TABLE OF CONTENTS

1. Francisco Valdes,* Foreword—Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities, 9 La Raza L.J. 1(1996). **

I.

INTRODUCTION

During the past decade or so the birth and growth of "Critical Race Theory" has enlivened and transformed critical legal scholarship. [FN1] Not only has Critical Race Theory animated and advanced the law's discourse on race matters, it also has helped to diversify this discourse: Critical Race Theory has ensured (for the first time in American history) that law review race scholarship is produced and published in significant or mainstream venues by scholars self-identified with subordinated racial groups and perspectives. [FN2] In so doing, Critical Race Theory has ensured that this expanded written record on race, law, and society includes the experiences, "stories" and insights of marginalized "voices" and communities. [FN3]

While still in its developmental stages, this lively and influential genre of critical legal scholarship has produced theoretical insights that have begun to penetrate the judicial consciousness. [FN4] Critical Race Theory, in other words, promises to keep affecting not only the way in which race discrimination is conceived and discussed but also litigated and adjudicated, [FN5] thereby helping to make the sort of practical difference that is a key aim of activist scholars. This branch of critical legal theory thus has filled conceptual, discursive and practical voids in American legal culture, both through its written literature and its repertoire of live events. [FN6]

Indeed, among the key contributions of Critical Race Theory (and its jurisprudential counterparts) has been the pioneering of post-modern [FN7] legal theorizing that is skeptical yet progressive, as well as increasingly inter-disciplinary. [FN8] In particular, the critical legal scholarship of race (and gender or sexual orientation) in recent times has interrogated and helped to debunk various essentialisms and power hierarchies based on race, color, ethnicity, sex, gender, sexual orientation and other constructs. [FN9] This discourse has given rise to "outsider jurisprudence" [FN10] and "perspective scholarship," [FN11] which have helped to constitute and establish innovative fields and kinds of legal theorizing. Perhaps most notable among these newer strands of critical and outsider perspectives on the law are Feminist Legal Theory, Critical Race Theory, Critical Race Feminism, and Queer Legal Theory. [FN12]

An obvious pending task is delineating the inter-relationship, if any, of these various and varied jurisprudential enterprises; indirectly, this Colloquium's focus on a group as diversified as "Latinas/os" calls for some reflection on this task, and on the questions that its undertaking raises. Nonetheless, one point is already clear: driven by a sense of progressive activism, Critical Race Theory, together with these other jurisprudential viewpoints, has infused contemporary legal discourses with a newfound concern for social and legal transformation on behalf of communities traditionally subordinated by dominant legal and social forces. [FN13] Without doubt, the body of literature and the convening of individuals that flow from the enterprise known as Critical Race Theory have made a continuing difference on multiple planes in the

race/power status quo within American legal culture. [FN14]

From its inception, however, moments of tension have punctuated this ongoing constitution of "RaceCrits" as theory and community, [FN15] and a sense of oddness surrounds this tension because it derives from a curious and continuing paradox: despite the original and sustained centrality of individuals who are women and/or non-African people of color to this enterprise, despite the increased diversity of perspectives and insights that it has brought to legal discourse on race, Critical Race Theory is sometimes experienced and described as both androcentric and Afrocentric, [FN16] as well as heterocentric. Thus, in recent years, Critical Race Theory (like Feminist Legal Theory) has found itself confronted with the objection that it has replayed the omissions and oversights of the majoritarian status quo. [FN17]

In brief, Critical Race Theory may have been insufficiently attentive to the interplay of patriarchy and white supremacy in the shaping of race and racialized power relations. Its interrogation of "race" perhaps left important "intersections" unexplored. [FN18] Likewise, Critical Race Theory perhaps has been insensitive to the limitations in scope and depth of the "Black/White paradigm" [FN19] as an exclusive lens for the deconstruction of race and race-based subordination in a multi-cultural society. The struggle against "race" subordination, if operationally narrowed to the oppression of African Americans, misses the Latina/o, Asian American, Native American and other dimensions of "race"-based power relations. [FN20] And if Critical Race Theory still wonders "what sexual orientation has to do with race," it is only because it has overlooked the poignant and powerful testimony of the many lesbians, gays, and bisexuals of color who have raised their voices against both homophobia of color and gay racism. [FN21]

If accurate, these particular shortcomings would be irony in the pure, for Critical Race Theory itself was born of well-warranted reaction to the careless and false homogeneities of traditional legal culture, or even an antecedent movement in modern legal culture--Critical Legal Studies. [FN22] This earlier movement, which conceived of itself as pluralistic and progressive, discovered that legal scholars from three overlapping communities or groups-- women, people of color, and women of color [FN23] --were profoundly disaffected with the tendency of Critical Legal Studies to slight "minority" scholars and communities even as it dedicated itself to improving the lot of the oppressed. [FN24] Critical Legal Studies, as a relatively direct precursor of Critical Race Theory, therefore contained or indicated lessons that recent events or dialogs suggest may not have been fully appreciated among RaceCrits themselves. For those of us who affiliate with and are supporters of Critical Race Theory (or of Feminist Legal Theory) the challenge, of course, is to ensure that the omissions or oversights of the past, wherever they be, are rectified resolutely and completely. But that is not all.

In this historical and contemporary context, as this Colloquium shows, the specific roles and places of Latina/o [FN25] voices, communities, and interests (among others) become an open question: is Critical Race Theory a project of or for Latinas/os qua Latinas/os ... should it be, can it be? [FN26] For Latina/o legal scholars, several key underlying questions immediately arise. Does the Black/White paradigm somehow define or delimit Critical Race Theory in a conclusive or definitive manner? Conversely, do or can critical race discourses and venues place Latinas/os at the center, at least for some significant portion of the time? Is critical "race" theory concerned with "ethnicity"? Should it be? Is, can, or should Critical Race Theory be a viable and inviting project to those with a Latina/o subject position? [FN27]

To nudge the discourse on these pending questions, the pages that follow present the remarks delivered at a Colloquium on Representing Latina/o Communities: Critical Race Theory and Practice, held by the Law Professors Section of the Hispanic National Bar Association in October 1995. [FN28] These remarks present an array of perspectives, foci, methodologies, and conclusions. On their face, these diversities evidence both the richness of the existing work produced by Latina/o legal scholars and the range of identity and intellectual pluralisms that presently exist in the Latina/o law professorate of the United States. Whether or not one (dis)agrees with any of these scholars on any given point or conclusion, these multiply-diversified authors and works display the extent of contribution that Latina/o critical legal scholars have made, are making, and will continue to make, to contemporary conversations about race, ethnicity, and gender subordination.

Precisely because of their multiple diversities, these works confront a dilemma prominent in current critical legal discourses, including Critical Race Theory: the sameness/difference dilemma. [FN29] In recent years this dilemma has attracted much commentary in critical legal discourses of race (and gender) as scholars self-identified with traditionally subordinated communities sought to theorize from particularized subject positions. [FN30] The recent proliferation of outsider or perspective jurisprudence has brought with it questions and critiques of identity and community, of sameness and difference. This sameness/difference multilog, as the works presented in this Colloquium attest, remains open-ended for and among Latinas/os as well.

In fact, these works suggest that sameness/difference discourses are compelling to Latinas/os because the category "Latina/o" is itself a conglomeration of several peoples from varied cultures and localities, all of which have managed to become thoroughly embedded in American society through different yet similar experiences. These group experiences include, but are not exclusively about, Mexican-American, Puerto Rican, and Cuban-American communities. [FN31] Each of these (and other) Latina/o sub-groups not only comprises "different" national origins and cultures but also diverse spectrums of races, religions, genders, classes, and sexualities. Given these multi-textured groups, and their wide ranges of overlapping experiences vis a vis the dominant culture of this Euro-American society, issues of sameness and difference must be a source of fascination and dissection for Latina/o legal scholarship--they are exactly the issues with which any conception or practice of coalitional Latina/o pan-ethnicity in the United States must grapple. [FN32]

Yet, within these (and other) diversities, the remarks below manage to share and exude a sense of commonality that threads them into one whole here: they are the work of scholars who identify as, or are concerned with, Latinas/os in American society. These scholars, due to heritage, experience, and volition are well-positioned, and they have elected, to speak here as agents of Latina/o legal scholarship in a social and theoretical context that frequently overlooks Latina/o existence. As a set, these works display both a sense of individuality and collectivity, of difference and sameness. This Colloquium manifests, in a specifically Latina/o context, some ability to traverse the grounds of a postmodern pan-ethnicity with caring, constructive, and progressive outlooks. In this way, this Colloquium also reflects the larger issues confronting Critical Race Theory at this historical moment.

This moment in the history of Critical Race Theory, so gracefully and incisively presented by Angela Harris in her Foreword to the 1994 Symposium on the topic by the California Law Review, captures the stresses, lessons, and opportunities posed by our

era's experience with modernism and postmodernism. [FN33] In that Foreword, Professor Harris engages three complex phenomena and points, which inevitably frame and inform not only the current state of Critical Race Theory, but also this Colloquium. These three phenomena and points are: 1) the benefit in turning the tensions that arise from the interplay of modernism and postmodernism in critical legal scholarship into an opportunity to advance critical legal theory; [FN34] 2) the simultaneous pursuit of sophistication and embrace of disenchantment to achieve a creative discursive balance that generates progressive and transformative theorizing; [FN35] and, 3) the need to initiate a politics of difference and identification that will foster a nuanced and capacious jurisprudence of reconstruction to alleviate myriad forms of human suffering. [FN36] These points, in turn, can aid the design and creation of a "reconstructed" [FN37] and "sophisticated" [FN38] modernism via Critical Race Theory and outsider jurisprudence.

Professor Harris' Foreword therefore serves as an excellent point of departure and reference for any consideration of the works constituting this Colloquium. The participants are outsider scholars electing to identify with each other despite differences of race, sex, class and sexuality, using this Colloquium as an opportunity to practice a "politics of difference" and a "politics of identification" through various jurisprudential methods. Their remarks indeed are charmed by the "creative balance" of "sophistication and disenchantment" that can yield a "jurisprudence of reconstruction" from the current sameness/difference identity tensions in critical legal scholarship.

In fact, the remarks presented below consistently exhibit a strong sense of commitment to the modernist goals of dignity, equality, and justice while accepting and proceeding from the postmodern problematization of these concepts. The tension that resides in the coexistence of modernist and postmodernist influences within these works provides a glimpse into a critical legal discourse "suspended in creative balance" to advance the anti- subordination project. [FN39] These remarks, individually, display that the tensions between modernist identity politics and postmodern identity theorizing does not entail incoherence; [FN40] this Colloquium, as a whole, is an act of creative balance, suggestive of a post-postmodernism in critical legal scholarship that bodes well for the future of Latina/o participation in critical legal discourses devoted to race, ethnicity, and subordination.

This Colloquium thus occurs at the intersection of progressive critical legal discourse: the residual, resilient power of the Black/White paradigm over the American consciousness regarding race/ethnicity group relations, and the emergence of post-postmodern identity theories and politics. Because current discourses regarding race/power relations often seem to track mostly the relationship of unitary blackness to unitary whiteness, this Colloquium is, first and foremost, a by-product of the discursive practices that operate within America generally, and within Critical Race Theory specifically, to the exclusion of other racialized (and gendered) groups, such as Latinas/os. The message is simple: the politics and techniques associated with this paradigm keep all peoples of color in subordinated positions. Its dismantlement requires a more textured critique and a more expansive discourse.

Indirectly, if not frontally, this Colloquium consequently occasions continuing reflection on the inter-related meanings of the Black/White paradigm and the sameness/difference dilemma in post-postmodern theorizing, and it specifically invites a place at the table for Latina/o legal scholars and others interested in the conditions of

Latina/o communities. [FN41] The remarks presented at this Colloquium therefore do more than display the vigor, richness, and promise of a nascent Latina/o legal scholarship. They beckon a larger renewal of the broader anti-subordination project with Latinas/os as full discursive participants.

The work and thought that unfold below thus suggest a need and place for a prospective community of critical legal scholars that is self-consciously Latina/o; this Colloquium, in addition to occasioning reflection on Latinas/os and Critical Race Theory, also provides an occasion for contemplation of "LatCrit" theory or discourse. [FN42] Because they prompt reflection on the underlying questions noted above, the set of remarks that constitute this Colloquium indirectly call for further exploration of the prospects for a Latina/o critical legal discourse that is more openly, directly, and unabashedly Latina/o in content and focus. [FN43] However, this prompting of further reflection is only a beginning. [FN44]

Set against this background this Foreword is focused on both the Practices and the Possibilities that I associate with Latinas/os and critical legal scholarship on race, ethnicity, and other sources of subordination in American law and society. Its title thus reflects this Foreword's core thesis: as illustrated by this Colloquium, the time has arrived to move from past and present practices to the powerful possibilities that beckon. This progression not only will preserve the gains of recent years but also can help reinvigorate the anti-subordination agenda.

This Foreword thus divides into two parts. The first is devoted to practices and the second to possibilities. Neither part, however, is an attempt to catalog comprehensively either practices or possibilities; rather, each is limited to the practices or possibilities that are evidenced or suggested by this Colloquium.

Focusing mostly on the express or implied messages contained in the texts of these remarks, this Foreword reflects on current practices, as addressed in these works, to raise some of the possibilities that these messages might augur specifically for the future of Latina/o legal scholarship. In these opening lines, my purpose is to speak both to the present that is, but also to the future(s) that might be. After reviewing and discussing the predominant or common themes and points or practices within each of the following presentations, I therefore conclude with some thoughts about the possibilities they might foretell as a set.

Finally, it bears emphasis that, by publishing these remarks in this way, the Colloquium organizers and participants, and the La Raza editors, seek several gains. First, we seek to make the thoughts and ideas presented at the live version of the Colloquium more readily accessible to those who were unable to; we hope, in other words, to create opportunities for a form of virtual attendance. Second, we seek to amplify the body of legal literature devoted to the discussion of issues particularly germane to Latina/o concerns and communities; in consequence, we intend to elevate both these concerns and communities, as well as the current state of knowledge and awareness in American legal culture. Third, we seek to build relationships among and between Latina/o legal scholars and journals; in this way, we aim to foster the success of both. The seven presentations that follow, each somewhat akin to an "oral essay" in its published format, make evident the value of this effort.

* * *

III.

ON POSSIBILITIES: LATINAS/OS, PAN-ETHNICITY, AND POSTMODERNISM

As with the preceding discussion of practices, the three possibilities noted below obviously do not exhaust the realm of Latina/o potential in critical legal scholarship. Instead, this trio of possibilities is calculated to focus Latina/o legal scholars on the tensions that await us as we seize the opportunities open to us. By focusing on these three possibilities, I hope to promote within Latina/o legal discourse a sense of post-postmodernism, by which I mean a productive engagement with "sophistication" and "disenchantment" as we stand at the threshold of LatCrit theory. [FN99]

These three possibilities therefore are posed as partial means through which LatCrit theory can negotiate issues of sameness and difference toward a progressive sense of a coalitional pan-ethnicity. If Latina/o legal scholarship can help to unpack the particular legal and material conditions that affect Latina/o-identified individuals and communities in the United States, helping through this knowledge to empower and improve Latina/o positions and interests, we will have performed a great service. But if this scholarship also helps to cultivate a sense of sophisticated commonality, or post-postmodern pan-ethnicity, among the "different" groups of Latinas/os in American society, we also will have provided a sturdy basis for an intra-Latina/o politics of difference and identity. If so, we will have helped to foster an intra-Latina/o consciousness as a potent and enduring means toward Latina/o self-empowerment.

Moreover, by cultivating post-postmodern coalitions, LatCrit theory can position itself to be a strong and positive collaborator in the broader and joint resistance to subordination, which animates the work of RaceCrits, FemCrits, Race/FemCrits, QueerCrits, and other emergent outsiders. Each of these schools of perspective jurisprudence shares with the others issues of oppression, methodology, authenticity, identity, community, and legitimacy; [FN100] each of these subject positions seeks to deconstruct and reconstruct the role of law in subordination. Working from sophistication and with disenchantment, and embracing an inter-people of color politics of difference and identification, LatCrit theory can be a solid partner, specifically of Critical Race Theory, in building the jurisprudence of reconstruction and transformation that communities of color in American society so much need. [FN101]

Accordingly, the first of these possibilities is the very prospect of a discursive or theoretical genre openly focused on and driven by Latinas/os, and denominated and deployed with Latinas/os qua Latinas/os uppermost in mind. This threshold possibility springs from recurrent themes in the presentations of this Colloquium: a continuing sense of Latina/o marginality under all extant discourses or critiques of law even though the concepts, issues and goals of the discourses are familiar and important to Latinas/os. Whether it be the vestigial omnipresence of the Black/White paradigm in the American mainstream or the more recent Afrocentrism [FN102] and heterocentrism of Critical Race theory (or the apparent whiteness and straightness of Feminist legal scholarship), the loss of diverse Latinas/os qua diverse Latinas/os from

the discourse truncates Latina/o needs and aspirations.

At this juncture, it appears that this loss can be rectified or alleviated in one or both of two basic ways: an inward turn, focused on initiating LatCrit theory, or an outward emphasis, renewing our commitment to existing discourses. In other words, Latinas/os can endeavor to elevate ethnicity within Critical Race theorizing and gatherings (and to rejecting the whiteness of Feminist legal theory) or move to initiate a similar enterprise focused specifically on Latina/os. Or, Latinas/os can pursue a two-track approach, which combines at once both inward and outward directions.

Without doubt, the two-track approach is preferable. The presentations of this Colloquium, again, either spell it out or imply it: Critical Race Theory creates discourses that are relatively conducive to critical examinations of ethnicity, to nuanced explorations of sameness and difference within and beyond any group of color, to gains and insights in corresponding quests toward equality and dignity. For these reasons, Latinas/os should continue to participate in and support Critical Race (and Feminist) legal scholarship. For these same reasons, Critical Race Theory (and Feminist Legal Theory) must continue opening itself to Latinas/os, Asian Americans and other people who are neither African nor Anglo. Latinas/os should help to inform Critical Race (and Feminist) theorizing, but, as Professor Harris' Foreword demonstrates by example, making that happen requires mutual commitment and sustained effort. [FN103]

Experience consequently suggests that Latina/o legal scholars also must begin to create the discourses that will help to coalesce and advance the prospects of Latinas/os qua Latinas/os in American society and legal culture. A self- aware and focused Latina/o legal scholarship, and the dialogs that it creates, can sharpen Latina/o political discourse and activism, both in law and throughout society. This sort of legal scholarship therefore is key to the improvement of social and legal conditions for all Latina/o groups and communities in the United States. The benefits of LatCrit theorizing can be secured only by undertaking the work of LatCrit theory because, in my view, LatCrit theory faces a specific project: the exploration of Latina/o pan-ethnicity.

The concept of pan-ethnicity, as I use it here, provides a frame for sameness/difference discourse in Latina/o contexts. It poses a threshold query: do the varied Latina/o groups of this country, including the Mexican American, Puerto Rican and Cuban American ones, perceive sufficient similarities in language, culture, history or circumstance to generate a sense of pan-group affinity? If so, to what extent--where are the limits of pan-ethnic groupness? This query of course may be applied with validity and utility in Asian American and African American contexts, but the examination of this question has remained mostly inchoate. LatCrit theory can--it should and must--open the question to examination, illuminating the issues that it raises for each of these groups. [FN104]

Thus, the possibility of LatCrit theory is not antagonistic to the continuation of Critical Race Theory, nor to continued (and increased) Latina/o involvement in race critical scholarship. Nor is LatCrit theorizing incompatible or competitive vis-a-vis RaceCrit theorizing. Instead, LatCrit theory is supplementary, complementary, to Critical Race Theory. LatCrit theory, at its best, should operate as a close cousin--related to Critical Race Theory in real and lasting ways, but not necessarily living under the same roof. [FN105] Indeed, and ideally, each would be a favorite cousin of the other--both always mutually present at least in spirit, and both always mutually

welcome to be present in the flesh.

Juxtaposed against the threshold possibility of LatCrit theory is a second possibility: making the shift from the current practice of identity politics to a potential construction of politicized identities. [FN106] This shift, being pioneered by Professor Chang, Professor Harris, and like-minded scholars, entails recognition of the fact that alliances are best built on shared substantive commitments, perhaps stemming from similar experiences and struggles with subordination, rather than on traditional fault lines like race or ethnicity. This second possibility thus entails rejection of automatic or essentialist commonalities in the construction of coalitions and entails the post-postmodernist combination of sophistication with disenchantment, which can create a platform for the politics of difference and identification.

And, therefore, it is this move from color to consciousness that permits reconstructed modernism to refine the dynamics of post-postmodern identity politics and to chart the directions of perspective jurisprudence in the coming years. This move and its potential riches are viable both in intra-Latina/o group contexts as well as in inter-people of color group contexts. This pending move from color to consciousness, motivated by the blending of sophistication and disenchantment, is therefore a theoretical and political anti-subordination strategy for legal scholars self-identified as Latina/o, as well as other subordinated communities.

In fact, as Professor Harris has indicated, this acceptance and balancing of sophistication and disenchantment is precisely what makes it conceivable to mount critical legal movements that are race-conscious, ethnicity-conscious, gender-conscious and sexual orientation-conscious without blindly assuming, embracing, and replicating political or analytical essentialisms. [FN107] This balance is what permits the tension of modernism and postmodernism to be marshaled creatively toward the remediation of common yet personal suffering. This second possibility, in sum, conjures a vision of diverse critical legal scholars emphasizing different subject positions to engage and abet each other by mutually mapping multiple "chains of equivalences," all of which accumulate to oppress women, people of color, and sexual minorities in different yet similar ways, forms, and settings. [FN108]

Coupling the possibility of LatCrit theory with the possibility of a post-identity and post-postmodern era in critical legal discourse consequently recognizes that commonality is not grounded in some innate or essential universality, but that it is engineered by socially constructed experience--the infliction of suffering and the attendant struggles against even more suffering. [FN109] Among Latinas/os, these experiences take place around the historical and contemporary issues of white supremacy, Eurocentrism, nativism, language, immigration, and culture. In and across these various issues, Latinas/os manifestly are both different and similar. The individual and collective suffering involved in these experiences, and the challenges posed by these issues, provide the source of a balanced and sophisticated sense of Latina/o pan-ethnicity.

This second possibility and vision thus are rooted in the peronal and group experiences of subordination and suffering, which in turn are based on race, ethnicity, gender, sexual orientation, and other socio-legal fault lines; this possibility, intentionally moving away from essentialist appeals to race, ethnicity, gender or sexual orientation, anchors the potential post-identity movements of the post-postmodern era to the consciousness, struggles, and affinities produced by varied yet shared experiences of oppression and suffering based on these and similar constructs. [FN110]

This move is radical because it causes a shift away from the customary anchors of personal and group identity politics, but it is a key shift in basic identity paradigms because it draws strength both from modern and postmodern precepts, practices, and traditions.

The move to consciousness helps to mediate Latina/o commonalities and diversities regarding past history and present conditions because it allows us to focus on shared aspirations and common purposes. It is a vehicle for joining like-minded forces from groups or communities that otherwise may be configured along fractious and self-defeating lines. This move thereby can facilitate pan- ethnic and coalitional Latina/o agendas, projects, and efforts.

To some extent, the juxtaposition of these possibilities--LatCrit theory, Latina/o pan-ethnicity, and post-identity subjectivities--simply reflects the discursive and conceptual practices already pioneered by Critical Race Theory (and Feminist Legal Theory). Conceptual devices and analytical tools, like multiplicity, [FN111] multi-dimensionality, [FN112] and intersectionality [FN113] permit critical legal scholars--Latina/o and otherwise--to speak from cognizable subject positions without imprisoning ourselves within any given position. [FN114] Against this background, this juxtaposition effectively describes a Latina/o critical legal scholarship that is analytically insightful and functional because it is culturally inclusive and conceptually flexible.

This juxtaposition of Latina/o theory, pan-ethnicity, and post-identity politics, in turn, illuminates the third possibility: the renewal and enhancement of collaboration and coalition between and among scholars who identify with traditionally subordinated communities. [FN115] Emerging from the ongoing mapping of sameness and difference, this possibility is about collective empowerment and improvement--about collaborating mutually to enhance the social and legal conditions of Latina/o and of other subordinated communities. This final possibility is about the broader alteration of individual and group power relations legally and socially. It is the promise of empowerment for self/kin/community through coalitions stemming, again, from common yet diverse experiences with oppression and suffering. [FN116]

Through comprehensive examinations of bigotry and domination, LatCrit projects can help to locate the appropriate sites of coalitional cooperation, thereby deepening the law's commitment to reform on multiple fronts of oppression and broadening Latina/o resistance to the politics of backlash and retrenchment. Furthermore, by appreciating how varied species of discrimination become systems of subordination, which then operate as inter-linked networks of oppression, all genres and subject positions of critical legal scholarship can contribute to a capacious anti-subordination project. [FN117] Only this sort of mutual, collaborative project, based on a clear vision of inter-connected group/power relations, can counter the pervasive and insidious cross-linkages of racism, nativism, androsexism, heterosexism, and classism in law and in society.

The benefits inherent in these three possibilities are crucial because they offer hope in Latina/o struggles against the (mis)use of law to inflict or permit human suffering, debasement, and exploitation. These benefits include the development of Latina/o self-awareness and understanding, the advancement of Latina/o civil rights, the improvement of material conditions for Latina/o people, and a broader lessening of oppression and suffering among outsider groups in American society. These benefits obviously do not preclude areas or times of divergence and contention within Latina/o

communities, or even among people of color more generally, [FN118] but these benefits cannot be foreclosed simply because oppressed groups may disagree on any given issue or situation. As we contemplate moving from practices to possibilities, LatCrits must apply our talents and energies to securing these benefits for ourselves, our communities, and our situational kin.

This vision of balance and broadness in critical legal scholarship is perhaps optimistic, but the presentations delivered at this Colloquium provide cause for some optimism. In each instance, the presentations that follow this Foreword proceed from a decided and conscious subject position that is racialized and/or ethnicized and/or gendered. Yet, in each instance, these scholars have endeavored to elucidate the connections between each particular position and the positions of those who might, in varying degree, be regarded as the situational and intellectual kin of these scholars. In this Colloquium, we witness the balance and broadness--the politics of difference and identification--that provides cause for optimism about the discursive, theoretical, methodological, and political possibilities that await us. In this Colloquium, we see both sophistication and disenchantment put to good use in the service of reconstruction and transformation through jurisprudence.

IV.

CONCLUSION

During the past several years, traditionally subordinated voices have sought to find our selves and our kinds in American law and society. In doing so, we have sometimes supposed commonality or similarity only to discover difference and diversity. During this time, we have problematized identities and their meanings to foreclose the re-inscription of simplistic homogeneities and to engender a discourse that was both realistic and reformatory. With these efforts, we have abandoned various essentialisms; we have moved from various modernisms to various post-modernisms.

Yet, we have not been entirely successful. Despite our best and continuing efforts, outsider critiques of entrenched biases and power relations in American law and society have perpetuated historic erasures or elisions based on race, ethnicity, gender, sexuality, and other features of multiplicitous, multi-dimensional, intersecting identities. Now, perhaps, outsider legal scholars are ready to take the next step in the ongoing project of liberation through critical legal scholarship and activism. Now, perhaps, we are prepared to practice sophistication and disenchantment. Now, perhaps, we are ready to usher in a post-identity politics so that we can enter and help create the post-postmodern era in critical legal scholarship. My hope is that diverse Latina/o articulations of LatCrit theory, in tandem with strong Latina/o participation in Critical Race Theory, Feminist Legal Theory, and Queer Legal Theory, will advance us toward this crucial step in an ongoing, broad-based, and ultimately successful anti-subordination project.

Footnotes

* Professor, California Western School of Law; Visiting Professor, University of Miami School of Law, 1995-96, 1996-97. J.S.D. 1994, J.S.M. 1991, Stanford Law School; J.D. with honors 1984, University of Florida College of Law; B.A. 1978 University of California at Berkeley. The Foreword would not have

been possible without the work and effort of the authors and participants whose papers I introduce and discuss below, nor without the commitment and support of the La Raza editors. I therefore begin by thanking both sets of individuals and, in particular, La Raza Co-editors-in-chief Bob Salinas and Sandra Flores for their leadership and assistance regarding the Colloquium herein introduced. I likewise thank David Oakland for excellent editing. Because this Foreword would not be possible without the work of pioneering Critical Race theorists, I also thank all RaceCrits. In addition, I especially thank Bob Chang, Juan Perea and Robert Westley for comments and suggestions that immeasurably improved this Foreword. Finally, I thank Joseph Colombo for first-rate research assistance.

[FN1]. Though it is not susceptible of any one definition, Critical Race Theory has been described as the genre of critical legal scholarship that "focuses on the relationship between law and racial subordination in American society." Kimberle Crenshaw, A Black Feminist Critique of Antidiscrimination Law and Politics, in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 195, 213 n.7 (David Kairys ed., rev. ed. 1990). See generally, Angela P. Harris, Foreword: The Jurisprudence of Reconstruction, 82 CAL.L.REV. 741 (1994) (introducing the first Symposium devoted specifically to Critical Race Theory in an American law review).

[FN2]. Even as recently as the mid-1980s, the status quo of American civil rights scholarship was exceedingly white and male. See Richard Delgado, The Imperial Scholar: Reflections on a Review of Civil Rights Literature, 132 U. PA. L. REV. 561, 561-63 (1984) (arguing that an inner circle of a dozen legal scholars, all white and male, dominated American civil rights legal literature by citing to each other). Today, the various symposia cited below in note 6 include authors speaking from various racial/ethnic self-identifications, including Anglo or Euro-American. See generally infra note 6 and sources cited therein on critical race discourse.

[FN3]. This development, in turn, has produced questions over voice, identity, authenticity, and community both from within and without Critical Race Theory. See, e.g., Robin D. Barnes, Race Consciousness: The Thematic Content of Racial Distinctiveness in Critical Race Scholarship, 103 HARV. L. REV. 1864 (1990); Robert S. Chang, Toward an Asian-American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space, 81 CAL.L.REV. 1241, 1 ASIAN L.J. 1 (1993); Jerome McCristal Culp, Jr., Voice, Perspective, Truth, and Justice: Race, and the Mountain in the Legal Academy, 38 LOY. L. REV. 61 (1992); Richard Delgado, Storytelling for Oppositionists and Others: A Plea for Narrative, 87 MICH.L.REV. 2411 (1989); Alex M. Johnson, Jr., The New Voice of Color, 100 YALE L.J. 2007 (1991); Gerald Torres, Critical Race Theory: The Decline of the Universalist Ideal and the Hope of Plural Justice -- Some Observations and Questions on an Emerging Phenomenon, 75 MINN.L.REV. 993 (1991). Not surprisingly, similar issues, themes or points arise in Feminist Legal Theory. See, e.g., Kathryrn Abrams, Hearing the Call of Stories, 79 CAL.L.REV. 971 (1990); Toni M. Massaro, Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?, 87 MICH.L.REV. 2099 (1989). Therefore, it is also not surprising that women of color -- Critical Race Feminists -- have been key participants in this discourse. See, e.g., Mari J. Matsuda, When the First Quail Calls: Multiple Consciousness as Jurisprudential Method, 11 WOMEN'S RTS. L. REP. 7 (1989); Patricia J. Williams, Alchemical Notes: Reconstructing Ideals from Deconstructed Rights, 22 HARV C.R.-C.L. L. REV. 401 (1987). Most recently, similar discussions have arisen in the context of sexual minority critical legal scholarship, or Queer Legal Theory. See, e.g., William N. Eskridge, Jr., Gaylegal Narratives, 46 STAN. L. REV. 607 (1994); Marc A. Fajer, Can Two Real Men Eat Quiche Together?: Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men, 46 U. MIAMI L. REV. 511 (1992).
This scholarship, in turn, has drawn skeptical or hostile rejoinders from various quarters. See, e.g., Daniel A. Farber & Suzanna Sherry, Telling Stories Out of School: An Essay on Legal Narratives, 45 STAN. L. REV. 807 (1993); Randall L. Kennedy, Racial Critiques of Legal Academia, 102 HARV. L. REV. 1745 (1989). These attacks have inspired spirited responses from scholars identified with Critical Race Theory, Feminist Legal Theory, Critical Race Feminism, and Queer Legal Theory. See, e.g., Jane B. Baron, Resistance to Stories, 67 S. CAL.L.REV. 255 (1994); Colloquy, Responses to Randall Kennedy's Racial Critiques of Legal Academia, 103 HARV. L. REV. 1844 (1990); Jerome McCristal

Culp, Jr., Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy, 77 VA.L.REV. 539 (1991); Richard Delgado, When a Story Is Just a Story: Does Voice Really Matter?, 76 VA.L.REV. 95 (1990); Marc A. Fajer, Authority, Credibility, and Pre- Understanding: A Defense of Outsider Narratives in Legal Scholarship, 82 GEO. L.J. 1845 (1994); Alex M. Johnson, Jr., Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship, 79 IOWAL.REV. 803 (1994). These responses likewise have elicited further replies from the skeptics. See, e.g., Daniel A. Farber & Suzanna Sherry, The 200,000 Cards of Dimitri Yurasov: Further Reflections on Scholarship and Truth, 46 STAN L. REV. 647 (1994).

[FN4]. In some ways, this penetration already may be discerned. A case in point is Lam v. University of Hawaii, 40 F.3d 1551 (9th Cir.1994) in which the Ninth Circuit adopts an "intersectional" analysis of race, ethnicity, and gender discrimination to grant relief to an Asian woman subjected to illegal employment biases. See id. at 1561-62. Under these facts, the racialized, ethnicized, and gendered dimensions of the discrimination could have been parsed and atomized, such that no illegality would be found at the conclusion of the analysis. Resisting this formalism, the court instead focused on the ways in which multiplicitous identities form intersections of oppressions. This sort of analysis originates with the work of leading Critical Race Theorists, including Kimberle Crenshaw and Angela Harris. See, e.g., Kimberle Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, 43 STAN. L. REV. 1241 (1991); Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 STAN. L. REV. 581 (1990); see also Berta Esperanza Hernandez-Truyol, Building Bridges -- Latinas and Latinos at the Crossroads: Realities, Rhetoric, and Replacement, 25 COLUM. HUM. RTS. L. REV. 369 (1994) (discussing the "multi-dimensionality" of identity in the Latina/o context). See generally, Clark Freshman. Note, Beyond Atomized Discrimination: Use of Acts of Discrimination Against "Other" Minorities to Prove Discriminatory Motivation Under Federal Employment Law, 43 STAN. L. REV. 241 (1990) (advocating judicial recognition of the inter-connectedness of "different" species of discrimination).

[FN5]. See generally, Richard Delgado, Brewer's Plea: Critical Thoughts on Common Cause, 44 VAND. L. REV. 1, 6-8 (1991) (discussing the limitations of filing amicus briefs, of coining new litigation strategies, and of writing conventional law review articles as sources of impetus for the initiation of Critical Legal Theory).

[FN6]. For instance, during the past few years a new set of regional conferences for legal scholars of color has come into existence, in part, as a result of the intellectual room and momentum created by critical race discourse. Today, these annual conferences cover the Northeastern region, the Mid-Atlantic Region, the Southwest/Southeast region, the Western region, and the Midwest region of the country. Though the regional conferences are not focused on Critical Race Theory as such, the annual Critical Race Theory Workshop is a nationwide gathering of scholars devoted specifically to the advancement of critical race discourse. The first of these Workshops was held in 1989 at the University of Wisconsin. For a history of critical race discourse, see generally John O. Calmore, Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World, 65 S. CAL. L. REV. 2129, 2135 (1992); see also, Harris, supra note 1, at 741 (providing another, personal account of Critical Race Theory and its origins).
In addition to these ongoing events, the pages of the law reviews during recent years have made plain the contributions of Critical Race Theory to the written literature. See, e.g., Symposium: Critical Race Theory, 82 CAL.L.REV. 741 (1994); Symposium: Race and Remedy in a Multicultural Society, 47 STAN. L. REV. 819 (1995); Symposium: Representing Race, ___ MICH.L.REV. (forthcoming 1996); Women of Color at the Center: Selections From the Third National Conference on Women of Color and the Law, 43 STAN. L. REV. 1175 (1991); see also Richard Delgado & Jean Stefancic, Critical Race Theory: An Annotated Bibliography, 79 VA.L.REV. 461 (1993).

[FN7]. The term "postmodern" describes a critical approach to various assumptions about the human condition, and to their social construction through words and practices. See Harris, supra note 1, at 748. See generally Anthony E. Cook, Reflections on Postmodernism, 26 NEW ENG. L. REV. 751 (1992) (discussing postmodernism in a socio-historical context).

[FN8]. Exemplars of this critical and progressive legal scholarship tap into history, sociology, literature,

psychology, cultural studies, and other disciplines to push for social redress through theoretical insight and doctrinal reform. See, e.g., Kimberle W. Crenshaw, Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law, 101 HARV. L. REV. 1331 (1988); Charles R. Lawrence, III, The Id. the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 STAN. L. REV. 317 (1987); Neal Gotanda, A Critique of "Our Constitution is Color-Blind", 44 STAN. L. REV. 1 (1991); Ian F. Haney-Lopez, The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice, 29 HARV. C.R.-C.L. L. REV. 1 (1994); Harris, supra note 4; Cheryl I. Harris, Whiteness as Property, 106 HARV. L. REV. 1707 (1993).

[FN9]. E.g., Kimberle Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. CHI. L. FORUM 139 (exposing how women of color are marginalized under the race/whiteness essentialism of Feminist Legal Theory and the gender/maleness of Critical Race Theory); Harris, supra note 8, at 588-89 (critiquing the race/whiteness essentialism of Feminist Legal Theory). This sort of non-essentialist work therefore both informs and inspires similar critiques of essentialism in sexual orientation contexts and discourses. See, e.g., William N. Eskridge, Jr., A Social Constructionist Critique of Posner's Sex and Reason: Steps Toward a Gaylegal Agenda, 102 YALE L.J. 333 (1992); Janet E. Halley, Sexual Orientation and the Politics of Biology: A Critique of the Argument from Immutability, 46 STAN. L. REV. 503 (1994); Daniel R. Ortiz, Creating Controversy: Essentialism and Constructivism and the Politics of Gay Identity, 79 VA.L.REV. 1833 (1993); see also infra note 17 and sources cited therein on sexual minority critiques of Feminist Legal Theory.

[FN10]. The term "outsider jurisprudence" was coined by Professor Mari J. Matsuda to signify the schools of legal literature and discourse that emanate from and focus on "outsider" voices, interests, and communities. See Mari Matsuda, Public Response to Racist Speech: Considering the Victim's Story, 87 MICH.L.REV. 2320, 2323 (1989); see also Mary I. Coombs, Outsider Scholarship: The Law Review Stories, 63 U. COLO. L. REV. 683, 683-84 (making a similar point with a similar term).

[FN11]. The term "perspective jurisprudence" was proffered more recently by Professor Martha Fineman, who defines it as "a body of scholarship that is built explicitly upon the assertion of relevant differences among people, whether they be found in race, class, sexual orientation, social situation or gender." This body of scholarship thus comprises "complementary critical" viewpoints, that are brought to bear on legal doctrines and practices in order to argue for reform. MARTHA FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES 11-12 (1995).

[FN12]. See generally Francisco Valdes, Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex", "Gender", and "Sexual Orientation" in Euro-American Law and Society, 83 CAL.L.REV. 1, 343-76 (urging and discussing Queer legal theory).

[FN13]. See generally, Charles R. Lawrence III, Foreword: Race, Multiculturalism, and the Jurisprudence of Transformation, 47 STAN. L. REV. 819 (1995) (urging a reconceptualization of race and racism as a substantial societal condition that affects entire groups of people rather than simply individuals as such).

[FN14]. Sometimes, the best measure of such inroads is the reactions it generates from the established quarters of the status quo. In the case of Critical Race Theory specifically, and of critical legal theorizing more generally, the reactions thus far indicate a certain unease over the methodology and influence of critical race scholarship, at least when produced by scholars of color. See supra note 3 and sources cited therein on reactions to and discussions of techniques and points associated with Critical Race Theory. This state of affairs indicates that Critical Race Theory indeed has had an impact on the status quo, but it does not mean that Critical Race Theory is comfortably ensconced within the legal Academy. On the contrary, young scholars of color continue to be undermined by a status quo that on the whole insists on questioning the very legitimacy of Critical Race Theory, viewing the enterprise as somehow below conventional or traditional legal discourse. See generally, Baron, supra note 3, at 259 (describing the "nasty" tone of criticism leveled at Feminists and Critical Race Theorists). This self-serving value judgment, of course, has the foreseeable and inevitable result of keeping legal culture and discourse racialized in favor of persons and projects associated with whiteness. See generally Richard Delgado,

The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later, 140 U. PA. L. REV. 1349 (1992) (discussing practices within the Legal Academy that continue to devalue the work of scholars associated with traditionally subordinated communities).

[FN15]. See, e.g., Crenshaw, supra note 4, at 1244 ("Because of their intersectional identity as both women and of color within discourses that are shaped to respond to one or the other, women of color are marginalized within both" Critical Race Theory and Feminist Legal Theory).

[FN16]. As used here, "Afrocentric" denotes a focus on black or black/white relations and not a yearning for, or a return to, Africa. The perception addressed here with this term, as discussed immediately below, is that the scholarship and discourse produced under the rubric of "Critical Race Theory" generally and effectively has equated African American "blackness" with "race" and measured that experience against Euro-American "whiteness" without examining how Asian American, Latina/o and Native American experiences or identifies figure in the race/power calculus of this society and its legal culture.

[FN17]. See, e.g., Crenshaw, supra note 4, at 1242-44 (critiquing the marginalization of women of color in Critical Race Theory and other discourses); Harris, supra note 4, at 587-89 (critiquing the failure of Feminism to expressly interweave women of color in Feminist legal theorizing). A similar critique has been leveled at Feminist Legal Theory from a sexual minority perspective. See, e.g., Elvia R. Arriola, Gendered Inequality: Lesbians, Gays, and Feminist Legal Theory, 9 BERKELEY WOMEN'S L.J. 103 (1994) (rejecting the use of arbitrary categorization adopted in Feminist Legal Theory); Patricia A. Cain, Feminist Jurisprudence: Grounding the Theories, 4 BERKELEY WOMEN'S L.J. 191 (1989-90) (examining the marginalization and invisibility of lesbian experiences in Feminist Legal Theory).

[FN18]. See generally Crenshaw, supra note 4.

[FN19]. Harris notes:
African American theorists have, until now, dominated [Critical Race Theory], and African American experiences have been taken as a paradigm for the experiences of all people of color.
Harris, supra note 1, at 775. The "Black/White paradigm" thus signifies the reduction of race relations in American society and law to the relations between "white" Euro-Americans to "black" African Americans. Consequently, this paradigm ignores or denies the existence and relevance of persons hued with other colors, such as Asian Americans, Native Americans, and Latinas/os. In addition, this paradigm marginalizes even persons who are hued white or black but who derive from cultural or geographic destinations other than Europe or Africa, such as persons from Caribbean nations, who identify as both black and Latina/o. For a recent discussion of current issues raised by the continued operation and domination of the Black/White paradigm in American law and society, see generally William R. Tamayo, When the "Coloreds" Are Neither Black nor Citizens: The United States Civil Rights Movement and Global Migration, 2 ASIAN L.J. 1 (1995) (discussing the limitations of the Black/White paradigm in light of increasingly multicultural and international events, problems, movements, and discourses).

[FN20]. See generally Chang, supra note 3.

[FN21]. See generally Valdes, supra note 12, at 356-60 and accompanying notes. In particular, see id. at 359, n. 1266 and sources cited therein by lesbians and gays of color. In those writings, the authors decry both the racism of lesbian and gay communities as well as the demands of their communities of color that they lay aside their sexual personalities in order to attain acceptance as "true" members of those communities. These texts, through personal testimony and analysis, show that "race" is in fundamental ways contingent on "sexual orientation" and vice versa; that is, people of color oftentimes are required to manifest heterosexuality to be accepted as authentically raced, while lesbians and gays oftentimes must be white to be authenticated and accepted by those communities. See also Valdes, infra note 29 (generally discussing the same phenomenon). These texts thus show that "race" and "sexual orientation" combine, or intersect, in the formation of individual and group identities, and that these combinations and intersections inform the way in which particular persons or groups are constructed and (mis)treated culturally and legally. Ultimately, the conceptual and normative background established by these texts

indicates that the "race" in Critical Race Theory must be expounded -- preferably by Critical Race Theorists -- to clarify this double-edged ambiguity of the term.

[FN22]. See, e.g., Symposium, Critical Legal Studies, 36 STAN. L. REV. 1 (1984) (describing, and presenting works of, the Critical Legal Studies movement).

[FN23]. See generally, Symposium, Minority Critiques of the Critical Legal Studies Movement, 22 HARV. C.R.-C.L. L. REV. 297 (1987).

[FN24]. See, e.g., Robert A. Williams, Jr., Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color, 5 LAW & INEQ. J. 103 (1987) ("Divorced from the essential historical situation of peoples of color ... CLS poses the peril of dangerous irrelevancy for minority people." Id. at 126-27); see also Joel F. Handler, Postmodernism, Protest, and the New Social Movements, 26 LAW & SOC'Y REV. 697, 707-710 (1992) (reporting various minority critiques, asserted during the 1987 Critical Legal Studies Conference).

[FN25]. Latina/o law professors come in all colors, sizes, shapes, genders, sexualities, and the like. Nonetheless, those present at the Colloquium gathered there with a sense of ethnicized identity, which was a commonality that co-existed with the other diversities that our bodies, backgrounds, or minds exhibited. My collectivization of law professors who self-identify as "Latinas/os" is meant to invoke that sense of shared groupness.

[FN26]. Consider the following observations focused specifically on the participation and representation of Latinas/os in Critical Race Theory. The first anthology devoted to Critical Race Theory was published only last year. Though edited by a Latino legal scholar of towering influence among RaceCrits -- Richard Delgado -- its authors are primarily Black, heterosexual men. For instance, of the 41 authors represented in that compilation, seven self-identify as Latinas/os. Likewise, the first full-fledged Symposium by a major law review devoted to Critical Race Theory, published in 1995 by the California Law Review, featured nine authors. See supra, note 6. Of those, one -- again, Richard Delgado -- was Latina/o. Id. Similarly, the most recent Critical Race Theory Workshop, held at Temple University School of Law in 1994, gathered about 35 individuals. Of those, two were Latinas/o (and three were openly lesbian, gay or bisexual).
It bears emphasis that, in each of these instances, the organizers of the events or programs were sensitive to issues of diversity. Nonetheless, the recurring results are relatively homogenized. These and other results therefore raise, at the very least, an appearance of underinclusiveness, which is problematic at least to those who are left with a sense of exclusion.

[FN27]. The term "subject position" denotes the perspective, standpoint or approach of the author regarding the topic or issue being addressed. See Robert S. Chang, The End of Innocence, or, Politics After the Fall of the Essential Subject, 45 AM. U. L. REV. 687, 690-91 (1996).

[FN28]. The Colloquium was organized by the Law Professor Section of the Hispanic National Bar Association (HNBA), and took place in conjunction with the 1995 annual meeting of the HNBA. The Colloquium was sponsored by University of Miami School of Law and co-sponsored by the La Raza Law Journal. The University of Puerto Rico sponsored related events. The works that follow represent most, but not all, of the remarks or papers delivered at the Colloquium.

[FN29]. This dilemma is the negotiation of sameness and difference, which in turn implicates essentialist and constructionist views of society and identity. See generally MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW (1990). This sameness/difference dilemma is related to the critiques of Critical Race Theory and Feminist Legal Theory, which object to the apparent and exclusionary assumptions of race and gender within those discourses. See supra notes 17 and 19 and sources cited therein on critiques of Critical Race and Feminist Legal Theory. The challenge, it seems, is to recognize and accommodate differences while using commonalities to build coalitions. See generally, Francisco Valdes, Sex and Race in Queer Legal Culture: Ruminations on Identities and Inter-connectivities, 5 S. CAL. REV. L. & WOMEN'S STUD. 25 (1995) (discussing issues of sameness and difference based specifically on race and sex within

lesbian and gay legal scholarship, and urging a sense of "inter-connectivity" to help traditionally subordinated communities develop more effective and enduring coalitions).

[FN30]. See, e.g., Regina Austin, Black Women, Sisterhood, and the Difference/Deviance Divide, 26 NEW ENG. L. REV. 877, 879 (1992); see generally Joan C. Williams, Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist and Critical Race Theory, 1991 DUKE L.J. 296.

[FN31]. See Hernandez-Truyol, supra note 4, at 383-96 (providing a demographic and historical summary of Latinas/os in American society); see also Gloria Sandrino-Glasser, Los Confundidos: DeConflating Latinas/os' Race and Nationality 10-54 (providing a comparative review of the Mexican American, Puerto Rican, and Cuban American histories and experiences) (unpublished manuscript on file with author).

[FN32]. The notion of Latina/o pan-ethnicity rests on "the pan-Latin[a/]o consciousness emerging in this country" in tandem with a recognition that "we must never obscure the uniqueness of the experiences of these various Latino groups." Angelo Falcon, NEWSDAY, Sept. 3, 1992, at 106. Panethnicity in the Latina/o sameness/difference context results from the conclusion that "more brings [Latinas/os] together than separates them within the political [and legal] process" of American society. Id. The works presented in this Colloquium manifest precisely this sort of consciousness with respect to Latina/o pan-ethnic identity. See also infra notes 99 - 118 and accompanying text for a further discussion of coalitional pan-ethnicity.

[FN33]. Harris, supra note 1, at 759-84.

[FN34]. Id. at 759-63. This interplay entails a continuing the pursuit of modernist ideals, such as equality and dignity related to constructs such as race, sex, ethnicity or sexuality, while recognizing the instability and subjectivity that problematizes these ideals and constructs in a postmodern setting.

[FN35]. Id. at 766-80. The balancing of sophistication and disenchantment effectively calls for a careful parsing and articulation of modernist ideals and goals from a continually critical, and postmodernist, stance.

[FN36]. Id. at 760, 783-84. A politics that embraces both difference and identification can accommodate particularity within an overarching sense of alliance against the myriad forms of discrimination that interlock in various ways to secure the devaluation of non-male, non-white, non-heterosexual people and groups.

[FN37]. Id. at 775.

[FN38]. Id. at 778.

[FN39]. Id. at 780.

[FN40]. Id. at 759.

[FN41]. Persons who do not self-identify as "Latina/o" may be interested in, or implicated by, this Colloquium. Indeed, as the works that follow attest, participation in this Colloquium confirms the point. See, e.g., Robert Chang, The Nativist's Dream of Return, 9 LA RAZA L.J. 55 (1996).

[FN42]. Indeed, the "LatCrit" naming occurred during conversations that took place during the Colloquium. For a historical account of LatCrit theory's origination, see Francisco Valdes, Poised at the Cusp: LatCrit Theory, Latina/o Pan-Ethnicity and Latina/o Self-Empowerment, 1 HARV. LATINO L. REV. (forthcoming 1996-97) (Foreword to Symposium, LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship).

[FN43]. Consequently, this further consideration and exploration is taking place in the form of the First

Annual LatCrit Conference, scheduled for May 2- 5, 1996 in La Jolla, California. This LatCrit Conference is sponsored by California Western School of Law and co-sponsored by the Harvard Latino Law Review, which will publish the papers and proceedings of the conference in its inaugural issue during 1996-97. See id.

[FN44]. Preliminary planning for the Second Annual LatCrit Conference, to be held in May of 1997, already is underway. For more information, contact the author.

[FN45]. Leslie Espinoza, Comments by Leslie Espinoza, 9 LA RAZA L.J. 33 (1996).

[FN46]. Keith Aoki, Foreword: The Politics of Backlash and the Scholarship of Reconstruction, 81 IOWA L. REV. (forthcoming 1996).

[FN47]. See generally, Daniel A. Farber, The Outmoded Debate Over Affirmative Action, 82 CALIF.L.REV. 893, 909-11 (1994) (discussing critiques of "merit" in law school admissions and other settings).

[FN48]. See generally Leslie Espinoza, The LSAT: Narratives and Bias, 1 AM. U. J. GENDER & LAW 121 (1993).

[FN49]. Espinoza, supra note 45, at 34.

[FN50]. Id. at 36-37.

[FN51]. Juan Perea, Suggested Responses to Frequently Asked Questions about Hispanics, Latinos and Latinas, 9 LA RAZA L.J. 39 (1996).

[FN52]. Id.

[FN53]. See generally Peggy C. Davis, Law as Microaggression, 98 YALE L.J. 1559 (1989).

[FN54]. Aoki, supra note 46, at ___.

[FN55]. Angel Oquendo, Comments by Angel Oquendo, 9 LA RAZA L.J. 43 (1996).

[FN56]. See generally DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM (1992).

[FN57]. See generally Chang, supra note 3 (calling for the initiation of a consciously Asian American genre of critical legal scholarship and discourse); see also Colloquy, The Scholarship of Reconstruction and the Politics of Backlash, 81 IOWA L. REV. (forthcoming 1996) (a collection of works by Asian American scholars devoted to issues of Asian American legal scholarship).

[FN58]. See supra note 31 and sources cited therein on Latina/o diversities, both historically and presently.

[FN59]. Id. See also accompanying text.

[FN60]. Oquendo, supra note 55, at 43.

[FN61]. See, e.g., Valdes, supra note 12, at 236-42, n.873 for a similar discussion, and additional sources, focused on the Native American experience.

[FN62]. See supra notes 33 to 40 and accompanying text.

[FN63]. See supra note 46 and accompanying text.

[FN64]. The fundamental nature of these stakes is what makes "rights talk" important to subordinated communities. See Harris, supra note 1, at 750-51.

[FN65]. Celina Romany, Gender, Race/Ethnicity and Language, 9 LA RAZA L.J. 49 (1996).

[FN66]. Id. at 49-50.

[FN67]. Id. at 50.

[FN68]. Id.

[FN69]. Id.

[FN70]. Id.

[FN71]. See supra notes 33 to 40 and accompanying text.

[FN72]. For prior exhortations on inter-connectivity, see Valdes, supra note 12, at 371-75; see generally Valdes, supra note 29.

[FN73]. Romany, supra note 65, at 50.

[FN74]. See Harris, supra note 1, at 760.

[FN75]. Chang, supra note 41.

[FN76]. See supra notes 55 to 64 and accompanying text.

[FN77]. See Chang, supra note 41, at 57.

[FN78]. Id.

[FN79]. Id.

[FN80]. Id. at 58.

[FN81]. Id. at 55.

[FN82]. See supra note 57 and sources cited therein on Asian American legal scholarship.

[FN83]. Various articles have noted in recent times that Latinas/os are poised to become a majority in California, the nation's largest state. See, e.g., Frank Sotomayor, State Shows 69.2% Rise in Latino Population, L.A. TIMES, March 28, 1991, at 1. This increase in population, in turn, can lead to increased Latina/o political activity and influence. See, e.g., Olga Briseno, Hispanics Try to Translate Numbers into Political Clout, SAN DIEGO UNION- TRIBUNEE, May 28, 1990, B1; James Fay & Roy Christman, Future Looks Good for State's Latino Politicians, SACRAMENTO BEE, July 24, 1994, at F2.
News reports consequently have suggested that Latina/o communities from coast to coast appear to be stirring from social or political marginality and dormancy. See, e.g., Manuel Perez-Rivas, One Language, Many Voices, NEWSDAY, Oct. 13, 1991, at 7 (reporting that the "signs of Latino influence are everywhere" after decades as New York's "invisible minority"); Gordon Smith, How Hispanics are Gaining in Political Influence, SAN DIEGO UNION-TRIBUNE, April 24, 1994, at A1 (describing political gains in numerous communities of California). For similar accounts focused on Asian American history and developments, see generally THE STATE OF ASIAN AMERICA: ACTIVISM AND RESISTANCE IN THE 1990S (Karin Aguilar-San Juan ed. 1994); BILL ONG HING, MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850-1990 (1993).

[FN84]. See Chang, supra note 41, at 55-56.

[FN85]. Deborah Ramirez, Forging a Latino Identity, 9 LA RAZA L.J. 61 (1996).

[FN86]. Harris writes:
A jurisprudence of reconstruction cannot afford to become enchanted with either 'theory' or 'practice'; its work ... is to refuse that dichotomy.
Harris, supra note 1, at 780.

[FN87]. Ramirez, supra note 85, at 63.

[FN88]. Id.

[FN89]. See supra notes 33 to 40 and accompanying text.

[FN90]. Berta Esperanza Hernandez-Truyol. Building Bridges: Bringing International Human Rights Home, 9 LA RAZA L.J. 69 (1996).

[FN91]. Id..

[FN92]. Id.

[FN93]. Id.

[FN94]. Id.

[FN95]. Id.

[FN96]. Id.

[FN97]. See id. at 71.

[FN98]. Id.

[FN99]. By "post-postmodernism" I mean precisely the balancing of modernist and postmodernist concepts and tenets, as urged by Professor Harris, in the next phase of critical legal discourse. See supra notes 33 to 40 and accompanying text.

[FN100]. See supra note 3 and sources cited therein on issues or techniques common to outsider scholars. See generally, Harris supra note 1, at 766-80 (discussing various concepts, themes or linkages shared by different genres of critical legal theory).

[FN101]. See generally Harris, supra note 1; Lawrence, supra note 13.

[FN102]. See supra note 16.

[FN103]. See generally supra note 1.

[FN104]. Appropriately, the first step in this direction is being taken at the First Annual LatCrit Conference, see supra note 43, which is designed both to explore the concept of "pan-ethnicity" among Latinas/os and to further consider the relationship of LatCrit theory to Critical Race Theory. For the published papers and proceedings of that conference, see 1 HARV. LATINO L. REV. (forthcoming 1996-97). For a brief elaboration of "pan-ethnicity" see supra note 32.

[FN105]. Accordingly, the First Annual LatCrit Conference featured a wide range of scholars, including Critical Race theorists such as Keith Aoki, Robert Chang, Sumi Cho, Jerome Culp, Adrienne Davis, Richard Delgado, Ian Haney-Lopez, Angela Harris, Gerald Torres, Robert Westley, and Eric

Yammamoto.

[FN106]. See Chang, supra note 27, at 688.

[FN107]. See Harris, supra note 1, at 754-66 (discussing modernism and its discontents).

[FN108]. Chang, supra note 27, at 692-93 (using term introduced in Chantal Mouffe, Hegemony and New Political Subjects: Toward a New Concept of Democracy, in MARXISM AND THE INTERPRETATION OF CULTURE 89-90 (Cary Nelson & Lawrence Grossberg eds., 1988)).

[FN109]. See Harris, supra note 1, at 750-54 (discussing the commitment of Critical Race Theory to ending suffering due to racism).

[FN110]. See generally Regina Austin, "The Black Community," Its Lawbreakers, and a Politics of Identification, 65 S. CAL.L.REV. 1769 (1992) (arguing that oppression and suffering due to racism can provide the basis for solidarity in the face of differences based on class, gender, geography and other constructs that keep African Americans apart).

[FN111]. See Harris, supra note 4, at 608 (on multiplicity).

[FN112]. See Hernandez-Truyol, supra note 4, at 429 (on multi- dimensionality).

[FN113]. See Crenshaw, supra note 4, at 1242-44 (on intersectionality).

[FN114]. See also Valdes, supra note 12, at 360-61 (discussing concepts of positionality and relationality vis-a-vis concepts of multiplicity and intersectionality); see generally Valdes, supra note 29 (further discussing these concepts and extending the discussion by elaborating the concept of interconnectivity).

[FN115]. See generally Harris, supra note 1, at 779 (discussing the role of academics and scholars in the maintenance of power relations).

[FN116]. See Mari J. Matsuda, Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition, 43 STAN. L. REV. 1183 (1991) (considering the relationship of legal theory to coalitional politics).

[FN117]. Matsuda writes:
Working in coalition forces us to look both for the obvious and non-obvious relationships of domination, helping us to realize that no form of subordination ever stands alone.
Id. at 1189.

[FN118]. Thus, examples of divergence or disagreement abound in daily life. E.g., Nanette Asimov, A Hard Lesson in Diversity: Chinese Americans Fight Lowell's Admissions Policy, S.F. CHRON., June 19, 1995, at A1 (reporting the still-unfolding controversy between Asian Americans and other people of color regarding admissions to a prestigious public school in San Francisco); Patrick J. McDonnell, As Change Again Overtakes Compton, So Do Tensions; Latino Plurality Seeks Power; A Generation After Winning it, Blacks Find Bias Charge a Bitter Pill, L.A. TIMES, Aug. 21, 1994, at A1 (describing political disputes between Latina/o and African American communities in one California city). Consequently, a sophisticated approach to coalitional efforts should proceed from an express understanding that sometimes one group may be justified or required to disagree with another. By expressly recognizing the inevitability of disagreement, coalitional efforts can negotiate specific instances of divergence without trivializing differences and without surrendering altogether the real, continuing, and substantial benefits of allied efforts.

2. Elizabeth M. Iglesias,* Foreword: International Law, Human Rights, and LatCrit Theory, 28 U. Miami Inter-Am. L. Rev. 177 (1996-97)**

I. INTRODUCTION

The last two years have witnessed the birth of the LatCrit movement in and through the work of an increasingly expanding group of legal scholars. [FN1] These scholars, who come from different Latina/o, Asian, and back communities, have been drawn together by a shared commitment to reinvigorate the antisubordination agenda of Critical Race theory, or RaceCrit, revive its ethical aspirations, and expand its substantive scope by introducing new themes, perspectives, and methodologies. Their efforts have produced a series of conferences focused on exploring how Critical Race theory might be expanded beyond the limitations of the black/white paradigm to incorporate a richer, more contextualized analysis of the cultural, political, and economic dimensions of white supremacy, particularly as it impacts Latinas/os in their individual and collective struggles for self-understanding and social justice. Equally important, these conferences reflect a commitment to ensuring that LatCrit theory is developed in a manner which produces a form of scholarship relevant to the legal struggles of other subordinated communities, whose particular histories of oppression and resistance have also been neglected in and through the black/white paradigm.

This Foreword introduces the proceedings of the third such gathering, which was organized in the form of a one day Colloquium entitled International Law, Human Rights, and LatCrit theory. [FN2] The proceedings can be read both as an effort to continue the conversations already underway and as a unique and significant scholarly event. Connecting this effort to articulate a LatCrit perspective on international law and human rights to past and future efforts in other substantive areas of law reveals the

rapidly expanding scope of the collective dialogue that is, in essence, the heart of the LatCrit movement. LatCrit discourse continues to grow, in part, because the practice of diversity and inclusion has enabled each successive conference to explore new points of departure, thus, building on the conceptual formulations, thematic priorities, and political concerns of earlier conferences.

Reading and publishing LatCrit conference proceedings as part of an evolving conversation serves important practical objectives as well. Professor Francisco Valdes argues persuasively that these publications transform critical legal scholarship into a practice of political activism. The publications expand the depth, breadth, and quantity of legal scholarship devoted to issues relevant to Latina/o communities--a compelling imperative given the current lack of such scholarship. Equally important, Valdes emphasizes the community building effected through publication. [FN3] Publishing these proceedings strengthens our intellectual community by transforming the production of legal scholarship from an experience of intellectual isolation into a practice of collective engagement and empowerment.

The proceedings of this Colloquium also have value in themselves and apart from the substantial contribution they will make to the development of LatCrit legal theory. The Colloquium represents the first self-conscious collective effort to explore some of the major issues in international law and international human rights from a critical race perspective and to articulate the significance of these issues to the antisubordination agenda that currently links the LatCrit movement to its RaceCrit precursors. This makes the Colloquium a significant scholarly event for two distinct, but interrelated reasons.

First, the effort to link the resolution of current international legal controversies to the domestic struggle against subordination calls upon the RaceCrit and LatCrit movements, both jointly and severally, to develop a broader scope for a more inclusive vision of the antisubordination agenda. The idea that international law and processes are relevant--let alone fundamental to the antisubordination agenda of Critical Race theory--is hardly ubiquitous in the scholarship. Indeed, a number of the conference participants have noted the extent to which the antisubordination struggles of various social movements in the United States have been impoverished by their relative isolation from and ignorance of the ongoing struggles for human rights and self-determination of peoples of color throughout the world.

This isolation may be due, in part, to a failure of vision that reflects inherited patterns of collective action and identity politics. From this perspective, both the RaceCrit and LatCrit movements face a common set of questions about the positions we will take, not only in relation to each other, but also towards the far larger group of humanity that does not share the privileges of our First World citizenship. These are the peoples of color, whose claims of right and struggles for justice will become increasingly compelling, both domestically and internationally, as the processes of globalization continue to unfold. Making the international move in our scholarship confronts us with the question whether our particular experiences of oppression will inspire us to imagine a broader more inclusive community, based on our common humanity and in solidarity with each other and the struggles and suffering of our Third World "others," or whether these experiences of oppression will become the media through which we stake our claim in the privileges of our First World citizenship.

Focusing on the relationship between international and domestic relations of subordination will also further constructive engagement between the RaceCrit and LatCrit movements by suggesting new points of intersection for imagining community

and building solidarity. Many of the problems we share, as racially subordinated peoples, are a function of the impoverishment and subordination of our nations of origin through the processes of colonialism and imperial capitalism. Of course, there are differences in these histories, differences, for example, in the terms and timing of colonial penetration, political independence, and outmigration. Understanding the way these historical differences reach into the present and are manifested in the institutional structures and discourses of international law will enable us to combat more effectively, the processes through which these differences are used strategically to divide us politically.

From another perspective, making the international move reveals new sites of contestation in the legal struggle against subordination. This is because the fragmentation of the various liberation movements in the United States and their isolation from similar movements throughout the world is not exclusively attributable to a failure of inclusionary vision. The ability to forge a common political agenda and organize collective action across the divisions of class, race, gender, and national boundaries requires more than vision and will. It requires resources, but more importantly, it presupposes the existence of social spaces and institutional arrangements that can operate effectively as forums for the development and expression of collective political identities. While the practice of international advocacy may promote some of the cross-national solidarities needed to broaden and deepen our antisubordination struggles, the ultimate effectiveness of this strategy is limited by the fragmentation of international and domestic legal regimes. [FN4]

International and domestic legal regimes are fragmented at multiple points, for example, by denial of the indivisibility and interdependence of the human rights enumerated in the Universal Declaration of Human Rights (Universal Declaration), by the separation of international and domestic rights regimes effected through state refusals to incorporate international human rights into their internal domestic laws and to accept accountability for their violations of international law in international forums, and by the separation of "private" and "public" international law. In the United States, this jurisprudential fragmentation has made international human rights and the human rights movement almost completely irrelevant to the legal struggle for domestic social justice precisely because these rights have been denied recognition as a legitimate basis for making claims within or against the United States. Promoting cross-national solidarities is, consequently, a socio-political struggle that will require LatCrits to develop the analytical resources necessary to evaluate the consequences of different ways of integrating international and domestic legal regimes and to intervene effectively in the legal struggles that the pursuit of jurisprudential integration will increasingly generate. Indeed, a number of the presentations make significant contributions to this theoretical project, thus suggesting a second major contribution of this Colloquium.

Just as engagement with international law promises to expand the way LatCrits/RaceCrits formulate and pursue our antisubordination agenda in theory and practice, these Colloquium proceedings also show how the application of LatCrit/RaceCrit methodologies, perspectives, and themes can expand international human rights legal discourse. The various presentations illustrate the extent to which critical methodologies like story-telling, the mapping of legal terms, and the incorporation of political economy and postmodern conceptualizations of identity can alter the terms of debate on key concepts and issues in international and human rights law.

Concepts like national sovereignty, refugee and alien, sustainable development, free trade, and regional integration take on new dimensions when approached through a LatCrit perspective. By bringing the perspective and methodologies of Critical Race theory to bear on the analysis of international law, processes, relations, and institutions, LatCrit theory has created a conceptual space for exploring how the formulation and resolution of key debates in international law reproduce the conditions of subordination of peoples of color, both domestically and internationally. In short, by making the international move, these proceedings open the door to the formulation of new critical perspectives and sites of contestation in the struggle for social transformation through law.

The rest of this Foreword tracks the structure of the Colloquium in the Miami proceedings. Professor Celina Romany's keynote address, [FN5] laying out in broad strokes the theoretical and political possibilities for LatCrit scholarship in the field of international human rights, was followed by three panel presentations. The panels were organized thematically around the so-called "three generations" of international human rights. [FN6] All the panel participants were asked to address their remarks to one or more of the following three questions:

(1) Does a LatCrit theoretical perspective on identity politics, the multiplicity and intersectionality of Latina/o identities and cultural values, as well as the convergences and divergences in our histories and discourses of assimilation, independence, and revolution offer new perspectives on the traditional themes and concerns that have organized the legal and political struggle to promote the recognition and enforcement of human rights, broadly conceived?

(2) Does LatCrit theory offer new perspectives on the recent trend toward regional economic integration in agreements such as NAFTA, and the likely impact of these developments on the human rights of Latinas/os within the United States, at the borders, and within the Latin American states considering regional integration?

(3) Does LatCrit theory have anything to say about key debates over (a) the status of national sovereignty in international law, (b) the proper scope and limits of state intervention in civil society, for example, police interventions to enforce immigration restrictions or promote drug enforcement operations, particularly in minority communities, at the borders or within the territorial jurisdiction of Latin American states or both, and (c) the status of international human rights in regional integration agreements?

In presenting an introductory overview of the participants' rich, varied, and compelling interventions, Part I focuses on the presentations of panel one, which addresses the ways in which LatCrit theory can further the theoretical and practical work of promoting respect for first generation civil and political rights. Part II examines panel two, which addresses second generation economic, social, and cultural human rights, and Part III focuses on the third panel analysis of third generations solidarity rights. Read cumulatively, these presentations illustrate both the contributions a richer understanding of key debates in international law can make to our struggles against subordination, as well as the contributions LatCrit theoretical perspectives can make to the development of international law.

II. IMAGINED COMMUNITIES AND TRANSNATIONAL IDENTITIES: LATCRIT PERSPECTIVES ON FIRST GENERATION CIVIL AND POLITICAL HUMAN RIGHTS

The presentations of the first panel develop a critical analysis of the role international civil and political rights discourse and practices can play in promoting and invigorating the antisubordination struggles of the LatCrit movement in the United States. Using different methodologies and points of departure, each presentation offers insightful variations on some common themes. In each presentation, U.S. domestic laws, policies, and judicially articulated legal doctrines are measured against the requirements of international law. Each presentation questions, in one way or another, the legitimacy of these policies and doctrines, focusing particularly on the way they impact the enjoyment of internationally recognized civil and political human rights.

Professor Hernandez-Truyol's intervention provides an excellent point of departure. [FN7] In introducing panel one, Hernandez-Truyol provides an overview of the evolution and development of international human rights law. This history reveals that human rights law, in general, and civil and political rights, in particular, are artifacts of a long and continuing struggle to articulate normative frameworks and develop enforcement mechanisms that might be effectively invoked to restrict the manner and conditions under which states exercise coercive power against individuals within their jurisdiction. Early formulations grounded individual rights against the state in religious and metaphysical conceptions of a transcendent moral order or natural law. Since World War II, these rights have been asserted by reference to the positive laws of the world community, grounded for example, in the provisions of the United Nations Charter, the Universal Declaration, the International Covenants, and a proliferation of international human rights instruments articulating the rights of the world's most vulnerable groups.

In recounting this history, Hernandez-Truyol makes numerous important observations. Although the Universal Declaration includes both economic and social, as well as civil and political rights, the legal framework for the enforcement of human rights law was subsequently divided into two regimes--one focused on civil and political rights, the second on economic, social, and cultural rights, each embodied in a different Covenant establishing different institutional arrangements and enforcement procedures. By reminding us that this fragmentation was a product of differences in the ideological commitments and priorities of developed and developing countries, Hernandez-Truyol strikes two important themes. The first theme focuses on the way the inequality of states in the international political economy constrains the articulation and enforcement of human rights law, a theme developed more fully in subsequent interventions. The second theme, while related, goes directly to the heart of the antisubordination project of the LatCrit movement (as a project in legal theory and scholarship), that is, the effort to articulate a vision of human identity that offers the most inclusive normative reference point for the enforcement of international human rights.

Hernandez-Truyol argues that "a human rights construct makes sense only with a holistic reading of rights that truly allows the enjoyment of the aspirational dignity that attaches to our status as human." [FN8] Accordingly, she attacks the fragmentation of human rights law into separate regimes. While the United States recognizes only civil and political rights and continues to deny economic and social rights any legal status, Hernandez-Truyol argues that this separation is morally and conceptually incoherent. From the perspective of individual persons, these rights are clearly interdependent and interrelated. Civil and political rights mean very little without the enjoyment of economic, social, and cultural rights, particularly given the differences that class and culture can otherwise make in our access to the state and to the resources necessary for

effective political mobilization. Indeed, this observation has not escaped the world community, as evidenced by the Third World sponsored General Assembly Resolution 32/130 of 1977, as well as in the numerous other human rights instruments Professor Hernandez-Truyol discusses. [FN9]

By sourcing the foundation of human rights in the individual's status as an individual and in the dignity and justice owed to individuals because of our status as human beings, Professor Hernandez-Truyol deploys a formulation and stakes a position that transcends, as contingencies, the differences of race, class, gender, and citizenship. Her formulation invokes our common humanity as the fundamental normative reference point for the conceptualization and enforcement of international human rights. Making this move, she provides a normative basis for combating the very real violence that is perpetrated by domestic legal regimes organized around contingent constructs like citizenship. In short, Hernandez-Truyol offers LatCrits an invitation to move even further beyond the black/white paradigm of early Critical Race theory and embrace the objective of achieving a global moral order that treats all human beings as equal.

To be sure, this formulation is not entirely unproblematic. The international legal order that LatCrits have inherited is one profoundly at odds with the centrality Hernandez-Truyol would confer upon the individual. As she acknowledges, sovereign states, not individuals, still remain the primary subjects of international law. International human rights enforcement practices are still constrained by and within institutional procedures constructed around deference to sovereignty. Moreover, achieving a normative consensus will not necessarily produce effective social change, since law still operates in and against the structures and relations of power it seeks to regulate.

More troubling however, this emphasis on the human dignity of the individual person, when deployed as a normative reference point for combating the state- centric positivism of international law, resonates, perhaps intentionally, with the language of natural rights and divinely ordained moral order. [FN10] Can such a move withstand the modernist challenge that it represents a psychological lapse into utopian delusion, a retreat from critical engagement to a metaphysical moral order which exists only in the imaginings of a new (LatCrit) coterie of high priests and priestesses? To my mind, it can. If modernism struck a death blow to any claims of direct access to the mind of God, the crisis in modernist categories, institutions and values has opened a space for what Professor Richard Falk has called "the postmodern possibility." [FN11] This is the possibility of creating a new world order that resolves the crisis of modernism by transcending the mess it has left us. That mess is the poverty produced by market efficiency; the conflict, instability, and violence perpetuated and exacerbated for the sake of national security; the confusion disseminated through a technocratic objectivity that purports to separate the articulation of fact and value; the ecological and human disasters that mark our development; and the crisis of identity and solidarity we confront as we struggle to imagine communities that can resolve and transcend the hatreds and injustices we have inherited from the modernist categories of class, race, and nation.

In short, what Professor Hernandez-Truyol's formulation offers is an enigma--a point of re-entry into a normative order we have yet to create. Rather than building this future through ex cathedra pronouncements grounded on some privileged epistemological access to divine will or natural law, her emphasis on the human dignity of the individual is a call to commit ourselves to the project of a radical and global democracy--based on a recognition of the fundamental equality of all human beings and a faith that more inclusive participation is our only real means of access to the common good.

Professor Elvia Arriola's presentation embraces this commitment to inclusion and addresses its implications for LatCrit scholarship at multiple levels. [FN12] Taking, as her point of intervention, the representational politics at work in popular media accounts of INS raids, she prefaces her substantive critique with an effort to define more precisely and self-consciously the normative commitments that should inform the LatCrit movement. Arriola links the development of the LatCrit movement, not initially to the production of a body of legal scholarship, but instead to the development of a diverse and inclusive community of scholars. She discusses LatCrit conferences, not primarily as a forum for the exchange of scholarship, but as socio-political spaces in which to practice our commitments to diversity and inclusion. By doing this, she openly invites and explicitly challenges LatCrit scholars to develop an ethical community.

Arriola's focus on LatCrit community-building is a politically and poetically appropriate preface to her substantive critique of the representational practices used to legitimate the violence of INS raids. In both instances, her call is for the development of an ethical community. In both instances, the danger is that community has often been and often is an enemy of diversity and inclusion, for as Arriola's story-telling illustrates, communities are too often constituted through the delimitation of boundaries and the construction of otherness.

Taking up her own challenge, Professor Arriola illustrates how story-telling methodologies can disrupt the boundaries of exclusionary community by exposing the inhumanity (and illegality) of the practices through which these boundaries are enforced. Significantly, her story-telling calls us to focus precisely on the narrative elements suppressed in mainstream media accounts of INS raids-- the physical and psychological violence visited on the detained and deported; the terror of confronting each day the risk that friends or family will be caught without papers, their papers rejected, indefinitely detained, deported without notice, in effect disappeared.

By emphasizing these narrative elements, Professor Arriola exposes how popular cultural representations manipulate the lines of empathy through which we imagine community. She asks whether INS immigration practices would withstand legal/political scrutiny if the judicial/popular conscience were more regularly exposed to stories of the hopes, fears, and aspirations of the individuals these practices target and terrorize. In short, by focusing on the common humanity that is denied in popular accounts of INS raids, Arriola's story-telling goes a long way toward recontextualizing U.S. immigration policy and enabling the exposure of its failure to comply with basic human rights.

Professor Kevin Johnson's intervention further develops these points in a rich, compelling, and multilayered analysis of U.S. immigration laws. [FN13] In his account, immigration law appears as a field of representation populated, among other things, by teeming hoards of rapidly multiplying, fearsome, loathsome creatures called "illegal aliens." Johnson's significant contribution begins by mapping their appearances on the field of legal discourse. Through a systematic analysis of the way the term "alien" is deployed in the articulation of U.S. immigration policy, Johnson invites us to explore more critically the values and assumptions embedded in the legal construction of citizenship. Not only does Johnson reveal the significant human costs of decisions enforcing the citizen/alien dichotomy, he also exposes the dichotomy's empirical indeterminacy--who is "illegal?" [FN14]--as well as its normative bankruptcy--why should any human person ever have to suffer the label? In this way, he, like Professor Hernandez-Truyol, leads us to a new threshold for imagining community--a human community beyond the nation-state.

First, Johnson shows how U.S. immigration law subordinates the individual's enjoyment of fundamental civil and political rights to the enforcement of the citizen/alien dichotomy. Only citizens have the right to vote, to participate in jury deliberations, to engage in political activities without fear of deportation, to challenge indefinite terms of detention, and to enjoy the protection of judicial review through habeas corpus. These rights are denied to "aliens," a term that legitimizes these restrictions by connoting illegality and otherness--rather than a common humanity.

Equally important, Johnson shows how the citizen/alien dichotomy contracts the parameters of community. Through this dichotomy, the political community is defined, not by reference to the human dignity of all individuals in relation to the state, but rather by citizenship. Aliens, no matter what their "real" connections to the community, remain only partial members, as marked by their more restricted rights against the state.

By reading U.S. immigration law through the normative prism of international human rights, Johnson's analysis establishes a vantage point from which we can challenge the artificiality of the imagined community underlying the citizen/alien dichotomy. Thus Johnson observes,

> [t]here is no inherent requirement ...that society have a category of "aliens" at all. We could dole out political rights and obligations depending on residence in the community, which is how the public education and tax systems generally operate in the United States. Indeed, a few have advocated extending the franchise to "aliens," a common practice in a number of states and localities at the beginning of the twentieth century. [FN15]

This revealed artificiality, in turn, enables us to explore more critically the kind of community the dichotomy sustains--the why of it all. This is Professor Johnson's second major contribution. By mapping the uses (and abuses) of the term "alien," Johnson enables us to see how the citizen/alien dichotomy legitimates practices of racial exclusion and economic exploitation. Through this dichotomy, U.S. immigration law continues to police the racial identity of the community it defines as citizens, even as it fosters, on an international level, the divide and conquer strategy that have so successfully undermined the American labor movement. The "alien" presence is tolerated in times of labor shortage, repudiated when work is scarce, super-exploited in either case through the denial of citizenship-based rights. In this way, the citizen/alien dichotomy creates a legal space in which exploitation and exclusion are legitimated.

At the same time, Professor Johnson makes a broader and more general contribution to the development of LatCrit theory. Johnson's work urges LatCrits to focus on legal doctrine and, more particularly, on the way language is deployed in the articulation of legal doctrine. His mapping of the term "alien," provides a powerful framework for challenging U.S. immigration policies and practices, in part, because it shows us that the legality of these policies is always a predetermined conclusion as a result of the meanings embedded in the language deployed. It makes sense, in any particular instance, to deny "aliens" basic civil and political rights--not because they are "human persons," not because they are "individuals," but because they are "aliens."

For LatCrit scholars, the implications of this analysis are profound. If legal discourse is a field of representation, legal interpretation is, all the more, an instrument of power. In order to challenge the subordination reproduced through law, we need to bridge the gap between the reality represented in legal discourse and the reality it rhetorically

suppresses. Professor Johnson's intervention is, thus, a call for us to develop our critical legal theories in the interdiscipline. This means finding new modes of analysis and importing them into the field of legal discourse. It is a call he answers, as much through his skillful mapping of the language used in immigration law, as through the external critique he develops using social science data on the contribution undocumented immigrants have made to the U.S. economy, a contribution otherwise invisible in the rhetoric of monumental social problems generated by teeming hoards of invading aliens.

If Professor Johnson leads us to the threshold of a newly imagined community, Professor Enid Trucios-Haynes pushes us through, for her intervention begins precisely where Johnson stops. [FN16] Despite his devastating critique of the way U.S. immigration law partitions community and legitimates the denial of citizenship-based rights to its partial members, Johnson ultimately accepts the citizen/alien dichotomy. [FN17] Perhaps the consequences of rejecting this dichotomy are deemed unacceptable, perhaps the feasibility too tenuous, but in either event it is Trucios-Haynes, who leads us to imagine a postmodern possibility superseding this dichotomy by invoking images of community and identity that transcend the nation-state.

Clearly, she travels a different route. Rather than focusing on the violence effected through the exclusion of aliens, Trucios-Haynes imagines the demise of the nation-state as a fulfillment of the possibilities embedded in the growing recognition of transnational identities. These identities, reflected in the legal form of dual citizenship, are artifacts of the increasing flows of peoples across national borders. These flows subvert inherited legal categories and compel a redefinition, a new map, of the international.

Rather than bemoaning these new changes, her formulation reveals and validates the possibilities they engender. More specifically, she views the increasing displacement of individual identity from the territorial boundaries of the nation-state as an opportunity, a new socio-political space, in which to promote the development of radical and plural democracy based on the personal self-determination of individuals. From this perspective, immigration law, particularly its construction and exclusion of aliens, reads like a last ditch effort to re-impose modernist categories in a postmodern world, a violent and regressive intervention aimed at preserving "the nation-myth, that defines the United States as a tribal community with a shared white, Christian, Western European heritage ... ." [FN18]

Professor Trucios-Haynes encourages LatCrit scholars to embrace our transnational identities as unique and empowering positions from which to develop cross-national solidarities. Many of us speak the languages of our places of origin. We may maintain family and community ties to and travel between these places and the homes we have made in the United States. Engagement in and with the social justice struggles in these places will make us the embodied instruments of social transformation. Crossing borders is our way of being and creates a vantage point from which to challenge more effectively and profoundly the borders we must cross.

At the same time, Professor Trucios-Haynes is not unaware of the substantial legal obstacles we confront in our efforts to promote cross-national solidarities with human rights movements in other places. If the fragmentation of political and economic human rights reflects the impoverished vision of social justice through which international capitalism maintains its dominance and claims its legitimacy, Trucios-Haynes shows us how the separation of domestic and international law enables the United States to maintain its dominance by rejecting its accountability to the international

community. In both instances, the fragmentation of legal fields reproduces the relations of subordination that undermine cross-national solidarity and contracts the jurisprudential and institutional spaces that might otherwise enable international legal advocacy to generate cross-national organizing. This makes the fragmentation of legal fields an important target for LatCrit critical scholarship--precisely because of its impact on the solidarities we want to develop.

To be sure, Trucios-Haynes's formulation is not entirely unproblematic, in part, because its most visionary elements need and deserve further development by her and other LatCrit scholars. She offers the personal right to individual self-determination as the focal point for and instrument of the cross-national solidarity she wants to promote. According to her, this right permits individual choice about loyalty to country, ethnic or racial group, or any other common bond and is evidenced in the growing recognition of dual citizenship. Can this postmodern conception of individual identity withstand the challenge it will face from scholars operating through modernist categories of group identity? Can it withstand the objection that a right to individual self-determination, at least the "choose your favorite loyalty" sort, is a recipe for possessive individualism, not collective solidarity? To my mind, it can because the contradiction between individual self-determination and collective solidarity is in large part an artifact of the policies, practices, and institutional arrangements through which modernist categories of group identity--of race and class and nationality--have been imposed upon and enforced against the human race. [FN19] To my mind, Trucios-Haynes's postmodern possibilities are worth pursuing, but not in a world of nation- states, dual citizenship notwithstanding. Thus, the challenge she puts to LatCrit scholars is precisely the task of envisioning and producing the type of world legal order in which the contradictions between individual self- determination and collective solidarity can be superceded.

III. FREE MARKETS, WELFARE STATES AND CULTURAL GENOCIDES: LATCRIT PERSPECTIVES ON ECONOMIC, SOCIAL, AND CULTURAL HUMAN RIGHTS

The presentations of the second panel move the focus of LatCrit analysis into the field of economic, social, and cultural human rights. These second generation rights depend upon the programmatic interventions of the welfare state, a state form increasingly under attack both in the United States and in Latin America. In the United States, these attacks are waged through the discourses of deregulation and reverse-discrimination and through a racist misogyny that targets all welfare recipients, particularly poor mothers and recent immigrants, even as it denigrates Latin cultural values and familial structures.

The welfare state, in Latin America, is also under attack through the discourses of privatization, structural adjustment, the repudiation of Latin economic nationalism and dirigista policies such as import-substitution, and increasing pressures to establish legal arrangements that protect free markets and free trade. Using different methodologies and points of departure, each of the four presentations offers a different perspective on these recent developments, their impact on the economic, social, and cultural rights of racially subordinated people and the practical and legal alternatives that a LatCrit perspective might afford.

The first presentation by Professor Jose Alvarez provides a critical analysis of the investment rights regime established by NAFTA, the North American Free Trade

Agreement. [FN20] His analysis of NAFTA's Investment Chapter makes a number of important contributions to the development of LatCrit theory, in large part because it demonstrates the significance of international trade and investment agreements to our antisubordination agenda. Alvarez encourages LatCrit scholars to turn their attention to these agreements because they are directly implicated in reproducing the patterns of subordination we struggle to dismantle. At the same time, his analysis illustrates how methodologies already familiar to critical race theorists can increase our understanding of the way international investment agreements impact on Latina/o economic, social, and cultural rights.

Like other commentators, Professor Alvarez is interested in revealing the realities of enforced subordination that are suppressed by the rhetoric through which the NAFTA is represented in legal discourse. However, Alvarez exposes these realities by invoking the rights critiques of early critical legal theory. Liberal rights, particularly negative rights, like the rights to property and privacy, have been the focus of heated debate in critical legal theory, as these rights have often proven to be empty formalisms of limited use in the struggle for social justice. Invoking these insights, Alvarez demonstrates how NAFTA's investment rights regime reproduces relations of economic and political subordination. Put differently, Alvarez can pierce the rhetoric of NAFTA's Investment Chapter, in part, because he knows how to do critical rights analysis.

Alvarez begins his rights analysis by noting that NAFTA is represented as a fair contract between sovereign equals, that establishes symmetrical and reciprocal rights between the state parties and their investors. NAFTA's Investment Chapter establishes a legal regime of substantive rights and remedial procedures for the benefit of "foreign investors." [FN21] The rights are broad ranging and impose significant restrictions on the state's authority to regulate economic activity within its territory. Indeed, many of these rights track the human rights enumerated in the Universal Declaration. Thus, under NAFTA's Investment Chapter, foreign investors enjoy the rights to be free of discrimination "to security, to recognition as a legal person and to nationality, to freedom of movement, and to own property and not be arbitrarily deprived of it." [FN22]

Alvarez's first move is to reveal the fundamental asymmetry of the rights established by the Investment Chapter. He does this by invoking the critical distinction between formal rights equality and equal rights enjoyment. For example, the rights to national treatment and unencumbered repatriation of profits may be equally afforded to all investors of the three contracting parties, but these rights are much more valuable to U.S. investors than to Mexican investors because U.S. companies are moving into Mexico much faster than Mexican companies are expected to move into the United States. Like other liberal rights regimes, NAFTA's formal rights equality for all foreign investors ignores the very real inequalities in levels of economic development between the state parties. These inequalities mean that U.S. companies will be the main beneficiaries of the NAFTA investment rights regime for some time to come.

This rights asymmetry is not the only thing that Professor Alvarez's rights analysis reveals. The formal rights equality of NAFTA's Investment Chapter hides the economic subordination it perpetuates. As a regime of negative rights, NAFTA investment rights operate as restrictions on the Mexican state's authority to regulate economic activity in ways that have promoted the economic development of Mexican investors, prohibiting requirements like domestic content rules, technology transfers, local sourcing, and the use of local managerial personnel. Mexican investors get formal rights equality in exchange for economic extinction, even as the Mexican economy

becomes another American market and the border becomes an INS encampment and a toxic waste dump.

Professor Alvarez's critical rights analysis takes another turn, striking a now familiar theme. Alvarez shows yet another way in which the fragmentation of legal fields undermines the struggle for human rights. While NAFTA's Investment Chapter purports to establish a self-contained regime of substantive rights and remedial procedures for foreign investors, this agreement and the economic activities and relations it protects from state regulation have a direct impact on many rights and interests not included, nor even recognized, within the rights regime the agreement establishes. The NAFTA investment rights regime only protects the human rights of the foreign investor. The rights most directly impacted and blatantly excluded are the social, economic, and cultural human rights of the most vulnerable Latinas/os, both in the United States and throughout Latin America.

Alvarez's analysis of the Investment Chapter is more than an illustration of the way critical rights analysis can be applied to international investment treaties. It also demonstrates the value (and limitations) of story-telling methodologies in the field of international economic law. The incomplete and asymmetrical rights regime established by the Investment Chapter depends on the deployment of a particular story for its legitimacy. The narrative elements of this story project the image of innocent investors as helpless victims of nationalistic expropriations by all powerful (but corrupt) states. LatCrits can and should combat the hegemonic deployment of this story in legal discourse, but not primarily through the counter- narratives of all powerful multinational corporations super-exploiting the oppressed peoples of the Third World, whose governments are too dependent on foreign capital to enforce their own social welfare laws.

Instead, what Professor Alvarez's analysis ultimately suggests is that the innocent investor story is best combated by analyzing the economic and political impact of investment treaties through the analytical frameworks of dependency theory, international political economy, and the economic sociology of immigration flows. These interdisciplinary methodologies are relatively new to critical legal theory, but they will increase the LatCrit repertoire of critical methodologies in ways that will substantially expand the scope of our antisubordination agenda and enhance the depth of our analyses.

Deploying different points of departure and critical methodologies, Professor Enrique Carrasco also encourages LatCrit scholars to turn our attention to the international economic legal order and, in doing so, illustrates the rich variety of perspectives represented in the LatCrit movement. [FN23] By organizing his analysis around a critical historical account of development ideas and practices in Latin America, Carrasco's intervention teaches us that the legal struggle to promote economic, social, and cultural human rights must target the policies and practices of international economic institutions such as the World Bank and the International Monetary Fund. These institutions have a direct impact on the socio-economic and political environments in developing countries and must be rigorously monitored to ensure that their policies enable the enjoyment of these rights through progressive social development.

It is no accident that Professor Carrasco's analysis does not focus directly on the substantive content of the rights recognized in the International Covenant on Economic, Social and Cultural Rights, nor on the United Nations procedures and institutions established to promote them. To be sure, these rights are crucial to eliminating the conditions of economic, political, and cultural subordination. Nevertheless, the

realization of these rights--either through their incorporation in domestic legal regimes or through the development of effective international enforcement mechanisms--has been captive to a profoundly ideological debate over the way the international political economy should be organized.

The history of this debate reveals a fundamental fracture between developed and developing countries or, more precisely, between defenders of free market liberalism and advocates for the interventionist welfare state. Free market liberals reject economic, social, and cultural rights as mere aspirations; treating them as enforceable rights is viewed as completely incompatible with the processes of "creative destruction" through which free market competition produces economic growth. Developing countries have, on the other hand, invoked the failure of liberal economic policies to effectuate these rights in order to challenge the assumption that unregulated private economic activity increases the general welfare and to defend the regulatory and programmatic interventions of the welfare state.

Carrasco organizes his critical historical analysis of this debate around four key concepts he associates with LatCrit theory: opposition, justice, structuralism, and particularity. This analysis makes him weary and wary of operating on the assumption that radical critiques will promote progressive social change. Indeed, he argues that the history of Latin American development demonstrates the futility of critical theories that assume radical oppositional stances and proceed through abstract analyses and generalized pronouncements.

While the post-World War II liberal economic order failed to fulfill its promises that open markets and an interdependent international economy would bring world peace, prosperity, and equal opportunities for all the world's peoples, liberal ideology has survived the radical critiques of Latin American development theorists. These theorists challenged the basic structures of the liberal legal order. Their theories enabled Third World states to announce the dawn of a New International Economic Order, encouraged Latin American policymakers to reject free market competition in favor of state economic regulation and applauded the nationalization of major industries, the implementation of currency controls and other import-substitution policies as well as the social programs of the welfare state. And yet, Latin America still remains a region marked by the violence and injustices of underdevelopment. Latin American policymakers have since jumped on the neoliberal band wagon, adopted the Washington Consensus, repudiated economic planning and social welfare spending and embraced the imperatives of structural adjustment. Neoliberalism is full force throughout Latin America, and the poor are getting poorer.

Carrasco is weary of this cycle and attributes it to the flawed assumptions and methodologies of both liberal economic theory and its radical development critics. None of these theories have been able to produce a legal order that secures social justice and enables economic development for the world's peoples because all are captive to a totalizing ideology that positions them on one side or another of a false dichotomy between the free market and a state- centric political economy. While each ideology offers a series of solutions to the problems created by the policies and practices prescribed by the others, all have, in different ways, enabled the production and reproduction of vast inequalities of wealth and power, the manipulation and exacerbation of uneven development, both within and between nation states, and the marginalization of a majority of the people. Careful and critical analysis would quickly reveal this.

Weary and wary of radical critiques that operate through abstract theory and righteous normativity, Professor Carrasco urges LatCrit scholars to reconstitute our oppositional strategies. Focusing specifically on the development context, Carrasco warns LatCrit scholars against making frontal attacks on neoliberalism and urges us instead to develop analytical tools that will enable "radically rigorous monitoring" of the policies and practices of international economic institutions. [FN24] Professor Carrasco knows this suggestion may be heard as a call to make our scholarship more acceptable to policymakers and consequently rejected as too much a capitulation to the way things are, but his response is compelling. Carrasco wants social development and economic justice for Latinas/os. Thus, he insists that we plant ourselves in the real world and begin to develop and deploy analytical methodologies that will have some chance of changing the policies and practices of international economic institutions. For Carrasco, this means mastering economic analysis and finance theory, getting the real stories from development victims and using this knowledge to reveal the structural discrimination neoliberal policies produce. It also means working to conceptualize and advocate new institutional structures and decisionmaking procedures that will facilitate the task of monitoring these institutions and the impact of their policies on the development process.

While the first two presentations focused on the way the structures of international political economy impact upon the enjoyment of economic, social, and cultural human rights, Professor Adrien Wing's intervention shows the essential role these rights can play in developing effective remedies for the various forms of spirit injury inflicted on women of color through the practices of rape, domestic violence, and other forms of sex-based oppression. [FN25] Her presentation also makes a more general contribution to the development of LatCrit theory by introducing and deploying the new perspectives and methodologies of Critical Race Feminism.

Like LatCrit theory, Critical Race Feminism challenges the black/white paradigm of Critical Race Theory. It places women of color at the center of critical analysis and focuses specifically on the intersecting impact of multiple forms of class, race, and gender subordination women of color often experience. [FN26] In this way, critical race feminism invites us to develop a collective political identity and to forge an antisubordination agenda across the divisions of race, class, and ethnicity. Like LatCrit theory, it urges us to transcend a black/white paradigm that has ignored the oppression of women of color as much as it has ignored the impact of white supremacy on nonblack minorities. At the same time, Critical Race Feminism also constitutes a direct and compelling challenge to LatCrit theory to develop in ways that are engaged with and responsive to women's claims of autonomy, dignity, and self- determination.

Professor Wing uses Critical Race Feminism to reveal important connections between the wide-spread rapes perpetrated on Bosnian women by Serbian men and the rapes of black women by white men under slavery in the United States. In both instances, the rapes did more than inflict severe physical and psychological harm on individual women; these rapes imposed systemic injuries on the entire ethnic/racial group to which these women belonged. Like the untreated spirit injuries suffered by black Americans, these injuries will reach far into the future, as the children produced by these rapes grow to confront the history that marks their very existence as an instrument of racial oppression and cultural genocide. Wing also shows how her spirit injury analysis can help LatCrits more fully understand and effectively address the many injuries inflicted on Latinas/os through the practices of state terrorism, compulsory sterilization, employment discrimination, environmental racism, and defamation.

In drawing these comparisons, Professor Wing criticizes the limited remedies available for these profoundly debilitating spirit injuries. Focusing on the victims of rape, she notes that criminal prosecutions and tort claims may provide some limited remedies to some limited number of women, but they do not remedy the spirit injuries of the women or their racial/ethnic group. Long-term spirit injuries require "a combination of law and rehabilitative and preventive measures in the fields of education, counseling, employment training." [FN27] In short, like social, economic, and cultural rights, adequate remedies require fully financed programmatic interventions. The fact that these affirmative interventions are the only adequate remedies for long-term spirit injuries underscores the crucial role of economic, social, and cultural human rights in the struggle against subordination. A greater acceptance of and commitment to the realization of economic, social, and cultural rights would make Professor Wing's suggestions seem much less radical.

Professor Wing also encourages LatCrits to acknowledge and oppose the ways in which Latin cultural norms, expectations, and practices enable and enforce the continued subordination of Latinas, both in the United States and in Latin America. Using her analysis of the substantial disabilities, constraints, and second class status imposed on Palestinian and South African women by cultural norms and, in the former instance, by the precepts of Islamic religion, Wing draws important parallels to Latin culture, noting that the glorification of machismo and marianismo and the teachings of the Catholic Church enable analogous forms of discrimination against Latinas. [FN28]

Professor Wing identifies numerous practical strategies LatCrits might use to combat these cultural norms and practices through international law. In making these suggestions, Wing is well aware that male elites have often resisted compliance with basic international human rights laws aimed at eliminating all forms of discrimination against women by declaring these sexist customs and traditions to be essential elements of their culture. Wing flatly rejects these claims and shows LatCrits how Critical Race Feminism provides the needed perspective from which the deployment of law against culture can be seen as part of a process of liberation. Cultural imperialism is most certainly a form of subordination LatCrits need to oppose, but the meaning and substance of a culture is neither static nor is it the exclusive jurisdiction of cultural elites. To the extent women resist the norms, practices, and expectations that oppress us, we are participants in the process through which cultures evolve and are entitled to have our claims to dignity, autonomy, and self- determination respected and enforced.

In the final panel presentation, I urged LatCrits to focus on and contribute to the evolution of various new rights regimes linking the enforcement of human rights to international economic law. [FN29] I organize this analysis around four specific linkage regimes: (1) the rights regime established by federal statutes imposing labor rights conditionality on developing countries seeking preferential access to U.S. markets; (2) the multilateral labor rights regime established by the North American Agreement on Labor Cooperation (NAALC); (3) the linkage regime established by the U.S. embargo of Cuba, read as an effort to promote the right to democratic governance, and finally (4) proposals to link the enforcement of international human rights to the decisionmaking processes of the World Bank.

These linkage regimes are all relatively recent developments and reflect a variety of possible responses to the fundamental restructuring both global capitalism and the inter-state system are currently undergoing. In different ways, each linkage regime challenges and transcends the fragmentation of legal fields. Some are more likely than

others to enable progressive developments in the struggle against subordination. Nevertheless, in either case, the rapid transformations currently underway in the international structure of production, investment, and trade have profound implications for LatCrit struggles against subordination both in the United States and in Latin America. Consequently, legal regimes linking the enforcement of human rights to the international regulatory frameworks that govern these processes are crucial sites for LatCrit critical analysis and political intervention.

At the same time, I urge LatCrits to approach this area super critically. Proposals to enforce human rights through the institutions and procedures established by international economic law can be designed to achieve many different ends. None of these ends are uncontroversial, and not all Latinas/os are similarly situated in relation to the economic arrangements, political institutions, cultural formations, and interstate structures that would be transformed by different human rights linkage regimes. For this reason, the legal debates over different human rights linkages constitute a concrete field of analysis through which we can move beyond a simple reiteration of the now familiar insights of postmodern identity politics. While we all know that Latinas/os occupy multiple identity positions at the intersection of many different social relations of privilege and subordination, we now need to better understand the political consequences of our assuming any particular subject position. My presentation demonstrates that the legal debate over human rights linkages provides a rich and fruitful field for developing that political analysis and assessing its practical implications for our struggles against subordination.

After briefly describing the four linkage regimes, I examine the difficulties involved in identifying the critical perspective from which the LatCrit movement should begin to analyze and intervene in the debates over these different linkages. To do this, I organize my analysis around three distinct but interrelated discourses. I call these the discourses of development, dependency, and neoliberalism. By focusing on the different ways these three discourses represent the problem of Latina/o subordination, I am able to show the relations of privilege and oppression that would be reinforced and the different political alliances that would be enabled and suppressed by analyzing these linkages through the critical perspectives expressed in each of the three discourses. For example, development discourse attributes Latina/o subordination to the persistence of underdevelopment (or underachievement) and underdevelopment to our failure to assimilate Western capitalist cultural values, modes of production, and social relations. Dependency discourse, by contrast, links Latina/o subordination to the inequality of Latin American states within the interstate system, while neoliberalism links it to the restrictions imposed on free market competition through state interventions and protectionism, as well as private monopolies and discrimination in the markets. Because each discourse attributes Latina/o subordination to different causes, each prescribes different responses and encourages different forms of political alliance and confrontation.

This analysis contributes to LatCrit theory in a number of ways. First, it illustrates the ways in which postmodern understandings of political identity and the politics of discourse can help LatCrits develop more comprehensive analyses of the legal structures through which relations of subordination are both challenged and reproduced. Any of these three discourses can be deployed either in support of or in opposition to any legal regime designed to link human rights enforcement to international economic law because each discourse simultaneously privileges and politicizes a different subject position.

Development discourse privileges subject positions most assimilated to First World cultural values and politicizes the unassimilated. Thus development discourse makes it possible to organize both support for and opposition to human rights linkages around issues related to the impact of international economic activity on pre-existing social relations of production, reproduction, and exchange. Dependency discourse privileges subject positions with control over the state apparatus and politicizes those without; thus it organizes the lines of political alliance and confrontation around issues related to the impact of international scrutiny on the sovereignty of the state; support and opposition to human rights linkages is, therefore, made to turn on one's position in relation to the state. Neoliberal discourse privileges those subject positions most favorably situated to exploit the opportunities offered by unregulated markets and politicizes those victimized by unregulated market competition; thus, it organizes support and opposition to human rights linkages around issues related to the impact of these linkages on the operation of the markets neoliberalism seeks to free.

These understandings, in turn, enable us to engage the legal struggle against subordination with greater awareness of the political implications of the subject positions we embrace. They clue us into the different ways in which our political identities are discursively constructed and politically manipulated and enable us to see the need for an antisubordination agenda which transcends the limited perspectives of all these various identity positions. These positions are, after all, only artifacts of the historically contingent structures of a world order we intend to transform.

This analysis also makes a second contribution. It is no accident that my intervention in the legal struggle for human rights specifically targets the way these rights have (and have not) been incorporated into the substantive and procedural frameworks of international economic law. Not only does this approach reflect my considered opinion that law facilitates the reproduction of subordination most insidiously through the fragmentation of legal fields, it also reflects my perhaps more controversial belief that the nation state will (and should) become a legal anachronism--a thing of the past. While this fate will be most directly attributable to the economic and political strategies multinational corporations are deploying in their efforts to liberate international capitalism from state interventionism and regulation, the demise of the interstate system of sovereign nations is potentially a progressive development for the struggle against subordination. After all, this system has been a major factor in enabling the processes of uneven development both within and between states and, in many ways, fosters the practice of war. [FN30]

The problem, of course, is that until recently the nation-state has been the only meaningful target for antisubordination movements, at least in the United States. Indeed, in this country, most advances in the struggle for racial, gender, and economic justice have been achieved through the power of the state. This is changing. As international legal regimes increasingly restrict and assume the regulatory power formally held by states, they are creating new sites for the struggle against subordination. Linking human rights enforcement to these regimes is a legal strategy LatCrits should pursue because it furthers our antisubordination agendas without requiring us to continue investing in a bankrupt system of nation-states.

IV. GROUP SOLIDARITY, ENVIRONMENTAL RIGHTS AND DEVELOPMENT WRONGS: LATCRIT PERSPECTIVES ON THIRD GENERATION HUMAN RIGHTS

The presentations of the third panel provide different perspectives on the way key debates surrounding the recognition of the third generation solidarity rights might be addressed through LatCrit theory and practice. Solidarity rights have been even more controversial than economic, social, and cultural human rights. Attacked as excessively general, unenforceable and likely to undermine respect for other human rights, solidarity rights have been defended, on the other hand, as derivatives of the mutual rights and obligations inherent in the interdependence that constitutes all social life and have been sourced to Article 28 of the Universal Declaration, which entitles everyone "to a social and international order in which the rights and freedoms set forth in this declaration can be fully realized." [FN31] They include the right to equitable and sustainable development, the rights of self-determination movements, and the right to a healthy environment, to security, and to peace.

The three panel presentations provide very different perspectives on the way a greater familiarity with the substance, purpose and conceptual structure of these rights might inform the development of LatCrit theory and antisubordination practices. From some perspectives, these rights promise to increase the range of strategies and expand the collective solidarities through which this agenda might be more effectively realized; from other perspectives, their implications are more ambiguous. These differences reflect the different positions from which the presenters approach these issues: Professor Natsu Saito's points of reference are the legal struggles of social justice movements in the United States; Professor Ileana Porras's concern tends to emphasize the development claims of Third World states in international forums constituted to establish environmental standards, while Professor Raul Sanchez's perspective is directly informed by his experiences representing Mexican farmers devastated by development wrongs. Together their different perspectives and positions provide a rich and compelling contribution to the development of LatCrit theory and practice.

Professor Saito's presentation provides the first point of departure. [FN32] Saito encourages LatCrits to explore the many new legal and political possibilities that would be enabled by reconceptualizing our struggles against subordination through the discourse of international human rights, generally, and group solidarity rights, in particular. She shows us these possibilities by retelling the story of the civil rights movements in the United States--re-envisioning their history as a struggle for human rights. These movements were initially movements for first generation civil and political rights, yet the struggle for social and racial justice quickly exceeded the limited parameters of civil and political rights. The struggle for economic justice--for the rights to housing, welfare, public education, and health care--that is, for second generation economic, social, and cultural human rights soon followed, costing many civil rights leaders their lives. Recognizing these various social struggles as related movements in a broader struggle for human rights is a first step toward conceptualizing new forms of solidarity that would enable racially subordinated groups to exercise effective political power across the divisions of class, ethnicity, and citizenship.

Using human rights discourse as a consciousness raising device is only one of Professor Saito's suggestions. This discourse also offers a variety of new approaches for LatCrits operating as legal advocates and theorists. The U.S. government has often asserted that the U.S. Constitution contains all the rights needed in this country and has responded to international criticism of its failure to secure second generation welfare rights by rejecting their status as human rights. But the idea that international human

rights are unnecessary in the United States is simply an expression of arrogant ignorance and a refusal to see the fundamental parallels Professor Saito notes between practices such as the ethnic cleansing in Rwanda and former Yugoslavia and the impact of welfare cutbacks and ordinances aimed at homeless people.

The United States is bound by international law, and the increasingly narrow interpretations of constitutional rights by a reactionary and activist Supreme Court make international law an even more important resource in the struggle for social justice within the United States. Greater familiarity with international human rights will provide lawyers with a broader perspective from which to challenge the limitations of U.S. rights regimes. LatCrits can contribute by invoking these rights in domestic litigation and international forums and by integrating them into our scholarship.

The most important site Professor Saito targets for careful critical legal analysis is the task of conceptualizing ways to promote the recognition and enforcement of group rights in American jurisprudence. American rights regimes are profoundly individualistic because American lawmakers tend to approach every social problem they want to address by articulating individual rights and remedies. Professor Saito provides a number of examples of the way this individual rights approach undermines the very interests it purports to vindicate. In one particularly compelling example, she recounts the impact of U.S. policies towards Native Americans. In the 1920s, the U.S. government attempted to divide up the Indian lands it held in trust by giving the divided parcels, along with U.S. citizenship, to individual Indians. This effort to translate the group interests of Native Americans into individual rights resulted in the loss of land, resources, communities, and access to culture and history.

The lesson Professor Saito urges us to draw from this example is that many fundamental human interests, both group interests and individual interests that arise from an individual's membership in a group, cannot be effectively protected by individual rights regimes. This lesson is there to be learned in many different areas of American law. In the 1960s and 1970s, the desegregation of longshoring unions throughout the South was carried out over the strenuous opposition of black and Mexican unions and their members. Through an excessively individualistic interpretation of Title VII's antidiscrimination mandate, the union merger cases stripped minority communities of many of the advances they had been able to achieve through the exercise of collective rights established under the National Labor Relations Act. [FN33] The union mergers were necessary to preserve the illusion that Title VII protects individual antidiscrimination rights, but the price of this illusion was the power of self-determination. By illustrating the importance of group rights in the struggle for human rights, Professor Saito enables and encourages us to continue challenging the conceptual limitations of U.S. rights regimes and, in doing so, helps us reconceptualize the antisubordination agenda. Freedom from discrimination is not the same as self-determination and, for precisely this reason, it is not enough.

Professor Porras's intervention takes a more skeptical stance towards human rights discourse. [FN34] Focusing specifically on efforts to address environmental problems through the framework of international human rights, Porras asks whether LatCrit theory will embrace the rights critique articulated by the early Critical Legal Studies movement. This movement, like many social movements in Latin America, rejected the formalism of liberal rights. These rights were criticized for their tendency to obstruct the development of authentic community, to ignore social interests that are untranslatable into the language of rights, and to divert social actors from pursuing more

transformative political strategies in favor, for example, of legal strategies like litigation. While Professor Saito's intervention suggests a number of ways in which the CLS critique of liberal rights might be integrated into a new narrative linking the civil rights movement to the struggle for human rights more broadly conceived, early Critical Race Theorists responded by aligning the struggle against racial discrimination to an affirmation of the negative rights regimes established by first generation civil and political rights.

In effect, Professor Porras's question asks how LatCrits, particularly those proposing to address environmental issues through a human rights framework, will position themselves in this debate. She herself expresses several doubts about the usefulness of international human rights discourse in addressing environmental problems. She notes that environmental problems are intergenerational. Solving them requires us to focus on and protect the interests of future generations, but human rights law prioritizes the present needs of individuals. When environmental values conflict with the satisfaction of basic human needs, the current human rights framework makes the satisfaction of human needs the fundamental priority--an anthropocentrism Professor Porras also rejects.

After sketching out some of her more immediate reservations, Professor Porras asks whether LatCrit theory can offer any more helpful insights on the issue of international environmental rights. She asserts that it can, focusing particularly on the way LatCrit insights can help Latinas/os negotiate the different socio-cultural processes that position our interventions in the international field between two dilemmas. On the one hand, a LatCrit perspective can help Latinas/os respond more effectively to the imperatives of assimilation; it enables us to resist the pressures to construct a USLat identity by denying what she calls the OtroLat; and it urges us to remember the contingencies of geopolitical boundaries. After all, as Professor Porras reminds us, the only difference between us and them is our papers. On the other hand, whatever our sense of cross national solidarity, a LatCrit perspective compels us to confront and combat the invisibility of privilege--including our own. As Professor Porras reminds us, we are Americans. The OtroLats we encounter will view us as Americans, in large part, because whatever our intentions or inclinations, we will think and act from the positions of our First World privilege.

How should this analysis inform our approach to environmental problems? For Professor Porras, it suggests the need for a politics that values the diversity and fluidity of the present and the indeterminacy of the possible--"a politics of embrace and non-exclusiveness." This in turn translates into a critical stance towards efforts to address environmental problems through international standards or the harmonization of domestic environmental laws or both. In taking this stance, Professor Porras is not unaware that it represents a particular subject position aligned in defense of Third World sovereignty. On the contrary, she invokes her experience as a Costa Rican representative working with the G-77 developing countries during the United Nations Conference on Environment and Development. There she saw first hand how the debates over environmental protection were manipulated in order to maintain the First World's economic domination. From this position, Porras would affirm the legitimacy of Third World claims to permanent sovereignty over resources within their jurisdiction.

At the same time, Professor Porras rejects any facile prioritization of economic development objectives or Third World sovereignty over environmental values and the human rights of people these states purport to (but may not actually) represent. In this way, her argument illustrates the strategic positioning a LatCrit perspective enables, even

as it suggests the limitations of positionality. We cannot move in all directions at the same time--though we can certainly imagine doing so. Moving from theory to practice means moving from positionalities to positions, even as we use the insights of our theoretical perspectives to redesign the structure of positionalities that constrain the positions we must take.

Professor Sanchez's intervention closes the panel presentations and the Colloquium proceedings. [FN35] It is a case study of the development wrongs perpetrated in the planning, construction, and management of a large infrastructure project located near the U.S.-Mexico border. By telling the story of the El Cuchillo Project, Professor Sanchez provides us with rich and detailed insights into the environmental and socio-economic harms created by unsustainable development projects; the governmental negligence, corruption, and political expediencies that produce them; the role and responsibilities of development banks in development disasters and the violations of domestic and international law that remain irremediable for lack of effective enforcement mechanisms.

Professor Sanchez's case study of the development wrongs produced by the El Cuchillo Project provides a graphic depiction of the way socio-economic subordination becomes a seemless web of violence constituted by innumerable and interrelated social and legal problems of daunting proportions. The development victims, whose story Sanchez tells, are enmeshed in a system that criminalizes their efforts to survive the socio-economic disruptions and environmental racism that threaten both their lives and their livelihoods, even as it allows government representatives to ignore and suppress the claims of right they assert.

Professor Sanchez's story of El Cuchillo also illustrates directly and concretely the pressing need for the legal recognition and enforcement of collective rights. Development projects produce collective harms and require collective remedies. At the very least, they require collective action. Nonelite individuals do not have the economic resources or the political power to intervene effectively in the political machinations through which these projects are planned, implemented, and managed. Thus they need the rights to act collectively (rights like the right to information, participation, and collective bargaining).

In addition, Professor Sanchez's description of the various groups dependent upon the water supplies affected by the project's dam--including human beings needing potable water, farmers needing water for irrigation, and local merchants living off recreational fishermen, boaters, and tourists--gives another reason to pause. Our own experience with class actions and structural injunctions in the United States should provide a concrete reminder that legal claims crafted around the assertion of individual rights do not provide an adequate framework for resolving the many competing and legitimate claims triggered by the impact of development projects. Resolving these competing interests requires the development of forums for informed negotiation and fair compromise--forums whose effective operation presupposes a balance of power among the claimants, or at the very least, a set of ground rules that prohibits the compromise of any claimants' fundamental interests. Legal scholarship aimed at articulating the procedural and institutional structures that could establish such forums at an international level is a project worthy of LatCrit attention.

V. CONCLUSION

The proceedings of this Colloquium span a broad range of substantive issues and analytical methodologies that arise from and bear upon two distinct but related projects in critical legal scholarship: the project of integrating international human rights into LatCrit struggles for social justice and the project of integrating LatCrit theoretical perspectives and our antisubordination agendas into the development of international law. The depth, breadth, and rich variety of the presentations evidence the many possibilities embedded in both projects. They are a credit to the movement and a promise of more to come.

* Professor of Law, University of Miami. Thanks to Dean Samuel Thompson for his unwavering support of these efforts, the editors of the University of Miami Inter-American Law Review, Professor Berta Hernandez-Truyol and special thanks to my friend and colleague, Professor Francisco Valdes.

Footnotes

[FN1]. For a chronicle of the movement see Francisco Valdes, Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities, 9 LA RAZA L.J. 1 (1996) [[hereinafter, Valdes, Latina/o Ethnicities] (chronicling presentations made at first colloquium sponsored by the Law Professors Section of the Hispanic National Bar Association in conjunction with the 1995 annual meeting of the HNBA in Puerto Rico); Francisco Valdes, Poised at the Cusp: LatCrit Theory, Latina/o Pan-Ethnicity and Latina/o Self-Empowerment, 2 HARV. LATINO L. REV. (forthcoming 1997) (providing a historical account of LatCrit theory's origination).

[FN2]. The Colloquium was organized in conjunction with the Law Professors Section of the Hispanic National Bar Association (HNBA) and cosponsored by the University of Miami School of Law and the Inter-American Law Review and presented in Miami during October of 1996. It was preceded by the first gathering of the HNBA Law Professors Section (cosponsored by the University of Puerto Rico and the University of Miami) in Puerto Rico during the Fall of 1995 and LatCrit I (cosponsored by CalWestern and the University of Miami School of Law) in La Jolla during the Spring of 1996. It is currently scheduled to be followed by LatCrit II (sponsored by St. Mary's School of Law) in San Antonio during the Spring of 1997, and LatCrit III (sponsored by the University of Miami School of Law) during the Spring of 1998.

[FN3]. Valdes, Latina/o Ethnicities, supra note 1, at 11-12 (noting that the publication of LatCrit conference proceedings serves "to build relationships among and between Latina/o legal scholars and journals; [and] in this way ... foster the work and success of both.").

[FN4]. The political fragmentation of the civil rights and labor movements in the United States provides a good example of the way the fragmentation of legal fields can obstruct the development of cross-national solidarity. See Elizabeth M. Iglesias, Structures of Subordination: Women of Color at the Intersection of Title VII and the NLRA. Not!, 28 HARV. C.R.-C.L. L. REV. 395, 497-502 (1993). Both movements have been severely weakened by their failure to develop a cooperative political agenda. This failure is, in part, attributable to the race-based essentialism of civil rights leaders and the class-based essentialism of the labor movement, in other words, to their exclusionary visions of community. However, the failure to develop effective intermovement alliances is also attributable to structural constraints established and enforced through the interpretative fragmentation of Title VII and the NLRA. The fragmentation of national labor policy across these two statutory regimes (and the subordination of Title VII's antidiscrimination mandate to the imperatives of an antidemocratic industrial relations policy) has suppressed the development of institutional arrangements that might have fostered the evolution of

intermovement alliances and the consolidation of new collective political identities that could help us supersede the race and class essentialism that has undermined these movements.
This is all to say that the fragmentation of legal fields (like the fragmentation of domestic and international law) is an interpretative strategy that has a direct impact on the kinds of alliances and collective action we are likely to imagine or able to pursue because it has a constitutive impact on the institutional arrangements we inhabit. The fragmentation of legal fields is, however, a strategy that operates at a jurisprudential level, thus making critical legal theory a crucial element in any struggle for social change. For a further discussion of these issues, see generally id.

[FN5]. Celina Romany, Claiming a Global Identity: Latino/a Critical Scholarship and International Human Rights, 28 U. MIAMI INTER-AM. L. REV. 215 (1996-97).

[FN6]. The "three generations" terminology reflects an effort to distinguish and categorize the thirty human rights principles listed in the Universal Declaration of Human Rights. See generally THOMAS G. WEISS ET AL., THE UNITED NATIONS AND CHANGING WORLD POLITICS 115-18 (1994). In this terminology, civil and political rights (for example, the freedom of speech, association, and religion) are referred to as "first generation rights" because these were the only rights included in the national constitutions of the industrial states. They are called negative rights because they aim to protect individual freedom by limiting state power. "Second generation rights" refer to socio-economic rights (for example, the rights to food and shelter). These rights are associated with the rise of the welfare state. They are called positive rights because they aim to promote freedom by imposing upon the state the obligation to ensure a minimum standard of living, commensurate with the state's level of development. "Third generation rights" refer to the rights to peace, development, and a healthy environment. These rights are called solidarity rights because they "pertain to collections of persons rather than to individuals." Id. at 116.

[FN7]. Berta Esperanza Hernandez-Truyol, International Law, Human Rights, and LatCrit Theory: Civil and Political Rights--An Introduction, 28 U. MIAMI INTER-AM. L. REV. 223 (1996-97).

[FN8]. Id. at 225.

[FN9]. As further evidence of interdependence, and more importantly, as evidence that this interdependence is simultaneously acknowledged even as it is strategically suppressed, Hernandez-Truyol points to the coexistance of these rights in international instruments such as the Children's Convention and the Women's Convention.

[FN10]. "An underlying assumption of natural law is that there is a common human nature that presupposes the equality of all human beings." See Hernandez- Truyol, supra note 7, at 228 n.21.

[FN11]. See generally RICHARD FALK, EXPLORATIONS AT THE EDGE OF TIME: THE PROSPECTS FOR WORLD ORDER (1992).

[FN12]. Elvia R. Arriola, LatCrit Theory, International Human Rights, Popular Culture, and the Faces of Despair in INS Raids, 28 U. MIAMI INTER-AM. L. REV. 245 (1996-97).

[FN13]. Kevin R. Johnson, "Aliens" and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons, 28 U. MIAMI INTER-AM. L. REV. 263 (1996-97)

[FN14]. As Professor Johnson notes:
The "illegal alien" label ... suffers from inaccuracies and inadequacies at several levels. Many nuances of immigration law make it extremely difficult to distinguish between an "illegal" and a "legal" alien. For example, a person living without documents in this country for a number of years may be eligible for relief from deportation and to become a lawful permanent resident. He or she may have children who citizens, as well as a job and community ties here. It is difficult to contend that this person is an "illegal alien" indistinguishable from a person who entered without inspection yesterday.
Id. at 277.

[FN15]. Id. at 268.

[FN16]. Enid Trucios-Haynes, LatCrit Theory and International Civil and Political Rights: The Role of Transnational Identity and Migration, 28 U. MIAMI INTER-AM. L. REV. 293 (1996-97).

[FN17]. "My point in this discussion is not that all distinctions between different types of "aliens" and between "aliens" and citizens should be discarded." Johnson, supra note 13, at 278.

[FN18]. Trucios-Haynes, supra note 16, at 295.

[FN19]. See Iglesias, supra note 4 (deconstructing the manipulation of the individual/collective rights dichotomy by foregrounding the way this dichotomy has suppressed the transformative agency of women of color, whose collective political identity supersedes the various group identities into which we are subsumed).

[FN20]. Jose E. Alvarez, Critical Theory and the North American Free Trade Agreement's Investment Chapter Eleven, 28 U. MIAMI INTER-AM. L. REV. 303 (1996-97).

[FN21]. For purposes of NAFTA, Chapter Eleven, "foreign investors" are investors of one of the three state parties to the NAFTA, who invest in the territory of one of the other two state parties. Chapter Eleven governs the treatment accorded by one state party to the investors of another state party operating within its territory. Thus, American investors are "foreign investors" protected by the provisions of Chapter Eleven, vis-a-vis their investments in Canada or Mexico, but not in the United States. Similarly, Mexican investors are "foreign investors" in the United States and Canada, but not in Mexico. Investors of states that are not party to the NAFTA are not protected by Chapter Eleven's substantive rights or remedial procedures. It should also be noted that the term "foreign investors" refers broadly to persons involved in the "establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments." Thus, it applies broadly to companies doing business in the territory of another party.

[FN22]. Alvarez, supra note 20, at 308 n.24 (citing Universal Declaration, Articles 2, 3, 6, 7, 8, 10, 13, 15, 17, and 27(2)).

[FN23]. Enrique R. Carrasco, Opposition, Justice, Structuralism, and Particularity: Intersections Between LatCrit Theory and Law and Development Studies, 28 U. MIAMI INTER-AM. L. REV. 313 (1996-97).

[FN24]. This is not to say that either Professor Carrasco's historical account or the lessons he draws are entirely uncontestable. While it is certainly true that Latin American welfare states have been unable to redistribute in an equitable and sustainable manner the wealth produced by import substitution policies, it does not follow that LatCrits should accept the structural adjustment policies and free trade agenda advocated by neoliberals. A very different development trajectory would begin with the reconfiguration of Fordist production relations in the import-substituting industries and a recognition that the welfare state cannot narrow the gap between rich and poor without the power to impose real redistribution on economic elites, a power few Latin American states have ever commanded. Without that power, any redistributive policies will come inevitably at the expense of macroeconomic health because they will be financed through inflationary spending rather than through real redistribution. See generally Tamara Lothian, The Democratized Market Economy in Latin America (and elsewhere): An Exercise in Institutional Thinking Within Law and Political Economy, 28 CORNELL INT'L L.J. 169 (1995). Nevertheless, Professor Carrasco's call for radically rigorous monitoring is hardly objectionable.

[FN25]. Adrien Katherine Wing, Critical Race Feminism and the International Human Rights of Women in Bosnia, Palestine, and South Africa: Issues for LatCrit Theory, 28 U. MIAMI INTER-AM. L. REV. 337 (1996-97).

[FN26]. See Iglesias, supra note 4, at 400 (arguing that "women of color constitute a distinct political subject and represent a meaningful perspective from which existing legal regimes may be examined and judged."). See also Elizabeth M. Iglesias, Rape, Race and Representation: The Power of Discourse, Discourses of Power and the Reconstruction of Heterosexuality, 49 VAND. L. REV. 869 (1996) [hereinafter Iglesias, Rape, Race and Representation] (analyzing the way racialized images of women's

sexual desire and feminine identity, both as mothers and as sexual beings, as well as women's economic vulnerability, reproduce the logics of white supremacy and male supremacy through the processing of rape cases, the regulation of welfare eligibility, and the resolution of child custody disputes).

[FN27]. Wing, supra note 25, at 345.

[FN28]. For an extensive analysis of the way Latin cultural norms and practices, in complicated ways, both undermine and enable the expression of female autonomy, see Iglesias, Rape, Race and Representation, supra note 26.

[FN29]. Elizabeth M. Iglesias, Human Rights in International Economic Law: Locating Latinas/os in the Linkage Debate, 28 U. MIAMI INTER-AM. L. REV. 361 (1996-97).

[FN30]. See generally CHRISTOPHER CHASE-DUNN, GLOBAL FORMATION: STRUCTURES OF THE WORLD ECONOMY, 107-50 (1989). See also Henry J. Richardson, III, "Failed States," Self-Determination, and Preventive Diplomacy: Colonialist Nostalgia and Democratic Expectations, 10 TEMP. INT'L & COMP. L.J. 1, 75 (1996) (offering a brilliant analysis which reveals the irrationality of international legal doctrines designed to uphold the concept of sovereignty by ignoring claims of liberation movements within the nation-state until they "earn" such recognition through successful military actions--thus fostering civil war).

[FN31]. See Sanchez, infra note 35.

[FN32]. Natsu Taylor Saito, Beyond Civil Rights: The Potential of "Third Generation" International Human Rights Law in the United States, 28 U. MIAMI INTER-AM. L. REV. 387 (1996-97)

[FN33]. See Iglesias, supra note 4.

[FN34]. Ileana M. Porras, A LatCrit Sensibility Approaches the International: Reflections on Environmental Rights as Third Generation Solidarity Rights, 28 U. MIAMI INTER-AM. L. REV. 413 (1996-97).

[FN35]. Raul M. Sanchez, Mexico's El Cuchillo Dam Project: A Case Study of Nonsustainable Development and Transboundary Environmental Harms, 28 U. MIAMI INTER-AM. L. REV. 425 (1996-97).

3. Celina Romany ,* Keynote Address: *Claiming a Global Identity: Latino/a Critical Scholarship and International Human Rights*, 28 U. MIAMI INTER-AM. L. REV. 215 (1996-97)

Latino/a Critical scholars and activists have a unique opportunity to crack the provincial shell that shelters critical legal scholarship in this country. Today, I would like to offer suggestions for the formulation of a dual strategy to be pursued at both the international and domestic levels. On the one hand, the international human rights field offers an ideal scenario for the exploration of a human rights discourse, which, in gaining a global perspective, re-energizes and transforms the U.S. civil rights agenda. As the dismantling of the civil rights agenda gets underway, a revitalized human rights agenda gains strength and empowers grassroots movements. On the other hand, as members of communities which constitute the South within the North, our positions must be incorporated in the critique of an international human rights framework that falls short in delivering the promised goods to subordinated groups.

Take the domestic front where the need to pass from a civil rights agenda to its human rights counterpart has reached emergency proportions. A post-Cold War globalization impulse, which erodes traditional notions of nationhood, sovereignty, and borders, sets the stage for passing. To stay in the niche of a civil rights agenda that has delivered crippled results to our communities amounts to not rising to the occasion and eludes undertaking the necessary inventories which precede a globally informed human rights advocacy.

In passing from civil rights to human rights, we incorporate a broader array of perspectives to our critiques of the formal/liberal dimension of political citizenship. Notions of equality--whose resilience to sameness and assimilation constitute hostile soil to differences--must be explored from the redefined location of the interrelatedness of the civil, political, socioeconomic, and cultural spheres. It is in light of such an integrated approach that a redefinition of marginalization and political citizenship can better weave the fabric of a human rights agenda, which reverses the disappeared status of our communities. A redefined human rights agenda is better equipped to challenge the systematic assault against the more recent and darker waves of immigrants, waged within the framework of sanitized versions of political citizenship which devalue identity politics.

Alongside an expanded concept of political citizenship lies the recognition of broader notions of national origin, which adequately capture its cultural and racial dimensions, or the recognition of the realities of transnational diasporic identities. The legal treatment of ethnicity, cultural difference, and national origin, based on colonizing sociological/anthropological renditions of immigration, can profit from an interdisciplinary critique which redefines such conceptual frameworks. To talk about national origin discrimination without addressing the importance of its cultural

dimension, such as language, amounts to advancing shallow notions of discrimination that fail to link cultural and economic marginalization. Another instance of a parochial vision.

Let us examine some examples. Enter the concept of equality. In both the Convention on the Elimination of Discrimination Against Women and in the Race Convention (ratified by the United States), equality is approached from a broader perspective than the one that U.S. courts are willing to accept. At the international level, the formal equality embedded in the concept of equality of opportunity, gives way to de facto equality or equality of outcome.

The generations framework, a descriptive mechanism accounting for the development of international human rights legislation and implementation, traces expansive maps which can guide a critique of domestic acontextual legal interpretations entrenching our social marginality. Coupled with an active and strong nongovernmental organization (NGO) movement advocating the interpretation of conventions as living documents, revised notions of state responsibility have emerged. In the context of violence against women, the International Covenant on Civil and Political Rights is an illustration of a broad construction, which includes human rights violations perpetrated by private actors. The erosion of the nation-state, coupled with the realities of women who suffer violence at the hands of both private and public actors, has exposed the need to incorporate the structural relationship of power, domination, and privilege in the construction of state responsibility. In a similar vein, the Women's Convention Committee reacted to women's lobbying and, in a General Declaration, explicitly characterized violence against women as a form of gender discrimination.

The second generation of economic, social, and cultural rights is another illustration of a scheme of rights and interpretations that ventures into the waters of distributive justice and which acknowledges the interdependence of civil/political and economic/social/cultural rights. The latter are particularly important in our efforts to redefine political citizenship along the lines of identity politics and revised social contracts which incorporate the connections between cultural disrespect and social/political marginality.

The so-called third generation of human rights travels the roads of communitarian values, privileging the welfare of groups and elaborating notions of the human rights subject which transcend the individual. The evolution of these rights also offer significant frameworks for our critiques of individualistic legal paradigms, which fail to acknowledge group identity as a source of rights. Discussions about the contours of the right to development and self-determination should be incorporated domestically in the formulation of critiques, which address equal protection concerns and relate to the multiple faces of discrimination.

The reluctance to deal with a global understanding of the movement of labor and its relationship to structural adjustment policies renders an analysis of economic divestment and affirmative action in this country severely confined. A human rights perspective, which engages the extraterritorial potential of Title VII and transcends the privileging of a U.S. based racial perspective, can offer a more nuanced discussion of the legal and political strategies to be pursued in the affirmative action context. Likewise, the emergence of a "knowledge sector" and the class gaps, brought about by a high- tech global economy, must be at the forefront of our critiques of labor laws and policies. It is within our communities where the bulk of displacement, generated by an

information elite that manages such economy, will be felt.

Theoretical and doctrinal reconceptualizations only constitute a piece in developing a stronger domestic human rights agenda. The expansion of implementation and enforcement strategies is equally significant in the domestic human rights approach. We can expand the range of accountability. The existence of treaty-based bodies, which allow for the presentation of state reports and international and regional complaint mechanisms as well as the potential litigation around violations of customary norms of international law, broadens the range of necessary dialogues. Regional and international mechanisms such as the Inter-American Commission of Human Rights as well as treaty bodies which deal with race discrimination issues, offer opportunities for filing complaints that take human rights violations committed in the United States to international levels. The Optional Protocols of the Covenants on Civil/Political Rights and on Race Discrimination provide a forum for filing complaints or narratives upon which significant case law can emerge. There are current efforts advocating for the existence of similar protocols for the Women's Convention and for the Covenant on Economic, Social, and Cultural Rights.

We cannot forget the classroom. The incorporation of an international human rights perspective can erode a compartmentalized domestic and international legal pedagogy. Workers' rights and employment issues in the face of global markets must be discussed in light of their human rights dimension. To teach labor law without acknowledging the limitations of a U.S. based advocacy framework is to blind our students to the realities facing workers in the twenty-first century. Self-determination issues, which transcend traditional territorial definitions such as those which arise among minority groups, are not the exclusive province of the former Yugoslavia. Students must often learn how to suspend disbelief when revised self-determination frameworks are used as a backdrop for the discussion of issues of discrimination in the United States.

In the few instances that U.S.-based NGOs have documented human rights violations, the use of an international lens to address domestic issues has proven to be quite successful in capturing the attention of policymakers. Informed by a human rights perspective, the Human Rights Watch report on sexual offenses against women in U.S. prisons captured the congressional attention that previous domestic reports on this politically marginalized issue did not.

A transnational approach to our scholarship and activism can inform the dual roads of vision and reform. Our critiques of the racialization maneuvers existing in a society informed by white supremacist values must have both visionary and reformist ingredients. The critique of diverse identities, in particular of ethnicity, race, and gender, must follow the footsteps of capital and go global. A narrow focus on federal-state based legal protections, which dwell on national boundaries, must be transcended in order to better address the current moves and flows of people, the phenomenon of diaspora.

On the international front, our insertion in the international debate plays horizontal and vertical roles. Horizontally, our presence serves to forge the political alliances that move international human rights law in the direction of serving the needs of oppressed people. Vertically, we refine the advocacy and lobbying skills necessary to formulate the critiques of exclusionary constructions and practices in international human rights law.

In an arena which requires constant flow of information and the development of

sophisticated advocacy and lobbying skills, it is imperative to build networks that work to solve problems and to challenge human rights interpretations privileging the views of the developed world. We must insert ourselves in a global network of nongovernmental organizations that deal with similar and equivalent issues confronting our communities. At economic and social levels, the plight of underdeveloped countries resemble those facing our communities in the inner cities. The problems facing minority communities in developed countries of Europe reveal the entrenched colonized and racist practices with which we are familiar.

At the 1995 Beijing World Conference, I had the opportunity to work in putting together a delegation of U.S. Latina civil rights advocates. In fact, it was the first time that U.S. Latinas had an official presence in an international gathering of this nature. The significance of our international presence was immediately felt. We had the opportunity to join ranks with other women of color from the United States, who, as a group, were initiating themselves in those settings. We managed to lobby and to advocate the U.S. governmental delegation to the conference, which allowed us to have a voice in critiquing the U.S. position, as well as those other potentially supportive delegations. We held meetings and caucuses, where we discussed our reactions to the proposed Beijing Platform for Action. All these efforts, instances of the vertical approach, allowed us to lobby for the concrete ramifications of the intersection of ethnicity, race, and gender analysis. Horizontally, we also gained an invaluable experience, since we reached out to networks of Latin American women, women who are minorities and immigrants in Europe, and Third- World women in general. The connections with Latin American women began important dialogues in advancing mutual understandings of our realities in the here and there.

Vertically, our presence can further elaborate the concept of "minorities" and "minoritization processes," a conceptual springboard for the elaboration of equality and antisubordination protections such as the right to development. Our realities can serve to demonstrate the need to liberate the right to self- determination from its rigid ties with traditional notions of statehood, particularly when the latter--in a systematic fashion--can be actively pursuing or perpetuating (or both) gender, racial, ethnic, and cultural subordination. In challenging the problem of the often homogenous portrayal of the "North," our presence voices the need for a more nuanced institutional approach to data collection. It is extremely important that international institutions and NGOs begin to properly document the realities of our communities in this country and the ways our legal system addresses them.

Our presence breaks current patterns that make nonrepresentative U.S.- based NGOs the sole international spokes-persons of this country's realities, thus reinforcing our invisibility. Likewise, our presence challenges the control of Northern coalitions of NGOs that, in advancing progressive agendas, reenact the Orientalist script which Edward Said so aptly captured. Such NGOs, if the missionary approach is to be avoided, must further refine the necessary self-restraint skills.

The South within the North must enter the international dialogue. The South within the North must, at the domestic level, play a central role in moving the agenda from civil rights to human rights. Although daunting, we cannot forget, as Terry Eagleton notes, that we are "spontaneous semioticians," the "natural hermeneuticists, skilled by hard schooling in the necessity of interpreting [[the] oppressors' language."

An edge that should inspire our moving forward.

Footnotes

* Professor of Law at City University of New York Law School.

Colloquium Proceeding
Panel One

4. Berta Esperanza Hernandez-Truyol,* International Law, Human Rights, and LatCrit Theory: Civil and Political Rights—An Introduction, 28 U. MIAMI. INTER-AM. L. REV. 223 (1996-97)**

I. INTRODUCTION

This short essay is adapted from introductory comments delivered at the Second Annual Law Professors' Colloquium, held *224 in Miami, Florida in conjunction with the Hispanic Bar Association's Annual Meeting. The Colloquium, "International Law, Human Rights, and LatCrit theory," focused on understanding how, why, and with what theoretical, political, and practical implications, the critical concerns of the LatCrit movement intersect with key issues of international law and human rights.

To explore the relevance of human rights to LatCrit theory, this Colloquium is conveniently organized into three panels representing the three so-called generations of rights: civil and political rights (the first generation); social, economic, and cultural rights (the second generation); and solidarity or collective rights (the third generation). However, at best, it is naive to claim that clear distinctions as to the character and nature of rights exist so as to permit inflexible, clearly delineated, generational classifications. Rather, as human rights instruments recognize, all human rights are indivisible and interdependent [FN1]--notions invaluable to the LatCrit discourse which were recently reiterated in the Vienna Declaration, the consensus document that emerged from the 1993 United Nations World Conference on Human Rights held in Vienna, Austria. The Vienna

Declaration plainly states that "[a]ll human rights are universal, indivisible and inter-dependent and interrelated." [FN2]

To be sure, the rights of free expression, free association, and free exercise--quintessential examples of the civil and political rights of the first generation--are at best meaningless without the health, education, and social security rights--all of the second generation. Similarly, these health, education, and social security rights are illusory without the peace or environment to facilitate them. Moreover, trade union rights and property rights can be viewed as either (or both) civil and political or social and economic rights.

Attesting to the indivisibility and interdependence construct, the European system [FN3] considers the right to education and cultural rights as part of the civil and political rights construct, but interestingly, they do not appear in the International Covenant on Civil and Political Rights (ICCPR). [FN4] Rather, they appear in the International Covenant on Economic, Social, and Cultural Rights (Economic Covenant). [FN5] Moreover, there are myriad significant documents in which the first, second, and third generation rights coexist, such as in the Children's Convention, [FN6] the Women's Convention, [FN7] the Convention on the Elimination of All Forms of Racial Discrimination, [FN8] and the African Charter. [FN9] Thus, a human rights construct makes sense only with a holistic reading of rights that truly allows the enjoyment of the aspirational dignity that attaches to our status as human.

Nonetheless, in order to organize presentations, this Colloquium uses the generational structure while concurrently debunking it. Every panel will, in some fashion, address all the "generations" of rights. For example, take immigration status--a much maligned status in the hallowed halls of Congress in the recent past. An appropriate question to ask, one of great importance and relevance to the LatCrit paradigm, is whether, in light of international human rights norms, the United States as a sovereign *226 enjoys the sovereign right to deny health, education, and welfare services/benefits to persons based upon their immigration status? And what insights can LatCrit offer in light of such dilemmas?

This brief introduction to the first panel, which will focus on civil and political rights, has three aims. First, it will introduce the theme of this panel and present some preliminary considerations concerning the so-called first generation of international human rights law. Second, this article will articulate the three questions the panelists were asked to keep in mind in the course of the preparation of their remarks. Finally, this preface will introduce the panelists, preview the rights that they will each address, and suggest some themes that show the inter-connections between and inter- relatedness of the concerns of international human rights law and LatCrit theory.

II. THE FRAMEWORK: INTERNATIONAL HUMAN RIGHTS LAW

International human rights are those rights vital to an individual's existence; they are fundamental, inviolable, interdependent, indivisible, and inalienable rights. Simply put, they are predicates to life as human beings. [FN10] Human rights are moral, social, religious, and political rights that concern respect and dignity associated with personhood and a human being's identity. [FN11]

The origins of the concept of human rights, a relatively recent, modern concept, are based in religion, "natural law, [and] contemporary moral values." [FN12] The foundation for human rights is the individual's status qua individual within the

international community and the dignity and justice owed to persons based upon that status. [FN13]

III. THE QUESTIONS: CIVIL AND POLITICAL RIGHTS

The Civil and Political Rights panel will explore whether LatCrit theory can further the theoretical and practical work of promoting civil and political rights in both the domestic and international arenas, particularly in light of the United States Supreme Court's recent constitutional jurisprudence effecting a dramatic contraction of certain individual rights in this country. The following questions were offered to the speakers to present a framework within which to explore this theme.

1. Does a LatCrit theoretical perspective on identity politics, the multiplicity and intersectionality of Latina/o identities and cultural values as well as the convergences and divergences in our histories and discourses of assimilation, independence and revolution offer new perspectives on the traditional themes and concerns that have organized the legal and political struggle to promote the recognition and enforcement of human rights, broadly conceived?

Significant themes raised by this inquiry include the theoretical and historic origins of the particular generation, here the first generation, of human rights. LatCrit can be instrumental in suggesting and proposing ways to conceptualize differences and commonalties in designing an agenda to promote the recognition and enforcement of human rights in domestic and international fora. For example, international human rights instruments expressly recognize the indivisibility, interdependence, and inviolability of rights. This paradigm is well-suited to LatCrit analysis as it supports the multidimensional nature of Latinas/os' identities. Thus, international human rights norms' protection against discrimination on the basis of race, sex, color, culture, and language serves Latinas/os well because their identities are the combination of many of the protected characteristics, *239 not the fragmentation of them as U.S. law would have it. [FN53]

2. Does LatCrit theory offer new perspectives on the recent trend toward regional economic integration and the likely impact of such developments on the human rights of Latinas/os within the United States, at the borders, and within the Latin American states considering regional integration?

This query insinuates that international human rights law provides a fulcrum from which to take a global perspective that encourages diversity of analysis rather than a parochial and nationalistic perspective that eschews others and insists on a preordained hierarchical normativity. What would happen, for example, if one were to focus on the border crossing issues from a Mexican worker's perspective instead of taking an irate Estado Unidense outlook? Rather than hear the cacophonous sounds of nativistic voices from this side of the border, which attempt to convince others that the so-called "illegal

aliens" are stealing American jobs (jobs which in reality involve performing tasks no "American" worker wants to carry out), one might simply hear the voices of concerned mothers and fathers whose family values render them willing to risk their lives for the sake of making a living at a job that will enable them to feed, clothe, and educate their children--a task not possible in their country and a risk easily understood when one compares the U.S. $4.00 per day wages earned in their countries working for U.S. companies to the U.S. $4.00 per hour wages earned by simply crossing the border.

3. Does LatCrit theory have anything to say about the key debates over (a) the status of national sovereignty in international *240 law, (b) the proper scope and limits of state intervention in civil society, and (c) the status of international human rights in regional agreements such as free trade agreements or procedural norms for the enforcement of international human rights?

LatCrit, and in particular the Latinas/os and Asian-American colleagues and coworkers, as well as other hyphenated "Americans," may have an especially valuable contribution to make because of our conflated North/South and East/West identities. To us, with our trans/international roots, origins, and families, and our multilingualism, national sovereignty takes a different form. We can all ask which part of a national identity or which of our nations a particular concern/policy triggers, since our claim to citizenship is not homo- national. With such multiplicity claims, again the indivisibility and interdependence paradigm of international human rights norms is both constructive and instructive. For one, national origin and its indicia such as language are expressly protected classifications in the international sphere. For another, the very notion of sovereignty and citizenship gets confused when in border raids in the United States, both Mexican nationals and U.S. nationals of Mexican ancestry get rounded up and herded out--simply because of their physical traits--regardless of nationhood. [FN54]

In addition, the notion of the individual in the global text is a concept broader than citizenship with protections of individuals based on their personhood, [FN55] not their citizenship. Significantly, all states, not just the state of nationality, owe all peoples, not just their citizens, these international protections. Finally, the lesson from Nuremberg and its progeny is that state sovereignty cedes to human rights protections. Consequently, international human rights norms set the proper baseline scope and limits of state intervention in civil society as well as the threshold observance of such rights in any regional or international agreement.

IV. HUMAN RIGHTS AND LATCRIT THEORY--THE FIRST GENERATION

The indisputably suprasovereign nature of fundamental human rights offers LatCrit theory fertile ground on which to develop conceptions of law that will be of significance to the comunidad latina as well as to all other communities in our midst. For example, with sovereignty ceding to basic human rights principles, it follows logically that human rights norms can trump local law which derogates from such principles.

Considering current issues of interest and activism, the immigration rights discourse provides a significant forum in which to apply the theory to practice. It is

beyond question that a state has the sovereign right to enact immigration laws; however, human rights norms dictate that such a sovereign right is not unfettered. While immigration norms can be, and are, promulgated, such norms cannot derogate from fundamental human rights principles. If a state, hiding behind the sovereignty shield attempts to treat similarly situated folks differently based upon grounds proscribed by human rights norms, such as the broad nondiscrimination mandates that include language, national origin, and conditions of birth, international principles simply prohibit the state's conduct. These same nondiscrimination principles could be put to good use against the welfare law, beyond the immigration provisions.

Last, but certainly not least, is the introduction of these exciting panelists who will, by their conversations, focus on some of the international human rights to which this introduction has alerted the readers. Elvia Arriola from the University of Texas is one of the leaders of "queer" theory, who has been doing some fantastic LatCrit work. Her presentation focuses on Immigration and Naturalization Service raids and the rights which are placed in jeopardy by such raids. As far as human rights go, this presentation raises issues of race, color, culture, and citizenship; the rights to life, liberty, security of the person, and human dignity; and the right to freedom of movement

The following presenter is Kevin Johnson who teaches at UC Davis and has studied, represented persons in cases dealing with, and has extensively written on immigration issues, particularly as they affect the Latina/o community. His panel discussion, entitled "Aliens and the U.S. Immigration Laws: The *242 Social and Legal Construction of Nonpersons scrutinizes how the construction of the alien has allowed these noncitizens to be afforded limited rights, to be mistreated, and to be abused--a timely topic in light of the recently signed pieces of legislation on welfare and immigration. Again, this theme raises the issues of global rights of others, in this instance, foreign others, outside the jurisdiction of their nationality.

Last is Enid Trucios-Haynes who teaches at the University of Louisville and has practiced, taught, and is writing up a storm in the area of immigration. She focuses on "Transnational Identities and the Implication for Global Advocacy Strategies and State Sovereignty." This presentation underscores the tension between, on the one hand, the individual rights of those who, because of immigration, language, ancestry, or family have identities with transnational reach rather than a single national identity, and, on the other hand, the sovereign states for which nationality is a crucial identifying factor for granting rights and taking responsibilities vis a vis the individual.

All of these presentations weave a unified challenge to LatCrit theorists: the identification of that fine balance of what is a legitimate exercise of power by the state and what is the pretextual overbearance of state power to others/outsiders, particularly Latinas/os who often may be citizens by birth, but foreigned out of full citizenship by name, language, color, accent or appearance. How can we reconcile the deportation of citizens because they look like their brothers and sisters from south of the frontera with their birthright to be present and enjoy life in their country and dignity to which all persons are entitled, free from governmental obstruction and intrusion? How can we use the diversity of Latina/o panethnicity to make international human rights a reality in the life of the immigrant rather than aspirational paper rights that leave the immigrant at the margins of the discourse? How can we use that panethnic diverse experience to reconstruct the meaning of alien, after its deconstruction shows its pretextual, thinly veiled patina aimed at contracting basic human rights to disempower foreigners by rendering them aliens, something less than human? How can we use the experiences

grounded in our multidimensionality, often including a transnational identity(ies) factor, to make the indivisibility and interdependence of that diversity central to the rights discourse? *243 LatCrit offers the multifaceted experiences of numerous persons who travel many worlds because of their Latina/o-ness. This experience and the successes we can share because of our non-mainstream culture, color, ethnicity, and multilingualism while traveling within our estadounidense home is a real life complement to the theoretical human rights framework. The international paradigm recognizing, indeed mandating, the recognition of a holistic rights construct--the indivisibility, inviolability, and interdependence of rights--is a reflection of the lives of Latinas/os whose multiple identities and multilingualism enable our world-travelling.

And so what does LatCrit have to offer? It can serve to urge, promote, and insist upon a local to universal theoretical construct that eschews the single- trait, myopic approach of our system of laws in favor of a holistic one that promotes the indivisibility and interdependence of our identities. Rather than focus on our differences, let our multilingualism be at the center of the creation of a cohesive theory that insists upon our protections notwithstanding our differences. And, this is of paramount importance to Latinas/os, as well as Asians and others: our panethnicity should be a source of strength rather than a pretext for surrender. We are the diverse peoples--we are tall and short; blond and brunette; blue-eyed and brown-eyed; we are India/o, mestiza/o, blanca/o, morena/o, triguena/o; men and women; lesbian, gay, and straight; Catholic, Protestant, Santera, and Jew; all levels of ability and education; all classes and religions; from all parts of the world, including all parts of the estados unidos, yes, nuestros United States as well. It is time to eschew the notions that our hyphenated entities are less than nonhyphenated ones. LatCrit and international human rights norms are indispensable to the articulation of a cohesive, holistic paradigm that effectively can develop, expand and transform the content and meaning of a rights construct.

Footnotes

* Professor of Law, St. John's University School of Law. Many thanks to the University of Miami Law School for its kindness and generosity in hosting this Second Annual Law Professors' Colloquium being held in conjunction with the Hispanic National Bar Association's Annual Meeting. Special thanks to Frank Valdes for his indefatigable work and amazing organizational concentration and skill; Lisa Iglesias who, together with Frank, organized this wonderful Colloquium; and to University of Miami School of Law Dean Sam Thompson without whose support this type of event could not take place.

[FN1]. Significantly, based on this notion of indivisibility and interdependence of rights, the United Nations General Assembly called upon the United Nations Commission on Human Rights to adopt a single convention on human rights. G.A. Res. 421 (V), U.N. GAOR, 5th Sess., U.N. Doc. A/1775 (1950). Because of disagreements as to the obligatory nature of social and economic rights between industrialized and developing nations, the one contemplated covenant was fragmented into two documents--one addressing civil and political rights and the other addressing social, economic, and cultural rights.

[FN2]. Vienna Declaration and Programme, U.N. GAOR, World Conference on Human Rights, 48th Sess., pt. 1, para. 5, U.N. Doc. A/Conf. 157/23 (1993), reprinted in 32 I.L.M. 1661 (1993) [hereinafter Vienna Declaration].

[FN3]. European Convention on Human Rights, Nov. 4, 1950, 213 U.N.T.S. 222 [hereinafter European Convention]. See also American Convention on Human Rights, opened for signature Nov. 22, 1969, O.A.S.T.S. No. 36 (entered into force July 18, 1978), reprinted in 9 I.L.M. 673 (1970)[hereinafter American Convention].

[FN4]. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, (entered into force Mar. 23, 1976, ratified by the United States June 8, 1992) [hereinafter ICCPR].

[FN5]. International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter Economic Convention].

[FN6]. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, Supp. No. 49, at 166, U.N. Doc. A/44/736 (1989), reprinted in 28 I.L.M. 1448 (1989) [hereinafter Children's Convention].

[FN7]. Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature Mar. 1, 1980, 1249 U.N.T.S. 14 (entered into force on Sept. 3, 1981) reprinted in 19 I.L.M. 33 (1980)[hereinafter Women's Convention].

[FN8]. International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Mar. 7, 1966, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter Race Convention].

[FN9]. African Charter on Human and Peoples' Rights, adopted June 27, 1981, O.A.U. Doc. CAB/LEG/67/31 Rev. 5 (1981) (entered into force on Oct. 21, 1986), reprinted in 21 I.L.M. 59 (1981)[hereinafter African Charter].

[FN10]. Berta E. Hernandez, To Bear or Not to Bear: Reproductive Freedom As an International Human Right, 17 BROOK. J. INT'L L. 309 (1991). See also REBECCA M. WALLACE, INTERNATIONAL LAW 175 (1986) ("Human rights ... are regarded as those fundamental and inalienable rights which are essential for life as a human being.").

[FN11]. See generally supra note 10.

[FN12]. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 701 cmt. b (1987).

[FN13]. But see Rhoda E. Howard, Dignity, Community, and Human Rights, in HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES 81, 82 (Abdullahi Ahmed An-Na'Im ed., 1992) (differentiating among human rights, dignity, and justice).

[FN14]. This is not to say, however, that universality as opposed to relativity, at least as originally articulated, represent the appropriate analytical paradigm. For a discussion on the universality versus relativity debate, see Berta Esperanza Hernandez-Truyol, Women's Rights As Human Rights--Rules, Realities and the Role of Culture: A Formula for Reform, 21 BROOK. J. INT'L L. 605, 657-67, 657 n.201 (1996).

[FN15]. 1 L. OPPENHEIM, INTERNATIONAL LAW 362-69 (2d ed. 1912), reprinted in LOUIS B. SOHN & THOMAS BUERGENTHAL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS 1 (1973).

[FN16]. Id. § 290.

[FN17]. See generally LOUIS HENKIN ET AL., INTERNATIONAL LAW at xxii-xxiii (3d ed. 1993); COVEY T. OLIVER ET AL., CASES AND MATERIALS ON THE INTERNATIONAL LEGAL SYSTEM 1390 (4th ed. 1995). The jus gentium system that the Roman Empire had developed to govern the relations between Roman and non-Roman citizens, which (contrasted with the jus civile, which applied between or among Roman citizens) was modeled on the Roman system and incorporated principles of equity and natural law. Contemporary scholars analogize the jus gentium to the source of international law called "General Principles of Law Recognized by Civilized Nations" contained in Article 38 of the Statute of the Court of International Justice.

[FN18]. HENKIN, supra note 17, at xxii, xxiii. Another significant historic event in the evolution of international law is the Thirty Years War (1618-1648) in Central Europe which marked the emergence of independent nation-states as the primary actors in the global setting underscoring the need to create norms to govern interactions between and among sovereign equals. James Friedberg, An Historical and Critical Introduction to Human Rights, in HUMAN RIGHTS IN WESTERN CIVILIZATION 1600-PRESENT 2 (John A. Maxwell & James J. Friedberg eds., 2d ed. 1994).

[FN19]. Friedberg, supra note 18 (quoting Grotius). Indeed, in the seventeenth century Grotius's visionary statement: "Human rights norms must exist today in a diverse world of immensely varied ideologies and beliefs"-- effectively predicted the development of a sophisticated human rights system. Id. Hugo Grotius, an important international jurist who was guided by natural law, provided a bridge to the positivists' theoretical foundations that followed the natural law epoch. Grotius distinguished between natural law and the customary law of nations based on the conduct and will of nations. As "a rationalist who derives the principles of the law of nature from universal reason rather than from divine authority," HENKIN, supra note 17, at xxiv, Grotius' natural law concept was secular and was based on "man's" rationality rather than revelation and deduction of God's will. OLIVER, supra note 17, at 1391.

[FN20]. Burns H. Weston, Human Rights, in ENCYCLOPEDIA BRITANNICA, reprinted in INTERNATIONAL LAW ANTHOLOGY 21, 22 (Anthony D'Amato ed., 1994) (stating that "the school of philosophy ... which held that a universal working force pervades all creation and that human conduct therefore should be judged according to, and brought into harmony with, the law of nature.").

[FN21]. See generally MYRES MCDOUGAL ET AL., HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY 68-71, 73-75 (1980), excerpted in FRANK NEWMAN & DAVID WEISSBRODT, INTERNATIONAL HUMAN RIGHTS 167-68 (2d ed. 1990). The underpinnings of natural law are assumptions that there are laws existing in nature--both theological and metaphysical--that confer rights upon individuals as human beings. The two sources for these rights are either in divine will or metaphysical absolutes, and they are deemed to constitute a higher law than is identified with all of humankind and requires protections of individual rights. An underlying assumption of natural law is that there is a common human nature that presupposes the equality of all human beings.

[FN22]. HENKIN, supra note 17, at xxiv. Thomas Aquinas, for example, viewed the law of nature as "a body of permanent principles grounded in the Divine Order, and partly revealed in the Scripture." In his thirteenth century writings, Aquinas even noted the notion that one sovereign could interfere in the internal affairs of another when one mistreats its subjects. Michael J. Bazyler, Reexamining the Doctrine of Humanitarian Intervention in Light of the Atrocities in Kampuchea and Ethiopia, 23 STAN. J. INT'L L. 547, 570-74 (1987) (quoting Fonteyne, The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter, 4 CAL. W. INT'L L.J. 203, 214 (1974)). This religious view of the natural law was carried forward by Spanish theologians Francisco de Vitoria and Francisco Suarez, both of whom recognized that beyond individual states there existed a community of states that was governed in their interactions with each other by international rules that were found "by

rational derivation from basic moral principles of divine origin." OLIVER, supra note 17, at 1390-91. See also HENKIN, supra note 17, at xxiv.

[FN23]. Weston, supra note 20, at 22.

[FN24]. Id.

[FN25]. Id.

[FN26]. HENKIN, supra note 17, at xxv. The popularity of positivism corresponds to the rise of the nation-state and the view of the state as independent and sovereign. Id.

[FN27]. See generally MCDOUGAL, supra note 21.

[FN28]. Bazyler, supra note 22 (quoting Hugo Grotius, De Jure Belli Esti Pacis 438 (William Whewell trans., Cambridge Univ. Press 1853) (1625)). See also Emmerich de Vattel, Le Droit des Gens, ou Principles de la Loi Naturelle, Appliques a la Conduite et aux Affairs des Nations et de Sovereigns (1758), reprinted in Covey T. Oliver, et al. Cases and Materials on the International Legal System 742 (4th ed. 1995). De Vattel articulates in section 71 some of the early notions of human rights law:
Whoever uses a citizen ill, indirectly offends the state, which is bound to protect this citizen; and the sovereign of the latter should avenge his wrongs, punish the aggressor, and, if possible, oblige him to make full reparation; since otherwise the citizen would not obtain the great end of the civil association, which is, safety.
Id. § 71. Section 72 states:
[b]ut, on the other hand, the nation or the sovereign, ought not to suffer the citizens to do an injury to the subjects of another state, much less to offend that state itself: and this, not only because no sovereign ought to permit those who are under his command to violate the precepts of the law of nature, which forbids all injuries, but also because nations ought mutually to respect each other, to abstain from all offense from all injury, from all wrong, in a word, from every thing that may be of prejudice to others. If a sovereign, who might keep his subjects within the rules of justice and peace, suffers them to injure a foreign nation either in its body or its members, he does no less injury to that nation than if he injured it himself. In short, the safety of the state, and that of human society, requires this attention from every sovereign. If you let loose the reigns to your subjects against foreign nations, these will behave in the same manner to you; and instead of that friendly intercourse which nature has established between all men, we shall see nothing but one vast and dreadful scene of plunder between nation and nation.
Id. § 72.

[FN29]. GERHARD VON GLAHN, LAW AMONG NATIONS 185 (4th ed. 1981).

[FN30]. The inalienability and inviolability of rights that Locke addressed and the natural law roots of these rights is also reflected in the language of the American Declaration of Independence, which proclaims the self-evident truth "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness." THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

[FN31]. The French Declaration of the Rights of Man and Citizen of August 16, 1789 also reveals its natural law roots. That document provides that "men are born and remain free and equal in rights... the aim of every political association is the preservation of the natural and imprescriptible rights of man ... [which are] Liberty, Property, Safety and Resistance to oppression." THE DECLARATION OF THE RIGHTS OF MAN AND CITIZEN (Fr. 1789). Liberty is defined to include the right to free speech, freedom of association, religious freedom, and freedom from arbitrary arrest and confinement. Id.

[FN32]. HENKIN, supra note 17, at 596-97.

[FN33]. VON GLAHN, supra note 29, at 185-86. See also HENKIN, supra note 17, at 597. A major step in the protection of individuals' rights is evident in the peace treaties of 1919 which provided guarantees of fair treatment to the inhabitants of mandated territories and certain racial minorities in eastern and central

Europe. Another landmark is the establishment of the International Labor Organization (ILO), the purpose of which was (and continues to be) the improvement of working conditions throughout the world. The origins of these actions can be traced to the period after the First World War when changes in sovereign boundaries required the expansion of rights to minorities because of the rise of nationalistic sentiments which created a real danger of oppression against racial, ethnic, linguistic, and religious minorities. Consequently, the allied and associated powers, such as Czechoslovakia, Austria, Greece, Bulgaria, Hungary, Poland, Turkey, Rumania, and Yugoslavia, concluded a number of treaties whereby those states promised to treat minority groups justly and equally. At a later time, Albania, Estonia, Iraq, Latvia, and Lithuania gave similar guarantees as conditions of their admission to the League of Nations. See generally MARJORIE M. WHITEMAN, 1 INTERNATIONAL LAW DIGEST 52 (June 1963).

[FN34]. Conventional views date the recognition of freedom from slavery as a customary international norm to 1915. This norm was re-affirmed in international conventions such as the 1926 Slavery Convention, Sept. 25, 1926, 46 Stat. 2183, 60 L.N.T.S. 253 (entered into force Mar. 9, 1927); 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 18 U.S.T. 3201, 266 U.N.T.S. 3 (entered into force Apr. 30, 1957). For subsequent treaties further prohibiting the traffic of women and children, see International Convention for the Suppression of the Traffic in Women and Children, 9 L.N.T.S. 416 (1923); 1947 Protocol, 53 U.N.T.S. 13 (1947). By 1955, it had been affirmed in the General Act of the Berlin Conference on Central Africa that "trading in slaves is forbidden in conformity with the principles of international law." RICHARD B. LILLICH, INTERNATIONAL HUMAN RIGHTS 1 (2d ed. 1991). Thirty-four years later, the Brussels Conference condemned slave trade and also agreed on measures for the suppression of such practices, which included "granting of reciprocal rights of search, and the capture and trial of slave ships." Id.

[FN35]. This attitude of states resulted in the Permanent Court of International Justice's (PCIJ) reiteration that discrimination against minorities within a state constituted a violation of obligations under the treaties. See Advisory Opinion No. 6, German Settlers, 1923 P.C.I.J. (Ser. B) No. 6 (Sept. 10); Advisory Opinion No. 44, Treatment of Polish Nationals in Danzig, 1932 P.C.I.J., (Ser. A/B) No. 44 (Feb. 4); Advisory Opinion No. 64, Minority Schools in Albania, 1935 P.C.I.J. (Ser. A/B) No. 64 (Apr. 6).

[FN36]. OPPENHEIM, supra note 15, § 292 reprinted in LOUIS B. SOHN & THOMAS BUERGENTHAL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS 4 (1973). After providing such a catalogue of rights, Oppenheim fretted that those rights could not be guaranteed by the Law of Nations because individuals cannot be subjects of law that is limited to relations between states. Yet, he also recognized the suprasovereign nature of "human" rights in the statement that:
there is no doubt that, should a state venture to treat its own subjects or a part thereof with such cruelty as would stagger humanity, public opinion of the rest of the world would call upon the Powers to exercise intervention for the purpose of compelling such state to establish a legal order of things within its boundaries sufficient to guarantee to its citizens an existence more adequate to the ideas of modern civilisation.
Id.

[FN37]. See generally 1 WHITEMAN, supra note 33, at 51 (quoting CHARLES DE VISSCHER, THEORY AND REALITY IN PUBLIC INTERNATIONAL LAW 125, n.8 (P. E. Corbett trans., 1957)).

[FN38]. TOM FARER, HUMAN RIGHTS BEFORE THE SECOND WORLD WAR IN INTER-AMERICAN COMMISSION ON HUMAN RIGHTS: TEN YEARS OF ACTIVITIESS 1971-1981, at v-vi (1982), reprinted in RICHARD B. LILLICH, INTERNATIONAL HUMAN RIGHTS 33-35 (2d ed. 1991).

[FN39]. See Hernandez, supra note 10, at 320-325; Louis B. Sohn, The New International Law: Protection of the Rights of Individuals Rather than States, 32 AM. U. L. REV. 1, 9-10 (1982).

[FN40]. Nuremberg Trial, 6 F.R.D. 69, 110 (1946).

[FN41]. See generally MICHAEL AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW 75-76 (5th ed. 1984). Prior to that, as the peace treaties and the treaties with respect to slavery and the slave trade show, the concentration was on remedying specific abuses or protecting particular groups.

[FN42]. U.N. CHARTER art. 1, para. 3. See also other U.N. Charter provisions that confirm it as a watershed moment in the internationalization of human rights. The preamble provides that the members "reaffirm [their] faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small [as well as the institution's goal] to promote social progress and better standards of life in larger freedom." Id. Preamble. In addition, Article 55 mandates that the United Nations promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Id. art. 55. To achieve this end, the state members "pledge themselves to take joint and separate action in cooperation with the Organization for the achievement" of such purposes. Id. art. 56.

[FN43]. The second panel of this Colloquium on social, economic and cultural rights, as well as the third panel on solidarity rights, will address this theme more directly.

[FN44]. Universal Declaration on Human Rights, G.A. Res. 217A, U.N. Doc. A/180 (1948)[hereinafter Universal Declaration]. Although there is ongoing debate on the legal status of the Universal Declaration, many scholars consider it to be legally binding as a general principle of international law while others consider it to have the status of jus cogens--a peremptory norm. CHERIF BASSIOUNI, THE PROTECTION OF HUMAN RIGHTS IN THE ADMINISTRATION OF CRIMINAL JUSTICE xxiv (1994). Moreover, notwithstanding that at its adoption the U.S. representative stated that the Declaration "is not and does not purport to be a statement of law or of legal obligation," (19 Dep't of State Bulletin 751 (1948)). Subsequent developments in both domestic and international law confirm the Declaration's status as a statement of customary international law. See LOUIS B. SOHN & THOMAS BUERGENTHAL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS 518-19, 522 (1973).

[FN45]. For a discussion of the different types of rights, see Berta E. Hernandez-Truyol, Human Rights Through a Gendered Lens: Emergence, Evolution, Revolution, in WOMEN'S INTERNATIONAL HUMAN RIGHTS: A REFERENCE GUIDE (Kelly Askin & Dorean Koenig eds., forthcoming 1997).

[FN46]. See Universal Declaration, supra note 44 passim. See also SOHN & BUERGENTHAL, supra note 44, at 516; AKEHURST, supra note 41, at 76-77.

[FN47]. See ICCPR, supra note 4.

[FN48]. Id. arts. 6, 7, 8(1)-(2), 15, 16, and 18. Aside from the U.N. Charter, the Universal Declaration, the ICCPR, and the Economic Covenant, a rich body of human rights treaties, including regional human rights systems, exists. Other significant treaties include the Women's Convention, supra note 7; Race Convention, supra note 8; International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, U.N. Doc. A/Res/39/46 (1984) (entered into force June 26, 1987), reprinted in 23 I.L.M. 1027 (1984); Children's Convention, supra note 6.

[FN49]. Stephen P. Marks, Emerging Human Rights: A New Generation for the 1980s?, 33 RUTGERS L. REV. 435, 437 (1981) (stating that "the commonly recognized starting point for the emergence of international human rights as we know them today is the movement for the 'rights of man' in eighteenth century Europe."). Significantly, notwithstanding these origins, Marks notes that he does not suggest "that the concept of human rights is exclusively or even essentially Western. All cultures and civilizations in one way or another have defined rights and duties of man in society on the basis of certain elementary notions of equality, justice, dignity, and worth of the individual (or of the group)." Id. at 437 (citing UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, BIRTHRIGHT OF MAN (1969); HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS (1949)).

[FN50]. Id. at 438. It appears that the right to property properly belongs as a civil and political right; however, it can easily be viewed as an economic right. Interestingly, it is often placed under the civil and

political rights because property was central to the interest fought for in the French and American Revolutions.

[FN51]. Asbjorn Eide & Allan Rosas, Economic, Social and Cultural Rights: A Universal Challenge 21, 23, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS (Asbjorn Eide et al. eds., 1995).

[FN52]. Marks, supra note 49, at 438.

[FN53]. See, e.g., Rogers v. American Airlines, 527 F. Supp. 229 (S.D.N.Y. 1981) (the court held that a black woman claiming discrimination based upon a company policy that prohibited her wearing braided hair could not conflate her identities (i.e., her blackness and her womanness to enhance her case in court), and the court, noting that corn-rowed hair was made popular by Bo Derek, found the policy was not discriminatory against women or blacks). See also, Paulette Caldwell, A Hair Piece: Perspectives on the Intersection of Race and Gender, in CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado ed., 1995) (discussing the Rogers case); Angela P. Harris, Race and Essentialism in Feminist Legal Theory, in CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado ed., 1995) (addressing the intersection of race, sex and class); Berta E. Hernandez-Truyol, Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks, 2 HARV. LATINO L. REV. (forthcoming 1996) (applying the indivisibility and interdependence construct to Latinas/os' identities).

[FN54]. See Elvia R. Arriola, LatCrit Theory, International Human Rights, Popular Culture and the Faces of Despair in INS Raids, 28 U. MIAMI INTER-AM. L. REV. 245 (1996-97).

[FN55]. For a discussion on the international legal protections of persons, rather than the narrower class of citizens, see Berta E. Hernandez-Truyol, Reconciling Rights in Collision: An International Human Rights Strategy, in IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 263-64 (Juan Perea ed., 1997).

5. Elvia R. Arriola, * LatCrit Theory and International Human Rights, Popular Culture, and the Faces of Despair in INS Raids, 28 U. MIAMI INTER-AM. L. REV. 245 (1996-97)

INTRODUCTION

Thank you and good morning. I understand we are on a really tight schedule so my comments will be brief. Thank you very much Celina, for your overview remarks intended to guide us in our sessions today on the relationship between the emerging LatCrit theory [FN1] and International Human Rights, and for this panel, on how the focus on identity politics in LatCrit theory can broaden our understanding of "human rights law and policy."

You made several important points, Celina: one is how our teaching and scholarship in "civil rights law" could benefit by bringing in a human rights perspective. As one who teaches this subject, I have often felt that contemporary civil rights textbooks could improve their doctrinal presentations by also examining the historical, social, economic, and political conditions surrounding a civil rights dispute. You have inspired

me to expand my own horizons in this course by experimenting with materials which illustrate the intersection between such bodies of law as immigration, employment discrimination, [FN2] constitutional torts, and international human rights. [FN3] Second, you noted correctly that the discourse of international human rights and LatCrit theorists shares a concern with "accountability." Finally, I agree that what is being called "LatCrit theory" has probably always been around but just had not been given a label. [FN4]

I have been very enthusiastic about participating on this panel, following, as it does, on the heels of the first LatCrit conference sponsored by the California Western School of Law last May in La Jolla, California. [FN5] I want to begin by sharing some of my own process in becoming part of this developing discourse called "LatCrit theory." As I noted back in May, I felt somewhat tentative in my role as a "first generation LatCrit theorist," given the heavily feminist and "queer" [FN6] directions in my scholarship.*247 Yet, I have always felt that my "Latinaness" has expressed itself in my lesbian/feminist writings--usually as a critical voice reminding progressive scholars of the importance of diversity and conflict raised by race, gender, sexuality, and class within our own movements. [FN7] In this vein, I would like to express my own observations about the promises and the challenges for this developing discourse. For example, the first LatCrit conference displayed a commitment to diversity and identities by including as attendees, not only supportive whites, Asians, African-American, and Native-Americans, but also lesbian and gay men and women. I hope we will continue to display that respect for multiple consciousness [FN8] which will enrich our discourse, and also challenge us to practice conflict resolution when tensions arise because our identities have collided on one or more of the factors by which we define ourselves. I also sincerely hope that the centering of issues like gender, sexuality, and multiple consciousness in this developing LatCrit movement will be a catalyst for the enhanced production of writings by and about Latinas, aimed at empowering Latinas/Hispanas [FN9] everywhere. I therefore encourage my Latino colleagues to include, wherever possible, the gendered perspective in their studies. [FN10]

I now turn to my role on this panel. Because I have been in this process of trying to figure out the role LatCrit theory will *248 play in my scholarship and teaching, I experienced some angst about how to address the themes of this panel--the relationship between LatCrit theory and the theoretical/historical origins of "first generation" human rights--also known as "civil and political rights." Being asked to think about the differences and commonalties in a LatCrit agenda, which promotes the recognition and enforcement of human rights in domestic and international forums sounded like such an ominous task! Energized as I was after the first LatCrit conference, I was having some difficulty putting "it"--the first LatCrit experience--into concrete terms. What finally lit my fire was a movie I saw over the summer while still on the wave of energetic enthusiasm generated last May at La Jolla.

II. LAW, SOCIAL JUSTICE, AND POPULAR CULTURE

Legal theorists have recently begun to pay greater attention to the role that popular culture, in particular films and theater, can play in not just telling stories, but in communicating ideas about the meaning and practice of the law and social justice. [FN11] Feminist and critical race theorists have also noted the value of telling good stories to question the status quo for social groups who are at the bottom of white male hierarchies. [FN12] I have valued the use of stories to construct the meaning of individual

and collective experiences in a particular time noted for the intensity of its gendered politics. [FN13] I suspect that LatCrit theorists will also use storytelling to construct the meaning of identity raised by a scholarship focusing on the social justice issues for Latina/o communities in the United States. I begin my discussion today, therefore, with the story of a movie which helped me see the complexity of the issues raised for analysis by this emerging commitment to articulate the premises of engaging in LatCrit theory.

John Sayles' recent film Lone Star is a good example of *249 popular culture which educates viewers about a complex social and political history by simply relating the life of a town and its people. The first words I spoke as I exited Lone Star were, "this movie touched on all those issues we just explored at this conference I attended in La Jolla on LatCrit theory!"

Very briefly, the film situates a murder mystery in a south Texas U.S.-Mexico border town after a member of the nearby military base out on a desert excursion finds a skeleton, a Mason ring, and a sheriff's badge. A follow-up investigation produces a bullet and identifies the victim as a male who had died at least thirty-five years prior, about the time Rio County's much-hated Sheriff Wade had disappeared without a trace. Described by old-timers as an arrogant racist and iron-fisted bully, Wade had ruled this territory bordering on the Rio Grande with ruthless exercises of the southern white male privilege he enjoyed. Flashback stories reveal everything from beatings of people who threatened his authoritarian enforcement of the racially segregated patterns of 1950s America in south Texas to brutal murders of "coyotes," [FN14] who had defied Wade's payoff system for being allowed to transport undocumented Mexicans across the border. Wade had killed or at least physically or financially hurt many of those who had questioned his run of law enforcement in Rio County.

I was struck by the ease with which Lone Star's characters, events, and situations embodied so many of the concepts we had tentatively explored as critical to the discourse on identity politics, power, and oppression of the LatCrit movement. I urge use of this film as a powerful teaching tool for examining the intersection of immigration and employment discrimination law, foreign policy, human rights, and civil and political rights. It also provides an excellent point of departure for exploring the "borderlands" concept [FN15] being used by some critical scholars to *250 illustrate the ways in which social borders are created, internalized and used by others and ourselves to shape and reshape our identities. Lone Star's characters and their stories can be used to explore how relations between individuals seemingly of the same culture, race/ethnic group, etc., come to exist nearly "worlds apart" as their experiences, marked by factors like age, class, education, and personal history illustrate the tension, conflict, and transformation that arise from either accepting or rejecting the value system of a "borderlands." The history in Lone Star centers on the meaning a town and its people give to the U.S.-Mexico border and to border crossings. At the same time the film's fluid use of flashbacks breaks down the border between the past and the present. In the fictional Rio County, several characters' stories illustrate the shifting attitudes of various social groups and individuals for whom the U.S.-Mexico border means having an identity and sense of community with the better "us" (whites), while maintenance of the border prevents being overtaken by the lesser "them" (Mexicans and African-Americans). [FN16] The changing methods of policing the U.S.-Mexico border are portrayed through flashback stories of the 1950s when local and state officials were the primary enforcers of the international boundaries, as contrasted with today, where the U.S. side of this boundary is policed by

the federal government through the Immigration and Naturalization Service (INS) Border Patrol.

Certain relationships in Lone Star serve as metaphors for the ways in which an individual self-constructs borders as a way to shape an identity or role in a community or a relationship. This is best illustrated by the conflict-filled relationship between two female characters, a mother and a daughter. Each represents first and second generation Mexican-American women whose identities have been critically shaped by the value system of the borderlands, a not uncommon situation for millions of *251 Mexicans, Latinas/os, and Chicanas/os living in the Southwest today. The story of the elder Mercedes Cruz, who is frequently at odds with the views of her daughter Pilar, involves not only a secret crossing of the Rio Grande as an illegal "wetback," but also the loss of a young husband to an untimely and violent death at the hands of the hated Sheriff Wade. Mr. Cruz had served as a "coyote" for Mexicans desiring to cross the border illegally to work in the United States, but he had also underestimated the depth of Wade's powerful rage against those who defied the payoff system for his "protection." The border cost Mercedes Cruz her husband.

Meanwhile, a past secret affair with Wade's possible killer, an Anglo, has produced a complex mystery by which Mercedes comes into some money that enables her to open a restaurant. She gives birth to a daughter who grows up not knowing she is half Anglo and half Mexican, who thinks her father was the unjustly murdered Mr. Cruz, and who does not understand that it was her mother's fear of incest and not racism which destroyed her first love to an Anglo boyfriend. These secrets underlie the tense emotional and intergenerational borders which have arisen between Mercedes and her daughter, Pilar, because each has a different view of the role of the border crossings in their lives. Mrs. Cruz has buried the memories of her life of poverty in Mexico and her river crossing as if the events occurred in another life; [FN17] yet, she allows her daughter to nurture the belief that her father was a martyr. That story has undoubtedly played a role in the shaping of Pilar's identity as a "Tejana" [FN18] citizen who questions the borderlands' hypocritical value system. Pilar decries her mother's denial of her heritage and her mother's harsh treatment of recent Mexican immigrants while manager of the town's largest restaurant staffed by Mexican workers. Pilar is a politicized Tejana who views her duties as a high school teacher as requiring her to teach a multicultural history of the United States through which the complex intersection of racism and classism in the Southwest are exposed.

Age, culture, class, education, and power intersect in a tense scene between the two women, which dramatizes how each sees her "Latina identity" differently from the other. The daughter's conflict with her once-mojada [FN19] mother shows when she questions her mother's tyrannical management of the workers in her large and prosperous Mexican restaurant. Pilar also disapproves of her mother's distrust of her workers and her demand to them that they "speak English only." The mother/daughter tensions illustrate how differently they have experienced and internalized or rejected the dominant value system. In another scene, the daughter is seen arguing with defensive colleagues over the role of multiculturalism in the curriculum. Meanwhile, her own mother has identified with the oppressor's values and has come to believe in the paradigm of "us/them" based on race, class, language, nationality, and residence status as the shaper of people's identities and their moral worth. Mrs. Cruz's identity critically depends on internalized oppression. She denies her own ties to the life of poverty her workers have left behind, by not only demanding that they speak "English only," but also by summoning the Border

Patrol on the mojados she often sees running from the river and across her backyard to safety. Mercedes' actions reinforce her acquired identity as the good "American citizen," and that of the mojados as the bad and illegal "aliens." It is a scene that illustrates how deeply some immigrants internalize the values and meaning given to physical borders by a dominant culture and region like that of Texas and the southwestern United States, especially where the transition leads to personal success accompanied by gratitude and loyalty to the new sovereign power.

Mrs. Cruz's own river crossing long ago and her acquired identity as a wealthy Americana clash in another scene where, instead of summoning the Border Patrol, she provides shelter to a mojado she recognizes as one of her valued employees and his intended wife. Seeing the young woman injured and helpless, Mrs. Cruz crosses her self-constructed border--a border which separates her identity as a U.S. nationalized citizen and vigilante from her identity as a compassionate Mexican woman who *253 is unable to barricade her own feelings of compassion and, as a result, ends up providing the immigrants with shelter and aid.

III. SHAPING A VIEW OF LATCRIT SCHOLARSHIP

My purpose here is not to examine all of the themes of borders and transgression or of mythical and inviolable boundaries based on race and class raised by Lone Star, but rather to illustrate the impact of this fascinating two-hour film in helping crystallize the essence of the dialogue we had initiated in May, 1996 at the first LatCrit conference. Among those themes, at a minimum, were the meaning of identity politics for Latinas/os, internalized oppression, the black/white race paradigm and the nature of Latina/o racism, intersectionality, gender, and the politics of history. Lone Star helped me formulate some tentative organizing concepts for a discourse which has definitely affected my personal identity as a Latina and my professional identity as a feminist, Latina, lesbian law professor. My expanded vision literally has me looking at the world very differently, not unlike the expanded awareness I recently experienced as I explored the gendered nature of our cultural attitudes by writing about discrimination against transgenders. [FN20] I am now in touch with a new meaning of the "border concept" at the theoretical level. At the experiential level, the stories of this not-so- fictional town, [FN21] set in the very state in which I currently reside in, connected my inquiry into the meaning of LatCrit theory to a familiar desire of mine to humanize the law by using stories to critically examine the impact of law and public policy.

Lone Star's examination of the lives of blacks, whites, and browns in Rio County, reminded me of, and also reshaped my understanding of, the paradigm of white supremacy over black and brown. Again I understood how white supremacy is capable of nurturing intergroup conflict and hostilities between members of "the oppressed." [FN22] I saw how the hypocrisy of immigration law enforcement, which has focused so heavily on one border, the Southwest, has managed to escape criticism for its racist nature *254 and has continued to exist because fear, economic need, and greed allow the system to thrive. The stories of killings, loves lost, and dehumanization in Rio County were all centered on the somewhat peaceful yet tense coexistence of African-Americans, Mexicans, and whites--a coexistence which depended upon the values of greed, racism, white male supremacy, fear, deceit, denial, and struggles for power and control.

IV. WHAT IS LATCRIT THEORY?

At this point I asked myself some of the questions I needed to focus on for this panel's theme; the most critical being, what is LatCrit theory? I see LatCrit theory as an intention to broaden the scope of legal analysis and scholarship so that it reflects the needs of the diverse Latina/o communities of this nation. I also see LatCrit theory as embracing a commitment to multiple consciousness; that is, a recognition that as we define our Latina/o identities, that identity is not essentialist, but rather, is inclusive of our gender and sexuality, culture, class, language, religion, resident status, age, and ability. I then connected these organizing concepts to issues of international human rights, with which I am less familiar but understand somewhat from a feminist perspective, thanks to Berta Hernandez's work. [FN23] As I thought about how to connect LatCrit theory and international human rights, I borrowed from the way in which feminists have argued that one's views of human rights change when one asks whether a nation can be deemed "good" on human rights if it does not consider issues like sexual harassment or gender-related bias to be human rights abuses. [FN24]

With these analogies in mind, I queried how these two things, LatCrit theory and human rights, intersect. One could see LatCrit theory as redefining the racial politics of identity for its failure to be sufficiently ethnicized or for conflating the meaning of race discrimination into ethnicity-based discrimination. [FN25] Some LatCrit scholars may see their mission as centering *255 the existence of unrecognized social groups in the white male and heterosexist discourse of American legal theory, which has tended to focus more on the black/white race paradigm. In this vein, LatCrit theory may be seen as trying to validate the concerns of those various U.S. communities, rural and metropolitan, made up in the United States of those people we call (and this list is not exhaustive): Mexican-American, Chicano, Puerto Rican, Cuban, Caribbean, Central American, South American, and more specifically, Guatemalan, Salvadoreno, and Nicaraguense. Similarly, a human rights discourse connected to a LatCrit perspective may change one's views about a nation like the United States when we consider the extent to which Latinas/os, whether residing in the United States legally or not, are discriminated against based on the intersection of those factors which typically characterize a "Latina/o" identity (e.g., ethnicity, race, language, and resident status). [FN26]

I had these formative ideas in mind one day when I opened up the Austin-American Statesman daily newspaper and read on the front page about the latest INS raid in Austin which affected about four or five construction companies and nine hundred workers. [FN27] My musings on LatCrit theory, border crossings, and the usefulness of stories in popular culture to explore the intersection of law and social justice forced me to look at the newspaper article about the INS raid with a fresh and most offended view. I have traveled far in this talk to make a point, which is nothing new to at least one of my copanelists, [FN28] and the point that the published account of the contemporary INS raid serves more as an effective propaganda tool rather than as a recorder of actual history. I would like to suggest that one goal of LatCrit theory, then, is to humanize the law and policy through more detailed *256 stories, designed to expose the need for more humane treatment of those Latinas/os known as Chicanas/os, Mexicans, and Mexican-Americans whose lives, especially in the Southwest, have been affected by the INS practice known as the workplace raid.

V. FACES OF DESPAIR IN INS RAIDS

INS raids, when assessed by way of the standard newspaper article with its skimpy details about who, when, and what happened, tells the American voter that Mexicans, at least in Texas, are taking jobs away from good American workers. Accounts of INS raids encourage readers to believe that, even if it is illegitimate to target such workers solely on the basis of their skin color [FN29] or their accented English, no sanctions will be imposed on the offending federal agents. [FN30] Furthermore, it may appear legal from these published accounts to enforce the law, [FN31] not on employers, but rather to focus on the workers. In fact, rarely does an account of a typical INS raid reveal the names of the employers who have been caught [FN32] violating the Immigration Reform and Control Act's prohibition against hiring a worker without *257 proof of citizenship or legal residence. [FN33] Nor does any published account ever explore the impact of a raid on the lives of the people caught without legal papers or of the failure of the INS to come up with nondiscriminatory methods of enforcement. [FN34] Because there is so little focus on the employers, there is nothing said about the value of educating them on how to spot illegal documents or forcing them to produce proof that they are not engaging in rehires of illegal workers. Of course, never does an account of an INS raid consider the possibility that the INS's approach to apprehending workers, with its heavy focus on the Mexican population and on people with brown skin, [FN35] smacks of blatant human rights abuses when the consequences of getting caught are to send a worker off to be detained and deported without due process or time to contact the family he or she is leaving behind. Nothing in contemporary accounts of INS raids ever suggests that there might be a need to put more of a burden on the employer rather than the worker. [FN36] In fact, enforcement fines on employers have been substantially relaxed in recent years. [FN37]

My LatCrit focus has me wondering how a different kind of account of an INS raid would change our views of this nation's compliance with basic human rights if one humanized the same *258 stories of recent INS raids and of the design and enforcement of INS policy. The typical studies on INS raids offer at best cold, impersonal data which only reports the numbers. [FN38] A newspaper article, which typically is full of facts and stories, is totally lacking in that kind of information when it comes to write-ups on an INS raid. One has to wonder who is discouraging the newspapers from accomplishing their usual task of providing the names of employers who are recidivists in the area of noncompliance with INS regulations. What one gets instead are the propagandist versions of INS raids. For example, one newspaper account reports that in Texas over the last three to four months, there have been over 5000 workers who have been arrested and detained by the INS; however, we are provided with no information that would help us learn about the industry that tends to employ undocumented workers. [FN39] Over ninety-eight percent of immigrants arrested were Mexican. In Austin, they were one-hundred percent Mexican, and they included Mexican and American legal residents. [FN40]

LatCrit theory encourages me to go further and beyond the reported numerical data. As I stated earlier, I believe many will view the LatCrit perspective as committed to the methodology of storytelling. This humanizing of law and policy can connect the data to reality and the numbers deported to the people and their experiences of pain, humiliation, fear of "la migra," [FN41] abandonment *259 of children, economic and health needs, and discrimination. Thus, for example, I want to get at the underlying experiences which define the term "deportation" in a common INS raid. As a LatCrit theorist, it is no longer enough for me to know of the numbers deported; rather, I want to

know: who they deported, where they lived and worked, who employed them, how many times have they been deported and later returned to the same employer, how they got back, whom they are leaving behind, how long they have resided in this country, how they were spotted, whether the INS was contacted by the employer's competitors, were they treated well, and were distinctions made on the job site based on skin color and language. These questions, which for me derive from the "critical" aspect of LatCrit theorizing, tell me that the term "deportation" has a life behind it--the life of a worker, a husband, a father, a mother, a child, a community, and so on. It means being kicked out of the place you are currently calling home. It means no way of making arrangements for children whose parents won't be coming home that night. It means no right to pick up some belongings or to go home to pick up valid identification. It means no right to pick up medication if suddenly you are being put on a bus or a train back to Mexico. It means even being charged for that bus or the train that is now going to take you thousands of miles away from your home.

I would stress as important in the LatCrit perspective the methodology of storytelling or the humanizing approach to our criticism of the status quo and of American law and policy for its neglect of the impact of racism, sexism, and nationalism Latinas/os in the United States. The sources of stories can come from unusual places. As an historian, I typically draw from the works of scholars like Professor Vicki Ruiz, whose studies give us a different focus on the impact of the exclusion of the "casual domestic servant" from the Immigration Reform and Control Act. [FN42] Her study on Mexicana domestic workers in El Paso, Texas, [FN43] for example, illustrates the hypocrisy of INS law and policy when one sees how Mexican women can be paid low *260 wages, sexually harassed, and threatened with deportation by vengeful employers, yet, also constitute a critical component of the local economy, which thrives on the abilities of such employers to be exempt from civil rights sanctions or minimum wage laws.

There are other sources of stories for examining the impact of INS raids on people's lives and on the social fabric of the southwestern United States. One book that is clearly a must for research in this area is Marilyn Davis's Mexican Voices/American Dreams. [FN44] It is a wonderful compilation of ninety oral histories used to examine the patterns of Mexico-U.S. immigration flow as an identity-shaping phenomenon for some Mexican villages and for Mexican, Chicana/o people in the United States. Through Davis's detailed stories on the lives of people who came and went, back and forth, and created transnational communities, one can learn about the reality of the hopes, dreams, and existence of that identity which this society labels "the illegal alien." [FN45] It is a compelling reading not only because we learn of the reasons why people leave their homes, how they fail and try again, and how they eventually succeed, but also because the stories capture the human dilemmas created by the need to continue the crossings even when one has been deported.

To return momentarily to the film Lone Star, there is a truly horrific scene involving the killing of Mr. Cruz, who has been caught driving a truckload of Mexican men across the border into Rio County. One should not believe that the rules Cruz defied, of getting protection for such transports in return for a bribe, are a thing of the past. While it is a brutal picture of the costs of a system which depends on the enforcement of "borders," it also communicates an important reality--that of the high personal risks involved in making these continual crossings. There is no guarantee of a successful crossing, and yet, these people continue to try and try until they are caught. Some eventually stay here, but many others continue to try at the risk of losing their own lives.

An Austin paper recently reported the story of a truck which was found abandoned on a Texas highway in the middle of *261 the summer. Twelve men were found dead, suffocated in a locked truck which had been abandoned by their driver who most likely feared being caught by the Border Patrol. [FN46] Stories like this demonstrate the need to expose the hypocrisy, the injustice, and the fundamental wrongness of the largely exclusive focus on Mexicans and brown people as the source of the United States' immigration "problems."

I will end with a short story based on my own first-hand experience with the impact of an INS raid. I was educated in Mexico for what would have been my high school years. For two years, I lived in a boarding school which opened its doors to approximately 350 day students. By my third year, the school closed its residency program, and I had to live temporarily in the home of a second cousin in Guadalajara, whom I stayed with for a total of five months. I soon learned that my second cousin's husband was living in California and that he sent money back to the family once a month. I think he worked in a meat packing plant. This was a very small house. There were literally three adults, three teenagers, and six small children sharing three rooms, a courtyard, and a water closet.

One day, my cousin's husband appeared on the front door step without prior notice of his arrival. He had been caught in an INS raid and had nothing on him other then the clothing on his back and a few dollars. I was only fifteen years old at the time, so I was very naive about the violence connected to INS raids and deportation methods.

My family certainly had contact in the United States with many people who had crossed the border illegally; we sometimes hired the friends of friends who needed jobs doing anything, which in our home, was domestic service. But now I was on the other side of the border. I heard Senor Bolanos describe in painful *262 detail the experience of being treated, in his words, "no better than cattle." He and hundreds of men had endured bad food, little water, and a long three day train ride to the Mexican interior, which for him was at least close to home. Many people were actually sent thousands of miles away from their original home-towns. They had no money and no ability to contact their families; overall he described it as a very frightening event.

The financial impact was felt in my cousin's household for several months because Senor Bolanos returned to California as soon as he could, but was unable to get his old job back. They became dependent on the money that my family was sending to temporarily board me there, which was about fifty dollars a month. We ate beans and tortillas for a very long time. I got sick. My cousins got sick. I felt the malnutrition even through the next term. I eventually moved out and went to live in a boarding house and convent. I never forgot the feelings of anger and frustration upon learning about my second cousin's plight. When my vacation came up, I told my dad all about it. I excitedly described what I had learned about the Bolanos family's plight. As I spoke, my father looked at me with what appeared to be both resignation and sadness, as he responded, "mija, [FN47] that's just the way it is. These things go on all the time. You just never hear about it."

I want LatCrit theory on this subject and any subject of concern to Latinas/os, to tell the stories will enlighten, scold, and maybe even change the minds of the politicians and the policy-makers who create and enforce law and policy which is tantamount to an exercise in human rights abuse.

Footnotes

* Assistant Professor of Law, University of Texas at Austin. I want to thank Berta Hernandez-Truyol for encouraging me to speak at this panel and Margaret Montoya for the conversation we had about Lone Star, as well as for her continuing contributions to the evolving LatCrit literature. My special thanks to Frank Valdes for asking me to speak at LatCrit I. This is an expanded and annotated version of my presentation as a panelist at the gathering of Latina/o law professors at the annual meeting of the Hispanic National Bar Association meeting, held in October, 1996 in Miami, Florida.

[FN1]. If there is an official date to the beginning of a LatCrit Legal Theory movement and discourse, it would be the gathering of Latina/o law professors at what was quickly termed "LatCrit I" in La Jolla, California on May 2-5, 1996. See Colloquium, 2 HARV. LATINO L. REV. (forthcoming 1997).

[FN2]. Feminist history provides another vehicle for demonstrating this intersection and for expanding the scope of analysis on the terms and conditions of employment for workers unable to seek protection under federal laws such as Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 e- 1 to 2000 e-17 (1982), or whose hiring is explicitly exempt from the scope of the Immigration Reform and Control Act of 1986, Pub. L. 99-603, 100 Stat. 3359 (codified in scattered sections of 8 U.S.C.)(e.g., undocumented domestic servants). See, e.g., Vicki L. Ruiz, By the Day or Week: Mexicana Domestic Servants in El Paso, Texas, in "TO TOIL THE LIVELONG DAY" AMERICA'S WOMEN AT WORK, 1780-1980, at 269-83 (Carol Groneman & Mary Beth Norton eds., 1987).

[FN3]. See, e.g., Murillo v. Musegades, 809 F. Supp. 487 (W.D. Tex. 1992) (illustrating the intersection of complex litigation, employment, immigration, constitutional torts, and human rights law). Murillo v. Musegades addresses the effort to certify a class of Hispanic citizens, students, and staff of a south Texas border town high school against various unknown INS Border Patrol officers who followed, harassed, beat, and otherwise targeted legal residents for questioning about their English speaking abilities and their nationality, based solely on their brown skin color.

[FN4]. See, e.g. Michael A. Olivas, The Education of Latino Lawyers: An Essay on Crop Cultivation, 14 UCLA CHICANO-LATINO L. REV. 117-138 (1994).

[FN5]. See Colloquium, supra note 1.

[FN6]. I intentionally adopt the term "queer" as an umbrella term to reflect the theorizing by lesbian and gay scholars as well the emergent discourse of bisexuals and transgenders and to reflect that such a term at all times reflects a sensitivity to diversity on the basis of other factors such as race, class, ethnicity, language, religion, ability, and age. See Francisco Valdes, Sex and Race in Queer Legal Culture: Ruminations on Identities and Inter- Connectivities, 5 SO. CAL. REV. L. & WOMEN'S STUD. 25 (1995).

[FN7]. See, e.g., Elvia R. Arriola, Gendered Inequality: Lesbians, Gays and Feminist Legal Theory, 9 BERKELEY WOMEN'S L.J. 103 (1994); Elvia R. Arriola, Faeries, Marimachas, Queens and Lezzies: The Construction of Homosexuality Before the 1969 Stonewall Riots, 5 COLUM. J. GENDER & L. 33 (1995); Elvia R. Arriola, Law and the Gendered Politics of Identity: Who Owns the Label Lesbian?, 8 HASTINGS WOMEN'S L.J. (forthcoming 1997).

[FN8]. I borrow the term used by Angela Harris to describe the scholar's need for sensitivity to the multiple facetedness of our identities. See Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 STAN. L. REV. 581 (1990).

[FN9]. Although I recognize that people often divide quite strongly on whether one should employ the term "Latina/o" or "Hispana/o" or "Hispanic," I feel that as scholars we must honor the choice of people in certain communities to self-identify in their politics or identity as "Hispanics." This issue was pressed upon the members of the Planning Committee of the Second Annual LatCrit Conference as we wrote up the

tentative agenda for a program which would be attended by many people from the San Antonio, Texas region--a community which draws political strength from the oft-decried and Anglo-imposed term, "Hispanic."

[FN10]. For an excellent example of this accomplishment, see Kevin R. Johnson, Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender and Class, 42 UCLA L. REV. 1509 (1995). Kevin Johnson personally embodies the intersectional identity as a "white-looking" Latino with an Anglo last name.

[FN11]. See, e.g., Symposium, Picturing Justice: Images of Law and Lawyers in the Visual Media, 30 U.S.F. L. REV. 891 (1996).

[FN12]. See, e.g., Jerome McCristal Culp, Jr., Telling a Black Legal Story: Privilege, Authenticity, "Blunders," and Transformation in Outsider Narratives, 82 VA. L. REV. 69 (1996).

[FN13]. See, e.g., Elvia R. Arriola, "What's the Big Deal?" Women in the New York City Construction Industry and Sexual Harassment Law, 1970-1985, 22 COLUM. HUM. RTS. L. REV. 21 (1990).

[FN14]. The term "coyote" is shared by the Spanish and English languages to identify night-prowling desert canines. Thus, the term applies to men and women who assist groups of Mexican nationals across the southern U.S.-Mexico border, usually at night through the desert, at often exploitative prices. For colorful descriptions by selected interviewees in an oral history project, of repeated and successful efforts to cross the California-Mexico border on foot, see MARILYN P. DAVIS, MEXICAN VOICES/AMERICAN DREAMS: AN ORAL HISTORY OF MEXICAN IMMIGRATION TO THE UNITED STATES (1990).

[FN15]. The "borderlands" as a concept signifies not only the physical topography of the region between Mexico and the United States, but also a metaphoric concept employed by scholars to represent cultural and epistemic sites of contestation. In non-legal writings, one of the first critical voices to use the "border" concept to apply to psychological, sexual and spiritual sites was Gloria Anzaldua. See GLORIA ANZALDUA, BORDERLANDS, LA FRONTERA: THE NEW MESTIZA (1987).

[FN16]. The recent militarization of Border Patrol in the southwestern United States, particularly since the 1980s, is at odds with the overall history of the creation and enforcement of the border in United States and Mexico, which has generally been lacking in hostility and has been characterized by the sharing of language, resources and culture. See Margaret E. Montoya, Border Crossings in an Age of Border Patrols: Cruzando Fronteras Metaforicas, 26 N.M. L. REV. 1, 3-5 (1996). See also TIMOTHY J. DUNN, THE MILITARIZATION OF THE U.S.-MEXICO BORDER, 1978-1992 (1996).

[FN17]. The idea of swimming to a new life by crossing the river evokes the fundamentalist Christian image of rebirth by way of full-bodied baptisms in lakes, ponds, or ritualistic pools.

[FN18]. Tejana/o is a term used to define native Texans of Mexican descent.

[FN19]. In Spanish, "mojada" is the equivalent of the American derogatory label "wetback," long used in Southwestern jargon to stereotype Mexicans, whether legal or illegal, who have crossed into the U.S. territories by swimming the Rio Grande in unpatrolled regions of the nineteen hundred mile U.S.-Mexico border.

[FN20]. See Arriola, Law and the Gendered Politics of Identity, supra note 7.

[FN21]. On my second viewing of Lone Star, a friend who accompanied me, a lifelong Texan, recognized that the film was shot on location, in and around the town of McAllen, Texas.

[FN22]. See Eric Yamamoto, Rethinking Alliances: Agency, Responsibility and Interracial Justice, 3 UCLA ASIAN PAC. AM. L.J. 33 (1995).

[FN23]. See, e.g., Berta Hernandez-Truyol, Women's Rights as Human Rights-- Rules, Realities and the Role of Culture: A Formula for Reform, 3 BROOK. J. INT'L L. 605 (1996).

[FN24]. Thus, for example, a gendered perspective changes one's views of a nation which appears to comply with human rights accords, but then becomes the subject of disrepute in a request for political asylum by a female citizen trying to escape an unwanted female circumcision.

[FN25]. Cases in which this conflation appear give rise to odd definitions of why a particular form of discrimination based on race, ethnicity, language, or nationality offend the principles of equality embodied in the U.S. Constitution and civil rights laws. See, e.g., St. Francis College v. Al- Khazraji, 481 U.S. 604 (1987) (holding that a person of Arabian ancestry is protected from racial discrimination under Section 1981. The Court drew upon confusing notions of race used in the nineteenth century, thus precluding the usefulness of other studies).

[FN26]. See Juan F. Perea, Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English, 77 MINN. L. REV. 269, 278- 79 (1992).

[FN27]. Enedelia J. Obregon, In 2 Days, INS Arrests 900 Illegal Workers, AUSTIN-AM. STATESMAN, Aug. 21, 1996, at A1.

[FN28]. That would be Kevin Johnson, who has made substantial contributions to criticisms of existing immigration law and policy. See, e.g., Kevin Johnson, Racial Restrictions on Naturalization: Another Example of the Intersection of Race and Gender in Immigration, 11 BERKELEY WOMEN'S L.J. 142 (1996).

[FN29]. An occasional journalist notes the racist character of the INS raid. See Enedelia J. Obregon, Latino Workers Feel Hassled by INS Raids, AUSTIN-AM. STATESMAN, Aug. 27, 1996, at D1.

[FN30]. Very oddly, one newspaper article reported that the INS determined which firms to target for a raid in Central Texas based on tips from competitors or "comments made by undocumented immigrants." George Rodriguez, Regional Crackdown by INS Targeting Texas Companies, DALLAS MORNING NEWS, Sept. 16, 1996, at 25A. One could query whether "comments" refers to the manner (e.g., whether the individual uses accented English or not) in which a worker responds to an INS officer's inquiry about his or her legal status or request for documentation proving he or she can work in the United States.

[FN31]. The relevant law is the Immigration Reform and Control Act of 1986 which was designed to cut back on the hiring of undocumented workers who had either crossed the border illegally or overstayed their visas. See Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified in scattered sections of 8 U.S.C.).

[FN32]. The recent reports of raids in Central Texas always refer to numbers of businesses raided and total numbers of undocumented workers arrested, the great majority of whom are from Mexico. Reports of raids in other states, which do not experience as great a number of raids or do not have as frequently targeted employers and workers, do mention names of employers. Compare George Rodriguez, INS Raids Hundreds of Texas Businesses, DALLAS MORNING NEWS, Sept. 6, 1996, at 6A, Teri Bailey, 3,679 Illegal Immigrants Caught by INS, HOUSTON CHRON., Sept. 6, 1996, at A5, and Jackie Crouse, INS Snares More than 70 Workers, SAN ANTONIO EXPRESS-NEWS, Aug. 29, 1996, available in 1996 WL 11495168, with 200 Arrested in INS Raids, TULSA WORLD, Sept. 7, 1995, at N6, with Illegal Aliens Nabbed in York County, INTELLIGENCER J. (Lancaster, PA), Feb. 11, 1995, at B4.

[FN33]. 8 U.S.C. § 1324a (a)(1) (1988) ("it is unlawful for a person or other entity to hire, or to recruit or refer for a fee, for employment in the United States-(A) an alien knowing the alien is an unauthorized alien..."). The I-9 form serves as the basis of proper identification, while the notice of intent to fine, Form I-763, is given to an employer when the INS has found a violation of Immigration Reform and Control Act. Charles C. Foster, Immigration Law and Employer Sanctions, HOUSTON LAW., Dec. 26, 1988, at 19.

[FN34]. The discriminatory impact of the Immigration Reform and Control Act has been noted. See Michael Crocenzi, IRCA-Related Discrimination: Is It Time to Repeal the Employer Sanction?, 96 DICK. L. REV. 673 (1992).

[FN35]. See Obregon, supra note 29.

[FN36]. A rare quote captured by an Indianapolis reporter from an employer who hired many illegal immigrants suggested the unfairness of the finger pointing at the laborer: "The employer is more to blame than the alien, because if a job wasn't available here, then people wouldn't drive 1500 miles from Mexico to take it. We all come from immigrant backgrounds, so you can't blame the immigrants." Julie Goldsmith, State Faces Growing Problem of Undocumented Workers, INDIANAPOLIS STAR, Aug. 25, 1996, at E1. Of course, despite the official barriers, many employers know that they can hire illegals, and they will do so because quite frequently the terms they use to describe their employees are "loyal," "hard work[ing]," "fast learners," "enthusiastic," and "dependable" while many officials look the other way and make it possible for illegals to be hired in economic sectors where they are most needed (e.g., agribusiness). See DAVIS, supra note 14, at 68-93.

[FN37]. The number of employers fined for violating immigration rules has fallen to 1427 in the fiscal year 1995, from 3547 in 1989. See Rodriguez, supra note 30, at 25A.

[FN38]. A good example of how the studies fail to do this, and reduce the story of the INS raid to impersonal economic or statistical data which does not discuss the impact on people's lives, is a recent study of the impact of Immigration Reform and Control Act on reducing the flow of illegal immigration or the rise in apprehensions. See Jeffrey S. Passel et al., Undocumented Migration Since IRCA: An Overall Assessment, in UNDOCUMENTED MIGRATION TO THE UNITED STATES: IRCA AND THE EXPERIENCE OF THE 1980S, at 251 (Frank D. Bean et al. eds., 1990).

[FN39]. See Obregon, supra note 27.

[FN40]. For the numbers used for these informal calculations, see newspapers articles supra notes 27, 29, and 32. Formal studies suggest that the majority of undocumented immigrants are from Mexico, although the authors suggest that the non-Mexican component should not be overlooked. Passel, supra note 38, at 252. Other critics of INS policy and practice urge that the INS raids only serve publicity purposes and that they are intimately connected to racial violations of civil rights. See Joseph Torres, Rights Groups Say INS Increased Raids Merely for Publicity, IDAHO STATESMAN, Oct. 13, 1995, at A17.

[FN41]. "La migra" is a well-known southwestern colloquialism among Spanish- speaking Chicanas/os and Mexicanas/os referring to the INS. Mention of the term can instill tremendous fear among undocumented workers who fear losing their jobs and being sent far away from their homes. Thus, an employer who knows the impact of the term "la migra" can use it as an effective device for controlling workers' behavior and attitude about wages, terms, and conditions of employment.

[FN42]. 8 C.F.R. § 274a.1(h) (1995) (providing exemption for "casual employment by individuals who provide domestic service in a private home that is sporadic, irregular, or intermittent."). The irony of such terms as "sporadic" and "irregular" in the statute is that they obscure the socio- economic reality that some local economies could not survive without the dependable and regular maid service or live-in baby-sitters provided by immigrant women employed at poor wages for domestic service. See Ruiz, supra note 2.

[FN43]. See Ruiz, supra note 2.

[FN44]. See DAVIS, supra note 14.

[FN45]. In today's symposium Kevin Johnson has analyzed the detrimental impact of the term "alien" as an operative concept to discuss problems of immigration. See Kevin R. Johnson, "Aliens" and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons, 28 U. MIAMI INTER-AM. L. REV. 263 (1996-97).

[FN46]. The violence surrounding the risks of crossing illegally have been noted. In California, the beatings of some immigrants was captured on camera, while a study by the University of Houston revealed that more than three hundred people die annually crossing the border. See Karen Fleshman, Public Forum: Illegal Immigrants Part of Our Society, AUSTIN-AM. STATESMAN, May 31, 1996, at A11. The American Friends Service Committee has also recently released a study called "Migrant Deaths at the Texas-Mexico Border, 1985-1994," which details the number, causes and characteristics of the deaths of undocumented migrants who die while trying to cross the U.S.-Mexico border. See Migrant Deaths at the Texas-Mexico Border, 1985-1994, AFSC NEWSLETTER (Am. Friends Serv. Comm., Texas-Arkansas-Oklahoma Headquarters, Austin, Tex.) Apr. 1996, at 6 (on file with author).

[FN47]. "Mija" is a shortened version of "mi hija" which affectionately translates into "my daughter."

Colloquium Proceeding
Panel Two

6. Enrique R. Carrasco,* Opposition, Justice, Structuralism, and Particularity: Intersections Between LatCrit Theory and Law and Development Studies, 28 U. MIAMI. INTER-AM. L. REV. 313 (1996-97)**

INTRODUCTION

This essay explores how emerging LatCrit theory [FN1] can inform efforts to critically assess and monitor global neoliberalism. My discussion is premised upon two persistent and striking dualities throughout the world. One relates to liberalism's promise of prosperity. Just over fifty years ago, a post-war liberal order was created to promote global prosperity. If one looks solely at the increase in world income from $4 trillion in 1950 to over $20 trillion in the 1990's, one would likely conclude that liberalism has performed admirably.

Yet the distribution of that income is highly skewed. Today, the richest twenty percent of the global population captures eighty-five percent of global income, while the remaining portion is shared by three-quarters of the world's population living in

developing countries. [FN2] Distributive disparities within countries, especially in South Asia, Latin America, and the Caribbean, are likely to increase in the future. [FN3]
These disparities do not exist solely in developing countries, however. Distributive inequality has been steadily increasing in the United States. The gap between the very rich and all other segments of society is wider today than at any other period since World War II. [FN4] Recent data indicates that Latinas/os disproportionately *315 occupy the low end of the economic spectrum. [FN5]

Another closely related duality relates to liberalism's opportunity principle. The creators of post-war liberalism spoke eloquently of freedom of opportunity, a foundational freedom that would enable "the people of every nation ... through their industry, their inventiveness, their thrift, to raise their own standards of living and enjoy, increasingly, the fruits of material progress *316 on an earth infinitely blessed with natural riches." [FN6] The U.N. Charter and other international and regional human rights instruments created thereafter have called for the elimination of the main obstacle to opportunity--discrimination. [FN7]

Little progress has been made on this front either. Relatively few people today can find meaning in the opportunity principle. Rampant economic discrimination on the basis of ethnicity, race, gender, and religion prevails in nearly every region of the world. As the World Bank has noted, "certain groups systematically do worse than others. For example, unstable employment and lower earnings are more common among the indigenous than the nonindigenous people of Guatemala, among blacks than whites in Brazil, among the members of scheduled castes and tribal groups than the upper castes in India." [FN8] More women than men are trapped in a degrading life of absolute poverty, and they are disproportionately affected by related problems: social disintegration, unemployment, environmental degradation, and war. [FN9] Once again, we need not look outside of the United States for pervasive manifestations of this duality. [FN10]

These dualities have not dissuaded many countries today from supporting an updated or "neoliberal" version of what was *317 viewed in the 1940s as a universal principle--that an open, market-based, interdependent, international economy combined with democratic governance is the best prescription for global peace and prosperity. [FN11] Policymakers realize, however, that neoliberalism cannot flourish over the long-term in the face of massive social inequalities. Equitable "development" is, thus, as necessary today as it was after World War II. Yet "law and development" efforts have addressed this need with only moderate success.

The question is, therefore, whether LatCrit theory can help those of us dealing with law and development issues to think of ways to promote "a political, economic, ethical and spiritual vision for social development ... based on human dignity, human rights, equality, respect, peace, democracy, mutual responsibility and cooperation, and full respect for the various religious and ethical values and cultural backgrounds of people." [FN12]

Given the incipiency of the LatCrit "movement," my response is cautiously optimistic. LatCrit theory's emphasis on opposition, justice, structuralism, and particularity--animated in part by concepts of ethnicity [FN13]--may help scholars explore and articulate a socio-legal framework that will give rise to an enabling environment for social development, [FN14] especially in Latin America. In particular, these concepts may enable development scholars and activists to engage in a careful and nuanced criticism of neoliberalism.

II. LATCRITS' TOOLS OF CRITICISM

LatCrit theory, which is emerging from Critical Race Theory, [FN15] is complex and thematically broad. [FN16] In this essay, I will address opposition, justice, structuralism, and particularity, four basic concepts of LatCrit theory that can inform our thinking about social development. As the discussion below will indicate, these concepts reflect both modern and postmodern views of law and society, to the extent that they reveal a hopeful quest for enlightenment leading eventually to liberation while at the same time rejecting modernism's epistemological foundations. [FN17]

As to opposition, LatCrit theory, like Critical Race theory, seeks to continue the "long tradition of human resistance and liberation." [FN18] History has taught Latinas/os that engaging in la lucha (struggle) is both honorable and inevitable. Struggling for justicia (justice) is almost a teleological "given" in the Latina/o community. LatCrits engaged in la lucha por la justicia (the fight for justice) thus seek to understand and change a U.S. socio-legal system that presents a disabling environment for social development of Latinas/os via new nativism and racism. [FN19] Importantly, *319 the inspiration and strength needed to wage la lucha por la justicia comes not from an intellectual construct, but rather from a communitarian ethic diasporically linked to Latin America.

LatCrit theory's structural critique of U.S. society and its preference for particularity or perspectivism over universalism can also be useful for social development. Structuralist criticism of law and society was first formulated by legal realists and subsequently refined by Critical Race Theorists. Derrick Bell, for example, has used structural theory to show how civil rights reform has been tied to the long-term interests of whites. [FN20] Similarly, Kendall Thomas has explored questions of race, power, and culture in the context of popular constitutional historiography ("popular memory") in order "to challenge the conceptual order or hierarchy that subtends the exclusion of the common run of human beings and their concerns from the historical study of constitutional law." [FN21]

Structural analysis is also evident in Ian Haney Lopez's examination of the social construction of the white race [FN22] and Juan Perea's exploration of how hierarchy and whiteness adversely affect the Latina/o population in the United States. [FN23] This type of scholarship has been characterized as "structural determinism" because it focuses "on ways in which the entire structure of legal thought ... influences its content, always tending toward maintaining the status quo." [FN24]

LatCrits seek to enrich structural critiques with scholarship emphasizing particularity, through the use of storytelling techniques to examine embedded racism, power, and ideology. [FN25] Particularity is the deconstructive companion of structuralism inasmuch as "[s]tories, parables, chronicles, and narratives are powerful means for destroying mindset--the bundle of presuppositions, received wisdoms, and shared understandings against *320 a background of which legal and political discourse takes place." [FN26] Well-known illustrations of this technique in the LatCrit context include Richard Delgado's The Rodrigo Chronicles, in which his alter ego, Rodrigo, explores racism in the United States, [FN27] Margaret Montoya's piece on Latina stories and legal discourse, [FN28] Michael Oliva's article weaving his grandfather's stories into a commentary on immigration law, [FN29] and Leslie Espinoza's reflections on how her background affects her work in legal academia. [FN30]

Taken together, opposition, justice, structuralism, and particularity appear to be useful analytical tools for scholars addressing what amounts to social development in the United States. Nevertheless, those of us who have been working in the international law and development field may view the tools with a bit of weary skepticism. For we are well aware that opposition, justice, structuralism, and particularity have also been important elements in our field. Unfortunately, as described below, they have not been very effective in the international context.

III. OPPOSITION, JUSTICE, STRUCTURALISM AND PARTICULARITY IN THE INTERNATIONAL CONTEXT

The "story" of social development in the international context commonly begins with post-war liberalism. After World War II, the Allied Powers believed that an international economy was the best prescription for global prosperity, which, in turn, would help maintain international peace. [FN31] Development issues that demanded contextual analysis, such as structural impediments facing developing countries, were marginalized as a result of the discourse of universal liberalism. [FN32] After decolonization, frustrated developing countries claimed the prevailing global order perpetuated economic inequality among nations. [FN33] However, as the examples below illustrate, efforts to promote progressive change were based on incomplete or otherwise flawed notions of opposition, justice, structural critique, and particularity. Hence, these analytical tools failed to make any significant changes in the global order.

A. The New International Economic Order

Conceived as a broad critique of post-war liberalism, the New International Economic Order (NIEO) was perceived as *322 radically oppositional. In the name of global justice, developing countries called for negotiations with industrialized countries to modify the philosophical, juridical, and institutional structures comprising post-war liberalism. [FN34] The broad agenda for structural change included issues ranging from official development assistance from the North, to international trade and finance, to health, education, and welfare. [FN35]

The NIEO's oppositional vision was not all that radical, however. The strategy was premised on a fundamental construct of liberalism--the nation state. [FN36] Because the NIEO's goal was to give true meaning to the principle of sovereign equality among states, particularly with respect to economic matters, [FN37] developing countries avoided discussion of justicia within their own borders. They argued that domestic inequalities could not be remedied without first transforming relations among nations. [FN38] They also claimed that the principle of sovereign equality among states gave developing countries the right to shield their domestic policies from international scrutiny. [FN39]

The NIEO agenda was hopelessly contradictory because it insisted upon radical and contextual change within liberalism's moderate, state-centered, and universal framework. Not surprisingly, much debate addressed the legal significance of the NIEO. While supporters asserted that the NIEO reflected customary international law, [FN40] critics argued that the non-binding United Nations resolutions were merely moral or political statements,*323 at best constituting "soft law." [FN41] Deep divisions between the North and South continue to this day over much of the NIEO's substance. [FN42]

B. Import Substitution

Import substitution was another strategy developing countries adopted (particularly in Latin America) to challenge postwar liberalism. In the 1950s and 1960s, development economists articulated a structural and particularized critique of the international economy, grounding their theory on a bias in the global trading system against developing countries which export primary commodities. [FN43] Import-substitution policies encompassed high tariffs and nontariff barriers that protected infant industries, laws that controlled foreign investment, and favorable financing that subsidized state-guided investments. [FN44]

Despite considerable efforts, the import-substitution model of development yielded mixed results in terms of economic growth in Latin America. [FN45] More importantly, the model provided little justicia. Supporters of import substitution assumed the welfare state would distribute the fruits of growth on an equitable basis. Yet populists redistributive policies only widened the gap between the rich and the poor. [FN46]

C. The Rise and Fall of Oppositional Voices

The increasing gap between the rich and the poor in developing countries undermined development models emphasizing capital accumulation and import substitution. [FN47] This gave rise to radical critiques of global liberalism that caused as much controversy as LatCrit/Critical Race Theory's current critique of domestic liberalism. In the late 1960s, for instance, neo- Marxists argued that "peripheral" (developing) countries were stuck in a state of underdevelopment and unequal exchange with the "center" (advanced capitalist countries). A socialist revolution was needed to capture the economic surplus for development. [FN48]

These critiques, though provocative, were ineffectual. Other voices in development claimed that neo-Marxist solutions, such as autarky, were unrealistic. [FN49] Much of neo-Marxist theory proved to be incomplete or empirically incorrect. [FN50] Moreover, the theory itself was too grand and fatally formalistic. [FN51]

Co-optation also stifled oppositional voice in international development. For example, the preoccupation in the 1970s with *325 inequitable development led some economists to reject the notion that growth in per capita income alone could be used to measure development. [FN52] Taking advantage of the emerging view that growth need not necessarily be sacrificed for equity, the World Bank soon declared there could be redistribution with growth. [FN53] The Bank's approach, however, avoided radical redistributive policies, advocating instead a moderate, incremental strategy of redirecting investment to raise the productivity and incomes of the absolute poor. [FN54] The World Bank took a similar approach to the controversial "basic human needs" approach to development [FN55] and avoided radical redistributive policies of that model by focusing on cost-effective, targeted expenditures on the poor. [FN56]

The clearest indication of the broadening crisis in the development field came from the "law and development" movement. During the Cold War, funding from the U.S. government, private foundations such as the Ford and Rockefeller Foundations, and international organizations enabled scholars to write about and advise on non-communist strategies to modernize "Third World" nations through legal reform. [FN57] Inspired by the work of Max Weber, [FN58] scholars believed that an autonomous, consciously

designed, and universal legal system could help replicate the development path of Western industrialized societies. [FN59]

By the early 1970s, scholars began to doubt the utility of the "liberal legalist model." [FN60] In a soul-searching article titled Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States, David Trubek and Marc Galanter despairingly observed:

> Law and development studies are in crisis because some scholars have come seriously to doubt the liberal legalist assumptions that "legal development" can be equated with exporting United States institutions or that any improvement of legal institutions in the Third World will be potent and good. They have come to see that legal change may have little or no effect on social economic conditions in Third World societies and, conversely, that many legal "reforms" can deepen inequality, curb participation, restrict individual freedom, and hamper efforts to increase material well-being. [FN61]

Having identified disadvantages associated with "pragmatic problem solving" and "positivistic pure science" approaches to law-and-development studies, the authors advanced an "eclectic critique" that "transforms the central assumptions underlying the law and development enterprise into critical standards." [FN62] The call for critical analysis by these and other authors [FN63] failed to ameliorate the crisis. The law and development "movement" subsequently subsided. [FN64]

IV. POTENTIAL INTERSECTIONS BETWEEN LATCRIT THEORY AND LAW AND DEVELOPMENT

The story I have recounted does not bode well for the creation of an enabling environment for social development. Those who work in the law and development field are likely to conclude that the tools of opposition, justice, structuralism, and particularity are worn and of little utility today.

The apparent triumph of neoliberalism in the face of glaring dualities in the global order breeds cynicism about the future of social justice. Along with the disintegration of the Soviet Union and the socialist bloc in Eastern Europe, [FN65] the debt crisis of the 1980s has led policymakers in developing and transitioning countries to abandon import substituting and statists approaches to development in favor of economic law and policy based on an open, privatized, market-based economy. Although the former policies failed to empower vulnerable groups, there is no guarantee that neoliberal policies alone will effectively address these groups either. [FN66]

Is there no hope, then, for a progressive approach to law and development? I believe there is, provided we reconstitute opposition, justice, structuralism, and particularity by examining potential intersections between LatCrit theory and concepts relating to law and development. [FN67] This process may help us find new ways of looking at the process of development, especially in Latin America. It may also reveal "domestic" aspects of LatCrit/Critical Race Theory that can be strengthened.

A. Opposition and Justice

As to intersections relating to opposition and justice, we should consider the following proposition: A critical approach to development based on LatCrit theory should avoid waging a frontal assault on global neoliberalism in the name of la lucha *328 por la justicia (fight for justice). The story recounted above suggests that a grand counter-hegemonic strategy risks the production of flawed scholarship. Moreover, policymakers would not take our work seriously were we to adopt such a strategy. [FN68] Instead, we should develop a careful, cautious, and constructively critical position supporting neoliberalism.

This proposition is not as shocking as it first seems. If we want to reconstitute opposition and justice effectively in the international sphere, strategic positioning is crucial. [FN69] In an article dealing with the plight of the nonwhite poor in the United States, Richard Delgado asks, "In a society with power divided almost equally between two political groups, one conservative, one liberal, which is the more likely source of aid for the nonwhite poor?" [FN70] After concluding that the moderate left and communitarians would unlikely provide significant long-term support for the poor, Delgado concludes that "conservative principles may be a better source of succor for the poor than has hitherto been thought, perhaps even superior to that available from the left." [FN71] He reasons that conservatives are more likely to provide the poor with job training and other forms of "cultural capital" in order to strengthen the legitimacy of conservative thought emphasizing "self-reliance, the free marketplace, and as little governmental intervention as possible." [FN72] Thus the poor should seek alliance with the right, albeit with a strident or radical voice. [FN73]

A similar strategy may be useful in the international realm. Statist- oriented development policies amply demonstrate that governments have often been indifferent to the plight of the poor, many of whom are women, children, black, Indian, and members of minority ethnic groups. [FN74] When governments have paid attention *329 to the poor for political reasons, the resulting populist policies have not been sustainable and have ultimately hurt the poor. [FN75]

LatCrits with an interest in development should therefore cautiously support the neoliberal policies of the International Monetary Fund (IMF) and the World Bank. This strategy is promising because unlike the situation fifty years ago, developing countries today are the major constituencies of these two multilateral institutions. Moreover, in order to respond to critics and thus bolster the legitimacy of the neoliberal development paradigm, [FN76] both the Bank and the Fund are attempting to address many of the economic, social, and cultural issues relating to today's human rights regime.

At the World Bank, for example, labor-intensive growth, investment in human capital (e.g., education and health), safety nets for the poor during market- based transitions, [FN77] and, increasingly, good governance (e.g., accountability, transparency, participation) are the primary components of development policy. [FN78] In an effort to persuade critical observers of its commitment to the "growth-with-equity" approach to development, the Bank has highlighted its increases in social spending and initiatives aimed at poverty reduction. [FN79]

The Bank also uses conditionality to address human rights. Responding to observations that governments facing adjustment have chosen expenditure reductions that hurt the poor, the Bank has relied upon charter provisions [FN80] to "increasingly include conditionalities in its structural adjustment operations to ensure that public expenditures on the activities and subsectors that benefit the poor disproportionately such

as primary education, basic health care, nutrition, and water supply and sanitation are protected, and in many cases, even increased." [FN81]

The IMF believes it promotes human rights, albeit indirectly, by insisting upon "high quality" economic growth. This approach embraces (i) macroeconomic stability, (ii) market-based trade and investment policies, (iii) good governance, and (iv) sound social policies that create social safety nets for the poor, increased employment, and cost-effective social spending. [FN82] Moreover, Fund missions now regularly discuss distributional consequences of adjustment with borrowing countries. [FN83]

All of these developments in the human rights field are welcome and necessary, but they are not sufficient for the realization of meaningful social development. LatCrit scholars along with other activists deben luchar por la justicia (should fight for *331 justice) by ensuring, at the very least, that multilateral and regional financial institutions actually comply with their own policy and rhetoric relating to economic, social, and cultural matters. [FN84] This does not require Delgado's stridency tactic as much as careful and precise observation and criticism--what can be called "radically rigorous monitoring."

LatCrit/Critical Race Theory, however, provides little guidance for the development of the analytical aspects of such monitoring, at least with respect to the intersections between race/ethnicity and financial/economic matters. This is partly due to the type of scholarship produced to date, which has focused on other pressing issues and problems relating to racism and identity in a liberal order. [FN85] In addition, important pieces in Critical Race Theory reflect the view that "law and economics" analysis is conservative, formalistic, and ultimately inconsistent with Critical Race Theory. [FN86] Thus, the argument goes, economic or financial analysis cannot effectively address systemic distortions in society. [FN87]

Although the rich LatCrit and Critical Race scholarship produced thus far can be usefully applied to social development issues, increased economic globalization will compel critical scholars to abandon their defensive posture regarding economic and financial analysis. Fortunately, recent writings suggest an expansion of critical analysis into the commercial/economic realm. Steven Bender, for example, has proposed comprehensive reform *332 of U.S. consumer protection regulation to ensure that Latina/o consumers and other language minorities can "strike informed bargains." [FN88] Beverly Moran's and William Whitford's critical examination of the U.S. Internal Revenue Code suggests that the Code treats blacks more harshly than similarly-situated whites. [FN89] And Anthony Taibi has used Critical Race Theory to explore how economic globalization disempowers local communities. [FN90] These and other writings [FN91] may eventually lead to a corpus of literature that can be used as a springboard for radical and rigorous monitoring of economic and financial institutions in the increasingly interconnected domestic and international spheres of today's world.

B. Structuralism and Particularity

Radically rigorous monitoring cannot occur without structural criticism. [FN92] Although the structural critique of liberalism described above has helped change the global order in favor of developing countries, [FN93] progress in this regard has been marginal. *333 LatCrit and Critical Race Theory may be able to broaden and invigorate the critical project by ungrounding institutionalized discrimination against communities and peoples.

Reconstituting structuralism along these lines should be premised on a proposition of LatCrit/Critical Race Theory that has begun to make inroads into scholarship relating to law and development--namely, that law is a constitutive element of race, gender, culture, and ethnicity itself. [FN94] Applying this type of structural analysis to international economic law and policy [FN95] may provide very useful insights into complex problems of development.

One of the hardest problems relates to the accountability of multilateral institutions governing the international economic order--the IMF, the World Bank, and the World Trade Organization (WTO). Progressive change does not come easily to these entities. An analogy to the Critical Race Theorists' criticism of the civil rights movement is instructive. Characterizing the civil rights movement of the late Sixties and early Seventies as "tragically narrow and conservative," Critical Race Theorists have noted that the whites who perpetrated segregation retained their positions of authority during the era of integration, making reform exceedingly difficult. [FN96]

The same can be said of the transnational elite inhabiting the IMF, the Bank, and the WTO. Although decolonization forced these institutions to recognize the needs and demands of *334 developing countries (e.g., the NIEO), reform has occurred slowly and in small increments. This is because policymakers in the international economic arena, whether from developed or developing countries, by and large have gone to the same schools and/or undergone similar doctrinal training. Universalism and orthodoxy pervade their thinking, which, of course, is reflected in and reinforced by institutional policy. [FN97]

Preservation of the status quo is compounded by the fact that policymakers in these institutions are not likely to view the institutions as constitutive elements of global discrimination. Rather, in their view, discrimination exists "out there somewhere," and it is up to member states to eradicate it. These problems can be attacked through radically rigorous monitoring and equally rigorous and sound research regarding structural discrimination.

Particularity, the final intersection to be addressed in this essay, can also be used to prmote a critical approach to development. As noted above, both the NIEO and the import-substitution model of development as well as development "radicals" of the 1960s and 1970s relied on particularity. However, the particularity of that era frequently lacked a human face. Much of the analysis was woodenly formalistic and exceedingly grand.

Although theory and models continue to be vital to tackling problems of development, policymakers today favor a pragmatic approach. Yet the danger with pragmatism in the realm of development is that it misleadingly suggests that programs and projects are or can be divorced from the hegemonic ideology produced by international institutions such as the IMF, the World Bank, and the WTO.

The risk of false consciousness in development calls for counter-hegemonic development stories "from the bottom." [FN98] *335 Such stories should be constructed from the reverberations in local communities resulting from cavalier applications of neoliberal law and policy. [FN99] This will require analytically rich, [FN100] contextual scholarship produced in conjunction with grassroots activists, members of non-governmental organizations, and academics in Latin American and Caribbean communities. [FN101] The goal of this type of particularity should be to monitor neoliberalism critically and radically, exposing weaknesses and contradictions in the dominant story that ultimately can be exploited to ensure a more equitable development process. [FN102]

V. CONCLUSION

This essay has provided only preliminary thoughts and ideas regarding connections between newly evolving LatCrit theory and development in the international sphere. Future research must, among other things, address various complications that may arise from a LatCrit approach to development, especially in Latin America. For example, openness and sensitivity may require LatCrits to reassess Critical Race Theory's reliance on *336 "rights," [FN103] given that the popular justice movement in the region has favored collective over "liberal/individualistic" notions of justice. [FN104] LatCrit theory's explicit reliance on ethnicity (and Critical Race Theory's reliance on U.S. concepts of race and racism) may also need readjustment to properly assess complex conceptions of race and racism in Latin America. [FN105]

Nevertheless, I am hopeful that LatCrit theory can help development scholars construct a socio-legal framework that will promote an enabling environment for social development. A reconstituted application of opposition, justice, structuralism, and particularity may help reinvigorate critical thinking regarding development and the role of law in the development process. Moreover, LatCrit theory may be especially useful vis-a-vis development in Latin America, given increasing regional integration and the cultural/linguistic connections between "Latinas/os" in the United States and "Latin Americans."

Footnotes

---

* Professor of Law, University of Iowa, College of Law. Many thanks to Janet Jenson and Narmin Nowzamani Koenig for their very able research assistance and to Jackie Hand for helping me produce the manuscript. I also thank the conference participants for their valuable remarks and observations relating to various aspects of this essay.

[FN1]. LatCrit theory (signifying "Latina/o" and "critical") is an outgrowth of Critical Race Theory. The former is "more openly, directly, and unabashedly Latina/o in content and focus." Francisco Valdes, Foreword: Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities, 9 LA RAZA L.J. 1, 11 (1996).

[FN2]. James Gustave Speth, Foreword to UNITED NATIONS DEVELOPMENT PROGRAMME, 1995 HUMAN DEVELOPMENT REPORT, at iii (1995)[hereinafter 1995 HUMAN DEVELOPMENT REP.]. See WORLD BANK, POVERTY REDUCTION AND THE WORLD BANK, at vii (1996)[hereinafter POVERTY REDUCTION REPORT] ("[M]ore than 1.3 billion people in the developing world still struggle to survive on less than a dollar a day, and the number continues to increase."); id. at 2-9 (examining worldwide trends in poverty from late 1980s to mid-1990s).

[FN3]. Outcome of the World Summit for Social Development: Draft Declaration and Draft Programme of Action, U.N. GAOR Preparatory Committee for the World Summit for Social Development, 2d Sess., Annex, Agenda Item 4, at 4, U.N. Doc. A/CONF. 166/PC/17 (1994).

[FN4]. Steven A. Holmes, Income Disparity Between Poorest and Richest Rises, N.Y. TIMES, June 20, 1996 (reporting on Census Bureau report indicating increased post-war income inequality in the United States). For recent literature relating to income distribution in the United States, see MARTIN N. BAILY ET AL., GROWTH AND EQUITY: ECONOMIC POLICYMAKING FOR THE NEXT CENTURY (1993) (recommending policies which will accelerate growth and narrow gap of inequality); MAURO BARAZINI, A THEORY OF WEALTH DISTRIBUTION AND ACCUMULATION (1991) (discussing a new model of macroeconomic theory of income distribution and wealth accumulation); BERCH BERBEROGLU, THE LEGACY OF EMPIRE: ECONOMIC DECLINE AND CLASS POLARIZATION IN THE UNITED STATES (1992) (analyzing recent transformation of the United States and world capitalism within the context of accumulation of capital on global scale); DENNY BRAUN, THE RICH GET RICHER: THE RISE OF INCOME INEQUALITY IN THE UNITED STATES AND THE WORLD (1991) (recognizing increase in inequality as a danger and discussing alternatives and strategies for change on global, national, and personal level); SHELDON DANZIGER & PETER GOTTSCHALK, AMERICA UNEQUAL (1995) (discussing public and private sector solutions to rising poverty rate and inequality in past two decades); SHELDON DANZIGER & PETER GOTTSCHALK, UNEVEN TIDES: RISING INEQUALITITES IN AMERICA (1993) (essays exploring growth in inequality in context of labor market changes and distribution of earnings, demographic changes and distribution of family income, and public policy changes and distribution of family income); HERBERT INHABER & SIDNEY CARROLL, HOW RICH IS TOO RICH? INCOME AND WEALTH IN AMERICA (1992) (advocating two-prong test that includes progressive tax on incomes above $100,000 and inheritance tax system); PAUL R. KRUGMAN, PEDDLING PROSPERITY: ECONOMIC SENSE AND NONSENSE IN THE AGE OF DIMINISHED EXPECTATIONS (1994) (advocating that the United States should diminish problem of slow growth and poverty by less government regulation, more innovative ideas); PAUL R. KRUGMAN, THE AGE OF DIMINISHED EXPECTATIONS: U.S. ECONOMIC POLICY IN THE 1990S (1990) (looking at future of economic policy relating to income distribution); NANCY G. LEIGH, STEMMING MIDDLE-CLASS DECLINE: THE CHALLENGES TO ECONOMIC DEVELOPMENT PLANNING (1994) (analyzing widening gap in individual earnings of middle class and advocating investment in social infrastructure); NAN L. MAXWELL, INCOME INEQUALITY IN THE UNITED STATES, 1947-1985 (1990) (analyzing income polarization and declining middle class in context of shifts in employment, population age, income-receiving unit composition, macroeconomy, and government spending); TAX PROGRESSIVITY AND INCOME INEQUALITY (Joel Slemrod ed., 1994) (discussing who bears burden of taxation); TIMOTHY M. SMEEDING ET AL., POVERTY, INEQUALITY AND INCOME DISTRIBUTION IN COMPARATIVE PERSPECTIVES: THE LUXEMBOURG INCOME STUDY (1990) (analyzing distribution and redistribution of economic well-being through cross-country comparisons); EDWARD N. WOLFF, TOP HEAVY: A STUDY OF THE INCREASING INEQUALITY OF WEALTH IN AMERICA (1995) (showing that wealth inequality has been increasing but proposing to ignore growing inequality and to exclude tax policy options).

[FN5]. See DANZIGER & GOTTSCHALK, supra note 4, at 73 (noting that Hispanics made no economic progress between 1973 and 1991); Cheryl Wetzstein, Poverty in Young Children Up Sharply, WASH. TIMES, Dec. 11, 1996, at A9 (explaining National Center for Children in Poverty's report indicating that Hispanics showed fastest growth in poverty rates); United States Dept. of Commerce, U.S. Census Bureau, Income, Poverty, and Health Insurance (Sept. 26, 1996) (noting that for first time poverty rate of Hispanics has surpassed that of blacks).

[FN6]. UNITED STATES DEPARTMENT OF STATE, 1 PROCEEDINGS AND DOCUMENTS OF THE UNITED NATIONS MONETARY AND FINANCIAL CONFERENCE 80 (1948) (remarks of Henry Morgenthau Jr., U.S. Treasury Secretary)[hereinafter PROCEEDINGS].

[FN7]. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. A810 (1948); Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1969, 660 U.N.T.S. 195; Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature Mar. 1, 1980, 1249 U.N.T.S. 14 (1981); American Convention of Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123; American Declaration of the Rights and Duties of Man.

[FN8]. THE WORLD BANK, ADVANCING SOCIAL DEVELOPMENT 9 (1995).

[FN9]. Report of the World Summit for Social Development, U.N. World Summit for Social Development, Copenhagen Declaration on Social Development, U.N. Doc. A/CONF. 166/9 (1995) 16 (g). See generally HUMAN DEVELOPMENT REP., supra note 2.

[FN10]. See, e.g., CHRISTOPHER EDLEY, Jr., NOT ALL BLACK AND WHITE 42-52 (1996) (Special Counsel to President Clinton appointed to review affirmative action policy) (reviewing evidence of pervasive discrimination against minorities in the United States and concluding that "the pattern of racial disparities in economic and social conditions remains painfully stark."). The Texaco case is the most recent example of blatant and egregious discrimination litigation against Texaco, where plaintiffs' counsel discovered audio tapes recording racist remarks by high corporate officials. Texaco recently settled the case for $176.1 million. Jack E. White, Texaco's White Collar Bigots: Top Executives, Confronting A Discrimination Suit, Talk About Shredding Documents, TIME, Nov. 18, 1996; Peter Fritsch et al., Texaco to Pay $176.1 Million in Bias Suit, WALL STREET J., Nov. 18, 1996, at A3.

[FN11]. See WORLD BANK, 1991 WORLD DEVELOPMENT REPORT 1. Neoliberal economic policies comprise noninflationary growth, fiscal discipline, high savings and investment, trade and foreign investment liberalization, privatization, and domestic market deregulation. They have become collectively known as "the Washington consensus." See JOHN WILLIAMSON, THE PROGRESS OF POLICY REFORM IN LATIN AMERICA (1990) (discussing ten areas of market-based policy reforms in debtor countries that "could arguably muster a fairly wide consensus ... in Washington").

[FN12]. This definition of development was articulated at the 1995 World Summit for Social Development in Copenhagen, Denmark. Social development is based in part on human rights. The Copenhagen Declaration thus pledges to strive for the realization of rights set out in various international instruments and declarations, including Universal Declaration of Human Rights, the Covenant on Economic, Social and Cultural Rights, as well as the Declaration on the Right to Development. See generally World Summit for Social Development 1: An Overview, Report of the Secretary-General, U.N. Doc. A/ CONF. 166/PC/8 (1994). Social development focuses on specific social sector issues, such as health, education, and welfare, as well as on broader concepts relating to human societies, such as equal opportunity and citizen participation. Id. at 3.

[FN13]. See generally supra note 1.

[FN14]. See Enrique R. Carrasco, Critical Issues Facing the Bretton Woods System: Can the IMF, World Bank, and the GATT/WTO Promote an Enabling Environment for Social Development?, 6 TRANSNAT'L L. & CONTEMP. PROBS., at i (1996).

[FN15]. See generally CRITICAL RACE THEORY: THE KEY WRITING THAT FORMED THE MOVEMENT (Kimberle Crenshaw et al. eds., 1995)[hereinafter KEY WRITING]; CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado ed., 1995)[hereinafter THE CUTTING EDGE].

[FN16]. See Colloquium, 9 LA RAZA L.J. 1 (1996); Colloquium, 2 HARV. LATINO L. REV. (forthcoming 1997).

[FN17]. See Angela P. Harris, Foreword: The Jurisprudence of Reconstruction, 82 CAL. L. REV. 741, 760 (1994) (proposing "jurisprudence of recontruction" and suggesting Race-Crits are compelled "to live in the tension between modernism and postmodernism, transforming political modernism in the process.").

[FN18]. Cornel West, Foreword to KEY WRITING, supra note 15. See EDWARD W. SAID, CULTURE AND IMPERIALISM 209-20 (1993) (discussing postcolonial resistance culture). MICHEL FOUCAULT, POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS 1972-1977, at 142 (1980) ("there are no relations of power without resistances").

[FN19]. See Juan F. Perea, Los Olvidados: On the Making of Invisible People, 70 N.Y.U. L. REV. 965 (1995) (discussing how the U.S. historical and statutory concepts reveal "white nation," causing "symbolic deportation" by making Latinas/os invisible or stigmatizing them for their "foreignness"). Latina/o scholars also note that even when structuralism is addressed, it is done so in black and white terms which still

largely ignore the Latina/o population. See also Juan F. Perea, Ethnicity and the Constitution: Beyond the Black and White Binary Constitution, 36 WM. & MARY L. REV. 571 (1995) (noting Supreme Court and legal academia exclude many minorities from Constitutional protection by largely ignoring discrimination based on ethnic characteristics, like bilingualism); Rodolfo O. De la Garza & Louis DeSipio, Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation After Seventeen Years of Voting Right Act Coverage, 71 TEX. L. REV. 1479 (1993) (explaining 1975, 1982, and 1992 registration and voting rights protection debates in Congress left out Latinas/os). See generally IAN F. HANEY LOPEZ, WHITE BY LAW (1996) (examining the "structuring and content of Whiteness as a legal and social idea").

[FN20]. Derrick A. Bell Jr., Brown v. Board of Education and the Interest Convergence Dilemma, 93 HARV. L. REV. 518 (1980).

[FN21]. Kendall Thomas, Rouge et Noir Reread: A Popular Constitutional History of the Angelo Herndon Case, 65 S. CAL. L. REV. 2599 (1992).

[FN22]. See LOPEZ, supra note 19.

[FN23]. See generally supra note 19.

[FN24]. THE CUTTING EDGE, supra note 15, at 205.

[FN25]. See generally Symposium, Legal Storytelling, 87 MICH. L. REV. 2073 (1989).

[FN26]. Richard Delgado, Storytelling for Oppositionists and Others: A Plea for Narrative, 87 MICH. L. REV. 2411 (1989).

[FN27]. RICHARD DELGADO, THE RODRIGO CHRONICLES (1995). Rodrigo was born in the United States of an African-American father and Italian mother. In the first chronicle, Delgado's fictional professor tries to describe Rodrigo: "His tightly curled hair and olive complexion suggested that he might be African-American. But he could also be Latino, perhaps Mexican, Puerto Rican, or any one of the many Central American nationalities ... ." Id. at 1. For another example of using narrative to address racism in the United States, see DERRICK BELL, AND WE ARE NOT SAVED (1987).

[FN28]. Margaret E. Montoya, Mascaras, Trenzas, y Grenas: Un/masking the Self While Un/braiding Latina Stories and Legal Discourse, 15 CHICANO-LATINO L. REV. 1 (1994).

[FN29]. Michael A. Olivas, The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History, 34 ST. LOUIS U. L.J. 425 (1990).

[FN30]. See Leslie G. Espinoza, Masks and Other Disguises: Exposing Legal Academia, in THE CUTTING EDGE, supra note 15, at 451; see also Enrique R. Carrasco, Collective Recognition as a Communitarian Device: Or, Of Course We Want to be Role Models!, 9 LA RAZA L.J. 81 (1996) (exploring the meaning of the role model in Latino culture by using a cuento--a type of narrative found in Latino culture); Ian F. Haney, The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice, 29 HARV. C.R.-C.L. L. REV. 1, 10 (1994) (telling of the author's Irish and Latino background, and how he and his brother looks similar, but identify differently with their Latino heritage and social constructs).

[FN31]. PROCEEDINGS, supra note 6, at viii (1948) (stating "[t]he proposal for ... the Fund ... was based on the premise that international financial cooperation and the establishment of conditions conducive to international trade are imperative to the economic welfare of the peoples of the world and to world peace ... . Proposals for the establishment of the Bank were based on the premise that postwar reconstruction and development would aid political stability and foster peace among all nations.").

[FN32]. See HAROLD JAMES, INTERNATIONAL MONETARY COOPERATION SINCE BRETTON WOODS 120 (1996); Richard N. Gardner, Establishing a Vision for Promoting Development, in FIFTY

YEARS AFTER BRETTON WOODS: THE FUTURE OF THE IMF AND THE WORLD BANK 63, 65 (James M. Boughton & K. Sarwar Lateef eds., 1995) ("There was simply no conception of the vast needs of the developing countries and of the role of the Bank should play in meeting them."); Victor L. Urquidi, Reconstruction vs. Development: The IMF and the World Bank, in THE BRETTON WOODS-GATT SYSTEM: RETROSPECT AND PROSPECT AFTER FIFTY YEARS 47-48 (Orin Kirshner ed., 1996) (noting that White and Keynes "did not seem to have a clear idea of the unusually quite different structural problems of the less developed countries").

[FN33]. Robert S. Jordan, Why A NIEO? The View from the Third World, in THE EMERGING INTERNATIONAL ECONOMIC ORDER 59, 63 (Harold K. Jacobsen & Dusan Sidjanski eds., 1982).

[FN34]. See TYRONE FERGUSON, THE THIRD WORLD AND DECISION MAKING IN THE INTERNATIONAL MONETARY FUND 7-46 (1988).

[FN35]. See generally ERVIN LASZLO ET AL., THE OBJECTIVES OF THE NEW INTERNATIONAL ECONOMIC ORDER (1978).

[FN36]. See Charter of Economic Rights and Duties of States, U.N.G.A. Res. 3281 (XXIX), 29 GAOR Supp. (No. 31) chap. II, art. 7, U.N. Doc. A/9631 (Dec. 12,1974) ("Every state has the primary responsibility to promote economic, social and cultural development of its people.").

[FN37]. Jordan, supra note 33, at 70-72.

[FN38]. LASZLO, supra note 35, at xxii.

[FN39]. See id. at 239-40 (recording India's position that national governments have sovereign right to determine development needs).

[FN40]. See Edwards A. Laing, International Economic Law and Public Order in the Age of Equality, in 12 LAW AND POLICY IN INTERNATIONAL BUSINESS 727 (1980); Inamul Haq, From Charity to Obligation: A Third World Perspective on Concessional Resource Transfers, 14 TEX. INT'L L.J. 389 (1979) (arguing that new equitable principles of international law support NIEO's call for transfer of wealth from rich to poor countries). See generally MOHAMMED BEDJAOUI, TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER 123-262 (1979).

[FN41]. See Texaco Overseas Petroleum Company v. Libyan Arab Republic, 17 I.L.M. 1, 27-31 (Int'l Arb. Trib. 1978) (holding the expropriation provisions in the Charter of Economic Rights and Duties of States was "a political rather than ... a legal declaration"); Stephen Zamora, Is There Customary International Economic Law?, 32 GERMAN Y.B. INT'L L. 1, 15-18 (summarizing criticisms).

[FN42]. FERGUSON, supra note 34, at 41.

[FN43]. See Celso Furtado, Capital Formation and Economic Development, 4 INTERNATIONAL ECONOMIC PAPERS (1954), reprinted in THE ECONOMICS OF UNDERDEVELOPMENT (A.N. Agarwala & S.P. Singh eds., 1958); W. Arthur Lewis, Economic Development with Unlimited Supplies of Labor, 155 THE MANCHESTER SCHOOL 22 (May 1954), reprinted in ECONOMICS OF DEVELOPMENT 109 (Malcom Gillis et al. eds., 1992); GUNNAR MYRDAL, AN INTERNATIONAL ECONOMY (1956); Raul Prebisch, The Economic Development of Latin America and Its Principal Problems, 7 ECON. BULL. LATIN AM. 1 (1962); Hans W. Singer, The Distribution of Gains Between Investing and Borrowing Countries, 40 AM. ECON. 473 (1950).

[FN44]. Enrique R. Carrasco, Law, Hierarchy, and Vulnerable Groups in Latin America: Towards a Communal Model of Development in a Neoliberal World, 30 STAN. J. INT'L L. 221, 230-35 (1994).

[FN45]. See Enrique R. Carrasco & M. Ayhan Kose, Income Distribution and the Bretton Woods Institutions: Promoting an Enabling Environment for Social Development, 6 TRANSNAT'L L. & CONTEMP. PROBS. 1, 14-15 (1996).

[FN46]. ROBERT R. KAUFMAN, THE POLITICS OF DEBT IN ARGENTINA, BRAZIL, AND MEXICO 62 (1988) (noting that import substitution in Mexico "provided extensive protection and subsidies for favored industrial and agro-commercial elites"); id. at 11 (noting that import substitution in Brazil benefited "military elites, coffee exporters, industrialists, and rural bosses"); id. at 71 (noting the Mexican working class maintained its share of expanding economy, whereas, in Brazil increases in income were limited to the top ten percent); id at 92 (noting that Mexican "[i]mport-substituting firms ... were the most important group opposing trade liberalization"); Enrique R. Carrasco, Chile, Its Foreign Commercial Bank Creditors, and Its Vulnerable Groups: An Assessment of the Cooperative Case-by-Case Approach to the Debt Crisis, 24 LAW & POL'Y INT'L BUS. 273, 294-95 (1993) (noting that Chile's rich and relatively wealthy middle class benefited from import substitution); Alejandro Foxley, Stabilization Policies and Their Effects on Employment and Income Distribution: A Latin American Perspective, in ECONOMIC STABILIZATION IN DEVELOPING COUNTRIES 191, 195-96 (William R. Cline & Sidney Weintraub eds., 1981) ("After a short initial success in redistributing income toward wage earners and in moderating the rate of inflation, the imbalances generated by the [populist] policy result in accelerating inflation and a regression in the initial distributive gains.").

[FN47]. DIANA HUNT, ECONOMIC THEORIES OF DEVELOPMENT: AN ANALYSIS OF COMPETING PARADIGMS 64 (1989).

[FN48]. Id. at 64-67, 163-95.

[FN49]. Id. at 189.

[FN50]. Id. at 67, 217-19, 220-21. Bill Warren, an "Orthodox Marxist" critiquing neo-Marxist theory, noted "empirical observations suggest that the prospects for successful capitalist economic development of a significant number of major underdeveloped countries are quite good; that substantial progress in capitalist industrialization has already been achieved ... that the imperialist countries' policies and their overall impact on the Third World actually favor its industrialization ... ." Id. at 190.

[FN51]. Id. at 189.

[FN52]. See Dudley Seers, What Are We Trying to Measure?, in MEASURING DEVELOPMENT 21 (Nancy Baster ed., 1972).

[FN53]. HOLLIS B. CHENERY ET AL., REDISTRIBUTION WITH GROWTH (1974).

[FN54]. Id. at 47-49.

[FN55]. See Carrasco & Kose, supra note 45, at 21 & nn.116-17 (noting inter alia that basic needs stressed autonomous development through considerable investment in human capital and access to employment).

[FN56]. HUNT, supra note 47, at 270-71. See Margaret E. Grosh, Social Spending In Latin America: The Story of the 1980s (World Bank Discussion Papers No. 106, 1990).

[FN57]. David M. Trubek & Marc Galanter, Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States, 1974 WISC. L. REV. 1062; David F. Greenberg, Law and Development in Light of Dependency Theory, in LAW AND DEVELOPMENT (Anthony Carty ed. 1992). See also John H. Merryman, Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement, 25 AM. J. COMP. L. 457 (1977); Elliot M. Burg, Law and Development: A Review of the Literature & A Critique of the "Scholars in Self-Estrangement," 25 AM. J. COMP. L. 492 (1977); Robert B. Seidman, Law and Development: A General Model, 6 LAW & SOC'Y 311 (1972).

[FN58]. See MAX WEBER, ECONOMY AND SOCIETY 641, 900 (Geunther Roth & Claus Wittich eds., 1978) (addressing the sociology of law).

[FN59]. See David M. Trubek, Toward a Social Theory of Law: An Essay of the Study of Law and Development, 82 YALE L.J. 1 (1972).

[FN60]. See Trubek & Galanter, supra note 57; Merryman, supra note 57. See generally JAMES GARDNER, LEGAL IMPERIALISM (1980).

[FN61]. See Trubek & Galanter, supra note, 57 at 1080.

[FN62]. Id. See David M. Trubek, Unequal Protection: Thoughts on Legal Services, Social Welfare, and Income Distribution in Latin America, 13 TEXAS INT'L L.J. 243 (1978); David M. Trubek & John P. Esser, "Critical Empiricism" in American Legal Studies: Paradox, Program, or Pandora's Box?, in CRITICAL LEGAL THOUGHT: AN AMERICAN-GERMAN DEBATE 105 (Christian Joerges & David M. Trubek eds., 1989) (addressing "critical empiricism" in law and society movement).

[FN63]. See GARDNER, supra note 60; Merryman, supra note 57; Abelardo Lopez Valdez, Developing the Role of Law in Social Change: Past Endeavors and Future Opportunities in Latin America and the Caribbean, 7 LAW. AM. 1 (1975); Abelardo Lopez Valdez, Law and Socio-Economic Change in Latin America and the Caribbean, 10 J. INT'L L. & ECON. 553 (1975).

[FN64]. Merryman, supra note 57, at 481 ("The mainstream law and development movement, dominated by the American legal style, was bound to fail and has failed."). See also David M. Trubek, Back to the Future: The Short, Happy Life of the Law and Society Movement, 18 FLA. ST. U. L. REV. 1 (1990) (describing 25-year evolution of "law and society" movement, which began in mid-1960s, and critically assessing related "law and development" movement).

[FN65]. See generally Symposium, Economic, Legal and Political Dilemmas of Privatization in Russia, 5 TRANSNAT'L L. & CONTEMP. PROBS. 1 (1995).

[FN66]. See Carrasco & Kose, supra note 45, at 28-34 (discussing mixed impact of stabilization and adjustment programs on income distribution in developing countries).

[FN67]. See Trubek, supra note 64, at 41-55 (describing post-modern emerging "countervision" based in part on Critical Race Theory, that rejects ideas prevailing in earlier stages of law and society movement).

[FN68]. This proposition is especially important with respect to international economic/financial policy. Policymakers in this realm are likely to be economists, many of whom presume that non-economists and their criticisms are irrelevant.

[FN69]. See SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI 229-39 (Quintin Hoare & Geoffrey Nowell Smith, eds. & trans., 1971)[hereinafter PRISON NOTEBOOKS](describing "war of positions" in which intellectuals engage in protracted political struggle).

[FN70]. Richard Delgado, Zero-Based Racial Politics: An Evaluation of Three Best-Case Arguments on Behalf of the Nonwhite Underclass, 78 GEO. L.J. 1929, 1931 (1990).

[FN71]. Id. at 1940.

[FN72]. Id.

[FN73]. Id. at 1947-48.

[FN74]. As Claude Ake has argued, the state's indifference may be the product of colonialism, at least in Africa:
Although political independence brought some changes to the composition of the state managers, the character of the state remained much as it was in the colonial era. It continued to be totalistic in scope, constituting a statist economy. It presented itself as an apparatus of violence, had a narrow social base, and

relied for compliance on coercion rather than authority ... [P] olitical independence ... was often a convenience of deradicalization by accommodation, a mere racial integration of the political elite. CLAUDE AKE, DEMOCRACY AND DEVELOPMENT IN AFRICA 3-4 (1996).

[FN75]. See supra notes 43-46 and accompanying text (discussing impact of populist policies during import substitution period).

[FN76]. See generally BEYOND BRETTON WOODS: ALTERNATIVE TO THE GLOBAL ORDER (John Cavanagh et al. eds., 1994); FIFTY YEARS IS ENOUGH: THE CASE AGAINST THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND (Kevin Danaher & Muhammad Yunus eds., 1994); PERPETUATING POVERTY: THE WORLD BANK, THE IMF, AND THE DEVELOPING WORLD (Doug Bandow & Ian Vasquez eds., 1994).

[FN77]. See generally WORLD BANK, 1990 WORLD DEVELOPMENT REPORT; POVERTY REDUCTION REPORT, supra note 2.

[FN78]. THE WORLD BANK, ADVANCING SOCIAL DEVELOPMENT: A WORLD BANK CONTRIBUTION TO THE SOCIAL SUMMIT, at ix (1995) [hereinafter ADVANCING SOCIAL DEVELOPMENT].

[FN79]. POVERTY REDUCTION REPORT, supra note 2, at 29. See generally ADVANCING SOCIAL DEVELOPMENT, supra note 78.

[FN80]. According to the Bank's charter, one of the Bank's purposes is to assist members with "raising productivity, the standard of living and conditions of labor in their territories." Article of Agreement of the International Bank for Reconstruction and Development, opened for signature and entered into force Dec. 7, 1945, art. 1(iii), 60 Stat. 1440, T.I.A.S. No. 1502, 2 U.N.T.S. 134, as amended, 16 U.S.T. 1942, T.I.A.S. No. 5929 (Dec. 17, 1965) [hereinafter IBRD Articles]. The charter of the International Development Association (IDA) contains a similar passage. See Articles of Agreement of the International Development Association, Jan. 26, 1960, art. 1, at 2(d), 11 U.S.T. 2284, 439 U.N.T.S. 249 (entered into force Sept. 24, 1960). Also, the IDA's charter urges accelerated economic development to promte higher standards of living and economic and social progress in developing countries. Id. at Preamble. Ibrahim Shihata, the Bank's General Counsel, cites these provisions in support of the Bank's involvement "with equitable distribution of income in its borrowing countries as an important aspect of development." IBRAHIM F.I. SHIHATA, THE WORLD BANK IN A CHANGING WORLD 87 (1991).

[FN81]. POVERTY REDUCTION REPORT, supra note 2, at 33-34. See James H. Weaver, What Is Structural Adjustment?, in STRUCTURAL ADJUSTMENT: RETROSPECT AND PROSPECT 1, 13-14 (1995) (noting that all bank adjustment loans must include "upfront" analysis of adjustment's impact on poor and measures to address impact). The Bank also addresses the poor through "poverty-focused" adjustment operations. Incorporated into SALs, SECALSs, or rehabilitation import loans (RILs), these programs help governments implement anti-poverty measures ranging from reallocation of public expenditures to gathering data on poverty and monitoring the impact of adjustment on the poor.

[FN82]. The Fund pursues the fourth element through its policy advice, technical assistance, and collaboration with other agencies, particularly the World Bank.

[FN83]. TONY KILLICK, IMF PROGRAMMES IN DEVELOPING COUNTRIES 20 (1995).

[FN84]. See Carrasco & Kose, supra note 45, at 45-46 (proposing various measures to monitor programs of World Bank and IMF with respect to income distribution); Daniel D. Bradlow, The World Bank, the IMF, and Human Rights, 6 TRANSNAT'L L. & CONTEMP. PROBS. (proposing that IMF and World Bank articulate human rights policy that can be effectively monitored).

[FN85]. See generally KEY WRITING, supra note 15; THE CUTTING EDGE, supra note 15.

[FN86]. See Derrick Bell, Foreword: The Final Civil Rights Act, 79 CAL. L. REV. 597, 604-11 (1991); Richard Delgado, Rodrigo's Chronicle, 101 YALE L.J. 1357, 1365 n.25 (1992); Richard Delgado, Rodrigo's Second Chronicle: The Economics and Politics of Race, 91 MICH. L. REV. 1183, 1202 (1993) ("Relying on economic theory to solve problems of race and sex makes about as much sense as reading Gramsci for help with one's household budget."); cf. Jerome McCristal Culp, Jr., Posner on Duncan Kennedy and Racial Difference: White Authority in the Legal Academy, 41 DUKE L.J. 1095, 1097 (1992) ("Judge Posner's [essay regarding affirmative action and tenure standards] manifests the arrogance and unselfcritical nature of white supremacy in the legal academy.").

[FN87]. Cf. Jerome Culp, Judex Economicus, 50 LAW & CONTEMP. PROBS. 95 (1987) (criticizing microeconomically-based assumptions of Posnerian "law and economics" model of judicial decisionmaking, using Bernard Goetz's shooting of four black youths as example).

[FN88]. See Steven W. Bender, Consumer Protection for Latinos: Overcoming Language Fraud and English-Only in the Marketplace, 45 AM. U. L. REV. 1027 (1996).

[FN89]. Beverly I. Moran & William Whitford, A Black Critique of the Internal Revenue Code, 1996 WISC. L. REV. 751.

[FN90]. For articles by Anthony D. Taibi on this topic, see Racial Justice in the Age of the Global Economy: Community Empowerment and Global Strategy, 44 DUKE L.J. 928 (1995); Banking Finance, and Community Economic Empowerment: Structural Economic Theory, Procedural Civil Rights, and Substantive Racial Justice, 107 HARV. L. REV. 1465 (1994); Environmental Justice, Structural Economic Theory, and Community Economic Empowerment, 9 ST. JOHN'S J. LEGAL COMMENT 491 (1994); Race Consciousness, Communitarianism, and Banking Regulation, 1992 U. ILL. L. REV. 1103.

[FN91]. See Linz Audain, Critical Cultural Law and Economics, the Culture of Deindividualization, the Paradox of Blackness, 70 IND. L.J. 709 (1995) (outlining a framework that will incorporate culture into law and economics analysis). See also id. at 712 n.4 (citing articles by Cheryl Harris, Robert Cooter, and Richard McAdams as examples of Critical Cultural Law and Economics); Andre Sole, Official English: A Socratic Dialogue/Law and Economics Analysis, 45 FLA. L. REV. 803 (1993).

[FN92]. Emphasizing structural critique may seem contradictory in light of post-modern aspects of Critical Race Theory. See KEY WRITING, supra note, at 440 (describing race and postmodernism); Trubek, supra note 64, at 50 (noting "critical empiricism's" contradiction between appropriation of post- structuralist concepts and reliance upon structural causes and explanations). The contradiction may be more apparent than real, however. See R.B.J. Walker, INSIDE/OUTSIDE: INTERNATIONAL RELATIONS AS POLITICAL THEORY 3 (1993) (characterizing "rigid division between modernity and postmodernity" as misleading). In any event, an extended discussion of this issue is beyond the scope of this article.

[FN93]. Several of Lance Taylor's works address this issue. See generally THE ROCKY ROAD TO REFORM: ADJUSTMENT, INCOME DISTRIBUTION AND GROWTH IN THE DEVELOPING WORLD (Lance Taylor ed., 1993); SOCIALLY RELEVANT POLICY ANALYSIS: STRUCTURALIST COMPUTABLE GENERAL EQUILIBRIUM MODELS FOR THE DEVELOPING WORLD (Lance Taylor ed., 1990); LANCE TAYLOR, STRUCTURALIST MACROECONOMICS (1983); Sustainable Development: Macroeconomic, Environmental, and Political Dimensions, in WORLD DEVELOPMENT 215 (Special Issue No. 24, 1996).

[FN94]. See Trubek, supra note 64, at 41-52 (citing Critical Race Theory movement as example of "post-imperial legal culture" in law and society movement that sees "law as fragile, contradictory, fragmentary, and dispersed"); AFTER IDENTITY: A READER IN LAW AND CULTURE 187-270 (1995) (containing essays examining "the often contradictory roles that legal rules have played in the construction of 'new identities'" in postcolonial culture); MARTTI KOSKENNIEMI, FROM APOLOGY TO UTOPIA 490-501 (1989) (contemplating "the possibilities of re-establishing the identity of international law by re-establishing that of the international lawyer as a social agent."). For literature relating to Post-Colonial Theory's treatment of race, gender, culture, and ethnicity, see COLONIAL DISCOURSE AND POST-COLONIAL THEORY: A READER (Patrick Williams & Laura Chrisman eds., 1994); CULTURAL

STUDIES (Lawrence Grossberg et al., 1992); EDWARD W. SAID, ORIENTALISM (1978); SAID, supra note 18.

[FN95]. See generally AKE, supra note 74; ARJUN MAKHIJANI, FROM GLOBAL CAPITALISM TO ECONOMIC JUSTICE (1992).

[FN96]. Introduction to KEY WRITING, supra note 15.

[FN97]. Enrique R. Carrasco, Chile, Its Foreign Commercial Bank Creditors and Its Vulnerable Groups: An Assessment of the Cooperative Case-by-Case Approach to the Debt Crisis, 24 L. & POL'Y INT'L BUS. 273, 265-66 (1993).

[FN98]. See Mari J. Mastuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 HARV. C.R.-C.L. L. REV. 323 (1987); Gerald P. Lopez, Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration, 77 GEO L.J. 1603, 1608 (1989) (noting that as to progressive lawyering in the United States, lawyers must "open themselves to being educated by the subordinated and their allies about the traditions and experiences of subordinated life."). For the use of narrative in international and comparative law, see David Kennedy, Spring Break, 63 TEX. L. REV. 1377 (1985); David Kennedy, An Autumn Weekend: An Essay on Everyday Life, in AFTER IDENTITY 1991 (Dan Danielsen & Karen Engle eds., 1995); Lama Abu-Odeh, Crimes of Honor and the Construction of Gender in Arab Societies (on file with the Inter-American Law Review).

[FN99]. See BRUCE RICH, MORTGAGING THE EARTH: THE WORLD BANK, ENVIRONMENTAL IMPOVERISHMENT AND THE CRISIS OF DEVELOPMENT (1994).

[FN100]. The extensive use of narrative in the development area is likely to provoke criticisms (especially from economists) that will make the critique of the "domestic" use of storytelling in Critical Race Theory look like a mild rebuke. See Daniel A. Farber & Suzanna Sherry, Telling Stories Out of School: An Essay on Legal Narratives, 45 STAN. L. REV. 807 (1993) ("[S] torytellers need to take greater steps to ensure that their stories are accurate and typical, to articulate the legal relevance of the stories, and to include an analytic dimension in their work."); see also Randall Kennedy, Racial Critiques of Legal Academia, 102 HARV. L. REV. 1745 (1989); Mark Tushnet, The Degradation of Constitutional Discourse, 81 GEO L.J. 251 (1992); Arthur D. Austin, Storytelling Deconstructed by Double Session, 46 U. MIAMI L. REV. 1155 (1992). For responses to the critique, see Richard Delgado, Rodrigo's Final Chronicle: Cultural Power, the Law Reviews, and the Attack on Narrative Jurispurdence, 68 S. CAL. REV. 545 (1995); Richard Delgado, On Telling Stories in School: A Reply to Farber and Sherry, 46 VAND. L. REV. 665 (1993); William N. Eskiridge, Jr., Gaylegal Narratives, 46 STAN. L. REV. 607 (1994).

[FN101]. Gloria L. Sandrino, The Nafta Investment Chapter and Foreign Direct Investment in Mexico: A Third World Perspective, 27 VAND. J. TRANSNAT'L L. 261 (1994).

[FN102]. Antonio Gramsci described:
a process of differentiation and change in the relative weight that the elements of the old ideologies used to possess. What was previously secondary and subordinate...is now taken to be primary [and] becomes the nucleus of a new ideological and theoretical complex.
PRISON NOTEBOOKS, supra note 69, at 195.

[FN103]. See KEY WRITING, supra note 15, at xxiii ("Race crits realized that the very notion of a subordinate people exercising rights was an important dimension of black empowerment"); Patricia J. Williams, Alchemical Notes: Reconstructing Ideals from Deconstructed Rights, 22 HARV. C.R.-C.L. L. REV. 401 (1987).

[FN104]. Fernando Rojas, A Comparison of Change-Oriented Legal Services in Latin America with Legal Services in North America and Europe, 16 INT'L J. SOC. L. 203, 208-09, 219, 225 (1988).

[FN105]. See TESSA CUBITT, LATIN AMERICAN SOCIETY 57-84 (addressing ethnicity and race relations in Latin America); Adrienne D. Davis, Identity Notes, Part I: Playing in the Light, 45 AM. U. L.

REV. 697 (1996) (describing impact on author of Nicauragua's "complex map of racial relations and domination"); cf. Valdes, supra note 1, at 27 (noting possibility that LatCrit theory could be based on politicized identitites based on common struggles rather than "traditional fault lines like race and identity").

7. Francisco Valdes,[*] Foreword: Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment, 2 HARV. LATINO L. REV. 1 (1997)

* * *

INTRODUCTION

On Cinco de Mayo weekend of 1996, Latina/o professors from law schools all over the United States gathered for the first-ever LatCrit Annual Conference. The purposes behind this convening were several. First, we were determined to form a regular scholarly venue for the discussion of social and legal issues especially germane to Latinas/os.[(2)] Second, we were determined to initiate the creation of a body of literature whose absence we deemed inexplicable and intolerable.[(3)] Third, we ached to meet and know each other as a means of rising beyond the isolation and desolation of our ivoried

lives and institutions. By all accounts, the First Annual LatCrit Conference met these purposes, and more.

But "LatCrit I" was not entirely spontaneous. During the preceding few years, the numbers of Latinas/os in the legal professorate had increased[(4)] but the visibility of Latinas/os in legal discourse and culture remained virtually nonexistent. Our representation at events or within organizations of legal education remained abysmal.[(5)] We thus elected to elevate our professional visibility and to pursue the quest for reform and Latina/o self-empowerment through legal scholarship by organizing the first of a series of annual conferences devoted to Latinas/os and the law.[(6)]

In retrospect, it seems entirely foreseeable that this act of individual and collective will would unleash energies and aspirations long pent up. Indeed, since the time that we adjourned the conference, a movement has been ignited. During the past year, a new sense of dedication to the cultivation of a community and to the cause of self-empowerment has taken hold among the Latina/o legal professorate of this country. Only time will tell where this initiative will lead, but, for now, the way in which Latina/o voices have begun to speak out more assertively in conferences and gatherings, as well as the proliferation of events and projects devoted explicitly to Latinas/os and to LatCrit theory, demonstrates our dedication.[(7)] Our determination is also confirmed by the rapid and increasing adoption of a "LatCrit" identification among Latina/o academics (and others) to describe a new and particularized subject position.[(8)]

Obviously, this subject position, and LatCrit theory more generally, are embryonic; the LatCrit category today is more an emblem than an agenda. With this symposium, we take the first step toward giving substantive meaning and content to LatCrit legal studies.

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.[(9)] Each of these endeavored to articulate analyses of law and society from particularized subject positions. But each was also experienced and described as analytically incomplete due to excessive focus on one or another construct -- gender, race, sexuality -- and a lack of attention to their legal and social interplay. The weakness in each resided in an essentializing failure to elucidate the sometimes covert, always complex, but nonetheless fundamental interdependence of sexism, racism and homophobia in the construction and practice of social and legal subordination by, within and between various identity categories.[(10)]

As we take this first step toward the formation of a LatCrit scholarship, the LatCrit movement is and must remain cognizant of its historical circumstance and jurisprudential backdrop. We -- the planners and advocates of this LatCrit mobilization -- have chosen one particular way in which to operationalize this cognizance. As the papers and proceedings that follow attest, the theory of the conference was a careful blending of two key ingredients: 1) a substantive conversation that unequivocally placed Latinas/os at the center, 2) held by a group of scholars that represented the enriching diversity of this nation's many communities. Both the live conference and this published record of its proceedings bring together scholars affiliated with various subject positions to focus on a particular subject.

In this way, LatCrit theory hopes to learn from and to apply lessons learned from recent jurisprudential practice and history and thereby begin to transcend the limitations that have been attributed to, or experienced in, preceding genres or venues of outsider scholarship.[(11)] LatCrit discourses aim to capture insights that otherwise might be missed

and to cultivate a broad community of scholars. By constructing LatCrit projects along these and similar lines, we hope over time to instill a basic sense of coalitional and egalitarian sensibilities within and beyond Latina/o scholars and communities.

In short, the symposium that follows demonstrates the structure, nature and spirit of LatCrit theory at its moment of inception. For this published record -- this symposium -- we have to credit the commitment and work of the Harvard Latino Law Review and the authors whose words appear below. Their work informs LatCrit theory's point of origin and provides a point of reference for its subsequent evolution.

The symposium is presented in the form of three articles and five clusters, each containing several essays prefaced by a short introduction. These works were all presented at the LatCrit conference, but are presented in different sequence below due to publication considerations. In this foreword, I endeavor to contextualize them in relation to each other and to the project of inaugurating a LatCrit community and discourse in the legal academy of the United States.

My purposes, then, are dual, and both flow from the fact that this symposium records LatCrit theory at its birth. My first purpose is to identify, summarize and synthesize prominent or recurrent issues and themes in order to make them more accessible for those who were not present at the conference. As such the first two parts of this foreword are devoted to a careful sifting of the articles and essays that follow. My second purpose is to distill further these themes into a succinct but collective "agenda" that captures and reflects the sense of *this* moment for subsequent use by all interested scholars. The final part of this foreword highlights the themes or "guideposts" that I am able to extrapolate from this symposium in order to inform the prospective development of LatCrit projects. In sum, this foreword strives to provide a substantive road map of the origins and perhaps the immediate future of LatCrit theory.

* * *

III. CHARTING THE FUTURE: LATCRIT GUIDEPOSTS FOR CRITICAL LEGAL SCHOLARSHIP

The contributors to this symposium have raised numerous yet recurrent themes and issues. The analyses proffered within these recurring areas of LatCrit interest represent some points of broad agreement, coupled with other varied -- even opposed -- points of emphasis. As such, the articles and essays reviewed above reflect and project a diverse yet collective sense of the conditions and impulses that underlie LatCrit theory as a new subject position within existing critical legal discourses. The closing part of this foreword therefore synthesizes these common refrains to assemble a list of eight "guideposts" or themes that may assist the next stage of LatCrit growth and evolution.

A. Recognizing and Accepting the Political Nature of "Scholarship"

Perhaps the foundational message that resonates through the works in this symposium is that all legal "scholarship" is necessarily and fundamentally "political" because law is used to structure society and theory helps to construct law. Consequently, recognizing the political dimensions and ramifications of legal scholarship can only sharpen our ability to employ theory as an engine for social progress. LatCrit theory thus declines at its moment of inception any pretense to the contrary, acknowledging the political nature of all scholarship, including our own. Recognizing and not fearing the political nature of legal scholarship therefore serves as the first guidepost in this initial articulation of LatCrit theory.

B. Praxis!

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.

C. Building Intra-Latina/o Communities and Inter-Group Coalitions

The combination of politics and praxis in LatCrit theory in turn implicates community and coalition-building. The works presented in this symposium have made clear that a core aspect of the original LatCrit agenda is to cultivate communities within and among diverse Latina/o groupings in (and outside) of the United States. They also demonstrate that another cornerstone of LatCrit theory is scholarly dedication to the development of frameworks and vocabularies for inter-group accommodation, collaboration and justice. A LatCrit commitment to transnationalism, internationalism, multiculturalism and multiracialism that is expressed and practiced in caring, egalitarian, nuanced and cautious ways therefore serves as the third guidepost for the evolution of LatCrit theory.

D. Finding Commonalities While Respecting Differences

In order to help craft a progressive conception of egalitarian transnationalism and sophisticated multiculturalism, LatCrit theory must devise ways to balance sameness and difference both within and beyond Latina/o groups. The symposium authors have shown how this balancing includes negotiation of the tension between specificity and inclusivity in LatCrit discourse and at LatCrit gatherings. It also includes the cultivation and celebration of both pan-ethnic and poly-ethnic identifications among Latinas/os and overlapping racialized, ethnicized, gendered and sexualized groups. The challenge posed

by politics, praxis, intra-Latina/o community formation and inter-group coalition building is finding commonalities while respecting differences. This symposium therefore teaches that a threshold and continuing component of LatCrit theory must be the perception and interpretation of "sameness" and "difference" in contextual and constructive ways. A sustained commitment to the acceptance of difference, coupled with a sustained commitment to the mobilization of commonality, thus serves as the fourth original LatCrit guidepost.

E. Appreciating, Incorporating and Applying the Jurisprudential Past

To illuminate and navigate sameness/difference divides, LatCrit analyses must cross-interrogate constructs like color, race, ethnicity, culture, nationality, ancestry, gender, class and sexuality. The symposium authors generally agree that these interrogations require LatCrit theorists to employ cross-disciplinary analysis as well as critical concepts like multiplicity, multi-dimensionality and intersectionality, which come from outsider legal scholars.(181) This symposium thereby demonstrates that LatCrit scholars must use the lessons of the past as our point of departure, acknowledging the work of scholars from various disciplines and subject positions who precede, or collaborate with, us. Incorporating the lessons of the jurisprudential past is crucial to the inauguration of LatCrit theory as well as to the substantive and political efficacy of LatCrit theorizing in the immediate future, but this symposium also suggests that LatCrit theory must situate itself -- and be cognizant of its role and impact -- as a new force within the larger jurisprudential landscape. LatCrit theorists must see ourselves as inheritors of and collaborators within an activist and expansive community of outsider scholars. Animated by this original self-conception, LatCrit projects can strive to advance both the substantive and political vibrancy of LatCrit theory and outsider jurisprudence. Being constantly aware of the past and its lessons while striving to apply those lessons progressively, therefore serves as the fifth inaugural guidepost.

F. Continual Engagement in Self-Critique

The symposium authors also have urged that LatCrit theorizing must entail continual self-reflection and a willingness to self-correct. This introspection includes critical self-examination of our (in)actions within our institutions. The symposium authors show that this theme informs the emergence of LatCrit theory; they call upon all LatCrit scholars to think critically and constantly about the ethics of our work, whether as teachers or scholars or activists, and to modify our conduct to ensure the grounding and integrity of it. The perpetual need for self-awareness and self-critique in all fields or areas of our work therefore serves as another preliminary guidepost for the continuing growth of LatCrit theory as a new force within outsider jurisprudence.

G. Specificity and Diversity: Balancing Subjects and Subject Positions

The penultimate guidepost or theme evident in this initial postulation of LatCrit theory is the blending of diversity and specificity in the construction of critical legal discourse. This symposium addresses a relatively specific subject -- the place and prospects of Latinas/os and LatCrit theory in Anglo-American law and society. This specific topic is addressed, however, by a diverse group of scholars representing and advancing varied viewpoints from varied subject positions. This variety represents both intra-Latina/o as well as inter-people of color diversities. A commitment to balancing specificity and diversity in inclusive and constructive ways and as a guard against the indulgence of false essentialisms within or beyond Latina/o populations, therefore stands out as another key guidepost in the inception and conception of LatCrit theory.

H. LatCrit Theory and Critical Race Theory

The guideposts noted above, drawn from the express or implied messages of this inaugural LatCrit symposium, evidence the intellectual and political debt that LatCrit theorizing owes to Critical Race theorists. Indeed, the methodologies, stances and emphases voiced by the symposium authors consistently employ the pioneering work registered during the past ten years in Critical Race legal discourse: the embrace of subjectivity, particularity, multiplicity and intersectionality; the acceptance of legal scholarship's inevitable implication of power politics; the emphasis on praxis, social justice, reconstruction and transformation; the navigation of sameness and difference to build self-empowered communities; and the recognition of self-critique's continuing importance to intellectual integrity, all reflect key theoretical advances posted by the outsider sensibilities articulated in and through Critical Race scholarship.[(182)] Though these advances do not describe the totality either of Critical Race or LatCrit theory, they do indicate that the two stand in close relationship to one another; against this backdrop, it is plain that LatCrit theory emerges not only from the need to center Latina/os identities, interests and communities in critical legal discourse, but from the analytical and conceptual paths imprinted by Critical Race theory. As these guideposts suggest, LatCrit theory is closely related to, and affirmatively should ally itself with, the burgeoning literature of Critical Race theory.

This final observation thereby underscores the close substantive and methodological relationship and the ideal discursive affinity that should be mutually cultivated between and among LatCrit and Critical Race scholars. Thus,

> LatCrit theory is supplementary, complementary, to Critical Race theory. LatCrit theory, at its best, should operate as a close cousin -- related to Critical Race theory in real and lasting ways, but not necessarily living under the same roof. Indeed, and ideally, each would be a favorite cousin of the other -- both always mutually present at least in spirit, and both always mutually welcome to be present in the flesh.[(183)]

The realization of this ideal -- and mutually-reinforcing -- collaboration and interaction, in both discursive and political planes, of course depends on the acts and

works that LatCrit and Critical Race scholars produce in the coming months and years; on whether future projects manifest a mutual engagement with sometimes divergent, sometimes convergent social justice agendas; and on whether LatCrit and RaceCrit discourses recognize and explore the overlapping though not identical impulses of ongoing racial and ethnic anti-subordination quests in reciprocal, synergistic and transformative ways. This final observation, serving as the end note of this Foreword, is an expression of that prospect not only as ideal and aspiration but as imperative.[(184)] This final LatCrit guidepost -- acknowledging the relationship of LatCrit to Critical Race theory -- therefore emphasizes the substance and roots of the others.

1. CONCLUSION

The First Annual LatCrit Conference was a milestone event. So is the publication of this symposium, which captures much of the substance of the live event. These two actions mark the launching and naming of a new voice in critical legal scholarship. As the works of this symposium illustrate, this new voice -- LatCrit theory -- is committed both to the placement specifically of Latinas/os at the center of legal analyses as well as to the nurturing of outsider jurisprudence more generally. To fulfill these dual high aspirations, LatCrit theory must persist in the face of inevitable limitations and shortcomings. Our commitment must be to the vision and to its perpetual evolution and implementation in the quest for equality, dignity, safety and prosperity.

Footnotes

---

* Visiting Professor, University of Miami School of Law, 1995-96 and 1996-97; Professor, California Western School of Law. This special symposium issue of the Harvard Latino Law Review is devoted to the papers and proceedings of the First Annual LatCrit Conference. I therefore thank the two sponsors of the conference, California Western School of Law and the Harvard Latino Law Review, as well as the participants and authors. In addition, I thank Joseph Colombo, Miami, class of '97, for unflagging and astute research assistance. All errors are mine.

2. The term "Latina/o" encapsulates an amalgam of persons and groups, who in turn embody multiple diversities. *See generally* Francisco Valdes, *Latina/o Ethnicities, Critical Race Theory and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 La Raza L.J. 1, 8 n.31 (1996) (Foreword to Symposium, *Representing Latina/o Communities: Critical Race Theory and Practice*). This term therefore necessarily oversimplifies. *See id.* at 6 n.25. While fully cognizant of these limitations, I use "Latina/o" generally to signify persons with nationalities or ancestries derived from countries with Hispanic cultures; in the United States, these persons or groups are primarily (but not exclusively) Mexicans or Mexican Americans, Puerto Ricans and Cubans or Cuban Americans.

3. *See id.* at 4-7.

4. For a detailed accounting of Latina/o representation in legal education, see generally Michael A. Olivas, *The Education of Latino Lawyers: An Essay on Crop Cultivation*, 14 Chicano-Latino L. Rev. 117 (1994). *See generally* Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. Pa. L. Rev. 537 (1988).

5. *See* Valdes, *supra* note 2, at 2-6.

6. The genealogy of "LatCrit" legal studies can be traced to two basic decisions. The first was the decision to hold a colloquium devoted to the place and role of Latinas/os in Critical Race theory -- the extant genre of critical legal scholarship with most direct apparent relevance to Latinas/os. This decision was made following the 1995 Critical Race Workshop, which continued a historical pattern of underrepresentation; the 1995 Workshop, for instance, included only 2 Latinas/os among the forty-some workshop participants (one was Trina Grillo and the other was myself). The colloquium was held in October 1995 and is chronicled in Valdes, *supra* note 2. During this colloquium, the second decision was made: to organize the

first annual conference on Latinas/os and the law, and to denominate that gathering and its topic as the initiation of "LatCrit" theory. This symposium chronicles that event.
7. During the past two years, five different conferences or symposia have taken place, or are about to take place. *See* Symposium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 La Raza L.J. 1 (1996); Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship,* 2 Harv. Latino L. Rev. 1 (1997); Symposium, *International Law, Human Rights and LatCrit Theory*, 28 U. Miami Inter-Am. L. Rev. 1 (1997); Symposium, *LatCrit Theory, Latinas/os and the Law*, 85 Cal. L. Rev. (forthcoming 1997); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 Chicano-Latino L. Rev. (forthcoming 1997).
8. The term "subject position" describes the stance or perspective of the author vis a vis the topic. *See generally* Robert S. Chang, *Essays the End of Innocence, or Politics After the Fall of the Essential Subject,* 45 Am. U. L. Rev. 687, 690-91 (1996).
9. *See generally* Valdes, supra note 2, at 24-30.
10. *See id.*
11. *See id.*
12. Rachel F. Moran, *Neither Black Nor White*, 2 Harv. Latino L. Rev. 61 (1997).
13. *See id*. at 61-62.
14. *Id.* at 61.
15. *Id.* at 69-72.
16. *Id.* at 77-78.
17. *See id.* at 72-76, 78-85.
18. *See infra* notes 57-61, 76-81 and accompanying text.
19. Moran, *supra* note 12, at 86-89.
20. *See* Valdes, *supra* note 2, at 26-27.
21. Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 Harv. Latino L. Rev. 101 (1997).
22. *Id.* at 104.
23. *Id.*
24. *Id.* at 106-117.
25. *Id.* at 117-121.
26. *See id*.
27. *Id.* at 129.
28. *Id.* at 105.
29. *Id.*
30. *See, e.g., infra* notes 58-61, 92-94, and 131-40 and accompanying text.
31. Steven W. Bender, *Direct Democracy and Distrust: The Relationship Between Law Rhetoric and the Language Vigilantism Experience*, 2 Harv. Latino L. Rev. 145 (1997).
32. *Id.* at 149-152. The term "microaggression" refers to everyday social interactions that represent and replicate larger structures of subordination. For a more detailed discussion of the concept of "microaggression", see Peggy C. Davis, *Law as Microaggression*, 98 Yale L.J. 1559 (1989).
33. *See* Francisco Valdes, *Under Construction: LatCrit Consciousness, Community and Theory*, 85 Cal. L. Rev. (forthcoming 1997) (Foreword to Symposium, *LatCrit Theory, Latinas/os and the Law*).
34. *See* Bender, *supra* note 31, at 163-66.
35. In this symposium, see Davis, *infra* note 68; Martinez, *infra* note 99; Cho, *infra* note ; and Culp, *infra* note 141. In each instance, these scholars articulate the interplay of politics, law, theory and scholarship.
36. Max Castro, *Making "Pan Latino*", 2 Harv. Latino L. Rev. 179 (1997).
37. *Id.* at 179.
38. *Id.* at 180.
39. *Id*.
40. *Id.*
41. *Id*. at 141.
42. Issues of sameness and difference have occupied other genres of outsider or critical legal scholarship in recent years. *See generally* Martha Minow, Making all the Difference: Inclusion, Exclusion, and American Law (1990). *See also* Regina Austin, *Black Women, Sisterhood and the Difference/Deviance Divide*, 26 New Eng. L. Rev. 877 (1992); Berta Esperanza Hernández-Truyol, *Building Bridges -- Latinas and Latinos at the Crossroads: Realities, Rhetoric, and Replacement*, 25 Colum. Hum. Rts. L. Rev. 369 (1994); Joan C.

Williams, *Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist and Critical Race Theory*, 1991 Duke L.J. 296.
43. *See* Castro, *supra* note 36, at 192, 196.
44. *Id*. at 195.
45. *Id.* at 195-96. This exile narrative prompts Cuban Americans to filter their understanding of domestic politics through the lens of homeland politics, Professor Castro explains. *Id.*
46. Berta Esperanza Hernández-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 Harv. Latino L. Rev. 199 (1997).
47. *Id.* at 205. In fact, Professor Hernández-Truyol cites the birthing and nurturing of LatCrit theory itself as evidence of Latinas/os' capacity to envision and call into existence a sense of inter-group commonality and solidarity despite the many intra-Latina/o differences that we already have voiced at LatCrit gatherings. *Id.* at 203-04.
48. *Id.* at 205.
49. *Id.*
50. The term "outsider" scholarship or jurisprudence was coined by Professor Mari Matsuda and refers to the body of literature generated during the past decade or so by scholars who identify with traditionally subordinated communities. *See* Valdes, *supra* note 2, at 4 n.10.
51. *Id.* at 209. Anglo culture marginalizes Latinos as well as Latinas, Professor Hernández-Truyol notes, but Latina/o culture compounds the marginalization specifically of Latinas. This compoundedness is furthered by various cultural practices associated specifically with Latina/o cultures, and even by the explicitly gendered structure of the Spanish language: "I am not Latino. I am Latina," Professor Hernández-Truyol asserts. *Id.* at 211.
52. *Id.* at 209. The phrase is borrowed and adapted from Elvia Arriola, *Gendered Inequality: Lesbians, Gays and Feminist Legal Theory*, 9 Berkeley Women's L.J. 103 (1994).
53. Hernández-Truyol, *supra* note 46, at 226.
54. *Id*. at 226.
55. *Id*. at 226-29. *See also* Castro, *supra* note 36, at 197.
56. *See* Hernández-Truyol, *supra* note 46 at 226-29. *See also* Valdes, *supra* note 33.
57. Juan Perea, *Five Axioms in Search of Equality*, 2 Harv. Latino L. Rev. 231 (1997).
58. *See id*. at 236.
59. *Id*. at 237.
60. *See id*. at 240.
61. *Id*. at 241.
62. *See* Valdes, *supra* note 2, at 25-29.
63. Keith Aoki, *(Re)presenting Representation*, 2 Harv. Latino L. Rev. 247 (1997).
64. *Id.* at 247.
65. *Id.* at 249 n.6, 250 (discussing religious systems like Haitian Voodoo, Brazilian Condomble and African-Caribbean Santeria).
66. *Id.* at 258.
67. *Id.* at 259-266.
68. Adrienne Davis, *Identity Notes Part II: Metaphoric Redemption of the Body Politic*, 2 Harv. Latino L. Rev. 267(1997).
69. *Id*. at 268.
70. *Id*.
71. *See id.* at 274. Witness English-Only laws pioneered in Florida, anti-immigrant referenda like California's Proposition 187 or, more recently, the disentitlement mood of federal lawmakers, which thus far has been brought to bear on "disposable" parts of the American national body. *See id.* In each instance, backlash politics have been depicted simply as the body politic protecting its self, its purity, its vitality, by rejecting the intrusion of foreignized, and hence disposable, matter. The use of metaphorical body politics, and the rhetorical use of the body politic, in these instances, Professor Davis argues, is part and parcel of the continuing effort to consolidate the national identity of the United States as white. *See id.*
72. *Id*.
73. However, Professor Davis also argues that the use of the body can serve to inspire alliances among those rendered disposable by the politics of white national identity. These alliances, Professor Davis also makes clear, need not be organized around racial lines. Reminding us of the oppression experienced by poor farmers, exploited factory workers and other besieged laborers, including white ones, Professor Davis

points to class and economic interests as alternative platforms for the construction of anti-subordination coalitions through the articulation of critical legal theory. *Id.* at 274-77.
74. For further discussion of backlash politics and their consequences on legal theory see Keith Aoki, *The Scholarship of Reconstruction and the Politics of Backlash*, 81 Iowa L. Rev. 1467 (1996).
75. For further discussion of this point, see Valdes, *supra* note 33.
76. Ian F. Haney López, *Retaining Race: LatCrit Theory and Mexican American Identity in* Hernandez v. Texas, 2 Harv. Latino L. Rev. 279 (1997) [hereinafter Haney López, *Retaining Race*]. *See also* Ian F. Haney López, White by Law: The Legal Construction of Race (1996); 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) [hereinafter Haney López, *Social Construction of Race*]; Ian F. Haney López, *Race and Erasure: The Salience of Race to LatCrit Theory*, 85 Cal. L. Rev. (forthcoming 1997).
77. Haney López, *Retaining Race*, *supra* note 76, at 280.
78. *Id.* at 280-82.
79. *See id*. at 282-83.
80. *Id*. at 282.
81. *Id*. at 294.
82. Michael Luis Principe, *A Reason for LatCrit Unification: Reflections on Comparative Efforts to Curtail Political Opposition and Terrorism*, 2 Harv. Latino L. Rev. 297 (1997).
83. *Id*. at 299-303.
84. *Id.* at 303.
85. *Id*. at 298.
86. *See supra* notes 54-56 and accompanying text.
87. *See generally* Principe, *supra* note 82. *See also* Valdes, *supra* note 2, at 12.
88. Stephanie Wildman, *Reflections on Whiteness and LatCrit Theory*, 2 Harv. Latino L. Rev. 307 (1997).
89. *Id*. at 308.
90. *See id*. at 314-15.
91. *See id*. at 309.
92. *Id.* at 311-12.
93. *Id.* at 311.
94. *See id.* at 312. This reminder, Professor Wildman continues, underscores the centrality of gender and androcentrism to LatCrit theory. A particular virtue of the "Latina/o" rubric, Professor Wildman explains, is that it turns topsy turvy the usual use of language to occlude gender variances and to valorize androcentric normativity. The "Latina/o" designation entails a recurrent and salutary foregrounding of gender via language. This discursive foregrounding, Professor Wildman states, is important because it serves as a further reminder in the lessons and rewards of sameness and difference, of solidarity and recognition: the "Latina/o" self-designation not only reminds us that gender matters but that it is linked to racial discourse. The very act of our self-naming is at once a historical artifact of LatCrit sensibilities at inception and a continuing reminder of our commitment to an intra-Latina/o politics of identification. *Id*. at 311-12. Professor Wildman thereby reinforces Professor Hernández-Truyol's call for LatCrit resistance of gendered inequality. *See supra* notes 46-53 and accompanying text.
95. Wildman, *supra* note 88, at 315.
96. Professor Wildman's discussion also juxtaposes three familiar concepts -- multiculturalism, sameness and difference -- provocatively. Casting ethnic assimilation as appeasement of majoritarian demands for ethnocentric sameness and multiculturalism as a strategy of resistance to such assimilation, Professor Wildman calls for a "multicultural perspective that honors difference and does not require assimilation." One objective of LatCrit theory, Professor Wildman effectively tells us, must be the development of a non-assimilationist model of equality and self-empowerment in the context of a demographically multicultural yet normatively and legally Anglocentric society. *Id.* at 314-15.
97. *See supra* notes 76-81 and accompanying text.
98. It bears emphasis that politicians preaching backlash have targeted Latina/o groups. For instance, California's Proposition 187 targets most of all Mexicans and Chicanas/os for special scrutiny, which in turn is intended to prompt a deprivation of access to state public benefits. *See generally* Linda S. Bosniak, *Opposing Prop. 187: Undocumented Immigrants and the National Imagination*, 28 Conn. L. Rev. 555 (1996); Nancy Cervantes, *Hate Unleashed: Los Angeles in the Aftermath of Proposition 187*, 17 Chicano-Latino L. Rev. 1 (1995); Ruben J. Garcia, Note, *Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law*, 17 Chicano-Latino L. Rev. 118 (1995); Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and*

Legal Irrelevance of Race, 70 Wash. L. Rev. 629 (1995); Jeffrey R. Margolis, *Closing the Doors to the Land of Opportunity: The Constitutional Controversy Surrounding Proposition 187*, 26 U. Miami Inter-Am. L. Rev. 363 (1995). Likewise, the federal Immigration Reform Act and Immigrant Responsibility Act of 1996 targets mostly Cubans, Nicaraguans, Salvadorans, Dominicans and other Latinas/os legally in this country who have not yet become "citizens" for a deprivation of access to federal public benefits. *See* Marcus Stern, *Sweeping Immigration Bill is Passed by House*, The San Diego Union-Trib., Sept. 26, 1996, at A-1.

99. George A. Martinez, *Mexican-Americans and Whiteness*, 2 Harv. Latino L. Rev. 321 (1997).

100. *Id.* at 329. This catch-all category not only commingled distinct communities, it also served as a foil for the construction of whiteness and for the further construction of whiteness' supremacy. *See id.*

101. *Id*. at 344-45.

102. *Id*. at 325-29.

103. Professor Martinez thereby provides another reminder that race and color are of common concern to LatCrit and RaceCrit scholars: unpacking the supremacy of whiteness and neutralizing its ideology socially and legally is central to both genres.

104. *See id.* at 322-23.

105. *Id.* at 336-37.

106. *See* Wildman, *supra* note 88 at 309.

107. *Id.* at336-38. This gap exists due to the "marginality" of law to social reality. *See id.* at 335-37. This "principle of marginality" serves as a sobering reminder of the limits of theory and praxis: if this marginality is true, the use of law as an engine of social reform will be limited by this principle as well. But this recognition should not -- cannot -- alleviate the LatCrit community of its responsibilities to the larger set of Latina/o communities that we seek to serve. On the contrary, this discussion of law's marginality permits LatCrits to approach our tasks with a conscious sense of the limits within which we work; it permits us to acknowledge at the outset that subordination is entrenched, resilient and perhaps even permanent. *See generally*, Derrick Bell, Faces at the Bottom of the Well: The Permanence of Racism (1992); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 Harv. C.R.-C.L. L. Rev. 323 (1987). Put to constructive use, this reminder of law's marginality can and should prompt a redoubling of LatCrit commitment to self-empowerment as a long-term struggle, one that will be replete with adversities and setbacks that may at times discourage us but which we cannot permit to deflect or defeat us.

108. *See* Martinez, *supra* note 99 at 338-39.

109. *Id.* at 339.

110. Margaret E. Montoya, *Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis*, 2 Harv. Latino L. Rev. 349 (1997). Drawing from the work of Latina/o scholars in the social sciences, Professor Montoya invokes Latina/o racial intermixing, or mestizaje, to emphasize "the melding together of traditional discourses with Latino/a experience." *Id.* at 352. Professor Montoya proposes that this hybridity, including the mixing of languages and disciplines, in LatCrit theory can serve "as a correction to and subversion of the repressive and stultifying character of traditional legal discourse." *Id.*

111. *Id.* at 351.

112. *Id.* at 370.

113. *Id.* at 351

114. *Id*.

115. *Id.*

116. Laura Padilla, *LatCrit Praxis to Heal Fractured Communities*, 2 Harv. Latino L. Rev. 375 (1997).

117. *Id.* at 382-87.

118. *Id.* at 388. Strategic or early interventions, like talks to Latina/o students still in their primary education, or participation in local school board proceedings, or development of programs supported through local bar groups, are well suited to the knowledge, skills, prerogatives and time of the Latina/o legal professorate, Professor Padilla notes. *Id.* at 388-89. In our teaching, Professor Padilla continues, we can employ the academic flexibility of our classes to expose students to the social realities that cases and casebooks often omit or edit; face-to-face confrontations with poverty and exploitation, such as visits to nearby ghettos or border maquiladoras, quickly communicate the relationship of theory to practice, or of law to life. *Id.* at 390-91.

119. *Id.* at 388.

120. Scholars identified with Critical Race Theory specifically, and outsider jurisprudence generally, have devised various concepts to help unpack the complexities of social and legal positions based on

characteristics such as race, sex and sexual orientation. *See* Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color,* 43 Stan. L. Rev. 1241 (1991); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,* 1989 U. Chi. Legal F. 139; Angela P. Harris, *The Unbearable Lightness of Identity*, 11 Berkeley Women's L.J. 207 (1996); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory,* 42 Stan. L. Rev. 581 (1990); Hernández-Truyol, *supra* note 42. *See also* Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities and Inter-connectivities,* 5 S. Cal. Rev. L. & Women's Stud. 25, 49 (1995) (articulating, in a sexual minority context, the concept of interconnectivity as a jurisprudential complement to multiplicity and intersectionality).

121. Elvia R Arriola, *Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self*, 2 Harv. Latino L. Rev. 397 (1997).

122. *Id.* at 403-12.

123. *Id.* at 398.

124. *Id.* at 401.

125. *Id.*

126. *Id.* at 402.

127. *Id.* at 403.

128. *Id.* at 421.

129. *See generally,* Harlon Dalton, Racial Healing: Confronting the Fear Between Blacks and Whites (1995).

130. For further discussion of this point, see Valdes, *supra* note 2, at 24-30.

131. Robert S. Chang, *Racial Cross-Dressing*, 2 Harv. Latino L. Rev. 423 (1997).

132. *Id.* at 423-24.

133. *Id*. at 424. See also Valdes, *supra* note 120, for further discussion of such claims.

134. *See* Chang, *supra* note 131, at 426-27. *See also* Elvia R. Arriola, *Law and the Gendered Politics of Identity: Who Owns the Label "Lesbian"?*, 8 Hastings Women's L.J. 1 (1997).

135. Chang, *supra* note 131, at 425.

136. *See generally* Anthony E. Cook, *Reflections on Postmodernism*, 26 New Eng. L. Rev. 751 (1992). *See also supra* note 42 and sources cited therein on sameness and difference as one aspect of postmodern critical legal discourse.

137. *See* Chang, *supra* note 131, at 427.

138. *Id.* at 429.

139. *See generally* Valdes, *supra* note 2, at 5-8.

140. Moreover, Professor Chang continues, scholarly development and recognition of these claims acknowledges and advances the agency of identity dissidents seeking to overturn the ideology of various social and legal supremacies. The agency implicit in and bolstered by these claims in turn helps establish "the groundwork for developing a collective political identity" willed into existence by and among outsider scholars in the common anti-subordination quest. Chang, *supra* note 131, at 429. This collectivity is rooted in common, though different, historical experiences with oppression as well as in common, though different, struggles against such oppression. "The challenge for us is how to articulate this political identity or identities to serve a progressive anti-subordination agenda," Professor Chang concludes. *Id.* at 432. *See generally* Angela P. Harris, *Foreward: The Jurisprudence of Reconstruction*, 82 Cal. L. Rev. 741 (1994).

141. Sumi Cho, *Essential Politics*, 2 Harv. Latino L. Rev. 433 (1997).

142. *Id.* at 435.

143. *Id.* at 435-41.

144. *Id.* at 442.

145. *Id.* at 447.

146. Mary Coombs, *LatCrit Theory and the Post-Identity Era: Transcending the Legacies of Color and Coalescing a Politics of Consciousness*, 2 Harv. Latino L. Rev. 457 (1997).

147. *Id.* at 458

148. *Id.*

149. *Id.* at 459-60.

150. *See id.* at 460.

151. *Id*. at 461.

152. *Id*. at 462.

153. *Id*. at 464.

154. Barbara J. Cox, *Coalescing Communities, Discourses and Practices: Synergies in the Anti-Subordination Project*, 2 Harv. Latino L. Rev. 473 (1997).
155. *See id*. at 473-75.
156. *Id.* at 475. At LatCrit I, as noted earlier, this balance was struck by organizing a program that focused substantively on Latinas/os but that incorporated the voices of non-Latinas/os. In this way, the organizers of the first LatCrit conference sought to create the conditions for a focused yet diversified ongoing conversation. This was the way we sought at the outset to traverse the continuing tension between specificity and inclusivity. Though that effort appears to have been deemed successful, Professor Cox's essay is a reminder that this tension is perpetual and that, therefore, our commitment to a balance must be proactive and unflagging.
157. Fortunately, the planning of the LatCrit II conference displays a similar commitment to balance. For the published papers and proceedings of the LatCrit II conference, see Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 Chicano-Latino L. Rev. (forthcoming 1997).
158. And as Professor Cox also points out, these connections need not -- indeed, should not -- be delimited only by race, color or ethnicity; Feminist and Queer discourses and communities also present opportunities for mutual connection and empowerment. *See* Cox, *supra* note 154, at 475.
159. Jerome McCristal Culp, Jr., *Latinos, Blacks, Others, and the New Legal Narrative*, 2 Harv. Latino L. Rev. 479 (1997).
160. *Id*. at 479-80.
161. *Id*. at 479.
162. *Id*. at 479.
163. *Id*. at 481.
164. *Id*. at 480.
165. *Id*. at 479.
166. *Id*. at 480.
167. *Id*. at 480.
168. *Id*. at 481.
169. Ediberto Román, *Common Ground: Perspectives on Latino-Latina Diversity*, 2 Harv.Latino L.Rev. 483 (1997).
170. *Id.* at 484.
171. *Id*.
172. Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 Harv. Latino L. Rev. 495 (1997).
173. *Id.* at 495.
174. *Id.*
175. *Id.*
176. *Id.* at 498.
177. *Id.* at 495.
178. *Id*. at 495-98.
179. *Id*. at 498.
180. *Id.* at 499. *See also* Eric Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 Asian Pac. Am. L.J. 33 (1995).
181. *See supra* note 120 and sources cited therein.
182. Critical Race theorists have produced milestone works on these points. For a (certainly not exhaustive) sampling, see John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. Cal. L. Rev. 2129 (1992); Robert S. Chang, *Toward an Asian-American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 Cal. L. Rev. 1241, 1 Asian L.J. 1 (1993); Kimberlé Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 102 Harv. L. Rev. 1331 (1988); Jerome McCristal Culp, Jr., *Voice, Perspective, Truth, and Justice: Race and the Mountain in the Legal Academy*, 38 Loy. L. Rev. 61 (1992); Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. Pa. L. Rev. 561 (1984); Neil Gotanda, *A Critique of "Our Constitution is Color-Blind"*, 44 Stan. L. Rev. 1 (1991); Haney López, *Social Construction of Race*, *supra* note 76; Cheryl I. Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1707 (1993); Charles R. Lawrence, III, *The Word and the River: Pedagogy as Scholarship as Struggle*, 65 So. Cal. L. Rev. 2231 (1992); Matsuda, *supra* note 107; Harris, *supra* note 140; Gerald Torres, *Critical Race Theory: The Decline of the Universalist Ideal and the Hope of*

Plural Justice -- Some Observations and Questions on an Emerging Phenomenon, 75 Minn. L. Rev. 993 (1991); Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 Harv. C.R.-C.L. L. Rev. 401 (19987); For further Critical Race readings, see Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography*, 79 Va. L. Rev. 461 (1993). *See also* Critical Race Theory: The Key Writings that Formed the Movement (Kimberlé Crenshaw et al. eds., 1996); Critical Race Theory: The Cutting Edge (Richard Delgado ed., 1995).

183. Valdes, *supra* note 2, at 26-27.

184. *See also* Francisco Valdes, *Queer Margins, Queer Ethics: A Call to Account for Race and Ethnicity in the Law, Politics and Theory of "Sexual Orientation"*, 48 Hastings L.J. (forthcoming 1997) (expressing similar points in the context of Queer legal theory and Critical Race theory).

8. Rachel F. Moran,[*] *Neither Black Nor White,* 2 HARV. LATINO L. REV. 61 (1997)

Questions of racial justice in America are being complicated by demographic change. Soon, the two groups that historically have defined race relations in the United States, Whites and Blacks, no longer will account for the overwhelming majority of Americans. In 1960, when the modern civil rights movement was in its ascendancy, Whites accounted for almost 90% of the population, and Blacks represented nearly 10%. Latinos and Asian Americans combined amounted to only about 5% of the total population. Not surprisingly, race relations were largely defined in Black-White terms.[(2)] By 1990, dramatic changes had taken place. Due to the rapid growth in Latino and Asian-American populations, one out of four Americans was identified as a person of color; only half of these were Black.[(3)]

Current demographic research indicates that these trends will continue. According to Census projections, by 2020 non-Hispanic Whites will account for 64.3% of the United States population, while non-Hispanic Blacks will make up 12.9%. Latinos will overtake Blacks to become 16.3% of the population, and Asians will represent 5.7%.[(4)] In short, individuals who identify themselves as Latino or Asian will account for over one out of every five Americans in the next 25 years!

For California, the future is already here. Today, Latinos and Asians make up 27.3% and 11.2% of the population respectively, while Blacks account for only 7.7%.[(5)] The Golden State has been a particularly attractive destination for many Latinos and Asians, leading one commentator to conclude that it "will supplant New York as the nation's new Ellis Island for immigrants, setting the pace for America's transformation into a more racially and ethnically diverse society. . . ."[(6)] As a result, California's population has grown rapidly. Census projections indicate that by 2020, the state will be home to 15% of the nation's population, or approximately one out of every seven Americans. Whites will account for only 34% of the state's population, while Blacks will make up 8%. Latinos will overtake Whites to become 36% of the state's residents, and Asians will account for 20%. In brief, the Census is predicting that a majority of Californians will be Latino or Asian in a little over two decades.[(7)]

If California is on the cutting edge of demographic change, its experience to date can hardly occasion sanguine predictions about the future of race relations in America. The state has passed a series of popular initiatives aimed at ensuring that newly arrived Latinos and Asians do not place undue strain on political, social, and economic resources. Other states and Congress have regularly been influenced by California's forays into racial and ethnic policy. For example, California voters passed the "official English" initiative in 1986 to encourage non-English-speakers, many of whom are recent immigrants, to assimilate by forcing them to transact government business in English.[(8)] Because federal statutes and regulations protect linguistic minorities from governmental discrimination based on race, ethnicity, or national origin, the practical impact of the initiative was limited. Its symbolic effect was significant, however, for it sent a clear message that nearly 70% of California's electorate was concerned enough about the dangers posed by newly arrived and unassimilated populations to amend the state constitution.[(9)] California has been the most prominent state to adopt an official English

policy, but it is by no means the only one. Twenty-two other states have adopted similar legislation, and Congress continues to consider proposals to make English the official language of the United States.[(10)]

In 1994, California voters again expressed their concerns about immigration, this time by supporting by a 3-2 margin an initiative to "Save Our State" from the fiscal and social costs of illegal immigration. Citing the crime and economic hardship caused by the undocumented, the initiative sought to deter the arrival of illegal immigrants by denying them access to education and social services.[(11)] Again, the initiative's immediate impact has been limited; a spate of lawsuits in state and federal court challenged its constitutionality. A federal district judge enjoined implementation of nearly all of the proposition's provisions. Later, the judge struck down most of the initiative because it improperly intruded on the federal government's sovereign prerogative to make immigration policy.[(12)] Still, the uproar over illegal immigration in California did prompt President Clinton to announce tough measures to police the border with Mexico.[(13)] In an intimidating political climate, some undocumented persons have refrained from seeking necessary medical care or other social services.[(14)]

Perhaps of greatest importance, in light of the federal court's deference to national policymakers, Congress passed legislation limiting undocumented immigrants' access to governmental benefits. Under the law, they can receive emergency medical care, disaster relief, immunizations, treatment for communicable diseases, and some in-kind services necessary for the protection of life and safety.[(15)] Before Congress took this action, undocumented immigrants already were ineligible for most federal public benefits. Now they are ineligible for most state and locally funded benefits as well. One federal benefit that had been available to undocumented immigrants was the Women, Infants and Children (WIC) nutrition program which provides supplemental food and nutritional information to pregnant, postpartum, or nursing women as well as infants and children up to the age of five. Under the new law, the federal government will continue to fund WIC benefits for the undocumented, but states can at their discretion bar them from receiving the aid. Because Governor Pete Wilson of California had sent out letters ordering state agencies to terminate prenatal care for undocumented women, some feared that he would also end the provision of WIC benefits. However, the Governor ultimately decided to continue this federally funded benefit for the undocumented in California. [(16)] In addition, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which increases resources for border control and eliminates some procedural protections that aliens previously enjoyed in deportation and exclusion hearings.[(17)] Indeed, Congress has gone even further than Californians by limiting the eligibility of immigrants lawfully present in the United States for benefits such as supplemental security income and food stamps. States may limit a permanent resident alien's eligibility for temporary assistance for needy families, programs under social services block grants, and Medicaid. Permanent resident aliens who have worked for 40 quarters (that is, ten years), are veterans, or currently are on active military duty are exempted from the eligibility restrictions.[(18)] Based on these congressional changes, Governor Pete Wilson of California announced his intention to have the federal district court reconsider the constitutionality of the "Save Our State" initiative.[(19)]

The official English and Save Our State initiatives in California have addressed the problems created by immigrants, most prominently Latino newcomers. However, a more recent initiative focuses on race, ethnicity, and gender, rather than alienage. This 1996 ballot measure seeks to eliminate affirmative action throughout all of the state's

official programs and activities.[(20)] Interestingly, in early media coverage of the initiative, commentators focused on its impact on Blacks, although Latinos arguably are the single largest population in the state affected by the proposal. For instance, one *Los Angeles Times* article started off by quoting an attorney at the National Association for the Advancement of Colored People, who summed up the series of state-wide initiatives this way: "First the Latinos. Now the blacks. It is getting ugly."[(21)] The story clearly suggested that while earlier efforts to declare English the official language and to crack down on illegal immigration were directed at Latinos, the anti-affirmative action movement targeted Blacks.

Passed by a 54-46 margin in November 1996,[(22)] the initiative's constitutionality is currently being challenged in federal court. Recently, a district court judge issued a temporary restraining order and preliminary injunction blocking implementation of the affirmative action ban in state governmental decisionmaking. According to the court, the initiative may unfairly burden the political access of women and minorities. Traditionally disadvantaged groups must seek a statewide constitutional amendment to reverse the affirmative action ban. By contrast, other groups that enjoy preferences based on age, disability, or veteran status can rely on local as well as state political processes to seek or preserve favorable treatment. However, on appeal, the Ninth Circuit lifted the injunction, rejecting the trial court's reasoning and concluding that the initiative was likely to be upheld as constitutional. The plaintiffs are seeking Supreme Court review.[(23)] Despite the litigation surrounding the initiative, other states and Congress are considering similar action.[(24)]

The California experience suggests that the debate over demographic transformation has been shaped by two key paradigms of opportunity: a civil rights model and an immigration model. The affirmative action initiative is concerned with the propriety of color-conscious remedies to compensate for past discrimination or to foster diversity. Latinos have yet to play a very salient role in this debate, although dismantling affirmative action clearly would affect the life chances of a young and growing population with depressed levels of income and education. The official English and Save Our State initiatives address the immigration model, expressing doubts about the assimilability of large numbers of newcomers to an American way of life. Here, Latinos feature prominently in the debate, and the crux of the matter is their ability to assimilate: are they learning English, adopting American values, and in general playing by America's rules? Because the deservingness of Latinos is measured by how quickly they will cease to be a distinctive population in the United States, demands for recognition of their unique history and characteristics generate little interest or support.

In this essay, I argue that the legacy of a Black-White model of race relations accounts for Latinos' limited success in drawing attention to their claims under either a civil rights or an immigration model. When Latinos invoke the civil rights model to improve their upward mobility, they are accused of exploiting remedies designed for Blacks when in fact Latinos resemble White ethnic immigrants. If Latinos turn to an immigration model to enhance their life chances, however, they discover that their capacity to assimilate is called into question by their characterization as a minority under civil rights law. Latinos receive the message that they are supposed to adapt to American life as earlier generations of White ethnic immigrants did, but instead they will remain an isolated and unassimilable population like Blacks.

I. THE CIVIL RIGHTS MODEL: NOT BLACK ENOUGH

Developed to address a caste system that perpetuated the harmful effects of slavery, the civil rights model clearly is rooted in the African-American experience.[(25)] This caste system was enforced through a system of racial classification, most notably the "one-drop" rule that treated anyone with a trace of African ancestry as Black.[(26)] The process of dismantling this system necessarily focused on race as the indicium of inequality and subordination. In formulating remedies, policymakers treated race as a biological trait, manifested through skin color and other phenotypical characteristics, that should be irrelevant to political, social, and economic opportunity. Even today, the African-American community is defined in primarily racial terms; a small influx of African and Caribbean immigrants has not altered the perception that Blacks are mainly the descendants of slaves. America's fascination with the charismatic General Colin Powell exemplifies this monolithic racial understanding of Blacks. When the media labeled General Powell as the first Black with the potential to become President, he politely pointed out that he was the descendant of Jamaican immigrants and thought of himself as such. Nevertheless, the press continued to refer to him as a Black who had broken through the race barrier to become a Presidential frontrunner.[(27)]

As the federal government's commitment to civil rights grew, so did the number of groups asserting that a history of disadvantage and discrimination rendered them sufficiently like Blacks to merit special protection. Among these were Latinos, who adduced evidence of past segregation and exclusion to win recognition as a minority group from Congress, the Supreme Court, and civil rights agencies. Latinos were able to gain this status, even though they are classified as an ethnic, rather than a racial, group.[(28)] Despite this formal recognition, doubts remained about the legitimacy of Latinos' claims. Because racial classifications were deemed biological, the United States Supreme Court concluded that race was a particularly pernicious basis for official discrimination precisely because the trait was immutable.[(29)] Ethnicity, by contrast, seemed relatively malleable because it related to social traits, like language and culture, that could be changed. Consequently, policymakers often believed that Latinos could free themselves of discrimination by learning English and adopting American customs, while Blacks could not. In short, these officials doubted that Latinos were entitled to civil rights protections because like earlier generations of White immigrants, they could achieve inclusion through acculturation and assimilation.[(30)]

A recent article by Paul Brest and Miranda Oshige discussing which racial and ethnic groups are entitled to affirmative action in law school admissions nicely illustrates the doubts surrounding Latinos' status as a disadvantaged minority.[(31)] The authors begin by defining Latinos as "immigrants or the descendants of immigrants from Puerto Rico, Cuba, [Mexico,] and the many countries of Central and South America."[(32)] Having categorized Latinos as a population of voluntary immigrants, Brest and Oshige question whether their disadvantage stems from factors meriting remedial intervention. Instead, they argue that Latinos' depressed socioeconomic condition is attributable in part to a large proportion of recent immigrants. Brest and Oshige go on to note that unlike Blacks, Latinos were "typically classified as 'white' by the Jim Crow laws that existed between the end of Reconstruction and the mid-1960s."[(33)] Although Brest and Oshige concede that Latinos suffered from negative stereotyping and systematic discrimination despite their formal classification as Whites, they conclude that "the extent to which discrimination has contributed to the poverty of Latinos is open to dispute" because "some social scientists attribute much of the wage differential to Latino immigrants' lack

of marketable job skills and English literacy."[(34)] By characterizing Latinos as a White, immigrant population, Brest and Oshige cast doubt on their entitlement to affirmative action. As a result, they find that special consideration for Latinos may be appropriate on a regional basis, depending on local demographics, but it should not rise to the level of a national commitment as is true for Blacks.[(35)]

By evaluating how closely Latinos resemble White immigrants, rather than Blacks, Brest and Oshige overlook unique features of the Latino population. First, the most intractably disadvantaged Latino populations, those of Puerto Rican and Mexican origin, have become part of the United States not simply through immigration but also through territorial annexation. This history of conquest is important because it resulted in structures of subordination and control to subdue seemingly alien and untrustworthy former Mexican and Spanish citizens. As David Montejano recounts in his history of Texas, settlers who arrived shortly after the Mexican War distinguished themselves as "white folks," rather than Mexicans, and they expressed dismay when former Mexican citizens insisted on asserting their rights because "they think themselves just as good as white men."[(36)]

Anxieties about the impact of the Mexican-origin population on race relations persisted well into the twentieth century. In the early 1900s, a professor at the University of Texas expressed concern that the Southwest could not handle a "second racial problem" and noted that "for Mexican immigrants, there is no congenial social group to welcome them . . . They are not Negroes . . . They are not accepted as white men, and between the two, the white and the black, there seems to be no midway position."[(37)] In 1930, Texas sociologist Max Handman echoed these views, noting that "American society has no social technique for handling partly colored races. We have a place for the Negro and a place for the white man: the Mexican is not a Negro, and the white man refuses him an equal status."[(38)] By analogizing Latinos to White ethnic immigrants, Brest and Oshige overlook the ways in which historical prejudice and systematic discrimination arguably have blocked Latino assimilation and forced newcomers to adapt to existing structures of inequality.

By emphasizing the formal classification of Latinos as White under Jim Crow laws, Brest and Oshige ignore the ambiguous racial status of Latinos in the United States. Perceptions of Latinos as foreign and unassimilable were linked to some extent to their very failure to fit America's racial paradigm; Latinos came from countries with a history of race-mixing at odds with and threatening to the United States' system of racial classification. In an earlier era, leading American social scientists even attributed the volatility and instability of Latin American governments to their deficient mixed-race populations, which were considered unfit for self-governance. These researchers warned that the dominance of America's pure racial types was key to preserving the country's democratic traditions.[(39)] In this way, the complex racial identity of Latinos was used to undercut their claims to equal status and respect. Neither Black nor White, Latinos threatened the established terrain in American race relations.

Today, the role of Latinos in American race relations remains uncertain and contested. Although Latinos are formally classified as an ethnic rather than a racial group, they continue to face informal discrimination.[(40)] Moreover, Puerto Ricans, who are most apt to identify themselves as Black, suffer the greatest economic and social barriers of all Latinos; at least some of this relative disadvantage is due to racial discrimination.[(41)] Currently, social scientists are struggling to determine whether Latinos in fact occupy a "midway position" in American race relations. Empirical research

consistently demonstrates that Latinos enjoy greater access to housing and jobs than Blacks, but their opportunities are more limited than those of Whites.[(42)] While some of the gap between Whites and Latinos can be attributed to the impact of recent immigration, a portion of the gap seems to reflect a tax on ethnicity that persists for the native-born.[(43)] Moreover, the persistent gap between Blacks and Latinos appears to reflect the severe racial tax that is levied on African Americans in their pursuit of housing and employment. Indeed, Latinos who disproportionately self-identify as Black bear this racial tax as well.[(44)] Some commentators argue that Latinos will serve as a buffer between Blacks and Whites. In this mediating role, Latinos can contribute greatly to the amelioration of race relations.[(45)] On the other hand, some observers argue that Latinos will ally themselves with Whites, thereby contributing to the increased racial isolation and alienation of Blacks.[(46)] To date, there has been no definitive resolution of this controversy. Significantly, though, both approaches emphasize Latinos' impact on Black-White relations; neither model relinquishes the dominance of Blacks and Whites in defining racial issues.

II. THE IMMIGRATION MODEL: NOT WHITE ENOUGH

The other key paradigm of opportunity affecting Latinos is the immigration model. While the civil rights model is rooted in the Black experience, the immigration paradigm draws on the experience of White ethnic immigrants. According to the traditional account, immigrants arrive by invitation only; having accepted the invitation to come to the United States, they make a permanent commitment to this country and renounce ties to their homelands. Although the first generation of newcomers struggles for a share of the American dream, their children and grandchildren profit from their hard work and enjoy the full benefits of life in the United States.[(47)] In contrast to the civil rights model, which assumes that government intervention is necessary to overcome past discrimination, the immigration model assumes that once the federal government has extended its invitation, immigrants will succeed through free enterprise and individual effort. Indeed, the receipt of government assistance is perceived as a failure of the immigrant work ethic; immigrants are screened to ensure that they will not become public charges.[(48)] Consequently, most government regulation under this model focuses on who will enter and who will be privileged to remain based on a demonstration of individual desert, rather than on how to integrate the newly arrived who confront obstacles to full participation.

The traditional view of immigration is seriously incomplete even for Whites, but its symbolic imagery continues to dominate discussions of immigration policy.[(49)] Because the Latino experience is frequently inconsistent with this account, some policymakers have expressed doubts about whether Latinos will prove to be desirable immigrants. In the first place, the terms of the invitation to come to America have not been clearcut for Latinos. While some have enjoyed the traditional opportunity to become permanent members of the American polity, others have been asked to work here on a temporary basis with every expectation that they will return to their native lands. For some, the scope of their provisional invitation has been explicit, formalized through temporary work programs, but for others, it has been implicit, a message sent by lax enforcement of border controls when work is plentiful.[(50)] For example, between 1940 and 1992, only 1.2 million Mexicans entered the United States as legal immigrants, while 4.6 million came as temporary contract workers and approximately four million entered

without documents. This influx of labor represented the "largest sustained flow of migrant workers in the contemporary world," yet only a little over 10% of the immigrants entered as permanent resident aliens, demonstrating that the traditional model is a poor fit for much of Latino immigration.(51)

In addition, Latinos in the United States remain in close proximity to their native countries, making it more likely that they will retain some of their linguistic and cultural heritage in order to facilitate ongoing exchange with friends, relatives, and associates who remain in their homelands. For this reason, even Latinos who have successfully integrated into American life may consider themselves bilingual and bicultural. Consider, for example, the remarks of Dr. Celestino Fernandez, Vice-President of Academic Affairs at the University of Arizona: "I feel Mexican and I behave American. Inside, my feelings, my values, my attitudes, my beliefs are based in Mexican culture, but my behavior is very American."(52) In a similar vein, a writer living in Ciudad Juarez, Mexico and commuting to a job at the University of Texas at El Paso found that "I can't be a Mexican and not be an American. And I can't be an American without being Mexican."(53) By adopting hybrid identities, many Latinos challenge the notion of what assimilation and being a "good American" mean.

Moreover, the proximity to Latin America makes it feasible for immigrants to travel back and forth between the United States and Latin American countries of origin, especially Mexico, a pattern that gives rise to transnational communities. Composed of international migrant workers with economic and social ties to both the United States and their homelands, these communities depart from the traditional picture of immigrants who settle in America and renounce their countries of origin. Indeed, the process of continuing exchange across international borders, as illustrated by transnational communities, undoubtedly accounts in part for the comparatively low rates of naturalization among Latino immigrants.(54)

Finally, the path of intergenerational upward mobility for Latino immigrants and their progeny is not certain. Although some observers believe that Latinos will pursue the same path to success as earlier generations of immigrants did, other researchers fear that blocked assimilation will stymie the aspirations of second- and third-generation Latinos. In the field of public health, for example, evidence suggests that first-generation immigrants, despite their low levels of income and education, lead healthier lives than their children and grandchildren. A number of explanations have been offered for this "Latino health paradox," but one of the most intriguing focuses on the dangers of acculturating to American standards of material success while systematically lacking the means to achieve them. According to this view, first-generation Latino immigrants gauge their success by standards in their home countries, and by this measure, they have accomplished a great deal by relocating to the United States. Because these Latino immigrants are basically satisfied with their lives, they do not resort to self-destructive behaviors. By contrast, their children and grandchildren measure themselves in comparison to American peers. By this standard, they often find their lives wanting, and they express little hope of overcoming exclusionary barriers to capitalize on educational and economic opportunities in the United States. Disappointed and disillusioned, they engage in risky health practices.(55) In short, the traditional immigrant account of intergenerational mobility is undermined by lingering racial and ethnic inequities.

Under the immigration paradigm, Latinos receive the message that they are supposed to assimilate like White, ethnic immigrants, but they will not. Under the Black/White model of American race relations, the corollary of this message is that those

who fail to assimilate will become a permanent minority like Blacks. This ancillary message is clearly communicated in a recent bestseller entitled *Alien Nation* by Peter Brimelow, which addresses the interplay of immigration and affirmative action.(56) Brimelow decries the fact that in contrast to earlier waves of White ethnic immigrants, Latinos are failing to assimilate because "they are being issued with a new, artificial 'Hispanic' identity" that entitles them to special treatment.(57) He argues that Latino immigration must be restricted because rising numbers of Latinos eligible for affirmative action will displace Whites in education and employment.

Having expressed doubts about the willingness of Latinos to assimilate, Brimelow goes on to question whether they in fact deserve to be included under affirmative action. As he puts it: "No matter how new, all immigrants from the right 'protected' classes -- black, Hispanic, Asian -- are eligible for preferential hiring and promotion. They are counted toward government quota requirements that were allegedly imposed on employers to help native-born Americans."(58) Having found that Latinos' treatment as a protected class is a function of "ethnic lobbying," rather than a genuine entitlement to corrective justice, Brimelow concludes that "any change in the racial balance must obviously be fraught with consequences for the survival and success of the American nation."(59) In Brimelow's view, America simply can not afford the creation of another permanent and rapidly growing minority. Ironically, then, Latinos are considered suspect beneficiaries of affirmative action because they are really White ethnic immigrants, yet they are considered poor candidates for immigration because they will end up needing special assistance like Blacks.

Despite the racial overtones in the immigration debate, civil rights organizations have sometimes been reluctant to ally themselves with immigrant rights organizations. For example, when Congress was considering employer sanctions for hiring undocumented workers, immigrant advocates argued that the penalties would lead to discrimination against Latino and Asian workers legally present in the United States. According to this view, employers would play it safe by refusing to hire people of Latino or Asian ancestry, even when they were citizens or permanent resident aliens.(60) Rejecting these concerns, the National Association for the Advancement of Colored People (NAACP) testified in support of the sanctions; the Leadership Conference on Civil Rights (LCCR) declined to take a position on the issue.(61) Ultimately, Congress adopted the sanctions.(62) A subsequent General Accounting Office study found that the penalties did in fact lead to widespread employment discrimination against Latinos and Asians.(63) The report prompted the NAACP and LCCR to join Latino advocates in calling unsuccessfully for repeal of the sanctions.(64)

The tensions between civil rights and immigration advocates stem in part from a fear that immigrants will reduce employment opportunities for native-born Blacks. Some argue that immigration must be cut back to preserve jobs for American citizens. Under this view, Blacks are particularly vulnerable to displacement because they are disproportionately represented among semi-skilled and unskilled laborers.(65) Some also contend that newcomers leapfrog Blacks in the queue for jobs because employers perceive Blacks as less reliable and less compliant workers than immigrants.(66) Other scholars question the benefits of restrictive measures because they believe that immigrants take jobs that native-born citizens refuse to do. New immigrants therefore displace other immigrants who have arrived shortly before them; that is, immigrants compete for jobs in a discrete segment of the labor market.(67) These analysts argue that the best way to preserve American workers' labor market position is to embrace

immigration policies that legitimate immigrant workers' presence and protect them from unfair labor practices; in this way, immigrant labor will not be used to undermine wages and working conditions that native-born workers demand.(68)

Ongoing doubts about the impact of immigration on African Americans' life chances have made it difficult to forge effective rainbow coalitions of Blacks, Latinos, and Asian Americans. Several studies have reported that Blacks and Latinos express relatively little interest in building political coalitions. For Blacks, the interest in forging alliances with other racial and ethnic groups is particularly low among younger generations.(69) The lack of such coalitions may explain why Blacks and Latinos increasingly perceive themselves as competing for various government positions, including elected office and civil service jobs.(70)

III. NEITHER BLACK NOR WHITE, BUT BUILDING MODELS OF EQUITY

For the foreseeable future, the civil rights and immigration models are apt to dominate law and policy that affect Latinos. For Latinos, the pressing question is how they can extricate themselves from the strictures of models of opportunity that fail to contemplate their special history and circumstances. Under the civil rights model, Latinos must show that a steady influx of immigrants presents new dangers of ethnic stereotyping. Rather than diminishing civil rights concerns, the rising prejudice that greets Latino newcomers requires a renewed commitment to principles of anti-discrimination in education, employment, and housing.(71) Moreover, Latinos must clearly show that they lag behind Whites not only because some Latinos are immigrants with limited education and skills but also because even Latinos who acquire training and experience receive a lower rate of return on their investment than Whites.(72) This ongoing discrimination based on ethnicity is precisely the sort of harm that the civil rights model is dedicated to eradicating.

In addition to enforcing an individual's right to be free of discrimination based on race or ethnicity, the civil rights movement has long demanded equity in education, employment, and housing not only as a corrective for past injustice but also to ensure that disadvantaged populations enjoy meaningful access to the American dream. Calls for improved public schools, job training programs, and affordable and safe housing -- all represent a vision of equity and opportunity that does not turn on individualized claims of harm. For Latinos, programs that expand opportunity are vital. Latinos are a youthful population increasingly segregated in low-income, urban areas. Like Blacks and unlike Whites, low-income Latinos disproportionately confront conditions of concentrated poverty that make it inordinately difficult to obtain education and employment. The containment of Blacks and Latinos in depressed urban ghettoes makes it less likely than ever that intergenerational upward mobility will happen naturally for immigrants. Without government intervention to reduce the terrible costs of living in racial, ethnic, and economic isolation, Latinos are not apt to participate fully in the American dream.(73)

Latinos need to build coalitions with other civil rights groups to forge effective reforms. For example, in the area of affirmative action, Blacks and Latinos can join to preserve programs that improve their access to educational and economic opportunity. Rather than arguing over which groups are entitled to affirmative action, Blacks and Latinos can demonstrate that both groups pay racial and ethnic taxes on their identity that impair their life chances. Each group suffers from barriers to receiving a sound education; even when Blacks and Latinos succeed in obtaining skills, they can not convert their

preparation into higher wages and better living circumstances with the same efficacy as Whites.(74)

In addition to capitalizing on the civil rights model more effectively, some Latinos have been questioning the very adequacy of the model. They argue it wrongly demands that individuals conform to White standards through acculturation and assimilation and that Latinos would be better served by a pluralistic approach that embraces their linguistic and cultural differences. In their view, policymakers should treat bilingualism and biculturalism as valued traits, rather than handicaps that hinder assimilation. Demands for recognition of a distinctive language and culture have met with mixed success; critics counter that these traits should be preserved through private efforts rather than public subsidies. As the rise of the official English movement makes clear, some fear that public recognition of multiple languages and cultures will undermine the political coherence of the United States. Opponents of a pluralistic approach fear that endorsing ethnocentric particularism will destroy the norms of individualism and universalism associated with liberal democracy.(75)

In a related vein, some Latinos have questioned the normative centrality of race under the civil rights model. They have insisted on treating race as one of a number of relevant personal characteristics that shape opportunity. In their view, policymakers falsely portray race in a way that magnifies its socially divisive properties. To undo race's undue influence on governmental responses to social, economic, and political inequality, these scholars demand that race be reconceptualized in ways that emphasize its contingent and malleable nature.(76) Often, Latino scholars cite the tradition of *mestizaje*, or race-mixing, to demonstrate that America's monolithic approach to mutually exclusive racial categories needs to be reconsidered.(77)

Although efforts to revisit the meaning of race under a civil rights model are important and provocative, they do suffer from potential pitfalls. In insisting on the malleability of race as a social construct, Latinos may seem insensitive to the experience of Blacks. Having been formally classified as White, Latinos probably enjoy racial capital that makes them assume more easily than Blacks that racial classifications can be dismantled or will diminish in importance.(78) Moreover, recent social science evidence suggests that if racial classifications change, the key shift may be from a White/non-White model to a Black/non-Black model. According to sociologist Mary Waters of Harvard University, "In the future, the differences among the Asian, Latino and non-Latino white populations of the United States -- among whom intermarriage rates are on the rise -- are apt to 'become like the differences among white ethnic groups now,' leaving blacks and perhaps some dark-skinned Latinos on the disadvantaged side of the color line."(79) Rather than doing away with race, those who insist on its socially constructed nature may simply facilitate the redrawing of the color line.

Efforts to reduce the significance of race could bolster the claims of those who would substitute class differences for racial ones in making public policy. Precisely because race seems a volatile, perilous, and contested terrain, policymakers will prefer an alternative that appears less explosive: socioeconomic status. In substituting class for race, officials could obscure the ongoing significance of race in the everyday lives of Americans and the ways in which it interacts with class to exacerbate the condition of the underclass. Efforts to substitute class for race presumably will damage that group for whom race historically has mattered most: Blacks. As a result, the push to diminish the significance of race may affect adversely efforts to build coalitions between African Americans and Latinos, who often confront similar barriers to social, economic, and

political opportunity. Moreover, the effort to minimize the role of race potentially will harm the life chances of some Latinos who self-identify as Black, thereby damaging the internal cohesion of Latinos as a political group.(80)

Under the immigration model, Latinos need to emphasize that although Congress has plenary power over immigration and may exercise it to protect a sense of social, cultural, and political coherence, federal officials should not enact policies that fail to recognize the personhood of those who enter the United States' borders. New arrivals should enjoy basic procedural protections, even if these do not amount to the generous due process afforded to American citizens confronted with the potential deprivation of life, liberty, or property. These protections should include a hearing at which the immigrant can meaningfully participate in the proceedings with some translation and legal assistance. Some form of review of immigration decisions should be available. Even if such procedural measures are not constitutionally required, Congress should adopt them as a matter of good public policy. In a world characterized by increasing exchanges of capital and labor across international boundaries, the United States should offer those entering its borders the same protections that it would expect its nationals abroad to receive.(81)

Latinos also must acknowledge that with the rise of a global economy, the categories of immigrants have proliferated and will likely grow increasingly complex. Many Latinos have entered the United States under temporary work programs without an expectation that they will become citizens. Moreover, even with these programs in place, a number of Latinos continue to come as undocumented immigrants without any formal protection from exploitation and abuse. To improve the treatment of immigrants, Latinos must demand that policymakers fully address the complexity of these categories. Congress should not treat non-citizens as a monolithic class modeled on the permanent resident alien when debating immigrant entitlements and obligations while in the United States. Such an approach simply delegitimates and marginalizes large numbers of Latinos whose presence here is a direct product of federal immigration policy.

To protect immigrants participating in the promise of a global economy, Latinos should press for the regularization of the status of transnational workers. The Immigration Reform and Control Act of 1986 relied on legalization to address this problem, but Latinos have to face the hard political reality that a demand that all temporary workers be eligible for naturalization and citizenship is unlikely to prevail in policymaking circles any time soon. In the meantime, a rigid insistence on making legalization available to all formally admitted immigrants could perpetuate a shadow class of undocumented workers who enjoy little or no protection from gross mistreatment. Latinos should openly debate the propriety of expanding temporary work programs and conditioning employers' participation in the programs on meeting certain minimally adequate working conditions. Many Latinos are understandably reluctant to embrace such initiatives because of the sordid history of the *bracero* program in the 1950s. Yet, the stark conditions of the undocumented require Latinos at least to take a second look at temporary worker programs.(82)

Temporary worker programs may seem like somewhat unsavory, second-best, short-run solutions to the problem of transnational flows of labor. In the long run, perhaps the debate should shift to an examination of the very definition of citizenship. Paralleling the debate over assimilation and pluralism in the civil rights arena, the reconceptualization of citizenship would focus on whether immigrants should be required to demonstrate their loyalty to the United States by renouncing ties to their home country

or whether they should be permitted to forge a transnational identity through, for example, dual nationalities. A quiet but significant transformation in the United States' approach to dual nationalities already has taken place. Throughout the 1940s and 1950s, Congress and the federal courts treated dual nationality as a plague that had to be eradicated. In the post-Cold War era, however, federal policymakers began to permit non-naturalized American citizens to affiliate with other countries without losing their American citizenship. Although the State Department does not formally encourage dual nationalities, the federal government has permitted American citizens to become citzens of foreign countries and even to hold high political office abroad without losing their United States citizenship. For instance, Americans have served as foreign ministers, chief of the army, and ambassadors for other nations, all without jeopardizing their status as citizens of the United States. A number of Americans now carry passports for two nations. Mexico and Canada, the United States' closest neighbors, have been adopting similar positions.[(83)]

Although non-naturalized United States citizens may adopt dual nationalities with relative ease today, those who naturalize must renounce their previous affiliations to other countries. A transnational identity is denied to those who become American citizens by choice but is freely allowed to those who are citizens by birth.[(84)] Ironically, in the debate over whether a good citizen can have a transnational identity, scholars have treated dual nationalities as evidence of a commitment to liberal individualism; the insistence on loyalty to a single nation-state is seen as sacrificing individualism in the interest of republicanism or communitarianism.[(85)] By contrast, in the controversy over assimilationism and pluralism, fealty to one language and culture is equated with respect for liberal democratic traditions, while demands for bilingualism and biculturalism are labeled ethnocentric particularism.

Latinos should insist that these parallel debates over the terms of belonging at least be consistent so that Latinos, no matter what position they take, do not always end up on the wrong side of the liberal democratic tradition. If transnationalism, as reflected in dual nationalities, promotes liberal individualist freedoms for non-naturalized citizens, then bilingualism and biculturalism presumably contribute to the same values; policymakers should not be free to dismiss demands for recognition of linguistic and cultural heritage as little more than rank ethnocentrism. Similarly, if naturalized citizens' renunciation of political allegiances to another country advances civic republican or communitarian values in the nation-state, then policymakers must look carefully at a standard that affords non-naturalized citizens the license to forge not only social, economic, and cultural links but also political ties to a foreign country. Certainly, it seems necessary to explain why allowing non-naturalized citizens to assume high political office in foreign lands is less threatening to national identity and integrity than a policy that would permit children to achieve fluency in English through use of their native tongue.

Moreover, Latinos must demand that the protections accorded to immigrants reflect their formal status. For temporary workers, Congress should focus on labor conditions that ensure a minimum standard of living during their stay. When an immigrant arrives as a permanent resident alien, that individual should enjoy protections and benefits similar to those afforded citizens. The distinctions in the treatment of citizens and aliens should focus primarily on their civic entitlements, such as the right to vote or hold certain government positions, rather than on their eligibility for public benefits in a period of adversity. Rigorous screening of applicants for permanent resident

alien status should be the primary vehicle for ensuring that those who arrive make solid contributions to their communities. Once here, absent some compelling evidence to the contrary, officials should presume that permanent resident aliens are capable of making responsible decisions about the opportunities and benefits offered in their new home. Whether or not the federal government is constitutionally required to adopt such policies, they seem better calculated as a matter of policy to integrate immigrants into American society.(86)

Latinos also must insist that policymakers recognize that the treatment of the undocumented and temporary workers is integrally linked to the life chances of permanent resident aliens and citizens. Some immigrant families are mixed; for instance, a household might include undocumented parents living with minor children, some of whom are undocumented and others of whom are citizens. These families in turn live in neighborhoods that include undocumented aliens, permanent resident aliens, and citizens.(87) Undocumented parents fearful of seeking medical care may imperil the health of their citizen children. If the undocumented do not have regular contact with community health service providers, they may not obtain treatment for communicable diseases or immunizations for their children, even if they are technically eligible for these services. As a result, they will place at risk not only other undocumented persons but also permanent resident aliens and citizens who are their neighbors, friends, and relatives.

Similarly, workplaces can be composed of undocumented workers as well as permanent resident aliens and citizens. Consequently, crackdowns on the undocumented can have untoward consequences for those legally present. As an example, when the Immigration and Naturalization Service uses factory raids to curtail the employment of undocumented workers, these actions burden not only the privacy and autonomy interests of those here illegally but also those of legally present Latinos who must repeatedly prove their status on demand.(88) Border Patrol officers who stop cars based in substantial part on whether the occupants "look Mexican" infringe on the freedom of movement of Latinos who are permanent resident aliens and citizens as well as those who are undocumented.(89)

Whenever the undocumented are punished in ethnic enclaves that include citizens and permanent resident aliens, Latinos legitimately in the United States also pay a price; they bear these externalities, although Congress has committed itself to integrating them fully and fairly into American life. Even if the United States Supreme Court upholds these law enforcement practices, responsible policymakers must recognize the ethnic tax that such tactics exact from legally present Latinos. The resulting dangers of ethnic division and strife should be weighed as a substantial and perhaps prohibitive cost of some of these "get tough" policies.(90)

Finally, Latinos must insist that policymakers acknowledge the interdependency of nations in a global economy. The rise of transnational Latino communities is one of the most visible challenges to a traditional account that was forged when the United States was better situated to insulate itself from international pressures. In a global economy, labor and capital flows have worldwide dimensions, as workers cross borders in search of higher-wage jobs, and jobs cross borders in search of lower-wage workers. Manufacturing enterprises have departed the United States for nations with cheap labor supplies, forcing many Americans to take positions in the service sector, often at relatively low wages and without benefits. Recent data suggest that the wage gap between the highest paid and lowest paid workers in this country is increasing. This trend is probably driven more by the global market for capital and labor than by domestic

immigration policy. Growing income inequality poses substantial dangers for a democracy founded on principles of political equality. Although the formal principle of "one-person, one-vote" remains a cherished tenet of the democratic process, the affluent can influence political outcomes through campaign contributions; as wealth becomes increasingly concentrated, the danger that elites will wield undue influence over political outcomes grows apace.(91)

Although it is tempting to blame immigrants for declining job opportunities, this policy analysis is both short-sighted and dangerous. Whatever steps the United States takes to restrict immigration, the dislocations created by a global economy are apt to continue. In addressing the impact of the global economy, officials will need creative solutions, not convenient scapegoats. Among these solutions are proposals for regional development and cooperation that reduce the disparities in wages and opportunity between the United States and nearby neighbors with cheap labor supplies. Another approach involves international efforts to organize and empower the labor force. This strategy recognizes that the conditions for labor in the United States are inextricably tied to those in other countries. A third tactic is to "retool America" by preparing the American labor force to offer skills and productivity that can not be matched in nations with poorly educated and unskilled workers. While these strategies are by no means an exhaustive list, they do suggest how officials can begin to redefine the policymaking process by linking immigration concerns to the rise of the global economy.

IV. CONCLUSION

As the Latino population continues to grow, officials are likely to pay increased attention to its unique needs and characteristics. With its heightened visibility will come weighty responsibilities. Demographic shifts will precipitate reconsideration of a civil rights model rooted in the historical experience of Blacks and Whites. In the process of reconsidering race relations, however, Latinos must be sensitive to the ways in which their reform agenda will affect those Americans least able to escape the strictures of racial labels. In the field of immigration, the Latino population can lead the way in alerting all Americans to global challenges that transcend national borders, problems that require imaginative solutions rather than nostalgic nostrums. If the Latino population prompts fresh perspectives on paradigms of opportunity, it may enable the United States to extricate itself from increasingly contested, traditional approaches to civil rights and immigration. Latinos may show that they do not fit models built on the past precisely because this burgeoning population represents the future.

Footnotes

* Professor of Law, University of California School of Law (Boalt Hall). A.B. 1978, Stanford University; J.D., Yale Law School, 1981. This paper is based on a speech presented at the First Annual LatCrit Conference in La Jolla, California on May 3, 1996; I would like to thank Frank Valdes, Laura Padilla, and Gloria Sandrino for arranging the financial support that made it possible for me to participate in this event. The paper draws on two earlier publications by the author: *Foreword--Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond*, 8 La Raza L.J. 1 (1995); and *Unrepresented*, 55 Representations 139 (1996).

2. *See* Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 Stan. L. Rev. 957, 958-59 (1995).

3. *See id*. at 960-61.

4. *See* Bureau of the Census, U.S. Dep't of Com., Series P25-1130, Population Projections of the United States by Age, Sex, Race, and Hispanic Origin: 1995 to 2050, at 13 (1996). By 2020, Native Americans will constitute .8% of the population. *See id*.
5. *See* Paul R. Campbell, Population Projections for States, by Age, Sex, Race, and Hispanic Origin: 1993 to 2020, at 17 (Current Population Reports, P25-1111, 1994).
6. George de Lama, *California: Troubled But Growing: Census Bureau Sees Increasing Diversity*, Chi. Trib., Apr. 29, 1994, at 1.
7. *See id*. *See also* Tony Bizjak, *Nearly 50 Million Californians Predicted in 2020*, Sacramento Bee, Apr. 20, 1994, at B1.
8. Cal. Const. art. III, ß 6 (1986).
9. *See* Rachel F. Moran, *Bilingual Education as a Status Conflict*, 75 Cal. L. Rev. 321, 332-33, 355-57 (1988).
10. *See* Joseph Torres, *The Language Crusade: English as Official Language*, 9 Hispanic 50 (1996). For a recent official English proposal in Congress, see Bill Emerson English Language Empowerment Act of 1997, H.R. 123, 105th Cong., 1st Sess. (1997).
11. The Initiative Statute -- Illegal Aliens -- Public Services, Verification and Reporting, Cal. Prop. 187, ß 1 (1994).
12. League of United Latin American Citizens v. Wilson, 908 F. Supp. 755 (C.D. Cal. 1995). *See generally* Kenneth B. Noble, *California Immigration Measure Faces Rocky Legal Path*, N.Y. Times, Nov. 11, 1994, at B20 (describing eight lawsuits filed shortly after Proposition 187's passage).
13. *See, e.g.*, Michael Doyle & Herbert A. Sample, *Clinton Proposes Big Boost to INS Budget; Wants Record $ 1 Billion Spending Increase to Fight Illegal Immigration*, S.F. Examiner, Feb. 7, 1995, at A8. *See also* Miguel Perez, *Illegal Dreams at the Border; Operation Hold the Line Reducing Flow of Undocumented Immigrants*, Record, Aug. 6, 1995, at 1 (Review and Outlook) (describing crackdown on border crossing in the aftermath of Proposition 187).
14. *See* Malcolm Garcia, *Give Me Your Healthy: The Immigration Crackdown Has Latinos Fleeing Mainstream Medicine*, S.F. Weekly, July 10, 1996; Lee Romne et al., *Child Cited as Prop. 187 Casualty Had Leukemia*, L.A. Times, Nov. 24, 1994, at A1; *see also* Efrain Hernandez, et al., *Point of Impact: Before It Has Even Come to a Vote, Proposition 187 Has Sent Shock Waves Through Central Los Angeles' Vast Immigrant Population and the Institutions that Provide for It*, L.A. Times, Nov. 6, 1994, at 14 (City Times); Steven Asch et al., *Does Fear of Immigration Authorities Deter Tuberculosis Patients From Seeking Care?*, 161 W. J. Med. 373 (Oct. 1994) (finding that in 1993, before Proposition 187 and its aftermath, fear of immigration authorities was rare but nevertheless was "the cultural variable most closely associated with symptomatic patients delaying care").
15. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, ßß 401, 411, 110 Stat. 2105 (1996). The in-kind services must be provided at the community level by a public or private non-profit agency without regard to a recipient's means; an example would be a soup kitchen. *Id*.
16. *See* Richard A. Boswell, *Restrictions on Non-Citizens' Access to Public Benefits: Flawed Premise, Unnecessary Response*, 42 UCLA L. Rev. 1475, 1487 (1995); Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration, Status, Ethnicity, Gender, and Class*, 42 UCLA L. Rev. 1509, 1528-29 (1995); Patrick J. McDonnell, *Welfare Overhaul Gets Mixed Reviews; Immigrants: Noncitizens Could Have Fared Worse in Governor's Plan, Analysts Say. But They Note That Blueprint Does Nothing to Mitigate Impact of U.S. Law*, L.A. Times, Jan. 11, 1997, at B1; Daniel Sneider, *California's Latest Weapon Against Illegal Aliens: US Welfare Reform*, Christian Science Monitor, Aug. 30, 1996, at 3; *Let Washington Pick Up Check; Immigration Issues Shouldn't Block Food Aid to Kids and Mothers*, L.A. Times, Dec. 3, 1996, at B6.
17. Pub. L. No. 104-208, 110 Stat. 3009, 104th Cong., 2d Sess. (1996).
18. *See* Personal Responsibility and Work Opportunity Reconciliation Act, *supra* note 14, ßß 402, 412. In addition, a sponsor's income can be deemed to be that of a permanent resident alien in determining eligibility for available benefits. *See id*. ßß 421-422. President Clinton objected to the provisions making permanent resident aliens ineligible for benefits but nevertheless signed the bill. *See* Statement of President William J. Clinton Upon Signing H.R. 3734, 32 Weekly Comp. Pres. Doc. 1487 (Aug. 26, 1996). *See generally* Patrick J. McDonnell, *Despite Legal Snags, Prop. 187 Reverberates*, L.A. Times, Nov. 8, 1995, at A1 (describing Proposition 187's role in prompting federal reform initiatives).
19. *See* Louis Freedberg, *Wilson Renews Push on Illegals: Federal Court Will be Asked to Reverse Ruling on Prop. 187*, S.F. Chron., Sept. 11, 1996, at A2.

20. *See* John H. Bunzel, *The Nation; Post-Proposition 209; The Question Remains: What Role for Race?*, L.A. Times, Dec. 8, 1996, at M2 (describing colorblind model underlying California's initiative and the resulting controversy over the propriety of affirmative action). *See also* Jerome Karabel & Lawrence Wallack, *Proponents of Prop. 209 Misled California Voters*, Christian Sci. Monitor, Dec. 5, 1996, at 19 (arguing that although California's initiative was designed to eliminate affirmative action throughout the state government, a substantial number of voters misunderstood the measure's impact).

21. Cathleen Decker, *Affirmative Action: Why Battle Erupted; Opponents Say Programs to Combat Bias Are Unfair Themselves; Backers Counter That Minorities Still Need an Edge to Overcome 300 Years of Discrimination*, L.A. Times, Feb. 19, 1995, at A1. *But cf.* Michael G. Wagner, *Painting a New Political Landscape in Brown and White*, L.A. Times, Dec. 10, 1996, at B2 (citing Professor Dale Maharidge's view that the backlash against affirmative action was a reaction to the growing Latino population in California).

22. *See* Richard D. Kahlenberg, *A Sensible Approach to Affirmative Action*, Wash. Post, Dec. 2, 1996, at A21.

23. *See* Coalition for Economic Equity v. Wilson, 946 F. Supp. 1480 (N.D. Cal. 1996) (preliminary injunction granted), *rev'd*, 122 F.3d 692 (9th Cir. 1997), *petition for cert. filed*, 66 U.S.L.W. 3171, No. 97-369 (U.S. Aug. 29, 1997).

24. *See* K.L. Billingsley, *Backers of Proposition 209 Put Cause on National Stage*, Washington Times, Dec. 30, 1996, at A1; Stephen Green, *Proposition 209 Inspires National Movement Against Preferences*, Copley News Serv., Feb. 12, 1997; Edward W. Lempinen, *Prop. 209 Takes National Stage; Uncertain Receptions Await Anti-Affirmative Action Drives*, S.F. Chron., Dec. 16, 1996, at A1; Adam Pertman, *National Battle Brewing on Rights; Calif. Vote, Suits Highlight Divisions*, Boston Globe, Nov. 17, 1996, at A1.

25. *See* Richard Kluger, Simple Justice: The History of *Brown v. Board of Education* and Black America's Struggle for Equality 3 - 238 (paperback ed. 1975); J. Harvie Wilkinson, From Brown to Bakke -- The Supreme Court and School Integration: 1954-1978, at 11-23 (paperback ed. 1976).

26. *See* Joel Williamson, New People: Miscegenation and Mulattoes in the United States 98 (1980).

27. *See* Sam Fulwood, *Finding a Niche; Powell's Experiences Highlight Complex Relationship Between African Americans and Caribbean Blacks*, Dallas Morning News, Dec. 3, 1995, at 1A; Sam Fulwood, *U.S. Blacks: A Divided Experience; Animosity Clouds Relations Between Caribbean Immigrants, Native-Born African Americans*, L.A. Times, Nov. 25, 1995, at A1; Orlando Patterson, *The Culture of Caution*, New Republic, Nov. 27, 1995, at 22.

28. *See, e.g.*, Keyes v. School District No. 1, 413 U.S. 189, 197-98 (1973) (analogizing Latinos' experience of discrimination to that of Blacks); Hernandez v. Texas, 347 U.S. 475, 478-80 (1954) (same). *See generally* Deborah Ramirez, *supra* note 1, at 957 (describing the expansion of civil rights statutes to cover groups other than Blacks and the difficulties engendered). The view that Latinos are an ethnic, rather than racial, group is consistent with their treatment on the United States Census. *See* Office of Management and Budget, Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting, 43 Fed. Reg. 19260 (1977) (indicating that Latinos can be of any race). For a description of how Latinos came to enjoy this unique status, see Harvey M. Choldin, *Statistics and Politics: The "Hispanic Issue" in the 1980 Census*, 23 Demography 403 (1986). Despite calls to reclassify Latinos as a race, the Census Bureau has yet to change its approach, although it is trying to remedy confusion among Latino respondents in answering questions about their race and ethnicity. *See* Steve A. Holmes, *Federal Government Is Urged to Rethink Its System of Racial Classifications*, N.Y. Times, July 8, 1994, at A9; *Hearings Before the Subcomm. On Census, Statistics and Postal Personnel of the House Committee on Post Office and Civil Service, Review of Federal Measurements of Race and Ethnicity*, 103d Cong., 1st Sess. 19 (1993) (testimony of William M. Hunt, Director, Federal Management Issues, General Government Division, U.S. General Accounting Office)

29. *See, e.g.*, McLaughlin v. Florida, 379 U.S. 184 (1964) (establishing strict scrutiny for racial classifications under the equal protection clause); Frontiero v. Richardson, 411 U.S. 677 (1973) (plurality opinion) (explaining why a trait's immutability increases the need for searching review under the equal protection clause).

30. For a discussion of the claim that Asian and Latino newcomers are more apt to be able to assimilate than Blacks, see Peter H. Schuck, *Alien Rumination*, 105 Yale L.J. 1963 (1996)(Book Review); Nathan Glazer, *Black and White After Thirty Years*, 121 Pub. Int. 61 (Fall 1995). For a view that the traditional process of assimilation is no longer straightforward in an increasingly racially and ethnically diverse society, see David E. Hayes-Bautista & Gregory Rodriguez, *California; Next Year, We Will All Be Minorities*, L.A. Times, Aug. 13, 1995, at M1.

31. Paul Brest & Miranda Oshige, *Affirmative Action for Whom?*, 47 Stan. L. Rev. 855 (1995).
32. *Id*. at 883-84.
33. *Id*. at 888.
34. *Id.*
35. *Id*. at 890.
36. David Montejano, Anglos and Mexicans in the Making of Texas, 1836-1986, at 29 (1987) (quoting Frederick Law Olmsted, A Journey Through Texas; or, a Saddle-Trip on the Southwestern Frontier 164 (1857)).
37. *Id*. at 181 (citing William Leonard, *Where Both Bullets and Ballots are Dangerous*, Survey, Oct. 28, 1916, at 86-87).
38. *Id*. at 158 (citing Max S. Handman, *Economic Reasons for the Coming of the Mexican Immigrant*, 35 Am. J. Soc. 601, 609-10 (1930)).
39. *See* David D. Smits, *"Squaw Men," "Half-Breeds," and Amalgamators: Late Nineteenth-Century Anglo-American Attitudes Toward Indian-White Race-Mixing*, 15 Am. Ind. Culture & Res. J. 29, 31 (1991) (citing Louis Agassiz, a renowned Harvard naturalist).
40. For a discussion of negative stereotyping of Latinos, see Thomas C. Wilson, *Cohort and Prejudice: Whites' Attitudes Toward Blacks, Hispanics, Jews, and Asians*, 60 Pub. Op. Q. 253, 260 (1996) ("Overall, unfavorable stereotypes are strongest for blacks and Hispanics and somewhat less strong for Asians. In contrast, stereotypes of Jews are on average relatively favorable . . . ."). For discussions of the disadvantages that Latinos face in education, employment, and housing, see Reynolds Farley, *Blacks, Hispanics, and White Ethnic Groups: Are Blacks Uniquely Disadvantaged?*, 80 Am. Econ. Rev. 237, 240 (1990) (noting that "Mexicans, American Natives, and blacks were at a double disadvantage" because "[t]heir characteristics [i.e., geographic locations, education, age, and marital status] limited their earnings, and their rates of return were also below average"); Charles Hirschman & Morrison G. Wong, *Socioeconomic Gains of Asian Americans, Blacks, and Hispanics: 1960-76*, 90 Am. J. Soc. 584, 593 (1984)(finding that Black and Latino men are the most disadvantaged in the labor market); Thomas J. Phelan & Mark Schneider, *Race, Ethnicity, and Class in American Suburbs*, 31 Urb. Affairs Rev. 659, 661, 664, 670-72, 673-74 (1996) (explaining that Latinos face increasing segregation; when they do live in suburban areas, they reside in less affluent suburbs than Whites, face declining property values while White property values are rising, and pay more taxes but receive less governmental assistance than White suburbanites).
41. *See* Nancy A. Denton & Douglas S. Massey, *Residential Segregation of Blacks, Hispanics, and Asians By Socioeconomic Status and Generation*, 69 Soc. Sci. Q. 797, 807 (1988) ("Previous research has indicated that Cubans and Mexicans experience substantial gains in spatial assimilation [i.e., residential integration] with rising status, but that Puerto Rican segregation is relatively impervious to changes in socioeconomic status."); Douglas S. Massey & Nancy A. Denton, *Trends in the Residential Segregation of Blacks, Hispanics, and Asians: 1970-1980*, 52 Am. Soc. Rev. 802, 821, (1987) (noting that the larger the proportion of Latinos who identify themselves as Black, the higher the degree of segregation from Whites); Phelan & Schneider, *supra* note 39, at 668 ("Of the largest Hispanic groups in the United States, Puerto Ricans are the least successful and share many of the same economic and social problem of blacks."); Cordelia W. Reimers, *Sources of the Family Income Differentials Among Hispanics, Blacks, and White Non-Hispanics*, 89 Am. J. Soc. 889, 891 (1984) (observing that the use of a single category for Latinos obscures significant differences in family income, depending on country of origin; Puerto Ricans have the lowest family income levels of all Latino groups); Marta Tienda, *Latinos and the American Pie: Can Latinos Achieve Economic Parity?*, 17 Hispanic J. Behav. Sci. 403, 412 (1995) ("[I]n 1960, Puerto Ricans were similar to Mexicans in terms of social, demographic, and economic characteristics, yet by 1980, they were more like Blacks in their family structure, male labor force-activity patterns, poverty status, and welfare participation of mother-only families.").
42. *See* Richard D. Alba et al., *Living With Crime: The Implications of Racial/Ethnic Differences in Suburban Location*, 73 Soc. Forces 395, 426 (1994) (Blacks reside in the most unsafe communities, Whites reside in the safest, and Latinos fall somewhere in between); Farley, *supra* note 39, at 239 (Latino men's earnings were intermediate between those of White ethnic groups and Blacks); Hirschman & Wong, *supra* note 39, at 596 (Blacks suffer the largest gap in occupational attainment compared to Whites, but there had been steady progress in narrowing the gap during the 1960s to 1976; Latinos face a smaller gap than Blacks, but there was no progress in narrowing the gap during the same period); Reimers, *supra* note 40, at 889 (Latino family income was 72% of White family income, while Black family income was 62% of White family income); Wilson, *supra* note 39, at 257 (Whites held stereotypes of Blacks that are more

negative than those of Latinos; Whites viewed their own racial group more favorably than either Blacks or Latinos).

43. *See* Farley, *supra* note 39, at 240; Marta Tienda & Ding-Tzann Lii, *Minority Concentration and Earnings Inequality: Blacks, Hispanics, and Asians Compared*, 93 Am. J. Soc. 141, 164 (1987).

44. *See* Marta Tienda & Ding-Tzann Lii, *supra* note 42, at 163-64.

45. *See* Richard D. Alba et al., *Neighborhood Change Under Conditions of Mass Immigration: The New York City Region, 1970-1990*, 29 Int'l. Migration Rev. 625, 653 (1995); Reynolds Farley & William H. Frey, *Changes in the Segregation of Whites From Blacks During the 1980s: Small Steps Toward a More Integrated Society*, 59 Am. Soc. Rev. 23, 41 (1994); William H. Frey & Reynolds Farley, *Latino, Asian, and Black Segregation in U.S. Metropolitan Areas: Are Multi-ethnic Metros Different?*, 33 Demography 35, 42-44, 47 (1996).

46. *See* Lawrence Bobo & Camille L. Zubrinsky, *Attitudes on Residential Integration: Perceived Status Differences, Mere In-Group Preference, or Racial Prejudice?*, 74 Soc. Forces 883, 904-05 (1996); John R. Logan et al., *Minority Access to White Suburbs: A Multiregional Comparison*, 74 Soc. Forces 851, 875 (1996); Massey & Denton, *supra* note 40, at 813-14, 821-23.

47. *See* Milton M. Gordon, Assimilation in American Life: The Role of Age, Religion, and National Origins 107-08 (paperback ed. 1964) (describing the acculturation of European immigrants seeking to improve their social and economic positions).

48. *See* 8 U.S.C. ßß 1182(a)(4), 1227(a)(5) (1994) (Supp. II 1996) (defining those who become public charges as aliens deportable within five years). *See generally* Johnson, *supra* note 15, at 1519-28 (describing historical and contemporary concerns that immigrants would receive government benefits and become public charges); Boswell, *supra* note 15, at 1481-87 (same).

49. *See* David A. Hollinger, Postethnic America: Beyond Multiculturalism 152 (1995) (describing how one-third of immigrants to United States returned to their home countries during the great migration of 1880 to 1924); Ruben J. Garcia, *Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law*, 17 Chicano-Latino L. Rev. 118, 122-29 (1995) (arguing that immigration law employs racially exclusionary measures); James F. Smith, *United States Immigration Policy -- A History of Prejudice and Economic Scapegoatism?: A Nation that Welcomes Immigrants? An Historical Examination of United States Immigration Policy*, 1 U.C. Davis J. Int'l L. & Pol'y 227 (1995) (arguing that the traditional account of immigration is belied by federal immigration policy that has historically limited entry by Latinos and Asians).

50. *See* 8 U.S.C. ß 1101(a)(15)(H) (1994) (establishing temporary work programs for those with special skills and farm laborers). *See generally* U.S. Commission on Immigration Reform, Temporary Migrants in the United States (B. Lindsay Lowell ed. 1996) (collecting essays describing a range of federal programs that extend temporary work permits and visas to foreign students, highly skilled workers in technology-related fields, and farm laborers); Philip L. Martin, *The Missing Bridge -- How Immigrant Networks Keep Americans Out of Dirty Jobs*, 14 Pop. & Env. 539, 547 (1993) (describing how immigrants occupy jobs that Americans refuse to take; as a result, these jobs remain isolated and undesirable); William R. Tamayo, *When the "Coloreds" Are Neither Black nor Citizens: The United States Civil Rights Movement and Global Migration*, 2 Asian L.J. 1, 6 (1995) (describing how civil rights movement left Mexican farm laborers in temporary work programs largely unprotected from massive deportation when demand for labor subsided).

51. *See* Douglas S. Massey et al., *An Evaluation of International Migration Theory: The North American Case*, 20 Pop. & Dev. Rev. 699, 705 (1994).

52. *See* Marilyn P. Davis, Mexican Voices/American Dreams 262 (paperback ed. 1990).

53. *Id.* at 321.

54. *See* Rafael Alarcon, Labor Migration from Mexico and Free Trade: Lessons from a Transnational Community 3, 18-21 (Chicano/Latino Policy Project Working Paper 1994); Massey et al., *supra* note 50, at 728-38.

55. *See* Hector Balcazar et al., *Interpretive Views on Hispanics' Perinatal Problems of Low Birth Weight and Prenatal Care*, 106 Pub. Health Rep. 420, 422-24 (1991) (describing the superior birth weight outcomes for Mexican-born women as opposed to native-born women of Mexican origin and hypothesizing that the differences are attributable to cultural protective factors); Jacqueline M. Golding & M. Audrey Burnam, *Immigration, Stress, and Depressive Symptoms in a Mexican-American Community*, 178 J. Nervous & Mental Disease 161, 169 (1990) (arguing that the higher rates of depression among native-born persons of Mexican origin than among foreign-born Mexican immigrants may stem from fact that immigrants focus on residents of Mexico as the standard for evaluating their success, while native-born people of Mexican origin look to Americans as the relevant standard for comparison); Elizabeth Hervey

Stephen et al., *Health of the Foreign-Born Population: United States, 1989-90,* 74 Advance Data 1, 4 (1994) (the health of Latino immigrants declines the longer they have resided in the United States); Paul D. Sorlie et al., *Mortality by Hispanic Status in the United States,* 270 JAMA 2464, 2468 (1993) (describing the "healthy migrant effect" that leads to higher mortality rates among native-born than foreign-born Latinos). For general discussions of the dangers of blocked assimilation, see Jorge Chapa, *The Question of Mexican-American Assimilation: Socioeconomic Parity or Underclass Formation?,* 35 Pub. Aff. Comment 1, 6 (1988); Herbert J. Gans, *Second-Generation Decline: Scenarios for the Economic and Ethnic Futures of the Post-1965 American Immigrants,* 15 Ethnic & Racial Stud. 173, 181-83, 188-89 (1992). For a collection of essays evaluating underclass formation in the Latino community, see generally In the Barrios: Latinos and the Underclass Debate (Joan Moore & Raquel Pinderhughes eds., 1993) (collecting essays on different Latino communities in various regions of the country to determine whether underclass formation is occurring in the same way as it has for Blacks).

56. Peter Brimelow, Alien Nation: Common Sense About America's Immigration Disaster (1995).

57. *Id.* at 218.

58. *Id.*

59. *Id.* at 218, 264.

60. *See Immigration Control and Legalization Amendments: Hearings on H.R. 3080 Before the Subcomm. on Immigration, Refugees, and International Law of the Comm. on the Judiciary,* 99th Cong., 1st Sess. 113, 123, 131-32 (1985) (statements by Raul Yzaguirre, President, National Council of La Raza; Richard P. Fajardo, Acting Association Counsel, Mexican American Legal Defense and Educational Fund; and Joseph M. Trevin, Executive Director, League of United Latin American Citizens).

61. *See* Dick Kirschten, *Not Black-and-White*, Nat'l J., Mar. 2, 1991, at 496; Carlos Sanchez, *Hispanic Groups, Labor Split in Rights Coalition,* Wash. Post, May 13, 1990, at A12.

62. *See* Immigration Reform and Control Act, Pub. L. No. 99-603, ß 101, 101 Stat. 3359, 3360-74 (1986) (codified as amended at 8 U.S.C. ß 1324a (Supp. II 1996)).

63. *See* General Accounting Office, Immigration Reform: Employer Sanctions and the Question of Discrimination 38, 71-72 (1990).

64. *See* Kirschten, *supra* note 60, at 496; Sanchez, *supra* note 60, at A12; Hector Tobar, *NAACP Calls for End to Employer Sanctions,* L.A. Times, July 12, 1990, at B1, B8. *See generally* Tamayo, *supra* note 49, at 18-20.

65. *See* Norman Matloff, *How Immigration Harms Minorities,* 124 Pub. Int. 61 (1996)*;* Mary C. Waters & Karl Eschbach, *Immigration and Ethnic and Racial Inequality in the United States,* 21 Ann. Rev. Soc. 419, 435-41 (1995). *See also* Ira N. Gang & Francisco I. Rivera-Batiz, *Labor Market Effects of Immigration in the United States and Europe: Substitution vs. Complementarity,* 7 J. Pop. Econ. 157, 158-60, (1994) (reviewing debate over whether immigrants displace native-born workers and concluding that any displacement effects in the United States are slight; those with skills similar to those of immigrants suffer wage declines, while those with skills different from those of immigrants enjoy wage gains)*;* David E. Simcox, *Immigration and Free Trade With Mexico: Protecting American Workers Against Double Jeopardy,* 14 Pop. & Env. 159, 166-69 (1992) (evaluating impact of free trade and Mexican migration on semi-skilled American workers); Julian L. Simon, *The Economic Consequences of Immigration* 213 (1989) (describing displacement effects on less skilled workers).

66. *See* Roger Waldinger, Still the Promised City?: African Americans and New Immigrants in Post-Industrial New York 165-68 (1996); Martin, *supra* note 49, at 546-48; Waters & Eschbach, *supra* note 64, at 440-41.

67. *See* Thomas J. Espenshade, *Unauthorized Immigration to the United States,* 21 Ann. Rev. Soc. 195, 207-09 (1995); Michael J. Greenwood et al., *The Short-Run and Long-Run Factor-Market Consequences of Immigration to the United States,* 36 J. Regional Sci. 43, 64 (1996); Massey et al., *supra* note 50, at 715-22.

68. *See* Leah Haus, *Openings in the Wall: Transnational Migrants, Labor Unions, and U.S. Immigration Policy,* 49 Int. Org. 285, 293-95 (1995).

69. *See* Byran O. Jackson, Elisabeth R. Gerber & Bruce E. Cain, *Coalitional Prospects in a Multi-Racial Society: African-American Attitudes Toward Other Minority Groups,* 47 Pol. Res. Q. 277, 291 (1994)*;* Kent L. Tedin & Richard W. Murray, *Support for Biracial Political Coalitions among Blacks and Hispanics,* 75 Soc. Sci. Q. 772, 780 (1994).

70. *See* Waldinger, *supra* note 65, at 249-53 (describing the serious underrepresentation of Latinos in New York City municipal employment, the significant role that municipal employment has played in building a Black middle class, and the tensions between Blacks and Latinos that result from their disparate access to these jobs); Bill McAllister, *Postal Service Record in Recruiting Hispanics 'Disappointing,' Report Says,*

Wash. Post, Nov. 27, 1996, at A17; Peter Skerry, *The Black Alienation*, New Republic, Jan. 30, 1995, at 19; Jonathan Tilove, *Minorities Fighting Each Other for Power; Many Ready to Abandon Idea of Rainbow Coalitions*, Times-Picayune, Dec. 8, 1996, at A20; Frank Trejo, *Report: Blacks, Hispanics Poised to Shape City Agenda*, Dallas Morning News, Nov. 4, 1995, at 39A; Armando Villafranca, *Political Unity of Black, Hispanic Houstonians Untapped*, Hous. Chron., June 30, 1996, at A29. *See also* Paula D. McClain, *The Changing Dynamics of Urban Politics: Black and Hispanic Municipal Employment -- Is There Competition?*, 55 J. Pol. 399 (1993) (finding that competition in municipal employment appears as the size of the Black workforce grows).

71. *See* Robert L. Jackson, *Rights Panel Voices Concerns on Prop. 187; Immigration: Initiatives Could Lead to Harassment of Latinos, Commission Members Say*, L.A. Times, Dec. 17, 1994, at A27.

72. *See supra* notes 40-42 and accompanying text.

73. *See* Rachel F. Moran, *Milo's Miracle*, 29 Conn. L. Rev. 1079, 1100-14 (1997) (describing the increasing segregation of Latinos in low-income, urban areas with the attendant negative consequences for their education and employment).

74. *See supra* notes 40-43 and accompanying text.

75. *See* Sarah V. Wayland, *Citizenship and Incorporation: How Nation-States Respond to the Challenges of Migration*, 20 Fletcher F. World Aff. 35, 44-46 (1996) (noting rising interest in cultural pluralism as a form of nation-building in North America and explaining the liberal critique that particularism challenges democratic traditions of universalism). For an example of these tensions in the context of bilingual education policy, see Rachel F. Moran, *The Politics of Federal Intervention in Bilingual Education*, 76 Cal. L. Rev. 1249, 1252-53, 1256-57, 1261-63, 1301-02 (1988); Moran, *supra* note 8, at 321, 326-33, 339-41, 346-50, 353-57, 360-62.

76. *See* Ian Haney López, *The Social Construction of Race*, 29 Harv. C.R.-C.L. L. Rev. 1 (1994).

77. *See* Luis Angel Toro, *A People Distinct From Others: Race and Identity in Federal Indian Law and the Hispanic Classification in OMB Directive No. 15*, 26 Tex. Tech. L. Rev. 1219, 1221-22 (1995).

78. *See* Richard Delgado, The Rodrigo Chronicles: Conversations About America and Race 24 (1995) (questioning utility of theories about the social construction of race).

79. David Lauter, *Where to Draw the Lines?; Changes in American Society Make It Trickier to Define the Beneficiaries and Goals of Affirmative Action; ThirtyYears Ago, Determining Who Was a Minority Was Less Complex*, L.A. Times, Mar. 28, 1995, at A1.

80. For some preliminary evidence that a racial divide is emerging in the Latino community, see Nancy A. Denton & Douglas S. Massey, *Racial Identity Among Caribbean Hispanics: The Effect of Double Minority Status on Residential Segregation*, 54 Am. Soc. Rev. 790, 798-805 (1989) (finding that Latinos who self-identify as White have more contact with non-Hispanic Whites than with Latinos who self-identify as Black).

81. *See* Stephen H. Legomsky, *Immigration Law and the Principle of Plenary Congressional Power*, 1984 Sup. Ct. Rev. 255 (articulating classical model of judicial deference to legislative and administrative branches in immigration law); Peter H. Schuck, *The Transformation of Immigration Law*, 84 Colum. L. Rev. 1, 14-18 (1984) (same). *Cf.* Hiroshi Motomura, *Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation*, 100 Yale L.J. 545 (1990) (arguing that courts have shown an increased willingness to scrutinize immigration decisions under statutory authority); Hiroshi Motomura, *The Curious Evolution of Immigration Law: Procedural Surrogates for Substantive Constitutional Rights*, 92 Colum. L. Rev. 1625 (1992) (same). At least one empirical study, however, suggests that courts have not grown more protective of immigrant rights in recent years. *See* Peter H. Schuck & Theodore H. Wang, *Continuity and Change: Patterns of Immigration Litigation in the Courts, 1979-1990*, 45 Stan. L. Rev. 115, 176 (1992).

82. *See* Espenshade, *supra* note 66, at 211-12; Frank del Olmo, *Human Behavior Skews Best Intentions; Immigration: The Illegal Population Surges Despite the 'Solutions.' Patience May Be Our Best Response*, L.A. Times, Feb. 16, 1997, at M5 ("I've long thought that a modern version of the World War II-era bracero program, allowing Mexicans to work in this country legally, but as migrants rather than immigrants, would be in the best interest of both countries."); Frank del Olmo, *Perspective on Immigration; Hold Off on Guest Worker Welcome; Congress Is Being Rushed Into a 'Reform' that Serves the Farm Lobby But Works Against the Nation's Interests*, L.A. Times, Feb. 18, 1996, at M5 (criticizing a guest worker program focused on agricultural labor and noting that "[o]ne of the reasons the bracero program was discredited is that it was heavily slanted in favor of farmers" with resulting abuse and exploitation because of the farmworkers' limited bargaining power). For an example of a proposed guest worker statute to deal with the problem of large numbers of undocumented immigrants, see Marjorie E. Powell, *Resolving*

the Problem of Undocumented Workers in American Society: A Model Guest Worker Statute, 17 U. Mich. J. L. Ref. 297 (1984) (arguing, among other things, that statutes must ensure worker mobility, flexible time periods for stays in the United States, and full workplace protections, including the right to unionize).

83. *See* Thomas M. Franck, *Clan and Superclan: Loyalty, Identity and Community in Law and Practice*, 90 Am. J. Int'l L. 359, 378-82 (1996). *See also* T. Alexander Aleinikoff, *Theories of Loss of Citizenship*, 84 Mich. L. Rev. 1471, 1475-84 (1986).

84. *See* Gerald L. Neuman, *Justifying U.S. Naturalization Policies*, 35 Va. J. Int'l L. 237, 268-69 (1994).

85. *See id.* at 270-77 (offering justifications for the renunciation requirement based on republicanism, liberalism, and communitarianism). *See also* Stephen H. Legomsky, *Why Citizenship?*, 35 Va. J. Int'l L. 279, 280-82, 295-98 (1994) (questioning whether philosophical goals of immigration law are promoted by renunciation requirement); David A. Martin, *The Civic Republican Ideal for Citizenship, and for Our Common Life*, 35 Va. J. Int'l L. 301, 302-18 (1994) (arguing that the republican ideals that underlie naturalization policy could be a healthy antidote to the liberalism that has come to dominate American policymaking).

86. *See* Wayland, *supra* note 74, at 38-39 (noting that permanent noncitizen status muddies the distinction between citizen and foreigner; the longer migrants reside in the host country, the fewer restrictions they face and the greater the rights they enjoy).

87. *See* U.S. Commission on Immigration Reform, U.S. Immigration Policy: Restoring Credibility 122-26 (1994) (noting hardships to mixed families of denying benefits to undocumented but endorsing policy anyway); Johnson, *supra* note 15, at 1573; Bill Piatt, *Born as Second Class Citizens in the U.S.A.: Children of Undocumented Parents*, 63 Notre Dame L. Rev. 35, 36 (1988).

88. *See* Immigration and Naturalization Service v. Delgado, 466 U.S. 210, 213 n.1, 218-21 (1984) (suit brought by permanent resident aliens and citizens alleging that factory raids by the Immigration and Naturalization Service violated their Fourth Amendment protection against search and seizure; held that no seizure took place because the workers remained free to move about the workplace and brief questioning about immigration status did not amount to a detention). *See also* David K. Chan, *INS Factory Raids as Nondetentive Seizures*, 95 Yale L.J. 767 (1986) (arguing that Court should have required individualized suspicion that a worker was undocumented before permitting questioning under the Fourth Amendment).

89. *See* United States v. Brignoni-Ponce, 422 U.S. 873, 884-87 (1975) (roving stops by the Border Patrol based solely on Mexican appearance are impermissible under the Fourth Amendment; however, Mexican appearance is a relevant factor in deciding whether to stop a vehicle). *Cf.* United States v. Martinez-Fuerte, 428 U.S. 543, 563 (1976) (secondary referrals to an inspection area based largely on Mexican appearance at permanent checkpoints operated by the Border Patrol do not violate the Fourth Amendment). *See generally* Edwin Harwood, *Arrests Without Warrant: The Legal and Organizational Environment of Immigration Law Enforcement*, 17 U.C. Davis. L. Rev. 505, 526-33 (1984) (noting ambiguity of factors for assessing alienage, the high rate of error in identifying potentially undocumented aliens for questioning, and the unpleasant encounters with legally present persons of Mexican origin that result).

90. *See* Immigration and Naturalization Service v. Delgado, 466 U.S. at 233-35 (Brennan and Marshall, JJ., dissenting) (noting burden on citizens and permanent resident aliens imposed by factory raids conducted without significant Fourth Amendment constraints); United States v. Martinez-Fuerte, 428 U.S. at 571-73 (Brennan and Marshall, JJ., dissenting) ("That deep resentment will be stirred by a sense of unfair discrimination is not difficult to foresee.").

91. *See* Helen Dewar, *House Rejects Republican Proposal to Change Campaign Finance System*, Wash. Post, July 26, 1996, at A10 (describing failed efforts to limit influence of wealthy and special interests over political process); *Campaign Reform Bill Dies Again; 68 in House GOP Defeat Gingrich Plan*, Chi. Trib., July 26, 1996, at 6 (same). For a general discussion of the ways in which a global economy aggravates wage differentials between highly skilled and semi-skilled or unskilled workers and thus alters American traditions, see Michael S. Knoll, *Perchance to Dream: The Global Economy and the American Dream*, 66 S. Cal. L. Rev. 1599, 1604, 1614-15 (1993).

9. Kevin R. Johnson, [*] *Some Thoughts on the Future of Latino Legal Scholarship,* 2 HARV. LATINO L. REV. 101 (1997)

INTRODUCTION

The First Annual LatCrit conference in La Jolla, California was devoted to the thought-provoking exploration of Latino Critical theory.[(2)] My contribution to this ongoing dialogue, reflecting circumspection about the possibility of formulating a coherent "Latino"[(3)] vision, considers the formidable challenges posed by this endeavor. Although identifying some hurdles that must be overcome, this article contends that there is a distinct need for the development of Latino legal scholarship, separate and independent though similar in outlook to Critical Race theory.[(4)] Indeed, the fledgling intellectual movement known as LatCrit theory, as part of a body of Latino legal scholarship, promises to play an important role in the future analysis of law and race relations in the United States. To achieve its potential, LatCrit theory must build on the work of Latinos and others in legal and nonlegal disciplines critical of the status quo as well as on the teachings of Critical Race Theory.

One might ask at the outset an eminently reasonable question. Why LatCrit theory? The response is simple. A significant void currently exists in modern legal scholarship.[(5)] Issues that implicate the interests of the Latino community often are not discussed, are briefly alluded to, or find themselves marginalized. Particularly Latino concerns often are submerged in the complexities of legalisms surrounding civil rights doctrine. Consequently, Latinos are simply forgotten in the public discourse of civil rights issues in the United States. This generally has been the case in traditional civil rights discourse and Critical Race theory scholarship, which focuses generally on the critical study of race relations in the United States. In the end, improving the status of Latinos in the United States all too frequently rests on the hope of riding the proverbial coattails of generic race relations literature. The absence of commentary by legal academics on issues of particular importance to Latinos demonstrates the dire need for analysis of law and policy from a distinctively Latino perspective.[(6)]

An important first step for LatCrit theory is to focus on core issues on which shared experiences breed common interests among Latinos. One characteristic of the Latino experience in the United States is especially significant. The treatment of Latinos as "foreigners," permanent outsiders to the national community, is a common experience among Latinos. It may serve as a rallying point around which consensus among Latinos on an agenda for change may be built.

The task for LatCrit theory is formidable, however. As is true to some extent for African Americans, Asian Americans, and other minority groups in the United States,[(7)] a great deal of diversity exists among Latinos on characteristics ranging from national origin to political views to physical appearance.[(8)] Although this diversity should not be

permitted to splinter the community into impotence, it cannot be ignored. In the past, the heterogeneous components of the loose-knit Latino community posed difficulties in building solid coalitions. To overcome the impediments created by Latino diversity, the focus must be on common issues of importance.

There are other challenges as well. My working assumption is that Latinos, with a distinctive voice and perspective,[(9)] will serve as the core for the development of Latino legal scholarship. Thus, the primary burden will be on the relatively few Latino law professors.[(10)] Strong institutional forces, however, make it difficult for these professors to write on civil rights issues, much less with a critical voice.[(11)] Nor are all Latino law professors interested in writing about issues of race.

These hurdles hopefully will not prove insurmountable. LatCrit theory has the potential of ensuring that Latino voices are not forgotten or marginalized. Important issues to Latinos must be given visibility and analyzed. With the benefit of such scrutiny, legal theory must be reconstructed. Two obvious areas for much-needed inquiry are immigration and civil rights.[(12)] Both issues touch on the all-important question of the assimilation of Latinos into the mainstream. Still other areas ripe for analysis may prove to be more controversial, such as the role of religion in the construction of Latino identity and the existence of racism, misogyny, and homophobia among Latinos.

Many of the observations in this article apply well beyond LatCrit theory. Academic discussion, even if not necessarily from a "critical" bent, of issues of importance to Latinos serves valuable functions. Scholarship focusing on issues of particular concern to Latinos heightens awareness of the issues and the fact that Latinos exist in U.S. society. Although examination of these issues has begun,[(13)] much more is necessary.

This article recognizes the need for Latino legal scholarship. The initial task for such scholarship is to increase the visibility of legal issues of special significance to the Latino community. In so doing, a Latino-focused scholarship must avoid being defeated by the diversity among Latinos that threatens to dismantle the nascent movement. By identifying and focusing on the common threads to the Latino experience in the United States and analyzing the specific issues of relevance to the Latino community, Latino legal scholarship may fulfill its goals.

With these impediments in mind, this article considers the future of Latino legal scholarship. Part I analyzes the need for scholarship focusing on the needs and concerns of the Latino community. Part II analyzes the differences and commonalities of the Latino experience in the United States and their relevance to Latino legal scholarship. Part III offers some thoughts on the first steps for scholarship focusing on Latino issues as we approach the twenty-first century.

I. LATINOS: SELECTIVELY "FORGOTTEN AMERICANS"

Public discussion of Latinos in the United States generally focuses on culture and language. Latino civil rights demands often take a back seat to the demands of other racial minorities, particularly African Americans. In this all-important realm, Latinos are often lost if not forgotten. This also proves true in legal scholarship. Legal analysis of race relations generally relegates Latinos to the sidelines.

A. Invisibility in Public Discourse

To borrow from sociologist Julian Samora's book title, Latinos are the "forgotten Americans."[(14)] In that vein, Juan Perea has aptly described Latinos as "invisible" features of the American landscape.[(15)] The silent, though subtle, exclusion of Latinos from dominant society continues despite the dramatic increase in Latinos as a proportion of the U.S. population over the last third of the twentieth century.[(16)]

At the same time, however, the unqualified assertion that Latinos are forgotten or invisible is simplistic. The truth of the matter is that Latinos are only selectively forgotten. Few can spend time in California, Arizona, New Mexico, and Texas, for example, without experiencing the strong influence that Mexico in particular and Latin America generally has had on the region's social, political, cultural, and economic development. This should not be surprising in light of the fact that large parts of the Southwest were once part of Mexico. Many, for example, revel in Mexican food and its many regional variations. The architecture of the Southwest, as well as its art and culture, reveals a distinctively Mexican influence. Linguistically, the prevalence of Spanish, exemplified by the names of states and cities such as California, Colorado, New Mexico, Los Angeles, San Diego, San Francisco, Sante Fe, El Paso, and San Antonio, demonstrates the impact of our southern neighbor. Food such as tortillas, chiles, and salsa, show the Mexican influence on the American palate.[(17)]

At the same time, Latinos often are conveniently omitted from serious public discussion of civil rights, race relations, and related subjects in the United States.[(18)] This is true even in the Southwest where the Mexican-American presence is unmistakable. Evidence of this invisibility can be seen by looking at my hometown of Los Angeles, one of the great metropolises of the world and the home to more than three million Latinos, three-quarters of whom are of Mexican ancestry.[(19)] In Los Angeles, the area east of the downtown -- from East Los Angeles[(20)] to Montebello to the San Gabriel Valley -- where a great many Latinos live, often is invisible in the eyes of the regional newspaper of record, the Los Angeles Times. "Los Angeles" as it is intellectually constructed[(21)] extends from the civic center west to the "nicer" part of the city -- to the Westside, including Beverly Hills, Century City, Marina del Rey and Santa Monica. (The irony of the Spanish names of the last two cities should not be missed.) When East Los Angeles is mentioned in the news, it generally is a story about crime, gangs, and the like.[(22)]

When issues of race relations arise in connection with Los Angeles, the focal point of discussion shifts geographically from the Westside not East, but to South Central Los Angeles, which is often considered to be predominantly African American. This results from the popular conception that the African American community is at the center of the struggle for civil rights in Los Angeles.[(23)] Consider the unrest in South Central Los Angeles following the May 1992 acquittal of the police officers videotaped beating Rodney King, an African American. It frequently went ignored, first in the mass media and later in academic commentary, that more than 50% of the population in the area was Latino, including a significant Central American immigrant population.[(24)] Latino invisibility in this high profile media event is exemplified by the general failure of the media to highlight that, in the wake of the unrest, the federal government successfully stepped up efforts to deport and in fact deported noncitizens, almost all of Latin American ancestry.[(25)]

This does not mean to suggest that the media's portrayal of African American civil rights issues is anything less than problematic. Negative images of African Americans, as criminals, welfare mothers, and drug addicts, abound in the media's

coverage of political debate on important social questions.[26] Latinos unquestionably do not want to be portrayed in this way. However, the civil rights grievances of African Americans at least are acknowledged. That, at a minimum, is what Latinos want. A change is necessary to the popular conception that civil rights issues are exclusively black-white ones.

B. Invisibility in Legal Discourse

As in the public discussion of civil rights issues, Latinos also are frequently forgotten in traditional legal discourse. Relatively few academic works focus on the status of Latinos in the United States or on issues of special importance to the Latino community. Rather, civil rights concerns traditionally have been seen through the black-white paradigm, a longstanding feature of race relations discourse in this country.[27] Traditional constitutional law doctrine, for example, frequently assumes that civil rights issues affect only two "races." Although efforts have been made to remedy this deficiency,[28] much remains to be done.

The black-white focus has prevailed in outsider jurisprudence as well as traditional civil rights scholarship. Until relatively recently, "African American theorists have . . . dominated [Critical Race Theory], and African American experiences have been taken as a paradigm for the experiences of all people of color."[29] The predominance of treating race issues as black-white conflict contributed to the call for the first annual LatCrit conference, where a group of Latino, as well as other minorities and kindred spirits thinking critically about issues of race, came together to explore changing the tenor of the dialogue.[30]

My contention is not that the study of African American civil rights issues is unnecessary. Indeed, analysis of subordination of the African American community is essential to a full understanding of racial subordination in the United States. This nation's history is deeply and forever scarred by the enslavement of African Americans, which affects virtually every aspect of American social life to this day. Nevertheless, race relation always has been much more complicated than the black-white dichotomy would suggest. The long history of subordination of Asian Americans, Mexican-Americans, Native Americans, and other minorities in the United States demonstrates the unfortunate richness of racial subordination in this country.[31] Moreover, migration trends during the twentieth century have resulted in great increases in the number of persons immigrating from Asia and Latin America to the United States.[32] As a result, the black-white paradigm will become all the more ill-suited in the future for analyzing issues of race relations in this country.[33]

The complexity of race relations in the modern United States increases exponentially once one recognizes the racial diversity in society as a whole. A multicultural society makes race relations a multilateral, as opposed to a bilateral, issue. Unfortunately, such complexities often are missed by the black-white focus on civil rights issues.

C. Why Latinos' Civil Rights Concerns Deserve Individual Attention

In analyzing issues of race, we must not over-"essentialize" the experiences of all racial minorities and treat them as fungible, homogeneous, and unitary.[34] Importantly, different subordinated communities have somewhat different views on important civil

rights issues. Such perspectives are animated by the historical experiences, needs, and goals of the particular community.

The analysis of race relations exclusively in terms of black-white conflict is troubling at a most fundamental level because not all people of color have been subordinated in identical ways. The experience of Latinos in the United States, for example, differs significantly from that of African Americans. Specifically, the history of the Southwest reflects how Mexican-Americans and Mexican immigrants often have been treated as a different "race" of people as a means to ensure the availability of a cheap source of agricultural labor.[(35)] The racial and class hierarchy peculiar to Mexican-Americans in the Southwest differs in quality and kind from the institutionalized slavery system, followed by Jim Crow, which subjugated African Americans.[(36)] One might suspect that the differences between the systems of subordination demand different strategies for dismantling.[(37)]

In light of this specific history, Latinos have civil rights concerns that differ from other minorities in a number of areas and reflect the distinctive Latino experience in the United States.

1. Language

Latinos, unlike African Americans, suffer from being classified as "foreigners."[(38)] Many Latinos are disparately impacted by the disfavored status of the "foreign" language of Spanish in the United States.[(39)] For example, the English-only initiative passed by Arizona voters[(40)] requires government employees in the state of Arizona, with a significant Spanish-speaking population, to conduct government business exclusively in English. Needless to say, many, if not most, of the persons in Arizona adversely affected by the initiative will be of Mexican ancestry.[(41)]

The Supreme Court has not been particularly sensitive to the disparate impacts of language rules. In *Hernandez v. New York*,[(42)] for example, the Court allowed prospective Latino jurors to be stricken from serving on a jury deciding the fate of a Latino defendant on the grounds that they spoke Spanish.[(43)] The Court accepted as "race-neutral," and therefore legitimate, the prosecutor's fear that these Latinos would listen to the Spanish-speaking witnesses rather than to the official court interpreter.

The importance of Spanish to the Latino community affects race relations in other ways as well. Bilingual education has been an issue of great importance to Latino activists.[(44)] The African American community has, for obvious reasons, been less concerned with this issue.[(45)] Consequently, while Latino activists have successfully pursued bilingual education programs in the public schools, African American activists have championed desegregation efforts exemplified by the famous *Brown v. Board of Education*.[(46)]

2. Immigration

Immigration enforcement, another issue important to the Latino experience in the United States, is of much less relevance to the African American community. Latinos tend to be concerned with the excesses of immigration enforcement,[(47)] while African Americans as a group are less so. This results in no small part from the simple fact that heightened immigration enforcement efforts often adversely affect people thought to "look foreign,"[(48)] with many Latinos falling into this category.

In addition, due to perceived competition in the job market with low wage undocumented labor, some African Americans desire more aggressive enforcement of the immigration laws.[(49)] Conflict between African American and Latino[(50)] and Asian[(51)] immigrant communities suggest cleavages between these communities on immigration. Adding to the complexities, Latinos share common concerns with Asian Americans on some issues, such as bilingual education and immigration, but differ on other controversial ones, most notably affirmative action.[(52)]

3. National Origin Ties

National origin ties represent another difference between the Latino and African American communities. While African Americans generally lack allegiance to a particular nation (which is understandable in light of the fact that many of their ancestors were forcibly brought to the United States centuries ago), many Latinos, for a variety or reasons including geography, have sympathetic, if not close, ties with their nation of origin or that of their ancestors.[(53)] These ties have made the political assimilation of Latinos more difficult than for other racial minorities.[(54)]

* * *

In sum, traditional and critical race discourse on civil rights matters frequently ignores Latinos. The spotlight ordinarily is on Anglo/African American relations. This is true despite the fact that the Latino community often suffers the painful and lingering stigma of foreign-ness and, despite the fact that population projections show that Latinos in the not-so-distant future will comprise the largest minority group in the United States. Because Latinos may have different perspectives from other groups,[(55)] Latino legal scholarship generally holds the promise of bringing to the fore the differences between their experiences and interests and those of other racial minorities.

II. COMMONALITY AND DIFFERENCE AMONG LATINOS: THE CHALLENGE FOR LATINO LEGAL SCHOLARSHIP

Latino legal scholarship must walk a tightrope. To be successful, it must draw on the experiences of Latinos in an attempt to articulate a coherent vision for change. At the same time, Latino legal scholarship must not oversimplify the heterogeneous experiences of the many different groups that constitute the Latino community in the United States.

A. Commonality: Latinos as Foreigners Who "Refuse" to Assimilate

Latinos critical of the status quo must, to borrow Angela Harris's words, strive for a "jurisprudence of reconstruction."[(56)] To do so, commonalities of interest among Latinos must be identified and explored. An important commonality of the Latino experience in the United States is that dominant society views Latinos, and the differences that they bring, as something "foreign" to the Anglo-Saxon core.[(57)] This perception applies to citizens as well as to immigrants, to temporary visitors as well as to permanent domiciliaries. This, of course, is not simply a Latino concern, but one shared by other racial minorities in the United States composed of significant immigrant populations, such as Asian Americans.[(58)]

1. Citizens as "Foreigners"

The "Latino-as-foreigner" phenomenon is exemplified by the treatment afforded Luis Gutierrez, a member of Congress, in the spring of 1996. A police officer accused him of presenting false congressional credentials as he attempted to enter the nation's Capitol after attending a tribute to an all-Puerto Rican infantry unit that fought in the Korean War. One officer told Gutierrez, in the presence of his daughter and guests, that he should go back to where he came from, a curious command to direct at a born-and-bred U.S. citizen.[(59)] Although embarrassed, Gutierrez, as part of the political elite, was able to quickly straighten matters out when another police officer recognized him and intervened.[(60)] Though suspended, the police officer guilty of making the slur soon was back at work.[(61)] Unfortunately, similar incidents occur regularly to Latinos with little, if any, recourse available.[(62)]

Peter Brimelow's book *Alien Nation: Common Sense About America's Immigration Disaster* illustrates how Latinos are viewed as foreign and therefore undesirable.[(63)] Although ostensibly concerned with immigration from Latin America, Brimelow expresses more general concern about the "Hispanic" influence in the United States and accuses the Latino leadership of creating an artificial "Hispanic identity" for illegitimate purposes, namely to reap the benefits of affirmative action.[(64)] In essence, Brimelow's argument is that, because all Hispanics are "foreign" to this nation's Anglo-Saxon roots, drastic efforts should be taken to keep any more of "them" out of the country.[(65)]

Persons of Latin American ancestry also are frequently charged with a related crime -- failure to assimilate -- that is sometimes used to rationalize their relatively low socioeconomic status in the United States.[(66)] This charge continues to be made even though Latinos are assimilating to some extent into the mainstream.[(67)] Moreover, the claims that Latinos fail to assimilate are part of a historical pattern of blaming the outsider for deep social problems. Earlier in U.S. history, claims that persons of Chinese and Japanese ancestry failed to assimilate were employed to justify laws prohibiting Chinese immigration and Japanese internment.[(68)] Blaming immigrants of color for the hardships they suffer is similar to the once-popular claim that African American poverty results from a "culture of poverty," a dubious theory championed by some social scientists in the 1970s.[(69)]

By stigmatizing Latinos as "foreigners" and pressuring them to assimilate, dominant society has affected the development of Latino identity, at times in oppressive ways. In attempts to assimilate and become less foreign, some Latinos have Anglicized their Spanish surnames, declined to teach Spanish to their children, and married Anglos.[(70)] Some Mexican-Americans in the Southwest have gone so far as to claim they were "Spanish," thereby denying their Mexican ancestry and attempting to "pass" as white.[(71)]

Because one uniting characteristic for Latinos is dominant society's view that they differ from the Anglo-Saxon ideal, time and effort would wisely be devoted by Latino scholars and activists in combating the dominant view that Latinos are "foreigners." As occurred with certain groups, such as Jewish immigrants who came from nations all over Europe, Latinos must realize, if possible, that common interests outweigh the differences between national origin groups.[(72)] Anti-Semitism in American culture contributed to the forging of a pan-Jewish identity.[(73)] Similar pressures might well facilitate creation of a pan-Latino identity.

In focusing on combating dominant society's view that Latinos are foreigners, exploration of Latino social identity is necessary. Some common characteristics of that identity -- ethnicity, the Spanish language, religious affiliation (Catholicism), and family -- all differ from the Anglo-Saxon norm, and contribute to the treatment of Latinos as foreigners.[(74)] The dynamics of the categorization of Latinos as foreigners, and its impact in such areas as immigration, education, and law enforcement, deserves scholarly attention.

2. The Mistreatment of "Foreigners"

Immigration is a convenient lens through which to learn how dominant society generally views Latinos. Consider the anti-Mexican message of the campaign culminating in the passage of California's Proposition 187, which would deny most public benefits to undocumented persons.[(75)] The Proposition 187 media director for southern California expressed blatantly anti-Mexican concerns in a letter printed by the *New York Times*:

> Proposition 187 is . . . a logical step toward saving California from economic ruin. . . . By flooding the state with 2 million illegal aliens to date, and increasing that figure each of the following 10 years, Mexicans in California would number 15 million to 20 million by 2004. During those 10 years about 5 million to 8 million Californians would have emigrated to other states. *If these trends continued, a Mexico-controlled California could vote to establish Spanish as the sole language of California, 10 million more English-speaking Californians could flee, and there could be a statewide vote to leave the Union and annex California to Mexico.*[(76)]

This statement falls squarely within the textbook definition of nativism.[(77)] As history, past and recent, makes clear, anti-Mexican sentiment tied to immigration is nothing new.[(78)] Mexican-American citizens along with Mexican nationals, for example, were deported indiscriminately in the depths of the Great Depression.[(79)]

As these events suggest, the hostility toward Mexican immigrants reveals how dominant society views Mexican-Americans in the United States -- as foreigners deserving of harsh treatment. Consider how the U.S. government, with popular approval, treats Mexican "foreigners." On April Fools Day 1996, a television crew videotaped the beating of a Mexican man and woman suspected of being undocumented by law enforcement officers after a high speed chase.[(80)] Though the public response generally was one of horror, some reflected the view that persons from Mexico, as less than human, deserved the treatment. One such response is revealing:

> I think the sheriffs were doing their job. I did M.P. work. I was accepted for the Highway Patrol but I turned it down. I can understand what they went through. Other people who are starting to file law claims, they ought to be shipped back. I know what the Mexicans do to the Americans in Mexico. They treat them like dogs. *That gal that's wanting to sue. Someone ought to hit her on the head and send her back to Mexico*.[(81)]

One unsettling aspect of the entire episode, which reflects the virtual invisibility of Latino oppression, is its contrast with the Rodney King beating. When that beating is discussed, it is with reference to the unfortunate person (Rodney King) attacked by police officers.(82) In contrast, left out of the public discussion for the most part was any mention of the names of the anonymous Mexican man and woman who were assaulted and hospitalized. Rather, they were portrayed as fungible, invisible, anonymous "illegal aliens" from Mexico of whom this nation has hundreds of thousands. But Alicia Sotero Vasquez and Enrique Funes Flores are human.(83) Further demonstrating the invisibility of the victims, this incident, quite unlike the Rodney King beating, almost immediately disappeared from public consciousness. There will not be law review symposia or books analyzing the event.(84) This is true despite the fact that the Vasquez and Flores incident is part of a pattern of violence against undocumented Mexicans along the border.(85)

The fact that this was a sensational event should not overshadow the day-to-day tragedies suffered by many Mexican immigrants in the United States. For example, within days of the videotaped beatings of Vasquez and Flores, seven Mexican citizens were killed and 18 others were injured in an automobile crash after being followed by Border Patrol agents near the U.S./Mexico border.(86) Similarly, signs along the freeways in and about San Diego, California include faceless shadow figures (presumably of a family), which warn drivers to watch for people running across the freeway. The signs are a response to the unfortunately common occurrence of motorists hitting undocumented persons attempting to evade the Border Patrol.(87) Despite the human tragedy, a radio talk show host in the summer of 1996 callously stated on the air that motorists near the U.S./Mexico border should be awarded a sombrero-shaped bumper sticker for each undocumented immigrant they hit with their automobile.(88)

Immigrants from Latin American nations other than Mexico also have been subject to harsh measures. The United States took aggressive measures against Central Americans fleeing political violence in the 1980s, including detaining them while asylum applications were pending and encouraging them to "voluntarily" return to their native countries.(89) The United States government also has indefinitely detained a number of Cuban citizens whom the Cuban government will not allow to return there.(90) In the 1990s, the United States changed longstanding practice and refused to accept Cuban refugees fleeing harsh conditions.(91)

Although often marginalized as "immigration" issues, these events offer a more general perspective about how Latinos are viewed by the Anglo-Saxon mainstream. Immigration is a somewhat unique area of law in which, due to the so-called "plenary power" doctrine, the courts place few legal constraints on governmental action.(92) Landmark cases, such as the seminal Supreme Court decision upholding the exclusion of Chinese immigrants to this country in the late 1800s that permit racial and national origin discrimination, are followed to this day.(93) Moreover, the immigration bureaucracy also enjoys considerable discretion in enforcing laws affecting the rights of noncitizens physically present in the country.(94) Legal constraints are minimal and society is able to act as it sees fit. This allows for harsh policies directed at "illegal aliens," a loaded term often used as code for Mexican citizens.(95)

The virtually unrestrained governmental power over immigration has permitted the crackdown on "illegal aliens" in the 1990s. Congress has passed increasingly harsh laws,(96) with the "illegal alien" from Mexico at the forefront of the debate. However, as exemplified by the Proposition 187 debate, it is difficult to limit public animus to Mexican *noncitizens*; rather, the antipathy toward Mexican immigrants often spreads to

Mexican-American *citizens*.[97] Consequently, the war on "illegal aliens" from Mexico reveals much about what dominant society thinks about Mexican-Americans, citizens and noncitizens alike, and perhaps more generally about Latinos in the United States.[98]

This helps explain why Latino activists resist the mistreatment of undocumented Mexicans.[99] At least intuitively, one knows that the crackdown on undocumented Mexicans and other immigrants from Latin America reveals the anti-Latino mindset of dominant society, as well as the "Latino-as-foreigner" phenomenon, in the United States.[100]

B. Difference

In bringing to national attention the fact that Latinos are relevant to the dialogue on issues of race, one difficulty is that the term "Latino community" is a misnomer. This generic category includes persons of many different national origins, immigration statuses, phenotypes, language abilities, social classes, races, and cultures.[101] Latinos in reality comprise a community of different communities. This heterogeneity increases the difficulties in articulating a Latino vision of the world.[102]

1. Intra-Latino Conflict

Latino diversity results in a variety of tensions. Diversity at times breeds intra-Latino tension. Consider Ruben Navarrette's description of the "game" he saw played by Mexican-American undergraduates at Harvard College:

> The rules of the game were simple. The contestants might be two Harvard Chicanos, similar yet different. The difference is noted. It might be a difference in skin color, Spanish-speaking ability, religion, even political affiliation. At first glance, it appears unlikely that both people can be authentic. The difference dictates that one must be a real Mexican, the other a fraud. The objective of the game becomes for the contestants to each assert his or her own legitimacy by attacking the ethnic credibility of their opponent. *More ethnic than thou.* The weapons are whispers. A pointed finger. A giggle. A condescending remark from one to another.[103]

In mediating disputes between members of La Raza Law Students Association (LRLSA) at U.C. Davis over the years, I have noticed similar tensions. Schisms along political, national origin, and skin color lines have recurred in the organization, which has limited its influence in a variety of ways. Some Latino students grew alienated and dropped out. Those that remained often argue about the proper direction of LRLSA. This is roughly consistent with my experience in the 1980s as a student at Harvard Law School.

2. National Origin

Tensions also exist between Latinos of different national origin groups. Such divisions are exemplified by a scene from *El Norte*,[104] a movie telling the poignant tale of two young refugees from Guatemala. One of the refugees is receiving advice before crossing the U.S.-Mexico border. Fearing arrest by the Border Patrol, he wants at all costs

to avoid return to likely persecution in Guatemala. The advice given: tell them you are from Mexico and curse a lot so that they think you are Mexican.[(105)] This gives an idea how some Latinos view Mexicans. More generally, it suggests tensions between Latinos of different national origin groups.

3. Ideological and Political Differences

Ideological diversity, not infrequently tied to national origin, is an oft-ignored characteristic of the Latino community. Ideological divides among Latinos are important, in no small part because they affect the ability to construct and promote a unified position on certain critical questions. Cuban Americans, for example, as a group are more politically conservative than Mexican-Americans and Puerto Ricans.[(106)] This has made it difficult at times to build a cohesive Latino political coalition.

Political differences have concrete impacts on particular issues. Different political views translate into different positions on assimilation, which in turn influence positions on language issues. Although Latino activists historically have strongly supported bilingual education programs and questioned the efficacy of forced assimilation,[(107)] some prominent conservative Latinos, such as Linda Chavez[(108)] and Richard Rodriguez,[(109)] decry bilingual education and unequivocally endorse Latino assimilation into the mainstream.[(110)]

Ideological divides among Latinos also can be seen on the issue of immigration. Although some consensus exists on the need to curb abusive immigration enforcement,[(111)] there is division of opinion on the appropriate levels of legal immigration. Not all Mexican-Americans, for example, support high levels of immigration from Mexico. To the contrary, believing that they compete with immigrants in the job market, some Mexican-Americans express restrictionist views.[(112)] Evidence of such views can be seen in the fact that exit polls indicate that nearly 25% of Latino voters cast ballots *for* Proposition 187.[(113)] Adding to Latino ambivalence on immigration, the Immigration & Naturalization Service has aggressively pursued affirmative action in its hiring for positions along the border, thereby making it a large employer of Mexican-Americans and other minorities in some localities.[(114)]

Moreover, Cuban American interest in immigration tends to focus on South Florida and reflects the volatile history of U.S.-Cuba relations.[(115)] The all-important immigration issue for the Cuban American community is how the United States treats persons fleeing Cuba, not the issues surrounding immigration enforcement along the U.S.-Mexico border. As a leader of a Cuban American activist group in Florida observed, "'[t]he problem here on the East Coast, specifically in South Florida regarding Cuba, is a totally different issue from the Mexican problem on the West Coast.'"[(116)] President Clinton's announcement in 1995 of an agreement with Cuba to limit the refugee flow from Cuba to the United States received mixed responses from the Cuban American community.[(117)] While this controversy brewed among the Cuban American community, many Mexican-American advocacy groups expressed concern with the heightened border enforcement efforts pursued along the Mexican border.[(118)]

4. Physical Appearance

An infrequently analyzed Latino divide of a wholly different sort involves physical appearance. Research shows that Latinos on the average have different life experiences depending on phenotype.[(119)] In essence, indigenous appearance correlates generally with lower socioeconomic status. A telling moment at the first annual LatCrit conference occurred when Laura Gomez asked the audience to consider how light-skinned the Latino law professors in the room were compared to the general Latino population. Physical appearance plays an important role in one's ability, and perhaps desire, to assimilate.[(120)] To "look Mexican," for example, affects one's life experiences in many different ways. In concrete terms, the more "Mexican" a person looks, the more likely that he or she will be questioned by Border Patrol officers in and about the border.[(121)] This is one of the limits on assimilation facing Latinos, which has a more significant impact on the more indigenous looking.[(122)]

Looked at differently, a significant number of Latinos do not fit the stereotype, which may promote their assimilation. This, in turn, suggests that voluntary adoption of a Latino identity among Latinos, especially those who are the offspring of mixed Anglo/Latino marriages, may be more prevalent than for other racial minorities.[(123)] At the same time, Latinos who "look" Anglo may embrace false hopes of assimilation into the Anglo-Saxon mainstream. This results from the fact that Latino identity is not simply an issue of physical appearance but one of ethnicity, language, family, and religion.[(124)] To be a fully-assimilated Anglo may be extremely difficult for a fully-acculturated Latino, even one who has a fair complexion.

Because the social construction[(125)] of Latino-ness is based on characteristics other than physical appearance, Latino identity differs from those of other racial minorities. Society constructed different "races" in different ways through different mechanisms for different purposes. Indeed, the social construction of "race" may vary among different groups of Latinos. Specifically, Mexican-Americans in the Southwest appear to have been socially constructed differently than Cuban Americans in South Florida and Puerto Ricans in the urban Northeast.[(126)] The history of subordination of Mexican-Americans differs from other Latinos, such as Puerto Ricans, for example.[(127)] Although commonalities exist, such as their treatment as "foreigners," they may be "racialized" in different ways and, in effect, may be of different "races."

* * *

In sum, the diversity of the Latino community makes it more difficult to articulate a "Latino" vision of the world. Latino legal scholars must recognize this diversity and discuss its implications. This observation should not be taken as a rejection of pan-Latino identity, but as a recognition of political realities.[(128)] Nor should recognition of Latino heterogeneity be read as suggesting, as some contend, that "Latino" or "Hispanic" is an ill-conceived, perhaps illegitimate, categorization,[(129)] or that Latino legal scholarship is either an impossibility or a misplaced endeavor.[(130)] Rather, my fundamental point is that diversity within the Latino community must be considered in the development of LatCrit theory, as well as any work focusing on issues of importance to Latinos.

The common "Latino-as-foreigner" experience, and possibly other common characteristics such as language, culture, and religion, may allow for an amalgam of complex and diverse groups to share a group identity. To do so, bridges must be built among the divergent groups comprising the Latino community. By focusing on common Latino interests, a more powerful Latino coalition may be constructed.

In attempting to articulate a pan-Latino critical theory encompassing many different Latinos, we should not miss a curiosity raised by the exercise. Among many Latinos, for good reason, there has long been resistance to the "melting pot" theory of assimilation, which has served as a euphemism for requiring Latinos, as well as other groups, to embrace the Anglo-Saxon norm.(131) In attempting to build pan-Latino solidarity, we are attempting to minimize difference among Latinos and highlight commonalities. In so doing, we must take care not to excessively "melt" down different Latino groups. Although similarities exist, many important differences remain between the groups that comprise the Latino community.(132)

IV. THE FIRST STEP FOR CRITICAL LATINO THEORY

The initial task for critical Latino legal scholarship, and for Latino legal scholarship generally, is to strive to ensure that Latinos are no longer "forgotten" in the public and academic discussion of race relations in the United States. Increasing the visibility of Latino issues will diversify mainstream and critical literature and serve to ensure that legal scholarship, as it historically has done, does not focus myopically on black-white race relations in analyzing civil rights issues. It also will address pressing concerns as the Latino community faces an increasingly hostile environment, as evidenced by the English-only movement, restrictionist immigration laws, and attacks on affirmative action and multiculturalism. We must begin the serious study of issues of special significance to the Latino community, including those of class, culture, national origin, and language as well as race. Because of the uniqueness of the Latino identity and experience, the study of race relations from a Latino perspective in some ways must necessarily differ from that of other subordinated groups.(133)

Many issues of importance to the Latino community are ripe for exploration. Besides immigration issues that have been touched on in this article, LatCrit theory might consider assimilation and the diversity of the Latino identity, including phenotypical heterogeneity that affects one's ability to assimilate. Much of the public discussion of this issue has been from a distinctly pro-assimilation Latino perspective. Linda Chavez and Richard Rodriguez, for example, both praise the virtues of assimilation and how Latinos will eventually assimilate into the mainstream as past "ethnic" groups have.(134) Voices challenging these assertions are few and far between.(135)

A literary response to the pro-assimilationists can be found in Rick Rivera's novel *A Fabricated Mexican*,(136) in which the author tells the story of a farm worker child who grows up to be an academic. Mexican-Americans accused the fair-complected child of not being "Mexican" enough.(137) Later, as a graduate student, Anglos denigrated his achievements by attributing them to affirmative action. An Anglo student, who initially offered congratulations after the Mexican-American student won a minority fellowship, went on and

> cleared his throat and expressed his true feelings and his anger at seeing, "all those minorities getting money just for being minorities." He frustratingly told me how unfair school was, and how white people were getting shafted. And then he ripped into my existence with a final "And you don't even *look* Mexican!"(138)

A wealth of other issues of importance to Latinos are ripe for examination. Latino identity is one.[(139)] Language is another.[(140)] The role and influence of religion, in particular the Catholic Church, on Latinos and Latino identity is another.[(141)] The differential experiences of Latinos and Latinas in the U.S. and the relationship between the two are all-important. Sexism and homophobia among Latinos, of course intertwined with religion, also deserve our attention.[(142)] Finally, racism within and without the Latino community should not be immune from analysis. Racism exists in the Latino community toward other racial minorities as well as toward some Latinos.[(143)]

Many of these issues are ones that Latinos correctly have demanded society to examine. We as a community should be ready and willing to study them ourselves. If we do not, non-Latinos will provide the analysis, perhaps in a way that neglects, ignores, or misunderstands the Latino perspective.[(144)] True, these are difficult issues likely to cause discomfort and provoke controversy. Nevertheless, they are crucial questions deserving our full attention. Latino legal scholarship has much to offer in articulating a uniquely Latino perspective on issues of critical importance to the Latino community.

Analysis of these issues hopefully will provide the groundwork for the articulation of a Latino agenda for social change. Strategies for achieving the desired change require further study as well. The race-based approach exemplified by cases like *Brown v. Board of Education*[(145)] is not as well suited for the Latino community, in no small part because of the great racial variation within,[(146)] as it may be for other minority communities.[(147)] Strategies for change for Latinos must differ and might focus on other aspects touching on Latino identity, including class,[(148)] immigration status,[(149)] and language.[(150)] More fundamentally, Latinos would be wise to be circumspect about the possibilities for litigation to improve the status of the Latino community.[(151)] Political strategies, buttressed by legal ones, must be explored and pursued.

One conundrum, which stems from the fact that Latinos include a significant immigrant community, looms ominously for Latinos' hopes for change through political means. Even as the size of the Latino population increases, many Latinos cannot (because they are noncitizens who have not naturalized or who are undocumented) or will not (due to lack of interest, alienation, and the like) vote.[(152)] Indeed, it has been estimated that only about 50% of the Latino adults in California are citizens.[(153)] In essence, Latinos simply are not integrated into the political process.[(154)] Efforts must be made to change this longstanding tradition.

Besides voting, Latinos must explore coalitions with other subordinated groups.[(155)] At the same time, we must recognize that coalition building runs the risk that issues of importance to Latinos will be lost in a plethora of civil rights concerns.[(156)] This risk, however, is a necessary one in light of the simple fact that Latinos remain an electoral minority.

CONCLUSION

In conclusion, it is an understatement to state that LatCrit theory is a nascent movement. Critical Race Theory is young and the study of Latino issues from a critical perspective is at best at an embryonic stage. In attacking such ambitious goals, LatCrit theory faces exciting yet daunting challenges. The critical study of law and Latinos is for the most part to be written. This article does not attempt to speculate about the precise development of Latino legal scholarship. It instead offers a road map of issues that must be addressed in the future for the development of a coherent theoretical vision. LatCrit theory has the

potential for offering this vision. Besides offering coherence to a Latino vision for change, it may contribute to that change by tying theory to practice. Even if such ambitious goals are not achieved, LatCrit theory will increase the profile and understanding of issues of particular importance to the Latino community in the United States. In so doing, it will remedy some serious deficiencies in modern legal scholarship.
In embarking on this new intellectual mission, we must keep in mind the diversity of the Latino community and not ignore issues that may cause uneasiness and possibly dissension. A strong pan-Latino coalition must be built on commonality while recognizing and respecting difference. Ignoring the diversity will only limit the effectiveness of this endeavor.

Difference of perspectives among people of color suggests a possible indirect consequence of the development of LatCrit theory. Divergence between Latino interests and those of other racial minorities may become more apparent. Articulating a Latino perspective may generate conflict between subordinated people and the traditional civil rights coalition.[(157)] This is one challenge posed by LatCrit theory. Nonetheless, these issues must be addressed among Latinos and people of color generally in order to foster a better understanding of the place of Latinos in the United States.

Footnotes

* Professor of Law, University of California at Davis. A.B. 1980, University of California at Berkeley; J.D., 1983, Harvard University. A rough draft of this article was presented at the First Annual LatCrit Conference in May 1996 in La Jolla, California. Laura Padilla, Gloria Sandrino, and Frank Valdes graciously invited me to participate in the conference and extended much-appreciated hospitality during my visit. Thanks to the conference participants, especially those who discussed ideas with me and offered encouragement. I greatly appreciate the comments on a draft of this article of Berta Hernández-Truyol, Bob Chang, Cynthia Lee, George Martínez, Michael Olivas, Laura Padilla, David Lopez, Arturo Gándara, Maria Ontiveros, and Rachel Moran. Christopher David Ruiz Cameron and Joel Dobris both had helpful conversations with me on subjects touched on in this article. Melissa Corral (U.C. Davis '98) and Christine Shen (U.C. Davis '97) provided fine research assistance.

2. For some background on the genesis of LatCrit theory, see Francisco Valdes, *Foreword: Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Culture: From Practices to Possibilities*, 9 La Raza L.J. 1, 1-12 (1996).

3. For convenience sake, this article uses the term "Latino" to refer both to Latinos and Latinas. In so doing, I in no way mean to marginalize the place of Latin*as* in the community.

4. For a collection of important Critical Race Theory writings, see Critical Race Theory: The Key Writings that Formed the Movement (Kimberlé Crenshaw et al. eds., 1995) and Critical Race Theory: The Cutting Edge (Richard Delgado ed., 1995).

5. *See infra* text accompanying notes 13-32 (analyzing invisibility of Latino civil rights concerns in public and legal discourse).

6. Some have advocated that other racial minorities and women develop a distinct body of legal scholarship. *See, i.e.*, Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 Cal. L. Rev. 1241 (1993); Jerome M. Culp, Jr., *Toward a Black Legal Scholarship: Race and Original Understandings*, 1991 Duke L.J. 39 (1991); Martha L. Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 U. Fla. L. Rev. 25 (1990).

7. *See generally* William E. Cross, Jr., Shades of Black: Diversity in African-American Identity (1991) (analyzing diversity in African-American identity); Bill Ong Hing, Making and Remaking Asian America Through Immigration Policy 1850-1990 (1993) (analyzing impact of immigration policy on various Asian American communities in U.S.).

8. *See infra* text accompanying notes 100-31 (analyzing significance of diversity within Latino community).

9. *Cf.* Alex M. Johnson, Jr., *The New Voice of Color*, 100 Yale L.J. 2007, 2009-10 (1991) (contending that "only when a scholar of color draws on her experiences and the insight gained from living as a person of color does she speak with the voice of color") (footnote omitted); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 Harv. C.R.-C.L. L. Rev. 323, 324 (1987) ("Those who have experienced discrimination have distinct normative insights."). *But see* Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 Harv. L. Rev. 1745, 1788-1807 (1989) (disputing that minority scholars possess any distinctive "voice").

10. *See* Michael A. Olivas, *The Education of Latino Lawyers: An Essay on Crop Cultivation*, 14 Chicano-Latino L. Rev. 117, 128-38 (1994) (reviewing statistical data on Latinos in legal education). Reflecting the limited impact of affirmative action, Latinos composed less than 2% (less than 100 of over 5,700) of the law teachers in 1994. *See id.* at 129.

11. *See* Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. Pa. L. Rev. 561, 561 (1984) (noting that, when he began teaching, well-meaning colleagues suggested that, to avoid jeopardizing tenure chances, he not write on "ethnic" or civil rights issues).

12. A 1995 symposium contributed to the much-needed dialogue on these issues. *See* Symposium, *Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990's & Beyond*, 8 La Raza L.J. 1 (1995).

13. *See, e.g.*, Richard Delgado & Victoria Palacios, *Mexican Americans as a Legally Cognizable Class Under Rule 23 and the Equal Protection Clause*, 50 Notre Dame L. Rev. 393 (1975); George A. Martínez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience*, 27 U.C. Davis L. Rev. 555 (1994); Rachel F. Moran, *Foreword -- Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond*, 8 La Raza L.J. 1 (1995); Michael A. Olivas, *The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders as Racial History*, 34 St. Louis U. L.J. 425 (1990).

For an annotated bibliography of LatCrit theory works, see Jean Stefancic, *Latino and Latina Critical Theory: An Annotated Bibliography*, 85 Cal. L. Rev. (forthcoming 1997).

14. *See* La Raza: Forgotten Americans (Julian Samora ed., 1966). *See also* George I. Sanchez, Forgotten People (1940, rev. ed. 1967) (analyzing history of "forgotten people" of northern New Mexico).

15. *See* Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. Rev. 965, 966 (1995) (analyzing "Latino invisibility," that is, "relative lack of positive public identity and legitimacy").

16. *See* Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 Stan. L. Rev. 957, 960 (1995) (summarizing changes in racial demographics in U.S., including fact that, from 1980 to 1990, Latino population increased by over 50%).

17. *See* Glenn Collins, *The Americanization of Salsa*, N.Y. Times, Jan. 9, 1997, at D1 (noting growth in Mexican food market in U.S. and that salsa has surpassed ketchup in sales). The Cuban influence on Florida, particularly South Florida, and the Puerto Rican influence on the Northeast are in many ways similar to that of Mexican-Americans on the Southwest. This article, representative of my experience and background, generally focuses on the Mexican-American experience in the Southwest.

18. Asian Americans may face similar problems. *Cf.* Chang, *supra* note 5, at 1260-61 (contending that myth of Asian Americans are "model" minority "renders the oppression of Asian Americans invisible").

19. *See* Fredric C. Gey et al., California Latina/Latino Demographic Data Book 19 (1992) (Table 2-4) (providing 1990 data for Los Angeles County). In 1990, Latinos comprised nearly 38% of the total population of Los Angeles County in 1990, up from about 28% in 1980. *See id*. at 21 (Table 2-5).

20. For analysis of the historical development of East Los Angeles, see Rodolfo F. Acuña, A Community Under Siege: A Chronicle of Chicanos East of the Los Angeles River 1945-1975 (1984), and Ricardo Romo, East Los Angeles: History of a Barrio (1983).

21. *Cf.* Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed "Los Angeles"*, 66 S. Cal. L. Rev. 1581 (1993) (analyzing how "master narrative" structured conception of Korean American and African American conflict in Los Angeles).

22. *See, e.g., Official Business; Mother of 2 Slain Children was Involved in Custody Battle*, L.A. Times, May 30, 1996, at B4; *Woman and 2 Men Fatally Wounded in Garage Shooting*, L.A. Times, Apr. 4, 1996, at B4. In a computer search of the *Los Angeles Times* articles mentioning East Los Angeles, I ran across one notable exception to this pattern. One article reported conflict between Mexican immigrants and Mexican-Americans in East Los Angeles. *See* Lynne Barnes et al., *Natives, Newcomers at Odds in East Los Angeles*, L.A. Times, Mar. 4, 1996, at A1.

23. *See, e.g.*, Ikemoto, *supra* note 20 (analyzing interethnic conflict between African American and Korean immigrants in South Central Los Angeles); Reginald Leamon Robinson, *"The Other Against Itself":*

Deconstructing the Violent Discourse Between Korean and African Americans, 67 S. Cal. L. Rev. 15 (1993) (same).

24. *See* Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 La Raza L.J. 42, 64-65 (1995). *See also* Perea, *supra* note 14, at 967-70.

25. *See* Manual Pastor, Jr. et al., Latinos and the Los Angeles Uprising: The Economic Context 11-13 (1993) (documenting increase in deportation efforts by law enforcement and immigration authorities, including "sweeps" of heavily Latino neighborhoods, in aftermath of violence).

26. *See generally* Adeno Addis, *"Hell Man, They Did Invent Us:" The Mass Media, Law and African Americans*, 41 Buff. L. Rev. 523 (1992) (analyzing impact of negative portrayal of African Americans in media).

27. For a prominent example, see Andrew Hacker, Two Nations: Black and White, Separate, Hostile, Unequal (rev. ed. 1995).

28. *See, e.g.*, Juan F. Perea, *Ethnicity and the Constitution: Beyond the Black and White Binary Constitution*, 36 Wm. & Mary L. Rev. 571, 571-72 (1995) (discussing "'other' Americans, Latinos and Asian Americans among them, and their treatment under the Constitution") (footnote omitted); Chang, *supra* note 5, at 1245-46 (announcing "Asian American Moment . . . marked by the increasing presence of Asian Americans in the legal academy who are beginning to raise their voices to 'speak new words and remake old legal doctrines'") (footnotes omitted).

29. Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 Cal. L. Rev. 741, 775 (1994). *See* Valdes, *supra* note 1, at 5-6 n.19 (discussing this phenomenon's influence on emergence of LatCrit theory). *See also* Daniel A. Farber, *The Outmoded Debate Over Affirmative Action*, 82 Cal. L. Rev. 893, 893 n.2, 932 (1994) (noting that Critical Race Theory literature treats all minority groups as the same).

30. This development is not unprecedented. Indeed, Critical Race Theory developed as a response to the concern that Critical Legal Studies had limited appeal to racial minorities. *See* Symposium, *Minority Critiques of the Critical Legal Studies Movement*, 22 Harv. C.R.-C.L. L. Rev. 297 (1987); Gerald Torres, *Local Knowledge, Local Color: Critical Legal Studies and the Law of Race Relations*, 25 San Diego L. Rev. 1043 (1988).

31. *See generally* Ronald Takaki, A Different Mirror: A History of Multicultural America (1993) (analyzing this history).

32. *See* U.S. Dep't of Justice, 1994 Statistical Yearbook of the Immigration & Naturalization Service 27-28 (1996) (presenting statistical data showing dramatic shift in immigrant stream from Europe to Asia and Latin America in post-1950 period).

33. *See* William R. Tamayo, *When the "Coloreds" Are Neither Black Nor Citizens: The United States Civil Rights Movement and Global Migration*, 2 Asian L.J. 1, 9-11 (1995).

34. *Cf.* Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581 (1990) (criticizing feminist theory for "essentializing" experience of women and ignoring distinctive experiences of women of color).

35. *See generally* Rodolfo Acuña, Occupied America: A History of Chicanos (3d ed. 1988); Mario Barrera, Race and Class in the Southwest: A Theory of Racial Inequality (1979); David Montejano, Anglos and Mexicans in the Making of Texas, 1836-1986 (1987).

36. *See* Luis Angel Toro, *"A People Distinct From Others": Race and Identity in Federal Indian Law and the Hispanic Classification in OMB Directive No. 15*, 26 Tex. Tech L. Rev. 1219, 1245-51 (1995) (summarizing briefly the racialization of Chicanos in the Southwest). *See also* George A. Martínez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, 2 Harv. Latino L. Rev. 321 (1997) (analyzing legal implications of the political construction of Mexican-Americans as a race).

37. *See* Moran, *supra* note 12, at 4-13. *See also* Martínez, *supra* note 12, at 557 (acknowledging implicitly this proposition in study analyzing "the Mexican-American litigation experience in light of contemporary jurisprudential and critical scholarship") (footnote omitted).

38. *See infra* text accompanying notes 55-99 (analyzing "Latino as foreigner" phenomenon as common to Latino experience).

39. *See* Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 Minn. L. Rev. 269, 340-71 (1992) (tracing history of and criticizing English-only movement in U.S.). *See also* Christopher David Ruiz Cameron, *How the García Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving Speak-English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, 85 Cal. L. Rev. (forthcoming 1997) (analyzing failure of Title VII to protect Latinos from discriminatory language rules); Alfredo Mirandé, *"En La Tierra Del Ciego, El Tuerto Es Rey" ("In the Land of the Blind, The One-Eyed Person is*

King"): Bilingualism as a Disability, 26 N.M. L. Rev. 75 (1996) (examining how English-only rules discriminate on basis of national origin and race). *See generally* Bill Piatt, øOnly English?: Law and Language Policy in the United States (1990) (analyzing evolution of law and language policy in U.S.).
40. *See* Yniguez v. Arizonans for Official English, 69 F.3d 920 (9th Cir. 1995) (en banc) (invalidating initiative on First Amendment grounds), *vacated as moot*, 117 S. Ct. 1055 (1997).
41. *Cf.* Perea, *supra* note 38, at 357-60 (analyzing how language can serve as proxy for national origin discrimination).
42. 500 U.S. 352 (1991).
43. *See* Sheri Lynn Johnson, *The Language and Culture (Not the Race) of Peremptory Challenges*, 35 Wm. & Mary L. Rev. 21, 53 (1993) (observing that prosecutor in *Hernandez* apparently limited questions about Spanish-speaking ability to jurors with Spanish surnames).
44. *See* Rachel F. Moran, *Bilingual Education as a Status Conflict*, 75 Cal. L. Rev. 321, 345-55 (1987) [hereinafter Moran, *Status Conflict*] (analyzing controversy over bilingual education as representing status conflict between Latinos and Anglos). *See also* Rachel F. Moran, *The Politics of Discretion: Federal Intervention in Bilingual Education*, 76 Cal. L. Rev. 1249 (1988) (analyzing bilingual education debate as battle over whether federal or state and local government would have discretion to establish education policy).
45. *Cf.* Colloquy, *Our Next Race Question: The Uneasiness Between Blacks and Latinos*, Harper's Mag., Apr. 1996, at 55 (colloquy between Jorge Klor de Alva and Cornel West on, among other things, whether African Americans are "Anglos" and how culture and language, not race, distinguishes Latinos from Anglos).
46. 347 U.S. 483 (1954). For analysis of the differing interests of Latinos and African Americans in the context of a specific piece of educational reform litigation, see Rachel F. Moran, *Getting a Foot in the Door: The Hispanic Push for Equal Educational Opportunity in Denver*, 2 Kan. J.L. & Pub. Pol'y 35 (1992).
47. *See infra* text accompanying notes 110-13 (discussing divide among Mexican-American community on immigration, though common concerns with enforcement abuses).
48. *See infra* text accompanying notes 118-21 & note 120 (identifying issue and citing authority).
49. *See* Lawrence H. Fuchs, *The Reactions of Black Americans to Immigration*, *in* Immigration Reconsidered: History, Sociology, and Politics 293 (Virginia Yans-McLaughlin ed., 1990) (analyzing consistent history of restrictionist views among African Americans). *See also* Peter H. Schuck, *Alien Rumination*, 105 Yale L.J. 1963, 1986-87 (1996) (summarizing claims that immigrant labor has increased unemployment among African Americans and concluding that empirical studies are inconclusive on this point).
50. *See* Jack Miles, *Blacks vs. Browns*, Atlantic Monthly, Oct. 1992, at 41 (analyzing such conflict).
51. *See supra* note 22 (citing authorities analyzing Korean and African American conflict).
52. *See* Selena Dong, Note, *"Too Many Asians": The Challenge of Fighting Discrimination Against Asian-Americans and Preserving Affirmative Action*, 47 Stan. L. Rev. 1027 (1995) (analyzing complexities facing Asian Americans seeking to combat discrimination while supporting affirmative action).
53. *See* Leo Grebler et al., The Mexican-American People 381 (1970) ("In the case of Mexicans . . . , there are many indicators of an extraordinary attachment to the motherland."); Moran, *supra* note 12, at 21-22 (noting transnational identity of some Mexican nationals living and working in U.S.). *See also* Earl Shorris, Latinos 62-110 (1992) (summarizing generally differing experiences of Cuban, Puerto Rican, and Mexican communities in United States).
54. *See infra* text accompanying notes 151-55 (analyzing difficulties of political assimilation of Mexican immigrants).
55. *Cf.* Robin West, *Jurisprudence and Gender*, 55 U. Chi. L. Rev. 1, 60-61 (1988) (articulating similar justifications for feminist jurisprudence).
56. *See* Harris, *supra* note 28, at 766-84 (identifying ideals that might inform Critical Race Theory "jurisprudence of reconstruction").
57. *See* Perea, *supra* note 14, at 985-88 (analyzing how judges applying laws have created a "normative American identity" that promotes Latino invisibility). *See also* Cynthia Kwei Yung Lee, *Race and Self-Defense: Toward a Normative Conception of Reasonableness*, 81 Minn. L. Rev. 367, 441-52 (1996) (analyzing influence of stereotypes of Latinos-as-foreigners on criminal law of self-defense).
58. *See* Keith Aoki, *Foreign-ness & Asian American Identities: Yellowface, World War II Propaganda and Bifurcated Racial Stereotypes*, 4 Asian Pac. Am. L.J. (forthcoming 1997); Pat K. Chew, *Asian Americans: The "Reticent" Minority and Their Paradoxes*, 36 Wm. & Mary L. Rev. 1, 33-38 (1994); Natsu Taylor

Saito, *Alien and Non-Alien Alike: Citizenship, "Foreignness" and Racial Hierarchy in American Law*, 76 Or. L. Rev. (forthcoming 1997); Lee, *supra* note 56, at 423-41. Larger coalitions of minority groups may be built from this common "foreigner" heritage. *See infra* text accompanying notes 154-55 (discussing possibilities and problems with such coalition-building).

59. *See* David Jackson & Paul de la Garza, *Rep. Gutierrez Uncommon Target of a Too Common Slur*, Chi. Trib., April 18, 1996, at 1. For more details, as well as Congressman Gutierrez's reactions, see Alex Garcia, *One Day at the Capitol*, Hispanic Bus., June 1996, at 112 (interview of Congressman Gutierrez).

60. *See* Jackson & de la Garza, *supra* note 58.

61. *See* Mike Dorning & Mary Jacoby, *To Gutierrez's Chagrin, Cop Has Job Back*, Chi. Trib., June 30, 1996, at 2.

62. *See, e.g.*, Lee Romney, *Over the Line?*, L.A. Times (San Gabriel Valley ed.), Sept. 2, 1993, at J1 (recounting story of third generation Mexican-American mayor of city who was stopped by Border Patrol miles from border because he fit "illegal alien" profile); Suzanne Espinosa, *Snafu Underscores Civil Rights Issues*, S.F. Chron., Oct. 22, 1993, at A1 (reporting mistaken arrest and deportation of U.S. citizen of Mexican ancestry).

63. *See generally* Peter Brimelow, Alien Nation: Common Sense About America's Immigration Disaster (1995).

64. *See id.* at 218-19.

65. For critique of the anti-Latino tinge to Brimelow's restrictionist arguments, see Kevin R. Johnson, *Fear of an "Alien Nation"? Race, Immigration, and Immigrants*, 7 Stan. L. & Pol'y Rev. 111 (1996). Brimelow's restrictionist prescriptions have been questioned on other grounds in Hiroshi Motomura, *Whose Alien Nation? Two Models of Constitutional Immigration Law*, 94 Mich. L. Rev. 1927 (1996) and Schuck, *supra* note 48.

66. *See* Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 Cal. L. Rev. 863, 876-79 (1993) (summarizing concerns that immigrants of color fail to acculturate).

67. *See* Linda Chavez, Out of the Barrio: Toward a New Politics of Hispanic Assimilation 101-20 (1991) (analyzing burgeoning Hispanic middle class). *See also* Dinesh D'Souza, The End of Racism 549-51 (1991) (making observation that immigrants are assimilating in U.S.); *How to Stir the Melting Pot*, Economist, Feb. 17, 1996, at 76 (summarizing social science studies presented at annual meeting of American Association for the Advancement of Science concluding that immigrant children adopt skeptical views of education and antipathy for homework held by many Americans).

68. *See, e.g.*, Hirabayashi v. United States, 320 U.S. 81, 96-97 (1943) (observing, in internment case, that "social, economic, and political conditions . . . have intensified [Japanese] solidarity and in large measure prevented their assimilation as an integral part of the white population"); The Chinese Exclusion Case (Chae Chan Ping v. United States), 130 U.S. 581, 595 (1889) (upholding law restricting immigration from China and emphasizing that "[i]t seemed impossible for [Chinese immigrants] to assimilate with our people or to make any change in their habits or modes of living").

69. *See generally* Edward C. Banfield, The Unheavenly City: The Nature and Future of Our Urban Crisis (1970) (arguing that black poverty resulted from "culture of poverty" prevalent in black community).

70. *See* Margaret E. Montoya, *Mascaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 Harv. Women's L.J. 185, 193, 15 Chicano-Latino L. Rev. 1, 9 (1994).

71. *See* Kevin R. Johnson, *"Melting Pot" or "Ring of Fire"?: Assimilation and the Mexican American Experience*, 85 Cal. L. Rev. (forthcoming 1997) (analyzing this phenomenon). *Cf.* Cheryl I. Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1707, 1711-12 (1993) (recounting experiences of her African American grandmother "passing" as white so that she could work).

72. *Cf.* Tamayo, *supra* note 32, at 23 (contending that racism is "common thread between all non-whites").

73. *See* John Higham, Send These to Me: Immigrants in Urban America 153-74 (rev. ed. 1974).

74. *See* David E. Hayes-Bautista et al., No Longer a Minority: Latinos and Social Policy in California 34 (1992) (identifying fundamental elements of Latino identity).

75. *See* Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 Wash. L. Rev. 629, 650-61 (1995) (analyzing anti-Mexican tilt to Proposition 187 campaign). Implementation of the initiative has been enjoined. *See also* League of United Latin American Citizens v. Wilson, 908 F. Supp. 755 (C.D. Cal. 1995).

76. *Letter to Editor by Linda B. Hayes*, N.Y. Times, Oct. 15, 1994, at sec. 1, p. 18 (emphasis added).

77. *See* John Higham, Strangers in the Land: Patterns of American Nativism 1860-1925, at 4 (1994 ed.) (defining nativism as "intense opposition to an internal minority on the ground of its foreign (i.e., 'un-American') connections" combined with the "energizing force of modern nationalism").
78. *See* Gilbert Paul Carrasco, *Latinos in the United States: Invitation and Exile, in* Immigrants Out! The New Nativism and the Anti-Immigrant Impulse in the United States 190-200 (Juan F. Perea ed., 1997) (summarizing history of treatment of Mexicans under U.S. immigration laws).
79. *See generally* Francisco E. Balderrama & Raymond Rodríguez, Decade of Betrayal: Mexican Repatriation in the 1930s (1995).
80. *See* Kenneth B. Noble, *Videotape of Beating by Authorities Jolts Los Angeles*, N.Y. Times, Apr. 3, 1996, at A10. *See also* Margaret E. Montoya, *Border Crossings in an Age of Border Patrols: Cruzando Fronteras Metaforicas*, 26 N.M. L. Rev. 1, 7 (1996) (mentioning this incident as part of larger political movement favoring increased border enforcement).
81. *Both Sides Speak Out on the Beatings by Deputies*, Press-Enterprise (Riverside, California), Apr. 6, 1996, at B02 (emphasis added).
82. *See generally* Reading Rodney King\Reading Urban Uprising (Robert Gooding-Williams ed., 1993).
83. *See* George Ramos, *Beaten Woman Says She Wasn't Fleeing Deputies*, L.A. Times, Apr. 6, 1996, at A18 (identifying beating victims). Cecelia Espenoza pointed out to me the fact that the media generally failed to focus on the identities of the two beating victims.
84. Perhaps this is because King's ordeal resulted in mass violence. If so, this sends a clear, and unfortunate, message about the utility of violence in seeking to highlight injustice and to promote social change.
Bob Chang brought another racial dimension to the Rodney King aftermath to my attention. Although Reginald Denny, an Anglo beaten at an intersection in South Central Los Angeles following the acquittal of the police officers, was featured prominently in the media, other, mostly Latino and Asian, victims at the very same intersection went ignored. *See* George J. Sanchez, *Reading Reginald Denny: The Politics of Whiteness in the Late Twentieth Century*, 47 Am. Q. 388, 388 (1995).
85. *See* Bill Ong Hing, *Border Patrol Abuse: Evaluating Complaint Procedures Available to Victims*, 9 Geo. Immigr. L.J. 757, 757-59 (1995) (describing incidents of abuse of undocumented Mexicans by Border Patrol and citing human rights reports documenting abuses). Similar to the Vasquez and Flores beating, the outrage over the killing by the Cuban government of Cuban Americans flying a mission for Brothers to the Rescue was quickly forgotten and the human tragedy masked by the media's reference to these persons as "exiles." *See, e.g.*, Mike Clary, *Cuban Fighters Down 2 Planes Owned by Exiles*, L.A. Times, Feb. 25, 1996, at A1; Larry Rohter, *Exiles Say Cuba Downed 2 Planes and Clinton Expresses Outrage*, N.Y. Times, Feb. 25, 1996, at 1.
86. *See* Kenneth B. Noble, *Crash Kills 7 Suspected Illegal Aliens After Agents Follow Truck*, N.Y. Times, Apr. 7, 1996, at 17.
87. *See, e.g.*, Len Hall, *Pedestrian Killed Crossing Near Inland Checkpoint*, L.A. Times (Orange County ed.), Feb. 12, 1996, at B10; Julie Tamaki, *Immigrant Killed Near Checkpoint*, L.A. Times, Mar. 31, 1992, at A3; James M. Gomez & Len Hall, *I-5 Checkpoint Deaths Revive Safety Concerns*, L.A. Times (Orange County ed.), Jan. 18, 1992, at A1.
88. *See* Dan Vierra, *Radio Host on Illegal Immigrants: Run 'Em Down*, Sacramento Bee, Aug. 17, 1996, at B1.
89. *See, e.g.*, Orantes-Hernandez v. Thornburgh, 919 F.2d 549 (9th Cir. 1990). *See also* A.B.A. Coordinating Comm. on Immigration Law, Lives on the Line: Seeking Asylum in South Texas (1989) (criticizing detention and expedited deportation procedures employed by Immigration & Naturalization Service in South Texas to deal with influx of Central American asylum-seekers).
90. *See, e.g.*, Barrera-Echavarria v. Rison, 44 F.3d 1441 (9th Cir.) (en banc) (rejecting constitutional challenges to indefinite detention), *cert. denied*, 116 S. Ct. 479 (1995); Garcia-Mir v. Meese, 788 F.2d 1446 (11th Cir.) (reaching same conclusion), *cert. denied sub nom.*, 479 U.S. 889 (1986); Gisbert v. U.S. Att'y Gen., 988 F.2d 1437 (5th Cir.) (same), *amended*, 997 F.2d 1122 (5th Cir. 1993). *But see* Fernandez-Roque v. Smith, 734 F.2d 576 (11th Cir. 1984) (finding that indefinite detention of Mariel Cubans violated law).
91. *See infra* text accompanying note 116 (discussing agreement with Cuba allowing change in policy).
92. *See, e.g.*, Reno v. Flores, 507 U.S. 292, 306 (1993) ("Over no conceivable subject is the legislative power of Congress more complete. . . . [I]n the exercise of its broad power over immigration and naturalization, Congress regularly makes rules that would be unacceptable if applied to citizens.") (citations omitted) (quotation in original omitted); Landon v. Plasencia, 459 U.S. 21, 32 (1982) ("This Court has long

held that an alien seeking initial admission to the United States has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.") (citations omitted). *See generally* Gerald L. Neuman, Strangers to the Constitution: Immigrants, Borders and Fundamental Law (1996) (examining history of excluding noncitizens from protections of Constitution and advocating extension of certain protections to them). I do not mean to suggest that the current state of the law in this regard meets my satisfaction. Powerful arguments have been made that the nation lacks unfettered sovereign power to limit immigration. *See, e.g.*, Louis Henkin, *The Constitution and United States Sovereignty: A Century of Chinese Exclusion and Its Progeny*, 100 Harv. L. Rev. 853 (1987); Berta Esperanza Hernández-Truyol, *Natives, Newcomers and Nativism: A Human Rights Model for the Twenty-First Century*, 23 Fordham Urb. L.J. 1075 (1996); Michael Scaperlanda, *Polishing the Tarnished Golden Door*, 1993 Wis. L. Rev. 965.

93. *See* The Chinese Exclusion Case (Chae Chan Ping v. United States), 130 U.S. 581 (1889). *See, e.g.*, Adams v. Baker, 909 F.2d 643, 647 (1st Cir. 1990) (citing *Chinese Exclusion* in upholding denial of nonimmigrant visa because of ideology of noncitizen); Achacoso-Sanchez v. INS, 779 F.2d 1260, 1264 (7th Cir. 1985) (citing *Chinese Exclusion* in affirming deportation order). *See also* Narenji v. Civiletti, 617 F.2d 745 (D.C. Cir. 1979) (rejecting constitutional challenges to regulation requiring Iranian students to report to the Immigration & Naturalization Service during tense U.S.-Iran relations), *cert. denied sub nom.*, 446 U.S. 957 (1980).

94. *See* Jean v. Nelson, 727 F.2d 957, 965 (11th Cir. 1984) (en banc) (referring to "sweeping delegations of congressional authority" in comprehensive Immigration & Nationality Act), *aff'd.*, 472 U.S. 846 (1985). *See also* Michael G. Heyman, *Judicial Review of Discretionary Immigration Decisionmaking*, 31 San Diego L. Rev. 861 (1994) (analyzing judicial review of discretionary agency decisions). The discretion delegated to the immigration bureaucracy is amplified by general administrative law principles calling for deference to agency decisions. *See* Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

95. For an analysis of how the terms "alien" and "illegal alien" often serve as racial code, see Kevin R. Johnson, *"Aliens" and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons*, 28 U. Miami Inter-Am. L. Rev. 263 (1996-1997).

96. *See, e.g.*, Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

97. *Cf.* T. Alexander Aleinikoff, *The Tightening Circle of Membership*, 22 Hastings Const. L.Q. 915, 920-21 (1995) (noting difficulties in drawing lines between lawful and unlawful immigrants in defining community membership).

98. Of course, racial animus is not the exclusive reason for the restrictionist move in the immigration laws. Economic arguments frequently appear as a justification for the harsh treatment of noncitizens. Arguments that lawful as well as undocumented immigrants economically injure the United States are a facially neutral justification for reducing immigration. *See* Brimelow, *supra* note 62, at 137-56. A related economic claim is that today's immigrants lack skills needed by the nation's economy. *See* George J. Borjas, Friends or Strangers: The Impact of Immigration on the U.S. Economy 115-33 (1990) (analyzing significance of fact that recent immigrants have fewer skills than previous immigrant waves). *See generally* Vernon M. Briggs, Jr. & Stephen Moore, Still an Open Door? U.S. Immigration Policy and the American Economy (1994) (offering contrasting views of economic impacts of immigration policy). The fact that many low skilled immigrants of color also come from developing nations complicates the picture. Put simply, it is difficult to discern whether race or economic concerns principally motivate the push to restrict immigration. To further complicate the racial dynamic, some contend that racial minority citizens would be better off economically with reduction in immigration. *See* Roy Beck, The Case Against Immigration 21 (1996) (concluding that, while business interests gain from immigration, "the roster of immigration losers is much larger and includes some of America's most vulnerable citizens: poor children, lower-skilled workers, residents of declining urban communities, large numbers of African Americans. . . ."); Michael Lind, The Next American Nation 207-11 (1995) (to the same effect). *See also supra* text accompanying note 48 (citing authority contending that immigration adversely affects African Americans).

99. *See* Peter Skerry, Mexican Americans: The Ambivalent Minority 326-27 (1993) (discussing Mexican American Legal Defense and Education Fund's pro-immigration positions).

100. Another way of looking at the treatment of Latin American immigrants is to say that it reveals "status conflict" between Latinos and Anglos. *But cf.* Moran, *Status Conflict*, *supra* note 43 (analyzing status conflict between Latinos and Anglos underlying bilingual education controversy).

101. For further exploration of Latino diversity, see Johnson, *supra* note 23, at 67-72. *But cf.* Kennedy, *supra* note 8, at 1778-87 (rejecting idea, which is premise to much Critical Race Theory, that experiences of African Americans in U.S. are similar and emphasizing diversity of these experiences).
102. For analysis of similar problems in building solidarity among Asian Americans, see Yen Le Espiritu, Asian American Ethnicity: Bridging Institutions and Identities 172-76 (1992).
103. Ruben Navarrette, A Darker Shade of Crimson: Odyssey of a Harvard Chicano 105 (1993) (emphasis in original).
104. El Norte (Cinecom Int'l 1983).
105. *See id*. *See also* David R. Maciel, El Norte: The U.S.-Mexican Border in Contemporary Cinema 73-76 (1990) (observing that, although the movie was "outstanding," it portrayed all of the "heavies" as "of Mexican or Latin origin"). *Cf.* Berta Esperanza Hernández-Truyol, *Building Bridges -- Latinas and Latinos at the Crossroads: Realities, Rhetoric, and Replacement*, 25 Colum. Hum. Rts. L. Rev. 369, 411 (1994) (recounting incident in which Cuban American law professor was present when other Latino law professors suggested that another Cuban American law professor was not truly Latino).
106. *See* Rodolfo O. de la Garza et al., Latino Voices: Mexican, Puerto Rican & Cuban Perspectives on American Politics 84 (1992) (reporting survey results showing that 34.2% of Cubans, 22.7% of Puerto Ricans, and 15.4% of Mexicans identified themselves as "conservatives").
107. *See* Moran, *supra* note 12, at 11.
108. Chavez, *supra* note 66, at 9-38.
109. Richard Rodriguez, Hunger of Memory: The Education of Richard Rodriguez (1982).
110. One wonders why it is that, when the media prominently features a Latino (like Chavez and Rodriguez), he or she almost inevitably is assimilationist in outlook. One possibility is that assimilationist Latinos are preferred because their views square with those of dominant society. *See* Edward S. Herman & Noam Chomsky, Manufacturing Consent: The Political Economy of the Mass Media (1988) (articulating "propaganda model" that sees media in U.S. as mobilizing support for status quo).
111. *See supra* text accompanying notes 46-51 (explaining consensus).
112. *See* Skerry, *supra* note 98, at 300-04 (reviewing Mexican-American public opinion surveys indicating that significant support existed for the imposition of sanctions on employers of undocumented workers). *See generally* David A. Gutiérrez, Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity (1995) (analyzing complex interrelationship between Mexican-American and Mexican immigrant communities, including restrictionist sentiment among Mexican-Americans).
113. *See Times Poll/A Look at the Electorate*, L.A. Times, Nov. 10, 1994, at B2 (presenting exit poll data). Support among Latinos for Proposition 187 may reflect a desire to assimilate by embracing dominant society's restrictionist views. *See supra* text accompanying notes 65-70 (analyzing pressures on Latinos to assimilate).
114. A high profile example is Silvestre Reyes, who as head of the Border Patrol in El Paso, Texas received national notoriety when he engineered an operation, originally dubbed "Operation Blockade," which effectively reduced undocumented migration in that region. *See* Carlos Hamman, *Tex-Mex: El Paso's Border Patrol Hero (Congressional Candidate Silvestre Reyes)*, New Republic, Apr. 15, 1996, at 14. *See also* Sebastian Rotella, *Line of Fire; San Diego Border Patrol Chief Tackles Complex INS Job*, L.A. Times, Sept. 14, 1994, at A3 (describing new western regional director of Immigration & Naturalization Service "[w]ith his cowboy boots and rumbling Texas drawl, the colorful Gustavo de la Vina . . ."). There have been claims, however, that the Immigration & Naturalization Service has a practice of not promoting Latinos within the agency. *See* Dora Meza, *Containment Policy*, Hispanic, Mar. 1997, at 40 (discussing class action brought by Hispanic employees of Immigration & Naturalization Service claiming discrimination in promotion and other aspects of employment).
115. *See generally* María Cristina García, Havana USA: Cuban Exiles and Cuban Americans in South Florida, 1959-1994 (1996) (analyzing migration of Cubans to United States after 1959 revolution).
116. John Marelius, *Wilson Courts Cuban-Americans*, San Diego Union-Trib., June 18, 1995, at A1 (quoting Raymond Molina, head of the Broad Front for the Liberation of Cuba).
117. *See* Larry Rohter, *Many Cubans Don't Share Havana's Pride in Pact with U.S.*, N.Y. Times, May 7, 1995, at sec. 1, p. 20 (discussing Cuban community's reaction to agreement). *See also Arrival of Cuban Rafters from Guantanamo in Full Swing*, Refugee Rep., Sept. 29, 1995, at 1 (describing agreement).
118. *See supra* text accompanying notes 74-87 (describing impact of immigration enforcement efforts on Mexican immigrants).
119. *See* Carlos H. Arce et al., *Phenotype and Life Chances Among Chicanos*, 9 Hispanic J. Behav. Sci. 19 (1987) (concluding that Mexican - Americans with European physical appearance have more enhanced

"life chances" than Mexican-Americans with indigenous features); Martha Menchaca, *Chicano Indianism: A Historical Account of Racial Repression in the United States*, 20 Am. Ethnologist 583, 599 (1993) (scrutinizing history of laws applied to Mexicans and concluding that "skin color of Mexican-origin people strongly influenced whether they were to be treated by the legal system as white or as non-white"); Edward E. Telles & Edward Murguia, *Phenotypic Discrimination and Income Differences Among Mexican Americans*, 71 Soc. Sci. Q. 682 (1990) (finding that, although Mexican American incomes in all phenotypic groups lag far behind those of non-Hispanic whites, earnings of Mexican-American males with dark and native American phenotype receive significantly lower income than lighter Mexican-American males with more European phenotype).

120. *See supra* text accompanying notes 65-70 (analyzing pressure on Latinos to assimilate).

121. *See, e.g.*, Gonzales-Rivera v. INS, 22 F.3d 1441 (9th Cir. 1994) (finding that Border Patrol stopped undocumented Mexican because of "Hispanic appearance"); Murillo v. Musegades, 809 F. Supp. 487 (W.D. Tex. 1992) (enjoining Border Patrol practice of harassing and intimidating Mexican American citizens on account of physical appearance). *See also supra* text accompanying notes 58-61 (analyzing treatment of Congressman Luis Gutierrez as foreigner as indication of larger pattern of treatment of Latinos as foreigners).

Recently, a group in San Diego known as the Airport Posse had members wearing shirts emblazoned with "U.S. Citizen Patrol" monitor San Diego's international airport and prod airline personnel to check the identification of suspected "illegal aliens." *See* Tony Perry, *Citizens on the Lookout for Illegal Migrants*, L.A. Times, May 19, 1996, at A3. One member stated that she knew one airline passenger "'was an illegal alien because . . . he did not speak English, he was very frightened, and I have been in San Diego for 20 years and I can tell an illegal alien when I see them [sic].'" Carrie Kahn, *Two Citizens Groups in San Diego Barred from Airport* (Nat'l Pub. Radio broadcast, morning ed., May 24, 1996) (quoting member of Airport Posse). Such stereotypes, of course, open the door to discrimination against Latinos.

122. For further analysis of the limits of Latino assimilation, see Johnson, *supra* note 23, at 79-83.

123. *See generally* Mary C. Waters, Ethnic Options: Choosing Identities in America (1990) (analyzing voluntary nature of adopting ethnic identity).

124. *See supra* text accompanying note 73 (outlining some salient characteristics of Latino identity).

125. *See generally* 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).

126. *See* Shorris, *supra* note 52, at 62-110 and accompanying text (describing diversity of historical experiences of these groups).

127. *Compare supra* text accompanying notes 34-36 (discussing subordination of Mexican-Americans in the Southwest), *with* José A. Cabranes, *Citizenship and the American Empire*, 127 U. Pa. L. Rev. 391 (1978) (analyzing colonization of Puerto Rico and history culminating in affording U.S. citizenship to Puerto Ricans).

128. In other contexts, scholars have acknowledged similar political impacts of diversity within the relevant community. *See* Mary Coombs, *Between Women/Between Men: The Significance for Lesbianism of Historical Understandings of Same-(Male) Sex Sexual Activities*, 8 Yale J.L. & Humanities 241, 260 (1996) (emphasizing that "politics around issues of sexualities is inherently coalition politics. Lesbians and gay men have issues in common around which we can work, but we are not the same, and our issues are not always the same.") (footnote omitted).

129. *See* Brimelow, *supra* note 62, at 218-19, 265; Skerry, *supra* note 98, at 308-10.

130. Some have made such claims with respect to the effort to build a body of Asian American legal scholarship. *See* Jim Chen, *Unloving*, 80 Iowa L. Rev. 145, 149 (1994) (responding to proposal of development of "a distinct Asian American body of [legal] scholarship" and rejecting idea of "racial fundamentalism").

131. *See* Kenneth L. Karst, Belonging to America: Equal Citizenship and the Constitution 83-84 (1989); Carlos Villareal, *Culture in Lawmaking: A Chicano Perspective*, 24 U.C. Davis L. Rev. 1193, 1196-97 (1991).

132. Discussions with my colleague Joel Dobris helped me develop and clarify these thoughts.

133. *See supra* text accompanying notes 33-54 (analyzing reasons for this).

134. *See* Chavez, *supra* note 66, at 161-71 (offering "new politics of Hispanic assimilation"); Rodriguez, *supra* note 108 (using his life story as example of benefits of assimilation).

135. *But see* Michael A. Olivas, *Torching Zozobra: The Problem with Linda Chavez*, 2:2 Reconstruction 48 (1993) (criticizing Chavez's theory of assimilation and its historical foundations).

136. Rick P. Rivera, A Fabricated Mexican (1995).

137. *Id.* at 80-81. Richard Rodriguez describes similar treatment when, as a child, he lost fluency in Spanish upon learning English. Rodriguez, *supra* note 108, at 28-30.
138. Rivera, *supra* note 135, at 131 (emphasis in original).
139. *See* Leslie G. Espinoza, *Multi-Identity: Community and Culture*, 2 Va. J. Soc. Pol'y & L. 23 (1994) (examining from perspective of Latina recognition of multiple identities); Enid Trucios-Haynes, *Race and Latino/a Identity: Quienes Somos? Who Are We?* (Oct. 1996) (unpublished manuscript on file with author).
140. Some have begun this analysis. *See supra* note 38 (citing authorities).
141. *See* Julian Samora & Patricia Vandel Simon, A History of the Mexican-American People 223-33 (1993) (outlining "religious dimension of Mexican Americans"). *See, e.g.*, Rodriguez, *supra* note 108, at 77-110 (analyzing influence of Catholicism on his life). The integral nature of religion to many Latinos is symbolically depicted in Helena María Viramontes, Under the Feet of Jesus 63 (1995), in which a Mexican farmworker instructs her children that, if they ever run into trouble with "La Migra," the Immigration & Naturalization Service, they should remember that their most valued possessions -- their birth certificates proving their U.S. citizenship -- are "under the feet of Jesus," a statue of Jesus Christ in their home.
The impact of religion on the African American community has been examined to some extent. *See, e.g.*, Anthony E. Cook, *Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.*, 103 Harv. L. Rev. 985, 1015-22 (1990) (analyzing Martin Luther King Jr.'s views on social change).
142. The study of some of these issues has begun but is far from complete. *See, e.g.*, Montoya, *supra* note 69 (Latinas); Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. Third World L.J. 231 (1994) (Latinas).
143. *See* Shorris, *supra* note 52, at 159-71 (describing "racismo" among Latinos). As Randall Kennedy has observed,
internalization of color prejudice, acquiescence to subordination, and indifference or hostility toward others victimized by racism cannot be dismissed as the idiosyncratic responses of relatively few people of color. These behaviors and forms of consciousness constitute central aspects of the complex way in which racial minorities have responded to conditions in the United States and are thus clearly relevant to any attempt to derive theories based upon that response.
Kennedy, *supra* note 8, at 1781-82 (footnote omitted).
144. For an example of this, see Skerry, *supra* note 98 (analyzing Mexican-American politics), a book which provoked critical commentary from Latinos. *See, e.g.*, Alejandro Portes, *The Longest Migration*, New Republic, Apr. 26, 1993, at 39.
145. 347 U.S. 483 (1954).
146. *See supra* text accompanying notes 118-26 (discussing diversity of physical appearances among Latinos).
147. *See* Moran, *supra* note 12, at 4-13. I recognize, of course, that there has been skepticism about how much *Brown* has done to improve the status of African Americans in the United States. *See* Gerald N. Rosenberg, The Hollow Hope: Can Courts Bring About Social Change? 49-57 (1991); Girardeau A. Spann, Race Against the Court 104-08 (1993).
148. *See. e.g.*, San Antonio Ind. School Dist. v. Rodriguez, 411 U.S. 1 (1973) (rejecting claim brought by Mexican-American activists that poor children were denied right to education by school funding scheme).
149. *See, e.g.*, Plyler v. Doe, 457 U.S. 202 (1982) (holding that state could not constitutionally bar undocumented children from public schools).
150. *See, e.g.*, Yniguez v. Arizonans for Official English, 69 F.3d 920 (9th Cir. 1995) (en banc) (invalidating Arizona law that prohibited government employees from conducting business in any language other than English), *vacated as moot*, 117 S.Ct. 1055 (1997).
151. *See generally* Martínez, *supra* note 12 (reviewing litigation implicating interests of Mexican-American community and concluding that courts often resolved legal indeterminacy against Mexican-Americans).
152. *See* Rodolfo O. de la Garza & Louis DeSipio, *Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation After Seventeen Years of Voting Rights Act Coverage*, 71 Tex. L. Rev. 1479 (1993) (analyzing problems of low Latino electoral participation). *See also* Johnson, *supra* note 23, at 51-55 (analyzing political difficulties facing Latino community).
153. *See* Harry Pachon et al., *Grass-Roots Politics in an East Los Angeles Barrio: A Political Ethnography of the 1990 General Election*, *in* Barrio Ballots: Latino Politics in the 1990 Elections 140 (Rodolfo O. de la Garza et al. eds., 1994).

154. The degree of political assimilation may differ regionally. *See generally* Skerry, *supra* note 98 (analyzing political fortunes of Mexican-Americans in San Antonio, where there has been some success, and Los Angeles, where there has been little).
155. *Cf.* Charles R. Lawrence III, *Foreword: Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 Stan. L. Rev. 819, 839-47 (1995) (emphasizing importance of building multiracial coalitions in fostering social change).
156. *See* Gerald P. López, Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice 372 (1992) (questioning possibility of building coalitions across ethnic lines). *See also* Robert S. Chang, *The End of Innocence Or Politics After the Fall of the Essential Subject*, 45 Am. U. L. Rev. 687, 689-90 (1996) (considering problems of coalition building).
157. *See* Ramirez, *supra* note 15, at 969-74 (suggesting that changing demographics in United States, including more diverse minority population, would result in increased interethnic conflict).

10. Berta Esperanza Hernández-Truyol,*Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks, 2 HARV. LATINO L.REV. 199 (1997)

This essay, an expansion of remarks delivered at the LatCrit I Conference -- the first conference ever convened to discuss and explore critical legal thought from a Latina/o perspective -- develops a basis for articulating a LatCrit theory. As the introductory section, "LatCrit: The Voice for Latina/o Narratives" sets out, Latinas/os are a diverse community, whose identity components -- race, sex, ethnicity, language, and sexuality to name a few of the pertinent ones -- are indivisible yet diverse and varied. Such diversity, to date, has not allowed for a cohesive Latina/o theoretical model to be articulated. Rather, it has been the basis of skepticism as to whether such a model could exist. The "Culture Clashes" section details how, in the context of the majority culture in the U.S., such diversity has resulted in a fragmenting of identities within each individual depending on external social/political contexts. More specifically, "Confused Constructs" reveals that the indivisibility of the Latina/o identity components does not easily harmonize with the prevalent binary black/white legal paradigm, rendering the controlling analytical legal paradigm a vehicle to atomize Latinas'/os' indivisible identities. Indeed, the dominant construct mis/constructs the Latina/o identity by essentializing it - thus contributing to the culture clashes *within* us. The final section of the essay, "Reality Checks," proposes that LatCrit's hope is in the embracing of a non-essentialist model, one that incorporates the notion of the indivisibility of identity components -- a concept borrowed from international human rights norms -- and takes a global, rather than a parochial, perspective on rights.

I. LATCRIT: THE VOICE FOR LATINA/O NARRATIVES

Not many Latinas/os have been involved in the critical legal movements[(2)] as critical feminist theorists,[(3)] critical race theorists,[(4)] and lesbian/gay (queer) theorists.[(5)] Yet, many of us noticed that even the few Latina/o voices engaged in the critical discourse were not speaking as Latina/o voices. In lock-step with the oft-criticized inclination to atomize our various identities and address one isolated identity component at a time, their focus was not Latina/o-ness and its conflation with, for example, race, sex, and sexuality. Rather, in the general discussion, even in light of the strong critical race feminists' intersectionality challenge,[(6)] the analytical emphasis continued to be monocular: disaggregating the legal impact of race *or* sex *or* sexuality *or* ethnicity *or* language in any particular situation.

More and more Latina/o scholars, who recognized Latina/o diversity felt increasingly uncomfortable with the pre-fabricated boxes into which our views and voices were channeled for packaging by the dominant paradigm. This discomfort gave way to many private conversations and the notion that we, as legal academics working with Latinas/os in other disciplines, should explore the viability of LatCrit discourse. Thus, it was quite recently that the concept of a LatCrit movement was conceived.

Just in considering whether to take on the challenge, we knew the task would be formidable. For one, the multidimensionality of Latinas/os, and the diversity that results,

raised the question of whether a cohesive, theoretical, pan-ethnic[(7)] model could develop. This conference certainly represents *in vivo* the challenges that the notion of pan-ethnicity as the epicenter of a theoretical construct presents. On the one hand, pan-ethnicity could be the *raison d'être* for LatCrit discourse: our common problems are many and together we can ensure the power to find a solution.[(8)] On the other hand, pan-ethnicity could be the source of mistrust of such a theoretical construct's existence: our differences are many and will impede a common perspective from which to launch cohesive discourse.

Last October, when many Latinas/os in legal education gathered at the annual Hispanic National Bar Association ("HNBA") meeting in Dorado, Puerto Rico, the birthplace, if you will, of LatCrit, it was plainly evident that the venture would be complex. In conjunction with the HNBA's meeting, Latina/o law professors and some non-Latina/o colleagues held an all-day colloquium on legal theory and practice. While we were extraordinarily excited at gathering as a group to discuss critical legal theory -- something we had never done -- the provocative (some might call them heated) discussions throughout the day revealed our extreme diversity and multiplicity of perspectives. Before it existed, or was even named, the question arose whether a pan-ethnic theoretical construct could work. We were *Mejicanas/os, Puertorriqueñas/os, Cubanas/os, y más.* We were *blancas/os, morenas/os; rubias/os, y trigueñas/os; algunas/os eramos bilingues, otras/os hablábamos solamente inglés o español*.[(9)]

The logistics of the decision on what language to use for this first meeting, alone, was emblematic of the panethnicity problems Latinas/os confront. The HNBA conference took place in Puerto Rico, where both English and Spanish are official languages. Although all the law professors who attended spoke English, not all -- including not all Latinas/os -- spoke Spanish. Significantly, some of our guests, including my aunt and uncle who attended my presentation, did not speak English. It is an understatement to suggest I was conflicted with respect to what language to use in addressing the audience. I was in Puerto Rico where I was raised in an extended family setting, where *tía* and *tío* were like another set of parents. Yet, I addressed the audience of which they were part, in their country, in a language that they did not understand and that was foreign to us as a family. It was disconcerting to know that regardless of what language I spoke someone would be left out. In the end, I *felt* that I must speak English so that law faculty colleagues -- Latinas/os and non-Latinas/os alike -- would not be excluded. However, that choice effectively excluded some of my family; I counted on *mami* and *papi* to translate for *tía y tío*.

As this example shows, existing combinations and permutations of our identity components place us sometimes together, sometimes uncomfortably at odds. Some of us felt invisible, and had the voice and forum to say so. Thus started the conversations that prodded us to explore further, boldly to go to an undefined, exciting, and inspiring place.

I recall how the name LatCrit was born. The evening after the colloquium work was completed some of us gathered at Celina Romany's beautiful home *en mi viejo San Juan*.[(10)] We, as friends who live in different cities are prone to do, talked into the late hours about the developments of critical theory over the last decade, and about the challenging issues and intersectionalities that became apparent in the course of the colloquium. Of course, we were engaging in this discussion from a Latina/o perspective and much of the discussion centered around the virtual absence from the general critical discourse of Latina/o voices, the consequent invisibility and silencing of the Latina/o viewpoint -- if such a thing existed, and the energizing discussions that we had witnessed emerging from Latinas and Latinos engaged in critical legal theory discussions earlier in

the day. So, we wondered out loud, is there a place for Latina/o critical legal discourse? Could such theoretical construct exist in light of the diversity of the "defining" perspective? What could it be called? We answered the last question that night: the LatCrit moniker was "in esse," as we say in Property Law.[(11)]

With this symposium, we are making history as we start exploring the other questions that were raised in San Juan. This is the beginning of the raising of Latina/o voices and of the integration of those voices into the critical legal discourse. Only such inclusion will ensure appropriate Latina/o participation in the endeavor to develop, expand, and transform the notion of law as we know it. Not that Latinas/os have not been around. A look at the symposium authors reveals persons who have been urging change for quite some time. Indeed some, like Richard Delgado, have been at the forefront of the Critical Race Theory movement since its birth.[(12)]

I posit that LatCrit is necessary because it is different from other movements. LatCrit needs to co-exist not replace current discourse. LatCrit urges change based upon a perspective provided by Latinas'/os' diverse and indivisible identities. And there lies both the richness and the challenge of the LatCrit endeavor.

Perhaps a LatCrit movement is now possible because the numbers of Latinas/os in the legal academy have attained a level that allow a coalition to form. These numbers, however, show more than our potential; they show our diversity and our differences. Rather than be disheartened by such facts, and by the historical truth of the marginalization of Latinas/os in other critical legal discourse,[(13)] I choose to be energized by them. Indeed, Latina/o diversity provides a wonderful opportunity to take Angela Harris's challenge and make it incumbent upon LatCrits to learn from the past efforts of the Crits, FemCrits, and RaceCrits, including their successes and stresses, and build on the knowledge of this experience.[(14)] We need to accentuate the positive, particularly now when the patent backlash in our social-political environment can appear to put our varying communities -- within the Latina/o groups as well as across other communities -- at odds.[(15)] The plain truth is that we cannot allow false oppositionality to drive a wedge between us, while at the same time we must accept and embrace our differences. As Professor Harris urges, we must use these apparent tensions as a source of strength -- as points of departure for our discursive, progressive, inclusive interaction.[(16)] So with these thoughts in mind, I will articulate my nascent vision of LatCrit discourse.

II. CULTURE CLASHES

Initially, the notion of culture clashes should not evoke an "us versus them" oppositional stance. Rather, it is intended to evoke the various, sometimes competing, identities that each person possesses, which often, when applying the dominant single-trait paradigm, are rendered as competing identities. To be sure, the "competing" aspect is not one that redounds, or should redound, to making essentialist choices about one's identity. Indeed the tension of identities often is contextual. On the one hand there is the varied, but self-imposed attribution of identities. In contrast, there are the identities that are attributed to the individuals by the group, community, or society with which the individual is interacting.

Culture clashes, thus, result from the Latinas'/os' multidimensionality. LatCrit's contribution can lie in transcending the concept of varied identities as intersecting and, instead, re/visioning our identities as indivisible (and interdependent). We cannot choose

our identities, nor can we fragment them. Thus, we should not let others choose or atomize them for us.

Although the last comment may appear on its face to contradict my starting point of indivisibility, a close analysis reveals it is fully cohesive. I, Berta, am Latina. I was born in Cuba, lived in Puerto Rico through high school, then came to the U.S. for college. My *mami y papi* both were born in Cuba, as were all my grandparents except for my maternal *abuelo* who was born in Palma de Mallorca in the Balearic Islands. *Mami* is a Cuban trained lawyer and a doctor of diplomacy who worked with the Cuban Department of State until we left the island in 1960.[(17)] *Papi* is an accountant who recently retired from banking. My Latinaness is both an ethnic and a gender identity; the traits are indivisible. Simply because I stand before a community of color does not, and cannot, mean that my gender, and all the cultural trappings that entails-- both of society as a whole and of *la comunidad Latina* -- disappears. Similarly, my ethnicity cannot dissolve when I address a community of Non-Latina White (NLaW) women. These identities indivisibly coexist in me, along with my sexuality, my class, my ability, my race, and so on. It can no longer be, as Professor Valdes has often said, that if he is addressing a gay audience he is Latino and if he is addressing an audience of color he is gay. The conflation of our multidimensional identities always coexists, wherever we go, with whomever we interact. And it is the myriad interdependent components of our identities that makes us each unique individuals.

One example about a Latina law student who graduated a couple of years ago -- call her María -- reveals the potential insidiousness of these culture clashes. She once told me the following story about her study group (all NLoW law students). On days that she would "do" her hair and wear make-up she invariably would get the comment: "Gee, María, you look Cuban today." She also reported that she tended to be called on often in her Criminal Law and Evidence classes: whenever a Spanish name cropped up in the case name.

As the example shows, too often others essentialize our identities rendering identity construction simply a dynamic between the inquirer and the inquired. We are who we are, but too often we are de-selved depending on a) where we are: in Puerto Rico or Miami I do not "look" so different; b) who is looking at/defining us: is it a NLoW looking at me (in which case my gender and ethnicity are probably quickly noticed), a NLaW looking at me (where my Latinaness might be the salient factor), a Latino looking at me (where gender is the deviation from the "norm"), a Latina looking at me (where nationality may become an issue); and, c) whether we are comporting to alien dress norms: am I wearing something that even remotely could resemble a lawyer/law teacher uniform? All these factors enter into the internal and external construction of our identities.

Let there be no doubt, there is a huge difference between the construction of my identities at this conference and the construction at non-minority committee functions at the American Association of Law Schools, or at the Association of the Bar of the City of New York, or even at the HNBA. In fact, the latter will likely result in different constructions if it is held in Puerto Rico, Los Angeles, New York City, Miami, or Washington, DC. Letting others define who we are results in the internalization of confused identity constructs, (mis)constructions of identity, or damaging societal fears such as racism, sexism, ethnicism, and homophobia to name a few.[(18)]

In the 1994-1995 academic year, while a Visiting Professor at Georgetown University Law Center I taught a course on Latinas and Latinos and the Law -- a class

that was the setting for a rather unique self-(mis)construction story. About four or five weeks into the course, the class was analysing issues of multidimensionality: the intersection of race, gender, and ethnicity. One student, who had been incredibly articulate and insightful in her comments, raised her hand to ask a question. I knew it was a question rather than a comment because she was wearing a furrowed brow that patently conveyed her consternation. I, now expecting some wonderful fodder for class discussion, responded with Pavlovian excitement at the sight of her hand. Well, I was not quite ready for -- nor could I ever have anticipated adequately -- what followed. Rather than her usual articulateness, when I called on the student, she started atypically stumbling over her words. She tried to start a number of sentences, each time punctuating the end of her effort with hands thrown up in the air and starting over. Finally, the student, who is a Cuban-Chinese woman, just got right to the point. "*Ay, Profesora Hernández, me tiene totalmente confundida.* Really, you have me totally confused." She continued, raising her left arm and pointing at her forearm with her right hand's index finger, "All my life I thought I was white. Now I just don't know what I am." This is an intriguing identity position. It makes sense if we consider the fact that she is Cuban and was raised in Miami thus being "normativa" in that context. BUT, this is a Cuban-Chinese woman who in the context of "American" society deviates from the normative mold on the basis of race, ethnicity and gender. To consider herself "white" she had to internalize the majoritarian concepts of normativity.[(19)]

To be successful in deconstructing normativity and implementing an indivisibility construct, Latinas/os must first confront two important aspects of identity: gender and culture -- two components that in both "American" culture and in the *cultura Latina* often are at odds if we look at sex, meaning female, inequalities. Elvia Arriola's term "gendered inequality"[(20)] is at its quintessential application when we look at general demographics for Latinas. Latinas have a lower level of education than non-Latinas and are over-represented in the least skilled jobs paying the lowest wages.[(21)] In the mid-1980s, 23% of Latina/o families had women as heads of the household; of those, over 50% fell below the poverty line leading one author to conclude that "Latino[/a] families headed by women have the lowest incomes and highest poverty rate of all family types . . . . "[(22)] These statistics are not disaggregated by race, sexuality, or national origin; they include *all* Latinas, all of whom are disadvantaged based simply on their sex, ethnicity and possibly language. These are statistics that none of us -- male or female; lesbian/gay or straight; *Mejicana/o, Cubana/o, Colombiana/o, Salvadoreña/o, or Puertorriqueña/o* -- can embrace. None of us, not one man and not one woman, can afford the Latina invisibility that exists. All of us must think of the gender question when we are viewing ethnicity just like all of us must think of the ethnicity question when we are viewing gender.

This is a daunting emotional and intellectual task because our culture itself relegates Latinas to the private domain of the home where public discourse is deemed an invasion of a sacred realm. Our communities, however, must be careful not to allow culture to be used as a shield to preserve cultural practices that are grounded upon sexism and serve to institutionalize and perpetuate gender subordination.[(23)] These practices and pretexts are no more acceptable than majority racist and ethnicist practices that are used as swords to defile or eviscerate our cultures.

Moreover, these gendered practices and beliefs are not gender-bound: both Latinas and Latinos have grown up with socialized gendered images, views, and beliefs. Both Latinas and Latinos engage in and accept conduct that results in the marginalization

and invisibility of Latinas. Both Latinas and Latinos must think about whether cultural practices are gender subordinating, and take active corrective action against those practices that say women are subservient, inferior.

This, too, is a difficult and complex task. I recall, not *that* long ago when I was applying to colleges, my headmaster suggested I take advantage of Cornell University's early admissions program. He wanted me to enroll in a real Ivy league school (mind you, I had no clue what this was), not one of the all-women "sister" schools. As far as he knew (and that was all the knowledge I had) Cornell was the only Ivy league school taking girls. Now I know that he was wrong, Yale had started accepting women that year. I was happy to fill out one rather than six applications to schools so I said "o.k." That weekend I started completing only the Cornell application, but proceeded to fill out all six. I did not apply to Cornell's early admissions program. On Monday I reported to my headmaster what I had done and explained why: early admissions was only for boys. "That's absurd," he said, and proceeded to write a letter to the office of admissions advising them that *I* had made a mistake and to kindly consider me for early admissions. He got a response: early admissions is only for boys.

I tell this story because I want to give context to my plea for gender inclusion and sensitivity. At the time, I had no sense that there was anything *wrong* with the "boys only" rule. It was simply the rule; a neutral, objective fact that must have had a reason for being. I was totally nonplused; not angry, not inquisitive, nothing. I just accepted the norm. I posit that LatCrit, as a gender inclusive and sensitive theoretical model, can aid in seeking to prevent such passive acceptance of gender inequality as norm or culture.

With the goal of imbuing LatCrit with gender sensitivity and inclusion I am going to point to two specific things. Language is one. I am not Latino. I am Latina. The use of male-gendered language as the norm that is deemed to encompass the female is no more acceptable than to use the term "he" to include "she" -- also once upon a time explicated as a "rule."[(24)] Reviewing the notion of gendered "gender neutral" terms one author has noted, "We notice in language as well as in life that the male occupies both the neutral and the male position. This is another way of saying that the neutrality of objectivity and of maleness are coextensive linguistically, whereas women occupy the marked, the gendered, the different, the forever-female position."[(25)] This exclusion is particularly felt in gendered languages such as Spanish.[(26)]

Yet the gendered-language female-exclusion -- what Professor MacKinnon refers to as male as norm and as male -- persists in Spanish: it is "business as usual" -- explained away by archaic rules of grammar that "say so." In this writer's views, then the rules are simply wrong. While in Spanish including women might be more linguistically cumbersome than adding an "s" in parentheses in front of "he", if linguistic cumbersomeness excuses sexism then we might as well concede defeat now. Yet, even with increased gender awareness this gendered practice persists. For example, I am proud and honored that these proceedings will be published in the Harvard Latino Law Review; however how onerous would it be to call the publication the "Harvard Latina/o Law Review" and include *all* Latinas/os? Is one letter really all that much effort that it is worth rendering the most marginalized of groups even more invisible and silent? Gendered names mean gendered exclusion which results in gendered injustice.

Another different but related example of culture-based gender subordination that continues is the nature and form of the custom of women taking their husbands' names. Here are two interesting versions I have heard. First, one of my students, a Latino, tells his significant other, a feminist non-Latina woman of color, that the custom (read: the

proper cultural practice) of a woman taking on her husband's name is grounded upon a showing of respect. Let us pause for a moment to consider this proposition. Respect? Whose for whom? From whom to whom? And, if as I surmise was the case, the Latino was explaining that a wife should take the husband's name out of respect, does it not make sense then that the husband also ought to take the wife's name out of a similar respect? Or is the message here that women, while obligated to show respect to the men, simply do not deserve it themselves? Regardless of what one's views and personal choices are, to ground (or wed) the practice of wife-takes-husband's-name to a notion of respect effects culture-wide, culture-bound gender subordination to which not one person should accede.

The other interesting narrative on the "taking the husband's name" custom I heard once when I was engaged in a name conversation within earshot of my father. *Papi* piped up, "*Mi hija, para que tu veas, en Cuba en esa cosa de los nombres teníamos un sistema mejor. Allá, por ejemplo, tu mamá no se tenía que cambiar su nombre. En vez, ella solo añadía 'de Hernández'*."[(27)] Well, at first blush it may appear that this is, indeed, a better system, although one might immediately wonder whether the husband would also add "*de* [wife's name]". Distasteful as it would be (and as repugnant as the implications are, given the translation that follows), at least this option would not be gender-subordinating. Rather, it would provide information about someone's notion of personhood in the context of matrimony. However, a literal translation sheds a totally different light on the topic -- it provides a completely changed, and unacceptable, significance to the apparently simple addition (and tradition). "*De*" means "belonging to"; *de* Hernández means belonging to Hernández -- a concept of ownership that our society rejected with the Thirteenth Amendment.

Normativity, in all its forms -- be it maleness, whiteness, or straightness -- creates a false sense of universality of what is right, desired, and desirable. At one time, this idea was used to support racial subordination.[(28)] Relativity -- cultural contextualization -- compared to the universal, can also negatively affect an identity construct for, as shown above, it can be used as a pretext to support cultural practices or traditions that effect subordination. Both universality and relativity have been used to subjugate women. The consequence has befallen Latinas based on sex and race and ethnicity.

Thus, as far as traditional analysis provides, defining identity as anything other than multidimensional, results in an essentializing of self that I, for one, reject. I am all that I am all of the time. It is the conflation of factors that makes me react, feel, think, and express the way I do. An integral part of my self is not, cannot, and does not become detached simply because of context. Such essentializing results in positioning the self as real *vis à vis* the particular selected "ism" which is only a part of the self, rendering all the other indivisible parts effectively invisible. Latinas/os are the multiplicity of our identities not the fragmentation or atomization of them. Audre Lorde expressed a similar sentiment:

As a Black lesbian feminist comfortable with the many different ingredients of my identity, and a woman committed to racial and sexual freedom from oppression, I find I am constantly being encouraged to pluck out some one aspect of myself and present this as the meaningful whole, eclipsing or denying the other parts of myself. But this is a destructive and fragmenting way to live. My fullest concentration of energy is available to me only when I integrate all the parts of who I am, openly, allowing power from particular sources of my living to flow back and forth freely through all my different selves, without the restrictions of externally imposed definition. Only then can I bring

myself and my energies as a whole to the service of those struggles which I embrace as part of my living.[29]

To be sure, an indivisibility approach is a challenge, but it also can serve as a coalition-building premise. If we are mindful of our myriad indivisible, interdependent identities, we as a people will be more sensitive to each other, less likely to marginalize and render invisible some in our midst, and be freer to be who we are.

III. CONFUSED CONSTRUCTS

Much of the diffusion, conflation, and confusion of identities results from the jurisprudential construction of equality. Equality theory, one would think, ought to engender liberty; unfortunately, its refuge is a jurisprudence of doubt.[30] To be sure, equality is one of those elusive concepts, difficult to define or articulate in positive terms;[31] but no doubt we know inequality when we see it.[32] Indeed, over the course of United States history, the Supreme Court has left a checkered trail in its grapplings with the Constitutional mandate to provide for "*equal* protection of the laws."[33] Today, the Court continues to grapple with, and balk at, the challenges of defining and securing real, not virtual, equality.

The state of legal developments is so replete with confusion and inconsistency that it arouses not only doubt but even suspicion. For example, courts even have difficulty defining sex. Concepts of sex include sex (meaning gender),[34] sex (meaning sex),[35] and sex (meaning sexuality) which depending on whether it is normative (meaning heterosexual)[36] or not (meaning homosexual)[37] can be either good or bad. One exception to such binary approach exists with sex in the trenches where it all is bad and thus a reason to keep all women[38] and gay men[39] out, so that our boys in uniform can tend to the serious business of defending the country. We have seen constructs of race, and concepts of hate, religious freedom, and establishment of religion manipulated to preserve hegemony, the power status quo.[40]

The Supreme Court is not alone in its attempts to ascertain the meaning of true or real equality. For example, feminist scholars have grappled with three different approaches to constitutional equality: neutral equality, special treatment, and recognizing and accommodating differences.[41] A noted scholar suggests that it ought to be the subject position that drives the equality concept and thus takes a dominance approach to equality which focuses on women's subordination -- women's *un*-equality.[42] Still another theoretical proposal is the "pragmatic" perspective that suggests that women should take whatever approach works.[43] Because of the entrenched monocular legal approach, however, none of the theoretical constructs is fool-proof; all, indeed, are flawed. Take neutral equality, for example, in the context of pregnancy. In that view, pregnancy -- the unique *ability* women have to carry and deliver a child -- is deemed to be a *dis*ability not well suited (indeed, rather awkwardly suited) to an equality analysis.[44] Only in a confused construct can such a capacity, and endowment, result in viewing the person/group with the capability as *less* able or *dis*abled -- in sum, *un*equal.

The role of normativity is of particular importance in leading to such anomalous legal analysis. Any consideration of equality in these terms incorporates the "equal to what?" question. The point of departure -- the "what" -- is entrenched in traditional legal thought -- purportedly objective, rational, and neutral. This "what" is then constructed (embellished) around the aspirational, normal (but really mythical) "reasonable man" -- the accepted normative model. This "reasonable man" was made in the image of the

heroic "founding fathers," and resulted in a skewed model. This archetype of normalcy is gendered (male), racialized (white), ethnicized (Western European/Anglo), classed (formally educated and propertied), sexualized (heterosexual), religious-based (Judeo-Christian), and ability-defined (physically and mentally). Each of the indicia of normativity becomes part of a rite of passage and each individual's divergent traits represents a deviation from the norm, a degree of separation from the aspirational paragon, a mark of a deficiency or defect. Such deviation from the norm is both a symptom of inequality and its justification.

This static model is anathema to a heterogeneous, democratic, and ever-changing society. Thus it is not surprising that the unprincipled normative intransigence of this model and its concomitant social/cultural/political inertia (of rest, not motion) has been subjected to serious challenge. LatCrit, it is my hope and vision, will be a forceful, multi-dimensional challenge to the hegemonic conservatism (backlash) that normativity has imposed on the law. LatCrit will allow for attainable aspirations, not false norms, for equality in our heterogeneous society. Two recent equality conundrums in the context of which LatCrit can have immense impact are the recent erosion of affirmative action programs and the new anti-immigration laws.

Nowhere in our jurisprudence does the issue of equality create more polarity than in the area of "affirmative action." Narrowly defined, affirmative action consists of race-, ethnicity-, and even sex-based "preferences." The concept, coined in the height of the civil rights era, was intended to make equality a reality for those who for essentially the entire history of this country had been excluded and marginalized from enjoying the fruits of social, technical, employment, and educational progress. The Civil Rights Acts, barring discrimination in employment, education, housing, and even immigration on the basis of race, sex, color, national origin, and religion, were the vehicles that would make the dream of equality come true.[(45)] Recently, with the affirmative action debate, this dream has become a nightmare.[(46)]

Ironically, although affirmative action takes many forms, the only models under attack are those models that grant "preferences" (read: unfair advantages) to all persons of color and majority women. Sometimes the opposition to these programs take the paternalistic view that the programs "stigmatize" those they seek to protect. The *Hopwood*[(47)] decision, with its extensive references to *Adarand*,[(48)] *City of Richmond*,[(49)] and *Metro Broadcasting*[(50)] -- all decisions taking away those "unfair preferences" from undeserving and less qualified (by normative standards, mind you) minorities[(51)] -- is replete with allusions to how demeaning such preferences are to those who are consequently stigmatized by obtaining a seat in law school or a job, simply because of their race.

Paul Rockwell in his article *Angry White Guys for Affirmative Action*[(52)] describes the duplicity of this "stigma" argument. First, he notes that "[w]e hear a lot about the so-called stigma of affirmative action for minorities and women [and] [w]e are told that affirmative action harms the psyches of African-Americans, Latinos[/as], and women."[(53)] Then he unearths the disingenuousness of such an assertion.

> It is a strange argument. Veterans are not stigmatized by the GI Bill. Europeans are not stigmatized by the Marshall Plan. Corporate farmers are not stigmatized by huge water giveaways and million-dollar price supports. The citizens of Orange County, a Republican stronghold, seeking a bailout to cover their bankers' gambling losses, are not holding their heads in shame. The $500 billion federal bailout

> of the savings and loan industry, a fiasco of deregulation, is the biggest financial set-aside program in U.S. history. Its beneficiaries feel no stigma.
>
> > Only when the beneficiaries of affirmative action are women and people of color is there a stigma. Where there is no racism, or sexism, there is no stigma.
> >
> > Affirmative action is already part of the fabric of American life. We are all bound together in a vast network of affirmative action . . . . [(54)]

Notwithstanding the patent infirmity of this "stigma" rationale, the Supreme Court has embraced it as an appropriate basis to dismantle *racial* preferences.[(55)] Yet, veterans' preferences[(56)] and alumni preference[(57)] remain constitutionally in place.

The irony of these results is inescapable. For example, in *Hopwood* the court rejected any consideration of race even in instances in which, as was the case at the University of Texas, historic *de jure* discrimination had been confessed. The *Hopwood* court plainly stated that "[w]hile the use of race per se is proscribed . . . [a] university may properly favor one applicant over another because of his[/her] . . . relationship to school alumni."[(58)] Only in a very confused construct of equality can this be considered, as the court expressly declared, color-blind.[(59)] How in a system in which, because of its conceded discrimination throughout history, the alumni body is overwhelmingly racially homogeneous (white), can an alumni preference be color-blind? This is as perplexing a premise as pregnancy not being sex-related[(60)] and Spanish language ability not being national-origin related[(61)] -- two concepts that under our neutral jurisprudence have been confirmed as constitutionally sound.

In the name of equality, the Supreme Court now requires color-blindness -- a concept that declares the constitutional irrelevancy of race. I find this an interesting concept at the eve of the twenty-first century. Where was this fair and neutral concept of color-blindness in the last few illustrious decades, decades during which women and men of color could not speak, could not vote, could not work, could not own a home, could not ride in the front of the NLWs buses, go to their schools, play on their teams, use their bathrooms, eat at their counters, or drink from their water fountains. The eve of the twenty-first century is some interesting time to call upon a notion of color-blindness.

It is noteworthy that this chaotic notion of justice is replaying itself in the anti-immigrant initiatives. Justice Scalia justifies color-blindness based upon the notion that we are all simply human beings constituting an "American" race.[(62)] At the same time, Congress apparently is seeking to re-define the American race. Notwithstanding our constitutional provision that "[a]ll persons born . . . in the United States . . .are citizens of the United States . . . " elected Senators and Representatives are contemplating a movement that would effectively repeal this constitutional right. The proposal would deny citizenship to persons *born* in the United States if their mother is not in the country legally.[(63)] A constitutional amendment to deny citizenship to one *born* in the United States would defile the very basis of the foundation of this country as new home for those seeking freedom and prosperity in this land of opportunity.

Nonetheless, federal initiatives, like local counterparts, target the presence of so-called "illegal aliens" -- a telling moniker in itself as the *people* are not illegal, although their presence within United States borders may well be, and the *people* are not "alien" they are simply foreign nationals -- for wreaking havoc with our economy by taking jobs

away from deserving Americans (although there is ample proof that "they" take jobs that Americans will not perform),[(64)] by depleting our coffers by virtue of using our health facilities and educating their children in our schools (although it is well established that the targeted immigrants -- Mejicanas/os, Salvadoreñas/os, and Guatemaltecas/os who enter California without documentation -- every year give more to national, state, and local economies than they receive in services),[(65)] and just their general and overall criminality, ironically proven by their very undocumented entry into and presence within our borders.

That outsiderness/otherness plays a role in these nativistic trends is made patent by a review of how other non-U.S. nationals are treated. Lack of papers alone as a symbol of criminality is very limited as such documentation is not even necessary for many other foreigners to enter into the U.S. legally.[(66)] For example, the visa waiver program allows persons who are residents of twenty-two selected countries, largely from Western Europe, to stay in the United States for up to ninety days simply by purchasing a round-trip ticket.[(67)] *These* "undocumenteds" are "significant abusers of the system" with the Immigration and Naturalization Service estimating they constitute between five and ten percent of the "illegal immigrants who overstayed their visas."[(68)] Further, visa overstays constitute over fifty percent of the illegal presence in the United States.[(69)] With these figures, nativism and xenophobia, and a disdain, dislike, and fear of *certain* others/outsiders are clear justifications and pretexts for such differential treatments of non-nationals. However, such differential treatment follows the pattern of the confused notions of equality in our jurisprudence.

IV. REALITY CHECK

So any self-preserving, if by now admittedly not sane, person must ask herself, what difference can LatCrit make? With the jurisprudential notions of equality being as chaotic, disconcerting, and befuddled as they are, with the Latina/o communities being as diverse as they are, is there any possibility, remote or attenuated as it may be, that we can go somewhere with this pan-ethnic movement? I think so. I hope so. I dream so.

So there are glitches. If I were to let that bother me I would not be able to continue teaching and writing and I would return to the safe haven of the practice of law where, as a commercial litigator, my soul was seldom at issue. However, the project (and its process) is not going to be easy. *Al contrario, tenemos un tremendo reto frente nosotros/as. Pero unidos, concientes de, pero aceptando, nuestras diferencias y múltiples dimensiones, no hay obstáculo que no podamos sobreponer.*[(70)] But the foundation must lie on the recognition of the indivisibility construct and our acceptance that although we may not like, understand, or agree with all our neighbors and their issues, well, we have to love them.

This commitment, of course, is a difficult one, for we must commit to asking questions we do not want to ask, hear answers we do not want to hear, and embrace people we might be afraid to embrace. But if not now when? If not us, who? We have the diversity to give us the strength to carry out this challenge. In our "us" we can include persons of every size, shape, form, gender, sexuality, race, color, religion, class, and ability. We have engaged with our *familias* for years -- *abuelas/os* from the "old country," whichever one that may be, and *hermanas/os* from the new one, often speaking a different tongue; we have supported each other for years, writing tenure letters and reviewing articles; we have fought for our causes for years, writing briefs, attending

rallies. It is time we join our intellectual strengths and make sense out of the nonsense that surrounds us calling itself law.

We have to keep our diversity in the foreground because, and some might see this as ironic, that is where our strength lies. Both Linda Chavez and Cesar Chavez want to educate our kids. And if those two can share a goal, who knows, we might be able to eat grapes in the near future. Here are the questions to always ask: The ethnicity question -- what are the implications of a practice/action/law to our ethnic group? The gender question -- are there particularized implications of the practice/action to Latinas? And so, following this pattern we must ask the alienage question; the race question; the language question; the sexuality question; the class question; the ability question. We have to own up to the reality check that we *are* all those groups. Thus, we have to be willing to work together to further ourselves, in spite of ourselves. We have to purge ourselves of our internalized racism, sexism, heterosexism, classism, ethnicism, elitism.

I am going to step forward and face the challenge. I will start by doing an unpopular thing: I am going to "out" us as imperfect, be a little critical of us. This exercise is intended in the constructive vein in which Angela Harris has presented the venture: so that we can recognize our past successes and stresses and mistakes, learn from them, and not repeat them. With respect to our achievements as well as our failings let us be neither unduly elated nor foolishly self-deprecatory. While we continue to focus on the positive, we must not overlook the blunders/exclusions that we effect ourselves, probably by virtue of the internalization of that normative hierarchy which we then echo, lest we then replicate those mistakes. So I say to the Latinos in our midst, do not make Latinas the truly *olvidadas*;[(71)] to the sexual normativos/as, do not marginalize the gays and lesbians; to the *más blancas/os*[(72)] do not exclude the *indias/os, mestizas/os, morenas/os*.

Let us be the first movement that can pride itself in not being gender/race/class/religion/sexuality/ethnicity essentialists. We have seen what it has done to the Crits. Women's feeling of exclusion engendered the FemCrits. Ironically, the FemCrits failed to learn from their own exclusion and the movement was overwhelmingly racially essentialized. Similarly, persons of color who felt excluded from the critical movement formed the RaceCrits who, while more inclusive, still felt the strain of the emerging Critical Race Feminism. In addition, the RaceCrit discourse so centered in the black/white paradigm that it overlooked issues related to ethnicity and sexuality.

One final component that LatCrit discourse should incorporate is a global perspective. We should expand our perspective to include international human rights protections. At a time of contraction in domestic civil rights protections, such norms offer hope with respect to many of Latinas'/os' concerns.[(73)] One of the centerpieces of international human rights documents is the protection of persons (not the narrower class of citizens) from discrimination on the bases of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.[(74)] Every single one of these status protections can be employed by Latinas/os to protect persons from our communities. For example, international norms expressly protect language, a right absent in our national laws.[(75)]

Moreover, various international instruments protect the rights to health,[(76)] education,[(77)] privacy and family,[(78)] liberty and security of the person,[(79)] travel,[(80)] information,[(81)] and freedom of association.[(82)] These protections can all be valuable to Latinas/os in challenging xenophobic laws such as the provisions of Proposition 187 that deny health, education, and social welfare benefits.[(83)] For example, education rights and

the right to information would impede exclusion of children from schools and the right to privacy would appear to shield targeted populations from inquiries when seeking health care.(84)

I urge that LatCrits learn from the omissions of the past and craft an inclusive, global model where truly all voices have a forum. And we should be able to, if anyone can. Those concerns we have in common are far greater than the differences that I am certain we can, in all events, resolve. To illustrate that our common interests are many, allow me to suggest a list of critical issues (in no particular order): education, immigration, health care, housing, employment, language, voting, crime, domestic violence, welfare reform, xenophobia, sexism, racism, heterosexism. That list provides enough work on which we all can agree to collaborate and furnishes us with a starting point. Significantly, working on the catalogued topics merges theory and practice -- because for LatCrit to have real meaning it must not be purely a theoretical endeavor, it must have a practical side that allows us to enrich our communities and fulfill their needs, fill the voids. Let us not impoverish any in our midst in order that we all can truly be enriched.

Footnotes

* Professor of Law, St. John's University School of Law. Many thanks to Kimberly Johns (the best research assistant for which anyone could hope) for her outstanding work on this essay. Many personal thanks to Cal Western for its generosity in hosting this truly historic event and in particular to Professors Frank Valdes, Laura Padilla, and Gloria Sandrino for their magnificent organizational efforts and successes.

2. *See e.g.*, Symposium, *Lawyering in Latina/o Communities: Critical Race Theory and Practice*, 9(2) La Raza L. J. 1 (1996) [hereinafter *Lawyering*] (first meeting of Latina/o law professors to discuss critical race theory and Latinas/os); Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography*, 79 Va. L. Rev. 461 (1993) (review of the entire bibliography reveals only seven writers with recognizably Latina/o names, of whom only four had specifically focused on the Latina/o experience).

3. For examples of Latinas/os who have written on critical feminist theory, see Elvia Arriola, *What's the Big Deal? Women in the New York City Construction Industry and Sexual Harassment Law*, 22 Colum. Hum. Rts. L. Rev. 21 (1990); Leslie Espinoza, *Masks and Other Disguises: Exposing Legal Academia*, 103 Harv. L. Rev. 1878 (1990); Berta Esperanza Hernández-Truyol, *Women's Rights as Human Rights - Rules, Realities and the Role of Culture: A Formula for Reform*, 21 Brook. J. Int'l. L. 605 (1996) [hereinafter Hernández-Truyol, *Women's Rights*]; Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 Yale L.J. 1545 (1991); Celina Romany, *Black Women and Gender Equality in a New South Africa: Human Rights Law and the Intersection of Race and Gender*, 21 Brook. J. Int'l L. 857 (1996).

4. For examples of Latinas/os who have written on critical race theory, see Richard Delgado, Critical Race Theory: The Cutting Edge, (1995); Leslie Espinoza, *Masks and Other Disguises: Exposing Legal Academia*, 103 Harv. L. Rev. 1878 (1990); Trina Grillo *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other-isms)*, 1991 Duke L.J. 397 (with Stephanie M. Wildman); Ian F. Haney López, White by Law: The Legal Construction of Race (1996); Margaret Montoya, *Máscaras, Trenzas y Greñas: Un/Masking the Self While Un/Braiding Personal Experience, Latina Heritage, and Legal Socialization*, 17 Harv. Women's L.J. 185 (1994); Juan Perea *Ethnicity and Prejudice: Reevaluating "National Origin" Discrimination Under Title VII*, 35 Wm. & M. L. Rev. 805 (1994); Michael Olivas, *The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 St. Louis U. L.J. 425 (1990); Gerald Torres *Critical Race Theory: The Decline of the Universalist Ideal and the Hope of Plural Justice - Some Observations and Questions of an Emerging Phenomenon*, 75 Minn. L. Rev. 993 (1991).

5. For examples of authors who have been at the forefront of the queer theory movement, see Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 1995 Cal. L. Rev. 1, and Elvia R. Arriola, *Gendered Inequality: Lesbians, Gays, and Feminist Legal Theory*, 9 Berkeley Women's L.J. 103 (1994).

6. *See, e.g.*, Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581 (1990); Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. L. Forum 139 (noting that a blackwoman's position can not be properly understood simply by looking at the effects of race *or* the effects of sex).
7. The basis of the concept of Latina/o pan-ethnicity is "the pan-Latino[/a] consciousness emerging in this country" conjoined with the realization that Latinas/os "must never obscure the uniqueness of the experiences of these various Latino[/a] groups." Angelo Falcón, *Viewpoints; Through the Latin Lens*, Newsday, Sept. 3, 1992, at 106.
8. The idea of pan-ethnicity is centered on the notion that, in the United States, "more brings [Latinas/os] together than separates them within the political process." *Id.*
9. Author's translation: "Some of us were bilingual, others spoke only English or Spanish."
10. Author's translation: "In my old San Juan." "En mi viejo San Juan" is actually the title of a beautiful song about old San Juan.
11. In esse: in being; actually existing. Black's Law Dictionary 776 (6th ed. 1990).
12. Richard Delgado delivered one of the keynote addresses in this symposium. *See generally*, *Lawyering*, *supra* note 1.
13. *See generally* Delgado & Stefancic, *supra* note 1.
14. *See generally* Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 Cal. L. Rev. 741 (1994) (urging that lessons be learned from the tensions arising from modernism to postmodernism theorizing to the benefit of critical theory, that we learn to use the high and low points to further discourse, and that we engage in an inclusive "jurisprudence of reconstruction" that accommodates "difference and identification"). For a discussion of how Professor Harris's thesis presents an excellent point form which to launch LatCrit theory, see Francisco Valdes, *Foreword - Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 LaRaza L.J. 1 (1996).
15. *See, e.g.*, Cal. Prop. 187 (1994) (an anti-immigrant proposal patently aimed at Latinas/os but that was supported by the Asian communities in California).
16. *See generally* Harris, *supra* note 13.
17. I told my learning story in Berta Esperanza Hernández-Truyol, *Building Bridges - Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 Colum. Hum. Rts. L. Rev. 369 (1994).
18. For a wonderful piece on unconscious internalizing of majority norms, cautioning as to possible harm from internalization, see generally Montoya, *supra* note 3.
19. These concepts were discussed during the first session at this conference by Leslie Espinoza, Max Castro, Rene Nuñez, and Laura Gomez, in *Plenary Panel I: Latina/o Pan-Ethnicity?: Histories and Conditions that Unite and Divide Our Communities*, published herein as *Panel One: Latina/o Identity and Pan-Ethnicity: Toward LatCrit Subjectivities*, 2 Harv. Latino L. Rev. 175 (1997). *See generally* Montoya, *supra* note 3.
20. Elvia R. Arriola, *Gendered Inequality: Lesbians, Gays, and Feminist Legal Theory*, 9 Berkeley Women's L.J. 103 (1994).
21. *See* Judith A. Winston, *Mirror Mirror on the Wall: Title VII, Section 1981, and the Intersection of Race and Gender in the Civil Rights Act of 1990*, 79 Cal. L. Rev. 775, 779 n. 20 (1991) (providing statistics regarding the status of Latinas). *See also* Berta Esperanza Hernández-Truyol, *Las Olvidadas I - Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law*, 1 Iowa J. of Gender, Race & Justice (forthcoming 1997) (discussing Latina demographics) [hereinafter Hernández-Truyol, *Las Olvidadas*].
22. Winston, supra note 20, at 779. *See generally* Hernández-Truyol, *Las Olvidadas*, *supra* note 20.
23. Certainly, these cultural practices that entrench gender-subordination are not limited to Latinas/os. To the contrary, it is, sadly, a global phenomenon. *See generally* Hernández-Truyol, *Women's Rights*, *supra* note 2 (reviewing the reality of global gender subordination and proposing a formula for reform).
24. For the impact of gendered language on legal reasoning see Lucinda M. Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 Notre Dame L. Rev. 886, 887 (1989) (noting that "[l]anguage matters [ ] [l]aw matters [ ] [l]egal language matters").
25. Catherine A. MacKinnon, Feminism Unmodified 55 (1987).
26. Of course it is not limited to Spanish, the same problems arise in French. One interesting effect in French is the gendered consequence in human rights literature where, for example, the Universal Declaration on Human Rights is called the Declaration des Droits de l'*Homme* [emphasis added] (author's translation: "Declaration on the Rights of *Man*").

27. Author's translation: "My daughter [note: that is a literal translation in Spanish but it is an endearment as well], you see, in Cuba in this thing about names we had a better system. There your mother wouldn't have to change her name. Instead, she just would add 'de Hernández'".
28. *See, e.g.*, Plessy v. Ferguson, 163 U.S. 537 (1896) (rejecting a Fourteenth Amendment challenge to segregation -- "Jim Crow" -- laws).
29. Audre Lorde, *Age, Race, Class and Sex: Redefining Difference, in* Out There: Marginalization and Contemporary Cultures 285 (Russell Ferguson et al. eds., 1990).
30. *See* Planned Parenthood of Southeast Pennsylvania v. Casey, 505 U.S. 833, 844 (1992) (O'Connor, J.) ("Liberty finds no refuge in a jurisprudence of doubt.").
31. *See* Mary Becker, *Strength in Diversity: Feminist Theoretical Approaches to Child Custody and Same-Sex Relationships*, 23 Stetson L. Rev. 701, 701-04 (1994) (describing neutral equality theory, Catharine MacKinnon's women's unequality theory, Robin West's hedonic theory, and Margaret Radin's pragmatic theory).
32. Potter Stewart used these words to explain what pornography that although he could not define pornography, he knew it when he saw it.
33. U.S. Const. amend. XIV, cl. 1 (ratified 1868).
34. *See* Mississippi University for Women v. Hogan, 458 U.S. 718 (1982) (holding that state-sponsored nursing school could not deny admission to males based solely on their gender under Equal Protection Clause of the Fourteenth Amendment); Reed v. Reed, 404 U.S. 71 (1971) (holding that discrimination based on gender is subject to Equal Protection Clause scrutiny).
35. *See* Meritor Savings Bank, FSB v. Vinson, 106 S. Ct. 2399 (1986) (sexual harassment is sexual discrimination).
36. *See* Loving v. Virginia, 388 U.S. 1 (1967) (holding that the states could not prevent interracial marriage as marriage was a vital personal right); Griswold v. Connecticut, 381 U.S. 479 (1965) (holding that marital privacy, in regards to a statute forbidding the sale of contraceptives, is within the penumbra of constitutional guarantees).
37. *See* Bowers v. Hardwick, 478 U.S. 186 (1986) (holding that there is no fundamental privacy right to homosexuality).
38. *See* Rostker v. Goldberg, 453 U.S. 57 (1981) (holding that act requiring registration of only men was constitutional, focusing on military needs rather than on equity).
39. An example of this is the "gays in the military" fear that led to the don't ask, don't tell, don't pursue ("DADTDP") compromise early in the Clinton presidency. Of course, this policy includes lesbians, but interestingly very little was said, heard, or seen about lesbians during the DADTDP hearings. Besides, lesbians, in wearing the "gender" hat (as opposed to the sex meaning sex [sexuality] hat) are excluded from the trenches in all events. *See generally* Menkel-Meadow *infra* note 40.
40. *See, e.g.*, R. A. V. v. St. Paul, 60 U.S.L.W. 4667 (1992) (ordinance prohibiting display of a symbol that arouses anger, alarm or resentment on the basis of race, color, creed, religion or gender unconstitutional); Doe v. University of Michigan, 721 F. Supp. 852 (E.D. MI 1989) (university policy on discrimination and discriminatory harassment, which prohibits stigmatizing or victimizing individuals on basis or face, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, etc, unconstitutional); *but see* Wisconsin v. Mitchell, 113 Sup. Ct. 2194 (1993) (statute enhancing sentence when defendant intentionally selects victim on basis of race constitutional).
41. *See* Carrie Menkel-Meadow, *Excluded Voices: New Voices in the Legal Profession Making New Voices in the Law*, 42 U. Miami L. Rev. 29, 46 (1987). The notion of neutral equality, i.e., treating similarly-situated people similarly, was first articulated in Brown v. Board of Education, 347 U.S. 483, 495 (1954).
42. *See* mackinnon, *supra* note 24.
43. *See* Becker, *supra* note 30, at 701-704 (describing the traditional formal equality approach and three alternative strands).
44. *See* Geduldig v. Aiello, 417 U.S. 484 (1974) (denial of disability insurance on basis of pregnancy not sex discrimination).
45. *See* Civil Rights Acts of 1964, 1965, 42 U.S.C.A. ß 2000e *et seq* (1994).
46. *See, e.g.*, Adarand Constructors, Inc. v. Peña, 115 S. Ct. 2097 (1995) (racial preferences in bidding unconstitutional); Texas v. Hopwood, 78 F.3d 932 (5th Cir.) (holding racial preferences in law school admissions unconstitutional), *cert. denied*, 116 S. Ct. 2581 (1996).
47. *See* Hopwood, 78 F.3d at 932.
48. *See* Adarand, 115 S. Ct. at 2097.

49. *See* City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) (holding racial preferences in bidding unconstitutional).
50. *See* Metro Broadcasting, Inc. v. F.C.C., 497 U.S. 547 (1990) (allowing racial preferences in issuing licenses met strong dissent from Justices O'Connor, Rehnquist, Kennedy, and Scalia). Justice Thomas who joined the Court after this decision, teamed up with the *Metro Broadcasting* dissenters to convert that dissent into the majority position in *Adarand.*
51. Hopwood was a suit brought by white students who, having failed to meet the standards set for students, had higher scores than the average for the incoming students of Mexican American, Puerto Rican, or African American demographics. *See* Hopwood, 78 F.3d at 932-37.
52. Paul Rockwell, *Angry White Guys For Affirmative Action* (visited Oct. 21, 1997) <http://www.inmotionmagazine.com>.
53. *Id.*
54. *Id.*
55. *See City of Richmond*, 488 U.S. at 493 ("[unless [race-based classifications] are strictly reserved for remedial settings, *they may in fact promote notions of racial inferiority and lead to a politics of racial hostility*.") [emphasis added].
56. *See* Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256 (1979).
57. *See Hopwood,* 78 F.3d at 946.
58. *See id.*
59. *Id.*
60. *See* Geduldig, 417 U.S. at 484 (denial of disability insurance on basis of pregnancy not sex discrimination).
61. *See* Garcia v. Gloor, 618 F.2d 264, 268 (5th Cir. 1980) (not equating "national origin with the language that one chooses to speak"), *cert. denied*, 449 U.S. 1113 (1981).
62. *Adarand*, 115 S. Ct. at 2119 (Scalia, J., concurring).
63. There is a resolution before Congress, H.J.R. 88, by Callahan (R-AL), which seeks to amend the U.S. Constitution in order to deny citizenship to those born in the United States unless at the time of birth a parent is a citizen. H.J.R. 64 by Gallegly (R-CA) would restrict citizenship even further to only those persons with mothers who are citizens or legal residents.
64. *See generally* Berta Esperanza Hernández-Truyol, *Reconciling Rights in Collision: an International Human Rights Strategy, in* Immigrants Out!: The New Nativism and the Anti-Immigrant Impulse in the United States 254 (Juan Perea ed., NYU Press, 1997)(discussing term "illegal alien" and reviewing jobs performed) [hereinafter Hernández-Truyol, *Collision*].
65. *See* Michael Olivas, *Preempting Preemption: Foreign Affairs, State Rights, and Alienage Classifications*, 35 Va. J. Int'l L. 217, 227-34 (1994) (citing figures that conclude that immigrants contribute $90 billion in taxes while taking only $5 billion in social services).
66. *See* Immigration and Nationality Act, 8 U.S.C.A. ßß1101 *et seq*. (1994). *See also,* Hernández-Truyol, *Collision*, *supra* note 63, at 255.
67. *See* Immigration and Nationality Act, *supra* note 65, ßß1101 *et seq*.
68. Ashley Dunn, *Greeted at Nation's Front Door, Many Visitors Stay on Illegally*, N.Y. Times, Jan. 3, 1995, at A1, B2.
69. *See, e.g., id.*
70. To the contrary, we face a tremendous challenge. But together, simultaneously recognizing and embracing our differences and multidimensionality, there is no obstacle that we cannot overcome.
71. Author's translation: "forgotten ones".
72. Author's translation: "lighter complected persons".
73. Of course, for the international obligations to apply against the United States, it must have acceded to them either by ratification of an instrument or by virtue of their existence as customary law. For an explanation of the nature of international obligations see generally Hernández, *Collision, supra* note 63.
74. These protections are included in the Universal Declaration on Human Rights ("Universal Declaration"), the United Nations Charter ("Charter"), the International Covenant on Civil and Political Rights ("ICCPR"), the Convention on the Elimination of Racial Discrimination ("Race Convention") (which includes ethnicity in the definition of race), the Covenant on Social, Cultural and Economic Rights ("Economic Covenant"), the Convention on the Elimination of All Forms of Discrimination Against Women, the regional conventions ("European Convention", "American Convention" and "African Convention"), numerous other human rights agreements, United Nations declarations and resolutions, and myriad conference documents, including the recently held international conferences on Human Rights

(Vienna, 1993) and Population (Cairo, 1994), the Social Summit (Copenhagen, 1995), the Women's conference (Beijing, 1995), and Habitat II (Istanbul, 1996).
75. *See, e.g.*, Hernández v. New York, 111 S.Ct. 1859 (1991); Garcia v. Gloor, 618 F.2d 264 (1980), *cert. denied*, 449 U.S. 1113 (1981).
76. For example, the Economic Covenant, 993 U.N.T.S. 3, annex to U.N.G.A. Res. 2200, at art. 12 (adopted by the U.N.G.A. on Dec. 16, 1966, entered into force on Jan. 3, 1976) ("right of everyone to the enjoyment of the highest attainable standard of physical and mental health"); Universal Declaration, U.N.G.A. Res. 217, Dec. 10, 1948, at art. 25; Women's Convention, U.N.G.A. Res. 280, at art. 12 (adopted by the U.N.G.A. on Dec. 18, 1979, entered into force Sept. 3, 1981); Convention on the Rights of the Child ("Children's Convention"), G.A. Res. 44/25, 44 U.N. GAOR (Supp. No. 49) at 166, U.N. Doc. A/44/736 (1989), at art. 24, *reprinted in* 28 I.L.M. 1448 (1989) (adopted Nov. 20, 1989); African Charter on Human and Peoples' Rights ("African Charter"), OAU Doc. CAB/LEG/67/3/Rev. 5, at art. 16 (1981), *reprinted in* 21 I.L.M. 58 (1982).
77. Universal Declaration, *supra* note 75, at art. 26 ("Everyone has the right to education"); Economic Covenant, *supra* note 75, at art. 13; Children's Convention, *supra* note 75, at art. 28; African Charter, *supra* note 75 , at art. 17; Women's Convention, *supra* note 75, at art. 10; Charter of the Organization of American States ("OAS Charter"), 119 U.N.T.S. 3, entered into force Dec. 13, 1951, for the United States, 2 U.S.T. 2394, T.I.A.S. No. 2361, Protocol of Amendment, O.A.S.T.S. No. 1-a, 21 U.S.T. 607, T.I.A.S. No. 6847, entered into force Feb. 27, 1970, at art. 47 (states have to ensure effective exercise of right to elementary education for school age children); Race Convention, 660 U.N.T.S. 195, at art. 5 (entered into force Jan. 24, 1994); Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, art. 22, Apr. 22, 1954 (refugees to be given same treatment as nationals regarding elementary education).
78. Universal Declaration, *supra* note 75, at art. 12; ICCPR, 999 U.N.T.S. 171, G.A. Res. 2200, art. 17 (adopted by the U.N.G.A. on Dec. 16, 1996, entered into force Mar. 23, 1976, ratified by the United States June 8, 1992); Children's Convention, *supra* note 75, at art. 16; American Convention of Human Rights ('American Convention"), 9 I.L.M. 673, art. 111 (1970) (entered into force on July 18, 1978); European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention"), 312 U.N.T.S. 221, E.T.S. 5, art. 8, as amended by Protocol No. 3, E.T.S. 45, Protocol No. 5, E.T.S. 55, and Protocol No. 8, E.T.S. 118, Nov. 4, 1950 (entered into force on Sept. 3, 1957).
79. Universal Declaration, *supra* note 75, at art. 3; ICCPR, *supra* note 77, at art. 9 ("Everyone has the right to liberty and security of the person . . . No one shall be deprived of his[/her] liberty except on such grounds and in accordance with such procedure as are established by law"); Race Convention, *supra* note 76, at art. 5; African Charter, *supra* note 75, at art. 6; American Convention, *supra* note 77, at art. 7; European Convention, *supra* note 77, at art. 5.
80. Universal Declaration, *supra* note 75, at art. 13; ICCPR, *supra* note 77, at art. 13 (though here it is limited to those legally within the territory); Race Convention, *supra* note 76, at art. 5; American Convention, *supra* note 77, at art. 22 (though here it is limited to those legally within the territory).
81. Universal Declaration, *supra* note 75, at art. 19; ICCPR, *supra* note 77, at art. 19; Race Convention, *supra* note 76, at art. 5; Children's Convention, *supra* note 75, 13; African Charter, *supra* note 75, at art. 9; American Convention, *supra* note 77, at art. 13; European Convention, *supra* note 77, at art. 10.
82. Universal Declaration, *supra* note 75, at art, 20; ICCPR, *supra* note 77, at art. 21; Race Convention, *supra* note 76, at art. 5; Children's Convention, *supra* note 75, at art. 15; African Charter, *supra* note 75, at art. 10; American Convention, *supra* note 77, at art. 16; European Convention, *supra* note 77, at art. 11.
83. *See generally* Hernández-Truyol, *Collision*, *supra* note 64 (discussing possible application of international norms to challenge Proposition 187).
84. *Id.*

11. Juan Perea, [(2)]*Five Axioms in Search of Equality*,[(1)] 2 HARV. LATINO L. REV. 231 (1997)

As scholars we do not want to be criticized for asserting a conclusion without axioms and postulates from which the conclusion follows. I offer several axioms, therefore, as starting points for discussion. I do not presume to be either final or comprehensive. I do seek to fuel thought about and discussion of these and other axioms necessary to the development of LatCrit studies that move us away from the repetition of old arguments and toward a fuller realization of equality.

As I think about the problems of civil rights for Latinos/as, I always return to the same questions. Why do we remain invisible as Americans? Why is our political voice not commensurate with our numbers? Why are our voices unheard at large in articulating the meaning and content of civil rights for us? I seek to express axioms and ideas that will facilitate recognition of our unique Latina and Latino voices and add our voices to the debate on identity in America in a significant way. My axioms have unifying themes: the pervasiveness of the Black/White binary paradigm of race in America; the centrality of Anglocentric premises for full American identity; the way these premises silence Latino/a voices. I begin with the least controversial axiom, how we might understand equality.

Axiom I. Our goal must be the most broad understanding of equality. It must be a full equality, admitting of no qualifications or impediments.

The scope of equality has been expressed differently by different scholars. As Kenneth Karst wrote regarding the principle of equal citizenship, "every individual is presumptively entitled to be treated by the organized society as a respected, responsible, and participating member."[(3)] Furthermore, the equality principle "forbids the organized society to treat people as members of an inferior or dependent caste, or as nonparticipants."[(4)] Or as Christine Littleton has expressed the idea, equality must mean a condition in which we pay no price for who we are, in which my identity costs me no more than anyone else's.[(5)]

Latinos/as are obviously far from attaining equality in these and most other senses. We are treated as an inferior caste. Official English laws render the Spanish language, and symbolically our identity, into an unofficial, second class status.[(6)] Society treats its use as evidence of ignorance and even child abuse.[(7)] We exist in the public imagination only as drug criminals, illegal aliens, and accented sex symbols. Our presence arouses suspicion. For example, one California legislator, in the wake of Proposition 187, suggested that all persons appearing "Hispanic" should be required to carry identity cards to prove their legitimacy upon demand.[(8)]

We continue to pay a heavy price for our identity. We may legally be discharged from employment merely for speaking Spanish words in the workplace.[(9)] We may be thrown off of juries for being bilingual and for the discomfort our bilingualism generates in attorneys and judges.[(10)] Many of our young people continue to be segregated, entombed in remedial and vocational classes, carefully steered away from the college preparatory courses they need to succeed.

Axiom II. The concepts of "Race" and "Racism" must be amplified to promote Latina/o equality.

Our understanding of race must be amplified so that it encompasses all peoples afflicted by racism. As Joel Kovel wrote insightfully, "racism antecedes the notion of race, indeed, it generates the races."[(11)] Our understanding of race and racism must be amplified so that the concepts also encompass ethnic characteristics, which often form the basis for prejudice and racism against Latinos/as, Asian Americans and Blacks. The concept of ethnicity, in turn, must also be amplified and informed by an understanding of racism, which all too often is left out of discussions of ethnic groups and their presumed ability to assimilate. Neither the concept of "race," as currently understood, nor the concept of "ethnicity," standing alone, will enable us to better understand the racism that affects Blacks, Latinos/as, Asian Americans, Native Americans and other racialized groups.

As we currently understand "race," it is entirely dominated by a binary Black/White paradigm in which only two races exist with legitimacy in the United States: the Black and the White. This binary paradigm has a stranglehold on the consciousness of most people in this country. It excludes Latino/as from public view and consideration comprehensively and with regularity. I will give one example: the national reporting of the recent Los Angeles riots and what we take to be facts about those riots.

The media presented the riots as though they were a conflict between Blacks and Whites, symbolized by the videotaped violence against Reginald Denny, and between Blacks and Korean-Americans, the latter presented as "good," upwardly striving ethnics. With the possible exception of local California media, the national media ignored entirely the multiple roles of Latinos/as in these riots:

> Most of the early victims of crowd violence were Latino/a;
> One-third of the dead were Latino/a;
> Between twenty and forty percent of the businesses damaged were Latino/a owned;
> One-half of those arrested were Latino/a.[(12)]

These statistics all make perfect sense, because fully half of the population of South Central Los Angeles is Latino/a; the Latino/a community there was bound to have been deeply involved in the riots.

The lesson I draw from the missing stories of Latino/a victimization and criminality in the Los Angeles riots is that significant racial events in this country are perceived and understood only within a binary Black/White paradigm,[(13)] and sometimes with little regard for what actually happened.

The persistent reproduction of the binary Black/White paradigm occurs as well across time in some of the leading literature on race in America: from Gunnar Myrdal's *An American Dilemma*,[(14)] to the 1968 Kerner Report which concluded that "[o]ur nation is moving toward two societies, one black, one white-separate and unequal"[(15)] to Andrew Hacker's book *Two Nations: Black and White, Separate, Hostile, Unequal*.[(16)]

The concept of race, understood as the Black/White binary paradigm, does not promote equality for Latino/a people because, in part, many races and ancestries constitute Latino/a people, one of whose salient traits is racial mixture. Many races, in a

genetic or biological sense, constitute Latino/a people, since racial mixture with Europeans began after the arrival of the Spanish in the sixteenth century. This includes blacks, browns, beiges, whites and colors in-between. This high degree of racial mixture is well illustrated from the beginnings of European colonization of the current United States by the first census of Los Angeles, conducted by Spanish authorities in 1781. Only two of the forty-six persons counted, approximately four percent, were Spaniards; the vast majority were identified as Indians, mestizos, mulattoes, and blacks.[17] Historians and scholars of racial mixture have noted that "virtually all Latinos are . . . multiracial."[18] Racial mixture, in a genetic or biological sense, does not fit a binary Black/White paradigm and disrupts this paradigm.

Because "race" is commonly understood to mean Black or White, arguments by analogy to race have generally not been helpful in recognizing or redressing claims of discrimination against Latinos/as. The virtual failure of Title VII and jurisprudence under the equal protection clause to provide any redress for claims of discrimination brought by Latinos/as illustrates the failure of arguments by analogy. In *Hernandez v. New York*,[19] the case allowing the peremptory exclusion of bilingual jurors from jury service, the Court reasoned that "it may well be . . . that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis."[20] "It may well be" according to the court, but language is not treated as a proxy for race under the equal protection clause and it receives no protection by the courts under Title VII.[21]

Axiom III. The concept of Civil Rights is so dominated by the Black/White binary understanding of American racial identity that it is currently of little utility for Latinos.

The binary conception of race operates to exclude Latinos/as from important forums for the discussion of racial issues and justice. Typically, but with exceptions, Latinos/as have no place at the table to voice our conception of civil rights and wrongs. All the civil rights enactments and court decisions in this area that most of us would consider to be major, even if of limited effect, attempted to redress harms to Blacks, and to a lesser extent, women. The Reconstruction Amendments have frequently, and correctly, been understood to have been enacted to reverse the *Dred Scott*[22] decision and to protect newly freed slaves from hostile state action. The pre- and post- Reconstruction Civil Rights Acts intended Blacks to be the principal beneficiaries. *Brown v. Board of Education*[23] abolished separate but equal education and was widely understood as a vindication of Black equality interests, although Latinos too benefitted from the abolition of segregated education. The Civil Rights Act of 1964 was passed to attempt to establish equal treatment for Blacks in crucial social, educational and economic institutions. The history of these Civil Rights enactments corresponds, of course, to the history of slavery, Jim Crow laws and violence directed at African Americans. While Latinos/as have benefitted from these reforms, the intended beneficiaries were African Americans.

Because African Americans have suffered most, and most visibly, the horrors of slavery, abusive Jim Crow laws, lynching, and the Ku Klux Klan, among many other injustices, and because African Americans resisted racism most powerfully during the organized resistance of the Civil Rights movement of the 1960s, African Americans can and do lay special claim to the major civil rights enactments as theirs. We must acknowledge with deep respect the African-American suffering and struggle that has made civil rights possible for us all.

The history of the Reconstruction amendments and Civil Rights statutes is so dominated by the experience of African Americans, however, that it obscures the efforts and history of Latinos/as struggling too for civil rights. Furthermore, the absence of Latinos/as in mainstream civil rights history undermines the legitimacy of Latino/a claims to equal civil rights.

When I talk about a Latino/a conception of civil rights, I am often met with arguments about the long history of African American slavery and the struggle for civil rights during the 1960s. It seems to me that these arguments assert African American claims to civil rights based on two notions: 1) reparations for past harms inflicted by whites and 2) freedoms and equality hard-won from whites in the more recent past. I agree with these and any other bases that may be asserted for more meaningful equality for African Americans.

However, I perceive two problems with this historically-founded and legitimate claim to civil rights. First, it leads to the assumption that Latinos/as have not suffered discrimination nor have struggled on behalf of greater civil rights. Because Latinas/os history in the United States is neither well known nor well accepted, and because it is different from the history of African Americans, we are perceived as late-arriving trespassers (perhaps undocumented immigrants) encroaching on the already-settled and distributed terrain of civil rights. Second, a possessory attitude towards civil rights makes the recognition of additional and different conceptions of civil rights exceedingly difficult. If the prevailing social conception is that civil rights belong more to African Americans than to Latinos/as or other racialized groups, what right do other groups have to demand changes in that conception of civil rights? This, I believe, is the difficult position in which Latinos/as find themselves.

I prefer, perhaps out of necessity, not to conceive of equality as a limited good but rather as a work in progress, a project in need of further elaboration and commentary from all concerned. In my view, steps toward greater equality and less subordination benefit us all in the long run.

The exclusion of Latinos/as from the discursive space on race and civil rights is also well illustrated by the academic literature on race.[(24)] Books on race and racism tend to focus exclusively on the problematic relationship between Blacks and Whites. Employment discrimination casebooks, and courts, focus prominently on problems of race and sex discrimination, and give only marginal treatment to other kinds of discrimination. Most law review symposium issues on race in America feature articles by African American and White writers, focusing on Black and White issues. Articles by Latino or Latina writers usually do not appear. I collect these symposium issues, and with very few and very recent exceptions, all the articles are on Black and White race, by Black and White writers.[(25)]

The persistent tendency to equate civil rights leadership and scholarship only with African American voices continues largely unabated. As long as only Blacks and Whites are seen as constituting the full relevant civil rights universe, the limited binary nature of discourse about civil rights will merely continue to replicate itself. I do not see how one can even begin to have a useful conversation about a civil rights agenda for the 21st century without including the concerns voiced by Latino/a, Asian-American and Native American scholars.

Axiom IV. "National Origin" is not a helpful concept in understanding discrimination against Latinos/as nor in redressing such discrimination.

The "national origin" concept focuses our attention on the ancestral lands of our parents or earlier ancestors outside the United States. Yet for most Latinos/as our national origin, our place of birth, is the United States. "National origin's" focus on ancestral lands and traits outside the United States facilitates the attribution of foreignness to Latinos/as, our "symbolic deportation" from within these borders. Thus we are removed from our full and constitutive role in a plenary conception of American identity. Thus too is our history within the United States marginalized as a kind of "foreign history" that does not really belong as part of American history.

Unfortunately, "national origin" is currently the well-accepted, but wholly ineffective, concept purportedly providing constitutional and statutory protection from discrimination because of ethnic characteristics. Since the national origin concept assumes and creates the foreignness of a plaintiff claiming its protection due to perceived racial and ethnic differences, the concept more often functions to reject Latino/a claims for civil rights than to redress them.(26) Rejection of the claims of perceived foreigners to protection from discrimination because of their racial or ethnic traits reinforces the closely held, Black/White binary conception of American identity.

Axiom V. The concepts of ethnicity and ethnic identity may be the most appropriate set of group traits for amplifying our understanding of race in a way that discrimination against Latinos/as can be recognized and understood.

The breadth of the concept of ethnicity, which corresponds in large measure to the notion of the social construction of race, encompasses the breadth of varying Latino/a identities and the discrimination consequent.(27) For example, introducing "ethnic traits" into our understanding of race makes Latino/a traits such as shared language, religion, history, color, culture, and accent relevant to discrimination analysis. Only careful study of the history of the several Latino/a peoples in the United States and historical patterns and features of discrimination will enable us to better identify and understand the ways and means of discrimination against Latinos/as today. As one example, the attribution of deportable illegal alien or foreigner status to all Mexicans and Mexican Americans, and to all Latinos, regardless of citizenship status, results in part from the long established Bracero programs, the cyclical importation and deportation of inexpensive Mexican labor corresponding to domestic labor shortages and surpluses, respectively.(28) This history also explains why our border with Mexico has always been highly permeable, largely in response to the demands of large American corporate and agricultural interests for cheap labor.(29)

* * *

I offer these five axioms and these comments in search of equality. These, and other axioms, should be discussed and examined critically. We need not agree on this or any other set of axioms. But I believe there is wisdom in beginning LatCrit studies with some common understandings, always subject to development and always open to the knowledge and discoveries that await us.

Footnotes

1. This title is inspired by and borrowed from Luigi Pirandello's brilliant play Six Characters in Search of An Author.
2. Professor of Law, University of Florida College of Law.
3. Kenneth H. Karst, *Citizenship, Race, and Marginality*, 30 Wm. & Mary L. Rev. 1 (1988).
4. *Id.*
5. *See* Christine A. Littleton, *Restructuring Sexual Equality*, 75 Cal. L. Rev. 1279, 1285 (1987) (describing "equality as acceptance:" "To achieve this form of sexual equality, male and female 'differences' must be costless relative to each other.").
6. For a detailed history of American multilingualism and the Official English movement, see Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 Minn. L. Rev. 269 (1992).
7. For example, in Texas, District Court Judge Samuel Kiser accused a Latina mother of child abuse and of consigning her daughter to life as a "housemaid" by speaking in Spanish to her daughter at home. *See* Patty Reinert, *Amarillo Judge Does About Face/Girls Parents Resolve Language Dispute*, Hous. Chron., Sept. 19, 1995, at A11.
8. California State Senator Craven stated that "the state legislature should explore requiring all people of Hispanic descent to carry an identification card that would be used to verify legal residence." Maria C. Hunt, *Craven Says All Hispanics Should Carry I.D. Cards*, San Diego Union-Trib., October 18, 1994, at A1.
9. *See* Garcia v. Spun Steak Co., 998 F.2d 1480 (9th Cir. 1993), *cert. denied*, 512 U.S. 1228 (1994).
10. *See* Hernandez v. New York, 500 U.S. 352 (1991). For extended critiques of the result and reasoning of *Hernandez*, see Juan F. Perea, *Hernandez v. New York: Courts, Prosecutors, and the Fear of Spanish*, 21 Hofstra L. Rev. 1 (1992); Deborah A. Ramirez, *Excluded Voices: The Disenfranchisement of Ethnic Groups from Jury Service*, 1993 Wis. L. Rev. 761.
11. Joel Kovel, White Racism: A Psychohistory ix (1984). On the social construction of race, see Ian Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 Harv. C. R.-C. L. L. Rev. 1, 20-24 (1994).
12. David E. Hayes-Bautista et al., *Latinos and the 1992 Los Angeles Riots: A Behavioral Science Perspective*, 15 Hispanic J. Behavioral Sci. 427, 429 (1993).
13. For a detailed study of the Black/White binary paradigm of race, see Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought,* 85 Cal. L. Rev. ___ (forthcoming 1997).
14. Gunnar Myrdal, An American Dilemma: the Negro Problem and American Democracy (1944).
15. Report of the National Advisory Commission on Civil Disorders 1 (1968).
16. Andrew Hacker, Two Nations: Black and White, Separate, Hostile, Unequal (1992).
17. *See First Census of Los Angeles* (Thomas W. Temple II trans.), *in* Foreigners in Their Native Land: Historical Roots of the Mexican Americans 34-35 (David J. Weber ed., 1973).
18. Racially Mixed People in America 9 (Maria R. P. Root ed., 1992). *See also* Temple, *supra* note 14 at 33.
19. 500 U.S. 352 (1991).
20. *Hernandez*, 500 U.S. at 354.
21. *See id.* at 379. *See also* Garcia v. Gloor, 618 F.2d 264 (5th Cir. 1980) (holding no violation of Title VII in firing Mexican-American worker for speaking Spanish in violation of English-only rule), *cert denied*, 449 U.S. 1113 (1981); Garcia v. Spun Steak, 998 F.2d. 1480 (9th Cir. 1993) (holding no violation of Title VII in firing Mexican-American workers for speaking Spanish in violation of English-only rule), *cert denied*, 512 U.S. 1228 (1994).
22. 60 U.S. 393 (1856).
23. 347 U.S. 483 (1954).
24. *See* Perea, *supra* note 11 on the Black/White paradigm, which structures much literature on race and racial discourse.
25. For exceptions, see *Symposium on LatCrit Studies*, 85 Cal. L. Rev. (forthcoming 1997).
26. *See* Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. Rev. 965, 981-990 (1995).

27. I do not want to be misunderstood here. I do not intend to suggest that "ethnicity theory," with its incorrect assumption that the experiences of American minority groups are comparable to those of assimilated white European immigrants, is an appropriate theory for considering Latino identity. "Ethnicity theory" neglects to consider racism as a formidable, and perhaps insurmountable, barrier to assimilation for many minority groups. For an apt critique of "ethnicity theory," see Ian Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 Harv. C.R.-C.L. L. Rev. 1, 20-24 (1994). *See also* Ian Haney López, White By Law: The Legal Construction of Race (1996). My use of the terms ethnicity and ethnic traits is meant only to suggest that amplifying our understanding of race to include the constituent characteristics of ethnicity may provide a better way to understand Latinos than the current conception of race, which is highly binary and underinclusive. The constituent aspects of ethnicity include "common geographic origin; migratory status; race; language or dialect; religious faith or faiths; ties that transcend kinship, neighborhood and community boundaries; shared traditions, values, and symbols; . . .an internal sense of distinctiveness; an external perception of distinctiveness." Harvard Encyclopedia of American Ethnic Groups vi (Stephen Thernstrom ed., 1980).
28. *See* Gilbert Paul Carrasco, *Latinos in the United States: Invitation and Exile, in* Immigrants Out! The New Nativism and the Anti-Immigrant Impulse in the United States, 190-204 (Juan F. Perea ed., 1997).
29. *See id.*

12. Ian F. Haney López,[(2)] *Retaining Race: LatCrit Theory and Mexican American Identity in* Hernandez v. Texas,[(1)] 2 HARV. LATINO L. REV. 279 (1997)

INTRODUCTION: ETHNICITY OR RACE?

This essay addresses the legal construction of Mexican American racial identity[(3)] by examining a 1954 Supreme Court case, Hernandez v. Texas.[(4)] It does so as a means of accepting the invitation issued by Professor Juan Perea to consider some fundamental axioms regarding Latinos/as and race.[(5)] Professor Perea issued this invitation in the

context of a conference intended to inaugurate a new legal genre, LatCrit theory, dedicated to exploring the relationship between Latinos/as and law. This essay considers in particular Professor Perea's suggestion that race may not be a helpful concept in understanding the experiences of Latinos/as or in promoting equality for Latino/a communities, and that instead, ethnicity may be more helpful. While ethnicity offers a powerful paradigm for conceptualizing Latino/a identity, one that has been extensively and fruitfully used, [(6)] this essay argues that race remains indispensable to understanding Latino/a experiences and to improving the welfare of Latino/a communities.

In one sense the disagreement with Professor Perea is a semantic one. Professor Perea offers this definition of ethnicity: "[E]thnicity consists of a set of traits that may include, but are not limited to: race, national origin, ancestry, language, religion, shared history, traditions, values, and symbols, all of which contribute to a sense of distinctiveness among members of the group. These traits also may engender a perception of group distinctiveness in persons who are not members of that group."[(7)] The differences may be semantic because this definition of ethnicity also serves well as a definition of race. If the two are substituted, the following results: race consists of a set of traits not limited to national origin, ancestry, language, religion, shared history, traditions, values, and symbols that contribute to a sense of distinctiveness among members of the group, and that also engender a perception of group distinctiveness in persons not members of the group. This serves well as a fairly broad and flexible definition of race. Race operates along each of the axes Professor Perea identifies to bind people together as a matter of external perception and internal self-conception into groups supposedly distinct as a function of biology and ancestry. 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.[(8)] The first section of this essay uses *Hernandez* to illustrate the contention that race is social.

Despite the success of Professor Perea's definition of ethnicity as a definition of race, however, the differences presented here are more than semantic. To a certain extent, of course, we are both saying the same thing: LatCrit theorists must look to a broad array of factors including language, religion, shared history, traditions, values, external perceptions of group identity, and so on, to understand and advocate on behalf of Latinos/as. On this much- and it is quite a lot- we completely agree. Nevertheless, Professor Perea contends that in grappling with these constituent characteristics of Latino/a identity, "race is not a helpful concept"[(9)] and instead, "the concepts of ethnicity and ethnic identity may be the most appropriate vehicle."[(10)] Professor Perea seems to be arguing that LatCrit theory should prefer ethnicity over race; it is possible to hear in his remarks echoes of the more stringent position taken by others that, in favor of ethnicity, we eschew race altogether.[(11)] However, both race and ethnicity are helpful and productive, with each possessing strengths and weaknesses. This essay suggests that neither should be abandoned as a lense through which to view Latino/a communities. More directly in response to Professor Perea's contentions, this essay argues that race should be retained.

Although race and ethnicity are equally the products of social invention, the processes of racial fabrication in the United States have and continue to impose distinct burdens on racialized peoples. Under the differing social constructions of ethnicity and race prevalent in the United States over the last century, ethnicity has been equated with

culture, and race with biology. Of course, the decision to use biology as a basis for group differentiation is itself an ethnocentric one, and increasingly, race is now constructed in terms of culture.[(12)] Nevertheless, race and ethnicity should not be equated. This is so not because they are essentially different; on the contrary, as this essay's usurpation of Professor Perea's definition suggests, race and ethnicity are largely the same. Rather, race and ethnicity 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.[(13)] 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.[(14)] Racial minorities are thus twice removed from normalcy, across a gap that is not only cultural, but supposedly innate.

The distinct historical deployment of race and ethnicity requires that both be used in theorizing Latino/a identity. Utilizing ethnicity focuses our attention on the experience of being constructed as culturally removed from the norm; using race forces us to assess the imposition of an inferior identity constructed in immutable terms. Race is thus indispensable to understanding the lived experiences of Latinos/as in this country. The second section of this essay employs *Hernandez* to support the contention that race provides a necessary tool for LatCrit theory. The essay then changes tack, considering in conclusion the role LatCrit theory might play in remaking understandings of race.

I. *HERNANDEZ V. TEXAS* AND MEXICAN AMERICAN RACIAL IDENTITY

On September 20, 1951, the Grand Jury of Jackson County, Texas indicted Pete Hernández for the murder of Joe Espinosa. Gus García, a lawyer with the League of United Latin American Citizens (LULAC), a Mexican American civil rights organization, took up Hernández's case, hoping to use it to attack the systematic exclusion of Mexican Americans from jury service in Texas.[(15)] García moved to quash Hernández's indictment under the Fourteenth Amendment, arguing that people of Mexican descent were purposefully excluded from the grand jury which indicted Hernández in violation of the guarantee of equal protection of the laws. The State of Texas conceded that "for the last twenty-five years there is no record of any person with a Mexican or Latin American name having served on a jury commission, grand jury or petit jury in Jackson County."[(16)] Texas also conceded that Mexican and Latin Americans comprised roughly fifteen percent of the county's population, and that over the previous quarter century Jackson County had called more than six thousand jurors.[(17)] Nevertheless, the District Court denied the motion to quash. Hernández was tried, convicted, and sentenced to life in prison. On appeal, the Texas Court of Criminal Appeals denied Hernández relief on the ground that the equal protection clause did not extend to Mexican Americans as a group. The appellate court wrote that "in so far as the question of discrimination in the organization of juries in state courts is concerned, the equal protection clause of the Fourteenth Amendment contemplated and recognized only two classes as coming within that guarantee: the white race, comprising one class, and the Negro race, comprising the other class."[(18)] *Hernandez* thus presented the Supreme Court with the issue of whether Mexican Americans constituted a protected class within the meaning of the Fourteenth Amendment; in effect, *Hernandez* required the Court to negotiate the terms of Mexican American existence.

The Court's struggle to conceptualize Mexican American identity merits close study. To begin with, the Court refused to hold that Mexican Americans constitute a racial group. The Court could have ruled in response to the Texas court's restrictive reading of the equal protection clause that the Fourteenth Amendment protected not only the Black and White races but other races as well. Instead, the Court announced that the equal protection clause reached beyond not just White and Black, but also beyond "race and color." "Throughout our history differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws. But community prejudices are not static," the Court wrote, "and from time to time *other differences* from the community norm may define other groups which need the same protection."[(19)] According to the Court, Hernández had to show not that he was discriminated against as a member of a disfavored race, but as a member of a group marked by "other differences." In perhaps the most significant sentence of the opinion, Chief Justice Warren then added that "[w]hether such a group exists within a community is a question of fact."[(20)]

This terse sentence invites extended comment. However, it may be worthwhile first to examine the effect given this sentence in the opinion. The Court noted that Hernández's "initial burden in substantiating his charge of group discrimination was to prove that persons of Mexican descent constitute a separate class in Jackson County," and that this might be demonstrated "by showing the attitude of the community."[(21)] In considering the community attitudes extant in Jackson County towards Mexican Americans, the Court reviewed the evidence Hernández had introduced before the Jackson County District Court in his original motion to quash the indictment. As summarized by the Court, that evidence revealed the following: First, "residents of the community distinguished between 'white' and 'Mexican.'"[(22)] Second, "[t]he participation of persons of Mexican descent in business and community groups was shown to be slight."[(23)] Third, "[u]ntil very recent times, children of Mexican descent were required to attend a segregated school for the first four grades."[(24)] The Court also observed in a footnote that "[m]ost of the children of Mexican descent left school by the fifth or sixth grade."[(25)] Fourth, "[a]t least one restaurant in town prominently displayed a sign announcing 'No Mexicans Served.'"[(26)] And finally, the Court noted that on the Jackson County courthouse grounds at the time of the hearing, "there were two men's toilets, one unmarked, and the other marked 'Colored Men' and 'Hombres Aqui' ('Men Here')."[(27)] On the basis of this evidence, the Court held that persons of Mexican descent were a distinct class within Jackson County, Texas, and that the exclusion of Mexican Americans from jury service violated the Fourteenth Amendment.[(28)]

In *Hernandez*, the Court took a contradictory approach to the question of Mexican American racial identity: on the one hand, the Court announced at the outset that if Mexican Americans deserve constitutional protection, they merit this protection on some ground other than race or color. On the other hand, the Court recited what can only be viewed as a long history of racial discrimination in order to establish that Mexican Americans existed as a group deserving protection. This contradictory approach follows from and highlights the Court's conception of race as something biological and immutable. Proceeding from this understanding of race, the Court could not help but be perplexed by Mexican American identity. Though subject to violent and extensive discrimination in some parts of the country, Mexican Americans were virtually unknown, and unracialized, in other parts of the nation;[(29)] though the objects of extreme social prejudice, Mexican Americans were relatively rarely the objects of de jure legal

discrimination;[(30)] though often darker in skin color than most Whites, Mexican Americans often insisted, as did the lawyers for Hernández in their argument before the Supreme Court, that Mexican Americans were members of the White race.[(31)] A biological view of race positing that each person possesses an obvious, immutable, and exclusive racial identity cannot account for, or accept, these contradictions. Operating under such a Manichean racial view, the Court insisted in the face of viscerally moving evidence to the contrary that the exclusion of Mexican Americans from juries in Jackson County, Texas, involved neither race nor color. Nevertheless, *Hernandez* is all about race.

Albeit unwittingly, the *Hernandez* opinion offers a sophisticated insight into racial formation: whether a racial group exists, the opinion correctly tells us, is a local question that can be answered only in terms of community attitudes. To translate this insight into broader language, race is social, not biological; it is a matter of what people believe, rather than of natural decree. Thus, it is possible for Mexican Americans to exist as a race in Jackson County, Texas, but simultaneously not to constitute a race in Washington, DC. It is possible for Mexican Americans to suffer under the lash of severe racial prejudice, but at the very same moment to be legally categorized as White. It is possible for many to perceive and discriminate against Mexican Americans as a non-White race, but at the same time for Mexican Americans to insist that they are White. All of this is possible because race is not a question of biology, but rather a question of community opinion. The Court erred in concluding that Mexican Americans did not constitute a racial group in Jackson County, Texas. It was more correct than it knew, however, when it wrote that the existence of Mexican Americans as a group suffering discrimination was a local question of fact. Races exist only as local facts measured in terms of community attitudes and the material inequalities such attitudes have built up. Professor Perea suggests that virtually all Latinos/as are *mestizo* (multiracial).[(32)] I submit everyone is *mestizo*: there are no pure biological races, only invented, complex, hybrid, social, local ones. All races are equally social constructions, though the force and thrust of that construction clearly differs between groups and across history and geography. Revisiting the definition borrowed from Professor Perea, race consists of a set of traits including national origin, ancestry, language, religion, shared history, traditions, values, and symbols that contribute to a sense of distinctiveness among members of the group, and that also engender a perception of group distinctiveness in persons not members of the group.

II. RACE AND LATCRIT THEORY

As social constructions, race and ethnicity substantially overlap. Nevertheless, as discussed above, these identities have been deployed in the United States in remarkably different ways.[(33)] While ethnicity tends to be socially defined on the basis of cultural criteria, race has been defined on the basis of physical factors.[(34)] This section uses *Hernandez* to develop the argument that race provides a necessary tool for LatCrit theory, one that cannot be neatly supplanted by ethnicity.

To begin with, relying solely on ethnicity to the exclusion of race as a basis for conceptualizing Latino/a lives risks obscuring central facets of Latino/a experiences. To understand what is lost from view, consider the evidence of discriminatory treatment at the root of *Hernandez*. In Jackson County, Mexican Americans were barred from local restaurants, excluded from social and business circles, relegated to inferior and

segregated schooling, and subject to the humiliation of Jim Crow facilities, including separate bathrooms in the halls of justice. To grasp the experience of just this last, imagine being present at the moment that García called co-counsel John Herrera to testify about those courthouse bathrooms. As excerpted from the trial court transcript, that moment progressed like this:

> Q. During the noon recess I will ask you if you had occasion to go back there to a public privy, right in back of the courthouse square?
> A. Yes, sir.
> Q. The one designated for men?
> A. Yes, sir.
> Q. Now did you find one toilet there or more?
> A. I found two.
> Q. Did the one on the right have any lettering on it?
> A. Yes, it did.
> Q. What did it have?
> A. It had the lettering "Colored Men" and right under "Colored Men" it had two Spanish words.
> Q. What were those words?
> A. The first word was "Hombres."
> Q. What does that mean?
> A. That means "Men."
> Q. And the second one?
> A. "Aqui," meaning "Here."
> Q. Right under the words "Colored Men" was "Hombres Aqui" in Spanish, which means "Men Here"?
> A. Yes, sir.[(35)]

By themselves on paper, the words are dry, disembodied, untethered. It is hard to envision the Jackson County courtroom, difficult to sense its feel and smell; we cannot hear García pose his questions; we do not register the emotion perhaps betrayed in Herrera's voice as he testified to his own exclusion. But perhaps we can imagine the wrenching pain we would feel, in our guts and in our hearts, if it were us- if it were us confronted by that accusatory bathroom lettering; us called to the stand to testify about the signs of our supposed inferiority; us serving as witnesses to our undesirability in order to prove we exist.

Do not suppose that imagining such a moment gives us insight into the very worst damage done by racism in this country. It does not. Or that those discriminated against because of differences conceptualized in ethnic or other non-racial terms do not also suffer significant, sometimes far greater harms. They often have. But placing oneself in that moment does afford insight into the qualitative difference that race frequently makes. The sort of group oppression documented in *Hernandez*--the sort manifest on the bathroom doors of the Jackson County courthouse--has in this country traditionally been meted out to those characterized as racially different, not simply different in ethnic terms. The treatment accorded those constructed as *innately* inferior has often been far more damaging, in kind and degree, than that accorded those understood as culturally inferior, if innately similar.

A rigorously ethnic conception of Latino/a identity risks more than simply losing sight of significant facets of Latino/a experiences, however. It jeopardizes as well the ability to address and remedy the social burdens imposed through race-based

discrimination. Because the language of ethnicity hides from view the vastly disparate social conditions confronting differently racialized groups in this country, this language allows the politically dangerous assertion that every group in the United States has found the same opportunities, and encountered the same hurdles.[(36)] Under this conflation, which I have elsewhere termed the "immigrant analogy," group differences in social standing and economic success are explained as a function of group attributes or failings, not social prejudices or structural advantages and disadvantages.[(37)] With systemic manifestations of racial prejudice removed as an explanation for social inequality at the level of assumptions, those subscribing to the immigrant analogy construe requests for protection against unfair discrimination as pleadings for special favors. Such "favors," for example the inclusion of a group within the ambit of antidiscrimination laws, cannot be countenanced, the immigrant analogy suggests, because of the unfairness to other similarly situated ethnics who receive no such protection. Paradoxically, however, under the analogy these "special pleadings" become evidence of the inferiority of the pleaders. Denying that systemic racial discrimination poses a significant hurdle to advancement for some communities, the immigrant analogy interprets requests for protection against entrenched disadvantage as indicia of an unwillingness or inability to compete on even terms, and as an admission of the need for extraordinary government assistance to escape the poverty and low social status every other group has purportedly successfully transcended on their own strength. Petitioning for or receiving antidiscrimination protection emerges under the analogy as unfair advantage over, and as evidence of inability relative to, those not protected. The immigrant analogy asserts a fundamental sameness ("we are all ethnics") at the same time that it reifies the essential racial differences it purports to deny ("but you people can't compete and are always asking for handouts.").[(38)] Unfortunately, the immigrant analogy has long been applied to Latinos/as.

Hernandez provides a graphic example of how White ethnic status is on occasion strategically imputed to Latinos/as as a means of opposing Latino/a access to remedies for race-based discrimination. The Texas Court of Criminal Appeals denied Hernández's claim in part on the ground that "Mexicans are white people."[(39)] In the face of the State's concession that no person of Mexican descent had served on any jury in Jackson County over at least the previous quarter-century, the court used this asserted Whiteness to hold that the "grand jury that indicted the appellant and the petit jury that tried him being composed of members of his race, it cannot be said . . . that appellant has been discriminated against in the organization of such juries and thereby denied equal protection of the laws."[(40)] The court in effect asserted that because Hernández was White, the shared identity and essential similarity between Hernández and members of the juries nullified his claim of discrimination. Yet, the court also seemed to suggest that this essential similarity did not exist, and more, that it did not exist because of the actions of Hernández. "It is apparent," the court wrote, "that appellant seeks to have this court recognize and classify Mexicans as a special class within the white race and to recognize that special class as entitled to special privileges in the organization of grand and petit juries in this state. To so hold would constitute a violation of equal protection, because it would be extending to members of a class special privileges not accorded to all others of that class similarly situated."[(41)] The court here presents itself as the defender of equality, and Hernández as the transgressor. It is Hernández, in his claim for protection under the Fourteenth Amendment, who threatens to disrupt the basic equality between all persons in this society, a threat the court must guard against. At the same instant, it is also Hernández, in his need as much as in his request for legal protection from discrimination,

who demonstrates his own inferiority. After all, according to the court's implied narrative, no other Whites make such requests, or need such protections. In what must be viewed as a considerable irony, the ethnic-immigrant analogy denies the need for and access to antidiscrimination remedies in the very instant that it confirms the supposed inferiority of those who ask for and to whom protection is denied.

Depicting Latinos/as solely in ethnic terms obscures from view central elements of Latino/a experiences in this country. It also facilitates a denial to Latinos/as of access to remedies for racial discrimination.(42) *Hernandez* compels the conclusion that race should be retained in understanding and working on behalf of Latino/a communities.

CONCLUSION: RECONSIDERING RACE

Race provides an important vantage point from which to assess Mexican American and Latino/a identity, one which LatCrit theorists should fully utilize. In doing so, however, it is likely LatCrit theory's reliance on race will rework the very meaning of that term. Using race to understand the experiences of Latino/a communities in the United States should lead to an increased sophistication in our understanding of race itself, particularly as that concept has been deployed and constructed by law.

Hernandez illustrates this last point, as well. In the U.S. Reports, *Hernandez* immediately precedes another leading Fourteenth Amendment case, Brown v. Board of Education,(43) having been decided just two weeks before that watershed case. Despite the fact that both cases extend the reach of the Fourteenth Amendment, the cases differ dramatically. In *Brown*, the Court grappled with the harm done through segregation, but considered the applicability of the equal protection clause to African Americans a foregone conclusion. In *Hernandez*, the reverse was true. The Court wrestled with whether the Fourteenth Amendment protected Mexican Americans, but took for granted that the equal protection clause, if it applied, would prohibit the state conduct in question. In large part, this difference is historical--that is, it is a function of the historical processes of racial fabrication in the United States. African Americans have been constructed relentlessly as the archetypal racial inferiors, both socially and at law. By contrast, the racialization of Mexican Americans has occurred unevenly in the limited geographic context of the Southwest, dating back not much further than the beginning of the last century, and largely without taking de jure legal form.(44) These differing histories make the study of the racial identity of Mexican Americans helpful to the study of race in general. The partial, incomplete, inconsistent racialization of Mexican Americans brings to the fore aspects of the process of racial formation difficult to perceive but nonetheless present in the relentless racialization of African Americans. Reading *Brown* against *Hernandez* directs our attention to rarely explored facets of the former, such as the genesis of the Court's assumption that African Americans constitute a biologically distinct race, the social and legal consequences of that belief, and that decision's role in legitimating racialized understandings of African American identity. Studying the racialization of Latinos/as can offer important insights into the processes of racial fabrication in law and in general, because of rather than despite our incomplete and shifting racial identity.

Footnotes

1.

2. Acting Professor of Law, Boalt Hall, University of California, Berkeley. This essay draws on a talk I delivered at the First Annual LatCrit Conference in La Jolla, California, in May, 1996. My thanks to Joseph Hahn and Pilar Ossorio for their generous assistance with this essay.
An expanded version of this article is forthcoming as Ian F. Haney López, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 85 Cal. L. Rev. (forthcoming 1997).
3. Regarding nomenclature, I treat all racial designations as proper nouns. I employ "Mexican American" to refer to all permanent immigrants to the United States from Mexico and their descendants, as well as to persons descended from Mexican inhabitants of the region acquired by the United States under the Treaty of Guadalupe Hidalgo. A long standing debate surrounds this term as well as others intended to refer to this community. *See* Rodolfo Acuña, Occupied America: A History of Chicanos ix-x (3rd ed. 1988). I use "Latino/a" to refer to those in the United States who immigrated from or who are descendants of persons from one of the Spanish speaking countries of the Western Hemisphere. Many different communities come under the Latino/a label. To highlight this multiplicity, I refer to Latino/a communities in the plural rather than the singular. Also, I have adopted the convention of using a virgule at the end of "Latino," rendering it "Latino/a," rather than relying on the gendered grammar of Spanish whereby reference to both males and females is indicated through the use of the masculine form. For an extended discussion of similar matters, see Angel R. Oquendo, *Re-imagining the Latino/a Race*, 12 Harv. BlackLetter J. 93, 94-99 (1995). *See also* Alex M. Saragoza et al., *History and Public Policy: Title VII and the Use of the Hispanic Classification*, 5 La Raza L. J. 1 (1992).
4. 347 U.S. 475 (1954). I have previously set out some general theories regarding the legal construction of race. Ian F. Haney López, White By Law: The Legal Construction of Race (1996).
5. This essay responds to the talk given by Professor Perea at the First Annual LatCrit Conference, published in revised form herein as Juan Perea, *Five Axioms in Search of Equality*, 2 Harv. Latino L. Rev. 231 (1997). Professor Perea's position has since changed in some key respects with regard to the utility of race as an analytic concept. *See* Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 Cal. L. Rev. (forthcoming 1997).
6. Myriad studies of Latinos/as draw upon an ethnicity paradigm. *See e.g.*, Frank D. Bean & Marta Tienda, The Hispanic Population of the United States (1987); Susan E. Keefe & Amado M. Padilla, Chicano Ethnicity (1987).
7. This approximates the definition Professor Perea offered at the conference; it is quoted from a recent article. Juan Perea, *Ethnicity and Prejudice: Reevaluating "National Origin" Discrimination Under Title VII*, 35 Wm. & Mary L. Rev. 805, 833-34 (1994), quoting from Harvard Encyclopedia of American Ethnic Groups vi (Stephen Thernstrom ed., 1980). *See also* Juan Perea, *Ethnicity and the Constitution: Beyond the Black and White Binary Constitution*, 36 Wm. & Mary L. Rev. 571, 575 (1995).
8. On the lack of any biological basis to race, see generally L. Luca Cavalli -Sforza et al., The History and Geography of Human Genes (1994). On the social construction of race, see generally 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); Michael Omi & Howard Winant, Racial Formation in the United States: From the 1960s to the 1980s (1986).
9. *See supra* note 3.
10. *Id.*
11. Several legal scholars have recently abandoned or advocated abandoning race as a concept irrelevant to Latinos/as. *See, e.g.*, Paul Brest & Miranda Oshige, *Affirmative Action for Whom?*, 47 Stan. L. Rev. 855, 883-890 (1995) (answering the question "Who are the Latinos?" almost exclusively in terms of ethnicity, national origin, and immigrant status, with scant reference to race); Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 Stan. L. Rev. 957, 958 n.5 (1995) (suggesting that "Hispanics [are] an ethnic group with multiracial origins"); *and* Luther Wright, Jr., *Who's Black, Who's White, and Who Cares: Reconceptualizing the United States' Definition of Race and Racial Classifications*, 48 Vand. L. Rev. 513, 563-566 (1995) (calling for a new racial classification system in which "[t]he Hispanic classification is eliminated and the other racial classifications are restructured so that they are parallel.").
12. For an insightful discussion of the conflation of race and ethnicity, see David Theo Goldberg, Racist Culture: Philosophy and the Politics of Meaning 70-78 (1993).
13. *See generally* Renato Rosaldo, Culture and Truth: The Remaking of Social Analysis (1989).
14. *See generally* Haney López, *supra* note 2.

15. *See* Mario T. García, Mexican Americans: Leadership, Ideology, & Identity, 1930-1960, at 49 (1989). Gus García was assisted by John Herrera, a Houston attorney who served as first national vice president at LULAC, and by Carlos Cadena, a law professor at St. Mary's University in San Antonio. *Id.*
16. Hernandez, 347 U.S. at 481 (quoting Record at 34).
17. *See id*. at 480, 482. García adduced the following population figures: "The total population of Jackson County is 12,916. Persons of Spanish surname total 1,865, of whom 1,738 are native-born citizens, and 65 are naturalized citizens." Brief for Petitioner at 18 (on file with author), Hernandez v. Texas, 347 U.S. 475 (No. 406).
18. Hernandez v. State, 251 S.W.2d 531, 535 (Tex. Crim. App. 1952).
19. 347 U.S. at 478 (emphasis added).
20. *Id.*
21. *Id.* at 479.
22. *Id.* The rise of racial distinctions between "Whites" and "Mexicans" is traced in Reginald Horsman, Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism 208-248 (1981).
23. 347 U.S. at 479.
24. *Id*.
25. *Id*. at 480 n.10. The history of segregated schools for Mexican Americans in Texas is examined in Jorge C. Rangel and Carlos M. Alcala, *Project Report: De Jure Segregation of Chicanos in Texas Schools*, 7 Harv. C.R.-C.L. L. Rev. 307 (1972). *See also* Guadalupe San Miguel, Jr., "Let Them All Take Heed": Mexican Americans and the Campaign for Educational Equality in Texas, 1910-1981 (1987).
26. 347 U.S. at 479.
27. *Id*. at 479-480. Racial discrimination against Mexican Americans in the administration of justice is discussed in Alfredo Mirandé, Gringo Justice (1987), as well as in U.S. Commission on Civil Rights, Mexican Americans and the Administration of Justice in the Southwest (1970).
28. Having prevailed before the Supreme Court, Hernández's case was remanded for a second trial. He was again convicted. *See* García, *supra* note 13, at 51.
29. *See generally* Horsman, *supra* note 20.
30. For an overview of recent Mexican American civil rights litigation, see George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. Davis L. Rev 555 (1994).
31. *See* García, *supra* note 13, at 50. Many Mexican Americans during this period subscribed to the notion that they were White, in part because of the widespread belief that everyone was of one race or another, where the principal choices were White and Black; partially as a result of the stigma attached to being non-White; and also partially through prejudice against Blacks. Such beliefs animated the litigation strategy of LULAC. As Mario García writes, "In [its] antisegregation efforts, LULAC rejected any attempt to segregate Mexican Americans as a nonwhite population. Mexican Americans expressed ambivalences about race identity and possessed their own prejudices against blacks. However, they also recognized that irrespective of how they saw themselves, reclassification as colored, especially in Texas, would subject Mexicans not only to de facto segregation but to de jure as well." *Id.* at 48.
32. *See* Perea, *supra* note 3, at 235-236.
33. *See supra* notes 3, 7, and 30 and accompanying text.
34. Werner Sollors provides a highly useful discussion of the origins of the notion of ethnicity, considering in that context the relation between ethnicity and race. Werner Sollors, *Foreword: Theories of American Ethnicity*, *in* Theories of Ethnicity: A Classical Reader (Werner Sollors ed., 1996).
35. Transcript of Hearing on Motion to Quash Jury Panel and Motion to Quash the Indictment, State v. Hernandez (Dist. Ct. Jackson Co., Oct. 4,1951) (No. 2091), *reprinted in* Transcript of Record at 74-75 (on file with author), Hernandez v. Texas, 347 U.S. 475 (No. 406).
36. *See* Omi & Winant, *supra* note 6, at 14-24.
37. *See* Haney López, *supra* note 6, at 20-24.
38. *See* Goldberg, *supra* note 10, at 78.
39. Hernandez v. State, 251 S.W.2d at 536.
40. *Id.*
41. *Id*. at 535.
42. I do not mean to suggest that access to antidiscrimination law currently depends on whether one alleges discrimination on the basis of race as opposed to ethnicity. Rather, I contend that the construction of Latino/a identity in ethnic rather than racial terms continues as a basis for arguing that the remedies fashioned to redress racial discrimination should not be available to our communities. This is the central

theme elaborated in Peter Skerry, Mexican Americans: The Ambivalent Minority (1993). Skerry laments that "one means Mexican Americans now have of advancing themselves--of pursuing the American dream--is to take advantage of the racially designated benefits afforded them . . . . Indeed, we must recognize that defining themselves as a [racial] minority group may be the way this new wave of immigrants assimilates into the new American political system." *Id.* at 29. According to Skerry, the threat to Mexican American assimilation comes not from racial prejudice or hostility, but from access to the legal remedies designed to combat racism.

43. 347 U.S. 483 (1954).

44. *See generally* Horsman, *supra* note 20; and Tomás Almaguer, Racial Fault Lines: The Historical Origins of White Supremacy in California (1994).

13. Keith Aoki,[(1)] *(Re)presenting Representation,* 2 HARV. LATINO L. REV. 247 (1997)

I. THREE OBSERVATIONS

A. De-Bracketing Religion

After listening carefully and with great interest to the preceding presentations at this symposium, I have a few observations. First, I sense that issues of religion and spirituality are submerged not far below the surface of emerging Latina/o Critical Theory. Religion requires us to confront questions of agency as they relate to identity construction in two ways. First, religion requires us to examine the different and particular ways, in assorted times and places, that our constructions of race, and not religion, are and are not mutable. Secondly, it enables us to examine the nature of race itself by exposing its socially constructed and historically contingent character, in part by comparison with the non-biological but equally problematic nature of religious affiliation and identity. It is revealing to note how traditional liberal legal theory tends to bracket religion, particularly as it relates to the construction of identity.[(2)] Until recently, traditional legal theory has also bracketed other subjects such as race, gender, sexuality and class in ways that encourage certain kinds of identities to coalesce and become legally coherent, and to discount or suppress formation or recognition of other identities.[(3)] Religion and its role in identity fabrication have a particular salience to issues of race and nation.[(4)] Here I am thinking of works such as Eugene Genovese's *Roll, Jordan, Roll: the World the Slaves Made*,[(5)] *The Autobiography of Malcolm*[(6)] or C. L. R. James' *The Black Jacobins.*[(7)] Genovese articulates how religion was used by slaves in the antebellum South to create a coded culture of resistance to the brutal regime of chattel slavery. This culture of resistance operated directly under the eyes of the master, and an inquiry into parallels between the complex interaction between religion, gender, race and nation in the antebellum South and the interplay of similar factors in the Latina/o experience seems likely to produce significant insights.[(8)] In a slightly different way, thinking about how an Afro-centric iteration of Islam provided Malcolm X a means of expressing solidarity along racial lines while simultaneously, perhaps inevitably, occupying an oppositional position with regard to white supremacy or James' discussion of the hybrid mingling of resistance culture, Christian and African religious practices in Haitian Voodoo, Brazilian Condomble or Caribbean Santeria may have analogies in the past or present experience of Latina/o communities. What has been, what is, and what might be the role of Roman Catholicism when combined with indigenous and African-Caribbean practices and beliefs, as well as with complex iterations of nationality, race and resistance as filtered through the Latina/o experience from the Spanish Conquest onward, in the fabrication of Latina/o identity both within and outside the U.S.[(9)]

B. Constructing Religious, Racial, National and Sexual Identities

Secondly, I observe that conference participants have taken a perhaps inescapably ambiguous/ambivalent stance toward "voluntariness." By "voluntariness" I mean the ability and capacity of a rational, autonomous legal subject to freely choose and control what and who he/she is with regard to which identities are assumed, constructed or abandoned.[(10)] I use the term "voluntariness" in counterpoise to the idea of "determinism"

which addresses the degree to which individuals lack choice or agency, and have identities imposed, inscribed or impressed upon them, which cannot be disclaimed, altered or abandoned.[(11)] Until recently, many people thought of race and gender as being determined in this sense; however, even these constructs have begun to be re-thought.[(12)] Indeed many of the categories within which we move may be radically under- and over-determined.[(13)] Considering questions surrounding the complex role of religion in identity fabrication allows us to re-examine questions of voluntariness, intentionalism and determinism.[(14)] In a paradoxical way, religion simultaneously may be both *more* and *less* difficult to voluntarily discard than race, language or nationality as a constitutive element of one's individual and group identity.[(15)]

Geography plays an important role in the construction of race and nation, whereas religion transcends geographical boundaries in many ways. For example, if you are a Latina/o you may simply move or travel to Mexico, Cuba or Puerto Rico and suddenly race, *at least as it is constructed in the United States*, undergoes significant transformations to you as an individual in terms of the lived experience of how others categorize themselves and how you categorize yourself and others.[(16)] Similarly, an Asian American can move to Korea, and U.S. understandings of race lose a considerable amount of salience,[(17)] however other constructs like gender, nationality, language or religion may be foregrounded and transformed into perhaps equally problematic iterations. Even within the U. S., the meaning of race shifts depending on whether one is in areas of New York, Los Angeles, Miami or an Asian American enclave like suburban Monterey Park, California or Flushing, Queens.[(18)] Thus, even within a bounded, sovereign political unit like the United States, construction of racial identities differs markedly from region to region, and even within regions or cities themselves, in spite of the absence of legal recognition of this fluidity. I do not claim that race disappears, or is less fraught in these spaces, only that its meaning undergoes significant shifts over time[(19)] as the demography and geography change.[(20)]

While understandings of racial identities may differ between regions in a nation-state, and may be radically transformed when an individual leaves a given nation, in certain ways 'religion' travels with or is 'attached' to an individual. If one is a Roman Catholic while living in Mexico, one is also a Roman Catholic while visiting China, or living in the United States. Additionally, religion can be, and has been, perniciously conflated with race, as was the case in the U.S. and Europe with regard to the racial stigmatization of Jews.[(21)] The complexity of race begins revealing itself if one considers what it means to be Jewish. Was the designation "Jew" a religious designation? A racial designation? A cultural designation? An ethnic designation? Or does it indicate familial ties with a nation-state or ancestral ties to a geographic region? Or is it all, or none of these?

C. Race, Space and Place: Linking the Macro with the Micro

My third observation is that questions of space, demography, geography and the dynamics of population flow as they relate to mapping the distribution of people are also present just below the surface of this symposium. Cultural geographers have begun addressing these issues, and I believe much of their work is crucially relevant to legal scholars of color. My sense is that Ed Soja's landmark book, *Postmodern Geographies*,[(22)] along with a few other works are useful additions to Latina/o legal discourse.[(23)] Soja's theories lay the groundwork to begin asking questions like: Why and how did Miami,

New York or Los Angeles become centers of Cubana/o, Puerto Rican or Chicana/o culture? How are both macro and micro demographic shifts changing both Latina/o communities and the cities/regions in which those dynamic communities exist? Why and how do sections of Miami, Chicago or New York differ from Los Angeles and San Antonio? Why and how might the East coast differ from the West coast? The North from the South? Why and how do Mexico City, San Juan, San Salvador or Havana differ from New York, Los Angeles, Miami and other United States cities in understandings about race? What are we to make of spatial patterns of internal migration, and how do they relate to the spatial patterns and flows of both legal and illegal immigrants?

Cultural geography addresses the intersections of race, space and place; urban, suburban and rural; global and local; domestic and international -- the field holds many descriptive and analytic tools. Valuable insights may be gained by using some of these tools because they impart a sense of the flux or dynamism of the spaces and places that legal discourse creates, negotiates and polices. Until recently, the law generally viewed space as opaque, as something found, not made, as a pre existing, unalterable fact of nature. In this sense space was treated like 'temperature,' akin to a law of nature, an objective quantity to be measured by metes and bounds.[(24)] Critical legal studies, and specifically critical race theory, have repeatedly adumbrated an acute sense of the interdeterminancy and contingency of the law and its categories, such as race.[(25)] A useful way to extend this critique is to begin examining how the juridical regime produces and regulates the spaces in which individuals and communities live.[(26)] Latina/o legal scholars may be able to gain valuable insights by incorporating some of the lessons and tools of cultural geography into their work and examining the concrete experience of the effects of the law as it produces, negotiates, maintains and polices aporetic and conceptually panoptic spaces like the border or the barrio. Furthermore, studying cultural geography can help enrich the legal discourse surrounding the complex interrelationships among our understandings of race, space, gender, sexuality, language, class, nationality, religion, and ethnicity, and can provide new insight into questions surrounding immigration, housing and workplace segregation or voting rights.[(27)]

II. COMMENTS: THREE SENSES OF "REPRESENTATION"

A. Mimesis and Semiosis

First, I would like to discuss the word "representation." All the speakers in this symposium have used the word "representation" with a variety of senses. In my mind, the word has at least three different, but related senses,[(28)] each of which has been foregrounded to different extents in all of the discussions thus far.

The first sense of "representation" goes back to my personal history as a visual artist. To an artist, "representation" can be thought of as a portrayal, depiction, or painting. It is a claim that the representation mirrors reality, that is, representation involves mimesis (i.e. mimicking something or being the so-called "mirror of nature"). In nineteenth century European and U. S. aesthetic theory, art was thought of as the "mirror of nature." This understanding of representation was and is related to pre-Wittgensteinian essentialist beliefs and attitudes about language.[(29)] Under a mimetic theory of language, language is thought of as representing something stable and preexisting, that is "out there" in the world. When we talk about representations, whether in paintings, movies, television or literature of Latina/os, or any group or individual, we are making a claim

about the nature of representation as well as a not-so-hidden political claim about what it means to "represent" something as well a claim about who has the authority to create or alter "representations."[(30)] This sort of "representation" involves a claim that a particularized story or depiction conveys some essential quality that can be generalized about the category or class to which the person or people represented belong.[(31)]

The understanding of representation as merely reflecting something stable and preexisting in nature in an unproblematic way has been contested in Western aesthetic and literary theory since at least the end of the nineteenth century beginning with artistic movements of cubism, surrealism, dada, situationism, structuralism and poststructuralism.[(32)] During the twentieth century art has made an erratic move from theories of representation involving mimesis to theories involving symbolic representation or semiosis (i.e., an understanding that language and expression involve contingent and dynamic relations between a sign, a signifier, and something that is signified). Under the latter view, "representation" is no longer seen as the unproblematic, one-to-one transmission by the artist of something that is objectively "out there," but as a series of acts involving, re-creation, interpretation and meaning-making: literally "RE-presentation."[(33)]

B. Mimetic and Symbolic Political "Representation"

This movement from mimesis to semiosis in twentieth century art relates to a second sense of "representation" one explored by philosopher Hanna Pitkin in her book, *The Concept of Representation*.[(34)] This meaning implicates politics -- what do we mean when we talk about "representative democracy" or "political representation?" This second meaning explores the connections between pictorial, aesthetic, representation and political representation.[(35)] Traditional theories of political representation have asserted that political representation is tied to something pre-existing in the world, that political representation, like nineteenth century art, is a mirror of the natural world, that is, that voting and other political processes are mimetic of this or that feature of the polity. The notion that political representation has, or should have, a strong mimetic component is contradicted by the post-*Shaw v. Reno* voting rights cases.[(36)] However, scholars like Gerald Frug,[(37)] Richard Thompson Ford[(38)] and Lani Guinier[(39)] have argued that political representation, like art, has moved or *should* move from a mimetic model to a symbolic or semiotic model. They argue that political representation is not merely an unproblematic "snapshot" of a particular polity on election day, but has complex symbolic dimensions, involving elements of race, gender, history and geography, in which the "will of the people" may be thought of as invented, not found. Latina/o legal scholars are well positioned to begin addressing this fertile area by analyzing the ties between aesthetic representations and political representation of Latinas/os.[(40)]

Discussions revolving around pan-ethnicity approach this intersection.[(41)] While pan-ethnic claims might not be true at all times and all places, they lead us into a way of thinking about the world that illuminates how and why symbolic theories of representation might be relevant in areas like redistricting, immigration, housing, employment, voting and language rights.

C. "Representing" Law to Those Who Will "Represent" Others Before the Law

Finally, I would like to address the sense of "representation" as conventionally used to refer to a lawyer's representation of her client and the way in which who your

client is - an individual, a community, or a segment of a community - affects the meaning of representation itself. Representation as used in this context is self referential. Unlike mimetic or semiotic representation that is limited by some external construct, representation in this context is defined by and limited by the act of representing.[(42)] This sense of representation necessarily encompasses the compositions of law schools, their student bodies and faculties in the most profound way.[(43)] To those who represent the law to those who are going to represent others before the law, questions of "representation" in all the senses thus far mentioned are crucial. I am thrilled by some of the tentative, but undeniably constructive ideas, proposals and directions that have emerged at this conference and hope that they will prove fruitful in the continued elaboration and expansion of LatCrit theory in the years to come.

Footnotes

1. Associate Professor, University of Oregon School of Law; B.F.A. 1978, Wayne State; M.A. 1986, Hunter College; J.D. 1990, Harvard Law School; LL.M. 1993, University of Wisconsin-Madison. Many thanks are owed Frank Valdes, Gloria Sandrino and Laura Padilla for organizing this gathering. I would also like to thank my colleagues Steve Bender, Garrett Epps, Ibrahim Gassama, Dennis Greene and Lisa Kloppenberg for their insightful comments, and Anne Fujita, David Munsey and Mary Ann Murk for their superb research and editing efforts on my behalf. Because it is relevant to a panel and conference dealing with identities, I identify myself with the subject position of a third generation Japanese American male (Sansei) within the legal academy who was born and raised in the Midwest, as well as from the overlapping but somewhat aporetic Asian American position. Additionally, for the decade prior to entering law school, I was a practicing visual artist in New York City, and this experience has helped shape in important ways how I think and look at legal issues and problems.

2. For an example of the doctrinal confusion regarding the bracketing of religious beliefs and practices, see Employment Div., Dep't of Human Resources of Oregon v. Smith, 110 S. Ct. 1595 (1990). *Compare* Michael McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409 (1990), *with* Michael McConnell, *Free Exercise Revisionism and the Smith Decision*, 57 U. Chi. L. Rev. 1109 (1990). *See also* Garrett Epps, To an Unknown God: The Hidden History of Employment Division v. Smith (book manuscript on file with author). *See also* Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (codified at 5 USCA ßß 1988, 2000bb to 2000bb-4), *and* the American Indian Religious Freedom Act of 1994, Pub. L. No. 103-344, 108 Stat. 3125 (codified at 42 USCA ßß 1996). On the problematic role of religion with respect to U.S. law, see, e.g., Laurence Tribe, American Constitutional Law ßß 14-6 (1988); Jesse Choper, *Defining 'Religion' in the First Amendment*, 1982 U. Ill. L. Rev. 579; Kent Greenwalt, *Religion as a Concept in American Law*, 72 Cal. L. Rev. 753 (1984). *See also* Board of Education of Kiryas Joel v. Grumet, 114 S. Ct. 2481 (1994); Church of the Lukumi Babalu Aye, Inc. v. Hialeah, 113 S. Ct. 2217 (1993); City of Boerne v. Flores, No. 95-2074, 1997 WL 87109 (U.S. Feb. 19, 1997) (striking down the Religious Freedom Restoration Act of 1993 as unconstitutional). *See also* Lizette Alvarez, *Santeria, A Once-Hidden Faith Leaps Out Into the Open*, N.Y. Times, Jan. 27, 1997, at A1 ("For decades, Santeria has operated in a muted underground here, its rites confined to basements and living rooms far from the condemning eyes of outsiders who labeled it voodoo . . . Once dismissed as a ghetto religion practiced only by the Caribbean poor and uneducated, Santeria has a growing following among middle-class professionals, including white, black and Asian Americans.").

3. *See, e.g.*, Critical Race Theory: The Key Writings that Formed the Movement (Kimberley Crenshaw et al. eds., 1996); Critical Race Theory: The Cutting Edge (Richard Delgado ed., 1995); Richard Delgado, The Rodrigo Chronicles: Conversations About America and Race (1995).

4. *See, e.g.*, Constructions of Race, Place and Nation (Peter Jackson & Jan Penrose eds., 1993) [hereinafter Constructions of Race]; James Duncan & David Ley, Place/Culture/Representation (1993); Doreen Massey, Space, Place and Gender (1993). *See generally* Stephen J. Gould, The Mismeasure of Man (1981); The Concept of Race (Ashley Montagu ed., 1964); Thomas F. Gossett, Race: The History of an Idea in America (1963).

5. Eugene D. Genovese, Roll, Jordan, Roll: The World the Slaves Made 7 (1972) ("Southern paternalism may have reinforced racism as well as class exploitation but it also unwittingly invited its victims to fashion their own interpretations of the social order it was intended to justify. And slaves, drawing upon a religion that was supposed to assure their compliance and docility, rejected the essence of slavery by projecting their own right and value as human beings.").
6. Malcolm X (with Alex Haley), The Autobiography of Malcolm X (1965).
7. C. L. R. James, *The Black Jacobins*, *in* The C. L. R. James Reader (1992). *See also* Church of the Lukumi Babalu Aye, Inc. v. Hialeah, 113 S. Ct. 2217 (1993); Alvarez, *supra* note 1, at A1 ("[S]anteria was born among the West African Yoruban people who were taken to Cuba as slaves from the 16th to the 19th Century . . . Forced to conceal their religious traditions, the santeros cloaked their faith in Roman Catholic imagery. Chango, god of thunder and lightning, for example, was worshiped in the image of Saint Barbara, whose father was struck by lightning as he beheaded her for her faith. This melding became known as Santeria, the worship of the Saints. It is not uncommon to find santeros lining the pews of a Roman Catholic Church or a devout Catholic dropping in on a Santeria priest for advice."). For example, many of the Latin American and Caribbean iterations of Yoruba, a West African belief system, such as Condomble, Macumba, Voodun, and Santeria involve strong linguistic, cultural and ethnic ties to West Africa as opposed to the brutal shattering/disruption of such ties that U.S. slaves underwent. By contrast, many of the Caribbean and Latin American slave populations were able to retain substantial elements of their language, culture and religion. *See* Joseph M. Murphy, Santeria: African Spirits in America (1988) (describing the Yoruban experience in Havana as closer to the experience of the immigrant Irish in Boston than to the experience of African Americans in the U.S.); Albert Raboteau, The Death of the Gods (1978) (contrasting the experience of U.S. Blacks with that of Blacks in the rest of the Western Hemisphere, where Yoruban variants continued and insinuated themselves into Caribbean and Latin American cultures); Abidos do Nascimento et al., Africans in Brazil: A Pan-American Perspective (1992). On the subject of the relation between race and religion in Asian American communities, see special issue of Amerasia Journals focusing on *Racial Spirits: Religion & Race in Asian American Communities*, *in* 22 Amerasia J. (1996).
8. *See* Rodolfo Acuña, Occupied America: A History of Chicanos (3d ed. 1988); Clara E. Rodriguez & Hector Cordero-Guzman, *Placing Race in Context*, 15 Ethnic & Racial Stud. 527 (1992) (discussing differences and similarities between the Spanish Caribbean, Latin American and U.S. Latina/o experience).
9. Margaret Montoya has been doing some fascinating interdisciplinary work in this area. *See* Margaret E. Montoya, *Border Crossings in an Age of Border Patrols: Cruzando Fronteras Metafóricas* 26 N.M. L. Rev 1 (1996); Melissa Harrison & Margaret E. Montoya, *Law Teaching in the Borderlands: 'The Mind Knowing Does Not Always Make a Difference That Matters,'* 5:2 Colum. J. Gender & L. 1 (forthcoming 1996). *See also* Gloria Anzualdua, Borderlands, La Frontera: The New Mestiza (1987); Renato Rosaldo, Culture and Truth (1989). For a consideration of Latin American iterations of Liberation Theology, see Mike Davis, City of Quartz: Excavating the Future in Los Angeles 325-372, 324, 352-53 (1990) ("Father Luis Olivares and his fellow Claretian and Jesuit priests [in] Downtown [Los Angeles] represent Liberation Theology's 'preferential option for the poor,' emphasizing direct action in favor of the oppressed, even when this defies secular law . . . Since assuming the pastorate of La Placita [a Claretian mission] in 1981, Olivares had made the old plaza church the city's major base of liberationist social practice, as well as a bustling center for refugee Central Americans. No parish in the country has a larger or more destitute congregation . . . Publicly contemptuous of laws that 'criminalize the poor,' Olivares has opened his door as a sanctuary to undocumented immigrants and political refugees, allowed hundreds of homeless men to sleep on his pews every night and declared the church grounds a 'zone of safety' for harassed street vendors . . . Olivares . . . Became the most important transmission belt between the radical church in Central America and Latinos in the Los Angeles diocese.").
10. See generally J.M. Balkin, *Understanding Legal Understanding: The Legal Scholar and the Problem of Legal Coherence*, 103 Yale L.J. 105 (1993); James Boyle, *Is Subjectivity Possible? The Postmodern Subject in Legal Theory*, 62 U. Colo. L. Rev. 489 (1991); Allan Hutchinson, *Identity Crisis: The Politics of Interpretation*, 26 New Eng. L. Rev. 1173 (1992); Pierre Schlag, *The Problem of the Subject*, 69 Tex. L. Rev. 1627 (1991).
11. *See, e.g.*, Rosemary J. Coombe, *Room for Maneuver: Toward a Theory of Practice in Critical Legal Studies*, 14 Law & Soc. Inq. 69 (1989); Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 Cal. L. Rev. 741 (1994); Edward J. McCaughan, *Race, Ethnicity, Nation and Class Within Theories of Structure and Agency*, 20 Soc. Just. 82 (1993);.
12. On the social construction/fabrication of race, see, e.g., Ian Haney López, White By Law: The Legal Construction of Race (1995); Michael Omi & Howard Winant, Racial Formation in the United States,

1960-1980 (1986); Howard Winant, Racial Conditions (1994). On the social construction/fabrication of gender, sex, and sexual orientation, see, e.g., Blending Genders: Social Aspects of Cross-Dressing and Sex-Changing (Richard Ekins & Dave King eds., 1996); Judith Butler, Gender Trouble: Feminism and the Subversion of Identity (1990); Bernice L. Hausman, Changing Sex: Transsexualism, Technology and the Idea of Gender (1996); Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 Cal. L. Rev. 1 (1995).

13. *See, e.g.*, 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, 47 (1994) ("Choice composes a crucial ingredient in the construction of racial identities and the fabrication of races. Racial choices occur on mundane and epic levels . . . they are made by individuals and groups . . ."); Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 Asian Pac. Am. L.J. 33 (1996) ("Agency is conceived neither in terms of free-standing individual autonomy nor straight-jacketed structural determinism. Agency is the existence of affirmative group power to self-define and to interact with other groups, the exercise of which is both facilitated and constrained by socio-political circumstances."). *See also* Haney López, *supra* note 11; Mary Coombs, *Interrogating Identity*, 11 Berkeley Women's L.J. 222 (1996); Judy Scales-Trent, Notes of a White Black Woman (1995).

14. *See* Neil Gotanda, *Chen the Chosen: Reflections on Unloving*, 81 Iowa L. Rev. 1585 (1996); Margaret Chon, *Chon on Chang and Chen*, Iowa L. Rev. 1535 (1996).

15. Rather than being a "natural" or "found" entity, our concepts of nationality, nation-ness and nation-state are extremely historically contingent, as well as subject to dynamic mutations and changes over both time and space. On the "invention" of the modern nation-state following the Treaty of Wesphalia in the mid-17th century, see Benedict Anderson, Imagined Communities: Reflections on the Origins And Spread of Nationalism (1983). On the multiplication and unbundling of identities beyond nationalistic iterations, see David J. Elkins, Beyond Sovereignty: Territory and Political Economy in the Twenty-First Century 25 (1995) ("Of the nations born of imperial decline after the Second World War or after the breakup of the Soviet Union and its empire, some have deep historical roots but most do not, and almost all contain substantial minorities who seek self-determination, autonomy, or devolution . . . The vitality and renewal of sub-national and transnational 'nations' such as the Palestinians, Kurds, Catalans, Scots and Quebeckers should warn us that 'nations' which belong to the United Nations may be weakened by the claims of 'nations' yearning to be recognized. Tribes, religious groupings, and transnational corporations pose . . . quite different kinds of threats to 'nations' . . .").

16. Note, however, that understandings of race may intersect and interact with political boundaries in odd ways, i.e., U.S. laws and understandings of race relations may be more relevant in a U.S. territory like Puerto Rico than in a sovereign nation-state such as Mexico or Cuba. But transborder trade agreements such as NAFTA and domestic U.S. Law immigration laws create a 'penumbra' or extranational zone of influence in which U.S. racial tropes may still play out in strange ways. For a particularly vivid example of how constructions of race, ethnicity, nationality and citizenship interact in bizarre ways, see Tim Golden, *Latins of Japanese Descent Seek Reparations*, N.Y. Times, Aug. 29, 1996, at A1 (describing how "more than 2,000 . . . Latin Americans of Japanese Descent were deported to the United States in World War II and forcibly interned on the orders of President Franklin Roosevelt." Following the war, they were generally denied U.S. Citizenship and were thus ineligible for reparations paid to Japanese American U.S. Citizens who were interned. These Asian Latina/o internees filed a class action suit in L.A. in August 1996, seeking redress from the U.S. Government equivalent to the redress granted to Japanese American internees). *See also* Maki Becker, *Japanese Peruvians Launch Campaign for WW II Redress*, L.A. Times, Aug. 29, 1996, at A1.

17. *See* Colloquy, *Our Next Race Question: The Uneasiness Between Blacks and Latinos*, Harper's Mag., Apr. 1996, at 55 (colloquy with participants Jorge Klor De Alva, Earl Shorris and Cornel West) (Jorge Klor De Alva, at 56: "To identify someone as black, Latino, or anything else, one has to appeal to a tradition of naming and categorizing in which a question like that can make sense . . . In the United States where unambiguous, color-coded identities are the rule, Cornel is clearly a black man. Traveling someplace else, perhaps in Africa, Cornel would not necessarily be identified as black.").

18. *See, e.g.*, Edward T. Chang, *From Chicago to Los Angeles -- Changing the Site of Race Relations, in* Los Angeles -- Struggles Toward Multiethnic Community: Asian, African American and Latino Perspectives 1 (1993); Timothy P. Fong, The First Suburban Chinatown: The Remaking of Monterey Park, California (1994); Peter Kwong, The New Chinatown (rev. ed. 1996); E. San Juan, Jr., *Symbolizing the Asian Diaspora in the United States, in* Hegemony and Strategies of Transgression: Essays in Cultural

Studies and Comparative Literature 165 (1995). *See also* Celia W. Dugger, *Queens Old-Timers Uneasy as Asian Influence Grows*, N.Y. Times, Mar. 31, 1996, at A1.

19. Compare contemporary constructions of African Americans, Chinese Americans and Latina/os with 19th century Californian understandings of such groups. *Compare* Tomas Almáguer: Racial Fault Lines: The Historical Origins of White Supremacy in California 4-6 (1994) ("Spanish colonialization of the Southwest had conferred a 'white' racial status, Christian ancestry, a romance language, European somatic features, and a formidable ruling elite that contested "Yankee" depredations [on 19th century Mexicans in California] . . . California Indians . . . were categorically deemed nonwhite, politically disenfranchised, and ruthlessly segregated from European Americans. [B]lacks were relegated to the lower end of the new class society . . . [and] were largely segregated from whites. [T]he 'heathen Chinese,' and later the Japanese 'Yellow Peril,' attracted intense opposition from segments of the white working class and self-employed, petit bourgeois commodity producers."), *with* Rodolfo Acuña, Anything But Mexican: Chicanos in Contemporary Los Angeles 133 (1996) ("Part of the alienation between [Asian Americans and Latina/os] comes . . . from the failure to appreciate each others' history. [L]ike Mexicans and Central Americans, Asians have shared a running battle with the INS, which has regularly rounded up undocumented Chinese workers. And contrary to the stereotypes of Asian Americans as satisfied, they have a long history of struggle in California, especially as workers. This history has included alliances with Mexican and Chicano workers, ranging from the Japanese-Mexican Labor Association formed in Oxnard in 1903 to the Filipino-Mexican grape workers strike of 1965 . . . Despite areas of disagreement, Latinos, Asians and Blacks share a collective sense of [having] been robbed of opportunities . . .").

20. *See* Francisco Valdes, *Foreword: Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practice to Possibilities*, La Raza L.J. (forthcoming 1996) ("'Latina/o' is itself a conglomeration of several peoples from varied cultures and localities . . . Each of these (and other) Latina/o sub-groups not only comprises 'different' national origins and cultures but also diverse spectrums of races, religions, genders, classes, and sexualities.").

21. *See* Leonard Dinnerstein, Anti-Semitism in America (1994).

22. Edward W. Soja, Postmodern Geographies: The Reassertion of Space in Social Theory (1989).

23. *See generally* John A. Agnew, Place and Politics: The Geographical Mediation of State and Society (1987); Nicholas K. Blomley, Law, Space and the Geographies of Power (1994); Constructions of Race, *supra* note 3; Displacement, Diaspora, and Geographies of Identity (Smadar Lavie & Ted Swedenburg eds., 1996); Duncan & Ley, *supra* note 3; Peter Jackson, Maps of Meaning: An Introduction to Cultural Geography (1992); Mapping the Subject: Geographies of Cultural Transformation (Steve Pile & Nigel Thrift eds., 1995); Massey, *supra* note 3; David Sibley, Geographies of Exclusion: Society and Difference in the West (1995). *See also* Davis, *supra* note 8.

24. *See* Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 Harv. L. Rev. 1841, 1858 (1994) ("We often imagine that cities develop naturally in a space that is naturally present, and are then 'discovered' by the law"). *See also* Soja, *supra* note 21, at 7 (1989) ("The 'illusion of opaqueness' reifies space, inducing a myopia that sees only a superficial materiality, concretized forms susceptible to little else but measurement and phenomenal description: fixed, dead and undialectical: the Cartesian cartography of spatial science. Alternatively, the 'illusion of transparency' dematerializes space into pure ideation and representation, an intuitive way of thinking that equally prevents us from seeing the social construction of affective geographies . . .").

25. *See, e.g.*, Haney López, *supra* note 11; Neil Gotanda, *A Critique of 'Our Constitution is Colorblind,'* 44 Stan. L. Rev. 1 (1991); Omi & Winant, *supra* note 11.

26. *See* Constructions of Race, *supra* note 3, at 104. *See also* Homi K. Bhabha, *Postcolonial Authority and Postmodern Guilt*, *in* Cultural Studies 57 (Lawrence Grossberg et al. eds., 1992) ("[T]he writing of cultural difference must proceed from an understanding of the contingent culture 'caught . . . in-between a plurality of practices that are different yet must occupy the same space of adjudication and articulation.'").

27. *See* Blomley, *supra* note 22, at 45 ("One insightful aspect of the legal geographic literature is its analysis of the manner in which legal interpretations actively produce space . . . Studies of busing, local residential change, and electoral redistricting in Los Angeles by William Clark illustrate [the way that legal decisions have both a discursive and material affect on localities] . . ."). *See, e.g.*, Keith Aoki, *Race, Space and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 Fordham Urb. L.J. 699 (1993); John O. Calmore, *Racialized Space and the Culture of Segregation: "Hewing a Stone of Hope From a Mountain of Despair,"* 143 U. Pa. L. Rev. 1233 (1995); John O. Calmore, *Spatial Equality and the Kerner Commission Report: A Back-to-the-Future Essay*, 71 N.C. L. Rev. 1487 (1993); Martha Mahoney, *Law and Racial Geography: Public Housing and the*

Economy in New Orleans, 42 Stan. L. Rev. 1251 (1990); Douglas S. Massey & Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass (1993); Reggie Oh, *Apartheid in America: Residential Segregation and the Colorline in the Twenty-First Century*, 15 B.C. Third World L.J. 385 (1995); Readings in Urban Theory (Susan Fainstein & Scott Campbell eds., 1996). *See also* Joe T. Derden, *Accessibility to Housing: Differential Residential Segregation for Blacks, Hispanics, American Indians and Asians, in* Race, Ethnicity and Minority Housing in the United States 111 (Jamshid A. Momeni ed., 1986).

28. *See* Hanna Fenichel Pitkin, The Concept of Representation 113-114 (1967). Representation has traditionally been defined as either mimetic or semiotic; that a representation either by mimicking reality, or by standing in as a symbol of reality is descriptive in that it is an "accurate rendering of information about something absent." However, representation can also be the activity of acting for others. This differs from the formalistic views of representation because formal views of representation suppose that the limits of the representation are circumscribed by a pre-existing object. However, when one acts to represent others it is the act of representation that defines the nature of the representation.

29. For a contemporary view of this from someone who was trained as an analytical philosopher of language, see Richard Rorty, Philosophy and the Mirror of Nature (1979).

30. *See, e.g.*, Terry Eagleton, Literary Theory: An Introduction (1983).

31. *See* Jody Armour, *Stereotypes and Prejudice: Helping Legal Decisionmakers Break the Prejudice Habit*, 83 Cal. L. Rev. 733 (1995).

32. *See generally* Greil Marcus, Lipstick Traces: A Secret History of the Twentieth Century (1989). *See also* Hakim Bey, T.A.Z.: The Temporary Autonomous Zone, Ontological Anarchy, Poetic Terrorism (1985); Guy DeBord, Society of the Spectacle (1983); Situationist Anthology (Ken Knabb ed., 1981). The Belgian painter Rene Magritte evoked the problematic nature of representation in his famous painting, "The Treachery of Images," a painting of a pipe with a caption reading, "*Ceci n'est pas une pipe*," or "This is not a pipe." This response encapsulates the complex claim that a painting is not a representation of nature; a painting of a pipe is a symbol, it is *not* the pipe. *See* Scott McCloud, Understanding Comics: The Invisible Art 24-25 (1993); DeBord, *supra*, at ß I ("In societies where modern conditions of production prevail, all of life presents itself as an immense accumulations of *spectacles*. Everything that was directly lived has moved into a representation.").

33. *See* John Carlin, *Culture Vultures*, 13 Colum-VLA J. L. & Arts 103, 110 n.24 (1988) ("Mimetic figuration refers to a one-to-one correspondence between the object depicted in art and its original tangible existence in the real world. Semiotic figuration is based upon the notion that all perception is subjective and therefore there is no tangible, stable real world from which objects can be transcribed into art. Instead we have a fluxional universe of agreed-upon signs that make up our sense of reality. Semiotic figuration is an attempt to deal with this situation in a non-illusionistic manner. The term "semiosis" was used in this context originally by the Swiss linguist Ferdinand de Saussere at the turn of the century. The French literary critic Roland Barthes began applying the term to literary figuration in the 1960s . . . The terms "semiosis" was first used in a legal context by [Bruce] Ackerman in, *The Storrs Lectures: Discovering the Constitution*, 93 Yale L.J. 1013, 1028 n.24 (1984). Ackerman specifically contrasts semiotic to mimetic representation to better analyze the rhetorical complexity of self-representation in the tradition of American constitutional law."). *See also* Suzanne Oboler, Ethnic Labels, Latino Lives: Identity and the Politics of "(Re) presentation" in the United States (1995).

34. Pitkin, *supra* note 27.

35. Political representation is analogous to artistic representation in that both have mimetic and semiotic components. Traditionally, political representation (i.e., a state's congressional delegation) is "representative" of a state's body politic *in toto*. However, consider a hypothetical state consisting of 50% males and 50% females, and 60% white, 20% African American, 10% Latina/o, and 10% Asian American. Under traditional U.S. voting rights law, this hypothetical state is likely to have a congressional delegation that is 100% white and male. Thus the descriptive claim that the voting process is mimetic, or has a one-to-one correspondence to the polity is incomplete at the best. The normative question of whether and to what degree mimesis is appropriate is a different question. Nonetheless, rhetorically the one person-one vote claim of mimetic representation, because of its apparent 'neutrality' and seeming 'natural-ness' is attractive -- voting results acquire a 'found' aspect, as though they were just a 'snapshot' of the polity on a particular day. However, photographs are not mere factual recordings, but comprise a number of complex and intertwined decisions about framing, depth of field, exposure, composition, etc. Likewise the 'snapshot' of the polity comprises a number of complex (and politically and racially charged) decisions which are concealed by claims of mimesis. The idea that all voting systems have a strong symbolic, or semiotic

component exposes the 'cooked' or 'invented,' not 'found' nature of voting districts, which then confronts decisionmakers with difficult (and ironically, political, in the broadest sense of the word) choices involving what kinds of 'representation' can be implemented, taking factors such as race, economic class, etc. into account (or not) and including other forms of voting such as cumulative voting. One faces the paradoxical idea that in order to get closer to mimesis (if it has been decided that that is what one indeed wishes to do), one first needs to confront directly the strong semiotic nature of redistricting and gerrymandering. Representation (racial and otherwise) has multiple (and contradictory) meanings, some of which are: representation on a racial or other basis that is consistent with census and other demographic data; representation that advocates on behalf of and promotes the expressed needs or agenda of a minority community within a district by a person who may or may not be a member of the particular community; or a hybrid representation that includes aspects of both demographic and agenda representation. Before we can get to discussing the normative desirability of symbolic representation, we first need to clear away assumptions that the systems we now have in place are descriptively mimetic in any satisfactory sense. Thanks to many conversations with Richard Thompson Ford who is doing important work in this area. *See also* Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 Harv. L. Rev. 1841 (1994). For an extended and in-depth discussion of aspects of the problem of minority voting dilution and the advantages and drawbacks of different types of cumulative voting schemes, see Lani Guinier, The Tyranny of the Majority: Fundamental Fairness in Representative Democracy (1994) [hereinafter Guinier, Tyranny of the Majority]; Lani Guinier, *The Supreme Court 1993 Term: (E)racing Democracy: The Voting Rights Cases*, 108 Harv. L. Rev. 109 (1994) [hereinafter Guinier, *(E)racing Democracy*]; Lani Guinier, *No Two Seats: The Elusive Quest for Political Equality*, 77 Va. L. Rev. 1413 (1991); Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, 89 Mich. L. Rev. 1077 (1991). *See also* Richard Briffault, *Race and Representation After Miller v. Johnson*, 1995 U. Chi. Legal F. 13; Lisa A. Kelly, *Race and Place, Geographic and Transcendent Community in the Post*-Shaw *Era*, 49 Vand. L. Rev. 227 (1996). *See also* Bernard Grofman et al., Minority Representation and the Quest for Voting Equality (1992); Minority Vote Dilution (Chandler Davidson ed., 1984); Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990 (Chandler Davidson & Bernard Grofman eds., 1994. *See also* Voting Rights Act of 1965 ß 2, 42 USC ß 1973. *See also* Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 La Raza L.J. 42 (1995); Rachel F. Moran, *Foreword -- Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond*, 8, La Raza L.J. 1 (1995).

36. *See, e.g.*, Bush v. Vera, 116 S. Ct. 194 (1996); Shaw v. Hunt, 116 S. Ct. 1894 (1996); Miller v. Johnson, 115 S. Ct. 2475 (1995); Shaw v. Reno, 509 U.S. 630 (1993). *See also* Garrett Epps, *Of Constitutional Seances and Color-Blind Ghosts*, 72 N.C. L. Rev. 401 (1994). *See also* T. Alexander Alienkoff & Samuel Issacharoff, *Race and Redistricting: Drawing Constitutional Lines after Shaw v. Reno*, 92 Mich. L. Rev. 588 (1993); Briffault, *supra* note 34; A. Leon Higginbotham, Jr. et al., *Shaw v. Reno: A Mirage of Good Intentions with Devastating Racial Consequences*, 62 Fordham L. Rev. 1593 (1994); Kelly, *supra* note 34; Pamela S. Karlan, *Maps and Misreadings: The Role of Geographic Compactness in Racial Vote Dilution Litigation*, 24 Harv. C.R.-C.L. L. Rev. 173 (1989); Richard H. Pildes & Richard G. Niemi, *Expressive Harms, "Bizarre Districts" and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 438 (1993); George Steven Swan, *The Political Economy of American "Apartheid": Shaw v. Reno*, 11 T.M. Cooley L. Rev 1 (1994).

37. Gerald Frug, *Decentering Decentralization*, 60 U. Chi. L. Rev. 235 (1993); Gerald Frug, *The Geography of Community*, 48 Stan. L. Rev. 1047 (1996).

38. Thompson Ford, *supra* note 34, at 1908-09 ("[T]o achieve civic democracy and civility within culturally desegregated space, we must reject the view of city life as the quintessence of alienation, and of the city as the social milieu of the atomistic subject . . . we must attend to political geography and to the position of racial minorities within our cities and within our democracy . . . Centralized government alienates citizens from the source of political decision making and offers only interest group representation or parochial communities defined from the outside as much as from within."); Richard Thompson Ford, *Beyond Boundaries: A Partial Response to Richard Briffault*, 48 Stan. L. Rev. 1173 (1996). *See also* Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 Stan. L. Rev. 1113 (1996).

39. Guinier, Tyranny of the Majority, *supra* note 34; Guinier, *(E)Racing Democracy*, *supra* note 34.

40. *See* Leland T. Saito, *Asian Americans and Latinos in San Gabriel Valley, California: Interethnic Political Cooperation and Redistricting 1990-92, in* Los Angeles -- Struggles Towards Multiethnic

Community: Asian American, African American and Latino Perspectives 55 (Edward T. Chang & Russell C. Leong eds., 1993).
41. For an excellent review of pan-ethnicity in the Asian American context, see Yen Le Espiritu, Asian American Panethnicity: Bridging Institutions and Identities (1992).
42. *See* Pitkin, *supra* note 27, at 114-115.
43. *See, e.g.*, Derrick Bell, Jr. & Richard Delgado, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 Harv. C.R.-C.L. L. Rev. 349 (1989); Pat K. Chew, *Asian Americans in the Legal Academy: An Empirical and Narrative Profile*, 3 Asian L.J. 7 (1996); Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. Pa. L. Rev. 537 (1988); Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 Corn. L. Rev. 1298 (1992); Leslie Espinoza, *Masks and Other Disguises: Exposing Legal Academia*, 14 Chicano-Latino L. Rev. 117 (1994); Harrison & Montoya, *supra* note 8; Michael A. Olivas, *The Education of Latino Lawyers: An Essay on Crop Cultivation*, 14 Chicano-Latino L. Rev. 117 (1994); James Boyd White, Justice as Translation: An Essay in Cultural and Legal Criticism (1990); Eric K. Yamamoto, *Foreword: We Have Arrived, We Have Not Arrived*, 3 Asian L.J. 1 (1996); Alfred C. Yen, *A Statistical Analysis of Asian Americans and the Affirmative Action Hiring of Law School Faculty*, 3 Asian L. J. 39 (1996). *See generally* Duncan Kennedy , *A Cultural Pluralist Case for Affirmative Action in Legal Academia, in* Sexy Dressing, Inc.: Essays on the Power and Politics of Cultural Identity 34 (1993).

14. Adrienne D. Davis, *Identity Notes Part II: Redeeming the Body Politic*,[(1)] 2 HARV. LATINO L. REV. 267 (1997)

INTRODUCTION

Political corpus, body politic, body of law, corporate law, body of evidence, body of knowledge, the footnote. Metaphors of the body dominate the rhetorical legal landscape, encroaching upon even the most casual of conversations. Intrigued by the various legal meanings and uses of the body, several years ago I proposed a seminar entitled, "Jurisprudence and Interpretation: The Human Body as a Legal Metaphor." In the course of discussing my proposal with a colleague, he frowned and responded without jest, "Hmmm, I doubt such a course would be appropriate for our student body."

Such a response illustrates perfectly the uses and abuses of anthropomorphism in law school and life, and in a way suggestive of similar uses and abuses in law and history. In daily encounters, people routinely and offhandedly evoke the body in order to cloak themselves in an image of consummate self-contained community. Evocations of the body, like any good metaphor, elicit a series of resonances.

For instance, my colleague's comment probably seemed to most readers to be no more than a routine and offhanded use of a convenient figure of speech. Why make any more of it than that? But consider for a moment the political framework established by his rhetorical appeal to "our student body." What resonances and alliances with our other colleagues did he hope to evoke by representing students of myriad and diverse interests and abilities as a solitary portrait? How and why would the collapse of 600-odd students into a single body authorize his position on the curriculum?

What is it exactly that a body represents? It suggests a singular and unified entity. But anthropomorphism, the use of the human body as a metaphor, has an even more specific connotation. It is an organism circumscribed by inflexible, unchanging boundaries, composed of discrete, hierarchical, discernible parts with a direct correlation between the number of the parts and their status in the hierarchy. One head, one heart, one soul, two arms, two legs, two eyes, ten fingers, 32 teeth, and unknown quantities of hair and epidermis. Some parts of the body grow rotten, die, and are excised, cut, or exfoliated. No one mourns dead skin and dead hair and few offer significant lament over dead teeth.

My colleague's adoption of anthropomorphism suggested a nonexistent unity of vision and will amongst our many students. I have been pondering the myriad images evoked by his metaphor in this instance. If all of our students were in fact "the student body," I wonder exactly which were the brain of that body, which were the heart, and which, if any, were the soul. More troubling, I am concerned that some of our students may in fact have been conceived as appendages, the things that we might lose, but without which we can go on. I hope none among the students would represent the rotten or dead parts, the split ends.

I. METAPHORS OF THE BODY

The study of the human body may be done in many ways. Inquiries into the body may be done as anatomies, classifying internal structure and function, or by drawing a genealogical tree, establishing ancestry, relationship, and pedigree. Alternatively, one might track the projection of bodies in time and space as a sort of discursive itinerary, documenting their starting point, destination, and stops. Finally, bodies may be mapped, describing the appearance and shape of their surfaces and characteristics.

There is much to be mined from the law about the persistent construction and use of the trope of the human body. This project is the starting point in attempting to graft coherent meaning from seemingly discrete and isolated instances of racial and other sorts of subordination and regulation.

What could a multi-dimensional inquiry of the body provide for the burgeoning theory of the Latino/a encounter with American law and history? More specifically, and politically, from the perspective of an already skeptical legal academy, what can the Foucauldian and radical feminist and literary analyses that generate these bodily mappings offer the latest child of racial legal theory, newly christened here as LatCrit Theory?

For the purposes of this paper, I decline to do the obvious, which would be an ancestral genealogy, a dissective anatomy, or a discursive itinerary of a Latino or Latina body. Instead, I will start with engagements between people of color and two of the most studied and analyzed bodies in Western culture, the metaphoric bodies of Jesus Christ and the body politic.

The body of Christ provided a literal anatomical map for canonical law and church structure, and it provided a parallel framework for medieval political theory:

> [T]he Church, as a community of the faithful, is considered to be a *body* of which Christ is the Head . . . . It found its way into political ideology during the Carolingian period when the empire, which was for them an embodiment of the Church, formed a single body of which Christ was the head, and which Christ directed on earth

> through two intermediaries, "the sacerdotal person and the royal person," that is, the pope and the emperor (or the king).[3]

As ecclesiastical and royal authority emerged and clashed, the institutions of the monarchy and the papacy each seized Christ's body to justify political authority and territorial dominion.

Thus, in the thirteenth century, Cardinal Hostiensis argued that,

> [A] bishop is anointed on the head but a king on the arms and a bishop with chrism but a king with oil, to inform us that the bishop is a vicar of our head, i.e. Christ, and to show how great is the difference between the authority of a pontiff and the power of a prince.[4]

Advocates of the superiority of royal authority fought back: "It is clear, therefore, that in Christ the royal power is greater and higher than the priestly in proportion as his divinity is greater and higher than his humanity."[5] Even the surgeon to Philip the Fair, king of France, linked his anatomical studies to the sovereign order:

> The heart is the principal organ par excellence [*membrum principalissimum*] which gives vital blood, heat and spirit to all other members of the entire body. It is located in the very middle of the chest, as befits its role *as the king in the midst of his kingdom*.[6]

Meanwhile, the Pauline formulation of Christ as the head of the Catholic Church provided another series of rich metaphoric uses. Alanus, an avid proponent of a papally run theocracy, declared the monstrosity of an empire in which the king was not subordinate to the pope: "[I]f the emperor was not subject to the pope in temporalities he could not sin against the church in temporalities. Again the church is one body and so it shall have only one head or it will be a monster."[7] Fellow canonist Vincentius Hispanus inverted the metaphor, but concurred.[8]

Monarchy and papacy each represented its political function as analogous to anatomical in order to naturalize a claim to a sovereign power. And mapping political hierarchy onto the divine, yet anatomically human body of Christ, added authority to anthropomorphism.

While the body of Christ has not been used explicitly to order secular American law and political theory, a multi-dimensional analysis of his body in Western political theory would have to include its use at a critical historic moment as an organizing metaphor for the racial order of the United States and the consolidation of the national identity as white. That historic moment is the end of Reconstruction in the recently reclaimed southern United States and the metaphor is the white conservative label of the age: Redemption.

In the midst of Reconstruction and efforts to integrate free Blacks into southern life and national citizenship, white conservatives resisted, labeling themselves Redeemers and their successful challenge and resistance Redemption. In Christian theology, Christ is known as the Redeemer, who, by virtue of crucifixion and resurrection, provides the possibility of salvation, redemption for the world. It is telling that in the face of the crisis of political reunification, the demand of the South was for redemption.

It is suggestive first of the perception that the Civil War worked as a sort of crucifixion of the national body. If resurrection followed the physical reunification of the country, that is the elision of the political significance of the Mason Dixon line, then white southerners' redemption, national *spiritual* reunification, could only occur when total white economic and political control was restored in the southern states. Thus the nation that entered the twentieth century had chosen a racial order and hierarchy even as it integrated the white controlled South as equal partner in the new political order. The Hayes/Tilden Compromise[(9)] signaled the redemption of the South, and the possibility of salvation of the previously torn country. Reunification came of course at the expense of Black civil and human rights.

The possibility of meaningful citizenship ends in the late nineteenth century as the Fourteenth Amendment is eviscerated,[(10)] the Fifteenth Amendment is savaged in poll taxes, literacy tests, and grandfather clause exemptions,[(11)] and the Thirteenth Amendment goes down in flames at the end of the century as apartheid is sanctioned in *Plessy v. Ferguson*.[(12)] Even as rights of citizenship are stripped, a simulacrum of the old antebellum order is enforced as federal troops withdraw, enabling totalitarian violence to be enacted against any who seek to enforce their remaining nominal rights.

In the last quarter of the 1800s, the United States confronted a challenge to its fragile postbellum identity. It had to incorporate the newly reclaimed southern confederacy.

In linking salvation to the resolution of the perceived crisis in political power, the redemptive metaphor is ineluctably about sovereignty. Restoration of sovereign control to Redeemers defined the salvation both demanded and celebrated by the metaphor. Redeemers articulated their political success as the return of "home rule," casting the Republican (and Black) governance during Reconstruction as a foreign invasion. Christ's body was used to justify the violent reclamation of the south by whites and the casting of Blacks out of citizenship. In its connection of salvation with political control, the redemptive metaphor creates the illusion that southern sovereignty requires white governance. Following the religious origins of redemption, only some are fit (called) to correctly govern the southern states. Not all Americans are included within the body politic, constructed as redeemed.

Christ's body played the implicit role of ordering society that it played explicitly in canonical law and medieval political struggles. The critical question of sovereign identity was not theocracy or empire, but racially defined membership in democracy.

II. THE SECOND REDEMPTION

I would submit that a similar process is occurring on the eve of the next millennium, in the last quarter of this century. In this instance, it appears to be a consolidation that targets explicitly Latinos/as, hoping to construct them as outside of the racially white body as well. White economic concerns now appear directed against the southern border, and segregation and grandfather clauses are represented in English-Only laws, Proposition 187, and proposals to alter birth citizenship. Another crisis of national identity has occurred, and we may find ourselves confronting the Second Redemption.

The process of excluding Latinos/as from a racialized body politic may prove intriguing due in part to the failure of the American racial structure to provide adequate account for distinctions between Latinos/as and non-Hispanic whites. Charting this consolidation, and attempting to stop it, will be one of the early challenges for LatCrit

Theory. Places to start are suggested by references to earlier efforts to consolidate national identity around whiteness.

Reclamation of the national identity as historically always diverse, documentation of the denial of citizenship to groups of color, and the rectification of the consequences of this, through both active and benign means, open the possibility of true redemption of the American character, and a vision of the participation of multiple bodies necessary for a serious democracy.

III. LATCRIT THEORY

Thus, in charting racial paradigms, I have focused on two bodies -- the American political corpus or body politic and that of Christ. Unraveling the metaphors of the body politic and redeemed body parallels the conference project of charting the still nascent body of LatCrit Theory.

Academic questions, both political and methodological, are raised by the process of charting an intellectual movement. If LatCrit Theory seeks to be a distinct body of legal scholarship, it must delimit its boundaries, and to expand the metaphor, in birthing itself, it must establish its genealogical tree. Scholarly movements typically are categorized along the lines of methodological approach, generational influence, or paradigm shifting. An early project for those commencing the intellectual genealogy of LatCrit Theory is to begin to establish the parameters of the discourse, as well as its point of entry into extant legal scholarship, specifically legal historical, critical legal, and civil rights scholarship.

The participants in this conference have denominated this emerging scholarly project Latino Critical Legal Theory. In offering a few tentative suggestions about possible avenues of exploration, I will commence with the name itself. Considered holistically, LatCrit Theory suggests that the project intends to document a distinctive legal history and identity for Latinos/as, while simultaneously drawing links to critical and racial legal discourses. The stress on Latinos/as marks an intervention in legal scholarship on race. Conventional civil rights scholarship and critical race theory have made excellent inroads in exposing the falsity of the binary "white/black" nature of racial reasoning and logic in America. Yet, the old paradigms continue to structure legal thought and analysis. A mere shift in language is not sufficient. What is needed is a deepened analysis of the specific legal engagement of Latinos/as with American culture and history.

One intervention LatCrit Theory will offer is to establish paradigms that engage the uniqueness of the Latino/a legal experience. The notion of Latino/a community challenges outdated and essentializing notions of race that pervade both progressive and conservative dialogues about civil rights. The spectrum of hues and politics in the Latino/a community requires sophisticated modes of reasoning about the nexus of heritage and race that at this moment appears to comprise Latino/a identity.

Rather than reworking established paradigms to appear as a racial amendment (i.e. "How is [insert a racial issue] the same/different for Latinos/as?"), LatCrit Theory will articulate the distinctiveness of the Latino/a encounter with law in this country. Some scholars may draw on theories of imperialism and colonialism to explain the historical and contemporary complexity of law's regulation of the relationship between U.S. capital and Latino/a labor. Other scholars may consider how Latino/a legal history ought to be periodized? What are the pivotal events, cases, victories, and defeats? How ought they be

grouped to constitute historic moments? Other LatCrits may engage how language has shaped community at the same time that it has been a primary justification for discrimination. Still others will analyze how the politics of sexuality in this community inform Latino/a (legal) feminism and understandings of gender discrimination. And finally, some will assess how the differential legal treatment afforded immigrants from various countries affects political affiliation? LatCrits may provide one of the most sophisticated structures for considering conservative strains in minority political culture.

Neither I nor LatCrit Theory ought to be understood as calling for essentialist historical inquiry. Instead, LatCrit's focus on a heretofore relatively ignored racial minority may expose flaws in historiographical methods that, applied neutrally, miss the presence of Latinos/as in our culture. Thus, LatCrit's project of documentation and inquiry will also challenge and enhance extant legal historiography.

The possibility of developing new methods of legal analysis and enhancing interdisciplinary study leads directly to the next piece of the project title. The designation of this project as "critical" suggests a desire to draw genealogical links to extant critical legal discourses, including possibly critical race theory, critical feminism, and one of the scholarly "ancestors" of both, critical legal studies. What sorts of interventions does LatCrit Theory perceive itself as offering into which specific legal discourses? Regardless of the call LatCrit makes as to its relationship to different types of theory, it cannot avoid landing squarely in the middle of academic debates raging over the role and effectiveness of critical theories in legal scholarship on race.

While here I will not delve into the substance or merits of that debate, I do want to take care to suggest that what is at stake for LatCrit Theory is not merely political affiliation, but rather, larger questions as to whether the insights yielded historically by critical race theory and fellow scholarly travelers might offer help and insight into the history of Latinos/as. This paper suggests, that in establishing its own genealogical tree, LatCrit Theory might benefit from grappling with the substantive issues of mapping Latino/a bodies and metaphors of exclusion, as well as engaging in a broader consideration of its own theoretical affiliation(s), directions for inquiry, and the role of methodological unity.

To address for a moment the need for methodological or political unity to constitute an intellectual movement, this paper does not mean to suggest that a monolithic paradigm of Latinos/as will emerge from this intellectual project. Rather, part of the task of LatCrit Theory is to offer and provide coherence for the ranging, and oft-times contradictory, and perhaps warring, theoretical, doctrinal, and historical documentations of the story(ies) of Latinos/as and the law in the United States. Rather than searching to create a monolithic paradigm of "Latinos and the Law," LatCrit Theory should conceptualize a series of platforms, assumptions, and paradigm shifts and linkages, again at times contradictory, that will not only enrich our understanding of Latinos/as, but will also enhance our larger understanding about law and race in America.

In doing this terribly important work, LatCrit Theory will join battle against the Second Redemption.

Footnotes

2. Associate Professor, American University, Washington College of Law. B.A., J.D., Yale University.

These remarks were given in April 1996 at the First Annual LatCrit Conference, co-sponsored by California Western Law School and the Harvard Latino Law Review. I would like to express my deep gratitude to both of the co-sponsors, as well as to Professor Frank Valdes in particular for organizing the conference and inviting my participation in the beginnings of this exciting scholarly collaboration. I would also like to thank Professor Robert Chang for graciously reading the original paper when I was unable to attend the physical symposium. Professor Chang's adoption of my persona for the purposes of reading this paper confirms our faith in the fluidity (and fun) of negotiating racial and gender identity. My thanks to James Boyle, Kevin Haynes, and to Joan Williams for their helpful comments and suggestions, and to Frankie Winchester for her administrative assistance.

3. Jacques Le Goff, *Head or Heart? The Political Use of Body Metaphors in the Middle Ages*, *in* 3 Fragments for a History of the Human Body 14 (Michel Feher et al. eds., 1989).

4. Brian Tierney, The Crisis of Church and State 1050-1300, at 156 (1964).

5. *Id.* at 77.

6. Le Goff, *supra* note 1, at 23 (footnote omitted) (emphasis in the original).

7. Tierney, *supra* note 2, at 123.

8. "[N]o kingdom can be excluded from the empire, for it would be headless and without a head it would be a monster." *Id.* at 162.

9. In 1876, Democrats challenged the election of Rutherford B. Hayes to the presidency. In order to secure Hayes' election, Republicans agreed to concessions that largely restored control of the South to white conservatives. See Eric Foner, A Short History of Reconstruction: 1863-1877, at 566-80 (1988), for a fuller discussion.

10. *See, e.g.*, United States v. Cruikshank, 92 U.S. 542 (1875) (holding that while the Fourteenth Amendment prohibits a State from depriving any person of life liberty or property without due process of law, the amendment does not protect the rights of one citizen against another); The Civil Rights Cases, 109 U.S. 3 (1883) (holding that the Fourteenth Amendment is not intended to protect individual rights against individual invasion; and therefore congress has no authority to prevent private citizens from violating individual rights); United States v. Harris, 106 U.S. 629 (1883) (holding that the Fourteenth Amendment provides a guarantee against the exertion of arbitrary and tyrannical power on the part of any State government, and is not a guarantee against the commission of individual offenses).

11. *See, e.g.*, United States v. Reese, 92 U.S. 214 (1875) (holding that the Fifteenth Amendment does not confer suffrage on blacks, but merely prohibits the States from giving preference to one citizen of the United States over another on the basis of race, color or previous condition of servitude); Derrick Bell, Race, Racism, and American Law 186-90 (3d ed. 1992).

12. 163 U.S. 537 (1896).

15. Stephanie M. Wildman,[(2)] *Reflections on Whiteness and Latina/o Critical Theory,*[(1)] 2 HARV. LATINO L. REV. 307 (1997)

This essay is dedicated to Trina Grillo (1948-1996)

Trina Grillo, Adrienne Davis and I spent some time working together on a project about privilege, categories, and the construction of race. My recounting of this episode is obviously just my version, and of course, because you are hearing about it from just one of us, it probably is wrong. This is not to say that only I must remember it wrong. All of us can only see, after all, our own piece of the puzzle. But I wanted to raise the remembrance, in my inadequate oneness, of the three of us working together, because we were trying to do something new, just as LatCrit Theory and Critical Race Theory each set out to change the discourse. We seem to have names for these projects before we necessarily understand all they may encompass and grow to be. I think that is why the work is so hard, because we do not know before we plunge in, where exactly it will lead.

Our favorite part of the project we undertook, which we never really finished, was called "The White Boys Handbook". Because we may never finish it, I wanted to share our ideas with all of you.

Basically there is a plane crash, and in the wreckage we discover this book. Nothing on its cover gives any indication of its contents. But when we open it up, it reveals all the secrets of how to behave as if you rule the world. Suddenly we have an explanation for why so many of them seem to behave the same way and also why they just do not get it. There is this handbook that teaches them all how to be who they are and makes them unable to hear us or see us, so much of the time. These are the rules we always feel so outside of and do not understand until we trip over them. These are the rules we did not make.

There are chapters on how to saunter into a room and sit in a chair taking up as much space as possible, and information on how to act like no one says anything of any importance until you rise to speak. The book gives lessons on how not to see or hear any women or any men of color or any issues that might concern them, but to say exactly what they said (if it was a good idea) without giving them credit and acting like they had not just said the exact same thing.

There could be a special chapter on white boys in the legal academy, including how to decide what books and articles to recommend for students to read, how to be exclusive about who to cite, and how to discern what is good scholarship from what is drivel, determining good scholarship to be that which conforms to the status quo.

Of course, we would have to add chapters on white women as white boys, and men of color as white boys, but I imagine you get the idea of how this book would read. We were sure it would be a best-seller -- not a single footnote.

It was from this consideration of whiteness, its characteristics and attributes of white privilege -- what Richard Delgado has described as critical white studies[(3)] -- that these thoughts emerge. This is the work that I have tried to bring to Critical Race Theory -- an exposition of this white privilege. I thought I might begin by coming out here as a white person, a non-Latina white person, consonant with this work about white privilege, and make clear my status. I do so in part because of an experience I had when I was invited to speak at the University of Texas.

The University has a reimbursement request form, which the law journal had filled out, so that they could be reimbursed for sending me an airplane ticket. Being a state school, Texas had a portion of the form devoted to questions about race and ethnicity. In an effort to be helpful, the student filling out my form had entered my race for me. She had checked Black. Now here was a lose-lose situation if ever there was one. I do not feel antipathy at being regarded as Black, but the fact is I am not. So next to the

box I wrote, "Sadly, not". But I thought it was interesting that people thought I could not be white, perhaps because of the things I say and write.

Looking at me you can all imagine that most of my life people have assumed that I *am* white, unless I am in a context where they are inquiring if I am Jewish, which I also am. Then I am still white, but it is white and . . . Whiteness, unmodified remains the dominant cultural norm.[(4)]

Because of white privilege, the opinion and voice of non-Latina/o whites[(5)] is heard throughout the dominant culture, while other voices have to fight for the air waves. So, you may wonder, why add more whiteness? Why should we talk about whites again? -- especially when Trina and I have already written about the problem of whites stealing the center of conversations and placing their own concerns ahead of everyone else's.[(6)]

Studying whiteness from a critical perspective reveals a lot about the construction of hierarchy, power, insiders, and outsiders. Because whiteness is considered the norm of the dominant culture, it remains mostly invisible, taken as a given. Whiteness is rarely named in conversations about race, except when it is discussed as the opposite of Black. Discussions about race are usually constructed along this bipolar axis, making many of the dynamics of the social construction of race invisible and thereby perpetuating white privilege.

The invisibility of whiteness works in curious ways when Latinas/os are added to the discussion. The bipolar construction of race eliminates Latinas/os from conversations about race. As a group, Latinas/os cross many racial groups of different colors, including white; yet they are not positioned with whites in the bi-polar conversation. Latinas/os are defined as non-white or other by the dominant culture. Even the history of how to name the group shows they are not the powerful. The fight for some kind of recognition in the census, to enable adequate funding requests for education and other programs led to the use of the category "Hispanic".[(7)] The recognition in the census was a form of political victory, but the power to self-name remained elusive.

There remains a lot of blurriness in our cultural thinking about race, nationality, and ethnicity. This blurriness helps to maintain the dominant cultural status quo that privileges whiteness. Illuminating the blur and examining this cultural thinking is helped greatly when we turn the lens to focus on Latinas/os.

I will say first that there is a downside to this lens, to naming Latinas/os as a group, because this act of naming essentializes a very diverse group, making it appear to be a homogeneous whole. The term essentializes the many different communities, the Cubanos, Puerto Riqueños, Chicanos, all into one lump. To talk about Latinas/os means ignoring the diversity and many-faceted groups encompassed in the term.

The error of this homogenization is perhaps best illustrated by Berta Hernández-Truyol story about trying to order a tortilla in New Mexico, thinking she would get an omelette and getting a white pancake-like bread. As she explained, "Same word, same language, different meaning."[(8)]

Can we achieve a common language to talk about race and ethnicity?[(9)] A common language does not seem possible under the present dominant discourse construction of race as black and white. So by naming Latinas/os as a group perhaps we can be strategically essentialist in order to move the dialogue forward. The pitfalls of essentialism have been well-documented by many people here. But strategic essentialism recognizes that we have to name things in order to talk about them and that sometimes we should.[(10)]

I like using the terminology given to us by the Spanish language, even though I do not understand all the linguistic nuances, because the term " Latinas/os" has the potential to help us remember not to essentialize based on gender. The word race, being genderless, is gendered male in most conversations, and the word race does not afford us this helpful linguistic reminder to avoid essentialism, even as we engage in trying to use essentialism strategically.

Naming Latinas/os, being strategically essentialist, instead of relying on the umbrella category race or people of color, can help us reveal the hierarchies that exist within the category race. My friend Julianna Alvarez tells a story of working for a white woman from South Africa. This woman began an argument in which she was particularly abusive to Julianna. Julianna responded, "My skin may be dark, but I'm not Black. You can't treat me like that." After her anger had subsided, my friend realized she should have said, "You can't treat me like that just because I'm Latina and a person of color." Although she would not use these words to describe what she had done, she had incorporated the bipolar dominant discourse into her gut reaction. Such a reaction reinforced the privileging of whiteness. But she realized that she did not want to benefit from using a racial hierarchy, from positioning herself above other people of color.

Being strategically essentialist in this way, naming Latinas/os as a particular community to be examined, ironically creates a less essentialist conversation within race theory in two significant ways: (1) it illuminates that there are different issues for different people of color, and (2) it reminds us that gender matters and is linked to the racial discourse. Of course critical race theorists never claimed all races are alike or that gender does not matter. But the problems of our language, the very word for race, encourages us to forget the complexity that must be part of the conversation. This creation of categories, like race, black, and white, may block the paths to creative thinking about the issues. So we have to be aware of the pitfalls of categories, even as we strategically use them.[(11)]

In their landmark book, *Racial Formation in the United States*, Michael Omi and Howard Winant talk about three paradigms of race that have been used in racial discourse in this country: ethnicity, class, and nation.[(12)] Their book shows the inadequacy of any of these descriptions to depict racial dynamics in this country where race has been and continues to be a social construction. Ian Haney López's book *White By Law* is an important step in this work about the social construction of race.[(13)]

Peggy McIntosh wrote an article on white privilege in which she listed conditions she took for granted that her African American co-workers, friends and acquaintances could not count on most of the time.[(14)] Many of the conditions on her list of 46 apply to Latinas/os as well. This list includes:

> -- I can, if I wish, arrange to be in the company of people of my race most of the time.
>
> -- When I am told about our national heritage or about "civilization", I am shown that people of my color made it what it is.
>
> -- I can be sure that my children will be given curricular materials that testify to the existence of their race.

I have begun my own list of conditions I can count on that are specific to dominant cultural white privilege, with respect to my Latina/o friends, acquaintances, and colleagues:

1. People who see me and hear my name will assume that my children and I speak fluent English. People will not be surprised if I speak English well.
2. People who see me will assume that I am white (the University of Texas notwithstanding).
3. People who see me will assume I am a citizen of the United States. They will probably voice this by assuming I am an American, an assumption they ironically will not make for people from Central and South America, who of course are equally entitled to claim that word. People will never assume that my children or I are illegal immigrants.
4. People will assume that I was born in this country, and will be surprised to learn that my mother was not.
5. Stereotyped assumptions will not be made about my class and educational background (or my likely form of employment, if I were a man.)
6. People will not comment about my sense of time, if I am prompt or late or talk too long, unless I am unusually late. Then people will assume I have an individual, personal reason for being late. My lateness will not be dismissed as a joke about "white time".
7. People will not assume I have a low IQ.
8. People will pronounce my name correctly or politely ask the correct pronunciation. They will not behave as if it is an enormous imposition to get my name right.[(15)]
9. People will not question my objectivity or my entitlement to speak concerning questions of race or immigration.[(16)]

All of these conditions are related to the assumption that I belong and will fit into the social norm. Since so many Latinas/os are also white, a consideration of these conditions reveals the construction of race is not about race at all, but about power. Critical Race Theory does address this notion of inside and outside. But distinct recognition time, studying the operation of this power in terms of Latinas/os adds force to the analysis. It is necessary for all of us, Latina/o or not, to pay specific attention to the operation of the construction of race in relation to Latinas/os. If we do not turn this lens specifically, it evaporates. It is in the dominant cultural interest to have it evaporate, to keep control of the blur, so that we will not see the issues raised: issues about the meaning of race and ethnicity, passing, and what is in a name.

The assumption about me, implicit in my list of conditions -- that I belong -- shows the power of the dominant culture's value in assimilation; belonging is everything, and belonging is defined as sameness and in not being the other. This empty value in assimilation reveals why a multicultural perspective, one that honors difference and does not require assimilation, is so important. It is an incredible strength to be bi- or tri-lingual, to understand more cultures than just the dominant norm. These real advantages possessed by Latinas/os are viewed by the dominant culture as disadvantages. This is a crime.

The dominant culture has been fond in these times of battles around affirmative action of appropriating the language of Dr. Martin Luther King, Jr., saying we must judge people by the content of their character, not by the color of their skin. However, the dominant culture fails to value the multi-cultural ability of Latinas/os as a measure of

their character. The failure to acknowledge the importance of multi-culturalism, to treat it as some PC fad, is the failure to acknowledge or value the Latina/o existence. The affirmative action critique also ignores the existence of privileges based on whiteness, maleness, heterosexuality, and class. Recognizing privilege would require seeing that the debates about merit are not waged on a level playing field.

Consider this notion of so-called merit. What if we defined as an aspect of merit for law school admissions the ability to speak more than one language -- the ability to be bi- or tri- lingual? What if we required knowledge of a non-English language as part of graduation requirements, so students could serve a wider client base? Who would then be the experts sought after in study groups? The operation of white privilege makes such a scenario unlikely, but promoting such requirements might be a worthwhile project.

Writing this list of conditions did reveal some gender commonalities, and some other commonalities, to the extent Jewish people are othered by this dominant culture. And so this effort made me realize that I had to think more complexly about all the identity categories. Adrienne Davis, Trina Grillo and I offered the koosh ball as a metaphor for the multi-dimensional way we need to learn to think about the intersections of all of our attributes.[(17)] Multi-culturalism also seeks to encourage us to move beyond linear thinking and the either/or choices that the dominant culture seems to mandate. Looking at our multi-faceted selves will help us to see commonalities and to construct bonds bridged upon them, instead of learning about socially constructed difference and exclusion.

Latinas are important leaders in this effort. I want to give one example from within the legal academy concerning work that remains to be done. Recently, at a conference about including these issues within our classrooms (where the audience was a group receptive to these concerns rather than the usual audience of law professors), Margaret Montoya rose and spoke in Spanish and English. She described the difficulty of finding her voice at this conference of supposed *compañeros* that was so alienating to her. She spoke of the speech patterns that favor those who are pushy and jump in front of others, of the lack of time to be thoughtful, to process and really hear what people were saying. She said that these patterns excluded voices like her own -- Latina voices.

And as I listened to her, tears streamed down my face, because I too have a history of trouble in making my voice heard, in classrooms as a student and teacher, at conferences, and at meetings. A multicultural perspective in conferences -- one that recognizes other ways of being in the world, besides the dominant cultural norms -- would be more inclusive to Latinas, but also to many others. Protocols for conferences are just one baby step that we desperately need. We need to rearrange the furniture. We need also to think about our classrooms, who we are including, who is being heard. Classrooms are the first place we can effect with a multi-cultural perspective in what we study and in how we discuss the issues that are raised.

Footnotes

This article appears in Stephanie M. Wildman, *Reflections on Whiteness and Latina/o Critical Theory, in* Critical White Studies (Richard Delgado & Jean Stefancic eds., 1997).

2. Professor of Law, University of San Francisco School of Law.
3. *See* Critical Race Theory: The Cutting Edge 541 (Richard Delgado ed., 1995).
4. Professor Nuñez described the history of Anglo-Saxonization that was accompanied by Christianity as part of the formation of this dominant culture. In this vision, I am white only as long as my whiteness is unmodified and I "pass" as a real white. I do get many unsought privileges for that whiteness. I will not be followed around when I enter a store or a bank, the emergency room in the hospital will pay attention when my child is brought in with a broken wrist and will not ask her if she has been abused. I receive these privileges because appearance places me within the dominant fold.
5. *See* Berta Esperanza Hernández-Truyol, *Building Bridges -- Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 Colum. Hum. Rts. L. Rev. 369, 381 (1994) (discussing non-latina/o whites).
6. *See generally* Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other Isms)*, *in* Stephanie M. Wildman et al., Privilege Revealed: How Invisible Preference Undermines America 85 (1996) (describing the operation of intersecting systems of privilege, including white privilege).
7. *See* Michael Omi & Howard Winant, Racial Formation in the United States: From the 1960s to the 1980s, at 76 (1986).
8. *See* Hernández-Truyol, *supra* note 3, at 406-07.
9. *See generally* Adrienne Rich, The Dream of a Common Language: Poems 1974-1977 (1978).
10. *See generally* Gayatri Chakravorty Spivak, The Post-Colonial Critic: Interviews, Strategies, Dialogues (Sarah Harasym ed., 1990) (discussing strategic essentialism); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581 (1990) (same).
11. *See* Stephanie M. Wildman & Adrienne D. Davis, *Making Systems of Privilege Visible*, *in* Privilege Revealed, *supra* note 4, at 7-24.
12. *See* Omi & Winant, *supra* note 5, at 9-52.
13. *See generally* Ian F. Haney López, White by Law (1996).
14. *See* Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women's Studies*, *in* Power, Privilege, and the Law: A Civil Rights Reader 22 (Leslie Bender & Dan Braveman eds., 1995).
15. Thanks to Catharine Wells for this idea.
16. Thanks to Margalynne Armstrong for this idea.
17. *See* Wildman & Davis, *supra* note 9, at 22-24.

16. Margaret E. Montoya,[(1)] *Academic* Mestizaje*: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis,* 2 HARV. LATINO L. REV. 349 (1997)

J.M.J.[(2)]

INTRODUCTION

¿Como comensaremos? ¿Con un grito, en silencio, con una oración? Hay que pensarlo porque estamos iniciando una meta muy ambiciosa: proponemos crear un nuevo discurso legal--un discurso de crítica latina--con un enfoque en la experencia latina y con el propósito de usar la teoría para mejorar la situación de nuestras communidades latinas. Actualmente académicos estadounidenses tienen poco conocimiento, no nomás de la historia de las communidades latinas pero también de las condiciones actuales en que tratan de sobrevivir. Nosotros "los LatCrits" buscamos la opportunidad de (re)presentar el pasado y analizar el presente con esperanzas de moldear el futuro.

Comenzamos con confianza, confiando que palabras, ideas, y teorías puedan aliviar la miseria y la desesperación en que vive tanta gente latina. Comenzamos también con la confianza que este tejido intellectual y académico, esta nueva crítica latina, represente un esfuerzo colaborativo que nos pueda sostener en solidaridad.[(3)]

I am no longer as certain as I once was that there are angels among us, but I have no doubt that there are devils. Spaces and places, both physical and discursive, are inhabited by the demons of segregation, subordination, language prohibition, and exclusion. So I begin in Spanish as a cultural exorcism to see if we can summon forth those devils and in resisting and defying them, banish them. I begin in Spanish to denounce and counteract attitudes of linguistic bigotry by claiming Spanish as a primary mode of expression for public and intellectual discourse. This call to linguistic re-territorialization as a counter hegemonic strategy and bilingualism as emblematic of LatCrit space is not intended to create barriers or boundaries among those of us who do not speak Spanish. Rather, it is a cry of resistance against the monolingualism that has been imposed on us, on our parents, and on our communities.

What follows is an analysis that draws connections between activist teaching and activist scholarship and posits that it is the activism, the focus on the needs of Latinas/os, that makes them community service. In Part I I describe the community lawyering program, one of the clinical law options, available at the University of New Mexico School of Law. In Part II I undertake to re-frame the law of wills in order to make this

end-of-life ritual more relevant to the lives of Latinas/os. Entonces enacto una crítica latina / Then I enact a LatCritique of academic discussions and Outsider discourses. I conclude by examining our roles as theorists and practitioners employing an anthropological model, LatCrits as "native informants" cum ethnographers.

I have called this paper "Academic *Mestizaje*: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis". *Mestiza* and *mestizo* are the new world Spanish word for the members of the racial group that resulted from the sexual relations[(4)] between the Spanish conquistadores and the indigenous women of the americas. Different racial mixtures with their political and economic valences continue to be a prominent feature of Latin American societies.[(5)]

Chicano/Latino scholars going back at least to José Vasconcelos[(6)] have employed the notion of racial mixing or *mestizaje* as a metaphor for their academic work, emphasizing the melding together of traditional discourses with Latino/a experience. Hybridity--a mixing of languages, disciplinary practices and discourses--has been an enduring characteristic of Chicano/a and Latino/a literary, artistic, and academic production.[(7)] This paper deliberately seeks to re/enact academic hybridity or *mestizaje*, proposing *mestizaje* as a LatCrit practice--as a correction to and subversion of the repressive and stultifying character of traditional legal discourse.

I. ACTIVIST TEACHING

> Pedagogy is, in part, a technology of power, language, and practice that produces and legitimates forms of moral and political regulation, that construct and offer human beings particular views of themselves and the world. Such views are never innocent and are always implicated in the discourse and relations of ethics and power. To invoke the importance of pedagogy is to raise questions not simply about how students learn but also how educators (in the broad sense of the term) construct the ideological and political positions from which they speak.
>
> Henry Giroux[(8)]

Activist teaching, specifically what I'll call critical teaching, refers to a pedagogy that is sensitive to the fluidity of power relations,[(9)] the constitutive nature of legal practices,[(10)] and the synergies created by the metamorphoses of legal processes when distorted, altered, and reclaimed by Outsiders[(11)] whose identities have multiple manifestations and expressions.

The law clinic in which I have been teaching has developed community sites throughout the state where we provide services for low income clients who are primarily persons of color, such as un/documented persons at *colonias*[(12)] near Las Cruces; black lung miners in Raton, New Mexico on the northern border with Colorado; female inmates of the county jail and clients in a variety of multi-service centers, including mental health clinics and senior citizen centers; as well as infants and toddlers born to mothers with substance-abuse problems in a multidimensional program pioneered by the pediatrics department of the medical school. In addition, we have begun to provide services for small businesses and non-profit organizations. One of the more innovative programs begun by one of my collaborators, Professor Alfred Mathewson, an African American who also teaches business courses and sports law, is intended to benefit recipients of

athletic scholarships, principally black college athletes, by training coaches and counselors about NCAA eligibility rules.

Within this community lawyering context, the students are required to undertake individual representation of clients in a variety of matters--usually involving public benefit programs, family law, and wills, but, occasionally, even such areas as land-use planning. The students are also required to participate in collaborative projects examining issues systemically and developing transdisciplinary approaches with and for the affected communities. This clinic is a highly collaborative one in which the faculty have created spaces where we can bring our individual theoretical interests into clinical teaching. Thus, Alfred Mathewson has been developing the notion of clinician as coach, reframing sports metaphors to emphasize aspects of participation that are collaborative and affiliative. Another colleague this semester, Professor Christine Zuni, a Pueblo woman from Isleta, emphasized for us the centrality of culture and the delicacy and potentiality of working within indigenous communities, potentiality not only in the sense of work as yet undone but also in a different sense: indigenous cultures present us with spaces, topics, and techniques some of which are penetrable by, and available to, outsiders; others must be respected as off limits and not to be breached by outsiders. The delicacy in working with indigenous populations comes from the fluidity of these categories and in learning ones proper role and place in the representation process.

My own emphasis has been on the relation between narrative and identity formation on the one hand and such legal skills as problem solving, interviewing, and counseling on the other, refining the existing scholarship that deploys translation practices and ethnography as metaphors for cross-cultural lawyering. My clinical teaching has permitted me to reflect on why it is crucial for us as law professors and lawyers to re-territorialize the spaces that have been colonized linguistically, legally, architecturally,[(13)] and spiritually.

Within the clinic we work with the students on story gathering, a process of learning both individual and collective narratives, the individual "problem-story" of the client but also the collective stories of the clients community. We endeavor to identify core information that is necessary to understand, decode and recode the client's narratives into acceptable legal approaches responding to the client's needs. For example, after examining the scholarship on lawyer as translator or ethnographer,[(14)] Professor Zuni invited Esther Yazzie, a certified Navajo translator, to describe and enact the skills necessary to work successfully with language interpreters. Ms. Yazzie's presentation debunked for all of us the idea that languages are transparent, with representations of reality somehow existing apart from language.[(15)]

Simply put, communities live within differently conceived realities, and our attempts to fashion legal options can require us to work within realities of which we are unaware. Therefore, we must be mindful of our potential for harming our client's larger interests, even when we prevail in our lawyering efforts.

We have been using transdisciplinary, multicultural and polylingual concepts and practices to introduce new vocabularies, techniques, and approaches to the students, proposing different schema or frames for understanding and interpreting information and experience. Such practices and concepts help us as well as our students reposition our/them/selves with respect to how we/they listen and interact with clients and respond to the multiple issues that clients bring.

Most students find the work exhilarating, complex, and engaging, but some leave with feelings of anguish, ambivalence and sometimes cynicism because of the ambiguity of

justice. These feelings are caused at one level by the fact that we work very hard for our clients, but for the most part we do not substantially improve the material conditions of our clients' lives. Rarely are our clients pulled out of poverty or their cyclical involvement with the criminal justice system, nor do we end the degradation they suffer at the hands of the multiple bureaucracies that control their lives. When we do prevail in our cases, it is an important improvement in the lives of clients but such improvements are usually not enduring nor sufficiently life-altering.[(16)]

Feelings of anguish, ambivalence, and cynicism about social justice are also provoked by the limitations of traditional legal discourse. Legal rights, claims, defenses, and remedies can circumscribe and curtail our ability to collaborate with our clients to alter the realities of their lives and ours.

The activism in my teaching comes in helping students listen to clients, assisting them to address problems and develop un/conventional options and remedies in conjunction with their clients, and then utilizing reflection to tolerate the ambiguities implicit in legal processes and outcomes. To paraphrase Henry Giroux,[(17)] teaching and pedagogy become critical when we recognize their potential for producing il/legitimate forms of moral and political regulation.

The synergy between my teaching and scholarship comes in working with students to identify the limits of traditional legal discourse and traditional legal practices and then developing ideas that challenge, subvert, and/or transform discourse and practices. Occasionally, the process moves from my scholarship to the classroom or clinic rather than the other way around.

II. ACTIVIST SCHOLARSHIP: WILL-WRITING AS LAT/CRIT PRAXIS

> [W]hat becomes apparent from [Deena] González's revisionist history is that the [Spanish/Mexican] women were growing increasingly aware of the collusion between church and state in the newly colonized lands.
>
> In response, the wills gained a clearly political valence, solidifying an important collaboration between the women's private and public lives. The wills were therefore a means of using the form provided by the courts both to dispose of one's possessions *and to officially mark the significance of one's life*.
>
> Carl Gutíerrez-Jones[(18)]

What follows is an example of a tentative analysis of the boundaries of the law of wills and how such boundaries function in hegemonic ways to compel a certain view of the world--a view that devalues, displaces, and obfuscates the "wealth" of subordinated communities. Focusing on recent scholarship on hispana will-writing practices using the work of historian Deena González and others, the Chicano cultural critic Carl Gutíerrez-Jones posits that narratives about loss are a means of resistance against U.S. hegemony through a reverse manipulation of legal rhetoric. Specifically, Gutíerrez-Jones declares that "[Gonzálezs] research points to an important history of politicized mourning in which [Spanish-speaking] women used Anglo institutional practices to define both their dealing with loss and their resistance to post-treaty Anglo rule."[(19)]

With Gutíerrez-Jones historical analysis in mind and my objective of identifying the limits of contemporary legal discourse, I have begun to examine wills as providing a

discursive space for experimenting with counter-hegemonic legal practices, including the use of autobiographical narratives within legal documents.[(20)] We begin with some questions, pertinent to wills generally, but especially poignant when thinking about Latinas: Who decides what is considered "wealth" for purposes of end-of-life planning? What are the cultural dimensions of "wealth"? What are the consequences of providing a legal mechanism for the transfer of money or its equivalents? What losses do such legal mechanisms represent to communities that do not participate in the economies of pre-determined "wealth"?

Does the will-writing ritual displace other more culturally appropriate end-of-life rituals, displace other rituals of public mourning? Can will-writing be transformed to provide a time and place for public mourning practices that are consistent with a Latina/o view of property, wealth, life and death? In short, can wills be oppositional legal discourse?

A. Using Wills to Preserve Latina/o's "Personal" Property

In contemporary times, wills are typically written to exercise the right to decide how one's property will be disposed of upon one's death.[(21)] Wills can be vitally important because all states have laws of intestate succession prescribing how to distribute the property of a person who dies without a valid will. Moreover, wills have also been used to record decisions about guardians for surviving minor children and about who will manage their money and property until they reach maturity.

It is not uncommon for elderly hispanos/as to make wills. From my four years of experience as a clinician, I have noted that many elderly within communities of color indicate an interest in writing wills. Will writing, according to historian Deena González,[(22)] was not uncommon among hispanas in the 1800's and I believe it persists to today.

To the extent that will-writing does occur within the Latino community, my concern and the focus of this analysis is with the sentimental and cultural property of Latinas. Nuestras abuelitas, tías, ninas and, of course, our mothers (y quizás debieramos incluir la propiedad de nuestros abuelos, tíos, ninos y papás pero ahorita estoy enfocada en la situación de la mujer latina,)[(23)] have quilts, crocheted doilies, knick-knacks, photographs, letters, and other items that are not what the majority culture considers valuable. Although these objects have little monetary value, they are embedded with memories and meaning. Moreover, such property, as we shall see below, is linked to the construction of Latinas' individual and collective identities. Such property can represent the encoding of family and, by extension, of community secrets, lore, *chismes*, *mitotes*, wisdom and knowledge.

Professor Margaret Radin has developed a concept of property that is related to personhood, property as personal and constitutive of identity.[(24)] "These objects are closely wound up with personhood because they are part of the way we constitute ourselves as continuing personal entities in the world. They may be as different as people are different, but some common examples might be a wedding ring, a portrait, an heirloom, or a house."[(25)] Radin considers fungible property, the type of property that is typically transferred through wills, "object[s] . . . perfectly replaceable with other goods of equal market value."[(26)] For Radin, fungible property is the theoretical opposite of what she has defined as "personal property." The important aspect of Radin's concept for our purposes is the relation of such personal property to the person's identity.

My point in arguing for the expansion of property bequeathed through wills is not to suggest that personal property in Radin's terms is not now included in the inventorying of property. Rather, the personal character of property, how objects are related to the "way we constitute ourselves as continuing personal entities in the world"[(27)] is contextualized within our family experiences and further embedded within our ethnic and cultural backgrounds.

In most cases the will-writing process begins with a form questionnaire provided to the client, asking about marriages, dissolutions, children and other family relations. An important purpose of such questionnaires is to assist the client in preparing an inventory of his/her "valuable" property.[(28)] Such questionnaires have not been formulated to capture "personal" or culturally significant property. Traditionally-trained lawyers do not know to ask about quilts, handkerchiefs, or photographs as cultural and "personal" property. Should the client inquire about such bequests, it is likely that the lawyer will suggest that the client use a separate letter to be left with a trustworthy friend or relation in order not to lengthen the will or burden the probate process.

The Uniform Probate Code permits the use of a separate writing for the disposition of tangible personal property even though the writing may not satisfy certain will formalities, such as the execution procedures.[(29)] Consequently, many states allow the use of a "Tangible Personal Property Memorandum"[(30)] or other such writing by a person who wishes to dispose of tangible property. However, the statutory requirements impose "a relatively high burden on users of this device."[(31)] Even this mechanism is not likely to accomplish the objectives of preserving "personal" property.

The type of "personal" property that passes through wills fits within commonly understood economies of value, namely money. Value and worth are measured almost exclusively by the monetary premium of the good. I propose to expand the types of property bequeathed under wills to challenge the currencies of value imposed by the dominant culture, to contribute to family and community solidarity, and to preserve the role of older Latinas/os as repositories and interpreters of markers of identity.

We all have a stake in expanding legal discourse to allow for such bequests. At the family level, failing to make these types of arrangements may mean that the items are lost, fought over, or that their meaning is forgotten. At the community level, failing to preserve this type of personal property means a diminution in our cultural heritage, a loss of histories, and the silencing of the voices of our ancestors, nuestras antepasadas.

Wills have become formulaic for reasons that are both good and bad. Predictability and efficiency have great value in probate matters. Given, therefore, that our communities have relied on this end-of-life arrangement, can we make wills do work that is more consistent with the individual and collective needs and concerns of Latinas? Currently, the disposition of fungible property is what drives the doctrinal and statutory development in this area of law, but much of the property of Latinas--property that has a gendered quality because it is tied to womanly activities, i.e., kitchen items; sewn, embroidered, woven or crocheted materials; sentimental writings--has little fungible value and therefore falls outside of formal bequests. Perhaps the undeveloped zones, these lacunae in wills doctrine, permit us to write different kinds of wills, wills written against the grain of conventional systems of property valuation. Wills that protect and preserve the property of value to our communities--the wealth of our communities.

B. Using Wills to Preserve Autobiographical Stories

Wills may provide a place for the expansion or deformation of the dominant legal discourse to include autobiographical narratives that have legally enforceable consequences. My quest is to find fissures within legal discourse for first-person stories and to invoke the power of the state to protect and sanction the act of narration.(32)

Wills used to be named testaments, as in, Last Will and Testament, providing a place for reflecting upon one's life and an opportunity to interpret one's life for one's progeny. An ancestor's life story can be an invaluable and irreplaceable gift for the living, even when and if there is no other fungible or personal property to be bequeathed. Moreover, everyone has a story to be told. Wills may offer a place for the telling of these stories.

Shouldn't wills offer a discursive space for the re/collection of one's experiences? Shouldn't narrative, the testament of one's life, be the object of a bequest? Can't we return to using wills "to officially mark the significance of one's life"(33) as Gutíerrez-Jones explains was done by nineteenth century hispanas?(34)

C. Using Wills as a Public Mourning Ritual and Rite

Wills can reframe, and, in an oppositional way, redeem conventional legal discourse. Conventional legal discourse undervalues and consequently displaces certain types of wealth that are of importance to the Latina/o community. The emphasis on fungible property has pushed out certain types of property for disposition through wills--not only sentimental and cultural property, but also the non-tangible, the life stories and the distilled wisdom that comes from a reflective life.

Conventional legal discourse may now be redeemed in the sense of accomplishing utilitarian functions while at the same time allowing wills to incorporate aspects of the sacred and the spiritual. I am importing into this analysis a tradition from the Jewish community and a document called an ethical will. Dvora Waysman was a distinguished writer in Israel and an excerpt from her ethical will provides an example of what an ethical will sounds like. She writes:

> I'm at an age where I should write a will but the disposition of my material possessions would take just a few lines. They don't amount to much. . . had we stayed in Australia where you my four children were born there would be much more. I hope you won't blame me for this. Now you are Israelis and I have different things to leave you. . .
>
> I am leaving you the fragrance of a Jerusalem morning . . .unforgettable perfume of thyme, sage and rosemary. . .
>
> I am leaving you an extended family--the whole house of Israel. They are your people. They will celebrate with you in joy, grieve with you in sorrow. You will argue with them, criticize them, and sometimes reject them (that's the way of families!). . .
>
> I am leaving you the faith of your forefathers. Here, no one will laugh at your beliefs, call you "Jew" as insult. . . You can be as religious or secular as you wish, knowing it is based on your own convictions and not because of what the "goyim" might say.

> I am leaving you pride. Hold your head high. This is your country and your birthright.
>
> I am leaving you memories. Some are sad. . . the early struggles to adapt to a new country and new language and new culture. . .
>
> And so my children, I have only one last bequest. I leave you my love and my blessing. I hope you will never again need to say: "Next year in Jerusalem." You already are there--how rich you are![(35)]

Historically, ethical wills have functioned as spiritual and religious writings, a summing up of what one has learned about life. This wisdom extracted from lived experiences can provide a different sort of legacy to one's heirs.

Will-writing is a frequently employed end-of-life activity. It is difficult to think of other rituals that occur as death is contemplated either because of advancing age or serious illness. Even religious rites such as the last confession or extreme unction, as the sacrament used to be known among Catholics, have become less common as public life has become more secular.

Many within our communities are impoverished in the material goods of modern society, but our communities are rich in personal narratives and in culturally salient and personally valuable property. Our communities have different forms of wealth, but such wealth currently gets squandered or abandoned because it falls outside of what gets transferred formally and legally.

We can and should create mechanisms for the preservation and transfer of this property. Wills may provide one such mechanism. LatCrit theory and practice can create fissures within legal discourse so that other mourning practices and activities connected with the end of life can emerge, practices more consistent with the experiences and communal values of Latinas and Latinos within our communities.

III. HABITS OF SELF-CRITIQUE

A. Turning the Gaze on Me and on Us

> Hegemony thus operates in a dualistic manner: as a "general conception of life" for the mass of people, and as a "scholastic programme" or set of moral-intellectual principles, which is reproduced by a sector of the educated stratum.
>
> Antonio Gramsci (via Carl Boggs)[(36)]

The Gutíerrez-Jones' book is valuable for other observations: his practice of self-critique and use of multivocal text in critical analyses and his encoding techniques.[(37)] First, the metaphor in the books title, RETHINKING THE BORDERLANDS, defines spheres of cultural conflict, particularly conflict between Chicano artists and the majoritarian sociolegal order but also the patriarchal contestation between Chicanos and Chicanas. Gutíerrez-Jones pauses in his analysis to interrogate the propriety of what he calls "non-Chicanas" intervening in the struggle of Chicanas to explore, define, and create our identities. By engaging in this self-critique, he is modeling for all of us an "interrogation of our positionality" as an academic practice. Such an interrogation is particularly salient because of his refusal to conflate gender with ethnicity. Even a Chicano who shares significant life experiences with the Chicana must nonetheless

search for interventions which allow him to engage in cross-gender dialogues with Chicanas. He finds such a technique in the multivocal writings of Chicana/Latina novelists and poets.[(38)]

Second, the book's title uses non-traditional capitalizations and juxtapositions, compelling the reader to consider the meaning of the words "RETHINKING THE BORDERLANDS" in relation to its subtitle "Between Chicano Culture and Legal Discourse." The title subtly encodes information with its juxtaposition of words that are fully capitalized with words with initial caps. This encoding inveigles us into rethinking all borderlands--geographic, linguistic, artistic, disciplinary--as well as rethinking the boundaries between Chicano culture and legal discourse.

Like Gutíerrez-Jones, I too have been prevailing upon you the reader to rethink borders and boundaries and to collaborate in re-framing information. Throughout the paper I have used Spanish, parentheses, or footnotes when moving into a different voice. Rethinking the borders of the page can also add a level of information that is not usually available to the reader. I have decided to play[(39)] with the placement of information on the page because I particularly want this section of self-critique to be heard as having two stances. This section is meant to have a multivocal and dialogic quality. Thus, I have decided to place general comments along the left hand margin and to place more personal comments along the right margin.

Ahora para una crítica latina / Now for a LatCritique of what I have been describing as critical teaching and critical scholarship by examining these ideas against Antonio Gramsci's ideas of the organic intellectual and the intelligentsia's role in hegemony. I recognize that these Gramscian comparisons have become routine and even hackneyed in critical literature of late. Nonetheless, I think there may be something important for those of us who come from poor and marginalized communities. Are we organic intellectuals? Can we be academics and remain connected to our communities? Has the situation we find ourselves in changed fundamentally from the 1920's when Gramsci developed the idea of organic intellectuals--theorists who would emerge and be formed by the lived experiences of the working class, combining understanding and passion, utopianism and pragmatism, theory and practice, the political and the social.[(40)] Isn't this one possible definition of LatCrit theorists?

So, as a preliminary inquiry, is organic intellectuality something to which the Latina/o LatCrit theorist should or even can aspire?

> Some of us did emerge and have been formed by the lived experiences of the Latina/o community. But did Gramsci mean formative experiences that are confined to our childhood and youth, given that as adults we live in relative affluence, separated from family and barrio? I suspect that education, socialization, and professionalization have such a strong pull on us, even when we resist the more obvious and perverse aspects of acculturation or assimilation, that it is very difficult for us to remain connected to our communities and even our extended families.
>
> Like many other Latina/o professionals, my family and I don't live in "the barrio." We don't face deprivation (gracias a Dios) and if there is an economic issue for us as a family, it has to do with excess, waste and over-consumption. These are not, I suspect, the life experiences and the quality of angst Gramsci had in mind.

Gramsci's ideas about organic intellectuals grew directly from his earlier theory of ideological hegemony which is also pertinent to LatCrit work. Gramsci warns us that hegemony is reproduced by the "scholastic programme" of a sector of the educated elite. Carl Boggs, a student of Gramsci, writes:

> Ruling elites seek to justify their power, wealth and status, ideologically with the aim of securing general popular acceptance of their dominant position as something "natural," part of an eternal social order and thus unchallengeable. The idea of hegemony. The oppressed strata accept or consent to their own daily exploitation and misery. . . Hegemony thus operates in a dualistic manner: as a "general conception of life" for the mass of people, and as a "scholastic programme" or set of moral-intellectual principles, which is reproduced by a sector of the educated stratum.(41)

Consequently, as LatCrit theorists and practitioners, as academics and intellectuals, we must be aware of our role in the reproduction of hegemony, aware that our work operates within complex dynamics of interwoven forces of liberation and oppression, of resistance and dominance. One aspect of this self-critique is to question where we do our work. LatCrit discussions might be different if they were conducted in a colonia along the border rather than in beach cafes.

> Ay, what am I saying? I'm seduced by nice hotels, posh restaurants, and chic boutiques more easily than others. More worried than most about my masks and disguises,(42) I have capped off earnest scholarly discussions about subordination in its many forms by searching out local shopping venues. My life is replete with such contradictions.

Our interactions at academic meetings, at LatCrit conferences, might be different if people from the communities for which we work were in attendance, and not just cleaning up after us.

Yet assuming that others want to be at our meetings is an aspect of our arrogance and elitism. Forgetting that others do not have the time, money, or energy to sit around talking about theory is an aspect of our hidden privilege. Many in the community/ies (wherever it/they might be) would likely not want to "interact" with us at academic meetings.

Some of our students are still very much a part of the impoverished communities that create the principal epistemic site for LatCrit theory. Active student participation would inform us of community experiences of which we may be unaware and help us re-establish connections that have attenuated because of our economic and social ascendancy. Some of us experience education as a benefit accompanied by a class-jumping phenomenon, but many of our students are closer to the communities and socio-economic class from which many of us "escaped."

Another aspect of this self-critique involves how we do our work and how we resist reproducing and re-enacting forms of subordination which we already recognize. Of particular note are the hierarchies of privilege that re-establish themselves as we seek to develop new analyses about the Latina/o experience within legal discourses. We must be attentive to patterns of interactions: Whose voices are amplified while others are

silenced? Is my own voice amplified to silence others? Who is identified with the core and who occupies the margin (and, it is instructive to think about who sits where, are there invitadas/os and arrimadas/os?[43] Are the vocabularies we choose those that include or those that exclude, occlude and elide? How do gender, color, language, sexual identity, and age form, inform and deform our nascent LatCrit movement?

The ivory tower with all its elitism--and because of its detachment--fosters an environment in which we can explore ideas. Our work, the production of knowledge and intellectual capital, is of utmost importance to our communities. This critique is not intended to destabilize the importance of our work but to bring to it a self-awareness of its hegemonic potential.

B. Lat/Crits: "Natives" and Western Wo/Men. Of Trobrianders and Malinowski[44]

> What I am suggesting is a mode of understanding the native in which the native's existence--i.e., an existence before becoming "native"--precedes the arrival of the coloniser. Contrary to the model of Western hegemony in which the coloniser is seen as a primary, active 'gaze' subjugating the native as passive 'object', I want to argue that it is actually the coloniser who feels looked at by the native's gaze. . .Western [wo]man henceforth became 'self-conscious', that is, uneasy and uncomfortable, in his[/her] 'own' environment.
>
> Rey Chow[45]

Allow me a final point about "positionality" and academic activism. Our reliance on the discourses and analytical practices of the dominant society makes us complicit in those activities and their hegemonic effects. This dilemma has been noted in post-colonial writings.[46] The editors of *The Post-Colonial Studies Reader*, in identifying the complicity or appearance of complicity of "post-colonial" linkages and articulations with imperial practices, write:

> [S]uch complicit activities occur in all post-colonial societies. . . [and the study of the complicit practices that are arguably more obvious in settler societies] may . . . be especially useful in addressing the problem of complicity in all oppositional discourse, since they point to the difficulties in escaping from dominant discursive practices which limit and define the possibility of opposition.[47]

It is precisely this difficulty which can evoke in us the feelings of anguish, ambivalence and cynicism that I earlier attributed to some of my students.[48] This concern with complicity can incapacitate us. Paradoxically, this concern is based on an observation that is imprecise because our analytical frames and disciplinary discourses are no longer just "theirs." They have become "ours"--that's one of the lessons of academic *mestizaje*.

What makes our academic tasks so difficult and what fills our analytical paths with potholes and cul-de-sacs is that we are simultaneously in and out of the dominant culture. We are at once involved in naming a new reality and in shrugging off realities that have been mis/named on our behalf. We are at once Malinowski, the ethnographer,

and Trobriander, the native informant.[(49)] I am deploying this anthropological device to elucidate one of the central dilemmas for LatCrit theorists and practitioners: How do we engage Malinowski in a discussion from the perspective of the Trobriander ethnographer? Like the Trobriander, the techniques we have, the frames we use, the discourses we employ are those of the colonizer, those of the dominant culture, and therefore, aren't we blinded and deafened to an un-named reality within our communities? We are involved in discourses that "Other-ize" our communities, our students, our clients, and ourselves. However, those very discourses can and do ameliorate the oppressive consequences of prior Other-izations. That's the promise and the challenge of LatCrit theories and practices.

Con safos.

Footnotes

1. Associate Professor, University of New Mexico School of Law, J.D. 1978 Harvard, A.B. 1972, San Diego State University. This essay was improved by comments from Ann Scales, Christine Zuni, Beth Gillia, and my stepson, Charles G. Boyer. Mil gracias. Unas palabras de agradecimiento para las organizadoras y el organizador de este symposio. Francisco Valdes, Laura Padilla y Gloria Sandrino nos han abierto un espacio donde podemos colaborar. Ahora nos toca llevar a cabo este intercambio académico reconociendo que este tipo de conversación tiene riesgos y las relaciones que estamos estableciendo todavía son delicadas y frágiles.

2. I went to Catholic school in northern New Mexico and under the nuns' watchful eyes, we unfailingly wrote "J.M.J." at the top of the page as we began our work. We were invoking the assistance of Jesus, Mary, and Joseph or "J.M.J." With all of the innocence of children we really believed that Jesus and his familia would inspire us. We also trusted with equal fervor in the guardian angel perched on our left shoulder. Our invocation of Jesus, Mary, and Joseph and our relationship with our guardian angel animated our pencils and released a force that we were sure brought greater coherence and brilliance to our written work. Even in this agnostic age and in secularized spaces, angels may be perched on our shoulders. Perhaps "J.M.J." is the religious corollary to the "C.S." or "con safos," the code that sometimes appears with Chicano/a graffiti. Cultural critic Jose Antonio Burciaga explains:

> The c/s sign-off means con safos, and translates literally as "with safety." It was meant as a safety precaution, a barrio copyright, patent pending. No one else could use or dishonor the graffiti. It was an honorable code of conduct, a literary imprimatur. Like saying "amen," it ended discussion. Above all, it meant, "anything you say against me will bounce back to you." . . .Chicano artists and writers of the late sixties and early seventies often used the c/s symbol in signing their works, especially when the works were political or cultural in nature. . . [M]y ending logo is the c/s sign, like an amen. *Whether you agree with me or not, whether you like it or not, with all due respect, this is my reality. c/s.*

José Antonio Burciaga, Drink Cultura 6-8 (1993) (emphasis added).

3. We need to think about how we should begin: with a cry, in silence, with a prayer? We have set out on an ambitious quest: we propose to create a new legal discourse, a LatCrit discourse, focusing on the Latina/o experience and using theory to improve the material conditions of latina/o communities. Currently, most U.S. academics know little about either the history of latina/o communities or the conditions in which they try to survive. We, "the LatCrits," seek the opportunity to (re)present the past, analyze the present with hopes of molding the future.

We begin in the hope that words, ideas, and theories can alleviate the misery and desperation in which too many Latinas/os live. We also begin with the hope that this intellectual and academic tapestry that is becoming LatCrit will be a collaborative effort that will sustain us in solidarity.

4. Choosing the right word is difficult here; perhaps rape is the accurate term, but it denies agency to all the indigenous women in the past who were involved in cross-racial relations.

5. Latin American countries today have varying proportions of mestizo/a populations with Paraguay and Mexico having high levels (94% and 84.8%, respectively) and Cuba and Dominican Republic low levels (8.5% each). *See* Claudio Esteva-Fabregat, Mestizaje in Ibero-America 335 (John Wheat trans., University of Arizona Press 1995).

6. *See* José Vasconcelos, The Cosmic Race / La Raza Cosmica (1979).
7. Prominent examples of linguistic mestizaje include Gloria Anzaldua, Borderlands / La Frontera: The New Mestiza (1987); Tey Diana Rebolledo, Women Singing in the Snow (1995); and Ilan Stavans, The Hispanic Condition: Reflections on Culture & Identity in America 124 (1995) ("Spanish or English: Which is the true Latino mother tongue? They both are, plus a third option: Spanglish--a hybrid. We inhabit a linguistic abyss: Entre Lucas y Juan Mejía claims a Dominican saying: between two mentalities and lost in translation.")
8. Henry Giroux, Border Crossings: Cultural Workers and the Politics of Education 81 (1992).
9. *See* discussion *infra* Part III.
10. *See* discussion *infra* Part II.B.
11. This phrase is another articulation of the notion of academic *mestizaje*, the organizing theme of this paper.
12. *See* Guadalupe T. Luna, *"Agricultural Underdogs" and International Agreements: The Legal Context of Agricultural Workers Within the Rural Economy*, 26 N.M. L. Rev. 9 (1996) in which colonias are defined as "rural and unincorporated subdivisions characterized by substandard housing, inadequate plumbing and sewage disposal systems, and inadequate access to clean water. They are highly concentrated poverty pockets that are physically and legally isolated from neighboring cities." *Id.* at 30.
13. As one enters the typical room for an academic conference and looks at the way it is set up, it is clear that the room is gendered and raced--gendered male and raced white. The linearity and order of the furnishings--chairs in their militaristic formations, rows within exact rectangles facing forwards towards a dais equipped with a podium and microphone, authority-creating accoutrements which hierarchical and epistemic constraints on interactions. Such arrangements make it harder to see others' faces and to read one anothers eyes, and harder to think messy, disruptive, chaotic, and subversive thoughts.
14. *See generally* Naomi R. Cahn, *Inconsistent Stories*, 81 Geo. L.J. 2475 (1993); Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 Cornell L. Rev. 1298 (1992); Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 Hastings L.J. 861 (1992); Melissa Harrison & Margaret E. Montoya, *Voices / Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, 6 Colum. J. Gender & L. 387 (1996); James Boyd White, Justice as Translation: An Essay in Cultural and Legal Criticism (1990).
15. One of several examples that Ms. Yazzie provided involved different conceptualizations of time: February translated into Navajo as the time when the baby eagles are born.
16. I do not mean to minimize the clients' need for the divorces, or the guardianships, or the criminal defense that the clinic and the Law provide.
17. *See supra* text accompanying note 7.
18. Carl Gutíerrez-Jones, Rethinking the Borderlands: Between Chicano Culture and Legal Discourse 155 (1995) (emphasis added).
19. *Id.* at 154.
20. My colleague Scott Taylor helped sharpen my thinking in this section. I emphasize that this analysis is tentative and exploratory.
21. *See generally* The American Bar Association Guide to Wills and Estates (1995); Eugene J. Daly, Thy Will Be Done: A Guide to Wills, Taxation, and Estate Planning for Older Persons (2d ed. 1994); *and* Joseph W. Mierwza, THE 21st Century Family Legal Guide, (1994).
22. *See* Deena J. Gonzalez, *The Widowed Women of Santa Fe: Assessments on the Lives of an Unmarried Population, 1850-80, in* On Their Own 65, 75-76 (Arlene Scadron ed., 1988) (one-third of the authors of wills from 1850-1880 were Spanish- Mexican women).
23. This sentence translates as "Our grandmothers, aunts, godmothers, and, of course, our mothers (and perhaps we should include the property of our grandfathers, uncles, godfathers and fathers but at the moment I am focusing on the Latina's experience,)...
24. *See* Margaret Jane Radin, Reinterpreting Property (1995).
25. *Id.* at 36.
26. *Id.*
27. *Id.*
28. *Id.* at 190.
29. Unif. Probate Code ß2-513 (1990).
30. Lawrence H. Averill, Jr., Uniform Probate Code in a Nutshell 167 (3d ed. 1993).
31. *Id.*

32. In other papers my interest has focused on narratives that, in various ways, elucidate the workings of legal structures, stories linked to legal analysis, stories confined within law reviews and legal journals. Here my interest turns to autobiographical narratives in documents that have legal consequences. *See* Margaret E. Montoya, *Máscaras, Trenzas y Greûas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 Harv. Women's L.J. 185 (1994); Melissa Harrison & Margaret E. Montoya, *supra* note 13; *and* Margaret E. Montoya, *Bordered Identities*, *in* Crossing Boundaries: Traditions and Transformations in Law and Society Research (Austin Sarat et al. eds., forthcoming 1997, Northwestern University Press).
33. Gutíerrez-Jones, *supra* note 17.
34. *See* discussion *supra* beginning of Part II.
35. So That Your Values Live On: Ethical Wills and How to Prepare Them 88 (Jack Riemer & Nathaniel Stampfer eds., 1991). The existence of ethical wills was brought to my attention by Stephen and Rachel Wizner, who graciously provided me with a copy of the book.
36. Carl Boggs, The Two Revolutions: Gramsci and the Dilemmas of Western Marxism 161 (1984).
37. Gutíerrez-Jones, *supra* note 17.
38. Gutíerrez-Jones, *supra* note 17, *passim.* He pays special attention to the María Helena Viramontes short story, "Cariboo Café," noting that "this story offers a subtle rethinking of positioning--of what it means as a writer to treat historically silenced others--Ö[and] has much to say to readers and writers who find themselves in analogous situations." *Id*. at 122.
39. This playfulness is connected to a spirit of "*jouissance*," of tonterias or outright buffoonery, which belongs in a category of Bahktinian (or carnivalesque) academic techniques deserving our attention and further analysis.
40. *See* Boggs, *supra* note 35, at 161.
41. *Id.*
42. *See* Montoya, *Máscaras, Trenzas y Greûas*, *supra* note 31.
43. Those who are invited and those who are made to feel like noncontributing hangers-on.
44. *See generally* Bronislaw Malinowski, The Ethnography of Malinowski: The Trobriand Islands 1915-18 (Michael W. Young ed., 1979).
45. Rey Chow, Writing Diaspora: Tactics of Intervention in Contemporary Cultural Studies 51 (1993) (citing Hegel).
46. *See* Ali Rattansi, *'Western' Racisms: Ethnicities and Identities in a 'Postmodern' Frame*, *in* Racism, Modernity & Identity 1 (Ali Rattansi & Sallie Westwood eds., 1994). Rattansi raises a parallel concern about modernity's constraints (which are related to but different from those constraints imposed by imperial discourse and its epistemic twin, traditional legal discourses). He rhetorically asks, "Is there a contradiction involved in interrogating the nature, foundations, and limits of Western modernity while still using some of its own logics and devices?" *Id.* at 20.
47. The Post-Colonial Studies Reader 1, 3 (Bill Ashcroft et al. eds., 1995).
48. *See* discussion *supra* end of Part I.
49. *See* Sarah Williams, *Abjection and Anthropological Praxis*, 66 Anthropological Q. 67 (1993). Williams, a feminist anthropologist, has written what she calls "a silhouette," a representation of an imagined reality. This particular silhouette takes place at a conference on ethnography. A student of Malinowski is giving a talk on the Trobriand Islanders. As Williams imagines the scene what makes this meeting different from any other such meetings is that in the audience is a graduate student of ethnography who is a Trobriander. So Williams asks, "Does the Trobriander read Malinowski in order to know something about his or her identity?" *Id*. at 74.

17. Laura M. Padilla,[(1)] *LatCrit Praxis to Heal Fractured Communities,* 2. HARV. LATINO L. REV. 375 (1997)

INTRODUCTION

Much of what LatCrit theorists address in a discussion on pan-ethnicity is relational.[(2)] In that spirit, allow me to share some of my background. I am a Latina, an activist, a law professor, a daughter, a sister, a wife, and a mother. My maternal grandfather is from Texas. He had a rough childhood -- his mother died when he was a baby and his father, who was married to another woman when my grandfather was born, was abusive. My grandfather was shy and spoke little English. He thought it was a heavenly blessing when he met my grandmother, a Nueva Mexicana,[(3)] in Los Angeles where they then lived. He suffered so much discrimination,[(4)] including language discrimination, he vowed not to teach his children Spanish.[(5)] My maternal grandmother is a spitfire. She always knew that a woman's place was wherever she wanted to be, and she taught me that no goals are too lofty. My grandparents hoped to buy a home for their young family in Los Angeles, but were told that the owner could not sell them the home they wanted to buy because they were Mexicans.[(6)] They could not advocate for themselves and no one else fought on their behalf. Sadly, this experience is not confined to the past -- I see people today who remind me of my grandfather and they motivate me to engage in LatCrit practice.

Before turning to LatCrit practice, let me offer a preliminary observation that many Latinos are troubled by leading divided lives in fractured communities.[(7)] This is exacerbated by social conditioning which encourages Latinos, as well as other outsiders, to fragment their identities.[(8)] One of the benefits of LatCrit theory is that it encourages the process of working toward wholeness. At a recent conference[(9)] which looked at the courage of those who have decided to live lives divided no more, Parker Palmer, the plenary speaker, suggested that the spark which causes people to decide to live divided no more is the understanding that "[n]o punishment can possibly be more severe than the punishment that comes from conspiring in the denial of one's own integrity."[(10)] That is a very powerful realization. Many of us have experienced situations where we are asked to choose to conspire in our own diminishment -- for instance, by recognizing only one of our many identities, while disregarding others. One of the tasks of LatCrit practice is to work towards rebuilding the wholeness of the Latino community. To say no when people ask us to live divided, fractured lives by insisting, for example, that we not speak Spanish, even if we do not know any other language.[(11)] We must fight persistent efforts to silence us. If Spanish is part of our identity, we should not be asked to mask that identity or to fragment it by deleting that part. We cannot and should not leave our race or ethnicity behind. Thus, we need to work toward rebuilding wholeness and leading lives of dignity, *con respeto* (with respect).

PRACTICING LATCRIT THEORY

As academics, we sometimes get so caught up in the ivory tower that we forget about community generally, and our communities specifically. Some of us spend much

time thinking and writing about our communities, but we are not actively engaged as change agents. We cannot afford to be disengaged. Practicing LatCrit theory is critical for the Latino community. Why? We are still saddled with oppression, racism and white supremacy. In San Diego County, "a group calling itself the U.S. Citizens Patrol has been roaming Lindbergh Field looking for illegal immigrants."[(12)] You can guess the profile of those the Citizens Patrol is hunting down - they tend to have darker skin, hair and eyes.[(13)] In some parts of the country, Latinos cannot even shop at Wal-Mart if they are "Mexicans."[(14)] Latinos are clearly still not equal citizens. We have not achieved equality in the areas of education, employment, compensation, and housing, among others. LatCrit practice may be utilized to address these inequalities.

The remaining sections of this essay will address strategies for deploying LatCrit Practice. Effective change agents must collaborate in their efforts to wipe out those vestiges of oppression which many in the dominant culture continue to practice, both unintentionally and intentionally.[(15)] Some of the tools they can use include LatCrit scholarship, LatCrit advocacy and LatCrit practice.

A. LatCrit Scholarship

Scholarship is important insofar as it allows us to identify problems, sources of those problems and solutions. LatCrit scholarship is particularly important in this regard because it understands the interconnected and three-way relationship between law, race and ethnicity which Professor Haney López has described so eloquently.[(16)] Our Latino-ness impacts the way we view the law. For example, many Latinos are frightened of the law because it has frequently been used as a sword against Latinos, to wit, the involuntary repatriation of United States non-citizens and citizens alike during the great depression,[(17)] and the intolerance of vigilante-like groups of U.S. citizens patrolling Lindbergh airport in San Diego, searching for illegal immigrants (read, anyone who looks Mexican or Latino).[(18)] In other words, because of the way the law has been utilized against Latinos, many Latinos fear the law.

Likewise, the law impacts how we view our Latino-ness. For example, California lawmakers and voters, respectively, drafted and passed Proposition 187,[(19)] which prohibits undocumented immigrants from receiving many public benefits.[(20)] California legislators and voters also respectively drafted and approved the California Civil Rights Initiative ("CCRI"),[(21)] which amends the California constitution to prohibit both discrimination and preferences on the basis of race, ethnicity, gender and national origin in public education, state contracts and employment.[(22)] This, of course, has the effect of eliminating public affirmative action in California, the nation's most populous state.

Each of these legislative acts attempts to imbue Latino-ness with dirtiness, impurity, illegality and undesirability. LatCrit scholarship must counteract these misconceptions. But it should go beyond repairing false images; it should also re-imagine the relationship between law, race and ethnicity. One LatCrit project should be the reconstruction of this legal relationship so it has concrete benefits,[(23)] instead of simply answering the current backlash, an approach which is taking a disproportionate amount of our time and resources.

B. LatCrit Advocacy

Advocacy is also an important tool. Fortunately, groups like MALDEF[(24)] work on behalf of Latinos. To the extent LatCrits have expertise or knowledge, we should be teaming with advocacy groups such as MALDEF to work for the elimination of oppression and racism, and for the construction of equality of opportunity. For example, LatCrit scholars should be involved in the fight against CCRI.[(25)] As another example, we should be at the forefront of the affirmative action debate.

To really engage in a dialogue on affirmative action and education, we need to reframe the issues to get away from the narrow, exclusive lens which focuses on color-blindness and meritocracy. Instead, we should look at the institutional causes of poorer quality education from kindergarten through high school for many ethnic minority students, which in turn results in lower standardized test scores. Latino and African American students still disproportionately attend segregated schools.[(26)] This is in large part because of white flight - the phenomenon of white families abandoning cities for the suburbs, leaving the cities comprised primarily of minority residents.[(27)] These inner-city schools receive fewer resources than schools in higher-income, suburban areas.[(28)] Moreover, teachers "have routinely shifted white children into gifted programs while ignoring blacks and Hispanics."[(29)] To the extent the gifted white children are transferred to predominantly white schools, this has the effect of exacerbating disparate funding patterns and exaggerating existing patterns of segregation. Students in inner cities who are predominantly from low-income families,[(30)] attend schools with much higher student-to-teacher ratios than students in the suburbs from middle-and upper-income families.[(31)] Furthermore, Latino and African American students:

> lag four years behind their Anglo counterparts in having access to computers in school. Because of their parents' low incomes and limited educations, young Latinos are less likely than young Anglos to have access to a computer at home; only one Latino household in eight has a home computer, half the number in non-Hispanic white households.[(32)]

In the aggregate, these education-related factors not only disadvantage students of color while still in elementary, junior and high school, these factors also limit the students' future career options. At a threshold level, the combination of these factors may explain why there are disparities in average SAT scores for white testers and minority testers.[(33)]

Unequal educational opportunities are undoubtedly part of a complex problem. It is disingenuous and over-simplistic to point to merit as measured by a standardized test score as proof that Latinos are intellectually inferior to whites, instead of undertaking the more difficult task of determining *why* there are disparities in test scores.[(34)] With advocacy, LatCrits can challenge these assumptions. It is certainly an uphill battle when, to quote Ana María Loya, "[w]e have gotten to the point where *Bakke* is beginning to sound like left politics."[(35)] But LatCrits cannot turn away from battles where fundamental rights to equal opportunities are at stake. Litigation and legislation have to be part of the strategy to achieve equality and eliminate racism.

C. LatCrit Practice

Another tool for improving the lives of Latinos is LatCrit practice. While research and writing are essential and satisfying, they do not always result in tangible change at a quick enough pace to be satisfactory. In truth, LatCrit theory needs a practical component to be effective. Practicing LatCrit theory takes place on many levels. At one level, we can utilize LatCrit practice through the community itself. At other levels, we can put LatCrit theory into practice through teaching and bar groups.

There are so many ways in which Latinos are being discriminated against that it would be impossible to try to list them all here. One critical area that is inextricably intertwined with the others is education. Latino students are failing at a greater rate than ever, and at a higher rate than any other ethnic group.[(36)] Education is a key to power, respect, and upward mobility.[(37)] This key has remained elusive for Latinos. "As of 1991, only 9.7% of Hispanics 25 years and older had completed four or more years of college, compared to 22.3% of non-Hispanics."[(38)] This means that it is at least twice as likely that non-Latinos have four or more years of college than Latinos. Furthermore, Latino adults are almost eight times as likely as non-Latino adults to be illiterate.[(39)] The need for greater educational opportunities for Latinos should be apparent. Nonetheless, the Supreme Court has made it clear that affirmative action is a limited remedy to rectify past discrimination;[(40)] a federal court recently held that race cannot be considered as a factor in law school admissions decisions;[(41)] and Californians voted to eliminate affirmative action.[(42)] This nationwide trend indicates that affirmative action may soon be obsolete and it will be even more difficult for Latinos to access higher education.

Without degrees from four-year schools, Latinos are not getting good jobs and in many cases, Latinos are not getting any jobs.[(43)] That leaves many Latinos stuck in a perpetual economic underclass and makes it nearly impossible to get into positions of power where Latinos can make policy and institutional change. LatCrit theorists are not necessarily typical Latinos, nor are we typical law professors.[(44)] Because of our unique position, we have a moral obligation to use our "elite status" to enhance opportunities for, and transform the lives of, all Latinos. This can be challenging because sometimes we are so far removed from our communities that we forget our obligations.

Following are some concrete steps we can take to make a difference in our communities, starting with efforts that anyone can make with no training and minimal time commitments. First, meet with students of all ages. Every city has a partnership in education type of program. Sign up as one of its speakers. Talk to students from grammar school through high school about the value of education, about staying in school, and about going to law school. Many Latino students have never met lawyers other than defense attorneys representing family members. Their view of the law should be broader than that. Let them see someone who looks like them, who went to college, and who went on to law school. At every school where I have spoken, students remarked that they had never met a Latina lawyer. If you touch only one person per presentation, your efforts will be rewarded.[(45)]

Second, be involved in local schools or school boards.[(46)] It is amazing how one Latino lawyer can change the dynamics at school or school board meetings. Even if you do not speak, your presence will impact what others will and will not say and do. Imagine the possibilities when you actively participate and direct or influence change and policy. Hold schools and school boards accountable.

Third, assess the problems in your community. For example, look at whether Latino students are failing more often, or progressing more slowly, than their white peers. If they are, find out why. If it is because of language differences, then determine whether

there are adequate bilingual or language facilities. Yes, Latino students should learn English - after all, it is a prerequisite to success in the United States. But no, they should not be asked to forget or forfeit their language. We are entering the 21st century and there is no question that this is an increasingly global society. In spite of what many nativists insist, we cannot go back.(47) This is home. Latinos should not give up our culture or language. To the contrary, we should be encouraged to keep our culture and language, both to preserve wholeness and in order to be better situated to take advantage of opportunities in a global market and society.

The National Council of La Raza has noted that "Hispanics suffer from substantial levels of discrimination in education, employment, and housing, yet receive minimal attention from federal civil rights enforcement agencies."(48) If you are aware of discrimination in education, employment, or housing, utilize LatCrit practice to eradicate that discrimination by, among other actions, bringing that discrimination to the attention of enforcement agencies, filing lawsuits, writing amicus briefs, testifying, and publicizing.

The State of Hispanic America reports, "Hispanics have the lowest levels of educational attainment of any major population group, but are under-represented in pre-school programs and other education programs designed to help at-risk students."(49) This under-representation is not for lack of interest by Latinos. Our students are simply not getting proportional educational benefits. If we do not raise our voices through LatCrit practice, these injustices will continue.

LatCrit practice can also be incorporated into teaching. For example, Professor Gloria Sandrino from California Western School of Law takes students from her International Business Transactions class to visit a maquiladora plant.(50) Through this experience, her students are able to personally get a sense of issues related to labor, business, and environmental law from both employers' and employees' standpoints.(51) Latinos are humanized when their faces are attached to concepts that students have been studying. This is important because in law school we frequently get away from the fact that real people are behind the cases we read and that their lives are impacted by the outcomes of the cases. Furthermore, it is important to use our teaching to sensitize students about issues impacting oppressed communities.

A final change we can make in the teaching arena is to include Latino names in hypotheticals and examinations beyond the criminal context where we are currently most likely to see Latino surnames.(52) We should also teach about racial injustice not just in the past tense, but in terms of what is happening today.(53)

LatCrits can further engage in LatCrit practice through local bar groups. For example, La Raza Lawyers of San Diego has organized Community Law Schools. We focus our efforts on the low-income Latino community, with the Community Law School meeting once a week for six to eight weeks. Each week, the school covers a different substantive area, typically starting with the United States Legal System and continuing with classes ranging from landlord-tenant law, to domestic violence, to immigration. The group does not use a clinic format. Instead, it uses an empowerment model, where students learn how to use the law as a tool to improve their lives, not merely as an enemy from which they are trying to protect themselves. Philosophically, we are trying to impart lifetime skills which students will be able to use on a long term basis, rather than trying to solve a single problem. As the saying goes, "If you give people fish, you feed them for a day; if you give them fishing nets, you feed them for a lifetime."

Community law schools are great projects to undertake with Latino law students for a number of reasons. For example, community law schools bring law students together as a group, they allow students to connect with local bar groups and with practicing attorneys, and they give students a chance to work on a worthwhile project and experience the joys of volunteerism. It is crucial to give law students a stake in organizing the project so they have ownership, and to give the local residents who will take the classes a stake in designing the program, particularly the classes offered, so they will also have ownership. We typically have a graduation ceremony at the end of the course, which provides an opportunity for participants and their families to celebrate culture, good food, and a sense of accomplishment together. It is significant that many students receive their first diplomas at the ceremony.

D. Funding

Normally, we do LatCrit or activist work on a completely pro bono basis. While this no doubt will continue, there are many sources which can fund various activities. For example, the W.K. Kellogg Foundation administers and funds the Kellogg National Fellowship Program ("KNFP"),[(54)] through which fellows can pursue a variety of service projects.

The W.K. Kellogg Foundation also funds significant lawyering projects for social change. To maximize its impact, the Foundation targets its grants toward specific programming priorities. It understands that certain groups of people presently face particular barriers that block them from reaching their full potential. Thus, it attempts to support projects that serve groups such as people with disabilities, the elderly, women, and minorities. The Foundation is particularly interested in grant proposals for programs which are designed to help people help themselves. Some programming areas for grant proposals include those related to: integrated, comprehensive health care systems; rural development; water resources; higher education; youth development; efforts to increase philanthropy and volunteerism; and efforts to develop leadership. The Foundation typically provides seed money only for projects which have the capacity to sustain themselves beyond the initial grant period.[(55)]

The W.K. Kellogg Foundation is just one resource available to fund projects that particularly impact communities of color. There are several other foundations and resources,[(56)] and LatCrits should be tapping into them for many reasons. First, it is better that we access them than other constituencies whose interests may be opposed to our own. Second, to the extent that we are doing service work anyway, we should get outside sources of funding for that work. Third, we can make wonderful contacts who may be able to assist with future LatCrit projects. Fourth, and most importantly, LatCrit theorists are unique and valuable resources and to the extent that these resources can be improved, we will all be better prepared to serve our communities in the future.

CONCLUSION

In summary, one of our tasks is to make our homes and communities more hospitable and less toxic. Through LatCrit praxis, we can advance the healing of fractured and unhealthy communities, thus better equipping Latinos to be healthy and vital community members. As healthy community members, we can improve our own

lives and contribute to a multiplier effect,[(57)] through which we can improve our neighborhoods, cities, counties, states, countries and world.

Footnotes

1. Associate Professor of Law, California Western School of Law; J.D. Stanford Law School, 1987; B.A. Stanford University, 1983. I am grateful to my California Western School of Law colleagues, Gloria Sandrino and Frank Valdes, for co-chairing this symposium. I also thank the symposium participants for committing themselves to the birth of LatCrit Theory. Finally, I thank my grandparents, Manuel and Mary Armendariz, for their superb role modeling and for leading lives of dignity.
2. This symposium was envisioned in part to address the existence of a Latino pan-ethnicity. In the first plenary panel, Professors Castro and Espinoza specifically addressed this in the context of histories and conditions that unite and divide the various Latino communities.
3. A Nueva Mexicana is a female native of New Mexico.
4. On my grandfather's daily walk in the early morning hours to the Wonder Bread factory where he worked, policemen frequently verbally and physically harassed him. (Hate crimes were not yet recognized.)
5. I have taken many years of Spanish courses but I am not a native Spanish speaker, nor am I bilingual. My grandparents did not want their children or grandchildren to experience the same pain and language discrimination to which they were subjected. Not to say that I have not been discriminated against, but at least it is not with respect to my accent.
6. While my grandparents could not purchase an existing home, they were eventually able to buy a piece of raw land in Hillside Village, a neighborhood in El Sereno (Los Angeles), where they built a home and still reside today. For a detailed discussion of restrictive devices used to preserve white residential neighborhoods, see C. Abrams, Forbidden Neighbors 224-225 (1955).
7. *See generally* Parker J. Palmer, *Divided No More: A Movement Approach to Educational Reform*, Change, Mar.-Apr. 1992, at 10 (discussing the negative effects of leading divided lives).
8. For example, as a woman of color, I am frequently asked to self-identify by race or gender. For a general discussion of this false either/or dichotomy, see Laura M. Padilla, *Positionality and Intersectionality: Situating Women of Color in the Affirmative Action Dialogue*, 66 Fordham L. Rev. (forthcoming 1997).
9. Confronting Issues of Faith in the Workplace, Kanuga Conference Center, Hendersonville, NC (Apr. 28-30, 1996).
10. This reflects part of the speech made by Palmer at the Kanuga Conference; it is quoted from his recent article. Palmer, *supra* note 6, at 13. Palmer gives the example of Rosa Parks deciding one day that she would not give up her seat at the front of the bus. At that moment, she realized that any punishment she received for that act could not possibly be worse than the punishment of conspiring in her own diminishment. *Id.* at 12-13.
11. Jordania Reed was fired from a job as a nurse's aide for speaking Spanish "in a community that's mostly Hispanic." *See English-Only Rules Have Become a Problem in the Workplace*, Cinc. Post, Apr. 10, 1995, at 8-B. Evette González's former employer, The Salvation Army, forbade her from speaking Spanish at work, even though her language ability contributed to her initially receiving the job. *See Paranoia on Parade*, Seattle Post-Intelligencer, Jan. 19, 1996, at D-1.
On a related note, the House recently discussed a measure that would eliminate bilingual election assistance. *See* Dori Meinert, *House Bill Seeks to Erase Bilingual Election Assistance*, San Diego Union & Trib., July 17, 1996, at A-10. This could diminish or take away the franchise altogether for those Latinos who speak only Spanish.
At a more frightening level, courts have entered the sacrosanct area of the home in the English-only frenzy. In a custody hearing, Texas State District Court Judge Samuel C. Kiser ordered a Mexican native, Marta Laureano, to speak English as well as Spanish to her daughter. Judge Kiser told Laureano that speaking only Spanish at home was equivalent to mistreating her daughter. He stated, "[i]f she starts first grade with the other children and cannot even speak the language that the teachers and the other children speak, and she's a full-blooded American citizen, you're abusing that child and you're relegating her to the position of a housemaid." *Judge Orders Hispanic Woman to Speak Some English to Daughter*, Associated Press, Aug. 28, 1995, *available in* 1995 WL 4403760. While Judge Kiser later apologized for the comment about the housemaid, he stuck with his order to Laureano to speak to her daughter in both languages. *See Judge Regrets 'Housemaid' Remark, He Tells Hispanics*, Orlando Sentinel, Sept. 10, 1995, at A-26.

12. Leonel Sánchez, *Citizens Keep Eyes on Airport; Patrol Group Seeking to Deter Illegal Immigrants*, San Diego Union & Trib., May 15, 1996, at B-1.
13. As someone who fits this profile and flies about 50,000 miles a year, this is not good news.
14. Attorneys for eleven Latino migrant workers circulated a plea to concerned citizens. They explained that the Latino workers "were shopping at a Wal-Mart store in Amory, Mississippi, and were told that they could not shop there because they were 'Mexicans.'" They then returned to Wal-Mart accompanied by Bo Robinson, a public official in the state of Mississippi. "Much to his surprise, they were again refused the right to shop because of their ethnicity." Letter from Filemon B. Vela, Jr., Esq., *Constant & Vela, Attorneys at Law*, as posted on the Internet and then hard copied to the author (July 12, 1996) (on file with author).
15. Oppression occurs, for example, through hate crimes against Mexicans - a common occurrence in San Diego County. *See, e.g.*, Greg Moran, *Youth, 17, Won't Be Tried As an Adult in Attacks on Migrants; D.A. May Appeal*, San Diego Union & Trib., Apr. 24, 1996, at B-3 (Youth was "accused of shooting at migrants with a pellet gun after luring them out of an encampment ... with shouts of 'Work! Work!' in Spanish."); Leonel Sánchez, *Horrors of Attack Haunting Migrants; Some of Defendants Given Probation in Brutal Alpine Attack*, San Diego Union & Trib., Dec. 13, 1995, at B-1 ("Three years ago in Alpine, a group of men brutally beat Mendoza and two other Latino migrant workers with baseball bats and other weapons in an attack that prosecutors say was racially motivated."); *Man Charged in Shooting Spree*, San Diego Union & Trib., Sept. 29, 1994, at B-2 ("A Carmel Valley handyman has been charged with six counts of attempted murder -- each charge carrying an additional allegation of a hate crime -- for a shooting spree in which a migrant worker was critically wounded along Black Mountain Road."); Leonel Sánchez, *Migrant Camp Raid Probed by Officials; Men in Camouflage Storm Site; Knock Man Unconscious*, San Diego Union & Trib., Aug. 10, 1994, at A-1 ("a Mexican migrant worker was kicked in the head and knocked unconscious by . . . attackers, who stormed the camp saying they were immigration officers.")
16. *See* Ian Haney López, White by Law: The Legal Construction of Race (1996).
17. For a general discussion of repatriation, see Francisco E. Balderrama and Raymond Rodríguez, Decade of Betrayal: Mexican Repatriation in the 1930s (1995).
18. *See supra* text accompanying note 11.
19. California Proposition 187: Initiative Statute--Illegal Aliens--Public Services, Verification, and Reporting, 1994 Cal. Legis. Serv. Prop. 187 (West 1994). The passage of Proposition 187 had the effect of amending many different California codes. For a discussion of the impact of Proposition 187, see Lolita K. Buckner-Inniss, *California's Proposition 187--Does it Mean What it Says? Does it Say What it Means? A Textual and Constitutional Analysis*, 10 Geo. Immigr. L.J. 577 (1996). Proposition 187 was propelled, in part, by issues of race and ethnicity.
One need only ponder the divisive campaign waged over 187, with its overtones of hostility against Latinos, Asians and other state residents who look or sound like 'apparent illegal aliens,' to get a sense of how difficult ethnic relations could become in the aftermath of the initiative's approval." Opinion, L.A. Times, Oct. 2, 1994. An unfortunate by-product of the campaign was that many Latinos were assumed, because of their appearance, to be illegal immigrants, and treated as if they were less than human. For a discussion of some other forces which prompted the passage of Proposition 187, *see* Kevin R. Johnson, *Fear of an "Alien Nation": Race, Immigration and Immigrants*, 7 Stan. L. & Pol'y Rev. 111 (1996).
20. *See* CA. Prop. 187, *supra* note 18.
21. Cal. Const. art. 1, ß 31(a) (1996).
22. *See id.*
23. For example, Latinos or other outsiders can use the law for their benefit, similarly to how insiders use the law to promote their interests. One effort LatCrits can make is to ensure the continuation of affirmative action, in the same way insiders use legacies to ensure their representation in higher education. I realize that this is a slippery analogy but, to date, legacies have typically not favored people of color.
24. MALDEF stands for Mexican American Legal Defense and Education Fund. According to its mission statement,
Its principal objective is to secure the civil rights of Latinos living in the United States. It is particularly dedicated to securing such rights in employment, education, political access, immigration, language assistance, and access to justice.
MALDEF's goals are: (1) to foster sound public policies, laws, and programs which safeguard the rights of Latinos; and (2) to expand the opportunities of Latinos to participate fully in American society and to make a positive contribution toward its well-being.

Mission Statement Memorandum from MALDEF (Feb. 25, 1997) (on file with author). For a more detailed discussion of MALDEF's goals and its strategies for attaining those goals, *see* Rachel F. Moran, *Of Democracy, Devaluation and Bilingual Education*, 26 Creighton L. Rev. 255, 291-92, 302 (1993).
25. We do not necessarily need to be primary organizers, but we should be involved in advocacy efforts related to CCRI. Regrettably, just before this article went to print, the 9th Circuit upheld the constitutionality of CCRI against an attack under both the equal protection clause and the supremacy clause. Coalition for Economic Equity v. Wilson, 1997 WL 160667 (9th Cir. (Cal.)).
26. *See* Northwest Regional Educational Laboratory, *Bridging the Achievement Gap in Urban Schools: Reducing Educational Segregation and Advancing Resilience-promoting Strategies*, Northwest Policy(visited Mar. 5, 1997) <http://www.nwrel.org: 80/newsletters/prev/nwpolicy/aug95/index.html. *See also* Chicano School Failure & Success: Research and Policy Agendas for the 1990s 3-26 (Richard R. Valencia ed. 1991) [hereinafter Chicano School Failure & Success].
27. *See* James S. Kunen, *The End of Integration: A Four-Decade Effort is Being Abandoned, As Exhausted Courts and Frustrated Blacks Dust Off the Concept of "Separate but Equal*," Time, Apr. 29, 1996, at 38. "Like most urban systems, the Kansas City, Missouri, School District . . . has lost white students to the suburbs in droves. . . " As a result, nationally, "a third of black public school students attend schools where the enrollment is 90% to 100% minority." At a local level, San Diego's inner-city elementary schools are comprised of 56.26% Latino students and 21.79% African-American students--clearly a significant majority. Telephone interview with Dr. Peter Bell, Director, San Diego City Schools, San Diego, Cal. (Aug. 14, 1996).
28. *See* Marc Ramírez, *This is the School That John Built*, Seattle Times, Sept. 5, 1993, at Pacific Sec. 10. "[I]nner-city schools often are poor compared with their suburban counterparts. Staff frequently are uninspired and without hope, and many environments would frighten most families away." *See also Equal Opportunity Act of 1995: Hearings on H.R. 2128 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 103rd Cong., 76-95 (1995) (statement of Deval L. Patrick, Assistant Attorney General, Civil Rights Division), *available in* 1995 WL 10889551:
[O]ver one-half of all African-Americans live in inner-city neighborhoods where schools are starved for basic resources. And yet, in 1993, a cash-poor district spent a million dollars to expand an all-white elementary school rather than send white students to a predominantly black school that was one-third empty and only 800 yards away from the white school.
29. Clemence Fiagome, *In Miami, Who's Gifted Hinges on Money, Color*, Christian Science Monitor, Oct. 4, 1995, at U.S. 3.
30. The composition of inner-city schools consists primarily of students of color, in part because of the white flight trend described in note 26, *supra*. Also, there are more Latinos who are low-income than non-Latino whites. In 1993, only 9.9% of non-Latino whites lived below the poverty level compared with 30.6% of Latinos. National Association of Hispanic Publications, Hispanics-Latinos: Diverse People in a Multicultural Society 24 (1995) [hereinafter Diverse People].
31. Benjamin Chavis of the NAACP described this educational and resource imbalance as follows:
African-Americans and Latinos are disproportionately isolated in underfunded school systems and sub-standard schools. Wealthier school systems provide their mostly white students with experienced teachers, modern technology, more extensive curriculum, better libraries, better facilities and lower student/teacher ratios.
Does 'Brown' Still Matter?; Brown v. Board of Education of Topeka, Kansas, Nation, May 23, 1994, at 718.
32. Frank Del Olmo, *All It Takes Is a Glimpse of Possibilities; NetDay; Hats Off to the Computer Enthusiasts for Helping Minority Kids Prepare for the 21st Century*, L.A. Times, Mar. 11, 1996, at B-5.
33. *See* Pamela Brogan, *Education Reports Show Gap Continues Between Blacks, Whites*, Gannett News Serv., Aug. 21, 1995, *available in* 1995 WL 2904236:
Last year, white high school seniors heading for college earned an average score of 443 on the verbal portion of the Scholastic Aptitude Test. African-Americans scored 352. Whites also fared better than Mexican-Americans (372), Puerto Ricans (367), other Hispanics (383), Asian-Americans (416), and American Indians (396).
In math, white high school seniors scored 495 on average, . . . ahead of blacks at 388, Mexican-Americans at 427, Puerto Ricans at 411, other Hispanics at 435, and American Indians at 441.
In other standardized tests, minorities and students from low-income families also perform below the average levels of white students and students from middle- and upper-income families. "Austin is an extreme example of a problem facing schools throughout Texas: Minority students do much worse than

whites on the TAAS, which measures reading, math and writing skills. And low-income students do much worse than their more affluent classmates." A. Phillips Brooks, Jeff South and Linda Latham Welch, *The Widening Gap; While Overall Passing Scores on the State's Basic Skills Test are Rising, the Disparity Between Minority and White Students in the Austin School District Continues to Increase*, Austin Am.-Statesman, Aug. 27, 1995, at D-1.
34. For a general discussion of what standardized tests do measure, see Leslie G. Espinoza, *The LSAT: Narratives and Bias*, 1 Am. U. J. Gender & L. 121 (1993).
35. Ana María Loya, MALDEF, Address at the Western Law Teachers of Color Conference, Santa Crúz, Cal. (March 22-24, 1996). To explain the irony of this quote, in *Regents of University of California v. Bakke*, a medical school applicant who was denied admission, brought suit against the Regents of the University of California ("UC"), claiming that UC's special admissions policy discriminated against him on the basis of his race. 438 U.S. 265, 277-78 (1978). The Supreme Court held, with some reluctance, that race could be considered a positive factor in medical school admissions. *Id.* at 320. This produced a guarded victory for affirmative action. In a more recent federal affirmative action case, white law school applicants who were denied admission to the University of Texas School of Law brought suit against the law school, claiming that they had been discriminated against on the basis of their race. Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S.Ct. 2581 (1996). In a victory for the plaintiffs, the *Hopwood* court stated that "the law school may not use race as a factor in law school admissions." Hopwood, 78 F.3d at 935. Hence, the reference to *Bakke* as left politics.
36. *See id. See also* Chicano School Failure & Success, *supra* note 25.
37. "The marketplace has tended to reward highly educated workers while punishing less-skilled workers." Bob Edwards, *Morning Edition*: *The Growing Inequality of Incomes in America* (National Public Radio broadcast, part 3, segment 13, show 1813, Feb. 28, 1996).
38. Raul Yzaguirre, State of Hispanic America 1991: An Overview, National Council of La Raza 9 (Feb. 1992) [hereinafter State of Hispanic America]. I do not like to use the term Hispanics and am only using it in the text here because that is the term used in the statistics. Aside from the implications of "his panic" which Professor Gerald Torres alluded to at the conference underlying this symposium, as a LatCrit feminist, the term Hispanic is less than ideal to me because it perpetuates male domination and does not allow for references to Latinas to be female specific.
39. *See id*.
40. *See, e.g.*, Adarand Constructors, Inc. v. Peña, 115 S. Ct. 2097 (1995) (holding that all governmental racial classifications, including those within affirmative action programs, are subject to the strictest judicial scrutiny).
41. *See* Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S.Ct. 2581 (1996), *supra* note 34, (holding that state university law school's admissions program violated equal protection clause by giving substantial racial preferences to minority applicants).
42. *See* Cal. Const. art. 1, ß 31(a), *supra* note 20.
43. Latinos sixteen years and older are more likely to be engaged in low-paying, less stable and more hazardous occupations (such as fabricators, laborers and in service occupations) than their non-Latino peers, who are more likely to be in professional or managerial occupations. *See* Diverse People, *supra* note 29, at 17. While the unemployment rate has vacillated for Latinos as it has for the rest of the population, it has consistently been higher for Latinos than for other ethnic and racial groups. For example, in 1994, the unemployment rate for Latinos was 11.1%, as compared to 5.7% for non-Latino whites. *See id.* at 20.
44. This is not to say either that there is an essential Latino or that LatCrits are superior in any way. I make this point only to demonstrate that not many Latinos are law professors, and certainly not many law professors are Latino. For instance, statistics from Fall 1995 for the 179 ABA-approved law schools in the United States show that approximately ten percent of full-time law faculty were non-white, and of that ten percent, approximately twenty-seven percent were Latino; hence, only 2.7% of all full-time law faculty in Fall 1995 were Latino. VI Consultant's Digest 4 (Dec. 1996). Even fewer law faculty are Latina--there were only 81 full-time Latina law professors in Fall 1995, less than 1% of all full-time law faculty. *Id.* at 5.
45. I recently spoke at an elementary school, together with California Western La Raza students, Lisa Maldonado and Guillermo Uriarte. Among the approximately thirty thank you cards we received was the following note: "Dear Professor Padilla, Thank you for coming to our school.... I'm glad you came. I want to be a doctor when I grow up. I learned to stay in school. Don't worry. I'm going to college and I'm not being a drop out. Sincerely, (name deleted for privacy reasons)." Letter from student (Jan. 10, 1997) (on file with author).

46. Ed López recently won a seat on the board of the San Diego Unified School District. *See Election 1996 Winners*, San Diego Union & Trib., Nov. 6, 1996, at B1. Mr. López is the first Latino ever to be elected to the school board, and this is in a city with a large Latino population.
47. *See* Kevin R. Johnson, *Free Trade and Closed Borders: The North American Free Trade Agreement and Mexican Immigration to the United States*, 27 U.C. Davis L. Rev. 937, 949-50 (1994). In this article, Professor Johnson described an incident at a conference on NAFTA's Effect on Human Rights, where an audience member challenged a fifth generation Chicano presenter to "go back to Mexico." *Id.* For a discussion of who is really an immigrant, see Rodolfo Acuña, Occupied America: A History of Chicanos (3d ed. 1988).
48. State of Hispanic America, *supra* note 38, at Executive Summary 2. For a discussion of some of the reasons that courts and agencies are more lax in enforcing national origin discrimination claims, see Juan F. Perea, *Ethnicity and Prejudice: Reevaluating "National Origin" Discrimination Under Title VII*, 35 Wm. & Mary L. Rev. 805, 822-30, 846-50 (1994).
49. State of Hispanic America, *supra* note 38, at Executive Summary 1.
50. *See* Ozzie Roberts, *Pair Cares; That's What Links Them*, San Diego Union & Trib., Feb. 24, 1997, at E-1. "Under the maquiladora system, large transnational corporations, many from the United States, have set up satellite companies on the other side of the 2,000-mile U.S.-Mexico border, from San Diego to Texas."
51. One writer described the allure of maquiladoras for businesses, and the downside for low-level employees as follows: "In Mexico, the economy is depressed, labor is cheap and business regulation is lax. Unscrupulous [maquiladoras] ... use the situation to exploit workers, disregarding labor and human rights laws that hold them accountable in this nation." *Id.*
52. For example, in a prominent Criminal Law case book, there are thirty-five cases with defendants who have Latino surnames. *See* Ronald N. Boyce & Rollin M. Perkins, Criminal Law & Procedure (7th ed. 1991). By contrast, in a Contracts case book, there are eight cases with Latino surnames. *See* E. Allan Farnsworth & William F. Young, Contracts (5th Ed. 1995).
53. *See supra* notes 11, 13, 18-21 and accompanying text. *See also* Kevin R. Johnson, *supra* note 47, at 943-50.
54. The KNFP is a three year leadership development program. Forty to fifty people from all professions throughout the United States are selected annually as fellows. Because fellows are chosen from many different fields, the fellowship offers tremendous vitality, a true inter-disciplinary sense of problem-solving, and a cross-fertilization of ideas. When applying to the program, applicants typically identify a social problem and how they might utilize a Kellogg fellowship to address that problem. There is a wrinkle insofar as the identified problem cannot be in an applicant's primary area of expertise. The reasoning is that the fellowship is designed to broaden one's perspective about social issues and problems and to assist fellows in developing greater interdisciplinary skills. To apply for the KNFP (which is changing its name to the Kellogg National Leadership Program), request an application in writing from: Kellogg National Leadership Program, W.K. Kellogg Foundation, P.O. Box 5196, Battle Creek, MI 49016-5196.
55. Thus, if you want to put together a project which provides legal assistance to AIDS patients in low-income, primarily ethnic areas, the project could fit the profile. Likewise, a project which explores the benefits of bilingual education, followed by implementation of a program utilizing bilingual education for under-served populations, may also fit the profile. If you are interested in this type of general grant, you do not need to complete an application form. Simply write a short letter describing the basic problem you are concerned with and a plan for its solution. The letter should be addressed to: Manager of Grant Proposals, W.K. Kellogg Foundation, One Michigan Avenue East, Battle Creek, MI 49017-4058.
56. *See, e.g.*, The International Foundation Directory (6th ed. 1994). In addition to the foundations cited in this directory, major businesses and employers in many cities have local foundations which try to fund local projects.
57. Dean Paul Brest and Miranda Oshige have discussed the myriad benefits which can accrue to communities of color through the progress and promotion of a single person of color. *See* Paul Brest and Miranda Oshige, *Affirmative Action for Whom?*, 47 Stan. L. Rev. 855, 868 (1995).

18. Sumi K. Cho,[2] *Essential Politics*,[1] 2 HARV. LATINO L.REV. 433 (1997)

At this launching of LatCrit, I would like to open up discussion regarding the cynicism, or loss of faith, that may have crept into some corners of the existing critical race project. Possibly for reasons of personal anomie, careerism, or intellectual disengagement, I fear that we have stopped thinking at a primary level about the political impact that critical race theory as a movement should be having. Instead of an unflinching commitment to intellectual activism, theoretically informed political resistance, and guiding ideals and principles of social justice, I sense instead a demobilizing fear of "essentialism"[3] and a fetishization of the array of post-isms that lay before us like a theoretical smorgasbord at a feast prepared by elite intellectuals whose political commitments lie who-knows-where. It is my hope that LatCrit will avoid the temptations of this *faux* feast.

To be sure, anti-essentialist thought and practice may too serve the ends of social justice, as I will describe below. However, the types of anti-practice which may also be underwritten by the fear of essentialism need to be exposed and challenged. If our postmodern sensibility leads us to a dead end of de-collectivized particularism, with a complete loss of vision for coalitional solidarity and audacious racial politics, then the usefulness of that kind of postmodernism needs to be rethought.

In essence, I suggest that we subject our work, as critical race theorists, to a kind of political impact determination. Of course, I mean this in a figurative sense, but I am quite serious about the need for caution and accountability in what we are putting out under the critical race rubric. We should be wary of theoretical "interventions" which rob us as a movement of vision, of potential, and of our commitment to grounded resistance and transformative projects. With this in mind, I would like to share two quite palpable fantasies I have been having of late.

One vision I have is of a very broad-based massive cultural resistance organized by critical legal scholars of color, directed at the courts and at the illegitimate exercise of racial supremacy by the judiciary.[4] I have a vision of a very strong, vocal and articulate critical movement that forwards a theory and a practice that challenges the judiciary's departure from good faith reasoning[5] and its cynical instrumentalization of racial egalitarianism[6] that serves to maintain sheer white supremacy.[7]

Because of this departure, I believe that we are morally justified and compelled to address this ideologically driven set of developments in the Supreme Court and the federal courts. It is necessary for us as legal scholars to challenge the cultural hegemony[8] of which the legitimacy of the judiciary is a part, not simply in our own communities but in larger society as well. I do not think that we have done that, or to the extent that we have done that, it is only through the more traditional litigation strategies that Gerald López discussed yesterday. Actually, we have been very ineffective at

foregrounding the political nature of that struggle. I found it very interesting when Gerald mentioned that the legal organizations were taking the lead in the political organizing against the California Civil Rights Initiative and were grossly deficient in doing so. Lawyers are often not used to community organizing and are hesitant to bite the institutional hand that may feed them from the bench or the state capitol. Nevertheless, I do think that there is a possibility for us as progressive law professors of color to be able to work on such a project. We have to remember that there is precedent for this type of activation -- when the *Bakke* case came before the Supreme Court, so did 10,000 supporters of affirmative action including sizable numbers of students, intellectuals and scholars.[(9)]

What would such an effort look like if it were to happen today? I envision such a gathering as encompassing and operating at the very level of tension that has been discussed in the talks presented at this LatCrit conference. That means that people of color would be at the forefront of this movement; there would be openly gay and lesbian marchers, perhaps wearing t-shirts, like the "Politically Erect" one that Professor Frank Valdes wore at the conference. Women would be well-represented. We would hear speakers whose first language was not English. We would hear not just the cadence of an expensive, Ivy League education but also the rhythm and style of people from working-class neighborhoods and families as well. That is what my fantasy entails in terms of what such an event would look and sound like, and of what it would represent.

The power that this type of mobilization has had historically in terms of community organizing is striking. For example, the PBS series on the Chicano Civil Rights Movement features an episode depicting Cesar Chávez being brought to trial in the middle of his hunger strike.[(10)] There was a strong community mobilization that greeted Chávez at the steps of the courthouse to support him and to send a message to those conducting business inside that courtroom. This morally informed act of community resistance and support did impact the judge who was hearing the case, as he would later acknowledge.[(11)] Aside from having a substantive impact on the law or on that judge, what the mobilization did for community formation is even more important -- that is, it marked the political activation of a subordinated group in culturally confronting the legal exercise of supremacy.[(12)] From then on, that courthouse was farmworker territory like it had never been before.

My second fantasy must be prefaced by the following question: If anti-subordination doctrine is so central to critical race theory, then why is it that, and what does it mean if, it has no application in our own house? Specifically, if we allow violence against Latinas to occur in the legal academy without resistance or even comment, then why do we even bother to talk the talk of anti-subordination?[(13)] We are outraged legitimately when we see violence occurring against nameless Latinos, such as the Latina and the Latino in the highly publicized beating in Riverside County.[(14)] But there has not been similar outrage and community resistance when it happens to people whose faces and names we do know, fellow academics who have attended this very conference. My second fantasy would thus involve a radical restructuring of power relationships in the legal academy that would render such violence unthinkable in our presence. We, as scholars of color, would respond to the big and "little murders" which occur daily at law schools across the country. We would also take seriously the challenge of changing the predominant culture at these institutions to diminish the possibility of such violence, or *at the very least*, to facilitate articulation of the injuries that we and our colleagues must endure as a condition of our participation in "white" legal academe.

What is it about legal academia and even critical race theory that prevents us from even coming forward with injustice claims? What is it about the contemporary social structure of accumulation[(15)] that essentially prevents this type of discussion from happening?

I suppose we can search for an answer in the topics discussed at this LatCrit conference. As Professor Elvia Arriola has suggested, we "house the oppressor" in ourselves, thinking that "there but for the grace of God go I" -- so much so that we are scared to death that deep down maybe we do not deserve to be here. That leads us to suspect that maybe others of us do not deserve to be here.[(16)] If we speak out on behalf of the allegedly undeserving, then those in power may soon discover that we ourselves do not deserve our place in legal academia.[(17)]

That is actually in some ways a sympathetic and a generous assessment of what might be going on. Internalized oppression does not necessarily implicate us, as a class of intellectuals. There are other explanations for the silence of scholars of color rooted in the theoretical and scholarly projects that we select that explains why our projects lead to this type of non-discussion. As Angela Harris explained in her recent work, *The Jurisprudence of Reconstruction*,[(18)] both the post-modernist tendency to acknowledge the *diversity* within our group and the *indeterminacy* of the social constructedness of the group conflict with the reconstructivist role of the anti-subordination project and the particular need for *solidarity* and a sense of *unity* in order to confront oppression.[(19)]

Post-modern insights are important and actually necessary in order to embrace the full diversity of our community.[(20)] But if we step back and look at ourselves from a more sociological viewpoint, we also have to acknowledge that the theoretical production of anti-practice that Harris writes about is completely in keeping with the system of subordination in a post-civil rights era.[(21)] Civil rights movements called attention to segregation, and law schools responded by desegregating. However, they have also absorbed this challenge by rewarding the detached careerism that has traditionally defined the role of the professional intelligentsia.

Of course, our consent to our own oppression is paradoxical because we are decidedly and expressly anti-subordinationists in our theoretical writings. Yet we consent to our own oppression through the diminution of anti-subordination practice. The way in which we now routinely problematize collective resistance as essentialistic, colonizing, or oppressive, is profoundly disturbing.

We must be vigilant as to the role of academic institutions and careerism in maintaining power relations, effected through political, economic, and social conditioning.[(22)] How? In many ways through the race for theory, as Barbara Christian put it,[(23)] a critique which should not be construed as unworthy anti-intellectualism, but rather as a laying bare of deracinated intellectualism.[(24)] The pursuit of disengaged theory, the desire to play with the big boys and in some cases the big girls, suppresses public discourse about racial and other forms of oppression. As leading philosopher and African American Studies professor Cornel West said, both bourgeois modernism and Foucauldian postmodernism keeps intellectuals safely away from political change.[(25)]

I will have to save for another day my more specific critique of the ways in which the capitulation to subordination is occurring now in critical race theory through vehicles such as post modernism, post-structuralism, and post-colonialism. I will devote the remainder of this essay to explaining two basic objections I have to the latest post-ism to find its way into political race theory - post identitism. I will also offer a qualified and partial embrace of one aspect of post identity thought.

First, the notion of "post-identity politics" as either a descriptor or normative ethic that implicitly restates the essentialist critique ignores the historicity of the term "identity politics." As LatCrits and critical race scholars, we must acknowledge the context of the identity politics critique before participating in it. The term has been popularized by some members of the white Left and seized upon by the white right. Such white Left criticism of politically engaged racial actors, perhaps epitomized by Todd Gitlin's bitter nostalgia,[(26)] essentially lays the blame at the feet of "identity politics" for destroying his progressive movement defined by the great, straight, white male Sixties.[(27)] Compare, for example, Gitlin's description of the 1960s universalistic movements (of which he was a part) with his description of 1980s identity politics:

> More grandly, in a revival of Enlightenment universalism, Students for a Democratic Society's Port Huron Statement spoke self-consciously in the name of all humanity. The universal solvent for particular differences would be the principle of . . . participatory democracy. . ..[(28)]
>
> The proliferation of identity politics leads to a turning inward, a grim and hermetic bravado which takes the ideological form of paranoid, jargon-clotted, post-modernist groupthink, cult celebrations of victimization and stylized marginality.[(29)]

Gitlin and his followers bemoan that "the Left is dead . . . where did all the good ol' days go?" This refrain refuses to take any responsibility for the exclusion of people of color, women, gays and lesbians among others,[(30)] from the substantive analysis and political leadership of much of the Great White Sixties, and thus well illustrates why that Sixties' notion of the primacy of white, middle-class, heterosexual male political actualization is indeed dead.[(31)]

In law, this refusal to acknowledge past mistakes and the willingness instead to attack new, more inclusive movements as "not radical" enough, is perhaps best illustrated by the bizarre and now comical tantrum that was thrown by an established white, male critical legal studies scholar known for his "seminal" scholarship critiquing civil rights.[(32)]

At the 1995 Critical Networks conference on "Class and Identity Politics," after having sat through the admittedly provocative as well as inaccurate attack on critical race theory and "identity politics" by the critic in question, Kim Crenshaw (a prominent race crit) responded in kind with her own provocative interpretation of political interests behind the critique: that perhaps the trashing of identity politics by the white Left is derived from a sense of displacement and anxiety of where white Left men belong in contemporary movements.[(33)] Her response was not only fair in light of the bitter provocations and "take no prisoners" stance the CLS speaker had adopted toward "identity politics" in his talk, but was also demanded by the intellectual moment that presented itself at a conference devoted to these issues.[(34)]

The gauntlet had clearly been thrown down.

And when Crenshaw picked it up, this major critical legal scholar attempted to subvert her response by storming out of the room in protest and slamming the heavy lecture hall door. Unfortunately for him, the door was equipped with a hydraulic arm, so he exited with an anti-climactic whimper rather than a bang. In light of such behavior by a leader among the white male Left, I find it oddly ironic that people of color, women, and gays and lesbians are often accused of excesses in their pursuit of "identity politics."

These criticisms of "identity politics" by some members of the white male Left were seized upon by the white male right in a backlash mode after the "political correctness" salvos were fired at the diversity movements and race-based political contestations of the late 1980s and early 1990s,[(35)] which had demanded minority faculty hiring, multicultural graduation requirements, gay and lesbian studies, and ethnic studies.[(36)] Thus, the two pejorative terms -- "identity politics" and "political correctness" -- have been embraced by some on the Left and on the Right,[(37)] but certainly not in the name of a more inclusive politics and theory.

The political correctness campaign, buoyed by the mainstream media,[(38)] released pent up racial frustrations shared by some on the Left and Right that the empire would ever dare strike back and succeed![(39)] It is obvious to many of us who had to confront insecure, and therefore reactionary members of the white male Left (who are often more formidable in their opposition than conservatives) at the sight of these struggles that this critique was the upshot of their inability and unwillingness to accept people of color -- and the full diversity of people of color -- in leadership positions, or to accept the fact that organizing issues and methods had irretrievably changed.[(40)]

A second problem with post-politics theorizing is that, ironically, it essentializes all past and present identity politics at the lowest common denominator. This results in an unfair caricaturing of identity politics and plays into the worst reactionary conceptions of what race politics are. Those who have been involved in racial political struggle know that there is actually a wide spectrum of "identity politics." Racial politics, for example, ranges from crude nationalism, with it reassertion of patriarchal and heterosexual domination as a coercive nation-building strategy within a free market economy,[(41)] to a radical progressive racial politics embodying what Eric Yamamoto refers to as a substantive commitment to interracial justice.[(42)] Such a commitment to interracial justice encompasses a procedural commitment to deep democratic inclusion, combined with a spiritual striving, as Angela Harris suggests, to eliminate moral and ethical performative contradictions in the pursuit of political liberation.[(43)] To broadly capture all race politics under the decidedly pejorative label of identity politics serves to create a base, essentialized understanding of community politics which may reveal as much about the personal positionality of the theorist as the object of criticism. In that sense, I think we have to be very careful how we assess this odd conceptual pairing -- identity politics -- again being careful to submit our musing to the political impact determination described above.

One version of the identity politics critique does raise an important question in terms of our romanticizing of race politics. One might ask, why has the anti-essentialist movement so resonated within critical race theory, especially among some junior race crits? I think there may be a generational divide that in part has to do with the moment at which each of us became intellectualized and politicized. That divide for senior/junior race crits breaks down in terms of the changing face of education. Senior race crits became educated and politicized in the exuberance of the Sixties (or recent wake of the Sixties) and the attendant race theorizing from internal colonial theory to bourgeois racial nationalism. In contrast, junior race crits came into the academy during an era of Reaganism, post-structuralism, deconstruction, and post modernism -- during a politically pessimistic, post-Watergate era.[(44)]

Due in part to that generational divide, a troubling problem of pervasive heterosexism has arisen, perhaps more troubling to junior race crits, than to senior race crits.[(45)] The continuous rearing of the ugly head of homophobia in gatherings of alleged race crits is

something of which many junior race crits want no part.[(46)] The junior race crits may come to identify this straight supremacy (correctly or incorrectly) with identity politics. I believe the anti-essentialist theorizing from this particular context of resisting straight supremacy is coming from a very good place, even though I differ with the apolitical end results and conclusions produced through such an approach generally.

The force of the unstated but widespread anti-gay norm among many senior race crits as well as some junior race crits may derive at least in part from an ideological ranking of oppression. As well, there may be a relative acceptance of a gender critique, for example, because of the interest convergences[(47)] that straight men of color have with feminist projects. In other words, there is a material and cultural dimension to their learning of anti-sexist behavior -- a material and cultural dimension that does not exist in the context of a critique of heterosexism. This interest convergence failure works to drive junior race crits away from identity politics. It is in this moment, as Angela Harris correctly observes, that we have to give up our romantic notions of racial community.[(48)] While Angela Harris' analysis applies in this case, I feel compelled to ask whether critical legal academia's (including Lat Crits') overall understanding of racial politics and racial community must be pegged to the lowest common denominator, in this case that defined by heterocentric nationalism?

I think that leaves us facing the following question: where do we go today in order to have a much fuller notion of what race politics means, or for that matter, lesbigay politics, feminist politics, or -- in terms of the space that we are creating here -- LatCrit politics? What does that mean substantively, strategically, and procedurally? To begin with, we must consciously and deliberately bring to the fore and prioritize a new leadership from among those of us who are multiply marginalized[(49)] -- even within our own communities -- in order to help us arrive at the answer.

Footnotes

1. I feel very privileged to be here and I am thankful not only to Frank Valdes, Gloria Sandrino, and Laura Padilla, who organized the conference, but also to the larger Latina/o community, to which I owe a great debt in terms of my own scholarly and political development. In movement politics, I am fortunate to have learned so much from my fellow travelers in the anti-apartheid struggle and various diversity movements from the UC Berkeley campus, especially from the mujeres, including Cecilia Zapata, Magdalena Avila, Patricia Vattuone, Estella Mejia, Ana Martinez, Evangeline Ordaz, Ana Loya, and Renée Saucedo to name only a few. Since the conference, it has been my pleasure to work with and learn from Margaret Montoya, Lisa Iglesias, Frank Valdes, and Elvia Arriola through the Society of American Law Teachers Action Campaign.

2. © 1997 Sumi Cho. Assistant Professor, DePaul University College of Law J.D., 1990, and Ph.D., 1992, University of California at Berkeley. I would like to thank the DePaul law library staff for their responsive resourcefulness, Eric Yamamoto and Gerald López for their encouragement on this project, my colleagues Gil Gott and Jane Rutherford for their comments, and my article editor, Nathaniel Mendell, for his proficiency.

3. Essentialism adopts the view that all members of a group are alike and share a common "essence". *See* Feminist Legal Theory: Foundations 335 (D. Kelly Weisberg ed., 1993) (articulating the central assumptions of gender essentialism as, first, that "the meaning of gender identity and the experience of sexism are similar for all women," and second, that "any differences between women are less significant than the traits women share in common." *Id*. *See also* Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581, 588 (1990) (describing gender essentialism as "the notion that there is a monolithic 'women's experience' that can be described independent of other facets of experience like race, class, and sexual orientation" and an analogous racial essentialism as "the belief that there is a monolithic 'Black experience' or 'Chicano experience.'").

4. The Supreme Court's recent affirmative action jurisprudence increases the level of judicial scrutiny of affirmative action programs, even those mandated by the federal government, thereby making such race-conscious remedies even more difficult to sustain. Adarand Constructors, Inc. v. Peña, 115 S. Ct. 2097 (1995). Accordingly, such decisions perpetuate and maintain existing power imbalances in society, which are reflected in the fact that although white men make up 48% of the college educated workforce, they hold more than 90% of the top jobs in news media, 90% of the officer positions in U.S. corporations, 85% of tenured college professorships and 80% of executive positions in advertising, marketing and public relations. *Affirmative Action Still Needed to Keep the Workplace Fair*, 7:12 Minority Markets Alert, Dec. 1, 1995. The effects of this judicial reterenchment are being felt at Texas universities and in California where a panel of the 9th Circuit has lifted a district court's injunction against Proposition 209. *Fewer minorities going to UT Law School*, UPI, May 21, 1997, *available in* LEXIS, Nexis Library, UPI File (reporting the precipitous drop in law school enrollments for African Americans and Latinos/as); *As NAACP Meets, Rights Leaders Focus on Minority Enrollments*, Sacramento Bee, July 13, 1997, at A6 (noting how minority enrollments and University of Texas and University of California at Berkeley law schools have "virtually disappeared" since the *Hopwood* decision and the passage of Proposition 209.) For the lifting of the preliminary injunction against Proposition 209, see Coalition for Economic Equality v. Wilson, 122 F.3d 692 (9th Cir. 1997). *See also* 122 F.3d 718 (9th Cir. 1997) (denying motions for stay of mandate).

5. Read, for example, the Supreme Court's recent affirmative action decision in *Adarand Constructors v. Peña*, in which the majority refuses to acknowledge its equation of racial classifications that are meant to subordinate a group (such as Jim Crow laws under segregation) with racial classifications meant to uplift a group from subordination (such as affirmative action programs):

According to Justice Stevens, our view of consistency 'equate[s] remedial preferences with invidious discrimination,' and ignores the difference between 'an engine of oppression' and an effort 'to foster equality in society,' or more colorfully, 'between a 'No Trespassing' sign and a welcome mat.' It does nothing of the kind. The principle of consistency simply means that whenever the government treats any person unequally because of his or her race, that person has suffered an injury that falls squarely within the language and spirit of the Constitution's guarantee of equal protection.

Adarand Constructors, Inc. v. Peña, 115 S. Ct. 2097, 2114 (1995).

6. In *Adarand*, the history of Japanese American internment is used by the Court to justify strict scrutiny for even benign racial classifications, in order to prevent a repeat of such an event. 115 S. Ct. at 2106. *See* Gabriel Chin, et al., *Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice*, Asian Pac. Am. L.J. (forthcoming 1997) (in footnote 53, the authors observe that "the Court made prominent use of the Japanese American internment in explaining why strict scrutiny was necessary to review even benign race-conscious remedies. It is only a slight oversimplification to describe the Court's argument as, 'Because we interned the Japanese Americans, we must get rid of affirmative action.'"). *See also* Reggie Oh & Frank Wu, *The Evolution of Race in the Law: The Supreme Court Moves From Approving Internment of Japanese Americans to Disapproving Affirmative Action for African Americans*, 1 Mich. J. Race & L. 165 (1996). There are at least two logical problems with this argument: first, the Court would be hard-pressed to explain how the internment order constituted a benign classification, thereby raising the problem of weak analogy between the internment order and affirmative action programs; second, even if today's strict scrutiny standards had been applied in the *Korematsu* case, military necessity would likely have constituted a "compelling governmental interest" that would pass constitutional muster. Korematsu v. United States, 323 U.S. 214 (1944). Clearly, the mistake in the *Korematsu* decision was not which level of scrutiny to apply, but the unwillingness of the Court to look past the overt racism behind the military's decision to intern 120,000 Japanese Americans, which was in evidence as pointed out in Justice Jackson's dissenting opinion. *See* Eric Yamamoto, *Korematsu Revisited: Correcting the Injustice of Extraordinary Government Excess and Lax Judicial Review -- Time for a Better Accommodation of National Security Concerns and Civil Liberties*, 26 Santa Clara L. Rev. 1 (1986).

7. I define "white supremacy" as a set of reinforcing and synergistic beliefs and institutional practices and policies consistent with superiority based on white racial identity, or inferiorization of non-white racial identity, and reflected in societal group power relations. *See* Sumi Cho, *Multiple Consciousness and the Diversity Dilemma*, 68 U. Colo. L. Rev. 1035, 1036 n.5 (1997). *Cf.* George N. Fredrickson, White Supremacy: A Comparative Study in American and South African History xi (1981) (defining white supremacy as "the attitudes, ideologies, and policies associated with the rise of blatant forms of white or European dominance over 'nonwhite' populations" -- a domination achieved by making race or color a qualification for equal participation in civil society); Frank Lee Ansely, *Stirring the Ashes: Race, Class and the Future of Civil Rights Scholarship*, 74 Cornell L. Rev. 993, 1024 (1989) (referring to white supremacy

as a "political, economic and cultural system in which whites overwhelmingly control power and material resources, conscious and unconscious ideas of white superiority and entitlement are widespread, and relations of white dominance and non-white subordination are daily reenacted across a broad array of institutions and social settings"). For further discussion of white supremacy, see Evelyn Hu De-Hart, *Affirmative Action -- Some Concluding Thoughts*, 68 U. Colo. L. Rev. 1209 (1997), Margaret Montoya, *Of "Subtle Prejudices," White Supremacy, and Affirmative Action: A Reply to Paul Butler*, 68 U. Colo. L. Rev. 891 (1997), and Paul Butler, *Affirmative Action and the Criminal Law*, 68 U. Colo. L. Rev. 841 (1997).

8. Anthony Cook succinctly states Antonio Gramsci's conceptualization of "hegemony" as "[t]he 'spontaneous' consent given by the great masses of the population to the general direction imposed on social life by the dominant fundamental group." Anthony Cook, *Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr., in* Critical Race Theory: Key Writings that Formed a Movement 90 (Kimberlé Crenshaw et al. eds., 1995) [hereinafter Critical Race Theory].

9. *See* Lawrence Feinberg, *Demonstration on Bakke Suit*, Wash. Post, April 15, 1978 at C1. Estimates of crowd size varied; the U.S. Capitol Police counted 10,000, the U.S. Park Police counted 15,000, and march organizers set the number at 50,000. *See also* Joel Dreyfuss & Charles Lawrence, The Bakke Case: The Politics of Inequality 204 (1979).

10. *Chicano! History of the Mexican-American Civil Rights Movement, Part II: "The Struggle in the Fields,"* (PBS television broadcast, Apr. 12, 1996).

11. *Id.*

12. This understanding of the relationship between law and subordinated communities is far different from the civil rights litigation model. In the civil rights model, a community is mobilized in order to reform existing laws, with success measured as the substantive change in law. Other legal scholars engaged in poverty law, critical race theory, and environmental justice see law and lawyers as resources through which communities may become politically empowered, with success measured by the level of "community formation" and development of political consciousness for long-term struggle against subordination. *See generally* Gerald López, Rebellious Lawyering: One Chicano's Lawyer Vision of Progressive Law Practice (1992) (forwarding group education and self-determination as central to rebellious poverty lawyering: "The evolution increasingly apparent in today's rebellious idea of practice finds lawyers working with groups mobilizing for social change through self-help and lay lawyering methods. . . What links these lawyers to subordinated people and other allies is a double commitment. They all regard every form of group work as important to mobilization, and they consider educational aims as central to every form of mobilization."). *Id.* at 76-77. *See also* Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation, in* Critical Race Theory *supra* note 6, at 5, 17 ("It is essential that lawyers "lawyer" and not attempt to lead clients and class. . . Litigation can and should serve lawyer and client as a community-organizing tool, an educational forum, a means of obtaining data, a method of exercising political leverage, and a rallying point for public support."); Luke Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 Ecology L.Q. 619 (1992) (arguing that community empowerment is the ultimate goal of environmental justice lawyering: "Solutions to poor peoples' environmental problems should be found by the victims of those problems, not by environmental lawyers. This stance is in opposition to traditional environmental lawyering, which has relied on an implicitly paternalistic model of the lawyer as the expert, imposing her ideas on the rest of us."). Cole nevertheless does envision a role for progressive lawyers to play: "By practicing law in a way that empowers people, that encourages the formation and strengthening of client groups, and that sees legal tactics in the context of broader strategies, attorneys can be part of the movement for environmental justice." *Id.* at 654.

13. *See* Elvia Arriola, *Welcoming the Outsider to an Outsider Conference: Law and Multiplicities of Self*, 2 Harv. Latino L. Rev. 397 (1997). Hopefully, the standing ovation that Elvia Arriola received for her talk is evidence of an emerging movement that will "walk the walk" of anti-subordination.

14. On Monday, April 1, 1996, Riverside County sheriff's deputies violently beat two suspected "illegal immigrants" in South El Monte who appeared to offer no resistance to the deputies. The beating, caught on videotape by a local LA television crew and aired internationally, culminated the deputies' 80-mile, high-speed pursuit of a pick-up truck. Los Angeles Times reporters Eric Nalnic and Edward Boyer described the events:

The videotape shows 18 of the passengers and the driver bolting from the truck and dashing for cover in a nearby nursery as the patrol cars roll up . . .

Two of the people in the truck had remained with the vehicle -- a female passenger in the front seat who apparently was unable to open the door, and a man who clambered out of the back of the truck to help her get free.
It was then, the videotape shows, that the beatings began.
One deputy started clubbing the man about the back and shoulders with a baton. The beating continued as the man fell, face down to the ground.
When the woman got out of the cab, the deputy hit her twice in the back with his baton and then pulled her to the ground by her hair. One other deputy struck her once with a baton.
Neither the woman nor the man appeared to offer resistance or make any attempt to get away.
Eric Malnic & Edward J. Boyer, *Deputies' Clubbing of Two Suspects Taped*, L.A. Times, Apr. 2, 1996, at A1.
The next morning, Latinos decried the "institutional violence against the Latino community" outside the Federal Building in downtown Los Angeles. Abigail Goldman et al., *Beatings Spur U.S. Investigation and a National Debate*, L.A. Times, Apr. 3, 1996, at A1.
The two beating victims most prominently featured in the videotape were eventually identified as Enrique Funes Flores and Alicia Sotero Vasquez, although previous conflicting newspaper reports identified the woman alternatively as Leticia Gonzalez. *See* Jim Newton & Eric Slater, *Deputies in Beating May Have Violated Policies*, L.A. Times, Apr. 6, 1996, at A1 (identifying victims as Enrique Funes Flores and Alicia Sotero Vasquez); Goldman et al., *supra* (identifying the victims as Enrique Funes and Leticia Gonzalez).
15. Radical economists refer to the set of mutually reinforcing social and economic institutions as "the social structure of accumulation," or "SSA". *See* John Miller & Chris Tilly, *The U.S. Economy: Post-Prosperity Capitalism?*, 23 Crossroads 1, 2 (July/Aug. 1992) ("Successful accumulation requires a set of mutually reinforcing institutions -- rules of the economic game, implicit and explicit agreements, and the organizations that carry them out, including government agencies, business groupings, and popular organizations."). *Id. See also* David M. Gordon et al., *Power, Accumulation, and Crisis: The Rise and Demise of the Postwar Social Structure of Accumulation*, *in* Radical Political Economy: Explorations in Alternative Economic Analysis 226 (Victor D. Lippit ed., 1996).
16. Paolo Freire discusses another psychological dimension to denial mechanisms by recounting a story:
A group in a New York ghetto was presented a coded situation showing a big pile of garbage on a street corner -- the very same street where the group was meeting. One of the participants said at once, "I see a street in Africa or Latin America." "And why not in New York?" asked the teacher. "Because we are the United States and that can't happen here." Beyond a doubt this man and some of his comrades who agreed with him were retreating from a reality so offensive to them that even to acknowledge that reality was threatening. For an alienated person, conditioned by a culture of achievement and personal success, to recognize his own situation as objectively unfavorable seems to hinder his own possibilities of success.
Paolo Freire, Pedagogy of the Oppressed 156 (1990).
17. Frantz Fanon was one of the earliest writers to theorize internalized oppression:
Having witnessed the liquidation of its systems of reference, the collapse of its cultural patterns, the native can only recognize with the occupant that "God is not on his side." The oppressor, through the inclusive and frightening character of his authority, manages to impose on the native new ways of seeing, and in particular a pejorative judgment with respect to his original forms of existing . . .
Having judged, condemned, abandoned his cultural forms, his language, his food habits, his sexual behavior, his way of sitting down, of resting of laughing, of enjoying himself, the oppressed *flings himself* upon the imposed culture with the desperation of a drowning man.
Frantz Fanon, *Racism and Culture, in* Toward the African Revolution 31, 38-9 (1967).
18. *See* Angela Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 Cal. L. Rev. 741, 754 (1994) (exploring the tension between Critical Legal Studies methods that Critical Race Theory adopted, including deconstruction, post modernism and anti-essentialism).
19. *Id.* at 754 ("The narratives of modernism [including the modernist narratives of Critical Race Theory] and of postmodernism are at war with one another, not simply in terms of the strategies they use or the conclusions they reach, but also in the way they see the world. . . As the debates over racial essentialism within CRT and the value of legal "storytelling" illustrate, when these postmodernist and modernist narratives clash, postmodernist skepticism threatens to undermine the modernist narratives completely.").
Freire goes on to note that:
To present this radical demand for the objective transformation of reality, to combat subjectivist immobility which would divert the recognition of oppression into patient waiting for oppression to disappear by itself, is not to dismiss the role of subjectivity in the struggle to change structures. On the contrary, one cannot

conceive of objectivity without subjectivity. Neither can exist without the other, nor can they be dichotomized. The separation of objectivity from subjectivity, the denial of the latter when analyzing reality or acting upon it, is objectivism. On the other hand, the denial of objectivity in analysis or action, resulting in a subjectivism which leads to solipsistic positions, denies action itself by denying objective reality. Neither objectivism nor subjectivism, nor yet psychologism is propounded here, but rather subjectivity and objectivity in constant dialectical relationship.
Freire, *supra* note 14, at 35:
20. *See* Dorinne Kondo, Poststructuralist Theory as Political Necessity, in *Thinking Theory in Asian American Studies*, 21 Amerasia 95 (Michael Omi & Dana Takagi eds., 1995) (arguing that post-structuralist politics "gives one the tools to theorize this multiplicity of subject positions and to problematize privilege and exclusion, while realizing their inevitability").
21. Three scholars give content to this oft-used, seldom-defined term prevalent in critical race theorizing:
At the risk of oversimplification, the current post-civil rights era in America might thus be generally characterized by a reconceptualizing of the role of rights litigation as part of, rather than as the pinnacle of, political strategies for social structural change; the movement away from principal reliance on narrow judicial remedies toward the additional use of courts as forums for the development and expression of counter-narratives and for the promotion of local empowerment and community control. . . .
Eric Yamamoto et al., *Courts and Cultural Performance: Native Hawaiians' Uncertain Federal and State Law Rights to Sue*, 16 U. Haw. L. Rev. 1, 27 (1994).
22. Cornel West observes how the economic base that private and public universities enjoy allows academe to become the "caretaker of nearly all intellectual talent in American society." Because of this patronage, West argues, "even the critiques of dominant paradigms in the Academy are academic ones; that is, they reposition viewpoints and figures within the context of professional politics inside the Academy rather than create linkages between struggles inside and outside of the Academy." In short, scholars of color simultaneously legitimate academe while they empty radical critiques of political substance. Cornel West, Race Matters 63 (1994).
23. In a 1989 article entitled *The Race for Theory*, Barbara Christian, an African American Studies scholar of Black women's literature issued a compelling critique of the academic chic of deconstruction that swept critical literary theory in the 1980s as hegemonic:
. . . I feel that the new emphasis on literary critical theory is as hegemonic as the world which it attacks. I see the language it creates as one which mystifies rather than clarifies our condition, making it possible for a few people who know that particular language to control the critical scene -- that language surfaced, interestingly enough, just when the literature of peoples of color, of black women of Latin Americans, of Africans began to move the "the center."
. . . Because I am a curious person, however, I postponed readings of black women writers I was working on and read some of the prophets of this new literary orientation. These writers did announce their dissatisfaction with some of the cornerstone ideas of their own tradition . . . But in their attempt to change the orientation of Western scholarship, they, as usual, concentrated on themselves and were not the slightest interested in the worlds they had ignored or controlled. Again I was supposed to know *them*, while they were not at all interested in knowing *me*. Instead they sought to "deconstruct" the tradition to which they belonged even as they used the same forms, style, language of that tradition, forms which necessarily embody its values.
. . . Increasingly, as *their* way, *their* terms, *their* approaches remained central and became the means by which one defined literary critics, many of my own peers who had previously been concentrating on dealing with the other side of the equation, the reclamation and discussion of past and *present* third world literatures, were diverted into continually discussing the new literary theory.
Barbara Christian, *The Race for Theory*, *in* Making Face, Making Soul: Haciendo Caras 335, 338-40 (Gloria Anzaldúa ed., 1990).
24. It is a sad commentary on the state of critical theory that many literary theorists to whom Christian was writing merely dismissed her critiques as "anti-intellectual" in public and as ignorant in private. As a graduate student on Professor Christian's home campus at the time of her article's publication and its subsequent reception, I can personally attest to the "anti-intellectual" construction of Professor Christian -- in my opinion, a bad faith, cowardly, ad hominem attack that rarely surfaced publicly in a way to which she might have been able to respond.
It was a Latina, Gloria Anzaldúa, who stepped forward to counter this attack by including Christian's work as the lead article in the "Doing Theory" section of her anthology, Making Face, Making Soul: Haciendo Caras, *supra* note 21, on creative and critical perspectives of feminists of color.

25. *See* Cornel West, *The Dilemma of the Black Intellectual, in* Keeping Faith: Philosophy and Race in America 67, 82 (1993).
26. Todd Gitlin, The Twilight of Common Dreams: Why America is Wracked by Culture Wars (1995) [hereinafter Gitlin, Culture Wars]. *See also* Todd Gitlin, *The Left, Lost in the Politics of Identity*, Harper's Mag., September, 1993, at 16 [hereinafter Gitlin, *Politics of Identity*]. ("But what began in the late 1960s as an assertion of dignity by various groups, a remedy for exclusion and denigration and a demand by the voiceless for representation, has developed its own habits and methods of silencing.") Michael Omi and Howard Winant coined the term, "nostalgic universalism" to describe Gitlin's one-man cottage industry extolling New Left virtues and decrying identity politics. Michael Omi & Howard Winant, *Response to Stanley Aronowitz*, 23 Socialist Rev. 5, 128 (1994) (suggesting that Gitlin's "dream of restoration" of the Enlightenment and Marxist Left projects is "hopelessly outdated" "nostalgic universalism.").
27. For a sampling of this early form of "identity politics," see Todd Gitlin, The Sixties: Years of Hope, Days of Rage (1993) (recalling his participation in Students for a Democratic Society).
Gitlin is emblematic of the what I would refer to as the "displaced white Left" -- those whose attacks on new social movements bespeak the threat they perceive to their own formerly secure leadership position in the Left. *See also* Jim Sleeper, *On Common Ground*, New Democrat, July/Aug., 1993, at 25 (arguing that "America must be defended against new 'identity politics' that makes race, ethnicity, gender and sexual orientation the primary lenses through which people view themselves and society."); Michael Tomasky, *Identity Politics in New York City: The Tawdry Mosaic*, Nation, June 21, 1993, at 860 (lamenting the collapse of local coalition politics because progressive New Yorkers "speak only in the coded language of identity politics and entreaties to oppressed subgroups"). I do not mean to suggest, however, that the white Left is entirely dominated by displaced white Leftists. *See e.g.*, Stanley Aronowitz, *The Situation of the Left*, 23 Socialist Rev. 5, 49 (1994) (arguing that "it is not accurate to characterize the emergence of identity politics as . . . a symptom of post modernist fragmentation; it was the result of overdue developments of necessarily autonomous movements.").
28. Todd Gitlin, *The Rise of Identity Politics*, Dissent, Spring 1993, at 173 [hereinafter Gitlin, *Identity Politics*].
29. Todd Gitlin, *From Universality to Difference: Notes on the Fragmentation of the Idea of the Left*, Contention, Winter 1993, at 21.
30. *But see* Stanley Aronowitz, *supra* note 25, at 48 (acknowledging that "sexist and homophobic insensitivity, third worldism and economism" "led many to return to the trenches to build movements based on identity oppression"). "Who can doubt," Aronowitz admitted, "that this collective decision was justified both by the urgency of the oppression and by the indifference of Left establishments?" *Id.* For a discussion of the exclusion and marginalization of women from the New Left, see Sara Evans, Personal Politics (1976) (tracing women's dissatisfaction with Students for a Democratic Society that led to the formation of the women's movement).
31. Not only does Gitlin fail to accept full responsibility for the "fragmentation" of the Left along identity group lines, he then blames gays and lesbians, women, and people of color for political regression: "the break-up of ideas of a whole Left throws the contest to the Right." *Id.* at 103. Compare Gitlin's analysis with that of Stanley Aranowitz, *supra* note 25 at 48 (arguing that despite right wing backlash, movements based on identity oppression "managed to save many of the gains of the previous decade.").
32. I have been advised that it would be best not to divulge the identity of this scholar at this time.
33. Kimberlé Crenshaw, Remarks at *Politics of Class and the Construction of Identity: A Crit Network Conference* (May 10, 1995) (conference program on file with the *Harvard Latino Law Review*).
34. *Id.*
35. As the concepts of identity politics and political correctness are linked, it is instructive to review the origins of political correctness. According to Todd Gitlin, political correctness has existed at least since the 1930s as a Stalinist relic. It was embraced in the 1960s by the New Left, evincing a "smug rigidity" of the movement. When it reappeared in the 1970s, it either conveyed the same smug rigidity or a certain "ironic distance," or "self-mockery." By the 1980s, the term was mostly used tongue-in-cheek. In the fall/winter of 1990-91, however, a media frenzy was set in motion by New York Times writer, Richard Bernstein in and article entitled, *The Rising Hegemony of the Politically Correct.* A cover story by Newsweek magazine, entitled, *Thought Police* quickly followed, as did stories in U.S. News & World Report, Time, and The Atlantic. Gitlin discloses that in the NEXIS database, there are 7 mentions of "political correctness" in 1988, 15 in 1989, 66 in 1990, 1553 in 1991, 2672 in 1992, and 4643 in 1993. Gitlin, Culture Wars, *supra* note 24, at 167-169.

36. *See* Sheila Foster, *Difference and Equality: A Critical Assessment of the Concept of "Diversity,"* 1993 Wis. L. Rev. 105, 108-109 (observing how diversity movements on campuses nationwide urge faculties to hire more minorities and women, increase multicultural requirements, award scholarships on the basis of race). *See also*, Dinesh D'Souza, Illiberal Education (1991) (lamenting the rise of campus movements in the late 1980s that urged affirmative action faculty hiring and student admission, ethnic studies requirements, hate speech codes, gay and lesbian studies, etc.).

37. D'Souza, *supra* note 35, at xvi (documenting the "defections of prominent intellectual figures and media from the progressive camp" to the anti-"political correctness" bandwagon).

38. To illustrate the homologous development and proliferation of the popular backlash concept of political correctness and its less popular academic counterpart, "identity politics," compare the number of NEXIS citations in newspapers and magazines between 1987 and 1996:

Number of citations in NEXIS "arcnews/curnews":

	"Political correctness"	"Identity politics"
1987	7	0
1988	7	3
1989	16	4
1990	70	4
1991	1532	3
1992	2673	39
1993	5219	111
1994	7081	174
1995	5323	293
1996	5824	392

I argue that the term "identity politics" is derivative of the term "political correctness," whose popularity exploded in the Fall of 1990, after an influential New York Times article. *See supra* note 34 and accompanying text. The response of displaced white Left academics such as Gitlin lagged two years behind, but nonetheless was consistent with the critique of racial politics and the valorization of nostalgic universalism.

39. The fear of a more multicultural academe is reflected in Nathan Glazer's recent book, in which he observes remarkable changes in the American public schools due to the "multicultural explosion." *Id.*

40. In one of his various essays advocating nostalgic universalism, Gitlin seems to be troubled by the concept of self-determination by people of color:

And the civil rights movement, initially framed in universalist terms, could unify the Left only until legal segregation was defeated in 1964-65. Once integration and voting rights had been secured, at least on paper, the alliance between liberals and radicals, integrationists and separatists, was strained to the breaking point. *Blacks began to insist on black leadership*, even sometimes exclusively black membership in the movement. One grouping after another demanded the recognition of its difference. Difference came to be felt more acutely than commonality.

Gitlin, *Identity Politics*, *supra* note 26 (emphasis added).

41. Manning Marable acknowledges various strands of Black nationalism, for example: "Nationalists of every kind, from the nihilistic 'cultural nationalists' or 'black fascists'. . . to the socialist-oriented nationalists on the Left, to Black Capitalists, rapidly created institutions and groups which influenced electoral politics." Manning Marable, Race, Reform, and Rebellion: The Second Reconstruction in Black America, 1945-1990, at 108 (2d ed. 1991).

42. Eric Yamamoto is at the forefront of theorizing a "critical race praxis" as "essential politics." Because he emphasizes the concept of "interracial justice" and "constrained racial group agency," he provides us with the theoretical foundation and moral imperative to *act*, rather than merely to *critique* others with increasing sophistication and skepticism from the safe sidelines of academe: "[I]nterracial justice involves a recognition of situated group power and therefore constrained yet meaningful group agency and corresponding responsibility in the construction of racial identities and interracial conflicts." Eric K. Yamamoto, *Rethinking Alliances: Agency Responsibility and Interracial Justice*, 3 Asian Pac. Am. L.J. (1996). *See also* Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 Mich. L. Rev. 821 (1997).

43. Angela Harris, *supra* note 16, at 784.

44. I will not belabor the careerist point made earlier, except to say that this personal history may also be why junior race crits might be more susceptible to "cashing in" on critical race theory now that it is an established, even fashionable, endeavor, as opposed to an incipient, insurgent project engaged in at the risk of one's own professional well-being.
45. Because junior crits have come of age during the era of post modernism and the development of gay and lesbian studies as an academic field, second wave crits may be more comfortable with lesbigay theory and exploring issues of sex and sexuality. However, I do not mean to diminish senior crits who have taken on a leadership role to confront straight supremacy within their own ranks and in their scholarly/political projects. *See, e.g.*, Testimony of Professor Jerome Culp at 1402, *Exams II* (Dist. Ct. Op), Evans v. Romer, No. CIV.A.98-CV-7223, 1993 WL 518586 (Colo. Dist. Ct. Dec. 14, 1993); AIDS and the Law (Harlon L. Dalton et al. eds., 1987); Margaret M. Russell, *Lesbian, Gay and Bisexual Rights and "The Civil Rights Agenda*," 1 Afr.-am. L. & Pol'y Rep. 33 (1994); Kendall Thomas, *The Eclipse of Reason: A Rhetorical Reading of* Bowers v. Hardwick, 79 Va. L. Rev. 1805 (1993).
46. Perhaps the hetero-centric dilemma is best illustrated through the annual and now ritualistic "violence" against gay and lesbian race crits in recent years at the summer workshop, ironically occurring and recurring in this carefully constructed, safe space.
47. Derrick Bell originated the term "interest convergence" to refer to the principle that racial remedies are extended to redress injuries suffered by Blacks only when, if granted, such remedies "will secure, advance, or at least not harm societal interests deemed important by middle and upper class whites." Derrick A. Bell, Jr., Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 Harv. L. Rev. 518, 523 (1980). I extrapolate a more generalized meaning of interest convergence -- i.e., progressive social change occurs more readily when dominant interests sense some material or cultural benefit.
48. Angela Harris, *supra* note 17, at 784.
49. *See* Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations,* 22 Harv. C.R.-C.L. L. Rev. 323, 360 (1987) (suggesting that critical scholars adopt methods embracing "intuition, guided by reason" and "tested against the lives of real people" at the bottom in order to generate theory). I echo Matsuda's sentiments and add that our multiple consciousness be shaped by those "at the bottom" who are organizing collective resistance.

19. Jerome McCristal Culp, Jr.,[(1)] *Latinos, Blacks, Others, and the New Legal Narrative,* 2 HARV. LATINO L.REV. 479 (1997)

I want to address my comments to the conversation we have begun on the nature of a Latino/Latina identity and the law. I hope that I am able to provide some useful insights on at least part of the questions we have raised here. I have entitled my comments Latinos, Blacks, Others, and the New Legal Narrative.

I want to begin with the issue that is central to our discussion. There is a notion that we have to ask and answer the question whether we are going to look at race, nationality or ethnicity, but I want to say that the social construction that exists in our society is mainly about the "other". The notion of the other is what the enterprise of critical race theory, LatCrit theory, feminism and queer theory are fighting. At the same time, it seems there is a second question involved in our struggle which is, how are we going to define ourselves? These two questions are not the same thing. The question about how we are going to define ourselves as an organizing force for change is not necessarily the same question as how other people see us. We are always going to be "others" to people who do not want us to be involved in various aspects of life in America. We have to build a theory that recognizes our differences and builds coalitions for change. At the same time, this new theory has to avoid falling prey to the temptation to become complicit in the description of the other. We will not build a theory for change if we replicate the structures of the other created by society.

Now we find ourselves at a difficult crossroads. The growing concentration of law professors of color are producing scholars and scholarship that alter and change traditional legal scholarship. This has produced a response among traditional scholars. I call this response the scholarship of dismissal. They have called us everything from anti-semitic[(2)] to incompetent scholars.[(3)] But there is an additional sort of discussion that goes on that is deeply imbedded in the structure that is not written, that you hear in the hallways, and that is part of the scholarship of dismissal. The unwritten but, I believe, widely held view is that we are all just good story tellers, excellent writers, and passionate people, but that there is no substance to our stories and, therefore, traditional scholars do not have to pay attention to it. It is all just narrative. This sort of non-story that is being told in the hallways of your law schools, if you have not heard it, is being told behind our back, and has a certain truth to it. But it is a truth that people who are telling the story do not understand. There is a narrative we are all telling, but the narrative is not just a story; it is a narrative that holds very different assumptions about the law and the possibility and necessity of change. This narrative is what we believe, and what I hope LatCrit will in some ways adhere to, not as emblematic concerns nor as necessarily foundational notions, but as encapsulating ideas about what LatCrit ought to mean -- that we do not accept the status quo. In particular, we do not accept the racial or identity status quo as a starting point for discussion. Our scholarship challenges the assumption buried in legal analysis and legal scholarship that change in this existing status quo has

the burden of proof. We do not believe that change has the burden of proof. We understand profoundly that our society has many things that are racially wrong. And we are not simply going to take on the burden of proving that in every place. We are going to assume something different. That assumption is not non-scholarly, but is very much a different narrative. Our scholarship is not directed simply at the nine mainly white people on the U.S. Supreme Court. It involves writing to communities composed of more than simply the people in power, some of whom are aware of the existence of racial and identity oppression.

We are talking about both group and individual history. The discussion about history in this conference says that history is important, and that one cannot understand where one is without understanding history. The discussion says that legal analysis that is basically ahistorical and leaves out the history of people of color cannot possibly deal effectively with our circumstance and importance in creating change. The discussion says that we reject the dichotomy between individuals and groups that is fundamental to trying to create a structure that ignores the concerns dealt with by LatCrit and Critical Race Theory, and Feminism and Queer Theory.

All of these sorts of differences are about ultimately rejecting the white supremacy that is buried in traditional legal analysis. By accepting the alternative to these assumptions, we allow white supremacy to be buried in our discussion without being involved. It is the unseen hand which moves our discussion. We can see that in the discussion about affirmative action. We can see that in the discussion about who ought to be represented in Congress, in school councils and other areas with respect to racial redistricting. One of the things that one has to do when one is not Latino or Latina is to hear and to be involved. It is important that I hear what is going on and be involved.

One last concern that has to be addressed is, how do we deal with each other? How do we as African-Americans, we as White-Americans, we as Asian-Americans, we as Latino/Latina Americans participate together in struggles that involve people who are not ourselves? Fundamentally, we have to figure out how to hear what other people are saying, how to participate in the struggle of those others who are involved with us in the larger struggle to reduce racial and gender oppression and how to understand what this project as a racial, ethnic, or nationality concern ought to entail and ought to make for us.

I have to end with a story I have never told before. It involves my name, Jerome McCristal Culp which people always find an interesting one. I got this name, Jerome McCristal Culp, Jr., because my father demanded that his first son be named Jerome McCristal Culp, Jr. He got the name because my grandmother won a contest. The supervisor at my grandfather's mine was named Jerome McCristal and he did not have any children and the first woman who had a child in 1926 was to name her child after him and be given a number of prizes for the act of naming. My grandmother was that woman, and my father was that baby. So, my father became Jerome McCristal Culp.[(4)] After finding out this history to my name I have often thought, is Jerome McCristal turning in some grave someplace as I carry his name around? In particular, would Jerome McCristal feel that we who have carried on his name and here are joining people to fight the legal oppression of Latinos and Latinas are bringing honor to that name? There is a lesson for LatCrit theory in this story. We have to have a name and in order to be understandable it has to have a history. LatCrit has a personal history of how it came to be and a larger historical connection to the forces that push this part of the historical project in legal scholarship. In thinking about the notion of what LatCrit is to become we have to hear that history and the historical antecedents to its production, but we have to decide and

define ourselves in ways that produce change. Those who want to engage in this project to change the law ought to go out and become the Jerome McCristal or LatCrit theorist of their choice. If we are to be great we have to be more than our histories, but at the same time we have to learn from them.

Footnotes

1. Professor of Law, Duke University School of Law, M.A. Harvard 1974, J.D. Harvard Law School, 1978.
2. *See* Daniel A. Farber & Suzanna Sherry, *Is the Radical Critique of Merit Antisemitic?*, 83 Cal L. Rev. 853 (1995).
3. *See* Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 Stan. L. Rev. 807 (1993); Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 Va. L. Rev. 1229 (1995). *But see* Jerome McCristal Culp, Jr., *Telling A Black Legal Story: Privilege, Authenticity, "Blunders," and Transformation in Outsider Narratives*, 82 Va. L. Rev. 69 (1996).
4. I have wondered but I do not know the answer to the question, what would have happened -- or did happen -- to the first girl born after this contest?

20. Eric K. Yamamoto,[(1)] *Conflict and Complicity: Justice Among Communities of Color,* 2 HARV. LATINO L. REV. 495 (1997)

When we look hard at the practical struggles of our racial communities, we see continued white dominance. But we also see the reality of sometimes intense distrust and conflict among communities of color -- coupled with efforts to forge multiracial alliances. When we listen hard, we hear stories of continued resistance by racial communities against mainstream subordination. But we also hear stereotypes and accusations of wrongdoing asserted by communities of color against one another -- coupled with cautious optimism about future relations.

Examining the tense mix of intergroup distrust and hope, and listening hard to the swirling sounds of intergroup accusations and optimism expands the scope of justice inquiry beyond white-on-black and even white-on-color paradigms (although they both remain important) to encompass color-on-color perspective. This means acknowledging continuing white dominance in most facets of American life and its impact on all racial interactions, while nevertheless developing a meaningful way to interrogate and act upon justice claims among nonwhite racial groups. It means understanding, amid changing racial-economic demographics, that a racial group can be simultaneously oppressed in one relationship and complicitous in oppression in another. I suggest that in many instances meaningful understanding of this dynamic and sensitive handling of intergroup justice grievances are a predicate to forging intergroup alliances and building coalitions.

What kind of situations am I talking about? In terms of litigation, the case of *Ho v. San Francisco Unified School District* is a good example.[(2)] Briefly, Chinese Americans are suing to invalidate San Francisco's court-ordered desegregation program for public high schools. The desegregation order was entered ten years ago following a suit by the NAACP charging educational discrimination by whites. The Chinese American plaintiffs are now seeking to expand the current 40 percent enrollment allocation allowed by the desegregation order, arguing that the average test scores of Chinese students are higher than scores for African Americans and Latino students. The plaintiffs claim that the desegregation order violates constitutional equal protection, arguing colorblindness as principal and the educational inferiority of African Americans and Latinos (and to a lesser extent whites and other Asian Americans). The suit is vigorously supported by some Chinese American community organizations, but stridently opposed by others. The suit has also been encouraged both by neo-conservatives and some liberals, but opposed by the NAACP. Given the history of discrimination against Chinese Americans in California, the continued socio-economic subordination of most blacks, and the rising numbers of struggling Latino and Asian immigrants, it is extremely difficult to determine where and with whom justice claims lie. What racialized images, what historical intergroup relations undergird this suit? All of which are unspoken. What practical consequences flow?[(3)]

Another example is the recent federal court suit by Latino and Asian American groups to invalidate Oakland's affirmative action program in city contracting. The Hispanic Contractor's Association, The Hispanic Chamber of Commerce and The East Bay Chapter of the Organization of Chinese Americans claim unconstitutional favoritism

of African Americans. The plaintiffs' attorney describes the "present [black and white patronage] system" as "corrupt."[(4)] A Latino politician charges that "[t]here has not been any attempt by this city to improve the representation of Latinos and Asian and Native Americans in top management and at every level."[(5)] The NAACP's response is "We can't have the have-nots fight the have-nots."[(6)] Other African Americans decry the suit as an ill-advised power-play by Latino and Asian American politicians.[(7)] In terms of state initiatives, an illustrative example is the passage of California's anti-immigrant proposition 187, which garnered nearly fifty percent support by African-Americans and established Asian Americans, groups who are concerned about Latino and South Asian immigrants displacing current workers and draining government resources. There has also been substantial Asian American support for the anti-affirmative action "California Civil Rights Initiative." What does this support mean?

In terms of economics and culture, an anecdotal example is the statement of a Pilipino American who, in a recent news interview, said that she and other Asian Americans are promoted to and kept at low management positions so that they can do the face-to-face firing of African American and Latino employees, thereby immunizing their employers from Title VII suits; after all, how can one racial minority illegally discriminate against another? A final example is the justice claim of Native Hawaiians to restoration of water diverted for 100 years by white agribusiness, which has decimated Hawaiian agricultural communities. These are claims not only of continued subordination by western capitalism, but also of complicity by nonwhite racial groups who ignore the historical origins of indigenous claims for self-determination and self-development.

These situations, and my descriptions of them, barely scratch the surface. These situations are set within continuing white societal dominance in most spheres of social and economic life. They are nevertheless important on their own terms, particularly as racial-economic demographics change. How do we, as LatCrit participants, theorize about and act practically upon justice claims which are often at the heart of intergroup distrust and conflict? How do we comprehend the notion of racial group complicity in the subordination of other racial groups? Or of situational racial group redeployment of oppressive socio-legal structures? How do we rethink the binary white-on-black civil rights paradigm that undergirds Equal Protection and Title VII law to promote healing and, where appropriate, reconciliation?[(8)]

The prevailing antidiscrimination law approach to justice, I suggest, provides no answers. First, it ignores questions of praxis, dissociating theory, legal norms and analysis from communities' real world experiences of subordination.[(9)] Second, the prevailing legal approach overlooks issues of interracial justice. And here what I mean by interracial is *among* groups of color. The Supreme Court as part of its antidiscrimination jurisprudence, has not meaningfully addressed the dynamics of interracial conflicts, nor has it developed any framework for analyzing interracial justice claims.[(10)] Similarly, until very recently legal scholars have largely ignored this aspect of racial justice. This silence is interesting because it contrasts starkly with the social/political works of journalists, social scientists, ethnic studies scholars, historians, and peace scholars, all of which highlight the prevalence of intergroup conflicts and the uniqueness of color-on-color racial dynamics.[(11)] For example, theologian Cornel West and a ethnic studies scholar Jorge Klor de Alva recently discussed what they called "Our Next Race Question: the Uneasiness Between Blacks and Latinos."[(12)]

For reasons developed in another recent article, it is unsurprising that a workable legal framework and language for interracial justice has yet to emerge. This void,

although understandable, is highly problematic.[(13)] The frameworks and language are necessary not only to challenge the ideology of the courts' silence, and not only to address interracial justice claims arising from concrete realities, but also to facilitate the formation of politically potent interracial alliances and coalitions. Race scholars Manning Marable and bell hooks locate the only hope for African Americans and other racial groups in the formation of interracial alliances, whether those alliances are to enhance cooperative working and living arrangements or to combat white racism.[(14)] The problem, however, is that neither Marable nor hooks offers a persuasive view on "how to" forge those alliances, on "how to" maintain coalitions in a distrustful post-civil rights America.

I suggest that theorizing about and acting practically upon concrete frontline interracial justice grievances is one aspect of the "how to." This underscores a need for development of a sophisticated, workable, interracial jurisprudence. I have offered a beginning framework for that jurisprudence in other works. I will suggest here four starting points.

The first, in addition to critically unpacking the Court's current non-recognition approach to interracial justice claims, is to interrogate nonwhite racial groups' situational redeployment of conceptual claims originally used by whites in "reverse discrimination" suits to invalidate programs benefitting other subordinated groups.[(15)] The key "challenge facing any movement dismantling . . . a system in which one culture dominates another . . . is to provide for a new order that does not reproduce the social structure of the old."[(16)] This leads to the second starting point, simultaneity: how groups can be simultaneously oppressed in one relationship in one setting and oppressive in another relationship in another setting.[(17)] This implicates racial group agency and responsibility not only in addressing resistance to white dominance but also in the construction of interracial group conflicts and the formation of intergroup alliances. This leads to a third point, differential group power: in light of continuing white dominance in most aspects of socio-economic life, how nonwhite groups are differentially racialized and how differing racial images and status impact upon intergroup power relations.[(18)] Tomas Almaguer has done a wonderful analysis of differential racial positioning among Mexicans, Chinese, Native Americans and African Americans in 19th century California.[(19)] That work needs to be undertaken now, particularly in the context of the kinds of interracial group justice grievances discussed at the outset.

The final starting point is praxis: closing the disjuncture between progressive race theory and political lawyering practice. An interracial jurisprudence needs to ground its theoretical inquiry in concrete racial realities, i.e., in how racial communities experience intergroup conflict and perceive and attempt to handle justice grievances. To do this, theorists need to engage in frontline justice struggles and to translate theory emerging from those struggles into operative political language. Political lawyers and community leaders, in turn, need to engage in critical analyses not only of the particulars of immediate controversies, but also of the ideological underpinnings of justice practice, i.e., the interplay of legal norms and procedures with judges, lawyers, bureaucracies, politicians, community organizations and media.[(20)]

When we look at and listen to racial communities in conflict, when we examine notions of agency and complicity and explore concepts of responsibility and prospects of intergroup healing,[(21)] we give new meaning to "justice among communities of color." For LatCrit theory, and indeed for race theory generally, interracial justice awaits.

Footnotes

1. Professor of Law, University of Hawai`i School of Law.
2. Ho v. San Francisco Unified School District, 965 F. Supp. 1316 (N.D. Cal. 1997).
3. For a more developed discussion of the Ho case, see Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 Mich. L. Rev. 821 (1997).
4. Rick DelVicchio, *Unusual Lawsuit Stirs Racial Questions in Oakland*, S.F. Chron., Aug. 13, 1996, at A15.
5. *Id.*
6. *Id.*
7. *See id.*
8. *See* Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 Asian Pac. Am. L.J. 33 (1995) (addressing these questions). *See also* Alexandra Natapoff, *Trouble in Paradise: Equal Protection and the Dilemma of Interminority Group Conflict*, 47 Stan. L. Rev. 1059 (1995), *and* Selena Dong, *"Too Many Asians": The Challenge of Fighting Discrimination Against Americans and Preserving Affirmative Action*, 47 Stan. L. Rev. 1027 (1995).
9. *See* Yamamoto, *supra* note 2.
10. *See id.*
11. *See id.* (discussing scholarly inquiry into interminority group conflict).
12. Colloquy, *Our Next Race Question: The Uneasiness Between Blacks and Latinos*, Harper's Mag., Apr. 1996, at 55.
13. *See* Yamamoto, *supra* note 2.
14. *See* Manning Marable, Beyond Black and White: Transforming African American Politics (1995), *and* bell hooks, Killing Rage: Ending Racism (1995).
15. *See* Yamamoto, *supra* note 7, at 59-65 (discussing situational redeployment of structures of oppression by nonwhite racial groups).
16. Lisa Lowe, *Heterogeneity, Hybridity, Multiplicity: Marking Asian American Differences*, 1 Diaspora 24, 31 (1991).
17. *See* Yamamoto, *supra* note 2 (developing concept of simultaneity as part of an interracial praxis).
18. *See* Yamamoto, *supra* note 7, at 59-65 (discussing differential racialization and disempowerment).
19. Tomas Almaguer, Racial Fault Lines (1994).
20. *See* Yamamoto, *supra* note 2.
21. *See* Harlon Dalton, Racial Healing (1995).

Joint symposium

21. Francisco Valdes [FNd1], *Under Construction: LatCrit Consciousness, Community, and Theory,* 85 CAL. L. REV. 1087 (1997) and 10 LA RAZA L. REV. 1 (1998)

Table of Contents

Introduction

This Symposium marks the first time that a "major" or "mainstream" law review [FN1] devotes an issue to "LatCrit theory" [FN2] as a genre of critical legal scholarship and, more particularly, as a new voice in outsider scholarship. [FN3] Its co-sponsorship by one of the nation's oldest Latina/o law review makes this Symposium a shining moment in the formation of a LatCrit discourse. Yet it was barely a year ago that the LatCrit subject position [FN4] was conceived and articulated. [FN5] The works presented below both reflect and constitute a nascent field--Latina/o [FN6] legal studies, or LatCrit theory.

This Symposium therefore is part of a larger beginning: the beginning of a LatCrit consciousness, community and literature within the contemporary legal culture of the United States. As the diversity and richness of this symposium indicate, LatCrit theory, and what it means, remains a question open to scholarly investigation and exchange. Outsider scholars must continue to investigate the indefinite contours of Latino communities and LatCrit theory in the years to come.

The early timing of this project also means that the pieces published here are both an artifact of the conditions they critique and indicants of the present and future of LatCrit theory. Each piece reflects the general silence on Latina/o legal issues and portends the future character of LatCrit discourse. Their authorship, scope, focus and tone at the threshold of this undertaking may indicate as much about Latinas/os and the law as the substantive analyses or conclusions advanced collectively or individually by their

contents. Simply, the pieces published here may tell us as much by what they are as by what they say.

The papers of this Symposium are presented below in two thematic clusters that reflect areas of law and life especially germane to Latina/o populations. Each cluster consists of several essays and an introduction. The first cluster concentrates on race, ethnicity and nationhood, while the second shifts attention to policy, politics and praxis. These works are followed by an annotated bibliography [FN7] to promote the development of LatCrit scholarship and a book review essay to facilitate further reflection on the relationship of LatCrit to Critical Race Theory. [FN8] An afterword [FN9] completes the Symposium with some reflections on the LatCrit project.

To discuss both the reflective and prospective aspects of the works presented in the two substantive clusters, this foreword addresses four underlying questions: [FN10]

1. What do the works presented in this Symposium tell us about the state of Latina/o voices, interests and communities in the United States today?
2. What do these works tell us about the current or historical relationship of Latinas/os to Anglo-American law?
3. What do the symposium articles tell us about Latinas/os and the American legal professorate?
4. Finally, what do these articles tell us about the potential benefits and limits of the embryonic enterprise denominated as LatCrit theory?

These questions flow from the symposium's contents and thus may be viewed as pending inquiries. By underpinning the foreword with these four queries, I aim to synthesize and highlight some key points about the first generation of issues that face the emergent community of LatCrit legal scholars.

To engage these four queries, Part I opens the foreword with a discussion of present LatCrit methodologies and issues, as evidenced by this Symposium and in light of the larger outsider discourse on identity, law and legal theory. Part II then turns to policy, politics, and praxis as LatCrit imperatives under Anglo-American rule, imperatives made especially urgent by these times of majoritarian backlash. [FN11] Part III next considers the Latina/o position within the legal professorate of the United States, again as evidenced by this Symposium and in light of larger events and circumstances. Part IV concludes the foreword with a few closing thoughts about the LatCrit enterprise raised or suggested by the works presented below.

But first a prefatory note on LatCrit theory and its underpinnings. Despite its embryonic state, LatCrit theory has come a long way since the moniker was coined. [FN12] The LatCrit experience thus far has impressed upon me a feature that I think is key and foundational to this enterprise: almost from the outset we have sought to develop a theory about legal theory. [FN13] At our gatherings and through our early writings, [FN14] we continually and critically theorize about the purpose of our theorizing. [FN15] Our approach to our work, our articulation and development of LatCrit theory, is informed and guided by this evolving meta-theorizing. To varying degrees and in different ways, this preliminary impression is borne by the works presented below.

By way of preface to this foreword, and at risk of oversimplifying or mischaracterizing, I therefore venture to distill LatCrit theory's theory about legal theory, a distillation that incorporates observations drawn from the works presented here as well as elsewhere. [FN16] Of course, this distillation is only one view--my view--and no doubt it will vary

over time. However, LatCrit theory's bedrock conviction presently seems to be that legal theorizing must operate (at least) on four levels simultaneously. And, if not at all times, then on balance. At this juncture, LatCrit theory exudes a strong sense that for legal theory to work--to be "worth it"--it must embrace and perform four inter-related or overlapping functions.

From my participation in this venture, I describe these four levels or functions as:

1. The Production of Knowledge. In my view, LatCrit theory's first function is the enhancement of socio-legal understanding through critiques of historical and modern experience. LatCrit theory is first and foremost an intellectual and discursive movement striving to create a culture of understanding about Latinas/os and the law. LatCrit theory therefore represents an interdisciplinary and critical approach to the study of social and legal conditions that beset Latina/o communities. The production of LatCrit ideas to better understand the world in which we live thereby devotes LatCrit theory to the ongoing improvement of both society and law. But this initial function--the production of knowledge--is never the end goal; it is the point of departure for the larger work and functions of theory.
2. The Advancement of Transformation. Consequently, LatCrit theory's second function is to be practical as well as insightful. The importance of practicality commits LatCrit theory to the advancement of transformation--the creation of material social change that improves the lives of Latinas/os and other subordinated groups. This emphasis on applicability, on relevance to social conditions and their material transformation, in turn dedicates LatCrit theory to praxis. In my estimation, LatCrit theory self-consciously recognizes that theory without praxis severely constrains the purpose and utility of theory; praxis is constitutional to LatCrit theory because social transformation is a key function of legal theory.
3. The Expansion and Connection of Struggle(s). From my perspective, LatCrit theory is committed to elevating the Latina/o condition, chiefly but not exclusively in the United States. I understand this commitment as broadly conceived in several respects. In addition to resisting domestic/foreign dichotomies, LatCrit theory rejects single-axis or unidimensional conceptions of "Latina/o" issues, which are likely to ignore intra-Latina/o diversities. Similarly, LatCrit theory recognizes the need to attend to more than immediate self-needs. LatCrit theory therefore is committed to the notion that our theorizing, as a form of practical and transformative social struggle, must be referenced to other anti-subordination theories and struggles. In my experience, LatCrit theory seeks both to contextualize and interconnect Latina/o struggles for substantive transformation vis a vis other oppressive conditions, and to employ our theory and practice toward fighting all forms of oppression. LatCrit theory therefore constitutes itself

as a struggle on behalf of diverse Latinas/os, but also toward a material transformation that fosters social justice for all.

4. The Cultivation of Community and Coalition. Finally, my understanding of LatCrit theory is that it self-consciously is about more than knowledge, discourse, politics and transformation. LatCrit theory's functions include actively nurturing a community of scholars who share a similar approach to legal theory, and who share a similar commitment to collaboration. Because it seeks to expand and connect anti-subordination struggles, the LatCrit enterprise thus far has been a collective design, rather than the sum of atomized or individuated exertions--a sometimes unruly group project always rooted in the ideal of community and the aspiration of coalition. Our envisioned community necessarily is intellectual, discursive and political, but it also is human, social; moreover it is diverse, inclusive, egalitarian, democratic and self-critical. From my perspective, the LatCrit community under construction is a self-selected formation of "different" scholars who have come to similar conclusions about the state of affairs in American law and society, who are willing to analyze explicitly the Latina/o situation within that larger state of affairs, and who share a similar outlook about our limited yet influential role(s) as legal theorists in relation to that state of affairs.

These four functions in turn require LatCrit resistance of essentialist assumptions or projections, and they also entail active application of intersectionality, multiplicity, multidimensionality, and other concepts minted in outsider jurisprudence. [FN17] These functions likewise require insistent LatCrit practice of interconnectivity. [FN18] These functions thus evidence, both directly and indirectly, the substantive and methodological post-liberal lineage of LatCrit theory [FN19]--a lineage that links LatCrit theory closely to Critical Race Theory and outsider jurisprudence. [FN20]

These functions and their fulfillment also present daunting tasks; identifying the chief functions of our work is not the same as realizing them. Without doubt, abstract commitment is neither the point nor measure of LatCrit theory and praxis. But LatCrit projects thus far have striven mightily, if imperfectly, to practice our theory about theory, and to honor our four main functions: LatCrit conferences and projects consistently have brought together a rich array of scholars and activists from various communities, disciplines and viewpoints to learn ways and means of walking the talk. [FN21] At each gathering we do what we can in light of our theory about theory--we learn and build both from the gains and shortcomings of our previous encounters.

In part because of this commitment to diversity and difficulty, LatCrit projects repeatedly have sparked vigorous and sometimes tense exchanges, both in person and in print. We have stumbled upon and through hard moments, and no doubt we will continue to do so; LatCrit theory is not just some shiny or gleaming gem. But our theorizing about theory has kept us committed to facing and processing the hard moments. Indeed, our commitments have inclined us proactively to center the awkward or difficult issues in our gatherings and conversations; each year we prominently feature in the upcoming program the prior years' most controversial topics. [FN22] While staying anchored to Latina/o issues, the LatCrit agenda also has affirmatively sought out broader problems; while

highlighting Latinas/os, LatCrit theory has set out to confront the fears, grievances and tensions that permeate and surround our labors.

At the outset it thus is important to understand that LatCrit theory's ambition extends beyond critical knowledge, substantive transformation, coalitional struggle and scholarly community. In my view, LatCrit theory strives both to center Latinas/os and to perform and balance these four functions precisely because it represents a self-conscious effort to recast legal theory as such. LatCrit theory signifies a particular consciousness about, and approach to, the work of a legal theorist. Though it cannot be claimed by any one viewpoint or reduced to any one conception, in my opinion, LatCrit theory thus far has been infused with a desire to transform theory itself.

Of course, no one can predict with confidence where these commitments and their pursuit will lead LatCrit theory. LatCrit theory is a human venture, fraught with the frailties and limitations of humans. Ours is a fragile yet determined collective experiment in post-postmodern critical legal theory. LatCrit theory, let me stress at the outset, is a project perpetually under construction, but one whose construction, at least in these formative moments, seems consciously guided by a progressive, inclusive and self-critical theory about the purpose and experience of theory. The works that follow below jointly represent an important step in that continual, multifaceted, and volatile process of construction.

* * *

III The Latina/o Legal Professorate: Gains, Gaps, Challenges

As this Foreword's third question notes, the works comprising this Symposium suggest various aspects of the Latina/o position within the legal professorate of the United States at the turn of this century. This Foreword therefore ventures a few preliminary observations on this point, using this Symposium to extrapolate a snapshot of the Latina/o legal professorate in the early stages of LatCrit legal studies. It is a mixed but not pretty picture.

The opening observation is the relative youth, measured as seniority within the academy, of the Latina/o-identified Symposium contributors. [FN193] On the whole, the authors represented here joined the academy only within the past few years, and at the most, within the past decade. [FN194] This fact points to a larger picture: the belated and begrudging entry of Latinas/os (or women, people of color, and openly lesbian, gay, or bisexual academics) into the nation's legal professorate. [FN195] In 1987, Latinas/os accounted for 33 of 5064 law professors in the United States. In 1994, Latinas/os accounted for 94 of the nation's 5700 law professors. [FN196] The underrepresentation of Latina/os is manifest: We still account for less than 2% of the legal professorate.

This paucity of representation has manifold negative consequences. These numbers necessarily mean that the few Latinas/os in the academy oftentimes find ourselves as the sole Latina/o on the faculty, creating conditions of isolation that impede professional development and empowerment. [FN197] These numbers also mean that the few Latinas/os in the academy must carry multiple burdens as "role models" and agents of conscience. [FN198] In short, Latina/o law professors, like many "minority" academics, are burdened with obligations that are integral to our professional personas, but that nevertheless can undermine the time and energy that we can devote to "success" as defined by conventional and dominant criteria. [FN199]

At the same time, Latinas/os account for approximately 10% of the nation's population [FN200] and 5% of the nation's law students. [FN201] Though the Supreme Court refuses to regard such disparities as proof of discriminatory practices, [FN202] these numbers do call for explanation. Why do so many Latinas/os in the general population fail to find our way into the nation's law schools? More pointedly, why are the Latinas/os in the law student population not represented in the ranks of the nation's law professors? This Symposium teaches that biased notions of merit do not suffice; [FN203] these numbers therefore ought to incite LatCrit interrogation of these disparities and their causes. [FN204]

Despite these dismal numbers, the authors of this Symposium depict an able, active, and diverse group of Latina/o law professors. Reflecting the larger Latina/o population of the United States, Symposium contributors include Latinas/os hailing from Mexico, Central America, and the Caribbean. [FN205] However, the Symposium lacks a Puerto Rican author [FN206] and underrepresents female and Queer authors, thus underscoring both the gains and the gaps in Latina/o representation within the legal academy.

This representation thus points to the challenges posed by the status quo: Latinas/os both within and without the academy must redouble our commitment to securing full Latina/o participation within the nation's legal processes and institutions. LatCrit theorizing and activism, as this Symposium indicates, is an important tool toward the fulfillment of this long-standing aim. LatCrit theory can and must become a practical means of finally securing the opportunity and dignity unjustly withheld from Latinas/os in all walks of American life. It is this rich human potential that most gives our work meaning.

IV On the LatCrit Enterprise: Some Closing Thoughts

This Symposium helps to create and establish a new field of critical legal scholarship--LatCrit theory. It endeavors to counteract the relative lack of attention given to Latina/o social and legal issues in the United States. The initiation of Latina/o legal studies is an effort to place Latina/o voices, concerns, and communities at the center of social and legal analysis as part of the larger anti-subordination project. This Foreword's fourth query therefore turns to LatCrit theory itself, and what these works tell us about it.

As a whole, this Symposium points to several elements that may be viewed as foundational to LatCrit theory. [FN207] The first is that LatCrit theory actually has a theory about the nature and purpose of legal theory generally. LatCrit theory represents an embryonic but particular approach to, and conception of, the outside scholar's work and role. This approach endeavors to advance and balance four functions. [FN208] The LatCrit effort to practice these functions in turn springs from the jurisprudential record of the recent past.

At the threshold, this Symposium thereby reminds us that the lessons of the past do and must inform LatCrit sensibilities and projects. The base line is to learn, and proceed from, the lessons and experiences specifically of outsider jurisprudence to date. These include substantive insights and methodological tools to guide the early formation of LatCrit scholarship; while advancing its insights, LatCrit theory cannot afford repeating the vexing omissions or oversights of outsider discourse. [FN209] The LatCrit stance must be to recognize both the kinship and the shortcomings that stem from the recent history of outsider theorizing.

An overarching and related lesson to be drawn from this history is the need for careful and caring LatCrit approaches to intra- or inter-group issues of sameness and difference. The negotiation of sameness/difference issues is inevitable in diversified multiracial, multicultural settings. This Symposium, for one, demonstrates positively that LatCrit scholarship cannot be limited to "Latinas/os" in any essentialized sense. LatCrit identification need not hinge on ancestry or nationality. [FN210] Rather, this identification flows from a willingness to center the "Latina/o" in social and legal discourse. The LatCrit subject position signifies a concern with Latina/o conditions and issues rather than with Latina/o roots or birth. This lesson therefore calls for more than LatCrit vigilance against essentialist assumptions; it underscores the importance of conceiving and projecting "political identities" [FN211] in part through the practice of "strategic essentialism." [FN212] This lesson, in sum, urges LatCrit scholars to position our work at the cusp of post-postmodernism. [FN213]

Outsider concepts like multiplicity, intersectionality, and multidimensionality consequently must inform LatCrit contributions to extant anti-subordination discourses. [FN214] Likewise, LatCrit analyses of legal and social conditions must be historical, contextual, and interdisciplinary. In this vein, LatCrit scholars should employ both fictional and non-fictional narratives to best voice our respective critiques. These and other tools are indispensable because they are predicates to Latina/o self-empowerment through a dynamic and pragmatic LatCrit discourse.

The use of scholarship in the service of self-empowerment in turn emphasizes the need for LatCrit commitment and accountability to Latina/o communities. This point therefore also raises the politicized setting of LatCrit scholarship in its initial moments--a setting of backlash and retrenchment. Without doubt, backlash politics create and exacerbate pressures against vulnerable and subordinated communities; the backlash campaign already has succeeded in its most basic aim--to instill fear, even terror, among some of the most vulnerable members of this society. This context gives urgency to the need for a sophisticated and expansive anti-subordination scholarship that can help organize empowered communities and mobilize effective coalitions. [FN215]

This socio-legal environment creates opportunities--and obligations-- for collaboration among Latinas/os and other traditionally subordinated groups. Pending legal issues of shared outsider interest begin with the dismantlement of White Anglo supremacy and privilege. Doctrinally, this task is presently focused on equality law and, most specifically, on the rollback of diversity and affirmative action policies in the name of "merit." With judicial approval and complicity,today's backlash politics threaten to deregulate the practice of White Anglo discrimination against non-White or non-Anglo communities, thereby further besieging disadvantaged groups and persons. LatCrit theory thus shares with all outsider scholarship the fundamental goal of reinvigorating equality law through a critical dismantlement of all legal and social structures that subordinate our communities.

More particularly, LatCrit scholars share with Asian-American scholars a common interest in legal issues that involve immigration, family, citizenship, nationhood, language, expression, culture, and global economic restructuring. These issues spring from the trans-national character of Latina/o and Asian- American communities. This Symposium thereby evinces the initial stirrings of a larger consciousness and community to connect Latina/o and Asian-American anti-subordination projects in careful and nuanced but caring and committed ways.

The importance of LatCrit scholarship to help achieve social progress through legal reform brings to the fore another outsider lesson from the recent past: the need to foster praxis. [FN216] Not only must LatCrit scholarship demonstrate political consciousness, commitment, and savvy, LatCrit scholars must proactively implement theory in all aspects of our professional lives. Our anti-subordination agenda necessarily includes the application of LatCrit insights in classroom, institutional, and community activities; our work at all times requires both outward and inward analyses and exertions toward a post- subordination future.

Finally, these writings remind us of the limits that inhere in legal theory, including LatCrit theory. Experience shows that critical legal theory is no panacea for socio-legal ills. However, the acknowledgment or discovery of limits cannot deter progressive, activist LatCrit scholarship. LatCrit scholars must remain sensitive to and respectful of the reality that limits, however ambiguous or contested, do exist. Yet we must try to transcend and overcome them. To strike and maintain this balance, LatCrit scholars must never neglect the need for continual self-reflection, self-examination, and self-critique. [FN217] The integrity of LatCrit theory depends on the pursuit of ambition, and also on the acceptance of, and struggle against, limitation. Thus, in addition to all else, this Symposium serves as a reminder that our work is at once limited yet never done.

Conclusion

As this unprecedented Symposium illustrates, this emergent field of "LatCrit" discourse and scholarship stems from a troubled past and a troubling present. The works presented here not only reflect, they pro-ject, the forces and factors that shape(d) Latina/o lives in the United States; this Symposium articulates both Latina/o histories as well as the aspirations born of those legacies. LatCrit consciousness, community, and theory are manifestations of Latina/o oppression and resilience. This Symposium thereby charts an agenda of sorts for the early years of LatCrit theorizing--an agenda that presents a complex but rich terrain.

The inauguration of LatCrit scholarship at this point in time necessarily situates our work against the existing discursive and ideological landscape of this Anglo-American society and its legal culture. Given this bedrock circumstance, our work can only benefit from the substantive, historical, and methodological lessons pioneered through other schools of outsider jurisprudence. Our work therefore should proceed consciously, carefully, and resolutely from the experiences, insights and techniques offered by Critical Race, Feminist, and Queer legal scholars.

Accordingly, and happily, this Symposium includes a varied mix of persons and positions. Yet the authors below evince a fair amount of consensus on which issues are key at the threshold, including: the transcendence of Black/White binarisms, the deconstruction of race and ethnicity, the reinvigoration of equality law, the exploration of transnationalities, the defense of immigration rights, the reinvention of nationhood, the diversification of language and culture, and the protection of all identities. Consequently, as this Symposium further illustrates, LatCrit projects and gatherings must be consistently and proactively inclusive of all scholarship and scholars committed to resistance against all forms of social and legal injustice.

Ultimately, the LatCrit task is to build on the gains of, and to work with, scholars committed to social progress through legal reform. Our bottom-line aim must be to create

progress on the ground through activist legal theory. To become an effective force for practical reforms, LatCrit scholarship not only must elucidate and illuminate the Latina/o position in the United States, it must promote praxis and cultivate coalitional sensibilities. LatCrit theory thus implicates, and is accountable to, varied interests.

As this Symposium makes clear, LatCrit theory must concern itself both with intra-Latina/o and inter-people of color anti-subordination interests, but the LatCrit agenda also includes the very institution of legal education. In other words, LatCrit interests include the composition and operation of the nation's legal professorate and culture. LatCrit scholars therefore must look simultaneously inward and outward to aid progress through, within and beyond legal education.

Without doubt, our discursive, political, doctrinal, and institutional environments are daunting in their interrelated intricacies. Only the years to come will determine the yield of LatCrit theory and praxis. Yet the turn of this century points to opportunities for the social and legal empowerment of Latinas/os and other oppressed groups throughout the United States and beyond. The inspiration and aspiration of this newest scholarly movement within the legal academy of the United States thus calls for an ambitious and egalitarian reconception and reapplication of critical scholarship on behalf of legal reform and social justice for Latinas/os and other outsider groups.

Footnotes

[FNd1]. Visiting Professor of Law, University of Miami, 1995-96 and 1996-97; Professor, California Western School of Law. Thanks go to Bob Salinas and to the 1996-97 editorial boards of the California Law Review and La Raza Law Journal, who proposed and approved this first-ever symposium. Thanks also go to the 1997-98 boards of these two journals for their caring work on this project, and especially to Joseph Hahn for his tireless and crucial efforts. Special thanks go to David Oakland and Sherri Sokeland for crucial attention both to detail and to vision. Thanks additionally go to the symposium contributors, and to all LatCrit scholars, whose endeavors are helping to bring Latina/o concerns to the fore of legal and social discourse. Finally, personal thanks go to Tony Alfieri, Keith Aoki, Margalynne Armstrong, Elvia Arriola, Paul Brest, Robert Chang, Sumi Cho, Barbara Cox, Jerome Culp, Richard Delgado, Leslie Espinoza, Clark Freshman, Lawrence Friedman, Phoebe Haddon, Angela Harris, Berta Hernandez-Truyol, Lisa Iglesias, Kevin Johnson, Gerry Lopez, Miguel Mendez, Margaret Montoya, Rachel Moran, Laura Padilla, Michael Olivas, Cruz Reynoso, Celina Romany, Jennifer Russell, Gloria Sandrino, Jonathan Simon, Jean Stefancic, Sam Thompson, Gerald Torres, Robert Weisberg, Robert Westley, Stephanie Wildman, and Eric Yamamoto, for their support of LatCrit theory and, in particular, of my participation in it. All errors below are mine.

[FN1]. This Symposium brings together the California Law Review and the La Raza Law Journal, which jointly produced and published the works that follow. See Symposium, LatCrit Theory: Latinas/os and the Law, 85 Calif. L. Rev. 1087 (1997), 10 La Raza L.J. 1 (1997). This joint publication follows several symposia in various other journals, which have helped to pioneer the emergence of LatCrit theory. See Colloquium, Representing Latina/o Communities: Critical Race Theory and Practice, 9 La Raza L.J. 1 (1996); Symposium, LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship, 2 Harv. Latino L. Rev. (forthcoming 1997); Colloquium, International Law, Human Rights and LatCrit Theory, 28 U. Miami Inter-Am. L. Rev. 177 (1997); Symposium, Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory, 19 UCLA Chicano-Latino L. Rev. (forthcoming 1998). The proceedings of the Third Annual LatCrit Conference will be published in 4 U. Texas Hispanic L.J. (forthcoming 1998).

[FN2]. It would be impossible to impart a single definition of LatCrit theory, as is the case with Critical Race or other genres of critical legal scholarship. See Francisco Valdes, Foreword--Latina/o Ethnicities,

Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities, 9 La Raza L.J. 1, at n.1 (1996) (describing Critical Race Theory as focusing "on the relationship between law and racial subordination in American society" (citations omitted)). In my view, LatCrit theory is the emerging field of legal scholarship that examines critically the social and legal positioning of Latinas/os, especially Latinas/os within the United States, to help rectify the shortcomings of existing social and legal conditions. For a summary of one view regarding LatCrit theory's key characteristics and ambitions, see infra notes 12-22 and accompanying text. Participation in this field of legal studies is not limited to "Latinas/os" nor any other category of identity; on the contrary, LatCrit discourse is open to all scholars interested in issues especially germane to Latinas/os and willing to focus on Latina/o concerns and communities. See infra note 210 and accompanying text. This point is illustrated by this symposium's annotated bibliography of LatCrit scholarship, which includes the work of various non- Latina/o authors. See, e.g., infra note 7. The internal diversities of Latina/o populations also invite an open and lively LatCrit discourse. See infra note 7.

[FN3]. The term "outsider jurisprudence" was coined by Professor Mari Matsuda and refers to the body of literature generated during the past decade or so by scholars who identify with traditionally subordinated communities. See Mari J. Matsuda, Public Response to Racist Speech: Considering the Victim's Story, 87 Mich. L. Rev. 2320, 2323 (1989).

[FN4]. The term "subject position" describes the stance or perspective of the author vis-a-vis the topic. See Robert S. Chang, The End of Innocence or Politics After the Fall of the Essential Subject, 45 Am. U. L. Rev. 687, 690-91 (1996).

[FN5]. The "LatCrit" denomination arose from a meeting of several Latina/o law professors during a Colloquium held in Puerto Rico on Latinas/os and Critical Race Theory as part of the Hispanic National Bar Association's annual meeting. For more details of that event, see Valdes, supra note 2, at 7 & n.28; see also Berta Esperanza Hernandez-Truyol, Indivisible Identities: Culture Clashes, Confused Constructs, and Reality Checks, 2 Harv. Latino. L. Rev. (forthcoming 1997).

[FN6]. The term "Latina/o" encapsulates an amalgam of persons and groups, who in turn embody multiple diversities. See, e.g., Valdes, supra note 2, at 8 n.31 (discussing the range of Latina/o scholars present at a symposium). This term therefore necessarily oversimplifies but does not automatically essentialize. See infra notes 67-68 and accompanying text (discussing essentialism and Latina/o diversities). Cf. Valdes, supra at 6 n.25 (noting the diversity of persons who self-identify as Latina/os); see also Gloria Sandrino-Glasser, Los Confudidos: De-Conflating Latinos/as' Race and Identity, 19 Chicano-Latino L. Rev. (forthcoming 1998) (discussing multiple Latina/o diversities). While fully cognizant of these limitations, I use "Latina/o" generally to signify persons with nationalities or ancestries derived from countries with "Hispanic" cultures; currently in the United States, these persons or groups are primarily (but not exclusively) Mexican Americans, Puerto Ricans, and Cubans or Cuban Americans. For population data, see infra note 105.

[FN7]. Jean Stefancic, Latino and Latina Critical Theory: An Annotated Bibliography, 85 Calif. L. Rev. 1509 (1997), 10 La Raza L.J. 423 (1997) (collecting and organizing the existing literature).

[FN8]. Anthony Alfieri, Black and White, 85 Calif. L. Rev. 1647 (1997), 10 La Raza L.J. 561 (1997) (reviewing the first two readers on Critical Race Theory).

[FN9]. Leslie Espinoza & Angela Harris, Afterword--Embracing the Tar Baby: LatCrit Theory and the Sticky Mess of Race, 85 Calif. L. Rev. 1585 (1997), 10 La Raza L.J. 499 (1997) (urging creative LatCrit approaches to race and to narrative).

[FN10]. In this way, the foreword leaves to the introduction of each cluster the task of framing the papers substantively in relation to each other. See Ian F. Haney Lopez, Race and Erasure: The Salience of Race to LatCrit Theory, 85 Calif. L. Rev. 1143 (1997), 10 La Raza L.J. 57 (1997) (introducing the articles that discuss questions of racial identity); Rachel F. Moran, What if Latinos Really Mattered in the Public Policy Debate?, 85 Calif. L. Rev. 1315 (1997), 10 La Raza L.J. 229 (1997) (introducing the articles exploring the role of Latinas/os in shaping public policy).

[FN11]. See infra notes 103-115 and accompanying text (discussing the rise of backlash and its ramifications for Latinas/os).

[FN12]. For historical background, see supra note 5 and sources cited therein (describing how the "LatCrit" denomination came into existence).

[FN13]. This theorizing about legal theory is prompted and informed by the histories and experiences of Critical Legal Studies, Feminist Legal Theory, Critical Race Theory, and, to some extent, Queer Legal Theory. For further discussion of this point, see Francisco Valdes, Theorizing About Theory: Comparative Notes and Post-Subordination Vision as Jurisprudential Method, in Critical Race Theory: Histories, Crossroads, Directions (Jerome McCristal Culp, Jr. et al. eds.) (forthcoming 1998) (comparing the RaceCrit, LatCrit and QueerCrit experiences); see also Valdes, supra note 2, at 4-7 (reviewing the relevance to LatCrit theory of the experiences and ruptures between Critical Legal Studies, Critical Race Theory and Feminist Legal Theory).

[FN14]. See supra note 1 and symposia cited therein (collecting works presented at, or inspired by, prior conferences and programs).

[FN15]. See generally Elizabeth M. Iglesias, Global Markets, Racial Spaces and Embedded Agency: Critical Race Theory and the Legal Struggle for Community Control of Investment, in Critical Race Theory, supra note 13 (urging Critical Race Theory to develop a theory about the way to "do" theory and offering an approach to that task).

[FN16]. See supra note 1 and symposia cited therein (presenting other LatCrit projects, both recent and forthcoming).

[FN17]. See infra note 67 and sources cited therein (employing intersectionality, multiplicity, and multidimensionality to go beyond the limits of essentialism).

[FN18]. See Valdes, infra note 67, at 54-57 (proposing interconnectivity as a complement to intersectionality, multiplicity, and multidimensionality).

[FN19]. Critical Race Theory conceived itself in similar ways. Thus, Critical Race Theory has been described as an intellectual and discursive movement that seeks to center a marginalized subject or viewpoint through interdisciplinary critiques, to project a resolutely political anti- subordination stance, and to foster a sense of progressive, scholarly community. See, e.g., Critical Race Theory: The Key Writings that Formed the Movement xix-xxvii (Kimberle Crenshaw et al. eds. 1995) (describing the origins and features of Critical Race Theory).

[FN20]. See Valdes, infra note 83 (discussing LatCrit theory's debts to Critical Race Theory specifically, and to outsider jurisprudence generally).

[FN21]. See, e.g., supra note 1 and symposia cited therein (presenting works by women and men who identify as Latinas/os, African Americans and/or Asian Americans, and who also identify as lesbian, gay or straight. These diversities do not capture the entire panoply of human identity positions, but they surpass the usual configurations).

[FN22]. For further elaboration, see Valdes, Theorizing About Theory, supra note 13.

[FN23]. I use the term "Anglocentric" to denote practices and preferences rooted in norms derived primarily from English culture.

[FN24]. See Kevin R. Johnson, "Melting Pot" or "Ring of Fire" ?: Assimilation and the Mexican-American Experience, 85 Calif. L. Rev. 1259 (1997), 10 La Raza L.J. 173 (1997).

[FN25]. See 85 Calif. L. Rev. at 1289-90, 10 La Raza L.J. at 203-04.

[FN26]. 85 Calif. L. Rev. at 1276, 10 La Raza L.J. at 190.

[FN27]. See, e.g., Elizabeth M. Iglesias, Rape, Race and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality, 49 Vand. L. Rev. 869 (1996) (drawing upon Latina/o cultural images to analyze how the internalization of Anglocentric constructions of femininity and masculinity reify misogynistic versions of heterosexuality to the detriment of both men and women).

[FN28]. Assimilation with dominant social norms, and the consequences for vulnerable members of society of legal rules based on them, are issues of importance to scholars writing from various positions. See, e.g., Lure and Loathing (Gerald Early ed., 1993) (addressing race, identity, and assimilation from three perspectives: Blackness as meaningless, irrelevant, and/or limiting, as a clearly defined identity, and as a social/political construct); Bill Ong Hing, Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society, 81 Calif. L. Rev. 863 (1993) (arguing for recognizing diversity, including racial separation, as part of a pro-immigration analysis); Martha R. Mahoney, Segregation, Whiteness, and Transformation, 143 U. Pa. L. Rev. 1659 (1995) (accepting race as a social construct, Professor Mahoney discusses the relationship between residential segregation, access to or exclusion from employment, and White privilege).

[FN29]. Johnson, 85 Calif. L. Rev. at 1262, 10 La Raza L.J. at 176.

[FN30]. See 85 Calif. L. Rev. at 1262, 10 La Raza L.J. at 176.

[FN31]. "Passing" is a phenomenon that has received increasing attention in recent years among legal scholars. See Passing and the Fictions of Identity (Elaine K. Ginsberg ed., 1996); Judy Scales-Trent, Commonalities: On Being Black and White, Different, and the Same, 2 Yale J.L. & Feminism 305 (1990); cf. Ian F. Haney Lopez, White By Law (1996) (discussing the legal construction of race); Judy Scales-Trent, Notes Of A White Black Woman (1995) (containing a series of essays inspired by the author's experience as a "White" Black woman).

[FN32]. See Johnson, 85 Calif. L. Rev. at 1266-67 nn.18-21 and accompanying text, 10 La Raza L.J. at 180-81 nn.18-21 and accompanying text.

[FN33]. 85 Calif. L. Rev. at 1273, 10 La Raza L.J. at 187.

[FN34]. See 85 Calif. L. Rev. at 1274, 10 La Raza L.J. at 188.

[FN35]. See 85 Calif. L. Rev. at 1263, 10 La Raza L.J. at 177.

[FN36]. See 85 Calif. L. Rev. at 1272-73, 10 La Raza L.J. at 186-87.

[FN37]. See 85 Calif. L. Rev. at 1272, 10 La Raza L.J. at 186.

[FN38]. See 85 Calif. L. Rev. at 1272-74, 10 La Raza L.J. at 186-88.

[FN39]. 85 Calif. L. Rev. at 1272, 10 La Raza L.J. at 186.

[FN40]. See 85 Calif. L. Rev. at 1272, 10 La Raza L.J. at 186.

[FN41]. See 85 Calif. L. Rev. at 1291-93, 10 La Raza L.J. at 205-07.

[FN42]. See 85 Calif. L. Rev. at 1280-82, 10 La Raza L.J. at 194-96. Ironically, the same identity position--Mexican American--simultaneously has been legally, or doctrinally, constructed as "White" in complex and dangerous ways. See Ian F. Haney Lopez, Retaining Race: LatCrit Theory and Mexican American Identity in Hernandez v. Texas, 2 Harv. Latino L. Rev. (forthcoming 1997); George A. Martinez, Mexican Americans and Whiteness, 2 Harv. Latino L. Rev. (forthcoming 1997).

[FN43]. Professor Johnson later notes the anti-African aspect of Latina/o racism, recalling that his "grandmother warned [him] never to bring home an African-American girlfriend." 85 Calif. L. Rev. at 1274, 10 La Raza L.J. at 188.

[FN44]. See 85 Calif. L. Rev. at 1264 nn.9-10, 10 La Raza L.J. at 178 nn.9-10.

[FN45]. The use of narrative in critical legal scholarship has engendered a lively debate in recent years. See Valdes, supra note 2, at 2 n.3. The storytelling debate ensued chiefly from the narrativity of Critical Race Theory, but similar questions have arisen in the context of another emergent genre of critical legal scholarship--Queer legal theory. See, e.g., William N. Eskridge, Jr., Gaylegal Narratives, 46 Stan. L. Rev. 607 (1994) (affirming the value of narrative as legal scholarship in sexual minority contexts); Marc A. Fajer, Authority, Credibility and Pre-Understanding: A Defense of Outsider Narratives in Legal Scholarship, 82 Geo. L.J. 1845 (1994) (defending the use of stories in lesbian and gay legal scholarship); Francisco Valdes, Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society, 83 Calif. L. Rev. 1, 366 (1995) [hereinafter Valdes, Queers] (calling for storytelling in the articulation and development of Queer Legal Theory).

[FN46]. See, e.g., Daniel A. Farber & Suzanna Sherry, Telling Stories Out of School: An Essay on Legal Narratives, 45 Stan. L. Rev. 807, 808 (1993) (acknowledging the potential usefulness and validity of narratives in legal scholarship, but faulting outsider storytellers for being "less concerned than conventional scholars about whether stories are either typical or descriptively accurate"); cf. Randall L. Kennedy, Racial Critiques of Legal Academia, 102 Harv. L. Rev. 1745 (1989) (generally accepting traditional conceptions of scholarship).

[FN47]. For a more extensive articulation of this linkage, compare Jerome McCristal Culp, Jr., Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy, 77 Va. L. Rev. 539 (1991).

[FN48]. See supra notes 45-47 (containing authorities that discuss the benefits and limits of legal narratives as legal method).

[FN49]. Professor Cameron, perhaps more so than Professor Johnson, trains attention on culture and ethnicity, and their expression through language, as crucial aspects of Latina/o marginality. See infra notes 156-185 and accompanying text. Professor Perea identifies the use of race in exclusively Black/White terms as a main cause of Latina/o invisibility, see infra notes 50- 63 and accompanying text, while Professor Haney Lopez, see infra notes 72-84 and accompanying text, hones in on race as the key to Latina/o subordination. Professor Roithmayr's analysis, see infra notes 88-99 and accompanying text, like Professors Chang and Aoki's, see infra notes 128-147 and accompanying text, focuses on nativistic racism broadly identifying the blending of racial and ethnic biases as central to the subordination of various non-White, non- Anglo groups. Professor Moran reflects on the unique configuration of Latina/o racial and ethnic heterogeneities to help explain widespread and continuing neglect of Latina/o needs and interests. See infra notes 187-192 and accompanying text.

[FN50]. Juan F. Perea, The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought, 85 Calif. L. Rev. 1219 (1997), 10 La Raza L.J. 133 (1997).

[FN51]. 85 Calif. L. Rev. at 1219, 10 La Raza L.J. at 133.

[FN52]. 85 Calif. L. Rev. at 1215, 10 La Raza L.J. at 129.

[FN53]. 85 Calif. L. Rev. at 1215, 10 La Raza L.J. at 129.

[FN54]. For instance, Professor Cameron critiques "racial dualism," a term synonymous with Professor Perea's use of "Black/White binarism." See infra note 159 and accompanying text (referring to "racial dualism"). Likewise, Professor Johnson's narrative effectively depicts a Black/White dominant social

environment as the context for the misidentifications that he recounts. See supra notes 35-43 and accompanying text (discussing "Black" and "White" positionalities in both Anglo and Latino normative settings). Similarly, Professor Alfieri notes that "the early tenor of [Critical Race Theory] literature echoes this essentialist dichotomy." 85 Calif. L. Rev. at 1649- 50, 10 La Raza L.J. at 563-64 (describing the effects of Black/White binarism in Critical Race Theory).

[FN55]. See, e.g., Perea, 85 Calif. L. Rev. at 1252-53, 10 La Raza L.J. at 166-67 (discussing the legal history of slavery and after, and the centrality of this experience in the formation of the United States).

[FN56]. 85 Calif. L. Rev. at 1237, 10 La Raza L.J. at 151.

[FN57]. See, e.g., Deborah Ramirez, Multicultural Empowerment: It's Not Just Black and White Anymore, 47 Stan. L. Rev. 957 (1995) (discussing the importance of moving beyond the Black/White paradigm for multicultural empowerment); see also Valdes, supra note 2, at 5-6 & n.19 and accompanying text (discussing the limitations of the Black/White paradigm).

[FN58]. A critical legal discourse on the position of Native Americans in relationship to the United States and its legal system also has developed, especially in recent years. See, e.g., Robert A. Williams, Jr., The American Indian in Western Legal Thought: The Discourses of Conquest (1990); see also Rennard Strickland, Implementing the National Policy of Understanding, Preserving, and Safeguarding the Heritage of Indian Peoples and Native Hawaiians: Human Rights, Sacred Objects, and Cultural Patrimony, 24 Ariz. St. L.J. 175 (1992) (explaining Native American approaches to sacred objects and cultural patrimony and suggesting a tribal context for reaching decisions consistent with the purpose of the Native American Graves Protection and Repatriation Act of 1990); Robert A. Williams, Jr., Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory For Peoples of Color, 5 Law & Ineq. J. 103 (1987) (discussing the dangers and benefits of critical legal theory for peoples of color from a Native American subject position).

[FN59]. The development of Asian-American legal scholarship also has quickened in recent years. See, e.g., Keith Aoki, The Scholarship of Reconstruction and the Politics of Backlash, 81 Iowa L. Rev. 1467 (1996) (introducing a symposium on Asian-American legal scholarship); Robert S. Chang, Toward an Asian American Legal Scholarship: Critical Race Theory, Post Structuralism, and Narrative Space, 81 Calif. L. Rev. 1241 (1993) (discussing the failure of Critical Race scholarship to address Asian- American issues); Pat K. Chew, Asian Americans: The "Reticent" Minority and Their Paradoxes, 36 Wm. & Mary L. Rev. 1 (1994) (calling for a new model for including or excluding Asian Americans from affirmative action programs); Kenzo S. Kawanabe, American Anti-Immigrant Rhetoric Against Asian Pacific Immigrants: The Present Repeats the Past, 10 Geo. Immigr. L.J. 681 (1996) (arguing that the current anti-immigrant rhetoric aimed at Asian immigrants echoes the anti- immigrant charges levied against persons of Asian descent in the 19th century); David Quan, Asian Americans and Law: Fighting the Myth of Success, 38 J. Legal Educ. 619 (1988) (arguing for affirmative action based on the unique position of Asian Americans arising from past discrimination and cultural values); Frank H. Wu, Changing America: Three Arguments About Asian Americans and the Law, 45 Am. U. L. Rev. 811 (1996). But see Jim Chen, Unloving, 80 Iowa L. Rev. 145 (1994) (rejecting Chang's article as "racial fundamentalism" that opposes the formation of multiracial families and that conflicts with the principle of equality and multiracial parity).

[FN60]. The "bottom" has become a metaphor of Critical Race Theory, although its use is not limited to a description of the Black or African-American position within the United States. See, e.g., Derrick Bell, Faces at the Bottom of the Well (1992) (discussing the permanence of racism in the U.S.); Mari J. Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 Harv. C.R.-C.L. L. Rev. 323 (1987) (arguing that Critical Legal Studies scholars must "look to the bottom," that is, toward those who have experienced discrimination, as a normative source of law); see also Roy L. Brooks, The Ecology of Inequality: The Rise of the African-American Underclass, 8 Harv. BlackLetter J. 1 (1991) (analyzing the disproportionate size of the African-American poor).

[FN61]. See, e.g., infra note 151 and accompanying text (discussing this very situation in Monterey Park, California).

[FN62]. The term "White supremacy" refers to the systematic elevation of Whiteness to accord it social, economic, and legal superiority. For readings on White supremacy, see Eyes Right! (Chip Berlet ed., 1995) (describing the role of White supremacy in the rise of the political right movement in the 1990s); George M. Fredrickson, White Supremacy (1981) (comparing and contrasting the historical development of "White supremacy" in the United States and South Africa); Racial Determinism and the Fear of Miscegenation, Post-1900 (John David Smith ed., 1993) (discussing the history of race relations in the United States); see also Cheryl I. Harris, Whiteness as Property, 106 Harv. L. Rev. 1707 (1993) (finding the concept of Whiteness as a form of property rooted in and perpetuating White supremacy).

[FN63]. The term "White privilege" refers to the everyday as well as the structural advantages enjoyed by White persons and groups under White supremacy. See, e.g., Stephanie Wildman, Privilege Revealed (1996) (describing how White privilege reinforces the existing racial status quo and interacts with other systems of privilege); Stephanie Wildman, Reflections on Whiteness and LatCrit Theory, 2 Harv. Latino L. Rev. (forthcoming 1997) (discussing the privileging of Whiteness specifically vis-a-vis Latina/o identity); see also Peggy McIntosh, White Privilege and Male Privilege: A Personal Account Of Coming to See Correspondences Through Work In Women's Studies, in Power, Privilege and Law 22 (Leslie Bender & Daan Braveman eds., 1995) (giving a personalized account of White privilege and male privilege in the United States).

[FN64]. Professor Johnson's autobiographical narrative provides a case in point. See supra notes 24-35 and accompanying text (recounting the interplay of diversity and assimilationism and their impact on his rearing). For further discussion of Latina/o diversities, see Berta Esperanza Hernandez-Truyol, Building Bridges--Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement, 25 Colum. Hum. Rts. L. Rev. 369 (1994).

[FN65]. See Margaret E. Montoya, Academic Mestizaje: Re/Producing Teaching, Scholarship and Community Service Latina Style, 2 Harv. Latino L. Rev. (forthcoming 1997) (discussing mestizaje as a key feature of Latina/o communities).

[FN66]. Racial and ethnic intermixture has long been recognized and accepted as a key characteristic of Latinas/os generally, and of the nations from which we originate. See, e.g., David E. Hayes-Bautista & Gregory Rodriguez, L.A. County's Answer For Racial Tensions: Intermarriage, L.A. Times, May 5, 1996, at 6 (discussing Latina/o intermarriage in the Los Angeles area); Jon Nordheimer, Miami Cultures Find Rapport After a Generation of Clashes, N.Y. Times, Dec. 16, 1985, at A1 (detailing the effects intermarriage has had on cultural tensions within the Cuban community in Miami).

[FN67]. See, e.g., Kimberle Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. Chi. Legal F. 139 (arguing that viewing subordination as a disadvantage occurring along a single categorical axis theoretically erases Black women and undermines efforts to broaden feminist and antiracist analyses); Kimberle Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, 43 Stan. L. Rev. 1241 (1991) (elucidating intersectionality to explore the race and gender dimensions of violence against women of color); Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 Stan. L. Rev. 581 (1990) (emphasizing multiplicity to critique gender essentialism in feminist legal scholarship as silencing the voices of Black women); Hernandez- Truyol, supra note 64 (discussing Latina/o diversity to argue for multidimensionality); see also Francisco Valdes, Sex and Race in Queer Legal Culture: Ruminations on Identities and Interconnectivities, 5 S. Cal. Rev. L. & Women's Stud. 25, 49 (1995) (positing, in a sexual minority context, the concept of interconnectivity as a jurisprudential complement to multiplicity and intersectionality).

[FN68]. See infra Section II.B. (discussing the diversities of the "Latina/o" category); cf. Elizabeth M. Iglesias, Structures of Subordination: Women of Color at the Intersection of Title VII and the NLRA. Not!, 28 Harv. C.R.-C.L. L. Rev. 395 (1993) (advancing a similar analysis in the broader "women of color" context).

[FN69]. For a recent and compelling analysis of race as a social construction, see Ian F. Haney Lopez, The Social Construction of Race: Some Observations on Illusion, Fabrication and Choice, 29 Harv. C.R.-C.L. L. Rev. 1 (1994).

[FN70]. For an earlier iteration of this argument, see Juan F. Perea, Five Axioms in Search of Equality, 2 Harv. Latino L. Rev. (forthcoming 1997). For the argument in favor of "race," see Haney Lopez, supra note 42.

[FN71]. See Perea, 85 Calif. L. Rev. at 1232-39, 10 La Raza L.J. at 146- 53 (presenting a detailed critique of this paradigm).

[FN72]. Ian Haney Lopez, Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory, 85 Calif. L. Rev. 1158 (1997), 10 La Raza L.J. 72 (1997).

[FN73]. 85 Calif. L. Rev. at 1153, 10 La Raza L.J. at 67.

[FN74]. 85 Calif. L. Rev. at 1152, 10 La Raza L.J. at 66.

[FN75]. See 85 Calif. L. Rev. at 1148-50, 10 La Raza L.J. at 62-64.

[FN76]. See 85 Calif. L. Rev. at 1158-74, 10 La Raza L.J. at 72-93.

[FN77]. See 85 Calif. L. Rev. at 1179-80, 10 La Raza L.J. at 93-94.

[FN78]. 85 Calif. L. Rev. at 1185, 10 La Raza L.J. at 99.

[FN79]. See 85 Calif. L. Rev. at 1155-57, 10 La Raza L.J. at 69-71.

[FN80]. See 85 Calif. L. Rev. at 1184-85, 10 La Raza L.J. at 99-100.

[FN81]. See supra notes 50-60 and accompanying text (calling for expanded analyses of "race").

[FN82]. See generally Sandrino-Glasser, supra note 7 (addressing both race and ethnicity, as well as their conflation in the construction of Latina/o socio-legal identities).

[FN83]. See Francisco Valdes, Foreword--Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment, 2 Harv. Latino L. Rev. (forthcoming 1997) (urging the same point while reviewing the works in another symposium).

[FN84]. See supra notes 70-71 and accompanying text (comparing positions advanced by Professors Perea and Haney Lopez).

[FN85]. The term "interconnectivity" refers to a capacity for present or future connection based on social and legal experience. See Valdes, supra note 67, at 46-57. In the context of critical legal scholarship, the term represents a "personal awakening to the tight interweaving of systems and structures of subordination...in the task of forging a capacious, if not universal, theory of subordination." Id. at 49.

[FN86]. Cf. id. at 65-70 (discussing similar points regarding Queer legal theory); see also Francisco Valdes, Queer Margins, Queer Ethics: A Call to Account for Race and Ethnicity in the Law, Theory, and Politics of "Sexual Orientation," 48 Hastings L.J. (forthcoming 1997) (urging coalitional cross- pollination of ideas and efforts across race, ethnicity and sexual orientation axes).

[FN87]. See 85 Calif. L. Rev. at 1219-25 nn.27-51 and accompanying text, 10 La Raza L.J. at 133-39 nn.27-51 and accompanying text (providing a critical account of Latina/o issues and involvement in civil rights cases).

[FN88]. Daria Roithmayr, Deconstructing the Distinction Between Bias and Merit, 85 Calif. L. Rev. 1449 (1997), 10 La Raza L.J. 363 (1997).

[FN89]. 85 Calif. L. Rev. at 1445, 10 La Raza L.J. at 369.

[FN90]. See 85 Calif. L. Rev. at 1456, 10 La Raza L.J. at 370.

[FN91]. 85 Calif. L. Rev. at 1482, 10 La Raza L.J. at 396 (quoting Gerold Auerbach, Unequal Justice: Lawyers and Social Change in Modern America 24-28 (1976)).

[FN92]. As Professor Roithmayr's deconstructive analysis indicates, the very notion of "merit" unavoidably teeters on incoherence, but her historical analysis additionally demonstrates a calculated disregard for "merit" in the specific context of legal education and law practice in this country. See 85 Calif. L. Rev. at 1475-94, 10 La Raza L.J. at 389-408.

[FN93]. The mistreatment of turn-of-the-century immigrants and the racialized aspects of this mistreatment are well documented. See, e.g., Dale E. Casper, The Community Experiences of Immigrant Minorities (1985); John Higham, Send These to Me: Jews and Other Immigrants in Urban America (1984); see also Thomas Kessner, The Golden Door (1977) (comparing the upward mobility of Jewish and Italian immigrants who came to New York City between 1880 to 1915).

[FN94]. See, e.g., infra note 130 and accompanying text (contrasting current images of Mexican, Chinese and Italian immigrants).

[FN95]. See Johnson, 85 Calif. L. Rev. at 1300-01, 10 La Raza L.J. at 214-15 (critiquing the social and legal construction of Latina/o identity).

[FN96]. Notably, exclusionary biases also were driven by anti-Semitism. See, e.g., Avraham Barkai, Branching Out (1994) (describing German-Jewish immigration to the U.S. from 1820 to 1914); Higham, supra note 93, at 116-95 (describing ideology and culture behind anti-Semitism in the United States from 1830 to 1930); see also Robert Stevens, Law School 100-101 (1983) (describing early twentieth century efforts to prevent Jewish lawyers from entering the Bar).

[FN97]. Most notable, perhaps, is the continuing importance of the Law School Aptitude Test (LSAT), which is "standardized" in a way that predictably and presently reproduces racial stratification in legal education and culture. See, e.g., Leslie Espinoza, The LSAT: Narratives and Bias, 1 Am. U.J. Gender & L. 121 (1993) (examining bias through narrative analysis of actual test questions and calling for continued access to questions appearing on actual tests so that they may be examined for bias); Portia Y. T. Hamlar, Minority Tokenism in American Law Schools, 26 How. L. J. 444, 493-506 (1983) (discussing the usefulness of LSAT scores in admission processes when the goal is to increase minority representation); Dannye Holley & Thomas Kleven, Minorities and the Legal Profession: Current Platitudes, Current Barriers, 12 T. Marshall L. Rev. 299, 305-19 (1987) (determining statistically that LSAT scores have a greater negative impact on minority admission rates than undergraduate grade point averages); R. Sandoval, Why the LSAT Does Not Test Chicanos, 6 Tex. S.U. L. Rev. 31 (1979) (arguing that although the LSAT tests the entire "Anglo-American Dimension" it fails to test the full spectrum of the "Chicano Dimension"); Rita J. Simon & Mona J. E. Danner, Gender, Race, and the Predictive Value of the LSAT, 40 J. Legal Educ. 525 (1990) (comparing statistically male and female LSAT scores and White and Black/Latina/o scores).

[FN98]. Despite this damning history, die-hard defenses of "merit" continue to appear in the contemporary literature. See, e.g., Daniel A. Farber, The Outmoded Debate Over Affirmative Action, 82 Calif. L. Rev. 893 (1994) (arguing that the failures of educational systems, rather than existing measures of merit, cause minorities to do less well); Richard A. Posner, Duncan Kennedy on Affirmative Action, 1990 Duke L.J. 1157 (1990) (arguing in favor of retaining traditional measures of merit as opposed to modifying or bending those standards to achieve greater diversity); cf. William Van Alstyne, Rites of Passage: Race, the Supreme Court, and the Constitution, 46 U. Chi. L. Rev. 775 (1979) (expressing a belief that race-based laws, even those with a corrective purpose, make race matter and destroy solidarity and cohesion);

Kingsley R. Browne, Affirmative Action: Policy-Making By Deception, 22 Ohio N.U. L. Rev. 1291 (1996) (arguing that, at bottom, the goal of most proponents of affirmative action is to achieve representation proportionate to each minority's representation in the population).

[FN99]. See Valdes, Queers, supra note 45, at 365-66 (urging similar approaches to sexual orientation issues).

[FN100]. See Perea, 85 Calif. L. Rev. at 1242, 10 La Raza L.J. at 156 (criticizing the marginalization of Latina/o participation in the making of civil rights law).

[FN101]. The Civil Rights Movement, for instance, represents a key example of Black anti-subordination leadership. See generally Herbert H. Haines, Black Radicals and the Civil Rights Mainstream (1988) (discussing the impact of militant groups in social movements on the ability of moderate organizations to achieve their goals); James C. Harvey, Black Civil Rights During the Johnson Administration (1973) (documenting the political atmosphere surrounding the Johnson administration's policies on civil rights); Mark V. Tushnet, The NAACP's Legal Strategy against Segregated Education 1925-1950 (1987) (interpreting and narrating the NAACP's campaign against segregated schools); Black Protest in the Sixties (August Meier et al. eds., 1991) (discussing the roles of nonviolent direct action, the Black Power movement, and political action in the civil rights context).

[FN102]. The affirmative action experiment always has been controversial, including its proper parameters, but it generally has included Latinas/os. For a recent discussion of affirmative action rationales and their application to various identity categories, see Paul Brest & Miranda Oshige, Affirmative Action For Whom?, 47 Stan. L. Rev. 855 (1995) (reviewing different affirmative action rationales and their applicability to various race and ethnicity categories). For additional reading on affirmative action, see also Karen Bell, Affirmative Action and Justice: A Philosophical and Constitutional Inquiry, 14 Cardozo L. Rev. 1545 (1993) (reviewing Michel Rosenfeld, Affirmative Action and Justice (1991) (attempting to offer a new approach to understanding and resolving the debate over affirmative action)); Luke Charles Harris & Uma Narayan, Affirmative Action and the Myth of Preferential Treatment: A Transformative Critique of the Terms of the Affirmative Action Debate, 11 Harv. BlackLetter J. 1 (1994) (defending affirmative action as a matter of affording its beneficiaries "greater equality of opportunity in a social context marked by pervasive inequalities").

[FN103]. See, e.g., Aoki, supra note 59 (discussing legal scholarship in the current climate of backlash).

[FN104]. See, e.g., Marcus Stern, Sweeping Immigration Bill is Passed by House, San Diego Union-Trib., Sept. 26, 1996 at A1 (describing the content of the federal Immigration Reform Act and Immigrant Responsibility Act of 1996); English-Only Campaign an Effort to Divide and Conquer in Worst Way, Sun-Sentinel, Sept. 6, 1995, at 1A (discussing various state initiatives to institute English-only laws).

[FN105]. Demographic projections identify Latinas/os as a fast-growing component of the total population, both in key regions and nationally. For instance, by 2010, Latinas/os are projected to increase to 32.2 percent in the nation's largest state, California. See Whites Seen Becoming a Minority in California, Wash. Post, Nov. 17, 1985, at A12. Of course, Latinas/os already are numerous in other states, such as New York, Texas, Florida, New Mexico and Arizona. See Bureau of the Census, U.S. Dep't of Com., No. 32, Resident Population, by Race and Hispanic Origin--States: 1990, in Stat. Abstract U.S. 30-33 (1993) [hereinafter Resident Population]. Nationally, Latinas/os are projected to become the most populous "minority" group in the United States by 2020. See Bureau of the Census, U.S. Dep't of Com., No. 20, Resident Population Projections, by Race and Hispanic Origin: 1992 to 2050, in Stat. Abstract U.S. 19 (1993) [hereinafter Resident Population Projections].

[FN106]. Proposition 187 effectively segregates "illegal aliens"--mainly Latinas/os--from California society. For selected readings on Proposition 187, see Linda S. Bosniak, Opposing Prop. 187: Undocumented Immigrants and the National Imagination, 28 Conn. L. Rev. 555 (1996); Kevin R. Johnson, An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race, 70 Wash. L. Rev. 629 (1995); Ruben J. Garcia, Comment,

Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law, 17 Chicano-Latino L. Rev. 118 (1995).

[FN107]. Proposition 209 seeks effectively to ban affirmative action for women and people of color--including Latinas/os--in California. See The Affirmative Action War In California, Black Enterprise, Nov., 1995, at 6 (examining those who have benefited from affirmative action, California's poor record on affirmative action, and both sides of the debate over its continued existence); University Minority Rolls Could Be Halved, The Press-Enterprise, Oct. 3, 1996, at A13 (predicting that enrollment of Hispanic students will drop by over 60% at UC-Berkeley and 79% at UCLA after the implementation of Proposition 209); see also Thomas Glenn Martin, Jr., UCLA School of Law Admissions in the Aftermath of the U.C. Regents' Resolution to Eliminate Affirmative Action: An Admissions Policy Survey and Proposal, 18 Chicano- Latino L. Rev. 150 (1996) (examining the effects of backlash and offering policy proposals). For a discussion of the potential legal interpretations and new causes of action that could arise from Proposition 209, see Legal Implications of Proposition 209-The California Civil Rights Initiative, 24 W. St. U. L. Rev. 1 (1996).

[FN108]. The federal Immigration Reform Act and Immigrant Responsibility Act of 1996 targets non-citizen Latina/os who are in the United States legally. See Stern, supra note 104, at A1.

[FN109]. Most recently, a panel of the Ninth Circuit upheld Proposition 209 with an opinion notable for its venomous majoritarian rhetoric. See Coalition for Economic Equity v. Wilson, 110 F.3d 1431 (9th Cir. 1997), cert. denied 66 U.S.L.W. 3316 (U.S. Nov. 3, 1997) (No. 97-369).

[FN110]. The purposes of "cultural war" include retaining "orthodoxy" in the face of changing power relations and progressivist movements. See Paul Galloway, Today's "Cultural War" Goes Deeper than Political Slogans, Chi. Trib., Oct. 28, 1992, at C1 (describing the "cultural war" phenomenon). Cultural war was declared from the podium of the 1992 Republican Party Convention by Presidential contender Patrick J. Buchanan. See Chris Black, Buchanan Beckons Conservatives to Come "Home", Boston Globe, Aug. 18, 1992, at A12 (reporting Buchanan's remarks); see also James Davison Hunter, Before the Shooting Begins (1994) (expounding the concept of "culture war" more generally); James Davison Hunter, Culture Wars: The Struggle to Define America (1991) (conceptualizing the political climate in the 1980s as war over culture and national identity).

[FN111]. See Roithmayr, 85 Calif. L. Rev. at 1475-82, 10 La Raza L.J. at 389-96 (analyzing the ramifications for today of historical racism and nativism in the formalization of legal education and practice in the United States).

[FN112]. In recent years, both politicians and scholars have paid increasing attention to immigration policy. See, e.g., Swati Agrawal, Trusts Betrayed: The Absent Federal Partner in Immigration Policy, 33 San Diego L. Rev. 755 (1996) (examining the claims brought by the immigration states against the federal government and concluding that the federal relationship to the states should be understood as that of a trusteeship); Kevin R. Johnson, Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement, 1993 B.Y.U. L. Rev. 1139 (reviewing and critiquing the political disempowerment and consequential abuse of noncitizen immigrants); Johnson, supra note 106; Carlos Ortiz Miranda, Immigration Reform, 35 Cath. Law. 259 (1994) (addressing specifically the situation of "religious workers" under recent immigration law changes); Joyce Antila Phipps, Immigration and the Latin Community, 17 Women's Rts. L. Rep. 279 (1996) (discussing issues of race, class, and gender in immigration policy); Peter H. Schuck, Alien Rumination, 105 Yale L.J. 1963 (1996) (reviewing Peter Brimelow, Alien Nation (1995), which Schuck finds to be a "bad" book yet valuable for the important points it makes "[o]n the way to its erroneous conclusions").

[FN113]. See infra notes 101-110 and accompanying text (addressing the recent rise of backlash politics); see also, Valdes, supra note 83 (positing that activist consciousness is a defining feature of LatCrit theory).

[FN114]. The importance of praxis is foundational to LatCrit theory. See, e.g., George A. Martinez, Mexican-Americans and Whiteness, 2 Harv. Latino L. Rev. (forthcoming 1997); Montoya, supra note 65;

Laura Padilla, LatCrit Praxis to Heal Fractured Communities, 2 Harv. Latino L. Rev. (forthcoming 1997); see also Valdes, supra note 83; see generally Alfieri, supra note 8.

[FN115]. See supra notes 85-86 and accompanying text (discussing the need for constructive inter-group anti-subordination collaboration).

[FN116]. For further elaboration of these points, see Valdes, Theorizing About Theory, supra note 13 (suggesting the coalitional value of "working back" from the vision of a post-subordination time in addition to the current practice of "working forward" from the past or present experience of anti- subordination struggle).

[FN117]. See supra notes 77-83 and accompanying text (discussing Professors Perea's and Haney Lopez's positions on this question).

[FN118]. See Valdes, supra note 3, at 4-7 (reviewing the relative marginality of Latinas/os in Critical Race Theory specifically and outsider jurisprudence generally).

[FN119]. See supra notes 70-71 and accompanying text (noting how both Professors Perea and Haney Lopez posit this benefit as one salutary effect of LatCrit theory).

[FN120]. See Valdes, supra note 83 (describing the LatCrit debt to Critical Race Theory); see generally Alfieri, supra note 8 (critically canvassing the roots and writings of Critical Race Theory as represented in its first two book anthologies).

[FN121]. Valdes, supra note 2, at 27.

[FN122]. See Valdes, supra note 67, at 38-70 (discussing the bases, imperatives, dangers and limitations of coalitional efforts as affected by race and sex in sexual minority contexts). For a similar analysis focused on race, ethnicity, and sexual orientation contexts, see Valdes, supra note 86 (forthcoming 1997) (calling for greater attention, and responsiveness, to emergent racial critiques of lesbian and gay legal scholarship).

[FN123]. See generally Valdes, supra note 116; see also Darren Lenard Hutchinson, Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse, 29 Conn. L. Rev. 561 (1997) (critiquing the absence of race from gay and lesbian antidiscrimination analyses and the weaknesses that flow from such absences).

[FN124]. See supra notes 24-40 and accompanying text (providing one account of Latina/o life in the United States).

[FN125]. See supra notes 50-56 and accompanying text (focusing on Latina/o invisibility in race discourses and legal histories).

[FN126]. See supra note 106 (citing sources on immigration policy); see also Johnson, 85 Calif. L. Rev. at 1292, 10 La Raza L.J. at 206.

[FN127]. I derive the term "nativistic racism" from Robert Chang. See Robert S. Chang, The Nativist's Dream of Return, 9 La Raza L.J. 55 (1996) (critiquing the commingling of nativism and racism in the subordination of Asian-American and Latina/o groups within the United States); see also Robert S. Chang, Dis-Oriented (forthcoming 1997).

[FN128]. Robert S. Chang & Keith Aoki, Centering the Immigrant in the Inter/National Imagination, 85 Calif. L. Rev. 1395 (1997), 10 La Raza L.J. 309 (1997).

[FN129]. This common ground is shared more broadly. For instance, Critical Race Feminism has begun to draw connections between the South African and North American experience, as well as connections that link domestic and global issues more generally. See, e.g., Adrien Katherine Wing & Eunice P. de Carvalho, Black South African Women: Toward Equal Rights, 8 Harv. Hum. Rts. J. 57 (1995) (reviewing the position

of Black women in South Africa from a Critical Race Feminist position); Adrien Katherine Wing & Sylke Merchan, Rape, Ethnicity and Culture: Spirit Injury from Bosnia to Black America, 25 Colum. Hum. Rts. L. Rev. 1 (1993) (advancing a transnational, comparative analysis of violence against women of color). Similarly, Queer legal theory has begun to connect the anti-subordination analysis of domestic homophobia with international human rights norms and discourses. See, e.g., James D. Wilets, Conceptualizing Private Violence Against Sexual Minorities as Gendered Violence: An International and Comparative Law Perspective, 60 Alb. L. Rev. 989 (1997) (positing an internationalist analysis that compares campaigns of violence based on gender and sexual orientation across borders and cultures). For more on the potential overlap of LatCrit and Queer legal theory, see infra notes 167-170 and accompanying text.

[FN130]. 85 Calif. L. Rev. at 1414, 10 La Raza L.J. at 328.

[FN131]. 85 Calif. L. Rev. at 1400, 10 La Raza L.J. at 314.

[FN132]. See 85 Calif. L. Rev. at 1143-1211, 10 La Raza L.J. at 57-125.

[FN133]. See 85 Calif. L. Rev. at 1281-86, 10 La Raza L.J. at 195-200.

[FN134]. 85 Calif. L. Rev. at 1404, 10 La Raza L.J. at 318.

[FN135]. 85 Calif. L. Rev. at 1414, 10 La Raza L.J. at 328.

[FN136]. 85 Calif. L. Rev. at 1416, 10 La Raza L.J. at 330.

[FN137]. Asian Americans and Latinas/os not only "carry" the border with our bodily movements, the law also permits the "border" literally to be moved from the nation's physical frontiers to its interior. See United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (holding that routine stops of persons at a "border" station placed at the interstate highway between Los Angeles and San Diego, and located 66 miles north of the frontier with Mexico, did not violate the Fourth Amendment).

[FN138]. See 85 Calif. L. Rev. at 1409-17, 10 La Raza L.J. at 323-31.

[FN139]. 85 Calif. L. Rev. at 1419, 10 La Raza L.J. at 333.

[FN140]. 85 Calif. L. Rev. at 1416, 10 La Raza L.J. at 330.

[FN141]. 85 Calif. L. Rev. at 1404, 10 La Raza L.J. at 318.

[FN142]. See 85 Calif. L. Rev. at 1419-20, 10 La Raza L.J. at 333-34.

[FN143]. Thus, Latina/o scholars already have begun to examine the relationship between globalization and subordination. See, e.g., Kevin R. Johnson, Free Trade and Closed Borders: NAFTA and Mexican Immigration to the United States, 27 U.C. Davis L. Rev. 937 (1994) (contrasting the policy of "free" movement for capital, goods, and services with the policy of increasingly restricted movement for persons); Angel R. Oquendo, NAFTA's Procedural Narrow-Mindedness: The Panel Review of Antidumping and Countervailing Duty Determinations Under Chapter Nineteen, 11 Conn. J. Int'l L. 61 (1995) (critiquing the imposition of Anglocentric legal traditions and norms in certain NAFTA dispute-resolution procedures); Gloria L. Sandrino, The NAFTA Investment Chapter and Foreign Direct Investment in Mexico: A Third World Perspective, 27 Vand. J. Transnat'l L. 259 (1994) (analyzing the subordinating impact of certain provisions of the North American Free Trade Agreement on Mexico).

[FN144]. See Elizabeth M. Iglesias, Foreword--International Law, Human Rights and LatCrit Theory, 28 U. Miami Inter-Am. L. Rev. 177 (1997) (analyzing the relationship of LatCrit theory to international law and particularly to human rights issues); see also infra note 166 (presenting works on LatCrit theory and transnational legal analyses).

[FN145]. See generally Chang & Aoki, supra note 128.

[FN146]. 85 Calif. L. Rev. at 1405, 10 La Raza L.J. at 319.

[FN147]. 85 Calif. L. Rev. at 1405, 10 La Raza L.J. at 319.

[FN148]. This task requires a careful practice of international and transnational analysis, mindful of its anti-subordination purpose. See generally Sharon K. Hom, Commentary, Re-Positioning Human Rights Discourses on "Asian" Perspectives, 3 Buff. J. Int'l L. 209 (1996) (calling for nuance in transnational anti-subordination analyses).

[FN149]. 85 Calif. L. Rev. at 1427, 10 La Raza L.J. at 341.

[FN150]. See 85 Calif. L. Rev. at 1426-27, 10 La Raza L.J. at 340-41.

[FN151]. See 85 Calif. L. Rev. at 1431-38, 10 La Raza L.J. at 345-52.

[FN152]. The "sameness/difference dilemma" has attracted much scholarly commentary in recent years as various groups, identities, and positions have asserted claims to inclusion and involvement in legal theory and culture. This dialogue implicates essentialism because it represents the efforts of various scholars to delineate "communities" and interests based on perceived (dis)similarities between and among various "identities," thereby prompting much debate over sources, claims and interpretations of sameness and difference. See, e.g., Joan C. Williams, Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist and Critical Race Theory, 1991 Duke L.J. 296 (attempting to reformulate the sameness/difference debate as two sides of the same concern highlighting structural factors that systematically disadvantage women and minorities); see also Martha Minow, Making All the Difference: Inclusion, Exclusion, and American Law (1990) (investigating the legal treatment of difference and categorization).

[FN153]. See supra note 67 and accompanying text (discussing essentialism and its dangers in critical legal scholarship).

[FN154]. See generally Valdes, supra note 67, at 58-65 (considering the interplay of race, sex and sexual orientation in the construction of "sameness" and "difference" in sexual minority contexts). See also infra notes 167-178 and accompanying text (discussing further sameness and difference issues).

[FN155]. For an incisive analysis of color-on-color issues related to coalitional social justice quests, see Eric K. Yamamoto, Rethinking Alliances: Agency, Responsibility and Interracial Justice, 3 UCLA Asian Pacific Am. L.J. 33 (1995).

[FN156]. Scholars have long pointed to language regulation--or repression-- as a key concern of Latinas/os, because it is a crucial means of (dis)empowering Latinas/os and others through law and throughout society. See Antonio J. Califa, Declaring English the Official Language: Prejudice Spoken Here, 24 Harv. C.R.-C.L. L. Rev. 293 (1989); Jose Roberto Juarez, Jr., The American Tradition of Language Rights: The Forgotten Right to Government in a "Known Tongue," 13 Law & Ineq. J. 443 (1995); Juan F. Perea, Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English, 77 Minn. L. Rev. 269 (1992); Juan F. Perea, English-Only Rules and the Right to Speak One's Primary Language in the Workplace, 23 J.L. Reform 265 (1990); see generally Mari J. Matsuda, Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction, 100 Yale L.J. 1329 (1991) (illustrating the significance of language issues to a broader range of traditionally subordinated identity categories).

[FN157]. See supra text accompanying note 33 (recounting why he never was taught Spanish as a child).

[FN158]. Christopher David Ruiz Cameron, How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English- Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy, 85 Calif. L. Rev. 1347 (1997), 10 La Raza L.J. 261 (1997).

[FN159]. See 85 Calif. L. Rev. at 1354-55, 10 La Raza L.J. at 268-69.

[FN160]. See 85 Calif. L. Rev. at 1363, 10 La Raza L.J. at 277.

[FN161]. See 85 Calif. L. Rev. at 1372-74, 10 La Raza L.J. at 286-88.

[FN162]. See 85 Calif. L. Rev. at 1353-54, 10 La Raza L.J. at 267-68.

[FN163]. See 85 Calif. L. Rev. at 1361, 10 La Raza L.J. at 275.

[FN164]. See 85 Calif. L. Rev. at 1363-65, 10 La Raza L.J. at 277-79.

[FN165]. See Chang & Aoki, 85 Calif. L. Rev. at 1413-16, 10 La Raza L.J. at 327-30 (arguing for more expansive treatment of "domestic" equality issues).

[FN166]. This merger of "domestic" and "foreign" spheres has been urged by various LatCrit scholars in recent years. See Hernandez-Truyol, supra note 52; Berta Esperanza Hernandez-Truyol, Indivisible Identities: Culture Clashes, Confused Constructs, and Reality Checks, 2 Harv. Latino L. Rev. (forthcoming 1997); see also Colloquium, International Law, supra note 2.

[FN167]. See 85 Calif. L. Rev. at 1361, 10 La Raza L.J. at 275.

[FN168]. For a discussion of Queer legal theory, see Valdes, Queers, supra note 45, at 344-75 (articulating one vision of Queer legal theory).

[FN169]. See, e.g., Janet E. Halley, Sexual Orientation and the Politics of Biology: A Critique of the Argument from Immutability, 46 Stan. L. Rev. 503 (1994) (discussing these issues and concepts as applied to equal protection law).

[FN170]. For more on this subject, see Elizabeth M. Iglesias & Francisco Valdes, Afterword--"Latinas/os" at the Center: Exploring the Points and Limits of LatCrit Social Justice Agendas, 19 Chicano-Latino L. Rev. (forthcoming 1998).

[FN171]. 85 Calif. L. Rev. at 1366, 10 La Raza L.J. at 280.

[FN172]. See supra note 67 (citing sources on essentialism in legal theory).

[FN173]. See supra note 152 (citing sources on sameness/difference scholarship).

[FN174]. See supra note 67 (citing sources on essentialism in legal theory).

[FN175]. See 85 Calif. L. Rev. at 1506-07, 10 La Raza L.J. at 420-21 (applying postmodern concepts to deconstruct "merit" in the legal profession).

[FN176]. For most Latinas/os in the United States, Spanish remains the language of choice. See Rachel F. Moran, Foreword--Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond, 8 La Raza L.J. 1 (1995) (discussing the resilience of bilingualism and biculturalism among some Latina/o communities); Christy Fisher, Hispanics Indicate Enduring Preference for Native Language, Advertising Age, Feb. 14, 1994, at 26 (stating that Latinas/os often prefer to communicate in Spanish even after residing in the United States for many years).

[FN177]. Latina/o immigration has seen tremendous growth in recent years. See Bureau of the Census, U.S. Dep't of Com., No. 8, Immigrants, by Country of Birth: 1961-1991, in Stat. Abstract U.S. 11 (1993) (reporting the arrival of nearly 191,000 legal immigrants from South and Central America in 1991 alone).

[FN178]. The growth in numbers of Latinas/os or Spanish-speaking persons can spark increased need and demand for bilingual services of all sorts. See Joel Kotkin, Urban Renewers, New Economy, Mar. 1996, at

23 (noting that Latina/o owned businesses have increased by 700% in Los Angeles County over the past 20 years); Diana Kunde, Bilingual Temp Firm Speaks to a Niche in Crowded Market, Dallas Morning News, Mar. 13, 1996, at 1D (discussing the increased demand for bilingual staffing); Beverly Vasquez, Hispanics Leading in Business Growth, 48 Bus. Dateline, Sept. 13, 1996, at 1A (according to U.S. Census Bureau data, Latina/o businesses are growing at three times the rate of all other businesses in the United States).

[FN179]. Generally, Mexican-American communities retain widespread fluency in the native tongue despite their multigenerational presence in the United States. See, e.g., Joan Moore & Harry Pachon, Hispanics in the United States (1985). Yet Professor Johnson's narrative in this Symposium illustrates how family assimilation strategies may undercut the potential resiliency of Spanish use. See supra note 34 and accompanying text.

[FN180]. For instance, recent reports indicate a marked decline in Spanish fluency among Miami Cubans. See Nordheimer, supra note 66, at A16 (discussing second generation Cuban Americans' decrease in Spanish fluency and increase in English fluency).

[FN181]. This observation raises another point of convergence with Asian- American legal scholarship: the preservation of bilingual and bicultural capacity. See generally supra notes 126-154 and accompanying text (reviewing similar connections suggested by Professors Chang and Aoki).

[FN182]. See 85 Calif. L. Rev. at 1356-57, 10 La Raza L.J. at 270-71.

[FN183]. 85 Calif. L. Rev. at 1391-92, 10 La Raza L.J. at 305-06.

[FN184]. See supra notes 113-114 and accompanying text (addressing the necessary and inevitable intersection of politics and legal scholarship).

[FN185]. The dichotomy between "politics" and "scholarship" tracks the dichotomy between "objectivity" or "neutrality" and "subjectivity" or "advocacy." These dichotomies impute to "conventional" scholarship the virtue of detachment while ascribing to "outsider" scholarship the vice of partisanship. However, the distinction between objectivity and subjectivity has been compellingly debunked because it can be reduced to the self-serving notion that dominant norms, or those who write from the position of dominant normativities, are "objective" while outsider reformists are merely "subjective." See Valdes, Queers, supra note 45, at 126-27 nn.332-34 (citing sources on legal notions of objectivity and subjectivity). Consequently, the delineation and interpretation of these supposed virtues and vices are themselves substantively and seriously contested by scholars that write from various subject positions.
This same tension is seen in other aspects of legal culture, including the institutions and processes through which law and legal knowledge and training are transmitted--legal education. See, e.g., Paul Carrington, Of Law and the River, 34 J. Legal Educ. 222, 226-27 (1984) (acknowledging that "law will reflect the tastes of that class of persons from whom the officials are drawn" but cautioning against the dangers of the "legal nihilism" that may be generated in reaction to this recognition of the law's majoritarian biases); Robert W. Gordon, Response to Paul Carrington, "Of Law and the River," and of Nihilism and Academic Freedom, 35 J. Legal Educ. 1, 13 (1985) (responding to the invocation of nihilism with the reminder that a "true professional should work to bring the practice of law into closer harmony with utopian ideals"); see also Robert M. Cover, Essay, Violence and the Word, 95 Yale L.J. 1601 (1986) (describing law and its processes as the infliction of violence through official words and choices); Angela P. Harris & Marjorie M. Shultz, "A(nother) Critique of Pure Reason": Toward Civic Virtue in Legal Education, 45 Stan. L. Rev. 1773 (1993) (challenging the notion of pure reason and scholarly detachment). Thus, even though dominant norms continue to preach "scholarly" detachment from "politics"--or from the construction of social reality through the force of law--it has long been noted that politics necessarily permeate legal doctrine, theory, and culture, even (or especially) the doctrine, theory, and culture that represent and reproduce the status quo.

[FN186]. See also Valdes, supra note 60 (advancing a similar argument in light of policy retrenchments produced by backlash politics).

[FN187]. Moran, supra note 10.

[FN188]. For more on this effort, see Valdes, supra note 83 (considering the possibility of Latina/o pan-ethnicity and its relationship to LatCrit theory).

[FN189]. See id.

[FN190]. See Moran, 85 Calif. L. Rev. at 1319-23, 10 La Raza L.J. at 233- 37.

[FN191]. See 85 Calif. L. Rev. at 1331-44, 10 La Raza L.J. at 245-58.

[FN192]. See 85 Calif. L. Rev. at 1331-44, 10 La Raza L.J. at 245-58.

[FN193]. Professor Cameron became a law professor in 1991, Professor Espinoza in 1987, Professor Haney Lopez in 1992, Professor Johnson in 1989, Professor Moran in 1983, Professor Perea in 1990, Professor Roithmayr in 1996 and Professor Valdes in 1991. The non-Latina/o contributors also are relative newcomers: Professors Aoki and Chang began full-time law teaching in 1993, while Professor Harris began in 1988 and Professor Alfieri in 1987. See The AALS Directory of Law Teachers 303, 405, 500, 554, 705, 756, 938, 216, 316, 504, 206 (Association of American Law Schools ed., 1996-97); Telephone Interview by David Oakland with Professor Daria Roithmayr, University of Illinois School of Law (Dec. 17, 1997).

[FN194]. See id.

[FN195]. The underrepresentation of various groups within the legal academy has drawn scholarly critique in recent years from various quarters. See, e.g., Richard H. Chused, The Hiring and Retention of Minorities and Women on American Law School Faculties, 137 U. Pa. L. Rev. 537 (1988); Cheryl I. Harris, Legal Education II: Law Professors of Color and the Academy: Of Poets and Kings, 68 Chi.-Kent. L. Rev. 331 (1992); Charles R. Lawrence III, Minority Hiring in AALS Law Schools: The Need For Voluntary Quotas, 20 U.S.F. L. Rev. 429 (1986).

[FN196]. See Michael A. Olivas, The Education of Latino Lawyers: An Essay on Crop Cultivation, 14 Chicano-Latino L. Rev. 117, 129 (1994) (documenting and critiquing specifically Latina/o underrepresentation).

[FN197]. See Rachel F. Moran, Commentary: The Implications of Being a Society of One, 20 U.S.F. L. Rev. 503 (1986) (reflecting on the condition of being the "only" of a type on a law faculty).

[FN198]. See Richard Delgado, Essay, Affirmative Action as a Majoritarian Device: Or, Do You Really Want to Be a Role Model?, 89 Mich. L. Rev. 1222 (1991) (cautioning against acceptance of a simplistic "role model" rationale for faculty diversity); see also Enrique R. Carrasco, Collective Recognition as a Communitarian Device: Or, Of Course We Want to be Role Models!, 9 La Raza L.J. 81 (1996) (discussing the pros and cons of "role model" arguments).

[FN199]. Generally, academic success and "merit" are measured by scholarly output and placement, which require relative disengagement from all else except teaching and minimal professional affiliations. Yet law professors of color are oftentimes called upon to counsel all minority students, to represent the school at all "diversity" events or functions, to affiliate with professional organizations to help diversify them, and to serve on school committees to attain intra-institutional diversity. At the entry level, success is gauged by proxies deemed to foretell the likely scholarly profile of the candidate. See generally Richard Delgado, Minority Law Professors' Lives: The Bell-Delgado Survey, 24 Harv. C.R.-C.L. L. Rev. 349 (1989) (surveying various aspects of the professional activities and environments that affect legal academics of color). Academics of color frequently take up these activist or representational activities in earnest, which inevitably cut into scholarly output--a cut that then is routinely used by the institution to jeopardize or deny retention, promotion, and/or tenure. See id. at 355-56. The bottom line is that a premium is placed on a task--the production of scholarship--that conflicts with the demands placed on "role models," which institutions typically expect or demand of outsider scholars.

[FN200]. There will be 28,693,000 residents of Latina/o population in the United States by the year 2000. See Resident Population Projections, supra note 105; see also Resident Population, supra note 105 (citing current population figures).

[FN201]. See A Review of Legal Education in the United States 67-70 (Rick L. Morgan ed., 1994).

[FN202]. See Washington v. Davis, 426 U.S. 229 (1976) (discounting the relevance of statistical disparity in documenting discrimination); Barbara J. Flagg, "Was Blind, but Now I See": White Race Consciousness and the Requirement of Discriminatory Intent, 91 Mich. L. Rev. 953 (1993) (critiquing formalistic conceptions of neutrality and White claims of colorblindness).

[FN203]. See supra notes 88-96 and accompanying text (reviewing Professor Roithmayr's critique of "merit" and "bias").

[FN204]. For an excellent detailed breakdown of Latinas/os in legal education, see Olivas, supra note 196 (showing that Latina/o entry-level professors on the whole possess higher paper credentials than White male counterparts).

[FN205]. The Latina/o-identified contributors to this Symposium either were born, or have ancestral roots in, various Hispanic nations and/or cultures: Professor Cameron was born in the United States, raised in the home of his Mexican-American grandmother, and combines a Mexican and Anglo heritage; Professor Espinoza is of a Mexican-American, Irish and Jewish ancestry and was raised by the Mexican-American side of her family; Professor Haney Lopez was born in the United States, and combines a Salvadoran and Anglo heritage; Professor Johnson similarly was born in the United States, and combines a Mexican and Anglo heritage; Professor Moran is an American-born Latina of Mexican and Irish ancestry; Professor Perea was born in Washington, D.C., and is of Colombian and Costa Rican ancestry; Professor Roithmayr is a Latina of Mexican-American descent; and Professor Valdes is Caribbean, having been born in Cuba before emigrating to the United States as a young child.

[FN206]. Excluding Puerto Rico itself, there recently were seventeen tenure- track law professors of Puerto Rican ancestry at law schools accredited by the American Bar Association. See Olivas, supra note 196, at 130.

[FN207]. For a similar summary of original or early LatCrit issues and characteristics, see Valdes, supra 83; see also supra notes 12-22 and accompanying text (distilling key LatCrit functions and commitments).

[FN208]. See supra notes 12-22 and accompanying text (discussing LatCrit theory's four functions).

[FN209]. See Valdes, supra note 2, at 4-11.

[FN210]. Cf. Valdes, Queers, supra note 45, at 354-56 (addressing analogous points in Queer legal theory as well as in race and gender scholarship).

[FN211]. The term "political identities" signifies identities and communities derived from commitment to specified political principles. See Iglesias, supra note 144, at 400-03 (discussing the way "women of color" constitute a strategic, political identity from which existing legal regimes may be critically examined); Robert S. Chang, Racial Cross-Dressing, 2 Harv. Latino L. Rev. (forthcoming 1997) (discussing political identities in race/ethnicity contexts, specifically Latina/o and Asian-American contexts).

[FN212]. The term "strategic essentialism" denotes recognition of the power that constructs like race, color, ethnicity, gender, and sexuality exert over human efforts to conceive and create progressive identities and communities and urges a strategic harnessing of this power to build anti-subordination solidarity within and among various essentialist categories. See Wildman, supra note 63 (elaborating on "strategic" essentialism).

[FN213]. See Robert S. Chang, The End of Innocence or Politics After the Fall of the Essential Subject, 45 Am. U. L. Rev. 687 (1996) (urging a shift from essential to political identities); Angela P. Harris, Foreword: The Jurisprudence of Reconstruction, 82 Calif. L. Rev. 741 (1994) (discussing modern and

postmodern elements of Critical Race Theory to devise a form of scholarship that marshals and transcends both); see also Valdes, supra note 2, at 27-28 (arguing for a post-postmodern move from color to consciousness).

[FN214]. See supra note 67 (citing sources on multiplicity, intersectionality and multidimensionality); Valdes, supra note 67, at 54-57 (proffering interconnectivity as a complement to these concepts).

[FN215]. See Hernandez-Truyol, supra note 166 (urging the pursuit of coalitions as key to LatCrit theory); Valdes, supra note 83 (also urging coalitional projects and sensibilities).

[FN216]. See generally Alfieri, 85 Calif. L. Rev. at 1682-85, 10 La Raza L.J. at 596-99 (cautioning that a failure to do so "condemns jurisprudential movements not to death, but to irrelevance and triviality").

[FN217]. See Montoya, supra note 65 (identifying and calling for self- critique as a constitutive feature of LatCrit theory).

22. Leslie Espinoza [FNd1] and Angela P. Harris, [FNr1] *AFTERWORD: EMBRACING THE TAR-BABY--LATCRIT THEORY AND THE STICKY MESS OF RACE,* 85 CAL. L. REV. 1585 (1997) and 10 LA RAZA L. REV. 499 (1998)

In this Afterword, Leslie Espinoza and Angela Harris identify some of the submerged themes of this Symposium and reflect on LatCrit theory more generally. Professor Harris argues that LatCrit theory reveals tensions between scholars wishing to transcend the "black-white paradigm" and proponents of "black exceptionalism." Professor Espinoza argues that the papers presented in this Symposium often reproduce in their critiques the very problems they have identified with race theory, illustrating the proposition that race in the United States is a "Tar-Baby." Professor Harris argues that LatCrit theory's value lies in its insistence that questions of language, culture and nation are inextricably intertwined with questions of race. Professor Espinoza, placing LatCrit theory in the broader context of critical theory, expresses hope that storytelling as a method of scholarship will allow us to "re-story" the past and "re-imagine" the future.

Introduction

Leslie sojourns to Angela:

The building loomed before me. This was my first time on the campus of Yale Law School, yet I had taken this uncomfortable journey before. Whenever I go to one of the bastions of the rich and powerful, I seem to be moving forward and backward at the same time. I confidently step up to the establishment edifice, while I quietly retreat in my mind to that little Mexican girl who just does not fit in. [FN1] What have I in common with all those old puritan gentlemen, the ones with the funny names like Cotton Mather and Increase Mather. How can I walk their hallways? [FN2]

Through the entrance doors, with lots of stone and wood, and naturally a security desk, the guard looks up at me, very friendly. I almost say, "It's OK, I was invited, I am supposed to be here." But I don't. Instead, I put on my professional mask. [FN3]

"Good morning, I am Professor Espinoza, here to see Professor Angela Harris." Looking at the register sheet, I ask, "Do I need to sign in?"

"Oh no," the friendly guard replies. Well, I think, I really must look like I belong. [FN4] I seem to have mastered the exterior. Mastered is, of course, the right word. [FN5] Angela Harris and I are meeting to discuss five papers, five ventures into this legal/theoretical world labeled LatCrit. [FN6] We are going to write about the papers and we are going to write about race. However, first we need to talk. Some things will be said, others will be unsaid but understood. Certain things will not even be broached. Angela and I have lived race all our lives. [FN7] There are certain ways in which we share a pain of understanding race, a joy of surviving despite the odds. Yet, there are other ways in which our differences drive us apart, making us question each other's ability ever to appreciate what race has meant in our lives. [FN8] You are invited to listen.

Seeing is important too. You need to see the heavy granite walls, the leaded windows and the carved wood of Brahmin intellectuality. More importantly, you need to see us. Angela is African American and looks African American. I am Mexican American and do not look Mexican American. These are simple statements of visible truth and invisible deception. The statements recognize a prototypical picture of "African American" and of "Mexican American." [FN9] This image is an internalized shared visual norm of both the dominant American society and, ironically, of the outsider

American society--the very victims of the stereotypical misidentification. [FN10] Appearances have played an important role in our personal and social understanding and misunderstanding of race. [FN11]

Angela and I are shaped by our life experiences--by our appearance, by our family histories, by our education and by our profession. Our personal experience pervades and guides our discussion of race. As women of color, race has been the powerful prism that fractures the invisible white light of dominant society. We see more than one surface, we hear more than one story. [FN12] As legal academics, our discussions of race always seem to circle back to law. When we discuss history, it is the history of case law and legislation. When we discuss injustice and suffering, our examples seem to cluster around the highly edited factual stories of appellate judges. When we discuss policy and change, we focus on law reform. It is astounding how much our perception of race is law-oriented.

Critical scholars of color are simultaneously disempowered by race and empowered by their professional status. We are thus confronted with a dilemma. How do we, as Audre Lorde writes, use the master's tools to pull down the master's house? [FN13] Critique is difficult when one is, as Angela and I are, living comfortably in the master's house. We see but are also blinded. More troubling, often we see, but desire to be blinded. We are outsiders who want both to remain outside and to belong.

The struggle to retain and nourish dual consciousness [FN14] is the central component to critical scholarship. Critical scholarship requires vigilance. First, if we believe that our experience as members of the community of color has been instrumental in our ability to develop a critical perspective on race, we need to actively nurture our connection to the community. [FN15] Second, critical scholars need to worry that their work and their consciousness has been co-opted by their success in the dominant community. [FN16] Traditional law, which reflects entrenched racism, structures our discussion and limits our ability to be truly critical; [FN17] au courant legal debates, by the dominant academy and particularly by our critics, frame our discussions. [FN18] If we "outsiders" [FN19] want to belong, if we want our issues heard, we are forced to play the game of those in power. However, the game is seductive. It lures us into forgetfulness. We may lose sight of the issues, the injustice, that first inspired us to play. Thus, we must constantly scrutinize our work for authenticity. Critical scholarship, then, must be a journey, not an end. Our work provides insight, it does not provide definitive answers that end our inquiry.

This Symposium is a model for dynamic theory. All of the Symposium scholars use LatCrit theory to challenge the usual positionality of the critical race scholars who are part of the critical race movement. The LatCrit authors recognize the important critique of law by critical race scholars. Critical race theorists begin by noticing how law supposedly impacts racial justice and how law actually impacts racial justice. [FN20] Legislators and judges reflect society's dominant understanding of race. The dominant group claims to address racism by first identifying the problem and then by providing a solution. The basic analysis of race in our society, the "dominant discourse," [FN21] is that there is a white/black divide. [FN22] Race is about the unfortunate history of slavery. [FN23] The legacy of slavery is that whites unjustifiably feel superior and blacks feel oppressed. What to do? First, pass anti-discrimination laws to address white bias and then provide encouraging opportunities to help with black defeatism. If whites have to be colorblind [FN24] and if blacks have to assimilate, [FN25] then racism will end. Racial injustice, thus, is an evolutionary problem of a too slowly melting ingredient in the pot.

Critical race scholars have revealed how the dominant society's mythological discourse on race is deceptive. There is little real effort to recognize or address racial injustice. Indeed, the laws and judicial decisions often are palliatives that obscure how much things stay the same or have become worse. [FN26] Furthermore, critical race scholars argue that the remedy for racism, the conception of colorblindness, is merely a ruse for white power. [FN27] It assumes that whites will first see color, that is race, and then choose to ignore it. [FN28] It is a trope for allowing whites to notice color but then exercise power by deciding not to notice it. It denies the reality of race and leaves persons of color "raced" or not "raced" at the whim of whites.

Likewise, assimilation is a remedy that ultimately leaves power in the hands of whites. Assimilation places a burden on outsiders to become like the dominant society, i.e., "white." [FN29] It is, of course, impossible to assimilate unless you are allowed to assimilate. [FN30] Assimilation may also be undesirable. Difference may have value. Critical race scholars have demonstrated that law most often operates to perpetuate the myth that racial justice is around the corner while in actuality assuring that the heavy, white male foot of injustice remains firmly planted on the throat of racial outsiders. [FN31]

LatCrit theorists want to complicate our understanding of the mechanics of oppression. Racism is not only historical slavery, Jim Crow laws and gerrymandered voting districts in the South. It is also immigration laws and internment camps; it is stolen land grants and silenced languages; it is standardized tests based on standardized culture; it is invisibility and lost identity. LatCrit theory also changes the image of the face attached to the victim of racial oppression. The face is not only African American, it is Asian and Latino/a, Caribbean black and Native American. It is a woman's face and the face of a child. The color of the face varies; it is milk chocolate and jasmine tea; it is burnished copper and golden sand; it is espresso and double latte; it is fair, it is dark, it is a medley.

LatCrits posit that by not complicating our understanding of race, critical race scholars have fallen into the trap of duplicating American [FN32] society's foundational understanding of race. Critical race scholars see race as a black/white binary problem. Failure to see the complexity of race leads to failure to understand racism. LatCrit theory endeavors to transform our understanding of race. Angela and I aspire to critique the LatCrit critics of the critical race scholars. We hope to further complicate our understanding of the meaning of the word "race." [FN33] We hope that knowledge of race will evolve into power over race; we hope that our discussion will provide a further step toward changing the tragic legacy of racism in all its manifestations.

In Part I of this Afterword, "Waiting To Exhale," Angela ponders the challenge that LatCrit theory brings to the centrality of African Americans in the American racial narrative. In Part II, "The Tar-Baby," we reflect on the contributions to this Symposium. Leslie analyzes the papers from the perspective of LatCrit theory; Angela analyzes them from the perspective of critical race theory. In Part III, "Tales and Transformations," we consider LatCrit theory as part of the larger problem of doing critical scholarship. Are we "just another brick in the wall" [FN34] when we engage in critical scholarship? After all, we are comfortably seated in the faculty wing of the Yale Law School. We are not only caught up in the system, we have become part of the system. How much authority would we have to speak were we not bonded to the very power structure that we critique? Leslie examines the convergence of critical projects and therapeutic projects; Angela ends with some reflections on avoiding the oppression sweepstakes in identity politics.

I. Waiting To Exhale

Angela replies to Leslie:

I laughed when I read Leslie's description of her first visit to Yale Law School. Her sense of discomfort is so familiar to me. Rather than using the front entrance with its steps and archways, I've noticed that I go out of my way to use the back door, which is marked only by a narrow ramp and a railing. The path to that door takes me by the kitchen, where most of the other black people who work at the law school work. In the mornings, there are delivery trucks and pallets of canned goods, spilled and dirty fruit in the slush. I hear the clang of pots and raised voices from the kitchen as I walk by, carrying in my pocket the building and office keys that will complete my Superwoman transformation from anonymous black woman on the street (where my faculty colleagues often hurry by without a glance) to a Yale law professor. I nod and speak to the middle-aged black man wearing a cook's apron who stands in the doorway smoking a cigarette; to the young black delivery man unloading crates; and, inside, to the elderly black men and women who dump the trash. Once, one of the very few black secretaries stops me to ask what courses I teach. She ends the conversation by saying, "It's good to see you here." I say, "It's good to see you, too." We both laugh, knowing that we both know why.

Why do I use the back door when I'm entitled to use the front? Part of my diffidence is, as Leslie suggests, the fear of being found out as a fake, the fear of being forced to return my borrowed authority. But this is a common anxiety, not limited to women of color. Indeed, I feel a certain kinship with this big, drafty, warren-like and ever so Gothic building that I sneak into every morning, for its authority is also partly borrowed. The campus buildings of Yale University were designed, I've been told, to imitate Cambridge University in England, a center of learning far more ancient and august than any American college. Moreover, the wealthy alumni who are paying for a multi-million dollar renovation of the law school building have insisted that no expense be spared in making the new aspects of the building look just like the law school they fondly remember from their own law school days. This requires the new elements of the building to imitate the older elements, which in turn imitate elements of buildings constructed an ocean away and many centuries ago. So, like the authority of this building, my authority rests in part on mere association: Yale (the building) must be good because it looks like Cambridge; I (the professor) must be good because I'm at Yale. Like the windows in my office, painstakingly broken and repaired with lead inserts imported from England in order to imitate Cambridge windows broken by accident, I am both real and fake.

Yet wielding borrowed authority is exhilarating as well as unsettling. The most offhand mention of my visitorship in "New Haven" (delivered, of course, modestly with downcast eyes, or carelessly in mid-conversation) causes people to make surprised exclamations and to congratulate me. In fact, my new status revives an old fantasy. As a visiting professor at Yale Law School (number one in the U.S. News & World Report list of best law schools in the country!), I can imagine I've finally transcended race. Or, at least, finally appropriated a club of respectability heavy enough to outweigh my disfavored race and gender. I've been waiting to exhale and now is my chance. I've made it to the top.

But the moment I exhale, a new version of an old joke occurs to me.

"What do you call a black woman with a visitorship at Yale Law School?"
"Nigger."

I feel a similar discomfort, a mixture of exhilaration and anxiety, at having been asked to co-author this Afterword on "LatCrit." As Juan Perea argues in his essay in this Symposium, the project of Latino/a critical legal theory forces us to rethink the black/white paradigm that has dominated American thinking about race for so long. [FN35] The prospect is challenging and exciting. Yet for me, an African-American woman, the journey begins with some self-conscious and unsettling reflections on the elements of blackness.

I want to make an argument that I know will be provocative and disturbing in the context of a symposium on LatCrit theory. I want to make this argument, not because I believe it to be true, but because I think it needs to be articulated in a clear and strong form in order for us to begin to critique it. The argument is an argument for what I will call "black exceptionalism." The claim is, quite simply, 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.

The claim of black exceptionalism can be supported in at least two ways: by examining the historic and continuing centrality of African-American ethnicity to American political and social life; and by examining the centrality of anti-black racism to the patterns of domination we call white supremacy. Consider first the importance of African-American ethnicity to the project of defining "America." American black people have lately christened ourselves African Americans, and many of us look back to an imagined Africa for history, names, customs, religious and intellectual traditions, and even the way we speak. As "African Americans," we have not only claimed a motherland, we have accumulated a pantheon of heroes, distinguished artistic traditions, a canonical history, distinctive ways of talking, moving, cooking, laughing, and even a national anthem. Our pride in this distinctiveness is an ethnic pride, arguably no different from any other group that imagines itself as a people. But African Americans also have a claim that is different in kind not only from the claims of "white" ethnic groups, but other groups racialized as "nonwhite." In the popular imagination, groups racialized as "nonwhite" each have their own particular stereotypical relationship to the American national project. Native Americans are thought to have vanished long ago, leaving behind only their noble spirituality for non-Indians to admire and appropriate at will. [FN36] Asian Americans and Latinos are imagined as eternal "strangers," [FN37] people who carry the border of American territorial power and cultural integrity within them. [FN38] But African Americans, for all our talk about Mother Africa, are profoundly and unmistakably Americans. More to the point, Americans are distinctively African. [FN39]

For example, the people who now call themselves "whites" originally developed that identity, and continue to maintain it most insistently, in contrast to "blacks." Our slavery became their freedom: our degraded labor produced their "free labor," our political nonexistence, their political belonging. [FN40] Our ugliness, our promiscuity, our simple natures reflected their beauty, continence, and refinement. [FN41] Our simple joys and pleasures, our songs and dances and folktales (mocked and admired in their minstrelsy) enabled their sophistication and formed a basis for their nostalgia. [FN42] Toni Morrison argues:

> For the settlers and for American writers generally, [the] Africanist other became the means of thinking about body, mind, chaos, kindness, and love; provided the occasion for exercises in the absence of restraint, the presence of restraint, the contemplation of freedom and of aggression; permitted opportunities for the exploration of ethics and morality, for meeting the obligations of the social contract, for bearing the cross of religion and following out the ramifications of power. [FN43]

Ralph Ellison concludes that for white Americans, the "Negro" eventually became "a human 'natural' resource who, so that white men could become more human, was elected to undergo a process of institutionalized dehumanization." [FN44] In these and other ways, American culture--to the very great extent that it is coextensive with "whiteness"--is founded upon an image of "blackness."

Moreover, America is distinctively African not just by way of contrast, but also by active incorporation. Here a few cultural examples will make the point. It has often been noted that the profitability of rap music, including hard- core "gangsta rap," depends on its appeal not just to urban black kids, but to suburban white kids. Black music has long been an important resource that white artists have turned to for inspiration. In the 1950's, many white artists became superstars either by re-recording black music for white audiences, like Pat Boone, or by drawing more indirectly on African-American musical traditions, like Elvis Presley. Indeed, the phenomenon called "rock 'n' roll," now associated primarily with white artists and white audiences, emerged from the African-American blues tradition. [FN45] In addition, jazz, which is sometimes called America's classical music, was developed by and brought to its highest pinnacle of sophistication by African-American artists and white artists working within African-American traditions.

More broadly, African-American styles define what is hip and cool for many Americans, including white Americans. Suburban white kids seeking validation through identification with black culture even have a nickname: "wiggers." [FN46] In Spike Lee's movie, "Do the Right Thing," a young Italian-American man rattles off racist stereotypes about black people, yet names African Americans as his favorite sports heroes, comics, and entertainers. [FN47] In the past two decades, an extraordinary number of Hollywood action movies have featured heterosexual male "buddies," one white and one black, who gradually learn to respect and love one another. [FN48] White Americans not only distance themselves from black people, they also admire them, imitate them, crave their approval. [FN49] Whether it is expressed in positive or negative terms, this obsession with blackness and black people is a central feature of American culture.

The centrality of blackness to American history and society is reflected in the law as well. As Perea notes in his essay in this Symposium, American anti- discrimination law emerged in response to experiences of and with black people. The constitutional and statutory provisions of the First Reconstruction reflect the Radical Republicans' effort to bring the freed slaves into the polity; [FN50] the statutory innovations of the Second Reconstruction emerged from a renewed effort to make that inclusion real. [FN51] Moreover, the African-American political and cultural resistance that finally forced these legal innovations has become a defining moment for American movements for social change. The moral claim to inclusion that African Americans made during the 1960s civil rights movement has become the rhetorical template for all subsequent civil rights struggles. Abortion protesters now sing "We Shall Overcome"; gay and lesbian activists liken marriage restrictions to miscegenation laws. Indeed, observing the history of black

struggle from the American Revolution to the present, some writers have concluded that "equality" itself is an "Anglo-African word." [FN52]

The claim of black exceptionalism does not rest only on the special role African Americans as an ethnic group have played in America's cultural, economic, political and social history. It also acknowledges the unique position of "blacks" in the material and symbolic framework of American white supremacy. As I, a black person who "looks" black, gaze at Leslie, the Latina who doesn't "look" Latina, I wonder, what can she really know about racism? There is a kind of pain, to be sure, that is experienced by those whose outsider status isn't visible on their faces, those who are forever assumed by others to be in the club and then must be outed or out oneself ("Excuse me, you must think I'm white."). [FN53] But in American social life, the operation of day-to-day white supremacy has always depended principally on color prejudice, and color prejudice has been most centrally associated with anti- black prejudice.

Color prejudice involves the unique humiliation of knowing that one is seen by others as physically frightening, ugly, or loathsome. Focused on the body, it incorporates the powerful drives of sexuality: the recognition of physical distinctiveness permits currents of sexual repulsion and attraction, fear, loathing, and desire to twist themselves around the notion of "race." [FN54] One consequence of color prejudice and its location in the body, then, is the experience of black people of being reduced to their bodies. [FN55] Another consequence is that one's claim to individuality is constantly vulnerable to being erased. [FN56] That well-to-do as well as poor black people are unable to catch taxis at night, are stopped by the police, and suffer from random racist violence has contributed to a sense of solidarity among all black people, based on the sense that color prejudice serves as a brutal leveler, erasing distinctions of class and status. Conversely, the mistrust and hostility often directed at light-skinned African Americans by dark-skinned African Americans has in part to do with the sense that what it means to be black is to have one's inferior status indelibly written on one's skin, hair, and features. In a perverse way, then, to be "authentically" African American is to be noticeably dark-skinned, continually vulnerable to being raced as black.

Of course, I do not mean to suggest that all African Americans "look" black and no Latinos do. But color, the experience of being visually raced through one's skin tone, lies at the very core of what it means to be African American. Consider, for example, the names we have been given: darky, colored, black, Negro, nigger. Blacks--and whites--have, unique among American ethnic groups, centered their identities on a notion of putative skin color, a phenomenon that attests to the centrality of color. For African Americans, but not for Latino/as, "ethnicity" converges with the biological fiction of "color."

Blackness is central to American white supremacy in another, deeper, way. Black people embody the nigger in the American imagination: a creature at the border of the human and the bestial, a being whose human form only calls attention to its subhuman nature. To be a nigger is to have no agency, no dignity, no individuality, and no moral worth; it is to be worthy of nothing but contempt. In the American collective unconscious, some nonwhites are more unequal than others. When compared with "whites," Latinos, like Asian Americans and Native Americans, are all considered abnormal, exotically different, inferior or somehow ominously superior. But when compared with one another, blackness is the worst kind of nonwhiteness. Words like "chink" and "spic" dehumanize. But they lack the horrific obliteration of nigger, a word reserved for black people. [FN57] The paradigmatic image of the racial Other in

American life has been the black body. [FN58] Thus, learning to have fear, loathing, and contempt for niggers is central to American white supremacy in a way that racism against "other nonwhites" is not. Toni Morrison argues that, in the United States, learning to distinguish oneself from and express contempt for blacks is part of the ritual through which immigrant groups become "American." [FN59]

Nor is this distancing limited to nonblacks. Many of us who grew up in middle class, "respectable" African-American homes can recall being told by parents or other relatives to stop "acting colored." The image we were all fleeing was the image of the nigger, the lower-class black person who talked too loudly in "Black English," laughed too heartily, and was vulgar in appearance, word, and deed. A similar tension exists in many American communities between black Caribbean immigrants and native-born African Americans. The immigrants often ascribe to African Americans the stereotypical qualities of the nigger: lazy, shiftless, too many children, searching for government handouts and always whining about racism. In this way, the nigger is kept alive, a source of contempt mixed with anxiety, shame, and self-hatred for blacks. The image of the nigger keeps individual racism alive, and it provides a powerful emotional engine for the institutions of white supremacy, from individual unconscious racism to notions of "merit" based on contrast with the nigger.

The argument for black exceptionalism is usually not articulated in mixed company in the interests of interracial solidarity. I have set out the argument, not because I believe it to be right, but because I believe that Perea's direct challenge to the black-white paradigm and the power and promise of LatCrit theory more generally forces it into the open. The claim of black exceptionalism presents both an intellectual and a political challenge to LatCrit theory. As an intellectual claim, black exceptionalism answers Perea's criticism of the black-white paradigm by responding that the paradigm, though wrongly making "other nonwhites" invisible, rightly places black people at the center of any analysis of American culture or American white supremacy. In its strongest form, black exceptionalism argues that what "white" people have done to "black" people is at the heart of the story of America; indeed, the story of "race" itself is the story of the construction of blackness and whiteness. In this story, Indians, Asian Americans, and Latino/as do exist. But their roles are subsidiary to, rather than undermining, the fundamental binary national drama. As a political claim, black exceptionalism exposes the deep mistrust and tension among American ethnic groups racialized as "nonwhite."

Even after having issued my disclaimers, I feel queasy writing these words. Not only does black exceptionalism present a serious threat of political division; the fact that I write about it in a symposium on LatCrit theory is politically suspect. Trina Grillo and Stephanie Wildman have written perceptively about the ways in which people who are members of a dominant group expect always to be given center stage, and will attempt to take back the center if they are momentarily denied it. [FN60] In these circumstances, I am a member of the dominant group. Until very recently, African Americans have numerically dominated critical race theory. To turn the subject back to African Americans at the end of a symposium devoted to Latino/as is a perfect example of taking back the center.

Nevertheless, I think I can justify this politically suspicious move, at least to myself. First, the claim of black exceptionalism represents something larger than the narrow interests of African Americans: it is an example of the conflicts that emerge from what Eric Yamamoto calls "differential racialization" and "differential disempowerment." [FN61] LatCrit theory is emerging at a time when the United States is rapidly becoming

more multiracial than ever before. As the preceding examples of conflict among "people of color" suggest, contemporary race theory must come to terms with tensions among "nonwhite" groups as well as the ever-present tension with "whites." Indeed, LatCrit theory's attack on the black/white paradigm itself engages the problem of developing a multidimensional race theory. On its own terms, then, LatCrit theory demands an understanding of white supremacy that goes beyond the binary of oppressed/oppressor.
Second, the problem of mediating conflicts among different "subject positions" is central rather than peripheral to the LatCrit project. Latino/a identity, and LatCrit theory, are being constructed out of a complex mix of ethnic identities, some of which are differently racialized. Leading LatCrit theorists have also made the link between race-ethnicity and gender a focus of their intellectual projects. [FN62] In acknowledgment of these complicated differences, rather than attempting to construct the "authentic" Latino/a, many LatCrit theorists have committed themselves to an antiessentialist politics. [FN63] The search for what Frank Valdes calls "connectivity" is imperative if the group "Latino/as" is to retain any internal coherence. Thus, the question of black exceptionalism does not disrupt but rather furthers the LatCrit project.

Finally, the problem of black exceptionalism offers me a way to make sense of my presence in these pages, rather than simply feeling as if I don't belong here. I cannot speak as a Latina or for Latino/as. But I can try and ask myself what LatCrit theory requires of me as an African American. How is the way I am used to analyzing white supremacy changed by LatCrit theory? How is my way of experiencing the world altered by trying to imagine it through Leslie's eyes? To what extent am I invested, as an individual and as a black person, in the black/white paradigm?

II The Tar-Baby

A. What Is LatCrit Theory?

Back to Leslie:

Race is like a riddle. The answers seem obvious, yet with each answer we find that this thing called race becomes even more puzzling, almost mysterious. In this section, I will first examine the common ways all of us define race. We think we know race, yet none of the definitions seem to work. It is no accident that race is clear cut and unknowable at the same time. Race works as an effective system of oppression because it is there and not there, race is a reality and a social construction. Race is quite like the "Tar-Baby." [FN64] You punch the Tar-Baby, you think you have got him, but instead you become stuck. [FN65] The more you try to exercise dominion, the more you are dominated. It may well be impossible to know what race is. Nevertheless, by critically examining that which we call race, we may move closer to an operational understanding of that which is experienced as real oppression.

Second, I will examine the LatCrit works that challenge our common understanding of race, particularly focusing on the critique of race as a black/white binary problem. However, in each paper, the LatCrit critics become stuck in the sticky mess of

race. Ironically, the LatCrit works reproduce in their critiques the very problems they have identified. This does not make them failed critiques. With each struggle, the intractable nature of race is further exposed. Rather than looking at each critical piece as an answer or solution, the papers reveal the need for tenacious endurance. Indeed, as I commence to critique the critics, I will no doubt often find myself in the "brier-patch," [FN66] with no clear path to understanding, making mistakes, causing injury, but continuing to struggle to be free.

1. Blindness and Bloodlines

I remember looking up at Angela. "What if I had a magic wand? What if I waved my magic wand and made all people the same color? Would there be such a thing as race?"

Angela paused. From deep inside, she replied, "Of course."

There is a horrific beauty about the system of oppression we call racism. For there to be racism, there must be race. Race is perceived in our society as easily knowable. [FN67] It fits snugly into the modern Western way of knowing and naming the world. [FN68] Race is all inclusive; everyone has a race. [FN69] There is a scientific certainty to race. [FN70] There are racial categories, much as there are the biological categories phyla and species and families. Each individual can name his or her own race. There are a few marginal outsiders who have to name their race by reference to more than one category. [FN71] However, even these messy cases conceive of their complexity categorically. Persons of mixed race break themselves into pieces, half this, a quarter that, tracing bloodlines that have an imagined recipe-like reality. [FN72]

Knowability of racial categories is one of the myths of race. Racial categories have been taught as if the categories, Negroid, Caucasoid and Mongoloid, had scientific bases. [FN73] Today, the scientific terminology has changed to "Black," "White" and "Asian." Social categories of race have grown to include "ethnic" racial groupings, including what is usually referred to as "Hispanic." [FN74] But what of Pacific Islanders? Are they a racial group or an ethnic group? And what of South Asians? Undoubtedly our categories expand to serve social and political needs.

This is the problem of race. It is both easily knowable and an illusion. It is obviously about color and yet not about color. [FN75] It is about ancestry and bloodlines and not about ancestry and bloodlines. [FN76] It is about cultural histories and not about cultural histories. [FN77] It is about language and not about language. [FN78] We strive to have a knowable, systematic explanation for race. We struggle with its elusivity. We name our categories, we refine our categories, and then inevitably we find too many exceptions to the categories, too many people who just do not fit. [FN79] Race should be rational and it is not.

Race certainly is operational. [FN80] For each group, race provides benefits and burdens. As a hierarchical system, the benefits and burdens are distributed in a grossly unequal and unjust way. Other systems of oppression, such as misogyny, homophobia and poverty, intersect with racism and synergistically operate to disempower some and empower others. [FN81] Yet for all the complexity, we recognize race as a correlate, negative and positive, to well-being. At the moment we recognize it, however, we also discount it--it could be capitalism, sexism, colonialism, etc. The complexity of oppression contributes to, and indeed may be at the heart of, our inability to understand race. In the same way that we think we know who is white, who is black, who is brown,

and who is yellow, we think that we know why she is poor, why she was fired, why she cannot read and why she is in jail.

Naming and understanding oppression seems like a catch-22. We use the master's tools to try to dismantle the master's house and think we are making headway, only to discover that the destruction of this house was part of a larger "urban renewal" plan to build a "Master's Fortress." For example, as we break down racial categories, we find that each group has a stake in maintaining their place in the racial order. Undocumented workers break their back in the hot sun, but are grateful for work; women, in dilapidated housing and with no hope for education or child care, raise small children and are thankful for a welfare check; sweatshop slaves work interminable hours for a pittance but are relieved to pay off the cost of their passage to America. And there are those who have moved up a step to own a small house in the barrio or a vegetable cart in the market; or those whose third-cousin's daughter managed to finish technical school and who have hope that one of their children will be in college instead of in a gang. It is the focus on the crumb thrown their way that keeps even the most oppressed from taking action for change. [FN82]

There are many examples of small benefit programs that are premised on definitional categories for racially oppressed groups: bracero work permits, welfare benefits, refugee immigration exceptions, targeted lending grants, minority business set-asides and affirmative action. The benefits are always tenuous because the benefactor can alter the application and understanding of the definitional category. This ambiguity is often used to pit different groups against each other in a scramble for benefits. [FN83] It is also used to pit persons within categories against each other. [FN84]

Tension and conflict within and between oppressed racial groups keep us from forming coalitions. Yet, united action is the only hope for effectively changing the vast disparities in wealth between social strata in this country. Racial outsiders are stuck in the "bottom of the well" [FN85] if they buy into the myth that equality means individual equality of opportunity. "Opportunity" has competition conceptually built into it. Equality is viewed as the responsibility of the individual to take advantage of opportunity. It is not understood as actual equality of basic material needs and it is not understood as something derived from group action.

Race definitions operate to define the "have-nots" and to mask the correlation between race and the "haves." American social discourse attaches negative characteristics by group; for example, he is poor because he is a lazy Spic. We do not attach success by racial group. Success is the reward of individual characteristics, e.g., he is rich because he is smart, he works hard and he is ruthless. We do not acknowledge that, as a statistical reality, he is rich because he is a white male. Race definitions go to the heart of our conception of equality. We learn that being racially identified can hurt us: we are part of a group that is unfairly stereotyped and unfairly treated. Likewise, we are taught that group identity does not lead to material success. We "race" ourselves in a way that leaves us lonely, isolated and mired in poverty.

2. Bearings, borders and barbed wire

I have my bearings. I know where I am. And I know where I must go: across the border. I make my move, but the boundary is marked by barbed wire. I am tangled and

torn, blood mixes with tears. I break free. But did I cross over or fall back? I am at the border, but I have lost my bearings.

For those of us whose lives are transcribed by borders, [FN86] there are constant crossings-over. We experience the border both as a line of demarcation and as a zone of dual meanings. There are moments when our outsider status means that we are excluded, that we are on the wrong side of the line. There are other times when we straddle two worlds, two consciousnesses. At these moments, the border itself may seem to be moving, but we have to worry about the delusion that we have crossed borders or that the borders do not exist.

The papers in this Symposium are about borders. The papers define borders, challenge the need for borders, examine how borders operate and endeavor to cross them. The first border is the color-line. In broad brush strokes, Professor Perea traces the use of color to create an understanding of race based on a black/white binary construct. The black/white understanding of race is so compelling, Perea demonstrates, that both mainstream and critical discourse on race adopt the two-sided construct as real. [FN87] Perea analyzes a wide variety of works by authors ranging from prominent black social critics, such as Andrew Hacker, [FN88] to black artists, such as Toni Morrison, [FN89] to reveal the omnipresence of the black/white racial concept. The black/white construct is everywhere and yet is decidedly not real. Latino/as, Asians, Native Americans and other outsiders exist. The black/white racial myth renders Latino/a experiences of race invisible, [FN90] and ultimately this leaves Latino/as themselves powerless.

Professor Cameron takes the theme of invisibility [FN91] and applies it to Title VII employment discrimination cases. [FN92] He demonstrates how Title VII protections are constrained because race is understood as color, and color is understood as immutable. [FN93] However, language is one of the prime racial markers for Latino/as. Language is understood as mutable by the courts, and, therefore, language discrimination is not prohibited either as race discrimination or as national origin discrimination. Cameron complicates our understanding of race by first positing that language may be ingrained in a way that makes it as immutable as color. [FN94] To make this argument, Cameron has to challenge both our understanding of language and our understanding of color. [FN95] Language is not the simple set of equivalents that Berlitz primers seem to indicate. Indeed, such a simplistic understanding of language might only be possible in a country such as the present United States, so unabashedly unilingual.

The color-line border is also a border between public and private selves. The operation of this border is examined by Professor Johnson. Johnson poignantly tells the story of his mother and her futile attempts to define herself as "Spanish." [FN96] The cultural racism defining Mexican Americans bound her private life, her identity. In the most telling part of his narrative, Johnson speculates on the relationship between his mother's mental illness and her ragged identity. [FN97]

Similarly, Cameron's Title VII critique demonstrates the wall between public erasure of ethnicity and private cultural survival. He shares the stories--the legal cases--of Latino/as who are forced to leave their language at home. [FN98] Bringing their Spanish into the workplace was tantamount to an invasion across borders. Law enforces the barricade between the public and private lives of Latino/as, fracturing Latino/as' individual senses of self. [FN99] The public/private boundary also works to fragment Latino/as as a group. We can be Chicano, but only at home. It prevents us from seeing the racism that plagues Chicanos in the public sphere. This is the racism that convinces us

that bad education and poor jobs are our lot: we are lazy and slow, we lack merit. We are victims of our individual shortcomings. The public/private boundary also keeps us from seeing the racism that affects us as a group in the private sphere. This is the racism that convinces us that mental illness, dysfunctional families, and domestic violence are not linked to our oppression as Latino/as but are an attribute of being Latino/a.

In the minds of critical scholars, there is an important boundary between ourselves as outsiders and ourselves as insiders. There is a border between the academic and the real, between our scholarship and our lives. This is a personal boundary. We are tangled in this stuff called law. Law frames our critiques and limits them. We see the color-line border and we explicate it. But we see it through the dominant lens of traditional legal categories, and we critique it within the accepted bounds of objection. We need to go further and question how the border came to be. Who does it benefit and who does it hurt? What kind of actions are called for?

The LatCrit articles in this Symposium cross the bounds of usual critique. Professor Perea's article, for example, could be read as a criticism of African-American scholars, a set piece for black/brown conflict. Arguably, Latino/as are asking why black scholars continually ignore the suffering of other racial groups. African Americans seem to have bought the franchise on race victimhood and don't want to share the territory of suffering--and righteous indignation--with other outsider groups. What seems to get lost as Perea documents black/white racial discourse, is the important story at the end of the article about Latino/a legal battles, particularly against school desegregation. [FN100] Paradoxically, Perea's article itself reproduces the focus on black/white race discourse--most of the article is a description of how race discourse is black/white. The focus on black/white discourse buries the powerful story of outsider groups working together for several decades to break segregation, the way Thurgood Marshall, Robert L. Carter and Loren Miller worked together with the litigants in the Mendez case. [FN101] As academics, we can lose our sense of why there is a border at all. We must remember that African Americans did not create the binary color line.

Why is it that outsider groups must tread so carefully? When we speak of our own oppression, why do we seem to reinforce the oppression of other outsider groups? Interracial conflict often occurs in the context of jobs. [FN102] Professor Cameron's critique of Title VII legal reform provides insight as to why we seem to conflict with each other whenever we try to assert our rights. Cameron argues that anti-discrimination law suffers from "indeterminacy." [FN103] Indeterminacy allows the courts to maneuver around the underlying intent of the law. Title VII was passed to stop discrimination against outsider groups. However, the courts interpret Title VII to exclude protection for the very groups at which the law was aimed. Given the EEOC guidelines and the accepted interpretation of legislative history, the lack of Title VII protection is not a problem of the statutes but rather of the judges. Indefiniteness allows racism. Critical scholars need to be willing to speak the truth and not lose themselves in the intricacies of border politics. We will never keep our bearings if we continue to play by the rules of the dominant society. Society's rule number one for critical scholars is that it is unacceptable for a legal scholar, an insider, to openly call another insider, a judge, racist. We are relegated to fighting amongst ourselves for crumbs. It is taboo to notice, let alone to point out, who is gobbling the cake.

The LatCrit theorists unearth the history of Latino/a repression: the history of material poverty, immigration internment, land seizures, police brutality, and lynchings. There is also the history of segregated schools, employment discrimination, and voting

exclusion. However, the suffering is too often contextualized to the role of the critical scholar as an academic. The history of suffering is divorced from the pain of the community. While it is arguable that the academic world permits a window on oppression to be opened a crack, it also can be a myopic self-indulgence that distorts the real legacy of racism.

The point is driven home by Professor Roithmayr's expert description of the history of law school admissions practices. [FN104] She traces the racist and economically elitist history of the development of "standards." Expanding on Stephen Gould's work, Roithmayr provides a compelling critique of the "science" of merit standards. Gould argues that science is used primarily to justify political ends. [FN105] Roithmayr focuses on who gets to develop "merit" standards. She argues that affirmative action is appropriate, because it gives outsiders the opportunity to fairly participate in developing standards. Unfortunately, Roithmayr's work is diluted, because it is given in the context of a specific critique of merit and reason. She misses the broader social perspective. In her examination of merit, she challenges the justification for tests based on the relationship between test scores and law school success by arguing that the process of developing standards was tainted. [FN106] However, even a racist process could conceivably result in accurate standards, much the same way that an incompetent construction company can still build a sound building. Roithmayr needs to clarify that admitting law students is not the same as constructing buildings. Racist standards keep law schools from having the material by which they can construct a sound legal profession. Roithmayr misses the fundamental issue of whether there is a relationship between successful law students [FN107] and successful lawyering. More importantly, she overlooks the relationship of lawyering as it is and lawyering as it should be. The "merit" question is: "Who gets to be lawyers?" The more meaningful question is: "Who should be lawyers to best serve the overall communities' interests in fairness and justice?"

The influence of the dominant society in Roithmayr's argument is further reflected in her focus on individuals and their right to be admitted to law school. The importance of current merit standards can be viewed another way. Merit standards play an important role in the political game of keeping outsiders from forming coalitions. For example, the interracial conflict over admission to the Lowell School in San Francisco centered on test scores. [FN108] Arguing about the validity of tests and entitlements to limited slots keeps outsiders from asking the real question, "Why is there only one good school in San Francisco?" [FN109]

Professor Cameron also traces the roots of language discrimination. Under Title VII analysis race is defined as color, as a characteristic that is "immutable." However, Latino/as are racially categorized by language. It is often language alone that renders them outsiders. [FN110] For example, an employer can prohibit Latino/a workers from talking in their own language. It is as if an employer had a work rule that required African Americans to straighten their hair or to bleach their skin. [FN111] There is little economic consequence for this abuse, because there are few job choices for disempowered Chicano/as.

Language discrimination is invisible to the monolingual majority. "[T]here can be no progress unless and until the majority culture recognizes there is a victim." [FN112] Invisibility is a terrible kind of oppression. Cameron, however, overlooks the fact that invisibility is also a form of resistance. There is value and power to silences, to building coalitions far from the sight of the oppressors. For example, we need to trace the history of monolingualism in Chicano/a culture. We need to recall the history, the repression,

that led so many Mexican-American parents to raise their children to speak only English. Bilingualism is difficult if Spanish-speaking children are placed in classes for the mentally retarded, if Spanish-speaking children are physically beaten or ridiculed for using Spanish words. Bilingualism is difficult if Spanish-speaking adults are fired for moving between two languages, if they are kept from juries, if they are punished for their accents. [FN113] Bilingualism is difficult in the face of discrimination, but it is language that often binds us.

And then there is the problem of the Tar-Baby; we get stuck in the messiness of our own critique. Latino/as are invisible, and yet they are not. California has had two major referenda that targeted this "invisible" group. [FN114] In a further twist, while it is language that binds us, it is also language that breaks us apart. Parents consciously choose not to teach their children Spanish. [FN115] It facilitates assimilation, but it also breaks the children from their culture and their families. In the language of Chicano/as, there is a special word for Chicano/as who lose their language, who no longer can speak Spanish. The word is "pocho"; it is pejorative. Language should not further divide us, but it does.

When we cross borders, we become tangled in the barbed wire, we are injured and in pain. This is the history of our oppression. We must be careful not to forget it. We also must continue to see across borders. We must have the courage to confront even the most fearsome obstacles, to pull ourselves out of the barbed wire and struggle to overcome. At times, we see the border and acquiesce to its existence. We create a border within a border, the border between resistance and quiet capitulation.

B. Race, culture, and nation: LatCrit theory and critical race theory

Angela continues:

In their pioneering work on race theory, sociologists Michael Omi and Howard Winant argue that race is neither a biological fact nor a mere illusion, but a system of power that operates simultaneously at material and symbolic levels. [FN116] One aspect of "racial formation," in their view, concerns the processes by which individuals and groups pursue power and advantage as agents with racial interests. A second aspect concerns the processes by which those racial interests are themselves formed: how racial concepts are given meaning and racial identities are created, altered, and maintained. Thus, racial formation encompasses "race relations": how racial groups jockey with one another around the globe in relations of economic production and consumption, in and between nation-states for political power, and in social systems for status and cultural hegemony. But racial formation, as a system of power, is also about how groups and individuals come to have or be "races" in the first place. [FN117]

The essays in this Symposium speak particularly to the second aspect of racial formation. Critical race theorists have become increasingly interested in tracking the way in which racial meanings are created, maintained, and altered, and LatCrit theory offers insights into the way "race" operates as an ideological system. First, LatCrit theory highlights how the proliferating meanings of "race" can be used to preserve the project of white supremacy, even in the midst of significant changes in form. Second, LatCrit theory demonstrates how language, culture, and nationality, as well as color, can be used to separate the privileged from the oppressed. These insights together point toward a

more sophisticated understanding of race. They also begin to suggest some of the limitations of black exceptionalism.

1. Race law as an ideological system

As Barbara Fields has said, "If race lives on today, it does not live on because we have inherited it from our forbears of the seventeenth century or the eighteenth or nineteenth, but because we continue to create it today." [FN118] The essays in this Symposium consider the operation of race as an ideological system at the end of the twentieth century.

The legal enforcement of white supremacy in the United States has retained certain continuities even in the midst of sometimes drastic shifts. [FN119] At the nation's inception, race law was a form of status law: a person's legal rights depended on his or her racial designation. [FN120] After the Civil War and the Reconstruction amendments, American race law passed into a new phase, characterized by a new acknowledgment of political and civil equality across racial lines. As Keith Aoki and Robert Chang note, this shift was accompanied by a rhetorical shift from notions of racial superiority and inferiority to mere racial "difference." [FN121] As commentators have noted, however, the law accommodated white supremacy under this new regime by declaring "social rights" outside the purview of anti-discrimination laws and preserving a broad scope of discretion for state and local governments to enforce racial segregation based on "difference" in the name of social custom. [FN122] The era of open white supremacy in the "social" sphere enforced by law crumbled with a new approach to equality that the Court recognized in Brown v. Board of Education. [FN123] But, once again, white supremacy was preserved: this time by a redefinition of "racial discrimination" as intentional malice and by rendering unconstitutional in most cases the use of racial categories to remedy existing racial inequality. [FN124]

How have these transformations been accomplished while retaining the appearance of logical consistency in judicial precedent? Lawyers are taught that the most effective communication is that which is most precise. Good legal writing reduces ambiguity, making chains of logic possible. But some kinds of communications are more effective the more ambiguous they are. Great works of art are machines for producing proliferating meanings. Similarly, discourses of power are machines for producing interlocking meanings; and accordingly, the success and power of the idea of "race" lies in its very indeterminacy and complexity. [FN125]

Studying "Euro-American heteropatriachy" as a rhetorical system, Francisco Valdes argues that it operates through what he calls the "conflation" of three distinct but interrelated concepts: "sex," "gender," and "sexual orientation." [FN126] These three concepts are sometimes treated as mutually determining: what sex your body has determines your social gender and what sort of body you will desire. At other times, however, the concepts are treated as distinct and separate: courts have concluded, for example, that laws against "sex discrimination" do not address discrimination on the basis of "sexual orientation." The result is not only that sexual minorities remain unprotected by anti-discrimination law; anti-discrimination law itself functions to police existing hierarchies of sex, gender, and sexual orientation.

Like the rhetoric of heteropatriarchy, the legal rhetoric of race brims over with meanings. To talk about "race" in this country means to talk about a welter of ideas--race, ethnicity, biology, culture, national origin, color, language--that turn race into a Tar-

Baby. By illustrating the ways that some of these concepts can be used alternately to support one another and be played off against one another, LatCrit theory sheds new light on how legal white supremacy can be maintained, even while the language and practices of oppression may drastically change.

Three characteristics of race talk have enabled the persistence of white supremacy even while its forms drastically change. First is the proliferation of many different meanings for the same word. For example, Neil Gotanda has identified four different meanings of "race" in Supreme Court doctrine. [FN127] By shifting from one meaning to another, Gotanda argues, the Court has been able over time to condemn some forms of white supremacy while keeping others intact, and to obscure the contradictions in its reasoning.

In this Symposium, Christopher Cameron takes note of two other ways in which the legal rhetoric of "race" is used to maintain white supremacy. One is what he calls "indeterminacy." As he notes, the concept of "national origin" is sometimes treated as synonymous with, or at least closely related to, "race," suggesting that people who are discriminated against based on being perceived as "foreign" or based on the language they speak should be protected as if they were being discriminated against based on their skin color. But at other times, "national origin" is treated as something completely unrelated to race: the Court, for example, has defined national origin for Title VII purposes as simply the country of one's birth, completely unrelated to race. The uncertainty about what "national origin" means keeps Latino/as from being either fully protected by anti-discrimination law or clearly out in the cold. It allows courts to pay lip service to the value of anti-racism while permitting racism to continue.

Finally, the legal rhetoric of race helps maintain white supremacy through the use of "binary oppositions." [FN128] As Cameron notes, one of these oppositions appears in the idea of race as an "immutable trait." If race is an immutable trait--for example, if it is reduced to skin color--then anything that looks "mutable" must not be protected by laws against race discrimination. In this way, discrimination against Latino/as on the basis of the language they speak is legally maintained--and even fostered. For the opposite of an immutable trait in the law turns out to be a free choice, and it is perfectly legitimate for employers and others to encourage people to choose one thing over another: to "choose" to speak English rather than Spanish, for example.

The shifting content of "race," the indeterminacy of racial references, and the use of binary oppositions have all contributed to making discrimination against Latino/as seem to be not racial discrimination, indeed, sometimes not discrimination at all. In his contribution to this Symposium, Ian Haney Lopez argues that this liminal status is potentially dangerous to Latino/as. [FN129] Latino/as are offered a lure by mainstream society: the choice of not identifying with African Americans and not identifying as racial minorities. In Hernandez v. Texas, [FN130] the lure was whiteness; more recently, Haney Lopez argues, the lure is to claim "ethnicity" rather than "race." But to the extent that Latino/as take the bait, they collaborate in making invisible their oppression, both historical and present. To the extent that being Latino/a is characterized as an "ethnicity" and not a "race," Latino/as take on the historical baggage of ethnicity: a term developed as a way of not talking about white supremacy. Yet, as Haney Lopez argues, the history of American white supremacy demonstrates that Latino/as have in fact consistently been treated as "nonwhite."

2. Race, culture and nation

Haney Lopez argues for the retention of the race concept with respect to Latino/as in recognition of the fact that Latino/as as well as African Americans have historically been the targets of white supremacy. More generally, LatCrit theory makes it plain that discrimination against people on the basis of "cultural" traits is as common in our history as discrimination against them on the basis of "biological" traits. Indeed, white supremacy has always depended on a conflation between the biological and the cultural.

Racialism [FN131] is sometimes described as the belief that biological differences cause cultural differences. But racialism is more complicated than that. As historians of race science have noted, a striking feature of nineteenth-century race science was the circle around which scientists pursued the truth of race. If cultural variation was taken to be the expression of biological variation, similarly the search for biological markers of race was guided by their correlation with cultural differences assumed to represent inherent racial differences. As Stephen Jay Gould has shown, when the indicators of "race" used by early race scientists failed to reaffirm the social differences they were supposed to cause, the scientists simply picked different indicators. [FN132]

In the law, as well, enforcers of racial identity pursued a long circle from biology to culture and back again. As Eva Saks has shown in her investigation of miscegenation cases in the early twentieth century, judges often used "blood" as a more reliable clue to an individual's racial identity than her skin color. [FN133] Yet the best evidence of "blood" often came from social acceptance in the white community (a "cultural" trait), which in turn might rely heavily on skin color (a "biological" trait). Thus, the law went in a long circle in attempting to establish racial identities.

Fundamental to understanding the grammar of racialism both in law and in society, then, is to recognize it not as a one-way causal link between biology and culture, but as a circular relationship. The content of this mutual dependency is variable. Formal race science looked to biology to find the source of capacities and characteristics that today are seen as the product of cultural, not physical, evolution. Though most contemporary public thinkers would reject this approach, the assumption that race is a biological marker of innate differences between human groups lingers, often unstated and unrecognized in popular discourse. The recent obsession with IQ and the popularity of the book The Bell Curve illustrates the continuing desire to reaffirm the link between biology and cultural characteristics like "intelligence." [FN134] Other writers are more likely to speak in terms of culture, expressing concern for the survival and transmission of "Western culture" or, in terms more familiar from the nineteenth century, "Western civilization." Behind attacks on--and defenses of--multiculturalism, however, are often old fears about "hybridization" and "miscegenation," or the unstated assumption that each "race" (or "ethnicity") has a unique "culture." [FN135]

Regardless of the content of such arguments and beliefs, however, they all take a similar form: the tendency to attribute social and cultural difference to biology. This tendency is usually reflected in a conservative political agenda. As Stephen Jay Gould has pointed out regarding biological determinism, "After all, if the status quo is an extension of nature, then any major change, if possible at all, must inflict an enormous cost--psychological for individuals, or economic for society--in forcing people into unnatural arrangements." [FN136] In this way, as the eighteenth-century political theorist Condorcet put it, such beliefs "make nature herself an accomplice in the crime of political inequality." [FN137]

Viewing "biology" and "culture" as mutually exclusive, then, is a mistake when it comes to race. Moreover, it is a mistake that results in the maintenance of material injustice. As Ian Haney Lopez argues in his contribution to this Symposium, the assumption that Mexican Americans in Texas in the 1950s were "white" rested on the misapprehension that skin color, rather than power, is at the heart of white supremacy. In recent years, rather than correcting this misapprehension, the courts have moved to widen the gulf between biology and culture, advancing the position that anti-discrimination laws that forbid "racial" discrimination protect persons against discrimination on the basis of "color" but not on the basis of "language," "ethnicity," or "cul-ture." Stepping outside the circle of "race" did not harm the Mexican- American plaintiffs in 1954. But doing so in 1997 may well further the Supreme Court's project of eliminating the recognition of group power differentials by reducing race to color and re-visioning America as a "nation of minorities," all equally different and possessing indistinguishable claims to political representation and economic power. [FN138]

LatCrit theory, by rejecting the focus on color discrimination as the essence of racial discrimination, reminds us that language and culture are often as important as skin color in separating privileged groups from oppressed ones. Racial hierarchy may be maintained by excluding those who do not physically conform: those whose skin color is dark, or whose eyes are distinctively shaped. Racial hierarchy is also preserved, however, by the establishment and maintenance of (white) cultural norms, norms to which those with the "choice" are pushed to aspire. Kevin Johnson's article in this Symposium sensitively describes the costs of choosing assimilation for Latino/as. To the extent that social acceptability and respectability is equated with whiteness, issues of cultural assimilation are issues of "race."

LatCrit theory also draws the attention of race-crits back to the importance of nationality and citizenship in the emergence and maintenance of white supremacy. History makes the point most vividly. The concept of race as we know it today emerged in a period of global trade, conquest, migration and economic production we call "colonialism," a period usually said to have begun around 1415 and ended around 1940. In this period, Western Europeans traveled around the globe in search of profit, glory, souls to save, and territory to claim; they spun elaborate theories about the people they encountered in the process. In some countries, European colonists settled to make a new nation, pushing out or exterminating the "natives"; in others, Europeans considered themselves only sojourners. In some countries, colonialists ruled directly; in others, an indigenous administrative class developed to form a buffer between the "natives" and the colonial masters. Slavery formed the base of economic relations in some countries and areas and not others. All of these various relationships, however, involved asymmetries of power: while cultures influenced one another, economic exploitation and political oppression went overwhelmingly in one direction. And to explain and justify this asymmetry, European theorists developed the concept of "civilization."

"Civilization" was both a descriptive and a normative term. Descriptively, a superior civilization was what enabled Europeans to dominate non-Europeans. Normatively, the concept of civilization made the continuance of that domination both essential and inevitable. At its roots, civilization was a religious concept, resting on the long-recognized distinction between Christians and heathens. [FN139] But it soon took on distinctively Enlightenment inflections, chief among which was the notion of progress. Civilization marked the journey of the human race toward greater and greater perfection, and "race" marked the stops of various human groups along the way.

More specifically, the formal race science that reached its peak of prestige and sophistication in the nineteenth century drew on at least two different currents in Enlightenment thinking. Race science was in part a science: it drew on the emerging "science of man" to connect biological differences with mental, moral, and characterological ones, linking biology and culture. Race science was also a theory of history. Indeed, the study of race emerged from the study of nation formation. Race as a historical concept helped explain not only European ascendancy over various groups of non-Europeans, but the power struggles among the European nations, their rise and fall, and the emergence of new nations. [FN140] The way in which it did so was to discern an invisible order behind the seemingly chaotic clash of peoples around the globe. The order began with the idea of peoples as distinct groups; [FN141] it continued by imagining the tumult of contemporary history as not simply a series of accidents and clashes of power but as the expression of inner essences that were fixed and persistent over time, though constantly interacting in new ways. [FN142] Thus, the power of nineteenth century race science was in its ability to connect the study of the natural world with the study of history--the rise and fall of nations. Indeed, theorists regularly used the term race to speak both of primordial, biologically fixed groupings and of "cultural" groupings we would today describe as nations or languages. [FN143]

As Keith Aoki and Bob Chang show in their contribution to this Symposium, this historical legacy is carried forward into the present day with the politics of borders, immigration, and citizenship. To the extent that the territorial borders of the American state are imagined as the borders of a white national body, questions of immigration and citizenship become questions about which foreign groups are capable of being assimilated into whiteness. Aoki and Chang point out that nativist movements in the United States have been at their most virulent when directed toward immigrants racialized as nonwhite. The current political attack on immigrants, both documented and undocumented, flows from a paranoia about the threat that racial Others pose to the white homeland. Domestically, Asian Americans and Latino/as are thought of as "foreign": as Aoki and Chang put it, "Foreign-ness is inscribed upon our bodies in such a way that Asian-Americans and Latina/os carry a figurative border with us." [FN144]

By noting the interplay between concepts of race and concepts of nation, LatCrit theory also brings back into critical race theory a focus on white supremacy as a world system. For example, current American immigration laws and policy create the conditions for an economic underclass of undocumented Mexican workers who have no political voice or legal rights, yet who contribute to American economic productivity. [FN145] Treaties like NAFTA help maintain a world system in which formerly colonialist nations of the North enjoy both economic and political dominance over formerly colonized nations in the South. A LatCrit focus on Latin America, South America, Central America, Mexico, and the Caribbean, and the relationship of these countries with the United States makes possible an analysis that joins together domestic "race relations" with international relations.

III. Tales and Transformations

A. "Therapeutic" Critical Theory? Leslie expresses hope:

I am somewhat comforted that I am only visiting Angela. I wonder if Angela is comforted that she is only visiting Yale. Angela and I have borrowed authority throughout our lives. As an African-American woman and as a Latina, we were not born with an entitlement to power. So perhaps this venture to Yale is no more dangerous than our privileged lives as legal academics at our home schools. And perhaps there is a way that it is safer. The more we feel our difference, the more we feel the pain of being an outsider, the more we will move both backward and forward, remembering who we were, who we are and who we might become. Critical theorists tell stories, both "real" [FN146] and "fictional." [FN147] Arguably, the most significant impact of critical theory has been the reformation of legal analytical practices through the use of stories. Outsider tales provide an opportunity to breach the limits of language in describing oppression. [FN148] They lead to the creation of new language. That which has not yet been named can be understood. [FN149] Most importantly, the narrative potential of critical theory lies in its ability to free us to move backward and forward in time, to "re-story" the past and to "re-imagine" the future. [FN150] Racial oppression is a disease of domination that has proved itself immune to accepted treatments. It is time for curanderas, healers who base their art on an oral tradition rooted in the community and attentive to the suffering of individuals.

Our stories are our reality. They are the way we understand who we are and who we might become. Within feminism, consciousness-raising is achieved through the sharing of stories--of experiences, worries, dreams and thoughts-- in a safe group setting. Safety is assured by confidentiality and by a commitment not to judge, but to listen, to offer and to interact with the purpose of better understanding who we are as women. Consciousness-raising is the methodology by which women break the dilemma of positionality. Consciousness-raising allows the participants to break the bonds of dominant language and the tyranny of false consciousness. [FN151]

Often, without the vehicle of a story, the story of oppression would be untold. [FN152] Language as a product of a hierarchical society often renders mute the experience of oppression. [FN153] If we do not see our oppression we cannot counter it. Stories have the power to build individual lives and to reveal the workings of the systems of power that affect our lives. [FN154]

Feminist therapists treating women and children who have been traumatized by violence and sexual assault use stories, individual and cultural, to heal. [FN155] The process of storytelling allows the individual to re-examine and reconstruct the meaning of her own life in a cultural context. [FN156] However, "[i]t is hard to link past, present, and future in one's life when the cultural stories that frame one's experience are storied in stereotypical, inaccurate, narrow, and rigid ways." [FN157] Thus, the individual story must also be an instrument for breaking the oppression of the stories of the dominant discourse. [FN158]

Narrative therapists recognize the need to place individual stories in a cultural context. [FN159] Likewise, for race theorists, it is important to put cultural stories in an individual context. [FN160] This becomes a test for reality. Each reiteration of our experience, of our stories, gives us the power of articulating a number of different visions. [FN161] With each telling and retelling, both listener and speaker are better able to construct a meaning for their own individual life and to sort through false visions of our individual stories and of the cultural stories that constrain us.

Sometimes in order to teach, to theorize, to illustrate, we have to share ourselves. Sometimes this is done through personal narrative, such as in Kevin Johnson's touching

story of his family. Sometimes this is done through fiction, such as Derrick Bell's chronicles, [FN162] Alice Walker's novels, [FN163] or Luis Valdez's films and plays. We find a tool that we can use from the Master's tool box. We refashion it, maybe use it in ways that were not originally intended. We have to be ingenious because the lesson of our history is that we too often are subverted and ineffective. It is the lesson of consciousness-raising, developed first by folklorists [FN164] and then feminists.

And when we are effective, we are attacked. [FN165] For example, critical theorist Richard Delgado uses the character "Rodrigo" to move through a series of Chronicles. [FN166] The Chronicles are part fiction, part fact, and part allegory. [FN167] Rodrigo claims to be a person of color, black. Yet, Rodrigo is developed ambiguously, neither clearly colored nor clearly European; his father was black and his mother was Italian. Rodrigo occupies the border region of the color line.

Who then is Rodrigo? Rodrigo is Richard Delgado, and he is not Richard Delgado. Richard Delgado is us; he is the pseudo-insider who is always an outsider. Rodrigo, on the other hand, is Richard without the pain of being Richard, of being brilliant and unrecognized for so long, of being Chicano, a person of the earth, and unrooted for so long. Rodrigo is a trope: he can engage on any subject with insight; he can speak without being choked by personal pain. I really think of Rodrigo as "Brer Rabbit." He is the universal folktale trickster. [FN168] He engages and comments, as both insider and outsider, and always seems to escape, if not unscathed, at least whole. Rodrigo is not the fragmented, dual consciousnessed, self-doubting, usual race crit scholar. He is smooth, even when he is warmly naive.

Should Rodrigo exist? I would say yes. Rodrigo's existence bespeaks of the healing of narrative. Richard Delgado can be so unrelentingly pessimistic. He has such an unerring eye. So much of his scholarship, his life's work has been dedicated to debunking the myth of our equality, to revealing our dismal state. Delgado uses Rodrigo to continue this work. Nevertheless, the fact that Delgado is able to imagine Rodrigo, imagine a critical raced person who is able to struggle without being destroyed, is a sign of hope for all of us.

Racism damages us. The material circumstances of outsiders are inferior. If you are African American, Latino/a, Asian, or otherwise an other, you are more likely to be poorly housed, poorly fed, poorly educated, poorly employed and in poor health. Beyond what we eat and where we sleep, racism injures our ability to know ourselves. It is the spirit injury of which Patricia Williams writes. [FN169] It is a loss of identity.

We imagine ourselves as Spanish, we imagine ourselves as Mexican, we imagine ourselves as "Americans," but none of these labels seem to fit. Indeed, any Chicano/a who travels to Spain or to Mexico is quickly reminded of how Americanized they are. Yet living in "America," that same Chicano/a is constantly reminded either by little tweaks or wrenching yanks that they are not Anglo, not assimilated and unassimilable. Who are we then? What is most obvious also seems to be that which is most repressed. We are who we are, a culture that is Southwestern Chicano/a--or Puerto Rican, or Cuban-American-Miamian, or Central American-American. We are a colonized people, convinced that we are immigrants in our own country. [FN170] Chicano/as belong to the land of the Southwest. The Anglos are attached to the land by law, the Treaty of Guadalupe-Hidalgo. Similarly, Puerto Ricans are in New York and Boston because the United States is in Puerto Rico. Guatemalans are in Los Angeles because United Fruit and the CIA are in Central America. Cubans are in Miami because of a century of United States imperialism in Cuba. The most effective colonialism is that which colonizes the

mind and the spirit. You feel an outsider in your own home. You are punished for speaking out loud, and find that you lose your ability to think silently. Professors Aoki and Chang capture the internal change when they write of carrying the border within ourselves. [FN171] The power of the border is that it is definitive not only for the recent immigrant but also for indigenous outsider groups. We lose our sense of entitlement to be here; we have become psychological immigrants whose status is tenuous and dependent on the benevolence of the Anglo power structure.

This "immigrant" aspect of racial oppression is not equivalized in the traditional black/white racial paradigm. African Americans know which side of the border they are on. African-American exceptionalism--and I agree with Angela that there is an exceptionalism--is much more tied to slavery. There is, however, Chicano/a exceptionalism. Like Native Americans, we are colonized. Unlike Native Americans, we have not had the symbolic recognition of our original sovereignty. I worry that this identity will be forgotten.

It is hard for immigrants to be visible when they can be deported. It is dangerous to resist when you worry about your right to exist. Chicano exceptionalism is different from African-American exceptionalism. Who is more "exceptional" ? When we ask that question, we are buying into the hierarchical system that oppresses us. Latino/as are seen as immigrant interlopers; blacks are seen as intractable criminals. [FN172] Does it really matter if resistance is met with deportation or with imprisonment? [FN173] The important questions are: "What is the nature of our oppression? Who benefits by it? And, how can we resist?"

B. Toward a multidimensional politics of race

Angela continues:

What, then, of the claim to black exceptionalism? Is the LatCrit attack on the black/white paradigm, as Leslie suggests, a veiled attack on African Americans? Certainly one scenario of the decades to come is a struggle for intellectual as well as political and economic power between African Americans and Latinos, the struggle that Jack Miles names "blacks against browns." [FN174]

The message of black exceptionalism is that this struggle can have only one outcome. Consider a model of American race relations in which "whiteness" is at the top and "blackness" at the bottom. Ethnic groups lacking a stable identification with either category have a choice: they may struggle to be accepted as white; they may proclaim themselves "black"; or they may struggle to be accepted as neither. [FN175] Of course, both color categories are metaphysical rather than biological: achieving whiteness may be accomplished through cultural assimilation rather than plastic surgery, and people visually identified as "black" may nevertheless strive to distance themselves from niggers. The prize here is not physical conformity but social status.

The claim of black exceptionalism reveals the fear that nonwhite, nonblack people will choose not to challenge the hierarchy that places white over black but to accomodate it. Haney Lopez describes the lure of "ethnicity" for Latino/as, who, in rejecting a racial designation for themselves, are implicitly rejecting blackness, just as in earlier generations Latino/as protected their status as "white." Similarly, many African Americans suspect that Asian Americans will find the "model minority" myth a convenient way to achieve social, economic, and political power: a way to distance

themselves from, indeed contrast themselves to, black people. Even if this is not the conscious intent of nonwhite, nonblack people, the power of the opposition between white and black may be such that any attempt to distinguish oneself from black people simply reinforces the degraded status of blackness. [FN176] Thus, whether Latino/as and Asian Americans seek to profit from the black-white paradigm by struggling to be accepted as white or simply by struggling to be accepted as not black, the result for African Americans is the same: once again, as with the Irish and other formerly "not yet white" ethnic groups, African Americans serve as the stepstool that other groups stand on as they advance in achieving social power and status.

What this model leaves out, however, is the complexity that LatCrit theory can bring to the analysis of blackness itself. Take, for example, LatCrit's shift in focus from viewing "race" as an immutable trait to viewing it as a conflation of biology, culture, and nation. At first glance, this shift may appear to have little relevance for African Americans. After all, white supremacy against African Americans has been based for the most part on color discrimination, supplemented by notions of "blood," rather than on cultural or national origin discrimination. Moreover, since the passage of the Fourteenth Amendment, African Americans have been citizens, not subject to the sovereign exclusionary power of the United States. [FN177] But just as it would be a mistake for Latino/as to accept the current bifurcation of discrimination into that based on "immutable" traits versus that based on "mutable" ones--and the attendant bifurcation of racialism into "race" and "ethnicity"--it would be a mistake for African Americans as well. The move beyond color begins to acknowledge the cultural bases of African-American identity in other, more subtle ways. Not all African Americans look "black" or experience color discrimination. [FN178] Not all black people in the United States are African Americans; there are important, if often unacknowledged, divisions between African and Caribbean immigrants and native-born African Americans. Many African Americans feel the pressure to assimilate to white culture, a pressure that leaves them struggling to "pass" socially if not physically. [FN179] The project of black liberation is left incomplete if employers are prevented from refusing to hire or promote African Americans but are free to force them to look and act as "white" as possible. [FN180]

Finally, the Supreme Court's increasingly vehement denial that race is anything other than skin color threatens the political strength of African- American communities. [FN181] As Alex Johnson has noted, for African Americans, blackness is not simply an accident of birth but the focus of an ethnicity--a distinct way of being in the world. [FN182] To the extent that white supremacy maintains itself by attacking the cultural practices that sustain blackness as an ethnicity, African Americans and Latino/as have a shared interest in questioning the bright line between mutable and immutable traits, biology and culture.

African Americans also have an interest in recognizing a larger geopolitical context for white supremacy. For instance, to the extent that African Americans are concerned about Africa and its relations with the West, it is necessary to understand that white supremacy is not solely a domestic phenomenon, but is inextricable from the colonial practices that gave it birth. [FN183] Finally, the concept of nativist racism shines a different sort of light on the claim of black exceptionalism. Focusing on the unique oppression of blacks obscures both the global and the local complexities of white supremacy. From a global perspective, the perpetuation of nativist racism puts American whites and blacks into collusion against foreign, nonwhite Others. From a local perspective, the exclusive focus on black oppression obscures the fact that African

Americans are not always the niggers. In some areas in the Southwest where few black people live, it is Mexicans, or Indians, who are treated as niggers. Black exceptionalism takes the part for the whole, and in so doing not only damages the material interests of African Americans but also enlists them in the project of preserving white supremacy.

Consider, then, a different model of United States race relations: a box with the mystical Other (perhaps a nigger; perhaps a threatening foreigner) at the bottom and perfectly transparent, cultureless whiteness at the top. African Americans still have a unique liability in their historic association with the nigger, but each ethnic group has ways and means, some more powerful than others, of strengthening its position within the box. People who speak unaccented Standard English, people with pale skins, round eyes, and straight hair, and people who are citizens all have the opportunity to profit by distancing themselves from the Other. Some groups have the opportunity to access white privilege through language, others through color, still others through familiarity with the dominant culture. This model is slightly more complex than the previous one, in that it does not suggest that blacks and no others are locked into the bottom position. Which group wins the competition for power and status depends in part on local conditions.

Yet ultimately, this model provides ample cause for pessimism as well. For, as set up, both models suggest the inescapability of ethnic-racial competition. In the long term, all "people of color" stand to benefit from destroying the box that pits blackness and whiteness, or whiteness and Otherness, against one another. But in the short term, the temptation is great simply to exploit the system rather than to transform it. Interracial and interethnic cooperation are difficult and painful to achieve, and smashing the box requires a direct challenge to white supremacy. How much easier to close the border, to organize on the basis of presumed racial-ethnic "sameness" as given by the existing hierarchy, and to seek an immediate advantage within the existing framework.

If the temptation to close the border is great among privileged law professors (and from personal experience I must say that it is), then how much greater must it be for communities that lack the material security we enjoy? Like the tensions that erupted into violence between African Americans and Korean Americans in the Los Angeles rebellion of 1992 and like the growing economic and political competition between working-class African Americans and Latinos in inner cities, the grim reality of ethnic-racial competition raises the possibility of destructive political, social, and even physical conflict among "nonwhites." [FN184]

These conflicts, like other American social conflicts, will ultimately be played out in the legal arena. Deborah Ramirez offers case examples in which African Americans are pitted against Asian Americans or Latino/as involving voting rights, education, and employment. [FN185] Eric Yamamoto examines an employment discrimination case, ironically titled United Minorities, in which tensions between African-American and Latino job applicants and Asian-American applicants, supervisors, and an investigator apparently played a significant role. [FN186] As legal disputes involving racial discrimination become increasingly fought out among people of color rather than between "whites" and "nonwhites," the claim of African-American exceptionalism may become a legal strategy to claim priority over Latino/as. Under such circumstances, African-American litigants may seek to write the black/white paradigm explicitly into anti-discrimination law.

Two potential injuries loom here: the material injury of a politics of all against all in which no one wins, and the spiritual injury of a politics that bases identity on woundedness and lack. The nature of the material injury is clear. To the extent that every

ethnicity can point to discrimination somewhere in its past or present, every ethnicity has a claim to redress from the state. This battle must ultimately devolve into an "oppression sweepstakes," in which each group has an interest in portraying its victimization as the most horrific. The Supreme Court has already begun to react to this fear of a racial war of all against all by increasingly finding all claims for racial remediation to be invalid. [FN187]

The spiritual injury is more subtle but no less real. Political theorist Wendy Brown describes the politics of victimization and woundedness eloquently:

> In its emergence as a protest against marginalization or subordination, politicized identity . . . becomes attached to its own exclusion both because it is premised on this exclusion for its very existence as identity and because the formation of identity at the site of exclusion, as exclusion, augments or 'alters the direction of the suffering' entailed in subordination or marginalization by finding a site of blame for it. But in so doing, it installs its pain over its unredeemed history in the very foundation of its political claim, in its demand for recognition as identity. In locating a site of blame for its powerlessness over its past--a past of injury, a past as a hurt will--and locating a "reason" for the "unendurable pain" of social powerlessness in the present, it converts this reasoning into an ethnicizing politics, a politics of recrimination that seeks to avenge the hurt even while it reaffirms it, discursively codifies it. Politicized identity thus enunciates itself, makes claims for itself, only by entrenching, restating, dramatizing, and inscribing its pain in politics; it can hold out no future--for itself or others--that triumphs over this pain. [FN188]

Such a nightmare vision of identity politics begins to become real when, for example, the claim to black exceptionalism becomes an attachment to black victimhood, in which the story of our slavery--"three hundred years ago our ancestors were brought here in chains"--becomes a story endlessly told and endlessly unchanging, a story told to silence others and to paralyze ourselves beneath the heavy weight of our own degradation. The spiritual injury emerges, as well, when African-American people refer to one another as "niggers," "bitches," and "hoes," literally equating our identity with negation in a kind of "spirit suicide." [FN189]

How can we face up to the reality of differential racialization without ending the struggle against white supremacy in a squabble among Asian Americans, Latino/as, Indians and African Americans for pride of place in a hierarchy of oppression? And how can we keep our identity politics from sliding into a discourse of endless woundedness, blame, exclusion, and resentment?

Eric Yamamoto offers several principles that must be acknowledged in the search for what he calls "interracial justice."

> The first is the notion that healing, whether by individual or group, entails some combination of acknowledgment of the humanity of the Other and of the sources of the conflict (including the historical roots of present conflict), acceptance of appropriate responsibility (often in the form of an apology) and material change (structural alteration of the relationship). [FN190]

One step on this journey toward racial healing can be what Leslie has called therapeutic critical theory: the telling of stories and listening to those stories. Even if some hierarchy of oppression were ultimately to be constructed, we could not know

which group should be placed where until we know each group's story. The LatCrit project of uncovering lost and obscured histories is essential to this end. But, as Leslie suggests, the ultimate goal is not telling the same story over and over again, unchanged. Rather, stories should change as one tells them, for narratives serve not just as explanations of the past but as road maps for where we wish to go. And the subject of the story, as well, should change in the telling. It is important, then, to acknowledge that the story of black oppression changes in light of the story of Latino/a oppression, and that the subject of each story--"black identity" or "Latino/a identity"--itself is constantly changing even in the process of telling its story.

Interracial justice in Yamamoto's sense may also require that we question the underlying assumption of the oppression sweepstakes: that the competition is for more and special goodies from the state, and that these will be distributed in accordance with a remedial paradigm in a zero-sum game. A narrow focus on securing a privileged place within the existing legal framework prevents us from challenging the framework itself; the oppression sweepstakes ignores the possibility that liberation is not a zero-sum game. [FN191] And like an unremitting focus on past injury in therapeutic discourse, the remedial paradigm endorsed by the Supreme Court in anti-discrimination law and furthered by various reparations movements has its dangers. It is important to acknowledge past injury; yet true remediation is impossible, both politically and symbolically. No amount of money distributed to present-day African Americans can undo the loss of forty acres and a mule at the end of the Civil War. Present-day Indian nations will never be given all of their land back, and even if they were, no land transfer could undo the genocide and the spirit-murder that Indian conquest wrought. The search for remediation as the way to undo the wounds of the past threatens to lock whites and nonwhites into a never-ending tango of guilt, despair, and hostile denial.

The way forward, then, depends on a fragile hope: the hope for transformation, both material and spiritual. For African Americans, I think the LatCrit challenge asks us to give up the co-dependent relationship we have with whites, in which we are repaid for our oppression with white guilt and obsession. "Whites" and "blacks" love to hate one another, to dwell on one another, to seek recognition and love from one another. Transcending the black- white paradigm means letting go, to some extent, of this obsession and with it the black claim to specialness, to a special wound that demands special acknowledgment. This letting-go should not be seen as a sacrifice, however, but as an opportunity to reimagine blackness for the new century, to reimagine blackness in the context of culture, language, and nation as well as color.

At the same time, it is important not to lose sight of the need for material renewal, not just spiritual reinvigoration. Destructive racial-ethnic antagonisms and spirit-suicide occur in a context in which the gap between the rich and the poor is rapidly growing, attempts at race-conscious redistribution of social goods are rapidly being dismantled, and the possibility of broad- based mass politics dedicated to economic redistribution becomes ever more remote. As law professors, we are fond of telling and listening to stories, but there is also a time to take to the streets.

* * *

I write these last words back at Berkeley, my home school, where the incoming class is nearly devoid of African-American students for the first time in a generation and I am the only black professor on the faculty. Letters to the editor in the San Francisco

Chronicle praise the return of "merit" and offer the reduction in black people as proof that the new colorblind society is working. In my view, LatCrit theory offers race-crits a way to imagine telling new stories and forming new alliances in pursuit of social justice. Yet I feel caught between hope and despair. As black people disappear from the universities and are herded into the prisons, will "other nonwhites" stand with us? As legal immigrants are thrown off the benefit rolls, will African Americans stand with them? As Sweet Honey in the Rock put it: "Will you harbor me? Will I harbor you?"

[FNd1]. Associate Professor of Law, Boston College Law School. This article is a true collaboration. Angela Harris and I shared thoughts, hopes, fears, frustrations and food. We endeavored to be honest with each other and with you, the reader. A special thank you to Dean Aviam Soifer for arranging my research leave, without which this article would not be. A debt is owed to Lisa Orube and Jennifer Nye for their unfailing research assistance. And finally, I would like to thank Mr. Timothy G. Garvey, an Irish patriot, who taught me that racism, while not always about color, is unfailingly about power.

[FNr1]. Professor of Law, University of California, Berkeley School of Law (Boalt Hall). Although Leslie Espinoza and I write separately in this essay, my comments are the product of our marathon conversations over coffee, tea, and pancakes. I would like to thank the participants in the LatCrit II Conference in San Antonio in April 1997, where I presented an earlier version of these comments. Finally, I would like to thank Catharine Wells and Jack Balkin for pressing me to think harder about the implications of black exceptionalism. All errors and misjudgments remain, of course, mine.

[FN1]. See generally Margaret E. Montoya, Mascaras, Trenzas, y Grenas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse, 17 Harv. Women's L.J. 185 (1994) ("examin[ing] the various masks ('mascaras') used to control how people respond to us and the important role such masks play in the subordination of Outsiders").

Footnotes

[FN2]. As if to remind us of who owns the law schools, not only the Harvards and Yales, but also the Boston Colleges, the hallways are lined with pictures of dead white men, glaring down disapprovingly. See Catharine Weiss & Louise Melling, The Legal Education of Twenty Women, 40 Stan. L. Rev. 1299, 1322-23 (1988) (noting that "[e]ntirely absent were images of women and men of color. These surroundings kept us distrustful, reminding us that the institution that admitted us had traditionally denied entrance to women and people of color. The pictures, the furniture, the male professors--all indicated that the place had always belonged to white men."); cf. Patricia J. Williams, The Alchemy of Race and Rights 80-92 (1991) (describing the way in which law school examinations reinforce feelings of exclusiveness and create a hostile atmosphere).

[FN3]. See Making Face, Making Soul, Haciendo Caras at xv (Gloria Anzaldua ed., 1990) [hereinafter Making Face] ("The masks, las mascaras, we are compelled to wear [as women of color], drive a wedge betwen our intersubjective personhood and the persona we present to the world."); Montoya, supra note 1, at 218 (describing putting on her public mask).

[FN4]. See Williams, supra note 2, at 44-51 (relating a story of not fitting the appropriate image of who should be let into a Benetton store in New York).

[FN5]. See Noell Bisseret Moreau, Education, Ideology, and Class/Sex Identity, in Language and Power 59 (Cheris Kramarae et al. eds., 1984) ("[L] anguage is the medium through which the dominant and the dominated consciously and unconsciously perceive and interpret their social roles.").

[FN6]. See Christopher David Ruiz Cameron, How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules As The Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy, 85 Calif. L. Rev. 1347 (1997), 10 La Raza L.J. 261 (1997); Robert Chang & Keith Aoki, Centering the Immigrant in the Inter/National Imagination, 85 Calif. L. Rev. 1395 (1997), 10 La Raza L.J. 309 (1997); Kevin R. Johnson, "Melting Pot" or "Ring of Fire?": Assimilation and the Mexican-American Experience, 85 Calif. L. Rev. 1259 (1997), 10 La Raza L.J. 173 (1997); Juan Perea, The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought, 85 Calif. L. Rev. 1213 (1997), 10 La Raza L.J. 127 (1997); Daria Roithmayr, Deconstructing the Distinction Between Merit and Bias, 85 Calif. L. Rev. 1449 (1997), 10 La Raza L.J. 363 (1997).

[FN7]. See, e.g., Trina Grillo, Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House, 10 Berkeley Women's L.J. 16, 22 (1995) (describing how the issue of race pervaded every aspect of her life as a Black, Cuban and Italian woman the author notes: "My race and my skin color have been issues that have preoccupied me for a good part of my life, I see little prospect of this changing soon."); see also Robert Staples, Introduction to Black Sociology 250 (1976) ("Being Black or White affects every element of individual existence, including access to jobs, education, housing, food, and even life or death.").

[FN8]. How can I, a Latina, know what it means to be African American? "It is utterly exhausting being black in America.... While many minority groups and women feel similar stress, there is no respite or escape from your badge of color." Marian Wright Edelman, The Measure of Our Success 23 (1992). How can Angela understand my continual struggle to regain my ability to speak Spanish? My clumsy Spanish, singing in my memory, fumbling out of my mouth, makes me feel an outsider in my own community, often in my own family. How can she know the conflict, my desire to simultaneously embrace and reject my father for his difficult choice not to keep us Spanish-speaking? As we became school age, his fear that his children would endure the cruelty and bias he suffered for being a Spanish speaker overpowered his longing for his children to be able to speak with his own mother. See Leslie G. Espinoza, Multi-Identity: Community and Culture, 2 Va. J. Soc. Pol'y & L. 23, 26-27 (1994). Will our differences drive us apart, create a suspicion that will keep us from working together? From being friends?

[FN9]. See Michael Omi & Howard Winant, Racial Formation in the United States: From the 1960s to the 1990s at 59 (1994) ("One of the first things we notice about people when we meet them (along with their sex) is their race. We utilize race to provide clues about who a person is....Our ability to interpret racial meanings depends on preconceived notions of a racialized social structure. Comments such as, 'Funny, you don't look black,' betray an underlying image of what black should be."); Richard H. Ropers & Dan J. Pence, American Prejudice 32 (1995) ("When we asked over 200 people this very question [how do we define race], more than 60 percent defined race in terms of physical appearance, which was usually specified as skin color. Perhaps the most descriptive comment was 'Races are to humans what breeds are to dogs. We all have the same parts but look different.'"). See generally Judy Scales- Trent, Notes of a White Black Woman (1995).

[FN10]. See Charles R. Lawrence III, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 Stan. L. Rev. 317, 318 (1987) ("We were all victims of our culture's racism. We had all grown up on Little Black Sambo and Amos and Andy.").

[FN11]. Appearances affect everything from whether a cab will stop, see Cornel West, Race Matters at x (1993) (describing how difficult it is for a black man to hail a cab), to whether you will be told a particular joke while sitting at a bar. See Johnson, 85 Calif. L. Rev. at 1262-63, 10 La Raza L.J. at 176-77; see also Paulette M. Caldwell, A Hair Piece: Perspectives on the Intersection of Race and Gender, 1991 Duke L.J. 365, 393 ("Judgments about aesthetics do not exist apart from judgments about the social, political, and economic order of a society.").

[FN12]. See, e.g., W.E.B. DuBois, The Souls of Black Folks 1-12 (Johnson Reprint Corp. 1968) (1903); Ralph Ellison, Invisible Man 3-14 (Modern Library Ed. 1992) (1947). See also the discussion of W.E.B. DuBois' concept of double consciousness by Professor Matsuda in Mari J. Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 Harv. C.R.-C.L. L. Rev. 323, 333 (1987).

[FN13]. See Audre Lorde, Sister Outsider 110-11 (1984) ("What does it mean when the tools of a racist patriarchy are used to examine the fruits of that same patriarchy? It means that only the most narrow perimeters of change are possible and allowable.").

[FN14]. The dual consciousness I am exploring stems, but is different, from DuBois' double consciousness, at least in emphasis. As people of color, we have double consciousness. I argue that our role as academics and scholars further fractures our consciousness, or at the very least widens the gap. We see ourselves as people of color and see ourselves as players, or hope-to-be- players, in the power system of the dominant culture. Cf. Alex M. Johnson, Jr., The New Voice of Color, 100 Yale L.J. 2007 (1991) (noting the use by communities of color of majoritarian languages, while retaining their other "dialects").

[FN15]. See Mari Matsuda, When the First Quail Calls: Multiple Consciousness as Jurisprudential Method, 11 Women's Rts. L. Rep. 7 (1989) (urging the development and use of "multiple consciousness" in thinking about lawyering practice and theory). See generally Gerald P. Lopez, Rebellious Lawyering (1992) (discussing the author's vision of a progressive law practice).

[FN16]. See Charles R. Lawrence, The Word and the River: Pedagogy As Scholarship As Struggle in Critical Race Theory 336, 343 (Kimberle W. Crenshaw et al. eds., 1995).
Translation of the colonizer's canon spreads its hegemonic message to ears and minds that it might not otherwise have reached. I experience a strong sense of ambivalence as I help black law students to understand and work with legal doctrine. As they become fluent in this new language, I watch them internalize its assumptions and accept its descriptions and meanings. I see them lose fluency in first and second languages of understanding that they brought with them to law school. I also watch myself struggle to maintain some fluency in languages that are expressive of liberating themes. This is particularly difficult when one is submerged in an institutional and professional culture where neither these languages nor the themes they express are valued or rewarded.
Id.

[FN17]. See, e.g., Richard Delgado, Mindset and Metaphor, 103 Harv. L. Rev. 1872 (1990); Richard Delgado, Storytelling for Oppositionists and Others: A Plea for Narrative, 87 Mich. L. Rev. 2411 (1989) [hereinafter Delgado, Storytelling].

[FN18]. See, e.g., Daniel A. Farber & Suzanna Sherry, Telling Stories Out of School: An Essay on Legal Narratives, 45 Stan. L. Rev. 807 (1993) (critiquing narrative scholarship as used by outsider scholars). There are numerous responses. See, e.g., Jerome McCristal Culp, Jr., Water Buffalo and Diversity: Naming Names and Reclaiming the Racial Discourse, 26 Conn. L. Rev. 209 (1993); Richard Delgado, On Telling Stories in School, A Reply to Farber & Sherry, 46 Vand. L. Rev. 665 (1993); Alex M. Johnson, Jr., Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship, 79 Iowa L. Rev. 803 (1994); Eleanor Marie Brown, Note, The Tower of Babel: Bridging the Divide Between Critical Race Theory and "Mainstream" Civil Rights Scholarship, 105 Yale L.J. 513 (1995) (critiquing the "undermining" of "merit" standards by outsider scholars). For another example of Farber and Sherry's work, see Daniel A. Farber and Suzanna Sherry, Is the Radical Critique of Merit Anti- Semitic?, 83 Calif. L. Rev. 853 (1995), for which there will be responses, including Professor Roithmayr's response in this Symposium. See 85 Calif. L. Rev. at 1449, 10 La Raza L.J. at 363. Richard Delgado's groundbreaking article, Richard Delgado, The Imperial Scholar: Reflections on a Review of Civil Rights Literature, 132 U. Pa. L. Rev. 561 (1984), critiques mainstream scholars for ignoring minority scholars and posits that majority scholars' views construct a distorted understanding of civil rights history and of appropriate legal remedies. Delgado demonstrates that the result of dominant discourse scholarship fashioning remedies for race discrimination has been a reordering of remedies and of the fundamental understanding of what gives rise to current inequality. Rather than recognizing the history of racial terror and de jure discrimination, with the concomitant need and justification for reparations,

dominant discourse civil rights scholars developed a "diversity" concept for racial equality. Conceptually, such a remedy focuses on the need for the dominant society to be exposed to the piquante, that is "minority" folks--and, of course, for the minorities to be given "opportunity" but no guarantee of equality.

[FN19]. Outsider is a term adopted by Professor Mari Matsuda to designate persons of color, feminists, gays, lesbians and members of other oppressed groups. See Mari Matsuda, Public Responses to Racist Speech: Considering the Victim's Story, 87 Mich. L. Rev. 2320, 2323 n.15 (1989). In support of this alternative terminology, Matsuda explains that the term "minority" is a misnomer because of the large number of persons in excluded groups. See id. Professor Matsuda also discusses the importance of recognizing outsider perspectives to various legal issues. See Mari Matsuda, Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground, 11 Harv. Women's L.J. 1, 2 (1988) (discussing the need to include outsider perceptions in order to combat racist preconceptions); see also Delgado, Storytelling, supra note 17, at 2412 (describing outsiders as "groups whose marginality defines the boundaries of the mainstream, whose voice and perspective--whose consciousness--has been suppressed, devalued, and abnormalized").

[FN20]. See, e.g., Critical Race Theory (Richard Delgado ed., 1995); Readings in Race and Law (Alex Johnson ed., 1994).

[FN21]. See Delgado, Storytelling, supra note 17, at 2411 (describing how the dominant discourse perpetuates and protects the status quo); see also Martha Minow, The Supreme Court 1986 Term--Foreword: Justice Engendered, 101 Harv. L. Rev. 10, 13-15 (1987) (describing how conscious recognition of viewpoint does not happen in the traditional academic/legal world since most scholars and judges, being both white and male, share the same unspoken perspective of self).

[FN22]. See Perea, 85 Calif. L. Rev. at 1219, 10 La Raza L.J. at 133, passim; see also Charles R. Lawrence III, Foreword: Race, Multiculturalism, and the Jurisprudence of Transformation, 47 Stan. L. Rev. 819 (1995); Rachel F. Moran, Foreword--Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond, 8 La Raza L.J. 1, 12 (1995); Juan F. Perea, Ethnicity and the Constitution: Beyond the Black and White Binary Constitution, 36 Wm. & Mary L. Rev. 571 (1995); Deborah Ramirez, Multicultural Empowerment: It's Not Just Black and White Anymore, 47 Stan. L. Rev. 957 (1995); William R. Tamayo, When the "Coloreds" are Neither Black nor Citizens: The United States Civil Rights Movement and Global Migration, 2 Asian L.J. 1 (1995); Frank H. Wu, Neither Black nor White: Asian Americans and Affirmative Action, 15 B.C. Third World L.J. 225 (1995).

[FN23]. See Delgado, Storytelling, supra note 17, at 2417.

[FN24]. See T. Alexander Aleinikoff, A Case for Race-Consciousness, 91 Colum. L. Rev. 1060 (1991) (discussing how colorblindness perpetuates racism, and arguing for color-consciousness); Jerome McCristal Culp, Jr., Colorblind Remedies and the Intersectionality of Oppression: Policy Arguments Masquerading as Moral Claims, 69 N.Y.U. L. Rev. 162 (1994) (arguing that a colorblind principle is not a moral requirement, but rather a policy argument resting on invalid assumptions); Neil Gotanda, A Critique of "Our Constitution is Color- Blind," 44 Stan. L. Rev. 1 (1991) (asserting that a color-blind interpretation of the Constitution legitimates, and thereby maintains, the social, economic, and political advantages that whites hold over other Americans).

[FN25]. For a prominent example of this mindset, see Adarand Constructors v. Pena, 515 U.S. 200, 239 (1995) (Scalia, J., concurring in part) ("To pursue the concept of racial entitlement--even for the most admirable and benign of purposes--is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of government, we are just one race here. It is American.").

[FN26]. See Derrick Bell, Faces at the Bottom of the Well 2-3 (1992).

[FN27]. See Barbara Flagg, "Was Blind, But Now I See": White Race Consciousness and the Requirement of Discriminatory Intent, 91 Mich. L. Rev. 953, 970 (1993) ("[W]hites rely on primarily white referents in formulating the norms and expectations that become criteria of decision for white decisionmakers.... [I]t's

[therefore] unlikely that white decisionmakers do not similarly misidentify as race-neutral personal characteristics, traits, and behaviors that are in fact closely associated with whiteness."). For a discussion of the power of white privilege, see Ruth Frankenberg, White Women, Race Matters (1993); Stephanie M. Wildman, Privilege Revealed (1996); Cheryl I. Harris, Whiteness as Property, 106 Harv. L. Rev. 1707 (1993).

[FN28]. See Gotanda, supra note 24, at 18. This is a denial of the fundamental way that cognition works. One has to assume the nonexistence of unconscious racism and the ability to mask conscious racism. See Peggy C. Davis, Law as Microaggression, 98 Yale L.J. 1559, 1560 (1989) ("The claim of pervasive, unconscious racism is easily devalued. The charge has come to be seen as egregious defamation and to carry an aura of irresponsibility. Nonetheless, the claim is well founded.").

[FN29]. This assimilation is really acceptance of the system, that is, becoming a willing participant in a hierarchical system in return for the small benefits meted out to you.
Instead of race, ethnicity is the term used by academic scholars today to codify the conventional belief in the virtue of assimilation, the gradual homogenizing of diverse groups predicated on value consensus ("the American Creed") and the norms of social integration. In this sense, "Americanization" virtually means cultural and psychological suicide for peoples of color.
E. San Juan, Jr., Racial Formations/Critical Transformations 6 (1992).

[FN30]. See Chang & Aoki, 85 Calif. L. Rev. at 1414, 10 La Raza L.J. at 328 ("The early Chinatowns, which were used to demonstrate the unwillingness of the Chinese to assimilate, were often the result of residential segregation.").

[FN31]. See Catharine A. MacKinnon, Feminism Unmodified 45 (1987) ("Take your foot off our necks, then we will hear in what tongue women speak.").

[FN32]. The use of the term "American" is deliberate. It is ironic that the dominant culture of the United States is overinclusive in designating its citizens as "Americans." Given the history of anti-immigrant sentiment and action, it is clear that this designation was not a sweeping camaraderie with all the peoples of that America. See Reginald Horsman, Race and Manifest Destiny, The Origins of American Racial Anglo-Saxonism (1981) (claiming that entitlement to the name "American" was making explicit the implicit imperialist presumption that manifest destiny designated the whole of the Western Hemisphere quite rightly to the Anglo-Saxon assimilationist imperative of United States culture).

[FN33]. I use the word "race" rather than "ethnicity" to designate Latino/as. See generally Luis Angel Toro, "A People Distinct From Others": Race and Identity in Federal Indian Law and the Hispanic Classification in OMB Directive No. 15, 26 Tex. Tech L. Rev. 1219 (1995) (noting that Latino/as are generally racialized in the context of United States society as Latino/as, but that in reality Latino/as are comprised of a mix of Spanish, Amerindian and African). I use this terminology intentionally. Ethnicity discourse has developed to eradicate the power differential implied in the use of the term race.
Race, not ethnicity, articulates with class and gender to generate the effects of power in all its multiple protean forms. Ethnicity theory eludes power relations, conjuring an illusory state of parity among bargaining agents. It serves chiefly to underwrite a functionalist mode of sanctioning a given social order. It tends to legitimize a pluralist but hierarchical status quo. San Juan, Jr., supra note 29, at 5.

[FN34]. See Pink Floyd, Another Brick in the Wall, on The Wall (Columbia Records 1979).

[FN35]. See Perea, 85 Calif. L. Rev. at 1214-15, 10 La Raza L.J. at 128- 29.

[FN36]. See Jimmie Durham, Cowboys and...: Notes on Art, Literature, and American Indians in the Modern American Mind, in The State of Native America 423, 427 (M. Annette Jaimes ed., 1992).
The master narrative of the U.S. proclaims there were no Indians in this country, only wilderness, 'vacant land.'...Then, that the Indians all died, unfortunately. Then, that the Indians of today are (1) basically happy with their situation, and (2) in any event, no longer 'real' Indians. Then, most importantly, it is held that this is the 'complete' story. Nothing contrary can be heard.

Id. On the appropriation of Indian ceremonial objects, names, spiritual concepts, and stories by white writers and poets, see Wendy Rose, The Great Pretenders: Further Reflections on Whiteshamanism, in The State of Native America supra, at 403, 403-18.

[FN37]. On the legal and social treatment of Asian Americans as "foreigners," see Ronald Takaki, Strangers from a Different Shore (1989). On the transformation of Mexicans living in the Southwest from land-holding citizens to dispossessed "foreigners" and wage workers after the Mexican- American war shifted the border and whites appropriated land from Mexican Americans in the wake of the Treaty of Guadalupe Hidalgo, see Rodolfo Acuna, Occupied America (1988); Foreigners in Their Native Land (David J. Weber ed., 1973).

[FN38]. See Chang & Aoki, 85 Calif. L. Rev. at 1396-97, 10 La Raza L.J. at 310-11.

[FN39]. Cf. Ralph Ellison, What America Would Be Like Without Blacks, in Going to the Territory 111 (1986) ("[S]omething indisputably American about Negroes not only raised doubts about the white man's value system but aroused the troubling suspicion that whatever else the true American is, he is also somehow black."); Albert Murray, The Omni-Americans (1970) (arguing that American culture is "incontestably mulatto").

[FN40]. For example, in a fascinating historical study, David Roediger argues that, before the Civil War, "chattel slavery provided white workers with a touchstone against which to weigh their fears and a yardstick to measure their reassurance," while after the war white workers organized on racial terms to combat the prospect of job competition with the newly freed slaves. In the process, the working class struggle for decent wages and even the concept of "free labor" itself became identified with whiteness. David Roediger, The Wages of Whiteness 66, 172 (1991). Drawing on the work of Frantz Fanon, Priscilla Wald argues that the "uncanny" existence of human beings officially excluded from personhood--African Americans and Indians, but particularly African Americans--ultimately called into question white Americans' sense of their own legal and social self-ownership. See Priscilla Wald, Constituting Americans 44 (1995).

[FN41]. On the rhetorical oppositions, partly inherited from the English, that associated whiteness with beauty and blackness with ugliness, see Winthrop Jordan, White Over Black (1968).

[FN42]. For a history of minstrelsy, see Eric Lott, Love and Theft (1993). Much of what can be considered "Americana" draws on white-created images of blackness. Consider, for example, the Uncle Remus stories themselves, as well as stories like Little Black Sambo, on which many white children as well as black were raised. Consider, as well, Stephen Foster songs like "Old Black Joe," "Dixie," and "My Old Kentucky Home," all of which draw on images of slavery to create an atmosphere of fond nostalgia. A recent article in the New York Times pointed out that even the University of Mississippi, long a bastion of white supremacy, relies on images of blackness: its nickname, "Ole Miss," "was derived from a phrase used by slaves to refer to a plantation's mistress." Kevin Sack, Old South's Symbols Stir a Campus, N.Y. Times, Mar. 11, 1997, at A14.
Thirty-five years ago, James H. Meredith integrated Ole Miss. Now, the university's black students are deeply offended by the state-supported institution's continued use of the symbols, including the Confederate battle flag, the song 'Dixie,' the nickname Rebels, the white-whiskered mascot known as Colonel Reb, streets named Confederate Drive and Rebel Drive, and even the name Ole Miss itself.
Id.

[FN43]. Toni Morrison, Playing in the Dark 47-48 (1992).

[FN44]. Ralph Ellison, Shadow and Act 29 (1964). Ellison argues elsewhere that:
[I]t is practically impossible for the white American to think of sex, of economics, his children or womenfolk, or of sweeping socio-political changes, without summoning into consciousness fear-flecked images of black men. Indeed, it seems that the Negro has become identified with those unpleasant aspects of conscience and consciousness which it is part of the American's character to avoid.

Id. at 100. Ellison goes on to argue that the avoidance of these unpleasant thoughts has led to an anemic national literature: "literary offspring without hearts, without brains, viscera or vision, and some even without genitalia." Id. at 101.

[FN45]. For an argument that the birth of white rock 'n' roll represented the death of black rhythm 'n' blues as a result of racist and capitalist appropriation, see Nelson George, The Death of Rhythm 'n' Blues (1988).

[FN46]. See William Upski Wimsatt, Wigger: Confessions of a White Wannabe, Chicago Reader, July 8, 1994, at 1. The embrace of black culture by white kids is sometimes met with violent reprisals. In the spring of 1994, Noel Ignatiev and John Garvey reported that several female students at a junior-senior high school near Morocco, Indiana, had recently begun to braid their hair in dreadlocks and wear baggy jeans and combat boots in hip-hop style, calling themselves the "Free To Be Me" group. See Editorial, Free To Be Me, 3 Race Traitor 33 (1994).
Whites in the town accuse the group of "acting black," and male students have reacted by calling them names, spitting at them, punching and pushing them into lockers, and threatening them with further violence. Since mid-November there have been death threats, a bomb scare, and a Ku Klux Klan rally at the [[overwhelmingly white] school. "This is a white community," said one sixteen-year-old male student. "If they don't want to be white, they should leave."
Id.

[FN47]. See Do the Right Thing (Universal Pictures 1989).

[FN48]. For a subtle and complex reading of the race, gender, sexual, and class codes worked out in such movies, see Fred Pfeil, From Pillar to Postmodern: Race, Class, and Gender in the Male Rampage Film, in White Guys 1, 1-33 (1995).

[FN49]. Phil Rubio argues that the figure of the "exceptional white" who is able to mingle freely and on equal terms with black people represents antiracist liberation: "White cultural assimilation is not the same thing as political defection from the white race, but it is already a form of political awareness." Phil Rubio, Crossover Dreams: The 'Exceptional White' in Popular Culture, in Race Traitor 149, 161 (John Garvey & Noel Ignatiev eds., 1996).

[FN50]. See, e.g., The Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 71- 72 (1873).

[FN51]. On the relationship between black protest and the legislative innovations of the Second Reconstruction, see Manning Marable, Race, Reform, and Rebellion (2d ed. 1991).

[FN52]. See Celeste Michelle Condit & John Louis Lucaites, Crafting Equality (1993).

[FN53]. For a remarkable account of how white and black people have reacted to the author, an African-American woman who "looks white," see Adrien Piper, Passing for White, Passing for Black, 58 Transition 4 (1992); see also Scales- Trent, supra note 9. Noel Ignatiev suggests that white people should respond to anti-black slurs with the remark, "Oh, you probably said that because you think I'm white. That's a mistake people often make because I look white." Noel Ignatiev, How to Be a Race Traitor: Six Ways to Fight Being White, Utne Reader, Nov./Dec. 1994, at 85.

[FN54]. For a discussion of this phenomenon, see Calvin C. Hernton, Sex and Racism in America (1965).

[FN55]. Iris Marion Young argues, for instance, that "[t]he experience of racial oppression entails in part existing as a group defined as having ugly bodies, and being feared, avoided, or hated on that account." Iris Marion Young, Justice and the Politics of Difference 123 (1990). Young explains:
Much of the oppressive experience of cultural imperialism occurs in mundane contexts of interaction--in the gestures, speech, tone of voice, movement, and reactions of others.... Pulses of attraction and aversion modulate all interactions, with specific consequences for the experience of the body. When the dominant culture defines some groups as different, as the Other, the members of those groups are imprisoned in their bodies.
Id.

[FN56]. For an examination of this process and its life-and safety- threatening consequences for black men, see Jody D. Armour, Race Ipsa Loquitur: Of Reasonable Racists, Intelligent Bayesians, and Involuntary Negrophobes, 46 Stan. L. Rev. 781 (1994).

[FN57]. It is telling in this respect that, throughout the period of formal race science, "Negroes" were consistently considered lower on the totem pole of "civilization" than "Asiatics," native peoples, and other "nonwhites." Although different theorists held different views about the composition of racial groups and how they were to be classified, European "whites" were typically placed at the top and African "blacks" at the bottom. See Nancy Stepan, The Idea of Race in Science 8-9, 14-15 (1982) (describing the traditional "chain of being" as beginning with Europeans at the top and moving gradually down to the Negro, who was placed next to the great apes).

[FN58]. Frantz Fanon's account of inadvertently frightening a small white child and in the process realizing that he is viewed as frightening and loathsome is one of the most powerful moments in the literature of anti-racism.

My body was given back to me sprawled out, distorted, recolored, clad in mourning on that white winter day. The Negro is ugly, the Negro is animal, the Negro is bad, the Negro is mean, the Negro is ugly; look, a nigger, it's cold, the nigger is shivering, because he is cold, the little boy is trembling because he is afraid of the nigger, the nigger is shivering with cold, that cold goes through your bones, the handsome little boy is trembling because he thinks that the nigger is quivering with rage, the little white boy throws himself into his mother's arms; Momma, the nigger's going to eat me up....

I sit down at the fire and I become aware of my uniform. I had not seen it. It is indeed ugly. I stop there, for who can tell me what beauty is?

Frantz Fanon, Black Skin, White Masks 114 (1967).

[FN59]. As Morrison explains:

If there were no black people here in this country, it would have been Balkanized. The immigrants would have torn each other's throats out, as they have done everywhere else. But in becoming an American, from Europe, what one has in common with that other immigrant is contempt for me--it's nothing else but color. Wherever they were from, they would stand together. They could all say, "I am not that." So in that sense, becoming an American is based on an attitude: an exclusion of me.

It wasn't negative to them--it was unifying. When they got off the boat, the second word they learned was "nigger." Ask them--I grew up with them. I remember in the fifth grade a smart little boy who had just arrived and didn't speak any English. He sat next to me. I read well, and I taught him to read just by doing it. I remember the moment he found out that I was black--a nigger. It took him six months; he was told. And that's the moment when he belonged, that was his entrance. Every immigrant knew he would not come as the very bottom. He had to come above at least one group--and that was us. Bonnie Angelo, The Pain of Being Black, Time, May 22, 1989, at 120; see also Bell, supra note 26, at 155-56 (quoting Morrison, and noting that Andrew Hacker and Ralph Ellison have made the same argument).

[FN60]. See Trina Grillo & Stephanie M. Wildman, Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other-isms), 1991 Duke L.J. 397, 402. As Grillo and Wildman observe:

So strong is this expectation of holding center-stage that even when a time and place are specifically designated for members of a non-privileged group to be central, members of the dominant group will often attempt to take back the pivotal focus. They are stealing the center--usually with a complete lack of self-consciousness.

Id. (citations omitted).

[FN61]. See Eric K. Yamamoto, Rethinking Alliances: Agency, Responsibility and Interracial Justice, 3 UCLA Asian Pac. Am. L.J. 33, 59 (1995). Borrowing these concepts from Michael Omi and Jeff Chang, Yamamoto argues that they are significant for two reasons:

First, an acknowledgement of differential power within and among racial groups, however unstable and shifting, is also an acknowledgement of some degree of group agency and responsibility. It raises the questions similar to those raised by postcolonial theory: To what extent do groups in a given situation have power over each other? And what ethical responsibilities attend the exercise of that power? Second,

situational or differential racial group power analyses historicize and localize inquiry into contemporary group relations in ways that postcolonial theory does not.
Id. at 62.

[FN62]. See, e.g., Montoya, supra note 1.

[FN63]. See, e.g., Melissa Harrison & Margaret E. Montoya, Voices/Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces, 6 Colum. J. Gender & L. 389, 411-412 (1996).

[FN64]. See Joel Chandler Harris, The Complete Tales of Uncle Remus 1 (Houghton Mifflin 1955). The Uncle Remus stories themselves demonstrate the complicated working of racism. The stories are so obviously racist. They are the slave owner's reality in setting the stage:
One evening recently, the lady who Uncle Remus calls "Miss Sally" missed her little seven-year-old boy. Making search for him through the house and through the yard, she heard the sound of voices in the old man's cabin, and, looking through the window, saw the child sitting by Uncle Remus. His head rested against the old man's arm, and he was gazing with an expression of the most intense interest into the rough, weather-beaten face, that beamed so kindly upon him. This is what "Miss Sally" heard....
Id. at 3. Uncle Remus speaks, in contrast to the narrator, in the "negro" English of the plantation slave. The stories, however, have a depth and double entendre. They are classic animal tales of the folktale variety. The main character, Brer Rabbit, has a series of adventures with a cast of many other animal personalities. Brer Fox is always trying to capture Brer Rabbit and make a nice meal of him. Brer Rabbit always seems to make his escape. Joel Chandler Harris interpreted the tales as a symbol of how black people responded to slavery, writing: "the negro [sic] selects as his hero the weakest and most harmless of all animals and brings him out victorious." Julius Lester, More Tales of Uncle Remus at viii (1988) (quoting Harris and arguing that the tales would more appropriately be interpreted as classic folktales and not narrowly as slave tales, which is the most common interpretation); see also Americo Paredes, Uncle Remus Con Chile (1993) (collecting radical folk stories of Mexican Americans).

[FN65]. The story of the Tar-Baby is a multi-layered fable of deception, the futility of power and unexplainable survival. "'Didn't the fox never catch the rabbit, Uncle Remus?' asked the little boy the next evening. 'He come mighty nigh it, honey, sho's you born--Brer Fox did....'" Harris, supra note 64, at 6. Uncle Remus then describes how the crafty Brer Fox "got 'im some tar, en mix it wid some turkentime, en fix up a contrapshun w'at he call a Tar-Baby...." Id. Brer Fox then puts the Tar-Baby in the road; Brer Fox crawls off to the bushes, hiding himself and waiting to see what will transpire. Brer Fox has not long to wait. Hippity-hoppity, along comes Brer Rabbit, friendly as can be. ""Mawnin'!' sez Brer Rabbit, sezee--'nice wedder dis mawnin',' sezee. Tar-Baby ain't sayin' nothin', en Brer Fox, he lay low.'" Id. at 7.
Brer Rabbit greets the Tar-Baby again. Still there is no response. This is most unfriendly. Brer Rabbit asks, "Is you deaf?" He is getting agitated and offers to "holler louder." The Tar-Baby lies still. Now Brer Rabbit is quite peeved: "You er stuck up, dat's w'at you is...." He carries on about how ""I'm gwine ter larn you how ter talk ter 'spectubble folks ef hit's de las' ack...."" Id.
Silent is the Tar-Baby. True to his threat, Brer Rabbit hauls off and punches the Tar-Baby. Still there is no sound. But now, Brer Rabbit's fist is stuck: "Ef you don't lemme loose, I'll knock you agin...." Id. And so it goes, Brer Rabbit now has both arms stuck, and the Tar-Baby is unrelenting. So Brer Rabbit threatens to kick him good. And he kicks the Tar-Baby, first with one foot, then with the other. Still, there is no capitulation. So Brer Rabbit butts the Tar-Baby with his head. Brer Rabbit is totally stuck and howling. Now, out waltzes Brer Fox, laughing so hard he is holding his sides.
"'I speck you'll take dinner wid me dis time....'" says the Fox. Id. at 8. Here Uncle Remus stops the story. The little boy wants to know if the Fox ate the Rabbit. "'Dat's all de fur de tale goes,' replied the old man. 'He mought, en den agin he moughtent.'" Id. Like the little boy, we are left to wonder at what miracle freed the rabbit.

[FN66]. See id. at 12-13. Here, Brer Fox catches Brer Rabbit. Brer Fox is mad at him and promises to do the Rabbit in. Brer Rabbit is usually brash and taunting of Brer Fox, but not this time. "'Den Brer Rabbit talk mighty 'umble. 'I don't keer w'at you do wid me, Brer Fox,' sezee, 'so you don't fling me in dat brier-patch. Roas' me, Brer Fox,' sezee, 'but don't fling me in dat brier- patch,' sezee.'" Id. at 13.

Brer Rabbit goes on to say how he would prefer hanging, drowning, skinning-- anything but the brier-patch--that dreaded field of thorns and tangled bramble. Of course, Brer Fox, "wanter hurt Brer Rabbit bad es he kin, so he cotch 'im by de behime legs en slung 'im right in de middle er de brier- patch." Id. After considerable commotion, Brer Fox sees Brer Rabbit at the top of the hill, on the other side of the brier-patch, sitting comfortably. Brer Rabbit "holler out: 'Bred en bawn in a brier-patch, Brer Fox--bred and bawn in a brier-patch!' en wid dat he skip out des ez lively ez a cricket in de embers." Id. at 14.

[FN67]. See Ropers & Pence, supra note 9, at 32 (noting that for a sizable portion of the American public, the perception and definition of race is common sense or taken for granted). Professor Gotanda explains:
American racial classifications follow two formal rules: 1) Rule of recognition: Any person whose Black-African ancestry is visible is Black. 2) Rule of descent: (a) Any person with a known trace of African ancestry is Black, notwithstanding that person's visual appearance; or, stated differently, (b) the offspring of a Black and a white is Black.
Gotanda, supra note 24, at 24.

[FN68]. The operation of racism is to eliminate other identities that might alter the power structure. See Gotanda, supra note 24, at 25 (discussing the failure of the legal system to acknowledge intermediate, "mixed" racial categories); Sharon M. Lee, Racial Classifications in the U.S. Census: 1890- 1990, 16 Ethnic & Racial Stud. 75 (1993) (identifying and discussing four themes in U.S. race classifications: importance of skin color, belief in "pure" race, role of census categories in creating pan-ethnic groups, and the confusing of race and ethnicity classifications).

[FN69]. See Lee, supra note 68 (arguing that a belief in "pure" race is reflected in official census data). Controversy over census categories continues. See Lynn Norment, Am I Black, White or In Between? Is There a Plot to Create a "Colored" Buffer Race in America?, Ebony, Aug. 1995, at 108 (discussing politics of the push to categories, and worrying about the effort now officially to dilute Black power with mixed race classifications). Census categories are particularly galling for Latino/as. See Clarence Page, Showing My Color; Biracial Kids Face Burden of Two Worlds, Houston Chron., Mar. 14, 1996, at 1. Most Mexicans regard themselves as "mestizo"--part Spanish and part indigenous; mixed race is almost part of the official culture in Mexico and Mexico has not asked the "race" question on its census since 1921. See id.

[FN70]. For a century, scientists tried to develop biological notions of race; now science still attempts to give scientific meaning to race by attributing certain characteristics to certain racial groups. See Omi & Winant, supra note 9, at 63-65.

[FN71]. See Andrew Hacker, Two Nations at ix (1992) ("Dividing people into races started as convenient categories. However, those divisions have taken on lives of their own, dominating our culture and consciousness, coloring passions and opinions, contouring facts and fantasies.").

[FN72]. The politics of identity in our society erases any complexity of identity by imposing strict categories and classifying individuals by pushing them to the most oppressed category. See Espinoza, supra note 8, at 27; Judy Scales-Trent, Commonalities: On Being Black and White, Different, and the Same, 2 Yale J.L. & Feminism 305 (1990) (arguing that impermeable boundaries are drawn both within and between the categories of race and gender). American dominant culture has long refused to recognize the progeny of interracial sex, indeed the very term "mulatto" comes from the word mule, the sterile offspring of a horse and a donkey. See Scales-Trent, supra note 9, at 99-100.

[FN73]. See Ropers & Pence, supra note 9, at 35-36.
The classification that was most widely accepted separated humans into three major categories: Negroid, with dark skin and woolly textured hair, located primarily in Africa south of the Sahara; Caucasoid, with light skin and straight or wavy hair, located primarily in Europe; and Mongoloid, with yellowish skin and an unique skin fold around the eyes, located mostly in Asia and North and South America....
Id. According to most social and biological scientists, then, race as a concept has little or no scientific meaning.

[FN74]. See Jose Cuello, Essay: Latinos and Hispanics: A Primer on Terminology, Noticias, Mar. 1997, at 2-3 (Mass. Assoc. of Hisp. Attys., Inc. & the MAHA Found.).

"Latino" is a term adopted by groups primarily in the West and Midwest who reject "Hispanic" as a colonial imposition by the government [who started using the term in 1973]. They also argue the term "Hispanic" is so broad that it includes everyone of Hispanic heritage, including those in Latin America and Spain, thus diluting and sabotaging the focus on the struggle for equality by Latinos in the U.S..... It too has a political charge. Self- identified Latinos are more confrontational than Hispanics and feel that the struggle for equality and opportunity in America is far from over.... Academicians and social activists are the biggest promoters of the term "Latino."
Id. at 3. Credit and kudos should be given to Professor Berta Esperanza Hernandez who unswervingly, indeed relentlessly, insisted in every meeting of Latino and Latina law professors that the two genders be consciously acknowledged as we named ourselves. To do otherwise would render invisible the women who comprise over half of Los Olvidados. See Juan F. Perea, Los Olvidados: On the Making of Invisible People, 70 N.Y.U. L. Rev. 965 (1995) (showing how Latinos are treated as Los Olvidados--the invisible ones). "Latino/as" is now almost universal among scholars of color. See generally Angel R. Oquendo, Reimagining the Latino/a Race, 12 Harv. BlackLetter J. 93, 97 (1995) (tracing the root of Latino/a to the term "latinoamericano" which strictly refers to peoples in the Americas who were colonized by Spain, Portugal or France, and excluding those colonized by the English and the Dutch).

[FN75]. See Ramon A. Gutierrez, When Jesus Came, the Corn Mothers Went Away 198-99 (1991).
The Chilean sociologist, Alejandro Lipschutz, called the racial system that developed in Spanish America a "pigmentocracy," because honor, status, and prestige were judged by skin color and phenotype. The whiter one's skin, the greater was one's claim to the honor and precedence Spaniards expected and received. The darker a person's skin, the closer one was presumed to be to the physical labor of slaves and tributary Indians, and the closer the visual association with the infamy of the conquered.
Id. Likewise, skin color and hair texture were important in the African- American community.
For example, poet and novelist Maya Angelou described how, one hundred years ago, some American churches had a pinewood slat with a fine-toothed comb hanging outside the door. People could enter the church only if their skin color was not darker than the pinewood and if they could run the comb through their hair without it snagging.
Ropers & Pence, supra note 9, at 32-33.

[FN76]. See Gotanda, supra note 24, at 24 (noting the classification of who is black by a rule of recognition or rule of descent, for example, "one-drop" of blood, is inadequate); Calvin Trillin, American Chronicles: Black or White, New Yorker, Apr. 14, 1986, at 62 (discussing history of race-defining laws using ancestry, in context of lawsuit brought by Louisiana woman to have racial designation of "col." on birth certificate changed to "white").

[FN77]. Culture and ethnic identity are not simply matters of choice. Individual choice is limited by social and political limits on the categories available. See Joanne Nagel, Constructing Ethnicity: Creating and Recreating Ethnic Identity and Culture, 41 Soc. Probs. 152 (1994); see also Clara E. Rodriguez, Challenging Racial Hegemony: Puerto Ricans in the United States, in Race (Steven Gregory & Roger Sanjek eds., 1994) (noting the complicated development of ethnic/race identity by Puerto Ricans, which stems from the complicated colonial history of mixing of Europeans, Amerindians and Africans).

[FN78]. Language is more than an immigrant vestige for Chicano/as. It is also a symbol and an action of resistance to colonization. "The hallmark of resistance still was the maintenance of Spanish. That Mexicans kept their language in the U.S. territory longer than most other ethnic groups is partially due to continuous Mexican immigration but also to the resistance to Anglo domination offered in previous generations." F. Arturo Rosales, Chicano! 18 (1996).

[FN79]. See Ian Haney Lopez, The Social Construction of Race, 29 Harv. C.R.-C.L. L. Rev. 1, 38-49 (1994).

[FN80]. See Omi & Winant, supra note 9, at 60.
[In our society,] we expect differences in skin color, or other racially coded characteristics, to explain social differences. Temperament, sexuality, intelligence, athletic ability, aesthetic preferences, and so on are presumed to be fixed and discernible from the palpable mark of race. Such diverse questions as our confidence and trust in others (for example, clerks or salespeople, media figures, neighbors), our sexual

preferences and romantic images, our tastes in music, films, dance, or sports, and our very ways of talking, walking, eating, and dreaming become racially coded simply because we live in a society where racial awareness is so pervasive. Thus in ways too comprehensive even to monitor consciously, and despite periodic calls-- neoconservative and otherwise--for us to ignore race and adopt 'color-blind' racial attitudes, skin color 'differences' continue to rationalize distinct treatment of racially identified individuals and groups.

[FN81]. Id. See id. at 68.
Going beyond this, it is crucial to emphasize that race, class, and gender are not fixed and discrete categories, and that such "regions" are by no means autonomous. They overlap, intersect, and fuse with each other in countless ways....There are no clear boundaries between these "regions" of hegemony, so political conflicts will often invoke some or all these themes simultaneously. Hegemony is tentative, incomplete, and "messy." For example, the 1991 Hill-Thomas hearings, with their intertwined themes of race and gender inequality, and their frequent genuflections before the altar of hard work and upward mobility, managed to synthesize various race, gender, and class projects in a particularly explosive combination.

[FN82]. Id. See Omi & Winant, supra note 9, at 66-67.
Antonio Gramsci--the Italian communist who placed this concept at the center of his life's work--understood it as the conditions necessary, in a given society, for the achievement and consolidation of rule. He argued that hegemony was always constituted by a combination of coercion and consent. Although rule can be obtained by force, it cannot be secured and maintained, especially in modern society, without the element of consent. Gramsci conceived of consent as far more than merely the legitimation of authority. In his view, consent extended to the incorporation by the ruling group of many of the key interests of subordinated groups, often to the explicit disadvantage of the rulers themselves.

[FN83]. Id. See Deborah Ramirez, Multicultural Empowerment: It's Not Just Black and White Anymore, 47 Stan. L. Rev. 957, 973 (1995) (noting "the potential for interracial conflict whenever members of distinct racial and ethnic groups compete for access to limited remedies and benefits").

[FN84]. Intra-group conflict is often based on economics. For example, should middle-class African Americans benefit from affirmative action in colleges? The irony is that nonimpoverished outsiders, that is, middle and upper class African Americans, are more likely to succeed. Successful African Americans might debunk the myth that people are smart by race. How much harder is it to make it through college if you have no financial support and a poor educational background? Intragroup conflict can also be based on color. See Gutierrez, supra note 75, at 198-99.

[FN85]. See Bell, supra note 75.

[FN86]. See Gloria Anzaldua, Borderlands, La Frontera at Preface (1987) (describing how psychological borderlands are "physically present wherever two or more cultures edge each other, where people of different races occupy the same territory, where under, lower, middle and upper classes touch, where the space between two individuals shrinks with intimacy"); Melissa Harrison & Margaret E. Montoya, Voices/Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces, 6 Colum. J. Gender & L. 1, 33 (1996).

[FN87]. See Perea, 85 Calif. L. Rev. at 1219-21, 10 La Raza L.J. at 133- 35.

[FN88]. See 85 Calif. L. Rev. at 1221-26, 10 La Raza L.J. at 135-40.

[FN89]. See 85 Calif. L. Rev. at 1230, 10 La Raza L.J. at 144.

[FN90]. See 85 Calif. L. Rev. at 1220, 10 La Raza L.J. at 134.

[FN91]. See Cameron, 85 Calif. L. Rev. at 1372, 10 La Raza L.J. at 286.

[FN92]. See 85 Calif. L. Rev. at 1374-80, 10 La Raza L.J. at 288-94. Professor Roithmayr similarly applies the color line to the concept of merit- based selection processes. See 85 Calif. L. Rev. at 1469-82, 10 La Raza L.J. at 383-96.

[FN93]. See Cameron, 85 Calif. L. Rev. at 1367-72, 10 La Raza L.J. at 281-86 (noting the common discourse that it is better to reserve our sympathy for the person who is treated badly due to his color or race, markers which are perceived as immutable, or beyond his ability to control).

[FN94]. See 85 Calif. L. Rev. at 1372, 10 La Raza L.J. at 286 ("The limits of racial dualism are reflected perfectly in the notion that bilingualism can be both a blessing and a curse. Whereas a bilingual person can view the world in its complexity, in stereophonic sound, a monolingual person can view the world only in its simplicity, in monophonic sound.").

[FN95]. See 85 Calif. L. Rev. at 1370, 10 La Raza L.J. at 284 (noting how race and sex are social constructs). I would add that it is difficult, but medically possible, to alter even the most "immutable" characteristics, such as through transsexual surgery, skin bleaching or darkening, changes to hair, etc.

[FN96]. See Johnson, 85 Calif. L. Rev. at 1269-77, 10 La Raza L.J. at 183-91.

[FN97]. See 85 Calif. L. Rev. at 1276-77, 10 La Raza L.J. at 190-91.

[FN98]. See Cameron, 85 Calif. L. Rev. at 1361-64, 10 La Raza L.J. at 275-78.

[FN99]. See Making Face, supra note 3, at xv ("After years of wearing masks we may become just a series of roles, the constellated self limping along with its broken limbs.").

[FN100]. See Perea, 85 Calif. L. Rev. at 1242-52, 10 La Raza L.J. at 156- 67.

[FN101]. See 85 Calif. L. Rev. at 1246-47, 10 La Raza L.J. at 160-61.

[FN102]. See Ramirez, supra note 83, at 972-74 (describing the conflict between blacks and Latino/as over postal jobs).

[FN103]. See Cameron, 85 Calif. L. Rev. at 1386, 10 La Raza L.J. at 300.

[FN104]. See 85 Calif. L. Rev. at 1475-94, 10 La Raza L.J. at 389-408.

[FN105]. See 85 Calif. L. Rev. at 1490-91, 10 La Raza L.J. at 404-05.

[FN106]. See 85 Calif. L. Rev. at 1475-94, 10 La Raza L.J. at 389-408.

[FN107]. It is unclear if there is a valid relationship between test scores and law school success. There is the obvious issue that test prep courses are quick, expensive training of merit for the well-heeled. See Leslie G. Espinoza, The LSAT: Narratives and Bias, 1 Am. U. J. Gender & L. 121 (1993) (discussing test bias, unproved correlation to success, and the myth of predictive precision; also discussing test prep courses and coaching "tricks"). It is also important to remember that the LSAT only claims a correlation between test scores and first year law school performance. Any further correlation that we anecdotally might observe is tainted by the self- perpetuating nature of first year success. Law schools reward first year achievers with a plethora of advantages, including law review status, which may entail access to office space in the law school, access to outlines and course preparation material that is often part of those offices, financial support and networking as research assistants, credit for law review work, and so on. The circle of "merit" measurements is completed with standardized bar exams.

[FN108]. See San Francisco NAACP v. San Francisco Unified Sch. Dist., 576 F. Supp. 34, 53 (N.D. Cal. 1983) (integrating Lowell High School by setting a forty-five percent limit on enrollment by any one of nine designated ethnic and racial groups).

[FN109]. Jews and Asians do better on standardized tests than other outsiders. See Roithmayr, 85 Calif. L. Rev. at 1543, 10 La Raza L.J. at 367. It is consistent with hegemony analysis for the dominant, ruling class to allow some outsiders access, particularly in a way, as with tests, that legitimizes the admission (really, exclusion) criteria. It also drives a wedge between outsider groups. I found it interesting that law schools were opened to Jews in the 1960s. This corresponds to the time period when there was a strong coalition between Jews and blacks in the civil rights movement.

[FN110]. See Cameron, 85 Calif. L. Rev. at 1365, 10 La Raza L.J. at 279.

[FN111]. Cf. Caldwell, supra note 11, at 376-81 (discussing Rogers v. American Airlines, Inc., 527 F. Supp. 229 (S.D.N.Y. 1981), in which the court found no discrimination for a work rule that barred braided hair).

[FN112]. Cameron, 85 Calif. L. Rev. at 1356, 10 La Raza L.J. at 270.

[FN113]. In the early 1800s in Ireland, eight-million Irish lived on their island and most spoke Gaelic. England had colonized Ireland hundreds of years before and wanted to complete the colonization by establishing English as the only language. "The Tudors under Henry VIII and his successors undertook to pacify their turbulent Irish subjects by enforcing English law and imposing the English language." Reg Hindley, The Death of the Irish Language 5 (1990). Laws were passed forbidding the use of Gaelic in government and business. See Colman L. O Huallachain, The Irish Language in Society 4, 6, 7 (Micheal A. O Murchu ed., 1991). Towns were renamed in English transliterations and Gaelic Irish were forced to anglicize their names in order to obtain passports. See Ed Siegel, Fluent, Rich "Translations," Boston Globe, Feb. 17, 1995, at 33. Until the early 1800s, the Gaelic-speaking Catholic population was denied schooling. Indeed, teaching Gaelic was punishable by death or transportation to a British penal colony. After the Catholic emancipation in the early 1800s, the only legal schools were government schools which were legally obligated to teach only in English. See O Huallachain, supra at 10. Another Irish historian writes that "British politicians of all persuasions discussed the Irish Question in racist terms. Disraeli and Salisbury thought the Irish were savages, as incapable of self-government as the Hottentots. Advanced Liberals like Sir Charles Dilke and Fabians Sidney and Beatrice Webb considered the Irish an inferior race." Lawrence J. McCaffrey, Ireland 121 (1979). The population of Ireland diminished as a result of famine and emigration. See Christine Kinealy, A Death-Dealing Famine 2-3 (1997). Now, of the remaining Irish, only a small percentage have working fluency in Gaelic. Similar to Mexico, emigration has become an accepted feature of life, and it is understood that English is needed to emigrate. See O Huallachain, supra at 9. Spanish will likely survive in Spain and Latin America, but will it be lost to Chicano/as? To Mexicans?

[FN114]. Proposition 187 and Proposition 209. See Chang & Aoki, 85 Calif. L. Rev. at 1409-10, 10 La Raza L.J. at 323-24 (discussing Proposition 187 and its progeny).

[FN115]. At her mother's funeral, Laura Munter-Orabona remembers her mother's dying words: "No lo creo. No lo creo." [I don't believe it. I don't believe it.] This memory takes the author back:
I don't know at what point I had turned from my native language. "Talk English or don't talk at all," my father had said as my brother and I passed from the warmth of mi familia's arms from the island of my birth to my father's snow-covered home. My mother had left him years earlier, me in her belly, my brother on her arm. "Talk English or don't talk at all," he said when we came to America. I stopped speaking for two years, they said. "We thought you were damaged. We were going to see doctors, then one day you said, "Bubba gum."
Maybe Dad thought he was helping. Maybe he felt threatened that we could leave him with conversation....But now standing mute at my mother's passing, Mami calling out to us in terror, calling out in her native tongue, I felt awakened in the middle of a rape. Each foreign word another thrust. "No lo creo. No lo creo." Mami, we don't know your language. My rage rising, I understood the lunatic gunning wildly through a crowd.
Laura Munter-Orabona, On Passing, in Making Face, supra note 3, at 128.

[FN116]. For Omi and Winant, race is something "real"; it refers to group differences in power, wealth, social status, and even health that can be objectively identified and measured. At the same time, they stress

that racial difference is not biological in origin but ideological. Thus, rather than speaking of race as a thing, they prefer to speak of it as a "concept which signifies and symbolizes social conflicts and interests by referring to different types of human bodies." Omi & Winant, supra note 9, at 55.

[FN117]. Omi and Winant express this by noting that "[f]rom a racial formation perspective, race is a matter of both social structure and cultural representation." Id. at 56.

[FN118]. Barbara Jeanne Fields, Slavery, Race and Ideology in the United States of America, New Left Rev., May-June 1990, at 95, 117.

[FN119]. Reva Siegel refers to this notion as "preservation through transformation." See Reva B. Siegel, "The Rule of Love": Wife Beating as Prerogative and Privacy, 105 Yale L.J. 2117, 2178-87 (1996) (discussing preservation of patriarchy through various legal regimes); Reva B. Siegel, Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action, 49 Stan. L. Rev. 1111, 1119-29 (1997) [hereinafter Siegel, Equal Protection] (discussing preservation of white supremacy through various legal regimes).

[FN120]. See, e.g., Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 406 (1856) (denying African Americans the right to political citizenship based on their designation as persons of African descent); Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543, 591-92 (1823) (holding that, as indigenous persons outside the family of European nations, Indians did not possess "title" to land vis-a- vis Americans, but only a right of occupancy); cf. Harris, supra note 27 (arguing that "whiteness" became a form of "status property" after slavery and conquest).

[FN121]. See Chang & Aoki, 85 Calif. L. Rev. at 1401, 10 La Raza L.J. at 315.

[FN122]. See Siegel, Equal Protection, supra note 119; cf. Gotanda, supra note 24, at 11 (arguing that contemporary constitutional law protects a "private right to discriminate").

[FN123]. 347 U.S. 483 (1954).

[FN124]. See, e.g., Washington v. Davis, 426 U.S. 229 (1976); Richmond v. J.A. Croson, Co., 488 U.S. 469 (1989).

[FN125]. See supra Part II.A.1.

[FN126]. See Francisco Valdes, Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society, 83 Calif. L. Rev. 3, 12-20 (1995).

[FN127]. See Gotanda, supra note 24, at 3-5 (defining "status-race," "formal-race," "historical-race," and "culture-race").

[FN128]. See Kimberle Williams Crenshaw, Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law, 101 Harv. L. Rev. 1331, 1373 (1988) (describing the use of "black" and "white" images as binary opposites).

[FN129]. See Ian Haney Lopez, 85 Calif. L. Rev. 1143 (1997), 10 La Raza L.J. 57 (1997).

[FN130]. 347 U.S. 475 (1954).

[FN131]. In my view, the word "racism" has suffered from both rhetorical inflation and deflation. As Robert Miles has argued, "racism" as a concept has suffered from rhetorical inflation to the extent that it is often used to describe not only "discourses (whether formal or disaggregated), but also (and more important) all actions and processes (whatever their origin or motivation) which result in one group being placed or retained in a subordinate position by another...." Robert Miles, Racism 52 (1989). At the same time, "racism" in popular conversation is often deflated; limited to mean only intentional and conscious

bigotry. Because this inflation and deflation makes the term "racism" difficult to use, I use the term "racialism" to refer to the rhetorical system underlying white supremacy, a rhetorical system that is centered on the concept of "race" but is not limited to situations where "race" is explicitly under discussion. I use the term "white supremacy" to refer to the material and institutional practices by which groups identified either as "white" or as not "black" gain economic, political, social and cultural power over groups identified as "nonwhite." As bell hooks notes, the term "white supremacy" permits the recognition that nonwhite people, including black people, can benefit from and work to reinforce this hierarchy. See bell hooks, Talking Back 113 (1989).

[FN132]. Gould argues that nineteenth-century race scientists "began with conclusions, peered through their facts, and came back in a circle to the same conclusions." Stephen Jay Gould, The Mismeasure of Man 85 (1981).

[FN133]. See Eva Saks, Representing Miscegenation Law, Raritan, Fall 1988, at 39, 40-42, 48-50.

[FN134]. See Richard J. Herrnstein & Charles Murray, The Bell Curve (1994).

[FN135]. Walter Benn Michaels, for example, argues that many contemporary arguments about "multiculturalism," on the left as well as on the right, rely on the unstated thesis that distinct groups of people inherently "possess" distinct cultures--an argument that only makes sense in biological terms. See Walter Benn Michaels, Our America 16 (1995).

[FN136]. Gould, supra note 132, at 21. Similarly, Colette Guillaumin argues that "what is urged upon us in the form of racial (or natural) symbols is the great law of obedience to order and necessity, the law enjoined in so many different ways by oppressors upon the oppressed." Colette Guillaumin, Racism, Sexism, Power and Ideology 62 (1995).

[FN137]. Gould, supra note 132, at 21.

[FN138]. As Alexandra Natapoff argues:
At the heart of its arguments about race, the Court uses the image of a thoroughly multiracial America to recast whites as just another group competing with many others. By transforming whites into a victim group with the same moral and legal claims as any other minority group, the Court gives intuitive plausibility to its attack on racial set-asides, majority-minority voting districts, and affirmative action programs that burden white economic interests.
Alexandra Natapoff, Trouble in Paradise: Equal Protection and the Dilemma of Interminority Group Conflict, 47 Stan. L. Rev. 1059, 1062 (1995).

[FN139]. See Robert A. Williams, Jr., The American Indian in Western Legal Thought (1990).

[FN140]. As Robert Miles writes:
The idea of "race" emerged in the English language in the early sixteenth century...and was used initially largely to explicate European history and nation formation. As it appeared in historical writing, the idea of "race" referred to those various groups which, collectively, constituted the populations of emergent nation states such as England and France, and which supposedly exhibited qualities which were subsequently transformed into national symbols.
Miles, supra note 131, at 31; see also Guillaumin, supra note 136, at 72 (arguing that the idea of race has its source not in a "static and hierarchical view of the world," but rather in "an awareness of the antagonisms and power relationships which disturb the very organization of society").

[FN141]. Colette Guillaumin argues that the central idea of the nineteenth century was that instead of one vast Society of Man, there existed finite, bounded groups of people. She further notes that the idea of "society" and of separate and distinct "societies" emerged at the same time that "race" was taking shape. See Guillaumin, supra note 136, at 72; see also David Carrithers, The Enlightenment Science of Society, in Inventing Human Science 232-70 (Christopher Fox et al. eds., 1995) (discussing the emergence in the eighteenth century of a new science of "society" along with the new science of human nature).

[FN142]. As Etienne Balibar puts it:
Racism is a philosophy of history..., a philosophy that merges with an interpretation of history, but makes history the consequence of a "secret" hidden and revealed to men about their own nature and birth; a philosophy that reveals the invisible cause of the destiny of societies and peoples, ignorance of which accounts for degeneration or for the historical power of evil.
Etienne Balibar, Paradoxes of Universality, in Anatomy of Racism 283, 287 (David Theo Goldberg ed., 1990); see also Alexander Saxton, The Rise and Fall of the White Republic 14 (1990) ("[R]acism reaches beyond [physical differences] to assert that moral, intellectual and psychological qualities are also racially characteristic; that they are transmitted, along with physical traits, by heredity; and that these together constitute a major chain of historical causation. Racism is thus fundamentally a theory of history.").

[FN143]. For example, George Stocking notes that Edward Tylor's arrangement of races in order of their culture placed Italians at the top, and comments:
The national specificity of Tylor's highest category is worth noting... because it most strikingly instances the ambiguity of the cultural and the biological in Tylor's scale. From our present anthropological perspective "Italian" denotes either a language or a nation; it is a cultural rather than biological category. That Tylor should have spoken of the Italian (or, for that matter, of the Tahitian) "race" no doubt reflected a more pervasive looseness in the usage of the term. But like much of that usage, it could also have an implicit biological rationale in the Lamarckian (and Spencerian) assumption of the inheritance of acquired characteristics, which...provided a mechanism by which habitual behavior became instinctive, and cultural inheritance became part of biological heredity.
George Stocking, Victorian Anthropology 235 (1987).

[FN144]. 85 Calif. L. Rev. at 1414, 10 La Raza L.J. at 328.

[FN145]. See Linda S. Bosniak, Exclusion and Membership: The Dual Identity of the Undocumented Worker Under United States Law, 1988 Wis. L. Rev. 955, 989 (noting that "[i]mmigrant workers, both legal and undocumented, have come to occupy a vital place in the labor markets...").

[FN146]. "Non-fiction" stories are told with the intention to accurately describe events understood through memory. The postmodernist's understanding of reality includes an acknowledgement of the knower's specific position, which includes both identity (factors such as gender, race, class) and context-- relation to the thing known. See Katharine T. Bartlett, Feminist Legal Methods, 103 Harv. L. Rev. 829, 880-81 (1990).

[FN147]. Most authors of fiction move between experiences they would call real and fold them into their creative, imagined story. Certainly there is not a sharp line between fiction and nonfiction, but rather a spectrum only partly based on the intention of the author.

[FN148]. See Martha Minow, Words and the Door to the Land of Change: Law, Language, and Family Violence, 43 Vand. L. Rev. 1665, 1688 (1990) (stating that stories "can create a bridge across gaps in experience and thereby elicit empathic understanding").

[FN149]. See Delgado, Storytelling, supra note 17, at 2437 (arguing that stories are therapeutic for outsiders); see generally Minow, supra note 148 (arguing that stories give voice to suppressed perspectives and help build a reservoir of alternative understandings of existing practices).

[FN150]. See Janine Roberts, Tales and Transformations 4 (1994) ("[In stories t] here is a resonance, an echoing of themes and issues, that helps us to understand that in the present we are always carrying our past as well as imagining our future. The present is the pivot point linking past and future.").

[FN151]. See Catharine A. MacKinnon, Toward a Feminist Theory of the State 83-125 (1989) (providing a description of consciousness-raising as feminist method and of the relationship between method and politics).

[FN152]. Antonio Gramsci understood that the power of hegemony was to rule with the consent of the oppressed. Certain limited benefits would actually be given to the oppressed. But keeping the underclass from seeing the reality of their situation was tricky.
Gramsci's treatment of hegemony went even farther: he argued that in order to consolidate their hegemony, ruling groups must elaborate and maintain a popular system of ideas and practices--through education, the media, religion, folk wisdom, etc.--which he called "common sense." It is through its production and its adherence to this "common sense," this ideology (in the broadest sense of the term), that a society gives its consent to the way in which it is ruled.
Omi & Winant, supra note 9, at 67. To break the grip of hegemony, the underclass must develop a new set of understandings, of myths, of tales, of stories.

[FN153]. See Lucie E. White, Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G., 38 Buff. L. Rev. 2, 8-9 (1990) (noting how the dominant language restricts and how it has been used as an instrument of resistance: "Every word that they speak, every silence, carries the risk of subversion, of a double meaning that those in power can never fully understand.").

[FN154]. See generally Delgado, Storytelling, supra note 17 (examining the use of narratives in legal discourse to challenge status quo perpetuated and protected by dominant discourse).

[FN155]. See Judith Lewis Herman, Trauma and Recovery 175-96 (1992); Toni Ann Laidlaw et al., Healing Voices at xiv (1990) ("The healing they [feminist therapists] refer to involves an inner change made up of two parts: the identification and expression of feelings and the reframing of destructive and unhealthy beliefs."); Roberts, supra note 150, at 1-11.

[FN156]. See Roberts, supra note 150, at 129 ("It is important to have the possibility of resonation between personal stories and cultural stories-- resonation that allows people to see how their particular experience is intertwined with the political and social history of their society.").

[FN157]. Id. at 130.

[FN158]. See id. ("Cultural stories also have profound implications for how the past can be explained as well as the future imagined.").

[FN159]. See id. at 134.
It can be very healing for people to see that the dilemmas they are caught in are not unique to their experience, but rather are embedded in larger societal problems and societal change. This can help them move out of stances of self-blame to positions that recognize how the social context affects individual lives. Sometimes this also leads to political action or advocacy work.

[FN160]. Id. These individual visions also provide an opportunity to change cultural structures. See Angela P. Harris, Foreword: The Jurisprudence of Reconstruction, 82 Calif. L. Rev. 741, 764 (1994) ("Storytelling serves to create and confirm identity, both individual and collective.").

[FN161]. See Roberts, supra note 150, at 7-8 ("Therapists need to let the multitude of perspectives that clients bring be told, hold them, and then help them construct new meanings that work better for them and in their relationships with others.").

[FN162]. See, e.g., Derrick Bell, And We Are Not Saved (1987).

[FN163]. See, e.g., Alice Walker, Possessing the Secret of Joy (1992).

[FN164]. Author Alan Dundes notes:
There may well be other terms that might be considered more appropriate than "folk ideas," for instance, "basic premises," "cultural axioms," or "existential postulates." The particular term is really not the point. What is important is the task of identifying the various underlying assumptions held by members of a given culture. All cultures have underlying assumptions and it is these assumptions or folk ideas which are the building blocks of worldview. Any one worldview will be based upon many individual folk ideas and if

one is seriously interested in studying worldview, one will need first to describe some of the folk ideas which contribute to the formation of that worldview.
Alan Dundes, Folk Ideas as Units of Worldview, in Toward New Perspectives in Folklore 93, 96 (Americo Paredes & Richard Bauman eds., 1972).

[FN165]. See, e.g., Jeffrey Rosen, The Bloods and the Crits, New Republic, Dec. 9, 1996, at 27 (criticizing the narrative scholarship of critical race scholars).

[FN166]. See Richard Delgado, The Coming Race War? (1996); Richard Delgado, The Rodrigo Chronicles (1995).

[FN167]. Cf. Ramon Saldivar, Introduction to The Hammon and the Beans at xvi (Americo Paredes ed., 1994) (noting that folktales have played a significant role in Mexican-American resistance to Anglo cultural domination).

[FN168]. See Lester, supra note 64, at ix. Among North American Indian groups similar tales [to Brer Rabbit] are found with the hero taking the form of Raven, Mink, Bluejay, Coyote, Rabbit, Hare and Spider. Among blacks of the Bahamas and West Indies the figure is known as Compe Anansi, as T Malice in Haiti, and as Reynard the Fox in Europe. Whatever name a particular culture gives to this creature, he is the Trickster, or as the Winnebago Indians called him, 'the cunning one.'
Id.; see also Angel Vigil, The Corn Woman 160-61 (1994) (relating a wonderful story where the Rabbit tricks the Coyote with the use of tar).

[FN169]. See Patricia J. Williams, Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism, 42 U. Miami L. Rev. 127, 128 (1987) (describing racism as "spirit-murder").

[FN170]. Chicanos are attached to the land that was Mexico before the Mexican-American War. However, the meaninglessness of that border has continued because of continuing immigration from what is now Mexico. In 1990, thirty- three percent of the population that self-identified as of Mexican origin was foreign born. Chicanas/Chicanos at the Crossroads 33 (David R. Maciel & Isidro D. Ortiz eds., 1996).

[FN171]. See Chang & Aoki, 85 Calif. L. Rev. at 1397, 10 La Raza L.J. at 311.

[FN172]. Adeno Addis comments on this phenomenon:
The image of the criminal black is one many whites are introduced to, not through individual experience, but rather through the media. Indeed, given the fact that most aspects of life such as neighborhoods and schools are still highly segregated...the only sustained contact that whites and blacks have is through the media. Therefore, the media plays an important role in the construction of a national image of the criminal (transgressing) black....It is the image of the dangerous black criminal that apparently convinced jurors in the Rodney King case that it was Officer Laurence Powell, not Rodney King, whose life was threatened in the encounter between the two. This, despite the video showing that Powell continued brutally to beat King on the head (about thirty times) after it was clear that he could have arrested him without any resistance.
Adeno Addis, Recycling in Hell, 67 Tul. L. Rev. 2253, 2264 (1993). It is common for black males to be stopped by the police, not listened to and not believed. See, e.g., Jerome McCristal Culp, Jr., Notes from California: Rodney King and the Race Question, 70 Denv. U. L. Rev. 199, 201 (1993) (relating the story of a large black male student, stopped by the university police while crossing campus and arrested, despite showing his student identification card, when he became angry for being stopped); West, supra note 11, at x (remembering ugly racial memories of being stopped while driving and falsely accused of drug trafficking and being mocked when he said he was a professor; of being stopped three times in ten days for "driving too slowly" in a residential area of Princeton; and of his fifteen year old son having similar experiences).

[FN173]. See, e.g., Alexander Cockburn, All in Their Family, Nation, Jul. 24-31, 1989, at 113, 114 (reporting the alarming statistic that "[t]oday more black men are in jail than in college"); Derrick Z. Jackson, The Double Standard on Drug Crimes, Boston Globe, Aug. 23, 1996, at A19 ("The result is that African-Americans, 13 percent of the drug users, make up 35 percent of the arrests, 55 percent of the convictions and 74 percent of the sentences for drug charges. African Americans and Latinos make up 90

percent of those sentenced on drug possession in state courts. Affirmative action may be out for jobs but very in for jails.").

[FN174]. See Jack Miles, Blacks v. Browns, Atlantic, Oct. 1992, at 41, 51- 54.

[FN175]. For an argument that nonblack minorities occupy a "middleman" position in American economic and social hierarchies, see Edna Bonacich, A Theory of Middleman Minorities, 38 Am. Soc. Rev. 583 (1973).

[FN176]. This is the likely source of African-American suspicion of mixed- race people who do not wish to identify themselves as solely black. See Norment, supra note 69 (discussing this phenomenon).

[FN177]. Indeed, the federal naturalization statute was amended after the Civil War to permit persons of African descent to become naturalized citizens, even while other "nonwhite" persons were barred from naturalization.

[FN178]. See Scales-Trent, supra note 9.

[FN179]. See generally Caldwell, supra note 11 (demonstrating that employment discrimination against African Americans may be based on cultural practices as well as on skin color).

[FN180]. Consider, for example, the recent "ebonics" controversy. To what extent might Christopher Cameron's analysis of the meaning of language for Latino/as have relevance to African Americans who speak Black English? Indeed, in the Ann Arbor "Black English" case, Martin Luther King Junior Elem. Sch. Children v. Ann Arbor Sch. Dist. Bd., 473 F. Supp. 1371 (1979), the plaintiffs, seeking better elementary education for Black English speaking children, "attempted to enlarge the scope of the laws governing education beyond matters of 'race, color, sex, or national origin' to issues involving 'cultural, social and economic differences.'" Richard W. Bailey, Education and the Law: The King Case in Ann Arbor, in Black English and the Education of Black Children and Youth 99 (Geneva Smitherman ed., 1981). Toward this end, the plaintiffs sought support (unsuccessfully) from cases involving Chinese-speaking children, Lau v. Nichols, 414 U.S. 563 (1973), Mexican-American and Yaqui Indian children, Guadalupe v. Tempe, 587 F.2d 1022 (1978), and Hutterite German-speaking children, Deerfield Hutterian Ass'n v. Ipswich Bd. of Educ., 468 F. Supp. 1219 (1979). See Bailey, supra at 105-07.

[FN181]. See Miller v. Johnson, 115 S. Ct. 2475, 2490-94 (1995) (holding that the assumtion that race creates commonalities of interest is unconstitutional racial stereotyping); Shaw v. Reno, 509 U.S. 630, 657-58 (1993) ("Racial classifications of any sort pose the risk of lasting harm to our society.").

[FN182]. See Alex M. Johnson, Jr., Bid Whist, Tonk, and United States v. Fordice: Why Integrationism Fails African-Americans Again, 81 Calif. L. Rev. 1401, 1403 (1993) ("Only by acknowledging and accommodating the reality of the unique and separate African-American culture or nomos will the process of integration ever move forward to accomplish the ideal state of integration sought by Brown and its progeny.").

[FN183]. See Ruth Gordon, Saving Failed States: Sometimes a Neocolonialist Notion, 12 Am. U. J. Int'l L. & Pol'y 101 (1997) (noting the present move to reinstall colonialism for certain Third World countries).

[FN184]. The Los Angeles uprising prompted commentators to look closely at interracial tensions in Southern California. See, e.g., Lisa C. Ikemoto, Traces of the Master Narrative in the Story of African American / Korean American Conflict: How We Constructed "Los Angeles," 66 S. Cal. L. Rev. 1581 (1993); Miles, supra note 75, Reginald Leamon Robinson, "The Other Against Itself:" Deconstructing the Violent Discourse Between Korean and African Americans, 67 S. Cal. L. Rev. 15 (1993).
Signs of ignorance and mistrust among different groups racialized as "nonwhite" appear even in opinion surveys, where people might be expected to express tolerance and goodwill. An opinion survey taken in 1994 for the National Conference of Christians and Jews discovered that many "people of color" agreed with common racist stereotypes about other racialized groups. See Steven A. Holmes, Survey Finds

Minorities Resent One Another Almost as Much as They Do Whites, N.Y. Times, Mar. 3, 1994, at B8. For instance, the survey revealed that:
46 percent of Hispanic Americans and 42 percent of blacks agreed with the statement that Asians were "unscrupulous, crafty and devious in business." At the same time, 68 percent of Asians and 49 percent of blacks said Hispanic Americans "tend to have bigger families than they are able to support." In addition, 31 percent of Asians and 26 percent of Hispanic Americans agreed with the statement that blacks "want to live on welfare."
Id. "Divide and conquer" is, of course, one of the oldest chapters in the book of oppression. The possibility of destructive interracial conflict brings to mind the old folktale of the crabs in a barrel: the man who has caught the crabs reports satisfiedly to a friend that he doesn't need a lid for the barrel, because every time one crab reaches the point of crawling out the others pull it back in.

[FN185]. See Ramirez, supra note 22, at 969-77. In De Grandy v. Wetherell, 815 F. Supp. 1550 (N.D. Fla. 1992), aff'd in part and rev'd in part sub nom. Johnson v. De Grandy, 512 U.S. 997 (1994), a group of African Americans and a group of Latinos claimed that Florida's reapportionment plan for its congressional districts violated the Voting Rights Act of 1965, because it unlawfully diluted the strength of African Americans and Latinos in the Dade County area. The district court found that the remedies for African Americans and Latinos seemed to be mutually exclusive: creation of a majority-Latino voting district would have diluted the voting strength of African Americans, and vice versa. In the end, the court chose a remedy that admittedly violated Section 2 of the Act, yet seemed the best remedy available, referring to the problem as a "political question." See Wetherell, 815 F. Supp. at 1579-82 (citing DeBaca v. County of San Diego, 794 F.Supp. 990, 992-93 (S.D. Cal. 1992)).
The conflict at Lowell High School involved the admission of students to a magnet school under a desegregation decree. Under the quota system established by the decree, Chinese-American students were disadvantaged as compared to African-American and Latino students, and a group of community leaders sued the San Francisco public school system on equal protection grounds. See San Francisco NAACP v. San Francisco Unified Sch. Dist., 576 F. Supp. 34, 53 (N.D. Cal. 1983).
Finally, Ramirez reports that the U.S. Postal Service has been accused of hiring a disproportionate number of African-American workers at the expense of "Hispanics." See Ramirez, supra note 22, at 972-74.

[FN186]. See Eric K. Yamamoto, Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America, 95 Mich. L. Rev. 821, 855-57 (1997). Yamamoto notes that not only were the plaintiffs' complaint and briefs silent on the question of "color on color interplay"; the attorneys in the case agreed to "'protect' against public disclosure the 'racial designations' of the participants in the hiring and promotion process." Id. at 856-57.

[FN187]. Cf. supra note 138 and accompanying text.

[FN188]. Wendy Brown, States of Injury 73-74 (1995).

[FN189]. Cf. Williams, supra note 169, at 128 (describing racism as "spirit- murder").

[FN190]. Yamamoto, supra note 61, at 69.

[FN191]. I thank Leslie for this point.

23. Elvia R. Arriola, [FNd1] *Foreword: MARCH !*, 19 CHICANO L. REV.1 (1998)

I. Introduction

For me, "LatCrit theory" started with our exciting and sometimes conflicting discourse at the LatCrit I conference in La Jolla, California in May 1996--in particular after the outburst of female energy spontaneously created by the "Latinas talking circle."

[FN1] LatCrit I brought together about seventy-five teachers and scholars, predominately Latina and Latino, desirous of exploring the concepts and premises for engaging in a new brand of "outsider scholarship." [FN2] Having had the privilege of being at that first gathering--which had as a goal simply to start a discussion about what it would mean to engage in Latina/o Critical Legal Theory--I now feel even more privileged to be writing this foreword at a moment that feels important in the history of liberation movements. As I write, I am enjoying looking at a copy of a recent news photograph of a march against the resegregation of our public universities [FN3] that took place on January 8, 1998, in San Francisco, and was led by an activist group of law professors. [FN4] Most of the people pictured in the photo *3 of this march are now friends and colleagues I met for the first time at LatCrit I. Most importantly, as I look at the photo and think back on the first gathering of scholars who began that conversation about the special meaning the term "diversity" might have to Latina and Latino scholars, I am aware of the different racial, ethnic, sexual and gendered identities represented by each person in the photograph. Heading the march and shouting slogans in support of diversity and affirmative action at the side of African-American Mayor of San Francisco Willie Brown are five law professors-- two women, a white and a Latina, and three men, one a gay Latino, an African- American and an Asian-American.

These different faces and identities in the photo took me back not only to the excitement of planning for and being in a historic civil rights march, but also to the hotel conference room where I sat in May 1996 with some of these very people, LatCrit colleagues, and to the range of feelings I had then as I witnessed a multiracial/multiethnic spectrum of identities forging a new scholarship movement. Back then I knew at best a handful of people, yet unlike so many other conferences in my professional life, I didn't feel alone. For once, I didn't stand out in my isolation as a brown woman at a professional conference. Rather, it was the Anglo whites who got to be the minority among women and men whose names and faces were stirring in me ancient memories of comfort, and the feelings associated with familia. As brilliant speakers presented works in progress, I felt proud to be "Latina," a woman of color. Occasionally my attention wandered to mental connections between Spanish surnames, bits of history of European conquest and diaspora in the "Americas" and the Caribbean, and faces that sometimes matched and often didn't fit this nation's stereotyped images of "Hispanics." [FN5] I knew I was witnessing something very important as *4 I visually appreciated the racial, ethnic, and linguistic diversity I had always known existed among Latina/o Americans we know as Mexicans, "Chicanos," [FN6] "Tejanos," [FN7] Cubanos, Puerto Ricans, "Newyoricans," [FN8] Guatemaltecos, Nicaraguenses, Salvadorans, Venezolanos, Colombians, Paraguayans, Uruguayans, Hondurans, Bolivians, and so on. Of course, the room and the speakers were not only Latina/os. Asian and African-American scholars noted for their work in Critical Race Theory had been invited to explore the concept of "Latina/o Critical Legal Theory." Yet the overwhelming Latina/o presence made me feel warm and connected, especially when I heard the occasional Spanish term or phrase, or reference to a bit of humorous cultural insiderness. [FN9] I was like the happy soul who has just discovered a long lost relative.

At this gathering in La Jolla we called LatCrit I, the attendees struggled with the theoretical task associated with confronting a Latina/o politics of identity as scholars engaged in critical analysis of the law's impact on Latina/os in the U.S. and elsewhere. Gazing around the room I saw an awesome gathering of mostly law professors, sharing an interest in critical theory, and personally differing from each other in their identities

based on race, ethnicity, color, language, ancestry, class, religion, age, gender, sexual orientation, professional status, and so on. Many in the room had already participated in critical legal theory, which centered on issues of race, ethnicity, sex, and sexual orientation. Most of the individuals in the room were Latina/os, while others were decidedly not. In time even the term "Latina/o" would become the source of a powerful and challenging substantive and political critique. [FN10] From this web of *5 difference a discourse was initiated on what it might mean to theorize about the shared multiplicity of difference in that room; more specifically, the commonalities of the experience of our marginalization as Latina/os in relation to the following: the white male legal academy, the established race, feminist, and Queer crit movements, and global community. The vast diversity before us generated excitement for a bold agenda--to explore the relationship of Latina/os to other minorities in the legal profession, and to forge a scholarship movement relentlessly committed to the theory and practice of diversity; one that would empower and support all of us in the deconstruction of the sources of our marginalized existence.

In Part II of this Foreword, which I have subtitled March! in the spirit of resistance my LatCrit colleagues and I recently demonstrated in San Francisco, I explore one of the primary questions we struggled with at LatCrit I and continued to explore in LatCrit II for its significance to our work as critical legal scholars--the question of our identities, or "who are we?" Examining LatCrit's commitment to be multiracial and multisexual or gendered, this part explores how LatCrit has engendered great possibilities for connection and interconnections, as well as tension, self-education and healing. I address the hope, promise and challenge for community among scholars whose identities intersect, minimally, across race, color, ethnicity, national origin, gender, class, religion and sexuality by offering some observations of lessons I have gained from the experiences of LatCrit I and II, both as an attendee and as the member of one Planning Committee. Part II also examines some of the strong departures between LatCrit and Critical Race Theory (CRT) by illustrating the interplay of gender, culture and identity politics at each LatCrit conference to date and by advocating a few reasons why Latina law professors need to strengthen their ties to each other.

In Part III, I comment on the three clusters of scholarship that were produced for the LatCrit II Symposium and briefly preface the discussion of Cluster Three with a personal commentary on religion as an essential ingredient of cultural analyses in Latina/o Critical Legal Theory.

Finally, Part IV briefly comments on the importance of connecting our scholarship movement to the pressing contemporary struggle to preserve the concepts of diversity and affirmative action in legal education, and encourages LatCrit scholars to explore critical pedagogy as an extension of their work in critical theory. LatCrit scholars were critical to the organizing of the Society of American Law Teachers (SALT) C.A.R.E. march by law professors against the re-segregation of our law schools. Their strength and commitment to promote activism in scholarship and deed is but one *6 of the many inspirations generated by our "LatCrit movement" which is marching forward in the midst of revolutionary times for the nation as a whole. I conclude with an example of a critically based teaching project bringing theory and practice together that was inspired by my involvement with LatCrit theory.

II. Quienes Somos: Who Are We?

A. A LatCrit I Retrospective: Or, I Wasn't In Puerto Rico but I Went to La Jolla

Although the 1996 conference at La Jolla, California had formalized the inquiry of what it means to engage in a politics of identity centered on the Latina/o experience, in reality, some of that conversation had been initiated by the Latina/o law professors who gathered at the 1995 annual Hispanic National Bar Association Conference in Puerto Rico. In fact, "who are we?" served as the question for plenary discussion on the first day of LatCrit II. As others and I learned, a late night gathering of professors in Puerto Rico shared stories filled with feelings of hurt, confusion and abandonment felt at CRT gatherings--gatherings that made no room for the experience and insights of Latina/os in the law. By the evening's end a venting of feelings had inspired a conference, and a vow among the organizers to assure that the panels and audience that would become LatCrit would be relentlessly characterized in substance and identity as inclusive and diverse. In my opening keynote at LatCrit II, I expressed the opinion to any newcomers in the audience that LatCrit should not be viewed as a gathering of "experts" on the established meaning of "LatCrit theory." I felt it important that newcomers know that many of us are still learning what it means to engage in LatCrit theory by simply putting forth the hard questions about identity. I also felt it important that newcomers to this emergent movement feel welcomed. I could imagine what it might feel like for one who had not only been absent from the formative events in Puerto Rico, but possibly had been absent from many more of the "critical race" gatherings leading up to LatCrit I or II. I relate these thoughts about where we've been to offer future LatCrit scholars and the readers of this symposium a small opportunity for connection--the support from one who was very alienated from her own "Latina-ness," as I have explained in a recent writing. [FN11] My experiences as an unwelcome Latina lesbian in a university with a bad history on the hiring and retention of minorities had *7 sapped me of the strength it would take to reach out to others whom, like me, were struggling for acceptance in their predominately white and male institutions. Yet, the spirit of inclusion I felt at LatCrit I encouraged me to reveal to my new colleagues the multiple reasons that underlied my feelings of alienation when I found myself with other Latina/o professors. I felt defeated by a lone battle I'd had trying to fill the "objective" criteria expected of untenured professors. I was tired of attending conferences where I was too often the token double or triple minority, and therefore I had a tendency not to see conferences as important to my professional development. In addition to all of this, I projected on to my colleagues the homophobic Latino values I had been exposed to since my youth and assumed I would be unwelcome as an out lesbian writing mostly about Queer topics as opposed to "Latina/o issues." [FN12]

There is another reason why an individual might feel disconnected from other Latina/os in the legal academy and wonder whether the question "who are we?" even applies to them. This reason is embedded in the various external forces, the systemic discrimination, which brings home the marginalization of Latina/os and other racial, ethnic or sexual minority law teachers. Let us face it. Those who choose to "come out" as critical scholars, including LatCrits, take huge risks, especially during these exceptionally revolutionary times when the infamy of individuals like Lino Graglia signal the loss of widespread cultural support for concepts like diversity and affirmative action. [FN13] Many of these courageous souls *8 have centered "race," [FN14] "gender and sexuality,"

[FN15] and "language and ethnicity," [FN16] in critical analyses of the law and have challenged *9 established forms of scholarship viewed as the singular "normative" and "legitimate" model by the mainstream academy. [FN17] The even bolder do so while still on the tenure track. As indebted as we are to our Abuelito, [FN18] Richard Delgado, for his infamous essay The Imperial Scholar, which exposed the hypocrisy of a so-called progressive civil rights scholarship dominated by white men who ignored the writings of racial minority intellectuals, we know that even Delgado wrote only after he was comfortably situated with tenure. [FN19] Critical Race Theory (CRT), with its loose and fragile connections to Critical Legal Studies (CLS), [FN20] permanently upset those paradigms of thought and analysis, including the conventional advice that one should wait until after tenure to expose one's radical views. [FN21] It was a tiny moment in history when CRT was popular and supported by progressive and tenured white professors in the academy who recognized the emerging "stars" in critical race scholarship movement, [FN22] and even actively recruited minority teaching candidates for their potential as critical race scholars. In that wave, the number of Latina/os in law teaching gradually rose, [FN23] and the scholarship invoking theories like intersectionality [FN24] and Queer [FN25] or lesbian [FN26] legal *10 theory or paradigms in writing like the personal narrative [FN27] proliferated--but only for a moment.

LatCrit I came at a moment when the popularity of CRT teachers and scholars was diminishing and the support for concepts like affirmative action was being actively cut back. Writing models viewed as standard in critical scholarship, whether racial [FN28] or feminist--like the personal narrative--were now being questioned and attacked. [FN29] But another phenomenon, one not connected to external attacks on minorities, also urged the creation of this new critical theory movement which vowed to have a membership as diverse as one could imagine the non-white minorities in the academy to be. That was the glaring absence of a strong community, a critical mass of scholars centered around CRT. [FN30] The people who had talked late into the night in Puerto Rico were in search of collegiality and feedback, intellectual energy and support, things they obviously missed in their home institutions since they were often the only racial minority on the faculty, but which they also lacked in the places where they had expected to receive greater support--at CRT workshops. [FN31] A typical complaint was that CRT scholarship had managed to produce a growing body of literature focused only on the African-American experience, while the absence of discourse on Latina/o issues, or issues of the intersections between race and gender, sexuality or class, and the differences and commonalties shared by each group was obvious. Thus the question of "who are we?" has been *11 critical to the forging of this community we call today "LatCrit." For who we are is a diverse group of people, many of whom have long been involved in CRT, others who helped forge the Asian-American scholarship movement, [FN32] some who like myself, have struggled to find a role as Latina/os among feminist and Queer theorists. Many, many Latina/os have wanted and needed a community of colleagues among whom they can develop new ideas and insights about how the law, legal institutions and white male supremacy marginalize the multiplicity of Latina/o identity and experience everywhere. The "Latina/o" experience, as a critical legal theory movement then, provides an opportunity to center at least one of the cultural values that is essential to many Latina/os--that of comunidad y familia. [FN33] Not, however, without the risk of being misunderstood as an identity category in legal thought and scholarship. [FN34]

B. On to LatCrit II and the Material Experiences of Diversity: Un Movimiento Tumultuouso [FN35]

One of the strengths so far, of this growing movement of "LatCrit Scholars" is our coming together as diverse people with diverse agendas trying to define a role for ourselves in the conservative academic profession of the law. We have gathered as tenured professors, tenure-track professors, clinical professors, interdisciplinary scholars and even students. Diversity, of course, is more than theory, it is a practice; a practice of our differences in identities, in ideas about LatCrit theory, in our experiences as lawyers and law teachers and scholars--and our reasons for becoming involved, or not, in this scholarship movement. The commonality we share is in our identities as law professionals who want a community that will support our scholarship interests and our struggles within our home institutions. At the most basic level, our conferences bring together into an intense three-day period a multiplicity of personal, intellectual and political agendas--agendas that could equally complement each other or conflict and collide. Mutual engagement therefore, in the name of comunidad, entails the personal risk of being questioned on our motives for a myriad of thoughts, attitudes, behaviors and agendas we may consciously or unconsciously manifest in the short period of intellectual discourse at a conference.

A commitment to the practice of diversity should have us recognize the right of every LatCrit conference attendee to feel safe knowing that their identity, views and agendas may differ from each *12 other, in some cases very strongly. Sometimes that awareness may cost us the experience of moving momentarily out of our emotional comfort zones. This message--that the multiplicity of identities and agendas we have as LatCrit scholars could potentially collide at future conferences--was understood well when the women at LatCrit I vocalized their concern that the men and a "male" approach to doing things was setting the wrong tone for starting out as a community. For whatever reason, the setup of the panels, the prominent role of mostly male speakers or the choices of topics left some of the Latinas in attendance feeling unsafe and disconnected to the emergent LatCrit scholarship movement. The lessons from LatCrit I, that there needed to be a greater sensitivity to gender was honored by an opening plenary for LatCrit II which focused on Latinas and the Law as its theme. At a methodological level, the contributions of a gendered consciousness in the planning of the second gathering also produced a conference discussion format aimed at the enhancement of community-- el circulo, or the "talking circle." [FN36] Of course, it is axiomatic to the consciousness raising experience for an individual to be forced out of their comfort zone. [FN37] Diversity then, may produce conflict, and conflict may generate discomfort, but it also produces energy and life for the community.

It is not coincidental that the spontaneous moment at LatCrit I which gave birth to the Latinas' talking circle--that had grown out of the rising swell of female discomfort with the proceedings--produced a critical gender consciousness-raising energy. That energy in turn fed a critical analysis by some decidedly feminist members of the LatCrit II Planning Committee concerning the nature, order and even method of topic presentation for the second annual gathering. My opening keynote described the "talking circle" as a probably unfamiliar method to most people, but one that some of us had used and trusted as a way to minimize the masculinized and cold environment produced by standard conference set-ups--where a panel of *13 a few "on high" speak to the lowly

"audience below." Or, even produced by standardized teaching styles, such as the classic Socratic method inherited from the white male academy. Having speakers and listeners at LatCrit II sit on the same physical level in the form of a circle was a very anti-patriarchal and anti-hierarchical method. [FN38] But, it was also a method that signaled the importance of the metaphor of the circle as drawing us in, of being included and encouraging us to be en comunidad. Drawn from the example of talking circles common among Native-American tribes, the image of the circle evokes support, community, warmth and coming together. Or, as Native-American feminist Paula Gunn Allen has described it, it is like life--we all have "[our] place in it." [FN39]

1. Multiplicity of Identities: Multiplicity of Agendas

At an organizational level, LatCrit's future challenges will be in maintaining a community where identities and agendas, both personal and political, can be communicated, understood and accepted. We have had experiences so far that promise community but that also encourage a strong commitment to conflict resolution. At LatCrit I, for example, I recall a break on the first day of panels when a female attendee tried to get the hotel staff to stop serving grapes as part of the refreshments. A seemingly innocuous gesture was greatly imbued with significance, but only to those who understood the irony of starting a discourse on the marginalization of Latina/o interests in American culture and law, at a hotel in California--the historic setting where this nation witnessed the Seventies' boycott against the purchase and consumption of grapes led by labor hero Cesar Chavez. [FN40] At least to the Latina/os of Mexican descent, the serving of grapes, symbolic of the oppression of Mexican migrant farmworkers in the Southwest, at a conference addressing discrimination against Latina/os, seemed very ironic and offensive. To other attendees, however, the grapes would have meant little or nothing at all, for they had no basis from which to relate to the historic boycott. Their sense of a Latina/o identity rested on far different regions of the U.S. and patterns of marginalization and discrimination that differed greatly from that of Mexicans in the Southwest and/or immigrant agricultural laborers. The grapes were never removed. This story illustrates one of the initial problems faced by a *14 community of scholars presented with the question of "who we are" as Latina/os. It illustrates the problem with assuming any homogeneity in the interests or experiences of those we call or who self-identify as "Latina/o." It signals the potential for our diverse interests, experiences and identities to become the source of miscommunication, misunderstanding and conflict.

In fact, LatCrit II had some conflicts which centered on everything from the personal to the political, and from the personal which became political. [FN41] The answer to "who is Latina/o" is ultimately a deeply personalized set of experiences, some we share in common with other Latina/os based on race, color, ethnicity, language, class, regional, educational and moral experiences, and some of which can be sharply different and potentially conflicting. In these formative years of creating community, the diversity of who we are, and the conflicts we have shown ourselves to be capable of should encourage us to commit not only to the theory and practice of conflict resolution but also to the values of honesty and compassion in our dealings with each other. One may legitimately ask: why is this important at all? Because as trainers of human rights organizers in conflict-ridden parts of the world have learned, it takes systematic work on ourselves and on the oppressor that lives inside of us to learn how to confront the elements of racist, homophobic, classist, and sexist societies. [FN42] I am alluding to the

need for taking our theorizing about systemic discrimination to the praxis level. This means collectively demanding of ourselves that we find appropriate tools for enhancing our coalitional effectiveness--methods and practices designed to help us root out those unconscious oppressive beliefs and attitudes which endanger our communal goals by dividing us against each other. That risk is enhanced when we share physical space with our colleagues, who are also oppressed, but whose sense of what it means to be victimized may be different from our own experience. To speak of the need for such methods and tools is to assume that the societal and individualized impact of racism, or sexism, or homophobia, or classism, and other "isms" is great and deep. [FN43] So great that no one escapes its impact. This means that as *15 survivors of cultural oppressions we often learn to bury the pain of our victimization in our unconscious minds. [FN44] But when we are in safe emotional spaces for feeling that victimization, like the setting of a LatCrit conference, supposedly among like- minded souls, we are more likely to act upon the feeling "I have been victimized." We may even find ourselves doing this among others who may or may not have the same sense of what it means to be a victim of discrimination. [FN45]

I cannot help but see LatCrit as exciting for the critical awareness of discrimination and marginalization we share with each other in our writings and conferences; but I also see it as risky for the sharp feelings like anger, hurt, joy, and the reflections on one's buried pain and opportunities for healing it may trigger. So far, LatCrit has managed to create the space to engage in left brain (analytical) work that can trigger right brain (emotional) responses. But, so far, we have not implemented methods for consistently addressing the possibility for tangible emotional and uncontrollable experiences generated by the intellectual engagement.

For example, on the opening day of LatCrit II, one of our plenary Latina speakers whose life experiences as a migrant farmworker's daughter has influenced her work as an expert on agricultural law, unexpectedly accessed memories filled with hurt and pain when Antonia Castaneda--who has interviewed Tejana farmworkers [FN46]--offered to help make the point about the oppression of migrant farmworkers by pulling out of a bag a short-handled hoe she *16 had brought for display. [FN47] The speaker was momentarily moved to tears and speechlessness at the sight of an implement that had evoked painful memories of harshness in work and the quality of life endured by her parents, siblings and herself. For several minutes there was hardly a dry eye in the room. Another incident occurred on the third day of LatCrit II, when a volatile discussion and similarly unexpected hurtful memories of how Catholicism had contributed to a period of suicidal depression for a gay hermano (brother), were triggered by a non-Latina Buddhist attendee's criticism of the Catholic religious icons that filled the room where we met. These scenarios certainly encourage us to think that as largely "left brain" [FN48] people engaging in critical scholarship which evokes "right brain" [FN49] responses we don't always have the answers, the tools and experience for knowing how to create safe space for critical discourse. Thus, many of us hope that LatCrit will differ from CRT by attending early on to the risks of trying to create community without paying attention to the problems in relationships that can destroy community. Many share the collective hope that ten years from now we will be large and expansive in numbers and not nearly defunct because our identity politics collapsed under the weight of personal anger, hurts, and feelings of disconnection and disillusionment. The fact is, our personal and political agendas will be entwined in LatCrit as a community and as an intellectual engagement. This is both risky and exciting. Our developing community embraces scholars who

strongly advocate coalitional politics [FN50] in these revolutionary political times of backlash and retrenchment on values *17 like diversity in legal education. Yet we all know that the term "coalition" implies diverse communities made up of diverse individuals, not splintered groups with fractious individuals and identities that can't mount a fight against the real oppressors because they've forgotten that "we are all part of one another." [FN51]

2. Practicing Diversity for the Sake of Community: It Soon "Becomes a Part of You" [FN52]

Of course, conflict resolution is more than a theory. Like the diversity that occasions conflict, conflict resolution is a practice that takes practice. As we meet each other and hear our voices at our conferences, we may encounter unexpected sources for expanding our ability to identify, tolerate and/or accept differences. In this sense, harmony may come only from knowing that we support the expression of our dissonance, in voice, attitudes, experience, commitment, and ideas about how to sustain ourselves as a viable scholarship movement.

A commitment to conflict resolution may force us to consider a discourse on principles for staying in community even as we experience the praxis [FN53] side of our theories in the very company of our colleagues. If indeed our end goal is to have community, then we must commit to not walking away when conflict arises, to not personalizing too much our individual and communal mistakes in judgment, to being honest and compassionate with each other in our confrontations, and to trusting in the community's support for continued hope and healing. As a powerful spokesperson for coalitional politics once said,

> *[t]o stand together is going to be hard. Our movement is composed of all kinds of groups and all kinds of individuals. It is certain that many of us will make all kinds of mistakes. It will become very tempting to wish that this group or that group, this individual or that individual were simply not among us. [FN54]*

Such models of communal, honest, patient, trusting confrontation with difference have been identified by feminist cultural theorist Riane Eisler as essential to saving our world from the unbridled cruelty of social values which unconsciously perpetuate masculinized values of patriarchy, like aggression and competition rather than partnership and support. [FN55] But as I noted in my keynote for LatCrit II, I believe the concept of LatCrit is infused with feminist method by appealing to a scholarship movement which encourages community, activism and dreams of social justice for ourselves and for the marginalized person everywhere.

3. Mujeres Encolerizadas: Latina Law Professors Celebrating Our Gender-Based Differences

At LatCrit I, a spontaneously created Latinas talking circle forced upon the conferees a painful reality--of how progressive scholars can be the unwitting victims of their own internalized sexism. On day two, an impassioned Margaret Montoya invited the Latinas to caucus in a gender consciousness raising session. [FN56] That evening we

gathered on a patio of the hotel in La Jolla, California. Some of us were adoloridas y encolerizadas--hurt and angry women. I remember looking out on a dozen or so women's faces, with shades of skin and hair color both lighter and darker than my own olive complexion and dark brown hair, and heard about the many paths we had taken from law school, to law practice, to teaching and to balancing personal lives with tenure battles. I understood then the meaning of having a consciousness over such intersecting factors as race, ethnicity, skin color, language, sexuality, class and so on. In this empowering session, some of us voiced for the first time in the company of scholars--with whom we could identify--some of the painful experiences we had had or were still enduring in our institutions. We understood in each other's stories how vulnerable and isolated we often felt among our mostly Anglo white colleagues, whether male or female. In our shared pain and tears, we saw our differences as women, teachers, clinicians and professors, tenured and untenured. The energy shift that grew out of the Latinas' talking circle, and that produced an important experience in consciousness-raising, also helped some of us access that significant question for LatCrit discourse centering on "Who Are We, and Where Are We as Latinas?" Shortly after LatCrit I, the progressive legal community lost a sister colleague, Trina Grillo, [FN57] *19 to the ravages of cancer, and a few people, heartened by the energy of LatCrit I talked of planning a Latinas and the Law Conference, maybe to honor Trina Grillo as a Latina critical scholar. The discussions focused on the need for creating a sense of community among Latina law professors despite our "forty-plus" in number throughout the legal academy. [FN58] Somehow Trina's death and the spirit of LatCrit I and the talking circle had opened our eyes to the need for connection and community with each other as progressive, feminista and Latina law professors.

Sadly, the Latinas and the Law Conference never materialized. I, for one, have not given up the dream that we will one day have a Latinas and the Law Conference inspired by the vision of strengthening our ties to women of color everywhere. I imagine workshops, panels and the production of a massive bibliography which examines the linkages between law, policy, the socio- economic status of Latinas and the gender role expectations impressed upon women by Latinismo--the specific gendered values for women in Latin culture, values which in some contexts render us politically useless. As one who teaches and writes about women's and minority issues with a historical perspective, I am frequently obsessed with a gnawing wonder as to why my own identity, as a woman of an ethnic group which has been critical to the labor and economic history of this country is so absent in American scholarly literature? What else, beyond the obvious history of race relations in this country, explains our drastically low representation in academia, law, business and politics? Where do we begin to unravel the reasons for the total void in women's history about the Latinas of our past who were noted for their sharp intellect, wit and quest for knowledge? Why don't more of us know that Latina women's history has people in it like the seventeenth century's Mexican nun Sor Juana Inez de la Cruz--whose brilliance might have never been recognized had it not been, ironically, for her defiance of the Church's position against a woman's right to education and intellectual pursuit? [FN59] Why is it that the model image for Latinas is most closely aligned with the motherly, subservient role of the Virgen Maria and not that of a passionate thinker and writer like Sor Juana Inez? [FN60] There is obviously a historical puzzle here to piece together, about when the history of *20 men and that of women in our Latino cultures conspired to produce the systematic means for assuring women's enduring second-class status in relation to men. Yet, strong women, of all

classes and occupations are a part of our unexamined past. But we don't know more about them, about the ways they fought institutionalized oppression, and we haven't generated the collective urge to reconstruct the evidence of our female intellectual and activist heritage. [FN61]

Of course, before we are inspired to create this collective urge we have to confront some painful realities about the value systems that deeply influence our lives, more or less, depending upon our class, education and moral upbringing--and obviously depending on the nuanced variations of the different cultures we represent, such as Puerto Rican, Cuban, Mexican, etc. We are confronted with the daunting task of deconstructing the term "Latinas," which itself comprises a very diverse social group. This diversity arises, minimally, from such factors as culture and family dynamics, color, class, and racial diversity, language differences, citizenship and/or resident status, education, sexuality and life occupation. [FN62] To speak of the Latina is to know that we are undocumented immigrants, [FN63] peasants, [FN64] borderland women, [FN65] housewives and housemaids, [FN66] wage-earners in pink-collar ghettoes, [FN67] in garment industries, in the *21 blue- collar trades, [FN68] on the streets as sex workers, cops [FN69] and gang members, [FN70] middle-class careerists, and professionals; we include heterosexuals [FN71] and lesbians, [FN72] the university student who has never known poverty [FN73] to one who has always known it. She may be a government worker, [FN74] a nun, [FN75] a judge, or a lawyer, [FN76] the owner of a small business and the highly paid consultant to a corporation. Latinas include assimilated and non-assimilated Mexicanas [FN77] or Puerto Riquenas [FN78] or Dominicanas, [FN79] or Cubanas; [FN80] from those who don't know Spanish, to those who use it and other dialects or cultural habits to preserve their identity and their racial/ethnic pride. [FN81] While we are different, [FN82] however, many of us do share a common value *22 system, one which can be the source of a proud identity as well as the source of our perceived and self-constructed limitations.

For example, the Latinas who know the influence of Catholicism and Christianity know that we are often raised with conflicting messages of who we are and what we should be. The bodies of our mestiza-india [FN83] sisters are treated like beasts of burden--we are the object of men's sexual needs, we are whores if we know too much about sex, our menstruation is a curse rather than a blessing and symbol of our creatrix role in life, while our men are taught to possess and abuse our bodies. Some of our female elders, and we ourselves were taught by religious dictate that our bodies are vessels that do not belong to us but rather to the natural laws of reproduction. Our stereotyped role is that of a submissive, naive, rather childlike "sainted mother" whose purity must be protected by her husband or her male relatives. [FN84] If in fact some of these generalizations apply to us regardless of our Latina identity and if some of us agree that such attitudes deeply affect our ability to empower ourselves in our homes, our communities and in the halls of government and justice, then seriously, we need to create the space for a consciousness-raising agenda aimed at understanding the interplay of such values, their benefits and burdens in our lives and those of the women of our communities.

To my intellectual companeras--we cannot achieve self-determination and/or self-direction in the public or private spheres of our lives without self- knowledge of who and where we are. As a small and dwindling number of Latina law professors, we can begin to empower ourselves by committing to a collective multi-year project aimed at validating the existence of Latinas everywhere. Minimally, we should start with placing

ourselves in the history of women in the legal academy. This task is not about minimizing the important contributions to date of important critical race feminists; [FN85] *23 it is about filling the void in existing feminist, Queer or race/crit scholarship of writings by or about Latinas. It was, sadly, no surprise when I recently scanned multiple sources of one of the largest Latina/o research libraries in the country [FN86] and could not find a single source in print which identified the accomplishments and identities of Latina law professors. My own library liaison was stunned by his search--one would think, he said, that there would be some directory identifying Hispanic or Latina/ educators in general? But there was nothing. It is not so amazing then that one reason why we need a Latinas and the Law Conference is that we don't even know who we are, where we are and what we are doing with our intellectual gifts and talents.

The first goal of a long term literary project should give credit to some of the forerunner Latina law professors who have already contributed to the growing body of literature in the law that weaves in the Latina experience. [FN87] Latina legal scholarship needs to be our starting point because, by validating our own professional identities we help destroy the damaging stereotypes that burden Latinas in all sectors of U.S. life. Sadly, in the minds of the average American, whether female or male--we are most often typecast as housewives, single parents, welfare recipients, maids or cleaning ladies; we are workers in pink collar ghettoes and "illegal aliens." [FN88] We are hardly first thought of as trial lawyers or as the educators of students who will be among the elite lawyers or politicians of this nation. Undoubtedly, many of our Latina sisters do find themselves in such non-lawyer jobs enduring experiences like losing family members to raids by la migra, [FN89] sexual harassment by supervisors, and psychological abuse by employers who justify low wages for domestic service by threatening to report undocumented workers to the Immigration and Naturalization Service. [FN90] But unfortunately, this is too often the only image members of the Anglo/white dominant culture *24 have of Latinas. Many professional Latinas know well the experience I have repeatedly had of being mistaken in their office suites for the secretary, rather than the boss. The invisibility of our identities engenders broader patterns of disparate treatment which elude the law because of unconscious patterns of sexist racism. [FN91] These are the same attitudes that render us "unequal and unfit" in the eyes of our colleagues in the elite profession of the law. [FN92] We therefore owe it to ourselves at least, to confront the construction of the identity Berta Hernandez-Truyol so aptly described as las olvidadas. [FN93]

C. "Latina/Latino": The Pleasure and Danger of a New Identity Category

A few months ago, shortly before LatCrit II in San Antonio, I chatted with a white male colleague--who writes in one of my fields of interest and who was visiting UT Law School for the year--about my involvement in a new scholarship movement called Latina/o critical legal theory. My colleague literally scratched his head, widened his eyes and said with a big grin, "Latinos and a critical theory? That strikes me as somewhat absurd; where do you begin to draw the parameters for such an identity category?" I realized then the challenge we were about to face as a scholarship movement.

Of course, quickly on the defensive and yet fully understanding some of his confusion, I responded that the Latina/o category was quite defensible if it was thought of as an identity label produced by personal and social construction. I pointed out that significant portions of the American population were quite comfortable with the label

Latina/o understanding that it did not deprive them of their national heritage as Puerto Rican, Cuban, Mexican, Salvadoran, and so on. I suggested that factors shaping the "Latina/o" experience varied, but at a minimum, race and ethnicity issues reflected a close association to CRT. Of course, I suggested that one reason for the emergence of LatCrit also stemmed from perceived differences from CRT, differences that called for theories of legal analysis that could appreciate the intersectionality of one's identity as Latina/o with factors that give rise to unique forms of racism against us--different not only from that against African-Americans, but even sometimes between different Latino ethnicities. I offered the example of the unique patterns of racism against Tejanos in the Southwest versus *25 that against Puerto Ricans in the Northeast. While one group, whether citizen or not, knows what it means to be targeted because of skin color by INS Border Patrol agents, the other does not--because of Puerto Rico's colonial status--yet both groups experience language discrimination that arises from U.S. Anglo cultural dominance. Meanwhile, as racial minorities, the skin color discrimination against Latina/os may overlap in housing, employment and education no different from that against African-Americans. But again, even here, for Latina/os it is not always about skin color--it is frequently a Spanish surname that will trigger the disparate treatment. I urged him to consider at least the critical role of language and race as significant intersectional factors in Latina/o discrimination, a statement that puzzled him even more as he argued, "why should speaking a foreign language be the basis for an identity category?" [FN94]

What I ultimately realized was that my colleague had not quite accepted the basic premise to my answer--that an essential element to the inquiry being called Latina/o critical legal theory is a relentless attention to a theory of multiple consciousness. And, that some acceptance of the notion that Latina/o critical legal studies could exist, as long as there is a collective stance or perspective taken by a group of scholars vis-a-vis the topic Latina/os. [FN95] Which there is--ergo LatCrit I, II and LatCrit III, being held at the University of Miami.

In this vein, the questions we have asked beyond "Who Are We?" are explored in greater detail below--how are we constructed as Latina/os, or non- Latina/os and why, or how do we experience both external and internal social, political and legal constructions of our identities? These were some of the questions that continued the conversation we initiated, tentatively, at LatCrit I.

Footnotes

[FNd1]. Visiting Professor of Law, St. Mary's University Law School; Assistant Professor, University of Texas School of Law, 1991-97. J.D., University of California at Berkeley (1983); M.A., History (Ph.D. Cand.) New York University (1990). I am especially grateful to Amy Kastely for insight and support, to Frank Valdes for his energy behind the LatCrit movement, to the Latinas of LatCrit for their carino and spirit, especially Margaret Montoya, Sumi Cho, Berta Hernandez-Truyol, Leslie Espinoza, Yvonne Cherena-Pacheco, Laura Padilla, Lisa Iglesias and Gloria Sandrino-Glasser, to my students at the University of Texas and St. Mary's Law Schools, especially the teams who worked on the Austin Schools Project in 1997-98: Courtney Bowie, Tanya Clay, Ernest Cromartie, John Donisi, Yolanda Cornejo, Margo Garana, Cullen McMorrow, Mary Maldonado, Judy Cavner, Stephen Shires, John Weikart, Leila Sarmecanic and Teasa Scott. Special thanks to Veronica Rivera and Claudia Valles for their unceasing commitment to social justice activism, their support and for research assistance.

[FN1]. See Part II, B infra for discussion on events at LatCrit II and the Latinas talking circle.

[FN2]. The term "outsider" has been adopted to refer to critical scholarship deemed outside of the white, male mainstream of academia. See, e.g., Jerome McCristal Culp, Jr., Telling a Black Legal Story: Privilege, Authenticity, "Blunders," and Transformation in Outsider Narratives, 82 Va. L. Rev. 69 (1996); see also Mary I. Coombs, Outsider Scholarship: The Law Review Stories, 63 U. Colo. L. Rev. 683 (1992).

[FN3]. The potential resegregation of public universities is decried as a consequence of legislative and judicial activities opposing affirmative action such as Proposition 209, a referendum in the State of California, which abolished the use of affirmative action in public services, education and benefits; and Hopwood v. State of Texas, 78 F.3d 932 (5th Cir. 1996) cert. denied, 518 U.S. 1033 (1996) which held as unconstitutional a dual-tracked admissions policy used by the law school based on its commitment to affirmative action. California's Proposition 209 was upheld against a constitutional challenge in Coalition for Economic Equity v. Wilson, 122 F.3d. 718 (9th Cir. 1997).

[FN4]. Communities Affirming Real Equality (CARE) was organized by the Society of American Law Teachers (SALT). Sumi Cho and Margaret Montoya, key members of the LatCrit movement, served as co-chairs of the Task Force responsible for the strategic planning and implementation of the march as part of a multi-year Action Campaign targeting the retrenchment in the legislatures, courts, universities/colleges and in society-at-large, on the use of gender and race conscious criteria. See CARE March Flyer (1998) (on file with author).

[FN5]. The choice of the terms "Hispanic" versus "Latino" can be the source of debate and controversy given their institutionalized character by reporting agencies like the Census Bureau. The term Hispanic is criticized because it deprives the population it purportedly represents of its heterogeneity and it attributes a racelike character in socio-scientific and colloquial language that facilitates racial stereotyping. See Gloria Sandrino-Glasser, Los Confundidos: Latino/as Race and Ethnicity, 19 Chicano-Latino L. Rev 69 (1998). The term "Latino" or "Latina" has been criticized as an inadequate substitute for Hispanic due to its colonialist origins. See Luz Guerra, LatCrit y La Des-colonizacion Nuestra: Taking Colon Out, 19 Chicano-Latino L. Rev. 351 (1998) (discussed infra at Part III B). Meanwhile, LatCrit II was held in Central Texas, in the city of San Antonio, where Latina/os have harnessed political clout around the term "Hispanic" to represent the extensive Mexican-American population in this Southwestern U.S. region. Local organizers of LatCrit II advised non-Texas members of the planning committee to contextualize its use by speakers and other local dignitaries to diffuse misunderstanding from seeing the term used in conference literature.

[FN6]. The term "Chicano" emerged from the politics of identity by Mexican- Americans in the 1970s. It is often associated with the historic labor struggles to unionize Mexican immigrant farmworkers in the Southwestern U.S. See Foreigners in Their Own Land: Historical Roots of the Mexican-Americans 262-63 (David J. Weber ed., 1973).

[FN7]. Not unlike the term Chicano, "Tejano" is a term for the Texan of Mexican descent with a politicized consciousness of his/her subordinated status in American law and culture.

[FN8]. The term "Newyoricans" colloquially refers to U.S. citizens and their descendants from the colonized island of Puerto Rico who migrate to New York City (NYC). The historic racial tensions between NYC Puerto Ricans and Anglo whites are the theme of the popular Broadway play and film West Side Story.

[FN9]. A memorable moment was when Margaret Montoya began her talk and explained her nervousness before the audience with a story of the cultural magic many of us learned in our Catholic education which taught us to invoke the spiritual power by uttering or writing down the names of the Holy Family ("J.M.J." = Jesus/Mary/Joseph) and/or the Holy Spirit. The practice is noted in her essay, Margaret Montoya, Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis, 2 Harv. Latino L. Rev. 349 (1997). See also Part III C, infra, for a discussion on the role of religious ritual in the lives of Mexican Latina/os.

[FN10]. See Guerra, supra note 5.

[FN11]. Elvia R. Arriola, Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self, 2 Harv. Latino L. Rev. 397 (1997).

[FN12]. Id.; see also, Elvia R. Arriola, Faeries, Marimachas, Queens and Lezzies: The Construction of Homosexuality Before the 1969 Stonewall Riots, 5 Colum. J. Gender & L. 33 (1995) [hereinafter Faeries]; Elvia R. Arriola, Gendered Inequality: Lesbians, Gays and Feminist Legal Theory, 9 Berkeley Women's L.J. 103 (1994) [hereinafter Gendered Inequality]; Elvia R. Arriola, Coming Out and Coming to Terms with Sexual Identity, 68 Tul. L. Rev. 283 (1994).

[FN13]. At the beginning of the 1997-98 fall term at the University of Texas, a group calling itself Law Students for Diversity held a rally calling on the administration to assure diversity in the law student population in the face of declining enrollment of Black and Hispanic students resulting from the decision in Hopwood, 78 F.3d 932, which abolished the use of affirmative action in admissions to the University. On September 10, 1997, a conservative student group calling itself Law Students for Equal Opportunity held a counter- rally in support of Hopwood and asked Professor Lino Graglia, a longtime opponent of affirmative action, to serve as the group's spokesperson. At the press conference, Lino Graglia opposed any preferential admissions criteria and defended the use of meritocratic criteria like high LSAT scores. In his comments Graglia stated that the lower test scores of Blacks and Hispanics were explained by their membership in cultures which didn't demand of their children hard work in academics and that didn't look down upon their failures in academic ventures. In the next two days a flurry of local media activity carried Graglia's controversial views across the state and nation. A week later the University of Texas witnessed a 5,000 student march calling for Professor Graglia's resignation and demanding from the Administration a commitment to the concept of diversity in student enrollment. See Mary-Ann Roser, Jackson urges UT to Fight Racism; About 5,000 Attend Rally Against Remarks, Austin American-Statesman, Sept. 16, 1997 at A1. See Part IV infra for a discussion of The Austin Schools Project, a pedagogically based research study which produced data that undermines the assumptions of individuals like Lino Graglia and others who rely on scientific race ideologies to proclaim the inferiority of Blacks and Latina/os. The data disturbs any notion of a fair, objective and "meritocratic" system of admissions in Texas and summarizes evidence produced by teams of law students who found glaring examples of unequal educational resources in the public schools of the City of Austin. The findings strongly undercut the view that cultural traits, and not racist educational policies account for the inadequate performance by racial minorities. For examples of the new scientific racism see Richard Herrnstein & Charles Murray, The Bell Curve: Intelligence and Class Structure in American Life (1994).

[FN14]. See Richard Delgado, Critical Race Theory: The Cutting Edge (1995); Patricia J. Williams, The Alchemy of Race and Rights (1991). See also Keith Aoki, Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification, 20 Fordham Urb. L.J. 699 (1993); Margalynne Armstrong, Protecting Privilege: Race, Residence and Rodney King, 12 Law & Inequality 351 (1994); Derrick Bell, Racial Realism, 24 Conn. L. Rev. 363 (1992); Kevin Brown, Do African-Americans Need Immersion Schools?: The Paradoxes Created by Legal Conceptualization of Race and Public Education, 78 Iowa L. Rev. 813 (1993); Robert Chang, Reverse Racism!: Affirmative Action, the Family, and the Dream that is America, 23 Hastings Const. L.Q. 1115 (1996); Sumi K. Cho, Multiple Consciousness and the Diversity Dilemma, 68 U. Colo. L. Rev. 1035 (1997); Kimberle Crenshaw, Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color, 43 Stan. L. Rev. 1241 (1991); Neil Gotanda, Failure of the Color- Blind Vision: Race, Ethnicity, and the California Civil Rights Initiative, 23 Hastings Const. L.Q. 1135 (1996); Anthony Paul Farley, The Black Body as Fetish Object, 76 Or. L. Rev. 457 (1997); Trina Grillo & Stephanie M. Wildman, Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other-Isms), 1991 Duke L.J. 397; Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 Stan. L. Rev. 581 (1990); Elizabeth M. Iglesias, Structures of Subordination: Women of Color at the Intersection of Title VII and the NLRA. Not!, 28 Harv. C.R.- C.L. L. Rev. 395 (1993); Lisa C. Ikemoto, The Fuzzy Logic of Race and Gender in the Mismeasure of Asian American Women's Health Needs, 65 U. Cin. L. Rev. 799 (1997); Margaret E. Montoya, Mascaras, Trenzas y Grenas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse, 17 Harv. Women's L.J. 185 (1994); Laura M. Padilla, Intersectionality and Positionality: Situating Women of Color in the Affirmative Action Dialogue, 66 Fordham L. Rev. 843 (1997); Juan F. Perea, Ethnicity and Prejudice: Reevaluating "National Origin" Discrimination Under Title

VII, 35 Wm. & Mary L. Rev. 805 (1994); Dorothy E. Roberts, Race and the New Reproduction, 47 Hastings L.J. 935 (1996); Reginald Leamon Robinson, Race, Myth and Narrative in the Social Construction of the Black Self, 40 How. L.J. 1 (1996); Enid Trucios-Haynes, Latina/os in the Mix: Applying Gotanda's Models of Racial Classification and Racial Stratification, 4 Asian L.J. 39 (1997); Eric K. Yamamoto, Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America, 95 Mich. L. Rev. 821 (1997).

[FN15]. See, e.g., Arriola, Gendered Inequality, supra note 12; Berta Hernandez-Truyol, Building Bridges, Latinas and Latinos at the Crossroads: Realities Rhetoric and Replacement, 25 Colum. Hum. Rts. L. Rev. 369 (1994); Francisco Valdes, Queers, Sissies, Dykes and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society, 83 Cal. L. Rev. 1 (1995).

[FN16]. See Keith Aoki, "Foreign-ness" & Asian American Identities: Yellowface, Propaganda and Bifurcated Racial Stereotypes, 4 UCLA Asian Pac. Am. L. J. (forthcoming, 1998); Juan F. Perea, Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English, 77 Minn. L. Rev. 269 (1992); Juan F. Perea, Hernandez v. New York: Courts, Prosecutors, and the Fear of Spanish, 21 Hofstra L. Rev. 1 (1992); Juan F. Perea, Los Olvidados: On the Making of Invisible People, 70 N.Y.U. L. Rev. 965 (1995).

[FN17]. I remember well being told when I started out as a scholar in the early eighties that authors of good law review articles only wrote evenhanded analyses with the purpose of changing the direction of courts' decisionmaking. As "neutral" instrumental writings, articles were not supposed to be infused with evidence of the author's personal feelings and values. In time, I quickly understood the near impossibility of writing this way on subjects I had very strong feelings about like, racism, sexism and homophobia and obviously I came to appreciate the critical movement's passionate deconstruction of the established paradigms in legal scholarship. The last dozen years have thus produced forms of writing which freely incorporate the personal narrative, whether that of the author's or of outside subjects as writings that reach beyond the courts to broader audiences engaging in the production of cultural knowledge aimed at ensuring an open society through the free exchange of ideas. I chose to take that bold risk and discuss the consequences in an essay. See Arriola, supra note 12.

[FN18]. In Spanish, one's grandfather is affectionately referred to as abuelito. Although Delgado certainly deserves this reference for his prolific scholarly inspirations, some of us owe our presence in the legal academy to the unceasing efforts of another abuelito, Professor Michael Olivas. See Michael A. Olivas, Before Legal Education and Professional Opportunities The Education of Latino Lawyers: An Essay on Crop Cultivation, 14 Chicano-Latino L. Rev. 117 (1994). In fact, LatCrit emerged from the annual gathering of Latino Law Professors who joined Michael for dinner at the meeting of the Hispanic National Bar Association, and for a discussion on the progress of increasing the representation of Latinas and Latinos in the legal academy.

[FN19]. Richard Delgado, The Imperial Scholar: Reflections on a Review of Civil Rights Literature, 132 U. Pa. L. Rev. 561 (1984).

[FN20]. Critical Race Theory (CRT) as a movement, originated from the critique of the Critical Legal Studies (CLS) movement's inadequate attention to race as a category of analysis. See, e.g., Gerald Torres, Local Knowledge, Local Color: Critical Legal Studies and the Law of Race Relations, 25 San Diego L. Rev. 1043 (1988).

[FN21]. See Delgado, supra note 19, at 561.

[FN22]. See Delgado, supra note 14.

[FN23]. See Olivas, supra, note 18, at 131.

[FN24]. See Kimberle Crenshaw, A Black Feminist Critique of Antidiscrimination Law and Politics, in The Politics of Law: A Progressive Critique 195 (David Kairys ed., 1990) (arguing that conventional antidiscrimination legal theory casts the women as white and the blacks as men and therefore fails to

capture the intersectional social identity and special problems of the "black woman").

[FN25]. See Valdes, supra note 15; Arriola, Faeries, supra note 12.

[FN26]. See, e.g., Mary Eaton, Homosexual Unmodified: Speculations on Law's Discourse, Race, and the Construction of Sexual Identity, in Legal Inversions: Lesbians, Gay Men, and the Politics of Law 46 (Didi Herman & Carl Stychin eds., 1995); Ruthann Robson, Lesbian (Out)Law: Survival Under the Rule of Law (1992).

[FN27]. See supra note 17.

[FN28]. See, e.g., supra note 2, and sources cited therein.

[FN29]. At the forefront of the attack on the use of storytelling have been two scholars. See Daniel Farber & Suzanna Sherry, Telling Stories Out of School: An Essay on Legal Narratives, 45 Stan. L. Rev. 807 (1993).

[FN30]. CRT has of course served as the catalyst for various regional groupings of law professors of color (e.g., the Northeast Corridor, annual Mid- Atlantic Law Professors of Color, Western Law Professors of Color Conference, etc.) which have been very successful in producing smaller communities of scholars who support and inspire each other's works. See, e.g., Proceedings of the Third Annual Mid-Atlantic People of Color Legal Scholarship Conference Feb. 13-15, 1997 Part I, 35 J. Fam. L. 1 (1997).

[FN31]. Thus, for example, I was invited to put together reading materials for the 8th annual CRT workshop for a panel focusing on the intersections between race and sexual orientation. This planned discussion was the fourth effort to have a discussion on the marginalized experiences of gay and lesbian people of color. Other efforts had been described--by gay and lesbian people of color who had been attending CRT workshops--as dismal failures because of the resistance by CRT folk to confront their internalized homophobia as a factor in the failed discussions.

[FN32]. See Chang, supra note 14.

[FN33]. Spanish for "community and family."

[FN34]. See Guerra, supra note 5 (discussed infra Part III B).

[FN35]. Spanish for "a tumultuous or turbulent movement."

[FN36]. See Paula Gunn Allen, The Sacred Hoop: Recovering the Feminine in American Indian Traditions 1 (1992).

[FN37]. See Catherine A. MacKinnon, Consciousness Raising, in Feminist Jurisprudence: Taking Women Seriously 52-57 (Mary Becker et al. eds., 1994). Feminist political organizing by women in the seventies used the technique of consciousness raising which involved women sharing stories about seemingly intimate aspects of their lives that illustrated the depth of male oppression in their homes, communities and society at large. The discussion in Part III C, which centers on our cultural differences based on religion, resonates to the message of the feminist movement--that an examination of one's personal life experiences may produce politicized consciousness about the value or the damage of social and cultural attitudes which have influenced one's life experiences (e.g., growing up Catholic, hearing the constant damnation of homosexuals, and having these experiences influence one's emerging political consciousness about the difficulties of being accepted as gay or lesbian and one's decision to devote energies towards social justice causes against homophobia, and other examples of institutionalized oppression).

[FN38]. As Stephanie Wildman noted at LatCrit I, the creation of this community urges us to consider how desperately we need more inclusive protocols for conferences, and that we literally "need to rearrange the furniture." See Stephanie M. Wildman, Reflections on Whiteness and Latina/o Critical Legal Theory, 2 Harv. Latino L. Rev. 307 (1997).

[FN39]. Gunn Allen, supra note 36.

[FN40]. See, e.g., Foreigners in Their Own Land, supra note 6, at 262-263.

[FN41]. See, e.g., Reynaldo Anaya Valencia, On Being an "Out" Catholic: Contextualizing the Role of Religion at LatCrit II, 19 Chicano-Latino L. Rev. 449 (1998), Nancy Ota, Falling From Grace: A Meditation On LatCrit II, 19 Chicano-Latino L. Rev. 437 (1998), Emily Fowler Hartigan, Disturbing the Peace, 19 Chicano-Latino L. Rev. 479 (1998) (each essay is discussed infra at Part III C).

[FN42]. See Guerra, supra note 5 (discussed infra at Part III B.).

[FN43]. See Troy Duster, Individual Fairness, Group Preferences, and the California Strategy, 55 Representations 41 (1996) (providing an incisive description of the ideological terrain of the contemporary anti-affirmative action rhetoric). See also Elvia R. Arriola, Law and the Healing Warrior: The "Isms" in Our Bodies, Our Selves, Our Communities (Aug. 1998) (unpublished manuscript, on file with author) (arguing that to thrive in their work, social justice activists and/or scholars must heal the wounds of rejection based on core features of their personal identities).

[FN44]. See Charles R. Lawrence, III, The Id, The Ego and Equal Protectionism: Reckoning with Unconscious Racism, 39 Stan. L. Rev. 317 (1987).

[FN45]. Both LatCrit I and II had volatile incidents that illustrated this problem. At LatCrit I, for example, the emotional safety of a conference about "Latinos" brought about a certain amount of "like-mindedness" for both men and women. Yet by the second day a vocal group of Latinas expressed their anger and feelings of separation induced by the masculinized environment they perceived in the tone and setup of the conference. At LatCrit II, an angry Professor Leslie Espinoza stood up with her hands akimbo in the middle of a conference room where everyone sat in a circle. She confronted an already standing Professor Beto Juarez to make a point about the unconscious sexism in his "lecturing" style of sharing, amidst a very heated discussion centering on religion, sexuality, progressive legal education and community. Obviously, such moments of personal dissonance with what it means to be "victimized" engage the greatest moments of communal risk, when a hurt and angry conferee confronts another on his/her "sexist" or "racist" (or other) behavior and maybe raises a conscience, but also may engender feelings of defensiveness and hurt that endanger that person's wanting to stay in community. I see these incidents as both liberating and dangerous in that without appropriate tools for processing how and why our emotional boundaries were loosened we risk being misunderstood as merely having lashed out in personal attack against our supposed friends and allies in community. I speculate we do this because it is less risky to call an ally at a crit conference a racist or sexist than to express similar feelings in our home institutions.

[FN46]. See Antonia Castaneda, Language and Other Lethal Weapons: Cultural Politics and the Rites of Children as Translators of Culture, 19 Chicano- Latino L. Rev. 229 (1998) (discussed infra Part III A).

[FN47]. Members of the LatCrit II Planning Committee invited conferees to help create a sense of community in our first meeting room by bringing any object, photo or item that helped them celebrate their identity and cultural roots.

[FN48]. These are popularized notions of the scientific studies of conscious awareness and its relationship to the human brain which established that our brain governs the central nervous system in a crossed over fashion; the left/major hemisphere regulates functions like speech and language which are associated with thinking and reasoning; meanwhile the right/minor hemisphere, the non-speaking half, processes experiences through feelings. For a summary of the studies, see Betty Edwards, Drawing on the Right Side of the Brain 26 (1979).

[FN49]. Id.

[FN50]. See Valdes, supra note 15; see also Elvia R. Arriola, Law and the Gendered Politics of Identity, 8 Hastings Women's L.J. 1 (1997); Sumi Cho, Essential Politics, 2 Harv. Latino L. Rev. 433 (1997); Mary

Coombs, LatCrit Theory and the Post-Identity Era: Transcending the Legacies of Color and Coalescing a Politics of Consciousness, 2 Harv. Latino L. Rev. 457 (1997); Barbara J. Cox, Coalescing Communities, Discourses and Practices: Synergies in the Anti-Subordination Project, 2 Harv. Latino L. Rev. 473 (1997); Michael Luis Principe, A Reason for LatCrit Unification: Reflections on Comparative Efforts to Curtail Political Opposition and Terrorism, 2 Harv. Latino L. Rev. 297 (1997) (urging the linkage between inter-racial coalition and the ability fend of growing examples of racial terrorism); Eric K. Yamamoto, Conflict and Complicity: Justice Among Communities of Color, 2 Harv. Latino L. Rev. 495 (1997).

[FN51]. We Are All Part of One Another, A Barbara Deming Reader (Jane Meyerding ed. 1984) [hereafter Deming Reader] (assembling a collection of essays and talks by a white feminist civil rights activist and advocate of coalition politics, whose work was described by black lesbian feminist activist and writer Barbara Smith as a demonstration of how "activism and the act of writing undeniably connect and can result, not in rhetoric or impenetrable theory, but in the clear and accessible telling of a life," and that the statement "we are all part of one another" challenges us to consider "that our oppressions and chances for freedom are inextricably connected."). Id. at xi- xii.

[FN52]. Id. at 85.

[FN53]. The term "praxis" as been defined in Critical Race Scholarship as practice grounded in critical theory. See generally Laura Padilla, LatCrit Praxis to Heal Fractured Communities, 2 Harv. Latino L. Rev. 375 (1997); see also Yamamoto, supra note 50.

[FN54]. Deming Reader, supra note 51 at 167.

[FN55]. See generally Riane Eisler, The Chalice and the Blade: Our History, Our Future (1987).

[FN56]. See supra notes 36-37 and accompanying text.

[FN57]. See, e.g., Trina Grillo, AntiEssentialism and Intersectionality: Tools to Dismantle the Master's House, 10 Berkeley Women's L.J. 16 (1995).

[FN58]. See Hernandez-Truyol, supra note 15, at 397-99.

[FN59]. Feminist studies of Sor Juana are emerging. See Feminist Perspectives on Sor Juana Ines de la Cruz (Stephanie Merrim ed., 1991). Apparently only one Mexican-American woman has presented an English translation of one of Sor Juana's letters to her father confessor re-affirming and defending her right to study. See Alicia Galvan, Autodefensa Espiritual (forthcoming 1998).

[FN60]. An English compilation of some of the works of Sor Juana Inez de la Cruz is available in A Sor Juana Anthology (Alan S. Trueblood trans., 1988).

[FN61]. The example of revolutionary conditions as a generator of female gender consciousness is seen in the activism of indigenous peasant and working- class women in Central America. See, e.g., Don't Be Afraid Gringo: A Honduran Woman Speaks from the Heart, The Story of Elvia Alvarado (Medea Benjamin trans. & ed., 1987); Hear My Testimony: Maria Teresa Tula, Human Rights Activists of El Salvador (Lynn Stephen trans. & ed., 1994); I, Rigoberta Menchu: An Indian Woman in Guatemala (Elisabeth Burgos-Debray ed., Ann Wright trans., 1983).

[FN62]. See, e.g., The Sexuality of Latinas (Norma Alarcon et al. eds., 1993).

[FN63]. See Helena Maria Viramontes, Under the Feet of Jesus (1995) as a creative literary fictional source for understanding the plight of undocumented immigrant farmworkers; see also Maria L. Ontiveros, To Help Those Most in Need: Undocumented Workers' Rights and Remedies Under Title VII, 20 N.Y.U. Rev. L. & Soc. Change 607 (1993).

[FN64]. See The Sexuality of Latinas, supra note 62.

[FN65]. Women who work along the U.S.-Mexico border are known to experience work on the Mexico side in U.S. owned factories and on the U.S. side in domestic service. See Norma Iglesias Prieto, Beautiful Flowers of the Maquiladora: Life Histories of Women Workers in Tijuana (Michael Stone & Gabrielle Winkler trans., 1997).

[FN66]. See Vicki L. Ruiz, By the Day or Week: Mexicana Domestic Services in El Paso, in "To Toil the Livelong Day" America's Women at Work 1780-1980 269- 83 (Carol Groneman & Mary Beth Norton eds., 1987); Vicky L. Ruiz, A Promise Fulfilled: Mexican Cannery Workers in Southern California, in Unequal Sisters: A Multi-Cultural Reader in U.S. Women's History 264 (Ellen Carol DuBois & Vicki L. Ruiz eds., 1990).

[FN67]. See, e.g., Denise Chavez, The Last of the Menu Girls (1986) for a down-to-earth narrative of working-class Latinas in the Southwest; see also Sandra Cisneros, The House on Mango Street (1984) (a Latina's working-class childhood in Chicago); Helena Maria Viramontes, The Moths, And Other Stories (1995).

[FN68]. See Elvia R. Arriola, "What's the Big Deal?" Women in the New York City Construction Industry and Sexual Harassment Law, 1970-1985, 22 Colum. Hum. Rts. L. Rev. 21 (1990).

[FN69]. See Mona Ruiz, Two Badges: The Lives of Mona Ruiz (1997) (a Latina street cop's portrayal of life experience in and around barrios and their gangs, before and after joining the police force).

[FN70]. Id.

[FN71]. See Daughters of the Fifth Sun: A Collection of Latina Fiction and Poetry (Bryce Milligan et al. eds., 1995) (noting the intent of the collection to differ from the lesbian orientation of predecessor collections by Latina writers like Gloria Anzaldua and Cherrie Moraga).

[FN72]. See Chicana Lesbians: The Girls Our Mothers Warned Us About (Carla Trujillo ed., 1991); Cuentos: Stories by Latinas (Alma Gomez et al. eds., 1983).

[FN73]. See Julia Alvarez, How the Garcia Girls Lost Their Accents (1991) (on the childhood memories of an upper-class Dominican immigrant to the U.S.).

[FN74]. See, e.g., Yniguez v. Arizona, 117 S.Ct.1055 (1997) (claim by Spanish-speaking employee that English Only amendment to state constitution effected national origin discrimination), vacated sub nom. Arizonans for Official English v. Arizona, 65 U.S. L. W. 3647 (plaintiff's having resigned her state job rendered case moot).

[FN75]. See, e.g., Ada Maria Isasi-Diaz & Yolanda Tarango, Hispanic Women, Prophetic Voice in the Church (1988).

[FN76]. See Maureen Ebben & Norma Guerra-Gaier, Telling Stories, Telling Self: Using Narrative to Uncover Latinas', Voices and Agency in the Legal Profession, 19 Chicano-Latino L. Rev. 243 (1998).

[FN77]. See Ofelia Dumas Lachtman, A Shell for Angela (1995) (a fictional exploration of the emotional and spiritual consequences of a woman who rejects her Mexican heritage and family); Demetria Martinez, Mother Tongue (1994) (exploring the role of a relationship between an assimilated Mexican- American and a political refugee of El Salvador in the development of the woman's personal identity).

[FN78]. See Esmeralda Santiago, Cuando Era Puertoriquena (1994) (translated in English the title means, "When I was Puerto Rican") (personal history of pre-migration childhood years of a young Puerto Rican woman).

[FN79]. See Julia Alvarez, In the Time of the Butterflies (1994) (story of four sisters growing up under the dictatorship of General Trujillo in the Dominican Republic).

[FN80]. See Cristina Garcia, Dreaming in Cuban (1992) (providing a fictional lens into the identity of Cubana-Americanas).

[FN81]. Berta Hernandez-Truyol provides personal narratives of reactions by Anglo colleagues to her intentional switching from acceptable "normative" English to accented English to heighten people's awareness of the dominant culture's unconscious desire to discriminate by seeking to repress the sounds of dissonance. See, e.g., Hernandez-Truyol, supra note 15.

[FN82]. Our identity as "women of color" provides a powerful vantage point from which to examine the law's role in perpetuating structures of violence within institutional settings like the American workplace, when certain labor laws are interpreted to deny the importance of "minority identity" or agency over presumably more important liberal democratic notions like "collective rights." An incisive analysis of the role that the perspective of women of color can play in critiquing those interpretations of American labor laws which result in more "structural violence" and/or institutional subordination, than true equity or internal democracy, is in Elizabeth M. Iglesias' Structures of Subordination, supra, note 14.

[FN83]. Mestiza or meztizaje refers to the crossbreeding between European Spanish Conquistadores and Native indigenous women whose relationship gave birth to a new racial breed of Mexicans and other Latino-Americanos. For a radical deconstruction and reconstruction of the concept "mestiza" see Gloria Anzaldua, Borderlands/La Frontera: The New Mestiza 76-101 (1987).

[FN84]. See Jeanette Rodriguez, Our Lady of Guadalupe: Faith and Empowerment Among Mexican-American Women 70-73 (1994).

[FN85]. See, e.g., Adrien Katherine Wing, Critical Race Feminism and the International Human Rights of Women in Bosnia, Palestine and South Africa: Issues for LatCrit Theory, 28 U. Miami Inter-Am. L. Rev. 337 (1996-1997) (and works cited therein).

[FN86]. The Center for Mexican-American Studies at the University of Texas.

[FN87]. See, e.g., Leslie G. Espinoza, Multi-Identity: Community and Culture, 2 Va. J. of Soc. Pol'y. & L. 23 (1994); Grillo & Wildman, supra note 14; Hernandez-Truyol, supra note 15; Montoya, supra note 14; Yvonne M. Cherena Pacheco, Latino Surnames: Formal and Informal Forces in the United States Affecting the Retention and Use of the Maternal Surname, 18 T. Marshall L. Rev. 1 (1992); Padilla, supra note 53; Celina Romany, Ain't I a Feminist?, 4 Yale J. L. & Fem. 23 (1991).

[FN88]. See Kevin R. Johnson, "Aliens" and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons, 28 U. Miami Inter-Am. L. Rev. 263 (1996-97).

[FN89]. This is the colloquial shortened phrase for the Immigration and Naturalization Service (INS) among undocumented Mexicans and other Latina/os who have managed to cross the now heavily militarized U.S.-Mexico border in search of a better life. See Timothy J. Dunn, The Militarization of the U.S.- Mexico Border 1978-1992 (1996); Elvia R. Arriola, LatCrit Theory, International Human Rights, Popular Culture and The Faces of Despair in INS Raids, 28 U. Miami Inter-Amer. L. Rev. 245 (1996-97).

[FN90]. See Ruiz, A Promise Fulfilled, supra, note 66.

[FN91]. See Elizabeth M. Iglesias, Rape, Race and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality, 49 Vand. L. Rev. 869 (1996).

[FN92]. See Arriola, supra note 11.

[FN93]. Spanish for "the forgotten women." See Berta Esperanza Hernandez- Truyol, Las Olvidadas I: Gendered In Justice/Gendered Injustice--Latinas from Invisibility to Empowerment, 2 U. Iowa J. Gender, Race & Justice (forthcoming 1997).

[FN94]. Of course, one frustrating point of his comment was that he of all people, as a scholar on gay rights

issues, should understand that writing from the subject position has been critical to the evolution of a viable "gay/lesbian/Queer" civil rights scholarship and jurisprudence, a topic that at one time judges and scholars viewed as virtually impossible to analyze from the standpoint of discrimination, because, at stake was a question of conduct, rather than status. This problem was the focus of early "gay rights scholarship." See, e.g., Elvia R. Arriola, Sexual Identity and the Constitution: Homosexual Persons as a Discrete and Insular Minority, 14 Women's Rts. L. Rep. 263 (1988).

[FN95]. The project is ambitious. It focuses not only on the placement of Latina/os in American law, policy and society, but it also attempts on a practical level to integrate in a communal discourse a very diverse group of scholars and identities with diverse perspectives, both theoretical and experiential on the topic of Latina/os. See discussion at Part II B supra; see also Francisco Valdes, Foreword: Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment, 2 Harv. Latino L. Rev. 1 (1997).

24. Pat K. Chew, [FNd1] *Constructing Our Selves/Our Families: Comments on LatCrit Theory,* 19 CHICANO L. REV. 297 (1998)

I. Roles We Play and Our Interpretation of Those Roles

Our focus on this panel is how we construct ourselves. One ostensible way to construct ourselves is to identify the different social roles we assume--as teacher, lawyer, mother, Asian-American. Yet these roles only begin to capture our identities; how we personally interpret and perceive these roles informs us further. In our role as teachers, for instance, do we see ourselves as defenders, victims, aggressors, discriminated against, or those who discriminate against others? Are we social activist--agents of change--or soldiers of tradition? The point is that we do not assume these roles neutrally. We attach judgments and purposes to these roles. For example, do we think that being a victim yields some benefits that makes the victim characterization more attractive? Do we think that being a social agent is inherently positive?

I am sensitive to how we characterize our roles, in part, because of my own background. My parents immigrated from China as young adults, and so a number of Kevin Johnson's comments about immigrant groups resonate with me. There are generational differences that are heightened by one's immigration status: parent immigrants and their non-immigrant children often characterize their roles differently. My parents have strong feelings about some of these roles, and their judgments may conflict with my judgments.

Even the label "Asian-American" is one with which they would not identify. First, they would view the label as political, and hence undesirable. Second, they would react viscerally, "How can you group me with Japanese-Americans?" (My mother recounts proudly *298 how she protested against the Japanese invasion in China.) My parents would reject the label "Asian-Americans." Similarly, they would not accept being cast as victims--as targets of discrimination. For them, denial of that discrimination protects them from the reality of discrimination. Similarly, my parents would not attach positive connotations to the label "social agent." Their negative reaction, I hypothesize, reflects their generational perspective and is also linked to how they coped with their immigration status. As immigrants and minorities, they believe you do not become a social agent because you do not want to become so visible. You do not want to argue publicly that you are discriminated against because that would lead to unflattering publicity and other negative social repercussions. It is not a chance worth taking, given that your family is relying on your steady progress in education and work.

So when I consider how we construct ourselves, I realize there are at least two dimensions to our identities. One is the ostensible roles we play. The second is our value-laden interpretation of those roles and how we cast and carry out those roles.

II. Claims on Our Identities

Given that we assume these roles, and that these roles can be characterized in various judgmental ways--my next inquiry deals with claims. To what extent do we allow these roles and these characterizations to claim us? Of course, I am a mother, law professor, in some ways a leader, in some ways discriminated against--but to what extent do these roles and characterizations shape my identity? How do I sort out the various

claims and decide which to emphasize and which to minimize, which to embrace and which to struggle against?

As I sort out these claims, an important part of the process is to understand the external pressures. To what extent will I permit others to impose their claims on my identity? I'm reminded of a past experience. I was doing my weekly grocery shopping at a large Pittsburgh store. As I was pushing my cart, busily selecting apples--I was oblivious to my Asian-American-ness. That aspect of my identity seemed irrelevant to what I was doing, and I would have presumed "invisible" to me and others. Yet another customer, a well-dressed middle-aged woman, apparently was not oblivious to my ethnicity. She approached me courteously, and asked in a slow cadence reserved for children and foreigners, "Do-you-know-where-the-milk-is?"

I looked Asian to her, and that apparently triggered an association with "foreigner" and not understanding English easily. Although I was not "claiming" my Asian-ness at that moment, this stranger was making that claim for me. Individuals, other groups *299 with which we associate, and as I've discussed in some of my writing, even the law and legal history--all make claims on our identities. Students, my law school, and a whole range of professional and community groups ask me to give speeches, be on committees, serve on accreditation teams, etc. Each time this happens, they focus on and target me because of one or more of my characteristics, perhaps because I am an established law professor, and often I suspect because I am a minority and a woman. They are claiming that piece or pieces of my identity.

This reminds me of Margaret Montoya's comments on what she calls our bordered and unbordered roles and identities. She describes how one's White identity meets one's Brown identity and how that boundary can move. I visualize our identity as very fluid. Boundaries not only move, they shift, are amorphous, wiggly, complicated, more defined and rigid in some places, and just beginning to gel in others. The question also arises, who decides how the lines are shaped and where the boundaries are? I am encouraged by a number of the speakers' comments. They applaud the power and freedom we have in shaping those lines, and thus in constructing our own identities. While we cannot totally control what claims others make on us, we can allow ourselves, to even take the initiative in, determining what claims we accept.

III. My Multicultural Identity and Multisensual Identity

This conference has been a learning experience for me in a number of ways. In considering how we construct ourselves, we often study present experiences and recount past experiences. I sometimes write in a personal journal, for instance, as a concrete way to capture these experiences. After this conference, my journal will recall more smells, sounds, music, and touching from my experiences. I will think in more sensual terms, in part because of the way presentations from this conference were made. Recall the earlier presentation on "La Comunidad Latina" set around the kitchen table with the speakers recalling key women in their lives--I could almost smell the food cooking and hear the short hoe hitting the dirt floor. These presentations emphasized the many senses that we can tap when we think about our pasts. Using all our senses helps us to recreate more fully the experiences and the feelings they evoked.

This conference also has reaffirmed some parts of my multicultural self. As the sixth child of immigrant parents from China, growing up in the border town of El Paso, Texas, I took for granted that the world was mutlicultural. As I youngster, I would boast

that I could stand on a high peak in the mountains around El Paso and *300 look out on the horizon--the United States at my feet, Mexico in the distance, and New Mexico over my shoulder.

Within my family, I was taught to speak Chinese and be Chinese. While my parents wanted me to assimilate economically and academically, they did not want me to assimilate socially and spiritually. One of my loving and indulgent mother's taboos was for her children not to date or marry someone who was not Chinese. She believed the shame it would bring to the family and the hardship it would bring me would be unbearable. El Paso has a very small Chinese- American community, so our summer vacations were spent in San Francisco and Los Angeles. There we could stuff ourselves with authentic Chinese foods, re- immerse ourselves in an Asian environment--hearing the familiar tones of Cantonese and seeing crowds of yellow faces.

This conference also helped me realize that part of me is "Latina," not by blood but by experience. My family lived in the Lower Valley of El Paso in an area called Ysleta. Cotton fields surrounded our house. Farms dotted the region, typically owned by White families and worked by Mexican migrants and Mexican-Americans. We also had a grocery store very close to the border of Mexico and the United States in an urban, poor, and predominately Mexican and Mexican-American neighborhood called South El Paso. Growing up, it was as common for me to hear Spanish as English. I became part Latina by osmosis, by just living multicultural life.

I reflect upon how my multiculturalism is symbolized. This past holiday season, I visited my parents who continue to live in El Paso. Two things happened that illustrate my multicultural identity. First, my husband noted that my mother uses English words, Chinese words, and Spanish words--sometimes even in the same sentence. What struck me was that he was correct and that I had never really noticed. My family's conversations are interspersed with these various languages, vocally demonstrating the pieces of my cultural identity, including some Mexican-American culture. The second incident deals with food, which some other presenters have indicated can play such an important role in our cultural development. During the holidays, one of our family's festive meals consisted of tamales (both chicken and pork) accompanied by home made wonton soup. Delicious combination.

These two experiences symbolically capture my growing awareness of the Latina part of my identity. I hope that I am not being presumptuous because this is an overall pleasant possibility for me. Part of this increasing cultural awareness evokes some ambivalent emotions however. In our grocery store, virtually all of our customers were Mexican or Mexican-American, and our workers were *301 Mexican or Mexican-American. My family was always the "boss." I now realize how little I knew, understood, and in some ways, even cared about our customers and workers. And how little I knew or cared about what they thought of me and my family. Some of these realizations are self-critiques that I am finding useful, but also painful because they highlight how narrowly and in what a self-interested way I viewed the world. I am looking forward to expanding my view of who I am and who others are.

Footnotes

[FNd1]. Pat Chew is a professor at the University of Pittsburgh School of Law, where she teaches corporate law, dispute resolution, international law particularly dealing with China, and interdisciplinary seminars on a range of topics. She received a J.D. degree with honors from the University of Texas in 1982 and an undergraduate degree in psychology and communications from Stanford University in 1972. She also did graduate work with honors in the School of Business and the School of Educational Psychology at the University of Texas.

25. Guadalupe T. Luna, [FNd1] "ZOO ISLAND:" *[FN1]* LatCrit Theory, "Don Pepe"*[FN2]* and Senora Peralta *[FN3]*, 19 CHICANO L. REV. 339 (1998)

Introduction

The conference organizers have offered a rare, invaluable, and appreciated opportunity to meet with other Latina/Latino professors. I have been asked to comment on my scholarship while keeping in mind two points. Specifically, (a) "my vision" and (b) "whether LatCrit theory affects and enriches my scholarship." The first section offers a brief summary of that vision and the second section provides a short discussion of how LatCrit theory affects and enriches my work. I conclude with two examples drawn from my scholarship.

Part I: A "Vision"

I join other scholars attempting to de-colonize laws that perpetuate our subordinate status within the world economy. Specifically, through my scholarship, I am attempting to document and analyze the condition of Chicana/os in law. [FN4] For too long law has racialized Chicanas/os, but denied it with adverse consequences for Chicana and Chicano communities. As an alternative, LatCrit theory offers some corrective measures. LatCrit theory, nonetheless, is not readily accessible to students in traditional curriculums. This is unfortunate because including the legal experience of outsiders would assist them in their positions of power as political actors, legislators, and others responsible for creating and interpreting law. [FN5]

In two of my primary teaching fields--property and agricultural law--students examine a vast realm of complex philosophical and analytical commentary. Yet the property jurisprudence of Chicanas/os remains primarily absent. The takings cases

following the United States conquest of Mexico, for example, delineate governmental actions that betrayed constitutional dictates and long- established treaty law. [FN6] Biased interpreters of the law disenfranchised Chicanas and Chicanos from their property interests and successfully thwarted Chicana/o land tenure. [FN7] They set a pattern that continues with rural land tenure remaining essentially non-existent for Chicanas/os. [FN8] They also offer mystical representations of legal history with no place for Chicanas/os.

Similarly, the study of agricultural law omits the rich agricultural and farming practices that occurred before the conquest and are still presently employed. [FN9] Bio-regionalism and its attendant form of sustainable agriculture, for example, were common in areas of scarce natural resources. [FN10] Ensuing sustainable agricultural enterprises promoted efficient land use for area residents and acequias (irrigation systems) in New Mexico are still a source of irrigation for area enterprises. [FN11]

Inaccessibility to the Chicana/o experience in the study of law impacts future legislators and other interpreters of the law, for several reasons. First, students are not exposed to the rich, diverse origins of the country. [FN12] Second, inaccessibility of the Chicana/o legal experience defaults future lawyers to skewed interpretations of legal history and distorted jurisprudence that favors the experience of white hegemony. [FN13] Third, the absence of Chicanas/os in law ultimately relegates their status to the margins of legal inquiry. Within this construct opportunities for change are precluded or minimized, and a legal culture is created in which the voice of outsiders is resisted.

Because the aggregate of the above expedites major detrimental consequences to communities of color, my purpose is to try and challenge the ongoing race, class, and gender oppression existing within our relationship with law.

Next, I will discuss a theoretical framework around which the issues of concern can be framed.

Part II: The Universal versus The Particular

Politicians and others benefiting from positions of power and authority are increasingly promoting race-baiting tactics, obscuring the country's legal history and its diverse, complex origins. This simultaneously subordinates people of color and our communities by disallowing the inclusion of outsiders and the opportunity that fosters and adheres to constitutional dictates.

The race-baiters deny and distort the specific conditions of a subordinate status by claiming a "universal ideal for all" which fails to acknowledge the complex experiences inherent to our communities of color. They struggle to conceal how law was used to racialize and disallow Chicanas/os from equal application of constitutional obligations. Simultaneously, they create exclusive realities that place Chicanas/os outside the legal culture. A theoretical paradigm based on the world systems demonstrates how the ideology of the conqueror facilitates and sustains inequality systematically. [FN14] As articulated by Immanuel Wallerstein, assertions of the universal relates to humanity, but in contrast, race requires consideration of the specific.

Attacks against affirmative action can illustrate how hegemonic dominant law misrepresents the reality and social condition of subordinate groups in the country. The underlying foundation for restrictionist legislation purports the "unfairness" caused by government preferences based on race and gender. Its backers justify their ideology on grounds that support the universal without regard to the specific. [FN15] Governmental

actors abolishing affirmative action, assert "diversity is not essential to education." [FN16] Those holding law hostage to their own perspectives manipulate claims of universal treatment. [FN17] Manipulated ideology in turn creates new cultural realities with harmful consequences for our communities. This approach deems the "impact of racism insignificant and obscures its complex and exhausting nature." [FN18]

As a further illustration, a vast array of public law--characterized as the Doctrine of Agricultural Exceptionalism--privileges the agricultural sector and demonstrates the impact of the ideology of those setting the agricultural agenda. [FN19] Public law exemptions demonstrate the selective nature of their claims to universal treatment and qualifying requirements for public benefits and under what terms. [FN20] Reference, for example, the self-policing aspect of agricultural committees where committee members who are also agricultural employees vote on subsidy awards to themselves. [FN21] This aspect of Agricultural Exceptionalism demonstrates Immanuel Wallerstein's assertions that the universal encompasses the treatment of humanity, but race, by way of contrast requires consideration of the specific.

Compare the social and economic conditions of Chicanas/os employed in the rural sector which have long been excluded from beneficial public law. Nonetheless, Chicanas/os have long enriched the agricultural sector by providing labor that expedites food production in the country and increases the sector's wealth. [FN22] Immanuel Wallerstein provides that considerations of both the universal and the specific contain inherent contradictions that must be examined. Nonetheless, exceptions from labor laws awarded the sector demonstrate the selective nature of universal treatment and creates an attendant subsidy with painful consequences for innumerable agricultural workers [FN23]--a vast array of public law directly ensuring its status as one of the largest and wealthiest in the country. [FN24] By contrast, public law directly impacts the rural poor by way of welfare cuts and disallows farmworkers the right to organize for improved working conditions. [FN25] This manipulation of public law demonstrates a particularly acute example of conquest ideology, laws designed to ensure workers' impoverishment, and making evident a clear case of disparate treatment. [FN26]

In challenging the hegemonic legal ideology which espouses to the universal, we arrive to the study of law with a simultaneous focus on the specific with references to race, class, gender, and sex perspectives. LatCrit theory is a tool that enables us to improve the conditions of our communities. With others, I consider it of utility in building a cogent and appropriate paradigm recognizing ongoing features of law that contribute to a colonized past and that seeks to remain codified with holdings ensuring Chicanas/os hold a colonized status in the United States. [FN27]

Emboldened by LatCrit theory, my scholarship focuses on the historical foundation of this country's legal history. It seeks to untangle the long chains of causation deriving from the conquest period that continue to impact our Chicana/o communities and to adjoin a more distant past with the present. [FN28] To do nothing disallows a valuable opportunity to reject the default model predicated on European dominance.

The following cases provide specifics derived from my scholarship.

A. Chicanas/os and The Universal

Prior to the conquest, Mexicanas/os resided on and facilitated estates and agricultural enterprises of varying sizes. [FN29] They built ranches, farms, and orchards,

roads and irrigation projects, and several engaged in trade with foreign markets. After the conquest, an international treaty and constitutional directives obligated the United States, in its contractual arrangement with Mexico, to protect and honor the fee holder interests of its newly acquired citizens. [FN30] Instead, Chicana/os were treated as colonized people, with law used to racialize their status. [FN31] Case law demonstrates how the law was used to disenfranchise and alienate them from their property interests.

Litigation interpreting the Treaty of Guadalupe Hidalgo, [FN32] shows how Anglo-jurisprudence racialized and, thereafter, caused Chicanas/os to yield to highly discriminatory laws. A long chain of evidence demonstrates that, after the conquest, they sustained irretrievable legal consequences which directly ensured the loss of their property. Challenges by land speculators, squatters, and homesteaders seeking Chicana/o lands turned property owned by Chicanas/os into public property. By the use of law on the basis of the universal, they reduced the treaty to a "mockery of written agreements" which ultimately turned "solemn obligations into writing exercises." [FN33] Inapplication of constitutional dictates essentially served to further distinguish and separate Chicanas/os from universal application of the law, in essence maintaining features of a colonized population.

B. "Don Pepe" and Senora Peralta

The following two cases examine the relationship between Anglo-jurisprudence and its treatment of Chicanas/os in defense of their property. [FN34]

1. "Don Pepe:" Luco v. The United States

In Luco v. The United States, Jose de la Rosa claimed ownership to a tract of land in California known as Ulpinas. [FN35] The case hinged on whether a seal on the granting documents was fraudulent. The Court's characterization of the grantee refers to him as 'Don Pepe,' the "household Jester of General Vallejo" "living with the profusion and bounty of semi-barbaric pomp. . ." At the same time the Court provides that

> though not actually a servant, yet a dependant of General Vallejo, residing in Sonoma, gaining a precarious livelihood by making and mending clothes and tin ware, acting as alcalde, printer, gardener, surveyor, music teacher, and attending to a grocery and billiard table for Vallejo.

In the same opinion the court considers the interest of settlers:

> There is an interest which in this and many other California cases cannot be overlooked--the interest of bona fide settlers. The Government of the United States contests these cases for the benefit ultimately of that class. It acquires territory, not that it may become and remain a vast land owner, but that the acquired territory may be thrown open to its citizens, for their occupation in moderate quantity, in aid of a public policy. . .
> The rights of such men must be not only respected, but protected

> by a just Government. They are the people who have carried our laws, institutions, and all that make up an empire, into the wilderness, and subdued it to the purposes of civilization; who, to reach this spot where they were bidden by law, have tempted the dangers of two oceans, or traversed vast spaces of desert, cut off from their old homes by savage mountains and barbarious tribes. They are entitled to regard and protection.

Here there is no equal application of the law. In the instant case, a talented individual, who worked seven jobs that required a range of talent and skill was disparaged as a jester.

Yet the Court accepts Anglo-Americans, as a class, as "bona fide" and acknowledges to be operating on their behalf as the universal claimants to "our laws, institutions" and "empire" while specifically excluding a "jester" from the American universe. The Court's concerns demonstrate how law is held hostage to the cultural biases of its imperialist interpreters.

Although the court was convinced that the claim was a forgery it nonetheless, recognized "the minute differences between the spaces of parts of the objections on the impressions, or of differences in the relative angles of two of three of the letters of the inscription." Notwithstanding various witnesses attesting to the purported ownership by Don Jose de la Rosa, the court relied on the actions of John Fremont, a known instigator of the Conquest, and disallowed De La Rosa's seal by comparing it with Fremont's seals on a non- Mexican document. Not even the testimony that could have been offered by the granting officers and other Mexican officials was permitted and thus, not allowed to save the grantee's claim. [FN36]

Other examples included land held by women.

2. Senora Peralta: Peralta v. The United States [FN37]

The rights of the women as they existed before the conquest were also preserved by the Treaty of Guadalupe Hidalgo. [FN38] Whether through marriage, inheritance, or donative grants, Spanish and Mexican law acknowledged the legal right of women to petition and receive land grants in Mexico's northern frontier.

On appeal to the Supreme Court in 1865, Peralta v. The United States offers an example of women seeking to defend their property. In the instant case, Maria de Valencia, along with her siblings, sought a patent on property they had inherited from their mother Teodora Peralta. Senora Peralta held claim to the property in California from an 1845 grant.

On or about 1843, Senora Teodora Peralta, in conformance with the 1828 Colonization Law, and the laws in force in the Mexican Republic, had moved onto a tract in Alta, California. In 1845, according to the law of the Republic, Teodora Peralta petitioned for the tract and sought ownership status. [FN39] Senora Peralta "belonged, it was said, to a well-known and good family, and was a native of the region, with a perfectly fair character." [FN40] In conformance with Mexican law, Teodora submitted a petition to complete the process. In 1845 she:

> petitioned the alcalde of San Rafael to obtain a report from the

> neighbors or colindantes of the tract which she desired to solicit from the government, in order that the report might accompany her petition to the governor for a grant of the land. [FN41]

The narrative from her appeal confirms that Mrs. Peralta followed the dictates of Mexican law. Her granting documents which she received from the Mexican government established her "expediente" [FN42] and comprised the essential elements of her claim of possession. The confirmation process culminated with Governor Pio Pico granting Senora Peralta the tract. At this point she was discharged from further action and her claim ensured to her ownership status.

According to the Treaty of Guadalupe Hidalgo, Senora Peralta's property rights were "inviolably protected" [FN43] and obligated the country to "a universal ideal" backed by the constitution as a foundation to her rights as a fee holder. Nonetheless, the government of the United States imposed on her the obligation to demonstrate the "validity" of her property interest, in contradiction of the explicit terms of Article VIII of the Treaty of Guadalupe Hidalgo. [FN44]

In presenting all claims of ownership status of existing ranchos and other tracts, determining bodies and courts declared that the mere possession of documents by claimants, without accompanying reference to those documents in Mexican archives, was insufficient to establish ownership status. To the detriment of Senora Peralta, the Mexican archives contained no record or trace of her petition. According to the Supreme Court, the Board of Land Commissioners determining the "validity" of Senora Peralta's claim admitted that her proof of occupancy and cultivation were satisfactory. [FN45] Nonetheless, in holding against Senora Peralta, the Board held that, "if the parties had used the proper diligence in procuring the issue of the grant and judicial measurement and formal possession, there might have been no difficulty in the case. . ." [FN46] In other words, "[i]n the absence of the issue of the grant, and a segregation of the land, they could do nothing but reject the claim." [FN47]

With the invasion by the United States imminent, the country was in a state of turmoil during the grantees' occupancy of California. [FN48] Moreover, it is well established that American officials destroyed evidence of granting documents, [FN49] discarded granting documents, [FN50] or held documents where interested parties with ill-motives could access them and disallowed access to Mexican grantees. [FN51] Natural disasters, such as the one in San Francisco in 1851, also affected the ability of grantees to procure their granting documents. [FN52] Finally, competing homestead and agricultural legislation increased the actions of Euro-Americans seeking Mexican property and kept grantees under intense pressure in defending their property against "jumpers" and settlers. [FN53] Yet courts disallowed the arguments of Mexican landholders and imposed elusive standards re-written to accommodate the claims of non-Mexican landowners. [FN54] Examining the specifics of Chicana/o land tenure and their litigation experiences shows how the law privileges and establishes paradigms that perpetuate inequality and disparate treatment.

Conclusion

Disparate treatment in law based on the ideology of the universal and stemming from the conquest continues to the present period. Examples range, inter alia, from recycled restrictionist immigration laws, [FN55] anti- affirmative action measures,

[FN56] English only laws, [FN57] and welfare reform. [FN58] Much of the legislation derives its origins directly from politicians and legislative actors who address the public through the use of racial images and stereotypes that are derogatory towards Mexicans and those of Mexican descent. [FN59] Excluding the historical period expedites a culture in which the politics of fragmentation and divisiveness is promoted and as an alternative, LatCrit offers a reliable and more precise representation of legal history in the United States.

Race-baiters use code words in an attempt to de-emphasize their racial-divide tactics [FN60] and in light of the present restrictionist construct, LatCrit theory provides innumerable opportunities to expose their actions and provide a link to the past. It allows us to reclaim our legal history and makes evident the widely diverse and complex origins of the country. Its value extends to considerations of the tension and contradictions between both the universal and the specific. It also grants opportunities for future lawmakers and interpreters of law that, to the present, have been harmed by the omission of the country's rich diverse origins from the study of law.

Footnotes

[FN1]. See Tomas Rivera, Zoo Island, in La Cosecha: Cuentos de Tomas Rivera (Juan Olivares trans., 1988). In Zoo Island, Jose a fifteen year old farmworker wakes up "one day with a great desire to take a census" of the farmworker population working on an Iowa farm. Id. at 113. Not unlike Jose, this Conference assists immeasurably in providing a community for Latina and Latino professors too long excluded from the academy. Julian Olivares, in his introduction of the text asserts Zoo Island: "manifests the desire of the Chicanos to exist as a community. The census makes them feel important, counted..." Id. at 79. Enumerating farmworkers is difficult because of the timing of the census which in the past has taken place when the workers are away from their home states. As an alternative to the U.S. Census, see the efforts of the Tomas Rivera Center, Migrant Enumeration, Austin, Texas.

[FN2]. Luco v. United States, 64 U.S. 515 (1858).

[FN3]. Peralta v. United States, 70 U.S. 434 (1865).

[FNd1]. Associate Professor of Law, Northern Illinois University. B.A., University of Minnesota; J.D., University of Minnesota. I thank Professor Dennis Valdez for his much appreciated and immeasurable assistance in ensuring completion of this piece. Many thanks also to Professors Kevin Johnson and George Martinez.

[FN4]. The term Mexican references individuals of Mexican birth and descent; Mexican nationals include citizens of Mexico; Chicana/Chicano refers to those residing in the U.S.; and Latina/Latino references Puerto Ricans, Cubans, and those from Central and South America. Terms are used interchangeably with "emphasis on self-designations." Genaro M. Padilla, My History, Not Yours (1993). For an alternative designator, see Ana Castillo, Massacre of the Dreamers (1994) (discussing Xicanisma).

[FN5]. Guadalupe T. Luna, Chicana/o Land Tenure in the Agrarian Domain: "On The Edge of A Naked Knife", 4 Mich. J. Race & L. (forthcoming Spring 1998) [[[hereinafter Chicana/o Land Tenure] (examines premise in greater detail.)

[FN6]. See generally United States v. Fremont, 25 F. Cas. 1214 (D.C.N.D. Cal. 1854) (No. 15,664).

[FN7]. See generally Pico. v. United States, 19 F. Cas. 593 (D.C. D. Cal. 1856) (No. 11,128).

[FN8]. See generally U.S. Bureau of the Census, 1992 Census of Agriculture- United States Data, Tenure and Characteristics of Operator and Type of Organization for all Farms and Farms Operated by Black and Other Races, 1992, 1987, and 1982 (1995). The national total of 12.4 million is dominated by majority-status individuals. Yet, only 1.7 percent of the Latina(o) population comprising, 9 percent of the nation's population, are owner-operators of farming enterprises.

[FN9]. Spanish, Mexicans and the indigenous population introduced a number of products, fruits and vegetables--cotton, corn, beans, squash, tomatoes, chili peppers, avocados, chocolate, rodeos, bar-b-que, grapes, raisins, apricots, peaches, plums, oranges, lemons, wheat, barley, olives and figs-- during the extant period. Farming methods and other aspects of the agricultural enterprise remain in use to the present. For example, irrigation water saving systems originating from the Mexican period remain in use, particularly where water resources are scarce. See Devon Pena & Jose Rivera, Historic Communities In The Upper Rio Grande (1995) (unpublished essay, on file with the author).

[FN10]. Juan Estevan Arrellano, La Querencia: La Raza Bioregionalism, 72 N. M. Hist. Rev. 32 (1997).

[FN11]. See, e.g., John Van Ness & Christine Van Ness, Introduction, 19 J.W. 3 (1980).

[FN12]. For example, the historical foundation of property titles derives from the Spanish and Mexican period (community property).

[FN13]. See, e.g., Pearson v. Post, 3 Cai.R. 175 (N.Y. Sup.Ct. 1805). On Latina/o invisibility in law see Kevin Johnson, Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement, 1993 B.Y.U. L. Rev. 1139 (1993); George Martinez, The Legal Construction of Race: Mexican and Whiteness, 2 Harv. Latino L. Rev. 321 (1997). Almost all law students begin their study of property law with the "wild animal stint." Berta Hernandez-Truyol, Borders (En)Gendered, Normativities, Latinas, and a LatCrit Paradigm, 72 N.Y.U. L. Rev. 882 (1997) (characterizing Pearson v. Post).

[FN14]. The basis of the paradigm is set forth in Immanuel Wallerstein, Culture As the Ideological Battleground of the Modern World-System, in Global Culture, Nationalism, Globalization and Modernity (Mike Featherstone ed., 1990).

[FN15]. See id.

[FN16]. See Laura Mecoy, Wilson Assails Clinton Stand on Racial Issues, He Calls for Equal Opportunity, Not Affirmative Action, San Diego Union-Trib., June 23, 1997, at A3.

[FN17]. See Joe Gelman, A Closer Inspection of Connerly's 209 Role, L.A. Daily News, Aug. 3, 1997, at V1. (stating that Ward Connerly, a regent for the University of California and an anti-affirmative action proponent, is "the nation's leading spokesperson against racial and gender preferences" and "has found himself in this position by assuming the leadership of the California Civil Rights Initiative, or what later became known as Proposition 209").

[FN18]. See generally Trina Grillo & Stephanie M. Wildman, Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other Isms), 1991 Duke L.J. 397. In other words, enrollments of people of color have decreased and are directly tied to the elimination of affirmative action. See generally Karen Brandon, In California, Minority Enrollments Falling At Leading Law Schools, Dropoff Tied To State Universities' Elimination of Affirmative Action, Chi. Trib., July 6, 1997, at A8.

[FN19]. See Ernesto Galarza, Merchants of Labor, The Mexican Bracero Story 106 (1964) (referencing Carey McWilliam's "Great Exception" characterization of the agricultural sector which provides that the exceptions afforded the sector offend the "basic tenets of free enterprise").

[FN20]. See, e.g., National Labor Relations Act, 29 U.S.C. § 152(b) (1983). See also Suzanne Gamboa, Garment Industry Comes Under State Investigation, Hous. Chron, Feb. 3, 1991. at A5 (discussing La Mujer Obrera and the efforts to organize women working in the maquiladoras).

[FN21]. Committee members determine which individual farming enterprises qualify for agricultural subsides. See, e.g., 7 C.F.R. §§ 7.1-.38 (1995). See also, Greg Gordon, Farm Program Criticized for Self-Policing Policy, Star. Trib., June 29, 1995, at B1.

[FN22]. Chicana/os exist primarily as laborers lacking land tenure and employed within the sector as farm laborers or in agro-maquilas (food processors). See U.S. Dep't Census, The Hispanic Population Of The U.S. Southwest Borderland, C3:196: P23/17 (1992).

[FN23]. See generally Report of the Commission on Agricultural Workers (1992); William K. Barger & Ernesto M. Reza, The Farm Labor Movement in the Midwest (1994) (documenting the social and economic conditions of agricultural workers outside the legal venue).

[FN24]. See U.S. Gen. Accounting Office, GAO/RCED-95-104FS, U.S.Agric: Status of the Farm Sector 6-7 (1995).

[FN25]. Compare with the Agricultural Act of 1949, 7 U.S.C. § 1421 (1988) benefiting the income of farmers. For an example of how law is used to curtail unionization efforts at the state level, see generally, Medrano v. Allee, 347 F. Supp. 605 (1972), modified, 94 S.Ct. 2191 (1974).

[FN26]. See, e.g., Polly Ross Hughes, Welfare Reform May Devastate Impoverished Hidalgo County, Hous. Chron., Aug. 17, 1996, at A1. See also Diane Jennings, Surviving On Hope, Dallas Morning News, June 30, 1996, at A43.

[FN27]. See generally Mario Barrera, Race and Class in the Southwest, A Theory Of Racial Inequality (1979) (for literature outside the legal venue).

[FN28]. See Agricultural Underdogs and International Agreements: The Legal Context of Agricultural Workers Within the Rural Economy, 26 N.M. L. Rev. 9 (1996); Chicana/o Land Tenure, supra note 5; Chicanas, Land Grant Adjudication and the Treaty of Guadalupe Hidalgo: This Land Belongs to Me, 3 Harv. Latino L. Rev. (forthcoming Fall 1998) [hereinafter Chicanas].

[FN29]. See generally Rodolfo Acuna, Occupied America 20 (3d ed. 1988) The conflict between the two countries resulted in the acquisition of Mexican territory "two and a half times as large as France" and in its aggregate nearly doubled the size of the country. For an account of Chicanas/os in the Midwest, see Dennis N. Valdes, The New Northern Borderlands: An Overview of Midwestern Chicano History, 2 Persp. In Mexican Am. Stud. 1 (1989); Dennis N. Valdes, Betabeleros: The Formation of an Agricultural Proletariat in the Midwest, 1897- 1930, 30 Lab. Hist. 53 (1989) (presenting the historical Chicana/o presence in the Midwest).

[FN30]. The Treaty of Guadalupe Hidalgo conferred citizenship status on this class. Art. VIII of the Treaty guarantees to protect their property. Native Americans were deemed Mexican citizens and were also protected by the Treaty's mandate. Treaty of Peace, Friendship, Limits and Settlement, Feb. 2, 1848, U.S.-Mex., art VIII, 18 Stat. (2) 502 [hereinafter Treaty of Guadalupe Hidalgo].

[FN31]. Courts regard the class as conquered people. See, e.g., Beard v. Federy, 70 U.S. 478 (1865) ("After our conquest of California...").

[FN32]. See Treaty of Guadalupe Hidalgo. Executed in the City of Guadalupe Hidalgo, February 2, 1848, its ratification took place in Queretaro, Mexico, May 30, 1848, and proclamation made July 4, 1848. See Hunter Miller, Documents 122-150: 1846-1852 Treaties and Other International Acts of the United States of America (1937). Congress declared war on the Republic of Mexico, on May 11, 1846.

[FN33]. Dickey v. Philadelphia Minit-Man Corp., 377 Pa. 549, 560 (Penn. 1954) (Mussano, J. dissenting)

(interpreting contractual language of a lease).

[FN34]. The first is adopted from Chicana/o Land Tenure, supra note 5.

[FN35]. Luco v. United States, 64 U.S. 515 (1859).

[FN36]. The signature of Pio Pico governor of California was also alleged as fraudulent. Yet he was not called to attest to the validity of his signature. Id.

[FN37]. Peralta v. United States, 70 U.S. 434 (1865).

[FN38]. The instant case is examined in greater detail in Chicanas, supra note 28 (discussing the litigation experience of women defending their property interests).

[FN39]. 70 U.S. at 434-435.

[FN40]. Id. at 435.

[FN41]. Id. The purpose of the petition was to provide notice to the government of Mexico, but also to ensure that the land was vacant and no adverse claims existed that would preclude ownership status.

[FN42]. Spanish word for case file or record. The papers were gathered together and formed the record ("expediente") of her petition. See generally, United States v. Cambuston, 25 F. Cas. 266, 267 (N.D. Cal. 1859) (No. 14,713). ("[t] hese papers stitched together, forme[d] the e[x]pediente").

[FN43]. Treaty of Guadalupe Hidalgo, supra note 30, at Article VIII.

[FN44]. See generally Treaties and Other International Acts of the United States of America 262-67 (Henry Miller ed., 1937); In contradiction to the goals of the Mexican Republic, the United States thereafter promulgated a series of major land acts. California Land Act of 1851, Ch. 41, 9 Stat. 631 (1851); Act of Mar. 8, 1891, Ch. 539, 26 Stat 854 (1891), Mar. 8, 1891 (Colorado, Arizona, New Mexico). The land acts required two levels of presentation from individuals holding property. The first required presentations of claims to the adjudicatory bodies to establish the validity of Mexican tracts. See, e.g., California Land Act §§8-10. Upon a showing of definitive proof, the United States awarded the recipient a patent. Id. at § 13. Failure to submit claims within a two year period defaulted the property to the public domain. Id. To qualify for a patent, each set of land grant laws further obligated grantees to present surveys of the claimed property. Id.; Act of Mar. 8, 1891 §6. During the survey stage, the United States rejected Mexican directed surveys and required its own agents to draw maps of the property. See California Land Act of 1851. In submitting to United States surveys grantees confronted a number of collateral attacks from a wide array of individuals seeking access to the country's public lands. See Luna, Chicana/o Land Tenure, supra note 5.

[FN45]. 70 U.S. at 436

[FN46]. Id.

[FN47]. Id.

[FN48]. Historians have long established academic inquiry over the conquest of the annexed territory. Further, United States v. Rocha, 76 U.S. 639 (1860) provides: "The confusion and disorder that existed, in respect to the Spanish and Mexican archives at the close of the war, when the Mexican authorities hastily left the country, has been shown in several cases before this court; and some indulgence is due to an honest claimant as to the order and time in which to produce his evidence." Id. at 647.

[FN49]. See, e.g., United States v. Pendell, 185 U.S. 189 (1902) providing:
[I]n the year 1846, while the original documents of title were in existence in the town of Paso del Norte...the place was occupied by the military forces of the United States, and the original documents of title and the official registry where they were recorded were destroyed by the American forces..." Id. at 190.

[FN50]. United States v. Chaves provides an example of claimants asserting that the state's governor ordered land grant documents be sold or thrown away. 159 U.S. 452, 462-63 (1895).

[FN51]. John Fremont "pathfinder of the West" and long recognized for his involvement in the uprising against the Mexico Republic, while he was a foreign national residing in California Alta, retained custody of land grant materials. Immediately after the conquest he alleged he lost several in the "mountains."

[FN52]. See generally Fuentes v. United States, 63 U.S. 443, 451 (1859) (referring to the "great fire of the 3d and 4th May, 1851," which the plaintiffs claimed destroyed land grant books and other documents vital to their case.)

[FN53]. See Donald J. Pisini, Squatter Law in California, 25 W. Hist. Q. 285 (1994) (addressing the politics of squatter sovereignty.)

[FN54]. Compare Senora Peralta's claim with that of John Fremont. United States v. Fremont, 25 F. Cas. 1214, 1215 (N.D. Cal. 1854) (No. 15,664).

[FN55]. Illegal Immigration Reform and Immigration Responsibility Act, Pub. L. No. 104-208, §1101, 110 Stat. 3009, 546 (1996).

[FN56]. See, e.g., Hopwood v. State of Texas, 78 F.3d 932 (1996); California's voter approved Proposition 209 (1996) (Civil Rights Initiative); Carol Ness, Jackson Plans Big Civil Rights March August 28th to Tackle Proposition 209, S.F. Examiner, Aug. 11, 1997, at A1.

[FN57]. See generally Yniguez v. Arizonans for Official English, 119 F.3d 795 (9th Cir. 1997), remanded with instructions to dismiss 117 S.Ct. 105 (1997).

[FN58]. Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. NO. 104-193, 110 Stat. 2105 (1996).

[FN59]. See Nancy Cervantes et al., Hate Unleashed: Los Angeles In The Aftermath of Proposition 187, 17 Chicano-Latino L. Rev. 1 (1995); Michael J. Nunez, Violence At Our Border: Rights and Status of Immigrant Victims of Hate Crimes And Violence Along The Border Between The United States and Mexico, 43 Hastings L. J. 1573 (1992).

[FN60]. See generally John Harwood, Counting Ballots, Parties Mull Agenda in High-Stakes Battle For Hispanic Voters, Wall St. J. Apr. 22, 1997, at 1 ("wedge issues"). See also Charles Lawrence III, Forward Ace, Multiculturalism, and the Jurisprudence of Transformation, 47 Stan. L. Rev. 819 (1995) (discussing a broader interpretation of the use of code words).

26. Luz Guerra, [FNd1] *LatCrit y la des-colonizacion nuestra: Taking Colon Out,* 19 CHICANO L. REV. 351 (1998)

I. Introduction

El panorama de America durante estos ultimos quinientos anos, y luego de estos quinientos, nos muestra un curioso mosaico multietnico, multirracial y en su conjunto plural, donde el eje de unidad y coherencia esta plasmado en aquello que aparece como herencia de Occidente y que nosotros identificamos como latino-america y anglo-america, en referencia al origen europeo de su existencia, dado que opera dentro de los parametros de origen colonial de su patrimonio cultural. Lo que no esta dentro de estos marcos de referencia occidental es llamado indigena. El mundo indigena americano aparece como un archipielago rodeado de Occidente. [FN1]

?Cual es nuestro ser? . . . de hecho solo hay implicitamente una respuesta con la cual identificarnos: el mestizaje. [FN2]

I come to this writing as an activist, not as a legal scholar. I wanted to participate in this discussion because it is one critical to our survival--the survival of the many peoples of this hemisphere. I also wanted--and yet did not want--to join this panel because of the "Latino" context, and because of the questions about the history of the peoples indigenous to the area now known as the United States suggested to the panelists. Therein lies a contradiction: to address the histories of the indigenous peoples of this hemisphere within a "Latino" context (i.e. within a LatCrit conference) without having critically examined the term "Latino" and its relationship to Native *352 history is impossible. And so I attempt to enter this discussion from the juncture of this history. [FN3]

Say, Skin!
Brown-hued soldadera
of urban slum jungles
& rural plantation esclavitud,
?en que parte
de la historia
has quedado? [FN4]

?En que parte de la historia has quedado? In what part of history have you

remained?--asks Indio/Mestizo poet activist Raul Salinas. This is a critical question, perhaps the critical question, for LatCrit studies 101. Where in history are we, we who name ourselves or accept the name "Latina" ?

In the October 1997 issue of Latina Magazine, contributing editor Chiori Santiago opens an article on Latina women with a reference to "Nobel Prize- winning Guatemalan activist Rigoberta Menchu" as a Latina who has "made it." [FN5] I have heard Rigoberta Menchu speak many times since she first toured the US in the early 1980s, denouncing the war of genocide the Guatemalan State has carried out against the Mayan people. I have never heard her refer to herself as "Latina"--and I question whether Ms. Menchu would appreciate that denomination when much of her life's work has been to make visible the histories and present-day lives of the Mayan peoples. What does it mean in the United States today for Ms. Menchu to be named "Latina" ?

I am going to assume that these discussions of critical race theory will be of some use, some benefit, to critical race practice. [FN6] *353 That it will benefit our communities, tribes and nations as we challenge the structures and devastations that colonialism in all of its manifestations has wrought.

The questions panelists were asked to consider fell into two categories. The first category asked how have the experiences of indigenous peoples in the U.S. been similar or dissimilar? The second category asked if LatCrit has a role to play in examining these histories and if so, what is it? Part of answering these questions requires that we also ask why and how we might use the term "Latino"--a name emerging out of our histories of colonialism--and asking what relationship the term Latino has with the terms "Indigena" or "Native Peoples."

Bringing this back to critical race practice, I must assume that these questions are asked in order to inform your next steps as practitioners, as activists for change. Native American activist Nilak Butler was direct when I mentioned this panel to her:

> What are you going to do with this discussion? [she asked.] Is it for the good of the whole? We need legal practitioners, technicians who understand Native issues, environmental law, land rights. There are not enough legal practitioners with the knowledge we need and the willingness to work pro bono or to accept long-term payments. We need practitioners who are looking to influence policies that will be more reflective of our own peoples. If you are getting together to discuss law and theory the question I have is: Which path makes the most sense for the earth and its peoples? [FN7]

The term "Latino" implies a path that is non-indigenous. Not all the peoples of the areas known as "Latin America" have the same history--nor do we have the same path to our collective future.

II. De-internalizing the mythology/reclaiming our histories

The domination of the mystified past over the present expresses itself in a conception of the future as unalterable. Conversely, the demystification of the past through the reclamation of the history *354 of individual and collective resistance permits the prefigurative envisioning of a transformed future. [FN8]

To look at the question of our colonial, postcolonial and neocolonial experiences we must open up the entire mythology of the "discovery" of the Americas as it is taught in the United States:

In his search for the Indies Columbus discovered a "New World," whose inhabitants were friendly and welcoming. They thought the Spanish were gods! Fast Forward to Spanish conquistadors on horses--Cortes, Pizarro, Ponce de Leon--claiming lands for Ferdinand and Isabel. A sweet Indian princess/slave befriends/falls in love with great white man, a.k.a., Cortes, helping him conquer her people. Fast Forward to grateful English pilgrims finally landing on Plymouth Rock. Refugees from religious persecution, they have come to face the wilderness of the new world for righteousness and their god. What luck! Again a sweet Indian princess befriends/falls in love with great white man, a.k.a., John Smith. Intervening on behalf of all white men, she implores her father, the savage chief, to spare them. Soon white people and Indians are laughing and smiling together, sharing the first "Thanksgiving" celebration. What nice Indians, they gave the white people corn and turkey! Fast Forward to pioneers and cowboys, moving west in covered wagons. Bad Indian warriors are terrorizing white women and children! Burning houses! Plundering, scalping, whooping war calls as they ride naked across the plains! Thank god for the Calvary, who arrive in time to save the white women and children from the savages! Fast Forward to the Lone Ranger and his friend Tonto, the one good Indian. He white man friend.

In order to understand the colonial, postcolonial or neocolonial experiences of Native peoples on this continent, we--all the peoples of the Americas--must step outside of this mythology in all of its variations. How simple to put those words on paper, to even say them out loud. How very difficult the process of stepping outside of all that we have internalized during the past five hundred and five years of colonialism--of de-internalizing, if you will, the mythology of our origins; of casting off the domination of the mystified past in the subjective practice of liberating our own stories.

The so-called "colonial" experience began at the juncture of history and myth--when Cristobal Colon landed on the island of Quisqueya. This European soldier/explorer claimed Quisqueya for Spain, "naming" this "discovered" land Espanola--belonging to Spain--and kidnapped/abducted several Tainos in the first of millions of acts of war. In Colon's own words: "As soon as I arrived in the Indies, on the first Island which I found, I took some of the *355 Natives by force in order that they might learn and might give me information of whatever there is in these parts." [FN9]

So we have the point of contact, and we have the first act of war. Five hundred and five years ago our world was split apart (not brought together, as myth would have it) and since then our mythologies and our histories have evolved in parallel realities.

This juncture has critical implications for Latinos, for what some call "outsider discourse" and "critical race theory," as well as for legal scholarship--beginning with a name which may or may not be the name we would have chosen for ourselves, depending on which parallel reality you occupy. Before Colon we were many. We were not Americans. We were not hyphenated. "Hispanic" came with Colon. "Latino" came with Colon. Since Colon, one common experience has been trying to "de-colon," decolonize, take Colon out.

When Colon came he brought double-speak, predating Orwell by several hundred years. Colon the outsider came to our lands and named them "of Spain," making we-who-resisted not-of-Spain, making us the outsiders on our Native soil. One of the defining factors in the colonial, postcolonial and neocolonial experiences of Native peoples in this

hemisphere, then, is how much we have remained outside of Colon/the colony and how much we have internalized Colon. And can we tell who is Colon and who we are? when he is inside us?

> Historians make political choices when they choose which facts--whose actions, what relationships, which events--to report and which to leave out. They make deeper choices still when they align those "facts" in a conceptual grid, such as liberalism, Marxism, or Christianity. When a historian's grid accords closely with the understanding of the world that best serves the interests of those in power, it becomes invisible and what is left looks like a simple, factual chronology. [FN10]

The conceptual grid that defines our understanding of/our telling of history is itself defined by our internalization of the colonial mythology from the European perspective. What is the conceptual grid of Latinoism, of Latino studies, of Chicano Studies, of Puerto Rican Studies? Has this conceptual grid been subservient to the conceptualized grid of imperialism, of colonialism-- post and neo? How has the nascent "latinoism" colluded with the mythology of *356 Colon-ization to the exclusion of Native peoples? How has it colluded with the exclusion of ourselves?

Is Latino a meaningful category? In what situations? [FN11] Eric K. Yamamoto refers to "decentering whiteness" as the singular "referent for determining racial group identities and relations." [FN12] It expands racial formation and racial justice into the realm of interracial relations. Yet for some Latinos, whose Mestizo culture is Native and Spanish (and for some of us, African), de-centering whiteness splits us in two: are you white, Native or other? What does it mean to be "other" and referentially opposed to "Native" when it is often your Native blood that makes you not-white?

III. At the outsider table--can we talk?

Whatever the differences in our various histories--whether actual or mythologized--we are currently experiencing a shared reality in relation to the evolution of postcolonial power relations in the world. Let us imagine that we are sitting collectively at the global outsider table, we children of colonialism. We bring to this table our various histories: we are the survivors of genocidal intent, we are the children of slaves, we are full- bloods and half-breeds, we are Mestizos and Mayas, Kickapoo and Caribs. We speak K'anjobal, Spanglish, Quechua, Mohawk, Creole, English. Our hair is straight and kinky, we are triguenas, blond, color de cafe. We have been pitted against each other over and over again. When we look at each other it is difficult for us to see past the mythologies, the lies, the propaganda. We look at each other and see the projections of a mythologized past/present: we might think we are seeing la Malinche, Colon, Uncle Tom, Geronimo, Tupac Amaru, Freddie Prinze, the virgin, el macho, the slut, fulana de tal. In fact we are the product of all of these and of none of these. We need to pack up those images and put them in the folder icon on our desktop, labeled "old archetypes for future study" so we can begin to really look around the table at our naked faces. Presente todos, let's get on with the agenda.

*357 And what is that agenda? A central "challenge facing any movement dismantling . . . a system in which one culture dominates another . . . is to provide for a

new order that does not reproduce the social structure of the old system." [FN13] The first item on our agenda, then, must be an agreement that we aim to work in solidarity with each other as we discover how we have internalized and have perpetuated the old system--the colonialisms; as we work to dismantle and to de-colonize those structures inside us individually and collectively; and to look to our common and different experiences pre- and post-Colon for the basis of the new order.

I believe that we must consider the proposals of our indigenous sisters, mothers, grandmothers, companeras en lucha as one of the first items for our common agenda. If we claim that we are the children of indigenous women, then we must seriously listen to our mothers. If we are re-claiming the mythology surrounding la Malinche, then we must look at her vision, removed from Colon's interpretation. If we embrace Tenontzin as our spiritual guide then we must follow her and not patriarchal Christianity's interpretation of her.

I must ask those of you developing this discourse called LatCrit theory, if la Raza Cosmica comes of the union of the Indian mother and the European father, where is your mother's voice? In what form has the mythology born of colonialism entered into our theories? Colon set forth the language, the world-view that would define the discourse of colonialism in this hemisphere for the next five hundred plus years. With few exceptions, the recognized history of colonialism has taken place in the oppressors' tongue, whether we are Taino or Chiricahua, Potawatomi or Mapuche, K'anjobal or Dine. Denied our tongues, we are denied our stories, and without our stories we have no decolonized legacy to leave for our children. [FN14]

*358 The late scholar/activists Ricky Sherover-Marcuse and Harrison Simms, and their colleague Hugh Vasquez, have proposed this working definition of the term "oppression": the systematic, pervasive, routine, institutionalized mistreatment of individuals based on their membership in various groups which are disadvantaged by imbalances of power in society. [FN15]

The project begun by Colon instituted the systematic oppression of the peoples indigenous to this hemisphere. How the various colonial societies evolved in relation to the different indigenous Peoples, and how the oppression of indigenous peoples was imbedded into the political, cultural, economic and social institutions of each colonial state is a topic far too vast for the scope of this discussion. The racial stratification born of the systematic oppression of indigenous and African peoples, of forced as well as chosen unions between races, and the mixing of blood and culture is as diverse and varied by region and state as any other aspect of the hemispheric history since Colon.

Europeans set up a colonial project here to extract wealth from the peoples and land. The "wars of independence" were the colonists cutting off the economic and political control of Europe--while maintaining the colonial structures of the systematic oppression of indigenous peoples. The privileges and power previously held by the Spanish was now claimed by the children of the Spanish, Portuguese, English, and French. Over the course of these 500 years the "Anglo-American" states formed a union, and ultimately achieved political, military and economic dominion over a good part of the hemisphere--specifically over many "Latin-American" states. This dominion has come to be called neocolonialism--the re-colonizing of the region by a new power--the U.S. This new colonial relationship did not change the essential structures of power--it added a new top layer to the stratification of power, whether military, political or economic.

The peoples of Anglo America have colonized the peoples of Latin America, and this neocolonialism defines the relationship of all Latin Americans to the U.S. When

Latin Americans migrate to the *359 U.S. they are transformed into Latinos--colonized peoples forced by history to enter the colonizers' nation.

The mythology of the Latin American nation states is that their peoples are "Latin" descendents of Spain, or, that they are Mestizo nations who claim indigenous ancestry but whose voice and vision (education, philosophy, literature, social sciences) are European or Euro-American. History begins at "conquest" and is interpreted and embodied by the colonizer. This mythology effectively makes invisible the Native peoples of Latin America, or at best reduces them to colorful remnants of the past to be packaged for tourism.

IV. De-colonizing "Latino"

> It will be good if the Ladino can understand what the ancianos know, that if there is no suffering there is no change. Maybe the next step will be to say, 'I am the product of a mix of our country's races--so I am Maya too.' [FN16]

Can the histories and experiences of the peoples indigenous to this hemisphere enhance LatCrit analyses of social and legal power, privilege and subordination? I believe the answer to your question is a qualified yes. I think that we must ask ourselves some very hard questions, as people who have been defined--by whose conceptual grid?--as Latinos. For example, what is the basis of our (Mestizos in US) social and legal power today? What are the so- called privileges we enjoy? What is our relationship to the (subordinated) indigenous nations/communities in the U.S./Americas? Our understanding of our history is incomplete without these questions. Until they are answered we are hindered in our process of de-colonizing our individual and collective selves.

You ask, can or should LatCrit theory help to deconstruct and interweave these histories to facilitate empowerment and interconnection among and between these and other subordinated groups? I think that depends on how LatCrit theorists determine their relationships to "these subordinated groups." Can LatCrit theory take this on? I guess my question is, can it afford not to?

How should this be done?, you ask. By continuing the process of our own de-colonization. By beginning a critical examination of our relationship to 'conquest', 'subjugation', and to the indigenous peoples of the world through a de-colonized lens. I believe this is done through entering into and supporting a dialogue with Native activists and academics about our common struggle/s. Do you know the works of Paula Gunn Allen, Ned Blackhawk, Beth Brant, Ward Churchill, Elizabeth Cook-Lynn, Vine Deloria, M. Annette Jaimes, *360 Winona Laduke, D'arcy McNickle, Anna Lee Walters, Angela Cavender Wilson? [FN17] Why not? This work should be done by supporting the leadership of Native thinkers, theorists, activists, by asking them for their perspectives before assuming they want to hear yours. Remember to ask, who is at the table?

This work must be done by critically examining colonial, postcolonial, and neocolonial "legal" relationships between Native and Euro/American nations and governments through a de-colonized or at least de-colonizing lens. It must be done by taking a pro-active stand against those relationships that perpetuate subordination, domination and genocide--no matter the privileges we might have to give up.

This work must be done by making "critical thinking" as it comes out of the

LatCrit community accessible to other Mestizo/indigenous people in our communities, through de-colonizing *361 language, and through insistence on translation to all of our languages.
Finally, you ask, why?

Because it is the path to our own emancipation as human beings. If we are lucky, we will get to glimpse our own de-colonized potential. We do this work so that our children, and their children, can be free to have visions of their potential that is beyond our still-colonized imaginings.

Footnotes

[FNd1]. Luz Guerra is una latina-mestiza, orgullosa de su sangre india, negra, y blanca, y de las historias de sus abuelos: puertorriquenos, dominicanos, y scot/irish. Trabaja como educadora/activista con NCEA, the National Coalition of Education Activists.

[FN1]. Luis Guillermo Lumbreras, La cultura indigena 500 anos despues, in Quinientos anos de historia, sentido y proyeccion 101, 102 (Leopoldo Zea ed., 1991).

[FN2]. Juan A. Ortega y Medina, Identidad, amplitud y plenitud del Mestizaje en Hispanoamerica, in Quinientos anos de historia, sentido y proyeccion 129, 134 (Leopoldo Zea ed., 1991).

[FN3]. To refer to the indigenous peoples of the area now known as the Americas-- the continents and islands that comprise this hemisphere with one all-encompassing term is itself problematic. For the purpose of this paper, when it is not possible to speak of a particular nation (Dine or Oneida, for example) I will use the terms "Native," "Native American," "American Indian," and "Indian" interchangeably to refer to the indigenous peoples of the area now known as the Americas. Less frequently, I will use "American Indian" and "Indian" to refer to the Native peoples of Canada and the US, and "Indigena" to refer to Native peoples of the Central and South America. When referring to the works or words of others I will use the language of the author.

[FN4]. Raul R. Salinas, Homenaje a la Pachuca, in East of the Freeway 12 (1995).

[FN5]. Chiori Santiago, Mujeres who made it and the men who helped, Latina, Oct. 1997, at 69.

[FN6]. See Robert A. Williams, Jr., Vampires Anonymous and CriticalRrace Practice, 95 Mich. L. Rev. 741 (1997). Mr. Williams, a member of the Lumbee tribe in North Carolina, tells how he was called upon by the Native communities surrounding the law school where he taught and wrote about critical race theory to be accountable to them:
"What these Arizona Indians really wanted me to do was to get off my critical race theory ass and do some serious Critical Race Practice. They didn't give a damn about the relationship between hegemony and false consciousness. They wanted help for their problems, and I was a resource. That's why they were so tough on me." Id. at 759.
This challenge to develop a critical race practice resulted in the formation of a Tribal Law Clinic, where all of the clinic's projects:
are approached as efforts aimed at decolonizing United States law and international law relating to indigenous peoples' rights. Students are encouraged to try to understand how the legacy of European colonialism and racism are perpetrated in contemporary legal doctrine, to expose that legacy at work in the project they are working on, and to develop strategies which delegitimate it, literally clearing the ground for the testing and development of new legal theories. Id. at 763.

[FN7]. Telephone Interview with Nilak Butler, Native American Activist (Apr. 1997).

[FN8]. Erica Sherover-Marcuse, Emancipation and Consciousness 140 (1986).

[FN9]. Christopher Columbus, quoted in Howard Zinn, A People's History of the United States, 1492-Present 1 (1995).

[FN10]. Rebecca Gordon, Movement Media 13 Women's Rev. Books 6 (Mar. 1996) (reviewing Rodger Streitmatter, Unspeakable: The Rise of the Gay and Lesbian Press in America (1995)).

[FN11]. Eric K. Yamamoto asks these questions as well:
under what circumstances do individuals faced with justice issues shift between pan-racial and ethnic identities? [H]ow do differences concerning history, culture, economics, gender, class, mixed ancestry, immigration status and locale contribute to malleable victim and perpetrator racial identities? [H]ow do unstable racial identities detract from or provide opportunities for deeper understandings of interracial harms and group responsibility for healing?
Eric K. Yamamoto, Rethinking Alliances: Agency, Responsibility and Interracial Justice, 3 UCLA Asian Pac. Am. L. J. 33, 43-44 (1995).

[FN12]. Id. at 36.

[FN13]. Lisa Lowe, Heterogeneity, Hybridity, Multiplicity: Marking Asian American Differences, in Diaspora 24, 31 (1991) quoted in Eric K. Yamamoto, Rethinking Alliances: Agency, Responsibility and Interracial Justice, 3 UCLA Asian Pac. Am. L. J. 33, 57 (1995).

[FN14]. Elizabeth Cook-Lynn has written eloquently of the decolonization of storytelling:
The role of Indians, themselves, in the storytelling of Indian America is as much a matter of 'jurisdiction' as is anything else in Indian Country: economics, the law, control of resources, property rights. It goes without saying that it reflects our struggle with the colonial experience of our concomitant histories. If that sounds benign, it is anything but that. On the contrary, how the Indian narrative is told, how it is nourished, who tells it, who nourishes it, and the consequences of its telling are among the most fascinating--and, at the same time, chilling--stories of our time. Elizabeth Cook-Lynn, American Indian Intellectualism and the New Indian Story, 20 Am. Indian Q. 57 (1996).
Ms. Cook-Lynn continues:
The diversity of American scholarship is being developed in substantially different ways from that of the historical educational pattern of colonial coercion for captive Indians. There are new movements afoot. This means that the Indian story is included in every genre and most disciplines during this era of the rise of cultural studies, diversity, and multiculturalism. In this period, the so-called "mixed-blood" story, often called "the post- colonial" story, has taken center stage. The bicultural nature of Indian lives has always been a puzzle to the monoculturalists of America; thus, mixed-bloodedness becomes the paradigm of preference.
Id. at 59.

[FN15]. This definition is utilized today in classes, workshops, and trainings presented by the activists and facilitators of the TODOS Sherover Simms Alliance Building Institute and the Oakland Men's Project, both of Oakland, California.

[FN16]. Miguel Matias, Guatemala's Peacetime Challenge: Maya Indians Reassert Identity While Ladinos Wonder About Theirs, 13 Native Americans 64 (1996).

[FN17]. This is certainly not an exhaustive list of American Indian scholars and writers, but are some of the authors who have informed my thinking about this paper. Paula Gunn Allen (Laguna/Sioux) is a poet and writer, author of The Sacred Hoop: Recovering The Feminine In American Indian Traditions (1992). Ned Blackhawk has written, among other articles, I Can Carry On From Here: The Relocation of American Indians to Los Angeles, 11 Wicazo Sa Rev. 16 (Fall 1995); Beth Bryant (Mohawk) is a writer, whose works include: A Gathering of Spirit: A Collection By North American Indian Women (Beth Bryant ed., 1988); Writing as Witness: Essay and Talk (1994). Ward Churchill (Creek/Cherokee Metis) is a scholar, activist, and prolific writer, his books include: From A Native Son: Selected Essays In Indigenism, 1985-1995 (1994); indians Are Us?: Culture and Genocide In Native North America (1994); and Since Predator

Came: Notes From the Struggle For American Indian Liberation (1995). Elizabeth Cook-Lynn (Crow/Creek/Sioux) is the founder and editor of the native studies journal Wicazo Sa Review, and the author of various articles including the collection of essays Why Can't I Read Wallace Stegner: A Tribal Voice (1996). Vine Deloria, Jr. (Standing Rock Sioux), Professor of American Indian Studies, Law, and Political Science at the University of Colorado at Boulder, is a prolific writer. His books include: American Indians, American Justice (1983); American Indian Policy in the Twentieth Century (1985); Behind the Trail of Broken Treaties (1974); Custer Died For Your Sins (1969); Red Earth, White Lies: Native Americans and the Myth of Scientific Fact (1995); and We Talk, You Listen (1970). M. Annette Jaimes (Juaneno/Yaqui) has worked and written in a variety of fora, and is the editor of The State of Native America: Genocide, Colonization, and Resistance (1992);Winona LaDuke (Chippewa) is an American Indian rights and environmental activist, whose recent writings include: Last Standing Woman (1997); and Ogitchida Ikwewag: The Women's Warrior Society in Reinventing the Enemy's Language: Contemporary Native Women's Writing of North America (Joy Harjo & Gloria Bird et al. eds., 1993). The late D'Arcy McNickle (Confederated Salish and Kutenai Tribes of Montana) was an historian, activist, and writer. His works include: Native American Tribalism: Indian Survivals and Renewals (1973); and Runner in the Sun: A Story of Indian Maize (1954). Anna Lee Walters (pawnee) lives and works on the Navajo Nation, her works include: Ghost Singer: A Novel (1988); and with Peggy V. Beck & Nia Francisco, The Sacred: Ways of knowledge, sources of life (1995). Angela Cavender Wilson (Dakota) has written various critical articles including American Indian history Or Non-Indian perceptions of American Indian History? 20 Am. Indian Q. 3 (1996).

27. Verna Sanchez, [FNd1] *Looking Upward and Inward: Religion and Critical Theory*, 19 CHICANO-LATINO L. REV. 431

La vida es duda,
y la fe sin la duda es solo muerte. [FN1]

Several years ago, I somehow "fell into" writing about religion and the First Amendment. I was intrigued, for several reasons, by a case then in a Florida district court. [FN2] The case was unusual in a number of respects. It was perhaps the first time in this country that a babalawo (very loosely translated, a priest) in the Santeria religion was attempting to set up a formal place of worship and ritual, which would include the sacrifice of animals. What was also unusual was that the babalawo, Ernesto Pichardo, had gone public with his intentions to establish such a place. Santeria, for various historical reasons, has long been "underground." Many people are aware of it, but it has not, until recently, intentionally gone public. As a Latina growing up in New York City, I was familiar with Santeria. Botanicas [FN3] were all over my neighborhood, and even people who were not formally initiated into Santeria would often have Santeria-related objects in their homes or engage in some practice that derived from that belief system. Having some familiarity with the religion, and knowing its general reputation for being, minimally, very private, I was surprised and amazed by Pichardo's stated intentions. I wondered about his motives and worried about the possible repercussions for him, his plans, and for practitioners around the country. There were many reasons to fear that Pichardo's attempt to bring Santeria public would stir up profound feelings and antipathies, *432 [FN4] and indeed, that was exactly what happened in Hialeah and elsewhere. [FN5]

After seeing Pichardo on a Spanish television news show, I became convinced that he was a man of good intentions and was trying to dispel many of the negative stereotypes that had developed about Santeria. It was against this backdrop that I was drawn into writing about religion, but only as it specifically related to what have typically been designated "minority" religions. This is an interesting term that usually has two meanings. The first is meant to refer to religions that are, at least in the United States, numerical minorities in terms of adherents. The second, though, refers to those religious beliefs/practices that are followed by "minority" persons. It was really this last meaning that intrigued me the most.

If race and ethnicity have, indeed, been the hidden or not so hidden influences on the development of the law in this country, then that should also be reflected in the jurisprudence of the free exercise clause of the First Amendment. I was curious to see to what extent, if any, a dominant cultural perspective would manifest itself in the jurisprudence. As I, and others before me discovered, there was indeed a discernible monotheistic, Judeo- Christian ideological bent that resulted in less protection being afforded to "minority" religions. [FN6] But lately, what has intrigued me even more is the fact that religion, generally, appears to be the only off-limit topic for discussion among many critical theorists. I am speaking of the virtual absence of any focused, critical examination of the role of religion in "the treacherous terrain of American racial politics." [FN7] This omission cannot possibly be because religion is seen as either irrelevant to our lives or not worthy of discussion. I cannot, then, understand why religion has remained a virtually unexamined factor in the realm of critical theory.

I have no interest in making a claim that for people of color, religion is a more important force in our lives than for others. I do know, however, that religion has been a strong influence in many of our cultures and communities. Religion has also, historically, and through the present day, been a tool or mechanism for enhancing and destroying or reshaping cultures, and playing on or into racism, *433 sexism and homophobia. It has been a means for confining and limiting the roles of many segments of society, especially, but not exclusively, women. Regina Schwartz has noted how monotheism has been grounded in violence: "Violence is the very construction of the Other." [FN8] Christianity has also served as a frequently explicit, and more often implicit, influence on courts throughout this country over the last two hundred years. [FN9] Thus, it has always puzzled me that of the many outstanding and creative writers producing provocative, innovative, and challenging analyses in the general area of critical legal theory, [FN10] few have explored the role of religion.

Critical legal theory was born of a rejection of the classic liberal belief that American law relies on a "rational, apolitical and neutral discourse with which to mediate the exercise of social power." [FN11] Religion and its influence on the law would seem to be natural area of inquiry for such theorists. I do not mean to suggest that there are no articles out there exploring, from a critical theorist's perspective, the ideology and history of the interaction between religion and law and the effect of that on the lives of disenfranchised people. There are, but why are there not more? Scanning the Table of Contents of two important, fairly recent books on Critical Race Theory, for example, there are no articles that specifically explore, examine, or analyze the question of how religion intersects with questions of race. [FN12] I do not think it is because religion is irrelevant to questions of racism. Indeed, I think quite the opposite is true. In this country, religion, specifically Christianity has exerted tremendous influence in this area, both in perpetuating racism and in fighting against it. In the introduction to Critical Race Theory: The Key Writings, for example, the editors explain that two common points emerged from the writings collected there. The first point is "to understand *434 how a regime of white supremacy and its subordination of people of color have been created and maintained in America. . . ." [FN13] The second, is the "desire not merely to understand the vexed bond between law and racial power but to change it." [FN14] I have difficulty understanding how it is that those points do not include a greater degree of scrutiny about the role of religion in all of that and why these writings have yet to appear in print. If critical race theory includes the insights that racism is normal and an "ingrained feature of our landscape" [FN15] and that "culture constructs social reality that promotes its own

self-interest . . ." [FN16] then it would seem that religion should be seen as part of that discussion.

Religions (most specifically, those based in or derived from Judeo- Christian origins, which includes Islam) have often been used to both help and hurt people of color in this country and elsewhere. One does not have to look further than the Civil Rights Movement in this country, for example, to establish how much of the impetus for progressive social change came from various churches and religious leaders. In Central and South America, the social justice movement has often derived from Christian ideals and has been closely linked with priests, nuns and laity of the Catholic Church. Conversely, the Dutch Reform Church was an ardent and leading proponent of Apartheid in South Africa, and, for a long time, many Catholic and Protestant churches in this country practiced de facto segregationist policies. I do not think that we have looked far enough past the role of religion and churches to examine how it can be that churches and religions have often operated, implicitly or explicitly, against the social good of people of color and the poor.

Several years ago, I took a graduate class in Latin American politics, where we discussed the various movements for social change and revolution that had permeated Latin America, particularly during the 1960s and 1970s. That led to a discussion of liberation theology, which had taken hold all over the region. The question I had about liberation theology, which was never answered to my satisfaction, is how one could reconcile all of the principles and ideals of that ideological movement while remaining and operating within the confines of Catholicism and the Catholic Church. I believe as do others, that such a theology is antithetical to the Catholic Church and Catholic theology. [FN17] For example, Gonzalo *435 Arroyo, who had been an exiled Chilean Jesuit, had written on what he considered to be the impossibility of the Church as an agent of social reform. [FN18] Yet, there have been many brave and courageous people who have put themselves at risk in order to struggle for social justice, motivated by what they have identified as beliefs based on Christ's teachings. For me, as a woman of color, feminist and mother to a daughter, I can not look past the subordination of women inherent in Judeo- Christian religions. Yet, I recognize both that that is a personal and political choice I have made, and that others have in fact found ways to reconcile what, to me, are seemingly contradictory positions and ideologies. What troubles me has been the absence, until now, of any real public dialogue or discussion, either at conferences or in the literature of critical race/gender/sexuality theory about these ideas. I do not raise this point to offend, or to challenge others to defend their beliefs. Instead, I raise it as an example of what I am trying to urge in this essay.

I think there are many viable and important perspectives and discussions that should be taking place under the large umbrella of critical theory. I suggest that exploration of the significance and interplay of religion vis-a-vis race, gender, and sexuality and the development of the law is critical. I think it is a vital and necessary component of our ongoing intellectual contributions to legal scholarship as well as to our communities and ourselves. I welcome then, the door that this symposium seeks to open, and am thankful for the opportunity to raise these concerns. I look forward to a full and rich dialogue about all of these issues.

Footnotes

[FNd1]. Verna C. Sanchez, B.A., Clark University, 1977, J.D., Northeastern University School of Law, 1981.

[FN1]. "Life is doubt, and faith without doubt is only death." Howard T. Young, The Victorious Expression: A Study of Four Contemporary Spanish Poets-- Miguel de Unamuno, Antonio Machado, Juan Ramon Jimenez, Federico Garcia Lorca 20 (1964) (citing a poem by Miguel de Unamuno).

[FN2]. Church of Lukumi Babalu-Aye v. City of Hialeah, 508 U.S. 520 (1993).

[FN3]. A botanica is a store which sells various herbs, liquids, etc., that are often used in Santeria rituals.

[FN4]. See 508 U.S. at 541-42. (noting specific comments made by City Council members and others in reaction to Pichardo's announcement.)

[FN5]. See Verna C. Sanchez, Whose God Is It Anyway?: The Supreme Court, The Orishas, and Grandfather Peyote, 28 Suffolk U. L. Rev. 39, 41 n.14 (1994).

[FN6]. See Russell Barsh, The Illusion of Religious Freedom for Indigenous Americans, 65 Or. L. Rev. 363 (1986); Verna C. Sanchez, All Roads Are Good: Beyond The Lexicon of Christianity in Free Exercise Jurisprudence, 8 Hastings Women's L. J. 31 (1997).

[FN7]. Kimberle Crenshaw et al., Critical Race Theory: The Key Writings That Formed the Movement xxxii (1995)

[FN8]. Regina M. Schwartz, The Curse of Cain: The Violent Legacy of Monotheism 5 (1997).

[FN9]. An excellent work documenting this is Forrest Wood, The Arrogance of Faith: Christianity and Race In America from the Colonial Era to the Twentieth Century (1990).

[FN10]. I am using this term to incorporate, by reference, all of the more specified areas within that umbrella--race, gender and sexuality.

[FN11]. Crenshaw et al., supra note 7, at xviii.

[FN12]. For example, in Critical Race Theory: The Cutting Edge, there are a total of fifty pieces, by various scholars, on topics ranging from "Criticism and Self-Analysis" and "Critical Understanding of the Social Science Underpinnings of Race and Racism" to "Race, Sex, Class, and Their Intersections." None of these pieces, however, specifically consider the ideology and history of religion, its influence and impact on the rule of law or any relationship it may have to perpetuating or opposing sexism, racism or homophobia, for example. Richard Delgado, Critical Race Theory: The Cutting Edge (1995). In Crenshaw et al., supra note 7, there are 27 pieces, none of which address the subject of religion vis-a-vis people of color. I have selected these two fine collections of writings only because I think they represent a broad array of writers and topics.

[FN13]. Crenshaw et al., supra note 7, at xiv.

[FN14]. Id.

[FN15]. Id.

[FN16]. Id.

[FN17]. See e.g., Thomas Bruneau, The Political Transformation of the Brazilian Catholic Church (1974), where he notes that those working within the Catholic Church are not free actors. They are not autonomous or independent or free to set their own goals. Id.

[FN18]. Ralph Della Cava, Catholicism and Society in Twentieth-Century Brazil, 2 Lat. Am. Res. Rev. 7,

46 (1976).

28. Nancy K. Ota, [FNd1] *Falling From Grace: A Meditation on LatCrit II,* 19 Chicano L. Rev. 437 (1998)

On Saturday morning at LatCrit II, the conference took an unexpected turn during the panel titled: LatCrit Theory and Asian-American Legal Scholarship: A Comparative Discussion of Non-White/Non-Black Positionalities. The panel started out as a breakfast conversation between Berta Esperanza Hernandez- Truyol, Sumi Cho, and me, and finished with Jerome Culp and Rachel Moran providing commentary. The panelists raised questions and concerns about the past essentialization of race in Critical Race Theory; the parallels among issues of race, culture, and ethnicity raised by LatCrit and Asian-American legal scholars; and the problem of the essentialization of a Latina/o and Asian-American identity that this comparison necessarily entails. They also raised concerns about the political complications that gender, class, race, and sexual orientation raise and the varied ways that our identities play out their differences vis-a-vis the material lives of all people in the United States. [FN1] We intended our breakfast conversation to be both a catalyst for discussion and a change of pace from the series of intense panel presentations that had taken place over the course of the preceding two days. In that regard, we were successful, but the surprise turned out to be the substance of the discussion. Rather than focusing on LatCrit and Asian-American legal scholarship, participants spent the next four hours in sometimes-heated debate over the role of religion. [FN2]

In the course of our breakfast conversation, I remarked that gay [FN3] Asians have relatively low visibility because, culturally, we do not talk about sexuality. At the same time, the gay rights movement has enabled a "queer" voice in our respective communities despite a history of white male dominance within the gay, lesbian, bisexual, and transgender movement and the corresponding white male supremacy, [FN4] and has contributed to the development of queer communities of color. I said, "[the movement] allows us to claim [a] space that recognizes our existence." [FN5] Having noted that many gay, lesbian, bisexual and transgender Latina/o and Asian-Americans are beginning to feel comfortable in their own (queer) skin, I went on to make an observation. I commented about the space in which we had convened the plenary session and about the way that religion, that is, Roman Catholicism, had percolated throughout the prior sessions. [FN6] In the context of a society which justifies de jure discrimination against gay men and lesbians on Judeo- Christian religious grounds, [FN7] I felt it was appropriate to point out the irony of our conversation taking place in a Catholic institution surrounded by religious images. [FN8]

I thought it odd that at a critical conference we were uncritically invoking religion through blessings and prayer and images. I expressed this thought from a position of discomfort as a sansei who in my youth attended a Buddhist church (Shin or Pure Land) and as someone who now partially identifies as a non-Christian (atheist) lesbian critical race feminist. [FN9] The comment was meant to be critical of two things: the most

obvious being that Christian orthodoxy does not embrace gay, lesbian, bisexual and transgender people and, almost as obvious, that Latina/o identity is not easily defined by a culture focused on a common language and common religion. In the big picture of all the panelists' remarks, this comment was a very tiny part of the presentation. Yet, it struck a chord that led to a wide- ranging and emotionally charged discussion illustrative of the complications of the politics of identity. [FN10]

Because there is no transcript of the ensuing discussion and I have no reason to trust my memory of it, I cannot report or recreate the conversation in this essay. Rather, I want to reflect further on religion and on Latina and Asian lesbians and on space. These reflections aim to begin an exploration of the "Borderlands" of LatCrit, Asian-American, and Queer legal scholarship. [FN11]

I am mindful of the contributions that the Catholic Church makes to various liberatory movements, to individual spirituality, and to building community. But, blithe incorporation of Catholic tradition in a LatCrit conference raises a few questions that I will briefly and partially address. First, even given Roman Catholicism's significance in the lives of many Latinas/os, should we not also at least note that these Catholic roots stem from a violent and long history of colonialization? Second, what does "religion" have to do with Latina/o and Asian American identity? This inquiry raises the third question: what do we mean by "religion" ? And finally, in what ways does "religion" bridge or divide us along race, class, gender, and sexual orientation lines? By raising these questions, I do not mean to detract from the values that religion imparts *440 on a community and on individuals. Rather, a critical project dedicated to a reconstructive jurisprudence [FN12] must recognize and understand historical domination and subordination in order to avoid preserving or duplicating hierarchical power relationships. Critical theorizing is difficult because it makes both external and internalized structures of oppression evident and reveals our own complicity. These conversations may cause discomfort and twinges of guilt, but without the fuller appreciation for the way structures of oppression operate that comes with these conversations, how can we expect to challenge unjustifiable subordination?

To that end, in the same way that Luz Guerra urged us to consider the colonialist history embedded in the term "Latino," it seems appropriate to suggest that we take note of the Catholic Church's relationship to colonialist conquest and patriarchy. Spanish missionaries and soldiers participated in the subjugation of millions of indigenous people in the Americas. Catholic clergy participated in violence and rape in the Southwest. In order to compel submission to their view of sexual morality, friars punished Pueblo Indians who practiced polygamy and curbed cross-dressing berdaches. [FN13] The Catholic Church continues to discriminate against women by limiting their role in the Church. [FN14] Acknowledging this history and continuing subordination illuminates the intragroup power differentials masked by an essentialized identity and engenders bridge building across the divides.

Catholicism is problematic not only from a historical perspective. Although influential, Catholicism is not ubiquitous in every Latina/o life. However, religion is important in community formation, even in Latinas/os' lives. Communities have gathered together weekly at Mass and have received educational and social services designed to assure survival in an often inhospitable society. But, numerous spiritual and religious influences shape the lives and communities of Latinas/os including other Christian denominations, Judaism, Islam, Buddhism, Santeria, Palo Mayombe and other African-Caribe traditions, Toltec and other indigenous traditions. [FN15] And *441 certainly,

atheists and agnostics can count Latinas/os among them. While LatCrit theory must deal with Catholicism's prevalence, the general presumption of a Latina/o religious homogeneity around Catholic tradition is faulty.

The diversity in religious tradition in Asian-American communities is more obvious than in Latina/o communities. [FN16] The variety of religious traditions playing a role in Asian-American lives include Hinduism, Buddhism, Shinto, Taoism, Sikhism, Cao Daiism, Islam, indigenous Pacific Island traditions, and Christianity (including Catholicism) among many others. These institutions influence and shape Asian-American lives and communities in many of the same ways that the Catholic Church influences Latina/o lives such that religion's role in community formation, support, and maintenance seems familiar. For many immigrant-based communities, the Church represents a safe harbor or base camp for a dispersed community. Family and social ties often revolve around spiritual or religious customs through holiday celebrations, observation of religious tenets, and church/temple activities. In my own experience, the Buddhist church bound my family by inculcating values and rituals which my grandparents practiced, but which we otherwise would have ignored. [FN17] More significantly, the Church was a site for social activity including youth activities, community picnics, and basketball. Even though it has been over 20 years since I went to church for a service other than a funeral, many of the relationships I began through the Church remain important to me. Thus, my religious affiliation serves as a tie to an anchored community.

The importance of religious institutions in forming and maintaining Asian-American communities has a negative aspect. That is, religious affiliations identify uncivilized non-citizens. The prevalence or the perception of non- western religious traditions, such as Buddhism, in Asian-American communities helps to place Asians further outside of the boundaries of the Judeo-Christian culture in America because their religious practices are foreign. [FN18] With respect *442 to religion, a problem with identity formation of Asian- America is that Asian-American identity is represented religiously around a conglomeration of filial, atheistic, and mystical belief. This representation is both racialized and racist in the way it relies on and supports stereotypical notions about Asians. The characterization of religion among Asians as a strange, unnatural belief system can be deployed to stir up anti- immigration sentiment. [FN19] Finally, this characterization works to divide the community by creating a sense of moral superiority and civilization among those who claim Christianity.

The connection of religion to Latina/o communities warrants further examination through the same lens used to examine this Asian-American experience. Like Asian Americans, Latinas/os suffer discrimination on the basis of "foreignness," which stems at least partially from language. [FN20] A perception that Latinas/os are Catholic or Christian helps create the perception that Latinas/os fit more easily into mainstream culture because their basic moral values share common ground with the white Protestant roots of this country's "forefathers." [FN21] In this instance, religion acts as a proxy for a *443 civilized middle-class whiteness. Uncritically accepting Catholicism as a part of Latina/o identity thereby helps perpetuate the dominance and moral superiority of Christian values in American society. Christian supremacy bolsters racist attitudes towards those affiliated with outsider religious practices, such as Santeria, because it perpetuates notions of outsiders, foreigners, or others by conjuring up images of "uncivilized," "pagan," "tribal" rituals. These terms code non-Judeo-Christian practices as non-white, uneducated, and primitive. Moreover, this coding alienates segments of a pan-ethnic Latina/o community on race and class lines by exploiting an internalized

colonial/racist Euro-Christian superiority.

This portrayal facilitates a distinction between Asian-Americans and Latinas/os that can act as a wedge between our communities. Although religion may be portrayed as a characteristic that distinguishes Latinas/os from Asian- Americans and from "Americans," the communities share similar spiritual affiliations. As mentioned earlier, both Latinas/os and Asian-Americans have a rich and varied religious tradition and in some cases these traditions overlap. A legacy of missionary work in Asia and the Americas has firmly established Protestant Christian congregations in both communities. Indeed, the colonial history of the Philippines parallels that of many Latina/o communities with a history of colonialization dating back to the 16th century. The predominant religious affiliation among Filipinos is Roman Catholicism. In this regard, Filipinas/os culturally share more with Latinas/os than with other Asian-American subgroups. [FN22] Asian-Americans and Latinas/os have spiritual links in a variety of traditions. Recognizing and understanding both the commonalities and religious diversity in all of our communities can begin to diminish the grip of Christian moral supremacy in American society.

Religion, reflecting diverse spiritual paths, plays a prominent role in our communities, but what impact does it have on sexual minorities in our communities? To start with the obvious, no religious organization fully accepts gay men, lesbians, bisexuals, or transgender people as members of their community. Interpretations of religious texts go so far as to advocate the death penalty for homosexuals. *444 [FN23] Others, while adopting more tolerant policies for ministering to and accepting sexual minorities, continue to cling to the belief that divine or natural law insists that sexual relationships be confined to heterosexual marriage. The end result is a limited acceptance of the "sinner," but not the "sin." In particular, the Catholic Church, while preaching tolerance for gay people, advocates against gay rights. The Church has stated that gay people can be discriminated against in housing and should not be allowed to teach. [FN24] An uncritical incorporation of Catholicism into a Latina/o identity supports a heterosexual hegemony built into the rhetorical, institutional, and economic structures of oppression. [FN25] The LatCrit, Critical Race Theory, and critical Asian- American legal scholarship projects seeking to build community and to develop a reconstructive jurisprudence must make the "hard acknowledgment" [FN26] of heterosexism and homophobia. By so doing, we begin to formulate a contextualized and historicized understanding of these structures, which changes the way we think about the spaces in which we gather and opens up spaces in our theoretical work.

Not all faiths, including Buddhism, have taken an explicit position on sexual minorities. Nevertheless, some people have interpreted Buddhist teachings as neutral towards homosexuality. In defining "right conduct," Buddhist teachings require abstention from sexual misconduct, but do not explain sexual misconduct further. Considering this rule in the context of a central tenet in Buddhism to abolish all suffering would suggest that sexual misconduct involves oppressive, non-consensual sex. Sexual misconduct would not involve consensual sex, especially consensual sex in a loving relationship. Moreover, Buddhism's anti-oppression goal requires living a life of compassion and one committed to understanding the conditions required for happiness and welfare for all living creatures. Buddhism, thus, urges a contextualized and particularized understanding of structures of oppression and represents an alternate religious/moral foundation to which we can connect the equality and *445 liberty ideals of American law. However, even though we can ascribe this anti-subordination spin to

the religious teachings, we must also consider the possibility that there are not specific edicts about sexuality because it is so culturally repressed in Asian communities where Buddhism and other religions, which do not take a position on homosexuality, are prevalent. [FN27]

As Dorothy Fujita Rony notes, "topics of sexuality are regularly shrouded in particular forms of silence in the Asian-American community. It is understood that you do not bring up the topic of sex in polite conversations without risking the disapprobation of community elders." [FN28] The existence of gay, lesbian, bisexual, and transgender Asian-Americans challenges this silence because merely acknowledging our existence means breaking the taboo over discussions about sexuality. My own "coming out" to my family is illustrative of this silence. I have never uttered the "L" word to my parents. In fact, I cannot recall a conversation lasting more than two minutes about sex or sexuality. We have managed to deal with my lesbian identity by not talking about it. [FN29] Given these circumstances, discovering that a basic cultural institution such as a church could look favorably upon gay and lesbian members within the community does not mean that the community itself looks favorably upon people like me who choose to live their (queer) lives openly. Rather, the silence may have more to do with homophobia and denial.

While a perception may exist that homophobia is greater in communities of color, including Asian-American and Latina/o communities, the reality is that families of queer people of color and non-Asian families react similarly. These reactions span the spectrum from acceptance to disowning and violence. [FN30] Oftentimes, the *446 less acceptable responses stem from a sense of shame, while others simply believe homosexuality is unacceptable or wrong. [FN31] What is different for the Asian-American gay men and lesbians who "come out" in their communities is that homophobia complicates their sense of community. Having to distance or disconnect yourself from your community because of homophobia means having to disconnect from cultural ties which enable survival in the face of racism. Combining the general reluctance to talk about sexuality with the possibility of disconnection from the community compounds the silencing effect of either circumstance.

The silence extends further. Asian cultures' strict attitudes governing narrowly defined sexual and gender roles offer little room to express gay identity. [FN32] Asian-American communities are built around traditional Asian notions of family with fiercely heterosexual and male- centered norms. The result is a practical erasure of lesbian existence. For example, although our languages may have words that describe male homosexuality or gay men, it is difficult to find words to identify lesbians in Asian cultures. [FN33] The denial of lesbian existence is made easy when the words to talk about us do not exist. One consequence of this omission is that it upholds the notion that lesbians or bisexuals are only found in Western societies. When family or community members deny the possibility of homosexuality by asserting the claim that homosexuality is a result of assimilation and acculturation in America, they alienate sexual minorities as "foreigners" to their communities. [FN34]

In order to counter this alienation, those asserting a queer identity in Asian communities have begun the project of uncovering and reclaiming a gay and lesbian past. Researchers have begun attempting to recover a history of expressions of same-sex sexuality in the early Chinese "bachelor societies," [FN35] in the internment camps during World War II, [FN36] in late imperial China, [FN37] among Chinese feminists in Japan in the early 20th century, [FN38] in the Kama Sutra, [FN39] and in female

kingdoms [sic] in ancient India. [FN40] Interestingly, much of this uncovering of history of gay and lesbian roots leads us back to religion.

People of color searching for the hidden history of gay and lesbian lives have begun to discover this history in the religious and spiritual traditions lost through migration and acculturation or colonialist suppression. These rediscoveries include the ceremonial position of lesbian and transgender people in indigenous berdache tradition, [FN41] homoerotic traditions and practices in Sufi Islam, [FN42] transgendered spirits in Yoruban tradition, [FN43] and the images on South Asian temples depicting intimate same-sex contact. [FN44] The discovery of these ancient and historical roots defends against the claim that homosexuality is foreign to communities of color and revitalizes cultural traditions nearly lost in the face of a dominant Euro-Christian culture.

Furthermore, gay men, lesbians, bisexuals, and transgender people, including people of color, have built spiritual homes based *448 on mainstream western religion. Efforts to organize gay-centered or gay-friendly churches have had a transformative effect on traditional religious institutions. One example is the Universal Fellowship of Metropolitan Community Churches (MCC) founded in 1968 by the Reverend Troy Perry, a minister defrocked by the Pentecostal church because he is gay. Perry started the church to serve the spiritual needs of gay men and lesbians. Over the years, MCC has made an effort to accommodate the variety of religious faiths held by the diversity of people who began attending services at MCC as an alternative to often hostile houses of worship. MCC has expanded internationally and has begun to create a place of worship that includes heterosexual and queer people of all colors. Other denominations have adopted policies supporting equality for gay men, lesbians, and bisexuals. [FN45]

The presence of gay, lesbian, bisexual, and transgender people of color in various spaces has had and continues to have a transformative impact. Our existence challenges beliefs and practices of religious institutions, and our participation in discovering hidden histories connected to spiritual practices contributes to a tremendous diversity of beliefs and values to guide our communities. Attention to this diversity requires consideration of the connections that spirituality has to our internal conceptions of identity. Moreover, we need to be cognizant of notions externally imposed on us even if we do not adopt spiritual beliefs. Reflecting on these connections reveals loci needing change and healing and reveals the possibilities for coalition and transformation. Among these possibilities is the potential for rethinking our conception of "religion" and the ways this reformulation can inform law.

Footnotes

[FNd1]. Assistant Professor, Albany Law School. B.S., University of California at Berkeley; M.B.A., Tulane University; J.D., Stanford Law School. Thanks to Krishna O'Neal, Frank Valdes, Donna Young, and Laura Shore.

[FN1]. See LatCrit Theory and Asian-American Legal Scholarship: A Comparative Discussion of Non-White/Non-Black Positionalities (May 3, 1997) (transcript of panel discussion on file with author) (hereinafter, Transcript).

[FN2]. Of course, this discussion covered several other topics, but from my perspective, the discussion felt like an implosion around sexuality and religion. Also, my reference to the discussion is not to say that religion should not be a factor when making comparisons and differentiating LatCrit and Asian-American legal scholarship. Finally, I do not mean to imply that the turn of events was negative. On the contrary, the discussion was an illuminating and necessary part of the project of developing a progressive jurisprudence.

[FN3]. Throughout this essay I use a variety of terms ("sexual minorities," "gay," "lesbian," "queer," and "homosexual") to refer to sexual minorities such as gay men, lesbians, bisexual and transgender people. When I use "gay" or "queer," I do so to avoid having to go through the list, but not to purposely exclude. I also intend my use of the term "queer" to correspond to Francisco Valdes' use of "Queer" with a capital "Q." Francisco Valdes, Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society, 83 Cal. L. Rev. 1, 346-50 (1995). Also, as Darren Rosenblum writes, "'The term 'queer' in its openness... suggests the truly polymorphous nature of our difference, of difference within the lesbian and gay community.... [Q]ueer includes within it a necessarily expansive impulse that allows us to think about potential differences within that rubric.' Thus 'queer' is a political category permitting both the recognition of differences and intersectionalities and expansion to a continuum of subversive people." Darren Rosenblum, Queer Intersectionality and the Failure of Recent Lesbian and Gay "Victories", 4 Law & Sex. 83, 87-88 (1994) (quoting Philip Brian Harper, Multi/Queer/Culture, in 24 Radical America 30 (1990)).

[FN4]. See generally Darren Lenard Hutchinson, Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse, 29 Conn. L. Rev. 561 (1997).

[FN5]. Transcript, supra note 1, at 2.

[FN6]. Actually, on the transcript, my remark is incoherent. I mention "invoking Christianity... explicitly... invoking the passages from the Bible." Id. The scripted notes for my part of the presentation indicate that I intended to say, "we have experienced numerous invocations of Christianity which is not predominant among Asians." I made this comment while pointing out the religious artwork on three walls of the room inside of the building that formerly housed Catholic Marianist sisters and now houses the St. Mary's legal clinic. As I recall, the walls had a depiction of the Last Supper, the Madonna and Child, and the Crucifixion.

[FN7]. See, e.g., Bowers v. Hardwick, 478 U.S. 186 (1986).

[FN8]. St. Mary's University School of Law graciously hosted the conference. The plenary sessions on Saturday took place at St. Mary's University School of Law Center for Legal and Social Justice.

[FN9]. Sansei is the third generation in a family of Japanese heritage outside of Japan. Issei, or first generation, is the generation that immigrated from Japan (e.g., my grandparents) and Nissei, or second generation, is the first generation in a family born outside of Japan.

[FN10]. Here I do not mean to take credit for the eruption that followed the panel. My own observations lead me to believe that a palpable tension existed due to a variety of factors and at some point, even without my remarks, this unexpected turn may have eventuated.

[FN11]. "Borderlands" represent both the frontiers and limits of space and the overlapping physical, social, political, and cultural spaces that we simultaneously occupy. See, e.g., Gloria Anzaldua, Borderlands/La Frontera: The New Mestiza (1987) and Eric Estuar Reyes, Asian Pacific Queer Space, in Privileging Positions: The Sites of Asian American Studies (Gary Y. Okihiro et al. eds., 1995) [hereinafter, Privileging Positions].

[FN12]. See generally Angela P. Harris, Foreword: The Jurisprudence of Reconstruction, 82 Cal. L. Rev. 741 (1994).

[FN13]. John D'Emilio & Estelle B. Freedman, Intimate Matters: A History Of Sexuality In America 91 (1988). Berdaches, or "two spirits," have been documented in many North American Indian tribes. Researchers have categorized them variously as transvestites, transsexuals, and third or fourth genders. Will Roscoe, Gender Diversity in Native North America: Notes Toward a Unified Analysis, in A Queer World 65-66 (Martin Duberman ed., 1997).

[FN14]. For example, women cannot be ordained. See The Vatican, Inter Insigniores (visited Feb. 16, 1998)<http:// listserv.american.edu/catholic/church/vatican/women.priests>.

[FN15]. See, e.g., Francisco Valdes, Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities, 9 La Raza L.J. 1 (1996); Berta Esperanza Hernandez-Truyol, Building Bridges: Bringing International Human Rights Home, 9 La Raza L.J. 69 (1996).

[FN16]. Perhaps more readily recognizing religious diversity is related to a greater sense of diversity created by language variation among Asian-American communities than that commonly perceived among Latinas/os.

[FN17]. A language barrier hindered my relationship with my grandparents. I did not have conversations with my grandparents even though as kids, we saw them at least once a week.

[FN18]. People of Middle-Eastern origin or of Islamic faith also face resistance to acceptance in mainstream American society. Racial and cultural intolerance, fueled in part by seemingly one dimensional images of Muslims as terrorists, create conditions which place Muslims well outside of mainstream American culture. See Scott Shepard, As Islam Grows in U.S., Tolerance Gradually Follows, But Mideast Crises Help Propagate Stereotypes of Muslims, Atl. J. & Const., Nov. 27, 1997, at 2D.
Islam being a religion that Americans know little about, but one whose history has been violently entwined with that of Christian Europe for a millennium and a half, it is not difficult to understand how a few violent and dramatic events can evoke emotional reactions in which half-truths, dim recollections of history, and feelings of racial and cultural antipathy take the place of an earnest quest for understanding.
Gasser Hathout, M.D., Islam and Democracy (visited Nov. 1997) <http:// www.islamforum.org/democrcy.html>.

[FN19]. The FBI arrested and detained men who held leadership positions in Buddhist churches on the West Coast during WWII on the basis that there was a greater risk of enemy contact. For instance, "[t]he association between Buddhism and traditional Japanese-ness was reinforced by the officially sanctioned paranoia during WWII in which being a Buddhist made an individual Japanese-American and his or her family more suspect in terms of presumed loyalty to the United States." Stephen S. Fugita & David J. O'Brien, Japanese American Ethnicity: The Persistence of Community 89 (1991).

[FN20]. See, e.g., Mark. L. Adams, Fear of Foreigners: Nativism and Workplace Language Restrictions, 74 Or. L. Rev. 849 (1995); Daina C. Chiu, The Cultural Defense: Beyond Exclusion, Assimilation, and Guilty Liberalism, 82 Cal. L. Rev. 1053 (1994); Mari J. Matsuda, Voices of America: Accent Discrimination Law, and Jurisprudence For the Last Reconstruction, 100 Yale L.J. 1329 (1991). At an individual level, the irony is that not all Latinas/os speak a language other than English. Yet, if a woman can pass as Latina, she may be presumed to speak only Spanish! Also note that construction of race figures in too because other immigrant communities come from non-English speaking countries, but are not similarly regarded as foreign. Also, Latina/o identity becomes raced by language given that phenotypically, many Latinas/os are not a foreign race (i.e., they may look white or black).

[FN21]. Of course, acceptance of Christian diversity is relatively recent and has its limits. But, these days, religion does not figure as much in to one's sense of self worth. See William N. Eskridge, Jr., A Jurisprudence of "Coming Out": Religion, Homosexuality, and Collisions of Liberty and Equality in

American Public Law, 106 Yale L.J. 2411, 2412 (1997). This view seems true only for mainstream Christian and Jewish denominations. Representations of fundamentalists and orthodox religions are rife with stereotypes and misconceptions, which often result in marginalization. See, e.g., Bruce Buursma, A Holy War Against the Media, Chi. Trib., Apr. 20, 1986, at A12.

[FN22]. Filipinos are ethnically diverse and include people with Spanish, Chinese, Japanese and other European heritage as well as indigenous heritage and cultural influence. In fact, Filipinos were grouped together with Mexicans and Puerto Ricans in John H. Burma's monograph first published in 1954. Burma notes, "[t]hese groups may legitimately be considered in one volume since they all share, in varying degrees, a background of Spanish culture." John H. Burma, Spanish-Speaking Groups in the United States viii (1974).

[FN23]. See, e.g., Lumpkin v. Brown, 109 F.3d 1498, 1499 (1997).

[FN24]. The National Conference of Catholic Bishops recently issued a Pastoral letter clarifying the Vatican's position on homosexuality in which the Bishops recognize that gay, lesbian, or bisexual identity is fixed and therefore parents and family of gay men and lesbians should accept their relatives. NCCB Committee on Marriage and Family, Always Our Children: Pastoral Message to Parents of Homosexual Children and Suggestions for Pastoral Ministers, in 27 Origins 1 (Oct. 9, 1997). But, the Catholic Church continues to uphold discrimination in employment, housing, and marriage. See, e.g., The Vatican, Some Considerations Concerning the Catholic Response to Legislative Proposals on the Non-Discrimination of Homosexual Persons, (June 1992) (visited Feb. 16, 1998) <http://www.odyssee.net/<<tilde>>prince/rights.html>.

[FN25]. See Eric K. Yamamoto, Rethinking Alliances: Agency, Responsibility and Interracial Justice, 3 Asian Pac. Amer. L.J. 33 (1995).

[FN26]. Id.

[FN27]. But see Vatsyayana, The Complete Kama Sutra (Alain Danielou trans., 1994) (discussing both male and female homosexuality in an ancient Hindu context).

[FN28]. Dorothy Fujita Rony, Introduction to Part Three: Sexuality and Queer Studies, in Privileging Positions, supra note 11, at 245. To be sure, this restraint around the topic of sexuality is not unique to Asian-American communities. See, e.g., Carla Trujillo, Chicana Lesbians: Fear and Loathing in the Chicano Community, in Chicana Lesbians: The Girls Our Mothers Warned Us About (Carla Trujillo ed., 1991). The silence around sexuality does not necessarily stem from prudishness. Evelynn M. Hammonds talks about a defensive strategy of silence around black women's sexuality aimed at transforming the sexually immoral image of black women. Evelynn M. Hammonds, Toward a Genealogy of Black Female Sexuality: The Problematic of Silence, in Feminist Genealogies Colonial Legacies, Democratic Futures (Jacqui Alexander & Chandra Talpade Mohanty eds., 1997).

[FN29]. Since we do not talk about it, I cannot say how long I have been "out" to my family. I have been "out" to myself in varying degrees for roughly 12 years. In spite of this silence, my family inquires about my partner and includes her in much the same way they included my male partners.

[FN30]. See Alice Y. Hom, Stories from the Homefront: Perspectives of Asian American Parents with Lesbian Daughters and Gay Sons, in Asian American Sexualities: Dimensions Of The Gay And Lesbian Experience 37 (Russell Leong ed., 1996) [hereinafter Asian American Sexualities].

[FN31]. Religion figures into the belief that homosexuality is wrong or unacceptable.

[FN32]. See Connie S. Chan, Issues of Identity Development Among Asian- American Lesbians and Gay Men, 68 J. Counseling & Dev. 16, 19 (1989).

[FN33]. Vivien W. Ng offers several Chinese words to describe male homosexuality in Homosexuality and the State in Late Imperial China, in Hidden From History: Reclaiming the Gay & Lesbian Past 76, 77

(Martin B. Duberman et al. eds., 1989). But Eric C. Wat, in describing his relationship with his parents notes, "[t]o introduce dialogue will be difficult when homosexuality is not in one's verbal or conceptual lexicon." Eric C. Wat, Preserving the Paradox: Stories from a Gay-Loh, in Asian American Sexualities, supra note 30, at 71. Lesbians in Thailand recently created a word--"anjaree"--meaning "someone who follows non-conformist ways." Took Took Thongthiraj, Toward a Struggle Against Invisibility: Love between Women in Thailand, in Asian American Sexualities, supra note 30, at 163, 164. In Hindi, "Our language does not have a word for who we are or how we feel." Sita to Radha, in Fire (Trial by Fire Films, Inc., Deepa Mehta & Bobby Bedi prods.,1996).
The silence around or denial of lesbian existence based in a male-centered culture also enables a weird kind of tolerance for lesbian relationships by creating a presumption that two women living together do so because they could not find husbands. This same mentality enabled "romantic friendships." See generally Lillian Faderman, Surpassing the Love of Men: Romantic Friendship and Love Between Women from the Renaissance to the Present (1981).

[FN34]. This notion of gay identity as Western is not universally held. Parents of Asian-American lesbians and gay men had knowledge of other lesbians and gay men while growing up and/or from their native countries. Hom, supra note 30, at 38. Among Latinas, Cherrie Moraga discusses the notion of a lesbian as "traitor to her race... Lesbianism can be construed by the race then as the Chicana being used by the white man, even if the man never lays a hand on her... homosexuality is his disease with which he sinisterly infects Third World people." Loving In The War Years 113-14 (1983).

[FN35]. See Jennifer Ting, Bachelor Society: Deviant Heterosexuality and Asian American Historiography, in Privileging Positions, supra note 11, at 271.

[FN36]. See Mona Oikawa, Locating Myself within Histories of Dislocation, in Privileging Positions, supra note 11, at 265.

[FN37]. See Ng, supra note 33, at 29.

[FN38]. See Vivien W. Ng, Looking for Lesbians in Chinese History, in The New Lesbian Studies: Into the Twenty-First Century 160 (Bonnie Zimmerman & Toni A. H. McNaron eds., 1996) [hereinafter New Lesbian Studies].

[FN39]. See AIDS Bhedbav Virodhi Andolan (ABVA), Homosexuality in India: Culture and Heritage, in A Lotus of Another Color: An Unfolding of the South Asian Gay and Lesbian Experience 21 (Rakesh Ratti ed., 1993).

[FN40]. Id. at 29. By offering these examples, I do not mean to infer the existence of a gay identity as we experience identity now. Rather, I offer them as examples of same-sex relationships that may have been acknowledged and perhaps tolerated by other members of the communities.

[FN41]. See Susan Beaver, Gays and Lesbians of the First Nations, in Piece of My Heart: A Lesbian of Colour Anthology 197 (Makeda Silvera ed., 1991); see generally Will Roscoe, The Zuni Man-Woman (1991).

[FN42]. See Lourdes Arguelles & Anne M. Rivero, Queer Everyday Life: Some Religious and Spiritual Dynamics, in New Lesbian Studies, supra note 38, at 177.

[FN43]. Id.

[FN44]. See ABVA, supra note 39, at 22; see also id. at 19 (photograph).

[FN45]. See, e.g., Resolution A-71 of the 1976 Convention of the Episcopal Church, available in <http://www.religioustolerance.org/hom_epis.htm> (visited Mar. 27, 1998) ("[T]his General Convention expresses its conviction that homosexual persons are entitled to equal protection of the laws with all other citizens, and calls upon our society to see that such protection is provided in actuality.").

29. Elizabeth M. Iglesias [FNd1] and Francisco Valdes, [FNdd1], *Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas,* 19 CHICANO L. REV. 503 (1998)

Introduction

This symposium marks and celebrates the Second Annual LatCrit Conference, which took place in San Antonio during the 1997 Cinco de Mayo weekend. Being only the second time that this gathering had occurred, we arrived at the conference with the satisfaction that the diverse, self-selected scholars participating in this latest intervention in critical legal scholarship had managed a key act of continuity: we had managed to begin a tradition of annual gatherings. [FN1] The event was energized by the open-endedness and aspirational *505 dimensions of our community-building as much as by the evolving contours of the intellectual project that brought us together then and continues underway.

As with the first LatCrit conference the year before, this gathering took on a life of its own. Though the formal program provided a frame for our work in both instances, it could not contain the energy of these events. As with our first gathering a year earlier, this conference occasioned unexpected and difficult encounters with issues that undeniably are central to LatCrit theory's emerging agendas. [FN2] Our purpose in this Afterword is to explore the substantive, theoretical and political concerns underlying these encounters by focusing primarily on the essays published in this symposium: these essays were inspired by and reflect the live events that transpired at the LatCrit II conference, events that deeply affected and engaged everyone fortunate enough to have been there. These essays thereby provide an example of, and a valuable springboard for exploring the parameters of possibilities and problematics that confront LatCrit theory in its efforts to define and promote social justice agendas in and through the production of critical legal scholarship at this particular point in time. [FN3]

At the same time, this Afterword does not attempt to produce a comprehensive review of the symposium's essays or contents; this task is taken up in the Foreword that opens this symposium and in the introductions that open the three clusters of essays. [FN4] Nor do we seek to revisit and recount our (or any other) view of the conference's live proceedings; this backward-looking task threatens to eclipse forward-looking dialogue and substantive critique with an inconclusive and unproductive competition of subjective recollections. *506 Instead, we approach this Afterword as an opportunity to reflect on the advances, both theoretical and political, that were made at the LatCrit II conference, to suggest some lessons we think can and should be drawn from the conference proceedings and surrounding events as reflected in these essays, to map out new areas of substantive anti-subordination inquiry that have emerged from our collective efforts to create a LatCrit intervention in legal scholarship, and to nurture a diverse and lively LatCrit community of critical legal scholars committed to the theory and practice of transformative anti- subordination politics.

This is not to say that we--the Afterword authors--are of one mind on all the controversies raised by the conference proceedings as reflected in this symposium. Like all individuals, we approach these questions from our own distinct, individual, internally-conflicted, but often overlapping, positionalities. These differentiated positions mean that we often interpret and evaluate events, ideas, and projects from different perspectives--even as our common interest in and commitment to the social justice values around which

we aspire to contribute to the LatCrit project of consolidating an intellectual movement and constructing a nurturing community of scholars has allowed us to experience repeatedly the power of dialogue and friendship in the struggle to understand these differences, to rethink our assumptions, to modify our priorities and, ultimately, to transcend our contingencies through the resolution of our perceived or actual differences. Thus, while our anti- subordination "bottom line" has often turned out to be similar, those similarities may tend to obscure marked differences in our interpretive processes. These differences are worth acknowledging at the outset for what they suggest about the ways that contrasting perspectives can converge at the same anti-subordination conclusions for varied reasons, even as they remind us how "difference" can be elided if we focus only on the bottom line. In acknowledging our differences of position and perspective we hope to highlight, in a performative manner, the importance of community and friendship to the success of LatCrit theory as an anti-subordination project.

Obviously, critical theorizing and coalitional politics can proceed without friendship, but the aspiration to build a scholarly community while recognizing the values of friendship and solidarity requires much more work, with much higher pay offs, than merely strategic alliances. Though both types of alignments may have anti-subordination value depending on circumstance, the important point for us here is that our analysis, both in this Afterword and at all times, is not focused exclusively or even primarily on the existence or experience of difference as such. We strive instead to configure our encounters with difference as occasions for the self-critical exercise*507 of LatCrit ideals, values and objectives by fostering constructive engagements with multiple and fluid diversities in the collective project of producing transformative anti-subordination theory and praxis.

We therefore address the works published in this LatCrit symposium with the same methods, concepts, techniques and politics espoused in LatCrit theory's previously published record. [FN5] That record evinces a multifaceted concern for the production of critical knowledge, for the cultivation of multiply diverse communities, and for the creation of egalitarian coalitions in the service of material, anti-subordination transformation. We thus endeavor in this Afterword to articulate a critical and self-critical analysis of LatCrit theory as anti-subordination scholarship; we invoke, and practice internally, the sort of anti-subordination analysis that serves as the substantive aim and anchor of LatCrit theorizing.

To that end, we focus initially on two substantive topics that, as this symposium reflects, were joined at LatCrit II with particular vigor: religion and sexuality. More specifically, we focus on the social and legal operation of religion and sexuality within and among Latina/o communities, as well as its impact on Latina/o relations with other outgroups in the United States and globally. [FN6] The exploration of this intersection can be particularly fruitful because religion and sexuality represent especially explosive fields of human experience and interaction. Yet the anti-subordination implications of this intersection are virtually unexplored in outsider jurisprudence. The joinder of religion and sexuality at LatCrit II thereby opens routes toward a fresh point of entry for critical analyses of law and allows an early--and hopefully constructive--outsider analysis of the way this convergence engenders both possibilities and problematics for LatCrit theory and the multiply diversified communities that we purport to aid through our social justice activism and legal scholarship.

Before turning to those issues and their relevance to LatCrit theory it bears emphasis that LatCrit II's discursive eruptions--as reflected in this symposium--properly

are understood as a vital feature, and a strength, of the LatCrit conferences: this conference, like LatCrit I before it, produced lively and unanticipated forays precisely because LatCrit theory is committed to creating occasions for the engagement of difficult yet pending issues. [FN7] The theory about *508 critical legal theory that underpins LatCrit theory calls for personal facilitation and collective accommodation of such moments. [FN8]

On the other hand, the value of the eruptions indulged at scholarly anti-subordination conferences, and hence the in/appropriateness of their embrace at future LatCrit gatherings, should be measured by the degree to which they enlarge analytical perspectives, increase LatCrit solidarity, and enable us to understand more clearly the different interests, perspectives and normative imperatives that converge in our mutual, distinct but overlapping battles against various and intersecting forms of subordination. Thus, our objective is to suggest ways of cohering LatCrit theory's application of anti-subordination values by exploring, in a self-critical way, the broader significance of our discourse at LatCrit II and in this symposium. In this way, we hope to advance the development of LatCrit legal scholarship as an intervention designed specifically to produce knowledge that furthers the struggle for community and against subordination--even as we acknowledge and engage the complexities and controversies of the still-evolving LatCrit community.

This final point is the key to this Afterword. In our view, the development of LatCrit theory to date points to anti-subordination principles and practices as the basic measure of our work's integrity. To ensure the integrity of our discourse and community, as prior LatCrit scholarship has taught us, we must be self-aware, self-vigilant and self-critical. We therefore employ this Afterword to engage and highlight LatCrit scholarship as a form of, and a path toward, critical and self-critical anti-subordination theory and praxis. To do so, the Afterword divides into three parts.

Part I focuses specifically on developing a critical account of the role of religion in LatCrit practice and legal scholarship. In articulating what an anti-essentialist, anti-subordination stance toward religion is likely to entail in the context of LatCrit theory, we urge and proceed to illustrate the value of a two-tiered analytical approach, which grounds its reconstructive energies in and around insights developed in and through the practice of deconstruction. Deconstruction, we urge, is more than fad: as a critical methodology for revealing the disjunctures of justice and power, it is a fundamental *509 prerequisite to a reconstructive engagement with religion precisely because the tendency toward essentialism is so routinely operative in the deployment of religious meanings and in mainstream accounts of the role of religion in Latina/o communities. This essentialism is reflected in discourses that center Roman Catholicism as definitive of the way religion is organized in Latina/o lives; it is reflected in discourses that center and sentimentalize the mystical and spiritual dimensions of personalized religious experience without engaging the institutionalized social power and political agendas through which organized religion has sought to promote and coercively impose its vision of morality; and it is reflected as well in discourses that invoke religion, but obscure contextual particularity and ignore the complex and enduring interpretative struggles reflected in the internal contestation over theological meanings. In this Part we conclude that religion, like any other social or political force or institutional arrangement, must be analyzed in terms of and engaged on behalf of the anti-subordination commitment that unifies the LatCrit movements' multiple diversities--with critical attention focused on whether and how religion's historical and contemporary agendas tend to promote and/or obstruct the

liberation struggles and anti-subordination imperatives that have coalesced in and around the LatCrit movement.

In Part II, we take up the question of sexualities, otherness and community in LatCrit theory, focusing particularly on the operation of sexual orientation diversities in the construction of LatCrit anti-subordination theory--as well as mapping out the multiply contested legal sites where the regulation of sexualities is interconnected with the hegemonic privileging of the male- dominated nuclear family. The purposes of this analysis are to mark some feminist and Queer intersections within LatCrit theory, and thereby to display the importance to LatCrit scholarship of multidimensional and interdisciplinary, as well as transnational, critiques that can aid our collective and individual appreciation for, and assessment of, competing claims about dis/empowerment. Continuing to emphasize context, particularity and anti-subordination purpose, this part of the Afterword elucidates specifically why LatCrit theory and heteropatriarchy [FN9] are fundamentally incompatible contructs--regardless of whether heteropatriarchy is embedded in and propagated by secular or sectarian forces and institutions.

In Part III, we map out multiple sites where LatCrit aspirations to move beyond all forms of essentialism have revealed new anti-subordination problematics and possibilities. While the preceding *510 parts employed chiefly religion, gender and sexuality to articulate an anti-subordination critique in LatCrit theory, this part highlights the status and progression, within this symposium, of inter- and intra-group issues that emanate from race, ethnicity, colonialism and language. Like any other pressure point, these points of potential conflict represent opportunities for the kind of explosive and enlivened creativity that we hope will help constitute new fields of conceptual breakthroughs, as well as new forms of cooperative interaction and increasing interconnection between different groups and individuals. This part consequently highlights advances made at LatCrit II as well as some of the issues that those advances hold in store for the next wave of LatCrit discourse.

Furthermore, because we believe that the "economic tour" of San Antonio that was incorporated into the formal program at LatCrit II represents an appropriate instance and significant expression of LatCrit commitments to the inclusion and engagement of particularity as anti-subordination method, [FN10] we devote the concluding portion of Part III to sketching issues of class and poverty in LatCrit theory. The economic tour of the local communities in San Antonio underscored, in many ways, the fact that Latina/o poverty and marginalization look and are different in different places throughout this country. By acknowledging and engaging the particularities of Latina/o poverty through these and other programmatic means, LatCrit conferences can manifest and strengthen LatCrit efforts to bridge theory and practice, even as we enlarge our collective understanding of the various ways in which economic marginalization has been organized in different parts of the country. This type of event, through its self-conscious engagement of the localities in which we hold our conferences, is a valuable step toward bringing into sharper focus the points at which local political and economic formations intersect with different historical processes of migration, conquest and/or assimilation endured by different Latina/o communities, as well as the material consequences of the differential treatment these communities have received from those in control of the United States government at the relevant moments in these histories.

The Afterword, in sum, surveys and critiques emergent LatCrit social justice claims and agendas to situate these developments within the short but growing record of

the LatCrit movement. This careful but caring consideration has instilled within us a deepened appreciation for the possibilities enabled by the LatCrit commitment *511 to an anti-subordination, anti-essentialist engagement with the particularities of multiple liberation struggles-- possibilities reflected in the rich and multi-layered encounters with difference at LatCrit II. The benefits of our collective commitment to searching out and centering experiences and identities that power renders otherwise invisible we hope will increasingly enable the LatCrit movement to enjoy the intellectual, political and spiritual benefits of participating in genuinely creative new encounters on behalf of social justice for all.

I. Mapping the Power of Faith: The Role of Religion in LatCrit Theory as Anti-Subordination Legal Scholarship

This symposium shows that Professor Keith Aoki was quite prescient when he observed after LatCrit I that "issues of religion and spirituality are submerged not far below the surface of emerging" LatCrit scholarship. [FN11] As the cluster of essays devoted to religion and LatCrit theory in this symposium attest, these issues promptly rose to the surface at LatCrit II. A truly remarkable feature of this cluster is that religion appeared no where on the planned program of the LatCrit II conference; these essays reflect the vitality and spontaneity of LatCrit convocations while advancing a collective LatCrit engagement of issues rooted in our divergent experiences with religion and perceptions of spirituality.

The essays in this cluster by Professors Valencia [FN12] and Hartigan [FN13] promote a view that one religion in particular--Roman Catholicism-- is an especially salient, if not central or constitutive, feature of Latina/o life in this country as well as abroad. This religion's role in the creation and positioning of Latina/o communities in this culture and others is cast in both historical and contemporary terms as a complex, but ultimately affirming, force. Furthermore, this religion's affirmative features are depicted in both personal or individual as well as institutional or professional terms. Roman Catholicism, though acknowledged to represent a multifaceted phenomenon, is cast ultimately as a proper object of LatCrit embrace as both an institution and a set of beliefs.

The essays by Professors Ota [FN14] and Sanchez, [FN15] on the other hand, approach the role of religion and spirituality within LatCrit theory in more expansive of catholic terms: rather than focus on any one religion, or on Roman Catholicism specifically, they project a critical approach to the operation of organized religion in and among traditionally subordinated communities. By invoking the coexistence of diverse religious traditions among Latinas/os, including not only Roman Catholicism but Santeria and other traditions, this critical approach effectively urges a comparative perspective in LatCrit analyses of religion and spirituality. This comparative approach is not limited to comparative religious traditions within Latina/o contexts; it also extends across national boundaries and cultural realities. Finally, these essays argue for a nuanced critique of all religious forces, including their consequences in a civil society purportedly devoted to social justice.

Combining key elements found in these two pairs of essays is social scientist Max Castro's consideration of the Roman Catholic Church specifically in Cuba, and in the context of the recent papal visit to that land. This essay critically examines Roman Catholicism's role in Cuban history and tradition. [FN16] This essay addresses first the mixed record of Roman Catholicism's impact on Cuban life, which includes support for

social hierarchies based on class, race and culture in the form of Church traditionalism as well as resistance against hierarchical oppression through the more recent insurgency of liberation theology. The essay additionally assesses Roman Catholicism's formal, historical influence in Cuban culture against the popular influence of other religious beliefs, in particular Santeria. On balance, this essay concludes, the Roman Catholic Church can be made to operate as a unique institutional resource for anti-subordination efforts.

This cluster of essays thus illustrates, but does not exhaust, the broad range of possible analyses and positions regarding religion and spirituality in LatCrit discourse; they commence an exploration of religion and spirituality hitherto lacking in outsider legal scholarship. The common themes embedded in, or suggested by, these various essays thereby mark potential sites for LatCrit analysis of the theoretical, social and political connections between religion and liberation. These themes, and how LatCrit theorists articulate their complexities and implications in the coming years, will help to determine *513 whether the intersection of law and religion becomes, in fact, a site of anti-subordination theory and action.

As we begin our exploration of these and other themes raised by this symposium relating to religion, LatCrit theorists must pause to appreciate the nature of the undertaking. Religion long has been claimed as an especially integral aspect of Latina/o family and national life, both within the United States and beyond. [FN17] This claim is supported by considerable corroboration in this symposium. [FN18] But the question for LatCrit theory goes beyond acceptance of master narratives about any existing social condition; the question is whether any existing social condition is a source of empowerment or disempowerment--of liberation or subordination--for Latina/o and other marginalized communities.

A. Anti-Essentialism, Anti-Subordination (Again)

The first theme presented by this cluster of essays is the operation of religion in the lives of subordinated communities on at least two levels simultaneously: institutional or formal and personal or idiosyncratic. For instance, the Castro essay discusses the impact of Roman Catholicism as a key, institutionalized source of social, economic and political power in Cuban society [FN19] while the Valencia and Hartigan essays oftentimes focus on those authors' personal experience with their religion and on the dissident members of the Roman Catholic Church that in part sustain these authors' faith in that organization. [FN20] As a set, these essays depict religion both as an enduring structural aspect of social life as well as a strikingly individuated human experience. They thereby counsel careful and critical attention to particularity in order to help theorize the different possibilities and problematics of each.

Related to this first theme is a similar tension between religion as theory and as action. The theory of Roman Catholicism, both Hartigan and Valencia assert, champions the interests of the subordinated; *514 yet their invocation of liberation theology and other dissident forces to illustrate the practice of such theory indicates a disjuncture between words and deeds at the organizational level. [FN21] The implicit juxtapostion of liberation theology and other dissident voices against the official apparatus of the Roman Catholic Church suggests that the Church's official anti-subordination theory is practiced more faithfully by the pockets of liberation dissidents that exist at the margins of the Roman Catholic church's formal tenets, organs or programs both in the United States and

abroad. This configuration of volatile variables under the rubric of religion or "Christianity" or "Roman Catholicism" illustrates, at the very least, that this church's institutional practices may diverge from its formal doctrines, even as both coexist with the dissident beliefs and practices of liberation theology.

As a set, the symposium essays presented in the religion cluster consequently remind the LatCrit community of basic and indispensable postmodern lessons: religion is not any one stable force across the vagaries of time and place. As the essays illustrate, religion encapsulates both the oppression practiced by Roman Catholicism's authoritative apparatus, as well as the resistance against such oppression mounted by dissident forces within that Church. Moreover, as the Ota essay displays most prominently in this symposium, religion encompasses manifold religious or spiritual heritages, both within and beyond Latina/o communities, including non-Judeo-Christian ones. [FN22] Essentializing religion into a single faith, or essentializing a single faith into a monolithic phenomenon, are mistakes of contemporary legal analysis already noted in so many other critical legal works that, at this point, we must consider them elementary in the articulation of LatCrit theory. [FN23]

These observations about the anti-essentialist foundations of LatCrit theory, if taken seriously, demand that LatCrit theorists recall the ultimate aim and purpose of our work: the promotion of anti-subordination transformation as a material bottom line. [FN24] Anti-essentialist approaches in critical legal scholarship are closely related to anti-subordination principles because anti-essentialism has been a means of securing discursive space for voices and interests that mainstream preferences and projects tend to overlook or marginalize; this claim to space and visibility, in turn, allows outgroups to conceive, articulate, and organize anti-subordination projects. To benefit from preceding outsider advances, LatCrit theorists must apply critical, anti- essentialist lessons to ensure that religion is in fact an anti-subordination force in everyday life--or, alternatively, to aid mobilization of resistance against any imposition of subordination in the name of any religion or any other construct. The "religion controversy" of LatCrit II, as reflected in the essays published here, thereby serves as an indirect yet dramatic reminder of baseline lessons: LatCrit theory must take care to recognize and interrogate the nuances and the effects of all forces identifiable as "religion." Anti- essentialism and anti-subordination principles require that LatCrit analyses of religion, as with all hierarchies of social power, be consciously critical and self-critical. [FN25]

B. Detecting the Bottom

One method of ensuring critical vitality is to focus critical analysis on the most vulnerable segments of the communities that LatCrit theorists profess to serve, and to do so cognizant of the past construction and present conditions of those communities. This method teaches outsider legal scholars to examine carefully and *516 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 anti- subordination theory makes sense because "the bottom" is where subordination is most harshly inflicted and most acutely felt. [FN26] Thus, when LatCrit theorists examine any particular religious belief--in both its material and theoretical dimensions--we must take affirmative care to consider how the beliefs and practices of all "religions" actually affect existing patterns or distributions of power and privilege within, among and beyond Latina/o communities.

Looking to the bottom, however, is not the same venture as racing to the bottom; the former calls for a constructive focus on targets of concentrated subordination to inform the development of a reconstructive and transformative jurisprudence while the latter describes a destructive rush into competition over comparative victimhood. By "looking to the bottom" we strive only to ascertain how power structures relations of privilege and subordination within any given context so that the most vulnerable and marginal within that particular context are never left behind by our critical analysis and political interventions. This critical and self-critical stance is fundamentally different from the notion of racing to the bottom, which entails uncritical, abstract and often essentialistic assertions of quantitative or qualitative victimhood in competition with other claims of subordination. We reject such a race because it abdicates any responsibility for or commitment to the actualization of objective justice--defined here as the production of social justice for all. Indeed, by pausing consciously for contextualized inspection of the relative positions of privilege and subordination that are organized by and around the various issues raised during LatCrit II, we seek to illustrate in concrete terms the unique challenge LatCrit theory confronts: to organize its coalitional politics and theorize its anti-subordination agenda 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. [FN27]

At the same time, the detection of subordination or "the bottom" can become a contentious and contested matter. A devout Roman Catholic's insistence on deploying church resources to promote patriarchy generally, and specifically to restrain legal recognition or individual availment of reproductive rights, is "faith" to some and oppression to others. [FN28] The Roman Catholic Church's international campaign against formal, much less actual, equality for sexual minorities [FN29] similarly is perceived or described in varied, and mutually opposing, ways. [FN30] Given such conflicting perspectives, *518 how should "the bottom" be identified--how should LatCrit theorists engage this apparent dilemma? [FN31]

The first step, in our view, is to recall and marshal the strong LatCrit norm favoring respect for difference and diversity within our incipient community of scholars. [FN32] LatCrit theorists must take special care to balance competing or conflicting experiences, preconceptions or tenets against the bottom-line anti-subordination objectives of our movement. We must take care to distinguish aspects of personal experience, preference or agency against the needs and functions of our work in this particular place and time, and in light of the ways in which Latina/o and other outgroup communities presently are structured. We must exercise great caution not to invoke personal experience or sentiment in ways that devalue or marginalize group histories. We must, in short, decenter our personal predispositions and take a hard look at the effects that all "religious" practices visit on the most vulnerable members of the relevant categories, and even more so on the effects of our interventions in the extant status quo as organized around those categories. [FN33] The second and related step is to be always cognizant of ideology-- even the forms that we tend to favor--and to inspect ideology's systematized re/production of predictable patterns of hierarchy within or among the relevant groups or categories of analysis. *519 Thus, rather than approach social and legal phenomena as random or individuated dots in a landscape, LatCrit theorists must inquire critically how relevant forms of ideology instill and institutionalize stratification. We must furthermore inquire how such stratification structures opportunity and

distributes social and economic wealth for the benefit of some and to the detriment of many.

At the very least, this line of inquiry eventually but certainly leads the critical analyst to the proximate vicinity of "the bottom" within or among the relevant categories because these questions can help us distinguish among the insiders and outsiders that inhabit the categories under inspection. This line of inquiry additionally induces analysis sensitive to context and history, and to the particularity of systemized power relations in all situations. In this Afterword we apply this line of inquiry to situate and advance LatCrit theory-- within the context of this symposium--as a form of anti-subordination legal discourse.

For example, "Latino" culture is repeatedly reported to constitute an especially virulent "macho" environment, and it is against this particular cultural status quo that we locate our interpretative encounter with religion as cast in the Valencia and Hartigan essays. These two essays invoke the image of the Virgen de Guadalupe to articulate the significance of Roman Catholicism to Latinas/os, deploying narratives in which the inspiration to persevere and survive the violence of poverty is organized around the adulation of, and devotion to, this particular Virgin. To be sure, veneration of the Virgin Mary has been a powerful force in the construction of transcultural meanings and values, and in the more specific but highly complex conception and organization of the socio-political roles of Latinas/os around the globe. [FN34] But these narratives make no effort to examine critically how the cult of the Virgin Mary has operated across time and space--from Medieval Europe to the New World, and throughout Mexico, Cuba, Puerto Rico and everywhere that the veneration of the Virgin Mary is culturally dominant. [FN35] Nor, additionally, do these essays undertake a critical examination of this Virgin's symbolic power, and how it is deployed by religiously or socially dominant forces simultaneously to rationalize and mystify the suppression, repression and persecution of female agency and sexuality. These two omissions represent serious lapses because they *520 overlook how religious doctrine operates as a form of ideology that can engender inequality and create "the bottom" of categories gendered in part by religion and its symbols.

LatCrit anti-subordination methodology counsels a more critical and contextualized analysis of this Virgin and the ideology that constructs and sustains her symbolic power and cultural effects. Through the doctrine of the Immaculate Conception--the doctrine that bestows upon Mary the title of Virgin due to the virgin birth of Christ--Mary was spared the stain of original sin. Under the calculus of this doctrine, only a woman without sin could be the mother of God and only a virgin could be without sin. Thus, even as the image of this Virgin is elevated and venerated, the embodied human woman is devalued, despised and degraded in her failures to measure up to this image of gendered perfection. The control of women's agency, sexuality and virginity by men, even God's men, therefore is not simply an ecclesiastical matter; control of female agency, sexuality and virginity has been claimed and exploited by men to control and exploit women physically, politically and economically in both Latina/o and other cultures. [FN36] The merger of secular and sectarian power in the hands of men thus has been used throughout history and is still used today to cast women, including Latinas, sharply either as virgins or whores, thereby constructing and sustaining an environment of androcentric control over both "public" and "private" spheres of human life, an environment that in design and effect curtails opportunities for women and aggrandizes them for men. [FN37] The failure to contextualize the image of the Virgin in its socio-

cultural situation therefore causes these narratives to neglect considering how this image helps, among other effects, to perpetuate gender stratification within Latina/o communities precisely because they pay fealty to Roman Catholic beliefs. The uncritical nature of the narratives about the Virgin's role in Latina/o culture effectively transmutes these essays into accomplices of male supremacy in the name of religion.

To detect and intervene on behalf of those at the bottom, as these essays show by omission, LatCrit theorists must contextualize critical analysis by accounting for patterns of domination and subordination in the organization of social power among Latinas/os and other multiply diverse populations. To engage religion from an anti-*521 subordination and anti-essentialist perspective, LatCrit theorists must examine critically how religion affects women's lives in relationship to men's lives, and how it affects white or middle-class or Anglo- American or heterosexual women's lives in relationship to black or Asian, indigenous or Latina or poor or lesbian women's lives. This sort of multidimentional interrogation is precisely what it means to account for gender, race, ethnicity, class and sexual orientation in the articulation of LatCrit theory; this sort of interrogation is precisely what it means to apply the lessons of postmodern analyses and outsider jurisprudence in LatCrit theory.

C. Locating LatCrit Analysis in the Material Realities and Historical Antecedents of the Here and Now

As illustrated by the forgoing examples, locating "the bottom" in a multiplicitous and intersectional world can become an exercise in ambiguity and contestation, a possibility exacerbated by uncritical and decontextualized approaches to LatCrit theory. The antidote is interdisciplinary, transnational, anti-essentialist analysis, requiring us to sift through the record of knowledge already adduced across boundaries of discipline, culture and perspective. [FN38] We must incorporate into our anti-subordination frameworks the personal experiences and the insights that inform them to sharpen, not dull, our capacity for critical understanding of the larger record of comparative knowledge also available to us. [FN39] We must focus on how "the bottom"--though variegated--is concretely constructed across different places and times given the actual particularities of the social, legal, political or ecclesiastical contexts under analysis. We must, in short, assemble and contextualize, as best as our conditions permit, the record of experience, and interrogate that record with all of our critical capacities, to imagine and devise compelling means of rectifying the material legacies of past or present social injustices.

To do so, we must start at the beginning; we must focus ourselves on the cultural, temporal and spatial context in which our *522 analysis takes place: the United States at the millenium. [FN40] Bringing to bear insights that might include, but must be based on, a record more expansive than uncritical anecdotes, we must examine the organization and allocation of opportunity and equality in this country at this particular time. Observing the relative positions of competing religious beliefs in, and their effects on, this context, it becomes quickly obvious that the United States today and historically represents an undeniably Christianized culture; though the Constitution forbids the formal establishment of any religion as the state's formal creed, the Constitution also commands the state to respect the exercise of religious beliefs. [FN41] Today, the state accommodates religious exercise to a significant degree, [FN42] and due to the legacies of a complex history, it accommodates Christian practices more so than indigenous or

other non-Western religions. [FN43]

To start at the beginning of Western Christianity's religious, material and ideological dominance over the land now claimed and governed by this country, we note a coincidental but telling irony: that the site of LatCrit II--San Antonio, Texas--was conquered and appropriated from indigenous peoples by the Spanish crown in the name of Roman Catholic beliefs and imperatives. [FN44] Indeed, its very name continues to project that history and its continuing legacies of power and oppression. This exemplar of Christianity's effects on this continent therefore helps set the stage for an anti-subordination analysis of the status quo that since then has been normalized and coalesced into virtual permanence.

As a result of this history, Christian churches, as a group, today operate fully as part of this society's establishment. And, like the rest of the national establishment, their possessions and activities permeate contemporary secular life: homage to their god is imprinted in the nation's coinage and expressed as the nation's motto, [FN45] their prayers are recited in multiple socio-cultural settings and intoned annually to convene the nation's representatives in Congress, [FN46] their (untaxed) properties stretch from coast to coast and occupy prime land valued at billions of dollars, [FN47] their messages and images fill the public's airwaves from dawn to dawn, [FN48] their sectarian holidays are promoted by businesses as economic events and celebrated by laborers as paid time off, [FN49] and their dogmas and doctrines are invoked by the tribunals and lawmakers of the land to justify juridical and legislative acts of law and policy. [FN50] Moreover, Christian groups are visible and vocal in, and they aggressively strive to influence the outcome of, current public policy debates that range from *524 presidential elections to state or local referenda. [FN51] Thus, in myriad ways and due to numerous circumstances, Christian religious influence over this country and its laws is awesome, and it is exercised routinely and systematically to promote a particular view of the world. Given the totality of historical and present circumstances, the cumulative effects of Christianity on this land cannot credibly be said to represent egalitarian respect for difference, or sincere accommodation of diversity on any of the points implicated by the recorded dogma of the various churches spawned by Judeo-Christian imperatives.

As the essays in this symposium by community activist Luz Guerra and author Antonia Castaneda jointly remind us, [FN52] a ready and enduring example of Christian intolerance is the Roman Catholic Church's leading role in the colonization specifically of this continent: the properties, families and cultures of the peoples indigenous to this land were plundered, divided and persecuted in the name of Christian dogma by imperialist powers that neither knew nor wanted any separation of church and state. In particular, Roman Catholic and/or Christian royalty and clergy collaborated mightily to seduce or subdue, and ultimately to erase all traces of, indigenous civilizations and their traditions, including religious ones. [FN53] While understanding that Christian missionaries sought to save indigenous souls around the world (regardless of the cost to those souls), and understanding that this global history is more complex than this Afterword *525 possibly could reflect, critical candor nevertheless compels acknowledgment that the net effects of Christian presence in this and other non-European continents have been decidedly imperial: Christianity as an institution repeatedly has aided secular campaigns to claim, domesticate and "detribalize" sovereign indigenous cultures. [FN54] Time and again since then, Christian religions--and perhaps most egregiously Roman Catholicism--have expressed their power and purpose in manifold forms, using their accumulated social stature and influence to effectuate biases and

pursue agendas that tend to increase the wealth and prestige of the European male (heterosexual) elites that invaded this continent half a millenium ago. Despite any self-serving verbiage to the contrary, Christian missionary zeal indeed has operated willingly as an arm of European invasion, conquest and hegemony as well as paving the way for brutal exploitation of indigenous peoples in the twentieth century. [FN55] In this instance, religion and its preferences in ideology therefore represent and reinforce more than androsexism; they additionally and synergistically advance eurocentrism.

Similarly, the history and legacy of organized religion in this context represents the introduction into this continent of compulsory heterosexuality--the edict that commands and extracts the surrender of individual agency in the formation of intimate bonds in the name of Christianity's seemingly insatiable appetite for procreation. Thus, the Roman Catholic missionaries that arrived on this land centuries ago set out to harness and reduce sexual connection to a means over which they and their sectarian ideology would lord: a means toward literal reproduction rather than toward human connection and mutual fulfillment. To do so, those missionaries labored systematically to destroy native customs of sexual equanimity, including the pansexuality that flourished among numerous indigenous nations at that time and that accommodated with respect and dignity same-sex as well as cross-sex unions. [FN56] Moreover, this homophobic *526 hierarchy of values and icons forcibly imposed and continues to inform and permeate the dominant psyche and axioms of this society and its laws in the repressive regulation of same-sex intimacies and families. [FN57] Therefore, Christian institutions and ideologies rightly are held critically accountable both for the brutal imposition of heterosexism as well as for their continuing avid participation in the continuing prevalence of heterosexist supremacy in this place and time.

It bears emphasis that the status quo begun long ago continues to fuel today's enforcement of material and political stratification via the combined interests and forces of Eurocentric, heteropatriarchal sectarian and secular elites. [FN58] As with the continuing effects of this nation's early decision to institutionalize racial slavery, the lands arrogated and the labor exploited by Christian-identified invaders during formative times and since then have created and entrenched a resilient and unjust political economy that prevails even today. This economy employs race, ethnicity, class, gender and sexuality to help construct religion, and in addition employs religion to buttress social privilege that hinges on race, ethnicity, class, gender and sexuality.

Finally, LatCrit scholars need only trace the ebb and flow of religious referents in the constitutions and legal systems of different states in Latin America and throughout the Third World to discover and begin assessing how religious discourse operates even today to facilitate the mystification of socio-political hierarchies, the denial of fundamental civil and political human rights and the consolidation of repressive authoritarian regimes. [FN59] Thus, the domestic histories and *527 legacies of subordination, coupled with the transnational and transcultural sweep of dominant religious organizations today, establish worldwide ambitions for sectarian ideologies that intentionally and simultaneously stratify men over women, Europeans over natives and straights over Queers. Organized Christian groups eagerly have rendered themselves adjuncts of the unjust hegemonies that still reign supreme in the United States and globally: androcentric, eurocentric, and heterocentric supremacies. The political mobilization of the Christian right in this country, which seeks to reimpose "traditional values" precisely to preserve such stratification, [FN60] furthermore makes attention to these historical and contemporary effects of religion, and to their domestic, cross-cultural

and international comparisons, particularly pressing for anti-subordination theorists and activists at this time of backlash and regression. But to detect and aid "the bottom" of these intersectional and international categories of experience and opportunity, an analytically rigorous and intellectually honest LatCrit approach to religion must not only reckon with this record and its legacies, it must develop and deploy the strategic methodologies that will enable us to craft viable means of reclaiming religion as an affirmative force in the continuing quest for social justice across particularities of time and place.

D. A Two-Tiered Framework for Engaging Religion in LatCrit Narratives and Theory

This context and history advises that a critical anti-subordination engagement of religion in LatCrit theory necessarily would incorporate (at least) two steps of analytical development. This advice is highlighted by Professor Leslie Espinoza's essay, [FN61] which points out that LatCrit theorists in all instances face a two-sided task: first, recognizing oppression and, second, overcoming it. [FN62] To do so, *528 LatCrit theorists must employ a two-tiered framework for engaging religion, or any other force, in LatCrit scholarship.

The first step is deconstruction--unpacking the ways and means of religion's historical and contemporary deployment to import and maintain social injustice along racial, ethnic, class, gender and sexual orientation lines. The second step is the act of reconstruction--reconceiving religion in egalitarian ways that avoid or minimize social injustice based on perceptions or realities of difference and diversity. From the deconstructive process thus follows the ultimate task of outsiders' jurisprudential work--building theory in the search for justice. [FN63] This two-step framework is the mimimun required to vouchsafe the integrity of LatCrit theory's approach toward religion because it is designed to check an uncritical redeployment of existing power hierarchies. [FN64] Efforts to circumvent or truncate either step, whether witting or not, endanger LatCrit theory's capacity for the careful blending of "sophistication and disenchantment" [FN65] that outsider legal scholars already have shown is indispensable in avoiding lopsided or undisciplined anti- subordination theorizing.

This two-tiered framework for engaging religion in LatCrit theory of course tracks the stages of development already identified among other strands of outsider scholarship, and it also brings into sharp relief the important epistemological and political role of "stories" in various strains of contemporary critical legal theory. [FN66] Accordingly, this general framework includes as an initial phase the practice of legal storytelling of varied types to document the untold experience with law and social subordination endured by people of color and other marginalized groups. [FN67] But the primary function of *529 narrative in outsider legal scholarship is to provide a point of departure for theoretical and doctrinal analysis and transformative intervention aimed directly at satisfying an indispensable prerequisite to our material goal: "understanding things not only about people of color but also about women, poor people, homosexuals, the physically disabled and other outsiders" that dominant institutions slight or ignore. [FN68] Through storytelling, interconnections in and between various particular experiences of subordination are rendered visible, enabling outsider scholars to see more clearly the conditions, practices and structures we must challenge and transform in delivering social justice for any group, as well as for all. Storytelling thus merits an expansive scope in LatCrit theory primarily because, and precisely to the extent, it

advances critical analysis by revealing the interlocking dimensions of multiple forms of subordination. LatCrit theory, born of this and other outsider methods and insights, [FN69] has in its brief history manifested a solid commitment to the practice of anti-subordination theory through critical narrativity on behalf not only of multiply diverse Latinas/os but of other multiply diverse outgroups as well. We invoke and reassert that commitment now.

It thus is not entirely afield to question, in the context of this symposium, whether this very danger of performing an un/witting apology for an unjust status quo by engaging in essentialist, uncritical storytelling is exactly the danger potentially posed by the personalized yet generalized accounts presented in the Hartigan and Valencia essays. Though both essays rightfully remind us that religion is a complex force, both proceed to stress in uncritical terms why their preferred actors--the concededly dissident and relatively disempowered factions within this complex force--ought to be selected as representing the true or "essential" nature of that institution. Instead of pausing to explore the current impact and consequences of acknowledged religious oppression and injustice, both essays jump to reconstructive arguments urging LatCrit theorists to accept uncritically the pockets of valiant dissidents mentioned in their stories as the "true" representatives of Roman Catholicism, and to view their intentions for Latinas/os and other peoples as the "true" meaning of religion.

By dismissively acknowledging, but in fact failing to engage, the critical issues triggered by their narrative performances, these essays threaten, whether intentionally or not, to reproduce insider/outsider dichotomies: namely, dichotomies that divide those who accept their representations of religion from those who don't. At the end of their stories, we know with confidence only that these *530 two authors personally have experienced Roman Catholicism as a salutary force in their lives and that they lament that others have not, even though they acknowledge in passing the possibility that Christianity generally, and Roman Catholicism specifically, does not always operate as an affirming force. These two essays therefore suggest but fall short of showing us the power of narrative in legal scholarship. Though the descriptive features of the stories recounted may be moving to some, and perhaps self-indulgent superstitious sentimentalism to others, the more important point is that these essays fail to take the requisite next step: articulating in a critical fashion the theoretical value of the narratives told and the claims made. In fact, these essays fail completely to engage the many critical questions their narratives trigger.

For instance, these essays beg threshold questions about the kind of intellectual or cultural community their accounts are intended to nurture and sustain or to negate and suppress, as well as meta-critical questions about the performative impact their narratives are likely to have on the various overlapping communities that have engaged LatCrit attention and that are participating in the evolution and development of LatCrit theory. Their use of narrative also begs epistemological questions about the way that the meanings embedded in their stories should be interpreted, and their truth values measured, against competing stories, as well as against other types of discourses--such as legal doctrine, anthropology, political science, psychology, and historical analysis--that might be used to address the meanings referenced in the stories they tell. In this way, both essays effectively minimize deconstruction and rush to reconstruction.

However, this leap to reconstruction without deconstruction must be carefully and critically rethought. In our view, such leaps must be resisted; otherwise, reconstructive efforts will lack the insight and drive that only critical deconstruction, including critical

narrativity, can instill in our efforts to re/build institutions and communities devoted to effectuating the egalitarian, anti-subordination ideals that LatCrit theorists purport to embrace and seek to promote. These essays thereby remind the LatCrit community (again) that the tendency to essentialism in legal scholarship remains a significant threat to the precision of our theorizing--a reminder that apparently is still needed even though essentialism's dangers already have been noted and urged within prior LatCrit publications. Thus, in tandem, these two essays should serve as a strong reminder of the care and caution LatCrit scholars should exercise when deploying narratives in critical legal scholarship. By way of contrast, essays that appear in the symposium's other clusters *531 help to illustrate the potential of critical narrativity as method in legal scholarship.

For instance, Professor Hernandez-Truyol's essay employs autobiographical narrative to elucidate the gendered inequalities promulgated by Latina/o normativities. [FN70] The Hernandez essay, like the Hartigan and Valencia essays, centers personal experience as a relevant element in legal theory. But Professor Hernandez employs narrative to engage the connectivity and complexity of Latina/o and other outgroup social identifications, using the story as a springboard to theorize anti-subordination strategy, and to urge outgroup anti- subordination collaboration despite and through difference. The Hartigan and Valencia essays, on the other hand, employ narrative to intercede insistently on behalf of socio-religious forces that, as the foregoing account shows and the Guerra essay confirms, are a dominant and, on balance, oppressive feature of this continent's history and heritage. [FN71] The Hernandez essay, while focused on the secular rather than sectarian forces that engender Latina subordination to Latinos and other men, serves as a useful counterpoint to the uncritical use of narratives motivated by a zealous wish to "infuse" LatCrit theory with any particular brand of religiosity. [FN72]

Similarly, the essay by Professor Chew employs autobiographical narrative to depict biological and environmental circumstances that interconnect Asian and Latina/o social experiences, identities, and positions. [FN73] This narrative enables Professor Chew to theorize how self-awareness combines with constrained agency to form networks of identification among individuals and groups. The Chew essay thereby points out how an Asian scholar's self- identification as *532 a LatCrit theorist is an act of will, an election to struggle despite cultural, structural, and physical constraints toward self-determination on behalf of diverse groups and persons both domestically and internationally. This pithy essay effectively displays how the multiply diverse self-selected group of scholars that identify as LatCrit theorists have exerted our individual and collective will to oppose multifaceted forms of subordination in a multicultural world.

The essay by author Antonia Castaneda likewise blends autobiography, history and critical theory to conduct an anti-subordination analysis of Latinas/os in the United States, and to highlight especially the impact on Latina/o children of the conditions and needs produced by past and present subordination. [FN74] Covering and joining vast fields of time and space, this essay brings to the fore multiple issues--like language, culture, colonization, gender and class--that recur elsewhere in this symposium. This use of critical narrativity thus is sweeping, engaging and devastating.

The essay by Professors Ebben and Gaier similarly uses Latina narratives about identity formation and social positioning to track how the construction of legal education marginalizes specifically Latinas/os in Texas. [FN75] The focus on Latina experience culled from the interviews these authors conducted displays the importance of anchoring

theory to actual living conditions. This essay's emphasis on the personal narratives of Latinas not only documents the particularity of lived experience, it also reminds us by example that LatCrit scholarship must focus self-critically on the way our work is likely to impact (or not) on the material transformation of unjust conditions if our discourse is to have social relevance and resonance.

Finally, the essay by Professor Gerald P. Lopez also can be situated loosely within this method. [FN76] This essay describes and dissects the methods and data of the Latino National Political Survey, effectively telling a story about Latinas/os living in the United States right now; like the Ebben/Gaier essay, this account of Latinas/os' lives reports and analyzes data that narrates the condition of a people. Recounting an empirical portrait, this essay thus can be viewed as a form of storytelling. And because this social narrative is told critically, and with the aim of advancing social justice, this essay performs the ultimate function of narrative in critical legal scholarship: uncovering the sources and structures of subordination in law and society to help dismantle them.

These various and varied essays employ different kinds and styles of "narrative" and address varied aspects of law and life, all of which are significant for, and if effectively employed can help to enrich, LatCrit theory. While we believe--indeed, know--there is a valuable role and much at stake in defending and continuing the use of various narrative styles in legal scholarship, as well as in the project of clarifying and disseminating ethical convictions and theological meanings, [FN77] these essays as a set illustrate an important and always potential shortcoming in, and hence a crucial lesson for, the future employment of narrative in LatCrit theory and outsider jurisprudence: a failure to connect expressions of personal identity or social experience to any substantive analysis of--or critical reflection about--their relevance to the broad range of socio-political, epistemological, ethical, methodological and legal issues that concern LatCrit theory can provide easy targets of criticism from skeptical or hostile scholars. [FN78] Without acquiescing to misguided points asserted by recent attacks on narrativity in legal scholarship, these essays, in their different approaches to and employment of legal storytelling, counsel extreme care in our use of narrative to articulate LatCrit theory.

Additionally, these essays, and their points of contrast and commonality, jointly display the fragile and tentative nature of the LatCrit enterprise and its likely valences. In particular, the uncritical interposition of autobiographical narrative in the Hartigan and Valencia essays leaves us to wonder whether their objective is to impel a collective LatCrit embrace of an institution with a historically and demonstrably eurocentric, androcentric and heterosexist ideology and agenda simply because some relatively disempowered souls here and there within the institution valiantly seek to resist its pernicious pro-subordination practices. While we applaud and support all such resistance, this use of narrative ultimately leads us to wonder whether the uncritical acceptance of (or apologies for) eurocentric, androcentric and heterosexist institutional biases can ever be said to aid the reconstructive projects that await LatCrit theory, at least if we understand LatCrit discourse to be a form of anti-subordination scholarship.

This not to say that we are unaware or in any way deny the extent to which Roman Catholic or Christian identity has been and still is the basis of formal or functional persecution in various parts of the world. [FN79] Certainly, one fruitful trajectory for future LatCrit scholarship would focus on examining the configurations of power and privilege that drive the persecution of any Christian group in countries around the world, particularly if this analysis is linked to the articulation of a more inclusive and effective human rights agenda. [FN80] Given, however, the here and now in this country,

and the history through which this here and now has been constructed, LatCrit scholars must continue our critical search for an anti- subordination comprehension of religion that does not ignore or dismiss the particular realities of this context--this here and now--as structured by historical and contemporary realities of politics and power through which organized Christianity has actively fomented and passively tolerated the imposition of hierarchy and subordination, both in this country and throughout Latin America.

Nor do we, by this anti-subordination critique of religion's operation in this symposium and society, mean to imply that LatCrit theory or legal culture ought to oppose or obstruct human spirituality and its expression. On the contrary, we think that anti-subordination principles require formal laws and social practices to honor the human capacity for spiritual experience and connection. In doing so, however, laws and norms should not be used to regiment spirituality or to repress spiritual diversity and agency. On this point, we agree with gay and feminist Roman Catholics, and other progressive Christians, who decry organized religion's policies precisely because they fracture the human potential to experience the spiritual by condemning non- procreational sexuality that nonetheless may be integral *535 to human connection and expression. Because we believe that religion and spirituality can be affirming forces in life and society, as certain strains of Christianity already suggest, we believe that LatCrit theory, legal culture, and the state should promote and protect the opportunity of all humans to experience and express spiritual conviction in peaceable and egalitarian ways. To be constructive, LatCrit theory's engagement with the status quo of religion and spirituality must search for ways of reconstructing religion's application and operation as a social force and human phenomenon in this here and now, and in light of the historical antecedents that now have brought us here.

E. Liberation Theology: Exploring the Reconstructive Potential of Anti- Subordination Interpretation in Religion for LatCrit Theory

In developing a reconstructive project in and through an engagement with religion, it is imperative for LatCrit scholars to move beyond the sentimental dimensions of our particular experiences of religion to an analysis and exploration of theological concepts and their relevance to the anti- subordination project that drives LatCrit theory. This critical and self- critical stance toward theology is imperative because theological doctrines are repositories and instruments of social control: it is precisely because control over the dissemination of theological meanings creates political power that liberation theology--and indeed, the historic schisms that divided the Roman Catholic Church and produced, over the past several centuries, the proliferation of Christian churches--originated in contestation over theological dogmas. Moreover, the duration and intensity of these power struggles suggest the awesome stakes involved in control over theology and its meanings as a vehicle for the construction of social and political realities. While none of the essays provide any in-depth exploration of theological concepts, Professor Hartigan's reference to and treatment of the Catholic doctrine of Transubstantiation [FN81] does provide a means within this symposium of illustrating how the contestation over theological dogma and meanings is relevant to LatCrit theory's anti-subordination project.

Responding to a suggestion made in another place and time that Aztec civilization is one of some unspecified number of civilizations that are "not equal" but rather "clearly inferior" (presumably because Aztec civilization practiced human sacrifice), Professor

Hartigan reports asking in that situation "just how [the Aztecs] were inferior to those of us who in our orthodox version [of faith] believe we eat the genuine flesh and drink the genuine blood of an executed *536 Palestinian Jew?" [FN82] While the apparent intent here was to challenge the supposed inferiority of Aztec civilization by drawing a parallel between Aztec sacrificial rituals and the Roman Catholic dogma that Christ is fully present in the Eucharistic sacrifice, [FN83] this casually dismissive reference to orthodox doctrine conjures up, but does not explicitly explore, key issues thereby triggered.

It is relatively easy in this place and time, due in large part to the historical bloodbaths that produced the separation of church and state and the secularization of a liberal society, to dismiss those elements of a creed that one deems unreasoned or unreasonable. Embedded in that dismissal, however, is the assumed capacity and claimed authority to differentiate Truth from error, as well as to distinguish the "essence" of a faith from its historical and cultural contingencies or from its self-interested political and ideological manipulations. Yet one cannot unilaterally pick and choose among the dogmas of a church or the laws of a state without fundamentally challenging the claims to exclusive interpretative authority asserted and protected by the church whose dogmas--or by the state whose laws--one elects to reject. Nor can one claim interpretative authority for oneself and deny it to others without implicitly or explicitly invoking some justificatory distinction--some privileged access to Truth. This contest over the interpretative authority to evaluate and articulate--and even to enforce--dominant or definitive theological meanings is precisely the radically transformative phenomenon at the heart of liberation theology, much as the struggle over the interpretative authority to evaluate and articulate binding legal meanings is at the heart of LatCrit and other strains of critical legal theory.

Roman Catholic dogma, like the doctrines of Transubstantiation and the Trinitarian god, have been sites of such interpretative contestation before liberation theology's emergence. Indeed, the struggle *537 over interpretation and application stretches throughout the history of that church, in part because these doctrines call upon the faithful to affirm the Truth of a reality that may defy reasoned analysis. Of course, the fact that a mystery of faith escapes one's analytical capacities is hardly a reason to reject its Truth, but the interpretative contestation provoked in and through the theology of liberation is born of a different conflict. It flows from the experience of a complete disjuncture between the meanings inscribed in the doctrines of Christian faith and the lived reality of the subordinated faithful to whom these meanings are preached. This disjuncture between lived reality and formal doctrine demands an accounting, and can explode of its own internal contradictions into the search for alternative meanings and toward the transformation of unjust material realities. Liberation theology is that explosion--the critical response of Christian social conscience to the questions born of the conflict between the formal dictates of Christian faith and the material realities from which they are proclaimed. These questions are fundamentally disruptive of inherited truths, as well as potentially revolutionary, precisely because they expose tensions and provoke further questions that, once noted, can only be resolved by oneself, for oneself. [FN84]

In defending its dominant and exclusive interpretative authority, the Roman Catholic magisterium has sought to suppress such questioning. [FN85] It has deployed its Inquisitors and, on pain of excommunication, has called the faithful to accept as an article of faith that the dogmas of this church can be reconciled with justice and reason. *538 [FN86] Those who instead affirmed the dictates of their own conscience and clung to the

justice and reason of their own experience were branded heretics, expelled from the community of saints, imprisoned, and tortured for the sake of their own everlasting souls and ultimate salvation. Against this long and complete backdrop, the historic conflicts over Roman Catholic or Christian doctrines, institutions and communities are worth exploring more extensively precisely because they can help LatCrit scholarship to develop a powerful psycho-social, historical and normative framework for combating the semiotic logic embedded in the systematic, institutional and symbolic assault on the ethical consciousness and moral agency of the human person in an unjust and deranged society--whether that society resides within or beyond the borders of this nation.

In Argentina, for example, the recent "dirty war" waged by military elites against the civilian population was, in the words of one of the junta leaders, General Videla, firmly grounded in "the Christian principles of Truth, Love, Justice and Liberty." [FN87] For LatCrit and other critical scholars, the immediate question is: What logic can sustain such a claim? It is the same logic that converts the socialist into a communist, the communist into subversive, the subversive into a heretic, and the heretic into the damned, who then must be purged from the community of the faithful lest the moral order collapse in error. But, again, what kind of logic is this? From an anti- subordination perspective, it is the pseudo-logic of entrenched privilege and raw power in defense of an established order that imposes hierarchy, confers status and wealth, and condemns to oblivion the human capacities to imagine, desire, and seek to manifest a moral, political or economic alternative to existing social injustices.

The legal and extra-legal regimes of oppression that were organized in and through the Argentine military's deployment of religious mysticism and its worship of a particular and peculiar version of "divine order" are by no means the only example ripe for LatCrit exploration of the social misery produced in and through the exploitation of ideologies that embrace, as sacred duty, the maintenance of a perpetual state of total war between the forces of Good and Evil. Early in this century the Ku Klux Klan chose some of Christianity's most sacred symbols and hymns to create antiblack, antisemitic, *539 xenophobic solidarity. Klan use of the Christian cross and its chants was more than base exploitation of social symbols whose power resided precisely in their association with dominant religious sects. Championing white supremacy both through violence and politics, the Klan over the years focused recruitment of its local leadership from the Christian clergy, which also served to proclaim the Klan's creed across the land with spectacular efficiency and success; counting on the prestige and respectability of churches and preachers, the Klan employed church ministers as a ready and willing social technology to inflict white supremacy from Sunday pulpits across the nation, in the process blurring for the better part of this century--and perhaps virtually beyond recognition--the distinction between hate and religion in this country. [FN88]

Closer in time are the legal trials and tribulations of the Sanctuary Movement in the United States. Throughout the 1980s, this movement assembled a network of religious believers who sought to live their faith by providing refuge and sanctuary to Central American refugees fleeing political persecution and physical terror in their countries of origin: to them, it was painfully certain that the U.S. government was acting in violation of domestic and international law, both by supporting governmental terrorism in Central America and by denying its victims political asylum in the United States. [FN89] This history of civil resistance in the face of government criminality, illegality and impunity marks another site where LatCrit scholars could begin to explore critically what it means to claim or forsake the interpretative authority/duty to ascertain for oneself

what moral truth demands in a society where the integrity of religious and social conscience is often more a facile platitude than a legal right. The record of the Sanctuary prosecutions launched by this nation's authorities to neutralize the rescue efforts of those individuals illustrates the power of master and counter narratives in political mobilization and legal adjudication, as well as the strategies through which the state, like organized religion, operates to maintain a monopoly *540 on interpretative authority and coercive power.

The alignments of secular and sectarian ideology and power in these varied contexts give reason to pause for reflection and analysis: in Argentina traditionalist versions of Christian values were formally invoked to legitimize state-sponsored terror; in the United States regressive versions of Christianity were used to instigate and coordinate racial tyranny and, more recently, state power was deployed to suppress and persecute progressive versions of Christian values in support of an unjust order abroad. Clearly, these examples of religion's impact on culture and politics are not conclusive, but the complex alignments of secular and sectarian ideology and power in these varied contexts display remarkable consistency: in each instance organized religion and dominant social forces combined to reinforce, rather than to rectify, existing social injustice.

Because LatCrit theory professedly works to promote the vindication of basic civil and political human rights both domestically and internationally, the success of its development must be measured in terms of its practical and material contributions to this objective. Accordingly, LatCrit analyses must be dedicated to the creation of structural and legal conditions that will honor and promote, in fact, the freedoms of conscience and expression without which the most powerless among us are denied both the integrity of our ethical consciousness as well as the capacity to participate fully and freely in the evolution of a more just and egalitarian society. These notes consequently raise just a few examples of the legal sites where a more detailed and critical exploration, and a more nuanced and textured anti-subordination account, of the historic struggle over theological meanings, and the authority to interpret or enforce them, might enrich and inform the evolution of a compelling LatCrit scholarship.

F. Theological Meaning(s) in LatCrit Theory: Toward More Substantive Encounters

Equally important, but similarly neglected in any essentialist, uncritical encounter with religious power, is the very serious project of informing LatCrit scholarship with a genuine understanding of the theological meanings at the center of the interpretative and aspirational conflicts that currently underpin the articulation of liberation theologies. To invoke the mere existence of liberation theology is not the same, nor nearly as valuable, as exploring the substantive meanings and political implications of its substantive theological concepts. Nor does its mere invocation help us understand how the premises and concepts of liberation theology can guide the evolution of LatCrit scholarship in critical pursuit of its anti-subordination *541 mission. To delve into these questions, we usefully can return to the doctrine of Transubstantiation.

Lost in any casual dismissal of this Roman Catholic orthodoxy are the anti-subordination insights that LatCrit scholars might obtain from grappling with the interpretative conflicts over the theological meanings and ethical imperatives embedded in the doctrine that Christ is fully present in the Eucharistic sacrifice. In the exercise of its interpretative authority, the Roman Catholic Church historically has condemned and

steadfastly has repudiated "anyone who denies the body and blood, together with the soul and divinity of our Lord Jesus Christ and, therefore the whole Christ is truly, really, substantially contained in the sacrament." [FN90] The Catholic Church has, through the centuries, maintained this dogma as an article of faith against the rebellions of secular reason. Accordingly, the Church proclaims that in the sacrament of the Eucharist all are called to be nourished, not merely by inspirational symbols or ritualistic references to events that occurred in another place and time, but by the real or literal presence of the God-Christ incarnate, whose ultimate self-sacrifice is eternally repeated via ecclesiastical ritual in order to make available the immortality promised through communion with God to any and all who choose to eat his body and drink his blood in the fellowship of Christ.

What liberation theology reveals is the ethical imperatives and the abundance of theological meanings that emerge when we ask what this doctrine could possibly mean "from the standpoint of a humiliated race--the Amerindians, the marginalized, women, the hopeless. . . ." [FN91] From the perspective of the poor and others at the bottom, a non-theological response to this question might be that it doesn't really mean much. In this vein, the anthropologist Marvin Harris writes as follows:

> Protestant and Catholic thinkers have spilled much blood and ink over the question whether the wine and wafer are transubstantiated into the corporeal substance of Christ's blood and body. The real significance is that by spiritualizing the eating of the paschal lamb and by reducing it to a nutritiously worthless wafer, Christianity long ago unburdened itself of the responsibility of seeing to it that those who came to the feast did not go home on an empty stomach. The point . . . is that the nutritive value of the common feast is virtually zero, whether there is transubstantiation or not. [FN92]

This disjuncture between religious and material realities is precisely the space that liberation theology occupies and attempts to *542 bridge by challenging Christians to attend to the social, as well as the spiritual, needs of others. For LatCrit theory, this space is critical: the question for LatCrit theorists in examining any theological dogma or interpretation is whether it creates accord or discord between religion and the struggle for liberation from all forms of subordination. Critical reflection on this question should produce an analysis that clearly and appropriately differentiates the two different "Christian" types of effects and relations, and it is to these issues that we now turn.

The emphasis liberation theology places on the material practices Christ is said by Christianity's own Bible to have demanded of those who would follow him helps to ground and guide such critical reflection. In word and deed Christ instructed his followers "to meet the material needs of the hungry, the thirsty, the stranger, the naked, the imprisoned" [FN93]--that is, to live as and among the poor and despised. Reflecting further in this vein, theologian Mark Taylor suggests how the doctrine of Christ's real presence in the Eucharist challenges the tendency both of the formal church hierarchy and of the comfortable or unaware believer to spiritualize the act of communion in a way that displaces material exigency and breeds complacency among well-fed Christians. The temptation "during times of intense concentration, with bowed heads and bended knees" to look inward or upward in search of "an ascendant spirituality that lifts one above the fray of material struggle and practice" abstracts away the imperatives of a praxis reportedly dictated by the Christ they profess to worship. [FN94] In the Christian

Gospels, after all, Christ did not offer his disciples symbols of food to eat; rather he gave his life's flesh and blood so that others might live, and he calls emphatically upon his followers on Earth to remember and participate personally--in the flesh, as much as in the spirit--in the hard and never-ending work of materially feeding the hungry among us.

Through its efforts to articulate and practice a grounded response to this recorded mandate, liberation theology creates a new possibility: an approach to Christ's teachings markedly different both from the anthropological posture of distanced curiosity and from the traditional stance of other-world mysticism and ritualistic formalism adopted by the institutional hierarchies of the Roman Catholic Church. This new response pointedly calls on Christians everyday to reconcile their sacramental rituals with the ethical imperative to engage in emancipatory material practices, a reconciliation without which the Eucharistic celebration becomes an empty symbol of nothing much but hypocritical mystifications. [FN95]

While these few paragraphs hardly capture the abundance of meanings embedded in interpretative struggles over the doctrine of Christ's real presence in the Eucharist, they do provide a way to illustrate how a genuine, substantive encounter with liberation theology might enrich the work of LatCrit scholarship as it struggles to transform the relations of domination and subordination that are institutionalized by legal doctrine, enforced through legal process and legitimated through legal discourse. These illustrative notes depict a ready connection between liberation theology and outsider jurisprudence: both embrace and espouse social justice causes and seek material transformation of unjust conditions. From this perspective, the biblical message posited by liberation theology mandates the same sort of anti- subordination praxis that also drives LatCrit theory. This message of liberation, however, is routinely suppressed in the actual practices of organized religions and the comfortable bureaucracies that activate religion in order to entrench human stratification, much as it is suppressed by the organs and agents of the state in secular contexts. The suppression and perversion of this liberation imperative therefore is the point of our critique of organized religion in this Afterword, and this point is the one we regard most relevant for legal scholars who profess to write about religion from an anti- subordination perspective.

In sum, we agree with the implicit message of the Hartigan essay: liberation theology does provide a powerful wealth of interpretative, analytical and imaginative resources that can help LatCrit theory challenge the flaccid, facile incantations of so-called Christian values expressed in contemporary public discourse. At the same time, failure to engage liberation theology's substantive contents, or to make any effort to illustrate with any degree of precision its relevance to the anti-subordination project of LatCrit theory, comes dangerously close to sentimentalizing the fundamental challenge that liberation theology directs at the structures of domination and privilege in which both the laws and the lawlessness of the powerful are so deeply implicated. Moreover, we urge that liberation theology's preferential option for the poor and oppressed--those at the bottom--as well as its critique of structural violence, are especially powerful tools for developing a critical analysis of the substantive *544 categories and interpretative methodologies that dominate Anglo-American legal consciousness. [FN96] Latina/o communitites need more than mere invocation of liberation theology as positive Christian example: anti-subordination calls for LatCrit production of new legal meanings enriched and informed by the theological meanings and ethical imperatives increasingly made manifest in and through the irruption of the many at the bottom--the poor, the oppressed and the colonized--onto the pages of history.

This brief discussion of a few Christian doctrinal beliefs and actual practices referenced by the symposium essays helps to make more concrete the various discontinuities that anti-essentialist and anti-subordination LatCrit analyses of religion must engage with critical and particularized care. These discontinuities, as we explained earlier, include the divergence of the institutional and the individual, the theoretical and the practical, and the authoritative and the dissident, which may tend to be collapsed in uncritical evocations of religion as individuated human experience. [FN97] But as we just noted, this brief discussion only addresses a small portion of the much larger, and very important, architecture that designs and deploys organized religion as a powerful force in the construction of Latina/o and other communities around the globe.

This brief discussion thereby calls for critical and caring analyses calculated to align the power of organized religions with the anti- subordination struggles of oppressed peoples around the world. To do so, as this discussion illustrates, LatCrit scholars necessarily must take special care to avoid even unwitting redeployments of this power in ways that reinforce or reify its oppressive characteristics. Thus, rather than call for an outright rejection of organized religion as a site or vehicle of social justice work, this brief analysis of religion, Christianity and liberation theology aims to identify some points of entry for LatCrit efforts to help engineer an anti-subordination re/alignment of organized religions globally. We hope that this discussion will help spark the imagination of LatCrit scholars, thereby promoting a collective and critical LatCrit engagement with this powerful and important force that profoundly affects anti-subordination alignments in this country and others. [FN98]

Finally, while in this Afterword we have centered the form and style of liberation theology that emerged from and speaks most directly to the conditions of Christian Latinas/os, particularly in Latin American countries, we have done so only to engage critically the ideas or forces referenced in the preceding discussion of religion within this symposium. However, in addressing the general questions we posed immediately above, LatCrit scholarship should note as well the existence of, and explore the emancipatory meanings articulated in, or the potential implied by, other subordinated theologies among Latina/o communities, such as Santeria, as well as among various subordinated groups in this country and abroad. [FN99] As the Ota essay usefully reminds us, religion's tracks are imprinted across the globe; [FN100] critical and comparative charting of diverse religious forces or experiences can only enlighten LatCrit understanding of religion as a tool of oppression and/or liberation. Moreover, in taking an expansively transnational and transcultural view of the interpenetration of law and religion, LatCrit theory will be manifesting and fulfilling its commitment to intra- and inter- group experiences, relations, and aspirations. [FN101] In doing so, LatCrit theorists additionally--and most importantly--will be producing a capacious and aggressive body of sharp anti-subordination scholarship.

II.
On Sexuality, Otherness and Knowledge: Difference and Solidarity in LatCrit Theory Through Anti-Subordination Practice

As the above discussion of religion and its intersections with law, culture and power shows, LatCrit theory's approach to the issues that define and confine the social and legal positions of Latinas/os and other outgroups in this country and beyond must be

approached with critical attention to context, particularity and purpose--the purpose at all times being to transform the material conditions of social and/or legal subordination. In this Part of the Afterword, we turn to these interconnections in the construction and operation of heteropatriarchy within Latina/o communities. More specifically, we now turn to the construction and operation of androsexist and heterosexist imperatives through the forces that combine to de/legitimate individual or group agency in intimacy and family and, thereby, to delineate communities pervaded and governed by heteropatriachal beliefs, norms and rules. These forces, as we explicate below, produce a political economy that occupies and controls vast domains of life and law. These domains persistently straddle "public" and "private" spheres in mutually-reinforcing ways and toward mutually-reinforcing ends--ways and ends that re/produce otherness, fragmentation and dis/empowerment through the validation or imposition of hierarchical values and dictates. These dynamics and effects, we argue below, are antithetical to anti-subordination principles and objectives, and therefore are properly targeted for critical scrutiny and political resistance through LatCrit theory and practice.

A. The Operation of Sexual Orientation Diversities in the Construction of LatCrit Theory and Community

As the preceding discussion urges, any anti-subordination analysis of religion must confront the implications for sexuality and its regulation when dogmatic power is exercised by churches or sects that wield considerable civic influence. [FN102] It thus should come as no surprise that the vocal expression of minority sexual orientation identities were central to the so- called "religion controversy" at LatCrit II. [FN103] What is surprising is that this crucial detail, unlike others that transpired at the conference, are not significantly represented *547 in the essays inspired by that event and comprising this symposium: the Ota essay is the only one that unfolds a sustained critical discussion of sexuality, religion and LatCrit theory. [FN104] Responding to this gap, the Afterword next takes up the role of sexuality and sexual orientation issues in LatCrit anti-subordination analyses of religion and social in/justice.

The opening point is that the expression of lesbian, gay or bisexual identity in this context should not be mistaken for a more general or blanket oppositional juxtaposition of religion and "sexual orientation." The Roman Catholic Church, like other organized sects, includes within its ranks openly lesbian, gay and bisexual adherents. [FN105] The Roman Catholic Church, moreover, also includes within its ranks clergy and other personnel that are relatively disinclined to participate in anti-gay politics. [FN106] In this country and beyond, *548 it is plain that members of sexual minorities and of this particular church do not monolithically stand outside of, or in opposition to, each other.

But the operation of sexual orientation vis-a-vis religion in the setting of LatCrit II does provide an apt opportunity for the interrogation of the interplay between dissident sexuality and organized religion. From an anti-subordination perspective, it is heartening that in recent years some organized Judeo-Christian churches, other than the Roman Catholic Church, have begun rethinking and rescinding official doctrines that condemn same-sex unions, families and cultures. [FN107] But for the most part, the current official position of most organized religions in this country remains unabashedly heterosexist. And despite the pockets of exceptions cited in accounts like the Hartigan and Valencia essays, [FN108] the historical and current official beliefs, as well as the routine practices, of the Roman Catholic Church continue to be stridently homophobic and sexphobic.

[FN109] On the whole, then, the ideology and power of organized religion in the contemporary civic life of this country remains an undeniable impediment to the equality quest of multiple diverse sexual minorities. This power and its systematized effects must be acknowledged, confronted and resisted in all of their forms if LatCrit theory's anti-subordination stance is to be more than a pose.

To do so, LatCrit analysis of religion must be relentlessly multidimensional, as the essay by Professor Ota illustrates: Professor Ota projects substantive concerns not only about the subordinating effects of current religious alignments regarding sexual orientation, she combines with that critique a similar concern over gender and race, and over ethnic and cultural biases, that are encapsulated in, and perpetuated by, certain sectarian customs. [FN110] Institutionalized religion, she effectively reminds us, can be organized and practiced to dovetail with the promotion of patriarchy, homophobia, white supremacy and eurocentrism all at once. And this point is relevant to LatCrit theory's anti-subordination commitment to the extent that the *549 richest and most powerful organized religions in this country and elsewhere indeed are patriarchal, homophobic, white and eurocentric institutions, or in fact aligning themselves with the forces that maintain those supremacies. We therefore turn now to a critical consideration of these questions by shifting our focus more specifically to the multidimensional dynamics that produce the formal families that religious ideology prefers, dynamics that simultaneously establish both exclusions from such families as well as hierarchies within them through the convergence of various biases.

B. Sexuality, Religion, and Family: Marking Feminist and Queer Positions in LatCrit Theory

In further examining the intersections of religion and sexuality, LatCrit scholars should take care to acknowledge and engage particularly fertile sources of critical insight: the understandings, methodologies and liberation aspirations expressed in Critical Race Feminism [FN111] and Queer legal theory. [FN112] Taking seriously the critical perspectives and substantive claims that women of color and sexual minorities have increasingly articulated in their demands for autonomy, dignity and self-determination is and must remain a central theme in the evolution of LatCrit theory--again, if LatCrit theory is to remain true to its expansive and egalitarian anti-subordination commitments. Taking these aspirations, demands and achievements seriously, in turn, counsels us to take a critical stance toward religion precisely because religion continues to play a fundamental role in structuring expectations and mystifying practices that restrict these groups' autonomy, repress these groups' agency and legitimate specifically the persecution and expropriation of women's sexualities--whether those sexualities are heterosexually, homosexually or bisexually oriented. [FN113]

Drawing on the substantial body of analysis already developed by feminists and critical race feminists, as well as by lesbian, gay and bisexual theorists, LatCrit scholars could further our collective understanding of the intersections between religion and sexuality by examining how religious norms and beliefs intervene in the legal and cultural processes by which intimate relations are regulated. The *550 threshold inquiries for LatCrit theory include: how and where--that is, through what legal institutions, substantive doctrines, procedures and apparatuses--do religious beliefs or norms operate within the regimes and discourses through which sexualities are regulated? Similarly, how does the regulation of human intimacy operate as a means of concentrating and

skewing power, privilege and opportunity? Or, conversely, how does the religious character or influence of such regulation impede and/or buttress patterns or structures of social and legal subordination?

Certainly, religious beliefs about the nature of the family, gender, intimacy, the role of women, and/or the meaning of sexual morality have played an integral role in legitimating coercive legal interventions against, and imposing substantial social disabilities upon, women for the benefit of men and on sexual minorities for the benefit of the sexual majority. Indeed, religious ideology--served up as the universal imperatives of morality and social order [FN114] --is pervasive in legal rhetoric and makes regular appearances in rationalizing the control and suppression of women's and sexual minorities' sexual autonomy; for example, through the imposition of legal disabilities on illegitimate children, single mothers and welfare recipients, [FN115] and through the selective validation of anti-sodomy statutes. [FN116] This array of regulatory schemes operates at once to create insiders and outsiders, and to establish relations of privilege and subordination along multiple, distinct and overlapping axes.

As Professor Novoa's essay illustrates within this symposium, [FN117] family law provides an especially relevant legal site for exploring how the regulation of (compulsory hetero) sexuality is embedded in and reflective of a broad range of social, cultural and religious *551 norms, assumptions and objectives. These norms, assumptions and objectives may be double-edged in some specific instances, as Professor Novoa shows. On the whole, however, these forces operate in inter-dependent and mutually-reinforcing ways to privilege overlapping and intersecting groups of men and heterosexuals at the expense of women and Queers through the construction and compulsion of the "companionate" family that today's conventions regard as traditional.

As Professor Novoa points out, family arrangements today are based on "domestic systems that created or expanded the economic empire of the 'Founding Fathers,' the white landed males of the colonial northeast." [FN118] Moreover, Professor Novoa continues, legal recognition and cultural valorization of the "nuclear" form of "household" so common in recent times "ignores the multitude of cultural traditions in the United States which extend the family both by horizontal and vertical" kinship. [FN119] Rejecting any aspiration to this "limited and unrepresentative" construction of the family, [FN120] Professor Novoa condemns the law's complicity in the maintenance of family units tailored by socio-economic hierarchies--hierarchies in turn tailored by race, ethnicity, gender, sexual orientation and other sites of dis/empowerment.

Using herself as example, Professor Novoa acknowledges the virulence of patriarchy in Latina/o and Anglo families, and its impact both on the private as well as the public activities to which she (or her mother, for instance) could aspire. [FN121] She furthermore recognizes the interplay of family and market in the maintenance of gender hierarchy. [FN122] Recognizing how patriarchy both produces families as well as the hierarchies that inhabit and delimit them, it thus is somehow odd to find totally omitted from this analysis any recognition of heteropatriarchy's total exclusion of same-sex partners from the domain of the family. We thus undertake a critical analysis of the family that begins where this essay ends, and that we hope will mark some Feminist and Queer sites within LatCrit theory for further critical investigation and exchange.

C. Deconstructing Heteropatriarchal Family Structures: Joining LatCrit, Feminist and Queer Anti-Subordination Projects

From an anti-subordination perspective, the relatively recent institution of the male-dominated nuclear family, as it is legally defined and culturally represented, has been a crucial location where *552 public and private power has converged to organize, legitimate and enforce relations of domination and subordination: not only are gays and lesbians denied access to the many state- sponsored benefits and privileges that are allocated, vested and subsidized by reference to a legal form that privileges the heterosexual marriage of a man and woman as the central unit of the family, this legal form also subjugates the woman to the man. [FN123] Additionally, and recalling the cultural heritage and context of this social order, dominant religious conceptions or imperatives regarding the control of marriage and sexuality have been used to construct and police racial fault lines on behalf of white supremacy, until relatively recently with the full force and complicity of the law and the Constitution. [FN124] Thus, even though the institution of companionate (heterosexual) marriage no doubt has provided solace to some, as Professor Novoa's testimonial illustrates, the heteropatriarchal structure of rights and obligations embedded in and established by legal marriage, and the cultural expectation that women (and men) can and should conform to its dictates or be penalized, have been central to the organization of in/formal racial, gender, class, sexual orientation and other hierarchies, and to the legitimation of social and legal systemic violence directed at various kinds of nonconformists. [FN125]

In examining, from an anti-subordination perspective, the role of religion in structuring human families and sexualities, a key question must be whether religious images and beliefs tend to--or can be made to--promote human agency, emotional happiness and *553 spiritual fulfillment in egalitarian ways: do they enable the evolution of new ways of understanding sexual desire and connection, and of practicing the mutual interdependencies that intimacy inspires and impels in humans, or do they operate to obscure, mystify and sublimate the sexual oppression, repression and real violence that is too often centered in and around the "traditional" family? [FN126] This question asks LatCrit theorists to resist both the uncritical acceptance and uncritical rejection of religion as a social force and asks us instead to assess critically religion's effects in this here and now. Returning again to the image of the Virgin Mary in Catholic dogma, this question might be reformulated as follows: do the meanings embedded in the image of the Virgin tend to rupture or reinforce relations of subordination in the way that human sexualities are understood, experienced and regulated? Answering this question requires, among other things, a critical analysis of the cultural and religious scripts that women and sexual minorities--those at the "bottom" of heteropatriarchal hierarchy--are called to enact or accept through the deployment of this image.

More concretely, this line of inquiry requires critical analysis of the way that Virginal scripts--such as sexual abstinence and maternal self- sacrifice--tend to structure relations between the women who perform them and the men who police their performance. It requires critical analysis, as well, of the more fundamental ways in which the semiotic logic of this image structures our understandings of the relationship between men and women, male and female, the masculine and the feminine, as well as the relationship between the spiritual and the sexual. As venerated as Mary may be, how do our cultural meaning systems and social practices reflect and articulate the dichotomization of sexuality and spirituality that is explicitly embraced in venerating the human impossibility of a virgin mother. [FN127] What, additionally, is the semiotic logic

expressed through the exclusion of the feminine from the image of God? Elevated as mother, most exalted among women, the Virgin Mary nonetheless is not present in the Trinity worshiped by that religion--excluded from the *554 internal communion of the Father, Son and Holy Spirit, she is subordinate even to her own son. [FN128] This configuration constructs the Virgin--and symbolically, doctrinally and ideologically all "women"--as both insiders and outsiders at once, but always as subaltern.

This insider/outsider dynamic is similarly reflected in the larger ideology of religion and its part in the production of cultural scripts for sexual minorities. Like women, though in different ways, sexual minorities are positioned as outsiders in relation to the "family" by and through the interaction of religion and culture, and this interaction is evident in the substance and process of the law. Religiosity not only permeates Anglo-American legal doctrines and discourse about family, but legislatures and tribunals often cite religion to enact or uphold the legal imposition of heterosexist ideology and privilege through the activation of both criminal and civil law norms. [FN129] Legal culture thus relies explicitly as well as intuitively on religion to force and justify the exclusion of sexual minorities from the nation's civic, social and economic life. The exclusionary status quo and history of this time and place show that sexual minorities are subordinated through the legal and cultural applications of religious precepts in the construction and operation of the traditional family. This subordination is effected and maintained, as well, by the zealous participation specifically of organized religious groups in promoting the continued hegemony of the heteropatriarchal family and its use in organizing and regimenting American society more generally.

Finally, from a LatCrit perspective, an anti-subordination analysis of these issues must also address their transcultural or transnational dimensions. The acknowledged centrality of international law and human rights advocacy in LatCrit theory offers important additional perspectives. [FN130] LatCrit scholars can use these perspectives to develop more comprehensive understandings of both the way religious norms and practices collaborate in the legal imposition and regulation of (compulsory hetero)sexuality and the way this particular *555 sexual regime intersects with other social and cultural processes and legal institutions to maintain class, race, sexual orientation and gender subordination, both domestically and internationally. These cross-cultural interventions by LatCrit scholars are important to critical legal theory in general because they represent a substantive expansion and significant contribution to existing discourses: while the feminist movement in the United States has made significant progress in identifying and revealing the interconnections between women's subordination in the family and their subordinated status in public and private institutions beyond the family, the analyses and reform agendas pursued by those at the "top" of this movement-- white heterosexual middle-class feminists--do not consistently address the particularities of those at the "bottom" of its constituencies, including Latina and other non-white/Anglo lived realities, either in the United States or throughout Latin America and the globe. [FN131]

D. Universality Through Particularity: Gender, Sexuality and Class in LatCrit Theory

Addressing these manifold particularities and their socio-legal implications for anti-subordination analysis is, as Professor Luna so effectively urges in her contribution to this symposium, an imperative for LatCrit theorists: an imperative to seek social justice by finding the universal in the particular and the particular in the universal. [FN132] By

engaging and expanding feminist legal theory from a cross-cultural and international perspective, LatCrit scholars can contribute to the further evolution of feminist theory and reform strategies; by challenging feminist legal theory increasingly to take into account the cultural, ethnic, racial and other differences between women, including differences in the ways women conceptualize liberation under different circumstances, LatCrit theory can *556 foster critical appreciation for the differential positions of power/lessness from which multiply diverse groups of women struggle to attain dignity and agency. And in adopting an international and cross-cultural perspective, LatCrit scholars will of course confront the need to develop new anti-subordination strategies that take into account the different socio-legal contexts in which particular regimes of subordination operate.

For example, LatCrit theorists might explore the way religion, ideology and culture participate in the formal legal subordination of (presumably or compulsorily) heterosexual women in Latin America and elsewhere, producing complex socio-legal regimes like the Guatemalan Family Code. This code provides that married women can accept employment, practice a profession, accept a public office or engage in commercial activities only when such activity does not interfere with their child care obligations and other domestic responsibilities. [FN133] Additionally, even when a wife's outside activities do not interfere with her domestic responsibilities, Guatemalan law enables the husband to veto his wife's involvement in activities outside the home, so long as he earns enough to support the family and his reasons for opposing her outside activities are deemed reasonably justified--as interpreted by a (probably male, heterosexual and at least nominally Roman Catholic) judge. [FN134]

In so prescribing, Guatemalan law does more than simply place in starker relief the gendered stereotypes and traditional family roles rooted in heteropatriarchy that prevent women from participating fully and freely either in the public or private spheres of human life and interaction. This statutory regime also presents a direct opportunity, obligation and challenge for LatCrit scholars to recognize the universal imperatives of liberation that are implicated in the particularities of women's legal and social subordination within the Guatemalan family structure and, by implication, in any other "particular" situation. Confronted by the provisions of this particular legal code, LatCrit scholars are called to consider and decide whether and/or how we will address such particularities in our critical theory *557 and anti- subordination practice: How important, after all, are the particular provisions of the Guatemalan Family Code to the articulation of LatCrit theory, or even to the development of LatCrit social justice agendas?

Our answer is this: addressing these and other particular provisions is central to the development of LatCrit theory, precisely because addressing such particularities is, as Professor Luna urges, a way to enrich the substantive insights and to leverage the political impact of LatCrit theory both as discourse and as community. [FN135] By engaging these particularities, we thereby operationalize our anti-essentialist commitments in and through the efforts we make to understand and dismantle the particular instances of subordination established and enforced through this or, for that matter, any other particular legal regime. It is precisely, primarily, and perhaps only through an increasing investment in identifying, analyzing and dismantling particular instances of subordination that LatCrit scholars successfully will avoid the essentialist tendency to seek universal truths in generalities and abstractions, rather than seeking universal liberation in and through the material, though limited, transformation of the particular and the contingent.

To make the importance of specificity and multiplicity in LatCrit theory's anti-subordination critiques even more explicit, consider how a sustained effort to analyze the particular context of subordination in which the Guatemalan Family Code operates, in turn, reveals otherwise invisible interconnections in the production of subordination, thereby providing a critical perspective on the normative validity of religious prescriptions and cultural expectations about the role of women and men in the heteropatriarchal version of the family. The restrictions that the Guatemalan Family Code imposes on women's freedom to accept employment, practice a profession, accept public office or participate in a labor organization effectively subordinate women's rights of free association to the husband's prerogatives and discretion as head of "his" family--ostensibly due to the state's interest in ensuring that children receive necessary care, attention and supervision. To this extent, the Code reflects the same gendered stereotypes invoked in religious prescriptions about the role of women in the family structure--prescriptions already repeatedly and effectively challenged in feminist theory. This overlap thus marks a shared interest in social justice for "women" among LatCrit and feminist theorists.

But an anti-essentialist, anti-subordination perspective on the particular context of subordination experienced by Guatemalan "women" must situate its analysis even more broadly to sharpen its *558 critical edge and expand its practical or political impact. These persons, situated at the bottom of their context, are more than "women." Their lived realities are determined by the intersecting positions of privilege and subordination they may occupy, at all times and simultaneously, in various overlapping relations that are organized around the hierarchies of class, race, religion, and sexual orientation. Taking into account the impact of these statutory restrictions on women's class interests as Third World workers, for instance, reveals other and contemporaneous dimensions of subordination that are maintained by and organized around the gendered expectations that women should bear primary responsibility for child care and housework--expectations justified by the cultural and ecclesiastical as well as by the statutory regimes of that context.

This multidimensional approach is beckoned by the abundant evidence linking women's poverty and economic subordination to employment practices that maintain sex-segregated occupations through myriad means both in the United States and throughout the Third World. In other words, the formal restrictions established by the Guatemalan Code must be analyzed in light of the pervasive practice of employment discrimination directed at women as workers--practices like the discriminatory refusal to hire women for jobs traditionally occupied by men as well as the suppression of wage rates in jobs that are occupied primarily by women. [FN136] These employment practices, in tandem, construct the sex-segregated occupational structures which reinforce women's economic subordination even as women enter the workforce in increasing numbers.

The important point of this analysis for LatCrit theory's goal of relevance through anti-essentialist, anti-subordination praxis is that the employment practices by which sex-segregated occupational structures are constructed across various economic sectors or markets are linked directly to the sex-based division of labor within the family: indeed, there is ample evidence that "the origins of sex-segregated occupations are found in the unequal division of labor within the family." [FN137] This linkage is resilient in part because employers often justify employment practices channeling women into *559 low-pay, dead-end jobs with few employment benefits on the grounds that women are temporary, and fundamentally unreliable, workers precisely because of their family

responsibilities as allocated--and otherwise celebrated--by heteropatriarchy. [FN138] This vicious cycle, as this abbreviated critique displays, is produced through and by the mutually-reinforcing ideas and actions expressed via religious belief, social culture and legal regulation.

Thus, rather than ensuring the protection of actual families or ensuring that children receive necessary care and attention, the discriminatory allocation of family responsibilities and restrictions on womens' rights of free association reflected in (but hardly exhausted by) the provisions of the Guatemalan Family Code contribute directly to maintaining the sex-segregated occupational structures through which women are channeled into low-wage, dead-end jobs, as well as the practices through which wages and other job-related benefits are suppressed in jobs occupied primarily by women. As a result of these provisions and practices, women systematically are denied equal rights to obtain remunerative employment and to enjoy the increased autonomy and self-determination such employment affords. Moreover, to the extent women's participation in the workforce is occasioned by their husbands' inability to earn enough to support their families (or indeed, by the absence of a male wage earner in the family), discrimination against women workers, based on counterfactual assumptions that women's wages are a secondary source of discretionary income for families supported primarily by men, only restrict women's ability to lift their families out of poverty through wage labor. This broadening of anti-subordination critique within LatCrit theory thereby points to strategies of resistance that recognize the transnational interaction of these various institutions and industries. [FN139]

Equally important, this broadened analysis would be incomplete without similar recognition of the position in which this statute, and its normative or religious underpinnings, situate women due to the normative inter- linkage of class, color and sexual orientation. For instance, a Queer critical sensibility within LatCrit theory would move to apply and particularize the "double and nothing" dynamic articulated by feminist and lesbian legal scholars to describe the position of lesbians at the intersection of sex, gender and sexual orientation. [FN140] This dynamic describes the feminization (and devaluation) of all women in the workplace as a result of sex and gender stereotyping and its convergence with a simultaneous defeminization (and double devaluation) specifically of lesbian women due to sexual orientation stereotypes that cast lesbians as "butch," masculinized or otherwise gender- atypical creatures. This confluence renders lesbians unfit workers because they are women and unfit women because they are lesbians. The social biases and legal scripts produced through the confluence of these stereotypes in the embodiment of the lesbian makes her "double and nothing"--or doubly nothing-- both in public life as a worker and in private life as a woman.

Proceeding from the "double and nothing" insight, a particularized and transnational LatCrit analysis would interconnect how, as women, the Guatemalan Family Code similarly relegates lesbians to subordination within the family and throughout society and how, as lesbians, this Code projects and reinforces the exclusion and erasure of lesbian women within the family and throughout society. This broadened but particularized comparative analysis thus interconnects the particular socio-economic conditions of women and lesbians in Anglo and Latina/o contexts to produce similar and perhaps interconnected positions of subordination on the combined grounds of sex, gender and sexual orientation. This transnational analysis indicates that this "family" Code, like other social and legal scripts, generates direct as well as consequential effects that intersect in mutually-reinforcing ways to subordinate all women in different ways

both within and beyond conventional family relations. This analysis thus heeds, and illustrates the anti-subordination efficacy of, Professor Luna's call for transformative universality through critical particularity.

This broadened analysis also illustrates why the strategies needed to combat internationally and cross-culturally all forms of subordination imposed through the deployment of gendered stereotypes must be informed and guided by the particular conditions prevailing *561 in Latin America and other portions of the global village: LatCrit theory's search for effective reformatory interventions must deal with the fact that, in many of these countries, gendered stereotypes are still codified as domestic law; we must deal with the fact that, in many of these countries, domestic legal process is only barely relevant to the structuring of power and the accountability of the state; we must deal with the particular ways in which the subordinated status imposed on women through the legal structures of the family is reinforced by transnational economic processes, like export processing zones, flexibilization, and the international division and feminization of low-skilled labor. [FN141] As we urged above and reaffirm here, LatCrit theorists must strive to progress continually from a generalized and abstract concern with subordination to a concrete engagement with the particular and contextual in order to craft holistic analyses of subordination systems that respect no borders or boundaries; as part of this effort, we specifically must develop international strategies and communities geared to international fora. [FN142]

Returning in closing to our initial emphasis--the articulation of a critical anti-subordination analysis of religion's role in regulating sexuality and channeling it through a particular vision of the male-dominated family organized around the centrality of heterosexual marriage--what we have seen is the cumulative and interconnected structures and relations of subordination that have been licensed in part by the direct and indirect exertion of religious ideological and institutional power and influence. Though a critical assessment of religion's effects in this time and place requires LatCrit scholars neither to wholly accept nor wholly reject "religion" per se, it does require us to articulate with care how LatCrit theory might help to re/align "religion" with social justice for all--including all nonEuropean peoples, all women, and all sexual minorities. Certainly, the normative validity of an order that systematically produces and willfully legitimates so much subordination is at least questionable when approached from a social justice perspective. Questioning this validity in a penetrating and expansive way is a task pending for LatCrit theory, a task whose critical engagement we hope that these brief notes will help to hasten.

III. Unity In Difference: Observations and Aspirations About LatCrit Theory's Diverse Social Justice Agendas

Like the preceding parts, the following discussion seeks to apply critical anti-subordination analysis to particular issues or themes that framed the LatCrit II conference, and that are represented in this symposium directly or indirectly. To do so, this Part divides into three sections. The first section focuses on issues arising from and related to the LatCrit commitment to pursue its anti-subordination agendas cognizant of and attentive to inter- and intra- group differences. The second section then examines the operation of poverty in Latina/o communities to encourage greater engagement of class within LatCrit theory. The third section closes the Afterword with some reflections linking the production of scholarship to the construction of a LatCrit community, and

considering briefly how these inter-related objectives may best be accomplished in both the short and long term. In this way, we seek to develop LatCrit approaches to issues of knowledge, community and transformation that exemplify and implement an expansive anti-subordination consciousness and agenda within LatCrit theory.

A. Inter/Intra-Group Solidarity Through Justice in LatCrit Theory

Since the beginning of the LatCrit gatherings, talk of the "Black/White Paradigm" has become staple fare. We are heartened to see a rapid and constructive evolution of that discussion. As we read it, the evolution of the LatCrit critique of the Black/White Paradigm thus far has unfolded in five steps.

The first step was centering the paradigm and noting its marginalization of Latinas/os and other non-White/non-Black people of color. [FN143] The second was recognizing this paradigm as an apparatus specifically of white supremacy and acknowledging the particularized oppression of Blacks under the paradigm. [FN144] The third was considering the historical sources of the paradigm, which is rooted in the exceptionalism of blackness in the social and legal history of this nation. [FN145] The fourth was to acknowledge and thematize the transnational *563 dimensions of Latina/o identities [FN146] as well as the multiplicity of subject positions around which a Latina/o political identity might be constructed and contested in articulating or manipulating the anti-subordination objectives of LatCrit theory. [FN147] The fifth was to confront the erasure of indigenous peoples both by the paradigm, and by our preceding stages of critique. [FN148] We consider these five stages of theoretical development as truly remarkable progress in a short time period, and look forward to continuing the evolution of this critique.

As the proceedings of the LatCrit II conference clearly demonstrate, those early insights have continued to evolve in LatCrit discussions of race relations. One example is the difficult topic of racism within and between various groups of color, including Latinas/os. [FN149] This topic has been broached in one form or another at every LatCrit gathering, but the LatCrit community has not yet focused in a sustained way on the relevance for LatCrit theory's development of the complex issues and concerns underlying this topic. This topic, however, is crucial both to pan-group aspirations and to inter- group relations; the activation of racial identities within and among people- of-color groupings against the backdrop of white-black binarism can promote solidarity or division; it can facilitate or defeat the quest for social justice; it can illuminate or reify current understandings of "race" and racism. Because this topic awaits our collective scholarly attention, we include it here as a prime aspiration for LatCrit theory at this time. [FN150]

We begin with Professor Kevin Johnson's incisive distillation of intra- Latina/o group conflict, which pivots on the interplay of race with ethnicity, language, class, social status and other factors. [FN151] This account shows that Latina/o subordination encompasses hierarchies blessed both by Anglo and Latina/o cultures, thereby reminding *564 LatCrit scholars of the internal sources that yield intra-group tension and abet Latina/o subordination. But this account also reminds us that intra-group tensions and their detrimental effects have additional causes, which are imposed externally: intra-group tensions, for instance, are instigated by the "unequal distribution of legal rights among Latinas/os"--inequalities imposed by law on the basis of legislative and judicial choices regarding constructs like formal immigration or citizenship status. [FN152] This

reminder has wider implications because it calls for recognition of a like dynamic--the external imposition of white supremacy on various groups of color at once--that leads to similar inter- group-of-color tensions and consequences.

These intra- and inter-group tensions, as Professor Sandrino's article effectively suggests, may be due in part to an uncritical conflation of race and ethnicity in the social and legal discourse of the United States. [FN153] Among Latinas/os, as among other racialized and ethnicized classifications, the categories produced by these social constructions sometimes overlap and sometimes not: Latinas/os, Professor Sandrino's article makes plain, are clusters of multiracial and multiethnic populations. [FN154] Therefore, both racism and nativism are relevant to LatCrit theory's anti-subordination agenda. But racism and nativism can be combatted effectively only if white supremacy is understood to be their specific and actual formulation in this time and place; in other words, only if LatCrit and other outgroup scholars approach antiracist struggle as a multifaceted engagement with, and resistance against, white supremacy's hegemony.

Given this conflicted backdrop, inter-group-of-color tensions can burst onto the national scene through the course of the everyday media attention given to popular culture, as the essay by Professor Bob Chang points out. [FN155] In this instance, the context was celebrity sports and its racialized dimensions in this white supremacist society. Using media and popular obsession with the racial (self-)identification of multiracial golf sensation Tiger Woods in 1997, Professor Chang interweaves culture, politics and power seamlessly, questioning: "Why have certain communities become so invested in his racial classification? What is to be gained?" [FN156] These are precisely the questions to which LatCrit theorists must subject all sources of inter-group conflict that enter or affect our work.

In other words, all LatCrit encounters with tension and conflict, which inevitably take place against the omnipresent backdrop of white supremacy and privilege, should proceed from a self-critical analysis of the benefits to be gained and the relations of solidarity and/or confrontation that may be catalyzed through our interventions--and of whether our intervention is, in fact, tailored to produce our intended objectives--given this omnipresent backdrop. To be effective, LatCrit interventions must be supported and directed by a keen analysis of their likely impact on the overall but particular context of their occurrence. Professor Chang's questions thus prompt us to etch a few notes about the links between this symposium and LatCrit theory generally, as well as among some of the essays presented within this symposium, which are in part responsive to these queries.

In particular we seek here to bring together the LatCrit deconstruction of the Black/White Paradigm with the recent attention directed by outgroup scholars to inter-group tensions among and across non-White identity categories. This connection is substantively and strategically important at this stage of our still-unfolding critiques because further LatCrit discussion of Black-White polarities can benefit from recent analyses of the color-on- color inter-group grievances and relations that inevitably are set against the omnipresent backdrop of White supremacy. [FN157] These recent analyses have shown how groups of color can lose sight of long-term anti-subordination interests when they opportunistically redeploy structures of subordination to exploit a momentary advantage created by some permutation of White supremacy's power: inter-group alliances among communities and scholars of color to make common cause against the hegemony of whiteness can be compromised in profound and lingering ways through a shortsighted reaction to the appearance of opportunity. The pending question for LatCrit theorists, therefore, is: "How do we, as African Americans, we as White Americans, we

as Asian Americans, we as Latina/Latino Americans participate together in struggles that involve people who are not ourselves?" [FN158]

Or, more precisely, how do LatCrit scholars help to reconceive social justice struggles that appear to be attenuated from those that we imagine to be our own, but that in fact implicate our own? Conversely, how do we craft and apply anti-subordination analyses that display the wholism [FN159] interconnectivity [FN160] and cosynthesis [FN161] both of *566 interlocking forms of oppression and of efforts to resist them? Equally important, but conceptually distinct, how do we develop an ethical vision beyond the imperatives of strategic alliances that can sustain our commitment to the liberation of others, particularly and precisely in those instances when their liberation challenges whatever privileges we may enjoy? [FN162]

One path to and past the difficult issues raised by these queries, urged by Professor Martinez in his symposium essay, is the conscious and proactive embrace of "epistemic coalitions" that can help to cohere complex--and perhaps sometimes colliding--anti-subordination struggles. [FN163] The Martinez essay's call to epistemic coalitions, joined with Professor Luna's interweaving of particularity and universality, seems to us an especially useful lens through which to view the continuing effort specifically to transcend the prevalence of reductionist accounts of "race" relations that tend to focus social and legal discourse "exclusively or primarily" on white domination of black persons. [FN164] Taking our cue from the combined insights of the Martinez and Luna essays, LatCrit theorists must exercise heightened care to differentiate black from white in the paradigmatic status quo. More so, LatCrit theorists must make the particular and foundational degradation of blackness via the Black/White Paradigm organic to our critiques of white supremacy's operation under that paradigm, while simultaneously striving to open a critical discourse that also incorporates other non-White, non-Black group interests. This expanded anti-subordination approach to inter- and intra-*567 group race relations within LatCrit theory and outsider jurisprudence is counseled by the need for epistemic coalitions forged through careful investigation of the particular to discern the universal.

A show of heightened care and differentiation is important to LatCrit theory's continuing rigor because it anticipates and responds to the possibility that LatCrit rejection of the paradigmatic status quo will be mistaken as a careless or uncritical equation of "Black" and "White" positions, interests or trajectories within this paradigm. This heightened demonstration of Black-White differentiation under the paradigm in future LatCrit projects furthermore will address inter-group concerns over displacement or competition. This concern is especially important given the overwhelming practical disadvantage of Black, Brown and other nonWhite groups in our corresponding and unfinished efforts to dismantle white supremacy and its legacies of social injustice against the backdrop of this entrenched paradigm. This approach is requisite because LatCrit theorists must consider carefully, consciously and critically the impact of our work not only on Latinas/os and our relationship to white supremacy, but also the effects of our interventions on the ongoing antiracist struggles of African Americans and other groups of color. [FN165]

LatCrit theorists accordingly should endeavor in our next phase of paradigmatic deconstruction to express critical comparisons of African American, Native American, Asian American and Latina/o experience under the hegemony of whiteness to emphasize the interconnected yet differentiated anti- subordination insights and imperatives embedded in those group histories. This critical comparative approach not only will avoid

the elision of particularity, it affirmatively can yield a deeper and broader exposition of whiteness' variegated oppressiveness. This approach also can temper headlong rushes to the sort of non-white opportunism that impedes antiracist struggle for all groups of color because it distracts and deflects anti-subordination energy away from the perpetration of white supremacy and redirects that energy toward a temporary or superficial alleviation of one oppressed group at the expense of another. [FN166] Comparative critiques thereby can produce a sturdier caliber of substantive anti-subordination insight, discourse and struggle: comparative critiques can delineate universality through particularity, and nurture coalitional projects through a shared epistemology on both intra- and inter-group levels.

B. Confronting Colon/ialism in LatCrit Theory and Practice

LatCrit evolution on multicultural or multiracial antiracist concerns is further reflected in the fact that LatCrit II is the first time in LatCrit gatherings that our community focused directly on the relationship between "Latinas/os" and native peoples. [FN167] But this relationship is made especially complex in light of Latina/o mestizaje, or racial and ethnic intermixture. Indeed, various LatCrit scholars have noted from time to time that the cultural and racial mixture of Spanish and indigenous peoples is a key source of contemporary Latina/o identities. [FN168] Yet colonial histories and legacies also make the Spanish connection complex, a point that underlies the challenge issued by the Guerra essay in this symposium. [FN169]

As activist Guerra points out in her essay, the very contents and usages of "Latina/o" as a denominator of identity can be problematic: it opens to question whether LatCrit theory is cognizant of indigenous roots and committed to the ongoing demolition of neocolonialism. [FN170] When Guerra asks whether LatCrit theory is committed to tackling "Colon" in neocolonialism, she knowingly highlights the actual name of the first conquistador, Cristobal Colon, in the word that describes the legacy he put into motion to prod us into thinking critically about our self-conception as Latinas/os or LatCrits. In fact, this essay challenges everyone to question whether anyone should embrace "Latina/o" as the category and label that designate our position in this country at this time. Guerra thus incites a provocative and underexplored question for LatCrit discourse: Should "LatCrit" denominate and describe our position, work and community in this particular place and time? This topic, as the Guerra essay begins to elucidate, is rich and ripe.

The Latina/o-identified scholars that in 1995 originated and adopted the "LatCrit" denomination did so in a self-aware and self-critical manner, and in a manner designed to convey the centrality of anti-subordination ideals to our action. [FN171] We were aware of other possible designations, including most notably the "Hispanic" labeling, but we eschewed that positionality in a critical and conscious manner. That original decision stemmed from both geographic and *569 racial considerations, and it signals both geographic and racial messages.

The "Hispanic" category was and is a creature of this nation's federal government, [FN172] a category that furthermore encompasses persons hailing from both within and without this hemisphere. It describes persons from Europe--Spain--and even Asia--Filipinos--as well as persons from South America and North America, such as those who have created "Spanish" Harlem in this country. [FN173] The "Latina/o" label, on the

other hand, connotes a more regionalized--a hemispheric--designation that, indirectly, also evokes the indigenous dimension of the groups propagated through Spanish and native mestizaje, or intermixture. In our estimation, Latina/o therefore was the more appropriate and accurate geographic and racial self-inscription.

Additionally, in this country the "Hispanic" label signifies whiteness. For instance, "Hispanic" is used within and among Latina/o communities to communicate Spanish, and hence whitened European, ancestry: "Hispanic" expresses a claim of whiteness and a position of relative privilege within the racially mixed and diverse Latina/o communities of this country and world. [FN174] "Hispanic" is an identification that signals affinity for the most dominant and oppressive racial position in this country. On the other hand, the "Latina/o" label conveys an alignment with people of color in this country, as well as an embrace of the non-Spanish, or indigenous, elements that help to configure our present-day communities. Given these additional points of racial politics, the inter- and intra- group message of the "Hispanic" descriptor quickly yielded to "Latina/o" identification when the political choice arose in a room populated with critical anti-subordination scholars.

Nonetheless, the Guerra essay effectively calls upon the LatCrit community to revisit and even reconsider that initial choice. In this essay Guerra implies the real plausibility of--and perhaps she soon will make explicit--other self- identificatory options that in her view are better suited to our scholarly and political self-conception in this time and place. Because LatCrit conversation on this subject up to now can only be regarded as preliminary, and therefore in some ways uncritical or incomplete, we hope the issues raised by this essay *570 will be pursued as a timely and illuminating intervention in the continuing unfolding of a self-critical "LatCrit" community consistently devoted to its diversified anti-subordination pronouncements.

And in this self-critical spirit of anti-subordination unity through the positive embrace of difference and diversity, the LatCrit community also must attend to issues of language and its uses in our gatherings, publications and meetings. LatCrit theorists have time and again critiqued and rejected using the force of law to suppress the Spanish language in both professional and personal interactions. [FN175] LatCrit scholars have marshaled their training and skills to demonstrate how various legal regimes of English supremacy are inimical to the history and culture of this heterogeneous society. [FN176] LatCrit projects and gatherings accordingly have been dedicated to the exercise of pluralist language rights as an expression of Latina/o identity and LatCrit anti-subordination goals.

Increasingly, therefore, a hallmark of LatCrit theory is that LatCrit analyses sometimes are partially expressed in Spanish, both in verbal and in written settings. This phenomenon is reflected in various of this symposium's essays, albeit to different degrees and in different ways. Perhaps most notable in the symposium is the Castaneda essay, which exemplifies the power of bilingual texts in their demonstrative as well as declaratory dimensions. [FN177] The critical concern, however, is over the effects of this practice, and whether those effects are consonant with LatCrit anti- subordination goals in particular contexts. Despite the powerful use of bilingualism in this essay, this underlying concern always lurks because the dangers that excite it are perennial.

Thus, LatCrit use of bilingualism, like all other practices, is subject to critical interrogation to determine whether it operates in a productive, or in an unduly exclusionary, manner. This interrogation of course must be informed by particularized factors or contexts; for instance, whether the use of bilingual capacity occurs at a

conference, or in an article; if at a conference, whether translation is somehow also provided. Though we have not drawn definitive conclusions about these queries, our ideal is that LatCrit theory should *571 employ bilingualism to resist the hegemony of English monolingualism, but we must devise ways of doing so that enable non-Spanish speakers to participate meaningfully in the project of resisting English hegemony. The LatCrit community's self-critical social justice egalitarianism, in other words, requires us to pursue at once both the reclamation of dignity for the Spanish language as well as the full and equal inclusion of English monolinguals in our anti-subordination projects and discourses.

This ideal in turn raises the related issue of indigenous language reclamation, a goal implicitly hinted by the points made in the Guerra essay [FN178] about the conjunction of Spanish and native elements in the construction of "Latina/o" people and in the Castaneda essay [FN179] about language and its multifaceted role in the production of power. While Spanish is a subordinated language vis-a-vis English in this Anglocentric society, it also is the language of conquest and attempted extinction vis-a-vis the indigenous societies that previously prospered on this land. Given this background, is the reclamation of Spanish effectively a redeployment of colonial legacies and their structures of subordination? Is the reclamation of Spanish an uncritical or undertheorized re/assertion of eurocentric and white, though not specifically Anglo, supremacy in public discourse? More specifically, is the reclamation of Spanish without a concomitant effort to reclaim indigenous names and idioms coherent in light of the logic underpinning the choice of "Latina/o" over "Hispanic" in the original self-ascription of "LatCrit" theorists? [FN180] The resolution of the points suggested by these complex questions cannot possibly be endeavored in the context of this Afterword, but a few preliminary observations may be useful to prospective LatCrit theorizing on this aspect of language rights as part of the LatCrit anti-subordination agenda.

We turn, again, to the particularities of context, and to the guidance of overarching anti-subordination principles, to approach this topic. [FN181] In this place and time--the Anglocentric construction of the United States at the millenium--the reclamation of Spanish is indeed anti- subordination practice: it dislodges the hegemony of a single culture and its tongue in the discourse and governance of a multicultural society professedly dedicated to heterogeneity and equality. But given the history that underlies our present context and its configuration of power positions, that practice is woefully incomplete without an equally vigorous reclamation of the indigenous *572 languages that Spanish coercively supplanted in an earlier time and through vast portions of the land that this country now occupies. [FN182]

Of course, we do not mean by "reclamation" that LatCrit scholars should embark at once on a concerted effort to express our analyses in native tongues. In our view, the first phase of reclamation instead signifies a clear and conscious recognition that exploration specifically and contextually of native language suppression or extinction is part of LatCrit theory's collective critical panorama. Reclamation thus means undertaking an initiative not yet engaged in LatCrit theory: developing a critical account of the relevance for legal reform strategies and social transformation projects of the historic legacies and contemporary subordination created through the repression of native tongues by the forced imposition of Spanish, and also incorporating this knowledge into the broader account of "Latina/o" identities, lives and aspirations that LatCrit scholars are composing incrementally through our joint work. It also means attending to, engaging and contributing our critical energies and political solidarity to the ongoing efforts

through which indigenous peoples are seeking to construct a transnational Indian rights network focused specifically on the preservation of native languages and cultural practices both in the United States and throughout Latin America. [FN183]

This additional, specific, reclamatory effort may be more taxing than the former, but that relative difficulty makes the very point that underscores the importance of reclaiming our native idiomatic heritage and, perhaps, capacity: it is precisely because Spanish is the privileged language within Latina/o cultures that anti-subordination imperatives require LatCrit theory to mount a determined effort toward developing a critical consciousness about indigenous tongues. *573 An either/or approach to language reclamation and rights would decontextualize our anti-subordination struggle for language liberty, an approach inconsistent with LatCrit Theory's professed anchoring in an egalitarian and expansive social justice sensibility.

The LatCrit approach to language anti-subordination analysis therefore cannot be limited, or self-limiting, by a privileged centering of Spanish to the exclusion of analogous outgroup grievances regarding subordination through language regulation. The purpose of LatCrit language analysis must be to deconstruct and resist how English suppresses all other languages in this country's numerous and multicultural communities, and how this suppression erases identities and disorganizes communities. Only expansive and egalitarian critique is likely to bring into existence an environment that affirmatively encourages all persons and groups presently suppressed through language regulation to flourish with dignity.

Finally, anti-subordination language analysis in LatCrit theory must reject the gendered inequality that is integral to the structure and elements of Spanish. This rejection is evidenced by our use, in this Afterword, of "Latina/o" rather than simply "Latino" or even "Latino/a" wherever that term appears. This usage denotes the practice of anti-subordination principles within LatCrit discourse because it looks to, and attempts to center, the relative "bottom" of the relevant categories--in this instance of syntax, gender. This practice, though already more generally in use within LatCrit discourse, has not been consistently adopted. [FN184] We think this inconsistency represents a lapse among ourselves in self-aware and self- critical anti-subordination scholarship because at a minimum this lapse acquiesces to androsexism in Spanish and in its use within LatCrit theory. It is a lapse that in effect continues gender subordination, even if unwittingly.

But the LatCrit community easily can mitigate these effects: what it takes, as often is the case, is an individual and collective decision to practice our anti-subordination commitments with evermore vigilance and detail. Though this single change in our language habits will not of itself eradicate gender inequality within or beyond Latina/o communities, this change does represent an increment of progress toward the development of critical anti-subordination consciousness and community. More importantly, this relatively modest change signifies LatCrit fidelity to substantive principles and methods, and it constitutes an example of practicing theory because it represents anti- subordination praxis. We therefore conclude this brief overview of anti-subordination language issues that are pending for LatCrit theorists with a call to consistent adoption of "Latina/o" *574 within our discourse as part of our larger and ongoing effort to coalesce and advance social justice claims both between and beyond LatCrit scholars.

This brief discussion of race, ethnicity, colonialism, "Latina/o" self- identification and language reclamation in LatCrit theory of course does not exhaust the issues raised by LatCrit II. However, we hope that these notes present useful ideas in the development

of LatCrit theory and community. In this instance, as in all others, our aim is to help ensure the relevance of LatCrit work and vision in the progressive pursuit of social justice along multiple legal fronts of oppression through anti-subordination collaboration.

C. Law, Poverty and Culture in the Construction of and Resistance to Latina/o Subordination

The economic tour of San Antonio, an unprecedented innovation within LatCrit programs, opened a variety of political and theoretical possibilities for future LatCrit conferences. [FN185] For one thing, the tour brought into concrete relief the very different life situations and conditions of poor Latinas/os in the Southwest compared, for example, to the urban slums of the Northeast. In our view, engaging these differences is and must remain a central focus of LatCrit theory. In this section, we therefore focus on class issues to advance the substantial contributions LatCrit scholarship already has made in deepening critical analysis of the multiple diversities within and between the various

Latina/o communities throughout and beyond the territorial boundaries of the United States.

More specifically, we focus here on the advances to be made through the exposition of four major themes: first, we stress the need to further compare and contrast the specific legal events and regimes that have been particularly operative in the construction of poverty within and between different Latina/o communities; second, we urge LatCrit scholars to draw specifically on the wealth of interdisciplinary analysis examining the particularities of uneven development and economic restructuring in different geographical areas because this knowledge sheds significant light on the broader economic and political processes through which Latina/o poverty is differentially structured and, hence, on the need to tailor legal reform interventions and political strategies to the particularities of these *575 processes in diverse localities; third, we emphasize the continuing need for LatCrit scholars to further explore the intersection of law and culture, focusing particularly on the way cultural norms and expectations operate in the social organization and subjective experience of poverty within Latina/o communities; and finally, we return once more to examine the subordination of women in the heteropatriarchal family, this time focusing on the way male supremacy contributes to the reproduction of Latina/o poverty by undermining the collective organization and political mobilization of women workers in Latina/o communities.

Professor Luna's essay within this symposium provides a particularly apt point of departure for this critical analysis. [FN186] This essay links the deployment of derogatory anti-Mexican stereotypes--currently used in public discourse to legitimate the poverty, marginalization and violence produced by anti-immigrant, anti-affirmative action, anti-welfare and English-only policies--to a historical analysis of the legal events following the conquest of Mexico in what is now the southwestern United States. Through critical analysis of the way race and national identity were represented in land-takings cases after the conquest, Professor Luna shows how the racialization and "othering" of Mexican people in legal discourse was used repeatedly to rationalize and legitimate the dispossession of their lands--in violation both of established constitutional doctrines and of the treaty obligations the United States government had undertaken to confer U.S. citizenship upon, and to respect the property rights of, Mexican people in the newly-acquired territories. Instead, the racialization of Mexicans, in and beyond judicial

discourse, created a new class of "true" citizens--the white, Anglo settlers on whose behalf the territories had been conquered--while the citizenship conferred upon Mexican Americans proved to be a second-class concoction of judicial manipulation.

By linking the current structure of Chicana/o land tenure, or rather the lack thereof, to this historical account of the legal doctrines and interpretative manipulations through which Mexican Americans were deprived of their lands and denied the rights of equal citizenship status in Anglo-American jurisprudence, Professor Luna's essay effectively foregrounds important particularities and universalities in the legal construction of Chicana/o poverty. At the same time, her methodological approach, combining history and law, opens up new points of contrast and comparison for LatCrit theory. These gains accrue because Latina/o poverty has been constructed, across space and time, by many different legal events and is maintained in different places by different legal regimes, whose *576 common elements and particular divergences provide important, and as yet unexplored, sites for LatCrit scholars as we seek to develop more comprehensive understandings of the ways in which Latina/o poverty is constructed and maintained through law. In this manner, LatCrit scholarship positions itself to make important contributions in two distinct but inter- related ways: first, by comparing and contrasting the different historical and contemporary legal events and regimes that have enabled upward mobility for some segments of the Latina/o population and produced poverty in others; and second, by identifying the different avenues of legal recourse and political resistance currently available in different contexts to different Latina/o groups. In this manner, LatCrit theory learns not only the particulars of structural subordination but also uncovers the particulars of effective and efficient resistance strategies.

Certainly, one particularly important legal event in the differential construction of poverty among Latina/o communities has been the different immigration status accorded to different Latina/o immigrant groups over the course of this nation's history: the welcoming reception that Cuban immigrants received in the early 1960s, and which included unprecedented government benefits programs and special speedy naturalization procedures, is in marked contrast to the hostile reception suffered by Salvadoran and Guatemalan refugees in the 1980s or Mexican immigrants in the 1990s. [FN187] While the early Cuban immigrants enjoyed massive public assistance, enabling them to create a successful entrepreneurial enclave in Miami, the Salvadoran, Guatemalan and Mexican immigrants have enjoyed only the disabilities of their illegal immigration status: low-wage jobs, vulnerability to labor exploitation, non-payment of wages and on-the-job harassment. Approaching the differential incidence of poverty in different Latina/o communities through a LatCrit analysis of the practical and material impact of U.S. immigration laws and related policies could enable LatCrit theorists to provide a powerful framework for developing much-needed counter-narratives in the rhetorical battle over the representation of Latina/o poverty, as well as ammunition supporting progressive policy initiatives in the areas of government assistance and immigration.

Similarly, the objective of identifying new avenues of legal recourse and creating new strategies for political and economic mobilization *577 to combat Latina/o poverty calls on LatCrit theory to advance its critical analysis of Latina/o poverty by noting the existence and exploring the implications of the new economic and political analyses that are emerging in other disciplines. We especially urge a LatCrit encounter with the political economy and geographies of uneven development as well as the socio-geographies of economic restructuring. [FN188] These fields of social inquiry focus specifically on analyzing and explaining the way different economic and political

processes have structured, and are now restructuring, socio-economic life in different parts of the country and the world. A sustained and critical engagement with this interdisciplinary literature promises significant contributions to our anti-subordination legal scholarship and activism because the kinds of anti-poverty legal strategies most likely to be effective in any particular place or time will depend, at least in part, on the broader economic and political contexts that generate the macro- and micro- processes through which poverty is being re/constructed in any particular place and time. The need for different strategies, policies and legal reform proposals follows directly from the fact that the forms of poverty experienced by different Latina/o communities in these different geographical areas are produced through different economic processes, respond to different political logics and are coalesced by different socio-legal regimes. Thus, LatCrit scholars will need to develop very different legal strategies for combating Puerto Rican poverty in New York, New Jersey and on the island of Puerto Rico as compared, for example, to the strategies needed to combat Chicana/o poverty in the border towns of Southern Texas, or the poverty of Central Americans and more recently- arrived Cubans in Miami.

To be more specific, combating Puerto Rican poverty requires strategies that can effectively intervene in and against the processes of economic disinvestment and industrial relocation that have closed so many industries in the Northeastern "Rustbelt" as well as addressing the particularities of underdevelopment that result from the history and current political logic of Puerto Rico's commonwealth status. [FN189] These strategies may call for, and therefore channel, LatCrit legal analysis into areas like plant-closing notification and employee-ownership laws, or the legal framework of collective bargaining, or legal restrictions on corporate relocations, or legal strategies to address particular structures and processes in Puerto *578 Rico itself. However, reform proposals and strategies developed in response to these particular situations may be completely ineffective or irrelevant to combating Chicana/o poverty in cities along the U.S.-Mexico border precisely because poverty and unemployment in the border towns are linked to different economic processes--and particularly to the mis/fortunes of the Mexican economy. [FN190] Combating poverty in the border regions may, consequently, call for different legal strategies-- strategies, for example, that address the current distribution of land ownership, that promote enforcement of labor and environmental standards in the Maquiladora industry across the Mexican border, and that combat the militarization of the United States border patrol.

It follows from the foregoing that strategies appropriate for combating poverty in the border regions or the Northeast Rustbelt may be completely ineffective in combating the poverty of Central American and Caribbean immigrants in South Florida, nor will they necessarily address the poverty that Latinas/os and indigenous peoples are experiencing in Latin America as a result of involuntary resettlements and internal displacements incidental to development projects or natural resource exploration and exploitation practices of first-world multinationals. Nevertheless, an anti-essentialist anti-poverty social justice agenda must take these particularities into account and attempt to address and resolve them. In doing so, we urge LatCrit scholars to explore the resources available in other academic disciplines precisely because combating Latina/o poverty in its particular manifestations will require LatCrit theorists to understand the different but inter-related economic processes and political logics at work in different geographical areas as part of our efforts to devise, develop and deploy the most effective theoretical, legal and political interventions.

A third major component of a LatCrit anti-essentialist anti-poverty engagement with particularity calls on LatCrits to further our collective understandings of the role of culture in organizing the social dimensions, as well as mediating the subjective experience, of poverty. LatCrit scholars need to explore, and incorporate into our scholarship, more concrete understandings of the way Latina/o cultural norms, values and resources influence the ways that different Latina/o groups experience, understand and respond to the conditions of poverty that affect them. This work is crucial to the ultimate success of any anti-poverty social transformation strategy because both policymakers and other legal decisionmakers are routinely--and perhaps unconsciously--influenced by the way *579 Latina/o culture is externally represented in dominant mainstream public discourse. [FN191] Consider, for example, how the deployment of cultural stereotypes about Latinas/os in the underclass debates helped to organize interventions around the presumptions of pathology within Latina/o communities as opposed to interventions that might restructure the lack of economic opportunity in the Barrios: Latinas/os, like African Americans, have been subject to blame-the-victim rhetoric which attempts to attribute poverty and violence within subordinated communities to prescriptively nonwhite cultural norms/values. [FN192]

At the same time, Latinas/os' uncritical internalization of inherited cultural norms and values may also present real obstacles to political and transformative mobilization. In this vein consider, for instance, how the cultural practices and expectations of ethnic solidarity tend to disguise and legitimate class exploitation within immigrant communities. Focusing specifically on Cuban women working for Cuban American employers in Miami, sociologists Alan Stepick and Guillermo Grenier note that, while the working conditions imposed on Cuban immigrants may routinely violate applicable labor laws and often are equivalent in all respects to the conditions endured by the most exploited illegal immigrants in any other part of the country, Cubans working for Cubans nevertheless do not perceive themselves to be exploited. Their lived experience is mediated by an ideology of ethnic solidarity, and by the "hopes for self-employment within a context of paternalistic employee- employer relationships," that create a paradoxical situation in the Cuban enclave economy: "The enclave allows increased exploitation at the same time that it ameliorates exploitation by providing cultural advantages and the [[[often, but not always, illusory] hope of self-improvement." [FN193] This intra-group dynamic recalls the duality and *580 fluidity of self and social identification that Professor Johnson addresses in his contribution to this symposium; [FN194] Latina/o subordination is rooted both in Latina/o and in Anglo normativities, and in their interaction--Latina/o disempowerment hinges on internal and external frameworks similarly but differently biased by identity markers like citizenship, language, class, race, gender and other axes of social status. This intra-Latina/o dynamic is real, and LatCrit theorists must engage it as such; but internalized reality also must be distinguished critically from the external inscription of group stereotypes that motivate, and distort, policy-making on issues especially germane to Latina/o economic well-being.

The objective of designing appropriate and effective anti-poverty strategies and interventions thus raises all sorts of important and cross-disciplinary research issues about the role of culture in aggravating or mitigating the effects of economic marginality. [FN195] Recalling the economic tour of San Antonio, we therefore wonder how LatCrit scholars embarking on comparative, critical and particular analyses would assess the impact of assimilation on the cultural resources through which different Latina/o communities have sought to cope with and/or escape the experience of impoverishment

and marginalization, and how different levels or forms of cultural and economic assimilation create tensions, obstacles or opportunities within and between poor Latina/o communities. [FN196] This overview, though necessarily abridged, should leave no doubt of the many cultural issues awaiting LatCrit attention and analysis in incorporating an anti-poverty agenda into our anti-subordination, anti-essentialist project.

Finally, no anti-essentialist anti-poverty social justice agenda would be complete without attending to, addressing, and ultimately intervening to reform the operation of male supremacy in heteropatriarchal Latina/o cultures and communities. Here we return to examine the particular situation of Guatemalan women workers, focusing specifically on those provisions of the Guatemalan Family Code that enable husbands to veto their wives' decision to participate in labor union activities, among others. [FN197] Just as cultural norms and internalized expectations may function to disguise and legitimate class exploitation, these external and internal influences *581 may render invisible the interconnections between the gender subordination of women in heteropatriarchy and the escalation of class exploitation through the poverty it produces. From this perspective, it is easier to see the extent to which the external imposition, legitimation and coercive enforcement of a male monopoly over the labor of women effected through these provisions of the Guatemalan Family Code, in turn, intersects with other practices and dynamics that currently are undermining working class unionization throughout the world.

The detrimental impact of heteropatriarcal cultural practices and expectations on the development of a strong and vigorous labor movement in Latina/o communities within and beyond the United States has been well documented. Indeed, in examining the organizing failures and successes among Chicanas/os in the cannery industry, Patricia Zavella, has noted that:

> One of the major problems in the Sun Valley Cannery Workers Committee was the lack of participation by women. Of the original membership, only a few were women, and most of them left because of pressure from their husbands. . . . [This is because] women have domestic obligations and men do not. [FN198]

From this perspective, the provisions of the Guatemalan Family Code convert the obstacles already occasioned by heteropatriarchal stereotypes and male resistance to new gender roles into a legal right for husbands to prevent their wives from engaging in union activity--to the determinent not only to their wives, who are denied the autonomy of self-determination and full and free participation in civil society, but also to the labor movement as a whole.

These ripple effects arise, and are profoundly significant in political and economic terms, because the future viability of the labor movement in the Americas is intricately linked to its future success or failure in organizing women workers: currently and increasingly, women are being employed instead of men precisely because their lack of workplace organization and their responsibilities in the home make them more vulnerable to labor exploitation. [FN199] As the number *582 of women in the work force continues to increase, gendered stereotypes and traditional roles that prevent women from fully participating in workers associations will deprive the labor movement of access to the energies, commitment and engagement of the largest growing sector of workers. What emerges from this brief analysis is but one example of the myriad ways in which the

cultural values and practices of heteropatriarchy in Latina/o communities are directly implicated in the dis/organization of class solidarity and collective action against economic exploitation and, in this way, the ripple effects of heteropatrirachy, as expressed through the Guatemalan Family Code and similar legal regimes, are partially responsible for at least as much poverty as might be avoided by the efforts of a vigorous and organized working class.

In sum, then, we are pleased and proud to see that LatCrit theory is beginning the project of developing a richer and more complete cumulative account of class and the different legal events through which Latina/o poverty has been constructed, as well as the role of culture and identity in Latinas/os' chosen methods and modalities of resistance and transcendence. To the extent that time and other limitations permit, exposure to local Latina/o communities during the LatCrit conferences, their places and spaces as well as their local issues and personalities, presents a powerful potential worth pursuing. If this exposure is made more and more ample and interactive, for example, through the inclusion of local activists and issues in LatCrit conference proceedings, it may help to ground our theoretical enterprise in the political struggles of Latina/o communities outside the academy, [FN200] as well as provide LatCrit conferences with a common point of reference for exploring our many diversities over the course of different LatCrit gatherings held in different geographical areas from year to year.

D. Some Concluding Reflections on LatCrit Scholarship, Community and Transformation

From the outset of this discourse, LatCrit theorists have displayed an interest in building through our work both a body of transformative*583 scholarship as well as a multiply inclusive community of critical scholars. LatCrit experience to date thus suggests that both our scholarship and our community should be tailored to the advancement of social justice for multiply diverse outgroups, including but not limited to Latinas/os. Most notably, we have embarked on a series of annual gatherings and related publications to advance these dual and synergistic aims. [FN201] In our view, these efforts at scholarship and community are co-equal means toward our expansive social justice objectives. Neither need yield to the other; on the contrary, we view scholarship and community in LatCrit theory as mutually-reinforcing anti- subordination methods. We therefore close this Afterword with a few thoughts on LatCrit II and its position or location within this embryonic and evolving record.

As Professor Espinoza's essay usefully reminds us, "Latina/o identity binds and breaks us." [FN202] It does both because this category of identity, like others, simultaneously "gives us power and it subverts us." [FN203] This dis/empowering duality, which encompasses both external and internal dimensions, frames the production of LatCrit scholarship: LatCrit theory inevitably is produced in the midst of, and through, the identity currents that cross through the LatCrit community as well as throughout this society at large. To rise above crude or self-defeating identity politics, the LatCrit community, like many others, therefore must recognize and come to terms with the complex effects that multilayered identity issues visit on the production, as well as the contents, of our work.

This point motivates the analysis elaborated in the essay by Professor Lopez, which demonstrates and affirms LatCrit theory as critical and self- critical scholarship committed to exploring intra-Latina/o and inter-people of color group issues from an anti-

subordination perspective. [FN204] In addressing the concept of "Learning About Latinos," this essay's careful review of the findings and methods of the Latino National Political Survey critiques both the benefits and limits of that project in light of the complexities presented by Latinas/os' socio-economic and political profiles. By reviewing the project in a detailed yet contextual way, the essay maps salient Latina/o interests and issues, including those of nationality, race, assimilation and language regulation. This essay, moreover, evinces anti-subordination purpose because the critique targets for scrutiny the sources and artifacts of dis/empowerment embedded in the project or its data. This essay thus sets an example calling for LatCrit repetition as LatCrit theory locates itself within the larger *584 landscape of outsider jurisprudence and critical legal theory and praxis.

As our preceding discussion of narrative, criticality and social justice in the religion context strongly urges, LatCrit theory must situate itself in a critical and self-critical fashion within the broader discursive background that already has been created, through substantial efforts and at great cost, by outsider scholarship. We must, in other words, envision the gains as well as the limits of the recent past as our joint point of LatCrit departure. This positioning, however, requires a broad learning and a caring embrace of outsider jurisprudence and, in particular, of the lessons and limits to be drawn from its experience, its substance and its methods.

These lessons begin with multiplicity, intersectionality and multidimensionality, which avert essentialist oversight and poise us to manage both intra- and inter-group diversities. [FN205] These lessons continue with the importance of balancing specificity and diversity to create self- critical communities and egalitarian coalitions devoted relentlessly to the vindication of "different" but pending social justice claims. These lessons include the imperatives of praxis and politics in all aspects of our professional lives, and particularly in the crafting of critical legal scholarship as an engine for material social transformation that actually benefits traditionally marginalized groups. These lessons thus begin and end with our personal and persistent commitment to practice LatCrit theory and its anti-subordination ideals in every endeavor and encounter. For us, the LatCrit II conference and this symposium are a reminder that LatCrit theory can realize its full potential only if our nascent community grounds itself in these lessons even as it seeks to transcend the limits of prior experiences and insights.

LatCrit appreciation for the gains and lessons of the recent past certainly is manifest in LatCrit II's formal program: in keeping with past LatCrit custom, this conference once again featured a program designed to ensure vigorous and diversified exchanges across multiple categories of critical legal discourse. LatCrit II welcomed both newcomers and veterans, community activists and policy makers, and academics from within the legal academy as well as from other disciplines. In addition, LatCrit II's formal program continued the LatCrit custom of including the participation of multiply diverse speakers to analyze the Latina/o condition from varied identity positions, and in comparison or relation to other outgroups. Moreover, this program once again evinced LatCrit theory's commitment to transnational and comparative analyses of law and culture. In this way, the LatCrit II program aimed to celebrate and solidify the LatCrit *585 ideal both of advancing critical knowledge and building intellectual community within and beyond "Latina/o" groups--an ideal born of the outsider jurisprudence and its insights.

Yet, as the experience of outsider jurisprudence also counsels, the transgressive aspects of our work require especially vigilant wariness of the external, institutional

circumstances that surround and structure the emergence of LatCrit scholarship and community. [FN206] It should go without saying that LatCrit scholars must guard against the many dynamics, incentives and temptations that might lead us to produce scholarship that is unable to withstand the critical scrutiny of mainstream academics, much less ourselves: to the extent that LatCrit theorists are seriously committed to social transformation and sincerely believe that the theoretical work we do in our scholarship is relevant to that transformation, we must be committed to producing scholarship that will move Latina/o concerns and interests to the center of legal discourse and culture. Only by subjecting our claims and our work to critical and self-critical scrutiny will we succeed in enabling ourselves and each other to achieve the new insights and develop the new strategies and solidarities so necessary to the continued evolution of our collective anti-subordination objectives. This imperative or objective necessitates scholarship that continually breaks new ground, is conceptually rigorous, well-researched and critically reasoned.

It does not, however, mean capitulation to dominant forms or standards of knowledge. LatCrit theory from inception has manifested a keen appreciation of legal scholarship's inevitably political and politicized implications. [FN207] From the beginning LatCrit theory has demonstrated the capacity to employ, critique and expand the analytical techniques, interpretative methodologies and interdisciplinary resources developed by Critical Race Theory and other outsider scholars. [FN208] To amplify those gains, LatCrit theory need not "go back" and must instead forge ahead with the transgressive means and aims that outsider jurisprudence and prior LatCrit efforts have pioneered: we must collectively and individually dedicate ourselves to imagining and implementing new ways of going forward in light of the myriad lessons to be drawn from past experience.

To help ensure the long-term viability of LatCrit theory we proffer one means: we must push ourselves and our colleagues to articulate expressly and continually the linkage of identities to ideas and, more specifically, the linkage of insights derived from identities to ideas for doctrinal and institutional reforms with transformative potential. To secure our work's momentum, we consistently must explicate and emphasize in volatile and varied socio-legal settings the linkage of outsider identity critiques with critical analyses of substantive doctrines and policies that affect the social justice agendas of Latinas/os and other outgroups globally and in the United States. This intensified and explicit linkage of identities to ideas is precisely the insight that underlies Professor Carrasco's essay, [FN209] and we could not agree more.

Reminding us that LatCrit scholars embody multiple roles at once--including employees, activists, teachers, scholars and lawyers--Professor Carrasco's essay insists that we connect insights derived from our performance of these roles to substantive legal doctrines and their progressive reformation. [FN210] In effect, Professor Carrasco's essay demands that LatCrit theorists employ multidimensional identities as springboards to anti- subordination theory and praxis. This method is sound and urgent, as it trains our attention to a perpetual source of critical insight: the everyday micro- aggressions that permeate our social and institutional environments daily as we perform our multifaceted roles. [FN211] Connecting these micro-aggressions to their macro-structures--or connecting ideas derived from experiences shaped by identity--is a powerful source of anti-subordination insight. Through this method of express linkage and its widespread use we thus hope that all LatCrit projects increasingly will demonstrate the relevance and importance of perspective jurisprudence to the project of legal reform and social justice

in the United States and beyond.

Of course, this push to link multiplicitous and intersectional identities to liberational insights and reforms is never-ending, and inexorably so. The frontiers of LatCrit theory must be ever-expanding until the outer consequences of our work meet and overtake progressively the edges and centers of social and legal subordination. LatCrit theory must grow in scope and depth until its contours match--and actually overhaul--the conditions of marginality and disempowerment that pervade Latina/o and other outgroup lives. The profundity and intricacy of LatCrit theory must be guided by the *587 complexity and diversity of Latina/o and other outgroup experiences with social injustice.

To this end, we think it important to refocus our collective attention on the need for all LatCrit scholars to keep in mind that we have launched a momentous and long-term project: building a body of scholarship that is socially relevant, that is the basis of a functional multicultural social justice community, and that lives up to the ideals of egalitarianism and anti- subordination. Our enterprise is difficult, draining and continual work, in part because it necessarily entails conflict as well as conflict resolution. If LatCrit theory is to succeed over the long term, we must be willing to express, critique and accommodate difference across multiple axes of experience and position in ways that always are consonant with our anti-subordination proclamations and aspirations. Part of our conscious, collective enterprise therefore must be to conceive and construct a discursive culture where conflict and conflict resolution are integral to the production of enduring and transformative legal scholarship. In sum, the LatCrit community must collectively and individually reach out to understand, embrace and defend the marginalized wherever they be found in this society and beyond it--even, or especially, when we perceive "them" to be "different" from "us."

Simply put, we cannot fear difference, its articulation, or its exploration. Instead we must welcome the manifestation of difference within and among LatCrit scholars, but with a sense of anti-subordination purpose: through the internal application of anti-subordination insights and methods, LatCrit scholars can focus on the construction of knowledge, communities and coalitions out of unavoidable differences. And when we misapprehend or alienate each other in the self-critical process of discovering various differences amongst us--as humans inevitably do from time to time--we must be able to help each other to learn from the experience and to continue our mutual work on behalf of Latina/o and outgroup anti-subordination objectives.

Thus, in closing this Afterword, our deepest hope and basic aim is that the richly diversified LatCrit community with which we proudly identify will approach each encounter with difference and conflict as an opportunity to reaffirm our individual and collective dedication to anti-subordination analysis and praxis. Indeed, as we have striven to do in this Afterword, we think it most important to seek out and apply anti-subordination methods for self-critical guidance on the very resolution of conflict among us. We can never forget that anti-subordination critique is more than rhetoric; it also is more than a method of understanding and reforming external social injustice. To secure the integrity and power of our work, purposeful anti-subordination consciousness and critical multidimensional *588 analysis are mandates that remain always applicable internally as well.

Conclusion

With this Afterword we seek to contribute to the ongoing construction of a LatCrit discourse and movement by articulating an anti-subordination critique of LatCrit theory as outsider legal scholarship. This critique self-consciously aims to advance multifaceted social justice agendas formed and informed by the multiple diversities of Latinas/os here and abroad. By emphasizing critical anti-subordination theorizing as an overarching method, value and goal of the LatCrit community, we seek through this Afterword both to engage and situate the multivocality of the symposium contributors on various issues, perhaps most notably at the intersection of religion and sexuality. In so doing, our hope is to demonstrate that anti-subordination analysis can provide a flexible yet workable means of confronting, ameliorating, and resolving resolving, the inevitable conflicts of priorities and subjectivities that any collective enterprise, including our own, is bound to encounter over time.

Footnotes

[FNd1]. Professor of Law and Co-Director, Center for Hispanic and Caribbean Legal Studies, University of Miami School of Law. Thanks to St. Mary's School of Law and the UCLA Chicano-Latino Law Review for sponsoring the Second Annual LatCrit Conference commemorated by this symposium, as well as to the organizers, participants, symposium contributors and particularly to the UCLA student editors, Jeffrey Reyna and Claudine Martinez, for making LatCrit II a historic contribution to the continuing evolution of LatCrit legal theory. Special thanks to my friend and colleague, Frank Valdes, for his many strengths of mind and spirit and for the always creative and sometimes even awesome synergies our collaborations have allowed me to experience. All errors I share with Frank.

[FNdd1]. Professor of Law and Co-Director, Center for Hispanic and Caribbean Legal Studies, University of Miami School of Law. I thank first and foremost my friend and colleague, Lisa Iglesias, for an enriching composition process and a wonderful professional friendship. I thank also Bob Chang and Sam Kaplan for comments and ideas that developed parts of this Afterword. Because this symposium commemorates the Second Annual LatCrit Conference, I thank the two sponsors, St. Mary's School of Law and the UCLA Chicano-Latino Law Review, as well as the organizers, participants and attendees of LatCrit II. I thank also the symposium authors for their contributions to LatCrit theory. Finally, I thank UCLA editors Jeffrey Reyna and Claudine Martinez for their leading and steady roles in this symposium, and Miami students Linda Leali and Sholom Boyer for strong and solid research support. All errors I share with Lisa.

[FN1]. Even though this event was the "Second" Annual LatCrit Conference, it was the fourth LatCrit gathering; previously, two colloquia were held in conjunction with the annual meeting of the Hispanic National Bar Association. The first colloquium, in 1995, took place in Puerto Rico and the second, in 1996, took place in Miami. The published proceedings of these colloquia appear in Colloquium, Representing Latina/o Communities: Critical Race Theory and Practice, 9 La Raza L.J. 1 (1996) and Colloquium, International Law, Human Rights and LatCrit Theory, 28 U. Miami Inter-Am. L. Rev. 1 (1997), respectively. The published proceedings of the First Annual LatCrit Conference appear in Symposium, LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship, 2 Harv. Latino L. Rev. 1 (1997).
In addition, a free-standing symposium on LatCrit theory was published jointly by the California Law Review and La Raza Law Journal as LatCrit Theory, Latinas/os and the Law, 85 Cal. L. Rev. 1087 (1997), 10 La Raza L.J. 1 (1998).
Finally, the proceedings of the fifth LatCrit gathering--the Third Annual LatCrit Conference--will be published jointly by the University of Miami Law Review and the University of Texas Hispanic Law Journal. See Symposium, Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory, 53 U. Miami L. Rev. (forthcoming 1998), 4 U. Tex. Hispanic L.J. (forthcoming 1998).

[FN2]. The prior year, at LatCrit I, the eruption concerned gender, leading to a spontaneous Latina caucus during the conference. That event occasioned the first-ever gathering of Latinas qua Latinas in the legal

academy of the United States. For reflections on that experience from one Latina participant, see Elvia R. Arriola, Foreword: March!, 19 Chicano-Latino L. Rev. 1 (1998).

[FN3]. In this essay we often invoke "LatCrit theory" and its "ideals" or "values" or "purposes" in order to convey our joint, subjective sense of the LatCrit enterprise. However, we also acknowledge now, and throughout this Afterword, that "LatCrit theory" and its characteristics are young and evolving. Moreover, we recognize that this evolution will be shaped incrementally by the diversities of the self-selected group of scholars that choose to self-identify with, and to participate actively in, this movement. We thus refer to the LatCrit theory, community and consciousness in this essay with these thoughts, and caveats, always in mind.

[FN4]. Arriola, supra note 2, at 26-52; Devon W. Carbado, The Ties That Bind, 19 Chicano-Latino L. Rev 283 (1998); Laura E. Gomez, Constructing Latina/o Identities, 19 Chicano-Latino L. Rev. 187 (1998); Margaret E. Montoya, Religious Rituals and LatCrit Theorizing, 19 Chicano-Latino L. Rev. 417 (1998).

[FN5]. See sources cited supra note 1 (LatCrit colloquia and symposia).

[FN6]. The term "Latinas/os" includes an amalgam of multiply diverse persons and groups. The term therefore necessarily oversimplifies. While cognizant of its limitations, we use the term here generally to signify persons with nationalities or ancestries derived from countries with Hispanic cultures and who self-identify as such.

[FN7]. For a fairly detailed analysis of LatCrit theory and its conception, see Francisco Valdes, Theorizing OutCrit Theories: Comparative AntiSubordination Experience and PostSubordination Vision as Jurisprudential Method, in Critical Race Theory: Histories, Crossroads, Directions (Jerome McCristal Culp, Jr., Angela P. Harris & Francisco Valdes eds., forthcoming 1999).

[FN8]. Early LatCrit works suggest four interrelated and overlapping functions of LatCrit theory specifically, and of critical legal theory in general: the production of critical knowledge, the advancement of social transformation, the expansion and connection of anti-subordination struggles, and the cultivation of intellectual community and progressive coalitions. See Francisco Valdes, Under Construction: LatCrit Consciousness, Community and Theory, 85 Cal. L. Rev. 1087, 1093-94 (1997), 10 La Raza L.J. 1, 7-8 (1998).

[FN9]. By "heteropatriarchy" we mean the symbols and structures that exalt male-dominated, cross-sex social arrangements and that therefore are androsexist and heterosexist in ideology.

[FN10]. This economic tour was designed to show how the city of San Antonio has been materially constructed around racial, ethnic and class lines through zoning choices and economic pressures that reflected corresponding relations of power and privilege. The tour, though only a brief incursion into the daily life of the host community, permitted the conference attendees to see for themselves the local manifestation of some issues directly relevant to LatCrit theory. See infra notes 185-200 and accompanying text.

[FN11]. See Kieth Aoki, (Re)presenting Representation, 2 Harv. Latino L. Rev. 247 (1997).

[FN12]. See Reynaldo Anaya Valencia, On Being an "Out" Catholic: Contextualizing the Role of Religion at LatCrit II, 19 Chicano-Latino L. Rev. 449 (1998).

[FN13]. See Emily Fowler Hartigan, Disturbing the Peace, 19 Chicano- Latino L. Rev. 479 (1998).

[FN14]. See Nancy K. Ota, Falling From Grace: A Meditation on LatCrit II, 19 Chicano-Latino L. Rev. 437 (1998).

[FN15]. See Verna Sanchez, Looking Upward and Inward: Religion and Critical Theory, 19 Chicano-Latino L. Rev. 431 (1998).

[FN16]. See Max J. Castro, The Missing Center? Cuba's Catholic Church with a Preface and a Postscript/Reflections, 19 Chicano-Latino L. Rev. 493 (1998).

[FN17]. See, e.g., David T. Abalos, Latinos in the United States: The Sacred and the Political 5, 66-67 (1986); Rodney E. Hero, Latinos and the U.S. Political System: Two-Tiered Pluralism 48 (1992); Earl Shorris, Latinos: A Biography of the People 362-80 (1992). According to the current news reports, this history of Latina/o religiosity, and specifically Catholicism, continues today in this country. See, e.g., Maria Miro Johnson, Haciendo Historia Making History; Hispanics in Rhode Island Latinos Reenergize Catholic Churches, Providence Journal-Bull., Nov. 23, 1996, at 1A; Robert Sargent Jr., Churches Cater to the Area's Growing Hispanic Population; Many Congregations on the Rise, Orlando Sentinel, June 27, 1997, at 26; Karl Spence, More Salsa, Please; America is Getting a More Colorful Complexion--And Loving It, Chattanooga Free Press, June 29, 1997, at A13.

[FN18]. For personal testimonials, see Valencia, supra note 12, at 451; Hartigan, supra note 13, at 480; see also Castro, supra note 16, at 494 (elaborating a more sociological analysis of religion and Catholicism in Cuba).

[FN19]. See Castro, supra note 16, at 499.

[FN20]. See Valencia, supra note 12, at 423; Hartigan, supra note 13, at 488.

[FN21]. See Valencia, supra note 12, at 465; Hartigan, supra note 13, at 486-87.

[FN22]. See Ota, supra note 14, at 440.

[FN23]. Postmodern anti-subordination analysis of law generally calls for attention to the operation of power relations with special attention given to the context, history and particularities of the issues under analysis. Postmodern legal analysis thus eschews "essentialism" as well as any delusion of objectivity or neutrality. For outsider exposition of postmodernism in critical legal theory, see Angela P. Harris, Foreword: The Jurisprudence of Reconstruction, 82 Cal. L. Rev. 741 (1994); see also Anthony E. Cook, Reflections on Postmodernism, 26 New Eng. L. Rev. 751 (1992).
In outsider legal discourse, postmodernism has been advanced perhaps most by women of color involved with Critical Race Theory and Critical Race Feminism. See, e.g., Kimberle Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. Chi. Legal F. 139 (developing the concept of "intersectionality" in critical legal analysis); Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 Stan. L. Rev. 581 (1990) (demonstrating the importance of "multiplicity" in critical legal theory); Berta Esperanza Hernandez-Truyol, Building Bridges-- Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement, 25 Colum. Hum. Rts. L. Rev. 369 (1994) (advancing the concept of "multidimensionality" in contemporary discourse about Latinas/os). Since these early gains, scholars of color have continued elucidating additional concepts or tools to enhance postmodern anti-subordination critiques of unjust legal doctrines, institutions and processes. See, e.g., infra notes 159-161 and sources cited therein on wholism, cosynthesis and interconnectivity.
The methodological and substantive breakthroughs of outsider legal scholarship represented by these works have been organic to the conception and early articulation of LatCrit theory. See, e.g., Francisco Valdes, Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self- Empowerment, 2 Harv. Latino L. Rev. 1, 56-59 (1997) (introducing the symposium based on the First Annual LatCrit Conference and discussing LatCrit theory's grounding in outsider insights like intersectionality, multiplicity and muldimensionality).

[FN24]. See Elizabeth M. Iglesias, Structures of Subordination: Women of Color at the Intersection of Title VII and the NLRA. Not!, 28 Harv. C.R.- C.L. L. Rev. 395, 502 (1993) (concluding that "[t]he practice of liberation legal theory [[must aim] at understanding the role of law in maintaining structures that perpetuate relations of domination and subordination in a given society for the purpose of materially promoting that

society's transformation.").

[FN25]. See Margaret E. Montoya, Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis, 2 Harv. Latino L. Rev. 349, 356-71 (1997) (calling for a self-critical approach to LatCrit theory).

[FN26]. See Mari J. Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 Harv. C.R.-C.L. L. Rev. 323 (1987) (illustrating critical analysis grounded in realities lived at the bottom).

[FN27]. See Elizabeth M. Iglesias, Human Rights in International Economic Law: Locating Latinas/os in the Linkage Debates, 28 U. Miami Inter-Am. L. Rev. 361, 377-86 (1996-97) (mapping the complex ways in which LatCrit understandings of the reasons for and the nature of Latina/o subordination can be discursively manipulated to consolidate very different political alliances around solidarities of class, culture or nationalism--at the expense of more inclusive and comprehensive anti-subordination agendas that resist reinscribing relations of privilege and subordination along any category of identity).

[FN28]. The Roman Catholic Church long has been vehemently against modern forms of contraception, much less any form of abortion. For instance, the 1968 papal encyclical, Humanae Vitae, positioned the Roman Catholic Church in opposition to contraception. See Pope Paul VI, Humanae Vitae, reprinted in Philosophy and Sex 167-84 (Robert Baker & Frederick Elliston eds., 1984). Christianity, and Roman Catholicism in particular, more generally also are closely allied with patriarchy's hold over both the "public" and "private" spheres of human activity. For an overview of the public/private distinction, see Morton J. Horwitz, The History of the Public/Private Distinction, 130 U. Pa. L. Rev. 1423 (1982); see also Ruth Gavison, Feminism and the Public/Private Distinction, 45 Stan. L. Rev.1 (1992). This alliance is enabled by Christianity's historic obsession with the sexual, which lends itself to the regulation of human personality through human sexuality in a calculated biased way: calculated to valorize heterosexuality as "the" "way of life" and to ensure substantial male control of it. See generally Francisco Valdes, Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender and Sexual Orientation to Its Origins, 8 Yale J.L. & Human. 161, 172-211 (1996).
Of course, patriarchy is a complex phenomenon that transcends any one religion. For a critical history of patriarchy, see Gerda Lerner, The Creation of Patriarchy (1986); Angela L. Padilla & Jennifer J. Winrich, Christianity, Feminism, and the Law, 1 Colum. J. Gender & L. 67 (1991). Though to varying degrees and in varied forms at different times or places, Christianity, sexual moralism and patriarchy repeatedly have been observed as historical correlates. See, e.g., Peter Brown, The Body and Society: Men, Women and Sexual Renunciation in Early Christianity (1988); James A. Brundage, Law, Sex, and Christian Society in Medieval Europe (1987); Robin Lane Fox, Pagans and Christians (1989); see also Pierre Chuvin, A Chronicle of the Last Pagans (B.A. Archer trans., 1990). More importantly, this ideological correlation continues vividly to be enacted even today by various Christian political groups, who mix the power of religion with "traditional values" to espouse cultural practices and state policies that obviously and intentionally favor men and straights over women and Queers. See generally infra notes 122-131 and accompanying text.

[FN29]. By "sexual minorities" we mean an inclusive category embracing multiply diverse lesbians, bisexuals, transsexuals, transvestites, transgendered persons and gay men; though each of these classifications represent different sex/gender/sexual orientation configurations, they all stand in opposition to heteropatriarchy. They all have a common interest in heteropatriarchy's dismantlement, and, hopefully, in a broader norm of sex/gender liberty and diversity. Without occluding multidimensional difference or variance within or across these classifications, we emphasize strategic and substantive commonality, if not social affinity, in pursuit of anti-subordination ideals.

[FN30]. The Roman Catholic Church has a long tradition of formal homophobia. See, e.g., John J. McNeill, S.J., The Church and the Homosexual (1985); Homophobia and the Judaeo-Christian Tradition (Michael L. Stemmeler & J. Michael Clark eds., 1990); Homosexuality and Religion (Richard Hasbany ed., 1989). This tradition stretches back, in some respects, to Christianity's earliest times. See generally John Boswell, Christianity, Social Tolerance, and Homosexuality 137-66 (1980). However, this tradition is mixed with pockets of inapposite precepts and practices, which include the practice of same-sex unions within Christian heritage. See generally John Boswell, Same-Sex Unions in Premodern Europe (1994).

Ideologically, the institutions of Christianity have aligned themselves with heterosexism in the pursuit of procreation. See generally Valdes, supra note 28, at 199-211. The Roman Catholic Church, for instance, routinely opposes deregulation of abortion and other reproductive rights in contemporary public policy debates. See, e.g., Gerald Renner, For State, A Movement of Contrasts; Anti-Abortion Effort Rests With Catholics Amid Liberal Laws, The Hartford Courant, Jan. 19, 1998, at A1; DeWayne Wickman, Mergers "Stealth War" On Reproductive Rights, USA Today, Mar. 17, 1998, at 15A. Today, the Roman Catholic Church and other Christians routinely oppose "gay rights" in public policy debates. See generally, e.g., Mary Curtius, Archbishop Challenges S.F. Domestic Partners Law; L.A. Times, Feb. 4, 1997, at A3; Lois Sweet, Pulpit power Conservative Christians have been lobbying hard against same-sex benefits since last year; The Toronto Star, June 4, 1994, at B1.

[FN31]. See Valencia, supra note 12, at 473; Hartigan, supra note 13, at 487; Ota, supra note 14, at 444.

[FN32]. See generally Max J. Castro, Making Pan Latino: Latino Pan-Ethnicity and the Controversial Case of the Cubans, 2 Harv. Latino L. Rev. 179 (1997) (discussing intra-Latina/o coalitions and the issues posed for this project by Cuban particularities); Berta Esperanza Hernandez-Truyol, Building Bridges: Bringing International Human Rights Home, 9 La Raza L.J. 69 (1996) (exploring intra-Latina/o diversities, especially based on gender, sexuality and nationality, and urging the need for affinity based on local and global commonalities); Kevin R. Johnson, Some Thoughts on the Future of Latino Legal Scholarship, 2 Harv. Latino L. Rev. 101, 11-38 (1997) (discussing intra- Latina/o difference and calling for LatCrit theory's cultivation of group solidarity within and across varied axes of difference); Ediberto Roman, Common Ground: Perspectives on Latino-Latina Diversity, 2 Harv. Latino L. Rev. 483 (1997) (urging Latina/o and other legal scholars of color to collaborate on joint anti-subordination projects).

[FN33]. This concern over the "effects" of LatCrit and other outsider interventions in social policy debates and legal reform strategies has generated a call for outcrits to evaluate the "political impact" of our work. See, e.g., Sumi K. Cho, Essential Politics, 2 Harv. Latino L. Rev. 433, 434 (1997).

[FN34]. See Elizabeth M. Iglesias, Rape, Race, and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality, 49 Vand. L. Rev. 869 (1996) (analyzing the way images of women, organized in part around the discourses of marianismo, operate in complicated ways to both undermine and enable the expression of female autonomy in Latin culture(s), and the broader implications of these cultural elements in the feminist legal struggle against male supremacy).

[FN35]. For an overview, see Marina Warner, Alone of All Her Sex: The Myth and the Cult of the Virgin Mary (Vintage Books 1983) (1976).

[FN36]. See Hope Lewis, Between Irua and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide, 8 Harv. Hum. Rts. J. 1 (1995) (discussing norms underpinning practice of female genital surgeries in African cultures); Adrien Katherine Wing, Critical Race Feminism and the International Human Rights of Women in Bosnia, Palestine, and South Africa: Issues for LatCrit Theory, 28 U. Miami Inter-Amer. L. Rev. 337, 348 (1996-97) (recounting cultural practices used to control sexuality of Palestinian women).

[FN37]. For readings on the "public/private distinction," see sources cited supra note 28.

[FN38]. See, e.g., Colloquium, International Law, Human Rights and LatCrit Theory, supra note 1 (presenting various works which articulate this form of analysis within LatCrit theory).

[FN39]. We must, in other words, use narrative to help make sense of the gaps, ambiguities, contradictions or falsehoods to be found in the larger record of social and legal experience that we also can, and must, access through conventional means of scholarship. For effective displays of LatCrit narrative, see Elvia Arriola, Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self, 2 Harv. Latino L. Rev. 397 (1997); Berta Esperanza Hernandez-Truyol, Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks, 2 Harv. Latino L. Rev. 199 (1997); Kevin R. Johnson, "Melting Pot" or "Ring of Fire" ?: Assimilation and the Mexican- American Experience, 85 Cal. L. Rev. 1259 (1997), 10 La Raza L.J. 173 (1998); Celina Romany, Gender, Race/Ethnicity and Language, 9 La Raza L.J.

49 (1996).

[FN40]. We consider "the United States at the millennium" to be the appropriate level of generality to begin this analysis because this country and its laws serve as the political, cultural and legal unit of formal and informal power relations that we study in this Afterword, and because we stand at the cusp of the 21st century.

[FN41]. See U.S. Const. amend. I; Justin Brookman, The Constitutionality of the Good Friday Holiday, 73 N.Y.U. L. Rev. 193 (1998); Lisa Ness Seidman, Religious Music in the Public Schools: Music to Establishment Clause Ears?, 65 Geo. Wash. L. Rev. 466 (1997).

[FN42]. See Wisconsin v. Yoder, 406 U.S. 205 (1972); Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993).

[FN43]. This nation in general, and its tribunals specifically, have not always shown non-European religions a solicitude similar to the accommodations given to Christianity in particular. See Employment Div., Dep't of Human Resources of Or. v. Smith, 485 U.S. 660 (1988); Keith Jaasma, The Religious Freedom Restoration Act: Responding To Smith; Reconsidering Reynolds, 16 Whittier L. Rev. 211 (1995); Michael W. McConnell, Free Exercise Revisionism and the Smith Decision, 57 U. Chi. L. Rev. 1109 (1990); James J. Musial, Free Exercise in the 90s: In the Wake of Employment Div., Dep't of Human Resources v. Smith, 4 Temple Pol. & Civ. Rts. L. Rev. 15 (1994). But cf. Church of the Lukumi Babalu Aye, Inc., supra note 42 (vindicating Santeria rights under the free exercise clause of the First Amendment).

[FN44]. For a critical historical overview of Spanish conquest and plunder in the region now known as the southwestern United States, see generally Ramon A. Gutierrez, When Jesus Came, The Corn Mothers Went Away: Marriage, Sexuality, and Power in New Mexico 1500-1846, 76 (1991).

[FN45]. For a discussion of the phrase "In God We Trust," see Keeping God's Name in Mint Condition, Time, Dec. 9, 1991, at 66.

[FN46]. The use of sectarian prayers in social, educational, occupational or governmental settings has sparked considerable and vigorous commentary. See, e.g., M. Stanton Evans, Reexamining the Religious Roots of Freedom, USA Today Magazine, Sept. 1, 1995, at 90.

[FN47]. The tax-exempt status of religious organizations, their wealth and activities, similarly has sparked considerable public controversy. See, e.g., Elliott Beard & Elizabeth Lesly, Pennies from Heaven; It's Time for Uncle Sam to Pass the Collection Plate; Tax the Churches, Washington Monthly, Apr. 1991, at 40.

[FN48]. Christian groups have used the mass media to proselytize "round the clock" since the early days of broadcasting. See, e.g., Carnegie Samuel Calian, Redeeming the Wasteland? Christian TV Increasingly Uses Entertainment to Spread its Message, Christianity Today, Oct. 2, 1995, at 92.

[FN49]. Retailers count on Yuletide sales for up to fifty percent of their annual profits, pumping an estimated $37 billion into the American economy. See Jeffery L. Sheler, In Search of Christmas, U.S. News & World Report, Dec. 23, 1996, at 56.

[FN50]. Invocation of the Judeo-Christian "creator" and the social imperatives mandated to his creations have appeared in the opinions of the land's highest tribunal at key moments in the nation's social history specifically to bless juridically state acts of subordination directed against women and sexual minorities. See, e.g., Bradwell v. Illinois, 83 U.S. (16 Wall.) 130, 141 (1873) (describing equal employment opportunity in the legal profession for women as "repugnant" to "the nature of things") (Bradley, J., concurring); Bowers v. Hardwick, 478 U.S. 186, 196-97 (invoking Judeo- Christian dogma as a proper justification for judicial allowance of the criminalization of consensual, adult same-sex male intimacy) (Burger, C.J., concurring). However, the judicial invocation of Christian beliefs to justify the use of law in the enforcement of social subjugation is not confined to gender and sexual orientation; until the Supreme Court's ruling in Loving v. Virginia, 388 U.S. 1 (1967), courts similarly relied on prevalent religious

precepts to justify anti-miscegenation statutes and the racial hierarchy they helped to maintain. Indeed, the Virginia supreme court invoked divine mandates to uphold the statute that the Supreme Court later struck down. Loving v. Commonwealth, 206 Va. 924, 17 S.E.2d 78 (1966). Thus, racial minorities also have experienced the sting of religion's use as a social force to help retain or enact unjust laws. These examples show that religion lends itself to social and political exploitation, sometimes more so than other times. See also infra notes 87-89 and accompanying text (describing similar domestic and hemispheric scenarios).

[FN51]. Indeed, Christian groups promoting "traditional values" steeped in religious doctrine today are among the best politically organized, financed and mobilized special interest factions in the country. See Jeffrey H. Birnbaum, Which Pressure Groups Are Best at Manipulating the Laws We Live By?, Fortune, Dec. 8, 1997, at 144; Family Research Council, http://www.cc.org/publications/ccnews/ccnews98.html#vaban (visited Apr. 19, 1998).

[FN52]. See Luz Guerra, LatCrit y la Des-colonizacion Nuestra: Taking Colon Out, 19 Chicano-Latino L. Rev. 351 (1998); Antonia Castaneda, Language and Other Lethal Weapons: Cultural Politics and the Rites of Children as Translators of Culture, 19 Chicano-Latino L. Rev. 229 (1998).

[FN53]. This reclaimed history and its ideological slant are well known by now. See generally Henry Warner Bowden, American Indians and Christian Missions (1981); Native American Testimony: A Chronicle of Indian-White Relations from Prophecy to the Present, 1492-1992 (Peter Nabokov ed., 1991). This history thus has given rise in recent years to a strong Native American discourse, both within and beyond the law, that seeks to further excavate hidden histories and to ameliorate the continuing legacies of European and Christian imperialism on this continent. See, e.g., Jo Carrillo, Readings in American Indian Law: Recalling the Rhythm of Survival (1998); Patricia Monture- Angus, Thunder in my Soul: A Mohawk Woman Speaks (1995); Rennard Strickland, Tonto's Revenge: Reflections on American Indian Culture and Policy (1997); Robert A. Williams, Jr., The American Indian in Western Legal Thought: The Discourses of Conquest (1990); The Invented Indian: Cultural Fictions & Government Policies (James A. Clifton ed., 1990); The State of Native America: Genocide, Colonization, and Resistance (M. Annette Jaimes ed., 1992); see also Colloquium, The Native American Struggle: Conquering the Rule of Law, 20 N.Y.U. Rev. L. & Soc. Change 199 (1993).

[FN54]. See Castaneda, supra note 52, at 238.

[FN55]. See, e.g., supra note 44 and sources cited therein on the European and Christian invasion and domination of this continent; see also Gerard Colby with Charlotte Dennett, Thy Will Be Done: The Conquest Of The Amazon: Nelson Rockefeller And Evangelism In The Age Of Oil (1995) (providing an in-depth account of the way Rockefeller-financed evangelical missions into the Amazon facilitated the penetration of the Amazon and the genocidal liquidation of indigenous tribes).

[FN56]. Their tactics in this determined institutionalization of heterosexism, as reflected in the historical record available to LatCrit theorists today, included the savage and unsentimental destruction of existing families and bonds: one recorded "technique occasionally used to render an obdurate and cocksure Indian submissive was to grab him by the testicles and to twist them until the man collapsed in pain." See Gutierrez, supra note 44, at 76. The sexual diversity destroyed systematically by European campaigns against indigenous sexual egalitarianism has been well documented in various recent works. See, e.g., Judy Grahn, Another Mother Tongue: Gay Words, Gay Worlds 53 (1984); Will Roscoe, The Zuni Man-Woman (1991); Walter L. Williams, The Spirit and the Flesh: Sexual Diversity in American Indian Culture (2d ed. 1992); see also, e.g., Living the Spirit: A Gay American Indian Anthology (Will Roscoe ed. 1988).

[FN57]. See infra notes 124-142 and accompanying text.

[FN58]. See, e.g., Francisco Valdes, Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society, 83 Cal. L. Rev. 1 (1995) (critiquing the conflation of sex, gender and sexual orientation in modern and legal culture, and its historical development, as artifacts of heteropatriarchy). For an extension of the historical analysis, see Valdes, supra note 28.

[FN59]. Religious discourse has been a rhetorical and political resource in the fundamental consolidation of the military dictatorships that sent Latin America into its multiple dirty wars. See, e.g., Frank Graziano, Divine Violence: Spectacle, Psychosexuality, & Radical Christianity in the Argentine "Dirty War" (1992) (describing Argentine junta regularly seen in public with Catholic hiearchy); see also, The Politics Of Antipolitics: The Military In Latin America 238-49 (Brian Loveman & Thomas M. Davies, Jr. eds., 2d ed. 1989) (providing speeches of Augusto Pinchocet, denying that political liberty, in a nationalistic and Christian Chile, includes the liberty to promote ideas that answer to a Marxist ideology). The Chilean Constitution of 1980, for example, declared the family to be the "fundamental nucleus of society" and, in institutionalizing Pinochet's ideological warfare against the left, criminalized doctrines considered to "attack the family, or propagate ... a conception of the society, the State or the legal order of a totalitarian character or based on the class struggle." Chile Const. (1980) art. 8 (abrogated by 1989 constitutional amendments). For an early historical incident, see the story of the Ecuadorian military dictatorship established under Gabriel Garcia Moreno, creator of the "Republic of the Sacred Heart of Jesus," Alain Rouquie, The Military And The State In Latin America 54-55 (Paul E. Sigmund trans., Univ. of Cal. Press 1989) (1982). See also Ann Elizabeth Mayer, Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?, 15 Mich. J. Int'l L. 307 (1994) (describing the strategic politics of Islamic fundamentalism and its implications for human rights). Cumulatively, the history of the incorporation of religion into Latin American and Third World legal systems suggests that such incorporations have operated more often to rationalize and legitimate, rather than to condemn and resist, state sanctioned brutality and massive human rights violations.

[FN60]. See generally Sara Diamond, Spiritual Warfare: The Politics Of The Christian Right (1989) (providing a comprehensive account of the domestic and international political agenda that drives the Christian right in the U.S.).

[FN61]. See Leslie Espinoza, A Vision Towards Liberation, 19 Chicano- Latino L. Rev. 193 (1998).

[FN62]. Id. at 193.

[FN63]. Id.

[FN64]. See Eric K. Yamamoto, Conflict and Complicity: Justice Among Communities of Color, 2 Harv. Latino. L. Rev. 495 (1997).

[FN65]. Harris, supra note 23, at 748.

[FN66]. The significance of storytelling in critical anti-subordination legal scholarship has been well developed (and well displayed) in recent years. See generally Kathryn Abrams, Hearing the Call of Stories, 79 Cal. L. Rev. 971 (1991); Jerome McCristal Culp, Jr., Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy, 77 Va. L. Rev. 539 (1991); Richard Delgado, Storytelling for Oppositionists and Others: A Plea for Narrative, 87 Mich. L. Rev. 2411 (1989); William N. Eskridge, Jr., Gaylegal Narratives, 46 Stan. L. Rev. 607 (1994); Marc A. Fajer, Authority, Credibility and Pre-Understanding: A Defense of Outsider Narratives in Legal Scholarship, 82 Geo. L.J. 1845 (1994); Catharine A. MacKinnon, Feminist Jurisprudence: The Difference Method Makes, 41 Stan. L. Rev. 751 (1989); Mari J. Matsuda, When the First Quail Calls: Multiple Consciousness as Jurisprudential Method, 11 Women's Rts. L. Rep. 7 (1989); Michael Olivas, The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History, 34 St. Louis L.J. 425 (1990); Patricia J. Williams, Alchemical Notes: Reconstructing Ideals form Deconstructed Rights, 22 Harv. C.R.-C.L. L. Rev. 401 (1987).

[FN67]. See Mari J. Matsuda, Where is Your Body? And Other Essays on Race, Gender and the Law 23-27 (1996).

[FN68]. Id.

[FN69]. See Francisco Valdes, Latina/o Ethnicities, Critical Race Theory, and Post-Identity in Postmodern Legal Culture: From Practices to Possibilities, 9 La Raza L.J. 1, 24-30 (1996); Valdes, supra note 23, at 56-

59.

[FN70]. See Berta Esperanza Hernandez-Truyol, Building Bridges III--Personal Narratives, Incoherent Paradigms, and Plural Citizens, 19 Chicano-Latino L. Rev. 303 (1998).

[FN71]. See supra notes 12-13, 52 and accompanying text.

[FN72]. See Valencia, supra note 12, at 469 (expressing a personal desire and unilateral decision to infuse the author's religion into the formal program of the LatCrit II conference).

[FN73]. See Pat K. Chew, Constructing Our Selves/Our Families: Comments on LatCrit Theory, 19 Chicano-Latino L. Rev. 297 (1998). Indeed, Asian American legal scholars have been instrumental in the cultivation and development of LatCrit theory from the outset. See, e.g., infra note 149 and sources cited therein on LatCrit works by Asian American scholars. The same is true for Black and other non-"Latino"-identified scholars. See, e.g., Culp, supra note 66; Espinoza & Harris, infra note 145. This point is further made by various contributions to this symposium. See, e.g., Anthony Paul Farley, All Flesh Shall See It Together, 19 Chicano-Latino L. Rev. 163 (1998); Jennifer Russell, Constructing Latinoness: Ruminations on Reading Los Confundidos, 19 Chicano-Latino L. Rev. 177 (1998). These authors and works illustrate the rich diversities that inhabit LatCrit theory and demonstrate that scholars of multiple racial/ethnic identifications can adopt the position of a LatCrit scholar. These authors and works thus display how "LatCrit" signifies a political identity with critical anti-subordination commitments to Latinos/as and other outgroups locally and globally. See generally Valdes, supra note 23, at 52-59 (summarizing key features of LatCrit theory as reflected in the LatCrit I symposium).

[FN74]. See Castaneda, supra note 52.

[FN75]. See Maureen Ebben & Norma Guerra Gaier, Telling Stories, Telling Self: Using Narrative to Uncover Latinas' Voices and Agency in the Legal Profession, 19 Chicano-Latino L. Rev. 243 (1998).

[FN76]. See Gerald P. Lopez, Learning About Latinos, 19 Chicano-Latino L. Rev. 363 (1998).

[FN77]. See, e.g., Why Narrative? Readings In Narrative Theology 5 (Stanley Hauerwas & L. Gregory Jones eds., 1989) (assembling a compelling and enlightening set of readings illustrating and explaining the multiple uses of narrative in "understanding issues of epistemology and methods of argument depicting personal identity, and displaying the content of Christian convictions.").

[FN78]. See, e.g., Daniel A. Farber & Suzanna Sherry, Telling Stories Out of School: An Essay on Legal Narratives, 45 Stan. L. Rev. 807 (1993); see also Valdes, supra note 69, at 2 n.3 (providing additional sources and information on legal storytelling and critiques of it).

[FN79]. See, e.g., Jane Macartney, China stamps out Catholic underground church-- group, Rueters (Jan. 10, 1997) <http://www.elibrary.com/getdoc.cgi? id=10... ydocid=1007626@library_d&dtype=0<<tilde>>0&dinst>; Religious persecution, 124 Commonweal 5(2), P3 (Aug. 15, 1997) <http:// www.elibrary.com/getdoc.cgi? id=10...ydocid=1224086@library_e&dtype=0<<tilde>> 0&dinst> (noting widespread persecution of Christians around the world both by governments in countries like China and Sudan and by non-state actors in countries like Algeria and Egypt and commenting that international human rights activists often ignore the religious persecution of Christians: "Because Christianity has been the dominant faith of the West, more likely to be in league with power than its victim, the persecution of Christians around the world often goes unnoticed; when pointed out, it is not often forthrightly acknowledged; whenacknowledged, it is rarely protested."); Mary Jo McConahay, Church Drawn into Central America's New Battlefield--The Economy, Jinn P9 (Feb. 5, 1996) <http:// www.pacificnews.org/pacificnews/jinn/stories/2.03/960205-guatemala.html> (reporting on the Archbishop of Guatemala's announcement of the publication of a martyrology listing hundreds of unarmed religious killed for having "opted for the poor" over the last 35 years).

[FN80]. See Mayer, supra note 59, at 63 (articulating a compelling critical analysis of the political agendas

underpinning the articulation of religious fundamentalism in Islamic countries).

[FN81]. Hartigan, supra note 13, at 489.

[FN82]. Id.

[FN83]. See John A. Hardon, S.J., The Catholic Catechism 458-65 (1975) (articulating official church doctrine on Christ's full presence in the Eucharistic sacrifice). For a general history of the Roman Catholic Church, see Barrie Ruth Straus, The Catholic Church: A Concise History (1992). Of course, much of the Roman Catholic Church's power stems from the secular and sectarian domination it achieved specifically in Europe during the middle ages. See generally R.W. Southern, Western Society and the Church in the Middle Ages (1972). The march to this domination commenced with the conversion of the Roman emperor, Constantine, to Christianity, and to his determined use of state largesse and imperial leverage to establish this religion and its views. See, e.g., Fox, supra note 28, at 609-81. To this day, the Roman Catholic Church and its belief system continue to wield extraordinary sway in Spain and among other southern European countries. See, e.g., Daniel Basterra Montserrat, The Constitutional Development of Religious Freedom in Spain: An Historical Analysis, 4 J. Transnat'l L. & Pol'y 27 (1995); Gloria M. Moran, The Spanish System of Church and State, 1995 B.Y.U. L. Rev. 535. Spain's history of imperialism in this hemisphere of course makes it the "mother country" of the states that now occupy much of this hemisphere. See supra note 44 and sources cited therein on Spain's relationship to Latin America.

[FN84]. It bears emphasizing that liberation theology was not born of the crisis of faith that challenges religious conviction in the modern and postmodern societies of the North. That crisis has been one of faith in the existence of God; liberation theology, by contrast, addresses a different crisis--one born of a lived imperative to understand (and transform) the brutalities of human injustice that presupposes already the existence of God. Indeed, liberation theology is precisely "a language for speaking about God [[that] is arising among us today out of the unjust sufferings, but also the hopes, of the poor of Latin America." Gustavo Gutierrez, The Truth Shall Make You Free: Confrontations 8 (Matthew J. O'Connell trans., 1990). Gutierrez explains its origin like this:
[I]n recent decades the church's life and thought in its Latin American setting have been marked by what we may call "the irruption of the poor." This phrase means that those who until now were "absent" from history are gradually becoming "present" in it. This new presence of the poor and oppressed is making itself felt ... within the church, for there the poor are increasingly making their voices heard and claiming openly their right to live and think the faith in their own terms. The rise of the basic ecclesial communities is one expression of this phenomenon; the theology of liberation is another.
Id. at 8 (emphasis added).

[FN85]. Hardon, supra note 83, at 36, quoting First Vatican Council, Dogmatic Constitution on the Catholic Faith 3 (1792) ("By divine and catholic faith everything must be believed that is contained within the written word of God or in tradition, and that is proposed by the Church as a divinely revealed object of belief, either in a solemn decree or in her ordinary, universal magisterium.").

[FN86]. Thus, for example, it would be heresy to assert that Catholic doctrines produce a conflict between reason and faith. "If human reason, with faith as its guiding light, inquires earnestly, devoutly and circumspectly, it reaches, by God's generosity some understanding of mysteries, and that a most profitable one. It achieves this by the comparison with truths which it knows naturally and also from the inter-relationship of mysteries with one another and with the final end of man." Id. at 37-38.

[FN87]. See Graziano, supra note 59, at 19.

[FN88]. For contemporary critical accounts of the Ku Klux Klan, its ideology and tactics, see David M. Chalmers, Hooded Americanism: The History of the Ku Klux Klan (1987); Wyn Craig Wade, The Fiery Cross: The Ku Klux Klan in America (Touchstone 1988) (1987).

[FN89]. The story of the Sanctuary movement is a story of the way a shared commitment to live the reality of their Christian faith led some brave people to challenge, at great personal risk, the master-narratives of national security and communist aggression through which the Reagan administration, at that time,

legitimated its homicidal foreign policies. They not only confronted and acknowledged increasing evidence that the U.S. government was then engaged in financing and, in many instances, coordinating the indiscriminate slaughter of massive numbers of innocent people in Guatemala, El Salvador, and Nicaragua; they also put themselves materially on the line by defying the government's claim to exclusive authority to interpret domestic and international laws. For one account of the movement, see Barbara Bezdek, Religious Outlaws: Narratives of Legality and the Politics of Citizen Interpretation, 62 Tenn. L. Rev. 899 (1995).

[FN90]. Hardon, supra note 83, at 458-71.

[FN91]. Gutierrez, supra note 84, at 20.

[FN92]. Marvin Harris, Cannibals And Kings: The Origins Of Culture 158 (1977), quoted in Mark Kline Taylor, Remembering Esperanza: A Cultural- Political Theology For North American Praxis 238-39 (1990).

[FN93]. Id.

[FN94]. Id.

[FN95]. Gustavo Gutierrez, A Theology Of Liberation: History, Politics and Salvation 265 (Sister Caridad Inda & John Eagleson transs., 1984). As Gutierrez puts it:
Without a real commitment against exploitation and alienation and for a society of solidarity and justice, the Eucharistic celebration is an empty action, lacking any genuine endorsement by those who participate in it. This is something that many Latin American Christians are feeling more and more deeply, and they are thus more demanding both with themselves and with the whole Church. 'To make a remembrance' of Christ is more than the performance of an act of worship; it is to accept living under the sign of the cross and in the hope of the resurrection. It is to accept the meaning of a life that was given over to death--at the hands of the powerful of this world--for love of others.

[FN96]. See Iglesias, supra note 24, at 395-403, 467-486 (elaborating an early but comprehensive and systematic analysis interpreting the preferential option for the poor as a call for legal scholarship that strives to liberate the transformative agency of the oppressed, and exploring its implications for a Critical Race Feminist analysis of the structural arrangements constructed by interpretative manipulation of the relationship between Title VII and the NLRA in legal doctrine).

[FN97]. See supra notes 35-37, 66-77 and accompanying text.

[FN98]. Some of the more immediately pressing questions that might usefully guide LatCrit scholars in our initial efforts to link liberation theology specifically to our analysis of legal process and doctrine include the following: what images of community, what conditions of membership, and what understandings of the obligations a community to its members are reflected in legal doctrines that rationalize and authorize the denial of basic human rights, the contraction of legal remedies, the construction of institutional- class structures, the destruction of the environment, the militarization of national borders, the dispossession of the poor, the purchase of political influence, and the monopolization of economic resources? How do these images of community, the legal doctrines they rationalize, and the material realities they help to structure and organize appear when examined through the lens of liberation theology?

[FN99]. See, e.g., Chung Hyun Kyung, Struggle To Be the Sun Again: Introducing Asian Women's Theology (1993) (recounting the emergence of Asian women's liberation theology as an affirmation of God's revelation in and through the indigenous religions and cultures of Asia); James H. Cone, Black Theology and Black Power (1969) (articulating a theology of liberation grounded in the experiences of racial oppression suffered by African American males); After Patriarchy: Feminist Transformations of the World Religions (Paula M. Cooey et al. eds., 1991) (compiling essays that explore the way feminist theologians have been reinterpreting the tenets of their diverse religions: Hinduism, Islam, Buddhism, Judaism, Christianity and Apache through a feminist conscientization).

[FN100]. See Ota, supra note 14, at 446-47.

[FN101]. See Elizabeth M. Iglesias, Foreword: International Law, Human Rights and LatCrit Theory, 28 U. Miami Inter-Am. L. Rev. 177, 201-203 (1996- 97).

[FN102]. See supra notes 17-37 and accompanying text.

[FN103]. The exchanges at LatCrit II over religion, sexuality and other constructs are recounted partially in various of the symposium essays. See, e.g., Ota, supra note 14, at 438-38; Valencia, supra note 12, at 450 n.6 & 468; Hartigan, supra note 13, at 479-80.

[FN104]. See Ota, supra note 14, at 439.

[FN105]. This point is exemplified by Dignity USA, the nationwide gay Catholic group that used to work within the American Catholic Church until the Vatican ordered church functionaries in the mid-1980s to cease any interaction with the gay group, calling Dignity members "disordered" and morally "evil" because they are gay. See Richard N. Ostling, Gays vs. the Vatican: San Francisco's Bishop Forbids Masses for Dignity, Time, Dec. 5, 1988, at 60. Dignity responded with its own letter challenging that characterization and asserting the wholesomeness of same-sex intimacies and families, but the group was expelled from Church-owned facilities across the country. See Bill Kenkelen, Gays, the Church and a Fight for Dignity: A "Manifesto" Attacks Catholic Teaching on Sex, San Jose Mercury News, Sept. 2, 1989, at 10C. Since then, Dignity has dwindled from 100 chapters nationally to a handful, though it continues to operate independently. For instance, the chapter in Sacramento, California continued to operate, in Church-owned facilities, until the mid- 1990's when it was expelled and later dissolved. See Bill Lindelof, Gay Catholics Dissolve Dignity, Sacramento Bee, Apr. 10, 1995, at A1.
The longstanding antagonism of organized Christian religions generally to sexual minorities similarly has led some gay and lesbian people to accept our exclusion from Christian groups and institutions, instead forming altogether independent religious organizations. The Metropolitan Community Church, a network of local congregations that minister to sexual minority communities, is an outgrowth of this dynamic. See Reverend Troy D. Perry with Thomas L.P. Swicegood, Don't be Afraid Anymore: The Story of Reverend Troy Perry and the Metropolitan Community Churches (1990). Despite formal and prevalent discrimination by Christian institutions against sexual minorities, some Christian groups and persons continue to minister to this population, or some portions of it. See, e.g.,Verla Lawlor, Gay Teens Often Face Lives of Despair, Isolation; Some Religious Groups Offer a Helping Hand, The Record, Jan. 29, 1998, at H06.
Of course, the Roman Catholic Church in particular also has accummulated over the years a rather notorious history as a hotbed of homosexual activity, and even as a haven for gay men who join the priesthood to evade a frontal social reckoning with their sexual orientation. See generally Homosexuality in the Priesthood and the Religious Life (Jeannine Gramick ed., 1990); see also Rosemary Curb & Nancy Manahan, Lesbian Nuns: Breaking Silence (1985). This complex history and status quo display why Christianity and homosexuality are not entirely distinct phenomena, and why LatCrit theory cannot make the mistake of essentializing or confusing either.

[FN106]. Individuals and groups of Roman Catholics operate at different levels of visibility and informality to alleviate their church's institutionalized homophobia. See generally David Briggs, Bishops Advise Support For Gays; Without Altering Church Doctrine, Austin American-Statesman, Oct. 1, 1997, at A1; Terry Wilson, Church Message Reassures Catholic Parents of Gays, Chi. Trib., Oct. 12, 1997, at C1; The Church's Outstretched Hand, St. Petersburg Times, Oct. 19, 1997, at 2D.

[FN107]. See, e.g., Valdes, supra note 58, at 112 n.308.

[FN108]. See supra notes 20-21 and accompanying text.

[FN109]. See, e.g., Damian Thompson, Homosexual Restrictions are Justified, Says Vatican, The Daily Telegraph, July 24, 1992, at 2 (describing Vatican report stating that discrimination is justified against homosexuals in certain circumstances); Pope, Gay Group Spar Over Adoption, Sun-Sentinel, Feb. 21, 1994, at 6A (describing how Pope John Paul II criticized the European Parliament for adopting a resolution stating that homosexual couples should be allowed to marry and adopt children); see also Pope Reminds Catholics of Ban on Contraception, The Buffalo news, Mar. 3, 1998, at 2A (reporting papal affirmation of

Roman Catholic opposition to contraceptive or reproductive choice for women).

[FN110]. See Ota, supra note 14, at 439-40.

[FN111]. See Iglesias, supra note 101, at 201-03 (critical race feminism should be a direct and compelling reminder to LatCrit theory to develop in ways that engage and respect women's claims of autonomy, dignity and self- determination); Iglesias, supra note 34, at 871-80 (mapping out a critical race feminist analysis of the way female subordination is effected through the social, legal and cultural regimentation of heterosexuality).

[FN112]. See, e.g., Valdes, supra note 58, at 344-77 (outlining one view of Queer legal theory).

[FN113]. See generally Catharine A. MacKinnon, Feminism Unmodified: Discourses on Life and Law (1987) (critiquing the use of gendered sexuality by men and the state to subordinate women both sexually and socially).

[FN114]. See, e.g., Valdes, supra note 58, at 110-18 (discussing the inter- relation of naturality, normality, morality in the regulation of same-sex sexuality in particular).

[FN115]. Nontraditional mothers oftentimes are culturally and/or structurally disdained. See generally M. Patricia Fernandez Kelly, Underclass and Immigrant Women as Economic Actors: Rethinking Citizenship in a Changing Global Economy, 9 Am. U. J. Int'l L. & Pol'y 150 (1993); Beverly Horsburgh, Schrodinger's Cat, Eugenics, and the Compulsory Sterilization of Welfare Mothers: Deconstructing An Old/New Rhetoric and Constructing the Reproductive Right to Natality for Low-Income Women of Color, 17 Cardozo L. Rev. 531 (1996);.

[FN116]. See, e.g., Bowers v. Hardwick, 478 U.S. 186 (1986). The very same Georgia statute upheld by the Bowers Supreme Court when applied to two male adults in consensual private same-sex activity subsequently was struck down by the state courts when applied to a married couple. Ironically, the state court's invalidation of the statute as unconstitutional relied on the Supreme Court's pre-Bowers privacy jurisprudence. See Francisco Valdes, Diversity and Discrimination in Our Midst: Musings on Constitutional Schizophrenia, Cultural Conflict and "Interculturalism" at the Threshold of a New Century, 5 St. Thomas L. Rev. 293, 332 n.201 (1993). The result is constitutionally curious, as it makes the statute's validity turn on the non/coincidence of sex in a private, consensual coupling.

[FN117]. Ana M. Novoa, American Family Law: HiStory--WhoStory, 19 Chicano-Latino L. Rev. 265 (1998).

[FN118]. Id. at 266.

[FN119]. Id.

[FN120]. Id.

[FN121]. Id. at 270-71.

[FN122]. Id. at 274.

[FN123]. For a recent incisive critique of this institution, see Martha Albertson Fineman, The Neutered Mother, The Sexual Family, and Other Twentieth Century Tragedies 150-51 (1995).

[FN124]. See Loving v. Virginia, 388 U.S. 1 (1967).

[FN125]. See Iglesias, supra note 34, at 968-90 (showing the tremendous-- legally sanctioned--sexual, economic and social vulnerability of women who cannot or do not conform to dominant norms that channel the expression of sexual desire and the conception of children into the framework of a heterosexual marriage-- even as class and race can substantially restrict the feasibility of marriage and the viability of the

nuclear family it is designed to promote). For additional recent critiques from a Critical Race Feminist perspective, see Twila L. Perry, The Transracial Adoption Controversy: An Analysis of Discourse and Subordination, 21 N.Y.U. Rev. L. & Soc. Change 33 (1994) (analyzing racist images of family in transracial adoption); Dorothy Roberts, The Unrealized Power of Mother, 5 Colum. J. Gender & L. 141 (1995) (examining impact of family law on African American women). For recent critiques of dominant "family" arrangements from a sexual minority perspective, see generally Patricia A. Cain, Same-Sex Couples and the Federal Tax Laws, 1 Law & Sexuality 97 (1991); Barbara J. Cox, Alternative Families: Obtaining Traditional Family Benefits Through Litigation, Legislation and Collective Bargaining, 2 Wis. Women's L.J. 1 (1986); Nancy D. Polikoff, This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families, 78 Geo. L.J. 459 (1990); Evan Wolfson, Crossing the Threshold: Equal Marriage Rights for Lesbians and Gay Men and the Intra-Community Critique, 21 N.Y.U. Rev. L. & Soc. Change 567 (1994); John C. Beattie, Note, Prohibiting Marital Status Discrimination: A Proposal for the Protection of Unmarried Couples, 42 Hastings L.J. 1415 (1991).

[FN126]. Domestic violence issues have received greater attention from legal scholars in recent years. See Mary Ann Dutton, Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Women Syndrome, 21 Hofstra L. Rev. 1191 (1993); Martha R. Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation, 90 Mich. L. Rev. 1 (1991).

[FN127]. For a broad critique of the way women's sexual autonomy is restricted and suppressed by social practices and legal regimes influenced by and organized around religious norms and cultural representations that negate the interdependence and inter-connection of sexuality and spirituality in human experience, see Iglesias, supra note 34, at 934-943 (examining the pycho-sexual meanings embedded in the ritual practice of sacred prostitution as practiced in the ancient matriarchies that flourished before the hegemonic dominance of the one male god of Judeo-Christianity); 915-929 (examining the cultural logic of maternal authority in the matrifocal family arrangements that appear in some Black and Latin communities).

[FN128]. For an effort to introduce the feminine into an account of the mystery of the Trinity, see Leonardo Boff, Trinity and Society 10 (Paul Burns trans., 1988). Not coincidentally, Boff is a liberation theologist, and his efforts to insert the feminine into the Trinitarian mystery represent a departure from mainstream Catholic orthodoxy, in which all three persons of God are represented as male. See, e.g., Hardon, supra note 83, at 63-67.

[FN129]. See, e.g., supra note 50 for discussion of key rulings hinged on religious precepts. The status quo represents a fairly systematic use of formal law to repress sexual minority identities and communities. See generally Developments in the Law--Sexual Orientation and the Law, 102 Harv. L. Rev. 1508 (1989); see also Valdes, supra note 58, at 31 n.83 and sources cited therein on sexual orientation discrimination.

[FN130]. See, e.g., Colloquium, supra note 38 (presenting various works that center internationalist analysis in LatCrit Theory).

[FN131]. See generally Critical Race Feminism: A Reader (Adrien Katherine Wing ed., 1997). However, mainstream feminist legal scholars have begun to pay increased attention to the substantive and political imperatives that underlie the value of transnational and transcultural discourses, projects and communities. See, e.g., Catharine A. MacKinnon, Rape, Genocide and Women's Human Rights, 17 Harv. Women's L.J. 5 (1994) (critiquing sexual terror against women as war tactics); Frances Elisabeth Olsen, Feminism in Central and Eastern Europe: Risks and Possibilities of American Engagement, 106 Yale L.J. 2215 (1997) (linking domestic feminist theory with political developments in the former Soviet Bloc); Ruthann Robson, The State of Marriage, 1 Yearbook of New Zealand Jurisprudence 1 (1997) (comparing same-sex marriage issues in New Zealand, the United States and Canada to call for matrimony's abolition as a state institution).

[FN132]. See Guadalupe T. Luna, Zoo Island: LatCrit Theory, Don Pepe and Senora Peralta, 19 Chicano-Latino L. Rev. 339, 341 (1998) (locating Chicano subordination in the ideological and rhetorical struggles between universal and particular); see also Enrique R. Carrasco, Opposition, Justice, Structuralism and Particularity: Intersections Between LatCrit Theory and Law and Development Studies, 28 U. Miami Inter-

Amer. L. Rev. 313 (1997) (on the importance of particularity in LatCrit theory).

[FN133]. Cod. Civ., tit. I, cap.I, art. 113 (Guat.) ("La mujer podra desempenar un empleo, ejercer una profesion, industria, oficio o comercio, cuando ello no perjudique el interes y cuidado de los hijos ni las demas atenciones del hogar." translated by authors as "A wife may accept employment, engage in a profession, industry, public office or commercial activity when such activity does not undermine the interests and care of the children nor the performance of other domestic duties.").

[FN134]. Cod. Civ., tit. I, cap.I, art. 114 (Guat.) ("El marido puede oponerse a que la mujer se dedique a actividades fuera del hogar, siempre que suministre lo necesario para el sostenimiento del mismo y su oposicion tenga motivos suficientemente justificados. El juez resolvera de plano lo que sea procedente." translated by authors as "The husband may prevent his wife from dedicating herself to activities outside the home, so long as he earns enough to maintain the household and his opposition is reasonably justified. Whenever necessary, the judge shall determine the appropriate resolution of a dispute as the law requires.")

[FN135]. See Luna, supra note 132, at 340.

[FN136]. See, e.g., Ruth Gerber Blumrosen, Remedies For Wage Discrimination, 20 U. Mich. J.L. Ref. 99 (1986) (developing evidence that the same factors that produce a segregated job were likely to produce a discriminatorily depressed wage rate); Carin Ann Clauss, Comparable Worth--The Theory, Its Legal Foundation, And The Feasibility Of Implementation, 20 U. Mich. J.L. Ref. 1 (1986) (noting the wage gap associated with sex-segregated occupational structures). For an analysis of these processes in the Third World, see Women Workers And Global Restructuring (Kathryn Ward ed., 1990); Women, Men and the International Division of Labor (June Nash & Maria Patricia Fernandez-Kelly eds., 1983).

[FN137]. Susan S. Green, Silicon Valley's Women Workers: A Theoretical Analysis of Sex-Segregation in the Electronics Industry Labor Market, in Women, Men, and the International Division of Labor, supra note 136, at 317.

[FN138]. As one commentator has noted: "Those attributes that women bring to the labour market by virtue of family obligations and socialisation [sic] are used by employers to select them for the secondary sector.... Women's cheap, flexible and disposable labour power, their situation both when employed and unemployed, stems fundamentally from their actual and assumed role in the family." Id. at 318-19, quoting Jackie West, Women, Sex and Class, in Annete Kuhn & Ann Marie Wolpe, Feminism And Materialism 247 (1978).

[FN139]. At the same time, a sustained and critical engagement with Latina/o particularities must also acknowledge, value and respect the degrees of individual and collective self-empowerment Latinas, in particular, have struggled and, at times, succeeded in organizing around heteropatriarchal representations of their maternal identities. See, e.g., Marguerite Guzman Bouvard, Revolutionizing Motherhood: The Mothers Of The Plaza De Mayo (1994) (recounting how political resistance against the forced disappearances during Argentina's dirty war was organized around the politicization of women as mothers). That the power of maternal identities in heteropatriarchal ideology is inadequate to the ultimate task of liberation and may come at the expense of other identity positions women may presently occupy or aspire to create does not negate the real interests women may, as a class, share in protecting and promoting the further enhancement of social, cultural and legal frameworks that foster maternal empowerment from a matrifocal perspective. See Iglesias, supra note 34, at 983-90 (elaborating this argument).

[FN140]. See Christine A. Littleton, Double and Nothing: Lesbian as Category, 7 UCLA Women's L.J. 1 (1996).

[FN141]. For a critical comparative analysis of these issues in contemporary settings, see Catherine T. Barbieri, Women Workers in Transition: The Potential Impact of the NAFTA Labor Side Agreements on Women Workers in Argentina and Chile, 17 Comp. Lab. L. 526 (1996).

[FN142]. See, e.g., Iglesias, supra note 101, at 207 (urging LatCrit attention to and intervention in ongoing legal and political struggles to combat neoliberal assaults on the welfare state--both domestically and

internationally--by linking the enforcement of human rights to the international economic regimes that regulate trade relations and development finance).

[FN143]. See Juan F. Perea, The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought, 85 Cal. L. Rev. 1213 (1997); Juan F. Perea, Five Axioms in Search of Equality, 2 Harv. Latino L. Rev. 231 (1997).

[FN144]. See Ian F. Haney Lopez, Race, Ethnicity,Erasure: The Salience of Race to LatCrit Theory, 85 Cal. L. Rev. 1143 (1997); Ian F. Haney Lopez, Retaining Race: LatCrit Theory and Mexican American Identity in Hernandez v. Texas, 2 Harv. Latino L. Rev. 279 (1997).

[FN145]. See Leslie Espinoza & Angela P. Harris, Embracing the Tar-Baby-- LatCrit Theory and the Sticky Mess of Race, 85 Cal. L. Rev. 1585 (1997).

[FN146]. See, e.g., Celina Romany, Claiming a Global Identity: Latino/a Critical Scholarship and International Human Rights, 28 U. Miami Inter-Am. L. Rev. 215, 220-21 (1996-97); Iglesias, supra note 101, at 177-84.

[FN147]. Iglesias, supra note 27, at 377-86 (noting instability and vulnerability of Latina/o political identity and intra-group solidarities to fragmentation and manipulation as a result of the manifold relations of privilege and subordination that are superimposed, in overlapping and divergent layers, upon and within Latina/o communities by the hierarchies--among others-- of class, culture, and the inter-state system).

[FN148]. See Guerra, supra note 52, at 353.

[FN149]. This topic is being developed especially by LatCrit scholars who are Asian American. See generally Robert S. Chang & Keith Aoki, Centering the Immigrant in the Inter/National Imagination, 85 Cal. L. Rev. 1395 (1997); Erik K. Yamamoto, Rethinking Alliances: Agency, Responsibility and Interracial Justice, 3 UCLA Asian Pac. Am. L.J. 33 (1995); Erik K. Yamamoto, Critical Race Praxis: Race Thoery and Political Lawyering Practice in Post-Civil Rights America, 95 Mich. L. Rev. 821 (1997).

[FN150]. See Gloria Sandrino-Glasser, Los Confundidos: De-Conflating Latinos/as' Race and Ethnicity, 19 Chicano-Latino L. Rev. 69 (1998).

[FN151]. See Kevin R. Johnson, Immigration and Latino Identity, 19 Chicano-Latino L. Rev. 197 (1998).

[FN152]. Id. at 200.

[FN153]. See Sandrino-Glasser, supra note 150, at 71-75.

[FN154]. Id. at 75-77.

[FN155]. See Robert S. Chang, Who's Afraid of Tiger Woods?, 19 Chicano- Latino L. Rev. 223 (1998).

[FN156]. Id. at 225.

[FN157]. See, e.g., supra note 149 and sources cited therein on inter-group- of-color relations. See generally Harlon L. Dalton, Racial Healing: Confronting the Fear Between Blacks and Whites (1995).

[FN158]. See Jerome McCristal Culp, Jr., Latinos, Blacks, Others, and the New Legal Narrative, 2 Harv. Latino L. Rev. 479, 481 (1997).

[FN159]. See E. Christi Cunningham, The Rise of Identity Politics I: The Myth of the Protected Class in Title VII Disparate Treatment Cases, 30 Conn. L. Rev. 441 (1998) (on wholism).

[FN160]. See Francisco Valdes, Sex and Race in Queer Legal Culture: Ruminations on Identities & Interconnectivities, 5 S. Cal. Rev. L. & Women's Stud. 25 (1995) (on interconnectivity).

[FN161]. See Peter Kwan, Jeffrey Dahmer and the Cosynthesis of Categories, 48 Hastings L.J. 1257 (1997) (on cosynthesis).

[FN162]. Elizabeth M. Iglesias, The Intersubjectivity of Objective Justice: A Theory and Praxis for Constructing LatCrit Coalitions, 2 Harv. Latino. L. Rev. 467 (1997) (grounding such ethical vision in the aspiration to objective justice); Iglesias, Structures of Subordination, supra note 24, at 469-78, 486- 88 (arguing that the realization of objective justice requires more than an ethical vision or empathetic solidarity, but rather a material transformation of the relations of power/lessness through which privilege is constructed and enjoyed).

[FN163]. See George A. Martinez, African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition, 19 Chicano-Latino L. Rev. 213 (1998); Iglesias, supra note 162, at 467-69 (arguing that the surest human path towards the universal of objective justice is through the proliferation of empowered political communities and the collective subjectivity created by the collision of their particular perspectives); but see Iglesias, supra note 24, at 473-78 (arguing that just as our evolving approximations toward objective truth depends upon the further emancipation of oppressed perspectives, the actualization of objective justice depends on the redistribution of effective social and institutional power).

[FN164]. It bears emphasis that LatCrit critiques of the Black/White Paradigm seek to counteract only prevailing tendencies toward analyzing and combating racism "exclusively or primarily" in white/black terms. See Perea, supra note 143, at 1219.

[FN165]. These and similar concerns already have begun to be raised. See, e.g., John O. Calmore, Our Private Obsession, Our Public Sin: Exploring Michael Omi's "Messy" Real World of Race: An Essay for "Naked People Longing to Swim Free", 15 Law & Ineq. J. 25, 61 (1997) (cautioning against possible dilution of African American claims or interests).

[FN166]. See, e.g., Chang & Aoki, supra note 149, at 1423-46 (analyzing inter-group relations and politics in Monterey Park, California).

[FN167]. At LatCrit II, a plenary panel was devoted to the issues posed by indigenous populations for LatCrit theory. Of the several panel participants, only Guerra contributed an essay to this symposium. See Guerra, supra note 52.

[FN168]. See, e.g., Montoya, supra note 25, at 351-52.

[FN169]. See Guerra, supra note 52, at 351-52.

[FN170]. Id. at 355-57.

[FN171]. For early accounts of LatCrit origins, see Berta Esperanza Hernandez-Truyol, Invisible Identities: Culture Clashes, Confused Constructs and Reality Checks, 2 Harv. Latino L. Rev. 199, 202-05 (1997); Valdes, supra note 23, at 3 n. 5; Valdes, supra note 69, at 6-11.

[FN172]. See Luis Angel Toro, "A People Distinct From Others": Race and Identity in Federal Indian Law and the Hispanic Classification in OMB Directive No. 15, 26 Tex. Tech L. Rev. 1219 (1995); Deborah Ramirez, Multicultural Empowerment: It's Not Just Black and White Anymore, 47 Stan. L. Rev. 957 (1995).

[FN173]. See generally Patricia Cayo Sexton, Spanish Harlem Anatomy of Poverty 9 (1965).

[FN174]. See, e.g., Kevin R. Johnson, "Melting Pot" or "Ring of Fire" ?: Assimilation and the Mexican-American Experience, 85 Cal. L. Rev. 1259, 1295-96 (1997) (discussing Latina/o ploys to "whiten" identity through "Spanish" indicia).

[FN175]. See, e.g., Montoya supra note 25, at 351.

[FN176]. See, e.g., Steven W. Bender, Direct Democracy and Distrust: The Relationship Between Language Law Rhetoric and the Language Vigilantism Experience, 2 Harv. Latino L. Rev. 145 (1997); Christopher David Ruiz Cameron, How the Garcia Cousins Lost their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminancy, 85 Cal. L. Rev. 1347 (1997); Margaret E. Montoya, Mascaras, Trenzas, Y Grenas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse, 17 Harv. Women's L.J. 185 (1994); Juan F. Perea, Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English, 77 Minn. L. Rev. 269 (1992).

[FN177]. See Castaneda, supra note 52, at 229-31 (combining Spanish and English use).

[FN178]. See Guerra, supra note 52, at 357.

[FN179]. See Castaneda, supra note 52.

[FN180]. See supra notes 171-176 and accompanying text.

[FN181]. See supra notes 23-25 and accompanying text.

[FN182]. See generally supra note 44 and sources cited therein on the European and Christian invasion and occupation of this continent. It bears mention that Spain's sort of imperialism was especially keen on Roman Catholicism, and that Spain thereby serves as the model for church-state relations in many of its former colonies. For further discussion of Spain's influence over, and relationship with, Latin America, see generally Edwin Williamson, The Penguin History of Latin America 233-47, 313-77 (1993); Jean Grugel, Spain and Latin America, in Democratic Spain: Reshaping External Relations in a Changing World (Richard Gillespie et al. eds., 1995).

[FN183]. See, e.g., Indigenous Peoples and Democracy in Latin America 33 (Donna Lee Van Cott ed., 1994, 1995); International Labour Organisation Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, reprinted in 28 I.L.M. 1382 (1989); Catherine J. Iorns, The Draft Declaration of the Rights of Indigenous Peoples (1993) (visited May 19, 1998) <ftp://infolib.murdoch.edu.au/pub/subj/law/jnl/elaw/current/iorns2.txt> (recounting and critiquing the development of the Draft Declaration on the Rights of Indigenous Peoples and suggesting revisions that should be incorporated before it is adopted by the UN General Assembly); Fernand de Varennes, Indigenous Peoples and Language (1995) (visited May 19, 1998) <ftp//: infolib.murdoch.edu.au/pub/subj/law/jnl/elaw/refereed/devarenn.txt> (articulating legal justifications for expansive interpretation of indigenous peoples language rights under international law).

[FN184]. See, e.g., Berta Esperanza Hernandez-Truyol, Borders (En)Gendered: Normativities, Latinas, and a LatCrit Paradigm, 72 N.Y.U. L. Rev. 882 (1997).

[FN185]. The tour was a planned program event designed to provide the conference participants with a better understanding of the local political and economic geography. The event was a guided bus tour, with two stops along the way, of various San Antonio areas not usually visited by most. The guide discussed the local and regional political economy that had produced municipal zoning decisions that reflected and perpetuated existing social hierarchies, as manifested materially and presently by the areas we wereable to witness. The guide was a longtime Chicana community activist, Maria Antonietta Berriozabal.

[FN186]. Luna, supra note 132.

[FN187]. In The Barrios: Latinos And The Underclass Debate (Joan Moore & Raquel Pinderhuges eds., 1993) (comparing Cubans, Salvadorans and Guatemalans) [[[hereinafter referred to as In The Barrios]; Amnesty International Report: United States of America: Human Rights Concerns in the Border Region with Mexico (AI Index: AMR 51/03/98) (reporting incidents of brutality by INS officers along the U.S./Mexico border including beatings, denial of food, water, blankets and medical attention, sexual abuse, abusive racist conduct and wrongful deportation of U.S. citizens of Mexican ancestry).

[FN188]. This literature has been growing in recent years. See, e.g., Newcomers In The Work Place: Immigrants And The Restructuring Of The US Economy (Louise Lamphere et al. eds., 1994); Structuring Diversity: Ethnographic Perspectives on the New Immigration (Louise Lamphere ed., 1992).

[FN189]. See generally Ediberto Roman, Empire Forgotten: The United States's Colonization of Puerto Rico, 42 Vill. L. Rev. 1119 (1997).

[FN190]. See, e.g., Avelardo Valdez, Persistent Poverty, Crime, and Drugs: U.S.-Mexican Border Region, in In The Barrios, supra note 187, at 179-84 (recounting economic history of Laredo, Texas and the cities links to the Mexican economy).

[FN191]. For a particularly infamous example of the way stereotypes about Latina/o culture can influence perceptions, attitudes and actual decisions made by judges, consider how the ability to speak Spanish was reinterpreted as a disability likely to condemn the speaker to a life of poverty in Judge Samuel Kiser's 1995 decision which held "in favor of a father's 'right' to prohibit the mother of his daughter from speaking Spanish to the child." Judge Kiser is quoted to have asked the mother: "What are you trying to do? Make her a maid for the rest of her life?" See Challenging Fronteras: Structuring Latina and Latino Lives in the U.S. 3 (Mary Romero et al. eds., 1997).

[FN192]. These imputed group characteristics include fatalism, failed individuation as a result excessive familial entanglements and interdependence reflected for example in the common practice among young Latinas/os to refuse educational or professional opportunities that would require them to move away from their families and a "God will provide" passivity. See, e.g., In The Barrios, supra note 187, at xi, xx-xxi. See Iglesias, supra note 34, at 925- 29 (challenging assumptions underlying these representations of Latina/o culture and, in particular, providing an alternative account of the cultural and psychoanalytic logic of Latin cultural practices of familial interdependence and individual self-sacrifice).

[FN193]. See Alex Stepick III & Guiellermo Grenier, Cubans in Miami, in In The Barrios, supra note 187, at 93.

[FN194]. See Johnson, supra note 151, at 205-206.

[FN195]. For further readings, see In The Barrios, supra note 187; Challenging Fronteras, supra note 191; Newcomers in the Workplace, supra note 191.

[FN196]. For recent reports, see Victor Perera, Homogenized Latino, The Washington Post, Sept. 8, 1996, at C3; Maria Recio, Hispanic Business Ranks Swelling; Assimilation, Affirmative Action Credited, The Fort Worth Star- Telegram, July 11, 1996, at 1.

[FN197]. See supra notes 133-134 and accompanying text.

[FN198]. Patricia Zavella, The Politics of Race and Gender: Organizing Chicana Cannery Workers in Northern California, in Chicana Critical Issues: Mujeres Activas en Letras y Cambio Social 127-53 (Norma Alarcon, et al., eds., 1993) (Zavella identifies the gendered division of labor in the family and the readiness with which men enforce it against their wives as a significant obstacle in organizing women workers).

[FN199]. Employers increasingly are hiring women because women will often accept lower wages and unstable employment conditions more readily than male workers. See, e.g., Susan S. Green, Silicon Valley's Women Workers: A Theoretical Analysis of Sex-Segregation in the Electronics Industry Labor Market, in Women, Men, And The International Division Of Labor, supra note 136, at 273-331. Green notes one important aspect of the new international division of labor: women are increasingly employed over men in industries undergoing rapid internationalization both in the Third World and in the United States. Id. at 274. The increasing employment of women is in turn related to a profit maximization strategy based on employing the cheapest labor "that is the most productive, exploitable and dispensable in order to maximize the opportunity for cutting costs without confronting the resistance of organized labour.... Women are invariably proved to be the source of the cheapest labour, regardless of the type of society we

consider." Id. at 321; see also Alex Stepick III & Guillermo Grenier, Cubans in Miami, in In The Barrios, supra note 187, at 83 (noting that Miami's apparel industry was created by the relocation from the North East motivated by the new supplies of female labor and the ability to informalize production by sub-contracting to women who worked in their homes).

[FN200]. This move has been addressed by LatCrit scholars in recent years as well. See, e.g., Laura M. Padilla, LatCrit Praxis to Heal Fractured Communities, 2 Harv. Latino L. Rev. 375 (1997).

[FN201]. See supra note 1 and sources cited therein on LatCrit symposia and colloquia.

[FN202]. Espinoza, supra note 61, at 194.

[FN203]. Id.

[FN204]. See Lopez, supra note 76.

[FN205]. See supra note 23 and sources cited therein on these and similar concepts.

[FN206]. For instance, the experience with legal storytelling, and in particular the nature of the mainstream attack on outsider narrativity, should forewarn LatCrit scholars about the types of critiques that we must anticipate and counter in the first instance. See, e.g., supra notes 77-78 and accompanying text. Our task is to show the groundlessness of those attacks without permitting them to chill or coopt our critical anti-subordination work.

[FN207]. See, e.g., Cho, supra note 33; Culp, supra note 158.

[FN208]. See supra note 1 and symposia cited therein on LatCrit theory during the past several years.

[FN209]. See Enrique R. Carrasco, Who Are We?, 19 Chicano-Latino L. Rev. 331 (1998).

[FN210]. Id. at 332-35.

[FN211]. See generally Peggy C. Davis, Law as Microagression, 98 Yale L.J. 1559 (1989) (articulating the concept of microaggression in critical legal theory).

30. Jean Stefancic, *Latino an Latina Critical Theory: An Annotated Bibliography*, 10 LA RAZA L. J. 423 (1998) and 85 CAL. L. REV. 1509 (1997)

Introduction

Latino/a critical scholarship, though largely ignored, has been around for a long time. One might say that its progenitor was Rodolfo Acuna, whose book Occupied America, [FN1] originally published in 1972, is now in its third edition. Acuna was the first scholar to reformulate American history to take account of U.S. colonization of land formerly held by Mexico and how this colonization affected Mexicans living in those territories. His thesis has proven as powerful for Latinos as the potent theories of Derrick Bell have been in understanding the dynamics of race for blacks. [FN2]
It took the Chicano movement of the 1960s and 1970s finally to force examination of American society from a Latino perspective. Farmworker strikes, high school walkouts, and the Chicano Mobilization movement brought the troubles of this community to national attention, even more than did the Zoot Suit riots and forced deportations earlier in the century.

***424** For a time, Reaganism and supply-side economics derailed the momentum of these and other progressive movements. Nevertheless, Chicano studies programs, created in response to student demands mainly in West Coast public universities, united a critical mass of scholars in sociology, political science, history, anthropology, literary criticism, and film studies. Latino studies slowly gained ground, although not in law. [FN3] With the fall of the Berlin wall and demise of the Soviet empire, America's obsession with an external enemy refocused on domestic irritants, including

activist minority groups and politically correct college programs. Immigration reform acts of 1965 and 1986 brought a substantial increase of new immigrants from Latin American countries. By the end of the 1980s their presence had become so visible as to begin creating another wave of retrenchment. English-only movements appeared, bilingual education came under fire, and conservatives began calling for immigration restriction. The riots in Los Angeles that followed the acquittal of the police officers who assaulted Rodney King focused media attention on tensions among blacks, Latinos, and Asians.

By then, the number of Latino/a law professors had finally risen to the point at which they could plausibly be described as a "crop"--i.e., more than a handful. [FN4] Dissatisfied with both liberal and newer approaches to antidiscrimination law, Latino/a law professors began meeting in small groups, often as adjuncts to other meetings such as the Association of American Law Schools (AALS), Critical Race Theory workshops, or the Hispanic National Bar Association. They began writing articles, naming the new body of scholarship LatCrit Theory. A spin-off of Critical Race Theory, with which it remains allied, LatCrit Theory calls attention to the way in which conventional, and even critical, approaches to race and civil rights ignore the problems and special situations of Latino people--including bilingualism, immigration reform, the binary black/white structure of existing race remedies law, and much more. The emerging body of Latino/a critical legal scholarship now includes over one hundred law review articles and several books.

***425** This bibliography lists and annotates each of these, as well as a number of key books and essays from other disciplines, under a series of categories or headnotes corresponding to a major LatCrit theme or subject area. Although I have aimed to be as comprehensive as possible, I have not included works that seemed to duplicate an author's previous work, very short articles, or, for the most part, book reviews or essays. I also did not include articles or books, however meritorious, that fall within the liberal tradition or that simply argue that problems of race and discrimination will yield if we all try harder. Instead, I looked for works that offer novel, critical, or foundational analysis, works on whose insights future scholarship might build.

My methodology was as follows. I examined every article and book by a known LatCrit legal scholar published or coming to my attention before June 1997, reading footnotes and bibliographies for works that appeared frequently. I then examined these other works, as well as additional ones referred to in their footnotes and bibliographies, for possible inclusion in the database, and so on until the circle began to close. I read and examined novels, collections of essays, journals, and works of history, sociology, literary criticism, and ethnic studies. When the annotated bibliography was completed, I mailed it to every legal author for corrections and suggestions. I also requested that each author examine the entire bibliography and suggest additional articles and books that I had omitted. To be included, a work needed to address one or more of the following themes I deemed characteristic of critical Latino/a scholarship. The themes, and the numbering system ("headnotes") used in the bibliography, are as follows:

1. Critique of liberalism. Many Latino/a writers argue, expressly or implicitly, that liberalism fails to address the Latino condition. Other authors target a mainstay of liberal jurisprudence such as neutrality, objectivity, color blindness, or the inability to address group-based harms.

2. Storytelling/counterstorytelling and "naming one's own reality." Latino culture incorporates a long, rich tradition of storytelling. Though few actual stories are included in this bibliography, the collections of literary criticism herein annotated testify to the power of stories to reflect Latino culture. In addition, the stories often attempt to change the majoritarian mindset, which many Latino/a scholars consider a key obstacle to the recognition of injustice and implementation of racial reform.

3. Revisionist interpretations of U.S. civil rights law and progress. Much of U.S. antidiscrimination law has not served the needs of Latinos. Not only has progress been halting, but court decisions and policy choices have been unreliable and wavering. Reparational civil rights law, based on a black/white paradigm and crafted to address historical injustice against African Americans, has not always worked as effectively for Latinos, especially those defined by multiple categories.

4. Critical social science. Historians describe the longtime effects on Latinos of living as a conquered people with ambiguous citizenship status. Sociologists and anthropologists reveal the hybridity of Latino people, exemplified in the concepts of mestizaje and double or multiple consciousness resulting from centuries of cultural blending and conflict.

5. Structural determinism. A number of Latino/a writers focus on ways in which the structure of culture or legal thought influences its content, in particular its tendency to maintain the status quo. Understanding these constraints results in working more effectively towards racial and other types of reform. Works addressing the way Western society differently racializes groups are placed here as well.

6. Intersectionality. Latina feminists, as well as other feminists of color, explore the intersectionalities of race, gender, class, and sexual orientation. Latinas focus particularly on another multiple oppression, stemming from being excluded from the women's movement and its agendas, as well as having to use color-based remedies based on the needs of African-American women.

7. Gender discrimination. Though gender discrimination is common to all women, some writers focus on a form particular but not unique to Latino culture--machismo (exaggerated masculinity). Works on domestic violence fall into this category, as do works on the role of color, poverty, lack of education, and Catholicism in subordinating women.

8. Latino/a essentialism. Does race--including the Latino race--exist except as a social construction? Does pan-Latinoism exist? Some writers address this question by asking what the appropriate unit of analysis is: Is the Latino community one, or many? How

do middle, working class, and immigrant Latinos differ? Is language their only common trait? Are Latinos a diaspora, an ethnicity, or something else?

***427** 9. Language and bilingualism. Spanish was spoken in the Southwest long before Anglos arrived and continues to be a unifying element in Latino communities throughout the United States. English-only movements attack bilingual education programs, ballots, and government forms. Debates rage about the value of voice and the legal status of language.

10. Separatism and nationalism. Though nationalism and calls for separatism flourished during the Chicano movement of the 1960s and early 1970s, they played a lesser role later. Some LatCrit scholars are reviving these notions, however, arguing that preserving diversity and cultural integrity benefits all, not just Latinos/as.
11. Immigration and citizenship. How is the U.S. civil polity constituted, and where do Latinos fit within it? Recent referenda, like California's Proposition 187, focus attention on increasing numbers of immigrants, many of them Latino, who enter the United States legally or illegally. Latino/a legal scholars address questions, raised by nativists and others, of equitable distribution of jobs and benefits.

12. Educational issues. Latinos/as have long been concerned about representation in education at all levels, as well as increasing their numbers in the bar. A number of authors have begun to search for new approaches to learning style, clinical education, affirmative action, and critical pedagogy.

13. Critical international and human rights law. Some LatCrit scholars critique the state-centered, traditionally male-dominated model of international human rights law, which is grounded in Western European Enlightenment thought and incorporates the perspective of the colonizer.

14. Black/brown tensions. African Americans and Latinos, long-time allies in the civil rights movement, no longer work in coalition as closely as they once did. Not only do both groups suffer from the divide-and-conquer tactics of white policy makers, they endure other tensions as well. Latinos/as question the essentialist urge that imposes civil rights remedies designed for blacks on the Latino community, while African Americans sometimes do not oppose restrictive immigration measures or English-only legislation. For their part, African Americans ***428** sometimes charge that Latinos ride on the coattails of the civil rights movement, while not doing the hard work. Both groups have begun to question how the other is racially defined and positioned.

15. Assimilationism and the colonized mind. Centuries of colonization by Western European countries have left a mark on third world cultures. Some writers explore the

effect of dominance on the behavior and thought of the colonized, and offer strategies to overcome or subvert that influence.

16. Latino/a stereotypes. Stereotyping that which is different in order to tame its seemingly dangerous aspects is common to all societies, with stereotyping directed against people of color being the most virulent type. A number of works deal with images of Latinos/as in popular culture--movies, the media, literature, etc. Others use linguistic and cognitive theories to analyze and explore the role of stereotypes.

17. Criticism and response. Included are some of the more well-known critiques of Latino/a ethnic consciousness, most of them by outsiders to the movement. Other works incorporate responses to such criticism.

Annotated Bibliography

Acosta, Oscar "Zeta," The Uncollected Works (Ilan Stavans ed., 1996). (Themes 1, 2, 3, 5, 6, 9, 12).

> Anthology of essays, letters, stories, and poems of charismatic Chicano lawyer and author of The Autobiography of a Brown Buffalo [FN5] (describing personal odyssey after leaving his job at a legal aid clinic in Oakland in 1967) and The Revolt of the Cockroach People [FN6] (recounting the East Los Angeles high school walkout, strike, and trial and the 1970 Chicano Mobilization). Collection includes: Racial Exclusion, Una carta de Zeta al barrio, and the anarchist platform on which Acosta based his campaign for the office of Los Angeles County Sheriff in June 1970. [FN7]

Acuna, Rodolfo F., Anything But Mexican: Chicanos in Contemporary Los Angeles (1996). (Themes 4, 5, 6, 7, 9, 11, 12, 14).

Explores racist nativism by examining its impact on Chicanos living in Los Angeles. Contrasts ways Euroamericans view Mexicans with ways Mexicans view themselves. Examines how complex issues of Chicano identity implicate race, class, national origin, and relations with other minorities. Evaluates successes Chicanos have registered in politics and with federal appointments. Shows how scholarship produced by conservative thinktanks influenced legislation to reduce taxes, which lowered the quality of education for Chicanos and closed opportunities for civil service jobs, and helped pass Proposition 187 in California. Discusses changes in the global economy and the struggle to unionize poor workers in the face of these changes. Examines the continued relationship between Chicanos and Mexico. Analyzes how the increased political influence of middle-class Chicanos influenced the passage of the North American Free Trade Agreement (NAFTA).

Acuna, Rodolfo F., A Community Under Siege: A Chronicle of Chicanos East of the Los Angeles River 1945-1975 (1984). (Themes 4, 8, 10, 12).

Asserts that common knowledge of East Los Angeles comes from shallow media stereotypes with the result that little is known about the community's real history or the special economic interests that shape its destiny. Chronicles the concerns of its residents as reflected in two community weekly newspapers, the Eastside Sun and the Belvedere Citizen, from 1945-1975. Shows how downtown Los Angeles business interests exercised power over East Los Angeles by controlling land use, particularly urban renewal, rezoning, and freeway construction. Covers the development of the Chicano movement, as well as brown/black competition for federal funding, and concerns about immigration and bilingual education. Includes comprehensive list of articles published in the newspapers, suggestions for further research projects, and bibliographic sources.

Acuna, Rodolfo F., Occupied America: A History of Chicanos (3rd ed. 1988). (Themes 1, 3, 4, 5, 6, 7, 10, 11, 15, 16).

Shows how U.S. invasions of Texas (1836) and Mexico (1845-1848) resulted in a legacy of hatred and violence toward Mexicans. Describes nineteenth- century conquest and colonization of Texas, New Mexico, Arizona, and Colorado that maintained Anglo control, privileged commercial interests, glorified the brutality of the Texas ***430** Rangers, and justified discrimination and terrorism against Mexican Americans. Examines how the expansion of agribusiness, mining, and industry and the shrinkage of the labor pool, diminished by the Chinese Exclusion Act, caused U.S. capitalists to create an underclass by recruiting Mexicans for cheap labor without adequate access to housing, health care, education, or the right to unionize. Describes how Depression-era sentiment against Mexicans resulted in massive deportations and how the interplay of U.S. business interests, changes in the labor market, and nativist sentiments continue to limit economic opportunities for Mexicans today. Explores the development and influence of the Chicano movement, the rise of the Hispanic middle class, and offers predictions about the future.

Almaguer, Tomas, Racial Fault Lines: The Historical Origins of White Supremacy in California (1994). (Themes 1, 3, 4, 5, 6, 7, 16).

Describes the racialization of three major groups in California-- Mexican Americans, Native Americans, and Asian Americans--during the nineteenth century. Shows how the black/white model of race relations gave way to the incorporation of class and culture, resulting in a more complex form of white supremacy than that which appeared in other parts of the United States. Examines how European American perceptions of the groups' cultural attributes afforded each group a place on the hierarchical ladder of acceptability and differential access to rewards and privileges that whites wanted to keep for themselves. Discusses implications of this social ordering for understanding relations among groups in California today.

Anzaldua, Gloria, Borderlands/ La Frontera: The New Mestiza (1987). (Themes 2, 4, 8, 15).

Experimental autobiography that argues against the patriarchy of Chicano culture and advocates a multi-dimensional approach to identity employing the border (la frontera) as a metaphor. The "borderlands" become a space for celebrating personal and cultural complexity, incorporating contradiction and ambiguity, also explored by other south Texas writers and artists (Rolando Hinojosa, Pat Moro, Tomas Rivera). Critiques multinational capitalism, especially Anglo agribusiness, which has commodified and privatized the physical borderlands of the Southwest and displaced the communal life of Chicanos.

***431** Arriola, Elvia R., Faeries, Marimachas, Queens, and Lezzies: The Construction of Homosexuality Before the 1969 Stonewall Riots, 5 Colum. J. Gender & L. 33 (1995). (Themes 6, 16).

Examines moral, medical, and popular attitudes about sex, gender, race, and class to show how society viewed homosexuals as a threat to the American way of life and often sanctioned violent methods of law enforcement to rid itself of gays and lesbians. Retells the story of the Stonewall Riots, from a minority critical perspective, highlighting the role of black and Puerto Rican drag queens in triggering the New York Police Department's violent raid of a gay bar in New York City in 1969. Shows contrast between political activism of pre-Stonewall largely closeted white middle-class gay world and that of highly visible black, Latino/a, transgendered, and working class gays and lesbians. Argues that the radically diverse origins of the lesbian/gay/bi civil rights movement, often ignored by white middle-class organizers, deserve recognition for exposing the complexity of oppression, prejudice, and victimization.

Arriola, Elvia R., Gendered Inequality: Lesbians, Gays, and Feminist Legal Theory, 9 Berkeley Women's L.J. 103 (1994). (Themes 1, 5, 6).

Critiques traditional antidiscrimination law, showing that group-based and individual-regarding models, as well as lesbian legal theory, mandate use of arbitrary, discrete, and hierarchical categories to address inequality issues. Argues that these models and the intersectionality model (which combines traditionally recognized categories) do not fully address discrimination directed against lesbians, gays, and others, such as Latinos/as, with complex social identities. Advocates a "holistic/irrelevancy" model that enriches traditional models with awareness of multiple traits and stereotypes about social groups in order to achieve a more subtle analysis of oppression.

Arriola, Elvia R., "What's the Big Deal?" Women in the New York City Construction Industry and Sexual Harassment Law, 1970-1985, 22 Colum. Hum. Rts. L. Rev. 21 (1990). (Themes 1, 6, 7).

Traces the development of sexual harassment law from 1970 to 1985, arguing that advances stemmed mainly from feminist activism and the predominantly white middle-class women's movement. Describes the reemergence of women in the U.S. work force especially in nontraditional jobs in the construction industry. Examines how issues of class, race, ethnicity, and sexual orientation continue to

complicate the lives of blue-collar tradeswomen. Questions the ***432** ability of sexual harassment law to address complaints of women in the blue-collar sector if institutional and popular resistance prevail.

Austin, Regina & Michael Schill, Black, Brown, Poor & Poisoned: Minority Grassroots Environmentalism and the Quest for Eco-Justice, 1 Kan. J.L. & Pub. Pol'y 69 (1991). (Themes 1, 4).

Points out that poor black and brown communities bear a disproportionate amount of environmental risk, including exposure to pesticides, herbicides, lead poisoning, and other pollution. Calls for the development of a grassroots environmental movement that is antiracist and antibourgeois and focuses more on political and economic roots of environmental oppression rather than romantic notions of wilderness ideals.

Aztlan: Essays on the Chicano Homeland (Rudolfo A. Anaya & Francisco Lomeli eds., 1989). (Themes 2, 10).

Explores the Aztec origin of the legend of Aztlan and its present day artistic, social, and political ramifications. Shows the importance of Aztlan as a mythical ideal embracing nostalgia and utopian possibility for contemporary Chicano identity and cultural cohesion. Essays include historical, anthropological, and cultural analyses, as well as symbolic interpretations in literature and myth by Luis Leal, Jorge Klor de Alva, Ramon A. Gutierrez, Gloria Anzaldua, Alurista, and others.

Barrera, Mario, Race and Class in the Southwest: A Theory of Racial Inequality (1979). (Themes 4, 5, 6, 11).

Addresses Chicano inequality in the Southwest from the nineteenth century to the present, describing how the establishment of a subordinate labor force created the foundation upon which present day inequality persists. Examines the state's role in protecting capitalist interests and regulating the labor supply. Analyzes deficiency, bias, and structural discrimination theories of racial equality. Combines insights of Marxist theories of race and class structure with an internal colonialism approach to explain the subordinated status of Mexican Americans in the Southwest.

Behar, Ruth, Translated Women: Crossing the Border with Esperanza's Story (1993). (Themes 2, 4, 6, 7, 8, 15).

Presents the autobiographical story of a Mexican-Indian woman and explains how the task of feminist ethnography (like that of the ***433** legal services lawyer) contains inherent dangers, ironies, and an inversion of the usual power relationship between writer and subject. Demonstrates how the process of producing a life history may colonize by reducing the subject to a "text," just as it transforms the ethnographer herself from a listener to a storyteller. Points out that the feminist anthropologist must present her subject's life history in both

novelistic and dialogic styles, as the relationship of ethnographic subject and ethnographer is both preserved and obliterated in the telling.

Bender, Steven W., Consumer Protection for Latinos: Overcoming Language Fraud and English-Only in the Marketplace, 45 Am. U. L. Rev. 1027 (1996). (Themes 5, 9).

Points out that unscrupulous merchants often take advantage of Spanish-speaking and other immigrant groups. Argues that current controls and doctrines such as fraud and duress are often insufficient for non-English speaking consumers preyed upon in this fashion. Discusses possible solutions, including the notion that the English-only marketplace is, per se, fraudulent.

Berk-Seligson, Susan, The Bilingual Courtroom: Court Interpreters in the Judicial Process (1990). (Themes 1, 9).

Examines the role of the interpreter in the judicial process, showing that Spanish is the language most frequently translated. Argues that translation puts non-English speaking litigants at a disadvantage because of the inability of some interpreters to translate nuance and idiom, with the result that the tone and meaning of the testimony are changed. Points out the deficiencies of a legal system wherein most non-English speaking persons are not provided free court interpretation services in civil cases, and, because of the lack of financial resources, are forced to use bilingual friends who often do a poor job of interpreting testimony. Expands on her article "The Importance of Linguistics in Court Interpreting." [FN8]

Between Borders: Essays on Mexicana/Chicana History (Adelaida R. Del Castillo ed., 1990). (Themes 4, 6, 7).

Contains essays by Chicana/o scholars examining theoretical issues such as historical materialism that bear on Chicana history. Includes other works focusing on labor history, examining the exploitation of ***434** Chicana workers in the United States and Mexico, and the difficulties they encounter in trying to improve their economic conditions. Describes the sexism and racism directed against Chicanas by society and political movements. Discusses research sources and methods.

Beyond Stereotypes: The Critical Analysis of Chicana Literature (Maria Herrera- Sobek ed., 1985). (Themes 2, 6, 7, 15, 16).

Collects articles from the first conference on Chicana writers presented at the symposium "New Perspectives in Literature: Chicana Novelists and Poets," held at the University of California, Irvine, May, 1982. Essays examine the themes, voices, and processes of Chicana short-story writers, novelists, and poets in their engagement with issues of silencing, assimilation, intersectionality, stereotyping, humor, and machismo, as well as their new perspectives on myths and figures such as La Malinche.

Blacks, Latinos, and Asians in Urban America: Status and Prospects for Politics and Activism (James Jennings ed., 1994). (Themes 3, 4, 11, 14).

Explores how communities of color relate to each other politically, and assesses problems in developing coalitions for progressive social action. Focuses on relations among blacks, Latinos, and Asians, examining the origins of and factors that shape the political agendas of Latinos and blacks, and the pros and cons of political coalitions between the two groups. Presents studies of three cities--Washington, D.C., Miami, and Los Angeles--where coalitions among minorities affected urban politics. Includes excerpts from a speech by Chicano activist Daniel Osuna, discussing historical parallels in the Chicano and black communities' political struggles for social equality in the United States.

Blauner, Robert, Racial Oppression in America (1972). (Themes 1, 3, 4, 5, 6, 10, 14, 15).

Critiques framework derived from European social theory by sociologists after World War II, which ironically assumed the declining importance of race and ethnicity at the very time when U.S. social scientists most needed theories to understand it. Rebuts the immigrant/assimilationist models advanced by Glazer and Moynihan and proposes an analysis of the structural components of racial oppression, asserting that race cannot be reduced to class nor racism to irrational beliefs. Argues that internal colonization of people of color in the United States created distinctive histories of repression ***435*** distinguishing racial minorities from each other and from European ethnic groups. Shows how 1960s-era policies divided blacks and browns and set them against each other. Posits that Chicanos are more averse to Anglo culture and more pessimistic about receiving justice at its hands than blacks. Lauds the complexity and diversity of Chicano literature. Concludes with case histories of institu-tional racism based on the author's experiences as a sociologist. Represents a classic work in sociology of race.

Bosniak, Linda S., Opposing Prop. 187: Undocumented Immigrants and the National Imagination, 28 Conn. L. Rev. 555 (1996). (Themes 1, 5, 11, 12).

Shows how most liberals argue against Proposition 187 (a virulently nativist California initiative) on the basis of side issues--for example, that it will poorly serve its own state objectives, such as saving money; that it is a distastefully xenophobic measure; or that it will create certain social pathologies, such as turning teachers into immigration cops--while virtually ignoring the central issue that the anti-immigrant measure is fundamentally unjust to undocumented immigrants. Argues that much leftist thought endorses protectionism or tacitly accepts the nation-state as the unit of social analysis, rendering it difficult to deal with injustice that takes the form of excluding groups from U.S. society in the first place. Remedying this normative nationalism will require an effort of the imagination, without which it will be impossible to address fully the reality of the undocumented.

Bracamonte, Jose A., Foreword: Minority Critiques of the Critical Legal Studies Movement, 22 Harv. C.R.-C.L. L. Rev. 297 (1987). (Themes 1, 3).

Reflects on the promise and frustration that critical legal studies holds for minority scholarship and politics. Praises critical legal studies for a generally progressive agenda and for developing useful tools such as the indeterminacy thesis, legitimation, and the critique of rights. Nevertheless, warns that without additional effort, leftist organizations may fail to account fully for the historical and existential needs of people of color, and instead adopt organizational practices antithetical to those needs. Gives examples of such failings and shows how critical legal studies may address them by incorporating the perspectives of the marginalized. Articles by Richard Delgado, Mari Matsuda, Patricia Williams and Harlon Dalton follow.

***436** Breaking Boundaries: Latina Writing and Critical Readings (Asuncion Horno-Delgado et al. eds., 1989). (Themes 2, 6, 7, 15).

One of the first collections of Latina literary criticism to present studies of Chicana, Puertorriquena, and Cubana writers in one volume. Focuses on works that have been largely unrecognized by the literary establishment in order to make this literature more visible and accessible. Personal narratives (testimonios) begin each section, followed by critical essays by leading writers including Cherrie Moraga, Sandra Cisneros, Ana Castillo, Evangelina Vigil, and others. Includes introductory essay on Latina literary discourse.

Burciaga, Jose Antonio, Drink Cultura: Chicanismo (1993). (Themes 2, 6, 8, 9, 11, 15, 16).

Examines the relationship of the Chicano to his Mexican roots and to U.S. culture in a series of sly short essays about historical events and the author's own personal experiences. Recounts the racism faced by Chicanos and tensions faced by Mexican Americans who are not thought of as fully American by the dominant society and are regarded as foreign by Mexicans. Contrasts how the United States and Mexico view issues of race, gender, and class, and the relationship of Chicanos to both cultures.

Cameron, Christopher David Ruiz, How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving Speak-English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy, 85 Calif. L. Rev. 1347 (1997), 10 La Raza L.J. 261 (1997). (Themes 3, 9).

Discusses English-only stories of the cousins Garcia: Hector, as reported in Garcia v. Gloor; [FN9] Priscilla, as reported in Garcia v. Spun Steak Co., [FN10] and the fictional Yolanda of Julia Alvarez' novel How the Garcia Girls Lost Their Accents, [FN11] showing that none of the cases stated a claim for national origin discrimination. Examines how Title VII's black/white binary categories fail to address discrimination against bilingual workers. Demonstrates how the majority

culture's ignorance of Spanish, as well as their perceptions of Latinos/as in subordinate roles, render Latinos/as invisible and their claims illegitimate. Shows how the definition of national origin discrimination varies from judge to judge, and is unreliable. Advocates that courts ***437** and litigants redefine concepts of national origin discrimination to afford justice to bilingual speakers.

Chang, Robert S. & Keith Aoki, Centering the Immigrant in the Inter/National Imagination, 85 Calif. L. Rev. 1395 (1997), 10 La Raza L.J. 309 (1997). (Theme 11).

Focusing on the Asian-American experience, examines the interplay among the ideas of the immigrant, the state, and the border in a racialized world. Shows how crude understandings of the border as a bright line facilitate nativism and violence and serve majoritarian political and economic interests, such as the availability of cheap labor. They also reinforce and are reinforced by binary understandings of race as a legal concept so that we come to think the only important racial categories are black and white. The fluid quality that Asian and Latino immigrants represent can serve as a useful metaphor for thinking more productively and flexibly about issues of race, power, and difference.

Chavez, Linda, Out of the Barrio: Toward a New Politics of Hispanic Assimilation (1991). (Theme 17).

Argues that any monocultural view of Hispanics ignores racial and ethnic diversity of the Latino community and takes no account of class analysis. Contains express and implied criticism of several tenets of leftist and LatCrit thought, including that: bilingualism is valuable, total assimilation is to be resisted, affirmative action and diversity are unqualified goods, Latinos are disadvantaged as are African Americans, and the true voice of the Latino community is a rebellious one.

Cherena Pacheco, Yvonne M., Latino Surnames: Formal and Informal Forces in the United States Affecting the Retention and Use of the Maternal Surname, 18 T. Marshall L. Rev. 1 (1992). (Themes 5, 7).

Argues that although law no longer prohibits using the Spanish style surname, which consists of both fraternal and maternal surnames, strong cultural and bureaucratic pressures encourage Latinas to drop maternal surnames. Concludes that this practice causes a loss of identity to Latinas and reinforces the inferiority of Latino culture. Maintains that keeping both fraternal and maternal surnames better represents feminist ideology than the recent practice of not taking a spouse's name after marriage, because a feminist who does not take her spouse's name still retains her father's name, whereas under the Spanish approach the mother's name is preserved. Asserts that ***438** government and society should accommodate the Spanish style surname and that Latinas should insist on this accommodation.

Chicana Creativity and Criticism: New Frontiers in American Literature (Maria Herrera-Sobek & Helena Maria Viramontes eds., rev. ed. 1996). (Themes 2, 6, 7, 15).

Collects Chicana literature and literary criticism presented at the second conference on Mexican-American women's literature held at the University of California at Irvine, April 22, 1987. Argues that Chicana writers, like their feminist and black-American colleagues, are expanding the frontier of American literature, challenging the institutionalized canon, and infusing new blood and ideas into that field.

Chicana Lesbians: The Girls Our Mothers Warned Us About (Carla Trujillo ed., 1991). (Themes 2, 6, 7).

Collects articles, essays, and poetry of Chicana lesbians that describe the difficulties of fitting into two worlds, neither of which is fully accepting. Argues that these writers must create or modify spirituality and family by altering traditional concepts that their very existence upsets. Examines life, desire, color, and struggle in the experience of Chicana lesbians.

Chicana Voices: Intersections of Class, Race, and Gender (Teresa Cordova et al. eds., 1990). (Themes 4, 6, 7, 16).

Proceedings of the 1984 National Association for Chicano Studies twelfth annual conference held in Austin, Texas. All papers address issues of sexism previously raised by Chicanas at the 1982 meeting and examine labor and politics; language, literature and the arts; research methods; higher education; and problems of gender inequality as they relate to Chicanas.

Chicana (W)rites on Word and Film (Maria Herrera-Sobek & Helena Maria Viramontes eds., 1995). (Themes 2, 6, 7, 16).

Collects Chicana poetry, prose, and film criticism presented at the third conference on creative works of Chicanas held at the University of California, Irvine in 1990. Explores feminist Chicana perspectives on social topics such as racism, poverty, immigrant discrimination, and domestic violence, and the challenges of being subject to racial and gender discrimination. Describes the progress ***439** Chicana filmmakers have made and obstacles encountered in obtaining funding.

Chicanas in the 80's: Unsettled Issues (Mujeres en Marcha ed., 1983). (Themes 6, 7).

Highlights proceedings of a panel organized by Mujeres en Marcha (U.C. Berkeley) at the 1982 National Association for Chicano Studies tenth annual conference in Tempe, Arizona. Addresses issues of gender inequality in the Association and in higher education generally, and how the particular concerns of Chicanas differ from those of Chicanos and white women. Represents an important early manifesto addressing sexism toward Chicanas in the academy.

Chicanas/Chicanos at the Crossroads: Social, Economic, and Political Change (David R. Maciel & Isidro D. Ortiz eds., 1996). (Themes 1, 4, 6, 8, 9, 11).

Assesses the Chicana/o experience through the writings of Chicana/o social scientists with emphasis on the 1980s through the present. Shows the impact that increasing numbers of Chicanos/as will have on the United States and argues that this trend should be accommodated rather than resisted. Examines the backlash

Chicano and other Latino groups have experienced as a result of increased immigration. Analyzes how the lack of programmatic foresight prevented the 1980s from becoming the "Decade of the Hispanic," when it was predicted that Latinos and whites would become economic equals. Criticizes the fragmentation of the Chicano political movement in the 1980s when some Chicanos supported agendas such as the English-only movement. Argues that although Chicano families historically valued education as a way to escape poverty, Republican administrations have alleged the opposite. Concludes with the difficulties Chicanas encounter when trying to voice their opinions in the feminist movement.

Chicanos and Film: Representation and Resistance (Chon A. Noriega ed., 1992). (Themes 2, 6, 15, 16).

Examines portrayals of Chicanos/as in the cinema via essays by prominent Chicano/a academics, critics, and artists. Contrasts the stereotypical portrayals of Chicanos and Latinos in traditional American and Mexican commercial films with their treatment in films made by Latino filmmakers in the 1970s as part of the Chicano rights movement. Of particular interest to legal scholars is ***440** Carl Gutierrez-Jones' essay, "Legislating Language: The Ballad of Gregorio Cortez and the English Language Amendment," which examines issues surrounding language translation in criminal trials, including who should bear the financial responsibility for it.

Colloquium: International Law, Human Rights, and LatCrit Theory, 28 U. Miami Inter-Am. L. Rev. 177 (1997). (Themes 1, 2, 5, 6, 8, 11, 13).

Proceedings of the third colloquium of the Law Professors Section of the Hispanic National Bar Association, held in Miami in October 1996. Articles address three generations of international human rights law: civil and political rights; economic, social, and cultural rights; and solidarity rights. Contributors include Elizabeth M. Iglesias, Celina Romany, Berta E. Hernandez-Truyol, Elvia R. Arriola, Kevin R. Johnson, Enid Trucios-Haynes, Jose E. Alvarez, Enrique R. Carrasco, Adrien Katherine Wing, Natsu Taylor Saito, Ileana M. Porras, and Raul M. Sanchez.

Colloquium: LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship, 2 Harv. Latino L. Rev. 1 (forthcoming 1997). (Themes 1, 3, 5, 9, 11, 12, 14, 15).

Proceedings of the second colloquium of the Law Professors Section of the Hispanic National Bar Association, held in La Jolla, California in May 1996. Contributors include Robert S. Chang, Ian F. Haney Lopez, Berta E. Hernandez-Truyol, Kevin R. Johnson, George A. Martinez, Margaret E. Montoya, Rachel F. Moran, Laura Padilla, Juan F. Perea, Francisco Valdes, and Stephanie M. Wildman.

Colloquium: Representing Latina/o Communities: Critical Race Theory and Practice, 9 La Raza L.J. 1 (1996). (Themes 6, 8, 9, 11, 12, 13).

Proceedings of the first colloquium of the Law Professors Section of the Hispanic National Bar Association, held in San Juan, Puerto Rico in October 1995. Articles

and comments by Francisco Valdes, Leslie E. Espinoza, Juan F. Perea, Angel R. Oquendo, Celina Romany, Robert S. Chang, Deborah A. Ramirez, and Berta E. Hernandez-Truyol.

Crawford, James, Hold Your Tongue: Bilingualism and the Politics of "English Only" (1992). (Theme 9).

Traces the history of ethnic tensions in the United States, showing how ethnic intolerance today is unique in that it focuses on language and apocalyptically links bilingualism with an alleged erosion of ***441** morality, unity, and U.S. nationhood. Seeks to show that language choice is legally a matter of group rights, of collective self-determination in a historically "ethnic democracy," as well as a matter of freedom of expression. Argues that the crucial policy issue is how to address bilingualism and changing demographics in the United States in a manner that balances freedom from language discrimination with efforts to overcome linguistic barriers in a democratic context. Concludes that the English-only movement rests on the fallacy that U.S. identity and ethnic harmony may be coerced by means contrary to the founding principles of the United States.

Criticism in the Borderlands: Studies in Chicano Literature, Culture, and Ideology (Hector Calderon and Jose David Saldivar eds., 1991). (Themes 2, 5, 6, 7, 8, 11, 16).

Presents various ideological perspectives on Chicano/a critical theory ranging from ethnographic to postmodernist, from Marxist to feminist, from New Historicist to cultural materialist. Intended to raise awareness of historical and cultural interdependence of the Northern and Southern American hemispheres. Essays address institutional studies and the literary canon; representations of the Chicano/a subject regarding race, class, and gender; studies of genre, ideology, and history; and aesthetics of the border. Includes a selected annotated bibliography of contemporary Chicano/a literary criticism.

Darder, Antonia, The Politics of Biculturalism: Culture and Difference in the Formation of Warriors for Gringostroika and The New Mestizas, in Culture and Difference: Critical Perspectives on the Bicultural Experience in the United States 1 (Antonia Darder ed., 1995). (Themes 1, 5, 6, 8, 15).

Examines how bicultural people view their identity and ethnicity and how their experiences shape their cultural construction. Analyzes the impact of colonization and decolonization in the development of cultural consciousness, and shows how hybridity gives rise to border culture as articulated in the writings of Gloria Anzaldua and Guillermo Gomez-Pena. Explores how the media distort social perceptions of subordinated groups. Urges reexamination of the concept "race relations," which implicitly defines race as biological, without accounting for the ways racism is manifested in class and political conflict. Argues for solidarity among subordinate groups to counter the dominant culture.

***442** Davis, Marilyn P., Mexican Voices/American Dreams: An Oral History of Mexican Immigration to the United States (1990). (Themes 2, 11).

Examines the significance of el norte in the lives of Mexicans through the stories of legal and illegal immigrants and the families left behind. Shows how Mexican immigration patterns are inexorably tied to the need for labor in the United States. Describes the role of el coyote (border crossing guide). Highlights the dilemma that Mexico's best and brightest, those Mexico needs most to build up its economy and country, are fleeing north. Demonstrates that immigration will continue, driven by economic conditions in both countries, changing both the immigrants and American culture in the process.

De Leon, Arnoldo, They Called Them Greasers: Anglo Attitudes Toward Mexicans in Texas, 1821-1900 (1983). (Themes 4, 11, 16).

Analyzes white attitudes about Mexicans in Texas in the nineteenth century, including beliefs whites held, the roots of these beliefs, and how they became sanctioned in white culture. Maintains that whites, as a result of ethnocentrism and racism, believed that Americans were of superior stock to Mexicans in Texas (Tejanos), thereby justifying an elevated place for whites and a subservient one for Mexicans, deemed fit only for menial work benefiting whites. Seeks to counter biased depictions of Mexicans and chauvinistic attitudes of Anglo Texans put forward by earlier historians such as Walter Prescott Webb. Concludes that while some of the earlier stereotypes of Mexicans have disappeared, the common, and perhaps most prejudicial attitudes of whites towards Mexicans were valorized and institutionalized in the culture.

Delgado, Richard, Affirmative Action as a Majoritarian Device: Or, Do You Really Want to Be a Role Model?, 89 Mich. L. Rev. 1222 (1991). (Themes 1, 12, 17).

Questions the role-model argument for affirmative action, and affirmative action itself, as devices aimed at serving majoritarian interests more than those of the minority. Urges that professionals of color decline the role- model assignment, which entails adhering to white norms of decorum, dress, and behavior, and instead opt for more authentic relationships with their communities.

***443** Delgado, Richard, The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?, 22 Harv. C.R.-C.L. L. Rev. 301 (1987). (Themes 1, 5).

Lauds Conference on Critical Legal Studies for a generally progressive agenda and politics, but notes organizational and conceptual deficiencies in its treatment of race. Observes that the idealism inherent in much of critical legal studies thought is less attractive to communities of color, whose chains are largely material, and that its positive program of deformalized, decentralized social organization would leave disempowered groups even more exposed than they are now. Suggests that progressive movements embrace instead a "confrontation" theory of antidiscrimination that would confront racism directly, instead of indirectly or through utopian reorganization.

Delgado, Richard, The Imperial Scholar: Reflections on a Review of Civil Rights Literature, 132 U. Pa. L. Rev. 561 (1984). (Themes 1, 12).

Discusses treatment of black, Latino, and other scholars of color by mainstream civil

rights authors. Finds that most fail to cite or take account of the work and ideas of minority scholars, resulting in distortions and omissions in the body of legal theory dealing with race and ethnicity. Urges that mainstream scholars check these practices and begin tempering their domination of the inner circles of civil rights writing.

Delgado, Richard, The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later, 140 U. Pa. L. Rev. 1349 (1992). (Themes 1, 12).
Updates earlier article, examining how citation practices of mainline civil rights scholars have changed in intervening years. Finds that exclusion of voices of color is less overt than before, but continues. Describes mechanisms by which white male scholars continue to marginalize scholars of color and women. Concludes: "All discourse marginalizes."

Delgado, Richard, Minority Law Professors' Lives: The Bell-Delgado Survey, 24 Harv. C.R.-C.L. L. Rev. 349 (1989). (Theme 12).

> Reports and comments on a survey of professors of color at U.S. law schools on workload, job satisfaction, stress, opportunities for advancement, relations with colleagues, and support from their institutions. Finds high levels of stress, exclusion from informal ***444*** information networks, dissatisfaction with work environment, and doubts as to whether respondents would remain long at their jobs.

Delgado, Richard, Recasting the American Race Problem, 79 Calif. L. Rev. 1389 (1991). (Theme 1).

> Reviews and praises Roy Brooks' Rethinking the American Race Problem, [FN12] but points out that books in the liberal mold contain defects that can be remedied only by resorting to critical race theory's insights. Argues that the principle of formal equal opportunity, which Brooks urges be reclaimed by divesting it of recent baggage, cannot easily redress racism and indeed may unwittingly promote it. Argues that racism is the norm in our society and that formal equality will only single out and punish highly visible deviations from a racist status quo.

Delgado, Richard, The Rodrigo Chronicles: Conversations About America and Race (1995). (Themes 1, 2, 4, 5, 6, 10, 11).

> Contains eight Chronicles and a conclusion, all taking the form of conversations between "Rodrigo," a fictional black-Latin foreign law school graduate, and "the Professor," an elderly American law professor who teaches civil rights. Topics include: immigration and deportation; law and economics; the role of love in antidiscrimination theory and practice; white- collar and street crime; and the operation of legal rules in perpetuating and confining racism.

Delgado, Richard, Rodrigo's Chronicle, 101 Yale L.J. 1357 (1992). (Themes 1, 2, 10).

> Sets forth a conversation between Rodrigo and the Professor dealing with affirmative action, operation of the legal hiring market, and the role of outsider thought in arresting cultural stasis and decline in the industrialized West.

Delgado, Richard, Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino- Critical Scholarship, and the Black-White Binary, 75 Tex. L. Rev. 1181 (1997). (Themes 1, 2, 5, 10, 15).

Reviews All Rise: Reynaldo G. Garza, The First Mexican American Federal Judge, by Louise N. Fisch (1996). Argues that the black/white binary operates in concert with other social forces to subordinate Latinos/as and that, unless challenged directly, generates ***445** a powerful pressure toward assimilation on the part of the oppressed, and further marginalization on the part of elite decisionmakers.

Delgado, Richard, Rodrigo's Fourteenth Chronicle: American Apocalypse, 32 Harv. C.R.-C.L. Rev. 275 (1997). (Themes 1, 2, 3, 5, 11).

Addresses the following question: Why are conservatives attempting not merely to roll back affirmative action but to destroy it root and branch? Notes that the controversy offers great benefits to the political right, yet bills, position papers, and referenda are aimed at eliminating affirmative action entirely. Speculates that this ground swell, coming on top of other conservative measures including immigration restriction and welfare cuts, is aimed at provoking the community of color into a militant reaction, which will be put down by force and followed by repressive legislation. Discusses possible roles the United States may have in store for Latinos in the new regime.

Delgado, Richard, Rodrigo's Twelfth Chronicle: The Problem of the Shanty, 85 Geo. L.J. 667 (1997). (Themes 1, 2, 3, 4, 5, 11).

Responds to Jane Larson's "Free Markets Deep in the Heart of Texas." [FN13] Argues that Larson's approach to the problem of the colonias, dirt-poor Mexican-American border towns situated on the outskirts of Texas cities like El Paso, is too narrow and risks perpetuating a woeful situation. Argues, based on social psychology and the dynamics of racial prejudice, that only aggressive aid in the form of governmental programs, environmental regulation, and individual activism will be able to remedy the problems of these shantytown settlements.

Delgado, Richard, Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling, 17 Harv. C.R.-C.L. L. Rev. 133 (1982). (Themes 1, 4).

Shows that tort law has stretched, not always successfully, to redress the harm of racial insults and name-calling. Employs social science to demonstrate how racism and racist insults harm their victims, and how law performs a vital role in curbing them. Argues that racist speech constructs a society at odds with our deepest commitments, and urges that courts recognize an independent cause of action to protect those values from bigoted speech.

***446** Delgado, Richard & Vicky Palacios, Mexican Americans as a Legally Cognizable Class Under Rule 23 and the Equal Protection Clause, 50 Notre Dame L. Rev. 393 (1975). (Themes 3, 5, 8).

Surveys cases dealing with Mexican-American plaintiffs who sought to invoke constitutional protection, or to file a federal class action, as a cognizable group. Shows that many courts have difficulty deciding whether, for legal purposes, Mexican Americans or Chicanos exist. Some have Spanish surnames; some trace

their ancestors to Mexico; some speak Spanish--and some do not. No trait is "essential" to being Latino. Argues that the group should be entitled to legal recognition because it embraces a common culture, and because its members self-identify and are frequently subject to discrimination.

Delgado, Richard & Jean Stefancic, Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?, 77 Cornell L. Rev. 1258 (1992). (Themes 1, 4, 16).

Reviews 200 years of ethnic depiction in literature, theater, and film of Latinos/as and other peoples of color, demonstrating that in each era the dominant images were demeaning, although not seen as such at the time. Coins term "empathic fallacy" to denote the mistaken belief that one can readily talk back against the prevailing cultural images; shows that the marketplace of free speech intensifies rather than relieves the predicament of outgroups. Offers suggestions for outsider movements. Includes bibliography of writings on ethnic imagery.

Dunn, Timothy J., The Militarization of the U.S.-Mexico Border, 1978-1992: Low-Intensity Conflict Doctrine Comes Home (1996). (Themes 4, 11, 13).

Describes how "border control" through military strength came to occupy national consciousness. Shows how rhetoric escalated during the Reagan years, causing human rights and international sensitivity to recede in favor of firepower, helicopters, electronic sensors, and other high-tech hardware, all fueled by an illusory fear of drugs and massive illegal immigration. Shows how the federal government's border philosophy borrowed from low- intensity conflict doctrine, constructed by the U.S. military-security establishment to deal with insurgent revolutionary regimes throughout the world.

***447** Espinoza, Leslie G., The LSAT: Narratives and Bias, 1 Am. U. J. Gender & L. 121 (1993). (Theme 12).

Examines LSAT questions, revealing bias of several sorts. Some questions assume knowledge likely to be possessed only by majority-race test-takers or are based on associations that hold true only in majority culture. Other items incorporate stories that test-takers of color would find offensive, such as ones based on cultural stereotypes or criminality, and that might inhibit performance. Exposes the test agencies' history of resistance to reform and argues for continuing struggle to challenge them to delete questionable items from the test.

Espinoza, Leslie G., Masks and Other Disguises: Exposing Legal Academia, 103 Harv. L. Rev. 1878 (1990). (Themes 1, 2, 12).

Points out shortcomings of Randall Kennedy's critique of critical race theory, employing the metaphors of masking and demasking. Shows how neutralist and universalist strains in Kennedy's and classical liberalism's approach to racial justice limit their explanatory and liberatory potential. Cites personal experiences to illustrate these shortcomings and outlines a new, more community-based and contextual methodology.

Espinoza, Leslie G., Multi-Identity: Community and Culture, 2 Va. J. Soc. Pol'y & L. 23 (1994). (Themes 2, 5, 6, 7, 12).

Discloses how "multi-identity" is not an accepted concept in the American lexicon of race and gender, and how the "politics of dichotomous categorical identity" either force individuals into categories or coerce them to choose a defining identity. Shows how this causes difficulties for women of color, such as Latinas, because it fragments their identities, forcing them to channel their experiences through either the discourse of race or that of gender and thus to deny their true multi-identities. Using classroom and courtroom examples, shows how everyday language contributes to these problems. Calls for a critical examination of legal language that will allow women and bilingual people to maintain all of their identities without penalty.

Freire, Paulo, Pedagogy of the Oppressed (1970). (Theme 12).

Starting with the premise that every human being has agency--that is, is a subject who can act upon and transform the world--Brazilian educator and philosopher Freire asserts that given critical ***448** tools, each person can become conscious of contradictions in personal and social reality and gain some control over his/her destiny. Offers pedagogical method for teaching reading to illiterate peoples to accomplish these goals. Contends that mastery changes consciousness by enabling people to overcome the fear of freedom, shed the identity of being only a responsive object, and instill the ability to question illegitimate authority.

Garcia, Juan Ramon, Operation Wetback: The Mass Deportation of Mexican Undocumented Workers in 1954 (1980). (Themes 4, 11).

Studies the major factors that influenced the large influx of illegals during the Bracero Program during the 1940s and early 1950s, and the events that led to the mass roundup and deportation of undocumented Mexican workers in the United States in 1954. Examines the Bracero Program, conflicting policies of Mexican immigration, the border patrol, exploitation of illegals, and the rationale and attitudes used to justify this treatment, legislation proposed to penalize employers using illegal hands, and the planning of Operation Wetback. Demonstrates that the United States' unilateral efforts-- mass deportations, restrictive measures, and contract labor programs--have not proved effective deterrents to illegal immigration.

Garcia, Ruben J., Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law, 17 Chicano-Latino L. Rev. 118 (1995). (Themes 1, 5, 11, 14).

Applies critical history and labor-market analysis to show racist and nativist background of Proposition 187, which denied welfare and other benefits to undocumented aliens in California. Argues that Mexican people are being used as scapegoats for U.S. workers pinched by consequences of poor economic policy at high levels. Argues that assimilationist measures like Proposition 187 are part of a

broader attack on immigrants and other non- Anglo groups and that this movement uses a divide-and-conquer strategy by appealing to blacks and poor whites. Recommends that courts should give this and similar movements strict scrutiny.

***449** Gaspar de Alba, Alicia, The Alter-Native Grain: Theorizing Chicano/a Popular Culture, in Culture and Difference: Critical Perspectives on the Bicultural Experience in the United States 103 (Antonia Darder ed., 1995). (Themes 1, 6, 8, 15, 16).

Examines theories of resistance in Chicano/a popular culture by analyzing cinematic portrayals of Chicanos/as. Explores the "cultural schizophrenia" that splits subject and object in Chicano identity as portrayed in the film Born in East L.A. Contrasts that approach to the romanticized, Anglo- produced The Milagro Beanfield War. Analyzes use of rasquachismo, a Mexican working-class aesthetic of resistance to elitist standards in the art world, in Guillermo Gomez-Pena's performance video, Border Brujo. Points out the stereotypical treatment Chicanos/as have encountered and how modern Chicano filmmakers have countered these stereotypes.

Golden, Renny & Michael McConnell, Sanctuary: The New Underground Railroad (1986). (Themes 2, 11, 13).

Explains the horror from which Central American refugees fled and sets out the moral and economic case for the U.S. sanctuary movement. Analogizes sanctuary workers to 19th-century abolitionists who helped slaves escape to freedom. Discusses deficiencies of official U.S. policy toward refugees, including prosecution of asylum workers. Contains case studies of Central Americans who fled oppression and violence in their home countries in hopes of securing freedom in the United States.

Gomez-Pena, Guillermo, Warrior for Gringostroika: Essays, Performance Texts, and Poetry (1993). (Themes 2, 6, 7, 8, 10, 15, 16).

Informed by his experience of biculturalism, Gomez-Pena--born in Mexico City and since 1978 a resident of the United States--challenges the opacity of the border between the two countries. Gomez-Pena, the "warrior for gringostroika," takes on kaleidoscopic identities with multiple voices-- Mexican, post-Mexican, Chicano, Chicano/Mexican, Latin American, trans- American, American--each speaking from a different perspective and uncovering ways Latino and Anglo culture have penetrated each other. Posits that border culture can lead to peaceful coexistence and cooperation and dismantle fear of the "other" that causes Mexicans, Chicanos, and Americans to view identity and culture as closed systems. Invites an imaginative leap into the psyche of the migrant, nomad, and exile to facilitate living in a world that is ***450** becoming increasingly hybrid and multidimensional. Contains performance texts Califas, Border Brujo, and 1992, as well as essays and poetry.

Gomez-Quinones, Juan, Chicano Politics: Reality and Promise, 1940-1990 (1990). (Themes 1, 3, 4, 5, 6, 8, 10).

Describes the political experience of the Mexican people north of the Rio Bravo over a fifty year period. Shows how group consciousness took different forms at different

times, including the liberal Chicano movement, conservativism, and empowerment. Shows the role of leadership, organization, ideology, and goals in representing Mexican-American people in the political arena. Describes how the struggle for political expression has had to confront condescension and demeaning stereotypes held by Anglo society. Argues that the political history of Chicanos in the United States cannot be understood without reference to issues of class and economic relations. Posits that Mexican unity and resistance are essential to long-lasting political advances.

Gonzalez, Deena J., Chicana Identity Matters, in Culture and Difference: Critical Perspectives on the Bicultural Experience in the United States 41 (Antonia Darder ed., 1995). (Themes 6, 7, 8).

Examines the difficulty of defining and locating the identity of Chicanas. Explores the complexity of Chicana identity formation in the Southwestern United States during the nineteenth century. Discusses Chicana lesbian writers Gloria Anzaldua, Alicia Gaspar de Alba, Cherrie Moraga, and Emma Perez, and shows how their varied backgrounds led to different articulations of Chicana identity. Highlights the important implications for social struggle and change of the way culture assigns identities to its members--and the way those members accept or reject that assignment.

Gossett, Thomas F., Race: The History of an Idea in America (1963). (Themes 4, 5, 11, 16).

Explores how mandates of early English and Spanish explorers to convert the heathen to Catholicism shaped their theories of white racial superiority. Shows how pseudo-scientific definitions of race, based on early anthropology, social Darwinism, and the theory of Teutonic origins of freedom and democracy, were advanced by leading nineteenth-century intellectuals such as George Bancroft, Francis Parkman, and Henry Adams. Describes how the Social Gospel message proclaimed by Josiah Strong and others, which ***451** deemed Anglo Saxons to be God's chosen people, helped justify U.S. expansionism during the Texas and Mexican Wars, as well as in campaigns against the Indians. Argues that this racist legacy persists to this day.

Gotanda, Neil, A Critique of "Our Constitution is Color-Blind," 44 Stan. L. Rev. 1 (1991). (Themes 1, 5).

Argues that color-blind mythology in classic liberal thought promotes a system of white supremacy. Demonstrates that before deciding not to take account of race, one must first recognize it. Analyzes Supreme Court opinions to show the fallacy of the color-blind norm and how in each of its versions it suppresses the ability of courts to recognize and confront racist treatment and makes remediation difficult.

Grillo, Trina, Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House, 10 Berkeley Women's L.J. 16 (1995). (Themes 2, 5, 6, 12).

Explains how the concepts of intersectionality and anti-essentialism may be used to challenge legal paradigms that tolerate racism and other oppressions. Applies intersectionality theory to show how the identity of women of color is fragmented

in traditional legal analysis. Demonstrates how essentialism enshrines the white middle-class experience as the norm and excludes the multiple perspectives of other groups. Discusses experiences of multiraciality and current debates about adopting a multiracial category. Advocates increased efforts to understand ways race, gender, class, and sexual orientation relate to one another and to the operation of hidden privilege.

Gutierrez, David G., Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity (1995). (Themes 4, 6, 8, 10, 11, 16).

Analyzes consequences of U.S. immigration policy for Mexican Americans residing in the United States, particularly in the border regions of California and Texas. Shows that anti-immigrant sentiment crosses class and race lines and that some Mexican Americans espouse restrictionist attitudes despite the emergence of a strong, nationalist Chicano movement. Suggests that immigration issues pose a threat to Mexican-American political and social integration, but that generally affinity ties are more important than differences.

***452** Gutierrez, Ramon A., When Jesus Came, the Corn Mothers Went Away: Marriage, Sexuality, and Power in New Mexico, 1500-1846 (1991). (Themes 4, 6, 7).

Provides a social history of the Kingdom of New Mexico from 1500 to 1846. Describes the Spanish conquest of America and its impact on the Pueblo Indians. Explores how the institution of marriage determines the meanings of class, gender, and sexuality. Beginning with the premise that every society is hierarchical, uncovers how marriage has historically structured relations of inequality. Examines marriage customs among sixteenth and seventeenth century Pueblo Indians, particularly following the Spanish conquest and the influence of Franciscan clerical culture, and marriage formation and social control in eighteenth century New Mexico, including the Spanish recolonization after the Pueblo Revolt of 1680. Focuses on how marriage in Spanish society was strictly administered to perpetuate inequalities. Seeks to provide understanding of cultural conflicts that occurred in nineteenth- century New Mexico, and which continue today between Anglos and Latinos.

Gutierrez-Jones, Carl, Rethinking the Borderlands Between Chicano Culture and Legal Discourse (1995). (Themes 1, 2, 3, 4, 5, 6).

Examines ways traditional legal rhetoric has shaped the definition of Chicano history and created a social and legal culture of dependency. Shows how Anglo historical romances intended to provoke political and social reform such as Helen Hunt Jackson's Ramona [FN14] and Edna Ferber's novel and George Stevens' film Giant [FN15] fail because they do not take account of institutional blocks to equality. Discusses work by Chicana/o writers including Oscar "Zeta" Acosta, Ana Castillo, Cherrie Moraga, Alejandro Morales, Luis Valdez, and Helena Maria Viramontes, which depict trials and legal culture, often without the defects noted in the works of some Anglo writers. Explores Chicano/a writers' and critics' ambivalent attitudes toward law's objectivity and judicial neutrality. Examines how the rethinking and rewriting (i.e., cultural translation) of history and narratives might aid transformational efforts to reconstruct the legal system's

treatment of Latinos.

***453** Haney Lopez, Ian F., Community Ties, Race, and Faculty Hiring: The Case for Professors Who Don't Think White, 1 Reconstruction No. 3, 1991, at 46. (Themes 1, 8, 12).

Argues for a race-conscious program of faculty hiring that takes into account not only the race and ethnicity of hires, but their community orientation as well. Points out that professors of color may serve as mentors and role models and enhance ties to the minority community. Defends race-conscious hiring from objections that it is essentialist, ill-defined, unfair to innocent whites, and saddles professors of color with unfair expectations and burdens.

Haney Lopez, Ian F., The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice, 29 Harv. C.R.-C.L. L. Rev. 1 (1994). (Themes 1, 3, 5, 8).

Argues that race is a social, not a biological construction; that is, terms like black, white, Latino, and Asian denote social, not genetically distinct groups. Shows how law has been used to reinforce racial subordination. Reveals how racial divisions are relatively new constructions, subject to constant change.

Haney Lopez, Ian F., White by Law: The Legal Construction of Race (1996). (Themes 1, 3, 4, 5).

Explores the social and legal origins of white racial identity by examining naturalization cases instrumental to the formation of modern images of race, law, and whiteness. Theorizes that law operates to construct races. Focuses on the role of law in creating and legitimating social ideas regarding race, and also on the legal structuring and maintenance of the material inequalities that give race an abiding salience in our society. Shows how "whiteness" is subconsciously thought of as the norm and how most whites think of their race as transparent. Argues that whites need to acknowledge and give up their white privilege before racial equality can be obtained.

Harris, Angela P., Race and Essentialism in Feminist Legal Theory, 42 Stan. L. Rev. 581 (1990). (Themes 1, 2, 5, 6).

Analyzes essentialism--the assumption of a single, united notion of woman-- in contemporary feminist thought. Shows that this assumption discounts the perspectives and needs of women of color and disempowers them. Shows how essentialism operates in the writing of leading theorists of feminism. Suggests incorporation of ***454** multiple consciousness and attention to storytellers of color as antidotes for essentialism.

Harrison, Melissa & Margaret E. Montoya, Voices/ Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces, 6 Colum. J. Gender & L. 387 (1996). (Themes 2, 4, 5, 12).

Shows how the Spiegel catalog and Ralph Lauren ads both extol and neutralize cultural diversity by juxtaposing words such as exotic, primitive, and ethnic with plantation images associated with colonialism, racism, and imperialism. Argues that legal discourse resembles this commercial-speak in masking historic forms of

subordination. Contends that marketplace consumption can imply racist complicity, just as legal discourse can encourage monocular perspectives. Uses concept of the borderlands as a way to challenge essentialist thinking and enable lawyers to understand the role of difference in their clients' perspectives. Discusses ethnography and translation studies, and warns of the Malinche paradox wherein even the best efforts of outsider lawyers to translate their clients' stories sometimes unexpectedly fail. Includes client Frank Baca's story to illustrate the problem of translation and the complexity of representing and speaking for a disabled client.

Hernandez-Truyol, Berta Esperanza, Building Bridges--Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement, 25 Colum. Hum. Rts. L. Rev. 369 (1994). (Themes 2, 3, 5, 6, 8, 14, 16).

Critiques the "exclusionary normative-centric model" of legal analysis, which uses a single-trait approach, wherein diverse traits become monocular characterizations--race equals black, gender means female, ethnic implies Latina/o, and so on. Argues that this approach leads to a black/white dichotomy that marginalizes Latinas/os wherein both whites and blacks perceive Latinas/os as "other." Posits that the multiple perspectives of Latinas/os, who stand at the crossroads of race, ethnicity, and gender, are critical to the development of universality--an acceptance of the complexities of all persons and an understanding of the "multidimensionality" that is our deepest commonality. Concludes that the Latina/o invisibility that the prevalent black/white model creates puts the group in the unique position of being outside both the white majority and the black minority, enabling them to build bridges and create a new visibility embracing multiple perspectives.

***455** Hernandez-Truyol, Berta Esperanza, Natives, Newcomers and Nativism: A Human Rights Model for the Twenty-First Century, 23 Fordham Urb. L.J. 1075 (1996). (Themes 3, 5, 11, 13).

Discusses the history of nativism and mistreatment of immigrants, including Italian, Irish, Jewish, German, Japanese, and Latino groups. Explores continuing nativist sentiment, evidenced in California's Proposition 187 and the official-English movement, against darker skinned and non-Western immigrants. Describes alienage discrimination, reviewing various rights limitations placed on non-citizens in areas such as welfare reform, voting, and employment. Examines Supreme Court decisions on U.S. sovereignty that exclude aliens, but notes that human rights conventions provide some limit to that power. Urges adoption of international human rights norms to counteract the unfettered sovereignty concept and to extend more rights to aliens.

Hernandez-Truyol, Berta Esperanza, Sex, Culture, and Rights: A Re/conceptualization of Violence for the Twenty-First Century, 60 Alb. L. Rev. 607 (1997). (Themes 1, 5, 7, 13).

Examines attempts to gain equality for women, including Latinas, around the world. Notes that subordination of women is not ceasing. Observes that exclusion

of women in the crafting of early human rights documents contributed to their lack of protection from gender-based abuses. Advocates redefining violence using a gender-sensitive perspective to include not only physical but psychological, political, and cultural acts that subjugate women. Suggests that such a reformulation would condemn all abusive conduct, including economic marginalization, which perpetuates women's subordinated status.

Herrera-Sobek, Maria, The Bracero Experience: Elitelore Versus Folklore (1979). (Themes 2, 4, 6, 8, 15, 16).

Analyzes the bracero experiences of the 1940s and 1950s by looking at elitelore (the writings of Mexican intellectuals) and folklore (interviews with various generations of bracero workers and folk songs about migrant farm life). Concludes that elite Mexican writers were generally highly critical of bracero workers, deeming them exploited in the United States and a drain of the best labor in Mexico, and thereby reinforcing an inferior image of the Chicano. Contrasts interviews with various bracero workers who, though faced with racism in the United States, reported generally positive experiences, ***456** using money and knowledge gained in the United States to improve their lives and those of their children in Mexico.

Herrera-Sobek, Maria, The Mexican Corrido: A Feminist Analysis (1990). (Themes 2, 6, 7, 16).

Explores the portrayal of women in over 3,000 corridos (Mexican folk ballads). Argues that the creation and crystallization of an archetype in a society is the result of historical process and not merely a preconscious mental construct. Identifies four components that forcefully structure archetypal images found in the Mexican folk ballad: patriarchal ideology, social class of the corridista and the corrido audience, Mexican history and Western literary tradition, as well as four recurrent images: the good and bad mother, the mother goddess, the lover, and the soldier. Advocates using these archetypes to analyze representation of women in corridos.

Horsman, Reginald, Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism (1981). (Themes 1, 4, 5, 11, 16).

Examines how the phrase "manifest destiny" was coined to legitimate U.S. military aggression and advance America's self-dealt special role in world history. Shows how this notion has led to the belief that the role of conquered "inferior" people is to retreat or disappear. Argues that the idea of Anglo-Saxonism as constituting a separate, innately superior people crystallized when whites needed to explain U.S. expansionist interests that culminated in the Mexican War of 1846-1848. Shows how journalists, novelists, travel writers, and politicians promoted this idea to label Mexicans an inferior mongrel race. Asserts that early American anathema toward granting citizenship to conquered Mexicans residing within U.S. borders enshrined enduring stereotypes of them into U.S. racial mythology.

Iglesias, Elizabeth M., Rape, Race and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality, 49 Vand. L. Rev. 869 (1996). (Themes 3, 6, 7, 16).

A Latina feminist perspective on images of female sexuality as they affect the culture of heterosexuality and rape. Argues that legal strategies aimed at reforming criminal laws will not eliminate rape because case processing decisions are discretionary, aimed only at after-rape intervention, and linked to a culture in which male power depends upon female powerlessness and in which culturally dominant narratives of race and sexual identity render it dangerous ***457*** to be a woman of color. Examines alternative images of women and men that could be used to reform legal doctrine and policy.

Iglesias, Elizabeth M., Structures of Subordination: Women of Color at the Intersection of Title VII and the NLRA. Not!, 28 Harv. C.R.-C.L. L. Rev. 395 (1993). (Themes 1, 5, 6, 7).

Argues, in opposition to the legal storytelling movement, that many of the mechanisms of oppression for women of color in the workplace stem from poor laws and lack of collective organization. Reasons that sensitivity training, agony tales, and a focus on meaning and anecdote have largely exhausted their potential and that it is time for progressive lawyers to begin the task of organizing workers and unmasking the operation of legal power.

Iguana Dreams: New Latino Fiction (Delia Poey & Virgil Suarez eds., 1992). (Themes 2, 6, 9, 11, 15).

Presents twenty-nine stories by Latino/a writers representing Chicano, Mexican, Puerto Rican, Cuban, Chilean, and Dominican cultures. Virtually all are united by the experience of bilingualism and the ability to blend two languages effectively and expressively. Recurrent themes include cultural survival and assimilation, nostalgia and reminiscence, intergenerational alienation, and attitudes toward women.

Immigrants Out! The New Nativism and the Anti-Immigrant Impulse in the United States (Juan F. Perea ed., 1997). (Themes 1, 4, 8, 11).

Essays examine changing relationships between citizens and immigrants in the United States from the Alien and Sedition Acts of 1798 to the recent Proposition 187 in California. Explores semantics, rhetoric, and the impact of economics, history, and demographics on the way nativism continues to influence national policy.

Infinite Divisions: An Anthology of Chicana Literature (Tey Diana Rebolledo & Eliana S. Rivero eds., 1993). (Themes 2, 6).

Presents 178 oral and written narratives representing 56 authors. Contains texts exploring personal identity, familial relationships, public and private spaces, myths and archetypes, and empowering events. Introduction gives overview of history of Chicana storytellers and writers from colonial and Anglo conquest periods through Chicana Renaissance of 1970s and 1980s.

***458** Johnson, Kevin R., Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century, 8 La Raza L.J. 42 (1995). (Themes 1, 3, 8, 11, 14).

Argues that immigration and rapidly changing Latino demographics in the United States make political, as opposed to purely legal, strategies essential to improving the situation of Latino peoples. Points out that the need to emphasize political action results largely from deficiencies of traditional civil rights solutions pioneered by the African-American community, which, because of the complex heterogeneity of the Latino community, work less well for it. Asserts that increased political mobilization of Latinos, coupled with voting-reform litigation, is the most prudent long-term strategy for transcending limitations of the black/white civil rights model, and for eventually developing a civil rights coalition that bridges minority boundaries.

Johnson, Kevin R., An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race, 70 Wash. L. Rev. 629 (1995). (Themes 1, 3, 11, 14).

Shows how California's Proposition 187, which limited governmental services to undocumented workers and required governmental employees to report suspected undocumented immigrants, was facially neutral with respect to race; like similar past legislation, however, it was aimed at Mexican Americans. Examines difficulty of challenging subordination of minority interests because of requirement to prove conscious intent to discriminate. Notes reluctance of some African Americans to oppose restrictive immigration measures because of feared economic competition by growing numbers of Latino and Asian immigrants.

Johnson, Kevin R., Fear of an "Alien Nation": Race, Immigration, and Immigrants, 7 Stan. L. & Pol'y Rev. 111 (1996). (Themes 9, 11, 14).

Critiques Peter Brimelow's Alien Nation: Common Sense About America's Immigration Disaster. [FN16] Argues that Brimelow has made scapegoats of Latino/a immigrants, blaming them for the nation's political, economic, and social problems, namely affirmative action, bilingual education, and environmental degradation. Identifies a contradiction in Brimelow's nativist position, in that he opposes ***459** Latino immigration because he feels Latinos/as do not want to assimilate, but nevertheless opposes funding for programs that encourage assimilation, such as English as a Second Language. Explores how immigration is used as a wedge between the black and Latino communities, by blaming immigrants for taking away unskilled jobs from black workers.

Johnson, Kevin R., Free Trade and Closed Borders: NAFTA and Mexican Immigration to the United States, 27 U.C. Davis L. Rev. 937 (1994). (Themes 11, 13, 16).

Examines the relationship between illegal immigration from Mexico and the North American Free Trade Agreement (NAFTA). Explains that some economic agreements, such as the one among members of the European Union, have abolished many migration restrictions between member nations. Contends that immigration was not addressed during the ratification of NAFTA because immigration from Mexico is highly unpopular in the United States with, on the left, trade unions and environmental organizations who fear the loss of

"American" jobs and degradation of the environment, and, on the right, restrictionists who fear that the United States will be corrupted by an influx of inferior people of color. Shows how easily rights of minority peoples become submerged when political interests take precedence.

Johnson, Kevin R., Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement, 1993 BYU L. Rev. 1139. (Themes 2, 5, 11, 16).

Explains how the electoral powerlessness of noncitizen immigrants, combined with economic hard times, anti-immigrant sentiment, and the lack of political mobilization around immigration issues, results in a dysfunctional political system. In this system, a well-organized vocal minority of citizens dedicated to restrictionist immigration policies actively represents the "silent majority" of voters on immigration issues. Because the political system does not accurately gauge the will of the public, immigration reformers must change the negative collective images of the immigrant in the national consciousness by telling the untold stories about the lives of noncitizens in the United States.

***460** Johnson, Kevin R., "Melting Pot" or "Ring of Fire" ? Assimilation and the Mexican-American Experience, 85 Calif. L. Rev. 1259 (1997), 10 La Raza L.J. 173 (1997). (Themes 2, 8, 15).

Argues that assimilation poses special dangers for Latino people, even those of high educational and professional attainment. Reflecting on his own experience as a person of mixed race, shows that race is indeed a social construct and, for many, a matter of personal choice and identification. Nevertheless, notes that full acceptance by mainstream society can rarely be achieved by darker-skinned persons of color, while the effort to pass oneself as white or European exacts great costs. Argues that mixed-race persons are best advised to accept their own racialized status and resist the temptation to "pass." Urges that individuals and society alike acknowledge the line- drawing problems posed by racial mixture.

Johnson, Kevin R., Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class, 42 UCLA L. Rev. 1509 (1995). (Themes 6, 10, 11, 14, 16).

Shows the "quadruple whammy" faced by undocumented domestic workers--discrimination on the basis of class, gender, ethnicity, and citizenship. Examines how current anti-immigrant sentiments continue a long tradition of nativist fervor. Reveals how poor African Americans and Asians fear illegal Latino immigration as competition that reduces wages and the number of available jobs. Criticizes how anti-immigrant legislation, such as California's Proposition 187, has been used to target Mexicans as inferior and undesirable people--stereotyping Mexican women as welfare queens and Mexican men as criminals, despite data that show only a small percentage of undocumented workers receive welfare or commit crimes. Argues that most of the anti-immigrant legislation and enforcement has been directed against Mexicans and other Latin Americans, even though just as many undocumented workers from other countries have overstayed their tourist, student, or business visas. Urges coalition by subjugated groups as a way of increasing their political power.

***461** Johnson, Kevin R., Racial Restrictions on Naturalization: The Recurring Intersection of Race and Gender in Immigration and Citizenship Law, 11 Berkeley Women's L.J. 142 (1996). (Themes 3, 4, 5, 6, 8, 11, 14).

Reviews Ian Haney Lopez's White By Law, [FN17] paying particular attention to issues the author leaves open, including the questions of why whites should disassemble their own whiteness and how communities of color should deal with degrees of "whiteness" in their own midst (viz., the way some Latinos or blacks look lighter than others). Praises Haney Lopez for drawing attention to the way gender operates in immigration and naturalization law, and shows additional ways in which scholars can explore this area. Argues that another function of law may be to "allow for more sophisticated discrimination," as in Latin American countries populated by people of color but where discrimination against darker or more indigenous- looking people is nevertheless rife. Argues that the transformation of the country's demographics and the United States' increasing multiracial makeup may generate tensions that ultimately yield beneficial change.

Johnson, Kevin R., Some Thoughts on the Future of Latino/a Legal Scholarship, 2 Harv. Latino L. Rev. (forthcoming 1997). (Themes 1, 3, 8, 14).

Describes how critical Latino/a theory, separate but similar in approach to critical race theory, needs to reconstruct civil rights discourse to accommodate Latino/a perspectives because the black/white paradigm fails to speak to important issues for the Latino community. Suggests that changing U.S. demographics imply an emerging multicultural society, with race relations a multilateral, rather than bilateral, phenomenon. Points out that, because diversity among Latinos/as makes it difficult to identify commonalities within the community, developing a LatCrit theory is a formidable task. Urges that areas for analysis would include: immigration reform; bilingual educational opportunities; maintaining Latino cultural identity in the face of cultural assimilation; challenging the stereotype of the Latino/a as foreigner; and examining racism, misogyny, and homophobia in the Latino community.

***462** Johnson, Kevin R., Why Alienage Jurisdiction? Historical Foundations and Modern Justifications for Federal Jurisdiction Over Disputes Involving Noncitizens, 21 Yale J. Int'l L. 1 (1996). (Themes 3, 5, 11).

Urges that reform or cutbacks of federal diversity-of-citizenship jurisdiction avoid reducing the category of federal subject-matter jurisdiction based on alienage. The two categories, although superficially similar, rest on different policy grounds; in particular, alienage jurisdiction serves as an essential protection against xenophobia in local courts. Moreover, in a period of increasing globalization it is in the United States' interest to maintain a federal forum for suits in which a party is a noncitizen. Urges congressional action to assure that alienage jurisdiction survives in the future.

Larson, Jane E., Free Markets Deep in the Heart of Texas, 84 Geo. L.J. 179 (1995). (Themes 3, 4, 6, 11).

Examines the condition of Mexican Americans living in the colonias--shantytowns lining the Texas-Mexico border. Reports fieldwork and interviews revealing substandard conditions prevailing in these settlements, including lack of running water and sewers, unsafe housing, and no street lighting or addresses. Notes the dilemma posed by both liberal thought and classical economics: regulation could price the colonistas out of the only place they can afford to live. Acknowledges the contribution of racist attitudes among white Texans in tolerating these slums, and proposes a seven-part solution including self-help housing, minimal regulations, and extending the franchise in local elections to noncitizens.

The Latino Encyclopedia (Richard Chabran & Rafael Chabran eds., 1996). (Themes 1, 4, 7, 8, 9, 10, 11, 12, 15, 16).

The first encyclopedia of its kind, co-edited by the brothers Chabran-- Richard, director of UCLA's Chicano Studies Research Library and Rafael, a professor of Spanish--comprises a six volume collection of almost two thousand essays by academics and researchers on Latino history and culture in the United States. Subjects covered include politics, education, literature, art, folklore, religion, sports, science, and medicine. Includes Puerto Rican Americans and Cuban Americans, as well as Mexican Americans.

***463** Latinos and the Political System (F. Chris Garcia ed., 1988). (Themes 1, 3, 4, 5, 8, 14).

Discusses Latino successes in the U.S. political system, examining the three major Latino groups--Mexican Americans, Cuban Americans, and Puerto Ricans. Emphasizes the political movement during the 1980s, categorized as the "Decade of the Hispanic." Includes essays by well-known Latinos/as, organized in accord with David Easton's model of political systems: inputs, conversions, outputs, and feedback. Describes tensions among the different groups and argues that tactics successful in the 1970s failed in the 1980s because of the reluctance of non-Hispanics to support causes they did not see as immediately beneficial to themselves.

Latinos in the United States: History, Law and Perspective (Antoinette Sedillo Lopez ed., 1995). (Themes 1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 16).

Six volume set on Latino/a legal history and scholarship reprinting 110 articles from law reviews, anthologies, and journals in anthropology, Chicano studies, education, history, political science, Puerto Rican studies, social policy, sociology, and women's studies. The volumes cover:

1. Historical Themes and Identity: Mestizaje and Labels. Focuses on history of Latino peoples in California, the southwest and midwest, Florida, Cuba, and Puerto Rico, with particular emphasis on legal history and doctrine, the role of women, racism, stereotyping, conflicts with Anglos, and ethnicity and identity.
2. Latina Issues: Fragments of Historia(Ella) (Herstory). Addresses Latina perspectives on colonization; gender, race, class, and their intersections; cultural values; work histories; family roles; reproductive issues; and the failure of the women's and Chicano movements to include Chicana perspectives.

3. Criminal Justice and Latino Communities. Reviews and critiques the legal system's treatment of Latinos, showing how deficiencies in criminological research techniques, disparate sentencing, cultural bias, and language barriers contribute to Latinos' lack of confidence in the criminal justice system.
4. Latino Employment, Labor Organizations and Immigration. Examines Latino labor history from 1850 to the present, including critique of U.S. immigration law showing how immigration policy protects U.S. labor needs but neglects human rights of immigrants.
5. Latino Language and Education. Contains essays by linguists, historians, educators, and law professors on language rights, English-only ***464** rules, bilingual education, school segregation and ability grouping, and affirmative action.
6. Land Grants, Housing and Political Power. Examines nineteenth-century land grant processes and policies, housing conditions and fair housing policies, and Latino access to and use of the political process.

Lionnet, Francoise, Autobiographical Voices: Race, Gender, Self-Portraiture (1989). (Themes 2, 4, 6, 7, 15).

Analyzes and compares the autobiographical texts of Augustine and Nietzsche with those of five twentieth-century women writers--Hurston, Angelou, Cardinal, Conde, and Humbert--from cultures with a high degree of hybridity. Juxtaposes these seemingly disparate texts with Augustine and Nietzsche, not so much to highlight the contrast with modern feminine visions, but rather to unearth the subjugated feminine voice within the masculine autobiographical tradition. Advocates concurrent readings of dissimilar texts for novel insights about historically constraining conceptual categories and to unmask mechanisms that perpetuate the sociocultural construction of race and gender as inferior. Argues for metissage, the braiding of indigenous cultural forms with Western concepts, as a means of enabling women to find the strength to persevere despite a culture that is arrayed against them.

Lopez, Gerald P., The Idea of a Constitution in the Chicano Tradition, 37 J. Legal Educ. 162 (1987). (Themes 1, 2, 5, 10).

Considers the notion of a constitution from the perspective of the Chicano community. Points out that, far from being a noble document, a constitution may easily cause injury by empowering some and not empowering others. Discusses the role of struggle in shaping and giving life to a constitution.

Lopez, Gerald P., Lay Lawyering, 32 UCLA L. Rev. 1 (1984). (Themes 2, 5, 12).

Shows the role of scripts and stock stories in the way people organize experiences, including those of justice and injustice. Describes how society attaches certain stock meanings and interpretations to recurring experiences, including ones of legality and illegality. Illustrates all these operations by means of an account of a mother and son trying to hail a taxicab in a busy city.

***465** Lopez, Gerald P., Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice (1992). (Themes 1, 2, 5, 12).

Analyzes practices of progressive lawyers in representing poor clients. Shows that many of these lawyers follow unconscious practices that inhibit reform and impede their ability to advance their clients' interests. Argues for a form of rebellious lawyering characterized by radical identification with the client community and an unending struggle to understand, incorporate, and give voice to that community.

Lopez, Gerald P., Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration, 77 Geo. L.J. 1603 (1989). (Themes 1, 2, 3, 5, 12).

Focuses on the underlying ideas of rebellious lawyering in relation to § 1983 litigation. Presents a fictional account of a relatively inexperienced young lawyer who learns to work not only for but with her client in a federal civil rights action. Demonstrates the importance of collaboration with allies and situating oneself in the community of the client.

Lopez, Gerald P., Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education, 91 W. Va. L. Rev. 305 (1989). (Themes 1, 5, 12).

Discusses reluctance of law schools to provide training for lawyers who will work with subordinated groups. Addresses the indifference of a legal education that perpetuates generic legal skills training which harbors a blindness to differences in the social conditions and lives of clients. Presents ways to implement a new vision based on the redesigned Stanford Lawyering for Social Change curriculum.

Lopez, Gerald P., Undocumented Mexican Migration: In Search of a Just Immigration Law and Policy, 28 UCLA L. Rev. 615 (1981). (Themes 1, 4, 11).

Criticizes historical U.S. immigration policy toward Latin America as cruel, unjust, and based on a misunderstanding of the forces that propel immigration. Argues that the current negative understanding of undocumented immigration is mistaken, and that national self-interest would be better advanced by a more generous approach to Mexican immigration.

***466** Lopez, Gerald P., The Work We Know So Little About, 42 Stan. L. Rev. 1 (1989). (Themes 1, 2, 12).

Describes struggle of an undocumented Mexican immigrant who attempts to support her family by low-pay housekeeping. Follows her journey to citizenship, her fear of deportation, her struggle to prove her residency with no paper trail, and her attempts to fulfill the education requirement. Highlights her distrust of the legal profession, and illustrates how pervasive this view is among low-income women of color. Urges that the legal profession's relation to working-class clients must change, and argues that this will in turn affect low-income women's perceptions of the law, allowing them to feel comfortable in seeking a lawyer for help.

Luna, Guadalupe T., "Agricultural Underdogs" and International Agreements: The Legal Context of Agricultural Workers Within the Rural Economy, 26 N.M. L. Rev. 9 (1996). (Themes 4, 11, 13).

Examines how the agriculture industry in the United States benefits from federal entitlements that offset the costs of accommodating labor demands but fail to provide any benefits for farm workers--especially those of Mexican descent. Asserts that exemptions from labor and immigration law have increased because of the liberalization of global agricultural markets by NAFTA, but without providing appreciable benefits or protections to agricultural workers. Points out that underrepresentation of Latinos as farm operators is a result of a historical power imbalance and that a parochial emphasis on labor law has guaranteed that Chicana/o farm workers lead a marginal existence. Proposes that conditions can be improved by using as models international agreements that shift the emphasis from macroeconomic entitlement policies to regionally determined criteria for distribution of agricultural benefits. Provides a case study of the colonias of the El Paso border region, where the Latino population is significant but Chicana/o farm ownership is minimal. Concludes that policies that enhance the diversity of farm ownership can better address issues of equality, farm preservation, and the quality of food and life in the United States.

Maciel, David R., El Norte: The U.S.-Mexican Border in Contemporary Cinema (1990). (Themes 7, 15, 16).

Examines the depiction of Chicanos/as in Mexican and U.S. films about life along the border. Reviews the most popular border films, finding that both Mexican and U.S. commercial films stereotype Chicanos/as as lazy, dirty, crude, stupid, or as criminals, or helpless ***467** and passive victims. Concludes that independent films made by Chicano writers and/or directors are generally devoid of stereotypes and forcefully depict important social issues that confront the lives of people who live along the border.

Making Face, Making Soul Haciendo Caras: Creative and Critical Perspectives by Women of Color (Gloria Anzaldua ed., 1990). (Themes 2, 6, 7, 12, 15).

Continues the work originally presented in This Bridge Called My Back. [FN18] Anthologizes eighty-three selections by women of color challenging identities traditionally assigned to them by others. By haciendo caras (making faces), the authors define themselves and construct their identities anew. Divided into seven parts, the selections address racism; sexism; internalized oppression; silencing and repressed voices; alliances with communities, other ethnic groups, and marginalized whites; critical theory; self-perception and identity. The introduction and various essays recount experiences and techniques used to confront racism in the classroom, in women's studies programs, and in the women's movement.

Martinez, Elizabeth, Beyond Black/White: The Racisms of Our Time, 20 Soc. Just. 22 (1993). (Themes 1, 4, 8, 11, 14).

Analyzes effects of defining racial issues in terms of a black/white framework that excludes the experiences of Latinos, Native Americans, and Asian Americans. Points out that worldwide economic recession, changes in the international labor market and consequent migration, and backlash against the 1960s civil rights agenda have increased racism against all peoples of color and increased tensions among racial and ethnic groups bent on survival. Compares histories of African

Americans and Latinos and argues that Latinos are defined and oppressed by language, cultural, and nationality issues, as well as by race. Calls for a discussion of racism in a framework that includes the experiences of all groups of color.

Martinez, George A., The Legal Construction of Race: Mexican Americans and Whiteness, 2 Harv. Latino L. Rev. (forthcoming 1997). (Themes 1, 3, 5, 16).

Examines how the legal system has classified Mexican Americans in various settings, including jury service, immigration and naturalization, and for the purpose of filing class actions. Concludes that ***468** judges generally find Mexicans white only when no benefit--and usually a burden--rides on it. When being white would bring a disability such as exclusion from jury service, courts have not hesitated to pronounce Mexican-American people white. Moreover, even when courts classify Mexican Americans as white, this classification brings few benefits outside court; the rest of society continues to regard Mexicans as inferior and "other."

Martinez, George A., Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980, 27 U.C. Davis L. Rev. 555 (1994). (Themes 1, 2, 3, 5).

Examines key court decisions in Mexican-American civil rights cases in the areas of public accommodations, land grants, restrictive covenants, racial slurs, school desegregation, and bilingual education. Shows how courts have generally decided against Mexican-American plaintiffs when not constrained by Supreme Court precedents. Argues that many decisions are not inevitable or logically compelled, but rather the result of discretionary or discriminatory policy choices. Describes how some civil rights strategies used successfully by African Americans failed when similar cases were brought by Mexican Americans. Concludes that litigators should deploy and courts should heed counterstories to overcome dominant perspectives when deciding politically sensitive cases or one's of first impression.

Martinez, John, Trivializing Diversity: The Problem of Overinclusion in Affirmative Action Programs, 12 Harv. BlackLetter L.J. 49 (1995). (Themes 5, 12).

Discusses overinclusion in affirmative action programs resulting from a lack of generally accepted standards by which to determine diversity status. Argues that the lack of such standards encourages institutions not to examine critically an applicant's self-designated minority status, in order to pad their diversity statistics. Cites examples such as a woman who checked the Hispanic box on her application, and, when questioned, replied that she was "Hispanic by birth" because her ex-husband had been Hispanic and she had a child by him. Proposes a reconstruction of affirmative action programs to seek two possible ends, "enrichment" and "social justice." Argues that we should abandon the use of suspect-trait proxies, such as race and gender, as means to achieve those ends, and that we should rely instead on an individualized inquiry into ***469** each candidate's history of employment, services, and contacts to determine inclusion in affirmative action programs.

McWilliams, Carey, North From Mexico: The Spanish-Speaking People of the United States (1949). (Themes 1, 4, 5, 10, 11, 16).

Early critical history of Mexicans in the United States points out the irony of, on the one hand, Anglo culture's fascination with romanticized mythology of Spanish and Californian influence in the West, and on the other, its determined efforts to subordinate Mexican Americans. Discusses how the failure of Spanish settlements north of the Rio Grande to link borderland outposts impeded the ability of Mexican settlers to function together politically. Shows how, with the passage of the 1924 Immigration Act, social work agencies and Americanization institutes, fearing loss of clients, defined a new area--"the Mexican Problem"--to justify their continuance. Reveals how data they collected were interpreted to "prove" various demeaning stereotypes about Mexicans, such as lack of character, discipline, intelligence, and thrift. Links the removal of Japanese Americans in California to internment camps during World War II with the substitution in the media of Mexicans as a major scapegoat group, leading in turn to the Sleepy Lagoon event and consequent Zoot Suit riots. Projects hope for a good neighbor policy with Mexico after World War II (which did not materialize).

Menchaca, Martha, Chicano Indianism: A Historical Account of Racial Repression in the United States, 20 Am. Ethnologist 583 (1993). (Themes 1, 3, 5, 8, 11, 15).

Discusses racial repression of people of Mexican origin in the U.S. legal system from 1848 to 1947. Shows how, after Mexico turned over one third of its land to the United States under the Treaty of Guadalupe Hidalgo in 1848, Mexican nationals (most of them mestizo) were placed in legal limbo. Because U.S. citizenship originally was granted to free whites only--and after the Fourteenth Amendment to blacks, but not Indians--people of Mexican descent were compelled to argue in court that they should be treated as Caucasians in order to gain citizenship. Uses nineteenth-century court records and citizenship legislation to show that Mexicans who appeared to be Indian or nonwhite were more severely discriminated against than ones who were classified as white or could prove their ancestry was predominantly white.

***470** Mendez, Miguel A., Hernandez: The Wrong Message at the Wrong Time, 4 Stan. L. & Pol'y Rev. 193 (1993). (Theme 5, 9).

Analyzes Hernandez v. New York, [FN19] the United States Supreme Court decision that upheld the right to eliminate a prospective bilingual juror if the prosecutor suspected that the juror would not abide by the official court translation of the testimony of a non-English speaking witness. Examines Batson v. Kentucky, [FN20] which prohibited peremptory challenges that disqualify a juror on account of his race, concluding that Batson gave only symbolic opposition to racial discrimination because the burden of persuasion on defendants makes proving the prosecutor eliminated jurors because of their race difficult. Argues that because many Latinos/as are bilingual, Hernandez will make it easier for prosecutors to exclude Latinos/as from serving on juries. Ironically, thus, the current law excludes super-competent jurors in favor of others less able, forfeiting the goals of justice in favor of sterile proceduralism.

Miles, Jack, Black vs. Browns: African Americans and Latinos, Atlantic Monthly, Oct. 1992, at 41. (Themes 6, 8, 10, 11, 14).

Argues that the Los Angeles riots following the acquittal of four white police officers who assaulted Rodney King reflected not only black/white enmity but also increasing tensions among the black, Latino, and Asian communities. Traces this tension to immigration and competition for jobs and social programs. Theorizes that whites are more comfortable employing Latinos than African Americans, and with the large increase in the illegal Latino immigrant work force who will work for lower wages, fewer jobs are available for African Americans. Examines debate among conservatives, some of whom want open borders with free trade of goods and labor, and others of whom oppose non-European immigration because they want to preserve whiteness in the United States.

Mirande, Alfredo, "En la Tierra del Ciego, El Tuerto Es Rey" ("In the Land of the Blind, the One Eyed Person is King"): Bilingualism as a Disability, 26 N.M. L. Rev. 75 (1996). (Theme 1, 9).

Shows how English-only rules devalue and punish Spanish speakers. Argues for a reformulation of employment discrimination law and equal protection doctrine to address differences among protected groups. Asserts that for Latinos, language, though less visible ***471** than race, is an immutable characteristic that should be viewed as a workplace disability subject to the provision of reasonable accommodation by employers.

Mirande, Alfredo, Gringo Justice (1987). (Theme 1, 4, 5, 16).

Traces the experience of Chicanos in the U.S. legal and judicial system from 1848 to the present, describing clashes between Anglos and Mexicans over land rights and labor disputes. Asserts that a double standard of justice treats Anglo Americans differently from Chicanos. Argues that the U.S. takeover of Mexico resulted in the displacement and subjection of Chicano people who were forced to live in an alien legal and judicial system that subordinates Chicanos. Rejects cultural deficiency theories of Chicano crime and delinquency, and calls for a model that recognizes the relationship between structural determinism and the role of competing world views.

Montoya, Margaret E., Law and Language(s): Image, Integration and Innovation, 7 La Raza L.J. 147 (1994). (Themes 2, 5, 9, 12, 15).

Proposes that adherence to traditional language norms in legal education tends to impoverish and distort legal discourse as well as coerce cultural assimilation of linguistic outsiders. Uses narrative analysis to highlight ways in which monolingual and monocultural discourse devalues the Spanish language. Calls for the use of metissage or "linguistic code-switching" in the classroom to create discursive space for telling stories that combine dominant language with "outlaw languages," thereby giving voice to bicultural clients and support to Latina/o resistance of cultural-linguistic hegemony.

Montoya, Margaret E., Mascaras, Trenzas, y Grenas: Un/masking the Self While Un/braiding Latina Stories and Legal Discourse, 17 Harv. Women's L.J. 185 (1994), concurrently published in 15 Chicano-Latino L. Rev. 1 (1994). (Themes 2, 4, 6, 7, 12, 15).

Uses personal narratives to show how outsiders, particularly Latinas/os, adopt various mascaras (masks) to construct a public persona acceptable to the dominant culture. Reveals how this process of acculturation disguises ethnic and racial difference, simultaneously providing defenses against racism and subordinating Latinas/os as they lose touch with their personal selves. Braids the personal and the academic voice, legal and interdisciplinary scholarship, English and Spanish, to illustrate how bicultural and bilingual storytelling becomes a discursive technique for resisting ***472** cultural-linguistic domination through both personal and collective redefinition of the Latina/o self.

Moran, Rachel F., Bilingual Education as a Status Conflict, 75 Calif. L. Rev. 321 (1987). (Themes 1, 3, 5, 9, 14).

Uses status conflict analysis to show that proponents and critics of bilingual education programs have used language as a vehicle to perpetuate or enhance the status of their own cultures, customs, and values. Shows how the debate has been fueled not only by concerns about governmental allocation of educational resources, but also by desires to accord symbolic cultural deference to a particular way of life. Describes how the response of English-only advocates represents a backlash to bilingual education victories and seeks to preserve the status of Anglo culture from increasing encroachment by linguistic minorities. Demonstrates that, because of requirements to substitute language barriers as a proxy for race, Latino and Asian efforts to establish bilingual education programs are diluted when litigated under multiple-issue omnibus civil rights acts primarily designed to redress discrimination against African Americans.

Moran, Rachel F., Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond, 8 La Raza L.J. 1 (1995). (Themes 3, 8, 9, 13, 14).

Reviews traditional civil rights and immigration advocacy models and examines their potential limitations for Latinos. Shows that the civil rights framework is rooted in African-American demands, and demonstrates how Latinos have tried to broaden this framework to include bilingualism and community control of neighborhood schools. Argues that coalition-building is essential among the civil rights community to achieve equal educational opportunities. Points out that the global economy has heightened awareness of U.S. immigration policy. Examines the traditional model of European immigration as a long-term, permanent commitment to the U.S., forswearing allegiance to the mother country. Contrasts the Latino experience, which includes ongoing contact with home countries and development of a transnational identity rather than exclusive loyalty to the U.S. Suggests that solutions to immigration issues may emerge from international human rights law, international labor organizing, and efforts to assure the job security of the U.S. workforce.

***473** Moran, Rachel F., Of Democracy, Devaluation, and Bilingual Education, 26 Creighton L. Rev. 255 (1993). (Themes 1, 5, 9, 12).

Charges that federal policymakers of bilingual education focus too narrowly on the relationship between the individual and the state, overlooking and undervaluing the importance of linguistic and cultural groups in influencing

personal identity and the development of interpersonal skills. Stemming from two models of democratic decision making, this undervaluation takes the form of special interest bargaining (aggregating individual preferences), and "technocratic" republicanism (relying on technocrats to identify the public interest), thereby limiting group input and increasing factionalization. Proposes an ethic of pluralism that affirmatively values linguistic and cultural groups and explores how current governmental strategies for intervention might be restructured to accommodate parent and student participation.

Moran, Rachel F., The Politics of Discretion: Federal Intervention in Bilingual Education, 76 Calif. L. Rev. 1249 (1988). (Theme 1, 9).

Posits that the intractability of the bilingual education controversy rests on the allocation of discretion to make educational policy. Examines four major groups--parents and community leaders, educational experts, federal officials, and English-only reformers--that have challenged state and local educators' discretionary prerogatives in developing curricula for linguistic minority students. Describes the deficiencies of each group's position and the type of intervention each proposes. Reviews the history of federal intervention in bilingual education, revealing conflicting assertions about the proper allocation of discretion in the decision making process. Examines three approaches to the allocation of discretion and assesses how they have shaped policy. Suggests an alternative framework that examines the organizational structure of schools and the necessary comprehensiveness of reforms.

Moran, Rachel F., Unrepresented, 55 Representations 139 (1996). (Themes 1, 3, 5, 11).

Develops a framework for understanding Latinos' relative invisibility in many policy issues, questioning why affirmative action debates are cast in black/white terms--especially in states such as California where Latinos are the largest minority. Asserts that Latinos/as have been underrepresented because their identity and entitlements have been undercut by two competing policy models: civil rights and immigration. Shows how Latinos are required ***474** to conform to a black experience under the civil rights model, and to a white experience under the immigration model, rendering progress difficult under either approach. Concludes that Latinos/as face a challenge in merging these models in ways that mutually reinforce the definition of their identity and history.

Navarrette, Ruben, Jr., A Darker Shade of Crimson: Odyssey of a Harvard Chicano (1993). (Theme 8, 17).

In the tradition of Richard Rodriguez and Stephen Carter, criticizes affirmative action as serving primarily high achievers who need it least and suffer discrimination because of it. Reflects on entering Harvard in 1985 as one of only thirty five Mexican Americans, and attendant feelings of privilege, loneliness, alienation, and guilt. Describes pressures by other Harvard Chicanos/as to abandon assimilationist ways and embrace ethnic authenticity. Argues that left-oriented groupthink can be harmful and dehumanizing.

Oboler, Suzanne, Ethnic Labels, Latino Lives: Identity and the Politics of (Re)Presentation in the United States (1995). (Themes 4, 5, 6, 8, 11).

Describes the origin and historical use of the ethnic label "Hispanic." Argues that homogeneous characterization as Hispanic affects the self-perception of the various groups that have emigrated to the United States from Latin America since passage of the Immigration Law of 1965. Explains that each group that emigrates from Latin America does so as a result of varying historical processes and during different periods in U.S. history. Addresses the immigration of Latin Americans and how Latino identity in the United States is constructed. Concludes that ethnic labeling determines the distribution of resources and opportunities and the inclusion or exclusion of a group in the political process.

Olivas, Michael A., "Breaking the Law" on Principle: An Essay on Lawyers' Dilemmas, Unpopular Causes, and Legal Regimes, 52 U. Pitt. L. Rev. 815 (1991). (Themes 1, 5, 12).

Uses the example of Oscar "Zeta" Acosta's work to argue for a new form of lawyering on behalf of the radically disenfranchised. Argues that law schools, judges, and other legal institutions systematically ignore plain cases of injustice such as the plight of Central American children locked up in detention centers for long periods of time away from their families. Urges that U.S. lawyers and scholars confront such cases of injustice, naming them and publicizing them before worldwide constituencies.

***475** Olivas, Michael A., The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders as Racial History, 34 St. Louis U. L.J. 425 (1990). (Themes 1, 2, 5).

Argues that Derrick Bell's Chronicle of the Space Traders, [FN21] in which the United States agrees to sell all citizens of African descent in return for gifts offered by interterrestrial traders is, in fact, borne out by Chicano and Native-American experience. Cites forcible removal, the Bracero program, mistreatment of Chicano youth and laborers, and racist immigration quotas to show that the rights of people of color are always sold for pecuniary or psychic advantage. Recounts stories told by his grandfather to illustrate how storytelling by outgroups serves to enhance solidarity and enable survival of the mistreated, and to cast doubt on comforting majoritarian myths used to justify race-trading and other forms of injustice.

Olivas, Michael A., The Education of Latino Lawyers: An Essay on Crop Cultivation, 14 Chicano-Latino L. Rev. 117 (1994). (Themes 1, 4, 12).

Shows that U.S. law schools still contain relatively small numbers of Latino/a students and faculty despite two decades of affirmative action. Argues that this is a demand, not a supply problem because Latino/a teaching candidates, as a group, have better credentials than the average of those hired, and because U.S. law schools control the size of the applicant pool by the students they admit and by encouraging certain teaching candidates but not others. Suggests measures law schools may take to improve this situation.

Olivas, Michael A., Legal Norms in Law School Admissions: An Essay on Parallel Universes, 42 J. Legal Educ. 103 (1992). (Themes 1, 2, 5, 12).

Argues that recent criticism of dual-track diversity admissions plans in higher education as tantamount to illegitimate race-norming are ahistorical and

misguided, resting on historical amnesia that overlooks a legacy of separate but equal schools, underfunded black colleges, and universities that totally excluded blacks and other students of color even after Brown v. Board of Education. [FN22] Takes special issue with Lino Graglia's argument that affirmative action is ***476** unfair to deserving whites, pointing out that little displacement occurs and that the minorities who are admitted are fully qualified. Moreover, white beneficiaries of racial practices "often assume that they reached their station in life on the merits," when in fact they benefit from previous exclusion of competitors of color and from a misapplication of standardized test scores.

Omi, Michael & Howard Winant, Racial Formation in the United States: From the 1960s to the 1980s (1986). (Themes 1, 4, 5).

Focuses on the centrality of race in U.S. society in creating mass movements and forming state and foreign policy. Shows how challenges to ethnicity theory, dominant since the 1940s, have come from class-based and nation-based theories of race. Proposes an alternative theory of race based on racial formation and the socially based trajectory of racial politics. Analyzes changes in racial meaning and politics and how social movements around race confront power structures. Criticizes conservatives for taking away gains made by the civil rights movement, in the guise of having a "colorblind" society. Argues that race is not objective and fixed, but rather a web of social meanings that shifts according to the political agendas of the time.

Ontiveros, Maria L., Fictionalizing Harassment--Disclosing the Truth, 93 Mich. L. Rev. 1373 (1995). (Themes 2, 6, 7).

Contrasts two different narratives of sexual harassment found in U.S. society: the "dominant story" told from a fictitious white male perspective in Michael Crichton's Disclosure, [FN23] and the "marginalized story" presented by first-person accounts of approximately fifty women in Celia Morris' Bearing Witness. [FN24] Argues that oppositional, nontraditional stories are important for what they teach about sexual harassment in U.S. society, and can thus be a crucial means of reshaping current sexual harassment doctrine. Shows how unconscious racism against women of color is almost always inseparable from the harassment perpetrated against them, and must be taken into account by legal scholars and judges in developing flexible categories within employment discrimination law to curb harassment.

***477** Ontiveros, Maria L., Rosa Lopez, David Letterman, Christopher Darden, and Me: Issues of Gender, Ethnicity, and Class in Evaluating Witness Credibility, 6 Hastings Women's L.J. 135 (1995). (Themes 6, 7, 8, 9, 16).

Criticizes tactics of the prosecution during the O. J. Simpson trial to discredit Rosa Lopez, as well as the biased treatment of her testimony by the media. Argues that Lopez's credibility would not have been put so much into question if better translations had been made of phrases that change meaning depending on the Spanish-speaking country in which they are used. Demonstrates that the court's lack of awareness of cultural differences, such as name usage, led to

misunderstandings about Lopez's seemingly self- contradictory statements. Shows that without high-quality translation, cultural nuance--and hence accurate fact-finding--are easily lost in criminal trials when a key participant is a member of another culture. Shows that the media were biased against Lopez because of her status as a Latina and as a working class woman.

Ontiveros, Maria L., Three Perspectives on Workplace Harassment of Women of Color, 23 Golden Gate U. L. Rev. 817 (1993). (Themes 1, 5, 6, 7).

Shows how racism and sexism combine in the experience of women workers of color harassed in the workplace and offers a framework for addressing it. Reasons that these two forces work together to create a unitary harm, from the perspective of both the harasser and the victim. Proposes that reform take the guise of either modification of existing rules governing sexual harassment or creation of a new cause of action for women of color victimized in the workplace.

Ontiveros, Maria L., To Help Those Most in Need: Undocumented Workers' Rights and Remedies Under Title VII, 20 N.Y.U. Rev. L. & Soc. Change 607 (1994). (Themes 3, 6, 11).

Examines a case of statutory intersectionality--the difficulties encountered by illegal immigrants in enforcing rights against discrimination under Title VII since passage of the Immigration Reform and Control Act (IRCA). Describes the nature of discrimination faced by undocumented workers. Demonstrates how IRCA has severely limited the ability of undocumented workers to recover under Title VII because many remedies, such as reinstatement, frontpay, and backpay, are severely restricted if the employee is not a legal resident. Explains that as a result, many undocumented ****478*** workers, many of whom are Latinas, are severely abused-- sexually, emotionally, and economically--because their employers do not fear legal retribution. Argues that the purposes of both IRCA and Title VII would be better served if remedies were available to undocumented workers: employer abuses would stop and less illegal immigration would occur if employers were forced to internalize fully the costs of hiring workers and treating them decently.

Oquendo, Angel R., Re-Imagining the Latino/a Race, 12 Harv. BlackLetter J. 93 (1995). (Themes 1, 3, 5, 8).

Discusses terminology and alternative classifications for the Latino/a race, including how the group should see itself and be seen for various purposes, including the U.S. Census, and for achieving grassroots solidarity. Condemns subcategories, such as white or black Hispanic, as divisive, and urges that the "material" view of race be dropped.

Our Next Race Question: The Uneasiness Between Blacks and Latinos, Harper's, Apr. 1996, at 55. (Themes 6, 8, 14).

Colloquoy among Jorge Klor de Alva, Earl Shorris, and Cornel West examining the tension between blacks and Latinos in their self-identification and perceptions of each other. Shows how some Latinos think of blacks as Anglos because of their high degree of identification with American culture, while some blacks think light-skinned Latinos receive privileged treatment by the dominant white community. Debates whether programs such as affirmative action work equally

well for blacks and Latinos. Explores the conflicts between the two groups and their inability to work together because of perceived unequal treatment and the perception that they are in competition for social programs. Suggests that the next issue on the civil rights agenda will be black-brown, not black-white, relations.

Padilla, Felix M., Latino Ethnic Consciousness: The Case of Mexican Americans and Puerto Ricans in Chicago (1985). (Themes 4, 8, 11).

Examines the external and internal factors that shape a common "Latino-conscious" behavior and identity separate from individual ethnic identities of Mexican Americans, Puerto Ricans, Cubans, and other Spanish- speaking groups in Chicago. Uses historical data and interviews of community leaders from the early 1970s to 1985. Shows how shared experiences of inequality common to each group provide the structural framework that shapes the formation of Latino ***479** ethnic consciousness and aids mobilization to realize social and political goals.

Padilla, Felix M., Puerto Rican Chicago (1987). (Themes 4, 6, 8, 10, 14, 15, 16).

Analyzes changes in Puerto Rican ethno-consciousness from the period of the U.S. takeover in 1898, when a stigmatized status of racial inferiority replaced an emerging nationalism, to present-day ethnic consciousness. Argues that these changes in consciousness result from the internal colonialism of Puerto Ricans within the United States, and the interaction between Puerto Ricans and the dominant society. Proposes guidelines for mobilizing the Puerto Rican community and calls for a Latino-black coalition to address issues of social and economic justice.

Paredes, Americo, "With His Pistol in His Hand," A Border Ballad and Its Hero (1958). (Themes 2, 4, 10, 16).

Situates the legend of Gregorio Cortez historically, and describes how the demarcation of the border between Mexico and the United States after the 1848 Treaty of Guadalupe Hidalgo ended a way of life. Contrasts attitudes of Mexicans and Anglo-Texans toward each other, as found in and perpetuated by war propaganda, verse, the writings of historians Walter Prescott Webb and J. Frank Dobie, and the exploits of the Texas Rangers. Retells and analyzes the corrido of Gregorio Cortez and its variants, likening it to other warrior- hero ballads of border conflict, such as those that celebrated Scottish resistance to Anglo hegemony.

Perea, Juan F., The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought, 85 Calif. L. Rev. 1213 (1997), 10 La Raza L.J. 127 (1997). (Themes 1, 3, 5, 14).

Argues that the civil rights movement's "normal science" (i.e., the dominant mode of thinking about race) is wedded to a black/white paradigm in which minority groups other than African Americans are either treated as variants of blacks or neglected altogether. Illustrates this treatment in the works of leading scholars of race and shows how adherence to the binary paradigm prevents U.S. race-remedies law from doing full justice, while impeding coalitions between blacks and other groups. Argues for an expanded paradigm that incorporates the

experiences of Latinos and Asians.

***480** Perea, Juan F., Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English, 77 Minn. L. Rev. 269 (1992). (Themes 1, 3, 5, 9).

Examines the paradoxical tension in the United States between cultural pluralism and the demand for conformity. Reveals the persistence of myths such as that of linguistic homogeneity, which allows many people to perceive English as the only true American language, and genuine "American" identity as synonymous with the dominant Anglo culture. Challenges these myths by using U.S. legal history to show that cultural pluralism and linguistic diversity were explicitly recognized at the founding of the U.S. republic. Recounts how nativism comes to the fore during periods of national stress and argues that the official English movement is yet another stage in nativist attempts to outlaw people who differ from the core culture--in this case, by excluding Latino peoples from the definition of American identity. Examines how using language as a proxy for exclusion on the basis of national origin violates principles of equal protection.

Perea, Juan F., Ethnicity and Prejudice: Reevaluating "National Origin" Discrimination Under Title VII, 35 Wm. & Mary L. Rev. 805 (1994). (Themes 3, 5, 8, 9, 16).

Argues that statutory language in employment discrimination law should be broadened from national origin to include perceptible ethnic traits such as language, accent, surname, and appearance. Reveals how courts have allowed ethnic discrimination, particularly in cases that turned on languages other than English, accents, or lack of proficiency in English. Concludes that explicit protection of ethnic traits would reduce incorrect and inconsistent court decisions and better protect the interests of a pluralistic society.

Perea, Juan F., Ethnicity and the Constitution: Beyond the Black and White Binary Constitution, 36 Wm. & Mary L. Rev. 571 (1995). (Themes 1, 3, 5, 8, 9).

Critiques the black/white dichotomy in civil rights law for failing to address the situations of all people of color. As a result, courts recognize national origin and ancestry in enforcing the Equal Protection Clause but often not ethnicity, which includes traits such as "language, religion, shared history, tradition, values, and symbols." Illustrates the problem by means of the Supreme Court's ***481** holding in Hernandez v. New York, [FN25] which allowed prosecutors to use peremptory challenges against potential bilingual jurors whom the prosecutors felt would not strictly follow the court's official interpretation of non-English speaking witnesses' testimony. Explains that by not recognizing the ethnicity trait of language, the Court sanctioned discrimination against bilingual Latinos/as. Concludes that forced assimilation and denial of ethnic differences--even in pursuit of "colorblindness"--is tantamount to upholding white privilege, since white ethnicity is the standard against which deviancy and ethnic variance are judged.

Perea, Juan F., Los Olvidados: On the Making of Invisible People, 70 N.Y.U. L. Rev. 965 (1995). (Themes 1, 5, 9, 15).

Describes the process of "symbolic deportation," by which Latino people are rendered politically invisible by the foreignness of their language and culture. Shows how fear of Spanish by English-only speakers, and a parallel fear by Latinos/as of being identified with the Spanish language, are the primary causes of "death by English"--a denial of one's Latino/a identity and concomitant reconfiguration of identity with the dominant Anglo culture. Analyzes the relative lack of positive public identity and legitimacy for Latinos/as in the U.S. in three interdependent settings: the near absence of Latinos/as from popular media presentation and scholarly treatment, the American Framers' conception of a white nation without racial mixture, and the role of law and "national origin" in creating a false and stigmatizing image of foreignness for the Latino people.

Piatt, Bill, Attorney as Interpreter: A Return to Babble, 20 N.M. L. Rev. 1 (1990). (Themes 3, 5, 9).

Examines the ethical problems facing clients and attorney-interpreters in judicial proceedings. Studies the potential harm this relationship imposes on the client, the attorney, and the administration of justice, claiming that none of these interests is properly served by an attorney-interpreter. Discusses a client's right to an interpreter, the implementation of this right, Sixth Amendment concerns regarding effective counsel and confrontation of witnesses, and due process and equal protection concerns. Stresses that if attorneys continue to act as interpreters for Latinos/as (and other language minorities), clients will be forced to defend themselves without the traditional legal safeguards afforded to others.

***482** Piatt, Bill, Black and Brown in America: The Case for Cooperation (1997). (Themes 4, 8, 14).

Examines similarities and differences between Latinos and African Americans, addressing such issues as slavery and immigration, racial and ethnic identity, competition for jobs, education and affirmative action, language barriers, gangs, and voting. Offers proposals for racial harmony and urges coalition building, cooperation, and understanding.

Piatt, Bill, Born as Second Class Citizens in the U.S.A.: Children of Undocumented Parents, 63 Notre Dame L. Rev. 35 (1988). (Theme 3, 11).

Explores validity of sanctions used against U.S. citizen children for the purpose of discouraging illegal/undocumented immigrant parents from staying in or coming back to the United States. Examines the dichotomy between the courts' willingness to intervene to prevent officials from making the educational and economic circumstances of these children more difficult because of their parents' undocumented status, and the courts' lack of intervention as officials make those circumstances more difficult when the children's parents are deported. Claims that courts should recognize that either choice--remaining parentless in the United States or staying with their deported parents in a family unit--is a deprivation that creates "extreme hardship" to the child as a matter of law. Suggests that legislative remedies be created, that public assistance be increased, and that courts recognize equal protection and due process violations of these children's rights.

Piatt, Bill, Only English? Law and Language Policy in the United States (1990). (Theme 3, 9).

Examines how the U.S. legal system has evolved, against a historical background of periodic nativist attempts to limit multilingualism, to the current recognition (albeit inconsistent) of language rights in a variety of settings. Argues that these strands provide a starting point for recognition of a right to maintain and use native languages other than English. Encourages a policy of "limited official bilingualism" when access to basic human needs is at issue, and one of "limited official monolingualism" when the immediate safety of persons or property requires communications in a standard language understood by the majority. Holds that individuals should be given the freedom to use their language of choice in the vast majority of other human communications, with the attendant right to have ****483*** recourse to legal remedies for infringement of that choice. Argues that this recognition will advance both domestic and international relations and protect culture and personality, both of which turn, in large part, on language.

Portes, Alejandro, & Alex Stepick, City on the Edge: The Transformation of Miami (1993). (Themes 4, 8, 11, 14).

Profile of Miami, based on statistical data, interviews, observations, anecdotes, and newspaper articles. Shows how, since 1960, political events have shaped Miami's development as a major urban center. Gives histories of groups, predominantly Latino (Cubans, Haitians, Nicaraguans) who now make up the majority of the population, and discusses intergroup conflicts. Predicts that assimilation may accelerate after Castro's demise.

Ramirez, Deborah A., Excluded Voices: The Disenfranchisement of Ethnic Groups from Jury Service, 1993 Wis. L. Rev. 761. (Themes 4, 9).

Discusses Hernandez v. New York, [FN26] in which the Supreme Court upheld the exclusion of a bilingual Spanish-speaking juror on the ground that the juror would listen not to the official version of Spanish- language testimony offered by the translator, but rather to the Spanish- speaking witnesses themselves. Uses social science to show that a bilingual juror will always be unable to ignore the first-hand testimony and concentrate only on the interpreted version, and that Hernandez effectively disenfranchises Latinos/as because of the super-correlation between race and language in the Latino community.

Ramirez, Deborah A., The Mixed Jury and the Ancient Custom of Trial by Jury De Medietate Linguae: A History and a Proposal for Change, 74 B.U. L. Rev. 777 (1994). (Themes 1, 5, 6).

Reviews recent jury selection cases to show that the Supreme Court pursues an abstract and misguided ideal of color-blindness, thus impairing the right of many defendants to an impartial jury. Exaltation of the right of citizens to sit on juries over that of criminal defendants to fair treatment introduces the greatest unfairness in cases, like that of the police officers accused of beating Rodney King, which have a racial dimension. Urges a policy of mixed juries in such cases, showing that this policy has roots in the ancient ****484*** English custom of a jury de medietate linguae, according to which civil trials between Jews, for

example, would take place before a separate Jewish tribunal. Shows that this policy was followed by the early U.S. colonials in cases concerning Indians, and argues that its application today would enable courts to render better justice. Defends the proposal in the face of various objections, including the objection that it is premised on an essentialist view of minority experience.

Ramirez, Deborah A., Multicultural Empowerment: It's Not Just Black and White Anymore, 47 Stan. L. Rev. 957 (1995). (Themes 1, 3, 5, 14).

Describes demographic trends showing the proportion of people of color in the United States has increased in the last thirty years, while the percentage of African Americans has decreased. Analyzes whether race-based remedies originally designed to address discrimination against blacks can effectively redress discrimination against non-black people of color. Examines the inability of such remedies to solve conflicts among minority groups competing for social resources. Advocates a "multicultural empowerment" paradigm allowing individuals to self-identify by race as well as by other factors such as language, poverty, sexual orientation, or disability. Concludes that multicultural empowerment can be crucial to creating new policies empowering minority groups without resorting to a system of racial classifications, and to fostering transracial alliances.

Rangel, Jorge C. & Carlos M. Alcala, Project Report: De Jure Segregation of Chicanos in Texas Schools, 7 Harv. C.R.-C.L. L. Rev. 307 (1972). (Themes 1, 3, 5, 16).

Reports invidious discrimination against Chicanos/as at all levels of Texas society, including beauty shops, drugstores, restaurants, swimming pools, movie theaters, and in the administration of justice. Focusing on public education, finds that contemporary pattern of school attendance is directly traceable to former de jure segregation and warrants de jure relief. Uses maps, charts, and statistics to trace intentional pattern of segregating Mexican schoolchildren in inferior schools. Argues that attorneys litigating Chicano desegregation suits have mistakenly pursued an "other white" strategy rather than challenging racist patterns of school assignments directly. Argues that Mexican Americans should be afforded suspect-class status for purposes of judicial review of school decisions and discusses theories of relief.

***485** Recovering the U.S. Hispanic Literature Heritage (Ramon A. Gutierrez & Genaro Padilla eds., 1993). (Themes 4, 6, 8, 16).

Presents essays growing out of the first two conferences of Recovering the U.S. Hispanic Literary Heritage project, a ten-year research, restoration, and publication program that includes preserving primary documents and establishing a database and archives of literary works by Chicano, Mexican, Cuban, Puerto Rican, and Central and South American writers of the United States. Essays analyze this body of work, tracing its national and regional complexity in a celebration of hybridity, intertextuality, and polyvocality. Subjects addressed include literary histories and communities, genres, and canon formation. Includes "The UCLA Bibliographic Survey of Mexican-American Literary Culture, 1821-1945: An Overview," by Ramon A. Gutierrez.

Rieff, David, Los Angeles: Capital of the Third World (1991). (Themes 6, 8, 11, 14, 16).

Revisits Los Angeles, noting its change from a Pacific coast paradise that idealized its Spanish colonial heritage (and relocated its Mexican-American population) to a complex metropolis comprised of more than a hundred ethnic groups. Shows the contradiction in the way a money-conscious, servant-dependent society enjoys a superficial cosmopolitanism while the largely Latino and Asian "third world" immigrant population struggles to survive and cope with intragroup conflicts.

Rivera, Jenny, Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials, 14 B.C. Third World L.J. 231 (1994). (Themes 4, 5, 6, 7, 16).

Examines the stereotype of Latino machismo, which tends to legitimize--both within and without the Latino community--domestic violence as a cultural norm, and to excuse intraracial violence against Latinas. Rejects the use of the "cultural defense." Presents data on the intersection of race and ethnicity and the ways in which the impoverished political and economic stance of Latinas causes them to respond to domestic violence less forcefully than either black or white women. Explores inadequacies of responses to violence against Latinas by legislation, law enforcement officials, the criminal justice system, and social service programs. Concludes that Latinas are best situated to describe their own predicament and that a community empowerment model using the resources of Latino ***486*** communities is best suited to address domestic violence against Latinas.

Rivera, Jenny, The Politics of Invisibility, 3 Geo. J. on Fighting Poverty 61 (1995). (Themes 4, 6, 7).

Argues that Latinas have carried much of the burden of the poverty and inequality of Latinos/as in the United States. Calls for an anti- violence agenda that addresses the experience of Latinas and other women of color, focusing on abuse by law enforcement officers and the problems Latinas experience in the current shelter system. Points out the need for carefully crafted legislation that takes account of the needs and resources of Latinas and other women of color.

Rivera, Jenny, The Violence Against Women Act and the Construction of Multiple Consciousness in the Civil Rights and Feminist Movements, 4 J.L. & Pol'y 463 (1996). (Themes 1, 6, 7).

Urges coalition between civil rights activists and feminists in order better to protect intimate partners against violence. Argues that despite histories of conflict and mutual distrust, the two groups should be able to converge over enforcement of the federal Violence Against Women Act by adopting a perspective of multiple-consciousness. Doing so will increase the Act's ability to address violence against women of color and immigrants by assuring that the unique features of domestic violence in their communities are recognized and confronted.

Rodriguez, Luis J., Always Running: La Vida Loca--Gang Days in L.A. (1993). (Theme 2, 4).

The author, a gang member in the Las Loma s barrio of South Central Los Angeles in the late 1960s and early 1970s, gives a chilling account of ten years of

la vida loca--the barrio gang experience. Begins with a brief history of his family's migration to Los Angeles, but primarily focuses on his teenage years in the barrio and its schools, and running from the law. Suggests that the inner city cycle of gang violence and youth will continue to thrive unless economic and social change is embraced so that Chicano youth are able to express solidarity and celebrate their culture in positive ways.

***487** Rodriguez, Richard, Days of Obligation: An Argument With My Mexican Father (1992). (Themes 6, 8, 17).

Traditionalist-conservative essayist comes to terms with his own background and cultural identity. Chapters (many reprinted from various magazines and journals) deal with issues of modernity, mestizaje (racial mixture), and the conflicted role of the English-speaking, cosmopolitan Latino intellectual. Discusses gay identity, attachment to Mexico, class differences within the Mexican-American community, Catholicism, and the meaning of California and the border.

Rodriguez, Richard, Hunger of Memory: The Education of Richard Rodriguez (1982). (Themes 2, 6, 15, 17).

Autobiographical account of the writer's early years. Includes ambivalent or negative thoughts on bilingualism, affirmative action, cultural nationalism, and other premises of the political left. Provides more sympathetic treatment of the role of Latino family and of preserving ties and heritage of Mexican past.

Roithmayr, Daria, Deconstructing the Distinction Between Bias and Merit,, 85 Calif. L. Rev. 1449 (1997), 10 La Raza L.J. 363 (1997). (Themes 1, 5).

Responds to Farber and Sherry's defense of merit [FN27] by showing that, though merit and bias appear to be polar opposites, they instead partake of and even collapse into each other on analysis. Argues that standard measures of merit, such as the LSAT, reflect what the dominant group knows and values, while race-based affirmative action programs enable formerly excluded groups to participate in the construction of new standards of merit. Urges that the misdirected focus on merit in recent scholarship exemplifies color-blind Enlightenment political philosophy that is flawed and injurious to outgroups of color.

Romany, Celina, Ain't I a Feminist?, 4 Yale J.L. & Feminism 23 (1991). (Themes 1, 6, 7).

Criticizes essentialism in feminist theory for offering an inadequate theory of oppression. A monocausal emphasis on gender short-changes those who suffer on account of race, ethnicity, and ***488** class in addition to gender. Illustrates reductionism in the work of four prominent feminists and gives examples of legal problems that cannot yield to analysis in terms of only one variable. Argues that the cure for such simplistic thinking lies in heeding Third World cultural theorists, particularly ones who write about border phenomena and who critique nationality.

Romany, Celina, Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law, 6 Harv. Hum. Rts. J. 87 (1993). (Themes 1, 7, 13).

Argues that international human rights discourse has done little for women. Illustrates thesis with a discussion of wife murders in Brazil and how the human rights framework construes the civil and political rights of individuals as belonging to the public realm, while failing to protect rights for women in familial relationships. Though women are still "aliens" in international law, this arena may yet develop new norms of state responsibility for human rights violations of women. Calls for international law to incorporate a dialogic framework that would broaden patriarchal narrative to include the voices and concerns of women.

Romero, Leo, Richard Delgado, & Cruz Reynoso, The Legal Education of Chicano Students: A Study in Mutual Accommodation and Cultural Conflict, 5 N.M. L. Rev. 177 (1975). (Theme 12).

Explores dissonance afflicting Chicanos/as in various aspects of legal education including the Socratic method, the culture of the classroom, examinations, and admissions policy. Suggests that rather than expecting students of color to accommodate to majoritarian practices, legal institutions would benefit by moving in the opposite direction, toward a more inclusive approach that recognizes a plurality of learning styles and aspirations.

Rosaldo, Renato, Culture & Truth: The Remaking of Social Analysis (1989). (Themes 1, 4, 5, 10).

Uses ethnographic studies to scrutinize how anthropology has undergone a radical transformation since the 1960s. Historical processes including decolonization, immigration and intercultural borrowing, the civil rights movement, and the emergence of global markets have produced a decentering of objectivism and a shift to plural forms of analysis. Contends that critical anthropology requires a reworking of the classic concept of culture, which has engendered notions of the possibility of passive observation ***489** and cultural separateness, to recognize that anthropologists are positioned social actors whose interpretations of culture are in turn acted upon by the subjects whom they observe. Examines three Chicano warrior-hero narratives-- Americo Paredes' With a Pistol in His Hand, [FN28] Ernesto Galarza's Barrio Boy, [FN29] and Sandra Cisneros' The House on Mango Street [FN30]--to show their value as analyses of the concept of culture in which the portrayal of Chicano/a identity shifts from an emphasis on cultural purity to mockery to survival struggles at social border zones. Posits that the hybridity and fluidity of border cultures renders them sites of creative cultural production.

Rosenbaum, Robert J., Mexicano Resistance in the Southwest: "The Sacred Right of Self-Preservation" (1981). (Themes 4, 5, 10).

Tells of the ways poor Mexicano people in the Southwest, especially New Mexico, organized to resist Anglo encroachment. Focuses particularly on Las Gorras Blancas and similar insurgent organizations that attacked americanos and rich mexicanos who acted like Anglos. Discusses border disputes, L.A. riots, nationalist parties, fence-cutters, and rebels like Gregorio Cortez (whose exploits are captured in myth, song, and a recent film). Describes tensions between los pobres and more assimilated Mexican- American "progressives" who sought reform through conventional means. Sees the unending struggle of Mexican

Americans in the Southwest as an aspect of the right of self-preservation.

Ruiz, Vicki L., By the Day or Week: Mexicana Domestic Workers in El Paso, in "To Toil the Livelong Day": America's Women at Work, 1780-1980, 269 (Carol Groneman & Mary Beth Norton eds., 1987). (Themes 2, 4, 6, 7).

Uses oral history to describe the plight of Mexican women seeking domestic employment in Texas. Shows how these women, although central to the region's economy, are exploited. Describes their efforts to resist low wages, sexual abuse, and loss of dignity. Examines patronizing attitudes of many Anglo homemakers, some of whom believe they are doing the women a favor by hiring them to perform ***490*** menial work. Notes that some Hispanic homeowners treat them no better. Shows how a surplus labor market works against efforts to improve working conditions and minimum wages for domestic workers.

Saldivar, Jose David, The Dialectics of Our America: Genealogy, Cultural Critique, and Literary History (1991). (Themes 2, 4, 6, 8, 10, 12).

Calls for development of an oppositional model of American literary history that embraces a postcolonial pan-Americanism and expands the canon to include Latin American and Chicano/a writing. Explores how the economic dependency of Latin countries on global capitalism shaped the way writers such as Jose Marti, Gabriel Garcia Marquez, and Ntozake Shange have critiqued the Western metanarrative of progress. Shows how counterstorytellers such as Gloria Anzaldua, Rolando Hinojosa, Arturo Islas, and Tomas Rivera address issues of power and class and race relations. Uses as an example Americo Paredes' recounting of the story of Gregorio Cortez as a challenge to the white supremacist rhetoric of Walter Prescott Webb. Explores how a number of Chicanos/as and Caribbean writers, such as Roberto Fernandez Retamar, Ernesto Galarza, and Cherrie Moraga, employ the Calibanic viewpoint of the oppressed as a technique of resistance. Shows how Richard Rodriguez's early work-- highly successful with mainstream critics and readers--fails to go beyond angst to engagement with social change and critique of coercive dominant cultures.

San Juan, Epifanio Jr., Racial Formations/Critical Transformations: Articulations of Power in Ethnic and Racial Studies in the United States (1992). (Themes 1, 4, 6, 12, 14).

Critiques the postmodern genealogical and deconstructive modes of racial analysis, noting that, while semiotic investigations have proven valuable, they have ultimately failed to bring about multiracial coalitions of resistance. Proposes a dialectical approach combining understandings of both history and consciousness in a way that allows racist discourse to be understood and challenged. Analyzes Arturo Islas' novel, The Rain God, [FN31] to show how memorializing a people's resistance to coercion helps them cast off internal colonization and begin transforming dominant stories about themselves. Argues that race, not ethnicity, is the central determinant of ***491*** power relations in the United States, and that its conceptual use can subvert the tendency of ethnicity theory to legitimize a pluralist but hierarchical social order.

Sanchez, George J., Becoming Mexican American: Ethnicity, Culture, and Identity in Chicano Los Angeles, 1900-1954 (1993). (Themes 4, 10, 11, 15).

Drawing on insights from cultural studies and other disciplines, examines the intricate process of cultural adjustment among Mexican rural immigrants to Los Angeles in the twentieth century. Argues that Chicano historians of the 1970s and early 1980s adopted a static bipolar model of opposing cultures, including retention of a Mexican way of life, or gradual acculturation into the American mainstream. Describes immigrant adaptation in family life, religion, music and popular culture, and at work. Analyzes how economic depression in the United States during the 1930s forged Mexican- American cultural identity by forcing examination of immigrants' desire and will to remain in the United States despite hostility and racism directed toward them. Concludes that Mexican Americans resolutely retained vestiges of native Mexican culture while at the same time inventing a uniquely American cultural identity.

Santos, Boaventura de Sousa, Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition (1995). (Themes 4, 5).

Asserts that the paradigm of modernity has exhausted its potential for social emancipation, but remains socioculturally embedded due to inertia caused by the absorption of the emancipatory by the regulatory ideal. We stand today at the threshold of a paradigmatic transition that is characterized by two processes: the transformation of science into a form of production, and thus subject to regulation; and the elevation of law into a second-rate rationalizer of social life. Focusing on three interrelated forms of social regulation--power, knowledge, and law--and drawing on utopian thought, proposes a postmodern paradigm--an "emancipatory common sense"--to address struggles against global capitalist oppression.

***492** Saragoza, Alex M., Concepcion R. Juarez, Abel Valenzuela, Jr., & Oscar Gonzalez, History and Public Policy: Title VII and the Use of the Hispanic Classification, 5 La Raza L.J. 1 (1992). (Themes 1, 3, 5, 8).

Employs an incident in San Francisco to highlight the diffi-culties attending the use of the broad "Hispanic" classification in providing remedies for discrimination under Title VII and similar legislation. Points out that "Hispanics" contain Latin-American groups that are conservative and support U.S. military power in that region, Chicano and Puerto Rican nationalists and activists, and, arguably, persons of pure Spanish descent. Points out the dangers inherent in essentialist, nationalist discourse and the strategy of aggregation, as well as the risks of analogizing discrimination against Latinos to that directed against blacks.

Saunders, Myra K., California Legal History: A Review of Spanish and Mexican Legal Institutions, 87 Law Lib. J. 487 (1995). (Theme 5).

Offers overview and selective bibliography of primary and secondary sources on legal history of California before its occupation by the United States. Provides background of pre-conquest California history including description of legal and political institutions of the Spanish (1540-1821) and Mexican (1821-1846) periods. Explains that Anglo Americans rejected the Spanish/Mexican legal structure, which was based on community norms and employed conflict resolution, because they considered it inadequate for protecting their property

interests. Consequently, many primary documents of that system are scattered, unindexed, and poorly preserved. Points out the Anglo-American bias of many secondary sources, particularly the earlier ones.

Shorris, Earl, Latinos: A Biography of the People (1992). (Themes 2, 4, 8, 11, 15, 16).

Asserts that Latino assimilation can never be complete, showing that it is always tempered, and indeed shaped, by the fact that native culture persists--even if only in the physical qualities of "strangerness." Describes this process as a dialectic between the desire to be assimilated and nostalgia for a distinctive cultural identity. Outlines origins and particular histories of the major Latino subgroups in the United States, and questions the existence of a collective Latino identity. Uses stories of various Latino/a individuals and families, including his own, to examine themes of family, culture, language, art, education, politics, economics, poverty, racism, and immigration and assimilation.

***493** Stavans, Ilan, The Hispanic Condition: Reflections on Culture and Identity in America (1995). (Themes 4, 6, 8, 10, 11, 14, 15, 16).

Describes how the Latino cultural experience in America has been one of ambiguity--of "life in the hyphen." Shows that current experience differs from that of the past in that Americanization of Hispanics now takes place concurrently with the Hispanicization of the United States. Argues that, contrary to the Chicano movement of the 1960s, Latinos/as today are rejecting notions of a collective identity and instead embracing the cultural medley that makes up the contemporary Hispanic condition. Examines the multiple histories connecting and differentiating Latinos/as in the United States from those residing south of the border, and the ways in which their intellectual and artistic traditions reflect a plural culture with common foundations but different ancestral traditions. Predicts that in the next century U.S. preoccupation with multiculturalism will give way to a focus on acculturation and multiracialism.

Symposium: Latinos & the Law: 20 Years of Legal Advocacy and Lessons for Advancement, 14 Chicano-Latino L. Rev. 1 (1994). (Themes 1, 2, 3, 4, 5, 9, 11, 12).

Series of short articles on developments in areas affecting Latinos/as, including environmental justice, criminal law, bilingualism, English-only rules, immigration, voting rights, and higher education. Authors include Ralph Abascal, Rodolfo Acuna, Leo Estrada, Robert Garcia, John Martinez, Michael Olivas, and Bill Piatt.

Takaki, Ronald T., A Different Mirror: A History of Multicultural America (1993). (Themes 1, 4, 6, 11).

Expanding on his earlier work in Iron Cages [FN32] and Strangers from a Different Shore, [FN33] Takaki decenters the Anglocentric perspective on U.S. history and recounts stories of Chinese, Japanese, Native Americans, Mexican Americans, African Americans, Irish, and Russian Jews. Short chapters on Mexican Americans address conflicts with Anglos in the Southwest, immigration, and labor history. Shows how, though each group has a disparate history, the

experience of racism is common to all.

***494** This Bridge Called My Back: Writings by Radical Women of Color (Cherrie Moraga & Gloria Anzaldua eds., 1981). (Themes 2, 6, 7, 15, 16).

Pathbreaking anthology and manifesto of feminism of color in the United States, containing poems, essays, letters, public statements, journal entries, and interviews by African-American, Latina, Asian- American, and Native-American women. Selections address childhood experiences dealing with the privilege of light skin; life-changing events that inform feminist political theory of women of color; descriptions of the ways that white racism manifests itself in the women's movement; reflections on being a first-generation writer and on the standards by which Third World women writers' work must be judged; and statements of ways Third World radical feminism can bring about change in the lives of the oppressed. Includes selections by Norma Alarcon, Gloria Anzaldua, Jo Carrillo, Aurora Levins Morales, Cherrie Moraga, Rosario Morales, Judit Moschkovich, and Mirtha Quintanales.

Toro, Luis Angel, "A People Distinct From Others": Race and Identity in Federal Indian Law and the Hispanic Classification in OMB Directive No. 15, 26 Tex. Tech. L. Rev. 1219 (1995). (Themes 1, 3, 5, 8).

Reviews the law's treatment of race and identity with respect to two groups of color, Latinos and Native Americans. Shows inconsistencies and dubious factual bases for certain common social beliefs, such as that Latinos/as are easily able to assimilate into mainstream society. Shows that the law's treatment of these groups is incoherent, suffering from rigidity and the assumption that race is biological and fixed at birth.

Torres, Gerald, Critical Race Theory: The Decline of the Universalist Ideal and the Hope of Plural Justice--Some Observations and Questions of an Emerging Phenomenon, 75 Minn. L. Rev. 993 (1991). (Themes 1, 10).

Discusses cultural nationalist movements, comparing them to political interest group politics. Argues that the two should not be confused and that the former embraces a broader, more vital way of thinking about social life. Argues that theorists who promote pluralism and postmodern approaches should reinterpret what they are doing to incorporate cultural difference without falling prey to the notion of one universalizing, totalizing system of justice.

***495** Torres, Gerald, Local Knowledge, Local Color: Critical Legal Studies and the Law of Race Relations, 25 San Diego L. Rev. 1043 (1988). (Themes 1, 10).

Analyzes Supreme Court opinions to show how the Anglo majority frequently fails to understand its oppression of cultures of color. Argues for a "new cultural pluralism" that avoids these defects and examines more sympathetically the relationships between law, coercion, and culture or local law.

Torres, Rodolfo D. & ChorSwang Ngin, Racialized Boundaries, Class Relations, and Cultural Politics: The Asian-American and Latino Experience, in Culture and Difference:

Critical Perspectives on the Bicultural Experience in the United States 55 (Antonia Darder ed., 1995). (Themes 1, 4, 6, 8, 14).

> Argues that continued use of the black/white paradigm perpetuates a simplistic view of race that is incapable of addressing complex, multiple racisms. Shows how racialization of Latinos and Asians is based mainly on color and physical appearance despite the wide range of cultures, languages, religions, and social classes the groups contain. Follows Robert Miles' argument rejecting the use of the terms "race" and "race relations" as ideological categories. Advocates instead use of the term "racialization," and urges more research and comparative studies of racialized groups in the United States. Calls for exploration of class divisions and intra-group relations, including the racialization of Central and Latin Americans by Mexican Americans.

Valdes, Francisco, Diversity and Discrimination in Our Midst: Musings on Constitutional Schizophrenia, Cultural Conflict, and "Interculturalism" at the Threshold of a New Century, 5 St. Thomas L. Rev. 293 (1993). (Themes 1, 5, 6).

> Examines how "cross-traditions" of normative liberty/equality and substantive non-liberty/inequality in the United States have evolved at cross purposes to frustrate the achievement of liberty and equality by traditionally subordinated groups. Uncovers ways jurisprudential techniques of analyzing racial, ethnic, gender, sexual orientation, and class-status legal issues contain built-in biases that consistently reproduce (non)liberty/(in)equality. Contrasts two cross-traditions in the law that promote opposite normative visions: the legalistic enterprise, which advances a unicultural ideal, and the humanistic agenda, which stresses multicultural values. Argues instead for an intercultural jurisprudence that transcends the ***496*** constitutional schizophrenia engendered by the cross-traditions of legalism and humanism, thereby fusing unicultural principles with emerging demographic multiculturalism to achieve a fairer result.

Valdes, Francisco, Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender and Sexual Orientation to its Origins, 8 Yale J.L. & Human. 161 (1996). (Themes 1, 5, 6, 7).

Traces and critiques the historical conflation of sex, gender, and sexual orientation--a "tautological trinity"--originating in ancient Greek society and culminating in the current androsexist and heterosexist Euro-American system. Notes that the Euro-American system is the only one of its kind to construct gender as if it were an absolute, reducing gender exclusively to sex. Contends that this "regime of compulsory hetero-patriarchy" represents the historical fusion of androsexism and heterosexism, socially privileging masculine, heterosexual men, and more importantly, implying that women and sexual minorities share an identical reform agenda when they do not. Argues that reconsideration of the constitutional value of "non-instrumental" forms of desire and a recognition of the intrinsic social worth of unrestrained intimacy are essential to doctrinal reform, and ultimately to substantive equality itself.

Valle, Victor & Rodolfo D. Torres, The Idea of Mestizaje and the "Race" Problematic: Racialized Media Discourse in a Post-Fordist Landscape, in Culture and Difference: Critical Perspectives on the Bicultural Experience in the United States 139 (Antonia Darder ed., 1995). (Themes 4, 6, 8, 16).

Examines media coverage of the 1992 South Central Los Angeles riots after the acquittal of police officers who beat Rodney King. Demonstrates how the media asserted narrative authority and conflated the categories "race" and "multiculturalism," implying that the latter fueled the former. Shows also how the media focused on the "foreignness" of Latinos/as and reinforced stereotypes of them as lawless illegal aliens out to ruin the dominant culture, instead of analyzing the socioeconomic causes, including police brutality and unresponsive government, of the riots. Criticizes the categorization of Latinos as a race when they are people of mixed cultures, languages, histories, and classes exemplifying mestizaje. Argues that the Latino/a perspective needs a more nuanced voice in media discourse.

***497** Villarreal, Carlos, Culture in Lawmaking: A Chicano Perspective, 24 U.C. Davis L. Rev. 1193 (1991). (Themes 1, 3, 6, 10, 15).

Examines how mainstream culture in the United States has harmed the Chicano community. Shows that these harms result in Chicanos/as relating to the dominant society in three different ways: assimilation, which has psychological, sociological, and economic repercussions; fragmentation, which forces Chicanos/as to attempt to live in two different worlds, one inside and one outside their cultural heritage; and separation, wherein Chicanos/as isolate themselves from the majority culture. Acknowledging a white-male Protestant bias in tort doctrine, investigates the role of culture in tort lawmaking and promotes pluralism as a way to achieve respect for diversity in law. Cites court decisions that implicitly take cultural values into account, providing protection against discrimination. Advocates a specific tort for discrimination based on ethnicity.

Villarreal, Carlos, Limits on Lawmaking: A Chicano Perspective, 10 St. Louis U. Pub. L. Rev. 65 (1991). (Themes 1, 3, 5, 11, 16).

Examines early case law affecting Chicanos/as in several areas, including land disputes, police confrontations, and immigration, with a view to determining whether formalist or legal-realist approaches afford better justice. Concludes that both approaches have dangers; formalism subordinates minority rights to majoritarian interests, while realism erodes individual rights when the political winds shift. Warns that communities of color should not complacently rest with a court's articulation of a sought-after right; interests may change in the future, and the rule may erode. Courts proceeding under either approach must constantly remind themselves of the dangers associated with it, while communities and litigators of color must engage in coalition-building and pursuit of law's benevolent exercise to protect against tomorrow's whim.

Walsh, Catherine E., Pedagogy and the Struggle for Voice: Issues of Language, Power, and Schooling for Puerto Ricans (1991). (Themes 9, 12).

Examines social and cultural factors that affect the ways Puerto Rican children deal with bilingualism. Shows how recognition of voice is implicated in the relation between language and power. Recounts the effect of colonialism on Puerto Ricans, examines the tensions and oppositions in language study, analyzes the power and meaning of language, advocates validation of students' voices as

***498** shaped by their particular experiences, and establishes a border pedagogy.

Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment (Mari J. Matsuda et al. eds., 1993). (Themes 1, 3, 4, 5).

Essays on hate speech by Mari Matsuda, Charles Lawrence, Richard Delgado, and Kimberle Crenshaw that discuss the case for legal redress for racial insults and invectives. Argues that words like "spick," "kike," and "nigger" injure democracy, set back the cause of racial justice, and are redressable under the First Amendment.

Footnotes

[FNd1]. Research Associate, University of Colorado School of Law. I thank Ian Haney Lopez, Margaret Montoya, and Juan Perea for initial helpful suggestions, and Frank Valdes for his enthusiastic support of this project. To Richard Delgado, as always I am grateful for advice, encouragement, dishwashing, and inspiration. Gabriel Carter, Blaine Lozano Milne, Lance Oehrlein, and Kim Quinn provided insightful and unfaltering research assistance. For a forthcoming volume expanding on many of the themes of this bibliography, see The Latino Condition:A Critical Reader (Richard Delgado & Jean Stefancic eds., forthcoming 1998). For earlier bibliographies of critical race theory, see Richard Delgado & Jean Stefancic, Critical Race Theory: An Annotated Bibliography, 79 Va. L. Rev. 461 (1993); Richard Delgado & Jean Stefancic, Critical Race Theory:An Annotated Bibliography 1993, A Year of Transition, 66 U. Colo. L. Rev. 159 (1995).

[FN1]. Rodolfo F. Acuna, Occupied America: A History of Chicanos (3rd ed. 1988).

[FN2]. See, e.g., Derrick Bell, Confronting Authority: Reflections of an Ardent Protester (1994); Derrick Bell, Faces at the Bottom of the Well: The Permanence of Racism (1992); Derrick Bell, Race, Racism and American Law (3d ed. 1992). 1509

[FN3]. This statement is not without exception. See, e.g., Richard Delgado & Vicky Palacios, Mexican Americans as a Legally Cognizable Class Under Rule 23 and the Equal Protection Clause, 50 Notre Dame L. Rev. 393 (1975); Gerald Lopez, Undocumented Mexican Migration: In Search of a Just Immigration Law and Policy, 28 UCLA L. Rev. 615 (1981); Leo Romero et al., The Education of Chicano Students: A Study in Mutual Accommodation and Cultural Conflict, 5 N.M. L. Rev. 177 (1975).

[FN4]. See, e.g., Michael Olivas, The Education of Latino Lawyers: An Essay on Crop Cultivation, 14 Chicano-Latino L. Rev. 117 (1994).

[FN5]. Oscar Zeta Acosta, The Autobiography of a Brown Buffalo (1972).

[FN6]. Oscar Zeta Acosta, The Revolt of the Cockroach People (1973).

[FN7]. See also Ilan Stavans, Bandido: Oscar "Zeta" Acosta and the Chicano Experience (1995) (revealing a complex Acosta who fearlessly fought against poverty, oppression, and racism in the Chicano community while exploring questions of personal identity).

[FN8]. Susan Berk-Seligson, The Importance of Linguistics in Court Interpreting, 2 La Raza L.J. 14 (1988).

[FN9]. 618 F.2d 264 (5th Cir. 1980).

[FN10]. 998 F.2d 1480 (9th Cir. 1993).

[FN11]. Julia Alvarez, How the Garcia Girls Lost Their Accents (1991).

[FN12]. Roy Brooks, Rethinking the American Race Problem (1990).

[FN13]. Jane E. Larson, Free Markets Deep in the Heart of Texas, 84 Geo. L.J. 179 (1995).

[FN14]. Helen Hunt Jackson, Ramona (1884).

[FN15]. Edna Ferber, Giant (1952); Giant (Warner Brothers 1956).

[FN16]. Peter Brimelow, Alien Nation: Common Sense About America's Immigration Disaster (1995).

[FN17]. Ian F. Haney Lopez, White by Law: The Legal Construction of Race (1996).

[FN18]. This Bridge Called My Back (Cherrie Moraga & Gloria Anzaldua eds., 1981).

[FN19]. 500 U.S. 352 (1991).

[FN20]. 476 U.S. 79 (1986).

[FN21]. Derrick Bell, After We're Gone: Prudent Speculations on America in a Post-Racial Epoch, 34 St. Louis U. L.J. 393 (1990).

[FN22]. 347 U.S. 483 (1954).

[FN23]. Michael Crichton, Disclosure (1994).

[FN24]. Celia Morris, Bearing Witness (1994).

[FN25]. 500 U.S. 352 (1991).

[FN26]. 500 U.S. 352 (1991).

[FN27]. Daniel A. Farber & Suzanna Sherry, Is the Radical Critique of Merit Anti-Semitic?, 83 Calif. L. Rev. 853 (1995); Daniel A. Farber & Suzanna Sherry, Beyond All Reason: Radical Multiculturalism, Law and Anti-semitism (1997).

[FN28]. Americo Paredes, "With his Pistol in his Hand," a Border Ballad and its Hero (1958).

[FN29]. Ernesto Galarza, Barrio Boy (1971). In addition to his well-known novel, Galarza wrote penetrating critiques of the bracero program, namely Spiders in the House and Workers in the Field (1970); Merchants of Labor (1964); and Farmworkers and Agribusiness in California, 1947-1960 (1977).

[FN30]. Sandra Cisneros, The House on Mango Street (1983).

[FN31]. Arturo Islas, The Rain God (1984).

[FN32]. Ronald T. Takaki, Iron Cages: Race and Culture in Nineteenth-Century America (1979).

[FN33]. Ronald T. Takaki, Strangers from a Different Shore (1989).