

**LatCrit Primer
Volume III**

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FOREWORD: Foreword Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment

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BIO:

* 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.

SUMMARY:

... 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. ... With this opening article, Professor Moran helps set the stage for the inauguration of LatCrit theory as a complementary and constructive rather than competitive player in existing race/ethnicity scholarship. ... The "body politic" that is the United States, Professor Davis suggests, is no different. ... The third essay of this cluster, by Professor Ian Haney Lopez, directly addresses the question of "race" and "ethnicity" as competitive or complementary in LatCrit theory. ... The final essay of this cluster, by Professor Stephanie Wildman, articulates from a White subject position the privileges of White identity and their relevance to LatCrit scholarship. ... Professor Wildman's analysis of whiteness in a multicultural setting thereby confirms both Professor Perea's insistence on LatCrit expansion of race scholarship through the use of ethnicity as well as Professor Haney Lopez's call to retain race. In this essay, Professor Wildman reminds all LatCrit scholars of the power that both race and ethnicity exercise over Latina/o populations. ... The next essay of this cluster, by Professor Sumi Cho, reinforces the message that LatCrit theory must heed today and tomorrow: the inescapably political and politicized nature and consequences of legal "scholarship" and law itself. ...

TEXT:

[*2] 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. n1 Second, we were determined to initiate the [*3] creation of a body of literature whose absence we deemed inexplicable and intolerable. n2 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, n3 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. n4 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. n5

In retrospect, it seems entirely foreseeable that this act of [*4] 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. n6 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. n7

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 [*5] legal theory. n8 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. n9

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. n10 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 [*6] 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.

[*7] I. OPENING VISIONS: LATCRIT THEORY AND COMMUNITY

This first part of the foreword is devoted to the three articles that open the symposium. These articles, all written by Latina/o legal scholars, reflect both the diversity and accomplishment of the Latina/o legal professorate as we begin to articulate a LatCrit vision of Anglo-American law and society. Not only do they raise concerns that beset Latinas/os today, they also raise issues that will occupy LatCrit theory during its formative years. Moreover, these articles also urge actions and solutions. Most importantly, given the timing of this symposium and the weighty nature of the issues confronting Latinas/os and LatCrit scholars, the opening visions of LatCrit theory projected by the authors of these three articles also point us in directions fertile for further critical investigation. These three articles, both in what they do and in what they suggest needs to be done, demonstrate the bottom-line necessity and viability of this incipient scholarship.

Professor Rachel Moran opens the symposium, appropriately, with a brief but powerful sketch of the changing demographics that make the coming years a propitious time for Latina/o self-empowerment. n11 Only during the past quarter century have Latinas/os become numerically significant, and this trend is set to continue well into the next century. n12 Demographic trends of Latinas/os in the United States, Professor Moran notes, help explain why "race relations were . . . defined in Black-White terms" throughout this nation's existence, n13 but they also demonstrate why this historical definition will not serve critical legal scholars and policy makers well in the future.

To help explain the bipolar paradigm of the past and to begin [*8] charting a more sensible future, Professor Moran disaggregates and describes the two models that define both the legal and the social experience of Latinas/os in the United States. The first, the civil rights model, neglects Latinas/os because we are not "Black enough" n14 while the second model, immigration, devalues Latinas/os because we are not "White enough." n15 Latinas/os are served by neither model for different reasons: the civil rights model was designed to redress the nation's era of institutionalized slavery and its aftermath while the immigration model was designed primarily to assimilate White ethnic arrivals from northern and western Europe. n16 Professor Moran urges LatCrit theory to become a means of making Latinas/os visible and empowered in both the civil rights and immigration settings through critiques that defy historical or categorical confines and that seize the demographic moment.

Professor Moran's comparison of these two socio-legal models point to substantive and methodological issues fundamental to LatCrit theory: the interrelationship of race and ethnicity as social or legal constructs and the relevance of this interrelationship to LatCrit legal studies. Whether either of these constructs should be the main substantive target, or the preferred methodological tool, for LatCrit analyses is fundamental because it will determine in great measure how LatCrit discourse is framed and directed. It thus is no surprise that we encounter this question in the essays below. n17

The increasingly outmoded premises of historic binarisms, especially in light of demographic change, open possibilities for outsider self-empowerment that, as Professor Moran urges, Latinas/os must exploit -- but with mutuality, care and sensitivity. n18 This call for mutuality, care and sensitivity acknowledges that ongoing change occasions danger. The increasing presence of [*9] Latinas/os (and Asian Americans), Professor Moran shows, presents both opportunities for inter-group cooperation and risks of intergroup conflict. Which of these possibilities actually transpires and how depends in part on LatCrit diligence regarding inter-group issues. Professor Moran's message is compelling: by devoting itself to the reform of the current civil rights and immigration regimes in caring and coalitional ways, LatCrit theory can contribute to the creation of a better social and legal future for Latinas/os *and* other people of color.

In this way, Professor Moran effectively makes clear that, even while it is an effort to make Latinas/os visible and significant in social and legal discourse, LatCrit theory is not exclusively a Latina/o concern. LatCrit theory implicates the social and legal interests of Blacks, Asian Americans, Native Americans and other people of color who experience different yet similar forms of subordination under the nation's civil rights and immigration policy schemes. LatCrit theory therefore must take expansive and caring account of its inter-group implications as well as demonstrate its capacity to navigate our society's complex identity terrains, and Professor Moran's article appropriately opens the symposium with a call for LatCrit attentiveness to inter-people-of-color relations and ethics. With this opening article, Professor Moran helps set the stage for the inauguration of LatCrit theory as a complementary and constructive rather than competitive player in existing race/ethnicity scholarship. n19

The following article, by Kevin Johnson, also helps to document and contextualize the genesis and original mind-set of LatCrit theory. n20 Like Professor Moran, he identifies the social and legal binarisms of the Black/White

Paradigm as one trigger for the initiation of LatCrit theory, critiquing Latina/o invisibility or [*10] oppression under civil rights and immigration law. n21 Professor Johnson also regards these binarisms as socially and legally untenable in light of the nation's increasingly multicultural character. n22 He points to language, culture and national origin discrimination as civil rights issues of special interest to Latinas/os. n23 Finally, Professor Johnson inspects the construction of all Latinas/os, even the native-born, as immigrants under the "Latino-as-foreigner" phenomenon. n24 This phenomenon operationally excludes Latinas/os from the national community and relegates Latinas/os to spectators of civic life. n25

But Professor Johnson additionally focuses LatCrit attention on potential sources of intra-Latina/o conflict as well as solidarity. "Latinos in reality comprise a community of different communities," Professor Johnson observes. n26 Latina/o diversities based on national origin, ideological and political differences, or the racialized ramifications of physical appearance, create points of potential intra-Latina/o division, which may offset the intra-group commonalities derived from common struggles with language, culture and immigration. Disregard of varied intra-Latina/o identities, Professor Johnson cautions, may lead to defeat by diversity. n27 To promote social justice through legal reform, LatCrit theory therefore must elucidate intra-group commonalities while respecting and vitiating intra-group differences, Professor Johnson explains. n28

The efficacy of LatCrit theory, Professor Johnson presciently forecasts, ultimately will depend on our capacity to account for Latina/o heterogeneities in our analysis of social and legal conditions of varying relevance to varied Latina/o communities. [*11] Intra-Latina/o heterogeneity requires intra-Latina/o accomodation; it means that our work is necessarily coalitional in myriad ways, including the creation of intra-Latina/o coalitions that recognize and marshal diversities. Professor Johnson's article therefore trains attention on intra-group opportunities *and* dangers at this moment of LatCrit origin. This inward precaution in turn counsels against LatCrit indulgence of intra-Latina/o essentialisms, a theme that recurs below. n29

The third symposium article, by Steven Bender, focuses on language regulation and "language vigilantism" as sources of Latina/o subordination and targets of LatCrit intervention. n30 Professor Bender shows how "popular initiatives" effectively create hostile social, political and legal environments for Latinas/os and in particular how this form of direct lawmaking licenses a broader array of anti-Latina/o microaggressions. n31 In this way, Professor Bender displays not only the prominence of language-related issues to Latinas/os and LatCrit scholars, he also displays the relationship of law to politics or of rules and doctrines to power and privilege. n32

The terms of the language regulation debate, Professor Bender shows, are riddled with racist and nativist sentiment; the rhetoric and professed aim of the English-Only and Official English movements are monolingual hegemony and English supremacy as adjuncts of Anglo and White dominance. These movements use majoritarian politics to fashion and enact formal legal rules that [*12] institutionalize this dominance as a matter of law, thereby consolidating the power of historically privileged social groups or forces. n33 In this way, Professor Bender effectively employs a contemporary debate -- language, diversity and conformity -- as a case study that shows the direct link between politics, law and subordination. Given this link, critical analyses of the "law" must be cognizant of the politics that produced the status quo; antisubordination scholarship must be "political" if it is to account for and counteract the political nature and slant of the law.

With this analysis, Professor Bender brings into sharp relief a recurrent and foundational aspect of LatCrit sensibilities at this time: the relationship of scholarship and theory to law and power. n34 This spotlighting acknowledges not only the political nature of legal scholarship but its roots in the political nature of legal institutions, processes and acts. Professor Bender's analysis of language thus elucidates a larger point about LatCrit theory at its moment of origin -- its political consciousness and its sense of commitment to aid the subordinated.

II. FROM INVISIBILITY, TOWARD INDIVISIBILITY: "LATCRIT I" AND LATCRIT THEORY

The second part of this foreword is devoted to five clusters of essays, which represent the bulk of the papers presented at the "LatCrit I" conference in May of 1996. As a set, these essays display the multivocality of this emergent community. At the same time, they corroborate the centrality of recurring themes to LatCrit theory and attest to the number and magnitude of the issues ripe for LatCrit theorizing. In combination with the articles, these essays help to delineate a diversified yet collective road map for LatCrit [*13] theory in the months and perhaps years to come.

A. Latina/o Identity and Pan-Ethnicity: Toward LatCrit Subjectivities

The first cluster of essays is devoted to the (im)possibility of Latina/o "pan-ethnicity" -- that is, a sense of intra-Latina/o interconnection rooted either or both in the historical and contemporary position of various Latina/o

communities within the area now known as the United States. This cluster, cross-disciplinary by design, features works emphasizing various Latina/o positionalities: a specifically Cuban American perspective, a broadly-defined Latina perspective and a broadly-defined Latino perspective. Despite the variance of positionalities conveyed by these works, each author sounds similar themes or alarms, thereby suggesting common ground for LatCrit cultivation of pan-ethnic sensibilities.

The first presentation, by social scientist Professor Max Castro, considers the similarities and differences that must inform any attempt at pan-ethnic identity among Latinas/os before turning specifically to the role of Cuban Americans in a pan-ethnic project. n35 The "common strands" that unite Latinas/os in the United States, Professor Castro argues, are many. Historically, Latinas/os share roots in homelands "too close to the United States" for their -- or our -- good. n36 Latinas/os "have in common that we were all parially or wholly incorporated, that in some fashion the border moved over us all," Professor Castro emphasizes. n37 Moreover, "we Latinos, who inhabit this turbulent border zone, can respond to *el norte* with defiance or compliance, with rebellion or identification, but we can hardly ignore it." n38 It might be added, this [*14] location is precisely where LatCrit theory can operate -- at the junctures of varied responses to the historical and current conditions of Latinas/os living under the shadow or jurisdiction of Anglo-American power. A threshold task of LatCrit theorists, this essay effectively asserts, is to help develop strategies of resistance to past and present inequalities in light of the long and complex histories and forces that define(d) the Latina/o position yesterday as well as today.

Professor Castro next highlights several other sources of potential Latina/o pan-ethnicity. Latinas/os "are heirs of syncretic cultures, children of a deep *mestizaje*" marked by racial admixtures of varied sorts. n39 The constellation of syncretic cultures comprising today's Latina/o communities, Professor Castro continues, have been consistently devalued and stigmatized by the "Latinophobia" of America's Anglocentric norms. n40 Thus, the cultural and racial diversities of Latinas/os as well as the Anglo-American effort to devalue them serve as common strands of a potential Latina/o pan-ethnicity. The construction and navigation of sameness and difference n41 represent threshold tasks for LatCrit theory because they are a prerequisite to mutual understanding of, and collaboration on, legal issues that affect the social, material and political positions of Latina/o-identified persons and communities throughout the United States.

The Cuban position in the Latina/o and LatCrit equation is [*15] potentially problematic to the construction of a Latina/o pan-ethnicity, as the second section of Professor Castro's essay indicates. The Cuban American establishment tends to self-identify racially as White, economically as upwardly mobile middle-class, and politically as conservative. n42 These identifications add immeasurably to the explosiveness of intra-Latina/o differences and coalitions because other influential Latina/o constituencies tend to identify in diametrically contrary terms in each of these categories. Charting and navigating these fault lines to produce self-empowerment is therefore a key challenge for LatCrit theory in its exploration of Latina/o pan-ethnic possibilities.

Professor Castro also notes the complex, paradoxical relationship of Cuban Americans to Cuba and Cubans. Professor Castro describes: Cuban Americans have "succeeded splendidly" at becoming seemingly permanent fixtures in the United States, yet they have failed to achieve their goal -- engineering a return to the homeland. n43 This mix of success and failure is crucial to understanding the Cuban American subject position, Professor Castro contends, because it problematizes the exile "master narrative" that informs -- indeed, pervades -- Cuban American consciousness and politics. n44

But this exile mind-set also points to a more general sensibility, which can be extended to other Latina/o groups in the United States: a continuing care for the people and the society of our ancestral or original homelands. Whether of Mexican, Puerto Rican, Cuban, Dominican, Nicaraguan, Salvadoran or other Latinidad, every Latina/o community in the United States harbors a special interest in relations between this nation and its homeland and a continuing concern for the impact of American policies on its homeland kin. [*16] This more general sense of linkage makes for a certain political sensibility, but the particulars of these linkages could also undermine Latina/o pan-ethnicity. The task awaiting LatCrit theory consequently must be to generate frameworks and postulates of inquiry, understanding and action designed to yield intra-Latina/o cooperation, accommodation and coordination in varied social or legal contexts.

Professor Castro's opening essay thus brings to light numerous issues awaiting and demanding LatCrit interrogation. It shows that issues of sameness and difference within or among Latinas/os, as well as between Latinas/os and Anglos, represent foundational inquiries for LatCrit theory. LatCrit treatment of these inquiries in turn control the measure of our contribution to Latina/o self-empowerment through Latina/o pan-ethnicity. Subsequent essays further demonstrate both the richness and the limits of this terrain.

The next essay, by Professor Berta Esperanza Hernandez-Truyol, advances a Latina perspective on the potential of LatCrit theorizing. n45 In doing so Professor Hernandez-Truyol elects to write from a subject position that makes gender, rather than nationality or any other aspect of human identity, salient. The salience of gender in this essay, however, does not yield a unidimensional analysis. On the contrary, Professor Hernandez-Truyol demonstrates the LatCrit ideal: the possibility of balancing subjectivity and diversity.

After recounting the multiple diversities of Latinas/os -- race, religion, sex, sexual orientation, class, ethnicity, ability and others -- as well as the failure of extant legal discourses to address Latina/o concerns, Professor Hernandez-Truyol issues a challenge for LatCrits to go beyond platitudes in our cultivation of Latina/o pan-ethnicity as a means toward Latina/o self-empowerment. n46 Latina/o [*17] pan-ethnicity in light of multiply-diversified Latina/o populations raises the challenge for LatCrit theory to learn through difference as a chief method of negotiating the culture clashes that await. n47 For Professor Hernandez-Truyol, one predicate of a LatCrit ability to learn through difference is acceptance of the "indivisibility" of Latina/o (and other) identities. By invoking this concept of indivisibility and illustrating its operation in daily life with various vignettes Professor Hernandez-Truyol properly emphasizes that multiplicitous identities cannot be segmented and atomized in LatCrit theory or LatCrit practice.

For LatCrit theorists and fellow travelers, Professor Hernandez-Truyol's emphasis on indivisibility urges a ready acceptance of identity complexities so that we can get on with the business at hand: overcoming Latina/o marginality and invisibility. Rather than fret and fracture over the relevance of particular points of sameness/difference, Professor Hernandez-Truyol optimistically urges LatCrit theorists to embrace our diversities and to employ them as a tool of self-knowledge and self-empowerment. n48 In this way, Professor Hernandez-Truyol indirectly raises a critical notion: LatCrit theory must be informed by and proceed resolutely from the valuable methods and lessons to be gleaned from the historical and substantive experience of outsider jurisprudence. n49

Professor Hernandez-Truyol then brings us to the chief concern of her essay: the operation of androcentric cultures to elide Latina interests and issues in social and legal discourses. This elision, Professor Hernandez-Truyol notes, is executed by the operation of [*18] *both* Anglocentric and Latina/o normativity. n50 If LatCrit theory fails to engage and resist the perpetuation of the "gendered inequality" that emanates from Latina/o cultures as well as Anglo structures, n51 Professor Hernandez-Truyol warns, "the Latinos in our midst [will have made] Latinas truly olvidadas." n52 In this way, Professor Hernandez-Truyol focuses this symposium on gender -- an integral aspect of LatCrit attentiveness to issues of sameness and difference, questions of inclusion and erasure and concerns about hierarchy and its replication.

In closing, Professor Hernandez-Truyol focuses on the use of international law to shore up domestic civil rights struggles -- an approach thus far left generally unexplored by outsider discourse. Due to recent contraction in civil rights protections, she urges LatCrit theory to explore international human rights discourse. n53 A global perspective or model, she concludes, not only can reinvigorate domestic civil rights law but also can expand LatCrit recognition of the manifold interests that Latinas/os have in common. n54 This essay thus closes with a crucial reminder: LatCrit anti-subordination analyses must be consciously and consistently transnational because Latina/o interests and communities uniformly transcend the territorial borders that asymmetrical power politics have imposed upon us. n55 This closing emphasis on transnationality, [*19] new to outsider legal scholarship, demonstrates the capacity and potential of LatCrit theory to make a difference in extant legal discourse.

The final essay in this first cluster is by Professor Juan Perea. n56 Professor Perea identifies Latina/o invisibility in the Black/White Paradigm, the centrality of Anglocentrism to American life and law and the consequential silencing of Latina/o voices within the status quo as the themes underlying his analysis. In effect, these experiential themes of subordination and struggle provide the raw materials from which LatCrit theory can help to develop pan-ethnic sensibilities among Latinas/os.

Professor Perea posits that current understandings of race, civil rights and national origin are of limited or no utility for LatCrit theory and its promotion of Latina/o self-empowerment. Race as presently understood is not helpful due to the prevalence of Latina/o *mestizaje* -- Latinas/os' multiraciality -- and because arguments by analogy to race have not succeeded in improving the lot of Latinas/os. n57 This latter reason segues into the limits of civil rights as presently conceived, which Professor Perea holds unhelpful because they are forged in Black/White terms not easily transferrable to other race/ethnicity contexts. n58 Similarly, national origin as presently conceived is not helpful because it focuses on place-of-birth, working a "symbolic deportation" for all U.S.-born Latinas/os. n59 Professor Perea thus concludes that understandings of race, civil rights and national origin must be amplified to include important aspects of "ethnic" identity. n60 Professor Perea calls for LatCrit theory to shift analytical emphasis away from "race" and toward "ethnicity" as the most efficacious strategy for Latina/o self-empowerment.

[*20] While both "race" and "national origin" are relevant to LatCrit theory, the point to be drawn from Professor Perea's analysis is that LatCrit theorists must shoulder the task of making them useful to the anti-subordination project of LatCrit scholarship. In doing so, Professor Perea effectively demands that LatCrit theory deconstruct and reconstruct both concepts from a Latina/o subject position, drawing on Latina/o histories and experiences to inform this reconceptualization. This essay thereby displays why and how the intersection of race, national origin and ethnicity constitutes a key site of LatCrit investigation.

Moreover, Professor Perea's analysis invites discursive mutuality from existing outsider discourses. His points are an invitation to expand existing discourses on race and nationality in mutual and multilateral ways that can broaden and deepen critical understandings of racisms and nativisms. The cultivation of discursive reciprocity is a fragile and oftentimes frustrating undertaking, history teaches, but one that Latina/o legal scholars must make central to LatCrit theory and its intellectual grounding. n61

B. Races, Nationalities, Ethnicities: Mapping LatCrit (Dis) Continuities

The second cluster of essays focuses LatCrit attention on the (dis)continuities posed by race, nationality and ethnicity for Latinas/os *vis a vis* dominant culture as well as other marginalized groups. Whereas the first cluster focused on potential Latina/o and LatCrit pan-ethnicity, this cluster considers some of the constructs that might impede its realization. This cluster, like the first, brings together authors writing from varied subject positions.

Professor Keith Aoki's opening essay raises and connects issues related to Latina/o religious, racial, spatial, and re/presentative [*21] interests. n62 He smoothly combines pithy observations on these macroscopic topics to display the manifold and inter-related complexities of Latina/o lives and, therefore, LatCrit endeavors. Through his observations Professor Aoki trains LatCrit attention on the bottom line of our endeavors: mobilizing Latina/o self-empowerment through the potency and potential of sophisticated critical legal scholarship.

Professor Aoki astutely notes that "issues of religion and spirituality are submerged not far below the surface of emerging [LatCrit]" discourses n63 and that these issues require a broad scholarly anti-subordination interrogation of Latina/o identities and communities. He is correct on both counts. Religion is a strong force in Latina/o communities and during informal LatCrit discussions has thus far run as a strong undercurrent; religion repeatedly is vocalized as a pending concern for LatCrit theory.

However, the law review literature by and large has not yet addressed Latina/o social or legal interests in religion or spirituality. In addition to Latinas/os' opportunity to exercise religious beliefs, these interests include the role of religion or spirituality in the configuration and operation of Latina/o identities and identifications, both individually and collectively, from within and beyond. More concretely, they include the relationship of Latina/o religious identities and practices to the politics of subordination and self-empowerment in the United States.

Professor Aoki timely reminds us that Latina/o religious beliefs and communities extend to non-Judeo-Christian tenets. n64 Furthermore, many of the non-Judeo-Christian Latina/o traditions are also non-White and/or non-Anglo. Santeria, for instance, is an African-Caribbean religion that combines African traditions and [*22] Christian icons to produce a distinct, and non-Judeo-Christian, Latina/o belief system. LatCrit interrogation of Latina/o religious and spiritual interests therefore must carefully avoid inadvertently essentializing Latina/o religiosity or spirituality on the basis of Judeo-Christianity and its orientation since assuming a uniformly Judeo-Christian religiosity runs the risk of overlooking important features of Latina/os social and legal interests.

Such oversights in turn run the risk of replicating and compounding the racialized or ethnicized power relations reflected in the organization of religion among racially, ethnically and religiously diverse Latina/o communities throughout the United States. Doing so is antithetical to LatCrit theory's anti-subordination principles, because it tends to further marginalize non-White, non-Anglo religious customs or spiritual values. Rather than overlook or reinforce the power relations that meet at the intersection of race, ethnicity and religion, LatCrit theory ought to examine *both* the oppressive and liberational aspects of these constructs and their interplay among or across Latina/o communities and cultures existing amid white-identified Anglo norms and biases.

The pending question for LatCrit theorizing, then, is whether "religion" and/or spirituality provide sources of Latina/o resistance to subordination or whether they serve as sources of Latina/o accommodation of disempowerment. In varied instances or contexts, the answer could be either or both. The task, then, is not a LatCrit assessment of the "correctness" or value attributed or imputed to any particular article of faith or dogma, but a searching analysis of religion's impact on Latina/o lives to help fulfill the LatCrit goal of advancing Latina/o liberation from social or legal oppression. The lesson therefore, is that LatCrit projects focused primarily on religion and spirituality, like those

focused primarily on race, ethnicity, class, gender or sexuality, should manifest a broadly-defined anti-subordination sensibility and purpose.

Next, Professor Aoki urges LatCrit theorists to employ cultural geography to map the causes and conditions of Latina/o subordination and to chart the ways and means toward Latina/o self-empowerment. n65 [*23] The material construction and confinement of Latina/o communities provides a ready site for LatCrit anti-subordination excavations, a project that necessitates employment of tools and insights devised through the work of other disciplines. This urging thus elucidates and points to a larger LatCrit imperative: the deployment of transdisciplinary anti-subordination analyses on behalf of Latina/o social and legal interests. Professor Aoki is right -- cultural geography is one tool among many disciplines from which LatCrit theory must draw to center Latinas/os in social and legal anti-subordination discourses.

Finally, Professor Aoki turns to LatCrit theory, Latinas/os and re/presentation. Professor Aoki describes three basic notions or practices of "representation". n66 The first is the depiction or portrayal of self and group. The second is the political concept of selecting a "representative" to advance self interests, either group or individual. The third is the legal practice of re/presenting one's self or group, or a client, before a tribunal or other legal decisionmaker. With this outline, Professor Aoki effectively warns LatCrit scholars carefully to conceive our work and its functions; he effectively urges us to think carefully about the way(s) in which various forms of "re/presentation" may be implicated both in our individual scholarly projects as well as in the LatCrit enterprise as a whole. With this re/presentational outline Professor Aoki implicitly reminds LatCrit theory at the moment of its inception that Latina/o self-empowerment is the baseline against which to measure our work's multiple re/presentational dimensions, effects and possibilities.

The next essay, by Professor Adrienne Davis, employs the metaphorical "body" and anthropomorphism as a lens for critical analysis of subordination through law and rhetoric. n67 The body represents not only a "singular and unified entity" but a hierarchy; [*24] bodies are "composed of discrete, hierarchical, discernible parts with a direct correlation between [each part] and its status in the hierarchy." n68 Each body has "one head" while other bodily parts are "conceived as appendages, the things that we might lose, but without which we can go on." n69 The body as symbol joins unity, heirarchy and disposability.

The "body politic" that is the United States, Professor Davis suggests, is no different. Here, the metaphorical body politic historically extended both to White and Black "parts," but the White operated as the "head" and the Black as the (disposable) appendage. This configuration of the "body" politic, Professor Davis notes, treated blackness as a threat to the body as a whole, a threat controlled by Whites and the regimented supremacy of whiteness.

Today, Latinas/os are portrayed as a threat to the integrity of the nation and its political corpus. A similar professed concern for the body's well-being justifies the politics of backlash that attack and subordinate Latinas/os through immigration and related policy choices. n70 But this body metaphor can reveal more than the analogs between Black and Latina/o positionalities regarding White supremacy and its role in the consolidation of national identity. It permits a constructive examination of the Black/White Paradigm, an examination that "will be one of the early challenges for LatCrit theory." n71 Professor Davis's essay thus proffers a unique analytical [*25] for an interrogation of race relations that both includes Latinas/os and tests the effects of the dominant paradigm. n72

Thus, not only can the metaphor help LatCrit theorists better understand and unravel the dynamic and rhetoric of today's politics of backlash, n73 it helps us visualize our position in relation to that of other groups, enabling reconstruction. Rather than acquiesce to disposability under White national identity, Professor Davis advises LatCrits should join the ranks of the "disposable" to reconfigure the designation and desecration of national body parts. LatCrit theory, Professor Davis concludes, can and should help to conceive and launch a revolt of the body parts.

With this call, Professor Davis draws well-warranted attention to the interplay of law, theory, power and politics, underscoring the politicized and polarized nature of the social and legal environment into which LatCrit theory is born. n74 Her imaginative and provocative metaphor reminds LatCrit scholars of the inevitably political and politicized "legal" controversies that demand the vocal and forthright intercession of outsider jurisprudence. Professor Davis, in short, calls upon LatCrit theorists never to shirk the responsibilities that majoritarian politics bestow on outsider scholars, especially during eras of backlash.

The third essay of this cluster, by Professor Ian Haney Lopez, directly addresses the question of "race" and "ethnicity" as [*26] competitive or complementary in LatCrit theory. n75 In contrast to Professor Perea's suggestion that LatCrit theory relinquish "race" and employ "ethnicity" as the main analytical construct for the articulation of LatCrit scholarship, Professor Haney Lopez argues that, while both race and ethnicity are closely related, they are not fungible and neither should be abandoned as a means of examining or explaining Latina/o experience. Because Latina/o

identities have been racialized, Professor Haney Lopez resists Professor Perea's call for a shift from race to ethnicity, contending that "race remains indispensable to understanding Latino/a experiences and to improving the welfare of Latino/a communities." n76

Professor Haney Lopez suggests that both race and ethnicity incorporate an amalgam of identity characteristics, including national origin, ancestry, religion, history, tradition, values and symbols of culture. n77 But they are distinguishable because the political and legal deployment of the two entail differentials vital to the conceptualization of emancipatory theories and strategies. n78 Professor Haney Lopez argues that, while ethnicity often indicates distance from Anglocentric norms, race implies innate, immutable dissimilarities from White characteristics. This distinction, Professor Haney Lopez explains, permits identity maneuvers in the context of ethnicity that are foreclosed in the context of race.

Consequently, Professor Haney Lopez argues that "LatCrit theorists must look to a broad array of factors [including both race [*27] and ethnicity]... to understand and advocate on behalf of Latinos/as." n79 For Latinas/os and LatCrit theorists, this approach facilitates broader and deeper explorations of Latina/o identities and the dynamics of Latina/o subordination. For outsider jurisprudence, it enables LatCrit theory to help Critical Race Theory "rework the very meaning of [race]." n80

The juxtaposition of Professor Perea's and Haney Lopez's essays brings into view both the riches and the complexities surrounding the range of Latina/o identities and interests that await LatCrit interrogation. Professor Perea's position stems from the limitations that race in a Black/White Paradigm imposes while Professor Haney Lopez's response shows that race nonetheless informs Latina/o issues because racialization pervades American society and its laws in general and Latina/o lives in particular. Both are right; both approaches produce knowledge, and therein lies the promise of a diversified LatCrit discourse. This exchange thus captures the kind of theoretical interventions and contributions that LatCrit discourse can generate to enrich and expand outsider jurisprudence in the months and years to come.

The next essay, by Professor Michael Principe, carries us beyond the racialized and ethnicized boundaries of the American national body, reminding us again that LatCrit issues have a transnational and transcultural ambit. n81 Professor Principe etches a comparative analysis of international reaction to terrorism, how this reaction implicates constitutional protection of individual liberty and how it can (and does) operate further to subordinate the most vulnerable members of a society. This comparative analysis points to another site of engagement for LatCrit theory.

Professor Principe's essay considers developments in the United [*28] States, Latin America, Europe and the Middle East. n82 In each setting, Professor Principe finds efforts to narrow constitutional rights as part of the establishment's anti-terrorism strategy. But this strategy can be turned against any kind of political opposition, Professor Principe notes, and it oftentimes results in the victimization or harassment of "populations without political power." n83 The contraction of constitutional rights to combat terrorism, Professor Principe thus suggests, can operate as a license for state suppression of dissent.

Applying these observations to the domestic scene, Professor Principe notes that the World Trade Center and Oklahoma City bombings brought international terrorism to the doorstep of American policy. These incidents and their aftermath, Professor Principe asserts, are likely to fuel the ongoing insurgency of backlash in American political discourse, thereby providing LatCrit and other outsider scholars even more reason to unify in resistance of any further civil rights retrenchments. n84 Professor Principe's internationalist emphasis thereby illustrates Professor Hernandez-Truyol's point that LatCrit theory must be transnational in scope; LatCrit theory must be a bridge between "domestic" and "foreign" domains of study. n85

Professor Principe's call for Latina/o unity based on resistance to civil rights retrenchment indirectly underscores a basic point: that civil rights and liberties are a key concern of LatCrit theory. This concern of course is magnified by the ongoing sense of "cultural war" and backlash, n86 but the LatCrit commitment to social and legal equality must be viewed as organic and permanent. The antisubordination project and the attainment of social justice through legal reform are at the core of LatCrit theory, its creation and its [*29] foreseeable future.

The final essay of this cluster, by Professor Stephanie Wildman, articulates from a White subject position the privileges of White identity and their relevance to LatCrit scholarship. n87 Professor Wildman's project is the "exposition...of White privilege" to advance the deconstruction of racialized hierarchy and oppression in two ways. First, by focusing on "privilege" rather than "subordination." n88 Second, by examining the privileging of whiteness in multicultural, rather than Black/White terms. n89 In this way Professor Wildman effectively highlights interrelated

themes of importance to LatCrit theory and outsider scholarship more generally: the operation of whiteness as the common tool of oppression against all peoples of color and the operation of the Black/White Paradigm to perpetuate White privilege. Professor Wildman employs two key concepts to elaborate these points.

The first of these concepts is "whiteness unmodified," which signifies the dominant set of cultural norms associated with Anglocentrism. n90 Professor Wildman notes that some Latinas/os, like some Jews, may appear phenotypically "White" but that Whites perceive them as tainted, colored, or modified by non-White or disfavored attributes, like non-Anglo ethnicity, non-Western European national origin or non-Christian faith. Modified whiteness therefore carves out a category for the analysis of non-White, non-Black positionalities embodied by persons who physically may appear White but who culturally, legally and politically are marked as other. Understanding whiteness as a feature that is sometimes modified and sometimes not enables the exposition of more accurate and incisive anti-subordination critiques in multicultural and multiracial contexts.

[*30] Professor Wildman's second concept is "strategic essentialism," a means of tempering the essentializing tendency of a moniker such as "Latina/o," which embraces many different persons and communities. n91 The very notion of Latina/o pan-ethnicity in the context of an Anglocentric and White supremacist environment can exert a pull conducive to essentialism. That pull, Professor Wildman reminds us, can be productive only if it is instrumental: "strategic essentialism recognizes that we have to name things in order to talk about them" but that such naming is not tantamount to the reality that it signifies. n92 LatCrits' use of essentialism, if any, must be carefully strategic rather than mistakenly or inadvertently substantive. n93

Appropriately, Professor Wildman closes with a defense of multiculturalism, emphasizing the vital role of Latinas/os in its operation: "The failure to acknowledge the importance of multiculturalism... is the failure to acknowledge or value Latina/o existence." n94 Professor Wildman encourages Latina/o opposition to compulsory assimilation while underscoring the need to transcend [*31] Black/White polarities to dismantle White privilege. n95 In this way, Professor Wildman confirms the need for LatCrit interrogation and reconstruction of race and race relations. Professor Wildman's analysis of whiteness in a multicultural setting thereby confirms both Professor Perea's insistence on LatCrit expansion of race scholarship through the use of ethnicity as well as Professor Haney Lopez's call to retain race. n96 In this essay, Professor Wildman reminds all LatCrit scholars of the power that both race and ethnicity exercise over Latina/o populations.

C. Teaching, Scholarship and Service: Practicing LatCrit Theory

The third cluster of symposium essays turns attention to the nexus that ideally ties together scholarship, teaching and practice. This blending of theory and practice, or praxis, is very much on the critical agenda; it is a task and a challenge that increasingly occupies the energy of outsider scholars seeking to protect vulnerable communities from backlash politics. For Latina/o communities besieged by backlash, n97 this cluster defines a LatCrit priority.

[*32] The first essay, by Professor George Martinez, provides a substantive analysis of Mexican Americans *vis a vis* whiteness and shows how this analysis can inform litigation efforts in an era of backlash. n98 Professor Martinez notes that "race" and "ethnicity" are confused constructs today precisely because Anglo-American society long has lumped them, along with national origin, nationality and ancestry, into a catch-all "other" category. n99 In his sketch of this continent's colonization by European invaders, Professor Martinez emphasizes that the "White self and the racial Other are coconstructed as discursive products... it is precisely by means of a construction of a range of racial Others that the White self constitutes itself." n100 In the several cases Professor Martinez uses to illustrate the juridical process of racial construction and denomination, n101 we encounter yet again another construct central to the LatCrit enterprise: the Black/White paradigm, which casts race relations into its two polarized extremes in order to [*33] operationalize White supremacy over all other colors. n102

Importantly, Professor Martinez also documents historical Latina/o complicity in the maintenance of this paradigm and its biases. The Latina/o objective in these "race" cases was not to challenge the superiority of whiteness, but to escape the dangerous burdens of blackened identity. n103 This strategy may be understood as a last resort when contextualized by time and place, but by working within the parameters and prejudices of this paradigm, Latinas/os historically have contributed to the legitimacy and continuation of White supremacy. This historical mistake, Professor Martinez argues, should not and cannot continue. He urges LatCrit theorists to resist identity labelings that tend to cast Latinas/os as White regardless of the professed motive behind such labelings.

To support his position, Professor Martinez notes how the judicially constructed "race" of Mexican Americans, even when formally decreed to be "White," failed to secure them usual social privileges of whiteness. Instead, like

Blacks, Mexican Americans "were excluded from public facilities and neighborhoods and were the targets of racial slurs . . . were segregated in public schools . . . [and] have also faced significant discrimination in the area of employment." n104 Professor Martinez thus takes effective note of the phenomenon that Professor Wildman described as "unmodified" whiteness. n105 Even when legally defined as racially "White," Mexican Americans remained ethnically of color; their "ethnicity" modified their "race" to preclude the attachment of White [*34] privileges. n106 This observation should remind Latinas/os that identification with whiteness is a dangerous route to liberation and equality and that both "race" and "ethnicity" are indispensable to our work.

Professor Martinez next turns to the connection of theory with practice. Focusing on litigation, Professor Martinez stresses that advocates of Latina/o equality must forego the temptations of whiteness in crafting antidiscrimination claims. n107 Moreover, Latina/o advocates (or LatCrit scholars) "should not hesitate to challenge harmful legal definitions establishing Mexican-Americans [or other Latinas/os] as White," n108 labelings that may tend to seduce Latinas/os into a self-defeating complacency. Our work as LatCrit theorists and activists is to remain always mindful of this history and to avoid in the present and future the seductions of assimilationist self-delusions. In short, Professor Martinez argues, the prize is not whiteness, nor is whiteness the means toward the attainment of the LatCrit prize. LatCrit energies and eyes must always stay on the substantive prize: equality, safety and dignity in law and fact for Latinas/os and other subordinated populations.

[*35] In the following essay, Professor Margaret Montoya employs Latina/o *mestizaje* as a metaphor for the practice of LatCrit theory. n109 To elaborate this metaphor and to demonstrate praxis by example Professor Montoya begins her essay in Spanish, continually shifting back and forth between her native language and English to "denounce and counteract" the linguistic subordination of Latinas/os and the devaluation of our bilingualism. n110 This expression of bilingualism is a reminder to the LatCrit community that our academic *mestizaje* stems in part from the combination of Latina/o background with Anglo education. This essay cautions Latina/o scholars to avoid disconnection from roots and origins, a disconnection potentially promoted by our Anglo education. Emphasizing that the subordinated communities from which we hail must "create the principal epistemic site" of LatCrit theorizing and activism, n111 Professor Montoya's use of Spanish in this essay displays the practice of anti-subordination theory; with this opening, Professor Montoya unabashedly claims her native tongue "as a primary mode of expression for public and intellectual discourse" n112 and underscores the connection of theory to community.

But this act of bilingualism also poses the potential exclusion of scholars, whether or not "Latina/o," who are not fluent in Spanish. Professor Montoya therefore cautions that LatCrit uses of language cannot be permitted "to create barriers or boundaries among . . . us." n113 Nonetheless, Professor Montoya insists that LatCrit theory [*36] must work to "linguistically reterritorialize" public or legal discourse because bilingualism "is a cry of resistance against the monolingualism that has been imposed on [Latinas/os], on our parents and on our communities." n114 Professor Montoya's opening therefore effectively points to the reclamation, assertion and preservation of Latinas/os' linguistic heritage as part and parcel of the LatCrit agenda, while also cautioning us that our embrace of this inheritance must be executed without sowing division amongst Latinas/os or between Latinas/os and other subordinated groups. Professor Montoya's analysis thereby instills a healthy reminder of the need for LatCrit self-critique; the balance to be struck between affirming expressions of Latina/o and LatCrit bilingualism on the one hand and affirmative inclusion of monolingual scholars in LatCrit discourse and venues on the other, requires constant self-awareness and critical evaluation.

Professor Montoya's essay is above all a call to effective and ethical LatCrit theorizing -- effective because it is grounded in and responsive to the social realities of contemporary lawyering in Anglocentric settings and ethical because it remains self-aware of separatist or assimilationist tendencies that might confuse or compromise this grounding and responsiveness. In particular, Professor Montoya challenges LatCrit theory to remain true to its cultural roots in Latina/o communities while exploiting our toeholds within Anglo institutions to advance the improvement of the material conditions that delineate Latina/o lives. To do both, she reminds us, entails self-awareness, self-critique and self-adjustment.

In the final essay of this cluster, Professor Laura Padilla addresses LatCrit praxis by exploring the notion of "wholeness" for Latinas/os, both as individuals and as communities. n115 Addressing the fragmentation of Latina/o law professors' lives as institutional and scholarly others, Professor Padilla's essay identifies another [*37] LatCrit objective: cohering both our selves and our communities. Professor Padilla's essay does the LatCrit movement a service in reminding us that the Latina/o legal professorate, too, is among the beneficiaries of LatCrit's potential. Like Professor Montoya's essay, Professor Padilla's opening underscores our personal implication in this new enterprise; while

Professor Montoya reminded and warned us of the danger in failing to realize and critique this implication, Professor Padilla reminds and invites us of the rewards we can accrue as a result of it.

Turning to advocacy, practice, community involvement and teaching, Professor Padilla singles out the importance of education in the creation of Latina/o self-empowerment. n116 In doing so, Professor Padilla situates LatCrit legal scholars in a particularly crucial locale: the intersection of education, law and power. Focusing on LatCrit praxis, Professor Padilla rightly pinpoints "concrete steps" n117 to make praxis an integral feature of antistatist scholarship and pedagogy. After this essay, the LatCrit community is in no position to defer praxis.

But Professor Padilla brings to light another opportunity for praxis which is usually not prominent in our thoughts: private funding of praxis-oriented projects. This final point notes the availability of funding sources, such as foundations, that LatCrit theorists and activists can tap to bridge the gaps between theorizing and practicing legal reform. In this way, as Professor Padilla's [*38] opening comments promise, LatCrit praxis can "make a difference in our communities" as well as in our personal and professional lives. n118

D. Multiplicities and Intersectionalities: Exploring LatCrit Diversities

The fourth cluster of essays re/turns our attention to the diversities within and beyond Latina/o communities. These essays thus take up concepts pioneered by Critical Race and Feminist legal scholars -- multiplicity, multi-dimensionality and intersectionality -- in a LatCrit context. n119 Authored by scholars writing from varied subject positions, this cluster illustrates LatCrit commitment to inclusivity and nuance.

The first essay, by Professor Elvia Arriola, fittingly begins by taking up the question of outsiders in an outsiders' conference. n120 Recounting her "fear and distrust" of scholarly gatherings that purport to be, but oftentimes are not, havens of safety, Professor Arriola focuses on the ways in which gender and sexual orientation, [*39] as well as class and biculturalism, work to marginalize Latinas/os and "others" both within the socio-legal mainstream as well as outsider communities. Professor Arriola's essay provides a personal and critical account of the gendered and sexualized structure not only of legal education, legal culture and Anglo-American society, but also of the norms that people of color acquire and internalize. n121 She analyzes the androsexism, heterosexism, classism and ethnocentrism both of Anglo and Latina/o normativities and the way in which these biases invidiously skew opportunity and agency to undermine social and legal equality.

Professor Arriola thus demonstrates the inward and outward critique that defines the scope of LatCrit theory and its critical missions. Professor Arriola effectively throws down the gauntlet: to achieve political and substantive efficacy, LatCrit theory must create occasions for scholars and activists, as well as students, to "integrate the multiplicities" of our selves, lives and communities. n122 To do so, she urges that LatCrit theorists "examine the ways in which we too fail our idealistic pronouncements if we do not seek to become conscious of the interconnections between our ideas, our experiences and our fears." n123 This examination must "connect our theorizing to some kind of practice." n124 In this way Professor Arriola confirms LatCrit commitment to self-critique and praxis.

Professor Arriola's essay also invokes another crucial aspect of the LatCrit venture: the act and process of community building. Before now the Latina/o legal professorate had no regular venue devoted specifically to the critical discussion of Latina/o concerns by and among outsider scholars. The creation of such a venue fosters not only the production of knowledge but the cultivation of professional and personal bonds between conference participants and attendees. These bonds, as Professor Arriola's essay poignantly [*40] recounts, can be nurtured only if these conferences actually create spaces of safety and growth. That is, our coming together physically every year can generate a new LatCrit community and consciousness within and beyond the Latina/o legal professorate only if LatCrit conferences, projects and events can create and maintain conditions conducive to mutual acceptance, respect, trust and collaboration among a diverse group of scholars whose responses to the "experience of outsiderhood [constitute] a unique and complex self-creation." n125

This inter-group mutuality and its generation of inter-group safety and solidarity, Professor Arriola points out, depends on a "continuing commitment to fight the wrongness of all forms of prejudice." n126 With this statement Professor Arriola succinctly captures a basic tenet of the LatCrit experience thus far -- a capacious conception of the anti-subordination struggle -- and a key method of LatCrit theory -- the articulation of a consciously coalitional jurisprudence. Professor Arriola's essay thus distills a sensibility involving the practice of diversity, inclusivity, equality, community, solidarity and self-empowerment, which underlies the first LatCrit conference.

Professor Arriola concludes with a compelling vision. The LatCrit conference and by extension LatCrit theory, she explains, occasioned and can serve to heal the "fear and distrust" that prior experience ingrained in us. n127 LatCrit

conferences and analyses can construct a home where the politics of healing merge theory and practice. The LatCrit community must consider the nurturing of *all* outsiders as integral to Latina/o self-empowerment. n128 In this way, Professor Arriola situates her analysis and the emergence of LatCrit theory in the larger historical context of outsider scholarship, [*41] highlighting why LatCrit theory must learn from, but also go beyond, the lessons and insights of the recent jurisprudential past. n129

The following essay, by Professor Robert Chang, provides a keen analysis -- and serves as a prime example -- of the new critical discourse necessary to community and coalition beyond the confines of current identity politics. n130 Using the metaphor of racial cross-dressing to unpack the essentialist premises and substantive limitations of identifications based on skin color or other such attributes, Professor Chang argues for a decisive shift from identity politics to political identities. This shift is fundamental to LatCrit theory.

Beginning with the provocative observation that he is not "Latino" but could be, Professor Chang draws on the history of migration and intermarriage that has given rise to a population that accurately could be described as Asian Latinas/os. Professor Chang asks us to consider the ramifications of his claim to a Latina/o or LatCrit subject position. n131 This claim, he continues, can be considered in light of similar "cross-dressing" claims, such as the claim of a gay man to lesbian identity n132 or the claim of a post-operative male-to-female transsexual to female identity. n133 These claims, he observes, encapsulate a real tension: they enable the misappropriation of identity and subjectivity but they may be a source of solidarity. That is, "moments of cross-dressing contain within them oppressive as well as emancipatory possibilities. The difficulty lies in telling these representations apart." n134 Professor [*42] Chang's challenge to LatCrit theorists is to go beyond reliance on essentialized identity labels . . . to reach as far as the insights of postmodern discourse permit and demand. n135 The challenge is to trigger "category crisis" as critical method. n136

Category crisis, Professor Chang shows, raises the opportunity to redraw categorical boundaries in ways that counteract traditional ideological and material hierarchies. It is this focus -- the careful defiance of essentialized categories with the specific aim of disrupting oppressive power relations -- that reduces the danger of misappropriation and facilitates constructive engagement with the tensions that underlie such crises. Acts of "cross-dressing" that reshuffle categories and frontiers in race, ethnicity, sex or sexual orientation contexts thus "might be sensible as claims to political identities, rather than to essential identities." n137 It is this very point -- the cognition of identity positions as political acts rather than essential conditions -- that animates the spirit and potential of LatCrit theorizing.

This essay thereby crystallizes and explicates the current moment in the continuing evolution of outsider jurisprudence. Professor Chang, like other symposium authors, situates LatCrit theory within the present discursive moment and refuses to deny or ignore its permeation with politics. This moment, inevitably defined by the contentious discourses and hard lessons of recent years, n138 calls for precisely the elasticity of identity affinities that Professor Chang prescribes as one ingredient of self-empowerment for traditionally subordinated communities. This essay makes a bottom line point exceedingly clear: LatCrit theory must help craft the ongoing shift from rigid essentialisms and divisive exercises of antiquated identities to a sophisticated understanding of the political [*43] dimensions that all identity claims and hierarchies possess. n139

The next essay of this cluster, by Professor Sumi Cho, reinforces the message that LatCrit theory must heed today and tomorrow: the inescapably political and politicized nature and consequences of legal "scholarship" and law itself. n140 Professor Cho opens with a brief exposition of an intriguing and explosive proposition. Outsider scholars, she suggests, might require of themselves a "political impact determination" prior to their articulation of any particular analysis or position. n141 This prerequisite would provide for an open and honest evaluation of the complete fusion of political reality and legal theory. At the least, Professor Cho's idea is a reminder that legal scholarship always is implicated in the operation of domination and subordination through the use of law, despite its supposed detachment and neutrality.

Professor Cho's first ambition is to expose judicial perpetuation of injustice through disingenuous analysis. n142 She rightly points out that LatCrit scholarship can become an effective means of exposing the disingenuity of unprincipled judicial pronouncements. LatCrit and other outsider scholars, Professor Cho reminds us, have the skills and positions that are necessary to an incisive exposition of [*44] courts' intellectual and doctrinal dishonesties. LatCrit theory -- and praxis -- are tools for combating judicial complicity in backlash politics but, Professor Cho emphasizes, only if we proactively approach and consciously develop our work as part of a larger social justice movement.

Professor Cho's second ambition takes an inward turn as she questions how the LatCrit community can help to make the legal academy safer for outsider critical scholars. Injustice and claims founded upon its occurrence, Professor

Cho sharply reminds us, can be found both throughout society and within the law schools that employ us. Why do we not speak out, she asks. n143 Professor Cho then points to the many factors that can cow resistance to in-house injustice: a fear of retaliation by still-dominant forces within legal education, the internalization of oppressive premises or precepts and the indeterminate nature of our substantive work, she suggests, can cause "capitulation to subordination." n144

Professor Cho's essay succinctly combines various key points. Among these are the inevitably political elements or results of law and legal scholarship, the importance of understanding both the strengths and limitations that adhere in our occupation as legal scholars, the indispensability of praxis to avert the complacency or irrelevance of disengaged anti-subordination theory and the necessity of self-critique to ensure the integrity of our work. Professor Cho powerfully asks that LatCrit theory practice what we hope it will preach, both within our institutional settings and beyond.

The final essay of this cluster, by Professor Mary Coombs, further advances the discussion of multiplicities and intersectionalities. n145 Focusing on the interplay of scholarship, [*45] identity and politics at this juncture of American history, Professor Coombs uses examples from Miami's contemporary civic life to illustrate how and why LatCrit theory's mission must include the "problematization of the black/white continuum and thus of race itself." n146 A Black American city council member, Professor Coombs recounts, objected to the appointment of a Black Costa Rican to a citizen board because the prospective appointee was not "literally African-American." n147 In Miami, Professor Coombs points out, lawmakers cannot evade the hard facts of multiculturalism; the collision of politics, race, identity and law is embodied by that city's diverse Black population, which encompasses Caribbean and Central American as well as African American Blacks. This anecdote therefore illustrates why interrogations of both "Black" and "White" identities are at the center of LatCrit discourse today and why they likely will stay so for some time.

Professor Coombs then considers the interplay of groups that might be denominated "woman" and "feminist" or "Hispanic" and "Latina/o" or "gay" and "queer." n148 In each instance, the former represents an essentialized grouping and the latter signifies a political position that might be associated with it. The latter thus is more likely to be experienced and perceived as elective. n149 The complex interplay of these constructs creates issues of "authenticity" and "representation," Professor Coombs rightly explains, creating the danger that voices speaking from the political position may claim to represent the larger group, or that such voices may be interpreted in this manner. n150 In the self-reflective mode of earlier essays, Professor Coombs calls on LatCrit theorists to "problematize our own often implicit claims of representational authority" in order to secure the integrity of our work. n151 This essay thus confirms [*46] LatCrit's embrace of self-critique to secure the grounding and integrity of LatCrit theorizing.

LatCrit theory, Professor Coombs implies, can provide a "place from which to understand the various forms of . . . subordination and exclusion that operate in our society" through or despite the law. n152 If so, LatCrit theory will have met today's fondest hopes of our future. Professor Coombs thus embraces and confirms the LatCrit need for analytical nuance and discursive particularity, the LatCrit ideal of political commitment and coalitional consciousness, and the central role of self-critique in ensuring the substantive value and success of LatCrit theorizing.

E. Latinas/os and Inter-Group Jurisprudence: Building LatCrit Communities and Coalitions

The final cluster of essays closes the symposium by training attention on the use of critical legal scholarship and praxis as a vehicle for threading coalitions among the traditionally subordinated groups that outsider jurisprudence seeks to serve and empower. In doing so, these essays, again voiced from diverse subject positions, invoke themes and values sounded in earlier essays. But this cluster advances the discussion by focusing specifically on inter-group relations and on the utility of our work as acts of coalition-building.

The first essay, by Professor Barbara Cox, tackles an issue that vexes outsider scholars and which LatCrit theory must engage: the balancing of specificity and inclusivity in the articulation of theory and in the coalescing of communities. n153 How do outsider scholars balance the need for group-specific spaces against the need for self-empowering coalitions between that subject position and others with probable affinity? n154 While affirming the need to construct spaces [*47] of safety for focused discussion of particularized issues, Professor Cox also acknowledges the importance of including "in our conversations those who are wanting to build coalition with us." n155 Each time that LatCrit scholars plan a project or event, this question must be among the considerations held uppermost in mind n156 because our work must simultaneously build an intra-Latina/o community and forge inter-group connections with similarly situated communities to be a source of Latina/o self-empowerment. n157

Professor Cox then underscores three key points: the primacy of praxis as method; the entwining of scholarship and politics; and the indispensability of reciprocity as the basis of inter-group alliances. The message is plain: unless

LatCrit theory practices its preaching, unless LatCrit scholars understand and invoke the relationship between scholarship and politics, and unless outsider scholars mutually support allied critiques of subordination, we surely will undercut critical legal scholarship's potential to function as a platform for self-empowerment and social change. Professor Cox's essay therefore challenges LatCrit scholars to resist our potential peril.

[*48] The second essay, by Professor Jerome Culp, advances a similar outlook while emphasizing different aspects of these themes. n158 Professor Culp highlights the concept of "other" to the articulation of outsider scholarship, including LatCrit theory. Anglo-American society and traditional legal scholarship, he points out, have benefited socially dominant forces by constructing "others" and rationalizing their subordination. n159 As the ranks of outsider scholars grow, as we rebel increasingly against this status quo, and as we marshal our skills to critique the rationalization of subordination, we inevitably "define ourselves" in ways that risk the construction of new "others" and new oppressions. But "we will not build a theory for change if we replicate the structures of the other created by society," Professor Culp warns. n160

Rather than view inter-group relations and struggles as a coalition of "us" and new "others," Professor Culp urges that outsider scholars consider common histories under the hegemony of White supremacy to animate our present commonalities and energize our commitment to broad-based anti-subordination praxis in the current social and legal milieu. n161 For Professor Culp, the foundational query is: "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?" n162 Thus, in striving to create new ways of creating power for the traditionally subordinated, Professor Culp urges that LatCrit and other outsider scholars "not accept the racial or identity status quo as a starting point for discussion." n163 Rather, we must "define ourselves as an organizing force for change." n164

[*49] This rejection of the status quo, Professor Culp adds, entails critical resistance of the "scholarship of dismissal" generated in recent years by traditionalist scholars in reaction to the methods and insights of outsider jurisprudence. n165 This sort of backlash scholarship, Professor Culp points out, accused outsider scholars of failing to adhere to traditionalist norms of scholarship -- an accusation that Professor Culp argues we should embrace rather than disdain. n166 Professor Culp is right.

The accusation that outsider work is "non-scholarly" because it expresses care for a connection of theory to practice springs in part from mainstream fear that our forthright acknowledgment of our conscious intention to repudiate business as usual will actually transform the parameters of contemporary legal scholarship. Our objective *is* the production of knowledge with new methods and values to improve the living conditions of oppressed communities and to animate the nation's formal commitment to justice and equality. The powerful counter-norm that underpins outsider jurisprudence is that our work is "scholarship" precisely because it refuses the complacency fostered by a false detachment from social or legal realities. Outsider jurisprudence, including LatCrit theory, therefore assumes a monumental responsibility: turning upside down the conventional belief that "scholarship" is "scholarly" only when it disclaims any stake in or concern for the consequences triggered by the knowledge it creates or disseminates.

The LatCrit agenda must include the unmasking of politics within traditional legal scholarship. Our work, Professor Culp emphasizes, is to persevere in illuminating the fact that *all* scholarship is influenced by subjective experiences, ideological orientations and politicized objectives. The scholarly, in short, is the political. Thus, among LatCrit contributions to the production of knowledge at the turn of this century -- and from our positions within legal culture -- is a frontal challenge to the "White supremacy [*50] that is buried in traditional legal analysis" and that is perpetuated through the norms of traditional legal "analysis." n167 Reinforcing similar urgings throughout this symposium, Professor Culp's essay makes clear that the LatCrit project includes not just the rejection, but also the dismantlement, of traditionalist conventions that code scholarship as either "White" or suspect.

The third essay of this cluster, by Professor Ediberto Roman, brings us full circle by retraining our sights on intra-Latina/o issues of sameness and difference. n168 Cautioning LatCrit theorists to avoid the danger of "undue emphasis on [our] differences," Professor Roman urges LatCrit scholars instead to "search for a common ground" as a means of Latina/o self-empowerment. n169 The former represents a strategy for self-defeat and the latter a path toward self-empowerment, he cautions. Thus framed, the choice for LatCrit theory is not difficult, but it is not simply theoretical, Professor Roman warns. Citing the need broadly to reach diversely disempowered Latina/o communities, Professor Roman stresses the importance of LatCrit commitment to praxis. n170 This essay thereby reminds us that LatCrit theory must be practiced on behalf of Latinas/os (and others) in egalitarian and caring ways if it is to possess cultural relevance, social utility and political force both within and beyond Latina/o communities.

The final essay of this cluster, by Professor Eric Yamamoto, concludes the symposium with a forward-looking focus on the improvement of color/color relations as a means toward outsider self-empowerment. n171 The current situation, Professor Yamamoto notes, is marked by a "tense mix of intergroup distrust and hope," a mix that combines sentiments of affinity with the reality of [*51] disunity. n172 A critical interrogation of this mix can facilitate an expansion of the "justice inquiry beyond white-on-black or even white-on-color paradigms . . . to encompass color-on-color" grievances. n173 Professor Yamamoto's aim, therefore, is to develop a meaningful way of acting upon justice claims among or between non-White racial groups, n174 an aim he denominates "interracial justice." n175 Its attainment is important, Professor Yamamoto insightfully notes, because it constitutes a "predicate to forging intergroup alliances and building coalitions." n176

To contextualize this aim Professor Yamamoto cites several current examples of political conflict between Asian American, Latina/o and African American communities or interests in the ongoing struggle over affirmative action and other policy debates related to race/ethnicity relations. n177 In each instance, Professor Yamamoto captures one or another community of color effectively aligning itself with majoritarian backlash politics to create or exploit opportunities for advancement that undermine the interests or progress of another subordinated racial/ethnic group. In the face of this explosive -- and ultimately self-defeating -- posturing, Professor Yamamoto asks LatCrit theorists to "comprehend the notion of racial group complicity in the subordination of other racial groups . . . [and] . . . of situational racial group redeployment of oppressive socio-legal structures." n178

LatCrit theory is in part a product of the yearning amongst Latina/o and other outsider scholars for better interracial group relations. It is an effort not only to place Latina/o voices, communities and interests on the discursive table, but an exercise in building the "politically potent interracial alliances and coalitions" [*52] that Professor Yamamoto correctly regards as necessary to race/ethnicity liberation. n179 Professor Yamamoto's essay thereby serves as a reminder that interracial justice and collaboration is at the heart of the intellectual and political energy that generated the enterprise now denominated "LatCrit theory," and that this spirit should remain central to its articulation in the years to come. Engagement of these issues might fracture efforts at superficial solidarity, but no substitute exists for constructive engagement of perilous questions. At the same time, this essay reminds us of the gains we might reap through the alliances that such an engagement can help us realize. For LatCrit theorists, this essay could well serve as a manifesto.

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.

[*53] *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 [*54] 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.

[*55] *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. n180 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 [*56] (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 [*57] 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. n181 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; [*58] 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. n182

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 [*59] and aspiration but as imperative. n183 This final LatCrit guidepost -- acknowledging the relationship of LatCrit to Critical Race theory -- therefore emphasizes the substance and roots of the others.

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:

n1 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.

n2 *See id.* at 4-7.

n3 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).

n4 *See* Valdes, *supra* note 1, at 2-6.

n5 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 1. 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.

n6 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).

n7 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).

n8 *See generally* Valdes, *supra* note 1, at 24-30.

n9 *See id.*

n10 *See id.*

n11 Rachel F. Moran, *Neither Black Nor White*, 2 *HARV. LATINO L. REV.* 61 (1997).

n12 *See id.* at 61-62.

n13 *Id.* at 61.

n14 *Id.* at 69-72.

n15 *Id.* at 77-78.

n16 *See id.* at 72-76, 78-85.

n17 *See infra* notes 57-61, 76-81 and accompanying text.

n18 Moran, *supra* note 11, at 86-89.

n19 *See* Valdes, *supra* note 1, at 26-27.

n20 Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 *HARV. LATINO L. REV.* 101 (1997).

n21 *Id.* at 104.

n22 *Id.*

n23 *Id.* at 106-117.

n24 *Id.* at 117-121.

n25 *See id.*

n26 *Id.* at 129.

n27 *Id.* at 105.

n28 *Id.*

n29 *See, e.g., infra* notes 58-61, 92-94, and 131-40 and accompanying text.

n30 Steven W. Bender, *Direct Democracy and Distrust: The Relationship Between Law Rhetoric and the Language Vigilantism Experience*, 2 *HARV. LATINO L. REV.* 145 (1997).

n31 *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).

n32 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*).

n33 See Bender, *supra* note 30, at 163-66.

n34 In this symposium, see Davis, *infra* note 68; Martinez, *infra* note 99; Cho, *infra* note 141; and Culp, *infra* note 159. In each instance, these scholars articulate the interplay of politics, law, theory and scholarship.

n35 Max Castro, *Making "Pan Latino"*, 2 *HARV. LATINO L. REV.* 179 (1997).

n36 *Id.* at 179.

n37 *Id.* at 180.

n38 *Id.*

n39 *Id.*

n40 *Id.* at 141.

n41 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 Hernandez-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.

n42 See Castro, *supra* note 35, at 192, 196.

n43 *Id.* at 195.

n44 *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.*

n45 Berta Esperanza Hernandez-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 *HARV. LATINO L. REV.* 199 (1997).

n46 *Id. at 205*. In fact, Professor Hernandez-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*.

n47 *Id. at 205*.

n48 *Id.*

n49 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 1, at 4 n.10*.

n50 *Id. at 209*. Anglo culture marginalizes Latinos as well as Latinas, Professor Hernandez-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 Hernandez-Truyol asserts. *Id. at 211*.

n51 *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).

n52 Hernandez-Truyol, *supra note 45, at 226*.

n53 *Id. at 226*.

n54 *Id. at 226-29. See also Castro, supra note 35, at 197*.

n55 *See Hernandez-Truyol, supra note 45, at 226-29. See also Valdes, supra note 32*.

n56 Juan Perea, *Five Axioms in Search of Equality*, 2 *HARV. LATINO L. REV.* 231 (1997).

n57 *See id. at 236*.

n58 *Id. at 237*.

n59 *See id. at 240*.

n60 *Id. at 241*.

n61 See Valdes, *supra* note 1, at 25-29.

n62 Keith Aoki, *(Re)presenting Representation*, 2 *HARV. LATINO L. REV.* 247 (1997).

n63 *Id.* at 247.

n64 *Id.* at 249 n.6, 250 (discussing religious systems like Haitian Voodoo, Brazilian Condomble and African-Caribbean Santeria).

n65 *Id.* at 258.

n66 *Id.* at 259-266.

n67 Adrienne Davis, *Identity Notes Part II: Metaphoric Redemption of the Body Politic*, 2 *HARV. LATINO L. REV.* 267 (1997).

n68 *Id.* at 268.

n69 *Id.*

n70 See *id.* at 274. Witness English-Only laws pioneered in Florida, antiimmigrant referenda like California's Proposition 187 or, more recently, the disentanglement 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.*

n71 *Id.*

n72 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.

n73 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).

n74 For further discussion of this point, see Valdes, *supra* note 32.

n75 Ian F. Haney Lopez, *Retaining Race: LatCrit Theory and Mexican American Identity in Hernandez v. Texas*, 2 *HARV. LATINO L. REV.* 279 (1997) [hereinafter Haney Lopez, *Retaining Race*]. See also IAN F. HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996); 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) [hereinafter Haney Lopez, *Social Construction of Race*]; Ian F. Haney Lopez, *Race and Erasure: The Saliency of Race to LatCrit Theory*, 85 *CAL. L. REV.* (forthcoming 1997).

n76 Haney Lopez, *Retaining Race*, *supra* note 75, at 280.

n77 *Id.* at 280-82.

n78 See *id.* at 282-83.

n79 *Id.* at 282.

n80 *Id.* at 294.

n81 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).

n82 *Id.* at 299-303.

n83 *Id.* at 303.

n84 *Id.* at 298.

n85 See *supra* notes 53-55 and accompanying text.

n86 See generally Principe, *supra* note 81. See also Valdes, *supra* note 1, at 12.

n87 Stephanie Wildman, *Reflections on Whiteness and LatCrit Theory*, 2 *HARV. LATINO L. REV.* 307 (1997).

n88 *Id.* at 308.

n89 See *id.* at 314-15.

n90 *See id. at 309.*

n91 *Id. at 311-12.*

n92 *Id. at 311.*

n93 *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 Hernandez-Truyol's call for LatCrit resistance of gendered inequality. *See supra* notes 45-52 and accompanying text.

n94 Wildman, *supra* note 87, at 315.

n95 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.*

n96 *See supra* notes 75-80 and accompanying text.

n97 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.

n98 George A. Martinez, *Mexican-Americans and Whiteness*, 2 *HARV. LATINO L. REV.* 321 (1997).

n99 *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.*

n100 *Id. at 344-45*.

n101 *Id. at 325-29*.

n102 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.

n103 *See id. at 322-23*.

n104 *Id. at 336-37*.

n105 *See Wildman, supra note 87, at 309*.

n106 *Id. at 336-38*. 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.

n107 *See Martinez, supra note 98, at 338-39*.

n108 *Id. at 339*.

n109 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.*

n110 *Id. at 351*.

n111 *Id. at 370.*

n112 *Id. at 351.*

n113 *Id.*

n114 *Id.*

n115 Laura Padilla, *LatCrit Praxis to Heal Fractured Communities*, 2 *HARV. LATINO L. REV.* 375 (1997).

n116 *Id. at 382-87.*

n117 *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.*

n118 *Id. at 388.*

n119 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 Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241 (1991); 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; 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); Hernandez-Truyol, *supra* note 41. 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).

n120 Elvia R Arriola, *Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self*, 2 *HARV. LATINO L. REV.* 397 (1997).

n121 *Id. at 403-12.*

n122 *Id. at 398.*

n123 *Id. at 401.*

n124 *Id.*

n125 *Id. at 402.*

n126 *Id. at 403.*

n127 *Id. at 421.*

n128 *See generally*, HARLON DALTON, RACIAL HEALING: CONFRONTING THE FEAR BETWEEN BLACKS AND WHITES (1995).

n129 For further discussion of this point, see Valdes, *supra* note 1, at 24-30.

n130 Robert S. Chang, *Racial Cross-Dressing*, 2 *HARV. LATINO L. REV.* 423 (1997).

n131 *Id. at 423-24.*

n132 *Id. at 424.* See also Valdes, *supra* note 119, for further discussion of such claims.

n133 *See* Chang, *supra* note 130, 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).

n134 Chang, *supra* note 130, at 425.

n135 *See generally* Anthony E. Cook, *Reflections on Postmodernism*, 26 *NEW ENG. L. REV.* 751 (1992). *See also supra* note 41 and sources cited therein on sameness and difference as one aspect of postmodern critical legal discourse.

n136 *See* Chang, *supra* note 130, at 427.

n137 *Id. at 429.*

n138 *See generally* Valdes, *supra* note 1, at 5-8.

n139 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 130, 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).

n140 Sumi Cho, *Essential Politics*, 2 *HARV. LATINO L. REV.* 433 (1997).

n141 *Id.* at 435.

n142 *Id.* at 435-41.

n143 *Id.* at 442.

n144 *Id.* at 447.

n145 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).

n146 *Id.* at 458

n147 *Id.*

n148 *Id.* at 459-60.

n149 *See id.* at 460.

n150 *Id.* at 461.

n151 *Id.* at 462.

n152 *Id.* at 464.

n153 Barbara J. Cox, *Coalescing Communities, Discourses and Practices: Synergies in the Anti-Subordination Project*, 2 *HARV. LATINO L. REV.* 473 (1997).

n154 *See id.* at 473-75.

n155 *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.

n156 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).

n157 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 153, at 475.

n158 Jerome McCristal Culp, Jr., *Latinos, Blacks, Others, and the New Legal Narrative*, 2 HARV. LATINO L. REV. 479 (1997).

n159 *Id. at 479-80*.

n160 *Id. at 479*.

n161 *Id.*

n162 *Id. at 481*.

n163 *Id. at 480*.

n164 *Id. at 479*.

n165 *Id. at 480*.

n166 *Id.*

n167 *Id. at 481*.

n168 Ediberto Roman, *Common Ground: Perspectives on Latino-Latina Diversity*, 2 HARV. LATINO L. REV. 483 (1997).

n169 *Id. at 484*.

n170 *Id.*

n171 Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 *HARV. LATINO L. REV.* 495 (1997).

n172 *Id.* at 495.

n173 *Id.*

n174 *Id.*

n175 *Id.* at 498.

n176 *Id.* at 495.

n177 *Id.* at 495-98.

n178 *Id.* at 498.

n179 *Id.* at 499. See also Eric Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 *ASIAN PAC. AM. L.J.* 33 (1995).

n180 See *supra* note 119 and sources cited therein.

n181 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); Kimberle 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 Lopez, *Social Construction of Race*, *supra* note 75; 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 106; Harris, *supra* note 139; 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 (Kimberle Crenshaw et al. eds., 1996); CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado ed., 1995).

n182 Valdes, *supra* note 1, at 26-27.

n183 *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).

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SYMPOSIUM
DIFFERENCE, SOLIDARITY AND LAW: BUILDING
LATINA O COMMUNITIES THROUGH LATCRIT THEORY

FOREWORD: MARCH

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BIO:

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SUMMARY:

... Thus in her role as law professor, Chew knows that claims to her ethnic minority identity surround the institutional requests for speeches, committee work, etc. ... As a law professor, I have often found myself in the privileged role of counseling students who become my research assistants or who seek me out when they discover I was a civil rights lawyer. ...

TEXT:

[*2]

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." n1 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." n2 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 n3 that took place on January 8, 1998, in San Francisco, and was led by an activist group of law professors. n4 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." n5 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," n6 "Tejanos," n7 Cubanos, Puerto Ricans, "Newyoricans," n8 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. n9 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. n10 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. n11 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." n12

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. n13 Many of these courageous souls [*8] have centered "race," n14 "gender and sexuality," n15 and "language and ethnicity," n16 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. n17 The even bolder do so while still on the tenure track. As indebted as we are to our Abuelito, n18 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. n19 Critical Race Theory (CRT), with its loose and fragile connections to Critical Legal Studies (CLS),

n20 permanently upset those Pdigns of thought and analysis, including the conventional advice that one should wait until after tenure to expose one's radical views. n21 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, n22 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, n23 and the scholarship invoking theories like intersectionality n24 and Queer n25 or lesbian n26 legal [*10] theory or Pdigns in writing like the personal narrative n27 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 n28 or feminist - like the personal narrative - were now being questioned and attacked. n29 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. n30 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. n31 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, n32 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*. n33 Not, however, without the risk of being misunderstood as an identity category in legal thought and scholarship. n34

B. On to LatCrit II and the Material Experiences of Diversity: Un Movimiento Tumultuoso n35

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 círculo*, or the "talking circle." n36 Of course, it is axiomatic to the consciousness raising experience for an

individual to be forced out of their comfort zone. n37 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. n38 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." n39

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. n40 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. n41 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. n42 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. n43 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. n44 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. n45

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 Castañeda - who has interviewed Tejana farmworkers n46 - 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. n47 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" n48 people engaging in critical scholarship which evokes "right brain" n49 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 n50 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." n51

2. Practicing Diversity for the Sake of Community: It Soon "Becomes a Part of You" n52

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 n53 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,

to 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. n54

[*18] 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. n55 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. n56 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, n57 [*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. n58 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? n59 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? n60 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. n61

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. n62 To speak of the Latina is to know that we are undocumented immigrants, n63 peasants, n64 borderland women, n65 housewives and housemaids, n66 wage-earners in pink-collar ghettos, n67 in garment industries, in the [*21] blue-collar trades, n68 on the streets as sex workers, cops n69 and gang members, n70 middle-class careerists, and professionals; we include heterosexuals n71 and lesbians, n72 the university student who

has never known poverty n73 to one who has always known it. She may be a government worker, n74 a nun, n75 a judge, or a lawyer, n76 the owner of a small business and the highly paid consultant to a corporation. Latinas include assimilated and non-assimilated Mexicanas n77 or Puerto Rique<tild n>as n78 or Dominicanas, n79 or Cubanas; n80 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. n81 While we are different, n82 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 n83 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. n84 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 compa<tild n>eras - 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; n85 [*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 n86 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. n87 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 ghettos and "illegal aliens." n88 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, n89 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. n90 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 disPte treatment which elude the law because of unconscious patterns of sexist racism. n91 These are the same attitudes that render us "unequal and unfit" in the eyes of our colleagues in the elite profession of the law. n92 We therefore owe it to ourselves at least, to confront the construction of the identity Berta Hernandez-Truyol so aptly described as las olvidadas. n93

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 Pmeters 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 disPte 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?" n94

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. n95 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.

[*26]

III. At The Scholar's Kitchen Table: Feeding Our Hungry Hearts For Intellectual Growth And Community

Twenty six pieces were produced for this LatCrit II Symposium issue - although many more people attended the conference, which was held in San Antonio, Texas with the support of St. Mary's Law School. Their themes have been clustered around the issues which have dominated the discourse of LatCrit from the beginning, such as the social construction of race and gender, and the significance of our subjective experiences and positions within the academy to LatCrit theory in the first and second clusters. The third cluster of essays advances a volatile conversation that was initiated on the themes of religion and spirituality on Day 3 of LatCrit II - a conversation which, in my opinion, is critically linked to a conversation we have not sufficiently explored yet - on class and unconscious elitism. I have titled this section "At the Scholars' Kitchen Table," in remembrance of the cozy atmosphere the local members of the Planning Committee managed to create for Day 1 of LatCrit II, which carried the theme of "Latinas and the Law: Who are We?" For a few hours, a wooden table, some Mexican paper mache flowers, Indian artifacts and family photos set upon a colorfully blanketed table transformed a large hotel conference room into a reminder for our female panelists of the important role la cocina (the kitchen) played in our homes, for it is the place where our families, and especially our women, gathered for cooking, meals, comfort, guidance and charla or chisme (chatting or gossip).

A. Cluster I - Race, Ethnicity and Gender as Anti-subordination Identities: LatCrit Perspectives

The discussions at LatCrit I focusing on the relationship between CRT and LatCrit were initially fraught with feelings of tension and liberation for the Latina/o law professors. One point of liberation resulted from the public realization that CRT had evolved into a discourse which too narrowly focused on the African-American experience, an uncomfortable truth n96 that rationalized the existence of a gap in scholarly production and engagement capable of addressing the

commonalities and differences in the experiences of discrimination by Latina/os vis-a-vis those of African-Americans and other racial and ethnic identities. As a result, some Latina/os had begun to feel disenchanting with the possibilities for having that need met in the established CRT discourse. Of course, many scholars, including Latina/o scholars, benefited from the mere fact of CRT's existence as a catalyst for their own engagement in broadened critical analyses of race, gender and sexuality, not only for the engagement in the interplay of modernism and postmodernism, but also for the personally transformative experiences gained from engaging in critical theorizing. n97 The aim of LatCrit I was not to bunk the organic process that had centralized the African-American experience of racism in legal discourse and decentered everyone else's. But, the truth revealed did open up the possibilities for a prolific and expansive critical discourse among Latina/o scholars about our potential roles for redefining the focus of our theories of discrimination, with an eye on the multiplicity of experience and identities capable of being described as "Latina/o." Because LatCrit scholars themselves would be diverse in their identities and interests (e.g., feminist, gay, lesbian, African, Asian, and Native American, etc.) and already committed to the values of the CRT insights, many have seen LatCrit as an outgrowth, overlap, and maybe even a reinvigoration of CRT. n98 LatCrit owes its energy for the felt desire and privilege to engage in critical legal scholarship to those forerunners in that discourse known today as CRT, one of whom, Richard Delgado, is a Latino himself, while another, Derrick Bell, contributed essential writings n99 to the Black/White Paradigm. Thus from a purely historical perspective, it is quite obvious that there is a close relationship between what emerged as CRT, and the explosion of a body of scholarship produced by a generation of new scholars whose own diverse ethnic, racial, sexual and gendered identities has forced upon CRT the need to expand.

The essays in Cluster One then, are further examples of the continuing expansions of a discourse aimed at discovering the "Latina/o critical legal experience," with its commonalities and differences from the established critical race discourse, and a focus on [*28] speaking to the broader political goals of recognizing the marginalized existence of multiple oppressed identities in American law and culture. It is more with optimistic hope for an enhanced Critical Race Theory than with aspersion that LatCrit theorists are interrogating, for example, the relationship to the Black/White Paradigm and CRT's limited critiques of inaccurate constructions of race that have affected regional racial politics and created obvious barriers to coalition building between U.S. Blacks, Latinos and Asians.

In this vein, Professor George Martinez, in his essay, African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition, n100 examines how the relationship between Blacks and Latina/os is implicated by a construction of race which has classified Mexican-Americans as whites, n101 in situations where such a classification significantly affects the distribution of public resources, like education. n102 Citing to the example of Dallas, Texas, Professor Martinez identifies the impact of the construction of race that has been played out in Southwestern U.S. politics as a public resentment and barrier to coalition: that Blacks fight for civil rights; Mexican-Americans ride their coat tails and share in the benefits. n103 Yet the historical evidence defies the notion that Mexican-Americans have ever truly benefited from manipulative constructions of their identity by the dominant WASP n104 culture. If anything, it is abundantly clear, argues Martinez, that Mexican-Americans have been identified as the "other," as non-white, and that they share an equally enduring historic battle for racial equality and civil rights - fighting the impact of beliefs that have cast them as genetically inferior in the eyes of dominant Anglo whites. n105 Martinez urges CRT scholars to reconsider the racialization of Latina/os so that they can get closer to the ugly truths of minority existence in America - that we are more alike than different when it comes to the historic examples of racist oppression that urge us to join forces in the struggle for social justice. But we cannot get there, says Martinez, if we don't create "epistemic coalitions," bases of knowledge about ourselves that will help us learn the truth about any other racialized group.

[*29] Of course, external constructions of race have their greatest impact when they are widely communicated, and to the critical race scholar, that is what can make them so dangerous to the narrative of so-called "racial progress" in America. Robert Chang's essay Who's Afraid of Tiger Woods, n106 reminds us of the powerful modes of discourse that can be facilitated by the wealthy enterprises of sports and the media when they glorify the exceptional minority athletes as anti-race heroes and heroines (e.g., Jackie Robinson as role model non-victim, non-recipient of affirmative action). Chang asks us to consider further, however, what message we get about race when we celebrate the ambiguous racial identity and accomplishments of an individual like Tiger Woods whose hard work and talent are held up as the criterion for breaking the color barrier. Chang is most troubled by the politics of identity over Tiger Woods' very body by multiple communities who seek to claim him as either Black, Thai, Chinese, or the deracialized "American." So, Chang asks, is this just an extension of the construction of Asian Americans as model minorities and non-Black/Marielitos Cubans n107 as white? Or is the fascination with Tiger Woods the question lurking within his problematized ambiguous racial identity, a question equally critical to LatCrit discourse - how to confront the external/internal construction of race, and how to confront the possibility of being challenged with why Latina/os are concerned with race to begin with? That, Chang says, may be the most threatening aspect of LatCrit theory - the fact

that it may ineluctably force the point that race is nothing but the product of social construction, because in fact Latina/os can be and are of any race. He concludes that the fear of that question is immense to a society that doesn't want to think about the implications of living in a multiracial world to begin with. n108

Kevin Johnson's essay *Immigration and Latino Identity* n109 Pillels Chang's concern over the impact of external constructions of racial identity as he urges Latina/o scholars to engage the complexity [*30] of how our identity is constructed because of patterns of in-and-out migration, intergenerational status, national origin, class, education and so on. The law treats the immigrant and the Mexican-American citizen differently, and the constant flow of immigrants attests to the tremendous diversity of Latina/o identity and their interests. Yet, whether immigrant or not, we are all treated as having a racialized identity. Thus, if we ignore the way in which the immigration status issue is manipulated in public discourse, such as pitting Blacks against Mexican immigrants competing for jobs, we also don't realize that status competition between citizen and immigrant - which is supported by the law n110 - becomes the source of self-constructions of our identity that aid in Latina/os being constructed as "the enemy within." The pressure to assimilate and to see our own racialized brothers and sisters as the enemy is facilitated by the absence of a discourse that deconstructs the historical context of the status of Mexican-Americans in the United States. Johnson illustrates the impact of self-construction by assimilated Latina/os that see themselves as different from the immigrant in the context of the politics that surrounded California's Proposition 187 - as about 25% of Latino voters, more or less assimilated, supported the enactment of a law intended to bar undocumented persons from receiving any kind of public benefit.

Johnson urges us to examine this and other examples of intragroup hostility surrounding issues of voice, identity, language, education, class, resident status, alliance to the old country, and the assimilation that every immigrant experiences on some level. It is incumbent upon us as Latina/o scholars to take back the discourse of our identity, to deconstruct the relationship between racism and social rank caused by both internal and external views of who we are. The danger of not looking at one of the key factors in our communities' intragroup conflicts - immigration - Johnson argues, is that a different story will be told, one that doesn't serve our interests.

Ana Novoa's essay *American Family Law: HiStory-WhoStory*, n111 is an example of how using gender as a category of analysis in law and history together with a Latina/o critical perspective can enhance one's understanding of the master narrative n112 on a subject of legal [*31] analysis that is classically identified with Latina/os - familia. Writing as a teacher of family law who works in a clinical program at St. Mary's Law School - a program designed to serve the homeless - Professor Novoa deconstructs the myth of the "family" as studied in family law courses as traditionally "nuclear." This perspective, she argues, perpetuates domestic systems designed to serve "the economic empire" of white men. In opposition to this myth, the historical evidence reveals that even the earliest forms of family in America were extended households, and that a multitude of cultural traditions in the U.S. continues to extend kinship family networks both horizontally and vertically. Yet, the accepted notion of the "American" family, when documented, is a family that looked first to male property rights, rather than intimacy, nurturing and sustenance as the social and legal ideal. Novoa argues throughout her essay that values like patriarchy, male individualism, gender-specific labor, consumerism, and the subordination of minority groups have contributed to a family law that is all askew - achieving this by using individualistic and atomized notions, instead of communal and humanitarian ideals to deal with our most intimate and personal relationships.

Novoa's evidence urges the reconstruction of the notion in American family law and policy that we all are in - or want to be in - nuclear domestic arrangements. If anything, we are living in a society that has families of choice and need, n113 whether they are so because of their cultural values - such as is the case with Latina/os - or because they are examples of oppressed groups who rarely benefit from any traditional notion of American "family law."

* * *

Many of us have been emboldened to interrogate our own identities by the personal narratives of two insightful Latina scholars, Margaret Montoya and Leslie Espinoza. Each of these women has written risky, liberating and now classic essays which theorized about identity from the subject position. n114 Risky in that mainstream legal academics criticize the personal voice as self-indulgent and non-scholarly, n115 and liberating in that, as Angela Harris has de [*32] scribed CRT scholarship in general, n116 they are examples of the personal empowerment and transformation that comes from using one's voice to speak to truth. Of course, the use of personal narrative has long and solidly been situated in non-legal arenas. Historians for example, often use oral history when a thorough story of critical events or subjects is inaccessible from the vantage point of the kinds of documents (e.g., letters, diaries) that are or were available only to the literate, middling and upper classes. n117 Feminism inspired scholars of all disciplines to employ the personal narrative, whether one's own or that of others, to explore concepts like "women's agency" n118 and gender

consciousness to illustrate how women have lived, to how they have understood what it means to be oppressed, or to revolt and struggle against external structures of power (e.g., religion, law) which used their sex and gender to subordinate the masses. Thus, narrative, whether one's own or that of others, is highly relevant to the questions of identity that are becoming critical to Latina/o critical legal theory from a gendered perspective.

The internal or self-construction of Latina identity is examined in the essay *Telling Stories, Telling Self: Using Narrative to Uncover Latinas' Voices and Agency in the Legal Profession*, n119 by Maureen Ebben and Norma Guerra Gaier. In this tradition, Ebben and Gaier interviewed three Latinas working within the legal profession - an administrator, a judge and a lawyer - to explore issues of equity and identity that are triggered by the hyperbolic fears of the dominant culture when the media reports official projections that Latina/os are becoming the largest U.S. minority. n120 Their stories gathered tidbits of recollection, self-history and experience, in the interviewees' professional capacities, as law students, and members of their families and communities. The analyses interlock race/ethnicity, gender, class, language, history and culture to produce a narrative that confirms the existence of unique patterns of racist sexism for Latinas in the legal profession and society-at-large. Stories of hating law [*33] school for the pedagogical styles of the Socratic method, and of self-torment in identity or conflict with family roles, illustrate the systemic exclusion of women of color from the legal profession. Yet each eventually found herself in the legal profession, despite the systemic discrimination, out of a desire to advance social change for both personal and communal empowerment. Of course, while each is a tale of discrimination equally familiar to Latina law professors, it is also a story of endurance and strength, a sense of agency from the self-history, and an example of how "voice" n121 is a part of the quest for identity and liberation and an essential ingredient of LatCrit theory - especially from a gendered perspective.

Gender and age are at the heart of a brilliant analysis by Antonia Castañeda on the role that language has played as an instrument of oppression in the lives of Tejanos/Tejanas. Castañeda's essay, *Language and Other Lethal Weapons: Cultural Politics and the Rites of Children as Translators of Culture* n122 brought tears to my eyes. Bold in its confrontation of the myths and lies which have crucially affected the construction of Latina/os in the Southwest as "the enemy within," Castañeda asks us to consider the role that children have been forced to play in the interpretation of "cultural universes" for adults. These universes are comprised of everything from the nations' mythology and ideology (e.g., the Old West, individualism, the frontier) to the first hand experience of oppression as children translate for their immigrant parents who cannot speak English - finding few words in one language to capture the essence of a parent's plea in another, and even fewer to explain to their elders the social prejudices their identity engenders in the Anglo person or institution they dealt with. Caught between two worlds, Castañeda argues, children of immigrants have historically contended with the limits of systems of knowledge, both cultural and political, as they interpret, for example, at the store which has denied the family credit, at the clinic which is misdiagnosing a medical problem, at the school which has stereotyped and expelled a child as a lice-ridden discipline problem, and so on. The experience serves as one possible lens from which to understand self-constructions of identity by Latina/os who either become assimilated "non-Latina/os" or who see translating as a source of empowerment and understanding of [*34] one's relationship to family, community, class and the world at large. Castañeda's analysis is derived from a series of interviews conducted among Tejanas who lived and worked as migrant farmworkers from 1945-1965, a period when Mexican immigrants and Tejanos were being recruited for agricultural labor under the Bracero program n123 and would later be deported by Operation Wetback n124 as "illegal aliens" in 1954 when they were no longer needed. The boldness of this essay is its subversion of the accepted literary tenet that translation studies are about the written text. It is an especially important addition to Latina/o critical legal theory to see the value of understanding the experience of child translators, from a contemporary as well as an historical basis, by hearing the stories of the women she interviewed and their memories of the times when they were the translators of culture.

Leslie Espinoza's written remarks n125 on the Panel that produced this first cluster of essays on the construction of Latina/o identities reminds us that while we may identify as the "oppressed," we are also liberated in our quest to come together as a group voicing different examples of racist oppression. Her essay encourages critical self-awareness of the limits we confront in our task to found a community of scholars, one limit being that the tools we use come in the packaging of what Audre Lourde referred to as "The Master's tools." n126 Those tools are the language we use to describe ourselves and each other, the role of hegemonic power of the master narrator of who we are, the role of our own cooperation in the construction of our identities, the incorporation of the racist language and ideas we use to divide ourselves in our communities. We are asked to be wary of the shifting and changing markers of our identity, the issues that can both join us and divide us, such as immigration; the issues [*35] that elude us in their description and their impact, like race - which for Latina/os, is about color and then not always about color. Ever mindful of the "critical" in LatCrit theory, Espinoza urges us also to remember, that as law professors - the theorists - we live comfortably in the Master's House, and that we must know our ability to see the world as a person who can see, hear and write like the

master, even as we shift personas and wear different masks in our multiple roles as teachers, scholars, lawyers, activists and members of our families and communities. Ever optimistic about our liberatory quest despite the ugliness we must confront when we deconstruct the sources of our oppression, Espinoza ends her essay with the three thoughts that identify her refreshing style as a narrator and writer: that we bring faith into our work to work against oppression, hope to maintain vision, and unabashed love and caring to motivate us in our work for liberation. n127

B. Cluster II - Composing LatCrit Theory: Self-Critical Reflections on "Latina/os"

It is by far one of the most radical agendas of LatCrit theory to contemplate the task of producing a critical legal discourse that hopes to balance the various tensions created by scholars who come to the subject of Latina/os by taking positions that do not necessarily imprison "ourselves within any given position." n128 Frank Valdes spoke of this radical agenda in the foreword to the first symposium initiating a scholarship movement that could take the topics of Latina/o ethnicities, CRT, and post-identity politics in a postmodern legal culture from theory to practice. At the heart of confronting the relationship of LatCrit theory to CRT, he urged, was the need to become self-aware of our own experience with the sameness/difference debate: could Latina/os in the U.S. find enough similarities in their experiences based on language, culture, history or circumstance to generate a sense of pan-ethnicity? n129 Would LatCrit theory be a hostile sister/brother to CRT or more like a close cousin to it? n130 And, how would a move from the modernist identity politics which only focused on race, to a postmodernist concern with consciousness of multiple sites of oppression, identified by scholars who spoke from their own subject position based on race, ethnicity, gender or sexual orientation, become the basis of strength in community rather than weakness from the category lines we have used to divide our [*36] selves? n131 The essays in Cluster Two advance the concept in LatCrit theory of a scholar's contributing to the mapping of Latina/os sameness and differences by writing from the perspective of their unique interpretation of the interlinked networks of oppression.

Guadalupe Luna's essay "Zoo Island": LatCrit Theory, "Don Pepe" and Se<tild n>ora Peralta n132 reminded me of why I urged this woman I met in my first year of teaching at the University of Texas to join us in conversation about Lat/Crit theory and scholarship. As a MALDEF n133 lawyer she had given a luncheon keynote talk to students in the Minority Orientation Program which has now been abolished by UT as a consequence of the Hopwood decision. I remember how she told students that she had become a civil rights lawyer because she had not forgotten the discrimination she and members of her family suffered in Texas. She encouraged them to confront the task ahead of them, in learning the master's confusing language and Pdigms, with courage and commitment to their communities. There is a fiery spirit in the essay not so different from the energy she conveyed then and at LatCrit II, as Luna embraces her Chicana identity as a teacher and scholar who seeks to empower legislators, judges and political actors who want to deconstruct the ideology of the conqueror.

Luna's thesis is that hegemonic law misrepresents the reality and social condition of subordinated groups, like Chicana/os in this country. Her task then, as a scholar and teacher of property and agricultural law, is to identify the areas of the law where history, hegemony and the politics of "race-baiting" in this country - centered on issues like affirmative action - play themselves out. Using two case studies to illustrate the untold stories about the relationship of Chicana/os as a subordinated group to Anglo-American property jurisprudence, Luna illustrates the hypocrisy of an American vision of law which promotes "universal ideals for all" while ignoring the specific and complex impact of racism on Chicana/os. The case studies thus reveal an ignored history of Chicana/o land ownership, colonization efforts, and collusion between the government and land speculators to systematically disenfranchise Chicana/os through "public takings." The cases reveal the hegemonic ideology of the law as judges interpreted the rights of "jumpers" and "settlers" claiming universal rights to "public" land grants against the claims of Mexican landowners - effectively stripping them of their rights, [*37] their land and in time, even of their history, with the help of derogatory racial stereotypes of them and their descendants.

I also felt proud to know the person behind the brilliant mind that produced the talk and essay LatCrit y La Descolonizacion Nuestra: Taking Colon Out. n134 As an activist and scholar whom I met in the context of her work as an educator for the human rights organization American Friends Service Committee, Luz Guerra has consistently asked the hard questions of those who proclaim their commitment to the liberation of all peoples. In her gentle yet critical style, Guerra posed one of the most challenging questions to the attendees of LatCrit II - the issue of our having placed on the LatCrit agenda a discussion on the histories of the indigenous peoples of this hemisphere within a Latino context "without having critically examined the term 'Latino' and its relationship to Native history." n135 That, she argues, is impossible, if the purpose of our critical race histories is to supposedly engender critical race practices that will help alleviate the suffering of indigenous peoples here and in this hemisphere. Are we for example, argues Guerra, to

attribute an unquestioned label "Latina/o," in the context of LatCrit theory, to indigenous human rights activists like Mayan/Guatemalteca activist Rigoberta Menchu - who learned the master's language of Spanish in order to tour the world to decry the genocide of Mayans in Guatemala? What in fact does it mean to call ourselves Latina/os when we must confront a history that reveals the truth of the labels we choose for our identity politics - a five hundred year history of internalized oppressors' ideologies, which told us that these Western hemispheric lands were empty when in fact we were many, that made us American when we are not, that hyphenates us with the words chosen by the colonizer, like "Hispanic" and "Latino." If we truly seek empowerment and connection with all, then we must share the common ground of "des-colonizacion," taking Colon (Christopher Columbus) out of the thought systems of the colonizer we use to empower ourselves. In order to accomplish that we must define the conceptual grid that narrates our history, a distorted history that we have internalized and that sePtes us from others and from all of the parts of ourselves. This means asking, do we have a conceptual grip of Latino/ism, Latino studies, Chicano Studies, etc., that is subservient to the conceptualized grids of imperialism and post or neo-colonialism? When is it useful to use the term Latina/o and when not? What, for example, does it mean for me to "decenter whiteness" as the singular referent from which to study race re [*38] lations so as to center interracial relations n136 when my Mestiza identity is comprised of both white (Spaniard) and Native (indigenous) blood? And, more important, to what good use are we putting our discussions on LatCrit theory? Our task, Guerra argues, is to de-internalize the mythologies handed down to us by our oppressors, to reclaim our histories, to see in each other's faces the other outsiders with whom we share the global "outsider table" - we, she argues, who are the children of colonialism, full-blood, half-breeds, Mestizos and Mayas, speaking Quechua, Creole, English, Spanglish, n137 with straight and kinky hair, blond, brown, past our faces to the history and the mythologized past with names like Uncle Tom, Malinche, La Virgen de Guadalupe, "el macho" and "fulana de tal." n138 She argues that if what we seek to do is dismantle old systems, then some of our identity labels may have to go in the folder labeled "archetypes for future study." We must agree, says Guerra, to work in solidarity with each other, not to reproduce the structures of the old system, to de-colonize the structures we carry individually and collectively, sharing our common and different interests as the basis for a new order.

Enrique Carrasco's essay Who Are We? n139 ponders the relationship between our quest to discover who we are as Latina/os en comunidad and what we do, or can do in our work as employees, activists, teachers, scholars and lawyers. Not unlike the two previous essays, we are challenged, urged to consider the possibilities for examining who and what the Latina/o community is that we are in and [*39] are attempting to describe, preserve, defend? Carrasco problematizes the potential views - the global, top-down, statistically oriented, objective and detached viewpoint, one which may produce simplistic, non-critical information about identity; against the street, office, classroom, courthouse view, maybe that of the Latina activist whose identity is grounded in both activism and scholarship; this perspective requires multiple consciousness to be appreciated but it also offers a more clear view of our collective process when we gather as LatCrit scholars. Since we are not at the top and can't be, our grounded position, says Carrasco, actually offers a more spectacular view of the self-construction of our identities. We do this, Carrasco unabashedly hopes, to continue the struggle for human liberation, the "good fight" that isn't dependent on a modernist or postmodernist label, given that one reason to reject modernism is the freedom we get to define ourselves. n140 But, not without some commitment to constant self-critique of why we want a LatCrit theory to begin with, argues Carrasco, of the standards we come up with to sustain us in the politics of difference and to enhance "workable and just conceptions of the good life for our communities." n141

If we understand Latina/os' own construction of their identity as based on multiracial, multilingual, multiphysical and multisexual and gendered experiences - phenomena which have been the focus of sharp critiques of established Pdigms of discrimination theory and analysis n142 - then how does one begin to tackle and connect these complex identity questions to the broader goals of achieving coalitional alliances for social justice and political action with any and every minority group who in these revolutionary times is feeling attacked by the right and abandoned by the left? Professor Hernandez-Truyol addresses these hard questions in her essay Building Bridges III - Personal Narratives, Incoherent Paradigms and Plural Citizens, n143 as she passionately urges LatCrit scholars to join her in wrestling with the theme of building coalitions and maintaining alliances as an essential practice towards empowerment in the face of a divisive public discourse that aims to disempower the members of racial minorities in this country by appealing to stereo [*40] typed notions of our inherent cultural inferiority. n144 Hernandez-Truyol explicitly promotes an intellectual framework of analysis which is "grounded in all of our worlds not only part of them." n145 The intent of the framework is to pierce the concept of identity into its potential multiple-facetedness based on racial, gender, sexual, ethnic, religious, class, educational, residential and linguistic differences. For after all, as she personally narrates herein and in other essays, n146 to be Latina is to be a multiple worlds-traveler through the fluid borders of our lives and our experiences, where identity traits like our ability to speak Spanish, or not, become the gates to our insider/outsider

experiences. n147 Knowing what it means to be at once insider and outsider is the measure of our fluid multidimensional identities. The "complicated mappings of our differences" says Hernandez-Truyol, are invisible in the "master narrative discourse," with its emphasis on race relations analysis premised only on the Black/White experience, a point increasingly stressed by LatCrit scholars. n148 For Hernandez-Truyol, however, the greatest problem is not necessarily the acceptable yet "incoherent Pdigms" used to define race, ethnicity and national origin. It is our own n149 self-construction of who we are. So she asks the hard question - have we in fact seen ourselves not as who we think we are, but rather as who the dominant Pdigm makes us out to be? n150 Professor Hernandez-Truyol optimistically urges us to engage in the re/construction and re/vision of a text that sees the multiplicity of differences not as limitations, but rather as sources for a critical theorizing about race/ethnicity/color/language at a minimum, which respects the differences and identifies the "fascinating points of convergence" in and among our LatCrit communities. In that analysis we will find common bases of discrimination produced by the master narrative, n151 based on experiences of language oppression, n152 racism, [*41] xenophobia, and racist sexism. It is in identifying the shared concerns and similarities that we find the richness of difference as the foundation upon which to re/formulate who we are and reject/resist the construction imposed on us by a master narrative. In that struggle for a truly inclusive discourse, Professor Hernandez-Truyol sees a path to empowerment and coalitional politics.

Pat K. Chew's essay, *Constructing OurSelves/Our Families: Comments on LatCrit Theory* n153 is both about identity and the coalitional possibilities engendered by the LatCrit movement. Professor Chew offers the multicultural identity perspective of a Chinese-American who grew up on the South side of El Paso, Texas, surrounded by Mexican immigrants and Tejanos. She asks, if LatCrit discourse is about oppression, identity and discrimination, then as teachers or scholars, for example, how do we actually see ourselves? What does it mean to be an activist, an agent of social change, or a victim of discrimination? Chew argues that it is essential to the notion of self-constructed identities that we know we have roles, that we interpret those social roles, and that we are always exercising the choice to play or not to play those roles. She offers for example, the problem of the label "Asian-American" from the perspective of her mother who rejected such a label because she never forgot the protesting of the Japanese invasion of China, or who never saw herself as a "victim" because denying the label, she believed, protected her from the reality of discrimination. Our identities and our roles may carry the meaning we give them, but they also can be the basis for external claims to our identity. Thus in her role as law professor, Chew knows that claims to her ethnic minority identity surround the institutional requests for speeches, committee work, etc. In those moments, she knows and accepts the way her identity is seen and interpreted. But when she shops for groceries and is suddenly taken by another customer as someone who can't speak English, it surprises her to see that others make claims on our racial and ethnic identities when we least see their relevance and that we have little control over how they do that. Chew brings to life the multiculturally identified vantage point with stories of her upbringing in El Paso, in a family that to this day uses English, Spanish and Chinese all at once to communicate, and that celebrates holidays with both Chinese and Mexican foods. Remembering however, that in her youth she didn't really know Mexicans other than customers and workers in her family's store, Professor Chew admits, as do other LatCrit scholars, n154 that exploring our self-constructed identities both liberates us and evokes ambivalent emotions of wonder, joy and [*42] pain, as we see how dominant cultural values have shaped our identities, externally and internally and forced us to see other ethnicities as strangers rather than as allies.

The final essay in this Cluster by Professor Gerald Lopez, *Learning About Latinos*, n155 urges LatCrit scholars to pay close attention to how Latinos and Latinas are being characterized in public discourse given our undeniable growing presence in the American social, economic and political scene. Because we have usually been cast, at best, as "afterthoughts" and "throw-ins" or at worst as "wannabes" and "impostors," Professor Lopez argues that our support for those who push and develop information on the Latino condition must carry with it careful scrutiny of the assumptions, sources, connections, motivations, and methods used to produce information intended to make Latinos matter. The harsh truth is that we are more visible but we are still misunderstood. The diversity of who we are and what we do or what we think, portrayed in fancy studies like the Latino National Political Survey (LNPS), which only focused on Mexicans, Puerto Ricans and Cubans, irritates those of us who recognize the bias inherent in the doing or the reading of political surveys. Certainly we should point to the media's facile misuse of the LNPS data which was used to cast Latinos as anti-immigrant, pro-assimilationist, anti-affirmative action, anti-bilingual education individuals lacking a strong political community and identity. But it's not enough to point the finger of distortion at the LNPS producers or the media coverage, Lopez argues. For we, as LatCrit scholars and among those who also produce knowledge about Latina/os must be wary of becoming trapped by the very stereotypes we aim to question. Lopez advances some chilling self-critical questions for our own research agendas as we march forward in the struggle to make Latino/as matter - that we recognize we too may have exaggerated facts, concealed what we didn't know, ignored a truth we found uncomfortable, or denied some fact that disturbed the image we wanted to portray about Latinas/os.

Our search for "counter-caricatures" Lopez argues, needs our commitment to building on the dimensions of life the LNPS rightly captured, as well as to the messiness of coalitional work. Our careful scrutiny of existing and new research should rest on cohesive theory and articulated motives as we advance knowledge on some of those factors that make Latinos/as matter - political community, citizenship, self-identification, race, assimilation, history and language. Lopez would thank the producers of the LNPS for their ambitious goal in claiming space for the term "Latinos" in American discourse. But he also wants us to join in the efforts to build upon its [*43] data, to connect the good and the bad of it to preexisting research and especially to understand that we should curiously ask more, adding the LNPS to the toolbox of social change for Latino/a empowerment. We need more because LNPS didn't get it all and neither did its readers. We also need more because the question Who Are We? is much more complicated and its nuances escaped the LNPS, at least from the angle of Latina/o political life. We deserve more because when we put the studies down or turn off the news we know that Latinos/as may no longer be seen as inferior beings but they're also still not seen as complete citizens. Lopez acknowledges that our activism for better and more subtle understandings of what the Latino/a is, forces us to confront the balance between the need for detailed studies and for more accessible information. This means learning how to master those moments when knowledge, scholarship and the media intersect, a task that may be daunting yet exciting, one undoubtedly worth taking on because on the American scene Latinas/os are here to stay.

C. Cluster III - Religion and Spirituality in Outsider Theory: Towards a LatCrit Conversation

Gloria Anzaldúa has written a chilling account in a poem titled Holy Relics n156 of the repeated exhumation of the body of Teresa de Avila, a legendary saint from Spain, whose piety and devotion to God have been the source of teachings about moral behavior passed down through generations of devout Catholic families. In my own Mexican Catholic family, for example, one sister wore a gown modeled on the habit of Abbess St. Teresa de Avila for her First Holy Communion - instead of the traditional white lace dress - to enhance the symbolic homage to a young girl's role model of sacrifice, honesty and obedience. In Mexico, or among very traditional Mexican-Americans, the saintly dress-ritual is part of a parent's promesa n157 to publicize a holy intervention in a time of crisis. Historic tales of saints whose dead bodies were cut to pieces to create relics for protection or miracles, or rituals devised to implore a saintly presence in one's body n158 were a significant part of the lore of my cultural upbringing. As a Mexicana/Chicana/Latina, I can say that critical aspects of my personal identity were shaped as much by religious attitudes and education as were my gender, class and educational opportunities. I have grown up both loving and hating the role of [*44] Catholicism in my life. As an out marimacha, n159 I have struggled, literally, in combative talks with my mother, with the Vatican's official position that sePtes the sin from the sinner by condemning at once homosexuality and discrimination against lesbians and gays. But, anything I have ever done or believed in connected to social justice - from union activism, to antiwar protesting, to civil rights lawyering or now to critical race and feminist theory, originated in my earliest training in some of the basic principles of Christianity I acquired in Catholic school or in my home. I have always found it ironic that in my family the most open-minded and accepting members of my lesbian identity, those who have welcomed me and my partner as a couple into their homes, are also very traditional, heterosexual Catholics whose deep faith encourages them to be loving, accepting and non-discriminatory. My feminism, in contrast, is based on a sincere rejection of the Mexican gender roles for women, which are insePble from Catholic sexist views of the ideal woman as a submissive, pious, domestic and subservient wife to her husband.

Of course, my own conflicted relationship with Catholicism doesn't allow me to generalize about the role of Catholicism for all Chicanos and Mexicanos, and even less so for other Latino groups such as Cubans and Puerto Ricans. Even in Mexico, other Christian faiths now exist next to the historically omnipresent Roman Catholic Church, n160 while among the Caribbean Latina/os, Catholicism has co-existed with Santería n161 - evidence of the diversity in the religious and spiritual experiences that are ascribed to Latina/o culture. For one significant segment of the Latina/ community however, Mexicana/os, religion is undeniably important, and as a source of significant cultural values it is essential to LatCrit theory. n162 Yet, while there may be commonalities among certain segments of the Latina/o [*45] population when we speak of the influence of religion in our lives, especially Catholicism, one cannot speak of a homogeneous Latina/o religious experience. That doesn't mean it cannot be examined for the impact it has had, and continues to have, among certain Latina/o ethnic groups for whom Christianity has equally been historical oppression and subjugation, legends, myths and superstition, community, faith, and spirituality, gender role identity and conflict, or succor, support and refuge, and so on. Like any aspect of culture, religion will be a convoluted, subjective, sensitive and even political topic in the examination of Latina/o identity. Its examination can evoke intersectional views based on race, ethnicity, class, gender, education, etc. To outsiders, some of the rituals of religion and spirituality may appear as

the legacies of class oppression, while to insiders they may be sources of pride in one's Latina/o identity and a symbol of resistance to the cultural obliteration that is risked with assimilationism. n163

The essays in Cluster Three open up a discussion that will need to be carried forward in future LatCrit conferences. Verna Sanchez, in *Looking Upward and Inward: Religion and Critical Theory* n164 sets the tone well in asking - why has there been a virtual absence of any focused, critical examination of the role of religion in the "treacherous terrain of American racial politics[?]" n165 What is its importance? We know and indeed accept that religion shapes our identities and our lives but, Sanchez notes, it has not been fully examined for its historical relationship to the issues of interest to critical race theory - such as racism, sexism and homophobia. In effect, not to explore the non-neutrality of the law's impact on those people whose place in American history marks the cultural genocide of Africans, indigenous peoples, women, bisexuals and transgenders, is to leave out an important topic in any critical legal theory. It must be a nuanced critical analysis, Sanchez notes, for religions "have often been used to both help and hurt people of color." n166 It is an important call for a needed discussion on the hard questions about who we are and where we come from if we seek a thorough deconstruction of the sources of our liberation, oppression and identity, whether we find them in liberation theology in Latina/o America, or apartheid's [*46] support by South African churches, or the free religious exercise rights of Santeros, or the Vatican's position on women's reproductive rights and homosexuality.

In fact, LatCrit II provided the opportunity to explore the role of religion in defining the cultural traits one might collapse under "Latinismo" n167 although it wasn't exactly a planned discussion. Between Verna Sanchez' call for the discussion in her essay, and the recalled events of an explosive session on the third day of LatCrit II - provided by Professors Nancy Ota, Emily Hartigan and Rey Valencia in their essays - I suspect religion will be on the agenda of future LatCrit conferences. A searing and unexpected opening discussion subsumed the scheduled talk on the construction of race, gender and class, and birthed a conflict of perspectives on the role religion should play in evolving notions of a critical theory centered on Latina/os, the law and culture. The conflict was generated by reactions to a comment on space and critical theory by Professor Nancy Ota, and multifaceted reactions and views on the special role that Catholicism plays in the culture of Southwest Tejanos. It was exacerbated by a largely misunderstood and undercommunicated role that the meaning of "Catholicism" has played in the development of the conference's host institution, St. Mary's Law School, which has broadly interpreted the meaning of "the Catholic mission" to advance progressive legal education, and as a result, had suffered virulent attacks from right wing opponents of such programs in 1997.

The strong feelings generated on the third day of LatCrit II are distant now. Their memory can barely evoke the passion that left some attendees wondering whether the LatCrit community could in fact discuss the politics of religion at a law school in a Catholic university and still remain in community. For me, with distance, I have concluded two things about the critical talk of that day: (1) that I'm grateful for the unexpected discourse generated by the honestly expressed discomfort with the religious icons that filled the room where the morning's panel met at St. Mary's Center for Legal and Social Justice (The Center); and (2) that I hope the LatCrit community will more carefully examine the potential sources for misunderstanding the role of Catholicism and politicized religious icons like La Virgen de Guadalupe n168 in the shaping of - and pride in - one's identity as a Chicana/o or Tejana/o, whether in Texas or other parts of the Southwestern U.S.

[*47] It was ironic to learn later from a St. Mary's faculty member that Brother Cletus' artistic icons had pushed some emotional buttons given that his art is an expression of the faith and the political, an extension of his service in the AIDS community, as an AIDS victim himself, among those who suffer discrimination because they may be poor, gay and Latino. The progressive St. Mary's faculty had appropriated Brother Cletus' art imagery, focused on the feminine values of love and nurturing, as symbolic of the Center's commitment to social justice in a community which punishes the poor, sick and Latina/o people of color. Of course, only in retrospect some conferees understood the strong political connections between various "religious" personnel in the San Antonio community, the St. Mary's faculty, and its Center, which houses five legal clinics to teach students the practice of law for social justice. The opposition, however, to an alleged uncritical alliance with symbols of Catholicism, n169 symbols that only feed internalized homophobia for some Latina/o sexual minorities, did open up an important discussion about religious practices and beliefs as sources of cultural identity.

With the excited discourse of that morning as a backdrop, Reynaldo Valencia's essay *On Being an "Out" Catholic: Contextualizing the Role of Religion at LatCrit II*, n170 emerges as a critical examination of the role of Catholicism in the shaping of working-class Tejano identity. Reacting partially to the challenge put by Professor Nancy Ota in her essay that a critical conference had "uncritically [invoked] religion through blessings and prayer and images," n171 Valencia at once agrees that the experience of religious culture among Latina/os is not homogeneous and that

Catholicism may not even be much of an identity issue for other Hispanic subgroups. However, Valencia argues that for a vast majority of working-class Mexican Americans living in the Southwestern part of the U.S., Catholicism is an intensely significant force in the shaping of identity and community, "largely because it has been accepted, rejected or otherwise confronted and dealt with by these individuals." n172 This is a moving essay which explores many facets of the working-class experience of Mexicans in Texas. Noting the extreme rarity of success among Latino men like himself who barely make it out of high school or young adulthood because of segregated education and violence, Valencia offers an important insight into the life experience of a people for whom religious culture has produced essential aspects of what it means to define oneself as a working-class Mexican-American, whose identity is tied to notions of family and com [*48] munity that are insePble from cultural/religious notions of identity, role and responsibility. Weaving throughout his essay various stories that illustrate the importance of religion in the development of Mexican-American men who both fail and succeed in this racist society, we come to appreciate Valencia's analogy to the feminist slogan that the personal of religion is essential to the secular political for the working-class Latinos of Southwestern Texas. This is an essay that excises out of the term "culture" one of the most important aspects of grasping the various attitudes, beliefs, practices, behaviors and values that are acquired, passed on and preserved in an ethnic group and one's identity - that of religious culture and moral ideology. n173 This essay encourages us to see that religious culture among Latina/os or any other racial or ethnic group bids myriad avenues of interpretation and perception.

Of course, we cannot tease out the elements of the role religion has played in the politics of identity among certain Latina/os, such as Chicana/os of the Southwest, without a relentless attention to the various factors that intersect with religion, that for some individuals make it a source of deep pain, like Latina/o lesbians and gays, and for others, a source of comfort and cultural pride. n174 Professor Ota uses her essay *Falling From Grace: A Meditation on LatCrit II* n175 to embellish on the importance of intersecting any discussion of "religion" as "culture" for Latina/os with factors like gender, race, class, and sexual orientation. Ota thus urges us to consider that [*49] critical scholars who intend to reconstruct jurisprudence must come to terms with historical domination and subordination so as not to duplicate hierarchical power relationships. Here is the rub of this agenda - knowing that our agenda of deconstruction must come to terms with the internal and external structures of oppression, that to be critical for legal theory may cause feelings of discomfort and guilt. But Ota asks, if we don't do this how can we challenge structures of subordination? In this vein, Ota uses the historical perspective on Catholicism, Latina/o religious heterogeneity and the diversity of religious tradition among Asian-Americans to find differences and similarities in religion as a source of identity, community and potential "wedging" between communities. Ota's essay offers a lens into the sources of oppression and/or tolerance for homosexuality among different racial and ethnic groups that rest on unique interpretations of the heterosexist mandate. While some may have explicit prohibitions against the practice (e.g., Christianity), others' religious traditions are neutral (e.g., Buddhism), yet both Asian-American and Latino communities largely manifest a cultural sexual repression and commitment to heterosexism that encourages homophobia, denial, silence, gender-phobia and lesbian invisibility.

In the final essay in this Cluster, *Disturbing the Peace*, n176 Professor Emily Hartigan reconstructs the events that produced the volatile discussion centering on religion and sexuality on the third day of LatCrit II with an eye towards deconstructing the complexity of the intersections that surfaced between spirituality and politics as people reacted to Professor Nancy Ota's challenge - had the conference organizers demonstrated an uncritical alliance by having the day's panels scheduled in a room filled with Catholic symbols? Writing from the stance of a St. Mary's faculty member who was defensively pained by the multiple levels of misunderstanding, of false and clear consciousness resonating in speakers' remarks, Hartigan explores her view of the question that underwrote the morning's emotional conversation - "What is the relation between an excess of signifiers, to use the LatCrit vocabulary, and a Catholic university"? n177 Hartigan notes the themes that kept surfacing in people's comments - memories of religion, Latino cultural values, struggles for sexual identity, acceptance and nonacceptance by family members, the meaningfulness of the icon of La Virgen de Guadalupe in the Southwest among Mexicanos and in labor struggles, contrasted against the absence of that meaningfulness of the Madonna among Cubans or Puerto Ricans, the Pdoxes of loving and hating the Christian values passed down through family and [*50] culture, and the curious mix of spirit and law being woven in and out of a discussion that for some ripped open our hearts and minds to our personal intersections based on gender, sexuality, class and race. In the discussion Hartigan sees the gift of consciousness, the place where we grow through our emotional discomfort. She also fills in the gap of information that might have tempered the remark of uncritical alliance with "offensive" religious imagery, explaining the subtleties surrounding the rise to power of a charismatic female dean who invited progressive, social justice law professors, some Catholic and others not, to provide the intellectual foundation for supporting a very radical meaning of "the Catholic mission." In the end Hartigan's essay exposes the Pdoxical role of the Catholic Church in identity politics and social justice activism. For even if we understand how St. Mary's clinics

bring justice for those fleeing the power of the INS, or death threats in Central America, or simply a battering spouse, we are still left with the stories of individual pain rooted in the powerful influence of the Church. And even as we understand that people like Hartigan, who once left the Church and then returned to it, would rather criticize it than focus on its authority, we also cannot deny the historical and continuing influence of the Catholic Church and some of its leaders in shaping people's lives, sometimes for the good and sometimes not. Hartigan invites us to explore those Pdoxes with her hope and concern for the multiple hurts of that morning, painful truths which, together with this essay, tell us that an inquiry into the "reality of Catholicism" is an inherently biased question premised on one's personal experience of joy or suffering with the undeniably powerful role that religion plays in shaping our personal identities.

In closing this discussion I will offer one more awareness this discussion triggered for me about the relationship between religion, race and class which is about sensitivity to the multiple internalized forms of oppression we are capable of. In a different article I wrote that progressive scholars can become the unwitting perpetrators of the very forms of discrimination they so loudly cry against. n178 I wondered whether the facile judgment of St. Mary's Law School's use of Catholicism to undergird radical and progressive work at the legal clinics, didn't rest on a kind of unconscious elitism - an inability to see the needs of the poor out of a subconscious fear and disdain of the poor. I couldn't help but think that the conferees' inability to hear what the St. Mary's faculty was saying about the role of the social justice clinics in the San Antonio community was the product of a subtle class issue that awaits some deeper thought and [*51] analysis. n179 In the context of the clinics, to address the needs of the poor, at least in San Antonio, means accepting the clients that walk through the doors for all they are, people who differ from us in terms of class, ability, education, and the kind of sophistication that it takes to think about things like the historical oppression by the Church. To embrace fully the meaning of the Center, is to understand that the most important people coming through its doors are not lofty scholars, judges and legal thinkers, but instead are among the poorest of the San Antonio community - refugees of violence, poverty, racism, sexism and homophobia. For people like them, Churches and their ministers are very often the only bridges to freedom and safety from political terrorism, hunger, illness and war, and yes, the same people who are associated with institutionalized doctrines that are subject to wide-ranging interpretation relevant to critical social and legal discourse, e.g., reproductive rights, sexism, homophobia, etc. n180 Whether we call it "religion," or "spirituality" or "the moral" or "the ethical," we enter a terrain that is fraught with multiple interpretations because of the diversity of our internally and externally constructed identities.

Although, in retrospect, some conferees may have wondered how it was the conversation steered so far from the planned agenda of talking about the race/class differences and commonalities between Latina/os and Asian-Americans, there is a bit of the determi [*52] nist in me who believes the religion discussion needed to happen. It broadened the scope of analysis for examining race and class within the context of a specific cultural identity. I believe the religious discussion, however it was triggered, and even the pain that was shared by at least one gay Latino colleague, was a gift to our evolving efforts to create a diverse community of scholars forging ideas for healing and empowerment. The fact that there will be unexpected issues for discussion, an "organic" and uncontrollable process so to speak, is about the only predictable factor about the LatCrit conferences so far. In that volatility, as many will probably recall, there was openness, excitement, honesty, healing and critique, room for analysis, and personal growth. There were many experiences that some individuals will see as the hope for preserving Latina/o critical legal theory as a scholarship movement and community. The conflicted discourse at LatCrit II could be seen for critical race scholars as "the blessing in disguise."

This brings me to a final commentary on where we are going as a community. It seems that so far we have not figured out entirely how to accommodate at least two distinct paths LatCrit can take. It begins with the obvious reality that we are a collective of both tenured and untenured, clinical, activists and non-activist professors and scholars. Arguably, the conflict centered on religion and its practical/physical manifestations at the Center for Legal and Social Justice can be seen as a catalyst for further inquiry about the need for a more cohesive philosophy that explains whether or not we intend to accommodate all paths, and that critically examines what that means. For example, are we to be a gathering of only legal scholars? That was not the case at LatCrit I. Are we to be consciously interdisciplinary at every panel? Are we to integrate on every panel scholars and activists? How are we going to define activism? Is it sensible to segment scholarship and activism? I, for one, have been defining both my teaching and my scholarship as intellectual activism because the contemporary issues of the day, which are using race-baiting tactics to destabilize the few gains of the civil rights and feminist movements urge me to do so. n181 What then is the purpose of our scholarship? Whom will it serve? How broad do we want our audiences to be? Are we to be generators of just more scholarship that is unconnected to our surrounding communities? Is our purpose just to make inroads in the overall discipline of the law as writers and not to produce writings and teachings for those in the streets, in pro bono practice, in clinics or in legal aid? I imagine that some of us see the possibilities for both kinds of philosophies to [*53] be embraced by LatCrit as a

whole, but that future conferences will produce more exacting organizational theory and practice for accommodating the interplay of the "reconstructive" n182 part of our intellectual agendas. In this spirit of reconstruction the final section of this Foreword offers one LatCrit scholar's perspective on the possibilities for expanding the reach of critical theory into the classroom as an example of the material side of intellectual activism.

IV. Foreword March In Revolutionary Times

On the day after the Fifth Circuit held in *Hopwood v. State of Texas* n183 that the plaintiff's constitutional rights under the Fourteenth Amendment equal protection clause had been violated by the law school's use of a dual-tracked affirmative action program to admit law students, I found myself awkwardly discussing the implications of the decision in a civil rights course. One of the difficulties I experienced standing before the class talking about the role that affirmative action programs had played in fulfilling the promise of equality in *Brown*, n184 centered on the court's reasoning that everything from "blood type" to alumni status to musical and/or athletic talents were more relevant to serving as legitimate admissions criteria than one's race or gender. n185 The reasoning of the opinion angered me not only for the distorted interpretation of the role that race and gender consciousness had played in alleviating this nation's blatant, historic patterns of discriminatory intent and impact. n186 I was disturbed by the unarticulated political message to anyone who had ever supported or benefited from an affirmative action program. n187 But the greatest difficulty I had that day, was confronting my limitations in emotional detachment from a look of pain and deep sadness I saw on the faces of several minority students who sat in [*54] my class that day. For days after the ruling, tension permeated the halls of the U.T. Law School, as students gathered in small racially identifiable groups expressing their feelings about the decision, some with joy and others with hurt and seething anger.

As a law professor, I have often found myself in the privileged role of counseling students who become my research assistants or who seek me out when they discover I was a civil rights lawyer. I say it is a privilege because I believe that sharing on a one-to-one basis broadens not only the education of the person being mentored, but also that of the mentor. In the weeks following *Hopwood*, I remember having more students than usual stopping by for support and direction. Some felt targeted by the politics of the decision, others felt Anglo white students' fear and hostility towards them, and others just sought hope in a future career and profession they felt betrayed by.

One of the greatest gifts to my professional development has been the energy derived from my recent involvement in two professional activities - one as a member of the Society of American Law Teachers (SALT), the organization responsible for the recent march by law professors in San Francisco opposing the re-segregation of our public universities, n188 and the other my involvement in Latina/o Critical Legal Theory. These professional engagements have encouraged me not to give up hope in the face of a politics that has managed to manipulate this nation's history of race relations and concepts like "colorblindness" in an effort to preserve white male privilege and supremacy. Thus, I have redirected my anger into the energy and activism it takes to forge community with like-minded-colleagues across the nation who are as upset as I am with *Hopwood* and/or Proposition 209 in California. n189 My professional activism has also encouraged me to begin theorizing about the importance of a reenvisioned legal pedagogy - one which addresses the relationship between law, power and knowledge and that sees the law as both an instrument of oppression and a tool for social justice.

A few judges and scholars have noted that contemporary law professors need to recognize that a gap between "the world out there" and the classroom has been widened in recent decades. Students are graduating from law school without a real sense of what they are supposed to do with their acquired education. n190 Law professors, including critical legal theorists of all persuasions, have not sufficiently theorized about pedagogical intent at any of our institutions [*55]. The legal academy has in fact forged an arbitrary division between "clinical" and "traditional" education, a separation that I think is grounded on elitist principles. Thus, the "worst" schools only provide practical experience and don't ground a student in enough theory. The "best" or "better" schools only do, or mostly do theory and thus produce students who supposedly know more about how to "truly think about the law." The supposed "best" schools have abandoned the responsibility for assuring that a student knows anything about the practice of the law in its multi-faceted potentialities, from nuts and bolts practice to ethical considerations. Instead, professors casually remark that students needn't worry, they'll "pick it up with experience." Yet, the bureaucratization of law practice in the form of large professional corporations n191 and the intimate relationship between the greatest investment scandals of the century and irresponsible lawyering n192 should have sent the signal to law schools some time ago. We cannot shirk the responsibility to produce a pedagogy that tightens the relationship between theory and ethical practice, and that, at a minimum, serves the interests of those who enter our schools with specific social justice goals in mind. Very few schools seem committed to a teaching agenda that demands that a student be grounded in concepts of both theory and

ethical practice. n193 Fewer examples of legal education exist that have seriously confronted the problem of the gap between theory and practice by at least beginning to reenvision the possibilities for "clinicalizing" the traditional classroom. n194

LatCrit scholars and teachers, who are social justice minded law professors, have an opportunity to use the contemporary struggles over the politics of affirmative action, diversity and racism to begin to reimagine the boundaries between their scholarship and their teaching, and how they engage with their students who come to them [*56] for professional guidance and inspiration. As both traditional and clinical professors, LatCrit scholars have much to offer in response to the growing institutional pressure to create a linkage between the pedagogy of the clinic and that of the classroom. n195 It is not coincidental that with the rise of the politics of retrenchment on every policy or program that has made it possible for there to be a critical mass of Latina/os in the legal academy, that I have felt a greater need to more than dabble with nontraditional teaching techniques designed to break down the boundaries between theory and practice. Students are coming to law school asking for more and better training on how to become social justice lawyers because they are witnessing a changing world becoming hostile to the dreams of people like Martin Luther King. The day I witnessed the dying of hope in the souls of a few students who interpreted Hopwood not from the vantage point of "colorblindness," n196 but from that of personal experiences of discrimination, I understood that my role as a teacher was getting harder and that I needed to think of ways of addressing that sense of my professional responsibility.

A. Theorizing about The Politics of Pedagogy: Transgressing the Boundaries Between The Clinic and the Classroom

In the fall of 1997, as I opened up a new semester in teaching a civil rights litigation course I again felt the need to do something in my teaching that would harness the feelings generated by my students confronting the political and social realities for public education in Texas generated by the Hopwood case. I felt it ironic that I was starting out a course which would focus on the historic school desegregation cases, including Brown, while right outside my office students both inside and outside of the law building were organizing [*57] a 5,000 person march for diversity on the UT campus. The march had been triggered by widespread negative reaction to the controversial words of a colleague, Lino Graglia, who was accused of using cultural racist theories to support Hopwood and his opposition to affirmative action. n197 In my own classroom, I understood quickly from the class discussions on the day of the march that I had more than a handful of students who were hungry for training in the skills that would help them become lawyers dedicated to using the law as an instrument of social justice. In the midst of this heated political environment, I realized that I had a golden opportunity to use the energy of the pro-diversity movement to advance a pedagogical experiment aimed at tightening the relationship between theory and practice in a setting, the non-clinical and traditional classroom, which usually prevents closer contact between professor and graduate student. I was also motivated by my worry that a new daunting textbook would overwhelm my students in a late afternoon class and that I might experience after the exciting discussion in the days of the campus activism, the classroom experience of "catatonia." n198

I urge LatCrit scholars to begin to re-think how they have been teaching their courses as an extension of how and why they engage in non-mainstream scholarship. If in fact, our scholarship is about forging community and advancing progressive insights into the role of law in society, then we owe it to our students to demonstrate those possibilities for them while they are still in law school. We may not reach every student but we will at least reach more than we usually do if we consider the possibilities for a restructured pedagogy. A restructured pedagogy should engage our activist thinking about critical legal theory on issues like identity politics and discrimination into new and simple teaching methods capable of transferring the excitement we feel in our work to our students. As scholars, we all know the positive experience generated for us when we write to advance legal theory that addresses issues of oppression. As teachers, I believe we can generate for ourselves and for our students similar experiences with the use of experiential learning models that take teachers and students to a place somewhere in between the clinic and catatonia.

The project I describe below is an example of the pedagogical experiment I introduced in my civil rights course in the Fall of 1997. [*58] I wanted my students to come away from a term fraught publicly with tension, hope, anxiety, frustration and anger, feeling that both their emotional intelligence and their intellectual abilities had been stretched despite the pressures created by the campus politics. My hope was to create a learning task that would help them deconstruct the legal, social, historical and economic realities underlying the political debate about race and affirmative action in public education. The "Austin Schools Project" n199 taught more than a dozen of my students, without the benefits of the typical clinic, that there is value in learning when theory and practice come together. They learned that their own future theorizing must be informed by careful attention to good practice. But, practice took on a different meaning as they also learned how to gather evidence, how to negotiate relationships with hostile yet valuable sources of

information, how to gather anecdotal evidence, how to organize an investigation so that they focused on the most important issues, how to anticipate funding problems for litigation, and so on. The meaning of "civil rights and public interest litigation" changed with every step towards the preparation of their investigative/advocacy reports. The tasks had a spillover effect in the classroom. Thereafter, class discussions were more lively, intelligent and sophisticated. The students also generated valuable original data that could serve as resources for the Austin public education community.

B. A LatCrit Scholar's Transformative Teaching Experiment : The Austin Schools Project.

The Austin Schools Project had two material end goals - for the students to receive alternative credit for their course work in a three-credit civil rights litigation course and for them to do so by working as members of a team producing an investigative report that would answer the question, "Is Austin in Compliance with Brown?" Students in my class were intensely aware that the principles and social policy issues in cases we were reading in this course, especially those on the famous school desegregation cases starting in the 1930s and through the 1970s, bore significant relevance to the surrounding political events on the campus at the University of Texas. A march of 5,000 students opposing the publicized controversial views of a member of the law faculty and in favor of diversity in education had re-opened an exciting discourse among students and faculty, a discourse which was at times emotionally tense, confrontational, challenging, educational, and frustrating. On the day of my second class for example, we had a major student sit-in in the lobby of the law school which followed the march against the re-segregation of the University of Texas system. In that environment it was difficult to ignore the need for as open and honest a discussion as could be had on the relevance of principles like "equality and the 14th Amendment," to the surrounding political environment. At stake, was the potential for a more thoroughly analyzed discussion on the meaning of equality and its relationship to an unexamined theory of "merit." Most public rhetoric narrowly focused on standardized testing, "colorblindness," the presumed inferiority of racial and ethnic minorities, or the falsified image of Asians as model minorities, and so on. I designed the Austin Schools Project to help students connect the activism on campus to an examination of the history of segregation in Texas, in its public schools, and to the contemporary political discourse, as well as to legislative and judicial developments in the 5th Circuit, and the nation.

1. The Method: Team Projects

Experiential models of teaching are premised on the theory that all human beings have different learning styles and that a comprehensive theory of education attempts to incorporate elements of pedagogical technique which honors that reality. While some students, usually a small minority in the typical law classroom do quite well with the confrontational and elusive Socratic method, many students, usually in the majority, need much more to engage their minds in thinking about and applying the legal principles we gain from reading or hearing them discussed. In my own experience, every time I use problems and partner or group discussion in class, we have more extended and diverse exploration of issues in a case, and the energy flows along multiple planes of analysis incorporating storytelling, debate, criticism and lecture. I agree with Professor Randall, that the burden is heaviest on the professor in the typical classroom which only relies on the Socratic method, and that the aliveness of a classroom from open discussion generated when students work together on a problem, or when they role play, is beyond comparison for its value.

Having had the benefits of experience in school desegregation litigation in my early years as a civil rights lawyer, I advised my students that if they chose the alternative assignment they had to work with at least one partner. They were to be in role-play as a fictional law firm or public interest advocacy group for six weeks as they conducted their investigative work and wrote their report. Each fictional law firm represented the same fictional client, a Mexican-American/Anglo family who had just moved to the City of Austin and was looking at the quality of the public schools before buying a home. The fictional family had learned that the quaint racially mixed neighborhood they had an interest in did not have the best schools. I guided their research assignment with an explicit set of criteria for how to produce a pre-trial investigative report that would help them decide (a) whether there was any evidence to support the belief that the Austin Independent School District (AISD) was illegally segregated and potentially ripe for a mandamus action to re-open any existing desegregation decree, and/or (b) whether, even if there were insufficient evidence to support the filing of any legal claim, there was evidence to support the need for further investigation into the quality of education provided by the AISD to racial minority students based on the suspicion that the school system was still racially segregated. My guidelines for their research encouraged the production of detailed facts they could think of generating only if they carefully read and re-read the facts of some of the leading school desegregation cases, as well as any local efforts which had been made in Austin either to desegregate, integrate and/or declare as "unitary" the public school system. The investigative report was to have a historical context component; a social, political and

economic analysis; a statistical data and budget analysis; a section on relevant legal analysis; and a recommendation for remedies. The latter recommendations would be based on their data and what they learned in class about the difference between a discriminatory treatment versus impact models when trying to prove a violation of the Equal Protection Clause. n205 They could recommend action in the form of a draft motion for summary judgment or mandamus to re-open or they could produce an advocacy report directed at public officials in the education field in Texas urging them to re-examine their current management and control of educational resources based on their findings. Because the announcement for signing up for the project had followed three weeks of discussion of school desegregation and Title VI litigation as well as the events surrounding post-Hopwood activism on campus, I felt the project would be sufficiently enticing and the credit incentive attractive enough to generate student interest. I was right. Out of seventeen students who were in my class, fourteen signed up and eleven eventually produced four reports.

2. The Instructor's Hopes for Accomplishing the Task and the Learning Experience

I knew when I designed the Austin Schools Project that I was taking a risk. My hope was that students would gain some experience in defining the concept of "remedies" in both traditional and non-traditional ways. I also hoped that by emphasizing the importance of developing the historical context in public interest litigation that they would run into enough interesting data that would get them curious about the contemporary realities in public education in one of Texas' supposedly most "progressive" cities. Students were therefore encouraged to look at old newspapers, writings on Austin's experience as a Southern city with busing and integration, to any litigation that had developed in the city, to actually going to the school districts and looking at their records of meetings, and most importantly to learning to read through the volumes of statistics that document the flow of state and federal monies to create, staff and support every imaginable aspect of education and school programs. Because they had a limited time span of six weeks, and I knew my students would discover too much information and too little time to analyze it all, I served as a managing consultant who encouraged them to narrow the focus of their inquiry and analysis. I encouraged [*62] them to be selective in the data that could credibly take a public stance on the question, "Is Austin in Compliance with Brown?," at least from the vantage point of its audience being public policymakers in non-litigation fora.

No one in the class, including myself, had any sense if Austin AISD was in fact considered "integrated" by law and whether or not there was enough evidence to support a prima facie claim of discriminatory impact on any aspect of the quality of public education. We all had a hunch, based on the location of the University of Texas, that Austin is at least residentially segregated and that a number of the schools around certain parts of town would qualify as racially identifiable, that is, as having a population at least 15% above their demographic representation in the city's population. n206 But, because AISD also publicizes the existence of magnet school programs, and many students, both racial minority and not, had experienced these in Texas and elsewhere as failures in bringing about just racial integration, the teams focused on examining more closely how these programs helped the AISD fulfill its legal duty to comply with the first desegregation orders which had been entered in the seventies. All four student teams quickly determined that they were in no position for legal action. They faced a formidable discriminatory intent standard n207 in the Fifth Circuit, which had followed a [*63] declaration of the AISD's status as a "unitary system" in 1983. That standard required heavy proof that the defendant's actions were intentionally designed not to meet educational necessity but instead to further purposeful discrimination. n208 However, because students knew that the pre-litigation investigative report is often a tool for educational and lobbying purposes, they were encouraged to gather evidence of discriminatory impact at least to support the charges made in an advocacy report they might present to the School Board. They understood the difficulty of gathering evidence of intent to discriminate, but they were also encouraged to narrow the inquiry on the illegality of specific programs in the face of the intent standard which presumes the legitimacy of the AISD's policies as a product of educational necessity. By being encouraged to narrow their inquiry to the actual functioning of a program in light of its presumed educational necessity, all teams eventually concluded that some of the policies and practices of the AISD were racially discriminatory in their impact. Others could be proved as being not educationally necessary and therefore potentially presumptive evidence of an intent to engage in purposeful discrimination. n209

3. The Findings: The Aliveness of Racism in Public Education

All four teams produced similar conclusions about the quality of education in the AISD public schools. The list below is only partial:

[*64]

i) that a majority of the Austin public schools at all levels are racially identifiable schools which give the AISD the overall character of a dual system based on race, with the schools on the Northwest and west side of town regarded as the "white and Asian schools" and the schools on the east side of Austin being the Black and Hispanic schools; n210

ii) that a brief experimentation with busing in the 1970s, integrated just a few schools; as soon as the system was declared "unitary" in 1983, the new policies on attendance zones, openings and closings, construction of new schools, and so on, have followed and continue to follow historical patterns of intentional residential segregation policy set in the 1920s by the Austin City Planning Office; n211

iii) that there has been substantial movement of African-Americans throughout the city but that the school attendance zones continue to be drawn and re-drawn to facilitate past and existing patterns of residential segregation; meanwhile the permanence of attitudes by local government officials perpetuate historic patterns of intentional race segregation reflected in projections by the City Planning Office of Austin's racial demographics in the 21st century; n212

iv) that the building of new schools has been only coincidentally accomplished just when a school has become racially integrated so that, for example, a new high school was built in South Austin purportedly to alleviate the growth in two other high schools, but the way the attendance zones were re-drawn the new high school became all white and the older schools suddenly became predominantly Hispanic and Black; n213

v) that the schools with the magnet programs are created to benefit primarily white students in the AISD; n214

vi) that the creation of a middle school program with a magnet school to facilitate greater integration by attracting transfers by white students to predominately minority schools in actuality sustains two schools within [*65] one school building - a white student program (the magnet programs) and the minority program; n215

vii) that the racially identifiable minority schools are spending qualitatively less money per pupil than non-minority schools; n216

viii) that one of the clearest indicators of sePteness by race producing inequality in education per se is in the fact that the higher paid teachers are the teachers with more experience and are assigned most frequently to the whiter elementary schools; n217

ix) that there is a discriminatory assignment of teachers such that most minority teachers will end up at minority schools, depriving white students of the opportunity to ever see a Black or Hispanic teacher role model; n218

x) that although neighborhood attendance zones could easily be drawn to facilitate integration the transfer policies and optional attendance zones created in recent years actually facilitate racial segregation; n219 and

xi) that overall there is a significant disparity in test scores between minority and white students in the school district but that this disparity is clearly dependent on the demographics of the school. Whether white or Black or Hispanic, the student in a school that has become a minority school as a result of school attendance zones created by the AISD will not do as well as a student, white or Black or Hispanic, at a school which is racially identified as a white school. Therefore, the disparity in the tests is indicative of the disparity between the schools and that disparity bears some relation to the District's consistent policy of placing the least experienced and worst paid teachers at minority schools. n220

* * *

I know that the energy it took for me to produce last fall's pedagogical experiment grew out of the energy that I have gained from my engagement in Latina/o critical legal theory. The production of a report that is also useful to the public n221 empowered the [*66] students in their developing skills as researchers, analysts and advocates. Their work in turn will empower with valuable data those who know that untold stories of injustice and prejudice underlie the divisive rhetoric n222 opposing affirmative action in America. They also understood that a simple concept like "remedies" is more than the tail end of a lawsuit; it is a concept fraught with social, economic, historical, political and legal meaning.

For the LatCrit scholar and teacher, activities like the one I supervised with my students do take some extra time to design and implement. However, the contemporary social and political reality demand that we develop more creative teaching methods aimed at confronting the external structures of power that have dominated the legal academy and that

threaten, indeed promise if unchallenged, the resegregation of all public education. When my students saw that AISD's schools produced "inferior" students as judged by their scores on standardized tests, not because of the inherent inferiority of their race or ethnicity, but because of consistent unequal distribution of resources to racially identifiable schools, they learned that public policy does not escape the impact of unconscious racism. n223 But, they were given hope in the struggle by doing their small part to deconstruct the impact of racist ideologies towards the goal of true racial healing for this nation.

C. Conclusion: Resistance, Community and Hope in Activist Scholarship and Teaching

As a LatCrit scholar, I am encouraged to go beyond the platitudes of "equality" set forth in a jurisprudence that wants to deny the reality of our racial, sexual, ethnic, gendered diversity as citizens of this nation. I am encouraged to take risks and to do so with the hope that in resistance I empower myself as I empower others to join in the march forward for social justice and liberty for all. When my LatCrit colleagues and I recently marched in San Fran [*67] cisco, we were demanding attention to a growing problem generated by the impact of legislative and judicial decisions that will deprive worthy students of the education they deserve. We have been coming together in conferences to know each other, share our ideas and produce the writings and sense of community that can carry us through these revolutionary times of retrenchment and backlash against our civil rights. We could come together in our diverse identities because we understood that our forms of discrimination may differ from each other, but in coalition with others to fight racism we march for ourselves. I urge LatCrit scholars to continue producing the theories that feed our practice, whether as lawyers, scholars or teachers. I urge us also to engage in more of the practices, new, old and yet to be tried, in our clinics and classrooms, which will sustain our theories, keeping us strong in hope, resistance and community.

FOOTNOTES:

n1. See Part II, B *infra* for discussion on events at LatCrit II and the Latinas talking circle.

n2. 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).

n3. 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).

n4. 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).

n5. 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.

n6. 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).

n7. 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.

n8. 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*.

n9. 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.

n10. See Guerra, *supra* note 5.

n11. Elvia R. Arriola, *Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self*, 2 *Harv. Latino L. Rev.* 397 (1997).

n12. *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).

n13. 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).

n14. 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, Trenzadas y Gre<tild n>as: 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).

n15. 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).

n16. 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).

n17. 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 Pdigms 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.

n18. 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.

n19. Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 *U. Pa. L. Rev.* 561 (1984).

n20. 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).

n21. See Delgado, *supra* note 19, at 561.

n22. See Delgado, *supra* note 14.

n23. See Olivas, *supra*, note 18, at 131.

n24. 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").

n25. See Valdes, *supra* note 15; Arriola, *Faeries*, *supra* note 12.

n26. 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).

n27. See *supra* note 17.

n28. See, e.g., *supra* note 2, and sources cited therein.

n29. 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).

n30. 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).

n31. 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.

n32. See Chang, *supra* note 14.

n33. Spanish for "community and family."

n34. See Guerra, *supra* note 5 (discussed *infra* Part III B).

n35. Spanish for "a tumultuous or turbulent movement."

n36. See Paula Gunn Allen, *The Sacred Hoop: Recovering the Feminine in American Indian Traditions* 1 (1992).

n37. 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).

n38. 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).

n39. Gunn Allen, *supra* note 36.

n40. See, e.g., Foreigners in Their Own Land, *supra* note 6, at 262-263.

n41. 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).

n42. See Guerra, *supra* note 5 (discussed *infra* at Part III B.).

n43. 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).

n44. See Charles R. Lawrence, III, The Id, The Ego and Equal Protectionism: Reckoning with Unconscious Racism, 39 *Stan. L. Rev.* 317 (1987).

n45. 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 sePtion 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.

n46. See Antonia Castañeda, 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).

n47. 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.

n48. 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).

n49. *Id.*

n50. 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 ComPtive 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).

n51. *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.

n52. *Id.* at 85.

n53. 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.

n54. *Deming Reader*, *supra* note 51 at 167.

n55. See generally Riane Eisler, *The Chalice and the Blade: Our History, Our Future* (1987).

n56. See *supra* notes 36-37 and accompanying text.

n57. See, e.g., Trina Grillo, *AntiEssentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 *Berkeley Women's L.J.* 16 (1995).

n58. See Hernandez-Truyol, *supra* note 15, at 397-99.

n59. 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).

n60. 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).

n61. 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).

n62. See, e.g., *The Sexuality of Latinas* (Norma Alarcon et al. eds., 1993).

n63. 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).

n64. See *The Sexuality of Latinas*, *supra* note 62.

n65. 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).

n66. 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); Vicki 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).

n67. 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).

n68. 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).

n69. 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).

n70. Id.

n71. 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).

n72. See *Chicana Lesbians: The Girls Our Mothers Warned Us About* (Carla Trujillo ed., 1991); *Cuentos: Stories by Latinas* (Alma Gomez et al. eds., 1983).

n73. 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.).

n74. See, e.g., *Yriguez 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).

n75. See, e.g., Ada Maria Isasi-Diaz & Yolanda Tarango, *Hispanic Women, Prophetic Voice in the Church* (1988).

n76. 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).

n77. 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).

n78. See Esmeralda Santiago, *Cuando Era Puertorriqueña* (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).

n79. 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).

n80. See Cristina Garcia, *Dreaming in Cuban* (1992) (providing a fictional lens into the identity of Cuban-American women).

n81. 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.

n82. 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.

n83. 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-Americans. For a radical deconstruction and reconstruction of the concept "mestiza" see Gloria Anzaldúa, *Borderlands/La Frontera: The New Mestiza* 76-101 (1987).

n84. See Jeanette Rodriguez, *Our Lady of Guadalupe: Faith and Empowerment Among Mexican-American Women* 70-73 (1994).

n85. 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).

n86. The Center for Mexican-American Studies at the University of Texas.

n87. 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).

n88. 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).

n89. 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).

n90. See Ruiz, *A Promise Fulfilled*, *supra*, note 66.

n91. 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).

n92. See Arriola, *supra* note 11.

n93. 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).

n94. 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).

n95. 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).

n96. More than one attendee at LatCrit I who was not Latina/o expressed both the need for Latina/os to develop a "Latina/o centered" discourse, and at the same time expressed a kind of defensiveness as Latina/o scholars openly critiqued the direction CRT discourse had taken.

n97. These are at least two of the benefits and opportunities Angela P. Harris identified as perspectives on the status of Critical Race Theory in her essay, Foreword: The Jurisprudence of Reconstruction, *82 Cal. L. Rev.* 741, 744 (1994). A third benefit and/or opportunity Harris identified from the engagement in critical race theory is the rise of a politics of difference capable of producing a reconstructed jurisprudence, one aimed at the alleviation of human suffering. *Id.* at 744.

n98. This was especially the felt mood of the attendees of the national Critical Race Theory Conference held on November 12-14, 1997 at Yale Law School. A majority of those who planned this conference were involved in or very supportive of the LatCrit movement and its spillover energy that helped produce a highly successful conference that was open to everyone regardless of identity or interest. This was a significant contrast to the early years of CRT when the workshops had been small and attendees came by invitation only. See Francisco Valdes, Under Construction: LatCrit Consciousness, Community and Theory, *85 Cal. L. Rev.* 1087 (1998).

n99. See, e.g., Derrick Bell, *And We Are Not Saved* (1987); Derrick Bell, *Faces at the Bottom of the Well* (1996); Derrick Bell, *Race, Racism and American Law* (3d ed. 1992).

n100. *19 Chicano-Latino L. Rev.* 213 (1998).

n101. See Ian Haney-Lopez, *White by Law* (1996).

n102. See Part IV *infra* for evidence of the manipulation of the Black/White Pdigm and the classification of Mexican-Americans as whites during efforts to prevent the full desegregation of the Austin public schools.

n103. See Martinez, *supra* note 100, at 215.

n104. White, Anglo-Saxon, Protestant (WASP).

n105. A particularly vivid and often ignored example of this oppression is the lynching of Mexicans in Texas which was critical to the obliteration of Mexican privilege, presence and power. See Anzaldua, *supra* note 83, at 8-9; see also, David Montejano, *Anglos and Mexicans in the Making of Texas, 1836-1986* (1987).

n106. *19 Chicano-Latino L. Rev.* 223 (1998).

n107. In recent waves of Cuban migration the "marielitos," a label derived from the "Mariel boatlift," possess the popular image of poor, uneducated, mostly Black or mixed Cubans who were also members of the criminal and mentally ill classes. See Sandrino-Glasser, *supra* note 5, at 85-90. Earlier waves of migration constituted members of the upper class who were fleeing Cuba after Fidel Castro's takeover in 1959. For accounts of the history of exile see Maria Cristina Garcia, *Havana USA: Cuban Exiles and Cuban Americans in South Florida, 1959-1994* (1996). For an excellent analysis of Cubans as a socio-historical and political identity and their relationship to the LatCrit project, see Max J. Castro, *Making Pan Latino: Latino Pan-Ethnicity and the Controversial Case of the Cubans*, 2 *Harv. Latino L. Rev.* 179 (1997).

n108. See, e.g., *Adarand Constructors v. Peña*, 515 U. S. 200, 239 (1995) (Justice Scalia, J., concurring) (asserting the new infamous notion that in the U.S. the only race is the American race).

n109. *19 Chicano-Latino L. Rev.* 197 (1998).

n110. See, e.g., *Espinoza v. Farah Manufacturing Co.*, 414 U.S. 86 (1973) (dismissing Title VII claim by a lawful permanent resident from Mexico who was married to a U.S. citizen).

n111. *19 Chicano-Latino L. Rev.* 265 (1998).

n112. In critical scholarship, the phrase "master narrative" has been appropriated from Audre Lourde's famous essay, *The Master's Tools Will Never Dismantle the Master's House*, in *This Bridge Called My Back* (Cherrie Moraga & Gloria Anzaldua eds., 1983), which addresses the problems of internalized oppression by pointing to the failure of a woman's rights conference to appreciate the need for race consciousness in any effort to speak on behalf of "all women." See also, 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).

n113. See Elvia R. Arriola, Law and the Family of Choice and Need, *35 U. Louisville J. Fam. L.* 691 (1997).

n114. See, e.g., Montoya, *supra* note 14; *Espinoza*, *supra* note 87.

n115. See, e.g., Farber & Sherry, *supra* note 29.

n116. See Harris, *supra* note 97.

n117. See, e.g., Ruiz articles, *supra* note 66; Marilyn Davis, *Mexican Voices/American Dreams: An Oral History of Mexican Immigration to the United States* (1990).

n118. In historical scholarship the notion of "women's agency" has been critical to the argument that gender is a meaningful and useful category of historical analysis, in which women are revealed in roles that transcend the view of them as passive objects, to a view of them as agents of their own location in particular events, times and places. Such a Pdigm produces a feminist history which is more complete and nuanced, one in which women will appear as not just victims or heroines, but rather as individuals with the capacity for a full range of human character, from good to mediocre, to bad to evil, to brilliant, average and even stupid. See Joan Wallach Scott, *Gender and the Politics of History* 15-27 (1988).

n119. *19 Chicano-Latino L. Rev.* 243 (1998).

n120. See Jim Coronado, The Hispanic Bar, *55 Tex. B.J.* 1136-37 (1992) (cited in Ebben and Gaier, *supra* note 119, at 243 n.2).

n121. The concept of "voice" simply means the incorporation of personal narratives as part of the analysis, whether one's own personal stories and experiences or that of others. It differs from more traditional views of scholarship which suggest that a researcher and writer should be detached, formalistic and unbiased in the presentation of data, opinions, conclusions, etc. It has been at the heart of critical race, feminist, and now LatCrit scholarship to freely incorporate voice, or stories, to help illustrate a point or to inject one example of the voice of experience. As noted, among legal scholars the concept of voice remains controversial. See *supra* notes 17 and 29.

n122. *19 Chicano-Latino L. Rev.* 229 (1998).

n123. The term *braceros* derives from the word *brazos* which means "arms" in Spanish. Recruitment of Mexican labor south of the border is a part of the hidden history that underlies the contemporary anti-immigrant fervor. Since early in the twentieth century the U.S. instituted immigrant quota laws and the U.S. Border Patrol with explicit exemptions for Mexicans. As a form of cheap labor, Mexicans were periodically recruited to work primarily the agricultural fields which were producing the food to feed U.S. citizens. In times of economic decline, like the Depression era, the Immigration and Naturalization Service (INS) would actively deport these same workers. In the World War II era, the cycle began again and an active "Bracero Program" brought in over 4 million Mexicans to work American farms and ranches. The *bracero* program officially ended in 1964 although the tradition of coming across the border for better wages and living conditions remained. See *Davis*, *supra* note 117.

n124. "Operation Wetback," named after the derogatory label for Mexicans who cross the U.S.-Mexico border by swimming across the Texas Rio Grande, was a 1954 military operation aimed at getting rid of illegal Mexicans in the U.S. and securing the southern border against the Mexican "invasion." Id. at 24.

n125. Leslie Espinoza, *A Vision Toward Liberation*, 19 *Chicano-Latino L. Rev.* 193 (1998).

n126. See Lourde, *supra* note 112.

n127. *Espinoza*, *supra* note 125 at 196.

n128. 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, 28 (1996).

n129. Id.

n130. Id.

n131. Id.

n132. 19 *Chicano-Latino L. Rev.* 339 (1998).

n133. The Mexican-American Legal Defense and Education Fund (MALDEF) has litigated for social justice on behalf of Mexican-Americans and other U.S. Latinos for over two decades.

n134. 19 *Chicano-Latino L. Rev.* 351 (1998).

n135. *Id.* at 351-52.

n136. See Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 *UCLA Asian Pac. Am. L.J.* 33 (1995).

n137. It is an example of the internalizing of the dominant Anglo oppressor's values for assimilated Latina/os and non-Latina/os alike in the U.S. to negatively view the speaking of "Spanglish," the use of English interjected with Spanish, and vice-versa, and/or the reconstruction of English words with Spanish inflections, endings, conjunctions and verb references. (e.g., "to mop the floor" is translated as mapear el piso in Spanish). Both politics and economics as minorities in a dominant culture explain why so many Latina/os are ashamed of speaking broken English, Spanglish, or Espa<tild n>ol mocho (broken). Growing Latina/o presence in certain regions of the U.S. help change those attitudes from shame to awareness of the "imperfect" diction in either language as a sign of accommodation to the dominant cultural needs while also trying to preserve one's cultural identity. In Texas, for example, San Antonio Tejano music stations freely broadcast in Spanglish and play both

Mexican folk, country and English rock and pop to an audience that represents the heavily Mexican-American demographics of Central and South Texas. Similarly, a popular TV comedy, called *Que Pasa USA?*, which broadcasts weekly from Miami, realistically depicts everyday family life among Cubans of different generations using Spanglish and/or accented English. LatCrit scholars are forcefully exposing the language terrorism and vigilantism accomplished by the various forms of an English-only movement. 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).

n138. "Fulana de tal" is the Spanish equivalent of a married Jane Doe, as de tal is used to identify a woman who is married (and belongs to) a certain tal.

n139. Enrique R. Carrasco, *Who Are We?* 19 *Chicano-Latino L. Rev.* 331 (1998).

n140. *Id.* at 335 n.14 (citing Richard Rorty, *Contingency, Irony and Solidarity* 3-69 (1989)).

n141. *Id.* at 336.

n142. E.g., Arriola, *Gendered Inequality*, supra note 12 (holistic/irrelevancy); Crenshaw, supra note 24 (intersectionality); Harris, supra note 14 (multiple consciousness); Hernandez-Truyol, supra note 15 (multidimensionality); Mari S. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 *Women's Rts. L. Rep.* 7 (1989). My partner has humorously applied these models of analysis to her own experience of discrimination as an older, female, non-skinny lesbian trying to get a job as a lawyer as the experience of being "multi-fucked."

n143. 19 *Chicano-Latino L. Rev.* 303 (1998).

n144. See supra note 13 for a discussion of controversial views uttered by Professor Lino Graglia, my colleague at the University of Texas.

n145. Hernandez-Truyol, supra note 143, at 311.

n146. See, e.g., Berta Hernandez-Truyol, *Borders (En)gendered: Normativities, Latinas, and a LatCrit Paradigm*, 72 *N.Y.U. L. Rev.* 882 (1997).

n147. See supra note 137.

n148. See Rachel F. Moran, *Neither Black Nor White*, 2 *Harv. Latino L. Rev.* 61 (1997); Juan F. Perea, *Five Axioms in Search of Equality*, 2 *Harv. Latino L. Rev.* 231 (1997).

n149. See, e.g., *St. Francis College v. Al-Khazraji*, 483 U.S. 1011 (1984) and its expansive interpretation of race discrimination to cover national origin but based on an odd use of 19th century social history which used race to categorize people on everything from skin color, to language, religion, national origin and ethnicity.

n150. See Hernandez-Truyol, *supra* note 143, at 320.

n151. See *supra* note 112 (explaining "master narrative").

n152. E.g., *Yniguez v. Arizonans for Official English*, 69 F. 3d 920 (9th Cir. 1995), vacated as moot 117 S.Ct. 1055 (1997) (invalidating English only amendment to state constitution on grounds of overbreadth under the First Amendment).

n153. 19 *Chicano-Latino L. Rev.* 297 (1998).

n154. See, e.g., Arriola, *supra* note 11.

n155. 19 *Chicano-Latino L. Rev.* 363 (1998).

n156. See Anzaldúa, *supra* note 71, at 90.

n157. A promise to a saint or other sacred identity to fulfill an act, offering, sacrifice, pilgrimage, etc. in exchange for help in a time of crisis (e.g., medical illness, financial distress).

n158. See Valencia, *supra* note 41, at 454-56.

n159. The term *marimacha* is Mexican slang for lesbian.

n160. The omnipresent influence of Catholicism has been brought to my attention in my recent exploration of Mexican family law with Professor Patricia Beggs of the University of Guanajuato, with whom I taught a Comparative Family Law course at St. Mary's Law School. Despite a rigid formal separation between Church and State in Mexican law directly traceable to the 1914 Mexican Revolution, Mexico's family law scholars incorporate significant commentaries on the role of the Catholic Church in the definition of basic institutions (e.g., marriage) and practices regulated by the State.

n161. See Verna Sanchez, *Looking Upward and Inward: Religion and Critical Theory*, 19 *Chicano-Latino L. Rev.* 431 (1998).

n162. Activist poet, writer and scholar Ana Castillo argues that while the Catholic Church isn't the best guide for the future of Mexican and Amerindian women, rejecting its intolerant structures does "not automatically obliterate its entrenchment in our culture." Chicanismo urged people to reclaim their "mexicanidad," to return to one's roots by not only rejecting total assimilation, but also by resurrecting every pre-Conquest and Catholic icon or symbol possible (e.g., Aztec names and calendars, la Virgen de Guadalupe). See Ana Castillo, *Massacre of the Dreamers: Essays on Xicanisma* 94-96 (1994).

n163. For example, in Chicano politics, the image of La Virgen de Guadalupe has played this role of encouraging pride and resistance. Id. See also Valencia, *supra* note 41.

n164. See Sanchez, *supra* note 161.

n165. Id. at 432.

n166. Sanchez notes the critical role of religious-based community organizing in bringing about the civil rights movement. Id. at 434. For an example of the role of the spiritually-based activism of Southern Black Christian women as critical to the civil rights movement, see Jo Ann Gibson Robinson, *The Montgomery Bus Boycott and the Women Who Started It* (1987).

n167. I define Latinismo or Latinism as the study and interest in Latina/o cultural ideas, values, beliefs and practices.

n168. See Rodriguez, *supra* note 84.

n169. See Ota, *supra* note 41.

n170. See Valencia, *supra* note 41.

n171. See Ota, *supra* note 41, at 439.

n172. See Valencia, *supra* note 41, at 453.

n173. A good example is provided in the use of the terms "madrina" and "padrino" which are rooted in the baptismal event and identify the persons who are sponsoring the child into their membership in the Church. Among Mexicans, however, the madrina and the padrino are akin to members of one's extended families; they are persons who would be the logical equivalent of a guardian ad litem in American law if one were to look for the next best person to care for a child that has been abandoned or lost her parents. Id. at 459 n.23.

n174. Even this description is complicated by the fact that there are gays and lesbians who do come to terms with the oppressive moral dictates of their childhood and who re-interpret aspects of the faith into their personal value system, but not without difficulty. Latina lesbians, for example, are unlikely to be very "out" in their sexual preference because of the heavy influence of our Christian heritage in our relationships to our mothers, our family and our community. See Ana Castillo, *La Macha: Toward a Beautiful Whole Self*, in *Chicana Lesbians*, *supra*, note 72, at 24. Some feminists, recognizing both the critical role Christianity plays in the identity of the Latina, whether she attends Church or not, and in Chicana/o politics, advocate a liberation theology which is informed by one's personal reality made up of standard Christian beliefs and the popular religiosity of Native American and African religious practices. It is a theology that transforms La Virgen de Guadalupe from a subservient image into a strong and powerful role model whose identity is traceable to the Goddess Tonantzi, revered by indigenous peoples for her sexual power to create and her strength to destroy - literally from Mother of God, to God herself. See Castillo, *supra* note 162, at 101 (discussing Isasi-Diaz &

Tarango's Hispanic Women, Prophetic Voice in the Church); see also, Goddess of the Americas: Writings on the Virgen de Guadalupe (Ana Castillo ed., 1996).

n175. Ota, supra note 41.

n176. *19 Chicano-Latino L. Rev.* 479 (1998).

n177. *Id.* at 483.

n178. Arriola, supra note 50, at 10.

n179. Another incident on the Planning Committee has been coming back to me as also connected to a range of un verbalized class issues that are essential to a LatCrit theory that can "walk its talk" of diversity. When plans for the Latinas and the Law Conference were subsumed by the plans for LatCrit II, the emphasis shifted to having the first day of LatCrit II devoted to Latinas and Community. In that discussion there was some talk of having Gloria Anzaldua as a keynote speaker, whom we learned would charge a \$ 6,000 speaker's fee to attend our event because she is now permanently disabled and has to depend on these fees for her livelihood. Of course, from the organizing perspective the fee seemed too high, but we never seriously worked on the fundraising idea that might have been explored to get this writer, scholar, poet and producer of classic works (see, e.g., supra note 83), to one of our conferences. We got stuck at the resistance to the cost, and too quickly dismissed her potential role, making comparisons to the fact that our own "stars" in this movement don't charge such high fees. It is as if some part of us, sitting in our comfortable 5 to 6 figure income posts couldn't take a moment to contextualize Anzaldua's \$ 6,000 fee as part of the meager source of income to someone who is poor, disabled, not working and dependent on occasional royalties and speaking engagements to create a decent and comfortable living. It made me wonder how many of us who have middle-class origins or who have survived working-poor and working-class existences unconsciously resist true connection with the plight of the poor, and literally avoid putting ourselves "in their shoes," because to do that might engender feelings we care not to experience. Query further whether our comfortable status in the academy induces us to more easily embrace the "fringe culture" of the white middle-class (e.g., prime-time TV's Ellen's portrayal of lesbian/gay lifestyle), rather than the "strange" ways of our own non-white poor (e.g., Tejano Catholic ritualism)?

n180. Professor Valencia notes that one Biblical passage has been used by the oppressors of any kind of advocacy on behalf of homosexuals and by the defenders of anti-subordination efforts on behalf of gays and lesbians. See Valencia, supra note 41, at 468.

n181. See discussion supra note 13; see also the discussion of Hernandez-Truyol's article Building Bridges III, supra notes 143-52 and accompanying text.

n182. See Harris, supra note 97; see also Elizabeth M. Iglesias, The Inter-Subjectivity of Objective Justice: A Theory and Praxis for Constructing LatCrit Coalitions, 2 *Harv. Latino L. Rev.* 467 (1997); Ediberto Roman, Common Ground: Perspectives on Latino-Latina Diversity, 2 *Harv. Latino L. Rev.* 483, 493 (1997).

n183. *78 F.3d* 932 (5th Cir. 1996).

n184. *Brown v. Board of Education*, 347 U.S.483 (1954) (invalidating legalized race segregation in public schools under U.S. Const. amend. XIV (the 14th Amendment Equal Protection Clause)).

n185. *Hopwood*, 78 F.3d at 946.

n186. See Charles R. Lawrence III & Mari J. Matsuda, *We Won't Go Back: Making the Case for Affirmative Action* (1997).

n187. Judge Smith stated that "to foster such diversity, state universities and law schools and other governmental entities must scrutinize applicants individually, rather than resorting to the dangerous proxy of race." *Hopwood*, 78 F.3d at 947. In the footnote that followed Judge Smith acknowledged, without much embarrassment, the white privilege embedded in non-racial, longstanding preferences like alumni status. *Id.* at n.31. He stated that the court, "recognizes that the use of some factors such as economic or educational background of one's parents may be somewhat correlated to race." *Id.*

n188. See *supra* note 4.

n189. See *Coalition for Economic Equality v. Wilson*, 122 F.3d 718 (9th Cir. 1997) (upholding constitutionality of Prop 209).

n190. Judge Harry T. Edwards, *A New Vision for The Legal Profession* 72 *N.Y.U. L. Rev.* 567 (1997).

n191. See Robert A. Kagan & Robert Eli Rosen, *On the Social Significance of Large Law Firm Practice*, 37 *Stan. L. Rev.* 399 (1985); Teresa Stanton Collett, *Teaching Professional Responsibility in the Future: Continuing the Discussion*, 39 *Wm. & Mary L. Rev.* 439 (1998).

n192. See, e.g., *SEC v. Drexel Burnham Lambert, Inc.*, 861 F.2d 1307 (2nd Cir. 1988); *SEC v. Levine*, 881 F.2d 1165 (2nd 1989); Nancy Lisagor & Frank Lipsius, *A Law Unto Itself: The Untold Story of the Law Firm Sullivan & Cromwell* (1988); William R. McLucas, et al., *SEC Enforcement: A Look at the Current Program and Some Thoughts About the 1990s*, 46 *Bus. Law.* 797 (1991).

n193. St. Mary's University promotes its clinical programs as an example of the "hands-on approach to the work for justice." Other schools with the reputation of being committed to clinical pedagogy are Northeastern University Law School in Boston and The City University of New York Law School at Queens College (CUNY).

n194. See Vincene Verdun & Vernillia R. Randall, *The Hollow Piercing Scream: An Ode for Black Faculty in the Tenure Canal*, 7 *Hastings Women's L.J.* 133 (1996); see also Vernillia R. Randall, *A Reply to Professor Ward*, 26 *Cumb. L. Rev.* 121 (1995-96); Vernillia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 *Cumb. L. Rev.* 63 (1995).

n195. Not coincidentally, progressive law professors gathering under the umbrella of organizations like SALT have been at the forefront of this effort to bridge the gap between theory and practice. The Fall 1997 SALT teaching conference was explicitly designed to introduce "traditional" professors to the benefits of

"clinical" experiments in the classroom. See SALT Teaching Conference A Huge Success, SALT Equalizer, (SALT, Fort Lauderdale, Fla.), Dec.1997, at 4 (on file with author).

n196. The concept of "colorblindness" is derived from Justice Harlan's opinion in *Plessy v. Ferguson*: "our Constitution is color-blind, and neither knows nor tolerates classes among citizens," 163 U.S. 537, 559 (Harlan, J., dissenting). Professor Charles Lawrence has forcefully argued that contemporary legal doctrine and political discourse have transformed Justice Harlan's prescriptive ideal of color-blindness into an assertion that would deny that we continue to live in a racist society. See Charles R. Lawrence III, *The Epidemiology of Color Blindness: Learning to Think and Talk about Race, Again*, 15 *B.C. Third World L.J.* 1 (1995); see also, Berta Hernandez-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 *Harv. Latino L. Rev.* 199 (1997) (observing the hypocrisy of the colorblindness concept in a historical perspective).

n197. See supra notes 4 & 13 and accompanying text (explaining the SALT sponsored C.A.R.E. march against the resegregation of public universities).

n198. These are days when the learning environment is sluggish for a variety of reasons, including too few students having read the material, the complexity of a topic, a pattern of the same students dominating the discussion, boredom and resentment by other students, and so on. Professor Vernellia Randall, architect of many experiential learning techniques, argues that in that environment the work of the traditional professor is much too hard, too tiring and not nearly as effective. See Randall, supra at 194 (solo articles).

n199. See Part IV B, *infra*.

n200. See Neil Gotanda, *Asian American Rights and the "Miss Saigon Syndrome,"* in *Power Privilege and Law: A Civil Rights Reader* 106-110 (Leslie Bender & Daan Braveman eds., 1995) (critiquing the model minority concept); Frank Wu, *Neither Black Nor White: Asian Americans and Affirmative Action*, 15 *B.C. Third World L.J.* 225 (1995).

n201. It is not coincidental that members of the LatCrit community who are clinical professors make the most forceful calls for activist teaching and scholarship. For example, Margaret Montoya openly advocates activist teaching and activist scholarship and asks us to scrutinize our relationship to the dominant discourses and analytical practices in either teaching or scholarship which lull us into thinking that we should only produce conforming models of writing and pedagogy. Laura Padilla reminds us not to get so caught up in the ivory tower that we forget about our communities and about the possibilities for work that not only helps empower our communities but ourselves. These inspiring statements should encourage us all to risk the raised eyebrows we may invite when we design classroom linkages between, for example, outside political discourse (e.g., student anti-racism protests) and in-class theorizing about concepts like "equality," "discrimination," "oppression," "subordination," etc. See Montoya, supra note 9, at 357; Padilla, supra note 53, at 378. A similar forceful call to think more carefully about our classrooms, and what we are including or not, was made at LatCrit I by Stephanie Wildman, supra note 38, at 316.

n202. See Randall, supra, note 194 (solo articles); see also Vernillia R. Randall, *Law Teaching* (visited July 13, 1998) <<http://www.udayton.edu/aep/legaled/>>.

n203. E.g., *Brown*, 347 U.S. 483 (1954); *Keyes v. School District No. 1, Denver, Colorado*, 413 U.S. 189 (1973); *Green v. County of School Board of New Kent County, Virginia*, 391 U.S. 430 (1968); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Pasadena City Board of Education v. Spangler*,

427 U.S. 424 (1976); *Milliken v. Bradley (Milliken I)*, 418 U.S. 717 (1974); *Milliken v. Bradley (Milliken II)*, 433 U.S. 267 (1977).

n204. In school desegregation litigation "unitariness" means that segregation is removed from the public school system and there are no longer any significant tangible signs of inequality and racial inequity. In a unitary system, racial discrimination has been eliminated. Once there is a finding of unitariness, intentional discrimination is the standard for revoking a previous finding of unitariness. See *U. S. v. Texas Education Agency*, 467 F.2d 848, 870 (5th Cir. 1972).

n205. See, e.g., *Washington v. Davis*, 426 U.S. 229 (1976); *Massachusetts v. Feeney*, 442 U.S. 256 (1979); *Guardians Association v. Civil Service Commission of the City of New York*, 463 U.S. 582 (1983).

n206. In supervising my students I relied on the experiences I acquired right after law school as co-counsel in the reopening of *Brown v. Board of Education of Topeka, Kansas (Brown III)*. By the late seventies and early eighties the litigation of *Brown III* was influenced by the sophisticated school desegregation law and practice which had been developed as federal judges began to oversee the dismantling of school systems allegedly operating as racially divided or "dual systems." The facts gathered in these cases were often very complex yet federal judges had developed fairly practical ways of identifying whether or not a school system could be viewed as presumptively illegal unless proven otherwise. Based on the city or town's racial demographics, courts typically determined whether a school's racial demographics fell either 15% above their representation in the city's population data, or 15% below. If for example, blacks in the community were 25% of the population and a school had a 60% black population in the school then one might see it as a racially identifiable minority school. If on the other hand their representation was 5% in a school then the school would probably be presumptively considered a "white" school, absent other data explaining the low representation of blacks. The convention was strictly viewed as a starting point of analysis in determining whether or not school systems were subject to challenges of racial discrimination and potential desegregation orders. Examples of the analysis are found in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). Cases like *Keyes*, illustrated that "duality" could be found even where the division was between whites and a racially mixed population (e.g., Blacks, Latinos and Asians). See *Keyes v. School District No. 1, Denver, Colorado*, 413 U.S. 189 (1973).

n207. The Supreme Court has adhered to a heavy intent standard of proof for establishing a claim of discrimination under the Equal Protection Clause. See, e.g., *Davis*, 426 U.S. 229; *Feeney*, 442 U.S. 256. A compelling finding of discriminatory impact may provide a strong inference of discriminatory intent. See *Metropolitan Housing Authority v. Arlington Heights*, 429 U.S. 252 (1977) (setting forth various criteria which could be combined with evidence of discriminatory exclusion which would prove a violation of the 14th Amendment equal protection clause).

n208. See *Price v. Austin Independent School Dist.*, 945 F.2d 1307, 1320 (5th Cir. 1991).

n209. John Weikart & Stephen Shires, *Elementary Schools in Austin, Texas, An Initial Finding of Facts and History of Integration in A.I.S.D.* (Nov. 18, 1997) [hereinafter Weikart Report] (unpublished manuscript, on file with author). In AISD, the least experienced teachers have been assigned to predominately-minority schools, while most qualified and/or experienced teachers have been assigned to predominately white schools. These assignments were made by AISD under AISD's teacher assignment policies. Id. at 21. Mary Maldonado & Jennifer Cavner, *Is Austin in Compliance with Brown?: A Study of One School District's Desegregation History* (1997) [hereinafter Maldonado Report] (unpublished manuscript, on file with author). In 1986, the AISD Board adopted a new attendance plan following the decree of unitariness in 1983; this plan has resulted in a return of several racially identifiable schools. Id. at Section 6. Yolanda Cornejo, John Donisi, Margo Gara & Cullen McMorrow, *Unlawful Segregation: Has Austin Complied with Brown II's Integration Mandate?* A

Comprehensive Study of Austin Independent School District (Nov. 19 1997) [hereinafter Cornejo Report] (unpublished manuscript, on file with author). The opening of new schools and further attendance zone changes have found Austin's middle schools becoming more and more segregated. Id. at 8. The policies the AISD currently utilized in selecting students for magnet, Advanced Placement, Honors, and Gifted and Talented programs creates a dual education system within schools. Id. at 28. Courtney A. Bowie, Tanya M. Clay and Ernest W. Cromartie, III, Austin Schools Project (Nov. 18, 1997) [hereinafter Bowie Report] (unpublished manuscript, on file with author). Predominantly minority schools are given the same amount of funding and resources even though the original compromise in 1987 required that these schools be given additional resources to offset the detriment of being racially isolated. Id. at 42.

n210. See Maldonado Report, *supra* note 209, at Section 6

n211. Id.

n212. Id.

n213. See Cornejo Report, *supra* note 209, at 8.

n214. See Maldonado Report, *supra* note 209, at Section 6.

n215. Id.

n216. Id.

n217. See Weikart Report, *supra* note 209, at 21.

n218. Id. at 23; Cornejo Report, *supra* note 209, at 17, 19

n219. See Cornejo Report, *supra* note 209 at 14.

n220. See Bowie Report, *supra* note 209 at 41.

n221. The evidence produced was so impressive that I supervised a second team of students who worked with me as independent researchers who expanded upon and drafted a summary report of the past work. This material will be donated to plaintiffs' lawyers in an action challenging the discriminatory impact of Texas' Education Agency's standardized tests as well as to interested members of the public and legislators.

n222. Arguably, this divisive rhetoric is fed by the opinions of judges who refuse to acknowledge the existence of a multiracial society (e.g., Justice Scalia in *Adarand*, 515 U.S. 200, 222 (1995)) and by a jurisprudence of racial discrimination committed to analyzing the law from a perpetrator rather than a victim's perspective. The former see racial discrimination not as conditions that must be remedied but as actions, or series of actions inflicted by the perpetrator on the victim. The victim perspective in contrast sees the problem

will not be solved until the conditions associated with racial discrimination have been eliminated. See David Freeman, Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine, *62 Minn. L. Rev.* 1049, 1052-53 (1978).

n223. See Lawrence, *supra* note 196.

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AFTERWORD: RELIGION, GENDER, SEXUALITY, RACE AND CLASS IN
COALITIONAL THEORY: A CRITICAL AND SELF-CRITICAL ANALYSIS
OF LATCRIT SOCIAL JUSTICE AGENDAS

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BIO:

* 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.

** 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.

SUMMARY:

... This symposium marks and celebrates the Second Annual LatCrit Conference, which took place in San Antonio during the 1997 Cinco de Mayo weekend. ... These essays thereby provide an example of, and a valuable springboard for exploring the Pmeters 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. ... 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. ... 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. ... 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. ...

TEXT:

[*504]

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. n1 The event was energized by the open-endedness and aspirational 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. n2 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. n3

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. n4 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. n5 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. n6 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. n7 The theory about [*508] critical legal theory that underpins LatCrit theory calls for personal facilitation and collective accommodation of such moments. n8

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 heteropatriarchy⁹ are fundamentally incompatible constructs - 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,¹⁰ 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.¹¹ 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 Valencia¹² and Hartigan¹³ 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.

[*512] The essays by Professors Ota n14 and Sanchez, n15 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. n16 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 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. n17 This claim is supported by considerable corroboration in this symposium. n18 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 n19 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. n20 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; 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. n21 The implicit juxtaposition 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. 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. n23

[*515] 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. n24 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. n25

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. n26 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 competitive 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 claimsofsubordination. 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 competitive victimhood - whether real or apparent. n27

[*517] 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. n28 The Roman Catholic Church's international campaign against formal, much less actual, equality for sexual minorities n29 similarly is perceived or described in varied, and mutually opposing, ways. n30 Given such conflicting perspectives, [*518] how should "the bottom" be identified - how should LatCrit theorists engage this apparent dilemma? n31

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. n32 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. n33

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. n34 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. n35 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. n36 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. n37 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 multidimensional 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. n38 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. n39 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. n40 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. n41 Today, the state accommodates religious exercise to a significant degree, n42 and due to the legacies of a complex history, it accommodates Christian practices more so than indigenous or other non-Western religions. n43

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. n44 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.

[*523] 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, n45 their prayers are recited in multiple socio-cultural settings and intoned annually to convene the nation's representatives in Congress, n46 their (untaxed) properties stretch from coast to coast and occupy prime land valued at billions of dollars, n47 their messages and images fill the public's airwaves from dawn to dawn, n48 their sectarian holidays are promoted by businesses as economic events and celebrated by laborers as paid time off, n49 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. n50 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. n51 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 Castañeda jointly remind us, 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. 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 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. 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 millennium 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. 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. Moreover, this homophobic 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. 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. 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. Thus, the domestic histories and 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, 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, n61 which points out that LatCrit theorists in all instances face a two-sided task: first, recognizing oppression and, second, overcoming it. n62 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. n63 This two-step framework is the minimum 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. n64 Efforts to circumvent or truncate either step, whether witting or not, endanger LatCrit theory's capacity for the careful blending of "sophistication and disenchantment" n65 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. n66 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. n67 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. n68 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, n69 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 afiel 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. n70 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. n71 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. n72

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. n73 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 Castañeda 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. n74 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. n75 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. n76 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.

[*533] 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, n77 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. n78 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.

[*534] 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. n79 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. n80 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 Transubstantiationⁿ⁸¹ 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?"ⁿ⁸² 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,ⁿ⁸³ 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 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.ⁿ⁸⁴

In defending its dominant and exclusive interpretative authority, the Roman Catholic magisterium has sought to suppress such questioning. n85 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 rea [*538] son. n86 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." n87 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. n88

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. n89 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." n90 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..." n91 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. n92

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" n93 - 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. n94 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. n95

[*543] 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. n96 Latina/o communities 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. n97 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. n98

[*545] 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. n99 As the Ota essay usefully reminds us, religion's tracks are imprinted across the globe; n100 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. n101 In doing so, LatCrit theorists additionally - and most importantly - will be producing a capacious and aggressive body of sharp anti-subordination scholarship.

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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 heteropatriarchal 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. n102 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. n103 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. n104 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. n105 The Roman Catholic Church, moreover, also includes within its ranks clergy and other personnel that are relatively disinclined to participate in anti-gay politics. n106 In this country and beyond, 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. n107 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, n108 the historical and current official beliefs, as well as the routine practices, of the Roman Catholic Church continue to be stridently homophobic and sexphobic. n109 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. n110 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 n111 and Queer legal theory. n112 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. n113

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 apptuses - 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 n114 - 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, n115 and through the selective validation of anti-sodomy statutes. n116 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, n117 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." n118 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. n119 Rejecting any aspiration to this "limited and unrepresentative" construction of the family, n120 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. n121 She furthermore recognizes the interplay of family and market in the maintenance of gender hierarchy. n122 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. n123 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. n124 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. n125

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? n126 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. n127 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. n128 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. n129 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. n130 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 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. n131

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. n132 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. n133 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. n134

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. n135 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. n136 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." n137 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. n138 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 women's 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. n139

[*560] 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. n140 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 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. n141 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. n142

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 non-European 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.

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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 Pdigm and noting its marginalization of Latinas/os and other non-White/non-Black people of color. n143 The second was recognizing this Pdigm as an apPtus specifically of white supremacy and acknowledging the particularized oppression of Blacks under the Pdigm. n144 The third was considering the historical sources of the Pdigm, which is rooted in the exceptionalism of blackness in the social and legal history of this nation. n145 The fourth was to acknowledge and thematize the trans [*563] national dimensions of Latina/o identities n146 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. n147 The fifth was to confront the erasure of indigenous peoples both by the Pdigm, and by our preceding stages of critique. n148 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. n149 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. n150

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. n151 This account shows that Latina/o subordination encompasses hierarchies blessed both by Anglo and Latina/o cultures, thereby remind [*564] ing 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. n152 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. n153 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. n154 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. n155 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?" n156 These are precisely the questions to which LatCrit theorists must subject all sources of inter-group conflict that enter or affect our work.

[*565] 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. n157 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?" n158

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 n159 interconnectivity n160 and cosynthesis n161 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? n162

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. n163 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. n164 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 Pdigmatic 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 Pdigm, 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 Pdigmatic status quo will be mistaken as a careless or uncritical equation of "Black" and "White" positions, interests or trajectories within this Pdigm. This heightened demonstration of Black-White differentiation under the Pdigm 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 Pdigm. 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. n165

LatCrit theorists accordingly should endeavor in our next phase of Pdigmatic 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 comPtive 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. n166 ComPtive critiques thereby can produce a sturdier caliber of substantive anti-subordination insight, discourse and struggle: comPtive critiques can delineate universality through particularity, and nurture coalitional projects through a shared epistemology on both intra- and inter- group levels.

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B. Confronting Colonialism 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. n167 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. n168 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. n169

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. n170 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. n171 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, n172 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. n173 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. n174 "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 es [*570] say 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. n175 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. n176 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 Casta<tild n>eda essay, which exemplifies the power of bilingual texts in their demonstrative as well as declaratory dimensions. n177 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 n178 about the conjunction of Spanish and native elements in the construction of "Latina/o" people and in the Castañeda essay n179 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? n180 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. n181 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. n182

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. n183

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. n184 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. n185 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. n186 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. n187 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 mobi [*577] lization 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. n188 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. n189 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. n190 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. n191 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. n192

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 Pdoxical 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." n193 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; n194 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. n195 Recalling the economic tour of San Antonio, we therefore wonder how LatCrit scholars embarking on compTive, 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. n196 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. n197 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 heteropatriarchal 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. n198

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 detriment 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. n199 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 heteropatriarchy, 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, n200 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 trans [*583] formative 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. n201 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." n202 It does both because this category of identity, like others, simultaneously "gives us power and it subverts us." n203 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. n204 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. n205 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 Lat [*585] Crit 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. n206 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. n207 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. n208 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.

[*586] 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, n209 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. n210 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. n211 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:

n1. 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, ComPtive Latinas/os: Identity, Law and Policy in LatCrit Theory, 53 *U. Miami L. Rev. (forthcoming 1998)*, 4 *U. Tex. Hispanic L.J. (forthcoming 1998)*.

n2. 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).

n3. 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.

n4. 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).

n5. See sources cited *supra* note 1 (LatCrit colloquia and symposia).

n6. 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.

n7. For a fairly detailed analysis of LatCrit theory and its conception, see Francisco Valdes, *Theorizing OutCrit Theories: Competitive 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).

n8. 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).

n9. 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.

n10. 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.

n11. See Kieth Aoki, *(Re)presenting Representation*, 2 *Harv. Latino L. Rev.* 247 (1997).

n12. See Reynaldo Anaya Valencia, *On Being an "Out" Catholic: Contextualizing the Role of Religion at LatCrit II*, 19 *Chicano-Latino L. Rev.* 449 (1998).

n13. See Emily Fowler Hartigan, *Disturbing the Peace*, 19 *Chicano-Latino L. Rev.* 479 (1998).

n14. See Nancy K. Ota, *Falling From Grace: A Meditation on LatCrit II*, 19 *Chicano-Latino L. Rev.* 437 (1998).

n15. See Verna Sanchez, Looking Upward and Inward: Religion and Critical Theory, *19 Chicano-Latino L. Rev.* 431 (1998).

n16. 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).

n17. 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.

n18. 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).

n19. See Castro, *supra* note 16, at 499.

n20. See Valencia, *supra* note 12, at 423; Hartigan, *supra* note 13, at 488.

n21. See Valencia, *supra* note 12, at 465; Hartigan, *supra* note 13, at 486-87.

n22. See Ota, *supra* note 14, at 440.

n23. 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 multidimensionality).

n24. 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 "the 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.").

n25. 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).

n26. See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and RePtions*, 22 *Harv. C.R.-C.L. L. Rev.* 323 (1987) (illustrating critical analysis grounded in realities lived at the bottom).

n27. 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).

n28. 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.

n29. 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.

n30. 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.

n31. See Valencia, *supra* note 12, at 473; Hartigan, *supra* note 13, at 487; Ota, *supra* note 14, at 444.

n32. 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).

n33. 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).

n34. 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).

n35. For an overview, see Marina Warner, *Alone of All Her Sex: The Myth and the Cult of the Virgin Mary* (Vintage Books 1983) (1976).

n36. 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); Adrienne 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).

n37. For readings on the "public/private distinction," see sources cited *supra* note 28.

n38. 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).

n39. 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).

n40. 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.

n41. 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).

n42. 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).

n43. 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).

n44. 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).

n45. For a discussion of the phrase "In God We Trust," see *Keeping God's Name in Mint Condition*, *Time*, Dec. 9, 1991, at 66.

n46. 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.

n47. 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.

n48. 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.

n49. 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.

n50. 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).

n51. 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).

n52. See Luz Guerra, *LatCrit y la Des-colonización Nuestra: Taking Colon Out*, 19 *Chicano-Latino L. Rev.* 351 (1998); Antonia Castañeda, *Language and Other Lethal Weapons: Cultural Politics and the Rites of Children as Translators of Culture*, 19 *Chicano-Latino L. Rev.* 229 (1998).

n53. 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).

n54. See Castañeda, *supra* note 52, at 238.

n55. 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).

n56. 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).

n57. See *infra* notes 124-142 and accompanying text.

n58. 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.

n59. 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 hierarchy); 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 Pinochet, 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.

n60. 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.).

n61. See Leslie Espinoza, *A Vision Towards Liberation*, *19 Chicano-Latino L. Rev.* 193 (1998).

n62. *Id.* at 193.

n63. *Id.*

n64. See Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, *2 Harv. Latino. L. Rev.* 495 (1997).

n65. Harris, *supra* note 23, at 748.

n66. 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 from Deconstructed Rights*, *22 Harv. C.R.-C.L. L. Rev.* 401 (1987).

n67. See Mari J. Matsuda, *Where is Your Body? And Other Essays on Race, Gender and the Law* 23-27 (1996).

n68. Id.

n69. 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.

n70. See Berta Esperanza Hernandez-Truyol, *Building Bridges III - Personal Narratives, Incoherent Paradigms, and Plural Citizens*, 19 *Chicano-Latino L. Rev.* 303 (1998).

n71. See *supra* notes 12-13, 52 and accompanying text.

n72. 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).

n73. 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).

n74. See Castañeda, *supra* note 52.

n75. 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).

n76. See Gerald P. Lopez, *Learning About Latinos*, 19 *Chicano-Latino L. Rev.* 363 (1998).

n77. 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.").

n78. 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).

n79. 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=00&dinst>; Religious

persecution, 124 *Commonweal* 5(2), P3 (Aug. 15, 1997) <http://www.elibrary.com/getdoc.cgi?id=10...ydocid=1224086@library_e&dtype=00&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; when acknowledged, 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).

n80. 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).

n81. Hartigan, *supra* note 13, at 489.

n82. *Id.*

n83. 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.

n84. 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:

In 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).

n85. 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.").

n86. 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.

n87. See Graziano, *supra* note 59, at 19.

n88. 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).

n89. 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).

n90. Hardon, *supra* note 83, at 458-71.

n91. Gutierrez, *supra* note 84, at 20.

n92. 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).

n93. *Id.*

n94. *Id.*

n95. Gustavo Gutierrez, *A Theology Of Liberation: History, Politics and Salvation* 265 (Sister Caridad Inda & John Eagleson trans., 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.

n96. 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).

n97. See *supra* notes 35-37, 66-77 and accompanying text.

n98. 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?

n99. 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. Cooney 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).

n100. See Ota, *supra* note 14, at 446-47.

n101. See Elizabeth M. Iglesias, Foreword: International Law, Human Rights and LatCrit Theory, 28 *U. Miami Inter-Am. L. Rev.* 177, 201-203 (1996-97).

n102. See *supra* notes 17-37 and accompanying text.

n103. 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.

n104. See Ota, *supra* note 14, at 439.

n105. 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 accumulated 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.

n106. 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.

n107. See, e.g., Valdes, *supra* note 58, at 112 n.308.

n108. See *supra* notes 20-21 and accompanying text.

n109. 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).

n110. See Ota, *supra* note 14, at 439-40.

n111. 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).

n112. See, e.g., Valdes, *supra* note 58, at 344-77 (outlining one view of Queer legal theory).

n113. 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).

n114. 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).

n115. 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);

n116. 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.

n117. Ana M. Novoa, *American Family Law: HiStory - WhoStory*, 19 *Chicano-Latino L. Rev.* 265 (1998).

n118. *Id.* at 266.

n119. *Id.*

n120. *Id.*

n121. *Id.* at 270-71.

n122. *Id.* at 274.

n123. 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).

n124. See *Loving v. Virginia*, 388 U.S. 1 (1967).

n125. 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).

n126. 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 SePtion*, 90 *Mich. L. Rev.* 1 (1991).

n127. 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 psycho-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).

n128. 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 theologian, 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.

n129. 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.

n130. See, e.g., *Colloquium*, *supra* note 38 (presenting various works that center internationalist analysis in LatCrit Theory).

n131. 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).

n132. 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).

n133. Cod. Civ., tit. I, cap.I, art. 113 (Guat.) ("La mujer podra desempeñar 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.").

n134. 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 P 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.").

n135. See Luna, *supra* note 132, at 340.

n136. 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, *Compble 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).

n137. 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.

n138. 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).

n139. 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).

n140. See Christine A. Littleton, *Double and Nothing: Lesbian as Category*, 7 *UCLA Women's L.J.* 1 (1996).

n141. 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).

n142. 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).

n143. 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).

n144. 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).

n145. See Leslie Espinoza & Angela P. Harris, *Embracing the Tar-Baby - LatCrit Theory and the Sticky Mess of Race*, 85 *Cal. L. Rev.* 1585 (1997).

n146. 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.

n147. 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).

n148. See Guerra, *supra* note 52, at 353.

n149. 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 Theory and Political Lawyering Practice in Post-Civil Rights America, 95 *Mich. L. Rev.* 821 (1997).

n150. See Gloria Sandrino-Glasser, Los Confundidos: De-Conflating Latinos/as' Race and Ethnicity, 19 *Chicano-Latino L. Rev.* 69 (1998).

n151. See Kevin R. Johnson, Immigration and Latino Identity, 19 *Chicano-Latino L. Rev.* 197 (1998).

n152. *Id.* at 200.

n153. See Sandrino-Glasser, *supra* note 150, at 71-75.

n154. *Id.* at 75-77.

n155. See Robert S. Chang, Who's Afraid of Tiger Woods?, 19 *Chicano-Latino L. Rev.* 223 (1998).

n156. *Id.* at 225.

n157. 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).

n158. See Jerome McCristal Culp, Jr., Latinos, Blacks, Others, and the New Legal Narrative, 2 *Harv. Latino L. Rev.* 479, 481 (1997).

n159. See E. Christi Cunningham, The Rise of Identity Politics I: The Myth of the Protected Class in Title VII Dispute Treatment Cases, 30 *Conn. L. Rev.* 441 (1998) (on wholism).

n160. 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).

n161. See Peter Kwan, Jeffrey Dahmer and the Cosynthesis of Categories, 48 *Hastings L.J.* 1257 (1997) (on cosynthesis).

n162. 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).

n163. 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).

n164. 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.

n165. 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).

n166. See, e.g., Chang & Aoki, supra note 149, at 1423-46 (analyzing inter-group relations and politics in Monterey Park, California).

n167. 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.

n168. See, e.g., Montoya, supra note 25, at 351-52.

n169. See Guerra, supra note 52, at 351-52.

n170. *Id.* at 355-57.

n171. 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.

n172. 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).

n173. See generally Patricia Cayo Sexton, *Spanish Harlem Anatomy of Poverty* 9 (1965).

n174. 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).

n175. See, e.g., Montoya *supra* note 25, at 351.

n176. 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 Indeterminacy*, 85 *Cal. L. Rev.* 1347 (1997); 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 (1994); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 *Minn. L. Rev.* 269 (1992).

n177. See Castañeda, *supra* note 52, at 229-31 (combining Spanish and English use).

n178. See Guerra, *supra* note 52, at 357.

n179. See Castañeda, *supra* note 52.

n180. See *supra* notes 171-176 and accompanying text.

n181. See *supra* notes 23-25 and accompanying text.

n182. 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).

n183. 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).

n184. See, e.g., Berta Esperanza Hernandez-Truyol, *Borders (En)Gendered: Normativities, Latinas, and a LatCrit Paradigm*, 72 *N.Y.U. L. Rev.* 882 (1997).

n185. 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 were able to witness. The guide was a longtime Chicana community activist, Maria Antonietta Berriozabal.

n186. Luna, *supra* note 132.

n187. 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).

n188. 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).

n189. See generally Ediberto Roman, *Empire Forgotten: The United States's Colonization of Puerto Rico*, 42 *Vill. L. Rev.* 1119 (1997).

n190. 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).

n191. 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).

n192. 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).

n193. See Alex Stepick III & Guiellermo Grenier, Cubans in Miami, in *In The Barrios*, supra note 187, at 93.

n194. See Johnson, supra note 151, at 205-206.

n195. For further readings, see *In The Barrios*, supra note 187; *Challenging Fronteras*, supra note 191; *Newcomers in the Workplace*, supra note 191.

n196. 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.

n197. See supra notes 133-134 and accompanying text.

n198. 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).

n199. 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).

n200. 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).

n201. See supra note 1 and sources cited therein on LatCrit symposia and colloquia.

n202. Espinoza, supra note 61, at 194.

n203. *Id.*

n204. See Lopez, *supra* note 76.

n205. See *supra* note 23 and sources cited therein on these and similar concepts.

n206. 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.

n207. See, e.g., Cho, *supra* note 33; Culp, *supra* note 158.

n208. See *supra* note 1 and symposia cited therein on LatCrit theory during the past several years.

n209. See Enrique R. Carrasco, *Who Are We?*, 19 *Chicano-Latino L. Rev.* 331 (1998).

n210. *Id.* at 332-35.

n211. See generally Peggy C. Davis, *Law as Microaggression*, 98 *Yale L.J.* 1559 (1989) (articulating the concept of microaggression in critical legal theory).

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FOREWORD: Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community

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BIO:

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SUMMARY:

... This symposium marks and celebrates the proceedings of the LatCrit Third Annual Conference, which took place on Miami Beach in May 1998. ... Neither tendency serves the purposes of a community determined to foster for the long-haul a collaborative project that continuously enables ever-more demanding engagements in the sort of substantive critical analysis that was the aspiration and, to an unprecedented degree, the achievement of LatCrit III. ... Second, her essay also opens new avenues of critical analysis into the way white supremacist ideology articulates the legal meaning of U.S. citizenship, a recurring theme in LatCrit scholarship and throughout this symposium. ... Comparing comparisons means assessing the way different intergroup comparisons tend to structure different political alignments and subjecting these alternative political alignments to anti-essentialist critical analysis informed by LatCrit commitments to anti-subordination politics. ... By identifying these four points of comparison, Professor Mertus provides a valuable analytical framework for a critical comparative analysis of the substantive content of "the democratic project" now circling the globe, as well as for assessing the degree to which this neoliberal project coheres with the right of self-determination, understood from an anti-essentialist, anti-subordination perspective. ...

TEXT:

[*575]

Introduction

This symposium marks and celebrates the proceedings of the LatCrit Third Annual Conference, which took place on Miami Beach in May 1998. Preceded by LatCrit I in La Joya and LatCrit II in San Antonio, the LatCrit III gathering marked a watershed event in the evolution of the LatCrit movement, both as the most recent intervention in outsider jurisprudence and as a community of scholars and activists. n1 [*576] If LatCrit I reflected the enthusiasm of a new found commonality and unprecedented dialogue among a diverse group of scholars coming together for a first time, LatCrit II demonstrated the profound challenges facing any movement seriously committed to exploring and transforming the realities of inter- and intra group injustices from an anti-essentialist and anti-subordination perspective. If LatCrit I marked the excitement of a first encounter and the enthusiasm of a party, LatCrit II demonstrated the speed with which any party can end. In a sudden crash or steady line of departures, a party based on suppositions of solidarity

and feelings of community can quickly unravel when confronted with substantive difference. When things "get too heavy," parties tend to dwindle and disperse. n2

From this perspective, LatCrit III was a watershed moment because it marked a key act of continuity and perseverance despite ruptures and disruptions. Viewed in hindsight, this act of continuity was a definitive moment in the survival of the LatCrit movement as a community of scholars and collective political intellectual project. n3 Viewed against the backdrop of prior LatCrit conferences, LatCrit III also offers a welcomed opportunity to reflect anew upon the objectives and methods of our community-building efforts. If LatCrit II counsels the need to remain ever-vigilant lest we be confused, seduced and ultimately [*577] betrayed by the human tendency to seek community in the sentimentality and pseudo-security of sameness, the intellectual and political advances made at LatCrit III show us the substantial pay-offs to be gained by resisting the impulse to seek or settle for sentimentalist communities. By this I mean communities where solidarity is more an image conjured through superficial feelings of identity and hence of momentary closeness, rather than a lived commitment, in solidarity, to relentlessly reveal and steadfastly dismantle relations of dominance and subordination that subvert the potential for authentic human sharing and connection - not just outside, but also within the LatCrit community we aspire to construct. n4

To recognize the limited life expectancy of sentimentalist communities is to take a first step down a long and difficult path that challenges us, at every instance, to seek affirmatively and self-consciously to produce something different in our midst. That difference is a community of scholars and activists that can intellectually engage, politically negotiate and collectively absorb the kinds of internal controversies and external assaults that have, in other contexts, shattered communities built on the fragile bonds of sentimental feeling, strategic alliance, individual careerism or simple self-interest, however mutual such interests may be said to be - in short, on any bond other than an inter-subjective commitment to seek and manifest objective justice in a caring and careful manner. n5

The excellent work and important advances, the conceptual breakthroughs, the interpersonal relationships and political solidarities that were further strengthened or newly born at LatCrit III are, indeed, substantively significant - as reflected in the proceedings of this symposium. The fact that none of these things might have ever seen the light of day, at least not in their current configurations and certainly not, as they are now, embedded in and enhanced by our memories of the shared community and collegiality that made LatCrit III such an enlivening experience - this fact should give reason to pause. Indeed, the achievements of LatCrit III offer ample evidence that LatCrit community-[*578] building must walk a careful path between the tendencies to rely, on the one hand, on the feel-good emotions of superficial identifications and, on the other hand, the tendency toward a kind of packing behavior that is sometimes indulged because it appears to enable spontaneous, though fleeting and often problematic, alliances to converge around a slash-and-burn, hold-no-prisoners, hypercritical attack upon some unfortunate and often unsuspecting target. Neither tendency serves the purposes of a community determined to foster for the long-haul a collaborative project that continuously enables ever-more demanding engagements in the sort of substantive critical analysis that was the aspiration and, to an unprecedented degree, the achievement of LatCrit III.

LatCrit III definitively demonstrated that even highly controversial topics and proposals can advance our intellectual development and strengthen our political and solidaristic commitments if organized and actually conducted in a respectful and inclusive manner. Thus, while there was significant controversy generated by a programmed event proposing to launch a jurisprudential intervention styled "BlackCrit theory" as an experimental way of centering the particularities of Black Latina/o and Caribbean peoples in and against the Black/White paradigm, n6 this pre-event controversy did not disrupt the conference, but was instead identified and negotiated through extensive substantive discussions, conducted late into the evening, in good-faith and mutual concern to resolve the misconceptions that might otherwise disrupt the next day's event. The payoff was that rather than an explosive emotional disruption followed by the scrambling (of some) to mediate the hurt feelings and unnecessary misunderstandings that routinely follow such explosions, we had a very fruitful discussion that has since spawned substantial advances by raising important questions about the relationship between LatCrit and other critical jurisprudential movements, most notably Critical Race Theory, n7 and about the particularities of Black experiences and the significance of those particularities to the LatCrit project. n8

[*579] There is no doubt that solidarity, understood as an anti-essentialist commitment to inter and intra-group justice, presents continual challenges and demands tremendous work. This work is not always fun. At the same time, there is no question that LatCrit III was fun. The conference was graced with the sunny springtime beauty, the pastel colored sounds and Caribbean skies that make Miami beaches a tropical paradise for wealthy tourists and gave us an opportunity to enjoy each other's company and to share some sensual displacements amid much privilege and luxury, even as we confronted the daunting challenges of our work. In fact, the conference was a lot of fun, and the fun we had

was a positive energy in our efforts to build community across our differences. n9 Thus, in myriad ways, LatCrit III demonstrated that the LatCrit project can and should engage profoundly controversial positions and proposals without indulging community-destroying disruptions that undermine, rather than enable, our efforts to explore substantive disagreements and to learn from our differences of position and perspective in the spirit and expectation of lively and lasting friendship.

In retrospect, it also bears noting that our collective efforts to self-consciously build the LatCrit community, and by implication any community, upon a commitment to anti-essentialist anti-subordination politics, is an unprecedented project of millennial proportions. Questions pending today on the LatCrit agenda will emerge tomorrow as definitive questions of the 21[su'st'] century. This is because the human community must find ways to construct identities that do not depend on the activation of essentialized differences or the reproduction of sociolegal hierarchies. There is no sustainable alternative. In the 21[su'st'] century, controversies that today are triggered by LatCrit's theoretical determination to reveal essentialist assumptions and traverse, in solidarity, such inherited boundaries as mark the distinctions of race, ethnicity, class, gender, sexual orientation and nation will tomorrow erupt the discursive [*580] boundaries of sociolegal theory and confront the world community as the woman-in-the-local/global streets, trodding the electronic highways for news of how, when and where the human flows in motion will be set or let to rest. Borders busted by new configurations of freedom and compulsion are producing new social realities in need of new identities, beyond the essentialisms of the modern that currently, and not so tenuously, still organize so much the conscious and unconscious of so many. n10

It is precisely because LatCrit theory has taken up the challenge of producing knowledge and performing community for the purpose of manifesting and advancing an anti-essentialist commitment to anti-subordination politics that the LatCrit community stands as microcosm of the many challenges that will face the global community in ever more pressing degrees. Our in/ability to negotiate the differences amongst us, to link identities to histories, histories to the articulation of an ethical and future-oriented vision, and our visions to the consolidation of effective and transformative political coalitions - on this - the stuff of dreams - depends the future of such weighty 21[su'st'] century imperatives as world peace, social justice, and human liberation. n11

With this in mind, this Foreword seeks to contextualize the LatCrit III symposium essays in relation to four basic points of reference: the first is LatCrit's evolving substantive agendas; the second is the impact of our discourse and interactions on our community-building objectives and on alternative trajectories for institutional development of the LatCrit project; the third is the broad array of issues and many fields of substantive inquiry that have not yet been addressed in LatCrit theory. These three points create a dialectical frame of reference linking past, present and future, thereby enabling us, more meaningfully, to assess where we have been and to project a vision of where we should go. The fourth point of reference refers back to the pre-conference objectives as delineated in the substantive program outline; n12 it injects a fourth [*581] dimension of intentionality into our understanding of LatCrit dynamics because what we actually achieve at any LatCrit gathering means different things and offers different lessons depending on its coherence with, departure from and/or expansion of the objectives we intended to achieve. Using this four-part frame of reference to contextualize the essays in this symposium enables us to assess the evolution of LatCrit theory and praxis in ways that engage the multiple dimensions of a project that is always and everywhere both about producing knowledge and about performing community.

***** The rest of this Foreword divides in three parts. This three part structure reflects, but does not directly track the live-events of the conference, which are detailed both in the LatCrit III Substantive Program Outline and the LatCrit III Program Schedule. n13 The live-events were programmed to effectuate the conference planners' self-conscious and concerted commitment to push LatCrit theory into new substantive areas, to encourage dialogue across jurisprudential and disciplinary boundaries, to bridge the gap between theory and practice, to experiment with new discussion formats, to include newcomers, to accommodate the many responses to our initial call for papers and to provide a forum for works-in-progress. To this end, the program featured four plenaries, two focus-group discussions, four keynote addresses, five concurrent panels and a concurrent works-in-progress session. However, as in previous LatCrit conferences, the energy, richness and synergies of our discourse exceeded the pre-established structure of our program - a phenomenon reflected, this time, in the many thematic interconnections evidenced across the keynotes, plenaries and concurrent panels, as well as by the fact that a number of essays submitted for this symposium volume were inspired by, but not delivered at, the LatCrit III conference. Organizing this abundance into a coherent final product has been a border-busting project in its own right precisely because the expedient of tracking the live-events was simply untenable. Instead, the objective in this symposium, and therefore in this Foreword, has been to cluster the various essays around the substantive themes most directly salient to our discussions at LatCrit III.

Part I, entitled *Beyond/Between Colors: De/Constructing Insider/Outsider Positions in LatCrit Theory*, takes up the essays in the first two clusters. These essays demonstrate the continued centrality of identity politics in LatCrit discourse, making questions of intra-group hierarchy and inter-group justice of special salience in any LatCrit gathering and [*582] their exploration a critical dimension of the continuity we seek to maintain. They also demonstrate that each time the LatCrit community takes up these issues in our formal gatherings, we approach them with a heightened awareness of the broader context in which we articulate the political implications of Latina/o identity. Using a variety of critical methodologies, including doctrinal deconstruction, policy-based political analysis of current affairs, personal narratives and social psychology, these essays take up the challenge of articulating how the anti-essentialist anti-subordination aspirations of the LatCrit project are implicated in struggles over such relatively theoretical matters as judicial power, interpretative objectivity and personal identity, as well as in the more immediate political struggles over immigration policies, minority access to legal education, the delivery of legal services to the poor, the ongoing expropriation of indigenous peoples in Latin American countries and the particularities of intergroup relations in South Florida, the site of the LatCrit III conference. n14

Both individually and cumulatively, these essays challenge LatCrit scholars to deconstruct essentialist representations of the Latina/o condition by attending to the particularities of subordination as experienced by different groups at different junctures of historical time and trans/national space. As critical methodology, attention to the particular helps unpack intra and intergroup hierarchies, enables critical analysis to resist the suppression of intra-group diversities and exposes instances in which representations of a common good or shared imperative are manipulated and monopolized to configure relations of intra and intergroup privilege. This attention to the particularities of subordination can, however, generate its own problems - most notably the problem of comparing subordinations both within and between groups. Such intergroup comparisons activate identifications that can disorganize alliances and can therefore have profound and varied impact on the future viability of any coalition project - depending on the kinds of political positioning a particular mode of comparison tends to promote. n15 At the same time, [*583] attention to the particularities of subordination makes intergroup comparisons practically inevitable.

LatCrit theory thus faces the formidable task of articulating an ethic and politics through which the practice of comparing the different realities of subordination that are increasingly revealed through our particularized analyses can be made to foster, rather than destroy, the possibilities for intergroup solidarity and genuine understanding across our many differences of experience and position. We need to learn how to articulate our intergroup comparisons in ways that energize new solidarities and promote more fluid and inclusive political identities by revealing new interconnections and commonalities among the oppressed despite and perhaps because of our differences. Indeed, understood specifically as a way of learning about and engaging our differences, intergroup comparisons can enable the affirmative valuation and embrace of the differences that make us both ourselves and not each other. n16 The essays in these first two clusters provide a valuable point of departure for this important task because their attention to the particularities of subordination across different contexts also illustrates a variety of instances of intergroup comparison.

Part II, entitled *Substantive Self-Determination: Democracy, Communicative Power and Inter/National Labor Rights* reflects the rapidly expanding agenda marked for LatCrit attention. This Part takes up three clusters of essays. The first cluster seeks to articulate a LatCrit perspective on the disjunctures between reality and rhetoric in the transition and practice of democracy. The second cluster focuses on communicative power, and the third and final cluster focuses specifically on the way LatCrit ant子subordination theory and practice is implicated in and activated by the sociolegal structures of labor and employment in an increasingly globalized society. Cumulatively, the essays in these three clusters reflect a concerted and self-conscious effort to expand the substantive concerns of the LatCrit movement beyond the familiar fare of [*584] "Latina/o issues." This is an appropriate and timely development because the struggle to articulate an anti-essentialist theory and practice of coalitional politics and transformative legal intervention implicates LatCrit scholars in a project that must concern itself with issues not peculiarly or exclusively of interest to Latinas/os in this country.

Until relatively recently, the trials and tribulations, for example, of the international peace movement, the labor movement, the environmental movement and the international movement for human rights, like the deconstruction of U.S. national security ideology or the critical analysis of the legal regimes organized by antitrust, tax and corporate laws have, for the most part, been cast as matters of universal concern, not particularly relevant to Latina/o and other minority communities, whose primary focus of attention has been thought to center on issues of discrimination and the meaning of equal protection. n17 LatCrit theory, by contrast, claims an interest in matters of universal concern, precisely because it rejects the metaphysical and epistemological assumptions that underpin the bifurcation of universal and particular. n18 By taking up and subjecting to critical anti-essentialist analysis such matters as the rhetorical and

realities of the democratic project, the legal structures of communicative power and the future of the labor movement in and beyond the United States, these essays demonstrate how attention to the particularities of Latina/o experiences and perspectives can produce a richer and more contextual understanding of the broader contexts and multiple dimensions of the human struggle for justice and peace.

Finally, Part III takes up the essays in the cluster entitled, Mapping Intellectual/Political Foundations and Future Self-Critical Directions. Though only three years old, LatCrit theory reflects a rich and varied intellectual inheritance because of the wide diversity of scholars who have chosen to self-identify as LatCrit scholars or participate in LatCrit conferences. Thus, LatCrit Theory finds its intellectual roots in Critical Race Theory, Critical Race Feminism, Chicano/a Studies, Law and Society, and Critical Legal Studies precisely because these various strains of critical discourse are the intellectual roots of the individuals whose energy drives the LatCrit project and secures its continued evolution. On the other hand, formations of scholarly communities do not spontaneously generate; and, in this respect, LatCrit theory is a project with a particular institutional history that reflects the efforts and visions of particular individuals responding to and reacting against the perceived limitations of each of the various strains of critical discourse that precede it.

The essays in Part III reflect this rich and varied intellectual inheritance even as they raise important questions about the purpose, history and future trajectories of the LatCrit project. In this vein, the one definitive lesson to be gleaned from the three years of LatCrit conferences that culminated in LatCrit III is that there are major differences between the kind of intellectual work that aims at articulating new critical insights in individually authored law review articles and the kind of work required to operationalize new possibilities of thought and action in ways that can effectively reorganize the dynamics of group interaction and generate a shared theoretical discourse with common points of reference and principles of engagement. Learning to understand and negotiate the vast spaces between the individual conceptualization of new possibilities and the collective processes that must be activated to translate these new insights into shared understandings, and to then manifest these shared understandings in new forms of interaction and institutional arrangements, is a crucial imperative in the further evolution of LatCrit theory and community.

This learning is crucial and central precisely because the practice of LatCrit conference organizing has been self-consciously and intentionally aimed, since its inception, at transforming the production of legal scholarship from an experience of intellectual isolation into a practice of collective engagement and empowerment. ⁿ¹⁹ Once this collective project becomes the imagined purpose and desired objective of our gatherings, the value of our work can no longer be measured simply by the breadth of any individual's vision or the depth of any one analysis, but by the degree to which our gatherings are effective fora for communicating and operationalizing the abstract ideas we so ably articulate in our individual work. Because the energies, efforts, errors, strengths, limitations and evolving visions of embodied human beings are such central components of this collective learning process, this Foreword also takes up the important challenge of recounting the historical development and institutional trajectories of the LatCrit project.

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I. Beyond/Between Colors: Constructing Inter-Group Solidarity and Deconstructing Insider/Outsider Positions in LatCrit Theory and Coalitional Politics

A. Centering Particularities and Comparing Subordinations: Toward an Ethic of Inter-Group Comparisons

The four essays in this first cluster provide different perspectives on the possibilities and obstacles confronting any project to promote inter-group solidarity. ⁿ²⁰ Professor Luna's opening essay seeks to identify points of commonality between Blacks and Chicanos by forwarding a deconstructive analysis of the legal doctrines through which judicial interpretation facilitated both the institution of Black slavery and the dispossession of Mexican landowners. The other three essays focus on the particularities of inter-group relations in South Florida. Attorney Cheryl Little's essay on intergroup coalitions, immigration politics and the Haitian experience uses the recently enacted Nicaraguan Adjustment and Central American Relief Act (NACARA) as the point of departure for a historical account of the discriminatory treatment Haitian refugees have been singly and systematically subjected to over the last 30 years, in contrast specifically to the treatment Cuban refugees have received during this same period. Attorney Lyra Logan provides a narrative account of the intergroup conflicts and convergence of interests among Black and Cuban-American political constituencies that enabled Florida to enact this country's first and only statewide state-funded affirmative action program aimed at increasing access to legal education for Black, Latina/o and other minority groups, whose members are grossly under-represented in the Florida State Bar. Finally, Attorney Virginia Coto recounts the objectives and

assesses the initial achievements of an innovative project to provide legal services to battered immigrant women in the South Florida community.

Cumulatively, these four essays provide a rich and varied perspective on the role of law in mediating or exacerbating intergroup tensions and divisions, as well as facilitating or obstructing the possibilities for achieving intergroup justice. The narratives are of law and legal institutions. Though the deconstruction of white supremacist legal ideology may initially seem far and away from the more immediate political struggles for immigration relief, access to legal education and the practice and politics of designing and running an alternative legal services program, each essay provides a unique perspective on the challenge of promoting inter-group solidarity in theory and practice. Theory without practice is a hollow luxury only the privileged can indulge; however, practice without theory too readily collapses complexity into a unidimensional struggle that can be counterproductive in the struggle for intergroup justice. Indeed, the complex social, political, cultural, economic and legal dimensions of the different struggles recounted in each of these essays is precisely the reason why theory and practice must remain in dialectical engagement.

Beyond Difference: Deconstructing the Legal Structures of Subordination

Professor Luna's essay on the complexities of race aptly opens the first cluster of essays on inter-group solidarity by exploring points of commonality and difference across two otherwise disconnected fields of legal doctrine. The first is constituted by the antebellum legal struggle of emancipated Blacks to obtain the status and privileges of U.S. citizenship, a struggle that culminated in the infamous *Dred Scott v. Sandford* decision of 1856, which propelled the United States into its bloody civil war. In *Dred Scott*, the Supreme Court declared that all Blacks, whether free or slave, were ineligible for U.S. citizenship because of the inherent inferiority of the African race. The court also accorded the property rights of southern slave owners a privileged constitutional status, denying both Congress and the free-states the legal authority to confine the institution of slavery to the territorial boundaries of the slave-states. The second field is marked by the legal struggles of Mexican-Americans to retain their lands in the territories ceded by Mexico after the Mexican War of 1846. These struggles generated a long line of cases in which Mexican landowners were systematically dispossessed of their lands for the benefit of white settlers, land speculators and gold-diggers.

By juxtaposing the historical tribulations of Blacks and Chicanas/os across these two very different sociolegal contexts, Professor Luna strikes three themes worth further comment and reflection. First, Professor Luna's essay makes historical reality a central concern in the articulation of anti-subordination legal theory. The history she recounts is of legal interpretation. It is a history of the arbitrary and inconsistent adjudication of rights asserted by different outsider groups across different points in time and space. It is also a history, the telling of which is designed to reveal how the internal coherence of legal doctrine has been repeatedly subordinated to the external imperatives of white supremacy - a history that can only be told by deconstructing the judicial decisions that constitute this history. Through this deconstructive analysis, Professor Luna's essay is able to link the distinct histories of free Blacks and Mexican landowners both to each other and to a critical analysis of the legitimacy of legal interpretation and the role of law in the reproduction of subordination. Second, her essay also opens new avenues of critical analysis into the way white supremacist ideology articulates the legal meaning of U.S. citizenship, a recurring theme in *LatCrit* scholarship and throughout this symposium. Finally, her analysis offers a valuable point of departure for developing an ethic and assessing the political implications of intergroup comparisons.

Professor Luna locates her historical analysis in the field of legal discourse. Her objective is to reveal otherwise invisible similarities, demonstrating that free Blacks and Mexican landowners confronted a common context of struggle despite apparent differences in their particular experiences of subordination within white supremacy. Professor Luna reveals these similarities by deconstructing the interpretative strategies and legal arguments used to rationalize the judicial decisions that produced these different experiences. The differential treatment of property rights across these two contexts provides a particularly valuable point of comparison. By invoking the concept of due process, the *Dred Scott* decision afforded slaveowner's rights of property a constitutional status that simultaneously contracted Congressional power and projected the legal effect of slave-state laws beyond their territorial jurisdiction. The *Dred Scott* decision was so immediately explosive because it cast slaves as property subject to constitutional protection everywhere in the country. In then Chief Justice Taney's view, slave owners were entitled to travel through and reside within the free states and territories with their slaves and were further entitled to have their property rights in slaves protected by due process despite the fact that slavery was illegal in the free states and territories. Since *Dred Scott's* claim to U.S. citizenship was premised on his status as a freeman emancipated by the act of residing in free territory, the Court's constitutional analysis stripped him of his legal claim to freedom, and hence to the citizenship status upon which his right to invoke federal diversity jurisdiction ultimately depended.

Professor Luna contrasts the costly protection granted the property rights of slaveholders to the treatment of Mexican property owners, whose land title claims purportedly were protected by the Treaty of Guadalupe Hidalgo. Read through the lens of legal precedent, the history of land adjudication in the ceded territories is a history of arbitrary rulings and of blatant disregard for established precedent. It is a history of nothing less than judicial lawlessness. While the United States was treaty-bound to grant U.S. citizenship to Mexican nationals choosing to remain in the ceded territories and to respect their property rights as established under Spanish and Mexican law, neither the implementing legislation, nor the process of land adjudication complied with these obligations. Under the terms of the Treaty of Guadalupe Hidalgo, Spanish and Mexican land titles were to be given legal effect in north American courts, yet reference to Hispanic law was, at best, inconsistent. In some instances, courts applied Hispanic law, demonstrating their familiarity with its requirements and with their own duty to apply it; yet, in other cases, Hispanic law was inexplicably ignored or blatantly misrepresented. In a similar vein, even a minimalist interpretation of due process would eschew arbitrary and inconsistent adjudication; yet Mexican land title cases are rife with such inconsistencies as border the irrational. Cases applied shifting burdens of proof, in some instances requiring documentary evidence of title, while, in others, mere parole evidence was allowed to suffice. In some cases, actual physical residence on the claimed property was required to confirm title despite the claimant's valid documentary evidence. In other cases, title was confirmed solely on the basis of documentation of doubtful authenticity. Indeed, through this morass of arbitrary adjudication, Professor Luna finds only one regular and predictable consistency: Anglo claimants tended to win title to land, while Mexican claimants tended to lose.

Certainly, *Dred Scott* and the long line of Mexican land title cases occupy very different sociolegal fields and might therefore be readily distinguished. The Mexican land title cases might be read as just another example of the United States repeated failure to respect customary international law and honor its treaty obligations. *Dred Scott*, by contrast, might be dismissed as aberration, an idiosyncratic moment of judicial lapse - like a handful of equally infamous Supreme Court decisions. However, the value of Professor Luna's analysis is that it nevertheless reveals a common context of struggle shared by Blacks and Mexicans and otherwise obscured by the fact that these instances of dispossession are coded in the abstractions of legal discourse and articulated across very different sociolegal contexts. In particular, Professor Luna's search for commonalities challenges LatCrit scholars to think critically about the way the doctrinal evolution of Anglo American property rights regimes is directly implicated in the material dispossession and economic marginalization of communities of color both within and beyond the United States. Her point, after all, is that the elevated constitutional status and due process protections accorded the property rights of slaveowners in *Dred Scott* were nowhere seen when the property rights at issue were the rights of Mexican nationals to retain the lands to which they were entitled under customary international and federal treaty law, thus suggesting that the protection of property depends more on the racial identity of the property owner, rather than the abstract elements of property law.

LatCrit scholars can usefully follow Professor Luna's lead in many directions, for example, by comparing the way abstract legal principles requiring just compensation in instances of expropriation have been applied when the expropriated are foreign direct investors in third world countries as compared to indigenous peoples separated from their communal lands and livelihoods by forced relocation. Indeed, once the search for commonalities leads us to center the interpretation of property rights regimes in our critical analysis of white supremacy, a whole range of familiar questions are rendered all the more compelling: we might ask not only how relations of subordination have been historically constructed through the differential legal protection afforded white property owners as compared to non-white property owners, but might also begin to develop a critical analysis of the way some economic interests are accorded the legal status of a property right, while others are not.

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The Supremacy of Citizenship: Beyond a Discourse of Absolute Difference

Professor Luna's comparative analysis also provides important insights into the way the search for commonalities through inter-group comparisons can expand the opportunities for intergroup identification and solidarity. For example, Taney's reasoning denied *Dred Scott* U.S. citizenship on the grounds that he was Black and that Blacks were so inherently inferior that they could never constitute a part of "the people of the United States." It is not hard to see how the brutal racism of this decision might easily be configured around a discourse of fundamental and irreconcilable difference. Such a discourse would, however, offer very little room for comparative projects of the sort Professor Luna has forwarded here because, in a discourse of absolute difference, the only thing that matters is that there is a fundamental difference between losing one's property through theft, corruption and racial bias and being altogether

denied the self-possession of one's own body and mind, one's labor and sexuality. n33 A discourse of absolute difference destabilizes the search for intergroup commonalities, or rather rejects the project out of hand. In this discourse, Black and Chicana/o histories are positioned within a hierarchy of dispossession, with one group cast as "more dis possessed" than the other. Indeed, the experience of African American slavery is cast as so profoundly unbridgeable - an abyss so separate and apart from the experiences of Chicanas/os in the ceded territories - that there is no meaningful point of reference or departure for construct ing a common identity or forging a common agenda around these differ ent histories of dispossession. The wrongs can never be compared; therefore the boundaries of difference can never be traversed, and inter- group solidarity is that much more ephemeral. n34

By contrast, in juxtaposing the Dred Scott decision to the Mexican land title cases, Professor Luna challenges LatCrit scholars to seek the commonalities of oppression without collapsing these two distinct histo ries into one false norm. n35 The payoff is a new perspective on the way [*593] law is implicated in the present day configuration of white supremacy. Read through the discourse of Black exceptionalism, Dred Scott is about slavery - a form of oppression uniquely experienced by Blacks in this country. Being about slavery, the decision is dead precedent, thoroughly discredited and consigned to historical infamy. Read, by contrast, through a discourse of common oppression, Dred Scott is about the con figuration of state power around a citizen/non-citizen dichotomy. Indeed, the language Professor Luna quotes from the Dred Scott opinion makes it abundantly clear that the decision not only denied free Blacks citizenship, but in doing so, transfigured a representative government of limited powers into an imperial state. This is because the constitutional framework of government underpinning the Dred Scott decision reveals a state that claims the power to govern, without any legal limitations, a class of persons whose interests it does not even pretend to represent. n36 These persons are the non-citizens, who do not constitute part of "the people of the United States," do not "hold the power," do not "conduct the government through their representatives," and therefore do not "enjoy the rights and privileges" that the constitution secures only to its citizens. n37 Unlike slavery, the forms of oppression that have been organ ized around the citizen/non-citizen dichotomy and effectuated through the exercise of imperial power, both domestically and internationally, are common to many, including Blacks who have never been enslaved. n38 [*594] Read through this discourse, the reasoning of Dred Scott is still alive and well in the present day configuration of white supremacy. Its present day target is no longer the Black American, as such, but the foreign, n39 the poor, n40 and those who are cast as "national security" threats. n41

Toward an Ethic and Politics of IntergroupComparisons

By juxtaposing the struggles of Blacks and Chicanas/os across these two very different sociolegal contexts, Professor Luna demon strates the potential value of inter-group comparisons. These compari sons reveal the kinds of structural interconnections that can help LatCrit scholars articulate a common agenda despite the different histories of dispossession. At the same time, she also recognizes that inter-group comparisons can be dangerous. She is therefore, careful to disclaim any essentialistic intent "to collapse the histories of people of color into one false norm." Instead, her stated purpose is "to demonstrate how law from one historical period established the[] subordinate status [of these two different groups]." n42 For this reason, Professor Luna's essay pro vides a valuable point of departure for reflecting on the ethics and poli tics of intergroup comparisons.

[*595] The key objective, viewed through a LatCrit normativity, is to ensure that our inter-group comparisons are performed in ways that pro mote the commitments and alliances that strengthen a community of sol idarity. Indeed, my point is even more dramatic. Not only can different group histories and lived realities be compared in many different ways, but it is precisely for this reason that the value of any comparison turns on the kind of collective identifications and inter-group alliances such comparisons engender. Comparisons that undermine the possibilities for anti-essentialist solidarity and derail the anti-subordination imperatives of our theory and praxis ought to be rejected outright precisely because they are not true in any way that matters. Conversely, comparisons that promote these objectives ought to be embraced for further exploration and centered in our collaborative projects. n43

If this position seems to play fast and loose with inherited notions of "historical truth," that too is untrue - in any way that matters. On the contrary, this position simply attaches a political imperative to the interpretative choices we make in telling our histories and comparing our subordinations. One happy truth of our otherwise decidedly unhappy era is that the once-upon-a-time illusion of a unitary history has been oh- so utterly destabilized by a proliferation of our discourses and persp ectives. Rather than bemoaning the fact that as finite social beings, we each access history, like any other reality, through the contingencies of discursive orders that are always in flux, n44 LatCrit scholars need to understand this discursive flux - and the multiplicity of perspectives it generates - as precisely the reason why the histories we should tell are the histories of the future we are determined to create together. n45

[*596] Attorney Cheryl Little's essay provides a valuable counterpoint. Her essay is based on years of committed advocacy on behalf of Haitian refugees. Hers is a story of an uphill battle on behalf of a vulnerable and disdained minority. Her point of departure is a critical analysis of NACARA, otherwise known as the Victims of Communism Relief Act. n46 This immigration legislation provides substantial immigration relief for nationals of Nicaragua, Cuba, El Salvador, Guatemala, the former Soviet Union and Warsaw Pact countries. Haitians are noticeably missing. Attorney Cheryl Little links their absence to a historical pattern of discrimination and exclusion, dating back to the initial wave of Haitian refugees fleeing the right wing brutality of the Duvalier regime and continuing through a series of instances in which Haitians have been singled out for differential treatment. This differential treatment is all the starker when juxtaposed against the treatment accorded Cuban refugees. Though both groups came to the United States fleeing dictatorship in their countries of origin, Haitians fleeing the political repression of the Duvalier regime received a very different reception than Cubans fleeing Castro in the freedom flotillas of the 1960s. This differential treatment has also generated significant intergroup tension and unrest. Haitians, subject to indefinite detention at Krome, have engaged in hunger strikes to protest the double standard that keeps them imprisoned, even as Cuban hijackers have been promptly released upon arrival in Florida. Haitians, intercepted at sea, have been repatriated to Haiti despite their claims of well-founded fear of persecution, while Cubans, rescued by the Coast Guard, have been flown to Miami and paroled into the community. Attorney Little sums up the differential treatment like this:

In many ways, immigration practices toward Cubans and Haitians have represented the extremes of United States policy. While immigration policy toward Cubans tends to be generous and humanitarian, even with recent repatriation, immigration policy toward Haitians tends to be stringent and inhumane. n47

Because so much of Attorney Little's argument is organized around a juxtaposition of Haitian and Cuban refugee experiences, her essay provides an appropriate moment to reflect anew and with greater precision on the political implications of the way intergroup comparisons are [*597] articulated in LatCrit theory. It enables us to move from abstract discussions of the normative aspirations and commitments that ought to inform the practice of intergroup comparisons to the more difficult task of articulating a methodology for assessing such comparisons from a LatCrit perspective. The first step is to recognize that intergroup comparisons impact the formation of collective solidarities and political alignments by structuring the perception of similarities and differences within and between the varied and various groups that might potentially coalesce around any particular political project - in this case the politics of refugee policy. Comparing comparisons means assessing the way different intergroup comparisons tend to structure different political alignments and subjecting these alternative political alignments to anti-essentialist critical analysis informed by LatCrit commitments to anti-subordination politics. n48

Applying this methodology, it is worth noting that unlike Professor Luna, whose effort is to reveal suppressed commonalities in the legal construction of Black and Chicano subordination, Attorney Little's narrative account is organized around a discourse of absolute difference that emphasizes the uniqueness of the Haitian refugee experience by contrasting it to the experience of Cuban refugees. In doing so, her narrative marks the lines of similarity and difference along a racial schemata that casts Cuban refugees as racially white and Haitian refugees as racially Black. This racial dichotomization, though profoundly essentialized, may nevertheless further some anti-essentialist political realignments at least insofar as it destabilizes discourses used to pit domestic minorities against recent immigrants. Black Americans, in particular, have often been cast as the group most directly and negatively affected by the influx of immigrants. n49 Reading the treatment of Haitian refugees through a discourse that links their differential treatment to the fact that a large majority of Haitians are Black can be an effective way of combating the articulation of anti-immigrant politics among Black Americans. By showing how Haitian refugees have been singled out for particularly restrictive immigration exclusion, the discourse of absolute [*598] difference makes a clear link between exclusionary immigration policies and domestic racism. The domestic anti-racist agenda is thereby challenged to become more inclusive precisely because a politics of racial justice cannot ignore the differential oppression and exclusion of Black immigrants without invoking and/or activating a particularly problematic form of intra-Black hierarchy that privileges Black Americans over Black immigrant refugees. Thus, reading the Haitian immigration experience through the discourse of absolute difference may help expand and consolidate a pro-immigrant political coalition by foregrounding a perspective from which achieving justice for immigrants can be seen as a part of a broader struggle for racial justice in this country.

Although Attorney Little's discourse of absolute difference may help redefine the treatment of Haitian refugees as a matter of racial justice, the pro-immigrant political realignments fostered by this discourse can become truncated in two important respects. First, Haitians are not the only racialized immigrant group that has been treated unfairly and

restrictively by U.S. immigration policy, and Black Americans are not the only domestically subordinated group that have cast themselves as particularly victimized by immigrant entry. n50 The discourse of absolute difference can truncate the coalitional solidarity that might otherwise be organized around these intergroup commonalities precisely because its account of racial injustice is based on the claim that harsh treatment received by other immigrant groups pales in comparison to the treatment Haitian refugees have received because they are Black. Rather than fostering a comprehensive and inclusive political agenda in opposition to racist immigration policies based on the substantive merits of each group's particular claims of injustice, intergroup comparisons articulated through a discourse of absolute difference tend to provoke intergroup competition over which group has received the harshest treatment.

Equally important, articulating a discourse of absolute difference forces Attorney Little to overlook intergroup commonalities and emphasize intergroup differences in ways that suppress other significant dimensions of U.S. refugee policy. While refugees from Cuba, Haiti, Guatemala and El Salvador have come to this country seeking refuge from dictatorship and persecution in their countries of origin, in Attorney Little's account, the totalitarian repression experienced in Cuba is reduced to the "relatively mild mistreatment of Cubans in their home land (which results in a grant of asylum), while gross mistreatment of [*599] Haitians does not." n51 This juxtaposition helps articulate a discourse of racial difference, but only by minimizing the degree of repression in communist Cuba and suppressing the fact that, Guatemalan and Salvadoran refugees, who like Haitians experienced gross mistreatment and death squad activities in their countries of origin, also have been routinely denied political asylum. n52 These facts do not fit neatly into a discourse of absolute difference because the totalitarian repression in Cuba, like the systematic denial of political asylum to Guatemalan and Salvadoran refugees, both suggest factors other than race are operative in the differential treatment of Cuban and Haitian refugees. These other variables include the articulation of U.S. national security ideology, n53 the doctrinal structure of U.S. refugee law, particularly its economic/political dichotomy, which justifies the exclusion of "economic refugees" even as the indeterminacy of the dichotomy renders every racialized immigrant group vulnerable to exclusion regardless of the objective merits of their claim to political asylum, and the unsettled controversy over the conditions and principles that justify international intervention in the "internal affairs" of repressive regimes. n54

To be sure, Attorney Little's narrative account notes these variables, but only in passing. Her objective is to center the reality of racial discrimination in the way we understand the politics of refugee policy, and in this respect, she is entirely successful. Her compelling narrative leaves no doubt that eliminating racial discrimination from U.S. refugee policy is a compelling objective; nevertheless, her narrative does trigger doubts as to whether the kinds of intergroup coalitions needed to advance this objective are likely to coalesce around a political agenda defined by a discourse of absolute difference, particularly if this discourse is articulated through intergroup comparisons that minimize the substantive claims of justice of one group in order to buttress claims of discrimination made by another group. The challenge is to move beyond these kinds of intergroup comparisons. The question is how. [*600] The answer is to articulate a broader perspective from which the particular experiences and various claims of different groups can be seen as part of a common struggle for justice.

A moment's reflection on the variables marginalized by Attorney Little's narrative account may provide some direction. These variables give reason to doubt whether a political agenda defined by the objective of eliminating racial discrimination from U.S. refugee policy would be enough to achieve justice for Haitian refugees - even as they suggest a variety of perspectives from which all refugees inhabit a common context of struggle. All refugees, including Haitians, inhabit a world in which U.S. policy responses to human rights violations, both at home and abroad, are filtered through an aggressive and self-serving national security ideology, n55 in which restrictions on mobility and exclusionary policies can be directed with legal impunity at the world's poorest peoples, and in which the international community has not yet developed the legal norms and enforcement mechanisms to empower and protect peoples against the repression and abuses of internal elites. n56 Reading the differential treatment of Cuban and Haitian refugees through these variables, rather than the discourse of absolute difference, would activate very different political agendas and foster very different intergroup coalitions precisely because these variables link the critical analysis of U.S. refugee policy to a critical analysis of the U.S. imperial state, the production of poverty in the international political economy, and the failures of the interstate system of sovereign nations to sustain a world order based on respect for international human rights. These dimensions of domestic and international law and politics bear directly on the project of achieving substantive justice for Haitian refugees; however, their transformation implicates a fundamental reconfiguration of power relations and requires a discourse of mutual recognition and intergroup respect, not of absolute difference articulated through intergroup comparisons that minimize the substantive claims of one group to enhance those of another.

Substantive Justice: Beyond Interest Convergence

At the same time, the essay by Attorney Little effectively fore [*601] grounds the difficulties of translating abstract assertions of intergroup commonalities into a practical politics of coalitional justice. In Attorney Little's narrative, the noticeable exclusion of Haitian refugees from the amnesties enacted by NACARA is significant, not only because it is linked to and informed by a long history of differential and discriminatory treatment towards Haitians, but because it represents an intergroup political betrayal in the corridors of Congress. Though a bipartisan and intergroup coalition, including leaders of the Black and Hispanic Congressional Caucuses, has been coalescing in response to growing community opposition to the continued and blatantly discriminatory exclusion of Haitians, Haitians still lack the political representation and committed advocacy other immigrant groups enjoy. The fact that Republican members of Congress supporting NACARA were willing and able to perform a so-called "jihad" for the benefit of Nicaraguan, but not Haitian, refugees raises profound questions about the practice of coalitional politics, n57 particularly in light of another part of the story. Confronted with assertions that including Haitians in NACARA would kill the bill, Haitian advocates might, nevertheless, have decided to press the point. They might, in effect, have chosen to perform their own "jihad" on behalf of the excluded Haitians. According to Attorney Little, they did not. n58 As a result, thousands of refugees and immigrants from Nicaragua, Cuba, El Salvador, Guatemala, the former Soviet Union and Warsaw pact countries are enjoying the benefits of NACARA, leaving Haitians to wonder whether their self-restraint and self-sacrifice in this instance will be remembered and reciprocated in the next.

Told as a story of sell-outs and sacrifices, the story of NACARA tracks a familiar problematic in the practice of coalitional politics. Years ago, Professor Derek Bell gave us the theoretical framework for understanding this problematic in the context of Black/White civil rights coalitions. Professor Bell forwarded an "interest convergence" theory of the way white people practice coalitional politics. n59 In this practice, intergroup unity and solidarity are grounded, not in any commitment to objective justice nor in any substantive vision of inter-racial equality, but rather in the contingencies of converging group interests. Inter-racial [*602] civil rights coalitions were viable only so long as white people saw their own particular self-defined group interests furthered by supporting Black civil rights struggles. The much discussed collapse of the civil rights coalition, and increasing reactionary retrenchment aimed at affirmative action policies, minority business set-asides, entitlements programs, read against the backdrop of economic problems, provide ample evidence in support of Professor Bell's initial thesis. n60

Attorney Little's narrative reveals the way Haitian refugees were cast as politically expendable in the coalitional politics that achieved the enactment of NACARA. It thus raises the significant question whether minority groups, their political representatives and legal advocates are destined to replay the interest convergence politics through which the white majority has strategically maintained its privileges. It challenges LatCrit theory, in particular, to struggle with the problem of articulating a more meaningful foundation for our coalitional theory and praxis. n61 Can we move the practice of intergroup coalitional politics beyond the pseudo solidarity and fleeting alliances of contingent convergence of interests? Of course, this question, itself, presupposes a level of perceived commonality that may have yet to be imagined in the local politics of South Florida.

In this context, the question asked by Attorney Lyra Logan in her essay in this symposium is whether Black and Cuban-American legislators, and the communities they purport to represent, can set aside their differences to establish common cause. n62 She believes they can, and this belief is based on her experiences directing Florida's Minority Participation in Legal Education Program. The MPLE is a statewide, state-funded affirmative action program designed to increase minority participation in legal education through annual funding of scholarships for 200 minority law school students and 134 undergraduate pre-law students. Attorney Logan's express purpose in recounting the history of the MPLE Program is to reflect critically on the conditions that enabled Black and Cuban- [*603] American state legislators to transcend a politically partisan and racially divisive competition over the creation and location of "a minority law school" in Florida to develop the intergroup, bi-partisan coalition that succeeded in enacting the MPLE Program.

Attorney Logan explains that the MPLE program was proposed by Florida's State University System as an alternative to competing proposals to establish a new law school at Florida International University (FIU), which is 50% Hispanic and 11% Black, or to reopen a law school at the historically Black Florida A&M University (FAMU). FAMU's all-Black law school was closed by Florida's all white legislature in 1965 in order to open another white law school at Florida State University. The decision was purportedly made to enable Florida to meet an expected increase in the demand for lawyers, since FAMU's law school was reportedly failing to graduate sufficient numbers of lawyers that would later be admitted to the Florida Bar. The recent controversy over whether a new law school should be located

at FIU, a proposal favored by Florida's Cuban legislators, or reopened at FAMU, the alternative supported by Florida's Black legislators, was sparked by various reports indicating that minorities are seriously under-represented throughout the legal profession in Florida. Indeed, in 1990, the Florida Supreme Court Racial and Ethnic Bias Study Commission concluded that a critical shortage of minority law students, attorneys and judges was a major factor contributing to the denial of equal justice for minorities in the State.

According to Attorney Logan, the MPLE program aptly illustrates the value of intergroup coalitions. The proposal to establish the scholarship program was introduced in 1994 by a Black representative in the House and a Latino Senator, as a bi-partisan, biracial compromise bill. This bi-partisan, bi-racial support has enabled the program to survive the transfer of power between Democrats and Republicans in the various elections since 1994. Rather than continuing a partisan and racially divisive competition for a law school that the State had no intention of funding, the Black and Hispanic legislators were able to put aside their differences and find common cause in a program that would help both groups achieve the objective of increased minority participation in legal education and the legal profession.

The problem is that, as her account indicates, this successful coalitional initiative is a case study in interest-convergence politics. Indeed, the success of the coalition was grounded in the contingencies of the moment, most particularly on the fact that the State could not justify giving either group the law school it wanted. If the State had decided to give a school to one group, this bi-racial, bi-partisan coalition would never have coalesced. Because the State did not, the two groups had to [*604] cooperate or walk away with nothing. This coalition is, however, fragile and unstable. Each group still wants "its own" law school, and both FIU and FAMU have indicated that a law school is among their top priorities for 1998-2003. The stakes are as daunting as the coalition is fragile. As Attorney Logan observes, "if that battle reheats and intensifies, chances for future alliances on any issue will become more and more remote. Also, if one group gets a school, the other group may well find its under-representation left inadequately addressed." n63 The fragility of this coalition is directly attributable to the fact that it is based on a contingent convergence of interests, rather than a substantive vision of and commitment to intergroup social and racial justice. Thus, while Attorney Lyra Logan views the MPLE as evidence of progress in intergroup coalitional politics, a LatCrit sensitivity must demand more from both groups.

At a minimum, a substantive vision of intergroup justice would eschew any political move to cast the problem of equal justice as a simple matter of increasing the number of Blacks and Latinas/os enrolled in Florida law schools or admitted to the Florida Bar, particularly when number-counting can operate to pit Blacks and Latinas/os against each other in a zero-sum competition. From the perspective of the Black and Latina/o residents of Florida seeking equal justice and affordable legal services, the crucial question is not who is going to control any proposed minority law school, nor how many Blacks and Latinas/os are admitted to the Bar, but how that control will be exercised and whether those attorneys will be trained, committed and enabled to practice law for social, racial, and ethnic justice.

The current structure of the legal profession in Florida, as in many places, is hardwired for inequality and injustice. n64 Despite the supposed over-supply of lawyers in South Florida, low and middle income individuals and families, as well as many small businesses, are literally priced out of the market for private legal services to such a degree that their legal needs go unattended or they resort to pro se representation. n65 State supported legal services for the poor are grossly underfunded. n66 [*605] Recent law school graduates inspired by a vision of social justice and a desire to practice law in the public interest are hard-pressed finding any public interest jobs, and certainly any that pay a living wage after accounting for law school loan repayment obligations. n67

Rather than empowering minority students to become effective advocates on behalf of the poor and the marginalized or even to achieve individual fulfillment through personally meaningful work, many minority students experience their legal education as a socialization process that numbs their sense of justice, subjects them to relentless microaggression, triggers profound identity crises, ignites their appetites for status and money, distances them from the communities they initially wanted to help and, if they are successful by mainstream standards, condemns them to slave away for years at any job that allows them to repay their student loans, while they take solace in the fact they are making more money than they have the free time to spend. n68 Integrating minorities into this pre-existing status quo without serious attention and proactive efforts to reform the way legal education, the legal profession and the delivery of legal services are currently structured may provide Black and Latina/o students with a well-deserved opportunity for individual advancement through professional education, but it will not in and of itself ensure that low and middle income Blacks and Latinas/os, not to mention the poor of any race, will enjoy equal justice, nor that these new attorneys will be ready and able to practice law for social justice.

Clearly, the MPLE program is a remarkable feat in an era of back lash and retrenchment. The question that Attorney Logan's essay effectively raises for LatCrit theory and praxis is this: how can we use the contingencies of interest convergence as a stepping stone toward, rather than a restriction upon, the achievement of social justice. Both the civil rights and the MPLE experiences show that coalitions based on interest-convergence can be put to good use, but those two experiences also counsel LatCrits to transcend the limitations and fragilities of these strategic alliances. With this critical account of the MPLE experience, Attorney Logan usefully reminds LatCrit scholars that our challenge is to imagine and implement coalitions based on a vision of and commitment to substantive justice.

In this context, Attorney Coto's essay is a particularly instructive counter-example. Like many students of color, Attorney Coto experienced her Latina identity as a compelling source of empathy for and commitment to the marginalized communities with whose struggles and suffering she could in many ways identify. Unlike most law students, however, Attorney Coto was able, with the help of an Echoing Green Fellowship and the sponsorship of the Florida Immigrant Advocacy Center, to translate her empathy into an innovative legal services project, which she founded upon graduating from the University of Miami School of Law in 1997. This project is called LUCHA. Its mission is to serve battered immigrant women by providing critical legal assistance under "VAWA," the Violence Against Women Act, a federal law that makes the prevention of violence against women "a major law enforcement priority" and includes provisions enabling battered immigrant women to self-petition for permanent resident status without the cooperation or participation of their abusive spouse. VAWA also provides suspension of deportation relief; however, without access to effective legal services, the vast majority of battered immigrant women lack the information and resources necessary to obtain this relief. Like other immigrants, these women face barriers of language, culture and social economic marginalization, but they face additional barriers because they are trapped in relationships with men who abuse them and manipulate their fears of deportation in order to exert power and maintain control.

The LUCHA project is especially noteworthy because it reflects a self-conscious and self-critical effort to implement an alternative model of legal services that is less focused on traditional litigation and more focused on reducing the dependency and isolation that make battered immigrant women so desperately vulnerable. While the traditional legal services model constructs the client as passive beneficiary of the benefits secured and rights vindicated through the agency of the lawyer advocate, LUCHA seeks to relocate and inspire agency in and among the battered immigrant women themselves. Formed as a grassroots membership organization, its strategy is to enable and promote self-determination by involving battered immigrant women in a larger community where mutual engagement and assistance become the vehicles of individual empowerment. LUCHA members are eligible for free legal services on immigration matters; however, to become a LUCHA member, women must take a six-part educational program and commit a portion of their own time to assisting other women. The educational component raises women's consciousness and provides them with necessary information on relevant topics in immigration law, workers' rights, domestic violence, public benefits, victim's rights, community resources and lessons on how to be heard by government. The mutual assistance creates community and organizes social networks otherwise disrupted by the dislocations of the immigrant experience and the isolation of domestic battery.

Despite its many strengths, the LUCHA project faces two significant sets of obstacles. The first is that the structure and philosophy of LUCHA run counter to elitist attitudes that currently structure the delivery of legal services to the poor. The second is that the project is primarily supported by a terminal fellowship. These two obstacles illustrate the difficulties or conundrums facing even the most creative and entrepreneurial minority law students committed to doing public interest work. On the one hand, their identification with their client communities can make them highly critical of the way traditional legal services operate and eager to innovate new approaches; on the other hand, established legal services are resource strapped and hardly interested in, nor often able, to hire recent graduates to develop and implement untested innovations. As a result, even the most innovative projects and ideas are increasingly dependent on terminal fellowships and grants, making these projects fragile, unstable and vulnerable to sudden termination, even after tremendous efforts have been invested in their success. The unsurprising result, too often, is a disillusioned disengagement and retreat to well-trodden paths of career development. Thus, Attorney Coto's story reflects the range and structure of possibilities and obstacles confronting recent law graduates determined to translate anti-subordination theory into meaningful practice. The reforms needed to alter this picture are systemic and profound - and attest to the fact that a struggle to increase minority participation in legal education, unconnected to a project of systemic reform in the delivery of legal services to disadvantaged communities, may fall short of the mark.

This is not to suggest that increasing minority participation in legal education and the profession is not a compelling social justice objective. It is to say that the struggle to achieve equal justice for Blacks, Latinas/os and other marginalized groups in Florida requires more comprehensive reforms, reaching deep into the heart of legal

education and forward into the structure of the legal profession. n71 These reforms can barely be imagined, let alone achieved, without the kinds of sustained, collaborative, bi-racial and bi-partisan alliances that the MPLE coalition initiative conjures, but has not yet fully delivered. By this, I mean alliances that are grounded in a substantive vision of justice and of the role of law and legal education in effectuating that vision, rather than a contingent convergence of interests among two factions that choose to position themselves in a racially marked, politically partisan, zero-sum competition for control of a non-existent law school at the expense of the collaborative intergroup political alliances needed to achieve more comprehensive and systemic reforms in the structure of legal education and the organization of the legal profession - to the detriment of the minority interests they purport to represent and, more generally, to the cause of social, racial justice through law in this State. n72

B. Inside Outside: Mapping the Internal/External Dynamics of Oppression

The second cluster of essays maps the dynamics of internal and external oppression within Latina/o communities, even as it illustrates a rich multiplicity of perspectives from which the theory and practice of anti-subordination politics can be mapped around the inside/outside met aphor. n73 Professor Padilla first activates the inside/outside metaphor by focusing our attention on the phenomenon of internalized racism. Acknowledging that Latina/o subordination is not just a function of external oppression, but also of internal acquiescence in the negative stereotypes that undermine individual self-confidence and destroy collective solidarity, challenges LatCrit scholars to theorize the relationship [*609] between internal and external oppression, to familiarize ourselves with the psychologies of liberation n74 and to put into practice the affirmation of self that Professor Abreu's essay so effectively displays.

The four essays by Professors Abreu, Hernandez-Truyol, Wiessner and Roberts in very different, though complementary and synergistic, ways introduce a second problematic that is also usefully analyzed through the heuristic lens of the inside/outside dichotomy. LatCrit theory has from the beginning sought to articulate an inclusive and multidimensional critical legal discourse, aimed at centering the previously marginalized experiences of Latinas/os, even as it continuously aims toward an ever more inclusive vision and practice of anti-subordination politics and intergroup justice. The initial birth and current trajectory of LatCrit theory has in some instances been celebrated as a natural outgrowth of the intersectionality and hybridity that characterizes Latina/o identities. Latinas/os are said to be uniquely positioned to bridge the hierarchical divisions of race, ethnicity, class, immigration status, linguistic marginality, gender and sexual orientation because Latina/o identity constitutes the intersection of all of these terms. n75

It is by now, for example, a LatCrit mantra that Latinas/os come in all races and colors: we are of African, Asian, European and Indian heritage. "We speak Spanish, English, Spanglish, regional dialects and indigenous tongues." n76 Latinas/os are, in this respect, a universal that contains all particulars, and whose liberation is therefore intricately intertwined and directly implicated in the liberation of all particulars. n77 Against this backdrop, Professor Abreu's reminder that LatCrits must avoid essentializing our intersectionality sounds a helpful note of caution, even as Professor Hernandez-Truyol's account of the multiple forms of subordination experienced by Latina lesbians within their own communities, Professor Wiessner's emphasis on the oppression of indigenous peoples within every Latina/o community across the globe, and Professor Robert's discussion of the particularities of Black experiences and political identity, all challenge LatCrit scholars to examine how Latinas/os construct insiders and outsiders within the very midst of Latina/o communities. Our aim must be to avoid the practices and [*610] assumptions that would replicate these insider/outsider configurations in the articulation of LatCrit theory, the consolidation of the LatCrit community and the organization of LatCrit conferences.

Internalized Oppression and the Problematics of Self-Affirmation

By invoking the notion of internalized oppression, Professor Padilla's essay offers a valuable point of reference from which to explore the role of individual psychological and spiritual agency in the process of anti-subordination liberation praxis. Read in tandem with Professor Abreu's account of her experiences as a Cuban immigrant, these two essays center the psychological processes through which outsider groups both participate in and transcend their own marginalization, as well as the way individual experiences of inclusion and exclusion are mediated by culturally specific narratives of identity and community. As narratives of Latina/o group identity, these two essays project very different accounts of the way the constitution of Latina/o identities is experienced by members of different Latina/o groups.

Professor Padilla's essay calls Latinas/os to begin our anti-subordination theory and praxis by acknowledging the reality of internalized racism in Latina/o communities, a phenomenon in which, according to Professor Padilla, "Mexicans internalize the 'Anything But Mexican' mind set." For Professor Padilla, exposing instances of internalized oppression is an important first step in any liberation struggle because internalized racism is the primary reason why

Latinas/os collaborate in their own denigration, sabotage the opportunities and undermine the positive efforts of other Latinas/os. She cites numerous examples: the fact that significant numbers of Latinas/os in California voted to deny immigrants access to many benefits they had previously enjoyed (Prop. 187), to end affirmative action in government contracting and public colleges and universities (Prop. 209), and to end bilingual education (Prop. 227). Latinas/os who have internalized the negative stereotypes promulgated by the white majority are alienated both from themselves and from each other. Thus, they experience even their substantial achievements through the insecurity of an imposter and project their self-doubts and self-hatred onto other Latinas/os.

Overcoming subordination requires overcoming this internalized racism, and to this end, Professor Padilla offers numerous suggestions as to how Latinas/os can develop more positive self-identities and more empowered and empowering relations with other Latinas/os, both within [*611] and beyond the legal academy. n78 These practices have the common elements of collective solidarity, mutual assistance and sustained engagement in each other's struggles and aspirations - over time and across the many different social, political and professional settings where Latinas/os can make common cause in promoting each other's achievements and development - including LatCrit conferences.

Professor Abreu's essay, by contrast, offers a narrative in which Cuban identity has been experienced as a source of pride, privilege and unique opportunities. She describes her own experience of being Cuban as an experience of being "where it was at." n79 Cuban identity most certainly marks a whole constellation of differences between her and the Anglo majority, but in Professor Abreu's narrative, these differences are experienced of a piece with the talent of a Luciano Pavarotti or the intellect of an Albert Einstein. "Difference," she notes, "is negative only when it is constructed as such." n80 Being Cuban never felt like a negative thing, nor did she ever feel inferior because she was Cuban. This is not to say that she never felt excluded, stereotyped or pressured to conform to the roles and positions the majority culture allots to immigrants in general and Latinas in particular. It does mean that these instances of exclusion produced no permanent damage in her sense of self because she, like many of the first and later waves of Cuban refugees, experienced their presence in this country as a temporary phenomenon triggered by the disruptions of the Cuban revolution. For many Cubans, the memory of a privileged pre-revolutionary status in Cuba and the dream of return, not to mention the human capital and economic resources some Cubans were able to take into exile, provide the social psychological resources through which many in the Cuban-American and "Ameri-Cuban" community combat their "minoritization." n81

These two essays provide a unique opportunity to explore the wide range of discourses through which Latina/o identity is mapped across the multiplicity of differences and similarities that constitute us as individuals marked by, or invested in, a Latina/o identity. Their focus is internal, self-critical and self-reflective. Though they perform the project of constituting a Latina/o identity in very different ways, each does so undeniably from the inside of a discourse, consciousness and community that are as internal to the Latina/o construct, as they are external to each other. The differences are striking. Where Professor Padilla reflects now on the broader significance of the fact she never dated any of the Chicanos [*612] with whom she went to college, Professor Abreu remembers dating only Cuban boys in high school; where Professor Padilla speaks of Chicanas/os distancing themselves from the Spanish language, Professor Abreu recounts the concerted and assuredly draconian efforts through which her parents ensured she would grow up bilingual; and where Professor Padilla speaks of Chicana/o feelings of inferiority at the margins of a dominant white society, Professor Abreu recounts the decidedly critical perspective her Cuban upbringing gave her on Anglo culture - a perspective that shielded her from ever feeling excluded by a society into which she never wanted to assimilate.

Read in counterpoint, these two essays give substantive content to the general observation that the way individuals and groups respond to experiences of oppression and exclusion is both central to the development of personal and social agency and informed by the different cultural narratives we internalize. n82 They also demonstrate how the project of Latina/o liberation implicates existential questions of universal significance, in this instance provoking a critical analysis of the relationship between the internal experience of one's own agency and will to flourish and the external structural constraints that might otherwise determine our fate by consigning us to the margins. n83 Poised between the discourses of free will and determinism, between the constraints of structure and the possibilities of agency, is a subtextual conflict between those who construct Latina/o identity through a discourse of victimization and those who eschew any connection to a victim identity. n84 Read in counterpoint, the essays activate this tension because they challenge LatCrit scholars to reconcile Professor Padilla's "reconstructive paradox" [*613] with Professor Abreu's celebration of self and assertions of indomitable agency.

The reconstructive paradox refers to the difficulties of enacting one's liberation from within a society that barely notices "the most insidious types of social evil because those evils tend to be so ingrained." n85 If Latina/o marginality

and inferiority are so pervasive in our society, where or how, as Professor Westley asks, do Latinas/os find the resources to resist acquiescing in the very power that constructs us? n86 Professor Abreu responds that Latinas/os should seek these resources of self-affirmation and personal agency in the fact Latinas/os are always both insiders and outsiders all at once. Drawing energy and affirmation from those contexts in which we are insiders prepares us to combat the power that, in other contexts, would cast us as outsiders. The problem, as Professor Abreu acknowledges, is that, unlike herself, not all Latinas/os know the experience of being inside a group that is privileged by class, education, or social status. Not having access to an inside that is materially privileged or socially valued means having to create a self- and other-affirming identity from the bottom or the outside.

To be sure, Professor Abreu recognizes that "refusing to acknowledge victimization does not transmute a victim into a non-victim." n87 Her point, as I see it, is that the impact of victimization is, in many though not all instances, fluid and indeterminate. There is always some avenue of agency. And even if there isn't really, the individual who always believes there is a way forward (or out) is more likely to flourish than an individual who internalizes the discourses and credits the practices that cast her as inferior or inadequate. Personal agency, like any great achievement or failure, is from this perspective a manifestation of the will to be and believe. n88 But even here, engaging Professor Padilla's reconstructive paradox means confronting the question: where does the outsider, one lacking access to the sorts of material, educational or social privilege Professor Abreu admits to enjoying, or one, who - like the Latina lesbian of whom Professor Hernandez-Truyol writes - finds herself multiply rejected, despised and excluded from all the identity groups or communities with which she might otherwise identify and align herself, where does someone so positioned - at the bottom and on the outside - find the will and resources to manifest an alternative vision from the bottom or the outside?

[*614] Read in this context, Professor Hernandez-Truyol's essay contributes a particularly valuable critical perspective on the significance of internalized oppression as well as on the configuration of insider/outsider positions within Latina/o communities. Tracking earlier accounts of the profoundly sexist constructs through which Latina/o culture structures heterosexuality and consolidates familial interdependence around the images of female sexual purity and maternal self-sacrifice, Professor Hernandez-Truyol notes how Latina/o culture routinely invokes the strictures of Catholic religiosity to regiment a form of heterosexuality that empowers men and smothers women. Under the weight and burden of the virgin/whore dichotomy, heterosexuality is constituted as a practice of male dominance and female self-negation, while the expression of female sexual agency or autonomy is cast as a dangerous step toward a rapid and ineluctable free fall into a life of sin, perversion and vulnerability to male sexual dominance. n89 And yet, however oppressive these cultural constructs may be for straight Latinas, Professor Hernandez-Truyol is right to insist that Latina/o culture is even more virulent in its oppression of lesbians as lesbians.

Though all Latinas must negotiate the rigidity of the virgin/whore dichotomy every time and everywhere it is invoked to confine Latina assertions of autonomy and self-determination within the parameters of permissibility dictated by heteropatriarchal normativity or to bully Latinas into doing and being only those things a Latina can do or be without being labeled "a whore," nevertheless, in this context, Latina lesbians must, in addition, negotiate a cultural reality that sums itself up like this: *Mejor puta que pata*. As Professor Hernandez-Truyol indicates, this cultural adage says it all: "The social and religious factors and influences that render sex taboo for mujeres in the cultura Latina are intensified, magnified and sensationalized when imagining lesbian sexuality." n90 As bad as the whore is, the lesbian is worse. The fact that Latina lesbians have nonetheless found ways to develop and express a self- and other-affirming identity reflects the power and resilience of [*615] humanity asserting "I am and I count" against all odds, n91 but it does not change the fact that the homophobia that marks her a lesbian also makes her an alien outsider -- marginal and irrelevant, perverted and unnatural - everywhere and anywhere, but most painfully within her own Latina/o family and community. n92

By centering the experiences of Latina lesbians, Professor Hernandez-Truyol projects a perspective from which the anti-subordination imperative now pending on the LatCrit agenda far exceeds the anti-subordination potential of any strategies that would reduce this imperative to a struggle against internalized oppression or would ground Latina/o liberation on the identification and reclamation of some insider position we have all purportedly experienced at sometime, somewhere or another. This is not to say that these strategies, as articulated by Professors Padilla and Abreu, have no anti-subordination potential. It is just to suggest that the anti-subordination potential of these seemingly different strategies is limited by a common element that, but for Professor Hernandez-Truyol's intervention, might be easily overlooked. This common element is that neither strategy really addresses the problem of outsiders within the Latina/o community.

Professor Abreu's reflections on the insider/outsider dynamic con jure but do not really engage the problem because she intentionally con flates the difference between outsider status and difference itself. While she may be quite right to insist that "difference" is negative only when it is constructed as such, there is still a vast difference between being "dif ferent" in the way of a Luciano Pavarotti and being different in the way of a Latina lesbian. The difference between these ways of "being differ [*616] ent" is precisely the fact that some differences, like sexual orientation, race and gender are in fact constructed as negative. As a result, the pro posal to ground Latina/o liberation on the self-valorization of one's dif ference rings a little hollow precisely because the project of self- valorization smacks of other-world psycho-spiritual realization, rather than the material and institutional transformation of the real-world con figurations of power and privilege that are currently invested in main taining these negative constructions of difference - precisely because these constructions help reproduce and legitimate hierarchical relations, both within and against Latina/o communities, in profound and material terms.

Professor Padilla's discussion of internalized oppression skirts the same problem in a different way. This is because the deconstruction of internalized oppression addresses a psycho-cultural dynamic in which the self is pitted against itself. In the case of Latina lesbians, overcoming internalized oppression may help the Latina lesbian, like other victims of relentless oppression, to resist the practices and discourses of subordina tion and exclusion and may thus enable her to revalue and respect both herself and other lesbians, but it does not eliminate the reality of homophobic oppression in la cultura Latina precisely because, and to the extent, this oppression is embedded in the very different dynamic of the self against its "other."

In this context, what Professor Hernandez-Truyol's intervention suggests is that anti-subordination theory and praxis must make a clear distinction between internalized and internal oppression within Latina/o communities: the first dynamic targets sameness; the second targets dif ference. The first is activated by self-hatred and self-doubt, the second by hatred or fear of the Other. Overcoming the first, requires that we learn to value ourselves. Overcoming the second requires that we learn to value others. Learning to value ourselves does not automatically translate into the valuing of others, particularly "Others," in whose dif ference Latina/o culture has inscribed its most virulent prejudices and whose acceptance and full inclusion within the Latina/o community would threaten and profoundly destabilize the routine practices and ingrained ideologies through which traditional relations of power and dominance are culturally performed and legitimated. It therefore fol lows that self-valorization can be only part, though - as Professors Abreu and Padilla powerfully demonstrate - an important part, of the anti-subordination agenda that drives LatCrit theory and practice. The other part requires that, in learning to value Others, who are at the bot tom or on the outside of their particular contexts, we learn to value our selves in a different way - in a way that does not reproduce the [*617] prejudices and hierarchies of the various supremacies we seek to transform.

Deconstructing Racial Hierarchies and De-Centering Hispanic Identities in LatCritTheory

Like Professor Hernandez-Truyol, Professor Wiessner calls on Latina/o communities to practice anti-subordination principles inter nally. n93 His essay opens by recounting a vision of a world order based on human dignity, inclusion and respect for diversity. In this imagined order, the anti-subordination agenda articulated by Latina/o communities raises compelling claims of justice. Nevertheless, he finds fault in the fact that LatCrit scholarship has seemingly turned a blind eye to the plight of indigenous peoples. n94 This asserted failure to engage the strug gles of indigenous peoples jeopardizes the legitimacy of Latina/o demands for equal treatment and respect. In Professor Wiessner's words, "If we do not respect the legitimate claims of others, we forfeit our own." n95 Indeed, the struggles of indigenous peoples are particularly appropriate matters for LatCrit attention precisely because they impli cate a whole array of current and historical discrimination and exploita tion by Hispanic Latinas/os, both in Latin American countries, where Hispanic Latinas/os constitute a dominant class, and elsewhere and everywhere Latinas/os display the conscious and unconscious racism that is endemic in Latina/o cultural sayings and practices toward indige nous peoples. n96 Just as Latinas/os resist our subordination within Anglo society, Professor Wiessner's objective is to challenge the subordination of indigenous peoples within Latina/o society.

Professor Wiessner makes his case by examining the legacy of His panic conquest in Latin America. This legacy is a history of physical and cultural genocide. From the initial encounter with the Spanish Con quistadors through the more recent history of military dictatorships, [*618] indigenous peoples in Latin America have been tortured, massacred, robbed, enslaved and displaced from their communal lands by the bru tality of scorched earth military campaigns, international development projects, U.S. sponsored drug enforcement search and destroy missions, and multinational companies seeking free access to their natural resources. Theirs is a struggle for physical and cultural survival, for self- determination and for land. Their current legal status in countries like Brazil, Venezuela, Nicaragua

and Mexico reveals the legal legacy of the Hispanic conquest as well as the increasing influence and impact of neo-liberal hegemony in Latin America. In Brazil, for example, Professor Wiessner notes that indigenous peoples are still subject to a special regime of tutelage, which casts them as "relatively incapacitated" and places them under the guardianship of the Brazilian state. Government decrees initially promulgated to protect indigenous rights to their ancestral lands have been rolled back by more recent decrees designed to afford private commercial interests the right to contest Indian land demarcations in an adversarial process. By outlining the present day legal struggles of indigenous peoples in the various countries of Latin America, Professor Wiessner reveals the continued complicity of Latin American elites in the expropriation of these subjugated, but resurgent Indian nations, even as he notes with approval the legal advances being made in some countries like Colombia and Chile.

This is not to say that Professor Wiessner's analysis is beyond criticism. Perhaps to underscore the compelling need for Hispanic Latinas/os to recognize their own complicity in the subordination of indigenous peoples, Professor Wiessner structures his argument around a comparison of the treatment indigenous peoples have received from Anglo and Hispanic conquerors. In this comparison, Hispanics fair poorly. According to Professor Wiessner, Anglo conquerors were more civilized and less brutal than Hispanic conquerors. n97 To support this brash generalization, Professor Wiessner quotes the work of Professor Steven McSloy. n98 The problem is that nothing in Professor McSloy's text supports Professor Wiessner's comparative assessment. The fact that the "the wars, massacres, Geronimo and Sitting Bull ...[were] really just clean up," hardly suggests that the colonization of the Northern parts of the American continent was any more humane than the conquest of the South. If anything, the comparison Professor Wiessner activates suggests instead that the "British colonizers" were more unitary and less internally conflicted about their colonizer status. While Spanish colonizers struggled against internal opposition by Spanish religious elites, who deployed "the natural law theories of St. Thomas Aquinas" to compel recognition of indigenous peoples as subjects with inalienable rights under the law of nations, the "British" colonization was total - in the law, as much as in the flesh. n99

My point is not to defend the Spanish conquest of Latin America, or to suggest that the treatment of indigenous peoples was, or continues to be, anything but brutal. My point is rather to use Professor Wiessner's analysis as a reference point for further reflection on the commitments implicit in the LatCrit aspiration to promote an anti-subordination politics that is broadly inclusive and relentlessly anti-essentialist, as well as to reflect further on the politics and practice of intergroup comparisons. From this perspective, there is no question that Professor Wiessner's essay activates a problematic that often is organized around an inside/outside dichotomy and is most immediately apparent in debates over who has standing to criticize the practices of oppression and internal hierarchies within a subordinated community. This is because Professor Wiessner's pointed and comprehensive account of the way indigenous peoples have been exploited, marginalized and oppressed "within the Latino-Latina midst" is in no sense a self-critical intervention, as Professor Wiessner at no point claims a Latina/o identity. Thus, his contribution provides a valued opportunity to reflect not only on the substance of his criticisms, but also on the way LatCrit theory should position itself in debates over standing to criticize the reproduction of hierarchies within Latina/o communities. To this end, a LatCrit response to these sorts of criticisms needs to take note that the practice of coding criticism as external interventionism, like the discourses of cultural relativism, privacy, sovereignty and the individualization of guilt and innocence, are standard tropes, routinely invoked by elites the world-over to deflect criticism from their abusive and exploitative practices, as well as from their unearned privileges. n100 Thus, it is imperative that LatCrit scholars resist the tendency to dismiss external criticisms automatically, even as we reflect critically both on the difference between internal and external criticism and on the way we draw the internal/external line in responding to those particular criticisms we might want most to suppress.

At the same time, the analytical and empirical imprecision with which Professor Wiessner juxtaposes the colonization of North and South America, as well as his mere passing reference to the substantial efforts currently underway to incorporate indigenous peoples into LatCrit discourse should give self-constituted "outsiders" reason to pause before launching their well-intentioned criticisms. At a minimum, such criticisms need to avoid inflammatory over-generalizations that cast their comparisons in broad, ambiguous and unsubstantiated terms. Such comparisons do little to enlighten, though much to confuse the issues and inflame the politics of reaction and division. Nevertheless, the underlying truth of Professor Wiessner's broader argument warrants serious LatCrit attention. Indeed, read through the heuristic of the insider/outsider dichotomy already thematized in the preceding essays by Professors Padilla, Abreu and Hernandez-Truyol, his essay calls attention to, and prompts reflection on, the fact that none of these essays address the way their analysis might be relevant to the particular experiences of indigenous peoples, nor for that matter of Black Latinas/os and Asian Latinas/os - though these group experiences would certainly enrich our understandings of the

social-psychological processes of internalized oppression as well as expanding our analysis of the way "difference" is used to configure insider/outsider positions within and between Latina/o communities.

To give just one brief example of the way attention to the particular realities of indigenous peoples might substantially enrich the analysis, even as it helps clarify the scope and meaning of LatCrit commitment to anti-essentialist anti-subordination theory consider the following: When Professor Padilla writes of internalized racism, she speaks specifically of the practices through which Chicanas/os undermine themselves and each other. The very concept of internalized oppression is activated around an imagined inside/outside. Internalized racism is not external oppression because it occurs within a delimited community, amongst its members, pitting insider against insider. Asking how this analysis might be relevant [*621] to articulating a LatCrit perspective on the anti-subordination struggles of indigenous peoples means asking how the histories of enslavement, exclusion and extermination, as well as the current marginalization of indigenous peoples, both beyond and within the United States, would figure in a theory of Chicana/o internalized oppression? The discourse of Latina/o hybridity and *mestizaje* offers one ready response. n101 In this response, the subordination of indigenous peoples figures centrally in the dynamics of internalized oppression because it is the indigenous aspect that makes Chicana/o identity a source of self-hatred and self-doubt.

The important point, however, is to see how this response falls short of the anti-essentialist commitments that ground the LatCrit project, even as it perhaps misses the mark of Professor Wiessner's criticism, for Professor Wiessner is not talking about the subordination of indigenous identities, but of peoples. Grounding LatCrit concern for their struggles in the discourse of Latina/o hybridity suggests that indigenous peoples are inside the Latina/o construct, and important to the LatCrit project, not in and for themselves, but rather because their experiences and realities have been important to the construction of Latina/o identities. To be sure, recognizing the indigenous and other racial mixtures that oftentimes are repressed in the constitution of Latina/o self-identifications has been one of the important advances achieved through the discourse of *mestizaje*; nevertheless, the anti-essentialist commitments underlying the LatCrit movement's aspiration to articulate a politics of intergroup justice will eventually require even further progress.

Indeed, fully recognizing and embracing the struggles for justice of indigenous peoples challenges the LatCrit movement to develop the critical discourses and implement the intergroup practices that will enable the LatCrit community to pursue three important objectives, simultaneously and in tandem: to continue articulating an anti-essentialist critique of the way the institutionalization and cultural performances of white supremacy marginalize different Latina/o communities in different ways, to de-center Hispanic identity in our conceptualization of Latina/o communities so that we can better understand the particular experiences and perspectives of minority groups within our communities, and ultimately to recognize and embrace the universal claims of right - to equality and dignity - that are everywhere constituted in the demand for justice and desire for inclusion expressed by every group oppressed by the articulation of white supremacy, both within and beyond the United States. Ultimately, the struggles of indigenous peoples, like the struggles of Black and Asian peoples, are matters of LatCrit concern, not so much because Latinas/os are a hybrid people composed of all these elements, but because recognizing and transforming the particularities of injustice is the only viable strategy for achieving substantive justice. n102

Read through the prism of these three objectives, the essays by Professors Padilla and Abreu make significant contributions to the LatCrit project, understood initially as a movement to articulate the particularities of Latina/o perspectives and experiences within the regime of white supremacy and to promote a pan-ethnic Latina/o political identity that can mediate and transcend the politics of division that is too often activated around the differences between Cuban-Americans, Puerto Ricans and Mexican-Americans. n103 They want to make Latinas/os "insiders" even as they make "the inside" a place worth inhabiting. But, as Professors Hernandez-Truyol and Wiessner remind us, "the inside" we create must aspire always and everywhere to provide a home for those at the bottom of their particular contexts because the logical and political implications of the LatCrit commitment to anti-essentialist intergroup justice, both encompass and transcend the politics of Latina/o pan-ethnicity and hybridity.

In this vein, Professor Roberts' contribution appropriately closes this cluster of essays. n104 Her essay is based on remarks she delivered at LatCrit III in a colloquy programmed to open the focus group discussion entitled *From Critical Race Theory to LatCrit to BlackCrit? Exploring Critical Race Theory Beyond and Within the Black/White Paradigm*. n105 The purpose of this focus group was to expand the parameters of LatCrit discourse by triggering a critical analysis of the different ways in which the Black/White paradigm of race truncates and essentializes the liberation struggles of Black peoples, for example, by deflecting attention from the intra-group hierarchies and diversity that divide "the Black community," as well as by obstructing the cross-racial and multi-racial solidarities that might otherwise coalesce around issues of imperialism, colonialism, national origin discrimination, language rights, immigration policy, gender and sexual orientation. The hope was that [*623] by creating a space and intentionally focusing attention on the sorts of

intra-Black particularities constituted in and through the different histories, perspectives, political ideologies and transnational identities of Black Latinas/os and Caribbeans, we might begin the process of conceptualizing the critical methodologies, thematic priorities and substantive areas of law and policy that might form the center of a post-essentialist "BlackCrit" discourse, which is just to say, a critical discourse that engages the particularities of Black subordination from an anti-essentialist perspective.

LatCrit stakes in such a project are high, for while LatCrit theory was itself born of the critical need to move beyond the essentialism of the Black/white paradigm toward a more inclusive theoretical framework that focuses, broadly and comprehensively, on the way the institutionalization and cultural performance of white supremacy affect all peoples of color, though in different ways, still the political impact of uncritically abandoning the Black/white paradigm would be indefensibly regressive. n106 To be sure, Asian and Latina/o communities have been marginalized by the Black/White paradigm and our increasing and mutual recognition of the commonalities that construct Asian and Latina/o subordination are among the most powerful new insights enabled by the anti-essentialist movement in Critical Race Theory. n107 Nevertheless, the inter-group solidarities this knowledge enables us to imagine and pursue cannot be promoted at the expense of our theoretical and political commitments to combating the particular forms of racism experienced by Black people, both in this country and abroad. If LatCrit theory were to abandon uncritically the Black/White paradigm, it would marginalize a substantial portion of the Latina/o community and betray our aspirations to substantive intergroup justice. Thus, the objective must be to move our understanding of white supremacy progressively beyond the Black/White binary of race, even as we acknowledge the [*624] particular and virulent forms of anti-Black racism that are institutionalized and expressed in virtually every society across the globe, including Latina/o communities. Doing so requires that we center the particularities of Black subordination long enough to recognize the way anti-Black racism operates in Latina/o communities and the way the struggles of Black peoples, who are not Latina/o, are also implicated in the LatCrit project.

From this perspective, Professor Roberts' essay makes two points worth further reflection. Her first point is to challenge a common misunderstanding of the meaning of "essentialism" in the anti-essentialist critique. White feminist legal discourse, for example, has construed this critique as an attack on any analysis that focuses exclusively on the experiences of one group of women without also addressing the experiences of other groups of women or, indeed, of all women in general. This misunderstanding may be genuine or opportunistic, but in either case, it makes it easier to deflect the impact of any analysis that focuses on the particular forms of oppression experienced by any particular group of women of color. Thus, when Professor Roberts writes or talks about the particular experiences of pregnant Black women in a racist criminal justice system, her analysis is at times discounted on the grounds that it does not discuss the experiences of other pregnant women in analogous situations. But, as Professor Roberts argues, the anti-essentialist critique, which launched Critical Race Feminism as a reaction against the exclusive attention feminist legal discourse was then giving to the problems of white women, did not attack the practice of studying the problems of a particular group of (white) women, but rather the practice of assuming that this particular group represented all women. n108 As Professor Roberts puts it, "writing about Black people is not essentialist in and of itself. It only becomes essentialist when the experiences discussed are taken to portray a uniform Black experience or a universal experience that applies to every other group." n109

This important insight has profound implications for the way the LatCrit movement should understand and pursue the practice of producing anti-essentialist, anti-subordination critical legal scholarship and was, in fact, a driving force behind the initial decision to organize the "BlackCrit" focus group discussion at LatCrit III. The purpose of this focus group was to operationalize, within the LatCrit community and conference setting, a vision of intergroup solidarity and substantive justice that is categorically different from the vision that currently links the anti-essentialist critique to a particular, and ultimately unsatisfactory, [*625] representation of both the meaning and the practical and political implications of a commitment to "multiculturalism." This alternative vision is referenced in, but not fully explained by, the call for "rotating centers" because the aspirations embedded in the practice of rotating centers are too easily confused with and overshadowed by an ingrained tendency to hear the call for critical attention to the particularities of subordination experienced by different groups as a call that can only be answered through the Balkanization of the universals that might otherwise bind us in solidarity. n110

Against this backdrop, the decision to feature a focus group discussion exploring the necessity and possibilities of launching a new intervention in outsider scholarship provisionally styled "BlackCrit Theory," was to perform a public event that, thereafter, would provide a meaningful point of reference for articulating a different vision of the way the anti-essentialist critique can (and should) mediate the relationship between universal and particular. The easiest way to explain this is to contrast the structure of the BlackCrit focus group at LatCrit III with the paradigm model through

which the commitment to multiculturalism has been performed in other contexts. n111 Rather than organizing LatCrit III as a conference dedicated to Hispanic Latina/o issues and relegating discussion of the particularities of Black subordination to one of a number of concurrent sessions, in which different subgroups separate to discuss "their own" particular issues, the BlackCrit focus group was designed to center the problem of Black subordination in LatCrit theory and to invite all participants to focus on these particular problems, with the implicit understanding that these particular problems are of universal concern for all LatCrit scholars committed to an anti-subordination agenda based on substantive intergroup justice, and with the further understanding that future LatCrit conferences would, in similar fashion, seek to center the [*626] particularities of subordination confronting other marginalized and inter sectional minority identities.

This latter point is crucial. By linking critical analysis of the particularities of subordination experienced by different groups to the practice of "rotating centers," the BlackCrit focus group at LatCrit III clearly illustrates why the production of anti-subordination theory and praxis must be conceptualized and performed as a collective project, reflected in and strengthened by our mutual commitment, across our many differences, to remain engaged in each other's issues over time. As Professor Roberts rightly notes, no one need, nor ever can, focus on everything at once, but the struggle against white supremacy requires that we - each individually and all collectively - increasingly learn to see and combat the multiple structures and relations through which the practices and ideologies of white supremacy have constructed the particular forms of subordination confronted, in different ways, by all peoples of color, both within and beyond the United States. Thus, the common project to transform the realities of white supremacy can only be realized through a collective and collaborative effort, in which we teach each other about the similarities and differences in the way white supremacy operates in our various communities. This by necessity requires a practice of "rotating centers," even as this practice, in turn, requires a mutual commitment to remain engaged over time. Only members of a community committed to fostering an inclusive and collaborative anti-subordination project for the long haul can afford to decenter their own compelling problems to focus, instead, on the problems confronting people other than themselves.

It follows, therefore, that the practice of rotating centers can operate effectively only in the context of a genuine community, whose members' commitment to remain engaged for the long haul can foster the kind of continuity needed to ensure that "the center" does, in fact, rotate from year to year and from venue to venue. It is this kind of community that the decision to feature a BlackCrit focus group at LatCrit III was designed to perform and promote. However, despite these seemingly unobjectionable intentions, the BlackCrit conference event generated significant controversy from two distinct perspectives, each of which sheds substantial light on the many challenges awaiting our collective attention. From one end, the critique was that, in centering Black subordination, LatCrit III was on the verge of taking "the Lat" out of LatCrit Theory. n112 From the other end, the critique was that, by centering Black subordination, LatCrit III was on the verge of assuming an umbrella position that was more appropriately left to the more universal and [*627] inclusive venue of Critical Race Theory. n113 Both of these critiques, however, miss the point of featuring the BlackCrit focus group at LatCrit III - though they do so in different ways.

The first critique misses the point because it essentializes Latina/o identity in a way that threatens to reproduce, within LatCrit theory, the racial and ethnic hierarchies that pervade Latina/o communities and culture and that are fundamentally at odds with any anti-essentialist commitment to anti-subordination politics. Latinas/os, to repeat yet again, come in every variety of race and ethnicity. LatCrit theory cannot marginalize the particular experiences of Black subordination, without presupposing, among other things, that Black Latinas/os are somehow less fully Latina/o, than Hispanic Latinas/os, and that therefore their problems are somehow less central to the LatCrit project.

The second critique misses the point because it tends to reinscribe the project of generating anti-subordination theory and praxis within a model of multiculturalism that continues to cast Black subordination as primarily "a Black thing," Hispanic subordination as "a Hispanic thing," Asian subordination as "an Asian thing," and so on and so forth. This structure has been tried, and the consciousness it simultaneously reflects and constructs has failed to enable the kinds of intergroup engagement and solidarity necessary for the task at hand: the deconstruction of white supremacy and reconstruction of a sociolegal reality grounded on a commitment to substantive intergroup justice. Indeed, it is all but obvious that this kind of structure and consciousness can promote little inter group understanding and collaborative progress precisely because the "discussions" it generates are hardwired to flounder in arguments about whose particular subordination ought to be addressed first: in the initial instance, when the particularities separate into groups that inevitably will include multiple and intersectional identities, like the Black Latina/o or the Japanese Peruvian; and in the second instance, when these separate particularities regroup to articulate a universal agenda in a common setting.

This is where Professor Robert's second major point makes her essay a welcomed and timely intervention. Professor Robert's second point illustrates the otherwise suppressed realities that make Black identity an intersectional

space, where group affiliation can be seen as a matter of political choice. She describes three different contexts in which her self-identification was fluid and in flux: in choosing to identify as African American, rather than as West-Indian; in choosing to identify as [*628] Black, rather than as bi-racial or multi-racial; and in choosing to identify as the daughter of a Jamaican immigrant during a debate with Peter Brimelow. n114 To Professor Robert's credit, each of these acts of self-identification reflects and performs, in different ways and from different perspectives, a commitment to anti-subordination solidarity. This is because the West-Indian identity has often been embraced by Caribbean Blacks as a mark of distinction that separates them from and seeks to raise them above the subordinated status of Black Americans in the United States; n115 the bi-racial or multi-racial identity category has some times operated to privilege whiteness and other non-Black identities in the configuration of Black identity among people marked by non-Black racial mixtures; and finally, because claiming an immigrant identity can, in some contexts, position Black Americans in solidarity with the victims of the virulent nativism that seeks to consolidate a supposedly "multicultural" American identity by purchasing inclusion for Black Americans at the expense of precisely those immigrants most vulnerable to exclusion: the racialized and impoverished peoples of the Third World.

Professor Robert's discussion of the different political identity choices she has made in different contexts challenges the notion of a unitary Black identity and thereby strengthens the case for the practice of "rotating centers," not only at LatCrit conferences, but at every gathering committed to the production of anti-subordination theory and practice through identity-based critique - whether those gatherings are organized under the auspices of the Critical Race Theory workshop or in other venues such as those emerging from the recent development of Asian Pacific American Critical Legal Scholarship. n116 Viewed from this perspective, the practice of rotating centers is, indeed, a move to claim a universal perspective for LatCrit theory, but only as an expression of the profoundly revolutionary possibilities embedded in the anti-essentialist critique. These new possibilities of thought and action will fully emerge only when enough us learn to see that every particular identity group constitutes a universal because every particular group includes members whose multiple and intersectional identities link each group to every other group. Just as Latina/o identity includes Blackness, certainly the converse is equally true that Black identity includes Latinidad; just as [*629] Latina/o identity includes Asian, Indigenous and European identities, so too it is true that each of these identities include all the others.

This realization has profound implications for the future development of identity politics and positions the anti-essentialist critique beyond rather than, as often is charged, at the center of the political fragmentation and Balkanization that threatens to sunder every universal into a proliferation of increasingly atomized and ineffectual particularities. This is because the anti-essentialist critique makes it possible to see that all the particular groups into which we might possibly separate are inhabited by multiple and intersectional identities. Any particular group that purports to practice anti-essentialist politics internally will, by necessity, have to treat the distinct problems of group members marked by intersectional identities as equally valid and central to the anti-subordination agenda defined by the group. This is simply to say, for example, that just as LatCrit theory must engage the problems of Black subordination because Latina/o identity includes Blackness, so too an anti-essentialist BlackCrit theory would have to confront the problems of Latina/o subordination because Black identity includes Latinidad. And yet, by doing so, each group would find that its pursuit of a genuinely anti-essentialist politics promises, always and everywhere, to reconstitute the group as a universal that contains all particulars. This would, however, be a very good thing. Indeed, the "only" thing still blinding us to the reality that every particularity constitutes the universal, albeit from a different perspective and in a different configuration, is the essentialist assumptions embedded in the imperatives of organizing hierarchical power relations through practices of inclusion and exclusion and the ingrained tendency, both within and between our various communities, to construct our collective identities and solidarities around an inside/outside dichotomy. n117

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II. Substantive Self-Determination: Democracy, Communicative Power and Inter/national Labor Rights

Part II takes up three clusters of essays that appear at first glance to have little in common: the first cluster focuses on the transition to and consolidation of democracy in regions as diverse as the Caribbean and Eastern Europe; the second cluster centers the struggle over language rights and communicative power, while the third cluster takes up a broad range of issues exploring the way Latina/o identities and lived realities should figure in the transformation of domestic and international labor rights regimes. Despite their differences, these essays reveal a common tension. In each instance, the struggle for self-determination confronts a seemingly irreconcilable and pervasively articulated antagonism between freedom and order, stability and plurality, uniformity and chaos. This antagonism has been most clearly articulated in democratic theory as the so-called "crisis of governability." n118 But this underlying antagonism is revealed

everywhere the claim to individual or group self-determination threatens inherited patterns and identities. It is evident, for example, in the political struggle over language rights and the paranoid nativism of the English-Only movement, in which the domestic proliferation of languages and cultures is cast as threat to the unity and integrity of the American national identity. n119 It is evident also in the anti-political structure of the labor rights regime established in this country. n120 By taking up these various issues, the essays in these three clusters illustrate how the universal struggle for self-determination is reflected in and [*631] advanced by the anti-essentialist commitment to anti-subordination politics at the heart of the LatCrit movement.

A. Democracy in Anti-Subordination Perspective: GlobalIntersections

The meaning of democracy and its role in the struggle for liberation present formidable conceptual and political challenges for LatCrit legal scholars and activists. As sociologist Max Castro aptly suggests, these challenges are born of the many profound and apparent disjunctures between democratic theory, or rather, the strategic manipulations of democratic rhetoric, on the one hand, and the reality of "democracy" as we live it, on the other. It is this disjuncture between rhetoric and reality that makes the struggle over the meaning of democracy a crucial political space for LatCrit theory to occupy, even as it makes the actualization of democracy, an aspiration and objective that, approached from an anti-subordination perspective, positions us against the injustices and beyond the hypocrisies of the "really existing democracies" we currently inhabit. n121 By critically examining the disjuncture between democratic rhetoric and the trans/national power structures that coopt and subvert the self-determination struggles of so many peoples in so many different contexts, all five essays in this cluster make significant contributions to articulating an anti-essentialist perspective on the meaning and practice of a real and substantive democracy both within and beyond the United States. n122

Three Stories of "the Caribbean"

The opening essay by Professor Griffith provides an excellent point of departure for a LatCrit analysis of democracy. His objective is to show how "the drug problem" impacts the democratic project in small countries throughout the Caribbean. By locating his intervention in "the Caribbean," Professor Griffith situates our analysis of democracy in an imaginary region whose multiple dimensions exceed the boundaries of [*632] any particular term. n123 Like "the drug problem" or "democracy," "the Caribbean" is a signifier with no stable, uncontested referent. It is, at first glance, a sea, not a territory - its boundaries marked by water, not by land. It is at second glance a clustered string of geographically isolated islands governed by weak and often corrupt little states, politically fragmented, but strikingly similar in their economic vulnerability to and dependence on the foreign aid and so-called preferential trade arrangements of their former colonizers and current day masters. n124 On a triple take, the Caribbean might be found beating to the rhythms of mambo, reggae, salsa, merengue and the cha-cha-cha - somewhere in, and yet beyond, a complicated overlay of transplanted cultures that emerge from, and have flourished despite, the last 500 years of colonial penetration, intervention and relentless expropriation - a history we would have to tell in Spanish, English, French, Dutch and Portuguese. n125 Pull back a bit, redraw the map a moment, and the Caribbean rises yet again - this time from a sea of blood, a theater of war zoned for the low-intensity conflicts that submerged it in waves of broken, burnt and butchered bodies, bleeding to the pulse of state sponsored terror and super-power contestations.

Embedded in this controversy over where "the Caribbean" begins and ends is the dialectic of universal and particular - as well as of the many diverse and conflicting political projects emerging from and targeted at this region. n126 Whether any universal term can unify these [*633] politically fragmented, culturally distinct, and multi-lingual particularities is an open question, but whether we seek "the Caribbean" in the regional similarities that transcend the diversities of language and history or, alternatively, in the struggle to imagine a future beyond the political fragmentation and economic uniformity that keeps these small countries dependent and weak, we will certainly not find it in any substantive meaning of the term democracy. On the contrary, as the first three essays in this cluster demonstrate, the Caribbean offers a particularly compelling starting point for an anti-subordination analysis of "democracy," precisely because democracy has been, for so long and for so many different reasons, as elusive in this region, as the dream of self-determination and the hope of peace. By focusing LatCrit attention on "the Caribbean," Professor Griffith challenges us to configure a broad and multidimensional vision of the democratic project - one that genuinely engages the anti-subordination struggles of peoples beyond the United States, even as it requires LatCrit scholars to think more critically about the U.S. role, both in promoting and obstructing the democratic project in this hemisphere.

Professor Griffith's story of the Caribbean is of democratic possibilities held hostage to an international drug war. Though U.S. popular rhetoric casts the problem primarily in terms of drug traffickers and pushers, "the drug problem," as Professor Griffith argues, is a fully integrated multi-billion dollar transnational industry that - from production to consumption to the recycling of drug profits - cuts across all regions of the hemisphere, penetrates all sectors of society and implicates all levels of government. n127 Assessing the impact of "the drug problem" on democracy requires a clear understanding of the divergent problems triggered by the different stages of this industry. It also presupposes some working definition of what democracy is. Drawing on the classic work of Joseph Schumpeter, Professor Griffiths defines democracy as a political form in which the contestation over state power operates through free and regular elections, where a high degree of participation is admitted and where there exist effective institutions to guarantee respect for civil and political rights and enhance social justice. Thus, when we speak of democracy "we are talking about contestation for [*634] power, participation, and institutions." n128

Given this definition of democracy, Professor Griffith develops a multidimensional analysis of the way the international drug industry and the war it has spawned operate in different ways to undermine the democratic project in the Caribbean. It is a story of corruption engendered by the circulation of billions in illegal profits that skews the logic of political contestation and makes state power unaccountable to the democratic electoral process, as well as a story of private business and financial elites, seduced into money laundering schemes that disrupt ordinary market forces, undermine the viability of legitimate economic activities and facilitate the consolidation of power and wealth in the hands of drug lords and their cronies. It is also a story of law enforcement run amok in its increasingly futile efforts to stamp out the drug trade through repressive and anti-democratic assaults on precisely those fundamental civil and political rights without which no democracy can flourish.

Professor Stotzky's essay tells a second story of the Caribbean. Measured against the aspirational imperatives of what he calls "deliberative democracy," n129 the transition to democracy in Haiti is a story of the democratic project held hostage to internal corporative political structures and external financial elites. These internal corporative structures suppress the emergence of a genuinely deliberative democracy by excluding "the people" from effective participation in the political process - in different ways, depending on whether the corporative structures are organized from the top down or the bottom up. When imposed from the top down, the state controls, coopts and to a large degree incorporates the organization of interest groups into state sanctioned monopolies, whose agendas are then confined to the politics of the possible as determined by the state; when organized from the bottom up, private power blocks so dominate the political process that the state is captured and subordinated to the articulation of their special interests. In either case, these corporatist variations leave little room for the expression of the popular will of the people.

In Haiti, as elsewhere throughout Latin America and the Caribbean, factions of the military, the Catholic Church, the business class, trade unions and even the press have all, at different times, cooperated in the institutionalization of corporatism by trading support for authoritarian regimes in exchange for special privileges. Because these privileges are threatened, as much by the rise of a genuine and popular sovereignty as by the extremism of a military dictatorship run amok, the legacy of corporatism is a network of organized power blocks hostile to any project of social, political or economic change that might force them to relinquish their special privileges or hold them accountable to the people whose families they have murdered or whose patrimony they have expropriated and squandered. In such a context, the consolidation of a democracy requires dismantling these corporative power blocks precisely because a genuinely participatory democracy presupposes and would undoubtedly trigger vast changes in the socio-economic and political structures these corporatist groups are most invested in maintaining.

Indeed, one need only consider Professor Stotzky's description of the objectives of "the Aristide Plan" to see how constructing the conditions for participatory democracy might threaten vested interests. n130 Demilitarization, an independent judiciary, empowered labor unions, grass roots organizations, cooperatives and community groups, progressive taxation and human rights prosecutions are all political objectives certain to put any democratic project on a collision course with precisely those sectors that have most benefitted from the repression and demobilization of the impoverished majority. Add to these internal obstacles, the externally imposed austerity measures dictated by the structural adjustment policies through which international financial organizations like the World Bank and the IMF have projected their neo-liberal agenda onto the international political economy, n131 and the obstacles confronting the democratic project in Haiti are nothing less than daunting. n132

[*636] However, the Haitian story only brings into starker relief the extent to which the democratic project in poor countries throughout Latin America and the Caribbean is caught between the internal rock of corporative political monopolies and the external hard place constituted by international financial organizations. Based on past history and the short-term interest analysis these two sectors tend routinely to exhibit, it is reasonable to predict that the former will

continue opposing the pro gressive tax policies, antitrust regimes and educational programs through which Professor Stotzky would reform the neoliberal agenda to help the poor majority live a dignified life, the latter will continue to oppose any state intervention in the economy that impinges on foreign exports and direct investments or restricts the expatriation of profits, and neither will be much interested in actually implementing Professor Stotzky's vision of deliberative democracy. Thus, this second story of the Caribbean is not heartening. n133

Mr. Martinez's essay on the rise and fall of the socialist project in Nicaragua provides yet a third perspective on the problem of democracy in the Caribbean. Though Nicaragua is geographically located in Central America, its position in "the Caribbean" is a function of the geopolitical rhetoric through which the Reagan Administration chose to respond to the "communist-in-our-own-backyard" problem. n134 The will to view the Nicaraguan revolution in terms of Cold War politics, rather than as a response to the legacy of terror and expropriation imposed on this small country by a U.S. sponsored dictatorship, is testament to the self-serving myopia that enabled former President Reagan to tell the Wall Street Journal in 1980 that "the Soviet Union underlies all the unrest that is going on. If they weren't engaged in this game of dominos, there wouldn't be any hot spots in the world." n135

Contrary to Reagan's suggestion, the Nicaraguan revolution ousted the Somoza dictatorship in 1979 through "the organized, militant partici [*637] pation of Nicaraguan citizens in a 'people's war' against a brutal and ruthless tyranny." n136 Mr. Martinez's objective is to explain why the Nic araguan people initially supported this revolution and how the Sandinis tas ultimately lost the people's support. n137 He tells this story through a critical analysis of the Somocista property regime that preceded the revolution, as well as the promises made and later betrayed by the Sandinista government's failure to legally institutionalize its agrarian reforms in a viable property rights regime. n138 This failure to establish a new legal order facilitated the rapid re-concentration of land ownership, through privatization, Sandinista self-dealing, and the rush of former landowners to reclaim their expropriated properties after the Sandinistas lost the 1990 election to Violeta Chamorro.

These three stories of "the Caribbean" provide different perspec tives on the profound challenges confronting the articulation of demo cratic theory in LatCrit scholarship. They tell of the democratic project held hostage to drug traffickers, domestic corporative elites, interna tional financial organizations and the self-interests of defeated revolu tionaries. What they do not mention is the role played by U.S. government agents in facilitating the growth of international drug traf ficking through their collaborations with, protection of and assistance to, known drug traffickers involved in this government's "anti-communist" crusades; n139 they do not tell of the millions of U.S. tax payer dollars spent supporting the Duvalier and Somoza dictatorships, as much as the corporatist elites in post-dictatorship Haiti and Nicaragua; n140 they do [*638] not tell of the CIA complicity in, and financial support for, the terror unleashed by the Haitian military and the Nicaraguan contras in their efforts to "restore order" and demobilize the masses for a more "govern able democracy." And yet, these missing elements are crucial to any anti-essentialist, anti-subordination analysis of the challenges facing the democratic project in the Caribbean precisely because, and to the increasing extent that, the democratic project everywhere is ultimately hostage to the policies of the only remaining superpower. The United States cannot continue "to promote democracy" with one hand, even as it undermines it with the other.

Thus, from an anti-subordination perspective, it makes sense for LatCrit scholars to begin our foray into democratic theory by focusing on the nature and impact of U.S. policies and politics. Beginning this way locates the problems of democracy at the center, rather than the peripheries, where LatCrit sensibilities should counsel us to tread rather carefully, lest we are too quickly seduced or reduced to thinking in terms of the readily available blame-the-victim discourses of Third World cor ruption, authoritarian traditions, and bureaucratic impotence. n141 These factors are certainly obstacles to the consolidation of democracy in the Caribbean and elsewhere, but they are embedded in an ongoing, centu ries-long process of interventions, transactions and exchanges between Third World states and peoples and a multitude of "foreign interven ors," whose resources, objectives and ideologies are profoundly impli cated in the scourge of corruption, dictatorship and underdevelopment that has visited these regions. Thus the problems of democracy in the Caribbean or elsewhere cannot be fairly assessed, nor effectively resolved without detailed and particularized attention to the anti-demo cratic impact of U.S. foreign and domestic policies. Indeed, revealing and combating these policies may be the best way for LatCrit scholars to get to "the bottom" of the problems of democracy, both beyond and within the United States. n142

Recontextualizing the Democratic Project: Beyond NeoLiberal Assumptions and Imperialist LegalStructures

The last two essays in this cluster by Professors Mertus and Roman [*639] shift our focus and expand our analysis of the problem democracy. n143 Professor Mertus's essay launches a new trajectory of analysis by offer ing a preliminary

comparison of the transition process in the countries of Eastern Europe and Latin America. In articulating these comparisons, she notes four particularly significant differences worth further reflection: (1) the different attitudes and relationships foreign intervenors have adopted towards the governing elites of the pre-transition regimes in these two regions; (2) the logically incoherent rhetorical structures generated by the biased and uninformed manner in which foreign observers tend to assess the meaning of, and allocate blame for, the internal conflicts and atrocities committed by competing groups in Eastern Europe and Latin America; (3) the different way foreign intervenors in these two regions have prioritized market and electoral reforms in the transition from dictatorship; and (4) the degree of internal conflict over the so-called "stateness problem" within these different regions. By identifying these four points of comparison, Professor Mertus provides a valuable analytical framework for a critical comparative analysis of the substantive content of "the democratic project" now circling the globe, as well as for assessing the degree to which this neoliberal project coheres with the right of self-determination, understood from an anti-essentialist, anti-subordination perspective.

In this vein, Professor Mertus notes that western intervenors have generally been more willing to work with the remnants of pre-transition regimes in Latin America than those in Central and Eastern Europe. This she finds unsurprising, given that the U.S. government actually established and substantially maintained the military dictatorships in some countries, like Haiti, Guatemala and Nicaragua, and remained a steadfast ally of, and apologist for, the military dictatorships in others, like Argentina and Chile - even as these regimes waged dirty wars of inconceivable brutality against their own people. n144 These regimes, though homicidal and corrupt, were friends and clients of the U.S. national security state. The need to legitimate U.S. complicity in their criminal practices and repressive policies gave birth to the totalitarian/authoritarian state dichotomy. In Reaganite doublespeak, the kind of human rights violations and political and economic repression perpetrated by the military dictatorships in Latin America were of a lesser evil than the [*640] kind committed by Eastern block regimes because the latter were "totalitarian states," while the former were only "authoritarian." Totalitarian states were always, everywhere and in every way, repressive and evil. Authoritarian dictatorships, by contrast, were not nearly so bad, and sometimes even necessary to ensure the governability of impoverished and uneducated masses too readily duped by international communists. n145 By organizing her comparison of the transition process in Latin America and Eastern Europe around a critical analysis of the relationships and attitudes foreign intervenors adopt toward pre-transition regime elites, Professor Mertus thus reveals how the neoliberal democratic project is still embedded in the doublespeak legacy of cold war politics.

Professor Mertus also contrasts the attitudes reflected in the way western intervenors have treated the process of political reform in Latin America and Eastern Europe. She notes, for example, that the 1988 Chilean plebiscite that ousted the Pinochet dictatorship was observed by thousands of western election observers, while fewer than thirty western observers were sent to oversee the 1992 Presidential elections in which Slobodan Milosevic defeated challenger Milan Panic. n146 This differential treatment raises profound questions about the "really existing agenda" driving the neoliberal project to promote "democratic" transitions across the globe. Certainly, Professor Mertus is right to suggest that western intervention projects of the 1990s in Eastern Europe have tended to prioritize the institutionalization of transnational capitalist economic relations over the consolidation of democratic accountability and the self-determination of peoples. However, the apparent emphasis on political reform in Latin America may not reflect different priorities, so much as the fact that Latin America has already been dancing to the tune of neoliberal market reform projects since the sovereign debt crisis of the early 1980s and its aftermath shifted the balance of power between Latin American debtor states and international financial organizations. n147 Indeed, if anything, the ready willingness with which the U.S. government embraced and supported the Pinochet dictatorship, which even today is lauded as a poster-child for the neoliberal model of economic development in the Third World, n148 suggests the degree to which [*641] which U.S. foreign policy in the region has subordinated democratic reform to the imperatives of transnational capitalism.

By focusing LatCrit attention on the relative priority accorded democratic political and neo-liberal economic reforms in these different regions, Professor Mertus's comparative analysis maps out a rich field of inquiry for examining and assessing, from an anti-subordination perspective, the increasing convergence between current projects to promote "democratic transitions" through market reform in Eastern Europe and the structural adjustment policies and agendas that have ravaged much of Latin America. n149 At the same time, by situating her comparative analysis in the perennial debate over the relationship between capitalism and democracy, Professor Mertus challenges LatCrit scholars to reflect more deeply on the way LatCrit anti-essentialist, anti-subordination objectives are impacted by the economic and political outcomes of this debate.

In the dominant neoliberal narrative, capitalism and democracy are cast as complementary and mutually reinforcing processes: capitalism promotes democracy, and democracy promotes capitalism in a happy embrace of economic abundance and political freedom. In some variations of the narrative, this is because competitive markets prevent the concentration of economic power, thereby preserving the people's freedom by dispersing and decentralizing private power; n150 in others, ironically, it is because capitalism enables the consolidation of private power blocks large enough to counter-balance the power of the ever-embryonic totalitarian state. n151 This narrative of the happy relationship between [*642] capitalism and democracy exists in direct competition with accounts of their mutual incompatibility. In these alternative accounts, each domain threatens always and everywhere to overrun and subsume the other: Capitalism threatens democratic freedom, and democratic politics threaten capitalist freedom. The threat to democratic freedom arises from the growth of economically powerful private firms, whose significance to the national economy renders the state, and the political possibilities it can pursue, hostage to the policy preferences of these corporate giants. n152 Conversely, since democracy creates the space through which demands for redistributive interventions are expressed and imposed upon private economic elites, the institutionalization of democratic accountability to the people always threatens to contract the realm of capitalist freedom. n153

Given the degree to which racial, ethnic and other forms of subordination are organized around both the political marginalization and the economic dispossession of peoples of color, Professor Mertus's essay suggests the profound challenges and wide range of questions awaiting LatCrit attention in the field of democratic theory. Though a LatCrit perspective might certainly shed valuable light on the rhetorical instability created by these abstract theoretical debates about the "real" relationship between capitalism and democracy, our legal training makes us particularly well situated to pursue a project more immediately relevant to the objectives of promoting anti-essentialist, anti-subordination social transformation through law. This project would focus critical analysis on the way the relationship between the state and the market is articulated in the interpretation of legal doctrine - particularly in litigated cases and legislative debates where the struggle for racial justice has confronted and sought to render the monopolization of both economic and political power democratically accountable. n154 The outcome of such [*643] cases and legislative debates raise fundamental questions about the relationship between racial inequality and the institutional structures and processes of the neoliberal political economy.

At stake, ultimately, is the question whether racial, ethnic and other forms of subordination can be eliminated within the institutional arrangements of a neoliberal political economy, structured around the strategic separation of economics and politics. n155 The answer LatCrit scholars give to this question may determine whether the imperatives of racial equality are to be satisfied by a project that achieves for minority communities the reproduction and transposition of the same class hierarchies pervasive in white society or whether the struggle for racial equality will eschew institutional arrangements that perpetuate the economic dispossession and political marginalization of the world's vast majorities and engage, instead, in the search for alternative arrangements that can actualize a more real and substantive democracy throughout both the political and economic institutions of the inter/national political economy.

Finally, by focusing her comparative analysis of the transition processes in Latin America and Eastern Europe on "the problem of stateness," Professor Mertus raises one of the most vexing problems confronting any project aimed at articulating a substantive vision of self-determination - that is, in Professor Roman's formulation, the problem of defining "the self" whose right of self-determination is to be protected and enabled through the construction of democratic regimes. n156 While Latin American states have enjoyed substantial international support in resisting the legal recognition of self-determination movements operating in this hemisphere, n157 Professor Mertus notes that "the state" in Eastern Europe has been systematically weakened by recent developments both at the international and subnational levels. At the international level, the driving engine of the neoliberal project has been the perceived imperative of weakening the totalitarian state. Indeed, the weak state, [*644] with limited authority to intervene in the economy and power fragmented across a system of checks and balances is at the heart of the liberal democratic vision of freedom. n158 However, in weakening the state to free the market, foreign intervenors have perhaps unwittingly contributed to the reactivation of ethnonationalist divisions at subnational levels throughout the region. These ethnonationalist group identities each claim the right of self-determination, undermining the power of the state and thereby triggering the so-called "stateness problem," precisely because the right of self-determination is legally effectuated through the international community's recognition that a particular group has the right to pursue self-government through the organization of their own state.

The final essay by Professor Roman takes up the international right of self-determination as if by design. While the preceding essays reveal, in different ways, the disjuncture between democratic rhetoric and the anti-democratic realities produced by the history and ongoing fallout of cold war politics, Professor Roman's essay links this disjuncture to the

structure of international law and, more specifically, to the strategic manipulations through which the doctrine of the right of self-determination of peoples has been interpreted in international law. According to Professor Roman, despite the supposed underpinning of the right to self-determination in the universal norms of human freedom and the equal right of all peoples to control their own destinies, the right of self-determination has been hostage to three stages in the organization of the current world order. These three stages are marked by the era of geopolitical militarism; the era of racial tutelage, in which the self-determination for non-self-governing and trust territories was to proceed, under the Trusteeship System, "at a pace dictated by the colonial administrators"; and the era of global disinterest marked by the tolerance of first world powers towards the alien domination of some third world peoples by other third world peoples.

In each era, the right to self-determination has been hostage to the political calculations of the most powerful states in the international community as well as to the indeterminacy surrounding the scope and limits of the right of self-determination. In its most restrictive formulation, the right is not recognized outside the decolonization context; in its most expansive formulation, the right of secession might be asserted by any distinct minority group. Thus, in Professor Roman's view, articulating a substantive content for the right of self-determination of peoples requires the formulation of objective criteria by which to determine whether a group constitutes "a self" or "a people."

[*645] Professor Roman's search for the objective criteria that make a group a people, like Professor Mertus's comparison of the stateness problem in Latin America and Eastern Europe, raise manifold questions for LatCrit theory. The Eastern European experience under the ethnonationalist governance structures established by the Dayton Peace Accords counsels grave caution in conflating the right of self-determination with the project of having "a state of one's own."¹⁵⁹ As with any complex and multidimensional problem, the substantive and methodological commitments already articulated in prior LatCrit scholarship provide a useful point of departure. At a minimum, this record counsels that the problem of defining the meaning of, and designing the institutional structures to give substantive content to, the right of self-determination should be approached from an anti-essentialist, anti-subordination perspective. From this perspective, the problem of self-determination is the same vis-à-vis any collectivity that purports to represent the interests of individuals, who are always and everywhere constituted as multidimensional beings marked by distinctions of class, gender, race, ethnicity, language, sexual orientation, and national origin. That problem, as Professor Mertus notes, is the problem of developing institutional arrangements that can sustain the commitment to social justice, both between and within states, by recognizing the importance of group membership and identities, on the one hand, and the value of personal autonomy and individual rights, on the other.¹⁶⁰

From this perspective, the anti-subordination agenda implicated in the struggle for self-determination reaches far beyond the parameters delimited by the problems of constituting a state. Indeed, I have argued before, and still believe, that the demise of the interstate system of sovereign nations is a potentially progressive development for the struggle against subordination.¹⁶¹ Not only has the structure of the interstate system figured prominently in enabling both the processes of uneven development and the practice of war,¹⁶² but as the essays by Professor Mertus and Roman illustrate, the very project of delimiting the parameters of a state must inevitably essentialize the identities and suppress the multiplicity of interests that simultaneously converge and diverge in the configuration of any group.

Rather than investing further in a bankrupt system of nation-states, LatCrit theory might chart a new agenda to imagine and articulate the kinds of institutional arrangements and rights regimes that can promote the right of self-determination, both at the international and sub-national levels where the neoliberal project is, even now, reconfiguring and consolidating new regimes of freedom and compulsion. At an international level, this agenda might take up the pending project of promoting the full recognition of individuals as subjects of international law, for example, through the incorporation of international human rights into the institutional structures, substantive norms, and decisional procedures currently regulated by international economic law.¹⁶³ At a subnational level, this agenda might begin by rejecting the neoliberal paradigm that confines democracy to the political realm, and pursue the institutionalization of democratic governance structures throughout the inter/national economy as well.¹⁶⁴ Both trajectories provide a meaningful way out of "the stateness problem," even as they expand the parameters and meaning of democracy in ways that more readily cohere with the anti-essentialist, anti-subordination commitments that are the heart of the LatCrit movement.

B. Language, Technology and Communicative Power: From Language Rights to the Struggle for Control of the Means of Communication

Language rights have been a central issue in LatCrit theory since its inception.¹⁶⁵ LatCrit III was, however, the first time that LatCrit conference organizers sought intentionally and self-consciously to link the [*647] struggle against English-Only to a broader struggle for communicative power. This imagined project was forwarded to expand LatCrit

theory's substantive agenda by encouraging a collaborative effort to develop a critical analysis of the way differential access to the means of communication is legally constructed across different sociolegal contexts and the way the resulting structures of communicative power/lessness should be addressed in LatCrit theory. n166 In this expanded critical project, the struggle over language rights reflects only one instance in a more general struggle against relations of domination organized by and effected through the legal production of differential access to the means of communication. This is because the compelling personal and collective interests at stake in the struggle against the suppression of non-English languages are equally implicated in the such matters as the regulation of political speech n167 and the ownership and control of new technologies of communication. n168

Indeed, in each of these contexts, the matter at stake is the power to communicate - to express oneself - meaningfully and effectively. Increasingly, the power to communicate is determined by access to, control of, or authority over the means of communication. n169 Indeed, the "means of communication" have become as central to the structure of power/lessness in our postmodern, hyperlinked, globalized, mass media society as the "means of production" were central to the class struggles of modernizing industrialism. Individuals and communities shut out of the information age and out-spent in a political system that casts the expenditure of money as protected political speech - such that effective speech comes to depend increasingly on the ability to spend money - are just as certainly robbed of the instruments of self-determination and [*648] the power of self-expression, as workers separated from and denied control over the means of production. By thematizing the linkages between language, meaning-making power and the struggle for self-determination, the essays in this cluster go a long way toward delimiting a broad field ripe for anti-subordination theory and practice. n170

Language Rights in Economic Analysis and Moral Theory

The opening essay by Professors Bill Bratton and Drucilla Cornell is based on a collaborative project in which they join the anti-nativist struggle against initiatives to suppress the use of languages other than English. n171 Their objective is to make an economic and moral case for treating language based discrimination as an equal rights violation. Interestingly, they develop their arguments using two very different forms of discourse. Professor Bratton uses law and economic analysis to challenge key assumptions about the way English-Only laws and employment regulations affect the incentive structures through which individual language acquisition and group assimilation are mediated in this country. Professor Cornell articulates a moral theory of rights that casts respect for language rights as fundamental to "the basic moral right of personality," thereby moving the articulation of equality rights beyond the truncated formalism of an anti-discrimination framework to ground it, instead, on the concept of self-determination.

More specifically, Professor Bratton's objective is to use economic analysis to destabilize the nativist political project by challenging the assumption that English-only laws and workplace regulations will promote assimilation to the English-speaking norm that, for the nativist, defines "the essence" of American identity. He acknowledges that English-only laws and policies are, at least superficially, supported by a plausible economic argument that language regulation maximizes social utilities by increasing communicative efficiency and reducing barriers to social interaction otherwise associated with the Tower of Babel [*649] cacophony of multiple languages. n172 To be sure, Professor Bratton also challenges the initial assumption that "sameness" lowers costs. n173 However, his major contribution is in showing why English-only laws are unlikely to achieve their purported "efficiency" objectives. He does this through a detailed analysis of the incentive structures Spanish speakers confront in acquiring English language proficiency.

In a nut shell, Professor Bratton's economic analysis suggests that if nativists are really serious about promoting Latina/o assimilation into American society, they should focus on eliminating discrimination against Latinas/os, rather than suppressing Spanish. This is because the suppression of Spanish is neither necessary nor sufficient to achieve its purported objective of fostering Latina/o assimilation. Spanish suppression is unnecessary because Latinas/os have strong economic incentives to learn English. n174 Those incentives only increase when non-discriminatory practices enable English language acquisition to produce upward social mobility. Conversely, Spanish suppression is insufficient to promote assimilation precisely in those instances in which the reality Latinas/os confront in American society is discriminatory and exclusionary. From this perspective, enclave settlement, employment and commercial practices are simply a rational response to the discrimination experienced when Latinas/os venture outside the Spanish-speaking enclave. n175

Professor Bratton's law and economics analysis of English-only is particularly interesting and valuable because it creates the point of departure for a more general and far-reaching attack on the oft-repeated assertions made by law and economics practitioners that civil rights and anti-discrimination laws constitute unwarranted "special interest" interventions in the otherwise efficient private ordering of American society. n176 It doesn't take a rocket scientist to see

the ready uses of this discourse for the nativist project. Bilingual education programs and other public policies aimed at mitigating the exclusionary impact of language difference on non-English speakers are either manifestations of the concrete steps needed to give meaning and effect to the vision of inclusion underlying the promise of equal protection and non-discrimination - or they are manifestations of the capture of public policy by special interests. Framed this way, it is clear that the initial debate is over the meaning of bilingual programs, on the one hand, and English-only, on the other.

In this debate, law and economics discourse gives the nativist substantial meaning-making power because the language of costs and efficiency is so readily wrapped in the mantle of purported objectivity and value-neutrality: English-only laws are not discriminatory because they are efficient, or so goes the argument. Against this backdrop, Professor Bratton's contribution maps the economic arguments that can effectively turn the tables to reveal English-only laws as special interest legislative interventions. Since - in the absence of discrimination - private ordering already ensures that non-English speakers will have strong incentives to acquire English language proficiency, there is no regulatory need to create such incentives through English-only laws. There being no regulatory need, English-only laws constitute the use of state power to reaffirm the exclusionary political project embedded in the presumption that Anglo culture defines what it means to be "an American," and, more specifically, to promote higher levels of English language acquisition and usage than the market would produce - in the absence of discrimination.

By laying out these arguments, Professor Bratton arms the anti-nativist struggle with a valuable meaning-making resource: the language of law and economics, but his analysis also demonstrates the indeterminacy and normative vacuity of law and economics analysis. Ultimately, cost-benefit analysis cannot tell us how public policy should respond to the skewed incentive structures currently obstructing Latina/o assimilation. This is, at least initially, because discrimination is not "absent" from the incentive structures mediating language acquisition. Given the presence of discrimination, the public policy issue cost-benefit analysis cannot answer is precisely the question whether state interventions should attempt to counteract these skewed incentive structures by promoting language assimilation through anti-discrimination enforcement and bilingual initiatives or through the imposition of policies like English-only. Indeed, cost-benefit analysis not only cannot tell us how to promote language assimilation in a discriminatory social context, it also cannot justify why assimilation to an English language norm should be the objective, given that efficiency is only one of many compelling values at stake in the formulation of public policy.

[*651] Professor Bratton is not unaware of the normative problems inherent in any discourse that measures language rights through a cost-benefit analysis. Thus, a fair assessment of his efforts requires that we read it as it was intended to be read - as part of a larger collaborative project in which Professor Cornell's role is to articulate the normative framework which gives moral content to the task of articulating public policies that otherwise are rendered profoundly indeterminate by Professor Bratton's creative subversion of the nativist economic arguments. Professor Cornell proceeds in this way to ground the case against English-only in the basic moral right of personality of non-English speaking and bilingual Americans.

As I read Professor Cornell, this basic moral right of personality is not just a right to be treated as an end-in-itself rather than a disposable means in some project to maximize social utilities, nor does it simply refer to the right to be treated as a free and equal subject whose rights of self-determination and self-expression are non-negotiable imperatives. It is all this and more, for in Professor Cornell's formulation, the moral right of personality is a right to be recognized - in one's very difference - as an equal and legitimate perspective. This formulation, correctly understood, constitutes a profound and compelling call for a fundamental gestalt shift in our current interpretations of the meaning of equal protection because it clearly marks the difference between "equal treatment" and "treatment as an equal." Treatment as an equal does not always mean equal treatment, precisely because the expectations imposed and benefits conferred by equal treatment may have a substantially different impact on one's human dignity and self-determination depending on the circumstances of one's difference. Conversely, it would be a mistake, in my view, to confuse the call for an equality norm based on the treatment of others as equals with earlier calls for an equality of results rather than of treatment. The objective in treating others as equals is not to make everybody equal by eliminating differences, but rather to recognize that everybody is already equal in their very differences and to design our social and legal institutions in ways that respect that reality.

[*652] The implications of Professor Cornell's way of understanding the meaning of equality are profound and far-reaching. It entirely changes the public policy issue, for the issue is not whether public policy effectuates equal treatment among the similarly situated, but whether it treats those who are differentially situated as equally worthy of the respect and deference to which equals are entitled. Applying this framework to the analysis of English-only laws, it is immediately evident that the impact of English-only on the self-determination and self-expression of non-English

speakers and bilingual or multilingual Americans cannot be reconciled with the imperative to treat all others as equals - each having the right of self-determination as defined and effectuated from their particular and altogether different perspectives. Thus, in this context, it is clear that the legitimacy of English-only laws depends on the projection of an equality norm that presupposes sameness as the predicate for equal treatment. Professor Cornell's great contribution is to show the profound inadequacy of this approach and to offer a more meaningful normative framework through which to resolve the indeterminacies otherwise generated by the instrumental analysis of public policy.

Though Professor Wells' reading of Professor Cornell's analysis is different from my own, n179 her essay does offer a clear and compelling account of the reasons why Professor Cornell's call for an equality norm based on the treatment of others as equals would constitute a major evolution in the moral fabric of human society. In this vein, Professor Wells' argument begins by noting the advantages a Kantian perspective offers over the utilitarian perspective underlying law and economics discourse: "while the economist thinks of human beings as aggregations of preferences backed by dollars, the Kantian conceives of them as non- [*653] negotiable subjects of respect and value." n180 Indeed, as Professor Bratton's essay illustrates, in a world ordered by law and economics, a person's interest in speaking a particular language will, like any other interest, be measured against the efficiency costs of protecting that interest so that, if the cost is too high, the individual's right will be sacrificed for the "greater good" of the whole. By contrast, in a Kantian moral universe, a fundamental right of personhood cannot be sacrificed at any cost.

The non-negotiable status given to rights of personhood makes Kantian moral discourse a more appropriate language than law and economics for articulating the meaning of equal protection. Nevertheless, in Professor Wells' view, the Kantian framework is ultimately inadequate because it grounds respect for others on the notion that human beings share an essential sameness - that the imperative of doing unto others as you would have done unto you is based on the recognition of a common humanity and a reverence for the things that make all human beings the same - rather than a recognition of the value of the differences between us. In Professor Wells' words, "what we can't get from Kant is the notion that what is sacred in you is fundamentally different from what is sacred in me; that someone who differs is - for that very reason - especially worthy of respect." n181

This is a brilliant insight, clearly and simply articulated in a way that makes evident the profound challenge awaiting LatCrit theory and practice. By linking respect for difference to the experience of one's own particularity, contingency and finitude, Professor Wells articulates a profoundly revolutionary perspective on the reasons why respect for difference is, always and in every respect, a moral, existential and epistemological imperative. The suppression of difference and enforced assimilation are not only attacks on the dignity of another, but acts of self-destruction that confine us even further in the limitations of our own contingency, for it is precisely through the other that our finite ways of being and knowing are expanded and enriched. n182 The implications are profound. Otherness and difference are a gift, an avenue of insight beyond our own particularities, a window on the world we might behold if ever we could see beyond our own contingency and live beyond our finitude - a glimpse of God. An equality norm based on the imperative of treating others as equals operationalizes this understanding in ways [*654] that the norm of equal treatment neither does nor can, for it is only by treating others as equals that we activate an equality norm that enables us to focus, as Professor Wells suggests, on "the gift of otherness, the opportunities of multi-lingualism and the possibility that through difference we can find wholeness." n183

Professor Wells makes another point worth further reflection. The power of self-expression is crucial to self-determination. Both presuppose access to language, not just any language, but a language in which the world, as one sees it, and one's own self-understandings can be meaningfully formulated and expressed. The language of law and economics has not been popular among critical legal scholars. Part of the reason is, as Professor Wells indicates, its failure to incorporate precisely those values, interests and cultural processes that resist translation into a cost-benefit analysis. The not-so implicit suggestion is that LatCrit theory should avoid speaking the language of law and economics. n184 Some might dismiss this suggestion out of hand: not only are the costs and benefits of any proposal substantively relevant to its proper assessment, but law and economics is the language of choice among policy-making elites and, increasingly, evident in the interpretative practices of many judges. n185

Speaking the language of power is, from this perspective, imperative precisely because, and so long as, power is power. Indeed, there is no question that Professor Bratton's efforts to recast the debate over English-only laws in terms that destabilize the economic justifications routinely invoked to support the nativist agenda constitute a major contribution to the anti-nativist struggle precisely because law and economics analysis is the language of power. More importantly, however, the indeterminacy revealed by Professor Bratton's creative subversion of the law and economics analysis underlying English-only suggests that law and economics discourse may have become such a ready conduit for regressive and elitist political agendas precisely because critical legal scholars have rarely contested its articulation on

its own terms. n186 Learning and using the language of power may thus be the best way to combat the legal production of subordination. Though not all LatCrit scholars need use law and economics analysis, certainly this suggests there is [*655] room for, and value in, counting it among the repertoire of critical methodologies through which we expand the scope of our anti-subordination agenda and enhance the depth of our analysis. n187

Nevertheless, Professor Wells' cautionary words give me reason to pause - not because I doubt the possibility or apparent usefulness of strategically deploying a language whose basic assumptions one does not embrace. Instead, my concern stems from the way increased fluency in the language of law and economics tends to reaffirm and consolidate its dominant position within the legal academy and profession. In *Language & Symbolic Power*, Pierre Bourdieu writes incisively of the way linguistic hierarchies are created and the way these hierarchies operate in the organization of social power. n188 Two points are particularly pertinent here. First, he argues that linguistic hierarchies are produced through "the dialectical relation between the school system and the labour market - or more precisely between the unification of the educational (and linguistic) market, ... and the unification of the labour market." n189 He further argues that "recognition of the legitimacy of the official language ... [is] impalpably inculcated, through a long and slow process of acquisition, by the sanctions of the linguistic market, and which are therefore adjusted, without any cynical calculation or consciously experienced constraint, to the chances of material and symbolic profit which the laws of price formation characteristic of a given market objectively offer to the holders of a given linguistic capital." n190

There is no question that a cost/benefit analysis would suggest, at least at first glance, that acquiring fluency in the language of law and economics makes for a better career investment than acquiring fluency in the methodologies, references and critical frameworks of outsider jurisprudence. Those who master the dominant language reap the rewards of assimilation. In this case, those rewards are directly linked to the labor market. Law and economics aficionados get hired by elite law schools, appointed to the federal bench, recruited for high-level policy-making positions and published in prestigious law journals at higher rates than exponents of any of the major strains of critical legal discourse. n191 By contrast, legal scholars working to articulate critical perspectives and promote legal transformation in and through the discourses of Critical Legal Studies, Critical Race Theory, Critical Race Feminism, Queer Theory, LatCrit Theory and even of Law and Society are channeled into the "interesting visitor" circuit, cast as "too political" for judicial appointment and "too abstract and theoretical" for the nitty-gritty of policy-making. For young scholars, the choice of an academic discourse can make the difference between being cast as "an insider" or "an outsider," and that difference can cost you tenure.

The stakes are high. Understanding their full scope requires understanding not only that legal education is training for hierarchy, n192 but also the extent to which those hierarchies can, consciously and unconsciously, infuse everything we do and aspire to achieve. It can infuse our assessments as to who should be our audience - whether we write to impress the powerful and well-positioned or to engage, enlighten and empower each other and thus to consolidate our otherwise dispersed and diverse community. It can also infuse our assessments as to where and how to publish our works - whether we seek to acquire prestige through fancy placements in top-ten law journals or, rather, seek instead to confer prestige by submitting our best works to the "secondary" journals run by minority law students eager to work with, and learn from, us.

Certainly, these matters would not concern me so much if I believed that the language of law and economics was infinitely indeterminate such that it really could, with sufficient effort, be made to formulate, communicate and construct the world as I, and other others, see it and, perhaps more importantly, as we aspire to imagine and transform it. It cannot - for the reasons Professors Bratton, Cornell and Wells have each alluded to in different ways. At the same time, critical legal discourses, that might, won't ever develop their full potential unless we collectively invest our human capital and professional careers in their further development and dissemination. The stakes are high indeed. The payoffs are higher, for rather than speaking the language of power - to tinker at the margins and to shift ever so slightly the points of pervasive disequilibrium - the articulation and effectuation of an anti-essentialist, anti-subordination vision and politics requires that we empower other languages by speaking them as much, as well and as often as we can. There is definitely a place for law and economics analysis in LatCrit theory, but, in my view, it is, and should remain, at the margins of our [*657] efforts to understand and reconfigure the structures and ideologies of subordination.

Professor Plasencia's comment introduces yet another dimension of the anti-subordination agenda awaiting future LatCrit analysis at the intersection of language rights, meaning-making power and the struggle for self-determination. Focusing on the awesome technological breakthroughs that continue to revolutionize the structure and content of global communications, Professor Plasencia notes the frustrations non-English speakers often encounter in attempting to use the new means of communication that increasingly will mark the difference between "information haves" and "have nots" in the new world information order:

In composing e-mail in Spanish, for example, one cannot readily find the symbols necessary to communicate fully in Spanish. Of the various templates made available for computerized language production, Spanish accents and other symbols often do not match the font of the original text in which the document was composed. The e-mail I have drafted in Spanish often arrives to its addressee with circles where I had placed accents. Therefore, I look like some sort of chaotic writer. n193

While the personal embarrassment experienced when one's communicative efforts are distorted into gibberish may seem, to some, a minor frustration, the issues it raises are profound. The Internet and the World Wide Web have been heralded as engines of a new world information order and as the most recent advances that increasingly are making the dream of universal communications a reality. They may be all this, but they also constitute a major challenge for the critical task of giving substantive meaning and anti-subordination content to the international and historical commitment to cultural pluralism and universal service. n194 From fiber optics to cyberspace networks, new communications technologies are speeding the flows of information. Being plugged into these flows means having the power of virtually instantaneous communications: the power to send and receive messages, to and from multiple audiences, instantaneously, to transfer documents, to reallocate capital, to purchase goods, to download and print out the world of information, it previously took hours or days or weeks to compile. Not being [*658] "plugged-in" can mean knowing too little too late. For some this is a personal choice. Others have no choice.

These developments suggest the pressing need for LatCrit theory to examine the ongoing communications revolution and its impact on the reproduction of Latina/o subordination, both domestically and internationally. This is because taking self-determination seriously means taking seriously the information inequalities that link the issue of meaningful access - to the historical development and future evolution of the legal regimes that regulate international and domestic communications technologies, information infrastructures, services and networks. The compelling social and racial justice issues implicated by the recent privatization and increasing monopolization of the broadcast spectrum by large multinational corporations, n195 by the redlining practices of for-profit telecommunications companies, n196 by the struggle for minority access to media ownership, n197 as well as the struggles of Third World states for access to the geo-stationary orbit for satellite communications - all these suggest the broad field of critical analysis awaiting LatCrit attention in ensuring that Latinas/os and other peoples of color are not shut out of the information age.

In pursuing this line of inquiry, LatCrit scholars would, as always, do well to draw on the writings and analyses of other Third World peoples and peoples of color, for example, by excavating the economic and political claims underlying earlier proposals to create a New World Information and Communication Order (NWICO) and the various reforms NWICO articulated for the information and communications regimes governed by the World Intellectual Property Organization (WIPO), the International Telecommunications Union (ITU) and the Universal Postal Union (UPU) n198 as well as by subjecting to critical anti- [*659] subordination analysis the more recent trend to shift decision-making authority formerly delegated to these international organizations to venues like the World Trade Organization (WTO). n199 From another perspective, this inquiry might entail mapping and deconstructing homologies in the way the discourse of "politicization" has been used to delegitimize Third World peoples as a legitimate perspective on the way international communications should be structured for the common good and the way the ideology of "free market competition" has been used to legitimate legal reforms and public policies that channel the achievement of universal service through the market imperatives of profit maximization, rather than the promotion of democratic governance and equal access norms. These brief observations demonstrate some of the wide range of issues and methods of analysis that will become increasingly relevant to the LatCrit project and our efforts to understand the relationship between the struggle for self-determination, for meaning-making power and for access to, and control over, the new means of communication.

Toward an Ethic and Politics of Mutual Recognition: Counteracting Exclusionary Practices, Elitist Pretensions and Intellectual Appropriations

The last three essays in this cluster by Professors Tamayo, Hom and Hayakawa Torok focus LatCrit attention on the complex and varied problems confronted by any project aimed at communicating across cultural differences and translating the untranslatable. Professor Tamayo's essay takes up these issues through a critical analysis of the arguments proffered by English-only advocates in *Yniguez v. Arizonans for Official English*. n200 In that case, English-only advocates argued that laws mandating use of English as a common language were appropriate and necessary means of combating the social disunity, political instability and public distrust and suspicion purportedly triggered when the English-speaking majority hears public business conducted in a language they do not understand. In

addition to recounting the reasoning that ultimately persuaded the Ninth Circuit Court of Appeals to strike the Arizona Lan [*660] guage Initiative as an invalid regulation violating the rights of Arizona public employees to speak and of non-English speaking Arizonans to hear public information spoken in Spanish, Professor Tamayo makes a point of linking her analysis to a narrative account of her own difficulties in attempting to translate meanings across Spanish and English. It is precisely these difficulties, and the "untranslatability" of certain meanings, that make the suppression of languages other than English a direct assault on the personal identity and self-expression of those persons, whose means of effective communication are thereby contracted solely in order to maintain English as the privileged and dominant means of communication in this country. Rather than fostering genuine integration based on mutual respect for, and accommodation of, these different means of self-expression, English-only laws seek to coerce a false sense of unity through the enforced silence of non-English speakers in, and their ensuing exclusion from, the public realm of American social life.

Professor Hom's essay also takes up the problem of "untranslatability." However, she substantially expands our analysis by providing concrete examples of the kinds of words and meanings that do not easily translate across language differences and the political implications of these barriers for cross-cultural understanding and exchange. Drawing on her experiences co-editing the first and only English-Chinese Lexicon on Women and Law, n201 Professor Hom describes the process of identifying and collecting a list of English terms that have been central to the development of feminist legal theory and political activism, but that Chinese women report to be particularly confusing, unclear or incoherent when presented in Chinese translation. Terms such as Affirmative Action, Empowerment, Gender and Sex defy ready translation into Chinese because these terms refer to particular social, political and historical contexts and/or because they are embedded in particular theoretical frameworks. Translating these terms is not impossible, but it does require an in-depth explanation of the broader context that gives each term its particular meanings within feminist legal discourse and politics.

Through her concrete examples and detailed explanations of the interpretative processes through which she and her collaborators sought to identify appropriate Chinese terms that could effectively be made to signify the new and foreign meanings embedded in English feminist terminology, Professor Hom provides an extremely valuable and fascinating avenue of insight into the way language is both the constructed repository and the unfinished instrument of the social and political transformations we have achieved in the past and might seek to imagine in [*661] the future. This is because the terms, whose meanings she struggled to convey through this English-Chinese Lexicon, are linguistic artifacts of particular historical struggles and conceptual breakthroughs. These struggles and breakthroughs generated a need for new ways of signifying new meanings which did not previously, and would not now, exist but for the intellectual and political efforts through which women's struggles for equality and dignity gave birth to the newly shared consciousness referenced in and by the new feminist terminology which developed to express it. Our present ability to convey these meanings quickly and easily by uttering a simple word like "gender" or "empowerment" is a tremendous political resource, whose historical contingency and inestimable value are often invisible - except in precisely those instances where the effort to produce a common political consciousness "goes international" or cross-cultural. Only then can we see the real and material costs of not having the words to reference the ideas we seek to express or the consciousness we seek to construct. n202

Professor Hom's essay would have been a major contribution to the future evolution of LatCrit theory if it had simply stopped here. It goes even further. Like her brilliant performance at LatCrit III, Professor Hom's essay is an imaginative and multiply nuanced interrogation of the normative and political implications embedded in the practice of cultural and intellectual appropriation. n203 In particular, her essay links an engaging narrative of a playful mother-son exchange, in which her son asserted that her use of his life stories might be a copyright infringement, to her own thoughts about the way she should interpret and respond to the massive underground xeroxing and distribution inside China of her copyrighted Lexicon. Linking these two instances of "copyright infringement" enables her, on a more serious note, to reflect critically on the possessive individualism that underlies western copyright and intellectual property regimes. To this end the linkage is entirely successful. The conjured image of a son proposing to charge his mother "by the story" provides a compelling backdrop against which to critically question the appropriateness of seeking to enforce copyright restrictions against a continent of Chinese women. In both instances, the assertion of copyrights ruptures bonds of solidarity and interconnection [*662] because it operates, in effect, to commodify the interpersonal experiences and shared political objectives that produced, and are otherwise embedded in, the copyrighted "product." Only someone completely ensconced in the (lack of) values of possessive individualism would seek to commodify these artifacts of a shared reality and a common cause.

Not surprisingly, Professor Hom continues to use her son's life stories even as she expresses hope that her copyrights in the Lexicon will continue to be violated by women in China. However, her reflections beckon further inquiry because they raise the question whether there are any instances in which LatCrit scholars should resist the appropriation of our intellectual work and the erasure of our individual authorship. For example, many scholars of color, in private discussions and public fora, have criticized the network of self-referential cross-citations through which majority scholars exclude minority authors, even as they appropriate and seek to preserve their dominant positions, in producing "the normal science" of mainstream legal scholarship, by ignoring any critical analysis they cannot rebut. n204 Beyond these instances of exclusion, scholars of color have also noted instances in which their intellectual work has been cannibalized in subsequent works by majority scholars, whose analysis uncannily tracks the same sources and articulates the same, or related, observations and conclusions with no citation, or a mere see generally, to the original work from which they have lifted the major theoretical insights or chain of analysis they present as their own.

From any objective standard of scholarship, the failure to reference and engage major critical works directly pertinent to the issues under discussion is at best poor scholarship and often reflects the intellectual dishonesty of either an ideologue or, more often, an imposter. However, when confronted with evidence that their work has been appropriated without appropriate citation or acknowledgment, many scholars of color flounder in the very sorts of internal conflict Professor Hom's essay conjures. To assert one's authorship and demand individual recognition for ideas whose purpose is to transform the world seems self-promoting and counter to the political aspirations underpinning the production and dissemination of critical scholarship. Put differently, too often minority scholars find themselves caught between the sense of being individually wronged by the unacknowledged appropriation of our intellectual labor [*663] and a deeper sense that our individual authorship is simply not the issue that matters.

It is precisely because LatCrit theory seeks to transform the production of legal scholarship from an experience of individual isolation into a practice of collective engagement and empowerment that LatCrit scholars should theorize the difference between the kinds of intellectual appropriations we should permit or encourage and the kinds we should challenge and resist. We should also explore different strategies for identifying instances of, and collectively implementing appropriate responses to, the erasure of minority authorship. Certainly, one ready response is to self-consciously practice a politics of mutual recognition by reading and citing the works of other LatCrit scholars as often, and in as many venues, as possible. It is politically significant when we choose, for example, to cite the works of dead European philosophers rather than living LatCrit colleagues. This is because who we cite (or fail to cite) reflects and defines the participants we acknowledge and engage as our intellectual and political community.

Beyond this practice of mutual recognition, LatCrit scholars might explore other strategies through which collective action might effectively be marshaled to combat the erasure of minority authors. For example, LatCrit scholars might consider the possibility of "outing" works by majority legal scholars that inappropriately ignore or appropriate theoretical insights and analysis previously forwarded by minority scholars. Collectively compiling and publishing a list of such works, with appropriate commentary, might go a long way toward revealing the extent of erasure and appropriation individual minority scholars too often suffer in silence. On the other hand, this particular strategy might be more work than it's worth. Perhaps a different strategy is in order. Rather than seeking recognition from the legal academy's "normal scientists" and gatekeepers of the status quo, LatCrit scholars might work, collectively, proactively and self-consciously, to forswear the elitist pretensions too often evident in the politics of citation and commit ourselves, instead, to a politics of mutual recognition through which the persistent dissemination and consistent cross-referencing of LatCrit scholarship may, thereby, actually trigger the paradigm shifts already embedded in the critical insights of LatCrit theory and discourse.

The final essay by John Hayakawa Torok closes this cluster with reflections on language acquisition and loss drawn from his experiences as a participant observer at the LatCrit III conference. Like the other essays in this cluster, his comments focus on the role of language in the construction and expression of personal and political identities. Reflecting on the many distinct and diverse perspectives articulated during the [*664] conference, he raises fundamental questions about the possibility of inter-group translation and cross-cultural recognition. Through personal narrative, he highlights the processes of individual language acquisition and challenges the wisdom of enforcing language uniformity. Read in tandem with the other essays in this cluster, his reflections reassert the centrality of language in the de/construction of communities, the affirmation of identity, the organization of power and the demarcation of insider/outsider relations.

C. Inter/National Labor Rights: Class Structures, Identity Politics and Latina/o Workers in the Global Economy

The essays by Professors Romero, Corrada and Cameron constitute the third and final cluster in Part II. n205 Like the essays in the first two clusters, these essays explore the relationship between regimes of il/legality, identity politics and the struggle for individual and collective self-determination. While the first two clusters examine these relationships through a critical analysis of the disjunctures between democratic theory and the realities of anti-democratic practices and institutions, on the one hand, and the ongoing struggle over language rights and communicative power, on the other, these last three essays focus LatCrit attention on the struggle for worker rights. In doing so, they explicitly center the issue of class in the articulation of LatCrit legal theory.

Attention to class issues has been acknowledged as a pending, but as yet underdeveloped, trajectory in the further evolution of LatCrit theory and the consolidation of LatCrit social justice agendas. n206 Class-based analysis is a particularly pressing matter for LatCrit attention precisely because so much ink has been spilled and so much intergroup solidarity has been squandered in abstract theoretical debates about the relative priority of class and "identity," particularly racial, ethnic and gender identity, in the subordination of peoples of color, as well as by [*665] the counter-positioning of race and class in more concrete debates over the future of public policies like affirmative action, minority business set-asides, public assistance eligibility rules, trade liberalization and immigration policies.

On the one hand, calls to ground the articulation of social justice reforms in a class-based analysis have too often ignored the very real impact of racism and sexism as strategic instruments in the material dispossession and anti-competitive exclusion of women and minorities. From this perspective, class-based legal reforms and empowerment strategies cannot eliminate the impact of racism or sexism precisely because they do not really engage the reality of racism and sexism. n207 Conversely, however, calls to emphasize the centrality of racial subordination, rather than class or gender-based subordination, have too often ignored the material realities of intra-racial stratifications and hierarchies that are organized around relations of gender and class privilege within minority communities, while calls to focus on gender-based subordination have often ignored the problems of class and racial hierarchies among women. n208

Against this backdrop, the three essays by Professors Romero, Corrada and Cameron illustrate the analytical power gained by articulating an anti-essentialist, anti-subordination analysis of the complexities of class subordination within and between Latina/o communities. This is because all three essays locate the economic dispossession of Latina/o workers at the intersection of national and international legal regimes and the ongoing transformation and restructuring of an increasingly internationalized global economy. They reveal, in different ways and from different perspectives, the failure of domestic and international labor law regimes to establish a fair and just framework for preventing the exploitation of Latina/o labor and the expropriation of the real value it creates. They also challenge us to further examine and more clearly articulate the relationship between the class biases reflected in these [*666] legal regimes, their politics of (non)enforcement and the reproduction of racial and gender subordination both within and beyond the United States.

The Dynamics of Dispossession: Labor Wrongs, the Fantasies of Market Ideology and the Realities of Economic Power/lessness

Professor Romero's essay opens the cluster with a narrative of her personal experiences at the home of a colleague who employed a Latina domestic servant. Professor Romero contextualizes this story of class privilege and gendered exploitation by linking it to a critical analysis of the unfair labor standards regulating domestic labor in the United States, as well as to a sophisticated critique of the theoretical assumptions that undermined, and ultimately betrayed, the anti-subordination potential otherwise embedded in early feminist efforts to recast the unpaid domestic labor performed by women in the home as a form of class exploitation. Professor Romero's analysis provides a particularly valuable point of departure for articulating an anti-essentialist class analysis in LatCrit theory because it shows how the material dispossession of Latina domestic servants is effected through a complex interaction of race, class, gender and immigrant status-based subordination - even as it reveals the methodological limitations of neoliberal micro-economic analysis.

In a nutshell, Professor Romero criticizes the fact that feminist efforts to cast women as an economic class and to theorize the economic value of women's unpaid labor structured the so-called "domestic labor debate" in ways that completely ignored the experiences of the women of color, who oftentimes must bear the burden of domestic work both within their own homes and in the homes of other (upper-class) women who hire them as domestic servants. Though early feminist theory sought to establish the value of women's unpaid domestic labor and to thereby reveal the full extent of unjust enrichment conferred on men through the cultural circulation and performance of patriarchal norms casting housework as "women's work," these early feminist efforts ignored the realities of "the market" for domestic service. In this reality, immigrant women of color often work long hours, at less than minimum wage, with no employment benefits, and under personally intrusive and otherwise exploitative working conditions. Instead of

confronting this reality, feminists turned to the fantasy world of micro-economic analysis. They sought to establish the monetary value of the many services women render in their own homes by calculating the costs of securing these same services through the voluntary arms length transactions of a [*667] market exchange. This analysis revealed that the vast majority of household units would be completely priced out of the market for domestic services because few could afford the accumulated costs of acquiring the services of a cook, a house cleaner, a teacher, a nurse, a chauffeur, a babysitter (and one might now add - of a surrogate mother) in the market. In this way, the economic viability of every patriarchal family was clearly linked to the exploitation and uncompensated expropriation of women's labor.

This domestic labor debate eventually erupted into public consciousness, as the "Nannygate" controversy, when President Clinton's woman nominee for Attorney General was discovered to have illegally employed undocumented workers as domestic servants in her home. The Nannygate affair, as recounted by Professor Romero, brings into sharp relief the contradictions in the way (some) white feminists have engaged the problem of domestic labor. On the one hand, the earlier feminist efforts to establish the "market value" of domestic labor cast women's services as ultimately priceless. On the other hand, the dominant feminist response - to the public controversy over Nannygate - was to minimize the criminal aspects of employing undocumented domestic workers by insisting that current immigration restrictions were out of step with "women's needs" for stable and affordable domestic help - meaning low wage workers owed no expensive benefits obligations.

But, as Professor Romero's analysis suggests, if the reproductive labor involved in maintaining a home is "priceless" when performed by white women in their own homes, certainly it should also be priceless (or at least remunerative) when performed by women of color in the homes of other women. The fact that it is not shows that wages for domestic service are determined not by "the market value," let alone the use value, of the services rendered, but rather by the asymmetrical power relations that are constructed through the compulsion of economic necessity, the vulnerability of being "illegal" or undocumented, and the cultural and racial prejudices that devalue the labor value produced by immigrant women of color. The fact that dominant feminist discourse has yet to acknowledge and address its internal contradictions reveals the essentialist assumptions through which feminist theory delimits the category of "women's interests" to privilege the particular interests of upper-class white women, while neglecting the "women's interests" of lower class immigrant women of color. By revealing this contradiction, Professor Romero's analysis enables us to see the full extent of unjust enrichment conferred on upper-class household units through the cultural circulation and performance of elitist classist and [*668] racist norms that legitimate the uncompensated material expropriation of the labor value of immigrant women of color.

Class Crimes and the Politics of Non-Enforcement: Law's Complicity in the Unjust (and Illegal) Expropriation of Latina/o Labor Value

Against the backdrop of Professor Romero's critical analysis of the asymmetrical power relations that "distort" the supposedly voluntary exchange transactions upon which micro-economic analysis builds its house of cards, the essays by Professors Corrada and Cameron further develop and expand the theoretical parameters and thematic concerns of an anti-essentialist class analysis in LatCrit theory. They also offer additional insights into the role of law in facilitating the material expropriation of Latina/o labor value as well as the poverty, marginality and economic dispossession this expropriation visits upon Latina/o families and communities.

Professor Corrada offers these insights by focusing LatCrit attention on the labor dispute between a Mexican labor union and Sprint Corporation after Sprint purchased La Connexion Familiar (LCF). This dispute is particularly noteworthy because it became the subject of the first complaint ever filed by a Mexican labor union against the United States under the NAFTA Labor Side Accord. LCF was a small Hispanic telephone company based in San Rafael, California. Its business involved marketing long distance telephone services to recent immigrants who speak mainly Spanish and who frequently make long distance calls to friends and family in Mexico. After the purchase, Sprint discovered that a large majority of LCF's employees were undocumented workers and sued to rescind the purchase. Though Sprint eventually went through with the deal, they paid substantially less money for the company and canceled the employment contracts in which they had agreed to retain the former Hispanic owners of LCF.

According to Professor Corrada, there was no further information about the fate of the undocumented workers whose employment at the company triggered Sprint's efforts to rescind the purchase. In particular, there was no information as to whether these workers were kept on or replaced by "legal" Spanish-speaking employees, though as Professor Corrada notes, this information would have been relevant to determining whether Sprint's efforts to rescind were pretextual. Alas, the fact that Sprint's scruples about buying a company staffed by undocumented workers might have been pretextual and strategic was not directly relevant "within the four corners" of the labor dispute at issue in the

NAFTA complaint. Nevertheless, what is evident is that Sprint initially [*669] decided to purchase LCF based on projections that increasing immigration by Spanish speaking persons into the United States would make LCF's niche market a growing profit center. Thus, Sprint's apparent scruples about employing undocumented workers did not affect its readiness to make a calculated business decision based on the expected profits to be earned from the consumption practices of illegal immigrants.

This point is key. Read in tandem with Professor Romero's analysis of the under-enforcement that makes the (unfair) employment of undocumented workers a low-risk white collar crime, it shows that the politics of immigration enforcement is not so much about stopping illegal immigration, but rather about who will be allowed to profit from the increased migration flows that are all but inevitable given the push-pull factors of an increasingly interconnected and global economy. n209 The fact that U.S. companies can with impunity profit from, and proactively plan their business projections around, the labor influxes and consumption patterns of illegal immigrants is a field of sociolegal analysis crying out for further exploration by LatCrit scholars interested in theorizing the political economy of Latina/o subordination.

But Professor Corrada's story goes on. After Sprint purchased LCF, the company started to perform below projected profit levels. At about the same time, the Communications Workers of America began an organizing campaign at the company in response to worker complaints of unfair treatment and failure to pay promised sales commissions. An administrative law judge issued a cease and desist order, finding that Sprint managers had violated Section 8(a)(1) of the NLRA by interfering with union organizing activity through threats of plant closure and employee interrogations. Just before the union election was to be held, Sprint closed LCF and terminated the employees. Part of LCF's customer base was transferred to Dallas, Texas, where Sprint hired additional Spanish speaking employees to deal with the influx of new business. There is no information as to whether these additional workers were documented or unionized. After an administrative law judge and a federal district court judge both ruled that Sprint's course of conduct in closing LCF did not violate federal labor laws, a Mexican labor union filed a submission under the NAFTA labor side accord alleging that United States was not enforcing its own labor laws as required by its commitments under the accord.

It was at this point that Professor Corrada was asked to testify as an [*670] expert witness for Sprint at a U.S. NAO hearing on the Mexican submission. He agreed and ultimately testified that U.S. labor laws had been properly enforced. Much of his essay is a searching, honest, self-revealing and self-critical effort to explore the broader implications of his decision to testify on Sprint's behalf. His essay is structured as a dialogue between himself and an inquiring Latina law student, perplexed by the seeming contradictions between his classroom discourse, his Latino identity and his decision to testify in support of a major U.S. company charged with the flagrant violation of Latina/o workers rights. It is, in fact, a moving demonstration of the way the intersectionalities of Latina/o identity can trigger the sorts of existential crises that expand political identity and enable new ways of seeing and being.

The more immediate point stems, however, from the fact that Professor Corrada's legal conclusion, that the United States government had properly enforced its labor laws in the Sprint case, was, on its face, a legally correct and entirely defensible expert assessment. After all, the NLRB had vigorously prosecuted the case up to and including its efforts to secure a district court injunction. The district court and the ALJ, for their part, were enforcing labor laws that have systematically and increasingly expanded the realm of employer business prerogatives and of unreviewable discretion in making "core entrepreneurial decisions" such as whether to close or relocate a plant - regardless of the foreseeable and profoundly negative impact of such decisions on union organizing and collective bargaining. n210 The fundamental un/fairness of U.S. labor laws is, however, simply not an issue relevant to the resolution of a labor dispute under the NAFTA labor side accord. The only issue there is whether the U.S. government enforced them properly, and that, therefore, was the only issue Professor Corrada was called to address.

Read, however and once again, in tandem with Professor Romero's analysis of the lack of enforcement that makes the employment of undocumented workers a low-risk white collar crime, these two essays reveal the many and profound inadequacies of domestic and international labor law regimes. Not only are domestic labor law violations routinely unenforced - even when enforced, these laws fail to establish a fair and just framework for preventing the exploitation of labor and the expropriation of the real value it produces. This is precisely because the hyper-technicalities, of which Professor Corrada writes, are simply the [*671] masks that hide the asymmetrical power relations these anti-labor laws and interpretative rulings are designed to institutionalize, preserve and enforce. The resulting consequences are well documented in Professor Cameron's essay linking the decline in union organization to the increasing impoverishment of labor and the simultaneous increase in business profitability.

Focusing specifically on Los Angeles County, Professor Cameron notes that in communities experiencing 20% or higher poverty rates, "over 15,000 manufacturing firms were generating annual revenues of over \$ 54 billion, due largely to the low-wage labor of 357,000 Latino employees." n211 Moreover, three enormous construction projects, totaling 12-14.5 billion dollars in investment, are currently in the works for the region. Professor Cameron asks whether anything could be done to help Latina/o workers share more equitably in this enormous wealth. Certainly, he is right to suggest that a larger share of the value their labor produces would go a long way toward ending, or at least substantially mitigating, the destitution that keeps so many Latinas/os at the margins of the social and political life of this country. This is just as surely certain as the fact that if poor immigrant Latina domestic servants were paid the fair "market value" of their labor in upper-income households, they would make enough money to lift themselves and their families out of "the culture of poverty" and criminality they purportedly are so wont to inhabit. Certainly, Professor Cameron is also right to suggest that securing a fair and equitable share of the value Latina/o workers produce depends ultimately on Latina/o self-determination through collective action and solidarity. No employer, union boss, labor board, ALJ, or district court is going to solve the problem. Only the concerted action and mutual assistance of Latina/o workers will do the job. n212

In this vein, Professor Cameron's essay reviews a number of recent examples of successful union activity by Latina/o workers. His thesis is that the future of Latina/o workers and the American labor movement are intricately interconnected. Just as the increasing "Latinization" of the U.S. workforce makes Latina/o organizing power an important resource for revitalizing the American labor movement, the significant wage gaps between union and nonunion jobs, particularly when analyzed by race and ethnicity, make it clear that Latinas/os have a lot to gain from unionization. Professor Cameron also offers a valuable analysis of the kinds of collective action and strategies most likely to work, [*672] for example, strategies involving non-strike alternatives - like corporate campaigns and community based boycotts - and, not surprisingly, strategies that do not depend or rely on the vindication of worker rights through legal process.

III. Mapping the Intellectual and Political Foundations and Future Trajectories of LatCrit Theory and Community

The six essays in Part III appropriately close the LatCrit III symposium by raising important questions about the purpose, history and future trajectories of the LatCrit project. n213 These essays reflect the rich and varied intellectual heritage of the many different scholars and activists who have committed their energies to finding, or planting, their roots in the LatCrit community. The unprecedented and rapid expansion of LatCrit discourse over the last three years reflect the synergies embedded in these diverse perspectives and constitute the substantial pay-offs of our concerted, self-conscious and collective efforts to release these synergies through respectful and inclusive intergroup discourse based on our shared commitment to an anti-essentialist vision of substantive justice. At the same time, the rapid expansion and many diversities of position and perspective coalescing in the LatCrit movement raise substantial questions about the future trajectories and sustained viability of this imagined, and still very young, community of scholars and activists.

To my mind, that future depends, both theoretically and politically, on the degree to which the LatCrit community is able to forge a common consciousness and generate a shared discourse for articulating and manifesting, in concrete ways, a new vision of the relationship between the universal and the particular. It depends, ultimately and in other words, on the degree to which each of us is able to see the many different ways in which the relationship between the LatCrit community and the many particularities of which it is composed and into which it might at any point fracture - is not a relationship between "the universal and the particular," but rather is, at every moment and in every instance, a relationship of the universal to itself. n214 What this means, in effect, is that the challenge we confront, directly and immediately over the next few years, is a challenge that most of us cannot even really imagine. This is, in no small part, because there are simply no words, no readily accessible sound-bites, no immediately obvious and easily recognized formulations that convey the conceptual implications, political parameters, ethical substance and practical consequences, as yet to be manifested in and as - an anti-essentialist vision of human interconnection. n215 Not only are we challenged to imagine the ineffable and make manifest the unimaginable, but to do so concretely and effectively, - not at some unspecified time in some distant and abstract future, but rather - in the here and now of this moment, as it reflects itself in our collective efforts to further the objectives and foster the growth of a particular and historically contingent group of scholars and activists, who have chosen to coalesce around this imagined community and its aspirations for a new way of seeing and being in the world.

It is with these thoughts in mind that I take up the last six essays of the LatCrit III symposium. The first section focuses on the theoretical dimensions and directions of the LatCrit project as reflected in these particular essays. The

second section takes up the practical challenges involved in ensuring the continued institutional and programmatic evolution of the LatCrit project.

A. Of Intellectual Debts, Theoretical Directions and the Challenge of Anti-Essentialism

From its title, the opening essay by Professors Johnson and Martinez would seem to suggest that the LatCrit movement originates, and is rooted, in the history of Chicana/o activism and scholarship. n216 A fair and fully informed historical account of the initial beginnings and subsequent evolution of the series of conferences, publications and related events that now constitute the historical record of the LatCrit project would not support such a claim. n217 However, a close reading of their essay quickly reveals a very different and altogether appropriate message. Indeed, the opening paragraphs of their essay make it quite clear that Professors Johnson and Martinez are not claiming that the Lat Crit movement is, in fact, historically rooted in Chicana/o studies. Not only do they acknowledge the central importance LatCrit theory has, [*674] since its inception, accorded the project of promoting a discourse and politics of pan-ethnic solidarity among Latinas/os, but the recorded history, thus far developed, unequivocally illustrates the degree to which LatCrit theory has also, from its inception, aspired to articulate an inclusive anti-essentialist politics of intergroup justice and solidarity that goes far beyond the politics of Latina/o pan-ethnicity. n218

Rather, Professors Johnson and Martinez's claim, as I understand it, is that LatCrit theory should be rooted in Chicana/o studies or, more precisely, that LatCrit scholars should view the long history of Chicana/o activism and scholarship as a rich resource worth further study and serious engagement. It is to this end that they append the bibliography of Chicana/o history compiled by Professor Dennis Valdes, and it is in this respect that their claims are entirely appropriate and consistent with the historical development and the theoretical and political aspirations of the LatCrit project.

LatCrit scholars should indeed study and learn from the significant body of scholarship and history of activism reflected in and recorded by a long tradition of Chicana/o studies. The particular perspectives and experiences of Chicanas/os are as central to the LatCrit project as the perspectives and experiences of any other multidimensional and intersectional collective political identity group committed to the struggle against white supremacy and the articulation of a substantive vision and political practice of social justice and solidarity. Only an unfortunate regression to the failed politics and limited consciousness of an ethnic or racial essentialism would view Professor Johnson's and Martinez's call for attention to the particularities of Chicana/o histories and experience as a threat to the LatCrit project. As Professor Roberts noted in her own contribution to this symposium, an anti-essentialist commitment to anti-subordination politics does not mean a commitment to an abstract universalism stripped forever of any particular content. n219 It is, instead, a commitment to see and respect the universal claims of justice and dignity reflected in and asserted by every particularity, as well as by the multidimensional and intersectional identities that oftentimes are superimposed [*675] pressed within each particularity. n220

What this means, more concretely, is that Professors Johnson and Martinez are right on point when they assert the need for a distinctive emphasis on the particularities on Chicana/o perspectives and experiences, both within and beyond the institutional and programmatic parameters of the LatCrit project. They are also right to suggest that Chicana/o Studies and LatCrit theory may ultimately converge if, and as, Chicana/o Studies become more inclusive and LatCrit theory continues to encourage a theoretical and political attention to the particularities of subordination experienced by the many different Outgroups that have coalesced in the LatCrit movement. n221 LatCrit III sought to operationalize precisely this theoretical and political commitment to addressing the particularities of subordination by self-consciously and intentionally organizing the BlackCrit focus group discussion as a programmatic event through which a tradition of "rotating centers" might be definitively launched and effectively institutionalized in the organization of LatCrit conferences. n222 Within this context, a Chicana/o Studies focus group discussion would not be difficult to imagine or to organize for a future LatCrit conference.

Conversely, of course, Chicana/o activists might likewise effectuate and expand upon Professors Johnson's and Martinez's call for attention to and respect for Chicana/o particularities, for example, by centering the experiences and perspectives and listening to the stories of Chicanas/os, who have experienced Chicana/o activism from positions located outside the parameters of identity and relations of solidarity defined and delimited by Chicana/o intellectual and political elites. n223 Beyond that, Chicana/o Studies activists and scholars might, as Professors Johnson and Martinez suggest, invite the comments and perspectives of non-Chicana/o Latinas/os, who share their commitment to an anti-subordination social justice agenda. Making these and other similar moves might indeed produce the ultimate convergence of Chicana/o Studies and the [*676] anti-essentialist, anti-subordination agenda that, thus far, has defined LatCrit theory as the collective and collaborative project of a diverse group of critical scholars and activists.

In this vein, the essays by Professors Mutua and Mahmud offer very different, but equally appropriate, reference points for the future development of LatCrit theory. Professor Mutua draws on her experiences at LatCrit III, and particularly her reflections on the BlackCrit focus group featured at the conference, in order to develop a deeply moving analysis and theoretically sophisticated framework for comparing the racialization of Latinas/os and Blacks. Professor Mahmud's essay, by contrast, draws upon, and introduces for the first time ever in a LatCrit symposium, the rich discourse of post-colonial theory and scholarship. Both essays acknowledge and explore the broader political implications of the fact that white supremacy operates through the ideological articulation and legal machinery of multiple racial systems. Both essays thus call upon LatCrit scholars to focus attention and deepen our comparative analysis of the various and varied modalities through which these different racial systems produce the subordination of peoples of color, both within and beyond the United States.

Professor Mutua's immediate objective is to articulate a theoretical framework that can effectively ensure that the LatCrit practice of "rotating centers" will trigger meaningful substantive analysis of the different ways in which white supremacy configures relations of relative privilege and oppression among different non-white groups and the intergroup rivalries that are thereby activated - as much by an uncritical embrace of the privileges conferred on one's own group, at the expense of another - as by an uncritical emphasis on the oppression endured by one's own group, but not the other. Focusing specifically on the intergroup tensions between Blacks and Latinas/os, Professor Mutua shows how the notion of "shifting bottoms" provides the necessary theoretical framework for linking the practice of "rotating centers" to a careful and critical analysis of the different racial systems through which Blacks and Latinas/os are relegated to their respective "bottoms." Once these different racial systems are identified and deconstructed, LatCrit scholars will be better able to understand the many obstacles confronting our hopes of achieving genuine intergroup solidarity and justice. These hopes confront profound challenges because Latinas/os, Blacks and Asians are privileged and oppressed by different racial systems. Dismantling one racial system, will not necessarily dismantle the others. On the contrary, it may actually reinscribe the remaining systems and enable their more virulent entrenchment in American society. Thus non-white groups are really and always potentially in conflict - absent a genuine and self-conscious commitment to anti-essentialist intergroup justice. n224

To this end, Professor Mutua's analysis makes three distinct, yet interconnected, theoretical moves of particular salience to the future development of LatCrit theory. The first is to recognize that the practice of "rotating centers" is not about "celebrating diversity." LatCrit organizers want to institutionalize the practice of rotating centers because it offers a valuable lens through which to examine, among other things, the different ways in which white supremacy configures relations of privilege and subordination within and between non-white groups. By articulating the notion of "shifting bottoms" Professor Mutua offers a valuable guidepost for deciding where the center should rotate next. This is because, as her analysis suggests, the practice of rotating centers will maintain its critical edge and effectuate its anti-subordination objectives only so long as it remains relentlessly committed to seeking and asserting the perspectives of those at the bottom of any particular context in which white supremacy is present and operative. n225

Professor Mutua's second move links the notion of "shifting bottoms" to a detailed and comparative analysis of the different racial systems operating in the United States. Through a detailed analysis of these different systems, Professor Mutua makes a compelling case for concluding that Blacks, Asians and Latinas/os are racialized in different ways - such that Blacks are raced as "colored," Asians are raced as "foreign," and "Latino/as when they are not raced as black or white are 'raced' as hybrid (being "raced" both as partially foreign and partially colored in a way that racializes their ethnicity and many of its components.)" n226 These different racial systems structure intergroup relations in ways that produce "shifting bottoms" between Blacks, Asians and Latinas/os, so that "different faces appear at the bottom of the well depending on the issue analyzed." n227 Thus, while (some) Latinas/os may be relatively privileged by the "racial mobility" of putative whiteness in the racial system that marks Blacks as colored, (some) Blacks may be relatively privileged by the presumption of an American national and cultural identity in the racial system that marks Latinas/os as hybrids and foreigners.

Her third and final move links the intergroup tensions between Blacks and Latinas/os, over such issues as language rights, immigration [*678] policies and affirmative action, to the shifting configurations of privilege and oppression created by these different racial systems. The aspiration underlying the theory and practice of coalitional politics has repeatedly been cast as a collective struggle to move beyond the divide and conquer dynamics of inter-group competition within white supremacy to a collaborative project aimed, instead, at eliminating white supremacy through a politics of intergroup solidarity and a commitment to intergroup justice. Professor Mutua's detailed analysis of the different racial systems organizing Black and Latina/o subordination furthers this project by revealing how tensions between Blacks and Latinas/os reflect the different configurations of privilege and oppression visited upon these

different groups by the particular dynamics of different racial systems. Even more importantly, it clearly and powerfully drives home the point that achieving intergroup justice is not simply a matter of eliminating oppression, but also of giving up privilege. This means that each group will have to confront and forswear the privileges conferred on them by the racial systems that oppress groups other than themselves - if there is ever to be genuine solidarity based on a shared commitment to objective justice. n228

At the same time, however, it is important to recognize the limitations of Professor Mutua's theoretical framework - not so as to undermine or discount the substantial advances it makes in the articulation of LatCrit coalitional theory, but rather so as to mark future directions for LatCrit analysis. More specifically, I wonder how the experiences of Black Haitians, and other immigrant Black identities would be mapped within and across the various racial systems delimited by Professor Mutua's framework. n229 More generally, I wonder what focusing specifically on marginalized and intersectional identities of Black Latinas/os, Black Asians, Asian Latinas/os and so on and so forth, would teach us about the interconnections and disjunctures between the various racial systems and other racial systems, we have yet to identify and deconstruct. Indeed, in this respect, Professor Mahmud's essay closes this section as if by design.

Focusing specifically on the various racial systems constructed in and through the British colonial project in India, Professor Mahmud illustrates the tremendous mileage to be gained from of a serious LatCrit encounter with post-colonial theory and discourse. Like Professor Mutua, his essay offers a detailed analysis of the discourses and practices through which different racial systems were constructed in the past [*679] and are reflected in the present conflicts and tensions among different racialized groups. By locating this analysis in the particularities of European colonialism, Professor Mahmud provides a valuable framework for expanding the critical analysis of racialization beyond the territorial boundaries, cultural ideologies and domestic concerns of the United States. There is no question that his essay marks a future trajectory for LatCrit theory.

B. Institutionalizing Solidarity and Practicing Mutual Recognition

The cluster afterword submitted by Professor Montoya in conjunction with her cluster introduction, as well as the essays by Professor Phillips and by Professors Ortiz and Elrod provide an appropriate occasion to shift the focus of attention from the theoretical foundations and future trajectories of LatCrit theory to the more concrete and practical challenges of ensuring the continued institutional and programmatic evolution of the LatCrit project. Some of the challenges thus far confronted, as well as the various strategies LatCrit organizers have implemented to meet these challenges, are detailed in Professor Valdes' Afterword. n230 Nevertheless, these last three essays each raise important issues concerning (1) the internal dynamics, historical development and future evolution of LatCrit conferences and the organizational practices and structures needed to sustain this movement; n231 (2) the relationship between LatCrit and other networks and organizations of critical scholarship; n232 and (3) the overarching necessity of ensuring that these concerns are mediated in ways that preserve and enhance a common ethic of authentic human sharing, inclusivity and connection. This last point is key. The LatCrit community can and should continue to grow and expand, even as we continue also, rigorously and honestly, to explore our substantive differences of position and perspective in the spirit and expectation of lively and lasting friendship based on a shared commitment to an anti-essentialist anti-subordination vision and politics. n233

To these ends, Professor Montoya's cluster afterword features interviews with two Chicana scholars involved in the National Association for Chicana/Chicano Studies. Through a candid and detailed narrative of the problems confronted in that particular context, these interviews offer valuable insights into the difficulties any collective project can eventually encounter as its participants confront the consequences of their own success. One such consequence, noted in these [*680] interviews, is the activation of an all-too-human tendency to abandon the ethic of mutual recognition and the aspirations it embodies, and to jockey instead for positions of individual prominence, whether real or imagined. This cannot be allowed to happen again. Too much is at stake in the here and now of this moment of retrenchment and hostility to the cause of social justice and genuine human interconnection. n234

Operationalizing an ethic of mutual recognition, in this context, means recognizing the efforts and contributions of particular individuals, rather than attributing current collective achievements to impersonal historical forces or to the heroes (or heroines) of a distant past. Though there can be no question that the LatCrit movement draws its energy and substantive value from the many scholars, who have chosen to find, or to plant, their roots in the LatCrit community, it is also true that the organization of appropriate venues, the construction of appropriate contexts for performing community and producing a collective learning process and the negotiation of publication commitments that enable these efforts to be recorded and broadly disseminated do not happen automatically without the efforts and energy of particular individuals, who at specific points in time, take up the burdens and challenges of creating the opportunities

that enable community. The history of these efforts in the development of LatCrit theory has yet to be told. As Professor Montoya's afterword suggests, much could be learned from the telling. That history, in its full detail, has much to teach about the meaning and value of perseverance, solidarity and intellectual, professional and personal generosity. That history, in its full detail, will have to await another moment and venue, but the lessons embedded in Professor Montoya's cluster afterword underscore the necessity and value of recording his story. n235 With that in mind, a few notes for the record are highly in order.

Though the future of the LatCrit movement has yet to unfold, its history began, without question or doubt, in the Critical Race Theory Workshop. It began there because, in its most proximate and concrete form, LatCrit began with the vision and efforts of my friend and colleague Francisco Valdes. That vision is reflected in Frank's [*681] Afterword, n236 but his many efforts on behalf of the LatCrit community are not. From the initial gathering of law professors which produced the first ever Colloquium seeking to locate Latinas/os in the discourse of Critical Race Theory and, in doing so, gave birth to the "LatCrit" movement, n237 and ultimately to this LatCrit III conference, Frank's efforts to build an inclusive community of scholars and activists, to promote a theoretically sophisticated and analytically rigorous anti-essentialist critical legal discourse and, above all, to combat the marginalization of Latina/o communities in American legal culture have been a driving force behind, and an unselfish source of energy and practical assistance to, the organization of LatCrit conferences, the publication of LatCrit scholarship and the consolidation of the LatCrit community. To locate the roots of LatCrit theory in any other venue, history or project, without accounting for the efforts of this particular man and the immediate context that inspired these efforts, would be an unfortunate distortion of the unrecorded history of the LatCrit movement.

Just as Professor Montoya's cluster afterword counsels LatCrit organizers to negotiate the future growth and the institutionalization of structures and procedures for the LatCrit project with care and fidelity to the ethic of mutual recognition, the commitment to unequivocal inclusiveness and the aspirations of collective solidarity and transformative social justice praxis that initially gave it birth, Professor Phillips's contribution counsels LatCrit organizers and scholars to attend to the needs and concerns of other networks and organizations of critical legal scholars. Whether her institutional proposal to coordinate LatCrit conferences and Critical Race Theory Workshops through an every-other-year rotation, or some other appropriate variation, is ultimately adopted, the objectives, concerns and aspirations that inform her proposal warrant serious LatCrit attention and consideration. Working out the programmatic and institutional details of the relationship between LatCrit conferences and activities and the Critical Race Theory Workshops, as well as the details of LatCrit participation in venues like APACrit conferences, Law and Society, People of Color Conferences, the NAIL and TWAIL networks focusing on New and Third World Approaches to International Law, INTEL's International Network on Transformative Employment & Labor Law and the Critical Legal Studies Network, to name but a few, are pending matters of increasing importance. Ultimately, taking seriously the commitment to social transformation through law means taking [*682] ing seriously the coordinated synergies that only our collaborative efforts can produce.

Finally, the essay by Professors Ortiz and Elrod provides a vivid image of the community spirit, collegiality and cultural ethos the LatCrit movement must not ever lose. Though the LatCrit project aspires to the serious objective of producing transformative anti-essentialist legal theory and praxis, it aspires also to the realization of the human need for genuine community, solidarity and friendship. Whether LatCrit conferences and activities will continue to provide an intellectual and political home for scholars and activists committed to the project of social justice depends on the degree to which we continue to structure our gatherings as spaces where the personal and professional are equally valued and accommodated.

Conclusion

LatCrit III undoubtedly marked a watershed event in the evolution of the LatCrit movement, both as the most recent intervention in outsider jurisprudence and as a community of scholars and activists. This Foreword has sought, in a caring, careful and analytically rigorous manner, to highlight the advances and engage the problems embedded in the essays that now constitute the only record of this wonderful event. Heeding prior calls and applying the methodologies advocated in earlier LatCrit scholarship, this Foreword has worked to situate the contributions of this symposium within the broader discursive background that has already been developed through substantial efforts, and at great cost, by other critical scholars. n238 This positioning, as previously explained and once again repeated, "requires a broad learning and caring embrace of outsider jurisprudence and, in particular, of the lessons and limits to be drawn from its experience, its substance and its methods." n239 It also counsels LatCrit scholars to recognize the importance of critical engagement and mutual recognition. Through our critical and focused engagement in each other's work and

ideas, we will ourselves, grow intellectually and politically, even as we foster each other's growth and development. Through our commitment to mutual recognition, we will promote the dissemination of LatCrit anti-essentialist, anti-subordination theory and, thereby - with a little luck and a lot of hard work - trigger the paradigm shifts that are imperative for the 21st century. The future is as bright as we make it together.

FOOTNOTES:

n1. LatCrit scholarship has virtually exploded in the last three years. In addition to the published proceedings of LatCrit I, see Symposium, LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship, 2 *Harv. Latino L. Rev.* 1 (1997) and LatCrit II, see Symposium, Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory, 19 *Chicano-Latino L. Rev.* 1 (1998), LatCrit scholars have also produced a first-ever symposium exploring major issues in international law and international human rights from a critical race perspective. See Symposium, International Law, Human Rights and LatCrit Theory, 28 *U. Miami Inter-Am. L. Rev.* 1 (1997). LatCrit scholarship has also been published in a stand-alone volume, see Symposium, LatCrit Theory, Latinas/os and the Law, 85 *Cal. L. Rev.* 1087 (1997), 10 *La Raza L. J.* 1 (1998). For proceedings of the gathering of Latina/o Law Professors that gave birth to the LatCrit project, see Colloquium, Representing Latina/o Communities: Critical Race Theory and Practice, 9 *La Raza L. J.S* 1 (1996). For a particularly insightful overview of the purposes and commitments of the LatCrit movement, see Francisco Valdes, Under Construction: LatCrit Consciousness, Community and Theory, 85 *Cal. L. Rev.* 1087, 93-96 (1997), 10 *La Raza* 1, 7-10 (1998) [hereinafter Valdes, Under Construction]. For proceedings of the LatCrit IV conference, see Symposium, Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections, 33 *U.C. Davis L. Rev.* (forthcoming 2000).

n2. For a sense of the substantive issues that triggered the eruptions at LatCrit II, see Elvia R. Arriola, Foreword: March!, 19 *Chicano-Latino L. Rev.* 1, 26-7 (1998) [hereinafter Arriola, Foreword: March!]; Nancy K. Ota, Falling From Grace: A Meditation of LatCrit II, 19 *Chicano-Latino L. Rev.* 437 (1998); Reynaldo Valencia, On Being an Out Catholic: Contextualizing the Role of Religion at LatCrit II, 19 *Chicano-Latino L. Rev.* 449 (1998); Emily Fowler, Disturbing the Peace, 19 *Chicano-Latino L. Rev.* 479 (1998); Margaret E. Montoya, Religious Rituals and LatCrit Theorizing, 19 *Chicano-Latino L. Rev.* 417 (1998); Elizabeth M. Iglesias & Francisco Valdes, Afterword: Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas, 19 *U.C.L.A. Chicano-Latino L. Rev.* 503, 539 (1998) (declining to engage in retrospective accounts of events, in favor of reflecting instead on the substantive issues raised by the clash of perspectives).

n3. The eruptions at LatCrit II raised substantial doubts about the continuity of the project. Communities may form spontaneously, but they do not evolve automatically, particularly not communities of choice and will that are little more than an imagined act of solidarity amongst people separated by so many differences. The organization of appropriate venues for performing community is critical to its evolution, but this also does not happen automatically. It falls to particular individuals at specific points in time to create the venues that enable community. Thus these communities are as fragile as the individuals upon whose energy, initiative and good will they depend. LatCrit II drained us.

n4. See Elvia R. Arriola, LatCrit Theory, International Human Rights, Popular Culture, and the Faces of Dispar in INS Raids, 28 *U. Miami Inter-Am. L. Rev.* 245 (1996-97) [hereinafter Arriola, INS Raids] (emphasizing the importance of LatCrit community building); Arriola, Forward: March!, supra note 2 (same).

n5. See Elizabeth M. Iglesias, The Inter-Subjectivity of Objective Justice: A Theory and Praxis for Constructing LatCrit Coalitions, 2 *Harv. Latino L. Rev.* 467-71 (1997); 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, 476-78 (1993) [hereinafter Iglesias, Structures of Subordination] (the intersubjectivity of equals: moral

imperative and institutional blueprint); *id.* at 493 n.324 (intra-feminist solidarity must be based on more than "touchy-feely" sentiments); *id.* at 475-78 (solidarity among women of color based on justice, not sentimentality).

n6. See *infra* note 105 and accompanying text (discussing objectives and drawing lessons from the LatCrit III focus group discussion entitled From Critical Race Theory to LatCrit to BlackCrit? Exploring Critical Race Theory Beyond and Within the Black/White Paradigm, see <<http://nersp.nerdc.ufl.edu/malavet/latcrit/archives/lciii.htm>>).

n7. See, e.g., Stephanie L. Phillips, The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History, 53 *U. Miami L. Rev.* 1247 (1999); Francisco Valdes, Afterword: Theorizing "OutCrit" Theories: Coalitional Method and comparative Jurisprudential Experience-RaceCrits, QueerCrits and LatCrits, 53 *U. Miami L. Rev.* 1265 (1999) [hereinafter Valdes, "OutCrit" Theories].

n8. See, e.g., Dorothy E. Roberts, BlackCrit Theory and the Problem of Essentialism, 53 *U. Miami L. Rev.* 855 (1999) [hereinafter Roberts, BlackCrit Theory]; Athena Mutua, Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm, 53 *U. Miami L. Rev.* 1177 (1999); see also The Meanings and Particularities of Blackness in Latina/o Communities, LatCrit IV Substantive Program Outline (reflecting the intellectual growth and theoretical development generated by the BlackCrit focus group discussion), <<http://nersp.nerdc.ufl.edu/malavet/latcrit/lcivdocs/lcivsubs.htm>>.

n9. To be sure, lounging on the pool deck of the luxurious Eden Roc Hotel, I did experience a moment of cognitive dissonance, which I was quickly able to resolve because I've never bought the line that our commitment to anti-subordination might be rendered any less authentic by sharing some moments of privilege. To my mind, that view reflects a crabbed and myopic misunderstanding of the ethical substance, political objectives and emotional dimensions of the practice of liberation politics. See, e.g., Jose Miranda, Marx and the Bible: A Critique of the Philosophy of Oppression (John Eagleson trans., 1974) (distinguishing the structural concept of "differentiating wealth" from the individual ownership of property). Like John Hayakawa Torok, I think LatCrit scholars need to find ways to provide ourselves and each other respite from the conflict and controversy to which our anti-subordination commitments routinely expose us - precisely so that we never give up or burn out. See John Hayakawa Torok, Finding the Me in LatCrit Theory: Thoughts on Language Acquisition and Loss, 53 *U. Miami L. Rev.* 1019 (1999).

n10. See, e.g., Charles R. Lawrence III, The Id, The Ego and Equal Protection: Reckoning with Unconscious Racism, 39 *Stan. L. Rev.* 317 (1987) (unconscious racism pervasive); Angela J. Davis, Prosecution and Race: The Power and Privilege of Discretion, 67 *Fordham L. Rev.* 13 (1998) (unconscious racism in criminal justice system); Sylvia R. Lazos-Vargas, Democracy and Inclusion: Reconceptualizing the Role of the Judge in a Pluralist Polity, 58 *Md. L. Rev.* 150, 263-64 (1999) (unconscious racism in interpretation of affirmative action); Susan Sturm, Race, Gender, and the Law in the Twenty-first Century Workplace: Some Preliminary Observations, 1 *U. Pa. J. Lab. & Emp. L.* 639 (1998) (unconscious racism in labor and employment policies and practices).

n11. See Francisco Valdes, Outsider Scholars and "OutCrit" Perspective: Postsubordination Vision as Jurisprudential Method, 49 *De Paul L. Rev.* 3 (forthcoming 2000).

n12. The LatCrit III Substantive Program Outline can be found by visiting the LatCrit webpage at <<http://nersp.nerdc.ufl.edu/malavet/latcrit/archives/lciii.htm>>.

n13. See *id.* (for webpage address).

n14. This emphasis on the local politics in South Florida is consistent with prior practice of planning LatCrit conferences to use the location of our conferences to increase our collective knowledge of the particularities of Latina/o realities across geographical areas. See Iglesias & Valdes, *supra* note 2, at 574 n.185 (discussing the economic tour of San Antonio as another instance of engaging the particularities of the areas in which the conference is held).

n15. 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) [hereinafter Iglesias, International Economic Law] (exploring the way different intra-Latina/o collective identities and political alliances -- some more progressive than others -- are triggered by the discourses of development, dependency and neo-liberalism and the very different impact these alliances would have on the project to link enforcement of human rights to trade and finance regimes regulated by international economic law). My point here is that the configuration of collective identities and political alliances is not "naturally" given. Nor do they flow directly from our position within any particular "group." Instead, these identities and alliances are constructed in and through the discourses we deploy. Historical comparisons are precisely the kinds of discourse that organize political alliances and construct collective identities, for better or worse. It is therefore critical to subject any inter-group comparisons to the kind of political alignment analysis I am again suggesting here. For a different, but allied, vision of the kind of political impact analysis that is needed, see Sumi Cho, Essential Politics, 2 *Harv. Latino L. Rev.* 433 (1997) [hereinafter Cho, Essential Politics].

n16. See Catherine Peirce Wells, Speaking in Tongues: Some Comments on Multilingualism, 53 *U. Miami L. Rev.* 983 (1999) (providing a clear and beautiful account of the way our ethic of inter-group relations needs to progress beyond a level where mutual recognition and regard depends on the identification of commonalities to a level where we learn to value difference itself).

n17. See, e.g., Alice Abreu, Lessons from Latcrit: Insiders and Outsiders, All at the Same Time, 53 *U. Miami L. Rev.* 787 (1999) (critiquing tendency to channel Latinas/os into fields deemed particularly relevant to Latinas/os).

n18. See *infra* notes 108-117 and accompanying text (reconstructing relationship between universal and particular in the articulation of anti-essentialist critical legal theory).

n19. 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, 11-12 (1996) (noting that the publication of LatCrit conferences serves "to build relationships among and between Latina/o legal scholars and journals; [and] in this way ... foster the work and success of both.").

n20. Guadalupe T. Luna, On the Complexities of Race: The Treaty of Guadalupe Hidalgo and Dred Scott v. Sandford, 53 *U. Miami L. Rev.* 691 (1999) [hereinafter Luna, Complexities of Race]; Cheryl Little, Intergroup Coalitions and Immigration Politics: The Haitian Experience in Florida, 53 *U. Miami L. Rev.* 717 (1999); Lyra Logan, Florida's Minority Participation in Legal Education Program, 53 *U. Miami L. Rev.* 743 (1999); Virginia P. Coto, LUCHA, The Struggle for Life: Legal Services for Battered Immigrant Women, 53 *U. Miami L. Rev.* 749 (1999).

n21. Luna, *Complexities of Race*, supra note 20; see also Guadalupe Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a Naked Knife*, 4 *Mich. J. Race & L.* 39 (1998).

n22. I follow Professor Luna's terminology, which itself follows Professor Matsuda's earlier rejection of the term "minority" in favor of the term "outsider" on the grounds that the former terminology contradicts "the numerical significance of the constituencies typically excluded from jurisprudential discourse." Luna, *Complexities of Race*, supra note 20, at 695 n.20 (citing Mari Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 *Mich. L. Rev.* 2320 (1989)).

n23. See Arriola, *INS Raids*, supra note 4; 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 (1997); Enid Trucios-Haynes, *The Role of Transnational Identity and Migration*, 28 *U. Miami Inter-Am. L. Rev.* 293 (1997).

n24. See Stuart A. Streichler, *Justice Curtis's Dissent in The Dred Scott Case: An Interpretive Study*, 24 *Hastings Const. L.Q.* 509, 534 (1997) (noting Taney's position that "an act of Congress which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offence against the laws could hardly be dignified with the name of due process of law.").

n25. Dred Scott's substantive claim was that he was a free man by virtue of his years of residency in Illinois, a free state, and in the territories of the Louisiana Purchase that were designated free by the Missouri Compromise. Scott had traveled to these areas from his original place of residence in Missouri, a slave state, in the company and with the permission of his owner, John Emerson. Scott had married and resided in free territory for a number of years before returning to Missouri with his wife and children at Emerson's request. Back in Missouri, Emerson died and Scott sued for his freedom in state court. Settled precedents at the time held that slaves who traveled to and resided within the jurisdiction of a free state or territory, with permission of their owners, were automatically free. Residence within these jurisdictions effected this emancipation precisely because slavery was not legally recognized in these areas. It was further settled that once emancipated by residence in a free state or territory, the free individual was not re-enslaved by mere act of returning to or residing within a slave state, but was rather entitled to have her/his free status legally recognized within the slave state. When the Missouri Supreme Court reversed the jury verdict rendered in Scott's favor and, in the process, reversed these established precedents, Scott brought suit in federal court, invoking the court's diversity jurisdiction, which applies to cases "between Citizens of different States." Scott asserted Missouri citizenship in his suit against John Sanford, who was the brother of his owner's widow and was, at the time of the lawsuit, a citizen of New York. See Jane Larson, *A House Divided: Using Dred Scott to Teach Conflict of Laws*, 27 *U. Tol. L. Rev.* 577 (1996); Mark A. Graber, *Desperately Ducking Slavery: Dred Scott and Contemporary Constitutional Theory*, 14 *Const. Comment.* 271 (1997).

n26. See Peter L. Reich, *Western Courts and the Privatization of Hispanic Mineral Rights Since 1850: An Alchemy of Title*, 23 *Colum. J. Envtl. L.* 57 (1998); Robert V. Urias, *The Tierra Amarilla Grant, Reises Tijerina, and the Courthouse Raid*, 16 *Chicano-Latino L. Rev.* 141 (1995).

n27. See Symposium, *The Long Shadow of Korematsu*, 40 *B.C. L. Rev.* 1; 19 *B.C. Third World L. J.* 1 (1999).

N28. See, e.g., Adrienne D. Davis, *The Private Law of Race and Sex: An Antebellum Perspective*, 51 *Stan. L. Rev.* 221 (1999) (examining the impact of slave/master sexual relations through lens of antebellum wills and estate cases); Margalynne Armstrong, *Race and Property Values in Entrenched Segregation*, 52 *U. Miami L.*

Rev. 1051 (1998) (exploring the impact of racism on value of Black-owned property and the interpretation of the anti-discrimination mandate in the struggle for fair housing); Keith Aoki, No Right to Own?: The Early Twentieth-Century "Alien Land Laws" As a Prelude to Internment, *40 B.C. L. Rev. 37; 19 B.C. Third World L. J. 37 (1998)* (laws barring agricultural land ownership by Asians); 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)* (providing critical analysis of First/Third World battles over scope of duty to compensate expropriation).

n29. See, e.g., 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)* (critical analysis of investor rights regime established by NAFTA reveals how economic and political interests of privileged are given priority of over economic and political rights of poor); Keith Aoki, Neocolonialism, Anticommons Property, And Biopiracy in The (Not-So-Brave) New World Order of International Intellectual Property Protection, *6 Ind. J. Global Legal Stud. 11 (1998)* (new wave expropriation of indigenous peoples through "biocolonialism"); Iglesias, International Economic Law, *supra* note 15, at 386 (noting that the rights of property so centrally featured in the Cuban Liberty and Democracy Act are not equally respected when the property rights at issue are the rights of indigenous peoples displaced from their communal lands without just compensation).

n30. For an analysis calling for critical legal scholarship that centers the legal structures of political economy in the analysis of white supremacy, see Elizabeth M. Iglesias, Out of the Shadow: Marking Intersections In and Between Asian Pacific American Critical Legal Scholarship and Latina/o Critical Theory, *40 B.C. L. Rev. 349; 19 B.C. Third World L. J. 349 (1998)* [hereinafter Iglesias, Out of the Shadow]. To this end, a critical comparative analysis of the way economic interests have/not been recognized as property rights across different sociolegal contexts might provide significant insights in developing an anti-essentialist anti-subordination analysis of the legal structure of American political economy. Compare, Reich, *supra* note 26 (recounting the doctrinal manipulations that integrated subsurface mineral rights into ownership of surface lands), with *Local 1330 United Steel Workers of America v. United States Steel Corp.*, *631 F.2d 1264 (6th Cir.1980)* (refusing to recognize community property rights as basis for enjoining management to sell factory it had decided to close despite evidence of profitability, and devastating impact of closure on community that had assisted company with public subsidies and other "giveback").

n31. Luna, Complexities of Race, *supra* note 20, at 710.

n32. See Claud Anderson, *Black Labor, White Wealth: The Search for Power and Economic Justice* (1994).

n33. See, e.g., Dorothy Roberts, Racism and Patriarchy in the Meaning of Motherhood, *1 Am. U. J. Gender & L. 1, 7-10 (1993)* (recounting brutality of slave system); see also Sumi K. Cho, Multiple Consciousness and the Diversity Dilemma, *68 U. Colo. L. Rev. 1035, n.103 (1997)* (arguing for a unified racial critique of white supremacy based on commonalities in the racial trauma of slavery visited upon indigenous peoples and Blacks).

n34. See Angela P. Harris & Leslie Espinoza, Afterword: Embracing the Tar-Baby: LatCrit Theory and the Sticky Mess of Race, *85 Cal. L. Rev 1585; 10 La Raza 499 (1997)* (exploring the tensions between the rhetoric of Black exceptionalism and multiracial coalitions).

n35. Luna, Complexities of Race, *supra* note 20.

n36. See Ediberto Roman, *The Alien-Citizen Paradox and Other Consequences of U.S. Colonialism*, 26 *Fla. St. U. L. Rev.* 1 (1998); Efrén Rivera Ramos, *The Legal Construction of American Colonialism: The Insular Cases (1901-1922)*, 65 *Rev. Jur. U.P.R.* 225 (1996).

n37. Luna, *Complexities of Race*, supra note 20, at 713, quoting *Dred Scott* opinion:

The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the "sovereign people," and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word 'citizen' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.

Id.

n38. For example, a discourse of common oppression might reveal otherwise invisible interconnections in the denial of political rights to non-citizens and the felony disenfranchisement laws that operate defacto to construct many Blacks as non-citizens. Compare Nora V. Demleitner, *The Fallacy of Social "Citizenship," or The Threat of Exclusion*, 12 *Geo. Immigr. L. J.* 35 (1997) (arguing that permanent residents have a compelling claim to political representation and participation), with Virginia E. Hench, *The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters*, 48 *Case W. Res. L. Rev.* 727 (1998) (noting that "of a total voting age population of 10.4 million Black men in the United States, approximately 1.46 million have been disqualified from voting because of a felony conviction. Of these, 950,000 are in prison, on probation, or parole, and more than 500,000 are permanently barred by convictions in the 13 states that disenfranchise prisoners for life.").

n39. Thus, for example, in *United States v. Verdugo-Urquidez*, 494 *U.S.* 1092, 110 *S. Ct.* 1839 (1990), the present-day court reasoned that the 4th Amendment did not apply extraterritorially to U.S. enforcement activities taken abroad against non-U.S. citizens because the latter did not constitute part of "the people" protected by the Constitution. Though the majority at no time cited the *Dred Scott* decision, its reasoning reveals the legacy of *Dred Scott*: a discursive order that can be readily reactivated to consolidate an imperial state. Because noncitizens are not part of "the people," they can, at any moment, be made the objects of unlimited state power.

n40. *Saenz v. Roe*, 119 *S. Ct.* 1518 (1999), illustrates another way the "dead hand" of the *Dred Scott* decision reaches into present day legal controversies. In *Saenz*, a majority of the Supreme Court struck down a California statute imposing durational residency requirement by limiting Temporary Assistance to Needy Families (TANF) benefits through the recipients' first year of residence on the grounds it violated 14[su'th'] Amendment right to travel. In dissent, Clarence Thomas cites the *Dred Scott* decision to support his contention that the rights and privileges of U.S. citizenship do not include welfare rights. Id. Cf. Dorothy E. Roberts, *Welfare and the Problem of Black Citizenship*, 105 *Yale L. Rev.* 1563 (1996) (exploring the implications of racism through analysis linking welfare rights to a substantive vision of social citizenship).

n41. See Gil Gott, *A Tale of New Precedents: Japanese-American Internment As Foreign Affairs Law*, 40 *B.C. L. Rev.* 179; 19 *B.C. Third World L. J.* 179 (1998) (arguing national security ideology legitimates deployment of imperial power to enforce white supremacy both within and beyond the territorial jurisdiction of

the United States); Natsu Taylor Saito, Justice Held Hostage: U.S. Disregard for International Law in the World War II Internment of Japanese Peruvians - A Case Study, *40 B.C. L. Rev.* 275; *19 B.C. Third World L. J.* 275 (1998) (same).

n42. Luna, Complexities of Race, *supra* note 20, at 711.

n43. See Iglesias, Out of the Shadow, *supra* note 30 (calling for more collaborative projects organized self-consciously around the exploration and comparison of particular histories). These kinds of comparisons show us commonalities even as they challenge us to confront and overcome our internal racisms, sexism, etc. They do not constitute a war of positions because the point is not to establish which group is more oppressed, but to understand how they are/were oppressed in order to change the way we are in community.

n44. See David Harlan, The Degradation of History at xx-xxii (1997). Lamenting the impact of postmodern thought on historical practice, Harlan asks "What now becomes of the "historical fact," once so firmly embedded in its proper historical context - firmly embedded rightly perceived, and correctly interpreted from a single immediately obvious and obviously appropriate perspective? The overwhelming abundance of possible contexts and perspectives, the ease with which we can skip from one to another, and the lack of any overarching metaperspective from which to evaluate the entire coagulated but wildly proliferating population of perspectives - all this means that the historical fact, once the historian's basic atomic unit, has jumped its orbit and can now be interpreted in any number of contexts, from a virtually unlimited range of perspectives. And if the historical fact no longer comes embedded in the natural order of things ... then what happens to the historian's hope of acquiring stable, reliable, objective interpretations of the past? *Id.* at xx.

n45. See Jerome McCristal Culp, Jr., Latinos, Blacks, Others & The New Legal Narrative, *2 Harv. Latino L. Rev.* 479 (1997); Elizabeth M. Iglesias, The Inter-Subjectivity of Objective Justice: A Theory and Praxis for Constructing LatCrit Coalitions, *2 Harv. Latino L. Rev.* 467 (1997); George Martinez, African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition, *19 Chicano-Latino L. Rev.* 213 (1998).

n46. Nicaraguan Adjustment and Central American Relief Act (NACARA), Pub. L. No. 105- 100, 111 Stat. 2160 (1997). NACARA is part of the Fiscal Year 1998 appropriations bill for the District of Columbia (H.R. 2607).

n47. Little, *supra* note 20, at 732. The interdiction, detention and parole policies aptly call attention to the disparities in our treatment of Cuban and Haitian refugees.

n48. See *supra* notes 15-16 and accompanying text.

n49. See, e.g., Anderson, *supra* note 32 (complaining that immigrants are assisted at the expense of Black Americans); Toni Morrison, On the Backs of Blacks, in *Arguing Immigration* 98 (Nicolaus Mills ed., 1994) (arguing that hatred of Blacks is a central step in the "Americanization" of immigrants so that "the move into mainstream America always means buying into the notion of American Blacks as the real aliens"); Juan Perea, The Black/White Binary Paradigm of Race, in *The Latino/a Condition: A Critical Reader* 365 (Richard Delgado & Jean Stefánic eds., 1998) (quoting Morrison and acknowledging that Latinas/os participate in this paradigm of "Americanization" by engaging in racism against Blacks or darker-skinned members of the Latino/a community" but noting that "current [anti-immigrant] events ... belie Morrison's notion of American Blacks as "the real aliens").

n50. See Kevin R. Johnson, Some Thoughts on the Future of Latino Legal Scholarship, 2 *Harv. Latino L. Rev.* 101 (1997) [hereinafter Johnson, Latino Legal Scholarship] (discussing Chicano perceptions of Mexican immigrants).

n51. Little, *supra* note 20, at 734.

n52. See Ari Weitzhandler, Temporary Protected Status: The Congressional Response to the Plight of Salvadoran Aliens, 64 *U. Colo. L. Rev.* 249, 252 ("Two factors contributed significantly to the denial rate: the characterization of Salvadoran nationals as economic immigrants, and the Reagan and Bush Administrations' foreign policies toward El Salvador."); Note, Political Legitimacy in the Law of Political Asylum, 99 *Harv. L. Rev.* 450, 458-64 (1985) (the political dimensions of economic conditions).

n53. Kevin R. Johnson, The Antiterrorism Act, The Immigration Reform Act, and Ideological Regulation in the Immigration Laws: Important Lessons for Citizens and Noncitizens, 28 *St. Mary's L. J.* 833 (1997).

n54. Cuban-American leaders in Miami have long called for the kind of intervention in Cuba that was undertaken to dislodge the Haitian military dictatorship that overthrew President Aristide. For statistics on the percentage of Miami Cubans who support military interventions of different sorts in Cuba, see <<http://www.fiu.edu/orgs/ipor/cubapoll/index.html>>.

n55. Gott, *supra* note 41.

n56. For a substantive vision of the way the international legal order might mediate the relation between the sovereignty of states and the self-determination of peoples, see 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) (revealing irrationality and offering alternatives to international legal doctrines designed to uphold concept of sovereignty by ignoring claims of liberation movements within nation-states until they "earn" such recognition through successful military actions- thus constituting civil war as only recourse).

n57. According to Attorney Little, "Nicaraguan activists have said that Republican members of Congress carried out a jihad in obtaining legal status for them. They didn't do that for Haitians and others excluded and punished by the new law." Let's hope they do that now. Little, *supra* note 20, at 741.

n58. Attorney Little notes that when it became apparent that there was a powerful effort to exclude Haitians in the legislation, "NACARA's architects maintained that if the Haitians were included the bill would die, and supporters of the Haitians in Congress agreed to permit the Central American refugee relief legislation to move forward without including them." *Id.* at 740.

n59. Derek Bell, *Brown v. Board of Education & the Interest-Convergence Dilemma*, 93 *Harv. L. Rev.* 518 (1980).

n60. See John A. Powell, An Agenda for the Post-Civil Rights Era, 29 *U.S.F. L. Rev.* 889 (1995) (linking disorganization of civil rights movement among other things to rise of colorblind ideology); Michael J.

Klasman, Brown, Racial Change and The Civil Rights Movement, *80 Va. L. Rev.* 7 (1994) (recounting history); Eric K. Yamamoto, Critical Race Praxis: Race Theory and Political Lawyering in Post-Civil Rights America, *95 Mich. L. Rev.* 821 (1997) (suggesting strategies for meaningful revival of civil rights agenda).

n61. Iglesias & Valdes, *supra* note 2; Berta Esperanza Hernandez-Truyol, Building Bridges: Latinas and Latinos at the Crossroads, in *The Latino/a Condition*, *supra* note 49, at 24, 30-31 [hereinafter Hernandez-Truyol, Building Bridges] (explaining the many ways Latinas/os can tap the experience of intersectionality and multidimensionality to build bridges across differences both within Latina/o communities and between Latina/o and other minority communities); Eric K. Yamamoto, Conflict and Complicity: Justice Among Communities of Color, *2 Harv. Latino L. Rev.* 495 (1997).

n62. Logan, *supra* note 20, at 743.

n63. *Id.* at 747.

n64. See *Where the Injured Fly for Justice*, Report and Recommendations of Florida's Supreme Court Racial and Ethnic Bias Study Commission, Part I (Dec. 11, 1990); see generally Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (1976).

n65. In 1998, the problems caused by the high number of pro-se litigants in family court prompted the Florida Supreme Court to approve a family law self-help program. See *Court Approves Family Law Self-help Centers*, Fla.BarNews, Dec. 15, 1998, at 5. The problem, however, remains. See, e.g., Jan Pudlow, *Court Asks Family Law Section to Turn Attention to Pro Se Problem*, Fla. Bar News, Aug. 15, 1999, at 17.

n66. See, e.g., Talbot D'Alemberte, *Tributaries of Justice: The Search For Full Access*, 73- APR Fla. B.J. 12, 14 (1999) (noting that after Republican Party took control of Congress in 1995, Congressional funding of legal services for the poor dropped, in real dollars, to its lowest level ever - 12% below what it was when Reagan took office in 1981).

n67. See, e.g., Bruce A. Green, *Foreword: Rationing Lawyers: Ethical And Professional Issues in The Delivery of Legal Services to Low-Income Clients*, *67 Fordham L. Rev.* 1713 (1999); cf. Lewis A. Kornhauser & Richard L. Revesz, *Legal Education And Entry Into The Legal Profession: The Role of Race, Gender, And Educational Debt*, *70 N.Y.U. L. Rev.* 829 (1995) (advocating scholarships rather than loan repayment assistance based on analysis linking public interest career choices to factors other than debt burden).

n68. Margaret E. Montoya, *Masks and Resistance*, in *The Latino/a Condition*, *supra* note 49, at 276; Alex M. Johnson, Jr., *The Under-Representation of Minorities in the Legal Profession: A Critical Race Theorist's Perspective*, *95 Mich. L. Rev.* 1005 (1997); Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School And Law Practice*, *64 S. Cal. L. Rev.* 1231 (1991).

n69. Coto, *supra* note 20.

n70. 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) (arguing that the project of radical reform requires connected critics acting as role models within institutional contexts of legal education and the profession where power is created

and distributed); Phoebe A. Haddon, Keynote Address: Redefining Our Roles in The Battle For Inclusion of People of Color in Legal Education, 31*NewEng.L.Rev.*709 (1997).

n71. See Eric K. Yamamoto, LatCrit III: Introduction to Plenary Session Four, 53 *U. Miami L. Rev.* 683 (1999) (discussing SALT Action Campaign); see also Phoebe A. Haddon, Education for a Public Calling in the 21st Century, 69*Wash.L.Rev.*573 (1994); Joan Howarth, Teaching in the Shadow of the Bar, 31 *U.S.F. L. Rev.* 927 (1997).

n72. More recently, minority legislators have reportedly put aside their differences and agreed to sponsor a joint proposal to establish two new public law schools in Florida, one at FAMU and the other at FIU. See Mark D. Killian, FAMU/FIU Join Forces for Law Schools, Fla. Bar News, July 1, 1999, at 1. Only time will tell whether this marks the beginning of a more substantive alliance based on mutual commitment to intergroup justice or just another variation on, and instance of, the interest-convergence politics of the past.

n73. Laura M. Padilla, Social and Legal Repercussions of Latinos' Colonized Mentality, 53 *U. Miami L. Rev.* 769 (1999); Abreu, *supra* note 17; Berta Hernandez-Truyol, Latina Multidimensionality and LatCrit Possibilities: Culture, Gender, and Sex, 53 *U. Miami L. Rev.* 811 (1999) [hereinafter Hernandez-Truyol, Culture, Gender, and Sex]; Siegfried Wiessner, <excl>Esa India! LatCrit Theory and the Place of Indigenous Peoples Within Latina/o Communities, 53 *U. Miami L. Rev.* 831 (1999); Roberts, BlackCrit Theory, *supra* note 8.

n74. See, e.g., Ignacio Martin-Baro, Writings for a Liberation Psychology (1996); Nancy Caro Hollander, Love in a Time of Hate: Liberation Psychology in Latin America (1997); Geraldine Moane & Jo Campling, Gender and Colonialism: A Psychological Analysis of Oppression and Liberation (1999); A Guide to Dynamics of Feminist Therapy (Doris Howard ed., 1986).

n75. Valdes, Under Construction, *supra* note 1, at 1106 (noting that Latina/o communities are characterized by high degree of mestizaje or racial intermixture and internal diversity).

n76. Hernandez-Truyol, Building Bridges, *supra* note 61, at 30.

n77. Iglesias & Valdes, *supra* note 2, at 557; see also *infra* at pp. 622-29.

n78. Padilla, *supra* note 73, at 779-84.

n79. Abreu, *supra* note 17, at 794.

n80. *Id.* at 800.

n81. *Id.* (attributing the term minoritized to Celina Romany).

n82. 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, 878 *n.18* (1996) [hereinafter Iglesias, Rape, Race and Representation] (challenging the characterization of male power in feminist theory as

an inescapable force in women's lives by arguing that the content and exercise of agency is guided more by the different cultural narratives we internalize than by "the reality" of the world we inhabit).

n83. See Iglesias, *Structures of Subordination*, supra note 5 (arguing structures may not determine our fate but they do raise the costs of finding ourselves and each other).

n84. Professor Abreu asks whether, as a Cuban, she would want to embrace a pan-ethnic Latina/o identity: "If the price of counting [as a Latina/o] is being cast in the role of victim, do I want to count?" Abreu, supra note 17, at 801-02. Cuban-American culture not only eschews any connection to a victim identity, but has also been exceedingly successful at affirming Cuban identity in Miami and everywhere and elsewhere - so much so that Cuban self-affirmation is the subject of internal jokes and external criticism. See, e.g., Earl Shorris, *Latinos: A Biography of the People* 62-76 (Avon Books, 1992). At the same time, Professor Abreu's narrative provides an additional and often suppressed perspective on the politics of Cuban inclusion in the "Hispanic category" when she recalls being told that, as a Cuban, she didn't really count. Abreu, supra note 17. Her experiences at Cornell University are not unique. Indeed, Cuban-Americans and Ameri-Cubans have long been excluded from the minority category for admissions purposes at the University of Miami School of Law.

n85. Padilla, supra note 73, at 779.

n86. Robert Westley, *Lat Crit Theory and the Problematics of Internal/External Oppression: A Comparison of Forms of Oppression and InterGroup/IntraGroup Solidarity*, 53 *U. Miami L. Rev.* 761 (1999).

n87. Abreu, supra note 17, at 801.

n88. See U.S. Andersen, *Three Magic Words* (Melvin Powers Wilshire Book Co. 1954).

n89. See Iglesias, *Rape, Race and Representation*, supra note 82, at 929-43 (discussing impact of virgin-whore dichotomy on Latina/o sexuality and offering image of sacred prostitution as resource and example of psycho-cultural resistance), and at 918-29 (discussing gender ideology underlying maternal roles in Latina/o culture and arguing for a culturally nuanced psycho-analytical model of identity formation that recognizes the significance of maternal power and the centrality of familial interdependence in Latina/o culture); see also Jenny Rivera, *Domestic Violence against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, in Adrien K. Wing, *Critical Race Feminism* 259, 260 (1997) [hereinafter Wing, *Critical Race Feminism*] (critically analyzing Latina/o cultural constructs of "El Macho" and the sexy latina).

n90. Hernandez-Truyol, *Culture, Gender, and Sex*, supra note 73, at 823.

n91. See Mutua, supra note 8 (analyzing white racism as function of obsession with refusal of Black people to accept their dehumanization).

n92. See Iglesias, *Structures of Subordination*, supra note 5, at 488-97 (linking Latina lesbian experience of multiple exclusions/inclusions in different political communities to argument that anti-essentialist institutional arrangements must be designed in ways that effectively mediate and simultaneously enable both individual autonomy and collective action). See also Francisco Valdes, *Notes on the Conflation of Sex, Gender and Sexual Orientation: A QueerCrit and LatCrit Perspective*, in *The Latino/a Condition*, supra note 49, at 543 (discussing

the strong heteronormativity of Latina/o cultures). For critical discussion of sexual orientation in Miami, the site of LatCrit III, see Francisco Valdes, *Below All Radars: An Ethnographic Portrait of Latinas/os Sexual Orientation and the Law in the Making of Miami's "New Enclave,"* 33 *Mich. J. L. Reform*; 5 *Mich. J. Race & L.* (forthcoming 2000). See generally Francisco Valdes, *Acts of Power, Crimes of Knowledge: Some Observations on Desire, Law and Ideology in the Politics of Expression at the End of the Twentieth Century,* 1 *Iowa J. Gender, Race & Justice* 213, 223-28 (1997) (discussing various strategies focused on increasing sexual minority visibility as central to Queer politics and self-empowerment); Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities and Interconnectivities,* 5 *So. Cal. L. Rev. & Women's Stud.* 25 (1995) (preferring "interconnectivity" as a strategic concept enabling intra- and inter-group coalitions that accept difference and make respect for it integral to antisubordination theory and praxis).

n93. Wiessner, *supra* note 73.

n94. Professor Wiessner bases this assertion on the fact that "a recent 'Annotated Bibliography of Latino and Latina Critical Theory' manages to painstakingly describe seventeen distinct 'themes' of 'critical Latino/a scholarship,' and fails to mention the indigenous condition in any one of them." *Id.* at 838. But see Luz Guerra, *LatCrit y la Des-colonizacion: Taking Colon Out,* 19 *Chicano-Latino L. Rev.* 351 (1998); Iglesias & Valdes, *supra* note 2, at 568-73 (reflecting on themes inspired by plenary panel on indigenous peoples at LatCrit II).

n95. Wiessner, *supra* note 73, at 837.

n96. Professor Wiessner recounts an incident in which a Chilean friend responded to an automobile incident in Miami by hurling an anti-Indian epithet at the other driver. Other LatCrit scholars have noted the anti-Indian prejudices expressed in Latina/o cultural practices. See, e.g., Elvia Arriola, *Voices from the Barbed Wires of Evil: Women in the Maquiladoras, Latina Critical Legal Theory and Gender at the U.S.-Mexico Border,* 49 *De Paul L. Rev.* 3 (forthcoming 2000) (recounting anti-Indian references invoked to deter childhood conduct deemed inappropriate for a muchachita).

n97. Wiessner, *supra* note 73, at 840. "By contrast [to Hispanic colonization], the British colonization relied much less on brute force and the destruction of indigenous political structures and society; its subjugation strategies included to a much larger degree the mechanisms of negotiation and persuasion." *Id.*

n98. *Id.* at 840 n.38 (citing Steven P. McSloy, "Because the Bible Tells Me So": Manifest Destiny and American Indians, 9 *St. Thomas L. Rev.* 37, 38 (1996)). More specifically, he quotes McSloy's account of the way American Indian lands were taken:

How were American Indian lands taken? The answer is not, as it turns out, by military force. The wars, massacres, Geronimo and Sitting Bull - all that was really just cleanup. The real conquest was on paper, on maps and in laws. What those maps showed and those laws said was that Indians had been "conquered" merely by being "discovered."

Id.

n99. For an alternative perspective on the relative virulence of anti-Indian racism in Latin American and U.S. cultures, see, for example, Martha Menchaca, *Chicano Indianism,* in *The Latino/a Condition,* *supra* note 49, at 387 (recounting how racial caste system was dismantled in Mexico by the 1812 Spanish Constitution of Cadiz, only to be reinstated by U.S. racial laws in the territories ceded by Mexico after the Mexican War of 1846).

n100. See, e.g., Adrien K. 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) (noting that male elites often resist compliance with basic human rights laws prohibiting discrimination against women by declaring their sexist customs and traditions essential elements of their culture).

n101. See Wiessner, *supra* note 73, at 832 n.5 (quoting Margaret Montoya, *Masks and Identity*, in *The Latino/a Condition*, *supra* note 49, at 40).

n102. See Iglesias & Valdes, *supra* note 2, at 555-61 (noting attention to particularities critical to actualization of substantive justice); 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 (1997) [hereinafter Carrasco, *LatCrit Theory and Law and Development*] (emphasizing the importance of particularity in LatCrit theory).

n103. See Johnson, *Latino Legal Scholarship*, *supra* note 50; Ediberto Roman, *Common Ground: Perspectives on Latino-Latina Diversity*, 2 *Harv. Latino L. Rev.* 483 (1997).

n104. Roberts, *BlackCrit Theory*, *supra* note 8.

n105. For a description of the substantive themes of the focus group, see <<http://nersp.nerdc.ufl.edu/malavet/latcrit/archives/lciii.htm>>.

n106. See Iglesias & Valdes, *supra* note 2, at 562-74 (urging LatCrit scholars to remain cognizant and vigilant lest in rejecting the Black/White paradigm, we uncritically equate Black and white positions within a paradigm that emerged from the very real oppression of whites over Blacks, as well as by non-Black minorities who have sought their own liberation in the delusions of a white identity); Chris Iijima, *The Era of We-construction: Reclaiming the Politics of Asian Pacific American Identity and Reflections on the Critique of the Black/White Paradigm*, 29 *Colum. Hum. Rts. L. Rev.* 47, 50 (1997) (warning that moves beyond the Black/White paradigm may be coopted by racist status quo); Taunya Lovell Banks, *Both Edges of the Margin: Blacks and Asians in Mississippi Masala, Barriers to Coalition Building*, 5 *Asian L.J.* 7 (1998) (articulating critique of "the middle position" as constituted by pervasiveness of Black/White paradigm in both dominant and minority consciousness and practices and advocating coalition-building among minority groups as alternative); see also Mutua, *supra* note 8.

n107. See, e.g., Iglesias, *Out of the Shadow*, *supra* note 30, at 351-72 (exploring points of commonality between emerging Asian Pacific American Critical Legal Scholarship and LatCrit theory).

n108. See Wing, *Critical Race Feminism*, *supra* note 89.

n109. Roberts, *BlackCrit Theory*, *supra* note 8, at 857.

n110. See, e.g., Cho, *Essential Politics*, *supra* note 15 (expressing concern that the "anti-essentialist critique" may undermine collective solidarity and political engagement); see also A. Sivananda, *All that Melts*

into Air Is Solid: The Hokum of New Times, Race & Class, Jan.-Mar. 1990 (expressing concern that the post-modern politics of proliferating subject positions forsakes commitment to universality and solidarity); cf. Iglesias, Structures of Subordination, supra note 5, at 486-502 (challenging notion that proliferation of political identities undermines pursuit of "common good" and arguing, instead, that the genuine common good can only be discovered and achieved through the reconfiguration of anti-democratic institutional power structures that suppress the self-representation and expression of multidimensional and intersectional identities).

n111. For example, in the labor context, the commitment to racial and/or gender equality has sometimes been expressed through the formation of separate racially marked or gender based caucuses within the broader collectivity, where members of the subgroup meet separately to discuss their particular problems and needs. For a critical analysis of the pros and cons associated with different institutional structures or arrangements that might be used to operationalize a commitment to anti-essentialist intergroup justice, see Iglesias, Structures of Subordination, supra note 5, at 478-86.

n112. See, e.g., Mutua, supra note 8 (reporting discussions at LatCrit III).

n113. See, e.g., Phillips, supra note 7, at 1256 (representing Critical Race Theory Workshop as "a place where, among other things, the experiences of all groups of color are articulated and where narrow conceptions of group interest are critiqued").

n114. See Peter Brimelow, *Alien Nation* (1995) (articulating a nativist agenda).

n115. See, e.g., Marvin Dunn, *Black Miami in the Twentieth Century* 99 (1997) (noting that Black Bahamians, proud of their British roots, "thought themselves to be less servile than American-born Blacks in Miami").

n116. See Symposium, *The Long Shadow of Korematsu*, supra note 27; see also Iglesias, *Out of the Shadow*, supra note 30 (offering one vision of the intellectual and political agenda that might be collaboratively pursued at the intersection of APACrit and LatCrit theory).

n117. See, e.g., Guadalupe T. Luna, *Zoo Island: LatCrit Theory*, Don Pepe and Se<tild n>ora Peralta, *19 Chicano-Latino L. Rev.* 339, 341 (1998) (locating Chicana/o subordination in the ideological and rhetorical struggles between universal and particular through which the white perspective is cast as universal in contrast to the particularity of the Chicana/o perspective); Iglesias, Structures of Subordination, supra note 5, at nn. 21 & 22 and accompanying text (implying need for gestalt- shift that would enable recognition of the way women of color constitute a universal perspective). See also generally 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.* 1293 (1997) (urging similar points in the context of Queer legal theory). See also Valdes, "OutCrit" Theories, supra note 7.

n118. The theory is that mass political mobilization triggers such undeliverable demands that it causes the democratic political system to internally implode. Thus, the discourse of democratic ungovernability has proven a valuable resource in legitimating political repression by casting mass mobilization as a threat to the democratic political form. Of course, the question this raises is whether a system that represses its people because it cannot meet their demands is really worth preserving. For an overview and critique of the way the problem of "democratic governability" has been addressed by both the left and the right, see Claus Offe, *The Separation of Form and Content in Liberal Democracy*, in *Studies in Political Economy* (1980); for an extensive analysis of

the reasons why "the liberal democratic state" cannot effectively respond to the demands of a politically mobilized polity, see Clause Offe & Volker Ronge, *Theses on the Theory of the State, in Classes, Power, and Conflict: Classical and Contemporary Debates* (Anthony Giddens & David Held eds., U.Cal.Press 1982) (linking the political limitations of the democratic state to the material bases of state power in liberal capitalism).

n119. See Rachel F. Moran, *What if Latinos Really Mattered in the Public Policy Debate?*, 85 *Cal. L. Rev.* 1315, 1328-9; 10 *La Raza* 229, 242-43 (1998) (noting limitations of traditional race-neutral model of inclusion and advocating alternative model of immigration which recognizes that bilingualism and biculturalism are assets rather than threats to national integrity).

n120. See Iglesias, *Structures of Subordination*, supra note 5 (critiquing impact of labor law doctrine of "exclusive representation" on self-determination of women of color in American workplaces).

n121. See Max J. Castro, *Democracy in Anti-Subordination Perspective: Local/Global Intersections: An Introduction*, 53 *U. Miami L. Rev.* 863 (1999) (using the phrase "really existing democracy" to measure the difference between democratic theory and the democracy in which we actually live).

n122. Ivelaw Griffith, *Drugs and Democracy in the Caribbean*, 53 *U. Miami L. Rev.* 869 (1999); Irwin P. Stotzky, *Suppressing the Beast*, 53 *U. Miami L. Rev.* 883 (1999); Mario Martinez, *Property as an Instrument of Power in Nicaragua*, 53 *U. Miami L. Rev.* 907 (1999); Julie Mertus, *Mapping Civil Society Transplants: A Preliminary Comparison of Eastern Europe and Latin America*, 53 *U. Miami L. Rev.* 921 (1999); Ediberto Roman, *Reconstructing Self-Determination: The Role of Critical Theory in Positivist International Law Paradigm*, 53 *U. Miami L. Rev.* 943 (1999) [hereinafter Roman, *Reconstructing Self-Determination*].

n123. See, e.g., Antonio Benitez-Rojo, *The Repeating Island: The Caribbean and the Postmodern Perspective* 35-36 (Duke U. Press, 2d ed. 1996) (noting the indeterminacy of "the Caribbean" and observing further that organizing "the Caribbean" construct around the plantation economy would redraw its boundaries to include the Brazilian northeast as well as the southern United States); see also H. Michael Erisman, *Pursuing Postdependency Politics: South-South Relations in the Caribbean* at 27, n. 1 (1992) (suggesting that "the Caribbean" be conceptualized in terms of three concentric circles: its inner circle comprised only of the English-speaking Caribbean islands, including the Bahamas; the second circle delimited by the Caribbean archipelago, meaning all the islands plus the mainland extensions of Guyana, Suriname, and French Guiana (Cayenne) in South America, along with Belize in Central America; and its outer circle constituted by the Caribbean Basin, which would include all the countries in the first two categories as well as the littoral states of South America (e.g. Colombia and Venezuela), all of Central America, and Mexico). These are, of course, only a few of many ways to imagine the meaning and parameters of "the Caribbean."

n124. See *Modern Caribbean Politics* 4-6 (Anthony Payne & Paul Sutton eds., 1993).

n125. See generally Benitez-Rojo, supra note 123, at 35 (of course, Benitez-Rojo's construction of "the Caribbean" as "a way of being in the world" incorporates, but is not exhausted by, the musical rhythms that express it).

n126. The Caribbean Basin construct was initially forwarded by the United States as part of its project to combat the "leftist threat to the prevailing pro-western ideological order and U.S. influence in the Caribbean Basin." See Erisman, supra note 123, at 132 n.12 (discussing the purpose and scope of the Reagan Administration's Caribbean Basin Initiative (CBI) which defined the Caribbean Basin to encompass Central

America, Panama, all the independent islands plus Guyana and Belize). But the struggle to delimit a broader map of the Caribbean has also been central to the CARICOM project to promote the kind of regional integration that will enable the small countries of the Caribbean to coordinate the diversification of their otherwise competing economies and to leverage their political objectives by articulating a unified position. See Erisman, *supra*, at 111-12 (discussing the Pan-Caribbean perspective underlying Mexican and Venezuelan pledges to provide oil at preferential prices to various Central American and Caribbean states, as well as the vision underlying CARICOM itself).

n127. United Nations estimates that the international trade in illegal drugs is worth \$ 400 billion - approximately 8% of world trade - more than the trading in iron, steel or motor vehicles. See International Narcotics Control 2 Dep't St. Dispatch 503 (1991).

n128. Griffith, *supra* note 122, at 873.

n129. Stotzky, *supra* note 122, at 890 (explaining the fundamental elements of a deliberative democracy).

n130. *Id.* at 893-903 (describing and critiquing the Aristide Plan).

n131. As Professor Stotzky notes, the economic aspects of the Aristide Plan reflect the influence of the World Bank, the IMF and the Agency for International Development in their boilerplate responses to the economic crisis in Haiti. *Id.* at 899. Trade "liberalization," privatization, reduced social spending and similar policies are a familiar fare served up for Third World consumption by these international agents of transnational capitalism. Unfortunately, these policies have, since the 1980s, only further impoverished and politically destabilized the countries that adopt them. It doesn't take a rocket scientist to see this - thus leading anyone with half an open mind to wonder at the relentless insistence with which these failed policies are repeatedly prescribed. See, e.g., Elizabeth M. Iglesias, *Global Markets, Racial Spaces and the Role of Critical Race Theory in the Struggle for Community Control of Investments: An Institutional Class Analysis*, 45 *Vill. L. Rev.* (forthcoming 2000) [hereinafter Iglesias, *Global Markets, Racial Spaces*] (assessing structural adjustment policies through a critical analysis of the institutional class structures of the international political economy).

n132. See James H. Street, *The Reality of Power and the Poverty of Economic Doctrine*, in *Latin America's Economic Development: Institutional and Structuralist Perspectives* 16-32 (James L. Dietz & James H. Street eds., 1987). Street's analysis is particularly interesting because it shows the symbiotic relationship linking authoritarian political regimes and international financial organizations. The call for structural adjustment by institutions like the IMF may well serve the political needs of authoritarian elites. When the people mobilize against the impact of austerity policies, their mobilization is cast as civil disorder (instigated by subversive communist influences) and used to justify the kinds of repression to which these elites are already inclined. Only from this perspective can an authoritarian dictatorship be made to appear a solution rather than a problem for the nation.

n133. For a more hopeful perspective on the potential role for Bretton Woods institutions to contribute to the evolution of a more just international political economy, see Carrasco, *LatCrit Theory and Law and Development*, *supra* note 102; Enrique R. Carrasco & M. Ayhan Kose, *Income Distribution and the Bretton Woods Institutions: Promoting an Enabling Environment for Social Development*, 6 *Trans'n'l Law & Contemp. Probs.* 1 (1996).

n134. See, e.g., Holly Sklar, *Washington's War on Nicaragua* 57-8 (1988) (noting that "in a March 1979 radio broadcast, Reagan seconded Idaho Rep. Steve Symms' concern that 'the Caribbean is rapidly becoming a Communist lake in what should be an American pond.'" Reagan added: "The troubles in Nicaragua bear a Cuban label also. While there are people in that troubled land who probably have justified grievances against the Somoza regime, there is no question but that most of the rebels are Cuban-trained, Cuban-armed, and dedicated to creating another Communist country in the hemisphere.").

n135. *Id.*

n136. Gary Ruchwarger, *People in Power: Forging a Grassroots Democracy in Nicaragua* (1987) (noting that the revolution would have been impossible without widespread support and recounting extent of popular participation in the struggle against Somoza).

n137. See Jeffrey M. Paige, *Coffee and Power: Revolution and the Rise of Democracy in Central America* (1997) (explaining role of agro-export elite in consolidating national unity alliance that enabled overthrow of Somoza, even as it laid seeds for eventual failure of Sandinista reform project).

n138. For a variety of perspectives on the Sandinista's land reforms and Nicaraguan property law, see generally Symposium: *The Nicaraguan Property Regime After Sandinista Land Reform*, 22 *Cap. U. L. Rev.* 833-963 (1993). Compare Jaime Wheelock Roman, *Changes in Agrarian Property in Nicaragua*, 22 *Cap. U. L. Rev.* 853 (1993), with O. Herodocia Lacayo, *The Current State of Nicaraguan Property Law*, 22 *Cap. U. L. Rev.* 839 (1993).

n139. See, e.g., Peter Dale Scott & Jonathan Marshall, *Cocaine Politics: Drugs, Armies and the CIA in Central America* (1991); Alfred W. McCoy, *The Politics of Heroin: CIA Complicity in The Global Drug Trade* (1991).

n140. See William Blum, *Killing Hope: U.S. Military and CIA Interventions Since World War II* (1995). As Blum recounts, the Duvalier family ruled Haiti from 1957-1986, when Jean Claude was forced to take flight for the French Riviera on U.S. Air Force jet. *Id.* at 370. In Nicaragua, Anastasio Somoza was installed as director of the Nicaraguan National Guard by departing U.S. military forces in 1933. The United States had invaded the country to quash the revolutionary uprising, supported by Augusto Cesar Sandino of the Liberal Party and purportedly financed by the Mexican government. In the years between 1933 and 1979, when Anastasio Somoza II was finally forced into exile by the Sandinista revolution, the Somoza family had amassed a fortune in land and businesses then worth \$ 900 million, even as they left behind a country where two-thirds of the people earned less than \$ 300 a year. *Id.* at 290.

n141. See Ileana M. Porrás, *A LatCrit Sensibility Approaches the International: Reflections on Environmental Rights and Third Generation Solidarity Rights*, 28 *U. Miami Inter-Am. L. Rev.* 413, 419-20 (1996-97) (urging a LatCrit perspective sensitive to both sameness/difference that can mediate the USLat/OtroLat identities).

n142. Iglesias, *Out of the Shadow*, *supra* note 30, at 379-83 (examining linkage between U.S. anti-terrorism interventions abroad and the devolution of domestic civil rights).

n143. Mertus, *supra* note 122; Roman, *Reconstructing Self-Determination*, *supra* note 122.

n144. See, e.g., Sklar, *supra* note 134, at 61 (quoting several of Ronald Reagan's radio broadcasts in support of the Argentine military dictators and Chile's Pinochet); see generally Blum, *supra* note 140 (recounting U.S. role in installing and/or assisting the military dictatorships in Guatemala, Haiti, Ecuador, Brazil, Peru, Dominican Republic, Uruguay, Chile, Bolivia, Nicaragua, Panama and El Salvador as well as its various efforts to topple the democracy in Costa Rica).

n145. See Sklar, *supra* note 134, at 60-61 (attributing the totalitarian/authoritarian dichotomy to Jeanne Kirkpatrick, U.S. Ambassador to the United Nations under Reagan and deconstructing its incoherence and hypocrisy).

n146. Mertus, *supra* note 122, at 939-40.

n147. See, e.g., Philip J. Power, Note, Sovereign Debt: the Rise of the Secondary Market and its Implications for Future Restructurings, 64 *Fordham L. Rev.* 2701 (1996) (providing excellent overview of Latin American debt crisis and legal mechanisms through which balance of power between debtor countries and international financial organizations has since been reconfigured).

n148. Cf. Rafael X. Zahralddin-Aravena, Chile and Singapore: The Individual and The Collective, A Comparison, 12 *Emory Int'l L. Rev.* 739 (1998) (noting and criticizing assumptions embedded in representations of Chile as the "model for necessary authoritarianism"); Enrique R. Carrasco, Autocratic Transitions to Liberalism: A Comparison of Chilean And Russian Structural Adjustment, 5 *Transnat'l L. & Contemp. Probs.* 99 (1995) (Chile cast as model for Russian transition).

n149. Compare, e.g., Kent Klauadt, Hungary After the Revolution: Privatization, Economic Ideology and the False Promise of the Free Market, 13 *Law & Ineq.* 303 (1995) (documenting the impact of neoliberal economic ideology on the production of poverty, unemployment, massive inequality and crime on a scale previously unknown in the centrally planned statist economies of the former Soviet Union), with Structural Adjustment and the Spreading Crisis in Latin America, (1995) <<http://www.igc.apc.org/dgap/crisis.html>> (visited August 27, 1999) (providing overview of impact of neoliberal structural adjustment policies on the political instability and economic underdevelopment in Latin America).

n150. See, e.g., Walter Adams & James W. Brock, The Sherman Act and the Economic Power Problem, *The Antitrust Bulletin*, Spring 1990. Conversely, neoliberals argue that democracy promotes capitalism because private companies must be free of state interventions and bureaucratization in order to innovate. See Bob Jessop, *Capitalism and Democracy: The Best Possible Political Shell?* in *Power and the State* (Gary Littlejohn et al. eds., 1978); F.A. Hayek, *The Road to Serfdom* (1946).

n151. See, e.g., Milton Friedman, *Capitalism and Freedom* 9 (1962):

Viewed as a means to the end of political freedom, economic arrangements are important because of their effect on the concentration or dispersion of power. The kind of economic organization that provides economic freedom directly, namely, competitive capitalism, also promotes political freedom because it separates economic power from political power and in this way enables the one to offset the other.

Indeed, in some versions of this second account, even concentrated markets promote freedom because only large economically powerful private corporations can counterbalance the power of a centralized, bureaucratic, interventionist state. See Jessop, *supra* note 150.

n152. See Adams & Brock, *supra* note 150, at 44 (discussing the capacity of giant firms (and labor unions) to threaten economic catastrophe if their demands are not met); see also Robert Pitofsky, *The Political Content of Antitrust*, 127 *U. Pa. L. Rev.* 1051, 1057 (1979) (excessive concentration of economic power will breed anti-democratic political pressures).

n153. See Offe & Ronge, *supra* note 118; Offe, *supra* note 118.

n154. See, e.g., Elizabeth M. Iglesias, "Confronting Race" by Mapping the Construction of Institutional Power: LatCrit Reflections on Law and the Anti-Political Economy, 33 *Mich. J. L. Ref.*; 5 *Mich. J. Race & L.* (forthcoming 2000) [hereinafter Iglesias, *The Anti-Political Economy*] (tracing interpretative manipulation of the state/market dichotomy through cases adjudicating constitutionality of minority business set-asides and political boycotts seeking racial justice in the market); see also Iglesias, *Global Markets, Racial Spaces*, *supra* note 131 (illustrating how economic/political dichotomy is invoked to obstruct democratization of economic institutions).

n155. See Iglesias, *The Anti-Political Economy*, *supra* note 154 (for deconstructive analyses revealing the strategically manipulated indeterminacy of the purported separation of economics and politics).

n156. See Roman, *Reconstructing Self-Determination*, *supra* note 122, at 947.

n157. L.C. Green, *Low Intensity Conflict and the Law*, 3 *ILSA J. Int'l & Comp. L.* 493, 503-04 (1997) (noting that none of the guerrilla movements in Latin America have ever been recognized by the Organization of American States on the theory that they are not national liberation movements, but only "revolutionary groups seeking to replace the local government rather than to overthrow domination, alien occupation or a racist regime").

n158. See Offe & Ronge, *supra* note 118; Offe, *supra* note 118.

n159. See Shelley Inglis, *Re/Constructing Right(s): The Dayton Peace Agreement, International Civil Society Development, and Gender in Postwar Bosnia-Herzegovina*, 30 *Colum. Hum. Rts. L. Rev.* 65, 79-80 (1998) (describing the ethnonationalistic structure of the constitutional regime established by the Dayton Peace Accords, which divide all components of the central government into thirds, ensuring both equal representation of Croats, Serbs, and Bosniaks and the paralysis of a central government mired in ethnic politics).

n160. Mertus, *supra* note 122, at 942.

n161. See, e.g., Elizabeth M. Iglesias, *Foreword: International Law, Human Rights and Lat Crit Theory*, 28 *Inter-Am. L. Rev.* 206-07 (1996-97) [hereinafter Iglesias, *Foreword*].

n162. See *id.* (citing references).

n163. See, e.g., Iglesias, *International Economic Law*, supra note 15; G. Richard Shell, *Trade Legalism and International Relations Theory: An Analysis of the World Trade Organization*, 44 *Duke L.J.* 829 (1995) (advocating trade stakeholder's model as vehicle to incorporate social welfare and human rights into WTO); Patricia Stirling, *The Use of Trade Sanctions as an Enforcement Mechanism for Basic Human Rights: A Proposal for Addition to the World Trade Organization*, 11 *Am. U. J. Int'l. L. & Pol'y* 1 (1996).

n164. See, e.g., Iglesias, *Global Markets, Racial Spaces*, supra note 131 (critical analysis of legal reforms needed to promote community participation in decisionmaking processes through which investment capital is allocated in the inter/national political economy).

n165. 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 Indeterminacy*, 85 *Cal. L. Rev.* 1347; 10 *La Raza* 261 (1998) (critical analysis of Title VII's anti-discrimination framework given its failure to prohibit the imposition of arbitrary and intrusive restrictions on the use of languages other than English in the workplace).

n166. To this end, LatCrit III featured a plenary panel entitled *Anti-Subordination and the Legal Struggle over Control of the "Means of Communication:" Technology, Language and Communicative Power*. A description of its substantive objectives can be found at <<http://nersp.nerdc.ufl.edu/malavet/latcrit/archives/lciii.htm>>.

n167. See, e.g., *Bank of Boston v. Bellotti*, 435 *U.S.* 765 (1977) (striking down restrictions on corporate political expenditures on theory that such expenditures constitute speech protected by 1[su'st'] Amendment); *Buckley v. Valeo*, 424 *U.S.* 1 (1976) (expenditures of money constitute protected speech).

n168. See, e.g., Madeleine Mercedes Plasencia, *The Politics of Race on the Electronic Highway: An Analysis of the Video Dialtone Redlining Cases, and the Nynex Consent Decree in Roxbury*, 15 *Touro L. Rev.* 513 (1999) [hereinafter Plasencia, *Video Dialtone Redlining*] (describing how discriminatory redlining practices of telecommunications companies threaten to shut minority neighborhoods out of communications revolution).

n169. See Keith Aoki, *Introduction: Language is a Virus*, 53 *U. Miami L. Rev.* 961 (1999) (Long Live Keith Aoki!); see also Mark D. Alleyne, *International Power and International Communication 2-5* (1995) (explaining difference between communication, understood as systems and infrastructures for dissemination of information, (e.g. telephones, satellites, news agencies, and languages) and information, understood as 'raw matter' or data, whose content is circulated through the means of communication).

n170. William Bratton, *The Law and Economics of English Only*, 53 *U. Miami L. Rev.* 973 (1999); Drucilla Cornell, *The Imaginary of English Only*, 53 *U. Miami L. Rev.* 977 (1999); Wells, supra note 16; Madeleine Plasencia, *"Suppressing the Mother Tongue": Anti-Subordination and the Legal Struggle Over Control of the Means of Communication*, 53 *U. Miami L. Rev.* 989 (1999) [hereinafter Plasencia, *Suppressing the Mother Tongue*]; Yvonne Tamayo, *Literal Silencing/Silenciando la Lengua*, 53 *U. Miami L. Rev.* 995 (1999); Sharon K. Hom, *Lexicon Dreams and Chinese Rock and Roll: Thoughts on Culture, Language, and Translation as Strategies of Resistance and Reconstruction*, 53 *U. Miami L. Rev.* 1003 (1999); Hayakawa Torok, supra note 9.

n171. See Drucilla Cornell & William W. Bratton, Deadweight Costs and Intrinsic Wrongs of Nativism: Economics, Freedom and Legal Suppression of Spanish, *84 Cornell L. Rev.* 595 (1999).

n172. Bratton, *supra* note 170.

n173. According to Bratton, "at some point, [this assumption] has to be qualified by the counter- assumption that diversity leads to creative interaction." *Id.* at 974.

n174. Professor Tamayo further buttresses this argument by noting the unmet high demand for English classes among immigrant populations. Tamayo, *supra* note 170, at 998-99 (5,000 immigrants turned away from ESL classes in Washington D.C.; 40,000 wait-listed in Los Angeles).

n175. See, e.g., Alex Stepick et al., Brothers in the Wood, in *Newcomers in the Workplace* 145, 148 (Louise Lamphere et al. eds., 1994) (recounting how Cuban construction workers excluded from Anglo dominated unions in Miami responded by creating their own non-union firms and ultimately taking over the industry: "When the unions finally recognized that excluding Cubans was a mistake, it was too late.").

n176. Bratton, *supra* note 170, at 974.

n177. See, e.g., Owen M. Fiss, A Theory of Fair Employment Laws, *38 U. Chi. L. Rev.* 235 (1971) (discussing difference between equal treatment and equal results in context of fair employment laws).

n178. For further reflections on this important theme, see, for example, Soren Kierkegaard, *Works of Love* 72 (Howard & Edna Hong trans., Harper Torchbook 1964). Kierkegaard puts the thought like this:

One's neighbor is one's equal. One's neighbor is not the beloved, for whom you have passionate preference, nor your friend, for whom you have passionate preference ... Your neighbor is every man, for on the basis of distinctions he is not your neighbor, nor on the basis of likeness to you as being different from other men. He is your neighbor on the basis of equality with you before God; but this equality absolutely every man has, and he has it absolutely.

Id. (emphasis added). Like many male philosophers, Kierkegaard's otherwise expansive vision was truncated by the gender myopia of his times. That, however, would be another article.

n179. Professor Wells' critique notes the limitations of grounding the equality norm in a Kantian framework. Wells, *supra* note 16, at 987. A close reading of Professor Cornell's argument reveals, however, that her analysis draws as much on Franz Fanon's insistence on the right to be recognized "as a legitimate point of view" as it does on Kant. See Cornell, *supra* note 170 (reflecting on meaning of Fanon's observations that evil of racism is in being "denied existence as a legitimate point of view."). The claim embedded in the demand the I be recognized as a "legitimate point of view" is precisely the claim that my difference be respected and my different perspective be recognized as an equally valid point of reference in defining the common good. See, e.g., Iglesias, *Structures of Subordination*, *supra* note 5, at 468, 473-78 (challenging "the complete and total absence of women of color as a legitimate agent or remedial reference point and the structure of power that is thereby established and maintained," and developing account of "the inter-subjectivity of equals" as "a moral imperative and institutional blue print"). Thus Professors Wells and Cornell are not as far apart as an initial reading of Professor Wells' critique might suggest.

n180. Wells, *supra* note 16, at 987.

n181. *Id.* (emphasis added).

n182. See, e.g., Iglesias, *Structures of Subordination*, *supra* note 5, at 478 ("Through the suppression of the other, we are all denied the opportunity to transcend the limitations of our contingent perspectives. We are denied, in short, the opportunity for authentic self-determination grounded on the objectivity of a collective truth.").

n183. Wells, *supra* note 16, at 988 (emphasis added).

n184. *Id.* (suggesting that we avoid getting caught up in "the cost of multilingualism").

n185. See, e.g., Carrasco, *LatCrit Theory and Law and Development*, *supra* note 102, at 331 (challenging LatCrit scholars to become fluent in the language of law and economics analysis, in part because that is the language to which policymakers respond).

n186. See also Frank J. Garcia, *NAFTA and the Creation of the FTAA: A Critique of Piecemeal Accession*, 35 *Va. J. Int'l L.* 539 (1995) (demonstrating that law and economics analysis can be made to further anti-subordination objectives).

n187. See, e.g., Iglesias, *Foreword*, *supra* note 161, at 177, 182, 187, 191 (noting the critical methodologies embraced or advocated by LatCrit scholars).

n188. Pierre Bourdieu, *Language & Symbolic Power* (Raymond & Adamson trans., 1991).

n189. *Id.* at 49.

n190. *Id.* at 51.

n191. Owen M. Fiss, *The Death of the Law*, 72 *Corn. L. Rev.* 1, 2 (1986) (contrasting critical legal studies and law and economics in terms of their representation within faculties at elite schools and on federal bench); Ian Ayres, *Never Confuse Efficiency with a Liver Complaint*, 1997 *Wis. L. Rev.* 503, 504-05 (noting that economic analysis has been dominant social science in analyzing legal issues and that economists and J.D.s with Ph.Ds in economics are more likely to be hired to teach in law schools than J.D.s with Ph.Ds in other social sciences).

n192. See Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy* (1983).

n193. Plasencia, *Suppressing the Mother Tongue*, *supra* note 170, at 994.

n194. See, e.g., Arturo Gandara, Equity in an Era of Markets: The Case of Universal Service, 33 *Wake Forest L. Rev.* 107 (1998) (critiquing rupture of telecommunications social compact based on universal service by Federal Communications Commission's Universal Service Order); Margaret Chon, Radical Plural Democracy and the Internet, 33 *Cal.W. L. Rev.* 143 (1997) (mediating cultural pluralism and liberal normativity in cyberspace).

n195. See Herbert I. Schiller, *Information Inequality: The Deepening Social Crisis in America* (1996).

n196. See Plasencia, Video Dialtone Redlining, *supra* note 168.

n197. Schiller, *supra* note 195, at 84 (noting that FCC permitted large corporate investors to acquire 75% of the equity and 49.9% of voting stock of minority businesses receiving set-asides in sell-off of publicly owned broadcast spectrum to private interests). Cf. *Adarand Constructors v. Pena*, 515 *U.S.* 200 (1995) (overruling *Metro Broadcasting, Inc. v. FCC*, 497 *U.S.* 547 (1990) on grounds that enhancing broadcasting diversity through minority ownership set-asides is not compelling government interest); see generally Marcelino Ford-Livene, The Digital Dilemma: Ten Challenges Facing Minority-Owned New Media Ventures, 51 *Fed. Comm. L. J.* 577 (1999).

n198. See, e.g., Alleyne, *supra* note 169, at 118-53 (explaining how each of these regimes advantaged first world interests at expense of third world interests and the reform proposals propounded by third world representatives); see also Ingrid Volkmer, Universalism and Particularism: The Problem of Cultural Sovereignty and Global Information Flows, in *Borders in Cyberspace* (Brian Kahin & Charles Nesson eds., 1997) (re-mapping the center/periphery of the global informatics world around the "spillover environments" marked by in/access to major satellite systems and telecommunications infrastructure and noting that "Africa has "12% of the world's people, but just 2% of the world's main telephone lines").

n199. See, e.g., Taunya L. McKarty, Liberalized Telecommunications Trade in the WTO: Implications for Universal Service Policy, 51 *Fed. Comm. L.J.* 1 (1998); see also Keith Aoki, (Intellectual) Property and Sovereignty: Notes Toward a Cultural Geography of Authorship, 48 *Stan. L. Rev.* 1293, 1338-52 (1996) (intellectual property rights under TRIPS/GATT regime).

n200. 69 *F.3d* 920 (9[su'th'] Cir. 1995) (declaring unconstitutional English-only provision in State constitution), vacated as moot and remanded to district court for dismissal, *Arizonans for Official English v. Arizona*, 117 *S. Ct.* 1055 (1997); see also Plasencia, Suppressing the Mother Tongue, *supra* note 170 (providing further critical analysis of arguments advanced in support of Arizona Language Initiative invalidated in this case).

n201. See Sharon K. Hom and Xin Chunying, *English-Chinese Lexicon of Women and Law* (Yinghan Funnu Yu Falu Cehuishiyi) (1995).

n202. The implications for LatCrit theory are profound - not only because so much of LatCrit theory's anti-essentialist agenda is focused on exploring and activating Latina/o transnational identities and international solidarity, but also because, and precisely to the extent that, LatCrit theory seeks to articulate a politics of anti-essentialist, anti-subordination intergroup justice and interconnectivity that defies expression in readily processed sound-bites. See, e.g., *infra* notes 213-15 and accompanying text.

n203. Professor Hom's presentation was, without question, one of the many highlights of the LatCrit III program. As my own son would say, her multimedia presentation rocked.

n204. Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 *U. Pa. L. Rev.* 561 (1984). For an account describing the practice of "normal science" and the politics through which its practitioners seek to suppress paradigm shifts, see Thomas S. Kuhn, *The Structure of Scientific Revolutions* (2nd ed. 1970). See also Juan F. Perea, *The Black/White Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 *Cal. L. Rev.* 1213 (1997), 10 *La Raza L.J.* 127 (1998) (applying Kuhn's analysis to legal doctrine and theory).

n205. Elvia R. Arriola, *Introduction: The Value of Our Work*, 53 *U. Miami L. Rev.* 1037 (1999) (introducing the essays); Mary Romero, *Immigration, the Servant Problem, and the Legacy of the Domestic Labor Debate: "Where Can You Find Good Help These Days!,"* 53 *U. Miami L. Rev.* 1045 (1999); Roberto L. Corrada, *Familiar Connections: A Personal Re/Viewing of Latino/a Identity, Gender, and Class Issues in the Context of the Labor Dispute Between Sprint and La Conexion Familiar*, 53 *U. Miami L. Rev.* 1065 (1999); Christopher David Ruiz Cameron, *The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers*, 53 *U. Miami L. Rev.* 1089 (1999).

n206. See Iglesias & Valdes, *supra* note 2, at 574-82 (mapping historical and regional differences in configuration of class relations and production of poverty among different Latina/o communities and calling for particularized analysis as distinct from generalized and abstract debates); Iglesias, *Out of the Shadow*, *supra* note 30, at 368-72, 370 (calling for LatCrit theory to move beyond abstract race/class debates by centering political economy and production of class hierarchies in analysis of white supremacy).

n207. See, e.g., Iglesias, *Structures of Subordination*, *supra* note 5, 488-92 (projection of universal class-based identity and solidarity ignores fact that racial and gender stratifications within working class make race and gender-based solidarity and collective action equally imperative); see also Iglesias, *The Anti-Political Economy*, *supra* note 154 (deconstructing suggestion that racial structure of "market" for government contracts can be transformed through color-blind reforms to assist small businesses in the inter-capitalist competition between small and large firms).

n208. See, e.g., Iglesias, *Structures of Subordination*, *supra* note 5, 488-97, 493 (exploring how class-based, gender-based and race-based essentialism of different liberation movements has caused each to ignore the perspectives and claims of justice advocated by the others, analyzing negative consequences for intersectional identities of women of color and suggesting reforms needed to construct anti-essentialist institutional arrangements that enable self-determination through more democratic self-representational governance structures and decisional procedures).

n209. See, e.g., Alvarez, *supra* note 29, at 310-11 (noting that investment patterns promoted by NAFTA actually encourage Mexican immigration to the United States and arguing therefore that "the United States is morally obligated to do more than simply build a 'fortress America' in reaction" to push-pull factors it has itself created).

n210. See, e.g., *Textile Workers Union of America v. Darlington Manufacturing Co.* 390 *U.S.* 263 (1965) (plant closings are matters peculiarly within management prerogative requiring proof of discriminatory intent rather than balancing test); see generally Francis Lee Ansley, *Standing Rusty and Rolling Empty: Law, Poverty and America's Eroding Industrial Base*, 81 *Geo. L.J.* 1757 (1993) (analyzing doctrinal devolution expanding

scope of employer unilateral control over "core entrepreneurial business decisions" - such as whether to sell, close or relocate a business).

n211. Cameron, *supra* note 205, at 1099.

n212. See, e.g., Mary Garcia Castro, What is Bought and Sold in Domestic Service? The Case of Bogota: A Critical Review, in *Muchachas No More* 105-26 (Elsa M. Chaney & Mary Garcia Castro eds., 1989) (recounting the struggle to gain legal recognition for SINTRASEDOM, a domestic workers union in Colombia).

n213. Margaret E. Montoya, LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions, *53 U. Miami L. Rev.* 1119 (1999) [hereinafter Montoya, LatCrit Foundations]; Kevin Johnson & George Martinez, Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship, *53 U. Miami L. Rev.* 1143 (1999); Mutua, *supra* note 8; Tayyab Mahmud, Colonialism and Modern Constructions of Race: A Preliminary Inquiry, *53 U. Miami L. Rev.* 1219 (1999); Phillips, *supra* note 7; Victoria Ortiz & Jennifer Elrod, Reflections of LatCrit III: Finding "Family," *53 U. Miami L. Rev.* 1257 (1999).

n214. See, e.g., *supra* notes 104 & 109 and accompanying text.

n215. See, e.g., *supra* notes 201-03 and accompanying text.

n216. See Johnson & Martinez, *supra* note 213.

n217. See, e.g., Valdes, "OutCrit" Theories, *supra* note 7 (recounting relationship between CRT workshop and emergence of the LatCrit movement); see also Phillips, *supra* note 7 (same).

n218. These theoretical and political aspirations have been substantially enriched by the active and continuous participation of a highly diverse and extraordinarily talented assortment of APACrit scholars, RaceCrits, QueerCrits and other OutCrit scholars. See, e.g., Aoki, *supra* note 169, at 969 (noting extent of APACrit participation in LatCrit conferences and community); Culp, *supra* note 45 (reflecting on relevance of LatCrit project to African Americans); Barbara J. Cox, Coalescing Communities, Discourses and Practices: Synergies in the Anti-Subordination Project, *2 Harv. Latino L. Rev.* 473 (1997) (reflecting on relevance of LatCrit project to white lesbians); Stephanie M. Wildman, Reflections on Whiteness & Latina/o Critical Theory, *2 Harv. Latino L. Rev.* 307 (1997) (reflecting on significance of LatCrit project from a white critical feminist perspective).

n219. See, *supra* note 109 and accompanying text.

n220. See Iglesias & Valdes, *supra* note 2, at 556-57 (urging LatCrit scholars to "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 contingent"); see also, e.g., Iglesias, Structures of Subordination, *supra* note 5 (criticizing different ways in which intersectional particularity of women of color is oftentimes suppressed in the constitution of class, race and gender based collectivities).

n221. Johnson & Martinez, *supra* note 213, at 1157 (noting that "ultimately, Chicana/o Studies and LatCrit theory may move in opposite directions - with Chicana/o Studies becoming more inclusive and LatCrit theory allowing for focused inquiry when appropriate").

n222. See *supra* notes 105-17 and accompanying text (discussing original purpose and intent behind the BlackCrit focus group discussion and controversies it generated at LatCrit III).

n223. See, e.g., Montoya, LatCrit Foundations, *supra* note 213, at Part III (reporting interviews with two Chicana scholars about their experiences as women within the National Association for Chicana/Chicano Studies).

n224. See, e.g., *supra* notes 46-55 and accompany text (discussing intergroup tensions over racially restrictive immigration policies).

n225. See, e.g., Iglesias, *Out of the Shadows*, *supra* note 30, at 374-75 (noting how exclusion of Japanese Latin-Americans from 1998 reparations paid by U.S. government to Japanese-American World War II internees reveals a "bottom" not otherwise evident).

n226. *Mutua*, *supra*note 8, at 1207.

n227. *Id.* at 1178.

n228. See, e.g., Iglesias, *Structures of Subordination*, *supra* note 5 (solidarity must be based on justice, not sentimental rhetoric).

n229. See, e.g., *supra* notes 46-55 and accompanying text.

n230. Valdes, "OutCrit" Theories, *supra* note 7.

n231. Montoya, LatCrit Foundations, *supra* note 213.

n232. Phillips, *supra* note 7.

n233. Ortiz & Elrod, Finding "Family," *supra* note 213.

N234. For a critical discussion of legal scholars and scholarships in this time of backlash lawmaking, see Francisco Valdes, *Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality, and Responsibility in Social Justice Scholarship, or Legal Scholars as Cultural Warriors*, 75 *Denv. U. L. Rev.* 1409 (1998) (urging progressive legal scholars to use our institutional and intellectual positions to blunt the drive to retrenchment).

n235. See Montoya, *LatCrit Foundations*, *supra* note 213, at 1135 (quoting Cordelia Candelaria: "Many of the early pioneers in Chicana/o studies have been so used to rolling up our sleeves and just doing what needed to be done without chronicling the process. We just move on to other projects. History is lost is one unfortunate consequence. Another is that later on the history is sometimes re-written in terms of making certain actors look good in ways that are totally unsupported by the facts.").

n236. See Valdes, "OutCrit Theories," *supra* note 7.

n237. See Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, *supra* note 1.

n238. Iglesias & Valdes, *supra* note 2, at 584.

n239. *Id.*

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AFTERWORD: Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience - RaceCrits, QueerCrits and LatCrits

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BIO:

* Professor of Law, University of Miami. I thank all the symposium contributors, and all LatCrits, for the texts, collaborations and experiences that underlie the thoughts expressed below. I thank in particular Keith Aoki, Elvia Arriola, Bob Chang, Sumi Cho, Jerome Culp, Adrienne Davis, Leslie Espinoza, Clark Freshman, Angela Harris, Berta Hernandez-Truyol, Kevin Johnson, Margaret Montoya, Stephanie Phillips, Celina Romany and Robert Westley for enriching conversations that, in one way or another, are reflected below. I thank also all the presenters and participants at LatCrit III; Dean Sam Thompson, for his belief in, and support of, the LatCrit project; and, my friend and colleague, Lisa Iglesias, for friendship, inspiration and solidarity. Finally, I thank Sabrina Ferris and the law review staffs that have helped to make this symposium a reality. All text defects are mine.

SUMMARY:

... Whatever the reason, the Third Annual LatCrit Conference, as this symposium illustrates, occasioned rich and varied thoughts about the origins, structures and trajectories of LatCrit theory. ... More particularly, the Afterword considers the relationship of this ongoing LatCrit experiment to two other contemporary genres of outsider jurisprudence - principally critical race theory and Queer legal theory. ... Though ambivalence is implicated in both instances, this tally also does not imply that these failures are identical phenomena - the Phillips essay shows how the content and nature of those two moments in our collective articulation of nonwhite outsider jurisprudence were very different indeed. ... In fact, Queer legal theory and LatCrit theory come onto the jurisprudential scene at roughly the same time - during the second half of CRT's first decade - but in markedly different ways. Of these two, as recounted below, only LatCrit theory positions itself collectively and consciously as aligned with CRT under the rubric of nonwhite outsider jurisprudence. ... Related to these moves are other possibilities and tensions that arise from LatCrit interventions in, and contributions to, the continuing evolution of nonwhite outsider jurisprudence. ... In the context of nonwhite outsider jurisprudence, the question is how LatCrit theorists might work with RaceCrit and all other antisubordination theorists to craft critical coalitions that are both principled and potent. ...

TEXT:

[*1266]

Introduction

Maybe there's something magical about the number three. Or maybe we're just acculturated to think and act so. Whatever the reason, the Third Annual LatCrit Conference, as this symposium illustrates, occasioned rich and varied thoughts about the origins, structures and trajectories of LatCrit theory. In this symposium, several authors writing from various perspectives have located LatCrit theory in - or vis a vis - several different precursors, ranging from legal realism and pragmatism to Chicana/o studies to critical race theory ("CRT"). Others have posed questions of future

form and direction. n2 Though LatCrit remains an embryonic formation - and maybe most of all because of it - this tendency toward self-reflection suggests that multiply diverse LatCrit scholars take this collective project of antisubordination discourse and community as a serious, personal, self-critical and long-term commitment. n3 These levels of commitment, as discussed below, are crucial to LatCrit theory, and make this self-reflective stance a welcome sign of growing critical vibrancy as LatCrit theory turns three.

This diverse effort to locate LatCrit in the broader landscape of critical theory can help elucidate and advance LatCrit theorists' original sense of collective and self-aware situatedness within the larger world of legal and outsider discourses. n4 In fact, the self-reflection evidenced in this symposium may be viewed as an extension of the ongoing LatCrit effort to learn from the lessons embedded in past jurisprudential experience with antisubordination discourse and struggle. n5 This self-reflection confirms the belief that LatCrit theory can and must learn from the insights and shortcomings of the intellectual and political antisubordination experiments that precede or continue alongside this one.

This year, as in the past, LatCrits (like other outsider scholars before and around us) have encountered and aired difference and dissonance, discovering in this process unspoken - and perhaps conflicting - premises and purposes. As recounted below, each LatCrit event or gathering incrementally has uncovered in ever-greater variety or detail the social justice agendas of multiply diverse outsider scholars. n6 The LatCrit balancing act, both substantively and structurally, clearly has not always been a pretty sight - though it always has been worthwhile. As with other outsider efforts in critical legal theory, this movement's brief experience already displays in many ways both the fragility and the utility of voluntary antisubordination collectivity.

Given this society's troubled record of race and ethnic relations, much of our collective learning process and tendency to self reflection has been concerned with intergroup issues or, more concretely, with improving intergroup collaboration among outgroup scholars and communities as a form of antisubordination praxis. n7 It must of course be so, for the issues that LatCrit and allied scholars seek to negotiate internally are reflective of those that divide larger outgroup communities, n8 and which can impede our antisubordination struggles more generally. n9 We must understand that, in effect, our work represents the current stage of struggle by our communities, through and with outsider jurisprudence, inside the legal culture and discourse of this country. n10 The importance of the legal academy and public discourse as sites of antisubordination contestation in this legalistic and cyberbolic society is unquestionable, and our work in both arenas has been a form of contestation seeking to enjoin subordination both within and beyond the academy. n11

The importance of outsider efforts to transform, or at least reform, the academy and its work product similarly is unquestionable - though questioned nonetheless. n12 And because our own immediate efforts and struggles are crucibles of antisubordination insight and potential, LatCrit and allied scholars must employ not only "rotating centers" and "shifting bottoms" for normative insight and theoretical grounding; n13 we also must look expansively and critically to our own jurisprudential experiments and experiences as outsider scholars in legal culture. n14 It is both important and right for LatCrits, and for all likeminded scholars, to conceptualize and deploy the critical insights to be drawn from the overall experiential record of outsider jurisprudence as part of this larger, and ongoing, social justice contestation that we have inherited and seek to advance. n15

Thus, our antisubordination analyses and interventions must be trained not only on society, the academy, its institutions and our various communities, but also on our selves and our work. To succeed in antisubordination solidarity, outsider scholars must practice internally the lessons and insights that we apply to others structures, and we must learn continually from this internal focus to help us unpack and tranquilize cycles or patterns of subordinating behaviors that recur both within and beyond our immediate vicinity. This inward moment of self-reflection, is part and parcel of our antisubordination work. n16

This multi-tiered concern for intergroup relations as antisubordination praxis is not surprising, especially from a LatCrit perspective, because the ongoing effort to link current practices and prospective projects to social and jurisprudential experience is part of a foundational LatCrit commitment to coalitional method and critical coalitions. n17 Indeed, and in retrospect, the threshold decision, taken during the early planning of the First Annual LatCrit conference in 1996, n18 to configure LatCrit as a critical coalition of multiply diverse Latinas/os and nonLatinas/os has turned out to be a defining choice. n19 Ideally, LatCrit brings us together to construct and promote via multilateral exchanges an ethical vision of a postsubordination society. n20 At their best, LatCrit theory and its conferences represent coalitional method toward critical coalitions dedicated to antisubordination principles and formed by scholars (and activists) from various backgrounds and disciplines.

It follows that the involvement in LatCrit of multiply diverse and overlapping outsider scholars from various genres of critical theory has been and is integral to this effort at coalitional method. Multiply diverse "OutCrits,"ⁿ²¹ including LatCrits, have arisen from within the legal academy in recent years to articulate the social justice claims of traditionally marginalized groups, and we have proceeded from that point of entry to bring into existence the jurisprudential formations, communities and experiments that today constitute "outsider jurisprudence"ⁿ²² in the United States. It therefore is important to stress at the outset that LatCrit theory, as presently conceived, can succeed only to the extent that both Latina/o and nonLatina/o outsider scholars, such as those whose self-reflective essays prompt this Afterword, continue to invest their time, energy and creativity in this project.

This foundational commitment to critical coalitions also is grounded in the conviction that coalitional exchange and analysis are better suited to a multicultural and postmodern condition, as is the contemporary case of "Latinas/os" and other outgroups in the United States and beyond.ⁿ²³ This belief is rooted in the pathbreaking work of early CRT scholars, including insights like intersectionality, multiplicity and antiessentialism.ⁿ²⁴ Thus, at least from my perspective, it also bears emphasis at the outset that LatCrit theory owes a great and direct debt not only to CRT and other jurisprudential precursors,ⁿ²⁵ but also specifically to the individual RaceCrit, FemCrit, RaceFemCrit and other allied scholars whom now nurture LatCrit with their time, energy and creativity.ⁿ²⁶ Today, this emphasis on antiessentialist communities, antisubordination principles and critical coalitions is counseled by more recent conceptions from CRT and LatCrit-identified scholars - including the likes of cosynthesis, wholism, interconnectivity and multidimensionalityⁿ²⁷ - which evince the same ethic or aspiration: egalitarian embrace of multiple diversities as a touchstone of social justice struggle to establish a postsubordination era for all.ⁿ²⁸

Because the LatCrit themes of intergroup relations, jurisprudential advancement and critical coalitions recur and converge in the writings presented above, this Afterword concludes the LatCrit III symposium^[*1273] with some notes on comparative jurisprudential experience as coalitional method and antisubordination praxis. More particularly, the Afterword considers the relationship of this ongoing LatCrit experiment to two other contemporary genres of outsider jurisprudence - principally critical race theoryⁿ²⁹ and Queer legal theory.ⁿ³⁰ In so doing, and as with other authors in this symposium, the Afterword reflects the vagaries and limitations of authorial positioning within legal culture and outsider jurisprudence: as will become clear below, my contribution to this reflection on LatCrit theory's precursors, origins and trajectories is informed principally by the lessons I have gleaned from my participation in CRT and Queer jurisprudential experiments. Ideally, however, this Afterword's triangular framing and focus can help synthesize comparative experience across various contemporary genres of critical legal scholarship to help promote a culture of antisubordination community and coalition among OutCrit legal theorists.ⁿ³¹

To help contextualize the analysis that follows, a prologue that situates my position and perspective vis a vis outsider jurisprudence opens the Afterword. Part I of the Afterword then turns to CRT as the prime exemplar of outsider jurisprudence. After a brief historical critique of the causes and costs of CRT's earlier coalitional ambivalence, Part II of the Afterword compares the more recent experiences of Queer legal theory and LatCrit theory to assess the relevance of these movements to our collective development of a progressive jurisprudence of color. In Part^[*1274] III, the Afterword summarizes from a LatCrit perspective some basic lessons suggested by this sketch of our collective experience with outsider jurisprudence. With this backdrop and summary in place, the Afterword takes up in Part IV the theoretical, coalitional and institutional concerns raised by some of the symposium essays. Concluding with a call to OutCrit perspectivity in our collective re/commitment to a progressive outsider jurisprudence, the Afterword seeks and endorses LatCrit affirmation of coalitional method and critical coalitions as a form of outsider praxis, and in light of the lessons to be learned from comparative experience.

Prologue

Before LatCrit: Accounting for Positionality

My involvement with outsider jurisprudence began with feminist legal theory, sexual orientation scholarship and critical race theory. When these discourses were first stirring, I had not yet even begun thinking about entering the legal academy. Once in, however, I located myself initially within sex/gender and sexual orientation studies, arguing for a feminist-Queer interconnection that made race-conscious analysis integral to antisubordination projects; this project grounded me in feminist perspectivity and Queer identification but inclined me toward race and ethnicity discourses.ⁿ³²

Since then, I have become increasingly involved in the race and ethnicity branches of outsider jurisprudence while continuing my original project in the development of Queer/feminist legal theory. This growing involvement in

race/ethnicity outsider jurisprudence began with CRT and participation in its annual workshops, n33 for CRT was and is the original race/ethnicity branch of outsider legal scholarship. n34 During [*1275] those mid-to-latter years of its first decade, CRT collectively was confronting the repercussions of its earliest successes, which were prompting shifts in career, location and family for some key founders. n35 This process of professional and personal change altered the original patterns of CRT's organization and community, both in individual and collective terms, creating voids and dislocations especially in the smooth and progressive continuation of the workshop series originated to provide a locus for CRT both as discourse and community.

I thus "joined" CRT at a phase in its history wherein it was reckoning with the consequences of its initial triumphs, crafted chiefly by the hard and brave work of a diverse "first generation" CRT core. n36 For a new movement set against a skeptical (if not hostile) background, the internal shifts of those times caused great uncertainty about our collective capacity to carry forward the sharp criticality and social ambition that conceived CRT. This period in CRT's development - roughly equivalent to LatCrit's immediate future - thereby witnessed both the attenuation of some key founders as well as the gradual and fitful emergence of an increasingly diverse "second generation" in the workshops. n37 This second generation, like the first, was a loose assemblage of nonwhite but otherwise richly diverse scholars.

For better or worse, we found ourselves adjusting continually to the gaps and opportunities of those years while searching for effective means of coalescing around, and advancing, the original insights, methods and structures that encapsulated the expansive antisubordination promise of the first generation's work. At that time, we were also, in effect, wrestling with the larger set of historical, experiential, circumstantial and other issues discussed further below. These issues, as elaborated below, spanned the entire nine-workshop series and ranged from structural to substantive questions of theory, discourse, community and coalition. Given the historical, experiential, circumstantial and other factors noted below, it now seems plain that consensus was bound to elude us on the difficult questions of structure, scope and direction with [*1276] which we grappled annually at the workshops in order to advance both the insights of theory and the sense of community.

It now seems plain to me that those discussions constituted not only the first generational transition within CRT but also a difficult, inevitable and ongoing collective learning process that presently should counsel all OutCrit formations, including LatCrit theory. In retrospect, those transitional years represented a key test of CRT's growth and of outsider capacity to sustain a nonwhite critical jurisprudence: the question then was whether RaceCrits would continue to develop as a diverse and egalitarian antisubordination movement of activist legal scholars, lively and sturdy enough to traverse beyond first-generation breakthroughs and, if so, how? n38 Embedded in the events and experience of those years are the lessons that I learned, and that I seek to share here, because LatCrit does and will face similar issues of consolidation, progression and sustainability - as do and will all other forms of outsider interventions in the construction of critical legal theory.

Indeed, that question is the challenge that the self-reflective essays in this symposium effectively assert vis a vis LatCrit. Framed more broadly, it is the question and challenge that we all face, today and every day: How do we, as legal scholars, collectively sustain and carry forward in a progressive way the outsider experiment in critical jurisprudence as a form of antisubordination struggle? It is a question and challenge that a collective and critical assessment of comparative jurisprudential experience can - and should - help to illuminate.

Thus, the account of outsider jurisprudential experience that I am positioned to convey necessarily begins with the period of time spanning roughly from the second half of CRT's first decade until now - a period of transition and evolution evidenced then and still mainly in the organization, composition and programs of the CRT workshops and the LatCrit conferences. This period of transition from CRT's growing pains to LatCrit theory's emergence and consolidation is neither linear nor neat - despite the efforts to the contrary that follow. But, it is crucial to LatCrit theory's wellbeing and sustainability that this period be mined for its lessons: because the CRT workshops gave tangibility to, and anchored, the nonwhite critical legal theory movement both as community and as theory, and because that experience now can and must serve as a rich well of OutCrit insight, the lessons of those times are invaluable. And as LatCrit enters the same period in its development, these lessons become increasingly timely.

[*1277] Yet, as the symposium essays indicate, the tense internal dynamics of those transitional years - and most importantly, their lessons - are barely evident in the texts that our collective labors have yielded. Unlike CRT's earliest origins, n39 these freighted mid-to-late first-decade moments, and their relevance to outsiders' longer-term development and jurisprudential trajectory, until now had not been engaged - except, of course, in the immediate context of the actual CRT workshops. By unfolding their respective accounts of LatCrit's precursors, roots, origins and agendas, the self-reflective essays of this symposium have begun both to fill that void and to invite other OutCrits to

help contextualize our present and future, but always as part of our continuing, collective work toward a postsubordination time. What these essays tell us in no uncertain terms is that critical understanding of the tension and growth of those key transitional moments, and of their continuing ripple effects for outsider jurisprudence as a form of antisubordination praxis, no longer should remain obscure. n40

By recounting from my particular position and experience how those moments may have affected and helped to advance the RaceCrit movement during the formative years of its first generational transition - and how the effects of that learning process perhaps continue to reverberate within LatCrit today - I hope to amplify and transmit to successive "generations" of scholars a critical history of this particular period. Through this recounting I aim to convey the tremendous progress achieved during and since those times, as well as to acknowledge and learn from the difficulties that we have overcome - but which nonetheless continue to endanger our collective ability to articulate a progressive vision of a postsubordination society. By theorizing those key moments, I hope in particular to aid LatCrit theory's continuing growth and vitality as part of a rich and diverse OutCrit community, and with the will and means to cultivate critical social justice coalitions among and across key axes of identity and community as antisubordination praxis.

[*1278]

I. The Emergence of a Nonwhite Outsider Jurisprudence: Critical Race Theory, Un/critical Coalitions, and Intersectional Ambivalences

Original reports indicate that CRT was founded to struggle for racial justice. n41 During the past decade, CRT has gone about doing so in large part by advocating postmodern criticism and centering voices and positions that previously had been marginalized in social policy and legal discourse by prevailing essentializing tendencies. n42 This advocacy and centering have produced their own conceptual and political tensions - indeed the substantive and structural issues discussed below properly can be viewed as one aspect of CRT's larger modern/postmodern admixture. n43

CRT's critiques of contemporary race relations undeniably have been powerful: they have unmasked a primary element of white supremacy's continuing sociolegal legacies - principally, the systematic subordination of African Americans within the United States despite the formal equality mandates of the Civil Rights reformation. In the course of such critiques, CRT's first decade also produced a pathbreaking body of work by critical race feminists that still resonates throughout outsider jurisprudence and critical legal theory. This work introduced methods and concepts now regarded as foundational to CRT, LatCrit and other OutCrit theorizing. n44 Indeed, the pioneering work of critical race feminists within CRT remains among the most important theoretical advances in legal discourse attributed generally to CRT: this work has changed the way both minority and majority scholars conceptualize [*1279] and conduct racial discourse. Unfortunately, the spectacularly productive engagement of race and gender begun during the first half of the first decade did not become the exemplar for similar exchanges and gains at other times.

CRT's intersectional shortcomings - as a manifestation of coalitional ambivalences - perhaps may be explained by the interaction of at least five general sources or factors. The first is the pervasive heteronormativity of this country and its legal institutions, from which CRT arose. The second is the habit of racial binarism that characterizes American law and society, and which initially induced a similar approach in CRT's antiracist framework. As outlined below, both of these societal conditions were formative circumstances in contouring CRT as a fluid yet recognizable discourse and "community" through the series of annual workshops.

A third formative factor is, perhaps, more specific to legal culture: the suppressive climate of skepticism, even suspicion, that surrounded CRT's initial emergence as a critical form of race-conscious legal scholarship. This formative circumstance also generated serious and unsettling concerns about CRT's legitimacy and capacity for survival at a time when the legal establishment increasingly hankered for conformance to colorblind imperatives. n45 These concerns, as described below in further detail, in turn fueled coalitional caution and (at times) community frictions that, at bottom, were incompatible with a programmatic prioritization of coalitional or intersectional projects.

A fourth source of coalitional ambivalence is more historical and experiential. The memory of Civil Rights and Critical Legal Studies, which created histories and experiences of unfulfillment through coalitional enterprise, affected both the texts and workshops of the first decade. The limited and limiting results of those two recent experiences planted in CRT's early consciousness a sense of greatly lowered expectation about antiracist reform through intergroup collaborations.

The fifth, and in this abbreviated account, final factor is the intense discursive and political demands that a postmodern, antisubordination jurisprudential movement elects to impose on itself not only intellectually but also

socially. These self-imposed demands effectively called for [*1280] CRT's embrace and pursuit of multiplicitous and intersectional projects. Thus, these five distinct sources overlapped interactively, each contributing to ambivalence in its own ways: basically, the first four served to make CRT wary of coalitional risk-taking, while the fifth demanded it.

These five general sources, as elaborated below, have combined and interacted in myriad ways to produce over the course of CRT's first decade the complex record that, in my view, most proximately helped to set the stage for the emergence of LatCrit theory; in particular, and from my perspective, the fitful but hopeful CRT experience of grappling with these issues provides the most direct backdrop for LatCrit theory's original and current self-conception. Though not susceptible to simple or linear recounting, this mix of historical, experiential, circumstantial and other factors has generated substantive and structural consequences that sometimes have confounded CRT's struggle to establish itself as an antisubordination discourse and antiessentialist community. As the self-reflective essays of this symposium suggest, LatCrit now must learn from the CRT experience precisely because of its immediate proximity to CRT in time and in consciousness. With this aim in mind, and recognizing this complexity, I disaggregate these sources in somewhat linear fashion simply to facilitate summary presentation and comparative analysis in the context of this Afterword.

A. Formative Circumstances: Societal Heteronormativity, Racial Binarism and Color-Blind Culture

As the Phillips essay indicates, perhaps the most troubled instance of coalitional ambivalence and intersectional avoidance recorded during CRT's first-decade learning process has been the persistent reluctance to consider and interrogate the relationship of race to sexual orientation - or, more specifically, the reluctance to investigate critically how and why social or legal homophobia influence antiracist communities, strategies and discourses. n46 In consequence, CRT has at times appeared to assume that "people of color" are congenitally heterosexual: Queers of color have been virtually invisible in the written record of CRT during its first decade, and issues we embody have been mostly marginal in, though not entirely absent from, the annual summer workshops. n47 The [*1281] construction and articulation of CRT as outsider jurisprudence in the form of workshop programs and published texts thereby has been sanitized virtually of all traces of the Queer, including the Queer of color.

The marginalization of sexual orientation issues within CRT gatherings or texts for the better part of a decade etches important lessons onto our collective record: these acts of omission provide a startling example within a progressive antisubordination movement of a failure by the relevant "majority" to see and repudiate a mechanism of oppression operating both within and beyond the relevant or salient "community." This collective failure no doubt is due, at least in part, to the culture of constant homophobia that envelops us all, inducing uncritical (even if unintentional) replication of straight privilege within CRT and other outgroup venues at different times and places. n48 This formative circumstance prompted failures of nuance, will and engagement suggesting that CRT and other race/ethnicity-conscious projects at key junctures disabled their full potential, becoming forces striving to make the world safe for "our" race (or ethnicity) instead of unsafe for oppression. n49

As a result, critical coalitions that cross and combine minority colors and desires have been neglected or unrealized. To be sure, individual [*1282] scholars of all sexual orientations have served as occasional bridges across these divided identities and communities. However, we have not collectively nurtured internal as well as intergroup coalitions capable of uniting lesbians, bisexuals and gays of color programmatically and structurally to CRT and other race/ethnicity projects in antiessentialist, antisubordination purpose. In outsider jurisprudence, critical coalitions within and beyond CRT that pivot on sexual orientation and race/ethnicity have remained ad hoc or dormant until, perhaps, very recently, because whatever postsubordination vision we projected failed explicitly to redress the harms that homophobia visits on nonwhite (as well as white) peoples. n50

Another instance of CRT's coalitional ambivalence is reflected in its general sense of comfort with the framing of antiracist struggles around the Black/white paradigm of American political thought. n51 Producing a mindset and discourse where "of color" becomes the functional equivalent of "Black" without much self-critical awareness, this paradigm reflects the broader and standard practices of this society in its regulation of race relations, which historically have emphasized Black/white binarism. Because CRT's first lens was "race" and its racist deployment, this paradigm initially may have lent itself to the needs of CRT's antiracist counter-discourse. Yet, as recent works have noted, this paradigm's binarism ultimately truncates antiracist analysis because the paradigm does much more than valorize whiteness and demonize Blackness: it also occludes all other nonwhite/nonAnglo positions in the construction and operation of racial hierarchy within and across groups or cultures. n52 As an artifact of white supremacy, this paradigm reproduces [*1283] white domination, Black subordination and nonwhite/nonBlack erasure in intra- and intergroup levels.

As Mutua's essay emphasizes, critiques of the binary paradigm cannot suggest that "Black" and "white" represent equal positions within this paradigm n53 nor, as Roberts' essay shows, can they overlook the utility of a Black-specific analysis of white supremacy and intergroup issues. n54 Without doubt, white domination is organic to this traditional paradigm and its application, and analyses issued explicitly from Black perspectives are indispensable to antiracist discourse - especially when accompanied by a critical appreciation of this traditional paradigm and its sociolegal effects. Introducing criticality to all antisubordination uses or analyses of this paradigm may raise new issues, n55 yet continued uncritical acceptance of this paradigm to deconstruct "race relations" from any perspective may end up essentializing "race" around the paradigm's bipolar hierarchy. This essentialism can help perpetuate atomized binarisms between whiteness and Blackness in a social order controlled firmly by whites. This atomization generates consequences at odds with antiracist ideals and objectives.

Uncritical applications of this paradigm in a racially plural but supremacist society pose the danger of distancing from each other Blacks and "other" communities of color that also are disadvantaged by the social and legal preferences accorded to whiteness under this paradigm and its racist ideology. Uncritical acquiescence to this paradigm lends little inspiration for antiracist coalitions of color precisely because it obfuscates how white racism affects and connects all nonwhite groups. Ultimately, uncritical outlooks on this binary framing affirmatively can impede antiracist projects capable of bringing "different" nonwhite groups together in critical antisubordination communities and coalitions. Working within this binary framework in a majoritarian system controlled politically and economically by an ensconced white-identified elite and majority therefore has the potential to achieve less than is necessary for Black ambitions to dismantle white supremacy's continuing legacies, and even less for similar Asian, Native or Latina/o ambitions.

[*1284] As in the case of sexual orientation, this paradigm's societal entrenchment and general internalization is one aspect of the formative circumstances that have helped to shape outsider jurisprudence: given the immediate conditions and larger background of race discourse during its emergence, CRT's ambivalent - or ephemeral - embrace of diversities based on ethnicity and trans/nationality as integral to antiracist struggle probably is best understood both as a reflection and projection of that paradigm's pull. n56 But incrementally, as this symposium displays, our collective learning process has prompted greater critical awareness of these issues - specifically of the shortcomings that lurk in paradigmatic binarisms. As a result - and as this and prior LatCrit symposia aptly illustrate - CRT, LatCrit and other OutCrit scholars recently have begun to shift from uncritical recyclings of the traditional Black/white paradigm to multilateral interrogations of "white-over-Black" norms that support white privilege within communities of color as well as beyond them. n57

This quick tally is not to suggest that our collective failures of intersectional analyses regarding sexual orientation, and to a lesser extent ethnicity or trans/nationality, are the only or most important results of coalitional ambivalence based on the factors sketched above. Though ambivalence is implicated in both instances, this tally also does not imply that these failures are identical phenomena - the Phillips essay shows how the content and nature of those two moments in our collective articulation of nonwhite outsider jurisprudence were very different indeed. n58 Nor does this tally suggest that the explanations explored here are the only way to account for the variations that distinguish them. While reflecting a basically well-founded and complex, yet selective, ambivalence over coalitional projects, single-axis analyses that omit(ted) the position within antiracist politics and discourse of nonAfri [*1285] can American people of color, or of gay/Queer people of color, or of Black and other nonwhite immigrant communities, or of multiply diverse peoples of color around the globe, nonetheless entail(ed) both a critical lapse of intersectional analysis and a denial of sociolegally significant diversities among the racialized constituencies of outsider jurisprudence. n59

Finally, and additionally, CRT arose as a "minority" insurrection emanating from within the established legal culture but cast in opposition to it. From the outset, then, nonwhite outsider jurisprudence found itself subject to a disconcerting range of initial establishment reactions, extending from indifference and skepticism to curiosity and, at times, even understanding and respect. Still, the palpable and strident hostility to CRT's explicit and critical race consciousness in the institutional and intellectual environment prevailing at CRT's inception must be recognized as another specific formative factor in early circumstances and ambivalence. Though CRT scholars gradually have been appointed and tenured at even the most exclusive institutions, CRT workshops annually forced us to confront in both formal and informal conversation the enervating hostility directed by "home" institutions at CRT scholars year-round in routine, structural, maybe even "unconscious" ways. n60 And, as CRT gained prominence, attack did not abate; emboldened in part by a larger onset of reactionary attitudes licensing majoritarian backlash, initial academic unease devolved into unabashed bashing during the second half of CRT's first decade. n61

[*1286] Ironically, and importantly, the suspect gaze of the early years came not only from dominant quarters of the legal academy. Reflecting the complexities of racialized politics in this society and profession, CRT has found itself especially vulnerable to the balking reception it received from some legal scholars of color. Questioning CRT claims about "voice" in legal scholarship, the nonwhite critique of CRT was asserted by "colorblind" scholars of color whose standing derived in part from nonwhite racial identity - even as they authored texts that dismissed or devalued the relevance of racialized identity to scholarly perspective and discourse. n62 The specific circumstances of CRT's formation thus raised grave additional doubts: whether the thick racial politics and set political preferences of a white and wishfully "color blind" legal culture would suffocate a nonwhite articulation of critical legal theory about race, race consciousness and racism.

The impact of these three formative circumstances - societal heteronormativity, entrenched Black/white binarisms and legal culture's suspicion of nonwhite race consciousness - in tandem go a long way toward explaining some of our early and collective failures in intersectional analysis and community-building. Yet the formative influence of social circumstance was not all that stood behind this coalitional ambivalence. In addition, historical and experiential factors helped set the stage not only for CRT's emergence but also for our conflicted relationship to antiessentialist communities and critical coalitions as vehicles of antisubordination praxis.

B. History and Experience: Equality and Ambivalence

Among the good historical or experiential reasons for CRT's early sense of ambivalence toward coalitional projects and intersectional politics is the national experience known as the Civil Rights Movement. The Civil Rights experience aligned modern, liberal segments of American political society with the antiracist struggle primarily of African American communities to overthrow this nation's de jure apartheid regime. This "coalition" succeeded at the basic level of formal desegregation.

[*1287] As a result of that movement, an avalanche of curative statutes was enacted, amended, interpreted and sometimes enforced earnestly. But the predominant liberal conception of formal legal equality as a way station to social colorblindness did not include the vision or will to dismantle racial supremacy and subordination in systematic, material or fundamental terms. In retrospect, nonwhite scholars have learned that colorblindness, rather than social justice, was the objective of the Civil Rights push for formal racial equality.

The Civil Rights experience also taught people of color, and especially African Americans, that cooperation - coalition - with mainstream liberalism was possible only at the margin, or at the surface, for a related reason: because dominant versions of liberal policy view "discrimination" as isolated, temporary or atypical instances of individual wrongdoing rather than as manifestations of the enduring structures and patterns of power that permeate American society and are leveraged systematically through the institutions, processes and doctrines of the law. n63 This conception of sociolegal reality cramps law's ability to counteract racism, as many outsider scholars amply have shown. For these reasons, the Civil Rights experience has not inspired (specifically within CRT) much confidence in racial, much less intersectional, coalitions.

Also among the good historical reasons for early collective ambivalence toward coalitional possibilities may be the experience with Critical Legal Studies ("CLS"). Generally, CLS has expressed a postliberal and antiformalist political sensibility that signals solidarity with CRT, but CLS ineptitude on racial particularity and its lack of dedication to praxis or transformation made that movement ultimately ill-suited to the antisubordination needs of nonwhite scholars and communities. Over time, these and related CLS characteristics helped to distance it from CRT despite the postmodern and progressive disposition they share(d). Though significant affinity always has existed between CLS and CRT, these two jurisprudential movements represent(ed) a combustible mix of racialized interests, intellectual stances and normative imperatives that produced years ago the rupture that helped spawn CRT and nonwhite outsider jurisprudence. Emanating from a direct confrontation over questions about nonwhite scholars' place within CLS, that rupture recalls in stark and subtle ways how white-controlled ventures - including coalitions - can delimit antiracist objectives. n64 The CLS/ [*1288] CRT experience consequently combines a basic sense of jurisprudential camaraderie with coalitional caution, which could have reinforced the early sense of ambivalence that Civil Rights history also has induced.

These promising and complicated but ultimately unfulfilling historical experiences suggested to early CRT adherents that white-identified forces espousing liberal and even postliberal viewpoints are likely to support antiracist reform vigorously only upon the perceived convergence of majority and "minority" interests. n65 More generally, these experiences suggested to CRT's founders and expositors that majoritarian forces are likely to constrict or compromise antiracist theory and action precisely when "equality" seems about to threaten in fact the existing

(mal)distributions of economic and social goods. These experiences therefore may be described as recent examples of "uncritical" collaborations that have continued to influence the early outlook of outsider jurisprudence on race, law and justice. In addition to the impact of formative social circumstance and a suspicious legal culture, the disappointments of these recent historical experiences may help to explain further the early general wariness of dilution or deflection through uncritical or dysfunctional "coalitions."

C. CRT as Nonwhite Outsider Jurisprudence: A Vehicle of Theory, Community, Both?

Because CRT's original vision dedicated outsider scholars firmly to scholarship as well as to community, this combination of developmental environment and historical experience was bound to influence outsider jurisprudence in both substantive and structural terms. Substantively, as just noted above, CRT workshops and texts during the first decade rarely have focused on critiques of sexual orientation and ethnicities or trans/nationality, and of their interaction with race, to produce hierarchies of power and networks of privilege both within the United States and abroad. Only in more recent years, as Phillips argues, has CRT begun to produce a body of literature reflecting this widened scope of critical inquiry and interconnection. As a result, only now is the published record beginning to provide inspiration for critical coalitions across these (and other) identity categories within and through CRT specifically.

Structurally, this combination of factors or influences helped to inspire the original workshop design, which sought to carve out within the legal academy of this country a "safe space" for the incubation of antiracist critical theory by creating an intimate and controlled venue. The workshops were designed to bring together scholars of color each summer to share and exchange insights based on our reading of pre-distributed texts, and without the draining omnipresence, or immediate interference, of white privilege. This structure was designed to provide opportunities for intellectual support to fertilize CRT as scholarship, as well as opportunities for personal interaction to foster a sense of community among the participants. The workshops, in short, would be CRT's means of re/production in both discursive and human terms.

During the nine-workshop series spanning from 1988 to 1997 based on this original model, the limited attendance of about 25-35 persons (including presenters) was determined each year by the workshop planning committees, which typically relied on attendance lists from prior years to mail invitations. Consequently, access to the workshop has been "closed" as well as limited, requiring both an initial invitation and then a prompt acceptance of subsequent invitations. This design inevitably affected the scope and structure of CRT's purpose, discourse and community, especially because the workshop planning committees themselves were not structured to promote and balance continuity with expansion from year to year.

Yet, balancing continuity and expansion in the workshops, and in their planning committees, always was important precisely because outsider scholarship dedicated itself from the outset to the cultivation of community, and also because the annual workshops were key instruments in making possible any such cultivation. In addition, the changing demographics of the legal academy, including the growing diversity of the professorate of color, made the need for this balancing more acute, as well as crucial to the mission of creating community. Unfortunately, however, planning committees emerged annually largely from happenstance, leaving each year's committee with accumulated folklore and the prior year's invitation list as its main organizational tool and resource.

With the composition and the consciousness of each year's planning committee left to the vagaries of individual agency or institutional exigency, no mechanism ever was created to ensure the balances and expansions necessary to CRT's continual and collective well-being as a vanguard discourse and community. This point, and its consequences, are captured by Phillips' account of the workshops' initial encounter with "ethnicity": though the initial lapse promptly was disclaimed and followed up with a programmatic intervention the next year, this history and programming did not carry forward into the future years - causing successive workshops to relive, and have to recover from, the same experience with Black/white binarism inside nonwhite outsider jurisprudence. In this and other instances, workshop programming, like workshop participation, lacked longterm charting and guidance to keep the workshop grounded to the original sense of community and transformation through critical legal theory and praxis. The need for multiple balances in the structure and staffing of CRT convocations, specifically to foster a multilateral sense of connection and growth among geographically dispersed and multiply diverse scholars, never was adequately theorized or institutionalized as part of the antisubordination jurisprudential project that we commissioned for ourselves.

Because the collective learning process taking place during those years was uneven and inevitably complex, each year pressure arose anew, and accumulated, over recurring gaps or skews in the programmatic and

physical aspects of the workshop. As intersections became more like fault lines, opportunities for critical insight and antisubordination allegiance among and across various overlapping outgroups became instead sources of semi-essentialized, and probably self-defeating, discord. Given these stresses, it might be a wonder that the workshops on the whole were as successful as they clearly have been, and that CRT has matured and prospered so much during this past decade as the exemplar of outsider jurisprudence: despite the above weaknesses, the nine-workshop series of the first decade did in fact provide a relatively "safe" space for CRT to unleash a discourse and congeal the beginnings of an OutCrit community.

LatCrit theory, and the "convergence chronicle" of CRT and Lat Crit that the Phillips essay elaborates, provide testament to that progress, for in many ways LatCrit theory springs from the gains that CRT posted. n73 But to learn from this progress requires us to learn from our mistakes and to remain vigilant against their recurrence. To build on our early progress, and to account for other significant factors of ambivalence, requires us to practice antisubordination principles and antiessentialist community-building as central to the project of constructing a nonwhite outsider jurisprudence.

D. Principle Matters: Antiessentialist Essentialism and Social Transformation in Nonwhite Outsider Jurisprudence

Though CRT's "race" literature in particular continued to thrive during those years of uncertain transition, the original dedication to community and cause became increasingly vexed during the second half of the first decade over an ironic "antiessentialist essentialism" associated with CRT's ambivalent (non)management of increasingly diversified identities, demographics and intersections. n74 This internalized form of essentialism includes the failures of intersectional bent or inquiry noted above. n75 But the early sense of ambivalence about coalitional theory and praxis juxtaposes another important factor against those historical, experiential and circumstantial stressors. This factor is a feature of CRT that no doubt is definitive of nonwhite outsider jurisprudence in both substantive and structural terms: CRT's postmodern [*1292] foundation in antiessentialist analysis and antisubordination struggle. n76 This factor, unlike the ones sketched above, insisted on principle that outsider scholars resolve our intersectional fears and form critical coalitions fueled by a respect for difference in the struggle toward a post subordination era.

In contraposition to the developmental, historical and experiential factors discussed above, the antiessentialist commitment has inclined CRT (and outsider jurisprudence) most definitely toward coalitional projects because "intersectionality" and "multiplicity" require skepticism of categorical generalization, single-axis group formations and unidimensional units of critical analysis. n77 Multiplicity and intersectionality effectively demand approaches to "race" and racism that entail coalitional moments and intersectional mindsets. Thus, while history, experience and circumstance may have tilted us collectively away from coalitional opportunities, the inclination of our antiessentialist sensibilities toward intersectional (and multidimensional) endeavors demanded them.

Additionally, outsider scholars' foundational commitment to antisubordination praxis reinforced antiessentialism's call for serious, [*1293] substantive consideration of the linkages between racial and other forms of injustice. Because material reform requires savvy decisions about the politics of change, the original ambition of substantive social transformation in pursuit of justice similarly inclines outsider jurisprudence toward cross-group alliances capable of producing concrete and lasting sociolegal progress. n78 CRT's very principles and intellectual architecture thus impel us toward intersectional analyses and coalitional practices despite the historical, experiential and circumstantial record that otherwise might counsel suspicion of jurisprudential (and other) forms of coalition.

In sum, the combined impact of historical experience and formative circumstance implanted within today's community of OutCrit scholars a rationale for circumspection about the value of (at least some) coalitional projects. Yet outsider nonwhite jurisprudence from inception has been conceived and staffed by a richly and multiply diverse group of critical legal scholars with an expansive sense of social justice - a richness of ambition enhanced by the changing demographics and expanding frontiers of the past decade. In turn, this confluence of history, experience, circumstance and diversity sets the stage for a comparative look at Queer and LatCrit experiments in critical legal theory. These experiments, as explained below, present significantly different approaches to, and experiences with, antisubordination discourse and community. These differences can translate into substantive alterations of postsubordination vision, and can have a profound impact, for better or worse, on the collective capacity to realize jurisprudential community and collaboration in antisubordination struggle.

II. Queer Legal Theory, LatCrit Theory and CRT: Diversifying Outsider Jurisprudence

Events since CRT's founding have witnessed the ascendency of allied ju-

jurisprudential movements, particularly (from my perspective) QueerCrit n79

[*1294] and LatCrit n80 discourses. In fact, Queer legal theory and LatCrit theory come onto the jurisprudential scene at roughly the same time - during the second half of CRT's first decade - but in markedly different ways. Of these two, as recounted below, only LatCrit theory positions itself collectively and consciously as aligned with CRT under the rubric of nonwhite outsider jurisprudence. Due in part to their differences, these two developments have helped to further diversify and enrich outsider legal discourse - and to refine and elucidate the lessons that LatCrits and OutCrits might draw from comparative jurisprudential experience now and in the next several years.

A. The Queer Position and Nonwhite Outsider Jurisprudence: Contrasting Experiences, Mutual Lessons, Pending Connections

During the past few years the "Queer" denomination has been crafted to signify a self-consciously political and progressive subject position in scholarly and public discourse. The "Queer" position professes to describe a broadly-conceived antisubordination posture; the "Queer" position, as initially articulated in New York, San Francisco and other early venues, explicitly stakes out antiracist, antisexist and anticlassist as well as antihomophobic commitments. Queer Nation flyers posted in New York, for instance, declared that "Being queer ... means everyday fighting oppression; homophobia, racism, misogyny, the bigotry of religious hypocrites and our own self-hatred." n81 Thus, the distinction between "Queer" and "lesbian" or "gay" is that the former signifies - and constantly searches for - a postmodern political identification while the latter at times amounts to essentialized, single-axis [*1295] identities. n82

However, with the relative (and limited) exception chiefly of lesbian and bisexual exchanges, n83 it remains sometimes difficult to ascertain whether "Queer" legal theory actually has come into full existence specifically in legal culture. As the emergent internal critique of gay and lesbian legal scholarship argues, sexual orientation legal scholarship has elided race, ethnicity, class, and gender. Consequently, "gay and lesbian" (as opposed to "Queer") legal scholarship certainly does exist, and it has proliferated with impressive (and exciting) momentum, aided in part by the social consciousness and cultural activism of progressive Queer nationalists.

In the legal academy, this proliferation began in 1979, with the first-ever symposium on sexual orientation and the law. n84 It has grown since then, posting significant insights in fields ranging from constitutional to family law, and engaging issues of power and identity familiar to CRT, LatCrit and other lines of OutCrit inquiry. n85 This discourse undoubtedly is a useful and positive development because it attacks sexual orientation injustice and expands the body of work produced as outsider jurisprudence. But, as the emergent internal critique points out, n86 this mostly unmodified scholarship is limited by its simultaneous failure to tackle with vigor various issues opened by CRT and outsider inroads into intersectionality, multiplicity and multidimensionality.

[*1296] As with CRT, this limitation no doubt is a function of multiple factors, including, again, historical experience and developmental circumstance. n87 In particular, this limitation reflects the impact of societal white supremacy on gay (and even Queer) consciousness or discourse, and on the agendas or projects thereby generated. Thus, gay and lesbian legal scholarship, like early inquiries of nonwhite outsider jurisprudence, on the whole has failed to enter, or linger at, the intersections of race, ethnicity and sexual orientation. n88 Though both discourses espouse resolute and egalitarian antidiscrimination ideals, both have generated a body of largely unmodified work for reasons that sometimes are shared and sometimes not.

Perhaps "gay and lesbian legal scholarship" has not yet matured into "Queer legal theory" in part because it lacks certain structural supports for the exchange and dissemination of ideas, as well as for the cultivation of communities and coalitions. For instance, sexual minority scholars have not created venues like annual summer workshops or regular conferences of the sort that have helped to fuel the prior and current development of CRT and feminist legal theory and, most recently, Lat Crit. n89 Of course, various law reviews have at times organized symposia devoted to sexual orientation and the law. n90 And the American Association of Law Schools ("AALS") in 1996 sponsored the first-ever national workshop on sexual orientation and the law. n91 However, apart from the programs and gatherings of the Section on Lesbian and Gay Legal Issues during the AALS annual meeting, n92 sexual minority legal scholars have [*1297] instituted no regular form of convocation to introduce and advance critical, collective and multidimensional discussion of "sexual orientation" issues. On the whole, we have not established autonomous structures or programmatic initiatives to affect positively the conditions of our work's production, nor, more specifically, to bring into existence a Queer consciousness and community within legal culture. n93

This collective structural failure inevitably shapes the literature both in substance and sensibility - both as discourse and community. Gay and lesbian legal scholarship has produced a record of mostly single-axis analyses that reflect and

replicate the atomized environments in which Queer scholars work due, in part, to the fact that sexual minority "communities" or networks are incipient, if not still inchoate, formations; though many factors undoubtedly contribute to this status quo, it seems that those of us writing from a sexual minority subject position have failed to articulate an advanced conception of Queer legal theory at least in part because we have not substantially overcome the physical and cultural conditions of psychosocial isolation that structure sexual minorityhood in the legal academy, the United States and elsewhere. n94 As with nonwhite outsider jurisprudence, Queer positionality cannot help but to reflect the conditions preceding and surrounding its emergence.

Thus, like other discursive formations, both sexual orientation legal scholarship and current articulations toward Queerness in scholarship undoubtedly have exhibited racialized, ethnicized, gendered and classed tendencies that reflect larger cultural hierarchies of privilege and position. n95 Yet, in my view, Queer ideals and insights - despite their flaws and even if not yet widely practiced in legal scholarship - can aid outsider scholars' continuing learning process and jurisprudential advancement. n96 Queer values, if practiced consistently and honestly, counsel all OutCrit scholars - CRT and LatCrit included - promptly and earnestly to take up neglected or postponed intersectional issues of law, identity and opportunity.

Among these pending intersections, of course, is the interplay of white and straight supremacies in producing the specific subordination of lesbian, gay, bisexual and trans/bi-gendered persons of color within communities of color, including Latina/o communities, and throughout society generally. n97 But Queering nonwhite outsider jurisprudence demands more than the addition of sexual orientation and sexual minorities to the current jurisprudential mix; the process of Queering retains yet builds on multiplicity and intersectionality because Queer positionality requires a multidimensional approach to all deployments of oppressive power and privilege. n98 Thus, even though Queerness remains a white, male and middle-class formation in many respects, the important, distinctive and (still) under-used contribution to critical theory of Queer positionality is its programmatic emphasis on expansive antisubordination stridency. Despite the limitations of current practices, Queer positionality provides a springboard from which to envision an egalitarian postsubordination society that CRT, LatCrit and other OutCrit scholars avidly should embrace and help to establish in accordance with our antiessentialist tenets and antisubordination imperatives.

[*1299] In sum, the substantive advances in critical perspective attached to Queer positionality have been undermined by the lack of structures to foster interconnective discourse and community among sexual minority and allied scholars. Reflecting the afflictions of our larger social and legal environments, Queer theory - or, more accurately, sexual orientation legal scholarship - has been limited by collective failures of intersectional inquiry and convocation. The overall record of sexual orientation legal scholarship thereby underscores challenges and experiences paralleled, though not necessarily duplicated, in race/ethnicity-conscious outsider jurisprudence.

B. Building LatCrit Theory: Lessons and Practices, Knowledge and Community, Aspirations and Limitations

LatCrit theory, in some ways the most recent of these jurisprudential phenomena, offers a notably different record and model from both the RaceCrit and QueerCrit experiences. LatCrit theory is an infant discourse that responds primarily to the long historical presence and general sociological invisibility of Latinas/os in the lands now known as the United States. As with other traditionally subordinated communities in this country, the combination of longstanding occupancy and persistent marginality fueled an increasing sense of frustration among contemporary Latina/o legal scholars, some of whom already identified with CRT and participated in its gatherings. Like CRT, Queer and other genres of critical legal scholarship, LatCrit literature thus tends to reflect the conditions of its production as well as the conditioning of its early and vocal adherents.

Born most immediately from and during a 1995 colloquium on Latinas/os and CRT, LatCrit theory is an intervention designed to highlight Latina/o concerns and voices in legal discourse and social policy. n99 As its origins indicate, this Latina/o-identified genre of outsider jurisprudence was conceived as a movement closely related to CRT. And because it was born of the CRT experience, LatCrit theory views itself as a "close cousin" to CRT, a cousin that always welcomes CRT, both in spirit and in the flesh, to its gatherings. n100

But these roots include a critical assessment of CRT - this birthing reflects both the strengths and shortcomings of CRT as revealed by a Latina/o-identified critique of antiracist public discourse and legal scholarship. Molded (in part) by a critical assessment of outsiders' substantive and structural record, LatCrit theory from its very inception has [*1300] been self-consciously devoted to practicing CRT's original commitments and pioneering techniques in self-critical ways. LatCrit theorists, in other words, have been determined to embrace CRT's original antisubordination

insights and employ its first-decade learning curve as this project's point of departure. n101 Not surprisingly, then, LatCrit theory has devised a conscious and critical self-conception very similar though not identical to CRT's.

Not all the "differences" (or similarities) between CRT and LatCrit can be attributed to the lessons drawn from comparative jurisprudential experience, however. Other factors inevitably influence or enable Lat Crit's make-up. For example, LatCrit emerges at a time in which the demographics of the legal professorate are much more diverse than a decade ago, during CRT's initial emergence. n102 Moreover, the effects of majoritarian racist/nativist backlash, and of the policy preference for for mal color blindness, also have been legitimated and consolidated, both judicially and legislatively, mostly in the decade since CRT's incep tion. n103 And, as yet "another" nonwhite subject position, LatCrit also has been required to anticipate and navigate carefully the perennial charge of interjecting or aggravating a destructive "balkanization" within legal discourse. n104 These factors, in addition to the CRT experi ence and the various historical and other factors that affected it, n105 have helped to shape and give meaning to LatCrit theory today, both in sub stantive and in structural terms. Like CRT and Queer legal theory, Lat Crit theory not only reflects but also must respond to the conflicts, circumstances and conditions that preceded and surrounded its emergence.

Also like CRT, LatCrit theory self-consciously endeavors both the creation of scholarship through community and the creation of commu nity through scholarship. The idea of, and need for, regularized meet [*1301] ings accordingly have been integral to the constitution of LatCrit theory, and to the production of a LatCrit body of legal literature generated in connected, rather than atomized, conditions. Like CRT but unlike gay and lesbian scholarship, LatCrit theory has undertaken the construction of structural conditions conducive to these twin objectives. And also like CRT, LatCrit theory expresses this commitment to the production of both knowledge and community specifically as a means toward an end - the attainment social justice. n106 LatCrit theory thus seeks to combine elements of CRT's early and formal self-conception with lessons drawn from CRT's actual experience and practice to employ and develop its insights.

As crafted by its earliest proponents, LatCrit theory attempts to bal ance multiple factors that conjoin the production of knowledge and culti vation of community, and this balancing serves as the theoretical frame for legal reform through LatCrit discourse and praxis. From the begin ning, therefore, LatCrit theorists have theorized about the purpose(s) of legal theory, and about the role of structure and substance in light of such purpose(s). In my view, these preliminary LatCrit efforts have pointed to four basic aims or functions of critical legal theory: the pro duction of critical and interdisciplinary knowledge; the promotion of substantive social transformation; the expansion and interconnection of antisubordination struggles; and the cultivation of community and coali tion among outsider scholars. n107 As these four aims or functions indi cate, a dual and coequal commitment to expansive substantive programs and to community-building structures and events underpins LatCrit theory.

This dual and coequal commitment is applied (or not) mainly in the context of the annual LatCrit conferences. Instead of CRT's series of small workshops, the annual LatCrit conferences have been open and mid-sized gatherings of about 75-135 attendees. As with CRT's work shops, these conferences meet in a different location each year, and have been the chief instrument that annually brings together multiply diverse legal scholars and friends for a critical and continuing engagement of social justice issues important, in this instance, to Latinas/os as well as to "other" outgroups. n108 Because these conferences are cosponsored by [*1302] law reviews, they also annually help to generate published texts that reflect this framing - this symposium being the latest case in point. n109 LatCrit theory therefore has been characterized by a self-instilled and self-critical sense of collectivity, situatedness and purpose, which is evi denced not only by the structuring of the annual LatCrit conferences but also by their substantive scope and focus.

The configuration of LatCrit interventions, both written and physi cal, thus far has been guided by a solid conviction that the social or legal position of multiply diversified Latina/o populations may be understood best - maybe only - when approached from multiple perspectives in collaborative but critical and self-critical fashion. LatCrit theory's sub stantive scope and focus therefore have been shaped by a firm resolve to center "Latinas/os" in social and legal discourse, but to do so in a way that foregrounds the multiple diversities of Latina/o communities and that contextualizes these issues within a broad critique of intergroup relations and outgroup positions. The structural design - featuring a wide range of attendance and participation in LatCrit programs and projects - is related to and reinforces this interconnective substantive purview. In both structural design and substantive scope, the LatCrit approach to outsider jurisprudence is calculated to nurture cross-group communities and intergroup coalitions spurred by intersectional discus sions and projects that broaden, deepen and contextualize self-empower ment quests both within and beyond "Latina/o" contexts.

Perhaps most notably, the annual LatCrit conferences have been employed consciously to elucidate intra- and intergroup diversities across multiple identity axes, including those based on perspective and discipline. This expansive approach to the articulation of LatCrit theory is designed to ensure that African American, Asian American, Native American, feminist, Queer and other OutCrit subjectivities are brought to bear on Latinas/os' places and prospects under the Anglocentric and heteropatriarchal rule of the United States. n110 Though we obviously [*1303] cannot train our collective attention on all diversities, issues or contexts at once, LatCrit theorists have guided the creation of holistic programs and projects to search out and progressively map Latina/o diversities and their interrelationships, aiming via this process to unpack comprehensively and critically the complexities of Latina/o subordination.

This approach consciously is designed to center not only Latinas/os and our many diversities in a manner that minimizes privileging any one Latina/o interest over another, but also to ensure critical discussion of Latinas/os as part of the larger social schematics formed in part through law. This LatCrit drive for diversity and particularity ideally will help to create an intellectual and social culture enabling the LatCrit community collectively to overcome Latina/o and other essentialisms, which some times stand in the way of critical outgroup and OutCrit coalitions. n111 This incremental critical effort is intended to promote and ground intra- and intergroup antisubordination coalitions by ensuring the representation and investigation within the LatCrit community of various power hierarchies and their interplay.

As coalitional method, this constant and perpetual balancing of diversities and specificities produces a "rotation of centers". n112 At each gathering thus far, LatCrit programs have allocated time and prominence to intersectional issues in a manner that in effect rotates "the center" of LatCrit discourse among various, and sometimes overlapping, intra- and intergroup interests. This rotational practice effectively requires all participants to "decenter" from time to time salient identities or preferred issues to juggle our collective limited resources. The joint objective every year, and also from year to year, remains constant, even while sites and centers rotate: to incorporate as fully as possible in all LatCrit programs, as well as in the overall LatCrit record, the manifold intraLatina/o diversities and intergroup issues that affect outgroup social justice quests, including those of Latinas/os. If assessed critically and pragmatically, and if managed responsibly, this process of continual and rotational analysis is the best - if not the only - route to balancing and expanding from year to year the programmatic attention given to these intricate issues and to their complex interrelationships in light of the discursive demands established by postmodern, intersectional [*1304] insights. n113

This system of rotation, however, obviously depends on a collective yet individual commitment to continuity and progression; because rotation in part means that each year's events build on those of the prior year(s), LatCrit programs and projects place a premium on repeat attendance and participation in annual or special events. To engineer the continual advancement of this discourse, knowledge and community, rotation calls for a personal and annual re/commitment to the LatCrit enterprise among an ever-fluid yet identifiable and self-selected group of scholars. The forms of commitment among the many individuals in the LatCrit community vary over time, of course. Generally, however, this commitment encompasses not only attendance and participation but also planning. Because the passage of time likely will make it progressively more difficult to sustain individual commitments across the board, the goal is to ensure a critical mass of continuity in attendance, participation and planning every year - and then to balance these levels of continuity and consolidation with incremental innovation, expansion and inclusion. n114

Additionally, this balancing of continuity and development must anticipate and accommodate the varying levels of knowledge and experience that individual scholars bring with them to LatCrit events: inevitably, different individuals bring with them not only varied backgrounds but also varied levels of exposure to, or involvement in, outsider jurisprudence. This accommodation therefore contains both substantive and structural components, and both are reflected in LatCrit programs, which seek to blend the familiar with the novel and to represent new comers as well as veterans. The perpetual task of the group is to create an environment where all present can access, participate and contribute to our collective act of learning and advancement through critical discourse and community. This task, of course, is never-ending, and necessarily becomes increasingly challenging with the passage of time and the expansion of the group. n115

[*1305] Given the diffused and nuanced nature of the decisions and considerations that underlie these group and personal commitments, only time - and effort - will determine how far LatCrit theory will (or won't) reach. In both substance and structure, LatCrit theory is an experiment-in-progress, and only time and effort will determine how far LatCrit theory actually reaches. The ultimate challenge, of course, is to persist for as long as the material conditions of subordination also persist. For the moment, it seems to be working because enough OutCrit scholars deem it worth it. The immediate and ongoing challenge, then, is to locate, excavate and rotate sites of theoretical contestation and political action to keep the LatCrit antisubordination project continuously on balance, and on the move. n116

Finally, as this symposium shows, LatCrit theory from inception has sought collaboration with Latina/o and other law reviews. Each event to date has been co-sponsored by one or more law journal(s), which publish edited versions of conference proceedings. n117 This feature of the LatCrit enterprise seeks to support, and build coalition with, law reviews (especially those of color) while also creating collective projects and opportunities for all participants in LatCrit programs. This particular aspect of the LatCrit venture has been tailored to provide support and community both to scholars and to journals while igniting the creation of a new field in legal literature. By producing a similarly diversified printed record of our gatherings and exchanges, this final feature of LatCrit projects advances the antiessentialist principles and antisubordination aims of this movement with respect both to community and to theory.

In some ways, then, LatCrit theory may be understood as an effort to practice Queer ideals while employing CRT insights and tools; while focusing on "Latinas/os," LatCrit theory also has embraced the Queer credo of interconnected struggle n118 as well as the CRT methods of antiessentialist community, antisubordination analysis and regular annual convocation. n119 Though somewhat simplified, LatCrit projects [*1306] and texts fairly may be viewed as a Latina/o-oriented fusion of Queer and CRT ideals and innovations, a fusion always being tested through time, experimentation and practice. This experiment at fusion already suggests a few tentative lessons.

III. LatCrit Notes on Comparative Jurisprudential

Experience: Critical Coalitions, Antiessentialist
Community and Antisubordination Convocation

As this sketch indicates, LatCrit theorists both have embraced and critiqued the structures, experiences, methodologies and ambitions set out for outsider jurisprudence by CRT's earliest exponents. During its original moments, like LatCrit now, CRT conceived itself as a community of legal scholars mounting a discursive and political intervention on several fronts at once. n120 And like LatCrit now, this early sense of CRT's collectivity - its notion of scholarly engagement and community - also was grounded in annual group experiences. In CRT's case, this grounding has been the summer workshops that annually convened a small group of scholars of color, n121 and in LatCrit's case it has been the various colloquia and larger annual conferences of the past several years. n122 The point is that both CRT and LatCrit theory, unlike gay and lesbian scholarship, n123 have invested in the creation of structures to promote both knowledge and community, and to enable the sustainability of both. From my perspective, LatCrit theory is most like CRT, which conceived itself in ways now claimed by the LatCrit project.

But the LatCrit experiment also has embraced and pursued the same kind of expansive antisubordination sensibility that defines Queer ideals. n124 This sensibility of course is fully consistent with CRT's breakthroughs in intersectionality, multiplicity and antiessentialism as antisubordination insights. n125 It also is consistent with LatCrit's efforts to learn from CRT's record of intersectional selectivity and coalitional ambivalence. n126 LatCrit positionality thus reflects both CRT and Queer influences in substantive and in structural terms - as well as critical and self-critical reflections on those influences and their lessons.

Consequently, LatCrit theory's original determination to benefit from a critical understanding of comparative jurisprudential has produced significant substantive and structural variations specifically [*1307] between LatCrit theory and CRT. These variations help to map some of LatCrit's contributions to the development of nonwhite outsider jurisprudence. The above account points to four distinct yet overlapping areas of substantive or structural variance.

First, LatCrit gatherings have been aggressively "open" to promote wide-ranging, self-selected and diverse participation, whereas CRT's workshops have been "closed" to foster an intimate, intense and trained discursive climate. n127 Second, LatCrit discussions from the outset have included sexual orientation proactively both in the form of bodies and ideas, whereas CRT ambivalence has overlooked or resisted the implications raised for it by this particular intersection. n128 Third, LatCrit conferences have placed a high priority on programmatic diversity specifically along race, color, ethnicity and trans/nationality, whereas CRT has looked chiefly to "domestic" domains of subordination and has practiced diversity along these lines in relatively haphazard or ephemeral ways. n129 Fourth, LatCrit programs and their advance planning consciously incorporate, and depend on, a group ethic of individual and collective continuity to ensure both memory and progress in the articulation of LatCrit theory as antisubordination praxis, whereas the annual workshop planning process was relatively ad hoc. n130

However, at this early juncture, perhaps the fundamental difference between the CRT and LatCrit experiences is that LatCrit theory has placed a greater emphasis on, or has displayed less ambivalence toward, the role of coalitional endeavors as a core aspect of nonwhite outsider jurisprudence. n131 This LatCrit enthusiasm for coalition and inclusion in both substantive and structural terms may be due to LatCrit naivete about the Civil Rights and CLS

experiences, n132 or to savvy recognition of political pragmatics, n133 or to a combination of these and other factors. [*1308] Whichever it may be, the LatCrit experiment invites OutCrit scholars concerned with our collective progress to consider whether, and how, the success of outsider jurisprudence and community can be influenced, perhaps profoundly, by the design and operation of antisubordination interventions. In my view, a key lesson of the LatCrit experience thus far is that the balancing of diversity and continuity, expressed through individual and collective choices over structure and substance made and remade annually, may be a fundamental requisite to the long-term viability of nonwhite outsider jurisprudence as both discourse and as community.

To be sure, no one approach to the continuing development of outsider jurisprudence is necessarily or absolutely the most productive in all circumstances. But the substantive and structural variances noted throughout this Afterword in the RaceCrit, QueerCrit and LatCrit contexts cumulatively can generate significantly different experiences of discourse, community and coalition. For instance, having taken critical stock of the dangers signaled by CRT's avoidance of sexual orientation, n134 LatCrit theory's commitment to intersectional discourse and antiessentialist community has led it proactively and programmatically to showcase issues stemming from known or discovered sources of difference. n135

Each time thus far, LatCrit programs have featured with intentional prominence active sources of group tensions and/or the prior gathering's most contentious controversies: at the first colloquium in 1995 the point of contentious engagement was intraLatina/o ethnic and racial difference; at LatCrit I it was gender and patriarchy within Latina/o culture; at LatCrit II it was the significance of religious and sexual traditions in Latina/o lives; and, this year, at LatCrit III, it was Blackness in LatCrit theorizing and events. These critical incursions into intra- and inter group sources of difference, whether spontaneous or programmatic, pose no automatic danger to knowledge and community - if guided by an overarching ethic of mutual care and responsibility. n136 [*1309] On the contrary, such engagements are the means through which multiply diverse OutCrit theorists join in the direction and evolution of LatCrit discourse and other genres of outsider scholarship. n137 At its best, this multilateral process of reciprocal and self-critical re/engagement re/invigorates the LatCrit community to craft antisubordination theory that reflects the synergies of our diverse positions, respective ideas and joint labors. However, these examples also illustrate how the issues that have afflicted outsider jurisprudence generally, and have caused coalitional ambivalence at key moments in our collective past, also can tend to surface now in LatCrit venues or contexts - despite the years of convocation and exchange that should yield an ever-improving, collective capacity to negotiate effectively and efficiently these increasingly familiar issues.

The race/ethnicity discussions at LatCrit conferences, for example, illustrate the power of white supremacy's dangerous legacies of division, as well as the danger of entrenched categorical racial/ethnic hierarchies, within and beyond Latina/o communities. n138 The gender discussions similarly illustrate the potential for LatCrit redeployment of oppressive structures unless confronted consciously and programmatically from year to year so that progress sticks. n139 The religion exchanges illustrate the potential or tendency within LatCrit gatherings and projects to essentialize identity along one axis or another in accordance with culturally [*1310] prevalent hierarchies or personally familiar arrangements. n140 Clearly, these moments of contestation challenge the collective LatCrit enterprise in complex ways that affect antisubordination vision and purpose. n141 LatCrit theory, like CRT and other genres of outsider jurisprudence is not - and cannot be - immune to the forces and influences of our times. This lack of immunity is, again, precisely why all OutCrits must be alert to the lessons that we might be able to glean from CRT's groundbreaking work on antisubordination substance, structure and community. Ultimately, the recurrence of these issues in various outsider settings is why LatCrit and other OutCrit theorists must cognize, and confront collectively, the lessons embedded in comparative jurisprudential experience.

As this brief accounting suggests, LatCrit theory's embryonic process of re/creation and re/development strains our collective capacity to operate at our best. And, as LatCrit III confirms yet again, every time we meet our exchanges progressively challenge our sense of commonality as well as our mutual commitment to critical knowledge and scholarly community in antisubordination struggle. Faced with the eruption of these structural and cultural issues during these formative and tentative times, the LatCrit community has elected to grapple both reactively and proactively, but always programmatically and always for the long term, with these and other compelling or competing claims on our time and energy. n142

[*1311] Time and experience increasingly will test LatCrit theory's collective ability and determination to make necessary adjustments and continual advances. For the moment, it seems to be working precisely because of the commitment to community - precisely because most LatCrit theorists individually are committed as a matter of group ethics to confronting and processing in a constructive and programmatic manner the substantively "hard" moments that intersectional attention to diversity oftentimes tends to produce. Given the nascency of LatCrit theory, even a tentative

prognosis about this movement's ability to travel increasingly intricate diversity terrains is difficult. But, as with CRT, the LatCrit commitment - and promise - is to sustain this experiment for as long as our human, intellectual and other resources permit, and as part of our collective and continuing journey toward a postsubordination order.

IV. Toward a Postsubordination Order: LatCrit Thoughts on Race, Ethnicity and Experience

These comparative notes on antsubordination experience depict jurisprudential developments that have taken place both before and since the origination of LatCrit theory as a self-conscious subject position in the legal academy of the United States. As a set, these comparative experiences have much to teach us about the possibilities of an Out Crit formation and agenda through critical coalitions and coalitional method. Our collective record to date can and should help to inform future OutCrit choices over substance, structure, community and coalition in the service of antsubordination struggle. But the LatCrit experience, in particular, does not beckon CRT (or any other formation) simply to mirror its substantive or structural designs. Nor does the Lat Crit experience beckon LatCrit satisfaction or complacency. Instead, the variations between LatCrit, CRT and Queer experiments in outsider jurisprudence raise new possibilities - and perhaps tensions - for all OutCrit theorizing as a form of antsubordination praxis.

A. From Comparative Experience to OutCrit Praxis: RaceCrits, LatCrits and Reconstruction from Within

As the Mutua essay in particular shows, one set of OutCrit possibilities and tensions suggested by LatCrit's brief record revolves around the value of shifting away from uncritical replication of conventional Black/white binarisms and toward a "white-over-Black" paradigm, which may be better suited to critical excavation of the interactive similarities and differences that situate varied nonwhite groups against, and [*1312] under, white privilege. n144 From a LatCrit perspective, the difference between the two approaches is great: whereas the former ultimately represents a bipolar caricature of racial heterogeneity and subordination, the latter highlights how all racial hierarchies systematically valorize whiteness and demonize Blackness, both in intra- and intergroup settings. Nonetheless, the self-reflective essays of this symposium illustrate how this shift can backfire as antsubordination method if not conducted critically and self-critically, and in coalition with African American and other scholars. n145

But, as those essays also indicate, these difficulties relate more to manner and tone than to substance, for the shift (or expansion) and its substantive value to nonwhite outsider jurisprudence ultimately are not contested; n146 rather, those essays rightly remind LatCrits that, as OutCrits, we proactively must ensure that historic hierarchies are not replicated, validated or reinforced by the manner of its execution. n147 This insistence, of course, itself cannot be contested in the context of critical coalitions as vehicles toward a postsubordination order - not under an approach to this shift that is congruent with and disciplined by the antiessentialist and antsubordination principles that help to ground Lat Crit theory. n148 Thus, the LatCrit deconstruction of the paradigm and its effects on our understanding of "race relations" has undergone several stages of development and refinement during the past three years, a process of investigation and adjustment intended to ensure that this shift takes place in a principled and coalitional manner. n149

[*1313] These recent exchanges and developments have not, nor could they have, extracted definitive answers to the questions of identity, law and society that have occupied LatCrits for the past three years, for the questions raised specifically by the interaction of "race" and "ethnicity" are heavily freighted - whether or not approached from a paradigmatic perspective. But these exchanges and developments have helped to begin clarify, and guide, LatCrit theory's approach to white supremacy and its effects on racialized as well as ethnicized categories: "a threshold task of LatCrit theorizing is ascertaining the ways and means by which 'ethnicity' and 'race' can be turned into a useful analytical tool for unpacking and alleviating the Latina/o social and legal position, as well as the subordination of other racial and/or ethnic groups." n150 The result of these exchanges, at least for the moment, has been a programmatic, critical and long-term approach to the study of white supremacy and privilege that regards "both race and ethnicity [as] necessary components of LatCrit antsubordination analyses." n151

Moreover, LatCrit theory's re-centering of this particular intersectional topic may be helping raise awareness of Blacks as an "ethnic" as well as a racial group. By way of example, the Roberts essay narrates an experience during the LatCrit II conference, in which she and other conference participants "discovered that most of the Black people [at Lat Crit II] there were of West Jamaican descent." n152 Having made that discovery, they "gathered together to share stories of [their] common background." n153

Substantively, Roberts' observation of this discovery implies more than can be unpacked in this Afterword, and thereby leaves pending provocative questions for a continuing LatCrit (and RaceCrit) interrogation of race and ethnicity as overlapping but not necessarily coterminous categories. What, for instance, does the "discovery" of West

Indian com monality among the Blacks at a LatCrit venue suggest about nonwhite outsider jurisprudence as a whole? May it indicate that LatCrit can help to provide a new opportunity for Blacks who live in the United States to explore and reclaim nonAnglo "ethnicity" as elemental to Black identity, [*1314] including African American ethnic identities? Does it suggest that both African American and nonAfrican American Blacks in this country, like Latinas/os, are a racialized and polyethnic grouping? n154 Does it suggest that both groups remain dominated by the ethnicized legacies of their colonial conquerors - for Latinas/os the Spaniard, for African American Blacks the Anglo and, in any event, for all Blacks and Latinas/os the "white" European? If so, can these lines of inquiry open up new understandings of "Blacks" and "Latinas/os" as postcolonial groups similarly yet differently racialized and ethnicized? Can these new understandings allow us to reconceive the possibilities and pivot points of Black-Brown critical coalitions that today may seem more like pipe dreams due to issues of "difference" and identity?

Whatever one imagines the ultimate answers to these questions should be, "the 'race' versus 'ethnicity' discussion is precisely the sort of substantive expansion that LatCrit theory can produce to existing critical legal discourses" about white supremacy and its ill effects on non white and/or nonAnglo communities. n155 In effect, then, the ongoing effort to transcend critically and collaboratively the traditional paradigm in both word and deed has been a process of reconstructing our collective experience with, and understanding of, race and ethnicity. It is a process that can help RaceCrits and LatCrits reconstruct the meaning of race and ethnicity personally as well as intellectually, and from within - by and through the practices and principles that we choose to adopt and disseminate in critical coalitions to dismantle white supremacy and privilege. Our collective development of knowledge and community through nonwhite outsider jurisprudence can transform our experience of race and ethnicity, as well as our vision of these constructs in a post subordination society, and this reconstructive process is a form of Out Crit praxis that can help enlighten and empower all communities disfavored by the paradigm's predilection for whiteness.

Because the value of this shift, if properly handled, does in fact resonate within African American as well as other racialized communities - including Queer and Latina/o communities - this reformulation of the traditional paradigm underscores a basic but crucial point: antiracist transformation in a white-majority, white-controlled yet multicultural society depends in part on antisubordination collaboration built through critical recognition and mutual resistance of white power's multiple [*1315] manifestations. The engagement of ethnicity and the shift to the "white over Black" formulation of the traditional paradigm thereby may help substantively and discursively to bring us all closer to OutCrit per spectivity. These moves can help bring into focus the common yet varied antisubordination interests that spread across conventional lines of identity, theory and community.

Related to these moves are other possibilities and tensions that arise from LatCrit interventions in, and contributions to, the continuing evolution of nonwhite outsider jurisprudence. In just three years, for instance, LatCrit theory has helped to highlight in the context of nonwhite outsider jurisprudence the relevance of trans/nationality, language, culture and religion to "race" n156 and to the sociolegal processes of racialization. n157 These early and continuing contributions also call for critical appreciation of the antisubordination issues that spring from the cultural and economic relationships that historically and presently link domestic communities of color to their overseas kin. n158 These lessons therefore help to center in nonwhite outsider jurisprudence the global and international dimensions of domestic social justice agendas. n159

Perhaps most centrally, the emergence of LatCrit theory has prompted possibilities and tensions that implicate questions of structure, theory and community in the continuing development of nonwhite outsider jurisprudence. In fact, a key structural question that these essays raise is how the pending work of sharpening and advancing nonwhite outsider jurisprudence should be approached and conducted in the coming years. Or, more specifically, how LatCrit, RaceCrit and allied schol ars should design and create spaces and institutional structures to maximize our collective resources and antisubordination punch. In the context of nonwhite outsider jurisprudence, the question is how LatCrit theorists might work with RaceCrit and all other antisubordination theorists to craft critical coalitions that are both principled and potent.

[*1316]

B. Particularity, Solidarity and Outsider Jurisprudence: Re/imagining the Structures of Antisubordination

Of course, the future form, scope and direction of coalitionality through nonwhite outsider jurisprudence is a topic of fundamental importance, especially in light of our collective recent past. n160 As the comparative record sketched above strongly indicates, the varied experiments mounted by CRT, Queer and LatCrit in recent years jointly point to a

common lesson: decisions and actions regarding the means and models of convocation can affect profoundly the project of cultivating both a diversified discourse and a community grounded in outsider normativities and dedicated to antisubordination transformation. Whether we meet as critical legal scholars or not, or how and how often, will affect - for better or worse - the knowledge and community that we produce, as well as the conditions for the production of future knowledge and community. A baseline lesson that comparative experience should teach us all is that regularized meetings are a must - convocation is a predicate of collectivity and sustainability.

The question, therefore, really is not "if" but how, when, where and with whom we should or will meet - given our antisubordination purposes and antiessentialist principles. n161 The symposium essays discuss helpfully concrete suggestions of possible options. One, explored programmatically at LatCrit III, is reflected in the Roberts essay and its postulation of a BlackCrit subject position. n162 "We should think more about a BlackCrit Theory that develops a notion of a Black identity that is not rooted in biology," writes Roberts. n163 In this view, "BlackCrit" signifies a position from which to explore the ethnic and other diversities of Black communities in the United States, and of the ethnic and racial dis/continuities that dis/connect African Americans from the global diaspora of Black communities. n164 Ideally, then, BlackCrit theorizing progressively articulates Black particularities in intra- and inter group frameworks.

But the effort to articulate a BlackCrit position, Phillips warns, might veer into a form of "regressive Black nationalism" that would reject multidimensional approaches to antiracist projects, and that thereby would undermine our collective progress toward "resisting all [*1317] forms of oppression." n165 In effect, such a regression might seek to assert, this time intentionally and ideologically, lapses akin to those recorded in our collective experience with outsider jurisprudence. n166 "Without the discipline that would be provided by working with people who come from other subject positions, there would be a substantial danger that a black nationalist formation would degenerate into the regressive type," explains Phillips. n167

First, we should note that this concern over "regressive nationalism" is applicable, if at all, not only to African Americans, but also to Latinas/os and, probably, to other race/ethnicity groups as well. This point is aptly illustrated by the Johnson and Martinez essay, which describes nationalist moments in the evolution of Chicana/o studies that denied the relevance or salience of diversities and issues based on gender and sexual orientation. n168 This point is powerfully confirmed by Montoya's contribution to this symposium, which recounts the fitful history of Chicana/o studies in much the same spirit that this Afterword sketches a similar history among RaceCrits, QueerCrits and LatCrits. n169 Thus, the "discipline" provided by diversity is one of the safeguards that LatCrit has adopted, in part, for this reason. n170

But Phillips' concern underscores a basic point that merits our emphatic remembrance: the concrete interventions of nonLat LatCrits show that LatCrit today would be a very different phenomenon had we at the threshold conceived this project otherwise. Last year, at LatCrit [*1318] II, for instance, the self-critical eruption over religion and Latina/o religious essentialism arose initially from a nonLat participant, and then attracted a tremendous amount of attention from the Lats. n171 At LatCrit I and since then, as the essays of this symposium again illustrate, race/ethnicity exchanges have been immeasurably enriched by nonLat contributions. Thus, in addition to fostering more incisive exchanges and promoting a sense of community grounded in antisubordination commitment, LatCrit's diversification has provided a self-imposed, self-activating disciplinary mechanism that helps keep us grounded, critical and self-critical in the moments that count most - that is, in the moments when our idiosyncratic or situational limitations tend to lead us astray. When those lapses of self-awareness descend upon us, diversity's discipline is activated by the prompt interventions of others in the room that keep us collectively honest. These moments provide the epiphanies of coalitional method, and help to develop patterns of LatCrit praxis for possible application to other sociolegal arenas that, like outsider jurisprudence, require ongoing negotiation of intergroup relations.

Moreover, this record of diverse involvement in the conception and advancement of LatCrit theory suggests that coalitional method, guided by a purposeful sense of OutCrit perspectivity, can serve as devices for critical coalitions based on antisubordination purpose and antiessentialist analysis. Indeed, these diversified interventions and exchanges, and their impact on the collective LatCrit consciousness and written record, effectively have helped to set the stage for further outsider advances, and to foster the relationships and exchanges that might lead next or soon to OutCrit perspectivity among LatCrit and allied scholars. Perhaps the jurisprudential and experiential continuum that links RaceCrit to LatCrit can lead both genres of scholarship toward an "OutCrit" subject position n172 as the next step in our collective development of a progressive nonwhite outsider jurisprudence.

To Phillips, however, the primary question at this juncture is not theoretical but institutional; her concerns over regressive nationalism are raised more by the prospect of institutionalizing a "separate BlackCrit organization" than by theorizing or articulating a BlackCrit position in nonwhite outsider jurisprudence. n173 This emphasis on organization of course is absolutely warranted by comparative jurisprudential experience among RaceCrits, QueerCrits and LatCrits: our collective experience demonstrates that choices about structure are integral to the content of knowledge, discourse, and community, and confirms that questions of organization and institutionalization are integral to the project's long-term sustainability. More specifically, our collective experience suggests that the prospects of critical coalitions and OutCrit perspectivity similarly depend upon the choices we make now and in the future about structure, organization and institutionalization. n174

In effect, the self-reflective essays presented above call upon all RaceCrits and LatCrits to consider and decide collectively how we next should re/structure and re/articulate the advancement of nonwhite outsider jurisprudence in the United States with OutCrit perspectivity, through critical coalitions, and in light of our experiential record and its lessons. If past experience is any measure, that collective consideration will present both dangers and opportunities. It also will present tough issues of resources, human and otherwise, as well as ground rules and terms of engagement. To expand the possibilities, and to affirm Phillips' focus on convergence and advancement in outsider jurisprudence, this Afterward closes with a few tentative thoughts on the relationship of comparative jurisprudential experience to OutCrit perspectivity and critical coalitions.

C. Beyond Comparative Experience: A Progressive Jurisprudence of Color, Queer Positionality and OutCrit Perspectivity

The concerns over regressive nationalism that Phillips has raised, and their general relevance to other groups, call for critical skepticism of convocations delineated only or mostly by biologized notions of identity, including identities based on race and/or ethnicity. n175 Yet, the object of our critical and self-critical study remains the unjust uses and effects of culturally biologized notions of identity, including race and ethnicity. And because we value as a matter of method and substance personal familiarity with the sociolegal constructs or issues under scrutiny, we tend to look for guidance toward those in the room who embody, and know, those biologized yet socially constructed experiences. Substantively, then, biologized constructs are the focus of our collective critical study while, structurally, the participants in the project are multiply diverse - and therefore do not embody uniformly the biologized construct(s) under inspection. Thus rises a whole host of tensions, which can help to explain the surge in recent years of sameness/difference dilemmas within and across various categories of identification in outsider jurisprudence. n176 These tensions are unresolvable, yet manageable.

To begin with, we must consciously recognize and accept the tension and its sources. Structurally, this acceptance means that LatCrits and RaceCrits, as OutCrits, must persist in experimenting with rotating centers and structural diversity. n177 Substantively, this acceptance means that we increasingly must situate our scholarship in intra- and intergroup frameworks. n178 Given the world in which we live, subjecting particular biologized identities to critical scrutiny from diverse sociolegal perspectives, at once, is the collective and individual technique that our meetings and writings should perform. It is a technique that history, culture and experience counsel, and that usefully may be conceived as the basic approach to antisubordination analysis of OutCrit perspectivity.

OutCrit perspectivity thus conjures and embraces the "convergence chronicle" of the moment: the intersection of a progressive jurisprudence of color forged by RaceCrit and LatCrit labors, a jurisprudence that embraces the expansive and strident antisubordination stance of Queer positionality n179 as well as the Queer of color. OutCrit perspectivity therefore encapsulates the embrace of outsider sociolegal identification, the adoption of a critical intellectual posture toward all forms of subordination, and, recalling specifically our collective jurisprudential experience, a forthright rejection of straight privilege, all as integral to social justice. This subject position effectively can serve as a positive expression of principled resistance to regressive nationalisms, or apolitical essentialisms. n180 The OutCrit position, in short, is a subject position that encapsulates and reasserts the gains of the comparative record sketched above, and seeks to denote and connote the sense of mutual [*1321] convergence and collective advancement expressed in Phillips' account of our joint histories.

Adopting OutCrit perspectivity, of course, does not per se address the questions of institution-building that the Phillips and other self-reflective essays rightly raise. But adopting OutCrit perspectivity toward the project of institution-building can make a difference to the outcome we collectively produce. In considering Phillips' as well as others' institutional proposals n181 in the months and years to come, OutCrit perspectivity can foreground coalitional method in our collective approach to threshold questions of focus, diversity, community, resources and sustainability.

n182 The "OutCrit" subject position ought to be our point of departure for collective and critical engagement of the inevitable questions over process, scope, structure and substance that a RaceCrit and LatCrit institutional convergence would raise, because it evokes and invokes lessons learned from prior encounters with the same or similar issues. Whatever the institutional forms of the future might be, they ought to be crafted from a critical and self-critical assessment of comparative jurisprudential experience, and infused with the critical sensibility that here I denominate as OutCrit perspectivity, to help ensure that the future of a progressive nonwhite outsider jurisprudence is made ever sturdier by the lessons of our joint past.

Conclusion

The comparative survey outlined above illustrates how the CRT, Queer and LatCrit experiences in outsider legal scholarship converge and diverge in numerous significant ways, both substantively and structurally. In different ways and to different degrees, these outsider jurisprudential efforts strive similarly to: represent sociolegally marginalized viewpoints; espouse critical, egalitarian, progressive, antisubordination [*1322] projects; accept analytical and discursive subjectivity; recognize postmodernism; favor praxis; yearn for community. As this symposium demonstrates, the RaceCrit and LatCrit experiments, along with other outsider initiatives, have helped to yield the initial texts and basic commitments of a progressive jurisprudence of color, imagined and articulated by outsider scholars.

This comparative look at the jurisprudential experiences of RaceCrits, QueerCrits and LatCrits is motivated by the need to interconnect these (and other) lines of sociolegal inquiry and action through critical coalitions and antisubordination community in a legalistic and white-controlled society. And, conversely, this discussion of critical coalitions as antisubordination praxis takes place against the backdrop of social history, formative circumstances, and record of collective jurisprudential experience. Some day, this work may aid the efforts of a future generation to solve the problems that we have inherited, combat ted and sometimes exacerbated.

In the shorter term, the lessons we learn from past and present jurisprudential experience can help us to imagine and implement critical coalitions not only among OutCrit scholars specifically, but also among outgroups more generally. Even more broadly, this comparative look at the jurisprudential experiences of RaceCrits, QueerCrits and LatCrits can help interconnect not only outsider scholars with the current and future struggles of our larger communities but also help to interconnect the social justice quests of overlapping outgroups internationally. In short, a critical and self-critical assessment of comparative jurisprudential experience can help inform and refine antisubordination strategy in numerous ways and contexts. These experiences, and their lessons, can help set the stage for OutCrit perspectivity as a next step in the development of a progressive outsider jurisprudence. It is from this perspective that progressive legal scholars will be best positioned to engage the issues of structure, theory and community that face us today, to imagine in substantive terms the egalitarian postsubordination society for which we shall struggle together, and to fight collaboratively for its establishment based on antiessentialist principles of social justice for all.

FOOTNOTES:

n1. See, e.g., Kevin R. Johnson & George A. Martinez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship*, 53 *U. Miami L. Rev.* 1143 (1999). Cf. Margaret E. Montoya, *LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions*, 53 *U. Miami L. Rev.* 1119 (1999).

n2. See, e.g., Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 *U. Miami L. Rev.* 1177 (1999); Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 *U. Miami L. Rev.* 1247 (1999); Dorothy E. Roberts, *BlackCrit Theory and the Problem of Essentialism*, 53 *U. Miami L. Rev.* 855 (1999).

n3. For an early assessment of LatCrit "guideposts," see Francisco Valdes, *Foreword - Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self Empowerment*, in 2 *Harv. Latino L. Rev.* 1, 52-59 (1997) [hereinafter Valdes, Poised].

n4. See generally *id. at 55*.

n5. *Id.*

n6. See *infra* notes 133-140 and accompanying text.

n7. In this symposium, for instance, see *supra* note 2 and sources cited therein on intergroup identities and relations in LatCrit theory.

n8. See, e.g., Pat K. Chew, *Toward a Community of Critical Race Scholars: Racing to the Bottom <elip> Or What?*, in *Critical Race Theory: Histories, Crossroads, Directions* (Francisco Valdes, Angela P. Harris, Jerome McCristal Culp, Jr. eds. forthcoming 2000).

n9. See generally Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post Civil Rights America*, 95 *Mich. L. Rev.* 821 (describing color-on-color tensions and urging the importance of attending to them); see also Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, UCLA Asian Pac. Am. L.J. 33 (1995) (examining why minority racial groups practice or exploit white supremacy, and offering some solutions to this self-destructive phenomenon).

n10. In this sense, this process of self-reflection is akin to looking at "the bottom" of particular categories - our jurisprudential experiments, our larger outsider communities, and the legal academy. The message is that we must apply the work and lessons of outsider pioneers internally to the legal academy and to the projects or communities that we form both within and beyond it. See generally Elizabeth M. Iglesias & Francisco Valdes, *Afterword - Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 *UCLA Chicano-Latino L. Rev.* 503 (1998).

n11. Indeed, the entire record of outsider jurisprudence, including, most recently, LatCrit, is a prime example of this contestation. See generally Francisco Valdes, *Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality and Responsibility in Social Justice Scholarship*, 75 *Denv. U. L. Rev.* 1409, 1412, 1459-63 (1998) (emphasizing the importance of critical legal theory and praxis in a legalistic society, such as the one we inhabit) [hereinafter Valdes, *Beyond Sexual Orientation*].

n12. See generally Jerome McCristal Culp, Jr., *To the Bone: Race and White Privilege*, 83 *Minn. L. Rev.* 1637 (1999) (responding to recent attacks on outsider scholarship, in particular critical race theory, that question the efficacy and integrity of our collective work); see also *infra* note 61 and sources cited there for similar attacks.

n13. See *Mutua*, *supra* note 2.

n14. For two such examples, see *Critical Race Theory: The Cutting Edge* xiii-xvi (Richard Delgado ed., 1990); *Critical Race Theory: The Key Writings that Formed the Movement* xiii-xxvii (Kimberle Crenshaw et al. eds., 1995)(hereinafter cited as *Key Writings*). For another, more recent, account of CRT origins, see Sumi Cho & Robert Westley, *Historicizing Critical Race Theory's Cutting Edge: Key Movements That Performed The Theory*, in *Critical Race Theory: Histories, Crossroads, Directions*, *supra* note 8. For another recent historical

overview, see also Richard Delgado & Jean Stefanic, *Critical Race Theory: Past, Present and Future*, in *Current Legal Problems: Legal Theory at the End of the Millennium* 51 (Michael D.A. Freeman, ed., 1998).

n15. LatCrits should be proactive about nurturing a self-critical evolution of our collective endeavors precisely because the lessons of comparative jurisprudential experience are not limited to our immediate condition. On the contrary, comparative experience can provide lessons applicable to the larger set or intra- and intergroup issues that afflict these times. From the lessons of our comparative experiences LatCrit and allied scholars can and must extrapolate both inward and outward advances: inwardly, we must develop critical antisubordination coalitions through our collective jurisprudential experiments with knowledge and community and, outwardly, we must link the lessons of comparative experience to the current positions and strategies of the larger communities from which we hale. It would be foolish, after all, to imagine that the professorate of color in the legal academy is unique in our relationship to the intra- and intergroup experiences, issues and aspirations that pervade our communities and this society. Thus, among the longer- term tasks that this Afterword pursues is the linkage of comparative jurisprudential experience to outsider antisubordination struggles more generally; this Afterword ideally represents one step toward critical use of the lessons embedded in our experience to help our selves and communities to build a better politics of critical coalitions as part of our collective antisubordination strategies. But, necessarily, the first step toward this process of linkage is to begin with ourselves - to elucidate and learn from the experiments and lessons explored below - which is where this Afterword begins. See generally Iglesias & Valdes, *supra* note 10 (urging critical as well as self- critical analysis in the articulation of LatCrit theory).

n16. For critical reflections of "inward" turns in outsider jurisprudence, see Richard Delgado, *The Inward Turn in Outsider Jurisprudence*, 34 *Wm. & Mary L. Rev.* 741 (1993).

n17. By "critical coalitions" I mean alliances based on a thoughtful and reciprocal interest in the goal(s) or purpose(s) of the coalition. A critical coalition is the sort of collaborative project that results from a careful and caring commitment to the substantive reason(s) for it, and produces on all sides a reformatory agenda and cooperative dynamic that reflects this mutual commitment. A critical coalition is based not simply on a fortuitous or temporary convergence of interests but, rather, on a critical and self-critical commitment to antisubordination principles and practices - which must be applied and respected both inwardly (in the operation of the coalition) as well as outwardly (toward the dismantlement of external structures of oppression). Thus, critical coalitions are grounded first and foremost in a conscious and consistent effort to establish a postsubordination order based on a substantive and progressive vision of such a society. See Francisco Valdes, *Outsider Scholars, Legal Theory and OutCrit Perspective: Postsubordination Vision as Jurisprudential Method*, 49 *De Paul Law Rev.* 3 (forthcoming 2000) [hereinafter Valdes, *Outsider Scholars*].

n18. See *infra* note 167. The proceedings of the "LatCrit I" conference appear in *Symposium, LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 *Harv. Latino L. Rev.* 1 (1997). Prior to that conference, a colloquium was held in Puerto Rico, in 1995, devoted to a discussion of Latinas/os in and within CRT. The proceedings of that colloquium appear in *Colloquium, Representing Latina/o Communities: Critical Race Theory and Practice*, 9 *La Raza L.J.* 1 (1996). Since then, the proceedings of another colloquium, on LatCrit theory and human rights, held in Miami in 1996, and of LatCrit II, held in San Antonio in 1997, have been have appeared, respectively, in *Colloquium, International Law, Human Rights and LatCrit Theory*, 28 *U. Miami Inter-Am. L. Rev.* 177 (1997) and in *Symposium, Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 *UCLA Chicano-Latino L. Rev.* 1 (1998). In addition to these conference-based publications, one LatCrit symposium was published jointly by the *California Law Review* and *La Raza Law Journal*. See *Symposium, LatCrit Theory: Latinas/os and the Law*, 85 *Cal. L. Rev.* 1087 (1997), 10 *La Raza L.J.* 1 (1998). Upcoming LatCrit symposia also include the proceedings of LatCrit IV, slated to appear as *Symposium, Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, *U.C. Davis L. Rev.* (forthcoming 1999) and the proceedings of LatCrit V, slated for publication in the *Denver University Law Review*. Most recently, *The Michigan Journal of Race and Law* and the *Michigan*

Journal of Law Reform similarly have decided to publish jointly an independent symposium, tentatively titled *Class, Culture and Color in LatCrit Theory: Activating Multidimensionality in Outsider Jurisprudence*.

n19. Thus, from the outset, and as discussed below, LatCrit theorists have devoted themselves to mindsets and methods calculated to cultivate critical coalitions along both intragroup and intergroup axes. LatCrit theory has dedicated itself not only to centering "Latinas/os" in legal and public discourse, but also to cultivating intragroup coalitional projects among multiply diverse Latinas/os. At the same time, LatCrit has endeavored to situate analyses of the "Latina/o" within intergroup histories and frameworks as a conscious effort to build critical coalitions with other outsider groups and scholars. See generally *infra* notes 107-115 and accompanying text.

n20. See Valdes, *Outsider Scholars*, *supra* note 17.

n21. The "OutCrit" denomination is an effort to conceptualize and operationalize the social justice analyses and struggles of varied and overlapping yet "different" subordinated groups in an interconnective way. By "OutCrit" I thus mean (at least initially) those scholars who identify and align themselves with outgroups in this country, as well as globally. Therefore, among them are the legal scholars who in recent times have formed the experiments that this Afterword considers - CRT, Queer, and LatCrit legal discourses - as well as scholars who have launched other lines of critical inquiry within legal culture, including critical race feminism and feminist legal theorists. But by "OutCrit" I mean additionally an embrace of multidimensional approaches to all antisubordination theory and praxis, including specific projects that might be focused principally on antiracist, antisexist and antihomophobic objectives. I mean a personal and proactive, as well as intellectual and collective, embrace of the historic and unfinished struggles against the interlocking legacies of white, Anglo, male and straight supremacies. In the converse, I mean a principled, concurrent and actual rejection of narrow and regressive nationalisms, or essentialisms, based unidimensionally on race, ethnicity, gender, sexual orientation or other single-axis categories of affinity or identification. Fundamentally, "OutCrit" signifies a position of multidimensional struggle against the specific kinds of racist, nativist, sexist and homophobic ideologies and elites that combine to produce and perpetuate Euroheteropatriarchy. See generally Francisco Valdes, *Unpacking Hetero-Patriarchy: Tracing the Conflation on Sex, Gender and Sexual Orientation to Its Origins*, 8 *Yale J.L. & Hum.* 161 (1996) (describing some of the sex/gender and sexual orientation norms that underlie and animate androsexism and heterosexism to produce the patriarchal form of homophobia - heteropatriarchy - that still prevails in Euroamerican societies, including the United States, today). OutCrit positionality, in short, is framed around the need to confront in personal, collective and coordinated ways the mutually-reinforcing tenets and effects of the sociolegal forces that currently operate both domestically and internationally under Euroheteropatriarchy. See generally Valdes, *supra* note 17.

n22. The term "outsider jurisprudence" is Professor Mari Matsuda's. See Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 *Mich. L. Rev.* 2320, 2323 (1989).

n23. For demographic portraits of Latina/o heterogeneity, see, e.g., Berta Hernandez-Truyol, *Buidling Bridges - Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 *Colum. Hum. Rts. L. Rev.* 369 (1991); Gloria Sandrino-Glasser, *Los Confundidos: De- Conflating Latinos/as' Race and Ethnicity*, 19 *UCLA Chicano-Latino L. Rev.* 69, 75-77 (1998).

n24. 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); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 *Women's Rts. L. Rep.* 7 (1989).

n25. See, e.g., Valdes, *Poised*, supra note 3, at 58 ("It is plain that LatCrit theory emerges not only from the need to center Latinas/os' identities, interests and communities in critical legal discourse, but from the analytical and conceptual paths imprinted by critical race theory <elip> LatCrit theory is closely related to, and affirmatively should ally itself with" CRT.); see also Francisco Valdes, *Foreword - Latina/o Ethnicities, Critical Race Theory, And Post-Identity Politics In Postmodern Legal Culture: From Practices To Possibilities*, in *9 La Raza L.J. 1, 26- 27 (1996)* ("LatCrit theory is supplementary, complementary, to critical race theory. LatCrit theory, at its best, should operate as a close cousin - related to [CRT] in real and lasting ways <elip> 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.").

n26. Even though the relationships of LatCrit to feminist legal theory and critical white studies are not the focus of this Afterword, it bears emphasis that, among the scholars I think of in making this statement, are the scholars who identify principally with those categories, and who from the beginning have attended and participated in LatCrit conferences, including FemCrits (and, of course, also RaceFemCrits). See, e.g., 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. 473 (1997)*; Barbara J. Cox, *Coalescing Communities, Discourses and Practices: Synergies in the Antisubordination Project*, *2 Harv. Latino L. Rev. 473 (1997)*; Stephanie M. Wildman, *Reflections on Whiteness and Latina/o Critical Theory*, *2 Harv. Latino L. Rev. 307 (1997)*. In this symposium, the contributions of scholars like William Bratton, Drucilla Cornell and Catherine Wells continue this practice. Thus, this Afterword's triangular focus on RaceCrit, QueerCrit and LatCrit experiences is not intended to slight the importance of feminist (or other) issues and scholars in the conception and development of LatCrit theory. Rather, as noted in the text immediately below, this focus simply reflects the limitations of my knowledge and experience in outsider jurisprudence. See infra notes 30-40 and accompanying text.

n27. See, e.g., e. christi cunningham, *The Rise of Identity Politics I: The Myth of the Protected Class in Title VII Disparate Treatment Cases*, *30 U. Conn. L. Rev. 441 (1998)* (on wholism); Hernandez-Truyol, supra note 23 (on multidimensionality); Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, *29 Conn. L. Rev. 561 (1997)* (on multidimensionality); Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, *48 Hastings L.J. 1257 (1997)* (on cosynthesis); Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminaitons on Identities and Inter-Connectivities*, *5 So. Cal. Rev. L. & Women's Stud. 25 (1995)* (on interconnectivity).

n28. At the same time, this substantive belief in the analytical and discursive value of coalitional method is underscored by the political exigencies of cultural war: born in 1995, LatCrit theory, in its brief lifespan to date, has never known a time not marked by backlash lawmaking. See generally Valdes, *Beyond Sexual Orientation*, supra note 11, at 1426-54 (analyzing cultural war and backlash lawmaking). This formative circumstance no doubt has influenced the LatCrit preference for critical coalitions: given that minoritized outgroups are not only marginalized structurally but also outnumbered in this country, our sources of intellectual and political strength must include ourselves as well as our situational kin.

n29. 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 CRT in an American law review). Two recently-released book anthologies provide good compilations of the literature. See Delgado, supra note 14; *Key Writings*, supra note 14. Even though CRT is a "movement" that comprises many voices and viewpoints, I discuss it as a collectivity in this Afterword for the sake of simplicity. In doing so I recognize that my description may gloss over some particularities that may be

deemed relevant to this discussion. My effort will be to provide a general account that avoids, or keeps to a minimum, that possibility.

n30. For discussion of the term "Queer" as used in this Afterword, see *infra* notes 78-81 and accompanying text.

n31. The lessons to be drawn from a comparative and self-critical contemplation of RaceCrit, QueerCrit and LatCrit experiences can help all OutCrit scholars not only to better understand the context of this moment, but also may lead to a richer sense of connection, collaboration and community among and across all OutCrits and outgroups. See *supra* note 21. As indicated above, my hope and purpose in preferring OutCrit perspectivity as a common position from which to articulate particularity within a progressive outsider jurisprudence thus are both substantive and strategic. Ideally, a broader identification as "OutCrits" among RaceCrits, QueerCrits, LatCrits, FemCrits and other outsider legal scholars will enhance our mutual understanding of the needs and goals that must underpin critical antistatist coalitions among and between us. See *supra* note 21.

n32. This multi-year project began with 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) [hereinafter Valdes, *Queers, Sissies*].

n33. After accepting the invitation to participate in the Sixth Annual CRT Workshop, in 1994, I served on the planning committee for the seventh workshop, co-chaired the eighth, and helped produce the programming for the ninth - perhaps destined to be the last workshop of the series based on the original model. As this Afterword indicates, my involvement in Queer and LatCrit legal scholarship is informed by the lessons I've drawn from CRT, both its texts and its workshops. In great measure, my involvement in Queer and LatCrit projects can be understood as a critical application of basic lessons I drew from my readings of, participation in, and experience with, CRT during the second half of its first decade. Though my jurisprudential outlook always has been critically comparative, I have tried to apply the lessons I learned from CRT both to it and to my Queer and LatCrit projects.

n34. CRT's earliest proponents initiated a series of small summer workshops held every year in a different location. See generally Phillips, *supra* note 2, at 1248-50. This series was an approach to antistatist theorizing and community-building that still inspire OutCrits today, as the regional people of color conferences, the Asian law professor conferences and the LatCrit conferences show. As elaborated below, the workshop series also was the site for much of CRT's first-decade growing and learning pains. See *infra* notes 68-73 and accompanying text. That series continues to contain many of the experiences and lessons explored here in relationship to LatCrit and its forms of convocation.

n35. See generally Cho & Westley, *supra* note 14.

n36. That first generation invented CRT and infused it with a focus of social transformation that from inception gave CRT its sharp political edge. See *supra* note 14 and sources cited therein on CRT's origins and early consciousness.

n37. This generational unfolding was the topic of the first plenary session of the Eighth Annual CRT Workshop, held in Washington, D.C. in 1996, which was devoted to a critical discussion of CRT's history. The panel included presentations by Stephanie Phillips and Elizabeth Patterson, who were present at the first and

other early summer workshops. For further discussion of the workshops, see *infra* notes 68-73 and accompanying text.

n38. As the tenth anniversary conference held at Yale Law School in 1997 illustrates, CRT did that, and more. For the collection of essays based on that conference, see *Critical Race Theory: Histories, Crossroads, Directions*, *supra* note 8.

n39. See, e.g., *supra* note 14 and sources cited therein on early accounts of CRT.

n40. This continuing omission is unhealthy for all OutCrits, for it deprives the growing ranks of outsider scholars a crucial resource: a rich well of experiential or "institutional" memory that is ongoing and that can aid outsider scholars, including LatCrits, progressively to refine and reiterate our work, both internally and externally, as antisubordination praxis. This omission foregoes the opportunity to revisit and refine the lessons of those times to help create conditions that may better conduce egalitarian solidarity through critical coalitions both within and beyond any particular subject position. Engaging these lessons critically and constructively ideally may help LatCrit and other OutCrit scholars contextualize pending jurisprudential issues and pursue elusive shared hopes.

n41. See, e.g., *Key Writings*, *supra* note 14, at xiii (describing CRT's social justice goals to "understand" and "change" racial hierarchy and law's complicity in it); see also *id.* at xxv (describing CRT's mission as discerning "how law constructed race" as a device and form of group hierarchy).

n42. For instance, prior to CRT's emergence, the legal scholarship of race and equality was dominated by, if not limited to, a handful of liberal, white, male, (and apparently heterosexual) modernists. See Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 *U. Pa. L. Rev.* 561 (1984); Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later*, 140 *U. Pa. L. Rev.* 1349 (1992).

n43. See generally Harris, *supra* note 29, at 745-66 (describing the tensions within CRT caused by its pursuit of modernist ideals like "equality" in light of its postmodern skepticism).

n44. Critical race feminists, and especially African American feminist theorists, account for much of CRT's early power and insight, including the development of advances like intersectionality, multiplicity and antiessentialism. For a representative sampling of foundational works by African American and other critical race feminists on these and similar concepts, see *supra* note 24 and sources cited therein on intersectionality and multiplicity; see also 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; Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 *Harv. C.R.-C.L. L. Rev.* 401 (1987); see generally *Critical Race Feminism: A Reader* (Adrien Katherine Wing ed., 1997).

n45. CRT arose during an era of retrenchment in civil rights policies and equality jurisprudence. See generally Kimberle W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 *Harv. L. Rev.* 1331 (1988) (critiquing juridical and political retrenchment during the 1980s). That era of retrenchment in more recent years has escalated to full-blown cultural war. See Valdes, *Beyond Sexual Orientation*, *supra* note 11, at 1426-43; see generally Sylvia R. Lazos Vargas, *Judicial Review of Initiatives and Referendums in Which Majorities Vote on Minorities' Democratic Citizenship*, 60 *Ohio St. L.J.* 402 (1999).

n46. According to Phillips, this reluctance began at the very first workshop, and it continued to plague the workshop annually thereafter. See Phillips, *supra* note 2, at 1249-50.

n47. The reluctance to enter sexual orientation intersections is evinced by the published discourse, which fails generally to express any explicit recognition of sexual orientation diversity within communities of color. It also is evinced by the query that has been posed at the annual CRT summer workshops from their very inception: "What has sexual orientation got to do with race?" See Valdes, Foreword - Latina/o Ethnicities, *supra* note 25, at 6. This query of course overlooks the intersection of minority race and minority sexuality, an odd oversight for a discourse otherwise more sensitive to intersectionality. For original analyses of race and gender intersectionality, see Crenshaw, *supra* note 24 (developing intersectional analysis and applying it to race and gender).

In addition to Phillip's account in this symposium, oral histories report that openly gay or lesbian scholars of color have been present at every summer workshop, and that they endeavored since then to introduce "race and sexual orientation" as an intersectional issue for workshop attention. Yet my personal experience, and the accounts that others have shared with me over the years, indicate that open acknowledgment and programmatic discussion of sexual orientation issues typically has triggered opposition and controversy within the workshop. Some gay or lesbian scholars of color consequently discontinued attendance. In recognition of this oppressive and exclusionary pattern, the Sixth Annual CRT Workshop, held in Miami in 1994, included for the first time a plenary session on sexual orientation and race. Peter Kwan and I selected, distributed and presented the reading materials for that programmatically unprecedented and wrenching discussion. Afterward, the summer workshops included sexual orientation in the program every year, with a general consensus of incremental but touchy headway. For further discussion of the CRT summer workshops, see *infra* notes 68-73 and accompanying text.

n48. See Darren Lenard Hutchinson, Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Antiracist Politics, *47 Buff. L. Rev. 1* (1999). More generally, developmental circumstance clearly affected CRT's formation. See, e.g., Key Writings, *supra* note 14, at xxiv-xxv (describing early responses to CRT and the racialist "reductionism" attributed to some of its "foundational essays," which may be a reflection of the "context and conditions of their production" during CRT's nascency); see generally 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. 1293, 1315-18* (1997) [hereinafter Valdes, Queer Margins] (reviewing some strengths and weaknesses of sexual minority legal discourse and considering similar developmental circumstances as they relate to the corresponding failure of lesbian and gay legal scholarship to take up the role of race and ethnicity in the law, theory and politics of "sexual orientation" discrimination).

n49. I thank Jerome Culp for this insight and vocabulary.

n50. And, it bears emphasis that these harms affect both members of the sexual majority as well as members of sexual minorities, both as groups and as individuals. See generally Homophobia: How We All Pay the Price (Warren J. Blumenfeld ed., 1992); Suzanne Pharr, Homophobia: A Weapon of Sexism (1988).

n51. The relevance of this paradigm both within and beyond CRT has been addressed by various scholars. See, e.g., Celina Romany, Gender, Race/Ethnicity and Language, *9 La Raza L.J. 49* (1996) (discussing how CRT has "concentrated on white-Black racism" in domestic race relations, giving CRT a flavor of North American "localism"); see also Harris, *supra* note 29, at 775 (discussing how "African American experiences have been taken as a paradigm for the experiences of all people of color").

n52. For a critical analysis of the "Black/White paradigm" and its role in the legal history of civil rights in this country, see Juan F. Perea, *The Black/White Binary Paradigm of Race: The 'Normal Science' of American Racial Thought*, 85 *Cal. L. Rev.* 1213, 1239-52 (1997). For recent calls to multicultural analyses, see 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); see also Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 *Cal. L. Rev.* 1241 (1993) (calling for an expanded race discourse that cognizes Asian American particularities); 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. Rev.* 395 (1993) (focusing on the category "women of color" to articulate this sort of expanded, intersectional analysis); 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 and various groups of people).

n53. See *Mutua*, supra note 2, at 1188.

n54. See *Roberts*, supra note 2, at 861.

n55. These issues, as the *Mutua* and *Roberts* essays illustrate, range from the role of Blackness and the value of Black-specific critiques in a postbinary discourse, as well as the prospects of such a discourse helping to ameliorate intergroup tensions and racial justice. See *Mutua*, supra note 2; *Roberts*, supra note 2.

n56. The account provided in the *Phillips* essay suggests that ethnicity's engagement was more ephemeral than it was ambivalent, though my own experience suggests to me that it was both. See *Phillips*, supra note 2, at 585-90. This engagement also did not lead to a sustained effort to transcend the dichotomy of the "domestic" and the "international" in antisubordination analysis. See, e.g., Elizabeth M. Iglesias, *Out of the Shadow: Marking Intersections in and Between Asian Pacific American Critical Legal Scholarship and Latina/o Critical Theory*, 40 *B.C.L. Rev.* 349; 19 *B.C. Third World L.J.* 349 (1998) [hereinafter *Iglesias, Out of the Shadow*] (centering international relations and transnational identities in developing a collaborative critical theoretical agenda beyond the Black/White paradigm).

n57. See *infra* notes 142-156 and accompanying text. This move to multilateral, rather than bilateral, critiques of race relations additionally is counseled by the existence of outgroup tensions, which can impede all social justice struggles. See supra note 9 and sources cited therein describing the importance of intergroup justice in antisubordination struggles.

n58. The ethnicity lapse was promptly disclaimed, with a programmatic follow-up the next year, while the sexual orientation avoidance was prolonged for years. It took "an excruciatingly long time for the Critical Race Theory Workshop to reflect a strong stance against heterosexism." *Phillips*, supra note 2, at 1251.

n59. It bears mention that this failure is reciprocal; gay and lesbian legal scholarship similarly seems to assume that sexual minorities are constitutionally white (and middle class). This assumption has drawn a racial critique of this assumption and its analytical shortcomings. I describe this critique as "internal" in the sense that it emanates from within lesbian and gay legal scholarship and is articulated by scholars writing from a sexual minority subject position. See, e.g., Hutchinson, supra note 27, at 585-90 (analyzing the relevance and class to lesbian and gay politics and legal discourse); Darren Rosenblum, *Queer Intersectionality and the Failure of Recent Lesbian and Gay 'Victories*, 4 *Law & Sexuality* 83 (1994) (questioning the transformative value of progress on selected current issues for sexual minority subgroups, including the trans/bi-gendered); Eric Heinze,

Gay and Poor, 38 *How. L.J.* 433 (1995) (focusing on the intersection of poverty and same-sex orientation); see also Valdes, *Queer Margins*, supra note 48, at 1297 n.12 and additional sources cited therein (discussing similar shortcomings in sexual orientation legal scholarship).

n60. For the foundational critique of "unconscious" racism and its present effects, see Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 *Stan. L. Rev.* 317 (1987).

n61. For an overview of attacks on outsider employment of narrative in legal scholarship and related aspects of CRT's interventions in legal discourse, see Valdes, *Foreword - Latina/o Ethnicities*, supra, note 25, at 2 n.3. These attacks have gone so far (afield) as to connect antisubordination legal theory, including CRT, with antisemitism. See Daniel A. Farber & Suzanna Sherry, *Is the Radical Critique of Merit Anti-Semitic*, 83 *Cal. L. Rev.* 853 (1995). More recently, these attacks have extended into the popular media, outlandishly imputing to CRT the spectacle (and verdict) of the Simpson murder trial. See, e.g., Jeffrey Rosen, *The Bloods and the Crits: O.J. Simpson, Critical Race Theory, the Law and the Triumph of Color in America*, *New Republic*, Dec. 9, 1996, at 27. For a very recent analysis of this campaign to delegitimize CRT specifically and nonwhite outsider jurisprudence more generally, see Culp, supra note 12.

n62. See, e.g., Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 *Harv. L. Rev.* 1745 (1989). For rejoinders, see *Colloquy, Responses to Randall Kennedy's Racial Critiques of Legal Academia*, 103 *Harv. L. Rev.* 1844 (1990); see also Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 *Va. L. Rev.* 539 (1991); 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).

n63. See, e.g., *Key Writings*, supra note 14, at xiv-xvii (describing CRT's relationship to the Civil Rights era). For a general legal account of the Civil Rights Movement, see Mark V. Tushnet, *The NAACP's Legal Strategy Against Segregated Education, 1925-1950* (1987).

n64. See *Key Writings*, supra note 14, at xvii-xxvii (discussing the CLS/CRT relationship). See generally *Symposium, Critical Legal Studies*, 36 *Stan. L. Rev.* 1 (1984) (collecting various CLS works). CLS was the most proximate jurisprudential precursor to CRT; CRT was formed in part as a result of events during a CLS conference, which included a confrontation between scholars of color and white scholars regarding race within CLS. See *Key Writings*, supra note 14, at xxiii-xxvii (describing the moment of rupture but noting a basic sense of continuing political affinity); see also *Symposium, Minority Critiques of the Critical Legal Studies Movement*, 22 *Harv. C.R.-C.L. L. Rev.* 297 (1987) (presenting the works that explain why minority scholars broke with CLS).

n65. See generally Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 *Harv. L. Rev.* 518 (1980). This divergence, and its consequences, are alarming from a CRT perspective because CRT is not satisfied with the atomized liberal conceptions of privilege and prejudice, nor with the liberal antidiscrimination solution of formal equality. CRT views power and subordination to be structural, rather than atomized, and it seeks material transformation, rather than formal or marginal reform. See generally *Key Writings*, supra note 14, at xvi-xxx (describing CRT's critical stance toward racialization in American law and society); see also Harris, supra note 29, at 759-84 (describing similar points relating to modernism and postmodernism); 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) (urging scholars of color to resist ahistoricism to avoid irrelevancy). For further description of the early CRT mindset, 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). For similar or allied analyses, see Alan D. Freeman, *Legitimizing Racial*

Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine, in *62 Minn. L. Rev.* 1049 (1978); Gary Peller, *Race Consciousness*, 1990 *Duke L.J.* 758 (1990).

n66. See Key Writings, *supra* note 14, at xxvii (explaining that, "A thorough mapping of Critical Race Theory must <elip> include a discussion of the role of community-building among the intellectuals who are associated with it.").

n67. See, e.g., *Critical Race Theory: Histories, Crossroads, Directions*, *supra* note 8. The related works of critical race feminists are featured in *Critical Race Feminism: A Reader*, *supra* note 44.

n68. In addition to relying on the Phillips essay, this account is based both on personal experience and on oral histories, including the 1996 presentations on early CRT workshops. See *supra* note 37; see also Key Writings, *supra* note 14, at xxvii (describing workshop origins).

n69. During the 1980s, the academy was diversified along several identity axes, which made more evident the "rainbow" of colors that constituted the nonwhite population and professorate. For a critical discussion of these changing demographics, and their relationship to CRT and race-conscious student activism during the 1980s, see Cho & Westley *supra*, note 14.

n70. Phillips, *supra* note 2, at 1251-53.

n71. See *supra* notes 51-57 and accompanying text.

n72. Of course, this annual experience was not constant, and Phillips' account also makes that clear in her recounting of the ethnicity story. See Phillips, *supra* note 2, at 1252. Instead, over the years, the planning and configuration of the workshops brought together different mixes of varied viewpoints on various intersectional issues, which in turn produced different workshop experiences from year to year. Some years, therefore, were "better" than others - that is, in some years more than others the workshop planners and participants strove consciously to recognize and use as a source of strength the legal academy's changing demographics and CRT's correspondingly expanded intersectional frontiers.

n73. See Phillips, *supra* note 2, at 1251.

n74. I thank Jerome Culp for this wording.

n75. See *supra* notes 46-57 and accompanying text.

n76. The antiessentialist commitment describes a refusal to homogenize units of analysis into a false monolithic experience devoid of factors such as history, context, particularity and power. CRT's antiessentialist foundation has been secured primarily by women of color writing from a CRT perspective. For instance, both Kimberle Crenshaw and Angela Harris have questioned the reluctance of both antisexist and antiracist discourse to interrogate the intersection of race and gender. See Crenshaw, *supra* note 24; Harris, *supra* note 24. This critique has been questioned vigorously by some feminist legal scholars. See, e.g., Catherine Mackinnon, *From*

Practice To Theory, or What Is a White Woman Anyway?, 4 *Yale J.L. & Feminism* 13 (1991)(responding to Harris).

Similar antiessentialist points have been raised about sexual orientation by lesbian feminists. See, e.g., Elvia R. Arriola, Gendered Inequality: Lesbians, Gay Men, and Feminist Legal Theory, 9 *Berkeley Women's L.J.* 103 (1994) (questioning feminist categories around sex, gender and sexuality); Patricia A. Cain, Feminist Jurisprudence: Grounding the Theories, 4 *Berkeley Women's L.J.* 191 (1989-90) (critiquing the invisibility of minority sexual orientations in feminist analyses of law). More recently, a similar questioning has been trained on the race essentialism of gay and lesbian legal scholarship. See, e.g., Hutchinson, *supra*, note 27. Cf. Patricia A. Cain, Lesbian Perspective, Lesbian Experience, and the Risk of Essentialism, 2 *Va. J.L. & Pol'y* 43 (1994) (arguing for an unmodified, if temporary, critique of the "lesbian" condition).

The antisubordination commitment describes a postliberal insistence on substantive and structural "equality" that is meaningful to those who live oppression daily, rather than simply formal equality. See, e.g., Key Writings, *supra* note 14, at xiv-xx (juxtaposing liberal and CRT views of racial justice); Lawrence, *supra* note 52, at 824-39 (focusing on racism as a "substantive societal condition" and urging that analysis be aimed on the actual transformation of such conditions); Mari Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 *Harv. C.R.-C.L. L. Rev.* 323 (1987) (urging that scholars "look to the bottom" - focus on the subordinated - to ground theory, making outsider jurisprudence socially meaningful and practically relevant).

n77. See Crenshaw, *supra*, note 24 (on intersectionality); Harris, *supra*, note 24 (on multiplicity).

n78. CRT scholars repeatedly have noted the importance of recognizing the interlocking nature of power hierarchies and social conditions. See, e.g., Charles R. Lawrence, III, The Word and the River: Pedagogy as Scholarship as Struggle, 65 *S. Cal. Rev.* 2231 (1992) (emphasizing the interconnectedness of teaching, theory and politics in the creation of substantive, enduring change); Mari J. Matsuda, Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition, 43 *Stan. L. Rev.* 1183, 1189 (1991) (urging antisubordination analyses to "ask the other question" as a means of theorizing across single-axis group boundaries).

n79. Queer legal theory describes a subject position that seeks to dismantle straight supremacy in law and society, and to oppose its mutually reinforcing interactions with other forms of oppression, including white supremacy and male supremacy. For one account of "Queer legal theory," see Valdes, Queers, Sissies, *supra* note 32, at 344-77. Various recent publications attest to the proliferation of this identification. See, e.g., Symposium, More Gender Trouble: Feminism Meets Queer Theory, 6 *Differences* 1 (1994); Symposium, Queer Subjects, 25 *Socialist Rev.* 1 (1995); Symposium, Queer Theory/Sociology: A Dialogue, 12 *Sociological Theory* 166 (1994); see also Valdes, *supra*, at 348 n.1231 (providing additional sources on Queer discourse). As with CRT and other jurisprudential communities, this movement is multiply diverse. I therefore discuss it here as a collectivity while understanding that generality of discussion necessarily tends to oversimplify. My aim is to minimize this effect as relevant to the purpose and scope of this Afterword. See *supra* note 29.

n80. LatCrit theory is the subject position that centers multiply diverse "Latinas/os" in social and legal discourse. Seeking solidarity with CRT, LatCrit theory strives to connect critiques of the Latina/o condition to other experiences and forms of subordination. See Valdes, Poised, *supra* note 3, at 56-59. LatCrit theory remains an embryonic enterprise, and it thus bears emphasis at the outset that its summary description in this Afterword is limited by the brevity of its record. As with CRT and Queer legal theory, I discuss LatCrit theory as a collectivity for simplicity's sake, even though I recognize that doing so can elide variety within the collective. See *supra* notes 29 and 79.

n81. Anonymous Queers, Queers Read This (1990), reprinted in *Lesbians, Gay Men and the Law* 45-47 (William B. Rubenstein, ed., 1993). The "Queer" subject position therefore is not limited to persons or groups who identify or are identified as sexual minority members, though at the present a substantial overlap does exist

between "Queer" and persons with minority sexual orientations. See generally Valdes, *Queers, Sissies*, supra note 32, at 354-56 (describing the relationship of minority and majority sexual orientations to Queer positionality).

n82. Although the "Queer" reclamation stands for expansive and egalitarian antisubordination consciousness, it sometimes has been operationalized as a white and male force, which has caused some hesitation about the capacity of a "Queer" movement to practice "Queer" ideals. With this caveat, and a few others, in mind, it nonetheless seems that Queerness is a valuable construct: it provides an apt set principles to guide discourse and politics toward the practice of the posited ideals. See Valdes, *Queers, Sissies*, supra, note 32, at 360-75 (discussing reservations about Queerness, urging the net value of the construct, and offering some thoughts on Queer methods and objectives).

n83. Lesbian legal theorists have pushed sexual minority legal discourse to be intersectional with regard to gender, class and race. See, e.g., Mary Eaton, *Homosexual Unmodified: Speculation on Law's Discourse, Race and the Construction of Sexual Identity*, in *Legal Inversions: Lesbians, Gay Men and the Politics of Law* 47 (Didi Herman & Carl Stychin, eds., 1995); Isabelle R. Gunning, *Stories from Home: Tales From the Intersection of Race, Gender and Sexual Orientation*, 5 *S. Cal. Rev. L. & Women's Stud.* 143 (1995); Cynthia Peterson, *Envisioning a Lesbian Equality Jurisprudence*, in *Legal Inversions*, supra at 118; Ruthann Robson, *To Market, To Market: Considering Class in the Context of Lesbian Legal Theories and Reforms*, 5 *S. Cal. Rev. L. & Women's Stud.* 173 (1995).

n84. *Sexual Preference and Gender Identity: A Symposium*, 30 *Hastings L.J.* 799 (1979).

n85. See Valdes, *Queer Margins*, supra note 48, at 1301-11 (summarizing the development of sexual orientation legal scholarship since the 1979 symposium).

n86. In the past two years an internal critique of gay and lesbian legal scholarship has emerged, urging a more wide-ranging embrace of intersectional antisubordination analyses in this discourse. See supra note 59 and sources cited therein critiquing the overall failure of lesbian and gay legal scholarship to engage intersectional issues, especially those regarding color and class. Helping to rectify this neglect two law reviews recently held "intersexional" symposia on sexual orientation and law. See infra note 90 and symposium sources cited therein.

n87. See Valdes, *Queer Margins*, supra note 48, at 1301-19 (discussing recent or current agendas of sexual orientation scholars and activists, and some developmental circumstances that may help explain the contents and priorities of those agendas).

n88. See Hutchinson, supra note 27.

n89. For a brief description of the workshops, see supra notes 68-72 and accompanying text; see also *Key Writings*, supra note 14, at xxvii (describing the community-building aspects of these annual CRT gatherings). Since its formative years, feminist legal discourse similarly has included regular gatherings designed to foster the formation of scholarly exchanges, texts and communities. See generally *At the Boundaries of Law: Feminism and Legal Theory* (Martha A. Fineman & Nancy S. Thomadsen eds., 1991).

n90. As noted above, the first of these was in 1979 by the *Hastings Law Journal*. See supra note 84 and accompanying text. Interestingly, the *Hastings Law Journal* in 1997 also became the first law review to hold a

second symposium devoted to sexual orientation, a symposium that also is the first-ever devoted to sexual orientation and "intersexionalities." See Symposium, *Intersexions: The Legal and Social Construction of Sexual Orientation*, 48 *Hastings L.J.* 1101 (1997); see also Symposium, *InterSEXionality: Interdisciplinary Perspectives on Queering Legal Theory*, 75 *Denv. U. L. Rev.* 1129 (1998)(held in the same year, this symposium also takes sexual minority legal discourse into intersectional analyses).

n91. This program was held in Washington, D.C during October 4-5, 1996.

n92. The AALS Section on Gay and Lesbian Legal Issues was established during the 1983 AALS Annual Meeting and held its first formal meeting during the following year's Annual Meeting. Today the Section holds a program on selected sexual orientation legal issues every year during the Annual Meeting. In addition, sexual minority academics participate in the Lavender Law Conference, the now-annual meeting of the National Lesbian and Gay Law Association ("NLGLA").

n93. Thus, it seems clear that CRT's substantive and structural record already extends beyond the current reach of Queer - or sexual orientation - legal scholarship. Even while noting the shortcomings and costs elaborated earlier, CRT successfully has instituted and maintained regular convocations in the form of summer workshops to foster both a solid scholarly movement as well as the beginnings of a community of antistatist scholars. See *supra* notes 41-78 and accompanying text. CRT likewise has forged and advanced concepts like multiplicity, intersectionality and multidimensionality that evince a sophistication still elusive in single-axis sexual minority legal discourse. See *supra* notes 24 and 27 and sources cited therein on these and similar concepts. Yet the overall record of intersectional selectivity noted above also shows that nonwhite outsider jurisprudence, as we have crafted it to date, does not quite extend as far as the egalitarian Queer credo might take us regarding antistatist structure, scope, theory and community. See *supra* notes 46-57 and accompanying text.

n94. For a solid and succinct account of sexual minorityhood's emergence in this country during the mid-Twentieth Century, see John D'Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Community in the United States, 1940-1970* (1983); see also Francisco Valdes, *Acts of Power, Crimes of Knowledge: Some Observations on Desire, Law and Ideology in the Politics of Expression at the End of the Twentieth Century*, 1 *Iowa J. Gender, Race & Justice* 213 (1997) (discussing the use of law to suppress, and thus isolate and invisibilize, the social and cultural expression of minority sexual orientation identities).

n95. See Hutchinson, *supra* note 27.

n96. See *supra* note 82.

n97. To be incisive, this overdue interrogation must produce critical mappings of the ways in which homophobia helps to constitute communities of color, and of the ways in which those communities in turn enforce and reward compulsory heterosexuality. This assessment similarly must include critical interrogation of the ways in which homophobia within communities or cultures of color may reinforce white supremacy more broadly. The pending OutCrit project therefore calls for theorizing by and through CRT, LatCrit and other subject positions how straight and white supremacy may be multiply cross-linked, and how antistatist scholars may help to disrupt those linkages and dismantle both supremacies as symbiotic features of Euroheteropatriarchy. See generally Valdes, *supra* note 17.

n98. See supra notes 79-81 and accompanying text. Indeed, the move to multidimensionality is counseled as well by CRT's original vision of antiessentialist community and antisubordination commitment, which on its terms must include how racism and homophobia combine to oppress the lesbian, bisexual or gay members of African American, Asian American, Latina/o, native and other communities of color. This pending interrogation therefore represents a joinder and vindication of CRT gains and of Queer ideals in the formation of social justice discourses and communities through critical legal theory. This joinder, in nonwhite outsider jurisprudence, ideally will facilitate appreciation among all OutCrits for the relevance of sexual minorities of color to antiracist communities and agendas, thereby helping to pave new paths toward critical coalitions across lines of minority colors and minority desires.

n99. The proceedings of this gathering appear in Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 *La Raza L.J. 1* (1996).

n100. See Valdes, Foreword - *Latina/o Ethnicities*, supra note 25, at 26-27.

n101. See *id.* at 3-7 (describing the circumstances leading up to the origination of LatCrit theory); see also supra note 25 and accompanying text (discussing the relationship of LatCrit to CRT).

n102. In particular, the nonwhite demographics have changed dramatically. See supra note 69 and accompanying text.

n103. While CRT conceived itself in a moment of "retrenchment" LatCrit came about in the midst of all-out cultural war. See supra note 45 and sources cited therein on retrenchment and backlash.

n104. This charge is excitable by LatCrit's assertion of Latina/o identification and, ironically but predictably, it exploits the preexistence of CRT as the relatively established exemplar of nonwhite outsider jurisprudence. Implying that one "outsider" or nonwhite subject position tests the mainstream capacity for diversity of perspectives in legal discourse, this charge is likely to confront any other effort to activate dormant or potential forms of positionality in critical legal theory. Compare Phillips, supra note 2, at 1255 (expressing similar concerns over BlackCrit positionality).

n105. See supra notes 41-78 and accompanying text.

n106. LatCrit theory thus far has displayed a keen appreciation of the relationship between legal scholarship, politics, and power. See, e.g., Valdes, *Poised*, supra note 3, at 44, 49, 53 (acknowledging the political relevance of legal scholarship and, therefore, of LatCrit theory).

n107. For further discussion of these four functions and their relationship to LatCrit theory, see Francisco Valdes, Foreword - *Under Construction: LatCrit Consciousness, Community and Theory*, 85 *Cal. L. Rev. 1087, 1093-94* (1997) [hereinafter Valdes, Foreword - *Under Construction*].

n108. To date, the LatCrit gatherings include two colloquia and four conferences. The first colloquium was held in Puerto Rico in 1995 and the second in Miami in 1996. The first conference, "LatCrit I," was held in San Diego in 1996, LatCrit II in San Antonio in 1997, LatCrit III in Miami in 1998 and LatCrit IV near Lake Tahoe in 1999. The next two LatCrit conferences, LatCrit V and VI, are scheduled for Denver and for a site in the

Northeast in 2000 and 2001, respectively. See *supra* note 18. For more information on these and other events, visit the (temporary) LatCrit website, located at <http://nersp.nerdc.ufl.edu/malavet>.

n109. For the LatCrit symposia, see *supra* note 18 and sources cited therein.

n110. This commitment to expansiveness is reflected in LatCrit theory's written record - the symposia based on the various LatCrit gatherings published by the journals that have co-sponsored LatCrit conferences or that otherwise have held independent symposia on LatCrit theory. For instance, the symposium based on the First Annual LatCrit Conference includes 28 authors, of which (by my count) approximately 11 are non-Latina/o in self-identification. See Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 *Harv. Latino L. Rev.* 1 (1997); see also *supra* note 18 and the LatCrit symposia and colloquia cited therein.

However, the LatCrit commitment to expansiveness is not always fully evident in the published symposia based on our programs. This disjunction stems from the fact that each year some program participants do not submit a contribution for publication in the symposium. Partially because programmatic initiatives are not always reflected in the written record, LatCrit theorists have established a website, at which all LatCrit programs to date are posted. To visit the LatCrit website, see *supra* note 108.

n111. See, e.g., *supra* notes 46-78 and accompanying text.

n112. I especially thank my friend and colleague, Lisa Iglesias, for discussions that developed these thoughts.

n113. See, e.g., *supra* notes 24 and 27 and sources cited therein on postmodern analysis in outsider jurisprudence.

n114. See Elizabeth M. Iglesias, Foreword: Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community, 53 *U. Miami L. Rev.* at 575 (1999) [hereinafter, Iglesias, Foreword: LatCrit III] (explaining objectives of rotating centers and need for collective commitment to continuity over time to make it work).

n115. Therefore, immediately after the LatCrit III conference that this symposium commemorates, the planning committee for the following year's conference began to discuss the advisability of compiling an informal "LatCrit Primer" to be distributed to conference goers each year. This Primer in fact was produced, and prepared for distribution to those who attended the Fourth Annual LatCrit Conference in Lake Tahoe, to help orient newcomers by providing an easy way to overview some explanatory LatCrit writings. See LatCrit Primer (copy on file with author).

n116. LatCrit engagement of this challenge already has produced vigorous exchanges, for instance, over the relative utility of "race" and "ethnicity" as categories of LatCrit analysis. See generally Juan F. Perea, The Black/White Binary Paradigm of Race: The 'Normal Science' of American Racial Thought, 85 *Cal. L. Rev.* 1213 (1997); Juan Perea, Five Axioms in Search of Equality, 2 *Harv. Latino L. Rev.* 231 (1997); 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); see also generally *supra* note 18 and symposia and colloquia cited therein.

n117. For more information about the publications corresponding to the LatCrit colloquia and conferences held in various locales since LatCrit theory's inception in 1995, see supra note 18.

n118. See supra notes 99-107 and accompanying text.

n119. See supra notes 108-115 and accompanying text.

n120. See generally supra note 65 and accompanying text.

n121. See supra notes 68-72 and accompanying text.

n122. See supra notes 108-115 and accompanying text.

n123. See supra notes 89-96 and accompanying text.

n124. See supra notes 78-81 and accompanying text.

n125. See supra notes 24-27 and accompanying text.

n126. See supra notes 46-57 and accompanying text.

n127. See supra notes 68-69 and accompanying text.

n128. See supra notes 46-50 and accompanying text.

n129. See supra notes 51-57 and accompanying text.

n130. See supra notes 69-72 and accompanying text.

n131. Indeed, as described above, intra- and intergroup, coalitional sensibilities have been foundational to the design of LatCrit programs and projects. See supra notes 107-113 and accompanying text. At the core of LatCrit theory has been the earnest practice both formally and functionally of intersectionality, multiplicity and multidimensionality across ethnicity, sexual orientation, trans/nationality, and other lines of identity and inquiry. Thus far, LatCrit enthusiasm for both the substantive and structural practice of multidimensionality has put in motion a promising, though imperfect, experiment in the articulation of a critical legal theory and the cultivation of a diverse scholarly community that self-consciously inclines nonwhite outsider jurisprudence toward an OutCrit movement. For elaboration of "OutCrit" positionality, see Valdes, *Outsider Scholars*, supra note 17; see also supra note 21.

n132. See supra notes 63-66 and accompanying text.

n133. LatCrit commitments to critical coalitions stem in part from a recognition that racial and ethnic (as well as sexual) minorities are outnumbered and outpositioned in the United States, specifically, and that social and legal transformation will depend in part on our collective capacity to influence majoritarian processes. See generally Valdes, *Beyond Sexual Orientation*, supra note 11, at 1426-43 (describing the tactics and strategies of majoritarian power in the context of today's cultural war).

n134. See supra notes 46-50 and accompanying text.

n135. For instance, a prolonged discussion of "religion" erupted spontaneously at the Second Annual LatCrit Conference in San Antonio, Texas. Even though those exchanges were not part of the official program, they became the basis for a series of essays in the symposium based on that conference. See Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 *UCLA Chicano-Latino L. Rev.* 1 (1998). The role of religion and spirituality in Latina/o lives and in LatCrit theory then was formally included in the program for the Third Annual LatCrit Conference in Miami, Florida. To review the LatCrit III program, see supra note 108 and the address to the LatCrit website provided therein.

n136. See Iglesias, *Foreword: LatCrit III*, supra note 114, at 575-85 (observing how and why LatCrit III demonstrated the possibility and necessity of collectively addressing controversial topics in a caring, respectful and community-building manner).

n137. As CRT's experience with sexual orientation suggests, prolonged avoidance of intersectional analyses that defy the demographic and social realities of the communities for which we purport to speak simply cannot withstand critical self-scrutiny under antisubordination principles. See supra notes 46-50 and accompanying text; see also Phillips, supra note 2, at 1248- 51.

n138. The polyethnic and polyracial makeup of "Latinas/os" prompted the initial discussion of panethnic practices and possibilities at the original colloquium (and at LatCrit I). This discussion began an ongoing exploration of color and culture among and beyond Latinas/os via LatCrit conferences. Most recently, as this symposium illustrates, this ongoing exploration has ventured programmatically into the complexities of Indian identities, *mestiza/o* roots and Blackness in Latina/o, African-American and indigenous communities. While imperfect and incomplete, this ongoing exploration has taken original issues of intraLatina/o difference as an opportunity both to produce knowledge and cultivate community; by articulating racial/ethnic difference as a site of antiessentialist, antisubordination praxis, LatCrit theorists have sought to disrupt patterns of racial/ethnic hierarchies within Latina/o as well as other communities, and to form color-conscious critical coalitions within and between those communities.

n139. The gender discussion at LatCrit I and since then has revolved around the place and position specifically of Latinas in the LatCrit project, and queried whether that place and position would reflect the androsexism of Latino (and Anglo) culture(s) generally. This early engagement has produced both plenary discussion and small-group Latina conversations, as well as a collective commitment to sex/gender intersectionality at LatCrit's inception. As a result, gender has been structurally and substantively integral to all LatCrit programs. This engagement has not triumphed over androsexist internalizations, but it incrementally has helped to bring them into sharp relief as one step toward combating even their unconscious traces.

n140. The religion discussion, which erupted at LatCrit II and has been pursued programmatically since then, has revolved around the historic predominance of a particular church - Roman Catholicism - in Latina/o

communities. This ongoing discussion has helped LatCrit theorists to underscore the differential impact of that predominance on "different" elements of the LatCrit and Latina/o population. Most notably, this discussion has allowed LatCrit theorists to begin examining the differential impact of Christianity on white, male, straight, affluent European elements of Latina/o communities on the one hand and, on the other, indigenous, mestiza/o, poor, nonWestern, nonCatholic, female and sexual minority elements of the same communities. This engagement similarly produced much spontaneous discussion, and revealed not only additional complex diversities among Latina/o and LatCrit populations, but also the variety of agendas that demand theoretical and practical LatCrit attention. This variety spells both difficulty and opportunity for LatCrit scholars, and compels our continuing interrogation of religion and its social effects.

n141. See generally Iglesias & Valdes, *supra* note 10 (discussing in a critical and self-critical way how LatCrit antisubordination agendas may be composed in light of Latina/o diversities and the complexities of social and legal analysis).

n142. A key LatCrit practice when confronted with these issues has been to center them in forthcoming programs and in multi-year time frames. This long-term programmatic response is key because it aids us collectively to excavate more thoroughly neglected sources of antisubordination knowledge, as well as to engage in a process of discourse that can help to rectify sources of community disorganization. Because of its long-term nature, this programmatic response helps to produce knowledge and cultivate critical coalitions at once. But this programmatic response also makes for some bumpy rides. See *supra* notes 135-139 and accompanying text.

n143. For a brief description of "OutCrit" perspectivity as used in this Afterword, see *supra* note 21.

n144. See Mutua, *supra* note 2, at 1190-201.

n145. For instance, the Phillips and the Mutua essays both raise a concern that LatCrit deconstruction of the traditional paradigm is, or appears to be, antagonistic or indifferent to African American positionality in the United States, both historically and presently. See Phillips, *supra* note 2, at 1253-54; Mutua, *supra* note 2, at Part II.

n146. See, e.g., Mutua, *supra* note 2, at 1179-80. ("The aspects of American racial reality that are accurately captured in the "White Over Black" paradigm must not be ignored even though the [traditional] paradigm is inadequate to describe all dimensions of the experiences of various American peoples of color.")

n147. For similar cautionary warnings, see Leslie Espinoza & Angela P. Harris, Afterword - Embracing the Tar-Baby: LatCrit Theory and the Sticky Mess of Race, *85 Cal. L. Rev. 1510 (1997)*, *10 La Raza L.J. 499 (1998)*; John O. Calmore, Our Private Obsession, Our Public Sin: Exploring Micheal Omi's 'Messy Real' World of Race: An Essay for 'Naked People Longing to Swim Free', *15 L. & Inequality J. 25 (1997)*.

n148. See generally Iglesias & Valdes, *supra* note 10, at 513 (applying those basic precepts to LatCrit theory).

n149. The first step in this deconstructive process, of course, was centering the traditional paradigm and its misuses. But since then our collective learning process has led to the recognition of the paradigm specifically as an apparatus of white supremacy and of its cultural roots in the exceptional history of Black subordination in this country. More recently, our collective learning process has led to a growing acknowledgement that this

traditional, domestic-centric paradigm may tend to occlude the transnational characteristics that mark Latina/o communities. Even more recently our collective learning process led us to confront the erasure of indigenous and mestiza/o communities both by the paradigm and our earlier stages of critique. See Iglesias & Valdes, *supra* note 10, at 562-66 (describing this evolution). Now, as this symposium shows, our collective learning process has reached the point of yielding a renamed paradigm as well as a refined sense of its applicability and explanatory power. See *supra* notes 51-57 and accompanying text. These successive stages of deconstruction represent remarkable critical progress in the context of nonwhite outsider jurisprudence. However, these essays and their specific concerns make plain that this work is far from done.

n150. Valdes, Foreword - Under Construction, *supra* note 107, at 1108, 22.

n151. *Id.* at 1110, 24.

n152. Roberts, *supra* note 2, at 861-62.

n153. *Id.*

n154. See, e.g., Iglesias, Out of the Shadow, *supra* note 56 at n.63-64 and accompanying text (noting need for critical analysis to center the particularities of transnational and intersectional Black identities in both LatCrit and CRT); Iglesias, Foreword: LatCrit III, *supra* note 114 at n.104-17 and accompanying text (asserting necessity and exploring implications of critical discourse engaging particularities of Black subordination from an anti-essentialist perspective).

n155. Valdes, Foreword - Under Construction, *supra* note 107, at 1110, 24.

n156. See generally *supra* note 18 and sources cited therein on LatCrit symposia.

n157. See generally Ian Haney Lopez, The Social Construction of Race: Some Observations on Illusion, Fabrication and Choice, 29 *Harv. C.R.-C.L. L. Rev.* 1 (1994); Ian Haney Lopez, White By Law: The Legal Construction of Race (1996).

n158. See generally Romany *supra* note 51, at 49 (discussing the "local character" and "North American face" of nonwhite outsider jurisprudence); see also Berta Esperanza Hernandez-Truyol, Building Bridges: Bringing International Human Rights Home, 9 *La Raza* 69 (1996) (urging the interconnection of the "domestic" and the "international" in antisubordination analyses of law and society); Iglesias, Out of the Shadow, *supra* note 56 (reflecting on significance of Latina/o transnational identities in the articulation of LatCrit legal theory).

n159. See Elizabeth M. Iglesias, Foreword - International Law, Human Rights and LatCrit Theory, 28 *U. Miami Inter-Am. L. Rev.* 177 (1997).

n160. See *supra* notes 41-116 and accompanying text.

n161. From a LatCrit perspective, these twin precepts, and associated concepts or techniques, always should anchor critical analyses of social and legal power relations, and of their effects on human lives and hopes. See Iglesias & Valdes, *supra* note 10, at 513-15.

n162. See Roberts, *supra* note 2, at 855.

n163. *Id.* at 862.

n164. See, e.g., *supra* notes 150-156 and accompanying text.

n165. See Phillips, *supra* note 2, at 1255.

n166. See *supra* notes 46-57 and accompanying text.

n167. See Phillips, *supra* note 2, at 1255.

n168. See Johnson & Martinez, *supra* note 1.

n169. See Montoya, *supra* note 1, at Part II.

n170. It is this diversity, and the tensions that go with its salutary discipline, that raise questions like those reported in Mutua's essay from the LatCrit III conference: whether, for example, LatCrit III lacked "Lat" - or, for that matter - "Crit." See Mutua, *supra* note 2, at 1185; see also Iglesias, Foreword: LatCrit III, *supra* note 114 at n.112-114 and accompanying text (noting and responding to these criticisms). We should expect (but not fear) more of the same - at least for so long as LatCrit continues to profess and practice its antiessentialist and antisubordination grounding: because LatCrit theory pushes for rotating centers programmatically and for implementing diversity structurally across multiple levels, questions about our collective focus or anchor are bound to come up and recur. In fact, their appearance at LatCrit III was itself a recurrence, as substantively similar questions came up at the very commencement of this enterprise - in the early stages of planning for LatCrit I. At that time, a threshold question was consciously confronted: whether LatCrit would be "open" and, if so, to what extent. A "closed" or nondiverse environment was consciously rejected in favor of the current model directly as a result of the earlier CRT experiences recounted above. See *supra* notes 68-72 and accompanying text. Since then, the kind of self-aware questioning reported in Mutua's essay has committed LatCrit collectively to an ethic of balance demonstrated by practices such as rotating centers and, now, shifting bottoms. See *supra* notes 111-115 and accompanying text. Moreover, since then, nonLat participation in LatCrit has been consistently crucial to our collective advances, as the Mutua, Phillips and Roberts essays, among others, exemplify in this symposium.

n171. See Nancy K. Ota, *Falling from Grace: A Meditation on LatCrit II*, 19 *UCLA Chicano- Latino L. Rev.* 437 (1998). That intervention produced a cluster of essays devoted to religion in LatCrit II in that year's symposium. See *Religion and Spirituality in Outsider Theory: Toward a LatCrit Conversation*, *id.* at 417; see also Iglesias & Valdes, *supra* note 10, at 511-55 (discussing critical antisubordination analyses of religion in LatCrit theory).

n172. For further description of the OutCrit position as envisioned here, see *supra* note 21.

n173. See Phillips, *supra* note 2, at 1255.

n174. Phillips, then, is concerned more with a critical and self-critical exploration of the means or venues for continuing the discourse that CRT founded and that LatCrit expanded. Providing concrete examples, Phillips invites LatCrits and allied scholars to alternate annually between the formats provided by the original CRT workshop model and the current LatCrit conferences. *Id.* at 1254. Other possibilities, such as holding the workshop and the conference at the same time and place with some flexible points of interphase, also have been posed and discussed - inconclusively, due to timing and other logistics - during the planning phase of this year's conference. Whatever option one currently prefers, Phillips' focus is a timely reminder of the importance nonwhite outsider jurisprudence must accord to institution-building.

n175. See generally *supra* note 154 and sources cited therein on race as a social construction.

n176. See Valdes, *Outsider Scholars*, *supra* note 17.

n177. See *supra* notes 108-114 and accompanying text.

n178. See *supra* notes 106-107 and accompanying text.

n179. OutCrit identification thus signifies a "coming out" as a biologized outsider, as well as a crit scholar, while also affirming the collective commitment of outsider jurisprudence to antistatist criticality regarding sexual orientation diversities and issues. Tellingly, it grounds us in outsider and critical traditions, while reminding us that sexual orientation is an outsider and antiracist issue after all - after all the efforts that precede and are reflected in this symposium. See *supra* notes 41-116 and accompanying text.

n180. See *supra* notes 46-62 and accompanying text.

n181. See *supra* note 171.

n182. For my part, the next structural move toward the cultivation of OutCrit perceptivity and community might be the organization of an annual workshop that builds on both the CRT model and the LatCrit model of outsider convocation. More specifically, I would recommend an OutCrit "workshop" (rather than a conference), which would be relatively small in size and organized around the reading and discussion of pre-assigned texts, but that would remain committed proactively and programmatically to long-term continuity, multidimensional analysis and critical coalitions in the production of knowledge and cultivation of community. This combined model, grounded in antiessentialist and antistatist principles and dedicated to critical and self-critical discourse, seems counseled by our collective jurisprudential experience to date: it has the virtue of recreating the kind of intimate and intense intellectual exchange of the original CRT model while ensuring that we retain and build on the benefits of LatCrit innovations both in substantive and structural terms. At the same time, I would encourage the continuation of LatCrit events, Asian Law professor conferences, the regional people of color scholarship conferences and, perhaps, the initiation of "BlackCrit" gatherings. See generally *supra* notes 150-156 and accompanying text; see also Roberts, *supra* note 2, at 861.

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LATCRIT IV SYMPOSIUM: ROTATING CENTERS, EXPANDING FRONTIERS: LATCRIT THEORY AND MARGINAL INTERSECTIONS: FOREWORD: Celebrating LatCrit Theory: What Do We Do When the Music Stops?

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SUMMARY:

... We see a full range of methodological approaches, from doctrinal analysis of the civil rights laws, to new theoretical approaches to international law, to narrative scholarship shedding fresh light on legal issues. ... Dean Rex Perschbacher of U.C. Davis praised "the remarkable ability of LatCrit IV scholars to blend academic theory . . . with one of the law's most positive attributes -- its link with people's day-to-day lives and their communities. ... On the heels of LatCrit I, a LatCrit colloquium at the Hispanic National Bar Association 1996 annual conference explored international law and human rights. ... This ambitious cluster proposes not one, but two, important international law perspectives that require future exploration. ... Similarly, Professor Ediberto Roman advocates a Critical Race approach to international law. Ferment in international law has spawned many new approaches, including New Approaches to International Law, Third World Approaches to International Law, and feminist approaches to international law. However, the impact of race on international law generally goes unexplored. ...

HIGHLIGHT: *seamos la llave que abre let us be the key that opens*

nuevas puertas a nuestra gente new doors to our people

que manana sea hoy let tomorrow be today
 ayer nunca se ha ido yesterday has never left
 demos en este instante let us all right now
 el primer paso: take the first step:
 por fin lleguemos let us finally arrive
 a nuestra Tierra Prometida! at our Promised Land! n1

TEXT:
 [*754]

Introduction

The fourth annual critical Latina/o theory conference (LatCrit IV) entitled "Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections," built on the scholarly and collegial successes of the first three. n2 On the shores of Fallen Leaf Lake at the Stanford Sierra Center near Lake Tahoe, n3 race scholars, students, and governmental officials, including Greg Stewart, General Counsel of the Equal Employment Opportunity Commission, from across the nation came together to discuss racial and other subordination in the United States. One of the most diverse conferences in legal (if not all) academia, LatCrit IV included African American, Asian American, Native American, Latina/o, Anglo, gay, lesbian, straight, and other participants. Legal academics, historians, sociologists, ethnic studies scholars, and students of many other disciplines facilitated the cross-fertilization of ideas. The varied backgrounds of the participants contributed immeasurably to the intellectual discourse. The following pages document those proceedings, including the scholarly achievements, intellectual ferment, and high ambitions, as well as the emerging tensions and fault lines in critical Latina/o theory.

The uninitiated might ask: just what is LatCrit? "LatCrit is a group of progressive law professors engaged in theorizing about the ways in which the Law and its structures, processes and discourses affect people of color, especially the Latina/o communi [*755] ties." n4 In many ways, LatCrit is helping us delve deeper into the impact of the law on Latina/o lives, dispelling popular stereotypes without essentializing or bracketing the Latina/o experience. n5 But the LatCrit project has broader ambitions; it seeks to further (1) "The Production of Knowledge"; (2) "The Advancement of Transformation"; (3) "The Expansion and Connection of Struggle(s)"; and (4) "The Cultivation of Community and Coalition." n6 This symposium exemplifies the breadth and expansiveness of LatCrit.

LatCrit events have become known as celebrations of wideranging intellectual interchange, marked by frank, tough, and critical discussion; tensions arise and tempers flare. n7 LatCrit IV was no different. Capitalizing on the successes of LatCrit III, LatCrit IV generally was positive, upbeat, and focused on scholarship and community. This description is not meant to mute tensions that arose during the conference and will likely resurface within LatCrit. Nonetheless, LatCrit IV focused on the substantive in a positive and generally constructive way.

The essays in this symposium issue reflect differences of opinion and sincere efforts to grapple with the complexities of the issues facing Latinas/os and other subordinated peoples in the United States. As Professor Frank Valdes aptly put it, LatCrit theory, like all scholarly movements, is "under construction." n8 In forming this new intellectual community, LatCrit theorists, unified by their experiences as outsiders in the law, seek to move the law toward new frontiers. n9

In my mind, the contributions to this symposium demonstrate the strength, vibrancy, and potential of LatCrit scholarship. Racial identity, diversity, commonality, religion, gender, class, and international linkages, among many other topics, are scrutinized. The [*756] richness, ambition, insight, and foresight of these essays show dedicated scholars attempting to reveal and remedy the various subordinations, especially that of Latinas/os, afflicting modern social life in the United States. We see a full range of methodological approaches, from doctrinal analysis of the civil rights laws, n10 to new theoretical approaches to international law, to narrative scholarship shedding fresh light on legal issues. n11 As we begin a new century, such eclecticism, energy, excitement, and engagement are necessary and essential for scholars truly committed to the antisubordination project.

Once again, the melding of theory and practice, a bedrock principle of LatCrit theory, n12 played a prominent role at LatCrit IV. This issue offers an important cluster of essays focusing on making theory practical. n13 Other

contributions engage legal doctrine and the making of law by legislatures and courts. Such inquiries are crucial to prevent LatCrit from becoming a purely intellectual exercise. Dean Rex Perschbacher of U.C. Davis praised "the remarkable ability of LatCrit IV scholars to blend academic theory . . . with one of the law's most positive attributes -- its link with people's day-to-day lives and their communities." n14

Narrative scholarship can be seen in the latest LatCrit installment, reflecting acceptance of the wisdom that counter-stories are needed to counteract the conventional wisdom in our society. n15 LatCrit narrative helps us better understand "Latina/o marginality and vulnerability traceable to dominant race/ethnicity norms of AngloAmerican society." n16 The stories employed in the symposium [*757] essays address a broad range of issues, from insights about the complexities of, and tensions at, LatCrit conferences n17 to discussions of the vulnerability experienced by untenured law professors of color. n18

Part I of this Foreword situates the essays comprising the written record of the LatCrit IV conference into the existing body of LatCrit literature and shows how this scholarship poises the movement for theoretical development. The five clusters are (1) Diversity, Commonality, and Identity, (2) Religion, Subordination, and Gender, (3) Class, Workers, and the Law, (4) LatCrit Praxis, and (5) International Linkages and Domestic Engagement. Part II discusses the evolution of LatCrit, including its past achievements and future aspirations, as well as its potential pitfalls. Ultimately, we all -- LatCrit scholars, organizers, participants, and other interested bystanders -- must be vigilant to ensure the survival of this emergent project so that it satisfies its lofty, all-important objectives.

I. LatCrit IV: A Celebration of Intellectual Interchange

The contributions to this symposium reflect the intellectual breadth and ambition of LatCrit theory. At the same time, they reveal the ferment and potential fault lines that will shape future theoretical development. Ultimately, this development hopes to influence the law to improve the status of Latinas/os and other people of color.

A. Diversity, Commonality, and Identity

A cornerstone premise of LatCrit theory is that the various forms of subordination in U.S. society, if not the world, are deeply interrelated and intertwined. n19 Woven together into the American social fabric, racial, gender, sexual orientation, class, and other subordinations all warrant careful inquiry. This section amply demonstrates the breadth of experiences relevant to LatCrit inquiry.

A much-debated issue at all LatCrit conferences has been the need to expand the discussion of civil rights discourse beyond simply African American and White relations. n20 LatCrit III focused our attention on the African American experiences in an important panel entitled "From Critical Race Theory to LatCrit to BlackCrit? Exploring Critical Race Theory Beyond and Within the Black/White Paradigm." n21 Nobody seems to disagree with the need for a multiracial understanding of civil rights in the United States; indeed, such analysis has gone on for quite some time. n22 However, objections to the sustained LatCrit criticism of the "Black-White paradigm," as it has been denominated, have emerged. Sensitivity in this area is especially necessary. Like all communities, anti-African American sentiment exists in some quarters of the Latina/o community. All interested in civil rights must take great care not to exacerbate, tap into, or capitalize upon such sentiment in advocating for Latina/o civil rights. n23 Unfortunately, however, the subject has not always been approached as delicately as it could have been. n24 [*759]

Besides the focus on the Black-White paradigm, LatCrit discourse also has considered the connections between the subordination of Latinas/os and other racial groups. Beginning in earnest at LatCrit II and continuing at LatCrit III, n25 LatCrit has analyzed the relationship between Latinas/os and indigenous peoples. In Mexico and other Latin American countries, the mixing of native and European peoples, known as *mestizaje*, has been the norm. n26 Over time in the United States, there have been efforts, part of the assimilation process imposed on Latinas/os, to downplay indigenous roots and emphasize a Spanish ancestry. n27 As influential Chicano/a Studies scholar Rudy Acuna, a keynote speaker at LatCrit IV, put it in referring to the Chicano/a experience in Los Angeles, efforts were made to be "Anything But Mexican." n28

Several conference presentations analyzed the intricacies of the indigenous heritage of Latinas/os. Professor Berta Hernandez describes her painful reaction as others at LatCrit IV questioned her exploration of her native ancestry because no tribe claimed her as a member. n29 This challenge to Professor Hernandez's interrogation of her identity misses the central point of recognizing racial mixture among Latinas/os, which has relatively little to do with tribal membership. "Despite the fact that most Chicanos have substantial indigenous ancestry, Chicanos do not generally, as a group, identify as an Indian tribe." n30 Sadly enough, coerced assimilation [*760] led to destruction of tribal cultures, denial of indigenous roots, and efforts to strive to be white. To counteract this unfortunate history, Chicano/a activists

embraced mestizaje and the recognition of our native ancestors. Chicanismo employs positively the phrase "La Raza" (the race) to connote that mestizos, a mixture of Spanish, native peoples, and others in Mexico, are in fact a separate and new race. n31

Professor Hernandez's story further suggests the need to avoid blind application of other group's experiences to Latinas/os and to ensure sensitivity by all LatCrit participants. If one of the most prolific scholars of the LatCrit movement can feel under attack, n32 we should all take pause.

Bringing her federal Indian law expertise to bear on LatCrit theory, n33 Professor Rebecca Tsosie's presentation considered the parallels between Native American and Chicano/a struggles for land. n34 Similar to Latinas/os, Indian peoples historically have suffered due to coerced assimilation at the hands of the U.S. government. n35 Professor Tsosie observed that, just as land is important to the identity of native peoples, it also plays a role in the Chicano/a movement, specifically the mythical Aztlan. n36 Her preliminary ideas on this [*761] subject raise important issues for future inquiry. Importantly, Aztlan and land do not appear to be as central to Chicano/a identity or to activism as they are to Indian tribes. n37 "Few Chicanos advocate the secession of Aztlan as a realistic solution to problems facing the community"; however, "the idea that Chicanos are indigenous to the Southwest remains powerful today." n38 Chicano/a activism over land in the past centered on efforts to reclaim lands in New Mexico and Arizona based on legal claims under the Treaty of Guadalupe Hidalgo. n39

Considering the status of native Hawaiians through a LatCrit lens, Professor Eric Yamamoto, who has analyzed interracial conflict, n40 shows how the perception of native Hawaiians, based on the performance of a hula dance, may affect judges and judging. n41 He opines that the Supreme Court's decision in *Rice v. Cayetano*, n42 "probably the most important Hawaiian rights case ever," n43 might well rest on whether indigenous Hawaiian communities are characterized as a political or a racial group. His insights about the centrality of judicial perceptions to the resolution of the dispute dem [*762] onstrate that culture's impact on the law is well worth LatCrit inquiry. n44

Two intriguing essays focus attention on the place of Filipinos in the American racial mosaic. n45 Although Filipinos commonly are thought of as "Asians," this classification, like all racial ones, is not inevitable. The Philippines once was a Spanish colony and the SpanishAmerican War of 1898 brought the Philippines under U.S. colonial control for half a century. n46 Due to the legacy of Spanish colonialism, Filipinos share cultural, religious, and other affinities and similarities with Latinas/os. Like Latinas/os, Filipinos have long been racialized in the United States, especially in California. n47

Consistent with his previous call for interracial understanding, n48 Professor Victor Romero analyzes how commonality between Latinas/os and Filipinos may allow for "building bridges" between the groups. n49 Advocating the investigation of minority-on-minority oppression, n50 he identifies schisms among Asian Americans and Latinas/os by analyzing his naturalization interview with a hostile Latina Immigration & Naturalization Service officer. Showing the fluidity of racial identity, Professor Romero tells of the differences in how he is treated by those that see him without knowing his last name (and assume because of his physical appearance that he is Asian) and those that have not seen him but assume that he is Latino because of his Spanish surname. n51 This shows the importance [*763] that surname and phenotype can play in racial identity and racial identification. n52

In a similar vein, Professor Leti Volpp, whose vibrant scholarship considers the complex relationship between law, culture, race, and gender, n53 analyzes the difficulties historically faced by the courts in fitting Filipinos into a racial category under California's antimiscegenation laws. n54 Evidence used by the courts and policymakers to determine whether Filipinos were subject to the antimiscegenation laws once again demonstrate how race is socially, not biologically, constructed. n55 Professor Volpp's analysis of the antimiscegenation laws raises fascinating points, among them the observation that many of the prevailing stereotypes about Filipino men, such as their "sexual passion," had long been held about African American men. n56 Her analysis also suggests some anomalies, however. For example, why weren't the antimiscegenation laws applied to people of Mexican ancestry? Why, if people of Mexican ancestry were treated as white under these laws, was concern not expressed about relationships between Filipino men and Mexican "girls"? n57 One legal classification treated Mexicans as White (i.e., not subject to the antimiscegenation laws) while social custom treated them as non-White (i.e., society did not penalize Filipino/Mexican relationships). n58 This suggests that Filipinos and Mexican-Americans may have different as well as common experiences. It more generally suggests that race mixing was not a concern unless "Whites" were part of the mix.

Professor Romero's and Volpp's essays raise the intriguing question whether Filipinos are Latinas/os. Professor Volpp directly poses the question whether "we should place Filipino/as within the [*764] rubric of Latina/o, primarily because of a shared legacy of Spanish colonization." n59 Similar questions might be asked about other groups whose

histories bear commonalities with the Latina/o experience. Are people of Jamaican ancestry from the Caribbean Latinas/os? n60 This once again illustrates the "messiness of race," n61 its uncertain borders, and the inherent contradictions of socially constructed meanings.

This cluster of papers makes it clear that the process of racialization is complex, affecting different groups in different ways. n62 Latinas/os comprise a truly complex racial mixture of peoples facing complex identity choices. By political necessity, Latinas/os have built coalitions at different historical moments. n63 Filipinos, for example, were a critical component of the United Farm Worker movement. n64 Geography plays a crucial role in the racialization process as well. n65 For example, intermarriage rates between Anglos and Mexican Americans are high in California's urban centers, but much lower along the border with its high racial tensions. n66

We should be sensitive to the complex interaction between law and racial mixture. On the one hand, racial mixture shapes law. The antimiscegenation laws responded to the mingling of the races and the fear that intermarriage and mixed race offspring might undermine racial hierarchy. n67 Racial mixture, however, need not [*765] be feared. n68 Juan Gomez Quinones, for example, observed that, in New Spain, "the process of mestizaje . . . which moved from Central America to New Mexico . . . undermined racial prejudice in its wake." n69 It also changed the way that racism manifested itself. n70 On the other hand, the law shaped racial mixture in that the antimiscegenation laws limited intermarriage and, thus, racial mixture.

B. Religion, Subordination, and Gender

The understatement of LatCrit I probably was Professor Keith Aoki's prescient observation that "religion and spirituality are submerged not far below the surface of emerging Latina/o Critical Theory." n71 The complexities of religion flashed in a tense emotional outburst at LatCrit II. n72 Religion, specifically Catholicism, obviously is a difficult topic for many Latinas/os. n73 It proves all the more complex because Catholicism, for example, has contributed to the subordination of women, lesbians, and gay men; at the same time, it has been at the core of important social movements, such as the Chicano/a Movement of the 1960s, the United Farm Workers' organizing efforts of the 1960s and 1970s, and the Sanctuary movement of the 1980s. n74 Catholicism, as well, remains an impor [*766] tant aspect of Latina/o culture, and shapes individual identities. We cannot fully understand Latinas/os without appreciating the impact of Catholicism on the historical development and current status of our communities.

Latinas/os must squarely and critically address the problematic aspects of religion on the community. n75 The papers in the Religion, Subordination, and Gender cluster contribute to the ongoing LatCrit analysis. The author of foundational work on the legal history of the enforcement of the Treaty of Guadalupe Hidalgo, which ended the U.S./Mexico War in 1848, n76 Professor Guadalupe Luna considers how the Catholic missionaries subordinated, often violently, native peoples and taught them how to subordinate women. n77 Her analysis of this legal history demonstrates how the concept of "saving souls for Christianity" authorized unmitigated brutality against indigenous peoples. n78 In the name of the Father, missionaries forcibly restructured tribal societies to bring them into compliance with a "patriarchal ideology." n79 This historical chapter starkly shows the role played by the Catholic Church in the subordination of indigenous Californians and women.

Building on Professors Iglesias's and Valdes's analysis of religion, n80 Professor Terry Rey analyzes how the sacred religious symbol of the Virgin Mary contributes to Latina subordination. n81 Professor Rey offers examples of how Latin American Catholicism functions [*767] as a "repressive and antisubordination force in Latin American history and cultures and select diasporic Latina/o communities." n82 Viewing Marianist Catholicism as Max Weber's "legitimizing authority" (legitimierende Macht), Professor Rey critically analyzes the symbols of the Virgin for Latinas. n83

Religion, however, continues to present vexing perplexities for LatCrit theorists. Central to the organizing of the original LatCrit conference (as well as LatCrit IV) and a knowledgeable observer of the impact of the law on women of color, n84 Professor Laura Padilla highlights the intricacies posed to Latinas by religion. n85 She contends that "religion simultaneously subordinates Latinas while serving as a source of strength" n86 and considers the important role of religion in Latina/o culture and family. n87 Far from an apologist for Catholicism, Professor Padilla considers the racial and gender discrimination in the Church, noting for example the fact that it was not until 1970 that the first Mexican American bishop was ordained by the American Catholic Church and that less than one percent of the nuns in the United States are Latina. n88 Professor Padilla contends that, although Latinas may look to the Church for solace, they must reconstruct the Church in their image.

In analyzing religion, one wonders whether national origin differences, as well as class differences, might exist among Latinas/os with respect to Catholicism. One would expect Cuban immigrants, for example, who have experienced the Castro government's attempts to stifle religion, to have a different perspective on the subject than Mexican immigrants and Mexican American citizens. n89 [*768] Similarly, as with all religion, class differences divide the Latina/o community. As Richard Rodriguez's famous *Hunger for Memory* n90 illustrates, devout Catholicism often flourishes with first generation immigrants as well as blue collar and farm workers. Rodriguez's own transformation shows that reaching professional status has often meant for many Latinas/os downplaying or abandoning their spirituality.

Importantly, we must not essentialize the Catholic Church as a unified monolith, because parts of the church have lent support to social justice movements. n91 Liberation theology has transformed some sectors of the Church, as have clergy who have fought for social justice in various locales. n92 Theological teaching may be relevant to legal analysis. n93 For example, some contend that religious convictions mandate more generous, less punitive immigration and welfare laws. n94

As these essays make clear, we must be forever attentive to how Latinas are mistreated, legally, religiously, and otherwise. n95 Spousal abuse is an obvious, all-too-common example. Professor Donna Coker analyzes how, as suggested by influential articles on the concept of intersectionality, n96 spousal abuse disparately affects women of color. n97 She highlights social science research illustrating this [*769] point and calls for additional remedial action. Professor Coker's article fits in with the burgeoning Critical Race Feminism movement, which posits that women of color are disparately affected by the law. n98 The focus on the particular forms of oppression suffered by women of color invites further inquiry into the class, gender, and race disadvantages facing Latinas in employment, housing, and immigration. n99 Immigration law deserves especially close scrutiny, as it has had a devastating effect on the well-being of undocumented Latinas in this country, undermining their legal rights and, tragically enough, increasing the violence done to them. n100

The study of the subordination of Latinas is of central importance to the LatCrit project. LatCrit, as an intellectual community, is committed to not replicating the dynamics of subordination. We must continue to analyze how that subordination originates and perpetuates itself through religious and other social institutions.

C. Class, Workers, and the Law

Class issues are especially salient for Latinas/os in the United States. n101 Early in LatCrit, attention was paid to the diversity among Latinas/os, including class diversity among national origin groups. n102 The LatCrit III symposium included a cluster on "In [*770] ter/National Labor Rights: Class Structures, Identity Politics and Latina/o Workers in the Global Economy." n103 The essays in this cluster on Class, Workers, and the Law continue this important discussion.

A thoughtful observer of racial stratification in the United States, n104 Professor Tanya Hernandez raises the important issue of intra-Cuban class and racial conflicts. n105 She documents the history of repression of Afro-Cubans, replete with atrocities, and shows how in modern times they are poorer on the whole than most Cubans. More recently, class and race differences have, for example, contributed to lukewarm Cuban American support for continued refugee admissions in south Florida. n106 Today's Cuban migrants are poorer and Blacker -and, not coincidentally, less popular in the United States -- than ones of times past. Professor Hernandez questions whether LatCrit theory's "antibusordination goal can be achieved if we as scholars do not explicitly challenge the Latin American model of discounting our own racial diversity . . ." n107 Importantly, Latinas/os must uncover racial subordination within their communities, which by necessity requires a race conscious approach. Professor Hernandez ties this into criticism of class-based affirmative action by contending, in effect, that its failure in Cuba suggests a similar fate in the United States. Such comparisons must remain tentative, although the central point remains well taken.

More generally, Professor Hernandez's article implicates broader questions concerning Afro-Latinas/os. Scholarship has begun to focus attention on Black immigration to the United States from the [*771] Caribbean n108 and other nations. n109 Additional inquiry must be focused on Mexican, Cuban, Puerto Rican, and other Latinas/os of African ancestry; the experience in each of these communities, inside and outside the United States, differs from that of non-Afro Latinas/os in important respects. Scholarship on this topic is emerging. n110 This phenomenon demonstrates once again the diversity of the Latina/o experience and how LatCrit theorists must take care not to homogenize or essentialize the communities.

Other essays in this cluster document how the law continues to adversely affect working class and poor Latinas/os. Dean Christopher David Ruiz Cameron skillfully analyzes how the ban of gas-powered leaf blowers by the city of Los Angeles, supported by environmentally conscious celebrities, negatively affected Mexican gardeners. n111 He effectively ties this movement into the fundamental LatCrit tenets of Latina/o invisibility and forced assimilation. Class dynamics cannot be missed in a story in which white Hollywood media stars seeking more personal comfort and environmental aesthetics advocate changes in the law that would make the lives of poor Mexican workers harsher than they already are. Although interests of environmentalists and people of color have been [*772] aligned in the environmental racism movement, n112 this case study reflects the continuing class and racial divisions on environmental issues. n113

The next contribution analyzes how the law has used proxies -facially neutral substitutes for racial classifications -- to discriminate against Latinas/os, with particular impacts on poor and working class Mexican immigrants. n114 Immigration status n115 and language discrimination, n116 two issues of central importance to LatCrit inquiry, constitute two proxies for race that discriminate subtly yet with impunity against Latinas/os. Professor George Martinez and I, n117 "writing squarely as law professors," n118 analyze how the anti-bilingual education initiative known as Proposition 227 adopted by the California voters in June 1998, in effect discriminated against Spanish-speaking persons of Mexican ancestry. This measure fits [*773] into a longer history of discrimination against people of Mexican ancestry in the Golden State. n119 The discrimination by proxy concept may prove to be an important doctrinal tool that has the potential of increasing Latinas/os' and other subordinated peoples' ability to attack the often subtle discrimination directed at them. As discrimination is driven underground, legal doctrines must evolve in sophistication to keep up with ingenious, facially neutral devices that discriminate.

Professor Pamela Smith offers a perspective on the difficulties of minority "workers" -- law professors -- in legal academia. n120 Her essay serves as a reminder to those among our ranks with tenure to consider the experiences, perspectives, and perceived vulnerability of the untenured, even at relatively safe settings such as LatCrit conferences. The discussion group of untenured professors that originated at LatCrit IV should be continued at future conferences. Moreover, Professor Smith tells of the kindness offered her as she entered the turbulent waters of legal academia by a tenured African American professor, Isabelle Gunning, who serves as a model for us all. n121

Placing into doubt the ability of LatCrit theorists to influence the law and help the subordinated, Professor Larry Cata Backer, an important voice on welfare "reform," n122 offers a gloomy forecast about the future impact of critical scholarship on the courts. n123 He presents the results of searches of computer databases showing few judicial citations to leading Critical Race scholars, which he interprets as suggesting that hope of changing the law through scholarship may be misplaced. However, even if citations fail to register on the computer databases, critical scholarship may well inform and influence judicial decision-making in subtle ways, through, for example, amicus curiae briefs and by educating the next generation of lawyers. Critical theory indeed may help bring about shifts in ways of thinking about the law. For example, even if a court [*774] does not cite Paul Butler's famous jury nullification article, n124 national attention has been raised about the racial implications of the criminal justice system.

Professor Backer further posits that the evidence indicates that state courts may be more likely to adopt a critical bent than the federal courts. In light of the anti-Latina/o sentiment in the states, often embedded in laws upheld and enforced by the state courts, n125 this optimism seems unwarranted. The trust in federalism requires a leap of faith and, at a minimum, a considerable amount of further investigation. n126

Is there reason for hope? Bill Tamayo, Regional Attorney for the Equal Employment Opportunity Commission ("EEOC") who has written important work on civil rights issues, n127 documents recent EEOC efforts to protect Latina/o farm workers. n128 Tamayo discusses outreach programs of the EEOC, including training of California Rural Legal Assistance attorneys about the law of sexual harassment. He recounts the EEOC-initiated litigation culminating in an over \$ 1.8 million settlement for the atrocious sexual harassment of farm worker Blanca Alfaro. n129 Such successes warrant celebration. One wonders, however, how effective litigation like this will ultimately prove to be, especially given the fact that farm worker labor conditions have been shameful for years without significant change. n130

D. LatCrit Praxis

LatCrit theory has an enduring commitment to putting theory into practice. n131 In this spirit, Professors Sumi Cho and Robert [*775] Westley offer a history of progressive political activism at U.C. Berkeley's Boalt Hall School of Law that contests the conventional wisdom. n132 They contend that student activism from the 1960s to the 1990s was central to the development of Critical Race Theory. To shed light on that contention, they focus on the history of

U.C. Berkeley's Boalt Coalition for a Diversified Faculty, an organization in which both authors played leadership roles as law students. This history is absent from the official record of this distinguished law school. Their historical research shows that the student activism that facilitated the formation of Critical Race Theory was not just a Harvard-centered phenomenon, as is commonly understood. n133 Because Critical Race Theory helped create the intellectual space necessary for the emergence of LatCrit theory, n134 its roots and its fortunes in legal academia are important to this project.

As history reveals, art also can be employed for political ends. n135 In a fascinating LatCrit IV panel on "Literature and Arts as Antisubordination Praxis: LatCrit Theory and Cultural Production," the panelists explored the nexus between art and LatCrit theory. Professor Pedro Malavet offers his perspectives on this panel, while describing his "accidental" descent into LatCrit theory. n136 His narrative tells how he was radicalized by a rough-and-tumble initiation into the legal academy and moved from traditional to critical scholarship with a Latina/o bent. In addition, Professor Malavet touches on the link between law, culture, and subordination. n137

Offering a specific example of art as praxis, Nicholas Gunia analyzes Jamaican music as a form of resistance. n138 He places the resistance into context by describing the racial stratification in Jamaica and the religious and social movement of Rastafarianism. Like the old [*776] slave songs in the United States, n139 this form of Jamaican music constitutes a type of resistance to subordination. Viewing art as resistance in certain circumstances sheds light on current social phenomena such as gangsta rap and gang membership. n140

Although radically different from art, clinical teaching holds the promise of linking theory and practice. n141 Professor Alfredo Mirande Gonzalez, an established Chicano/a Studies scholar n142 turned law professor, utilizes the narrative form to reflect on teaching clinic students how to put the law into practice. n143 Attempting to follow the methodological path blazed by Derrick Bell n144 and Richard Delgado, n145 Professor Mirande uses fictitious field reports from a clinical placement similar to those he did as a student in Stanford's now-defunct Lawyering for Social Change Program. Through alter ego Fermina Gabriel, Professor Mirande raises questions about critical theory. His imaginary dialogue, however, fails to present a unified thread of inquiry and neglects relevant LatCrit and critical lawyering scholarship. n146 Most troubling, Professor Mirande's fiction lacks gender sensitivity. n147 Work that neglects subordinations undermines the LatCrit project. In addition, narratives, particularly those not based in personal experience, have [*777] come under vitriolic attack as of late. n148 Narrative in scholarship must tread with care in order to avoid scathing critiques that have recently become fashionable and undermine LatCrit theory's scholarly mission.

E. International Linkages and Domestic Engagement

For many reasons, including globalization, immigration, and technological advancement, to name a few, the local and the global are increasingly intertwined. n149 LatCrit has been central in considering the international. On the heels of LatCrit I, a LatCrit colloquium at the Hispanic National Bar Association 1996 annual conference explored international law and human rights. n150 At the forefront, Professor Elizabeth Iglesias focused LatCrit attention on the importance of human rights to international economic law and the Latina/o condition in the United States. n151 LatCrit III saw a discussion of "Global Intersections." n152 LatCrit IV also focused on the international. Professor Celina Romany, the author of influential scholarship on women's rights as international human rights, n153 offered an inspiring keynote speech entitled "Global Capitalism, Transnational Social Justice and LatCrit Theory as Antisubordination Praxis."

Because the expansion of the Spanish colonial empire shaped the evolution of Latin America, "empire" is a central concept for Latinas/os to consider in evaluating their place domestically and internationally. n154 Reviewing Vday Singh Mehta's book *Liberalism* [*778] and *Empire: A Study of Nineteenth-Century British Liberal Thought*, n155 Professor Tayyab Mahmud articulates his vision of the impact of empire-building and how colonialism is important to liberal thought. n156 He contends that liberalism also calls for racial, class, cultural, and other exclusion.

Consistent with this pessimistic version of liberalism, Professor Tim Canova criticizes the claim that meaningful positive economic and social transformation for developing nations can be accomplished through the efforts of the International Monetary Fund (IMF). n157 This criticism finds intellectual support in the longstanding critique of liberalism. n158 Professor Canova astutely applies LatCrit teachings to the study of the international economic system. He claims categorically that "the global monetary system, and the IMF in particular, systematically subordinates entire nations of color." n159 In making his case, Professor Canova disagrees with the relative optimism of Professor Enrique Carrasco about the IMF's transformational potential. n160 Whatever the relative strength of his argument on the merits, Professor Canova's mode of criticism should serve as a positive role model for LatCrit theo [*779] rists. Admitting

Professor Carrasco's laudable goal of protecting vulnerable groups in Latin America and respectfully treating his views, n161 Professor Canova constructively questions the means of achieving that end.

Considering the domestic impacts of international developments, Professor Chantal Thomas critically evaluates the effects of the "globalization" of the world economy on the United States, marred as it is by deep and enduring racial and economic inequality. n162 She opines that, despite the frequent trumpeting of the benefits of the emerging global economy, "without intervention, globalization may instead lead to increased socioeconomic inequality and economic volatility." n163 Indeed, "it is . . . possible that globalization will generally entrench existing structural inequalities, and that some of these inequalities will be racial in character." n164 Consequently, Professor Thomas asks us to consider the possible racial impacts in the United States resulting from the development of a global economy.

Professor Thomas thoughtfully demonstrates the inextricable links between the global and the local, the overlapping nature of class and racial inequality, and the interrelationship between the subordination of various groups, especially African Americans and Latinas/os. These, of course, all are central to LatCrit theory. n165 The article also suggests questions for future inquiry. Importantly, by distinguishing between Latina/o immigrants and the well-established Mexican American community in the inner cities, n166 Professor Thomas obliquely raises the question of how migration and labor flows into the United States, part of the globalization of the world economy, figure into her analysis. The domestic racial [*780] impact, if any, of international migration has been the subject of considerable controversy. For example, prominent labor economist Vernon Briggs has long contended that "mass migration" from Asia and Latin America has injured the African American community. n167 Similarly, some commentators claim that the impoverished state of farm workers in the United States can only be improved with a clamp down on undocumented immigration from Mexico. n168 These difficult issues, representing potential fault lines among subordinated communities, warrant close attention.

This ambitious cluster proposes not one, but two, important international law perspectives that require future exploration. A keen observer of the international legal scene, n169 Professor Gil Gott suggests the need for a new genre of "Critical Race Globalism," which would "expressly link[] racial with international justice struggles." n170 He views white supremacy as a global phenomenon, thereby requiring global solutions. Similarly, Professor Ediberto Roman advocates a Critical Race approach to international law. n171 Ferment in international law has spawned many new approaches, including New Approaches to International Law, Third World Approaches to International Law, and feminist approaches to international law. n172 However, the impact of race on international law generally goes unexplored. Demonstrating the inability of various methodological approaches to account for race, Professor Roman calls for an expressly race-based perspective and articulates the case for race being at the center of international discourse. n173 Importantly, events in Latina/o history, such as the U.S./Mexican War and the Treaty of Guadalupe Hidalgo n174 as well as the Spanish/American War and the subsequent denial of constitutional rights to racialized peoples in U.S. territories, n175 need concentrated analysis with race at the forefront. This racial history continues to impact the present and therefore warrants future LatCrit analysis.

II. Future Challenges and Trajectories?

We are at a critical juncture in the evolution of LatCrit theory. In the next few pages, I identify future challenges and potential pitfalls. Importantly, although we should celebrate LatCrit theory's early success, we must brace ourselves for growing pains, internal tensions, and external critique.

A. LatCrit Must Remain Inclusive

Critics might claim that the LatCrit movement has strayed from its Latina/o roots. The "rotating centers" concept captured in the title to LatCrit IV, however, allows us to be inclusive and to consider the subordination of other peoples of color and the relationship to Latinas/os' status in the United States. n176 As LatCrit theorists have observed, n177 Latina/o subordination is related to and connected with other subordinations. To fully understand one, we must comprehend them all.

Moreover, the inclusiveness of LatCrit theory is an important source of strength that holds great promise for the future. Inclusiveness has fostered coalitions and mutual self-help. It has built good will and promoted serious scholarship in new and important ways. Inclusiveness allows the LatCrit community to engage in ongoing intellectual ferment and allows it to remain dynamic rather than static. [*782]

B. External Challenges and Internal Tensions

As LatCrit matures, we must anticipate external challenges and continuing, perhaps mounting, internal tensions. The maturation process may well subject LatCrit to attack, such as that leveled at Critical Race Theory, feminist jurisprudence, and other critical genres. n178 As we prepare for external critiques, we should keep in mind that Critical Race Theory ("CRT") has been vulnerable to attack because critics have ascribed certain intellectual positions as part of CRT orthodoxy. Yet, CRT remains difficult to reduce to fundamental tenets because its fluid and eclectic approach encompasses diverse methodologies from many disciplines. n179 LatCrit should retain the prerogative to define and redefine itself rather than be defined by critics. Constant self-criticism and self-definition is essential to a movement as dynamic as LatCrit.

To fend off external attacks effectively, LatCrit theorists must address internal tensions within the movement. We must support each other and be ready to respond to the future intellectual challenges. Striving to maintain unity, LatCrit theorists must resist the centrifugal pressures toward disintegration.

To this end, LatCrit must keep internal tensions in perspective and learn the lessons of the past. Importantly, LatCrit theorists cannot let the personal dominate the intellectual and allow interpersonal antagonisms to undermine the project. n180 Specifically, we must avoid at LatCrit conferences, the spontaneous "slash-and-burn, hold-no-prisoners, hypercritical attack upon some unfortunate and often unsuspecting target." n181 In that vein, we hopefully will never see the day when so-called "attack scholarship" focuses on each other's work. n182

We must nip in the bud the development of schisms along gender, class, national origin, racial, and other lines. One way to ease [*783] tensions is to recognize and encourage separate investigations of specific group histories, both inside and outside LatCrit. n183 All of these competing strands and thoughts must continue to be included within the umbrella LatCrit intellectual community.

At the same time, we must allow dissent within our ranks. Criticism of ideas and diversity of approaches, of course, remains essential to intellectual growth. LatCrit must continue to emphasize the critical. As scholars, we should be critical of each other's work. Nonetheless, the tone and method by which we criticize is all-important. In voicing dissent and promoting sophisticated intellectual discourse, we must be sensitive to the feelings of others and attempt to offer constructive, not destructive, criticism. n184 An ongoing intellectual scholarly community requires sensitivity to each other, our differences, and our humanity, not a scorched earth approach to scholarship and the views of our colleagues.

In my mind, a wonderful example of constructive criticism was Professor Frank Valdes's presentation at the June 1999 LatCrit conference in Spain. n185 He presented a provocative and devastating thesis -- that Spain should seriously consider the payment of reparations for the plunder of the grand indigenous societies of the New World -to a group of Spanish legal scholars. The challenge to Spain from an American ran the risk of causing tension, discord, and hard feelings. Professor Valdes offered a balanced account of the need for an investigation of reparations by Spain for its exploitation of New World natural resources and people. We need this type of constructive and positive engagement both at the live events and in the symposium contributions.

C. Engaging LatCrit Literature

Future LatCrit scholarship must fully grapple with the breadth and nuances of the rapidly evolving LatCrit scholarship. This formidable task, which at a minimum requires engagement with a series of symposia, colloquia, and an anthology of readings, n186 as [*784] well as review of LatCrit pieces published in other venues, n187 is as daunting as it is exhausting. Recent actions should make the task easier. Professor Roberto Corrada compiled a primer of LatCrit readings, provided to LatCrit IV participants, which attempts to capture the essence of the movement and offer an introduction to those interested in the field. n188 The LatCrit web page created by Professor Pedro Malavet n189 allows us to keep up on the growing body of literature as well as upcoming events and related LatCrit information.

In future contributions to LatCrit symposia, I hope that participants seriously engage the existing scholarship, study the literature, and acknowledge previous contributions. Ideally, each contribution to a LatCrit symposium would explain how the author's contribution fits into LatCrit theory and the existing body of LatCrit scholarship. n190 Publication opportunities for scholarship obviously are central to the LatCrit mission. However, they cannot be the sole purpose of LatCrit theory or the movement will soon dissolve as a cohesive and distinct body of scholarship. Due to Frank Valdes's leadership and foresight, LatCrit crystallized with the formation of the annual LatCrit conferences, an event with importance that cannot be underestimated. However, the critical study of Latina/o issues did not begin in 1995. The work of the scholars [*785] from law and many other disciplines who were doing LatCrit before it became "cool" should not be marginalized or ignored. n191

In our scholarship, LatCrit theorists also must strive to avoid the "star system" and exclusive citation to a small group of perceived stars for legitimacy. If we do not take care, the "imperial scholar" phenomenon may well infect LatCrit scholarship as it has majority scholarship. n192 We must be inclusive or risk the splintering of LatCrit into disgruntled factions.

To warrant intellectual respect, the LatCrit authors should always strive for high quality scholarship. The scholarship should fulfill the LatCrit mission, which requires critical analysis of Latina/o and related subordinations. All of us should be conscious of how our LatCrit scholarship contributes to this important mission.

D. The Need for Infrastructure

A LatCrit infrastructure, currently under construction, is necessary to ensure the continuity and future of the project. n193 The legal incorporation of LatCrit n194 and the overlapping membership of the planning committee have helped provide necessary continuity and institutional memory. This infrastructure, missing from Critical Legal Studies and Critical Race Theory, hopefully will keep LatCrit moving forward and should help LatCrits avoid getting bogged down in the same old disputes. n195

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Because of the success of LatCrit III and IV, I firmly believe that we are beyond the time when it is accurate to refer to "the fragile and tentative nature of the LatCrit enterprise." n196 LatCrit is now robust enough to undergo its own internal close scrutiny and ongoing selfcriticism. We must refine and improve the project to ensure its longevity and influence.

FOOTNOTES:

n1 Francisco X. Alarcon, *Tierra Prometida (Promised Land)*, in S. Beth Atkin, *Voices from the Fields: Children of Migrant Farmworkers Tell Their Stories* 95 (1993).

n2 See Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 *Harv. Latino L. Rev.* 1 (1997) (proceedings of LatCrit I, May 1996 in La Jolla, California); Symposium, *Difference, Solidarity, and Law: Building Latina/o Communities Through LatCrit Theory*, 19 *Chicano-Latino L. Rev.* 1 (1998) (proceedings to LatCrit II, May 1997 in San Antonio, Texas); Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, 53 *U. Miami L. Rev.* 575 (1999) (proceedings to LatCrit III, May 1998 in Miami, Florida). A 1995 colloquium at the Hispanic National Bar Association annual conference in Puerto Rico served as a precursor to the annual LatCrit conferences. See Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 *La Raza L.J.* 1 (1996). Published symposia that grew out of LatCrit I in 1996 were Colloquium, *International Law, Human Rights, and LatCrit Theory*, 28 *U. Miami Inter-Am. L. Rev.* 177 (1997); Symposium, *LatCrit Theory: Latinas/os and the Law*, 85 *Cal. L. Rev.* 1087 (1997), 10 *La Raza L.J.* 1 (1998). For collected critical readings on law and Latinas/os, see *The Latino/a Condition: A Critical Reader* (Richard Delgado & Jean Stefancic eds., 1998).

n3 Because of the location of the conference, a number of the symposium contributions focus on the impact of law on Chicanos/as and Latinas/os in California.

n4 Fact Sheet: LatCrit, in LatCrit Primer, unpublished materials distributed to participants at LatCrit IV (1999).

n5 See Gerald P. Lopez, *Learning About Latinos*, 19 *Chicano-Latino L. Rev.* 363, 368 (1998).

n6 Francisco Valdes, Foreword: Under Construction -- LatCrit Consciousness, Community, and Theory, 85 *Cal. L. Rev.* 1087, 1093-94 (1997), 10 *La Raza L.J.* 1, 7-8 (1998).

n7 See Elizabeth M. Iglesias, Foreword: Identity, Democracy, Communicative Power, Inter/National Labor Rights, and the Evolution of LatCrit Theory and Community, 53 *U. Miami L. Rev.* 575, 576-79 & nn.2-3 (1999) (discussing how LatCrit III helped calm tensions, particularly those surrounding religion, which arose at LatCrit II); see also *infra* text accompanying notes 71-75 (analyzing complexities of Catholicism for Latinas/os).

n8 Valdes, *supra* note 6.

n9 See generally Thomas Kuhn, *The Structure of Scientific Revolutions* (2d ed. 1970) (articulating theory of paradigm shifts in intellectual disciplines).

n10 See *infra* notes 117-19 and accompanying text.

n11 See *infra* notes 120-21, 141-48, 169-75 and accompanying text.

n12 See, e.g., Sumi K. Cho, Essential Politics, 2 *Harv. Latino L. Rev.* 433, 434-36 (1997); Laura M. Padilla, LatCrit Praxis to Heal Fractured Communities, 2 *Harv. Latino L. Rev.* 375, 386-92 (1997).

n13 See *infra* text accompanying notes 131-48.

n14 Rex R. Perschbacher, Welcoming Remarks for LatCrit IV, 33 *U.C. Davis L. Rev.* 751 (2000).

n15 See, e.g., Richard Delgado, Storytelling for Oppositionists and Others: A Plea for Narrative, 87 *Mich. L. Rev.* 2411 (1989); George A. Martinez, Philosophical Considerations and the Use of Narrative in Law, 30 *Rutgers L.J.* 683 (1999). Feminist theorists also have advocated storytelling. See, e.g., Kathryn Abrams, Hearing the Call of Stories, 79 *Cal. L. Rev.* 971 (1991); Lisa R. Pruitt, Law Review Story, 50 *Ark. L. Rev.* 77 (1997).

n16 Valdes, *supra* note 6, at 1102; see also Marilyn P. Davis, Mexican Voices/American Dreams (1990) (collecting interviews of Mexican immigrant experience); 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, 256-62 (1996-97) (offering stories of personal impact of immigration enforcement); Roberto L. Corrada, Familiar Connections: A Personal Re/View of Latino/a Identity, Gender, and Class Issues in the Context of the Labor Dispute Between Sprint and La Conexion Familiar, 53 *U. Miami L. Rev.* 1065 (1999) (presenting narrative highlighting class, racial, and gender identity issues).

n17 See Berta Esperanza Hernandez-Truyol, LatIndia II -- Latinas/os, Natives, and Mestizajes -A LatCrit Navigation of Nuevos Mundos, Nuevas Fronteras, and Nuevas Teorias, 33 *U.C. Davis L. Rev.* 851 (2000).

n18 See Pedro A. Malavet, Literature and Arts as Antisubordination Praxis LatCrit Theory and Cultural Production: The Confessions of an Accidental Crit, 33 *U.C. Davis L. Rev.* 1293 (2000); Pamela J. Smith, The Tyrannies of Silence of the Untenured Professors of Color, 33 *U.C. Davis L. Rev.* 1105 (2000).

n19 See Iglesias, *supra* note 7, at 595, 622-29; Kevin R. Johnson, Racial Hierarchy, Asian Americans, and Latinos as "Foreigners," and Social Change: Is Law the Way to Go?, 76 *Or. L. Rev.* 347, 358-62 (1997); George A. Martinez, African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition, 19 *Chicano-Latino L. Rev.* 213, 221-22 (1998); Athena D. Mutua, Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm, 53 *U. Miami L. Rev.* 1177, 1202-15 (1999). Professor Frank Valdes has referred to this phenomenon as "webs of power." Francisco Valdes, Piercing Webs of Power: Identity, Resistance, and Hope in LatCrit Theory and Praxis, 33 *U.C. Davis L. Rev.* 897 (2000).

n20 Compare Juan F. Perea, The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought, 85 *Cal. L. Rev.* 1213 (1997), 10 *La Raza L.J.* 127 (1998) (criticizing Black/White view of civil rights), with Anthony Paul Farley, All Flesh See It Together, 19 *ChicanoLatino L. Rev.* 163 (1998) (challenging criticism of Black/White paradigm).

n21 See Iglesias, *supra* note 7, at 622-29 (responding to critiques of focus on African Americans in LatCrit, including claim that this approach leaves "Lat" out of LatCrit).

n22 See Farley, *supra* note 20, at 172-74; Kevin R. Johnson & George A. Martinez, Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship, 53 *U. Miami L. Rev.* 1143, 1157-59 (1999); see also *Challenging Fronteras: Restructuring Latina and Latino Lives in the U.S.* (Mary Romero et al. eds., 1997) (providing analysis of Latina/o civil rights issues); Ronald Takaki, *A Different Mirror: A History of Multicultural America* (1993) (offering multicultural approach to history of racial subordination).

n23 See Farley, *supra* note 20, at 174.

n24 See, e.g., Juan F. Perea, Five Axioms in Search of Equality, 2 *Harv. Latino L. Rev.* 231, 238 (1997) (suggesting that certain African Americans have a "possessory attitude toward civil rights"). Some have stated that the challenge to the Black/White paradigm "could be read as a criticism of African-American scholars We must remember that African Americans did not create the binary color line." Leslie Espinoza & Angela P. Harris, Afterword: Embracing the Tar-Baby -- LatCrit Theory and the Sticky Mess of Race, 85 *Cal. L. Rev.* 1585, 1615 (1997), 10 *La Raza L.J.* 499, 529 (1998); see also Mutua, *supra* note 19, at 1189 (objecting to "tone" of criticism of Black/White binary and emphasizing that "blacks did not invent white racism, nor do we control the primary institutions supporting racial hierarchy") (footnotes omitted).

n25 See, e.g., Luz Guerra, LatCrit y La Des-Colonizacion Nuestra: Taking Colon Out, 19 *Chicano-Latino L. Rev.* 351 (1998) (analyzing relationship of term "Latino" to Native American history); Siegfried Weissner, 3Esa India! LatCrit Theory and the Place of Indigenous Peoples Within Latina/o Communities, 53 *U. Miami L. Rev.* 831 (1999) (analyzing history of subordination in Latin America). LatCrit inquiry into the status of indigenous peoples in the United States and Latin America is necessary given the well-documented human rights abuses of these peoples. See, e.g., Amnesty International, *Human Rights Violations Against the Indigenous Peoples of the Americas* (1992).

n26 See generally Julian Samora, *Mestizaje: The Formation of Chicanos* (1996).

n27 See, e.g., Kevin R. Johnson, "Melting Pot" or "Ring of Fire"?: Assimilation and the MexicanAmerican Experience, 85 *Cal. L. Rev.* 1259, 1272-74 (1997), 10 *La Raza L.J.* 173, 186-88 (1998); George A. Martinez, Latinos, Assimilation, and the Law: A Philosophical Perspective, 20 *ChicanoLatino L. Rev.* 1 (1999).

n28 See Rodolfo F. Acuna, *Anything But Mexican: Chicanos in Contemporary Los Angeles* (1996).

n29 See Hernandez-Truyol, *supra* note 17.

n30 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, 1238 (1995) (footnote omitted).

n31 See Manuel G. Gonzales, *Mexicanos: A History of Mexicans in the United State* 4 (1999); see also Ramon A. Gutierrez, *Community, Patriarchy and Individualism: The Politics of Chicano History and the Dream of Equality*, 45 *Am. Q.* 44, 46 (1993) ("Chicanismo meant identifying with la raza (the race or people), and collectively promoting the interests of carnales (or brothers) with whom they shared a common language, culture, religion, and Aztec heritage.").

n32 See, e.g., Berta Esperanza Hernandez-Truyol, *Borders (En)Gendered: Normativities, Latinas, and a LatCrit Paradigm*, 72 *N.Y.U. L. Rev.* 882 (1997); Berta Esperanza Hernandez-Truyol, *Building Bridges -- Latinas and Latinos at the Crossroads: Realities, Rhetoric, and Replacement*, 25 *Colum. Hum. Rts. L. Rev.* 369 (1994).

n33 See, e.g., Rebecca Tsosie, *Negotiating Economic Survival: The Consent Principle and TribalState Compacts Under the Indian Gaming Regulatory Act*, 29 *Ariz. St. L.J.* 25 (1997); Rebecca Tsosie, *Separate Sovereigns, Civil Rights, and the Sacred Text: The Legacy of Thurgood Marshall's Indian Law Jurisprudence*, 26 *Ariz. St. L.J.* 495 (1994). Other LatCrit theorists also have federal Indian law expertise. See, e.g., *Readings in American Indian Law: Recalling the Rhythm of Survival* (Jo Carrillo ed., 1998); Nell Jessup Newton, *Indian Claims in the Courts of the Conqueror*, 41 *Am. U. L. Rev.* 753 (1992).

n34 See Rebecca Tsosie, *Native Cultures, Comparative Values and Critical Intersections Panel Presentation at LatCrit IV* (Apr. 30, 2000). Other panelists included Jo Carillo, Donna Coker, Berta Esperanza Hernandez-Truyol, and Eric Yamamoto.

n35 See generally Felix S. Cohen, *Felix S. Cohen's Handbook of Federal Indian Law* (1986) (recounting history of U.S. government's policies toward Indian tribes).

n36 See Gloria Anzaldua, *Borderlands/La Frontera: The New Mestiza* 1-13 (1987) (placing Aztlan in historical and political context); Ian F. Haney Lopez, *Race, Ethnicity, Erasure: The Saliency of Race to LatCrit Theory*, 85 *Cal. L. Rev.* 1143, 1176 (1997), 10 *La Raza L.J.* 57, 90 (1998) (referring to "Aztlan, the mythical homeland for those of Aztec descent and a powerful symbol of Chicano identity and resistance") (footnote omitted). See generally *Aztlan: Essays on the Chicano Homeland* (Rodolfo A. Anaya & Francisco Lomeli eds., 1989) (collection of essays analyzing concept of Aztlan).

n37 See generally Ignacio M. Garcia, *Chicanismo: The Forging of a Militant Ethos Among Mexican Americans* (1997) (analyzing evolution of Chicano/a movement).

n38 Toro, *supra* note 30, at 1250 n.184 (citation omitted).

n39 See Rodolfo F. Acuna, *Occupied America: A History of Chicanos* 340-41 (3d ed. 1988); see also *infra* note 76 (citing authorities analyzing legacy of Treaty of Guadalupe Hidalgo). See generally Richard Gardner, *Grito! Reies Tijerina and the New Mexico Land Grant War of 1967* (1970); Reies Tijerina, *Mi Lucha Por La Tierra* (1978).

n40 See, e.g., Eric K. Yamamoto, *Interracial Justice: Conflict and Conciliation in Post-Civil Rights America* (1999); Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 *Harv. Latino L. Rev.* 495 (1997); Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 *Mich. L. Rev.* 821 (1997).

n41 See Eric K. Yamamoto, *Practically Reframing Rights: Culture, Translation, and Judging*, 33 *U.C. Davis L. Rev.* 875 (2000).

n42 146 *F.3d* 1075 (9th Cir. 1998), *rev'd*, 120 *S.Ct.* 1044 (2000). In this case, the Court decided the constitutionality of "special elections for trustees of the Office of Hawaiian Affairs . . . , who must be Hawaiian and who administer public trust funds set aside for the betterment of 'native Hawaiians' and 'Hawaiians,' in which only people who meet the blood quantum requirement for 'native Hawaiian' or 'Hawaiian' may vote." *Rice*, 146 *F.3d* at 1076 (footnote omitted). The Court invalidated the election scheme under the Fifteenth Amendment. See *Rice*, 120 *S.Ct.* at 1060.

n43 Yamamoto, *supra* note 41, at 875.

n44 See *infra* text accompanying notes 135-40. Law and culture have been explored in other contexts. See, e.g., Renato Rosaldo, *Culture & Truth: The Remaking of Social Analysis* (1993); Janet E. Halley, *Sexuality, Cultural Tradition, and the Law*, 8 *Yale J.L. & Human.* 93 (1996); Madhavi Sunder, *In Fragile Space: Sexual Harassment and the Construction of Indian Feminism*, 18 *Law & Pol'y* 419 (1996).

n45 See Toro, *supra* note 30, at 1262-63 (raising question whether Filipinos are Latina/o).

n46 See generally Stanley Karnow, *In Our Image: America's Empire in the Philippines* (1989) (exploring history of Philippines as part of U.S. colonial empire).

n47 See, e.g., *In re Lampitoe*, 232 *F.* 382 (*S.D.N.Y.* 1916) (holding that Filipino could not naturalize because he was not "White"); Ronald Takaki, *Strangers from a Different Shore* 315-54 (rev. ed. 1998) (analyzing history of Filipinos in United States); Simeon E. Baldwin, *The Constitutional Questions Incident to the Acquisition and Government by the United States of Island Territory*, 12 *Harv. L. Rev.* 393, 415 (1899) (stating that "the half-civilized Moros of the Philippines . . . or even the ordinary Filipino of Manila" in recently-acquired U.S. Territories did not deserve constitutional protections afforded to U.S. citizens).

n48 See Victor C. Romero, *Broadening Our World: Citizens and Immigrants of Color in America*, 27 *Cap. U. L. Rev.* 13 (1998).

n49 See Victor C. Romero, "Aren't You Latino?" Building Bridges upon Common Misperceptions, *33 U.C. Davis L. Rev.* 837 (2000).

n50 See, e.g., Yamamoto, *supra* note 41; Deborah A. Ramirez, Multicultural Empowerment: It's Not Just Black and White Anymore, *47 Stan. L. Rev.* 957 (1995).

n51 See Romero, *supra* note 49, at 846-47.

n52 See Johnson, *supra* note 27, at 1295-97, 209-10.

n53 See Leti Volpp, Talking "Culture": Gender, Race, Nation, and the Politics of Multiculturalism, *96 Colum. L. Rev.* 1573 (1996); Leti Volpp, (Mis)Identifying Culture: Asian Women and the "Cultural Defense", *17 Harv. Women's L.J.* 57 (1993).

n54 See Leti Volpp, American Mestizo: Filipinos and Antimiscegenation Laws in California, *33 U.C. Davis L. Rev.* 795 (2000).

n55 See generally Michael Omi & Howard Winant, *Racial Formation in the United States* (2d ed. 1994) (analyzing dynamics of racial transformation); Ian F. Haney-Lopez, *White by Law: The Legal Construction of Race* (1996) (studying similar issues in context of naturalization laws).

n56 Volpp, *supra* note 54, at 809-10.

n57 *Id.* at 810 n.59.

n58 See George A. Martinez, The Legal Construction of Race: Mexican-Americans and Whiteness, *2 Harv. Latino L. Rev.* 321 (1997) (showing how, although Mexicans were classified as "white" for naturalization purposes, there were subject to discrimination and segregation).

n59 Volpp, *supra* note 55, at 833.

n60 See Devon W. Carbado, The Ties that Bind, *19 Chicano-Latino L. Rev.* 283, 283 (1998) ("My father is an African Cubano. My mother is Jamaican. . . . Am I Latino?").

n61 John O. Calmore, 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, 81 (1997).

n62 Some of the comments in the following pages are based on my presentation at LatCrit IV on the panel on "Mestizaje, Identity and the Power of Law in Historical Context: LatCrit Perspectives."

n63 See Acuna, *supra* note 28, at 133 (summarizing coalitions between Asian and Chicano/a workers).

n64 See F. Arturo Rosales, *Chicano! The History of Mexican American Civil Rights Movement* 135-37 (1997).

n65 See generally Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 *Harv. L. Rev.* 1843 (1994) (analyzing relationship between geography and race relations).

n66 See Oscar Martinez, *Border People: Life and Society in the U.S.-Mexico Borderlands* 325 n.5 (1994).

n67 See *Loving v. Virginia*, 388 *U.S.* 1, 11 (1967) ("The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that [they are] measures designed to maintain White Supremacy.") (footnote omitted); Akhil Reed Amar, *Attainder and Amendment 2: Romer's Rightness*, 95 *Mich. L. Rev.* 203, 205 n.7 (1996) ("The social meaning of miscegenation laws was the legal enactment of racial hierarchy . . ."). Some today hope that racial mixture will have precisely this impact. See Jim Chen, *Unloving*, 80 *Iowa L. Rev.* 145, 167-72 (1994); Alex M. Johnson, *Destabilizing Racial Classifications Based on Insights Gleaned from Trademark Law*, 84 *Cal. L. Rev.* 887, 925-31 (1996).

n68 See, e.g., Jose Vasconcelos, *Raza Cosmica* (1925) (viewing racial mixture in Mexico as creating a "cosmic race" (*raza cosmica*)).

n69 Juan Gomez Quinones, *Roots of Chicano Politics, 1600-1940*, at 11 (1994).

n70 See Roxanne Dunbar Ortiz, *Roots of Resistance: Land Tenure in New Mexico, 1600-1980*, at 50 (1980) (A "caste system, pervaded Spanish colonial societies, little different from the racism which modern colonialism has bred wherever it has become rooted.").

n71 Keith Aoki, (Re)Presenting Representation, 2 *Harv. Latino L. Rev.* 247, 247 (1997).

n72 Compare Elizabeth M. Iglesias & Francisco Valdes, *Afterword -- Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 *Chicano-Latino L. Rev.* 503, 511-46 (1998) (calling for critical scrutiny by LatCrits of how Catholicism has contributed to subordination), Margaret E. Montoya, *Religious Rituals and LatCrit Theorizing*, 19 *Chicano-Latino L. Rev.* 417, 427-29 (1998) (same), and Nancy Ota, *Falling From Grace: A Mediation on LatCrit II*, 19 *Chicano-Latino L. Rev.* 437 (1998) (describing her experiences and feelings with religious symbols at LatCrit IV and about Catholicism generally), with Emily Fowler Hartigan, *Disturbing the Peace*, 19 *Chicano-Latino L. Rev.* 479 (1998) (offering wholly different perspective on religion and events at LatCrit IV), and Reynaldo Anaya Valencia, *On Being an "Out" Catholic: Contextualizing the Role of Religion at LatCrit II*, 19 *Chicano-Latino L. Rev.* 449, 458-66 (1998) (articulating his views on Catholicism from working class Chicano perspective).

n73 See Elvia Arriola, *Foreword -- March!*, 19 *Chicano-Latino L. Rev.* 1, 43-53 (1998).

n74 See Acuna, *supra* note 39, at 431-37; Rosales, *supra* note 64, at 138-42; see also Garcia, *supra* note 37, at 61-63 (discussing ambivalence about Catholic Church among Chicano/a activists in 1960s and 1970s).

n75 See Iglesias & Valdes, *supra* note 72, at 511-46.

n76 See, e.g., Guadalupe T. Luna, On the Complexities of Race: The Treaty of Guadalupe Hidalgo and Dred Scott v. Sandford, 53 *U. Miami L. Rev.* 691 (1999); Guadalupe T. Luna, Chicana/Chicano Land Tenure in the Agrarian Domain: On The Edge of a "Naked Knife", 4 *Mich. J. Race & L.* 3 (1998); Guadalupe T. Luna, En el Nombre de Dios-Poderoso: The Treaty of Guadalupe Hidalgo and Narrativos Legales, 5 *Sw. J.L. & Trade Am.* 45 (1998); 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) [hereinafter Luna, Agricultural Underdogs]. See generally The Legacy of the Mexican and Spanish-American Wars: Legal, Literary, and Historical Perspectives (Gary D. Keller & Cordelia Candelaria eds., 2000) (compiling readings on legal history of Treaty of Guadalupe Hidalgo); Symposium, Understanding the Treaty of Guadalupe Hidalgo on Its 150th Anniversary, 5 *Sw. J.L. & Trade Am.* 5 (1998) (collecting essays analyzing legal and other implications of lack of enforcement of Treaty of Guadalupe Hidalgo) [hereinafter Symposium, Understanding the Treaty of Guadalupe Hidalgo].

n77 See Guadalupe T. Luna, Gold, Souls, and Wandering Clerics: California Missions, Native Californians, and LatCrit Theory, 33 *U.C. Davis L. Rev.* 921 (2000).

n78 *Id.* at 925.

n79 *Id.* at 935-36.

n80 See Iglesias & Valdes, *supra* note 72, at 511-40.

n81 See Terry Rey, "The Virgin's Slip is Full of Fireflies": The Multiform Struggle over the Virgin Mary's Legitimierende Macht in Latin America and Its Diasporic Communities, 33 *U.C. Davis L. Rev.* 955 (2000).

n82 *Id.* at 956; see also Linda L. Ammons, What's God Got to Do with It? Church and State Collaboration in the Subordination of Women and Domestic Violence, 51 *Rutgers L. Rev.* 1207 (1999) (analyzing role of Christianity in subordination of women and condoning domestic violence).

n83 Rey, *supra* note 81, at 957-58.

n84 See, e.g., Laura M. Padilla, Social and Legal Repercussions of Latinos' Colonized Mentality, 53 *U. Miami L. Rev.* 769 (1999); Laura M. Padilla, Single-Parent Latinas on the Margin: Seeking a Room with a View, Meals, and Built-In Community, 13 *Wis. Women's L.J.* 179 (1998); Laura M. Padilla, Intersectionality and Positionality: Situating Women of Color in the Affirmative Action Dialogue, 66 *Fordham L. Rev.* 843 (1997).

n85 See Laura M. Padilla, Latinas, and Religion: Subordination or State of Grace?, 33 *U.C. Davis L. Rev.* 973 (2000).

n86 *Id. at 974*; see also Jeanette Rodriguez, *Our Lady of Guadalupe: Faith and Empowerment Among Mexican-American Women* (1994) (analyzing religious symbols as source of hope and power for Mexican American women).

n87 See Padilla, *supra* note 85, at 976-79.

n88 See *id. at 987 n.72*.

n89 See Valencia, *supra* note 72, at 451-53.

n90 Richard Rodriguez, *Hunger of Memory* (1981).

n91 See *supra* text accompanying note 74.

n92 See Iglesias & Valdes, *supra* note 72, at 535-45 (investigating liberation theology's relevance to LatCrit theory).

n93 See, e.g., Anthony E. Cook, *Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.*, 103 *Harv. L. Rev.* 985 (1990).

n94 See Michael Scaperlanda, *Who Is My Neighbor? An Essay on Immigration, Welfare Reform, and the Constitution*, 29 *Conn. L. Rev.* 1587 (1997).

n95 See, e.g., Berta Esperanza Hernandez-Truyol, *Las Olvidadas -- Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law*, 1 *Iowa J. Gender, Race & Justice* 353 (1998); 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, 15 *Chicano-Latino L. Rev.* 1 (1994).

n96 See 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). Intersectionality analysis has been expanded to apply to other groups and to emphasize the multi-dimensionality of identity. See, e.g., Darren Lenard Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Anti-Racist Politics*, 47 *Buffalo L. Rev.* 1 (1999); 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).

n97 See Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 *U.C. Davis L. Rev.* 1009 (2000); see also Donna Coker, *Enhanced Autonomy for Battered Women: Lessons from Navajo Peacemaking*, 47 *UCLA L. Rev.* 1 (1999); 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).

n98 See generally *Critical Race Feminism: A Reader* (Adrien Katherine Wing ed., 1997) (collecting essays on Critical Race Feminism).

n99 See, e.g., Mary Romero, *Maid in the U.S.A.* (1992); 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 (1993-94).

n100 See Janet Calvo, *Spouse Based Immigration Laws: The Legacy of Coverture*, 28 *San Diego L. Rev.* 593 (1991); Cecelia Espenosa, *No Relief for the Weary: VAWA Relief Denied for Battered Immigrants Lost in the Intersections*, 83 *Marquette L. Rev.* 163 (1999); Lee J. Teran, *Barriers to Protection at Home and Abroad: Mexican Victims of Domestic Violence and the Violence Against Women Act*, 17 *B.U. Int'l L.J.* 1 (1999); see also Virginia P. Coto, *LUCHA, The Struggle for Life: Legal Services for Battered Immigrant Women*, 53 *U. Miami L. Rev.* 749 (1999) (summarizing difficulties facing organizations providing legal services to poor, battered immigrant women).

n101 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, 10 (1995) (noting that Latinas/os "often have been attuned to questions of class, rather than race or ethnicity, in formulating a reform agenda"); see also Mary Romero, *Immigration, the Servant Problem, and the Legacy of the Domestic Labor Debate: "Where Can You Find Good Help These Days!"*, 53 *U. Miami L. Rev.* 1045 (1999) (analyzing issues of race and class implicated for Latinas in domestic service industry).

n102 See Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 *Harv. Latino L. Rev.* 101, 129-38 (1997). This focus on Latina/o diversity at LatCrit I provoked critical response. See Michael Luis Principe, *A Reason for LatCrit Unification: Reflections on Comparative Efforts to Curtail Political Opposition and Terrorism*, 2 *Harv. Latino L. Rev.* 297, 298 (1997); Ediberto Roman, *Common Ground: Perspectives on Latino-Latina Diversity*, 2 *Harv. Latino L. Rev.* 483, 483-84 (1997).

n103 Iglesias, *supra* note 7, at 664-72.

n104 See Tanya K. Hernandez, *"Multiracial Discourse": Racial Classifications in an Era of Color-Blind Jurisprudence*, 57 *Md. L. Rev.* 97 (1998); Tanya K. Hernandez, *The Construction of Race and Class Buffers in the Structure of Immigration Controls and Laws*, 76 *Or. L. Rev.* 731 (1997).

n105 See Tanya K. Hernandez, *An Exploration of the Efficacy of Class-Based Approaches to Racial Justice: The Cuban Context*, 33 *U.C. Davis L. Rev.* 1135 (2000). For analysis of the place of Cubans in a Latina/o coalition, see Max J. Castro, *Making Pan Latino: Latino Pan-Ethnicity and the Controversial Case of the Cubans*, 2 *Harv. Latino L. Rev.* 179, 191-96 (1997).

n106 See Gloria Sandrino-Glasser, *Los Confundidos: De-Conflating Latino/as' Race and Ethnicity*, 19 *Chicano-Latino L. Rev.* 69, 89-90 & n.81 (1998).

n107 Hernandez, *supra* note 105, at 1167.

n108 See Leonard M. Baynes, Who Is Black Enough for You? The Stories of One Black Man and His Family's Pursuit of the American Dream, *11 Geo. Immigr. L.J.* 97 (1996); Hope Lewis, Lionheart Gals Facing the Dragon: The Human Rights of Inter/National Black Women in the United States, *76 Or. L. Rev.* 567 (1997).

n109 See Lolita K. Buckner Inniss, Tricky Magic: Blacks as Immigrants and the Paradox of Foreignness, *49 DePaul L. Rev.* 85 (1999); see also Berta Esperanza Hernandez-Truyol, Building Bridges III -- Personal Narratives, Incoherent Paradigms, and Plural Citizens, *19 Chicano-Latino L. Rev.* 303, 322 (1998) (observing that Black immigration includes "not only that from many different African countries . . . , but also from the Caribbean countries. Such increased diversity increases the commonality and intersection of issues of Blacks with those facing Latina/o and Asian/Pacific groups . . .").

n110 For example, at the LatCrit IV conference, on the plenary panel entitled "The Meanings and Particularities of Blackness: Latina/o Identities and LatCrit Theory," Professor Taunya Lovell Banks and Charles Venator Santiago, as well as Professor Hernandez, presented papers on the Afro-Latina/o experience. These panelists also presented these papers on a panel on "Afro Latina/os and Racial Formation" at the 1999 Annual Meeting of the American Society of Legal History in Toronto in October 1999. See American Society for Legal History, Twenty-Ninth Annual Meeting, Oct. 21-23, 1999, at 19 (1999).

n111 See Christopher David Ruiz Cameron, The Rakes of Wrath: Urban Agricultural Workers and the Struggle Against Los Angeles's Ban on Gas-Powered Leaf Blowers, *33 U.C. Davis L. Rev.* 1087 (2000); see also Christopher David Ruiz Cameron, The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers, *53 U. Miami L. Rev.* 1089 (1999) (contending that future of organized labor in United States rests on Latina/o workers).

n112 See Mary S. Pardo, Mexican American Women Activists: Identity and Resistance in Two Los Angeles Communities (1998); Luke W. Cole, Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law, *19 Ecology L.Q.* 619 (1992); Eileen Gauna, The Environmental Justice Misfit: Public Participation and the Paradigm Paradox, *17 Stan. Envtl. L.J.* 3 (1998); Olga L. Moya, Adopting an Environmental Justice Ethic, *5 Dick. J. Envtl. L. & Pol'y* 215 (1996).

n113 See Richard J. Lazarus, Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection, *87 Nw. U.L. Rev.* 787, 850-52 (1992).

n114 See Kevin R. Johnson & George A. Martinez, Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education, *33 U.C. Davis L. Rev.* 1227 (2000).

n115 See, e.g., Robert S. Chang & Keith Aoki, Centering the Immigrant in the Inter/National Imagination, *85 Cal. L. Rev.* 1395 (1997), *10 La Raza L.J.* 309 (1998); 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 (1997).

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n128 See William R. Tamayo, The Role of the EEOC in Protecting the Civil Rights of Farmworkers, *33 U.C. Davis L. Rev.* 1075 (2000).

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n173 See Roman, RAIL, supra note 171.

n174 See, e.g., Christopher David Ruiz Cameron, *One Hundred and Fifty Years of Solitude: Reflections on the End of the History Academy's Dominance of Scholarship on the Treaty of Guadalupe Hidalgo*, 5 *Sw. J.L. & Trade Am.* 83 (1998).

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n182 See Keith Aoki, The Scholarship of Reconstruction and the Politics of Backlash, *81 Iowa L. Rev.* 1467, 1471 (1996).

n183 See Johnson & Martinez, *supra* note 22, at 1155-57 (calling for specific exploration of Chicano/a experience).

n184 See, e.g., *supra* text accompanying notes 157-61.

n185 See Francisco Valdes, "Criminality, Accountability and Reparations: Post-Pinochet Extrapolations," at The Spanish Legal System and LatCrit Theory: A Dialogue, Presentation at the University of Malaga, Malaga, Spain (June 30, 1999).

n186 See Latino/a Condition, *supra* note 2; *supra* note 2 (citing various symposia and colloquium).

n187 See, e.g., Iglesias, *supra* note 172; Luna, Agricultural Underdogs, *supra* note 76; HernandezTruyol, *supra* note 95; Montoya, *supra* note 95; Yxta Maya Murray, The Latino-American Crisis of Citizenship, *31 U.C. Davis L. Rev.* 503 (1998); Olivas, *supra* note 158; Roman, Empire Forgotten, *supra* note 154; Symposium, Understanding the Treaty of Guadalupe Hidalgo, *supra* note 76; Sylvia R. Lazos Vargas, Deconstructing Homogenous Americanus: The White Ethnic Immigrant and Its Exclusionary Effect, *72 Tul. L. Rev.* 1493 (1998); see also Johnson & Martinez, *supra* note 22, at 1159-61 (contending that much Chicano/a Studies scholarship is relevant to LatCrit theory). LatCrit scholarship need not necessarily be published in LatCrit annual symposia or other LatCrit conferences. Rather, as the literature expands, we would hope to see LatCrit scholarship in law reviews outside the annual symposia. Similarly, although the movement was officially denominated "LatCrit" in 1995 or thereabouts, see Iglesias, *supra* note 7, at 673, 680-81, critical literature about Latinas/os and the law existed before that date. Careful research requires looking at literature both inside and outside the official symposia and both before and after LatCrit I in 1996.

n188 The primer includes a "Fact Sheet: LatCrit" describing the movement and its participants, as well as "LatCrit: A Conceptual Overview," which is excerpted from Francisco Valdes, Theorizing "OutCrit" Theories: Comparative Antisubordination Experience and Subordination Vision as Jurisprudential Method, in *Critical Race Theory: Histories, Crossroads, Directions* (Jerome M. Culp, Jr. et al. eds., forthcoming 2001).

n189 See Pedro Malavet <<http://nersp.nerdc.ufl.edu/malavet/latcrit/latcrit.htm#anchorlc>> (on file with author).

n190 See, e.g., Canova, *Global Finance*, supra note 157.

n191 See, e.g., Richard Delgado & Vicki Palacios, *Mexican Americans as a Legally Cognizable Class Under Rule 23 and the Equal Protection Clause*, 50 *Notre Dame Law. 393* (1975); Johnson, supra note 118; Martinez, supra note 117; Montoya, supra note 95; Moran, supra note 101.

n192 See Iglesias, supra note 7, at 679-82. See generally Richard Delgado, *The Imperial Scholar: Reflections on a Review of the Civil Rights Literature*, 132 *U. Pa. L. Rev. 561* (1984).

n193 See Francisco Valdes, *Afterword -- Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience -- RaceCrits, QueerCrits and LatCrits*, 53 *U. Miami L. Rev. 1265, 1299-1306* (1999).

n194 LatCrit, Inc. is a fictitious name duly registered with the Florida Secretary of State on behalf of: Latina and Latino Critical Legal Theory, Inc., a non-profit corporation, incorporated under the laws of the State of Florida.

n195 This criticism has been leveled at Critical Race Theory. See Richard Delgado & Jean Stefancic, *Critical Race Theory: Past, Present, and Future*, 51 *Current Leg. Probs. 468, 490* (1998) ("CRT . . . has not changed with the times. It continues focusing on feelings, language, social construction, and the unique multiple consciousness of people of color, while programs vital to the well being and, indeed, survival, of minority communities are being terminated right and left.").

n196 Iglesias & Valdes, supra note 72, at 533.

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GLOBALIZATION OR GLOBAL SUBORDINATION?: HOW LATCRIT LINKS THE LOCAL TO GLOBAL AND THE GLOBAL TO THE LOCAL: AFTERWORD: Historicizing and Symbolizing a Racial Ethnic Identity: Lessons for Coalition Building with a Social Justice Agenda

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* Professor, School of Social Justice, College of Public Programs, Arizona State University. B.A., Regis College, Ph.D. University of Colorado at Boulder. I am indebted to Kevin R. Johnson, Christopher Ruiz Cameron, and George A. Martinez for inviting me to participate in LatCrit and who continue to support my increasing involvement. The warm welcome I received from Frank Valdes, Elizabeth M. Iglesias, Guadalupe Luna, Laura Gomez, Sumi K. Cho, Sylvia Lazos, Elvia Arriola, Adrienne Davis, and others has truly been inspiring and uplifting. I am honored that Frank Valdes invited me to write the Afterword to LatCrit IV Symposium. I thank the symposium authors for their challenging articles and their significant contributions to LatCrit social justice agendas. I am grateful for the critical feedback I received from Eric Margolis and the insightful comments I received from Kevin R. Johnson, Sumi Cho and Chris Cameron. Mike Soldatenko and Maria Guitierrez Soldatenko provided me with helpful cites on Chicana/o Studies.

SUMMARY:

... Although groups centering on discrete identities struggled to find a rallying point from which to advocate social justice and coalition building, this has proven to be a difficult project. ... The ways in which race-based movements and racialized communities construct their identities has enormous implications for setting social justice agendas and for coalition building. ... I argue for cooperation and coalition building, for making common linkages, sharing values, and respecting differences. ... A historical analysis of Filipinos in California suggests strategies for coalition building among subordinated groups. ... Each of these works calls into question the legitimacy of certain kinds of historicizing and symbolizing, as well as underscoring the limitations to coalition building that stem from identity construction. ... This type of identity construction has already proven to be an obstacle to coalition building within and outside Chicana/o and Latina/o communities. ... We might take a look at the implications for coalition building with other subordinated groups, what role Latina/o popular culture has in influencing global conversations about contradictions produced by transnational capital, and how popular culture facilitates conversations with other racialized and minoritized people. ...

TEXT:

[*1599]

Introduction

In the late 1960s and 1970s the civil rights and antiwar movements splintered into an array of groups grounded in identity politics. A quarter of a century later, concern for inclusion, diversity, and difference continues to dominate progressive literature. Although groups centering on discrete identities struggled to find a rallying point from which to advocate social justice and coalition building, this has proven to be a difficult project. Self-criticism in the 1980s called attention to falsehoods lurking behind attempts to make universal claims about particular kinds of subordination. In the 1990s, these critiques have extended to problems of essentialism n1 and antiessentialism n2. Questions about [*1600] the framing of racial and ethnic identity, n3 the history n4 and symbols n5 evokes, the incorporation of literature and

the arts as antisubordination praxis, n6 and their basis for building coalitions (internationally and domestically) n7 were vigorously discussed and debated at LatCrit IV.

LatCrit IV raised number of challenging and provocative issues, particularly those arising from the apparently uneasy union between the theory and praxis of identity. As I reflected on the issues that arose in the symposium stressing commonalities and respect for difference in coalition building, I recalled a troubling incident that occurred recently where I teach at Arizona State University. Following the Supreme Court decision on the Boy Scout hiring practices that allowed the Boy Scouts to discriminate against gays, n8 the campus newspaper published a cartoon depicting a gay scout master handing a badge to a Boy Scout saying, "Ok Boyth, Who wants to earn their First AIDS merit badge?!" During this time, a graduate student in my seminar reported her research findings on student involvement. One of the students she interviewed used this incident as an example of the lack of university-wide support for gay activists. This interviewee remarked that a similar attack on the Chicano community would [*1601] have generated hundreds of letters to the editor, and Movimiento Estudiantil Chicano de Aztlan ("MEChA") would have responded by rallying Chicano students and holding demonstrations. My student selected this interviewee for the study because he had helped to develop a public service component for a new Hispanic fraternity on campus. What I found revealing and alarming about the account was the way he constructed the issues around boundaries or turfs. First, the student did not comprehend how a cartoon attacking gays was "his" issue. He did not perceive that it had anything to do with the narrow range of topics and activities he had defined as "service." Second, he did not consider "activism" within the range of activities that his group participated in. Instead, he perceived Chicano and Latino issues to be narrowly constructed the mission statement of the student organization MEChA. Similarly, MEChA did not voice opposition to the cartoon because they defined political activism within a cultural nationalistic agenda, one that does not include gays or the general category of human rights.

I reflected on this story as I began this Afterword because it captures the tunnel vision inherent in constructing racialized ethnicities that ignore intersectionality and frequently narrow the terrain for coalition building, or make it impossible. The ways in which race-based movements and racialized communities construct their identities has enormous implications for setting social justice agendas and for coalition building. n9 Racialized ethnicities were forged out of centuries of colonialism, conquest, slavery, capitalism, racism, sexism, classism, and the politics of appropriation and co-optation. Consequently, all forms of resistance and struggle pose extremely complex questions. In order to resist effectively, we must constantly reconsider and reconstruct identity. n10 This Afterword reflects on a number of identity issues that emerged in LatCrit IV, paying particularly attention to three objectives: (1) the commitment to the production of both knowledge and community specifically as a means toward an end the [*1602] attainment of social justice; (2) elucidating intra-and inter-group diversities across multiple identity axes, including those based on perspective and discipline, and; (3) ensuring that African American, Asian American, Native American, Feminist, Queer, and other OutCrit subjectivities are brought to bear on Latinas/os places and prospects under the Anglocentric and heteropatriarchal rule of the United States. n11

I hope to add to ongoing dialogues and critiques of problems in identity politics, particularly the distinctions between identity constructions based on a mythical past, imagined communities stemming from lived and shared experiences, claims of authenticity and cultural nationalism. I begin by discussing reflections on historicizing and symbolizing Latina/o identity in terms of agency in the struggle for social justice. Here, I want to engage questions of commonalities and differences involving both intra-and inter-group diversities. I note several essays that offer lessons for building coalitions that draw upon commonalities. Next, I consider writings that highlight cultural controversies that arise when we assume commonalities that do not lead to coalition building but rather splinter organizing efforts. I draw lessons on how to ground LatCrit in theory and material reality from historical and contemporary cases analyzed throughout the symposium. I end with a review of lessons learned by discussing the critical intersections and transformative potential that culture offers in the struggles for social justice.

I. Historicizing and Symbolizing Latina/o Identity: Questions of Commonalities and Differences

There is a disturbing parable that I first heard when I taught Chicana/o Studies, I had never heard it growing up: A young child asks a fisherman why he didn't put a lid on a basket of crabs. The fisherman says, "Because the basket contains Mexican crabs. As soon as one of them gets near the top the others drag him back down. They are so busy fighting among themselves that I don't have to worry about any of them reaching the top and getting out." This story has two meanings: the first is the familiar [*1603] ideology of capitalism: the only path to success is individual effort, and attempts at organizing only drag the hard worker back into the bucket. The second is a message of cultural-hatred -- this behavior is peculiar to Mexicans. The story frequently is told with a coda; pointing to another bucket with a lid, the fisherman completes the story by saying, "This basket has Jewish crabs. They help each other get to the top. I have to

keep a lid on here because they will help each other get out of the basket." Each time I heard this story from a Chicana or Chicano undergraduate it was offered as an explanation for why collective action on campus or in the community failed. The ethnicity of the crabs changed in later tellings, but the parable always evokes the same two underlying assumptions: that organizing is counter-productive and that culture explains why some groups have difficulty establishing common ground and helping members get ahead. The "dysfunction" of Mexican, black, or Indian crabs was explained by the essential qualities of culture and ancestry, as was the "function" of Jewish, Korean, or West Indian crabs.

I counter the myth by explaining that neither conflict nor organizational ability are essential cultural characteristics, and are no more inherent to Chicanas/os than any other group. I argue for cooperation and coalition building, for making common linkages, sharing values, and respecting differences. I argue for overturning the basket. Although the social constructions of race in the U.S. present identity as fixed and stagnant, ideologies of race are anything but consistent. n12 Political strategies aimed at establishing interracial justice cannot assume that commonalities and differences articulated in multiple identities are devoid of racist ideology and history, and, therefore, necessarily constructive for coalition building. Interracial justice requires recognition of the fluidity of racism n13 and exposing the underlying assumptions in particular constructions of identity that create opportunities or establish barriers to coalition building. Constructing the ground between negotiated commonalities and respected differences is key to building the extremely delicate path toward coalition and [*1604] antiracism praxis. n14 In the following section, I begin to identify the lessons offered in LatCrit V concerning historicizing and symbolizing Latina/o identity and the limits or opportunities for progressive coalition building.

A. Lessons for Building and Constructing Common Ground

A historical analysis of Filipinos in California suggests strategies for coalition building among subordinated groups. Professor Leti Volpp's study of the neglected history of Filipinos and the pattern of antimiscegenation laws and enforcement raises questions about the different ways that race has been sexualized and gendered and the ways these characterizations govern marriage contracts, inheritance, and cultural/social legitimacy. n15 Volpp's questions about the implications of legal distinctions made within identity categories of "Asian American" and "Pacific Asian American" is particularly relevant to similar internal hierarchies within the identity category of Latina/o that need further consideration. n16 Linking examples of antimiscegenation laws and Filipinos to Proposition 187, Professor Victor Romero introduces the concept "minority on minority oppression" to explain inter- and intragroup action that "help perpetuate racial stereotypes that separate us rather than unify our communities." n17 He persuasively argues that responses to racism that fail to build bridges with other racially subordinated groups are likely to promote "minority on minority oppression." In addition, Romero illustrates how identity can be constructed and symbolized to include "perceived notions of commonality" that create opportunities for coalition building in everyday encounters -- even when they are based on stereotypes. n18 However, the limits of such a beginning are questionable and probably need to be qualified. It is necessary to move beyond stereotypes towards the development of concrete [*1605] commonalities in social, political and/or economic circumstances.

Bringing the lessons closer to home, three essays offer cautionary appraisals of "both the creation of scholarship through community and community through scholarship." n19 Professors Sumi K. Cho and Robert Westley suggest ways of facilitating coalitions among the generations of race critics and avoiding competing paradigms. They recount "an obscured history that was central to the development of Critical Race Theory ("CRT") "the history of student activism for diversity in higher education from the 1960s to the 1990s." n20 Documenting the history of law students at Boalt, Cho and Westley challenge the commonly held perception that CRT was born at Harvard, and point out that the movement has heterogeneous roots. Grounding critical theory in the historical context from which it emerged ties together CRT, LatCrit, APA Crit, Fem Crits, CLS, and NAIL. This grounding also constructs an egalitarian basis for developing and building coalitions to incorporate diverse communities in common struggles and acknowledges "symbiotic relationship between intellectual activists and activist intellectuals." n21 In his panel presentation, Professor Devon Carbado added to growing commentaries on "the old and tired" critiques of the black/white paradigm. n22 He added a caution against continuing critiques that offer no strategic direction methods, or that fail to identify the political misuses of the paradigm. He offers concrete suggestions to move dialogues on the various paradigms in directions that offer a basis for coalition building. The importance of community building among scholars of color is particularly salient to the experiences of young legal scholars whose "contributions to legal academia were disrespected, devalued and denigrated" by their home institutions. Professor Pamela Smith's essay provides a number of lessons for tenured and tenure track professors, stressing the need to make [*1606] connections with professors of color across the disciplines,

that experience silencing tactics and hostile academic environments, and to senior colleagues that can provide mentoring.

In the third essay, Professor Tanya K. Hernandez explores the socialist Cuban context of affirmative action to pose difficult questions concerning the case of Afro-Latinas/os that are frequently ignored in LatCrit critiques of the white/black binary. n23 This case study poses a distinction between color, class, and ethnicity that has largely been ignored in the analysis of racial and cultural discrimination. While social research has documented differences among Latinas/os based on color and class, n24 writings on intersectionality are primarily theoretical and narrative. n25 A related issue emerging from Hernandez's work is the question of the comfort zone among Latinas/os dissecting race: Are we more likely to engage in theoretical explorations of our mestizo roots rather than our multiracial roots? More specifically, have we ignored our African roots -- both the Moorish connections from Spain and African heritage from slavery? I will return to these issues of identity construction and the assumption of commonality and difference.

B. Lessons About Assuming Commonalities and Similarities

The most obvious incident of assumed and fictitious commonality was presented in the case study written by Dean Cameron. n26 He analyzes the fight over banning gas-powered leaf blowers, in which Hollywood celebrities often supported the ban under the guise of caring for safer environment and the health and spirituality of the Latino gardeners. Defining the ban as benign guidance was not an attempt to build a coalition but to appropriate the voice of the workers. It served to keep Latino gardeners invisible as workers. The social and class differences between the [*1607] gardeners and Hollywood celebrities was exacerbated by these attempts to couch their relationship as that of allies rather than of adversaries; no attempt was made to find a common ground to define the issue.

Salient issues that distinguish racialized communities in the U.S. are highlighted in Professor Eric Yamamoto's article. n27 He demonstrates how questions of identity situate groups' political status, historical consciousness, self-determination, human rights and colonialism. n28 These specific questions of identity are closely related to the underlying the conflicts described in Professor Hernandez's essay. n29 Each of these works calls into question the legitimacy of certain kinds of historicizing and symbolizing, as well as underscoring the limitations to coalition building that stem from identity construction. While these essays are primarily aimed at inter-and intra-groups within the U.S., I suggest that they raise serious implications for international coalition building as well.

In her comments on the Native Cultures, Comparative Values and Critical Intersections Panel, Professor Tsosie challenged constructions of Chicana/o identity that claim "indigenous" status and rejects similar claims to ancestral land implied in the concepts of Aztlan and la frontera. While I largely agree with her critique, I do think it is important to note that there are numerous constructions of Chicana/o and Mexican American identity. And while some of these identities are grounded in indigenous ancestry, they do not claim the same political status as Native Americans or Native Hawaiians.

On the one hand, I appreciate Professor Tsosie's comments because they address the underlying problem with the movimiento indigenista and the growing cultural nationalism in our communities and universities today. On the other hand, her critique has the unfortunate consequence of erasing the basis for one hundred and fifty years of land and water rights struggles in Southern [*1608] Colorado and Northern New Mexico. n30 Before addressing the specific identity constructions of the movimiento indigenista, I think it is critical to recall that the construction of racial, ethnic and national identity is inexorably tied to myth-making and is highly selective, n31 particularly when the identity is a gloss of two to five hundred years of conquest, occupation, the destruction and creation of nation states, transitions from feudalism to capitalism, and shifting boundaries of citizenship status. n32

Given the acceptance of the term Chicano and the concept of Aztlan among academicians and writers, the Chicano Movement was extremely successful in unifying a population that had not previously owned its history or culture. n33 While Chicanos are unlikely to distinguish themselves as mestizo or non-mestizo, they do make regional classifications such as Tejanos, n34 Californios, n35 and manitos, n36 and they differentiate between Mexicano and Chicano, immigrant and nonimmigrant. n37 We also make generational distinctions. n38 Comparisons between rural and urban experience are extremely significant to families who migrated from the countryside of Texas, New Mexico, and California to find employment in Chicago, Detroit, Denver, and Los Angeles. n39 Prior to the commercial homogenization of culture, regional distinctions were observed in linguistic differences n40 and a host of cultural practices including food, music, n41 traditional medicine, n42 santos, shrines, and other religious customs. n43

I draw attention to these distinctions, not merely to celebrate diversity and acknowledge difference, but to focus on the importance of historical events n44 in shaping social processes and creating and maintaining unique or similar

cultures. There is an extensive literature of historical and sociological studies that documents significant regional differences generated by the various religious, government, n45 and labor n46 practices used "to win the [*1610] West." Each of these institutions contributed to shaping the process of "becoming Mexican American," "becoming Chicano," "becoming Latino," and "becoming Hispanic." n47 These concrete historical, social and cultural processes went beyond individual choice to construct specific but fluid group identities created from group experiences and struggle. The construction of identity involved imagining community and establishing the basis for collective action. Today's (so-called postmodern) identity construction based on personal choice or idiosyncrasy is quite different from one based on a concrete, lived experienced. Furthermore, the ways in which identity is historicized and symbolized creates boundaries that do not necessarily promote coalition building in antisubordination struggles within the inter-or intra-group. n48

One of the first references to identity politics that I can recall reading was by Carey McWilliams. Writing in the 1940s, he critiqued the identity politics of the elite in Los Angeles in a chapter entitled, "The Fantasy Heritage." n49 At the time Mexicans were excluded from "restaurants, dance halls, swimming pools, and theaters." But, claiming to be direct descendants of "Spanish grandes and caballeros," and building a "Spain-away-from-Spain," they referred to "a quarter acre and twenty chickens" as a rancho. McWilliams followed with a racial description of Los Angeles' first settlers:

Pablo Rodriguez, Jose Variegas, Jose Moreno, Felix Villavicencio, Jose de Lara, Antonio Mesa, Basilio Rosas, Alejandro Rosas, Antonio Navarro, and Manuel Camero. All "Spanish" [*1611] names, all good "Spanish" except "Pablo Rodriguez" who was an Indian; Jose Variegas, first alcalde of the pueblo, also an Indian; Jose Moreno, a mulatto; Felix Villavicencio, a Spaniard married to an Indian; Jose de Lara, also married to an Indian; Antonio Mesa, who was a Negro; Basilio Rosas, an Indian married to a mulatto; Alejandro Rosas, an Indian married to an Indian; Antonio Navarro, a mestizo with a mulatto wife; and Manuel Camero, a mulatto. The twelfth settler is merely listed as "a Chino" and was probably of Chinese descent. n50

What is most telling is that such references to "Spanish" in our fin de siecle imagination translates into White. This translation is distorted given that Spain's history includes eight hundred years of Moorish domination prior to the colonization of Mexico and the expulsion of Jews in 1492. Clearly, myth making is not the exclusive property of any one group. n51 Early writings of the Chicano Movement claimed Chicanos as the direct descendants of Aztecs and the Southwest as Aztlan, thereby establishing essentialist notions of culture and the nature of mestizos n52 that were later popularized in poetry, art, literature, and dance. n53 In the late [*1612] 1970s and 1980s, Chicana/o writings began to critique aspects of "Aztlan" ideology and challenge certain assumptions, particularly those depicting gender and sexuality. For instance, Mexican n54 and Chicana n55 feminists revisited the portrayal of Malintzin Tenepal or Dona Marina as "La Malinche," the Mexican Eve. n56 In a mytho-symbolic language, they argued that Tenepal could not be traitor of the Mexican people because Mexico was not a nation state at the time and Aztecs had subordinated surrounding tribes. n57 Revisionists argued that Malintzin Tenepal was a heroine that united the tribes in their quest to overthrow the tyranny of the Aztec empire. The most popularized Chicana writings strived to replace the macho representations of Yo Soy Joaquin or Chicano Manifesto with feminist versions of spirituality drawn from MesoAmerica, that (1) replaced the male deities Quetzatcoatl or Huxilopochtli, with the female deities, Tonatzin and Coatlicue, n58 and (2) feminized indigenous identities claiming that "la Raza Comica comes of the union of the Indian mother and the European father." n59 This genre did not directly challenge Chicanismo but merely packaged cultural nationalism in a feminist voice. The symbolizing used to construct indigenous and mestiza/o identity as the true identity of Chicanas/os in the U.S. had several politi [*1613] cal consequences that limited its usefulness and hobbled its ability for coalition building that: (1) it lacks historical specificity, n60 (2) it equates biology [the hybrid represented in the concept of mestizo] to a common culture, history and ancestry, (3) it erases 500 hundred years of material reality; n61 (4) it ignores the central importance of social class, n62 (5) it creates dualistic thinking about racial justice, n63 and (6) it centers spirituality while marginalizing concrete historical and sociological analysis. n64 [*1614]

A contemporary version of the "the fantasy heritage" may well include many aspects of cultural nationalism, particularly the movimiento indigenista. n65 Primarily structured around dance troupes known as Danzantes, the movement claims a Mexica nation and proclaims cultural nationalism -- frequently expressed in sexist, homophobic, anti-Semitic, racist, and militarist ideology. Ignoring Mexico's complex ethnic, race and class history, as well as the existing indigenous communities still struggling to survive, they claim a distinctive indigenous identity based on a MesoAmerica heritage and culture as members of a Mexica nation. n66 In spite of the obvious contradiction, indigenous and mestizo identity is being claimed as a collective spiritual link. Such an ideology requires a highly selective and distorted vision of Mexico's past. n67 In the romantic imagination, indigenous and mestizo identity

becomes highly symbolic and ritualized, ungrounded in the lived experience, cultural competence or struggle that unifies specific communities. n68 Nonetheless, Mexistas burn sage, built sweat lodges, and claim a position at international conferences on indigenous rights and struggles. n69 This produces, not coalition, but increased tension and strains surrounding their claims of an identity as "a people/a tribe." In his critique of Anzaldua's identity [*1615] construction of the new mestiza, Benjamin Alire Saenz captured the embedded contradictions in appropriation of indigenous identity:

In wanting to distance herself from dominant European discourses, which she views as dualistic, oppressive, and racist, Anzaldua gestures toward mythologies and cultures that I cannot believe are truly her own. Acknowledgment of mixed ancestry is not in itself problematic; it is far better to acknowledge the competing cultures we literally inherit than to base our identities on ridiculous (and dangerous) notions of "purity" and "pedigree" such as those that gave rise to Nazi Germany and the current wars of ethnic cleansing in Eastern Europe. . . . By calling herself a mestiza, she takes herself out of a European mind-set. She refuses to refer to herself as "Hispanic"; to do so would be to embrace an identity that admits no competing discourses, that admits only a European history and erases any indigenous consciousness. Her impulse is to defy that her "Indianness" has been destroyed. But her "Indianness" has been destroyed -- just as mine has. I do not find it productive to build a politics and an identity centered on "loss." n70

Characterized as a form of oppositional culture or culture of resistance in the face of internal colonialism and institutional racism, the romanticism of pre-Columbian traditional ways, coupled with the appropriation of living indigenous cultures, is inconsistent with the decolonization process that Franz Fanon n71 and Paulo Freire n72 described. Embracing an oppositional culture that substitutes adherence to perceived tradition for assimilationist ideology hampers the progress toward decolonization because it discourages dialectic consciousness-raising or liberating techniques involving self-criticism.

A serious confrontation with our mestizo heritage is a complex project; one that needs to include accepting historical responsibility and recognizing privileges gained by neither being fullbloods [*1616] nor assimilating into Spanish/Mexican culture. n73 An argument that claims (or mandates) mestizo and indigenous identity as a political identity, but remains centered on pre-Columbian mythology assumes commonalities with indigenous people that is not based on our material existence or historical and current struggles in the U.S. While I recognize that the spirituality gained through the mythology of pre-Columbian gods and goddesses may be inspirational to some individuals, the imagined community is thoroughly exclusionary. This type of identity construction has already proven to be an obstacle to coalition building within and outside Chicana/o and Latina/o communities.

The problematic politics of an indigenous identity that places tradition above concerns for social justice is an issue that can be shared with Native Americans. Like the manitos that claim the Colorado's San Luis Valley, Mora Country, Tierra Amarilla and other land grant areas of New Mexico as their homeland, n74 and have been forced off their land in search of jobs, many Native Americans were dispossessed of their land and tribal position through various means. Too often the litmus test of "tradition" and "authenticity" is used to deny membership to mixed-bloods, detribalized or nonreservation Indians. n75 Denying the urban Indian experience, their struggles, and cultural production advances the assimilationist project that began under Richard Pratt at the Carlisle Indian school. n76 No community confronted by the racist colonial past of U.S. policies can wrap themselves in traditionalism and be assured of developing and maintaining an anti [*1617] subordination agenda. Nor will such a policy result from the refusal to engage in self-critique or address issues of essentialism.

The salience of particular kinds of historicizing and symbolizing also appear in the essays that revisit the controversies over religion and coalition theory and praxis. n77 Professor Luna's n78 analysis of the establishment and enforcement of Spanish law by clergy of the Catholic Church in the California missions alerts us to the need to recognize the historical and religious linkages of canon law, statutes, and doctrine to the subordination of Indians and mestizos. Grounding her discussion in a historical context, she avoids the tendency to make the essentialist arguments that appear in more general abstract discussions. n79 At the same time, universalizing the Catholic experience among Latinas/os on the basis of theology is inaccurate because each cultural group had a unique history to the Church. The uniqueness is characterized by the incorporation of specific cultural rituals and icons (including saints and distinctive versions of Mary). n80

Similarly, the Catholic Church's selective appropriation of indigenous culture provided parishioners with a variety of cultural flavors. n81 Cultural variation within Catholicism is not limited to music, language, rituals, or icons but also includes of other ideologies (feminism, nationalism, humanism) n82 and a wide range of beliefs and behaviors. The task, to ascertain how religious praxis may "promote or obstruct the liberation struggles and antisubordination

imperatives that have coalesced in and around the LatCrit movement," n83 is most clearly illuminated in Luna's analysis of [*1618] specific struggles of resistance within the Church rather than centering the discussion on theology or the mythology of saints and icons.

C. Historicizing and Symbolizing Material Realities

As the articles in the symposium show, connecting LatCrit theory and praxis to the concrete political struggles of Latina/o communities and other subordinated groups outside the academy, n84 rather than to mythology and theology, promises to bring focus and clarity to the movement. Reclaiming our intellectual history is best achieved by grounding our project in the resistance and struggle of activists. n85 Professor Gil Gott's essay provides an excellent example of locating the roots of the intellectual and political project of critical race theory in the work of "activists such as Ida B. Wells, DuBois, Paul Robeson, Mary McLeod Bethune, Arturo Schomburg, Addie Hunton and Alphaeus Hunton, Jr." n86 Drawing from this rich history of political thought and praxis, we can see how to bridge difference and build coalitions as suggested in Professor Gott's call for a critical race globalism. n87 Recovering our intellectual and political history has been a major project since the fragmenting identity politics of the 1970s and continues today. n88 Shifting our search for roots from the feet of MesoAmerican or Catholic deities to human social activists such as Sara Estela Ramirez, n89 Ricardo Flores Magon, n90 Juan Jose [*1619] Herrera, n91 Lucia Gonzalez Parsons, n92 Teresa Urrea, n93 Emma Tenayca, n94 and Ernesto Galarza n95 has the potential to set us firmly on the path towards anticolonialism theory and praxis.

The value of historical specificity n96 or employing "a kind of political impact determination" n97 in the investigation of LatCrit theory cannot be overstated. Several of the essays provide evidence of the strength of grounded analysis. A fine example of historical specificity in race identity is found in Professor Ediberto Roman essay. By analyzing the race debate surrounding the Spanish American War and occupation of territories in the Caribbean and the Pacific, Roman demonstrates that the debate is not merely legislative history but has become "part of the United States Supreme Court jurisprudence." Roman thus demonstrates how "race has always been a real but unspoken factor in international policy." n98 Professor Donna Coker's n99 assessment of the actual material resources available in intervention programs takes into consideration conditions that determine different outcomes for Latinas and other poor women of color. Rather than falling back on models of cultural determinism that characterize Latinas as submissive, suffering and fatalistic, n100 Coker emphasized the intersectionality of multiple identity axes and highlighted structural barriers to obtaining services, such as bilingual services, citizenship, unemployment, and police community relations. William Tamayo, Regional Attorney for the Equal Employment Opportunity [*1620] Commission ("EEOC"), draws upon past experience with political asylum applicants and battered immigrant women in "challenging the cultural limits and cultural-based assumption of the staff" in order to investigate the rape and sexual abuse of nonEnglish speaking Latina immigrant farm workers. n101 Analyzing the recent antibilingual education initiatives in California, Professors George Martinez and Kevin Johnson demonstrate concrete ways that persons of Mexican ancestry have been discriminated against in each initiative and argue for using "discrimination by proxy" as a doctrinal tool to strengthen antidiscrimination laws. This is a very important type of analysis that addresses the more subtle and covert forms of racism that are replacing familiar but the previously unmasked forms.

II. Critical Intersections Through Culture

The urgency of Professor Eric Yamamoto's thesis that "cultural performance" is a viable means to influence the cultural frameworks of decisionmakers, became apparent n102 after reading Professor Larry Cata Backer's findings on the limited penetration that outsider scholarship has made in the courts. n103 Using citations in the opinions of courts to measure the degree of acceptance of the legal writings by women and scholars of color, Backer concludes by noting that most successes have been experienced in "the political and cultural life of the states." n104 Yamamoto's powerful account of "a multifaceted hula dance program performed by a multiracial group of law students and faculty during the Jurist-in-Residence program two years ago" shows how cultural performance has the potential to penetrate the individual framework of supreme court justices. Yamamoto imagines the influence that this cultural performance may have in (re)presenting the history of indigenous Hawaiians to members of the Supreme Court who might not otherwise understand their political status in *Rice v. Cayetano*. Yamamoto challenges legal advocates to go beyond the work of crafting doctrinal arguments by including strategies for cultural transformation. There are brilliant examples from the [*1621] community to draw from, including: CHRLA's use of novelas to organize domestic workers, n105 Nuyorican Poets, n106 Luis Alfaro, n107 Marisela Norte, n108 Culture Clash, El Vez, n109 Coco Fusco, n110 Guillermo Gomez Pena, n111 and many others. The overwhelming enthusiasm in the U.S. over the revival of Cuban music presented in the film and CD of *The Buena Vista Club* will no doubt play an important role in shaping the American public's cultural framework for expanding diplomatic channels in Cuba.

Critical intersections between the arts and legal commentary are further illuminated in Professor Pedro A. Malavet's essay. Drawing on his extensive experience as the editor of several books on storytelling, he extends "insightful and powerful social, political and legal commentaries" n112 to other art forms of the narrative. Citing examples of popular culture, including such forms as Afro-Cuban Jazz, Salsa, poetry, and dance, he points to the political significance and the potential for re-thinking, refiguring and reproducing narratives of nation, citizenship, class, race, gender and sexuality. Discussing Jamaican popular music as antisubordination praxis, Nicholas A. Guinia's reviews ways that Reggae functions as both a "tool for resisting oppression" and a "vehicle for communicating and promoting values, ideas and beliefs." n113 In much the same way, Professor Lillian Manzor analyzed Camelita Tropicana, a Cuban-American lesbian art performer, to call attention to the power of narratives and story telling in sub [*1622] verting essentialist constructs of race, gender and sexuality. n114 The intersections between LatCrit and narrative story telling found in the arts suggest innovative ways for outsider scholarship to penetrate the cultural frameworks of decision makers and the political process.

Future LatCrit sessions on popular culture might inquire into the ways that the production and consumption of Latina/o popular culture in the U.S. is being transformed by the transnational flows of capital and people. We might take a look at the implications for coalition building with other subordinated groups, what role Latina/o popular culture has in influencing global conversations about contradictions produced by transnational capital, and how popular culture facilitates conversations with other racialized and minoritized people. The growth of "world music," the easy availability of video technology, and the spread of cultural forms through the Internet, make the issue of popular culture a particularly promising area for critical theory.

Conclusion: A Cautionary Tale

When I began my academic career twenty years ago, I was inspired by the transformative potential and political activism shaping Chicana/o Studies. As I look back, I can see many important intellectual and political contributions that my generation has made. However, I am also aware of our shortcomings and the pitfalls we tumbled into. There were originally two linked goals: 1) creation of a political vision linking intellectual production to community activism; 2) the elimination of oppression. However, as faculty and students undertook the process of institutional building, their political strategies of control and autonomy within academia shifted towards efforts to acquire resources and stability within the institution. Establishing journals, building an academic association, and developing curricula lead to the development of characteristics similar to traditional disciplines. Gradually the critical edge and link to community struggle lessened as scholarship and student activity became focused on identity issues and not antisubordination praxis. The cultural nationalism that dominates current political discussion and debate within Chicana/o Studies, was largely fueled by an emphasis on arts and [*1623] humanities that was not grounded in a social justice agenda but served narrowly construed identity politics. n115 Even as early as the late 70s, the move towards "doing culture" as a priority of identity politics was apparent. Gomez-Quinones remarked that:

Without class identification and political participation this is at best neutral. At worst, it becomes deceptive, diversionary, and conservative, thus supportive of the status quo. Cultural activity, quo culture, even in groups ostensibly allied to the political movement, retains this conservative character. n116

Building on cultural or racial identity rather than specific antisubordination theories and praxis has resulted in the establishment of interdisciplinary programs that provide Latina/o faculty and students with an academic home but frequently bear more similarities to the larger institution than differences. For instance, on my campus, Chicano/a Studies continues to accept funding from Motorola in the face of strong evidence of the company's continued pollution in communities heavily populated by Chicanas/os. Moreover they accepted a substantial grant from Wells Fargo -- the bank that assisted Oregon Steel in surviving a strike at their Colorado Fuel and Iron Company in Pueblo. The CF& I strike consisted largely of Chicano workers. With a growing number of students majoring in business, efforts are underway to develop an undergraduate bidisciplinary program with the Business School. Needless to say, this program does not empha [*1624] size the concerns of workers but rather of employers and corporate interests.

Replicating traditional disciplines also involved institutionalizing norms and values. Arrogance and self-importance crept into daily interaction between faculty. Hypercriticism and personal grievances repackaged as "political" limited intellectual discourse and community participation in the National Association for Chicana and Chicano Studies. Academic cliques emerged around the practice of selective citation, and perceived stars became legitimated through this institutional practice. Meanwhile as jargon intensified and relevance dissipated the applicability of their writings to community struggle waned. In our enthusiasm to produce interdisciplinary knowledge in LatCrit, I hope that the errors made by ethnic and cultural studies will not be uncritically embraced or reproduced.

Identity politics and resurgent nationalism have made coalition building in our demographically changing communities difficult and have made it impossible, in many instances, to undertake common projects with our neighbors in the black, Asian, Native American, and poor white communities. All too often we see ourselves involved in a zero sum game where black political gains are seen as Latina/o losses. This ideology hinders our ability to address the pressing substantive issues of race, gender and class oppression -- locally, nationally, and internationally. Nationalism has slowed our progress in addressing issues of gender and sexuality. Relying on exhausted tropes of ethnic specificity, ethnic solidarity and other essentialized notions of community, we find ourselves with an identity stripped of the national and international struggles for human rights and alone in the fight against racism and class oppression.

Advancing LatCrit's "commitment to the production of both knowledge and community specifically as a means to social justice" involves transforming the crab parable from cultural determinism to a message that organizing is both productive and essential in anticolonial struggle. The LatCrit project has the potential to rebuild misdirected and fragmented ethnic studies discourses. LatCrit discourse has already influenced interdisciplinary writings and revived the link between scholarship and community struggle. The LatCrit web page, LatCrit Primer, and the LatCrit-Student Outreach Listserv will further strengthen [*1625] links towards anticolonial struggle. All of these efforts will hopefully transform future responses of student activists on campuses and in the community to identify with the larger category of human rights rather than fragmenting along lines of race, ethnicity, sexuality, and other dissected identities.

FOOTNOTES:

n1 See Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stan. L. Rev.* 581 (1990).

n2 See Sumi K. Cho & Robert Westley, *Critical Race Coalitions: Key Movements that Performed the Theory*. 33 *U.C. Davis L. Rev.* 1377 (2000).

n3 See Tanya K. Hernandez, *An Exploration of the Efficacy of Class-Based Approaches to Racial Justice: The Cuban Context*, 33 *U.C. Davis L. Rev.* 1135 (2000); Berta Esperanza Hernandez-Truyol, *LatIndia II -- Latinas/os Natives, and Mestizajes -- A LatCrit Navigation of Nuevos Mundos, Nuevas Fronteras, and Nevas Teorias*, 33 *U.C. Davis L. Rev.* 851 (2000).

n4 See Cho & Westley, *supra* note 2; Gil Gott, *Critical Race Globalism?: Global Economy and the Intersections of Race, Nation, and Class*, 33 *U.C. Davis L. Rev.* 1503 (2000); Eric K. Yamamoto, *Practically Reframing Rights: Culture, Performance, and Judging*, 33 *U.C. Davis L. Rev.* 875 (2000).

n5 See Cho & Westley, *supra* note 2; Gott, *supra* note 4; Guadalupe T. Luna, *Gold, Souls and Wandering Clerics: California Missions, Native Californians, and LatCrit Theory*, 33 *U.C. Davis L. Rev.* 921 (2000); Laura M. Padilla, *Latinas and Religion: Subordination or State of Grace?*, 33 *U.C. Davis L. Rev.* 973 (2000).

n6 See Nicholas A. Gunia, *Half the Story Has Never Been Told: Popular Jamaican Music as Anticolonial Praxis*, 33 *U.C. Davis L. Rev.* 1333 (2000); Pedro A. Malavet, *Literature and Arts as Anticolonial Praxis LatCrit Theory and Cultural Production: The Confessions of An Accidental Crit*, 33 *U.C. Davis L. Rev.* 1293 (2000).

n7 See, Gott, *supra* note 4; Pamela J. Smith, *The Tyrannies of Silence of the Untenured Professors of Law*, 33 *U.C. Davis L. Rev.* 1105 (2000); William R. Tamayo, *The Role of the EEOC in Protecting the Civil Rights of Farm Workers*, 33 *U.C. Davis L. Rev.* 1075 (2000); Leti Volpp, *American Mestizo: Filipinos and Antimiscegenation Laws in California*, 33 *U.C. Davis L. Rev.* 795 (2000).

n8 See *Curran v. Mount Diablo Council of Boy Scouts of America*, 17 Cal. 4th 670, 72 Cal. Rptr.2d 410 (1998) (permitting Boy Scouts to discriminate in hiring on basis of sexual preference).

n9 See George A. Martinez, African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition, 19 *ChicanoLatino L. Rev.* 213 (1998) (discussing importance for Latinas/os to reject legal designation of white in order to dismantle racial subordination and step toward building coalition with African Americans).

n10 These issues are explored in depth in videos by Marlon Riggs. See *Black Is, Black ain't: A Personal Journey Through Black Identity* (California Newsreel 1995); *Tongues Untied* (Frameline 1989).

n11 Francisco Valdes, Afterword -- Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience -RaceCrits, QueerCrits, LatCrits, 53 *U. Miami L. Rev.* 1265 (1999).

n12 See Volpp, *supra* note 7. Defining racial identity for Filipinos is addressed in the question of whether to classify as Latinas/os or Asians. The "either/or" nature of the question reflects mainstream society's demand that we all pick and in some cases be assigned a single identity, when in fact many of us have more than one.

n13 See Robert C. Smith, *Racism in the Post-Civil Rights Era, Now You See It, Now You Don't* (1995).

n14 See Jodi Dean, *Solidarity of Strangers, Feminism After Identity Politics* (1996) (proposing theory of participatory democracy that respects difference and moves beyond limitations posed by identity politics).

n15 See Volpp, *supra* note 7; see also Tomas Almaguer, *Racial Fault Lines: The Historical Origins of White Supremacy in California* (1994) (discussing role of intermarriage in establishing upper class relationships between Mexican elite in California and Anglo Americans).

n16 See Volpp, *supra* note 7.

n17 See Victor C. Romero, "Aren't You Latino?": Building Bridges upon Common Misperceptions, 33 *U.C. Davis L. Rev.* 837 (2000).

n18 See *id.*

n19 See Valdes, *supra* note 11.

n20 See Cho & Westley, *supra* note 2.

n21 *Id.*

n22 See Anthony Paul Farley, All Flesh Shall See It Together, *19 Chicano-Latino L. Rev.* 163, 172-74 (1998) (critiquing Gloria Sandrino-Glasser's criticism of black/white paradigm because paradigm makes Latinas/os that are multi-racial invisible). In addition, Farley makes a very important point about the criticism that ignores the extensive writings by blacks that have been inclusive of Latinos, Asians, and Native Americans - including Frederick Douglas, W.E.B. DuBois, Booker T. Washington, Paul Robeson, and James Baldwin. See *id.*

n23 See Hernandez, *supra* note 3.

n24 See Suzanne Oboler, Ethnic Labels, Latino Lives: Identity and the Politics of (Re)Presentation in the United States (1995); Alejandro Portes & Alex Stepick, City on the Edge: The Transformation of Miami (1993); Clara E. Rodriguez, Puerto Ricans, Born in the U.S.A. (1989).

n25 See Kevin R. Johnson, How Did You Get to be Mexican? A White/Brown Man's Search for Identity (1999).

n26 See Christopher David Ruiz Cameron, The Rakes of Wrath: Urban Agricultural Workers and the Struggle Against Los Angeles' Ban on Gas-Powered Leaf Blowers, *33 U.C. Davis L. Rev.* 1087 (2000).

n27 See Yamamoto, *supra* note 4. Specifically he discusses: "(a) political status contrasted with racial status (in applying equal protection doctrine); (b) historical acuity versus historical myopia in multiracial settings; (c) legal norms of self-determination vis-a-vis equality; (d) international human rights rather than domestic civil rights, and; (e) colonialism and conquest vis sovereignty and liberation."

n28 See *id.*

n29 See Hernandez-Truyol, *supra* note 3.

n30 Since 1848, Chicanas/os have engaged in political and legal struggles to keep their homeland and have never claimed their homeland as descents of Aztecs or the Mexica nation. Instead, they claim an identity based on a history of two or three hundred years, tracing their ancestry to communal land grants, and to the surrounding Pueblos and/or Spanish colonization. Unless engaged in university campus politics, they are unlikely to refer to the land as Aztlan but as land designated by Spanish and Mexican land grants, such as Tierra Amarillo. See Patricia Bell Blawis, Tijerina and the Land Grants, Mexican Americans in Struggle for Their Heritage (1971).

n31 See Luz Guerra, LatCrit la Des-Colonizacion Nuestra: Taking Colon Out, *19 Chicano-Latino L. Rev.* 351 (1998).

n32 See Gloria Anzaldua, Borderlands: La Frontera: The New Mestiza (1987).

n33 However, there is an overabundance of university examples, particularly among college students in MEChA, that are used in writings claiming an Aztec identity. Consequently, we do not have strong indicators

measuring the level of acceptance of ethnic terms and movement symbols that are embraced by the larger Mexican and Mexican American population throughout the U.S.

n34 See generally David Montejano, *Anglos and Mexicans in the Making of Texas, 1836-1986* (1987).

n35 See generally Gilbert G. Gonzalez, *Labor and Community: Mexican Citrus Worker Villages in a Southern California County, 1900-1950* (1994); Martha Menchaca, *The Mexican Outsiders: A Community History of Marginalization and Discrimination in California* (1995)

n36 See generally Nancie L. Gonzalez, *The Spanish-Americans of New Mexico, A Heritage of Pride* (1976).

n37 See David Gutierrez, *Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity* (1995) (providing overview of history of tensions and cooperation between Mexican Americans and Mexican immigrants in California). Gutierrez provides numerous examples in which Mexican Americans perceived and treated immigrants as not part of their community, and other examples of how Mexican Americans defined their social and political issues as one community. See *id.*; see also Kevin R. Johnson, *Immigration and Latino Identity*, 19 *Chicano-Latino L. Rev.* 197 (1998) (identifying difficulty that legal definitions "citizen" and "alien" create for coalitions in Los Angeles).

n38 See Leo Chavez, *Introduction to Shadowed Lives: Undocumented Immigrants in American Society* xii (1998) (identifying himself as thirteenth generation Chicano).

n39 Although early writings by anthropologists characterized Mexican Americans as a rural people, some of the oldest urban centers in the Southwest were founded by Mexicans. In other words, the urban experience of El Paso and Los Angeles is just as authentic and Yakama Valley in Washington.

n40 See Rosaura Sanchez, *Chicano Discourse Socio-Historic Perspectives* (1983) (discussing Spanish language varieties).

n41 See Manuel H. Pena, *The Texas-Mexican Conjunto, History of a Working-Class Music* (1985) (discussing development of class-base and regionally specific type of music).

n42 See Fran Leeper Buss, *La Partera: Story of a Midwife* (1980) (telling life story of Jesusita Aragon, midwife from San Miguel County in northern New Mexico). Buss's book contains descriptions of specific maternal health practices, herbs, and beliefs specific to this region and borrowed from training received in Mexico. See *id.*

n43 See generally Ana Maria Diaz-Stevens & Anthony M. Stevens-Arroyo, *Recognizing the Latino Resurgence in U.S. Religion, The Emmaus Paradigm* (1998) (discussing traditions); Norma Jean Williams, *The Mexican American Family: Tradition and Change* (1990) (reporting on study conducted on changing traditions within Mexican American families in Texas from one generation to next).

n44 These include distinct settlement histories and government policies. See generally Rodolfo Acuna, *Occupied America: A History of Chicanos* (1988).

n45 See *id.* (contrasting states in Southwest after Mexican American War, presented in terms of length of time each experienced before annexation and different role each region played in the U.S. economy and capitalist development); Carey McWilliams, *North From Mexico* (1961).

n46 See generally Mario Barrera, *Race and Class in the Southwest; A Theory of Racial Inequality* (1979) (discussing labor history of Mexican Americans from Mexican American War to 1970s that built on colonial labor system model); Camille GuerinGonzales, *Mexican Workers & American Dreams: Immigration, Repatriation and California Farm Labor, 1900-1936* (1994); Devra Weber, *Dark Sweat, White Gold, California Farm Workers, Cotton, and the New Deal* (1994); Emilio Zamora, *The World of the Mexican Worker in Texas* (1993).

n47 See Gutierrez, *supra* note 37 (discussing political struggles and historical incidents in which Mexican Americans identified with Mexican immigrants); Felix M. Padilla, *Latino Ethnic Consciousness: The Case of Mexican Americans and Puerto Ricans in Chicago* (1985) (exploring ethnic identity and identifying uses and practices of pan-ethnicity); George J. Sanchez, *Becoming Mexican American, Ethnicity, Culture and Identity in Chicano Los Angeles, 1900-1945* (1993) (analyzing formal federal and state programs of acculturation aimed at Mexican immigrants and ways that Mexican culture was reconstructed through family networks, religious practices, musical entertainment, work experiences, and consumption patterns).

n48 See Hernandez, *supra* note 3 (discussing implications of AfroCubans theorizing Latinos as race or as ethnicity and ways that Latinas/os with connections to African ancestry may be excluded from coalition building).

n49 McWilliams, *supra* note 45, at 43.

n50 *Id.* at 44.

n51 Of course, the power to write history and establish policy based on one's myth depends on the group's political and economic power. In addition, the less threatening the revisions are, the more likely they will be accepted. I would argue that the incorporation of spiritual and mythical writings into the curriculum is much less threatening than social science research that examines structural inequalities and the impact on the Latina/o community or historical research on labor struggles and organizing.

n52 See generally Armando B. Rendon, *Chicano Manifesto* (1971) (referring to "People of Aztlan").

We are the people of Aztlan, true descendants of the Fifth Sun, el Quinto Sol.

In the early morning light of a day thousands of years old now, my forebears set out from Aztlan, a region of deserts, mountains, rivers, and forests, to seek a new home. Where they came from originally is hidden in the sands and riverbeds and only hinted at by the case of eye and skin which we, their sons, now bear.

Id. at 7.

n53 See Rodolfo Gonzales, *I am Joaquin* 16 (1967).

I am Cuauhtemoc,
 proud and noble,
 leader of men,
 king of an empire
 civilized beyond the dreams
 Of the gachupin Cortes,
 who also is the blood,
 The image of myself.
 I am the Maya prince.
 I am Nexahualcoyotl,
 great leader of the Chichimecas.
 I am the sword and flame of Cortes
 The despot.
 And
 I am the eagle and serpent of
 the Aztec civilization.
 Id.

n54 Juan Armanda Alegria, *Psicologia de las Mexicanas* (2d ed. 1995).

n55 See generally Sandra Messinger Cyress, *La Malinche in Mexican Literature from History to Myth* (1991); Adelaida R. Del Castillo, *Malintzin Tenepal: A Preliminary Look into a New Perspective*, in *Essays on la Mujer* (Rosaura Sanchez & Rosa Martinez Cruz eds., 1977).

n56 See Octavio Paz, *The Labyrinth of Solitude, Life and Thought in Mexico*, (Lysander Kemp trans., 1961).

n57 See Alfredo Mirande & Evangelina Enriquez, *La Chicana: The Mexican-American Woman* 31 (1979).

n58 See Gloria Anzaldua, *Borderlands: La Frontera: The New Mestiza* (1987). (concluding with belief that la diosa, Aztec goddess figure, will "life us," presumably our salvation from capitalism, heterosexism, sexism and racism).

n59 Guerra, *supra* note 31, at 357; see also Anzaldua, *supra* note 58; Cherrie Moraga, *Loving in the War Years: Lo que Nunca Paso por Sus Labios* (1983).

n60 See *Border Theory: The Limits of Cultural Politics* (Scott Michaelsen & David E. Johnson eds., 1997) [hereinafter *Border Theory*] (critiquing Gloria Anzaldua and other writers using border, borderlands and border crossing metaphor in developing theories, and pointing to contradictions embedded in the various applications); Paula M. L. Moya, *Chicana Feminism and Postmodernist Theory*, in *Signs* (forthcoming) (arguing that: "If we

choose the realist approach, we will work to ground the complex and variable experiences of the women who take on the identity 'Chicana' within the concrete historical and material conditions which they inhabit.") Moya continued:

Rather than a figure for contradiction or oppositionality, the identity 'Chicana' would be a part of a believable and progressive social theory. I would like to suggest that it is only when we have a realist account of Chicana identity, one that refers outward to the world we live in, will we be able to understand what social and political possibilities are open to use, as Chicanas, for the purpose of working to build a better society than the one we currently live in.

Id.

n61 The emphasis on a genealogical construction of race in defining mestizo in Chicano literature is based on U.S. racial formation rather than the one developed in most Latin American contexts where constructions were influenced by culture, class, and other social factors. See Clara Rodriguez & Hector Cordero-Guzman, *Placing Race in Context*, 15 *Racial & Ethnic Stud.* 523 (1992). In addition, race is often viewed as an "individual marker" in the Caribbean and Latin America, while in the U.S. race is always assumed as a group marker that determines your reference group. See Lawrence Wright, *One Drop of Blood*, *New Yorker*, July 25, 1994, at 46-55.

n62 Migration of European men outnumbered the migration of European women and families. This sex ratio may have attributed to the kinds of relations between the races and the conceptions of race that developed in Latin America. The offspring between Indian and black women that served as mates for European men were in some cases recognized as members of the criollo class and inherited all the privileges attached to this racial class. See Elinor C. Burkett, *In Dubious Sisterhood: Class and Sex in Spanish Colonial South America*, 4 *Latin Am. Persp.* 18, 18-26 (1977).

n63 See Benjamin Alire Saenz, *In the Borderlands of Chicano Identity*, in *Border Theory*, supra note 60, at 86. Saenz noted: "Anzaldua, unfortunately, falls into the dualistic thinking she so eloquently critiques. To categorize the world into 'European' and 'indigenous' and try to bridge those two worlds under mestizaje is to fall squarely into 'dualistic' thinking that does not do justice to the complex society in which we live." Id.

n64 Id. "The material conditions that give rise to the Aztec's religion no longer exist. Anzaldua's language, her grammar, her talk are ultimately completely mortgaged to a nostalgia . . ." Id. at 86-87.

n65 See Hector Carreon, *A Cancer in Chicano Studies . . . Immediate Surgery Required* (visited Apr. 18, 2000) <<http://www.serve.com/Impacto/cancer.html>> (on file with author). "Our community is predominately Catholic and as Christians we believe that 'homosexuality' is an abnormality and should not be promoted in our tax supported institutions of higher learning." Id. More recently, anti-Semitic e-mails have been in abundance over the removal of Los Angeles schools Superintendent Ruben Zacarias. See March B. Haefele, *Dialogue of Slurs, Ethnic Insults have no Place in School District's Power Struggle.*, *L.A. Weekly*, Nov. 1999 <<http://www.laweekly.com/ink/99/50/city-haefele.shtml>> (on file with author).

n66 There is no acknowledgment of Mexico's history of slavery or the complex hierarchy arising from intermarriage between Spaniards born in Spain to those born in Mexico, between Spaniards and Indians, Spaniards and mestizos, Spaniards and *mutalos*, Indians and *mutalos*.

n67 *Indigenista* is based on a cultural deterministic model much like the one proposed by cultural anthropologists, Florence Kluckhohn and Fred L. Strodbeck, conducting research in a New Mexican village in

1950s. See Florence Rockwood Kluckhohn, *Variations in Value Orientations* (1961). Although their study consisted of less than fifty individuals, their research findings were applied to Mexican Americans throughout the U.S. The history of Mexico is multicultural and the simplistic claims of indigenous or mestizo roots erases the incredible diversity of the country and denies the existence of a meaningful culture undergoing the daily transformations to meet the material demands of daily life.

n68 See Saenz, *supra* note 63, at 85.

n69 The movement has only superficially links to American Indians or indigenous communities in Mexico.

n70 Saenz, *supra* note 63, at 85-86.

n71 Frantz Fanon, *The Wretched of the Earth* (1963).

n72 See Paulo Freire, *Cultural Action for Freedom* (1973); Paulo Freire, *Education for Critical Consciousness* (1973); Paulo Freire, *Pedagogy of the Oppressed* (1970).

n73 The controversy over the commemoration of the Spanish conquest in New Mexico highlights the different legacies left from conquest for Don Juan de Onate and soldiers' descendants and the residents of Acoma Pueblo. Commemorations symbolize an attempt by his descendants and other Spanish-Mexican people to reclaim New Mexico away from the growing number of Anglo influences throughout the state; whereas Onate remains the murder of Indians. See *New Mexico Monument Conjures Bitter Legacy*, *Philadelphia Inquirer*, Apr. 17, 1999, at A1; *Bridges Needed to Unite Cultures*, *Denv. Post*, Apr. 4, 1999, at G2; *Conquistador Statue Stirs Hispanic Pride and Indian Rage*, *N.Y. Times*, Feb. 9, 1998, at A10.

n74 James Brooke, *Hot Issue in Northern New Mexico: Fine Print of an 1848 Treaty*, *N.Y. Times*, Feb 19, 1999, at A10 (addressing significance of Treaty of Guadalupe Hidalgo for communities in Northern New Mexico and loss of communal land grants).

n75 See Joanne Marie Barker, *Indian TM USA: Citizenship Rights, Blood Tales, and the Indian Arts and Crafts Act of 1990*, in *We Decide! Native Identity* (Irene Vernon ed., forthcoming).

n76 See Richard Henry Pratt, *Battlefield and Classroom: Four Decades with the American Indian, 1867-1904* (1964); see also William Heuman, *The Indians of Carlisle* (1965).

n77 Elizabeth M. Iglesias & Francisco Valdes, *Afterword -Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, *19 Chicano-Latino L. Rev.* 503 (1998).

n78 See Luna, *supra* note 5.

n79 See Padilla, *supra* note 5 (portraying Chicanas and Latinas as having specific cultural tendencies "to accept their fate of suffering with dignity").

n80 See Terry Rey, "The Virgin's Slip Is Full of Fireflies": The Multiform Struggle over the Virgin Mary's Legitimierende Macht in Latin America and Its U.S. Diasporic Communities, *33 U.C. Davis L. Rev.* 955 (2000).

n81 See *id.* After the Mexican American War, the archdiocese changed hands and Archbishop Lamy assumed the post. The conflict between the Archbishop and local priests who allowed parishioners to continue their indigenous practice is documented as part of the history of New Mexico. See generally Ray John De Aragon, Padre Martinez and Bishop Lamy (1978).

n82 See Rey, *supra* note 80.

n83 Iglesias & Valdes, *supra* note 77, at 509. The case of the Mothers of East L.A. is an example of how a group of Latina activists experienced tension within one Catholic parish; they sought affiliation with another parish and developed a nonprofit community-based component direct by their concerns. See Mary Pardo, Working-Class Mexican American women and "Voluntarism": "We Have to Do It!", in *Women and Work: Exploring Race, Ethnicity, and Class* 204 (1997).

n84 Iglesias & Valdes, *supra* note 77, at 582.

n85 See Cho & Westley, *supra* note 2.

n86 See Gott, *supra* note 4.

n87 See, Timothy A. Canova, Global Finance and the International Monetary Fund's Neoliberal Agenda: The Threat to the Employment, Ethnic Identity, and Cultural Pluralism of Latina/o Communities, *33 U.C. Davis L. Rev.* 1547 (2000) (suggesting areas of application that LatCrit theory may have to the international economic system).

n88 For example, Recovering the U.S. Hispanic Literary Heritage is a national project to search for literary expressions created by Latino in the U.S. from colonial to contemporary times. The project is housed at the University of Houston, and works and collections have been published by the Arte Publico Press.

n89 See Emilio Zamora, Sara Estela Ramirez: Una Rosa Roja En El Movimiento, in *Mexican Women in the United States Struggles Past and Present* (Magdalena Mora & Adelaida R. Del Catillo eds., 1980).

n90 See Ward Albro, *Always a Rebel: Ricardo Flores Magon and the Mexican Revolution* (1992); Colin MacLachlan, *Anarchism and the Mexican Revolution: The Political Trials of Ricardo Flores Magon in the United States* (1991).

n91 See Robert J. Rosenbaum, *Mexicano Resistance in the Southwest: "The Sacred Right of Self-Preservation"* (1981); Mary Romero, *Class Struggle and Resistance Against the Transformation of Land Ownership and Usage in Northern New Mexico: The Case of Las Gorras Blancas* (unpublished manuscript, on file with author).

n92 See Carolyn Ashbaugh, *Lucy Parsons: American Revolutionary* (1976).

n93 See *Notable Hispanic American Women 405-06* (Diane Telgen & Jim Kamp eds., 1993).

n94 *Id.* at 398; Matt S. Meier, *Mexican American Biographies; A Historical Dictionary 1836-1987*, at 218 (1988).

n95 See Ernesto Galarza, *Merchants of Labor: The Mexican Bracero Story; An Account of the Managed Migration of Mexican Farm Workers in California, 1942-1960* (1964); Ernesto Galarza, *Spiders in the House and Workers in the Field*. (1970); Ernesto Galarza, *Tragedy at Chualar: El Crucero de las Treinta y Dos Cruces* (1977).

n96 Iglesias & Valdes, *supra* note 77.

n97 See, Sumi K. Cho, *Essential Politics*, 2 *Harv. Latino L. Rev.* 433, 434 (1997).

n98 See Ediberto Roman, *A Race Approach to International Law (RAIL): Is There a Need for Yet Another Critique of International Law?*, 33 *U.C. Davis L. Rev.* 1519 (2000).

n99 See Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 *U.C. Davis L. Rev.* 1009 (2000).

n100 Mirande & Enriquez, *supra* note 57.

n101 See Tamayo, *supra* note 7.

n102 See Yamamoto, *supra* note 4.

n103 See Larry Cata Backer, *Measuring the Penetration of Outsider Scholarship in the Courts: Indifference, Hostility, Engagement*, 33 *U.C. Davis L. Rev.* 1173(2000).

n104 *Id.*

n105 See Pierrette Hondagneu-Sotelo, *Why Advocacy Research? Reflections on Research and Activism with Immigrant Women*, *The American Sociologist* (1994).

n106 See, e.g., *Aloud! Voices of the Nuyorican Poet's Cafe*, Henry Holt and the Online Bookstore (visited Apr. 5, 2000) <<http://www.obsus.com/obs/English/books/holt/books/aloud/index.htm>> (on file with author).

n107 See Luis Alfaro, *Down Town*, New Alliance Records (1993); Michelle Habell Pallan, *Family and Sexuality in Recent Chicano Performance: Luis Alfaro's Memory Plays*, *Ollantay Theater J.* 33, 33-42 (1996).

n108 Marisela Norte is the author of a CD entitled *Norte Wood*. See Marisela Norte, *Norte Word* (New Alliance Records 1991). She has written essays and short stories too. See, e.g., Marisela Norte, *And the Wind cries Mari*, in *Alchemy* 14-16 (1992); Marisela Norte, *Dolores Fuertes: A Short Story*, in *Alchemy*, supra, at 32-33; Marisela Norte, *El Club Sufrimiento* 2000, *9 High Performance* 56 (1986).

n109 See Michelle Habell Pallan, *El Vez is 'Taking Care of Business': The Inter/National Appeal of Chicana/o Popular Music*, *13 Cultural Stud.* 195, 195-210 (1999).

n110 See Coco Fusco, *Broken English Spoken Here: Notes on Cultural Fusion in the Americas* (1995).

n111 See Guillermo Gomez-Pena, *Warrior for Gringostroika: Essays, Performance Texts, and Poetry* (1993).

n112 See Malavet, supra note 6.

n113 See Gunia, supra note 6.

n114 See Malavet, supra note 6.

n115 The argument against cultural nationalism and identity issues that I make here is not exclusive to Chicano and Chicana Studies or Latina/o Studies for that matter, but dominates the current debates over the direction of ethnic studies. This controversy was featured in a recent *New York Times*, featuring two spokesmen representing differing perspectives: Manning Marable and Henry Luis Gates. See *A Debate on Activism in Black Studies*, *N.Y. Times*, Apr. 4, 1998, at A13, A15. The titles of their individual essays clearly state their position. Manning Marable's essay was entitled *A Plea That Scholars Act Upon, Not Just Interpret, Events* and Henry Luis Gates' essay was entitled *A Call to Protect Academic Integrity From Politics*. Gates calls for "the distinction between scholarship that is political and politicized scholarship" whereas Marable makes the distinction between the "intellectual tradition that has generally been 'descriptive,' 'corrective' and 'prescriptive'" and the one he advocates which would continue to link scholarship with the goal of improving the lives of black people. While Manning Marable and Henry Luis Gates are nationally recognized scholars, they are certainly not the first or only ethnic studies scholars and educators to engage in this debate. See Juan Gomez-Quinones, *On Culture* (1977); *The State of Asian America: Activism and Resistance in the 1990s* (Karin Aguilar ed., 1994).

n116 Gomez-Quinones, supra note 115, at 43.

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AFTERWORD: LatCrit VI, Outsider Jurisprudence and Looking Beyond Imagined Borders

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BIO: * Professor of Law, Florida International University College of Law; B.A., Lehman College; J.D., Wisconsin University School of Law. This Essay is dedicated to Mr. Carmen Hernandez. Thanks goes to Professors Mary Romero, Guadalupe Luna, Scott Norberg, M.C. Mirow, and Kevin Johnson for their thoughtful comments on this Essay. Much thanks also goes to Professors Frank Valdes, Lisa Iglesias, Kevin Johnson, and Berta Esperanza Hernandez-Truyol for their roles in maintaining the vibrance and vitality of critical race discourse, the University of Florida Levin College of Law for supporting and hosting the conference, and the organizers of LatCrit VI for a wonderful job and allowing me to contribute with this Afterword. Thanks once again goes to my incredibly diligent and professional Research Assistant, Mr. Theron Simmons. Finally, endless thanks go to Carmen Hernandez, Andres Roman, Katerina Estrella Roman, Christian Isaiah Roman, and Nicholas Gabriel Roman for being the reasons why I care and write about racial justice.

SUMMARY:

... The goals of the conference were to explore the ties that bind Latinas/os residing in the United States to their homeland's societies and cultures, and to examine the impact of globalization on critical jurisprudential discourse. ... The broader progression of the movement is perhaps the inevitable response to one of its founder's questions during the movement's formative years; namely, can scholars of this movement maintain the momentum of their scholarly experiment? Specifically, Professor Frank Valdes' query centered on whether, as a progressive, outsider, scholar-driven effort, the LatCrit struggle could continue to consolidate, progress, and sustain its undertaking. ... As Professors Johnson, Valdes, and Romero observed at earlier conferences, the LatCrit movement is more than a means to theorize about how law affects Latinas/os, it is an antiessentialist antisubordination effort by progressive, often-times younger, legal scholars of color, to: (1) produce critical knowledge as a means to approach greater social justice; (2) challenge perceptions of reality concerning the identity of Latinas/os; and (3) cultivate coalition-building among Latinas/os, African Americans, Asian Americans, indigenous peoples, feminists, queers, and other OutCrits. ... This innovative critique has wide applicability that is applicable to global critiques of the dominant gaze. ... Indeed, greater LatCrit institutional involvement in the application of theory is necessary to promote the goal of progressive change. ...

HIGHLIGHT: "The white man ... desires the world and wants it for himself alone. He considers himself predestined to rule the world. He has made it useful to himself. But there are values which do not submit to his rule."

-Frantz Fanon n1

"If God were black my friend, everything would change, it would be our race, my friend, which would have the power.

The President would be Black and the Governor Black.

The Lawyer would be Black and the

Doctor Black, my friend.

The Pope would be Black and the

Minister Black.
The Angels would be Black and
Jesus Christ Black."

-Roberto Anglero n2

TEXT:
[*1156]

I. Introduction

The Sixth Annual LatCrit Conference (LatCrit VI) titled "Latinas/os and the Americas: Centering North-South Frameworks in LatCrit Theory," was the latest installment of the leading progressive scholarly movement addressing nonwhite critical jurisprudence. n3 The goals of the conference were to explore the ties that bind Latinas/os residing in the United States to their homeland's societies and cultures, and to examine the impact of globalization on critical jurisprudential discourse. n4 The conference was attended predominately by straight and gay law professors of color, including Latinas/os, African Americans, Asian Americans, and indigenous persons, most of whom describe themselves as LatCrits or more whimsically, LatCritters. Other participants included White colleagues, members of other disciplines including historians, sociologists, and anthropologists, as well as students and other friends. They all came together to continue an academic endeavor that examines, challenges, and at times attacks traditional Anglocentric American legal jurisprudence. n5 The educational, ethnic, racial, gender, social, and class diversity of this multicultural group contributed significantly to the excitement and the variety of the discourse and exchange.

The LatCrit movement is an experiment of outsider scholarship that seeks to unmask the modalities of modernity, which has in turn led to the systematic institutional subordination of Latinas/os and other marginalized groups. Self-reflection of the Latina/o condition and examination of identity politics has been a hallmark of the [*1157] undertaking from its inception. n6 The movement's central aspirations are to develop coalitions of like-minded progressives, enhance theoretical discourse, and conceive of and engage in antisubordination praxis. n7 Scholars within the group have grappled with the tension of advancing and developing postmodern multicultural theory while at the same time implementing progressive praxis. n8

While, by its very name, LatCrit was intended to focus on the plight of Latinas/os without the limiting factor of constructed borders of the nation-state, the primary inquiry of the scholarly undertakings has, to a considerable extent, examined the effect of racism within the United States. n9 Notwithstanding this fact, the movement has made great strides in promoting global critiques by, among other things, holding conferences specifically focusing on international issues, inviting renowned international scholars and activists of color, and holding scores of plenary and concurrent panels on transnational concerns.

LatCrit VI also situated the movement to explore beyond imagined sovereign or parochial domestic constraints. LatCrit VI sought to examine the ties that "bind Latina/o Communities in the United States to their homeland societies, cultures and economies." n10 As its title suggests, the focal discourse of the gathering had a broader emphasis than just an exploration of the impact of U.S. laws on domestic issues. n11 In other words, the effort was to undertake a comparative study of domestic issues concerning Latinas/os and comparable concerns throughout the Americas. n12 This transnational emphasis was a stated agenda for the conference, which encouraged inquiry into ways that illuminate and elucidate the north-south character of Latina/o transnationality, n13 or pan-ethnicity. n14 This [*1158] emphasis is also a product of the efforts by members of this group to expand outsider critical jurisprudential movements. n15 The emphasis appreciates the anomalous status that encapsulates Latina/o identity in the United States. That status is characterized by attributes of citizenship or belonging to the United States, yet at the same time being branded with the social perception of an alien n16 or foreigner n17 - hence the existence within the alien-citizen paradox. n18

The broader progression of the movement is perhaps the inevitable response to one of its founder's questions during the movement's formative years; namely, can scholars of this movement maintain the momentum of their scholarly experiment? Specifically, Professor Frank Valdes' query centered on whether, as a progressive, outsider, scholar-driven effort, the LatCrit struggle could continue to consolidate, progress, and sustain its undertaking. n19 One way to answer this query may involve looking beyond our imagined nation-state borders and addressing the subordination of Latinas/os globally, n20 which in turn will likely promote coalition building with like-minded critical thinkers and those from different schools of thought situated throughout the world. This Afterword, in addition to examining LatCrit in

general, and the works submitted for the LatCrit VI Symposium, specifically suggests a blueprint for institutionalizing an international and comparative component to all LatCrit Symposia. Perhaps prophetically, the very first LatCrit gathering, even before it had its name, stemmed from a Hispanic National Bar Conference held abroad in the United States colony of Puerto Rico. n21

Before further addressing this transnational trajectory, a brief reflection on the movement may provide a blueprint for the [*1159] uninitiated or unconverted. As Professors Johnson, n22 Valdes, n23 and Romero n24 observed at earlier conferences, the LatCrit movement is more than a means to theorize about how law affects Latinas/os, it is an antiessentialist antistatist effort by progressive, often-times younger, legal scholars of color, to: (1) produce critical knowledge as a means to approach greater social justice; (2) challenge perceptions of reality concerning the identity of Latinas/os; and (3) cultivate coalition-building among Latinas/os, African Americans, Asian Americans, indigenous peoples, feminists, queers, and other OutCrits. n25 As these objectives illustrate, central to the discourse is an effort to question as well as situate Latina/o racial and ethnic identity. n26 Irrespective of whether particular LatCrit writings have focused on issues of gender, n27 ethnicity, n28 sexual orientation, n29 or race, n30 a central theme of this movement is self-reflection by its members in their writings, n31 as well as an examination of contemporary issues pertaining to questions of the marginalized and stigmatized identity of Latinas/os in the Anglocentric heteropatriarchal American Legal framework. Part of the Latina/o identity focus is an attempt to reconstruct the dominant perception of all subordinate and subjugated groups in America.

LatCrit VI aptly addressed the above lofty aspirations in [*1160] addition to raising a number of broader provocative global themes. This conference produced knowledge, with central themes of the international, particularly by centering renewed paths towards theoretical examinations of the United States' domination or undue influence in Latin American and Caribbean cultural, social, legal, and political frameworks. n32 By continuing examinations of identity pertaining to race, gender, and sexuality, and promoting new thematic directions towards areas such as economics and interdisciplinary studies, as well as renewed emphasis on previously touched areas such as criminal law, the movement continues to challenge dominant visions of reality and is ensuring the longevity and malleability of the intellectual endeavor. As for the third primary aspirational focus - the coalition building goal - it was not only visible in the familial gathering and social interaction, it thrived as a result of the scholarly effort to expand the movement by inviting interdisciplinary participation and promoting broader global theoretical discourses.

This Afterword, in addition to providing a brief analysis of several topics raised at the conference, will attempt to look beyond the present and immediate future of LatCrit. As part of an effort to incite debate, reflection, and perhaps controversy, this Afterword seeks to promote dialogue concerning Latina/o identity politics, as well as where LatCrit is now and where it will be in the future. It will also attempt to provide one outsider's vision to situate LatCrit at a place where it will continue to be first and foremost "Lat," both within and beyond the United States, and at the same time continue its multicultural, postmodern "Crit" tendencies.

II. Beyond "The America"

When addressing issues affecting Latinas/os, LatCrit scholars have taken a global perspective. n33 As my colleague, Guadalupe Luna, persuasively highlights, n34 globalization, including international trade pacts such as NAFTA, n35 the Caribbean Basin Initiative, n36 and the [*1161] proposed Free Trade Area of the Americas, n37 has universal economic and political ramifications. Globalization's inevitable effects on the lives of Latinas/os and other people of color throughout the world is indisputable. This international phenomenon is an area of increasing importance in traditional scholarship, n38 though it has received little critical examination. n39 Consequently, globalization needs to be an area of increased focus for critical scholars of color. This movement towards the international, which has begun with efforts by several LatCrits, n40 is in its infancy. It is, however, perhaps the genesis of renewed vibrancy of an already significant theoretical undertaking. Resulting from the impetus of its initiators, LatCrit is well situated to be a leading voice in the global theoretical debate. The so-called New World Order will gray demarcations of nationality, sovereignty, and identity in general. Because this global shift will transcend our own national border and identities, both within the United States and in our homeland societies, progressive outsider scholars should engage in the discourse, which purportedly searches for insights to, and solutions for, common global problems. n41 Globalization will also affect, among other things, immigration, economic dependency and development, democratic reform, self-determination, human rights, and minority rights within existing sovereigns. As such, globalization may very well have the hegemonic effect of furthering the [*1162] Americanization or "Westernizing," so to speak, of the world. These consequences alone pose the danger of further silencing the marginalized and thus also of decreasing traditional

academic inquiry into the lives of Latinas/os and other marginalized groups, unless progressive leaders engage the traditionalists.

The consequences of first-world globalization on people of color will often be pernicious and will not only affect the lives of Latinas/os in the Americas, the Caribbean, and other areas, but it will have an indirect impact on these groups within the United States. Latina/o communities within this country are pan-ethnic, with ties here and to their homelands. n42 These groups directly affect, and are affected by Latinas/os throughout the world. This reality, among others, demonstrates that Latinas/os residing in this country exist, in many respects, in a transnational status "typically retaining strong material connections to, and cultural identifications with, their homelands' traditions, issues, concerns, hopes and aspirations." n43 These characteristics have global effects that are not limited to trade, which includes the movement of capital to and from transnational regions and the migration of thousands of individuals, it will also affect perceptions of identity, nationality, and democracy. In addition to globalization and the western support of it, the United States' related, omnipresent influence in world affairs will continue to have an enormous impact.

Even prior to becoming the world's sole superpower, the United States' policies and laws often negatively affected Latinas/os. n44 These policies, even when masked as addressing local, national, or domestic matters, had a much broader impact. n45 Before the word LatCrit was mentioned, leading Latina/o scholars appreciated the fallacy of the domestic domain. Professor Olivas, for instance, in addition to demonstrating the similarities in the oppression of the Mexicans, Native Americans, and Chinese Americans, revealed the international impact of laws allegedly geared to address domestic matters. n46 For example, during the United States' Great Depression, Los Angeles was targeted for massive deportation for those who [*1163] looked Mexican or had Spanish-sounding names. n47 During the period of 1929-1935, over 80,000 Mexicans were deported, even though many of them had the legal right to be in this country or were citizens of the U.S., because they did not have the ability to prove they belonged in the United States. n48 Over half a million Mexican and United States citizens, some of whom had never even been to Mexico, were also "voluntarily" repatriated to their purported homeland. n49 These are American stories that progressive scholars, such as LatCrits, have explored. These are also international stories of oppression that should be part of a global LatCrit examination. These are also ongoing stories. For instance, when one thinks of the United States military bombings in Vieques, Puerto Rico, n50 the violent political oppression in Latin America, n51 or the repatriation of Haitians off the shores of Miami, Florida, n52 we are reminded that oppression and discrimination thrives today. These facts also can be LatCrit rallying points. As the movement has already appreciated, it would be shortsighted for any endeavor advancing the interest of subordinate groups not to focus its inquiry on existing global, political, and economic shifts. Globalization is a phenomenon that is causing such a shift, and LatCrits must continue to respond accordingly.

LatCrit is situated to continue its examination of the realities facing Latinas/os in Latin America and in other regions. The movement, consistent with its prior efforts, will likely continue to explore issues concerning group identity, and critique legal, political, and economic structures with an eye towards achieving true social justice. Latina/o communities within the United States, as well as Latin America, are multiethnic, multilingual, multicultural, and multiracial. n53 LatCrit has appreciated this intergroup and intragroup diversity, n54 a diversity that includes educational background, language, history of conquest and subjugation, color, class, gender, and sexual orientation. Accordingly, LatCrit has understandably explored global concerns affecting Latinas/os.

[*1164]

III. The LatCrit Trajectory

As the above discussion suggests, LatCrit VI initiated and produced an impressive body of international work. LatCrit VI has done well in achieving the aspiration of producing knowledge and challenging Anglocentric perceptions of reality. In addition to the workshops, works-in-progress presentations, and keynote presentations of the eight clusters of essays resulting from the conference, at least five of these groupings engaged in a comparative analysis between domestic and international Latina/o issues. With themes such as the "North-South Frameworks," "Cubans Without Borders," "Migration and Citizenship," and "Cultural and Postcolonial Critiques," the conference engaged in a critical discourse beyond classic western constructions. The stimulating discourse engaged in by these groups touched upon the multidimensional and multicultural nature of Latinas/os, particularly when examining the intersections between gender, gender relations, race, class, and the transnationality of Latinas/os.

In the North-South Frameworks cluster, for instance, the authors not only explored Latin American legal systems, but also engaged in interdisciplinary transnational examinations of identity as reflected by the law. In an effort to unmask systematic bias and propose reform geared towards social justice, contributors to LatCrit VI championed

progressive structural change. As these works illustrate, there is significant need for outsider scholars to examine the depth of the plight of Latinas/os in the Americas. Such an inquiry will unmask the similarities, perhaps with an appreciation for the daunting extent of Latin American oppression, in the struggles of Latinas/os in the entire region.

Not unlike the outsider critiques of the United States' democratic experiment, there is considerable room for similar critiques in Latin America. For instance, a review of Latin American history would reveal the shortcomings of that region's democratic restructuring. The end of the twentieth century witnessed the return of democratic rule to many in Latin America, yet relations between governments and the poor and otherwise marginalized members of their societies were characterized by the illegal and arbitrary use of power. n55 The return to democratic reform did little to eradicate the authoritarian practices of the state. n56 Not unlike the history of the treatment of people of color in the United States, brutal violence and [*1165] gross human rights violations of ethnic minorities, in particular, of indigenous peoples, is common in Latin America. n57 Much like the bigoted rationale justifying the enslavement of African Americans as witnessed in *Scott v. Sanford*, n58 or the theft and annexation of Mexican lands as witnessed in the Treaty of Guadalupe Hidalgo, n59 change in Masters for Puerto Rico, Guam, and the Philippines in the 1898 Treaty of Paris, n60 and the Insular Cases, n61 the violations of indigenous peoples' rights in Latin America is justified because they are perceived to be "undesirable" or somehow "subhuman." n62

Not unlike the dearth of United States legal scholarship concerning the democratic problems of South America, there is relatively little traditional or progressive legal scholarship on Central America. This is a region where the United States has supported dictators, whose acts in turn led to civil wars and mass migration of Salvadorans, Guatemalans, and Nicaraguans to the United States. n63 These groups have, in turn, become some of the fastest growing immigrant groups in the United States, again illustrating a link between international issues and domestic issues.

The LatCrit VI presenters undertook comparative critiques and introduced critical progressive proposals. For instance, Professor Rojas proposed a multicultural-state framework for the legal and political system of Chile. n64 The proposal included identity frameworks in terms of rights of self-determination for indigenous peoples, particularly cultural identity rights and the right to governmental representation. n65 Despite its transformative goal, questions may nevertheless remain concerning whether the new multicultural state will lead to substantive changes in the lives of these marginalized groups. Using a world historical perspective, Professor Scafidi, not unlike previous Critical Race Theory and LatCrit examinations of recent racial constructions, examined, without much reference to Critical Race Theory or LatCrit, how colonizers used Eurocentric [*1166] constructions to marginalize and classify indigenous peoples. n66 Professor Esquirol, in a thoughtful methodological piece, reassessed basic understanding of how national law is viewed in Latin America. n67 He explained how early western strategies, used to promote change in the region, actually consolidated a mode of thinking and structural approach that ultimately made progressive reform difficult. n68 This critique demonstrates how traditional scholars and policymakers parochially used Western constructions to explain shortcomings in Latin American legal and economic development. n69

Similarly the "Cubans Without Borders" cluster looked beyond Western demarcations of the sovereign, examining identity constructions of Latinas/os in the Caribbean and the United States. Professor Valdes, in a thoughtful, timely, and innovative work, examined how mean-spirited Cuban elitists in both Havana and Miami have effectively used their respective narratives to betray their noble rhetoric in order to preserve a "win at all costs" attitude. n70 Valdes persuasively demonstrated that by manipulating power and bias, these two groups have sustained racist, sexist, and homophobic vehicles of subordination. n71 Professor Hernandez-Truyol similarly examined the two identities of Cuba - the one in Cuba and the other in Miami - and the divergent narratives that emerge from each. n72 Professor Hernandez went beyond the domestic to capture the little-known story of "Cubanas" in Cuban history, and examined their transformative efforts within Cuba's social structure. n73 Similarly, Professor Mendible spoke of the two identities of Cuba. n74 An important question raised by these impressive works concerns their characterization of the exile community in the United States and the extent to which that community's respect for freedom of speech also allows them, at least, to tolerate critical political speech.

Likewise, the cluster on "Migrations, Citizens and Latinas/os" involved an Inter-American critique. Professor Romero's thorough [*1167] work on the Child Citizenship and Family Reunification Act examined immigration issues within and without the United States by paying particular attention to the deportation of individuals who are parents of U.S. citizen children. n75 Other works touched on analyses that have global implications. For instance, in his work on "crossing the borders" to explore immigrant status in terms of group identity, Ruben Garcia acknowledged the broader implications of the issue. Though his analysis focused on U.S. labor doctrine regarding immigrants, n76 the work nonetheless contains substantial cross-border implications. n77

The final cluster of the conference was, by its own terms, primarily theoretical, comparative, and international. Professor Santos provided a thoughtful analytical piece examining globalization as a form of Western, particularly North American, hegemony. n78 Professor Inniss provided a law and literature (or film) critique arguing that science fiction may be a vehicle for the exploration of legal themes and the unmasking of cultural myths. n79 This innovative critique has wide applicability that is applicable to global critiques of the dominant gaze. Professor Wing, one of the leaders of Critical Race Feminist Theory, n80 explored the controversial issue, at least from the United States' perspective, of sovereignty and human rights for Palestinians. n81

Several other clusters also analyzed the international. n82 For instance, in his work on the need for critical "raced" economics, Professor Pouncy provided a sophisticated analysis of, and potential [*1168] direction for, critical scholars. n83 In an era with considerable controversy concerning the goals and impact of globalization and harmonization of institutions such as the World Bank, the World Trade Organization, and the European Union, Professor Pouncy's suggestion for an economic critique should be well-received and followed. n84 Professor Schutte, likewise, looked beyond our borders to examine indigenous issues and LatCrit Theory. n85 In the cluster examining criminality, Professor Mirande, in a controversial, yet thought-provoking piece, addressed the apparent "Mexican Exception" to the Fourth Amendment. n86

As this perhaps exceedingly brief overview illustrates, LatCrit VI is a fine example of a primary goal of the movement - producing critical knowledge with an eye towards approaching social justice. This goal was achieved in part by the conference's distinctively international and comparative focus. In the same vein, this thematic undertaking accomplished the goal of challenging perceptions of reality concerning Latinas/os. This broader focus is instrumental to the maintenance of the vibrancy and momentum initiated by the movement's founders. n87 The prior literature of the movement acknowledges the importance of a broader critique, and the movement is likely prepared to take that journey.

The following is a proposal to institutionalize and perpetuate a thematic international and comparative structure at future LatCrit conferences and the works stemming from them. While the structure and focus of the conferences have, at times, centered on the global, the themes for the conferences have followed the inclusionary goal of responding to expressions of interest by its members. While this approach has been wildly successful in developing a dynamic conceptual movement and diverse exchanges within the movement, it has not always achieved a structural progression or contemporary [*1169] global emphasis. n88 For instance, the anniversaries of consequential events in Latina/o history have recently occurred, such as the 150th anniversary of the signing of the Treaty of Guadalupe-Hidalgo n89 affecting Mexicans and the 100th anniversary of the Treaty of Paris n90 affecting Puerto Ricans, Guamanians, Cubans, and Filipinos. While past LatCrit symposia examined these important events, the movement arguably did not focus on them. n91 A thematic international and homeland emphasis that is a co-theme of every conference may facilitate ensuring a "Lat" global perspective. It may also promote interdisciplinary involvement and encourage reaching out to Latina/o communities. n92 For instance, conferences could, in part, be structured to engage in a comparative analysis of domestic and regional or specific country inquiries. A comparative Latin American n93 focus as a part of every conference is manageable and perhaps, warranted. A concerted ongoing effort that seeks to link international and homeland issues, while comparing and contrasting each, may assist in engaging historical, contemporary, and regional specific dialogues at each conference. n94 Related to this point, an international focus is tied to the LatCrit goal of building coalitions, recognizing that LatCrit Scholars are multicultural, and a broader focus will highlight that diversity as well as promote interdisciplinary participation. Too often the above topics are separated into panels of their own, and opportunities to engage in more comparative engagements and [*1170] perspectives are missed. n95

The third goal of the movement - coalition-building - is one that LatCrits have spent a great deal of time addressing in one fashion or another. n96 As was addressed early on in the movement, "LatCrit Theory self-consciously endeavors both the creation of scholarship through community and the creation of community through scholarship." n97 This goal has been instrumental in the professional development of young scholars and in educating all participants. This has been an incredibly savvy and fruitful undertaking. The conferences are not only challenging, but at some level they are even intimidating because of the impressive gathering of so many intellectual leaders in academia. The gatherings also have a positive consequence of maintaining a feeling of something akin to a family reunion of sorts. n98 This is truly an amazing accomplishment in light of the number of powerful and accomplished participants.

Now, for perhaps some more controversial constructive comments. The movement from its beginning has focused much of its literature on praxis, n99 or the connection between theory and practice, geared toward actually transforming social institutions. n100 While great scholarly efforts have focused on this goal, past n101 and upcoming conference n102 agendas have also focused on social justice [*1171] movements; n103 thus it is unclear how much praxis has been achieved beyond the scholarly engagement. Perhaps to many law professors, because in part of the nature of the

beast, the theoretical transformation or challenge is praxis or at least the most influential component of the profession. But the question that remains is whether the theoretical discourse is enough? n104 As addressed in previous LatCrit works, praxis is diverse and LatCrits should explore more ways to move beyond traditional means of dialogue. n105 Related to the question of the limits of scholarship is the concern over whether LatCrit scholars emulate the imperial scholars, n106 well-recognized scholars who largely speak to each other, because of the hierarchal structure of academia. What concrete actions do progressive academic scholars undertake collectively? In other words, are LatCrits, as progressive scholars, sufficiently effecting dominant culture as well as engaging Latina/o communities? As Professor Backer recently observed, scholars of color often end up having little more than interior dialogues. n107 "Dominant groups remain outside this outsider discourse and substantially unaffected by it." n108 If these observations by Professor Backer are true, how can LatCrit evolve to promote social change more forcefully? Does the movement want to undertake this engagement and is it prepared to do so? These questions concerning praxis have no easy answers but merit further discussion.

One possibility is to take from the corporate world and diversify the energies of LatCrit leadership. For instance, the LatCrit board could become more active and committees could be created to engage in plans of action. There could be litigation and legislative committees that could work on amicus briefs or significant litigation on such matters as affirmative action. n109 These committees could also be involved in the public debate by making resources available for editorials, petitions, and other pro-active legislative lobbying engagements. Another committee could specifically focus on global engagements and interdisciplinary outreach. This may assist in keeping LatCrit growing and working on influencing social institutions. Yet another committee could engage in concerted [*1172] education efforts to develop plans and work product to assist other progressives in their efforts to affect socialization of future lawyers and the means in which law is taught and practiced. These are just a few suggestions for a more community-involved LatCrit movement. While it is likely the case that most LatCrits are individually true forces for change in their respective localities, can LatCrit evolve to undertake more collective efforts? Few would likely question that collective efforts would be greater than the efforts of an individual; likewise, the efforts of many in unison are often greater than the efforts of many working separately.

Related to this notion of reaching out to communities of color and the viability of the movement, a series of additional questions come to mind. Is the movement effectively maintaining the involvement of more senior Critical Race scholars? This is not necessarily an attack on the movement, but a challenge or plea to senior Critical Race statespersons, and LatCrit members or former members, to continue their leadership role in a collective, progressive scholarly arena. As many progressive scholars as possible are needed to maintain, as well as advance, the prestige, vibrancy, and leadership of critical jurisprudential efforts. In addition, such increased visibility will likely increase the interest and participation by younger scholars. Otherwise, a lack of new blood may lead to stagnation by default. n110

Are LatCrits and other progressive scholars "leaving their home turf" and engaging in visible challenges to mainstream scholars? This is a question that can be answered fairly easily in the affirmative, particularly when examining the international law arena with works of Professors Hernandez-Truyol and Gott, including their work with the American Society of International Law. n111 Professor Johnson has similarly attempted to integrate race and race theory into mainstream immigration scholarship and has faced reluctance by traditionalists. n112 This question is posed because it should be part of ongoing self-reflection by LatCrits. Can LatCrits or subversives, such as outside scholars, expect to reap the rewards of traditionalists? n113 While the answer appears fairly obvious, as Professors Delgado n114 and [*1173] MacKinnon n115 demonstrated, outsiders can affect the dominant gaze and consequently, its legal structure. Perhaps, LatCrits and other RaceCrits should follow Roberto Anglero's suggestion and never stop challenging the perceived racial construction of the Almighty. n116

Related to efforts at scholarly advancement, are LatCrits sufficiently supporting each other in their scholarship and other professional endeavors outside the conferences? n117 While these simple and perhaps paternalistic and disturbing questions are applicable to all law professors, LatCrit, as a movement, aspires to a higher goal of coalition-building. In that vein, do LatCrits sufficiently read each other's work and provide non-conference scholarly support? n118 This goal is essential to building the body and quality of literature in the movement, as well as promoting broader interdisciplinary involvement and exposure. Do LatCrit scholars cite each other when working on similar projects? n119 In addition, LatCrit scholars should embrace related interdisciplinary works. n120 Likewise, interdisciplinary scholars engaging in the LatCrit effort should familiarize themselves with prior LatCrit and Critical Race Theory efforts. n121 A review of the interdisciplinary works submitted for this symposium issue often illustrated a lack of familiarity with Critical Race Theory, in general, or LatCrit works, specifically. Perhaps, the LatCrit board or conference organizers could create an initial reviewing body to review submissions and provide suggestions to [*1174] interested authors. This in turn would

ensure the quality and development of LatCrit and interdisciplinary scholarship affecting LatCrit. Working in this vein will likely assist the LatCrit effort in deconstructing false norms in the traditional jurisprudential paradigm.

IV. Conclusion

While the questions raised in this Essay may trouble some, they are honest thoughts from a LatCrit that is proud to be part of a group that owes much to the energies of its founders and to their Critical Race Theory predecessors. LatCrit is changing as well as challenging scholarship and academia. If its energy and momentum can be maintained, it will continue to promote a progressive agenda aimed at procuring social justice. Praxis is obviously essential to this goal. Indeed, greater LatCrit institutional involvement in the application of theory is necessary to promote the goal of progressive change. This point is not lost to the movement and is a reason why LatCrit VII, held in Spring 2002, engaged some of these questions and focused on social movements. Implementing what is learned here and perhaps what was suggested there may effectuate further change.

Despite the challenges facing LatCrit and this self-examination, the LatCrit endeavor, as a whole, is impressive and successful, particularly in its first two primary goals, because its members' collective energies and intellect make it a truly unique and potentially transformative group. These are the thoughts of a not-so-new member of LatCrit. n122

FOOTNOTES:

n1. Janheinz Jahn, Muntu: An Outline of the New African Culture 23 (Marjorie Grene trans., 1961) (1958) (exploring the primary assumptions and principles upon which African world-view and culture are based) (quoting Frantz Fanon).

n2. Roberto Anglero, Si Dios Fuera Negro, on Tierra Negra: Si Dios Fuera Negro (Southern Music Publishing Co. (ASCAP), 1979) (English Translation).

n3. See generally Symposium, Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory, 53 *U. Miami L. Rev.* 575 (1999); Symposium, Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory, 19 *Chicano-Latino L. Rev.* 1 (1998); Colloquium, International Law, Human Rights and LatCrit Theory, 28 *U. Miami Inter-Am. L. Rev.* 177 (1996); Symposium, LatCrit: Latinas/os and the Law, 85 *Cal. L. Rev.* 1087 (1997), reprinted in 10 *La Raza L.J.* 1 (1998); Symposium, LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship, 2 *Harv. Latino L. Rev.* 1 (1997); Colloquium, Representing Latina/o Communities: Critical Race Theory and Practice, 9 *La Raza L.J.* 1 (1996).

n4. The Sixth Annual LatCrit Conference, Substantive Program Outline, available at <http://personal.law.miami.edu/~fvaldes/latcrit/lcvidocs/lcvisubstantiveprogram.html> [hereinafter Substantive Program Outline]. Also available at www.LatCrit.org.

n5. Enormous credit must be given to the movement's founders, Professors Elizabeth Iglesias, Francisco Valdes, Berta Esperanza Hernandez-Truyol, Selena Romary, and others for their vision, tireless work ethic, and skills at coalition building. Without them not only would there not be a movement, but also many of its members, including this author, would not reach their professional and educational development.

n6. See generally Francisco Valdes, Afterword: Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience - RaceCrits, QueerCrits and Latcrits, 53 *U. Miami L. Rev.* 1265 (1999).

n7. See Berta Esperanza Hernandez-Truyol, LatIndia II - Latinas/os, Natives, and Mestizajes - A LatCrit Navigation of Nuevos Mundos, Nuevas Fronteras, and Nuevas Teorias, 33 *U.C. Davis L. Rev.* 851, 851 (2000).

n8. See generally *id.* (addressing the complexities of and tensions arising at LatCrit conferences).

n9. See, e.g., Mary Romero, Afterword: Historicizing and Symbolizing a Racial Ethnic Identity: Lessons For Coalition Building With a Social Justice Agenda, 33 *U.C. Davis L. Rev.* 1599 (2000); Valdes, *supra* note 6, at 1302.

n10. Substantive Program Outline, *supra* note 4.

n11. *Id.*

n12. *Id.*

n13. *Id.*

n14. See, e.g., Ediberto Roman, Common Ground: Perspectives on Latino-Latina Diversity, 2 *Harv. Latino L. Rev.* 483 (1997).

n15. See, e.g., Jorge L. Esquirol, The Fictions of Latin American Law (Part I), 1997 *Utah L. Rev.* 425; Mario Martinez, Property As An Instrument of Power in Nicaragua, 53 *U. Miami L. Rev.* 907 (1999); Ediberto Roman, Reconstructing Self-Determination: The Role of Critical Theory in the Positivist International Law Paradigm, 53 *U. Miami L. Rev.* 943 (1999).

n16. See generally Ediberto Roman, The Alien-Citizen Paradox and Other Consequences of U.S. Colonialism, 26 *Fla. St. U. L. Rev.* 1 (1998).

n17. See Kevin R. Johnson, Racial Hierarchy, Asian Americans and Latinos as "Foreigners," and Social Change: Is Law the Way to Go?, 76 *Or. L. Rev.* 347, 358-62 (1997).

n18. See generally Roman, *supra* note 16.

n19. See generally Valdes, *supra* note 6.

n20. See, e.g., 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).

n21. Substantive Program Outline, *supra* note 4.

n22. See generally Kevin R. Johnson, Foreword: Celebrating LatCrit Theory: What do We do When the Music Stops?, 33 *U.C. Davis L. Rev.* 753 (2000).

n23. See Valdes, *supra* note 6, at 1302.

n24. See generally Romero, *supra* note 9.

n25. See Johnson, *supra* note 22, at 754-55; Valdes, *supra* note 6, at 1302; see generally Romero, *supra* note 9.

n26. See, e.g., Romero, *supra* note 9.

n27. See, e.g., Berta Esperanza Hernandez-Truyol, *Las Olvidadas-Gendered in Justice/ Gendered Injustice: Latinas, Fronteras and the Law*, 1 *J. Gender, Race & Just.* 353 (1998); 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 (1994).

n28. See, e.g., Berta Esperanza Hernandez-Truyol, *Indivisible Identities: Culture Clashes Confused Constructs and Reality Checks*, 2 *Harv. Latino L. Rev.* 199 (1997).

n29. See 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); see also Beverly A. Greene, *Heterosexism and Internalized Racism Among African Americans: The Connections and Considerations for African American Lesbians and Bisexual Women*, 54 *Rutgers L. Rev.* 931; Josephine Ross, *The Sexualization of Difference: A Comparison of Mixed-Race and Same-Gender Marriage*, 54 *Rutgers L. Rev.* 999.

n30. See generally Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 *Cal. L. Rev.* 1213 (1997); cf. Betty W. Taylor, *A History of Race and Gender at the University of Florida Levin College of Law 1909-2001*, 54 *Fla. L. Rev.* 495 (2002).

n31. See Valdes, *supra* note 6, at 1268-69 n.15 (stating that "LatCrits should be proactive about nurturing a self-critical evolution of our collective endeavors").

n32. See Substantive Program Outline, *supra* note 4.

n33. See generally Ediberto Roman, *Globalization or Global Subordination?: How LatCrit Links the Local to Global and the Global to the Local: A Rare Approach to International Law (RAIL): Is There a Need for Yet Another Critique of International Law?*, 33 *U.C. Davis L. Rev.* 1519 (2000).

n34. Guadalupe T. Luna, *Foreword: LatCrit VI, America Latina and Jurisprudential Associations*, 54 *Rutgers L. Rev.* 803.

n35. See North American Free Trade Agreement, Pub. L. No. 103-182, 107 Stat. 2057 (1993).

n36. See Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, 97 Stat. 384 (1983) (codified in scattered sections of titles 19, 26, and 33 of the U.S. Code of 1988).

n37. See Free Trade Area of the Americas (FTAA), available at <http://www.ftaa-alca.org>.

n38. Indeed, the importance of globalism is recognized as the cutting-edge of legal education with law schools such as American University, New York University, and the University of Arizona committing themselves to incorporating current global restructuring into their curriculum. The new public law school in Miami, Florida, Florida International University, has gone one step further, making international law a core component of its curriculum, which includes a required first year course in international and comparative law. The institution has also established International and Comparative Law programs, and has hired a founding faculty with a commitment to the scholarly examination of global issues. See, e.g., M.C. Mirow, *Globalizing Property: Incorporating Comparative and International Aspects into First-Year Property Classes* (work in progress) (copy of manuscript with the Law Review).

n39. See, e.g., Alfred C. Aman, Jr., *Feminism and Globalization: The Impact of the Global Economy on Women and Feminist Theory*, 4 *Ind. J. Global Legal Stud.* 1 (1996); Adelle Blackett, *Globalization and Its Ambiguities: Implications for Law School Curricular Reform*, 37 *Colum. J. Transnat'l L.* 57 (1998); David P. Fidler, *The Globalization of Public Health: Emerging Infectious Diseases and International Relations*, 5 *Ind. J. Global Legal Stud.* 11 (1997); Nancy L. Kaszak, *Practicing Law in the Global Economy*, 22 *N. Ill. U. L. Rev.* 1 (2001). But see Lucy Taylor, *Globalization and Civil Society-Continuities, Ambiguities, and Realities in Latin America*, 7 *Ind. J. Global Legal Stud.* 269 (1999); Eisuke Suzuki, *The Fallacy of Globalism and the Protection of National Economies*, 26 *Yale J. Int'l L.* 319 (2001).

n40. See, e.g., Roman, *supra* note 33.

n41. Eden E. Torres, *Power, Politics, and Pleasure: Class Differences and the Law*, 54 *Rutgers L. Rev.* 853.

n42. See generally Roman, *supra* note 14 (noting the pan-ethnicity of Latinas/os).

n43. Substantive Program Outline, *supra* note 4.

n44. See, e.g., Ian Haney-Lopez, *White By Law: The Legal Construction of Race* (1996) (examining the racialized nature of U.S. immigration and citizenship law).

n45. See generally *id.*

n46. See generally 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).

n47. *Id.* at 437.

n48. Id.

n49. Id.

n50. James Anderson, *Vieques Vigil A Quagmire*, Miami Herald, Oct. 18, 1999, at 4A.

n51. See, e.g., *Nunca Mas: The Report of the Argentine Commission on the Disappeared* (1986); *Report on the National Commission on Truth and Reconciliation* (1993) (Chile); *North American Congress on Latin America: Preserving Hegemony, National Security Doctrine in the Post-Cold War Era* (2000)

n52. World Conference Against Racism, available at <http://www.antiracismnet.org/arn/worldconf/haiti1.htm>.

n53. Substantive Program Outline, *supra* note 4.

n54. Roman, *supra* note 42, at 483.

n55. Juan E. Mendez et al., *The (Un)Rule of Law and the Underprivileged in Latin America 1* (1999).

n56. Id. at 3; see also Mark Ungar, *Elusive Reform: Democracy and the Rule of Law in Latin America 1* (2002).

n57. See Ungar, *supra* note 56, at 7.

n58. *60 U.S. 393 (1856)*.

n59. Treaty of Peace, Friendship, Limits and Settlement with the Republic of Mexico, Feb. 2, 1848, U.S.-Mex., 9 Stat. 922.

n60. Treaty of Paris, Dec. 10, 1898, U.S.-Spain, T.S. No. 343.

n61. See, e.g., *Armstrong v. United States*, 182 U.S. 243 (1901); *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Goetze v. United States*, 182 U.S. 221 (1901).

n62. *Downes*, 182 U.S. at 244.

n63. Much thanks goes to Professor Kevin Johnson for his discussions on this subject.

n64. See generally Hugo Rojas, Stop Cultural Exclusions (In Chile)!: Reflections on the Principle of Multiculturalism, *55 Fla. L. Rev.* 121 (2003).

n65. See id.

n66. See generally Susan Scafidi, Old Law and the New World: Solorzano and the Analogical Construction of Legal Identity, *55 Fla. L. Rev.* 191 (2003).

n67. See generally Jorge Esquirol, Continuing Fictions of Latin American Law, *55 Fla. L. Rev.* 41 (2003).

n68. See id.

n69. See id.

n70. See generally Frank Valdes, Diaspora and Deadlock, Miami and Havana: Coming to Terms with Dreams and Dogma, *55 Fla. L. Rev.* 283 (2003).

n71. See id.

n72. See generally Berta Esperanza Hernandez-Truyol, Building Bridges V - Cubans Without Borders: Mujeres Unidas Por Su Historia, *55 Fla. L. Rev.* 225 (2003).

n73. See id.

n74. See generally Myra Mendible, Paradise Lost, Paradise Found: Oral Histories and the Formation of Cuban Identities, *55 Fla. L. Rev.* 269 (2003).

n75. See generally Victor Romero, The Child Citizenship Act and the Family Reunification Act: Valuing the Citizen Child as Well as the Citizen Parent, *55 Fla. L. Rev.* 490 (2003).

n76. See generally Ruben J. Garcia, Across the Borders: Immigrant Status and Identity in Law and LatCrit Theory, *55 Fla. L. Rev.* 511 (2003).

n77. See id.

n78. See Boaventura de Sousa Santos, Reinventing a Subaltern Paradigm of Recognition and Redistribution, *18 Theory, Culture & Society* 185-217 (2001).

n79. See generally Lolita Buckner Inniss, Bicentennial Man - The New Millennium Assimilationism and the Foreigner Among Us, *54 Rutgers L. Rev.* 1101.

n80. See, e.g., *Critical Race Feminism: A Reader* (Adrien Wing ed., 1997).

n81. See generally Adrien K. Wing, *Healing Spirit Injuries: Human Rights in the Palestinian Basic Law*, 54 *Rutgers L. Rev.* 1087.

n82. See, e.g., Elvia R. Arriola, *Comparative and Co-Constituent, Construction of Identities*, 55 *Fla. L. Rev.* 413 (2003); Manuel J. Caro, *Tying Racism in El Ejido to Spanish and European Politics*, 54 *Rutgers L. Rev.* 893; Claire Moore Dickerson, *Culture and Trans-border Effects: Northern Individualism Meets Third Generation Human Rights*, 54 *Rutgers L. Rev.* 865; Michael Wallace Gordon, *Legal Cultures of Latin America And the United States: Conflict or Merger*, 55 *Fla. L. Rev.* 115 (2003); Camille A. Nelson, *Carriers of Globalization: Loss of Home and Self Within the African Diaspora*, 55 *Fla. L. Rev.* 539 (2003).

n83. See generally Charles Pouncy, *Institutional Economics and Critical Race/LatCrit Theory: The Need for a Critical "Raced" Economics*, 54 *Rutgers L. Rev.* 841.

n84. *Id.*

n85. See generally Ofelia Schutte, *Indigenous Issues and Ethics of Dialogue in LatCrit Theory*, 54 *Rutgers L. Rev.* 1021.

n86. See generally Alfredo Mirande, *Is There a "Mexican Exception" to the Fourth Amendment*, 55 *Fla. L. Rev.* 365 (2003). Other works explored the affect of being Latina/o in the criminal law arena. See Kevin R. Johnson, *The Case for African American and Latina/o Cooperation In Challenging Racial Profiling in Law Enforcement*, 55 *Fla. L. Rev.* 341 (2003); Christopher Slobogin, *The Poverty Exception to the Fourth Amendment*, 55 *Fla. L. Rev.* 391 (2003).

n87. See generally Elizabeth M. Iglesias, *International Law, Human Rights, and LatCrit Theory*, 28 *U. Miami Inter-Am. L. Rev.* 177 (1997).

n88. For instance, in 1997, LatCrit held an International Law and Human Rights Colloquium. In 2000, LatCrit IV focused on expanding frontiers and marginal intersections. LatCrit V similarly examined Praxis in World Economic Inequality. For a further discussion, see <http://lnersp.nerdc.ufl.edu/2malavet/latcrit/archives/articles.htm>.

n89. *Treaty of Peace between the United States of America and the Kingdom of Spain*, Dec. 10, 1898, U.S.-Spain, 30 Stat. 1754.

n90. See generally *The Legacy of the Mexican and Spanish-american Wars: Legal, Literary, and Historical Perspectives* (Gary D. Keller & Cordelia Candelaria eds., 2000) [hereinafter *Historical Perspectives*].

n91. Indeed some LatCrit theorists, in part because of the LatCrit neglect in this area, participated in other conferences that recognized the significance of these historical milestones. See *id.* Symposium, Understanding the Treaty of Guadalupe Hidalgo on Its 150th Anniversary, 5 S. J. L. & Trade Am. 5 (1998).

n92. Efforts to reach out to other fields and engage traditionalists does not come without caution. LatCrit must be prepared to take criticism from different fronts, even if some might consider them paternalistic. See, e.g., Siegfried Weissner, !Esa India! LatCrit Theory and the Place of Indigenous Peoples with Latina/o Communities, 53 *U. Miami L. Rev.* 831 (1999).

n93. This includes the Caribbean, Central America, and South America.

n94. See, e.g., Johnson, *supra* note 17; George A. Martinez, African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition, 19 *Chicano-Latino L. Rev.* 213 (1998); Valdes, *supra* note 6.

n95. Thanks again to Mary Romero for our discussions related to this point.

n96. See *supra* note 94.

n97. Valdes, *supra* note 6, at 1300.

n98. While conflicts may exist among LatCrit scholars concerning a host of matters, including the importance of certain scholarly pursuits, LatCrit theorists must continue to work on building communities in, at times, competitive environments or the movement may run the risk of some of the troubles faced by Critical Race Theory. See Valdes, *supra* note 6, at 1310.

n99. See, e.g., Elizabeth M. Iglesias, Foreword: Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community, 53 *U. Miami L. Rev.* 575 (1999); Pedro A. Malavet, Literature and the Arts as Antisubordination Praxis: LatCrit Theory and Cultural Production: The Confessions of an Accidental Crit, 33 *U.C. Davis L. Rev.* 1293 (2000); Francisco Valdes, Foreword: Under Construction-LatCrit Consciousness, Community, and Theory, 85 *Cal. L. Rev.* 1087 (1997); Eric K. Yamamoto, Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America, 95 *Mich. L. Rev.* 821 (1997); Eric K. Yamamoto, Rethinking Alliances: Agency, Responsibility and Interracial Justice, 3 *Asian Pac. Am. L.J.* 33 (1995).

n100. See, e.g., Critical Race Theory: The Cutting Edge 571 (Richard Delgado & Jean Stefancy eds. 2d ed., 2000).

n101. See Margaret E. Montoya, LatCrit V Symposium, Class in LatCrit: Theory and Praxis in a World of Economic Inequality, 78 *Denv. U. L. Rev.* 467 (2001).

n102. LatCrit VII, Substantive Program Outline, Coalitional Theory and Praxis: Social Justice Movements and LatCrit Community, available at <http://www.latcrit.org>.

n103. See Montoya, *supra* note 101.

n104. See Roman, *supra* note 14, at 491-92 (arguing that theoretical movements must not lose sight of affecting their communities).

n105. See *id.* at 492.

n106. See Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 *U. Pa. L. Rev.* 561 (1984).

n107. Larry Cata Backer, *Measuring the Penetration of Outsider Scholarship Into the Courts: Indifference, Hostility, Engagement*, 33 *U.C. Davis. L. Rev.* 1173, 1216 (2000).

n108. *Id.*

n109. See, e.g., *Hopwood v. Texas*, 84 *F.3d* 720 (5th Cir. 1996).

n110. See generally Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2000 *U. Ill. L. Rev.* 525.

n111. See, e.g., 93rd Annual Proceedings of the American Society of International Law (1998).

n112. See generally Johnson, *supra* note 110.

n113. See, e.g., Backer, *supra* note 107, at 1173-74.

n114. See *The Price We Pay: The Case Against Racist Speech, Hate Propaganda, and Pornography* 4-5 (Laura J. Lederer & Richard Delgado eds., 1995); Richard Delgado, *Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 *Harv. C.R.-C.L. L. Rev.* 133 (1982).

n115. See generally Catherine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (1978).

n116. Though an outsider who perhaps too often feels his writings pass with little notice, I recognize that I am blessed and am so happy to have recaptured faith.

n117. While the list of the failure of more senior scholars to acknowledge or even recognize other progressives is long, community quells any effort at more pointed criticism.

n118. Compare the following articles that touch upon similar themes but do not build on each other. Juan Perea, *Killing Me Softly, With His Song: Anglocentrism and Celebrating Nouveaux Latinas/os*, 55 *Fla. L. Rev.* 441 (2003); Steven W. Bender, *Will the Wolf Survive?: Latino/a Pop Music in the Cultural Mainstream*, 78 *Denv. U. L. Rev.* 719 (2001); Ediberto Roman, *Who Exactly Is Living La Vida Loca?: The Legal and Political Consequences of Latino-Latina Ethnic and Racial Stereotypes in Film and Other Media*, 4 *J. Gender Race & Just.* 37 (2000).

n119. Professor Kevin Johnson is one to be emulated. An extremely well-respected scholar who has always supported much younger scholars like myself; his works and efforts are a model for all of us. Thanks Kevin.

n120. See Alejandro Covarrubias & Anita Tijerina Revilla, *Agencies of Transformational Resistance*, 55 *Fla. L. Rev.* 459 (2003); Ellen Pader, *Space of Hate, Ethnicity, Architecture and Housing Discrimination*, 54 *Rutgers L. Rev.* 881.

n121. Joe Feagin, *White Supremacy and Mexican Americans: Rethinking the "Black-White Paradigm"*, 54 *Rutgers L. Rev.* 959; Mauricio Garcia-Villegas, *Symbolic Power Without Symbolic Violence?*, 55 *Fla. L. Rev.* 157 (2003); Felipe Lopez, *The Construction of Mexican Identity*, 54 *Rutgers L. Rev.* 989.

n122. Cf. Roman, *Diversity*, supra note 14, at 494 ("These are the views of a newcomer.").

LENGTH: 13276 words

LATCRIT VI: LATINAS/OS AND THE AMERICAS: CENTERING NORTH-SOUTH FRAMEWORKS IN
LATCRIT THEORY: FOREWORD: LatCrit VI, America Latina and Jurisprudential Associations

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SUMMARY:

... During the past few years, a group of innovative thinkers and scholarly investigations have sought to introduce a more precise legal engagement into the realm of race relations. ... Studying Latinas/os and those confronting inequality and disparate treatment offers a more precise engagement of race, class, and gender relations. ... The Clusters make clear the import of knowledge with specific contemplation of communities of color, issues underscoring identity, race, class and gendered relations with law. ... Part II introduces the Clusters, but in traditional LatCrit fashion, engagement of the essays precedes and follows each Cluster. ... It proves ultimately the connected goal of LatCrit VI in its additional engagement of domestic based Latinas/os. ... Cluster I demonstrates that "democracy in the early 21[su'st'] century requires careful thinking. ... Cluster IV permits engagement with communities familiar with disparate treatment on the basis of their ethnicity, race, gender, and sexual identity. ... The author observing that immigration law is intensely racialized" questions why "other bodies of law, such as civil rights and labor law, have failed to take into account how identities that are currently legally protected-race, gender, national origin, and ancestry-intersect with immigrant status and history. ... G. Cluster VII: Race, Gender, and Sexuality Issues grounded in sexuality, queer theory, gender and race are not uncommon constructs of concern for the LatCrit community with Cluster VII presenting yet additional sophisticated aspects. ...

TEXT:

[*803]

I. Introduction

During the past few years, a group of innovative thinkers and scholarly investigations have sought to introduce a more precise legal engagement into the realm of race relations. The LatCrit journey, an important example of intellectual inquiry, surfaced in formalized settings only five years prior. n1 As an offset, LatCrit theorists not only advance, but, instrumental to LatCrit's theoretical base, engage knowledge for too long cast aside within standardized legal training and conventional academic investigations. Attendant to this effort, rotating spheres of conferences seek to advance the past, n2 present, [*804] and future n3 jurisprudence of LatCrit theory.

In this fashion, detailed circumstances of communities of color have not only emerged within formal legal investigations, but the potential transformation of distressed populations has also surfaced. Previously, the human circumstances of nuestras comunidades infrequently appeared at the center of legal-directed investigations. n4 This isolationist approach not only misdirected but also stymied the potential transformation of communities of color in distress. Lacking accountability, mono-cultural accounts dominated the record. The consequences of such accounts fail to disclose the extent to which law influences and structures the social, economic, and political reality of the nation's diverse populations. In contrast, the LatCrit interest looks beyond the status quo, and in this expansion succeeds, as the LatCrit VI Conference and this Symposium issue demonstrate.

Through the immeasurable assistance of the University of Florida, Levin College of Law, the LatCrit VI Conference brought to the table a diverse group of community activists, public and private attorneys, n5 academics and students. n6 The focus of inquiry explored [*805] LatCrit Theory within a United States/Latin America framework. The contributions of the Symposium authors in this issue present to the broader legal community a unique journey encompassing a general dual-purpose framework.

The first purpose is specific to a Latin America focus. The second is tethered to gente Latina in the United States with possible connections and linkages to their countries of origins. Encouraging critical inquiry in "ways that illuminate and elucidate the North-South character of Latina/o transnationality" n7 ultimately define the primary intent underscoring this year's Conference. Complementing past year's efforts, LatCrit VI also sought to "undertake some comparative critical studies of 'domestic' issues and their counterparts throughout the Americas" n8

Law has long played an active role in defining the social, class and gender construct of communities of color. n9 Studying Latinas/os and those confronting inequality and disparate treatment offers a more precise engagement of race, class, and gender relations. The United States' intervention into the internal politics of America Latina renders imperative the LatCrit project. Globalization and its resulting hierarchies as imposed on labor, the natural resources of America Latina, as well as political and private spheres underscore the intent of LatCrit VI. n10 This Symposium issue offers impassioned [*806] contributions with tangible impact on the diverse realm of America Latina generally with domestic connections specifically.

The reality of the dirty wars, military coups, direct and indirect disruption of democracies with the imposition of Western-based ideologies on gente Latina highlights a twofold obligation. The first shows law moving forward, with the second proving its vitality. Turning this lens towards America Latina makes evident the asymmetrical relationship between the United States and its neighbors to the south. Much can be learned for example from alternative reform measures, the indigenous fight for and protection of their land base, socialized medicine, and sustainable agriculture. n11 LatCrit VI accordingly brings to this journey of exploration individuals concerned not only with the role of law but also with the extent to which law structures race, class, identity and gendered relations within the public/private spheres.

The various links and relationships of Latinas/os in the United States who retain "strong material connections to, and cultural identifications with, their homelands' traditions, issues, concerns, hopes and aspirations" further emphasize the goal of LatCrit VI. n12 Underscoring the definite and indefinite links that "bind Latina/o Communities in the United States to their homeland societies, cultures and economies" n13 allowed a thematized international effort which further articulated the possible linkages, connections, and interconnected web of complexities drawn from the world of marginalized groups. n14

A series of relationships from those within the United States and those tethered to Latina America spell out the experience of the subordinated who ride along the margins of law. Imperative to this effort our hope is that its totality cements in yet greater measure the aim of LatCrit theory in not only excavating and engaging knowledge [*807] specific to our communities but also linking the theoretical to praxis n15 with challenges to recalcitrant ideologies. And while each Latina/o community maintains discrete differences, a wide diversity of culture, ethnicity, language, and gender, the political and economic reality of private and public spaces of Latina/o communities makes urgent the thematic call of LatCrit VI.

The resulting Clusters bring to legal jurisprudence a broad range of concerns that impact their constituent communities both in the United States and throughout America Latina. The Clusters make clear the import of knowledge with specific contemplation of communities of color, issues underscoring identity, race, class and gendered relations with law. To the landscape of critical thought, intellectual curiosity and engagement, they bring the requisite legal curiosity to the study of jurisprudence. Imperative to the issues of intersectionality with law, a range of incomparable differences of perspectives further expedite this LatCrit excursion while also promoting the integrity of teaching increasingly diverse student bodies. To the benefit of legal inquiry the Clusters relate a host of questions which explore the circumstances of the human condition in nuestras comunidades, challenges to the "rule of law" and its role in inhibiting coalitions of multi-cultured communities. n16

Part II addresses tangible and intangible connections between the United States and America Latina. Additionally, it considers the domestic based goal of LatCrit VI. Part II introduces the Clusters, but in traditional LatCrit fashion, engagement of the essays precedes and follows each Cluster. An Afterword thereafter completes this Symposium issue.

II. Latinas/os and Entangled Relationships and the Clusters

The success of LatCrit Theory renders coalition building an imperative with an emphasis on the production of knowledge. Accordingly, LatCrit VI chose to explore a series of paradoxical relationships between the nation's neighbors that comprise America Latina. The United States and America Latina hold a number of [*808] common links that have long shaped the contours of relations long grounded in the historical, legal, political, economic and geographical arenas. That Latin America and the Caribbean Basin sustain concrete relationships with their counterpart constituents across the United States is also long grounded in law, history, and the political spheres. n17

Market-oriented economics, free trade, and deregulation show an emphasis on elected national governments and democratic values and yet lack structural reforms to support participatory democratic ideals. n18 The relationship between the United States and Mexico, as with other countries, suggests that they "enjoy close and cordial bilateral relations that cover an unprecedented range of issues and engage a wide range of participants in government, the private sector and civil society." n19 And yet, that United States hegemony led to the destabilization of various countries within Latin America n20 underscores the urgency of LatCrit scrutiny and compels rigorous inquiries into the elusive nature of democracy in America Latina. LatCrit raises sensitive questions regarding the relationship between common law nations and those grounded in civil law. While numerous theoretical models offer frameworks in which countries retain relations with the United States, n21 several concrete links to the contrary surface.

The first considers the environmental and geographical links between the United States and America Latina with a focus on a geographical base that "stretches 7,000 miles southward from the Mexican-U.S. border to the tip of Tierra del Fuego on Cape Horn." America Latina's "widest east-west point across Peru and Brazil, spans 3,200 miles" n22 and sets up red flags regarding the colonization [*809] of the natural resources and labor of the various countries. Tropical areas to cities further show geographical diversity and mark an ancient and asymmetrical relationship with the United States that yields to colonial, political, economic and extra-legal dimensions. n23 Because globalization flows from historically narrow definitions that prove harmful to Latinas/os, a focus on interconnected geographical links is crucial.

A second consideration involves the vast realm of diverse cultures and ethnicities in America Latina. Regional communities benefit from individuals retaining Black, Indigenous, Mestiza/o and European or Hispanic backgrounds. n24 Drawing into analytical inquiry, compelling issues define the nature of race, class, and gendered relations, as well as its complex intersections with conventional jurisprudence on gente Latina. Critical questions regarding the use of children working for American interests, slavery and disparate pay n25 compel serious inquiry as to the nature of citizenship in the Americas. Conversely, labor rights accrued in the Latin American nations are not permitted in industries employing a significant number of people of color in the United States. n26

Yet a further contemplation of America Latina brings into this circle ongoing concern over the nature of restrained citizenship, the environment, n27 social and economic history, and human rights reaching into gender and other intersectionalities within law. n28 The reality of gente Latina shows measures of great wealth and yet [*810] tremendous impoverished conditions with unmitigated restraint calling for extended fields of inquiry. Impoverished communities n29 and their relationship with the privileged in control of the various nations in America Latina generate apprehension and accordingly make evident this call. n30

Class distinctions additionally underscore the LatCrit VI inquiry and its obligation to remain vigilant of legal systems specifically constructing the public and private spheres of its constituents across the hemispheres. n31 "Deep and persistent inequalities" n32 hinder the social and economic citizenship of its constituents. The socio-economic distances between women in rural spheres with the urban wealthy underscore a measure of class differences in America Latina. The judiciary's connection to preserving the rule of law, n33 the military in disrupting democracies, and the lack of freedom of the press disallow participatory and representative theories of democracy. Overly restrictive legal ideologies in sum refusing the exigencies of race, gendered, and class relations in the present.

Advancing America Latina connections within LatCrit theory consequently promotes a more precise legal, historical, and political engagement. Even more so it promotes intra and intergroup justice with our constituent communities and delineates collective action not [*811] facilitated otherwise. Critical analysis of inconsistent rhetoric in America Latina communities has yet to emerge with significant emphasis. n34 Cold War dominated scholarship n35 and subsequent development models not only set the stage for hemispheric relations n36 but its limitations advance unequal and uneven relations between the United States and its Latin American counterparts. As an example, narrow definitions of globalization define the character of investigations by American politicians reaching into Mexico, Cuba, and other Latina/o countries. n37 Yet "the conflation of citizenship and geography in popular discourse and legal theory" n38 without vigilance can only inhibit LatCrit priorities. It proves ultimately the connected goal of LatCrit VI in its additional engagement of domestic based Latinas/os.

Evoking yet further contemplation of Latinas/os for LatCrit VI required a corresponding focus on domestic Latinas/os in the United States with possible connections to their countries of origin. The United States retains a rich and diverse realm of histories, culture, and innumerable benefits from the contributions of its diverse populations. The nation's texture draws from individuals from countries such as Mexico, Cuba, Nicaragua, Columbia, El Salvador, and Guatemala. Brazil, Peru, Ecuador, Argentina, along with other Latin American countries are also linked with domestic based communities. Latina/o communities are enriched with individuals retaining Black, Indigenous, Mestizo and European or Hispanic backgrounds. n39 Inter-and intra-groups from varied nation-states throughout the Caribbean and Central America further emphasize a degree of connections that remain fluid and offer extensive possibilities for the LatCrit excursion.

Latinas/os are commonly identified as residing solely in Southwestern communities. Yet they are also residents of Midwestern communities and are scattered throughout the nation in [*812] areas as diverse as North and South Carolina, Georgia, Wyoming and New York. To the extent that differences mark each community commonalities nonetheless, exist. The varying conquests invading communities of color subjected Latinas/os to the forces of new legal systems, forever changing their relationship in the public and private spheres. Human rights investigations surfacing on the international scheme, however, infrequently spark application on the domestic front. The lack of investigations involving the human rights violations of agricultural workers makes obvious the realm of inequalities impacting Latina/o communities and makes urgent a LatCrit emphasis. n40

The influences of Latinas/os from diverse countries render immeasurable positive influences on the United States. One of the largest populations across the nation, Latinas/o give the nation a variety of native languages. In line with the displacement of native languages with Spanish, indigenous speakers are facing newer forms of discrimination in the workplace. In some instances, Spanish speakers have been physically harmed for speaking Spanish. n41 And while historical antecedents are culturally contingent, legal, political, economic, and public spheres govern their reality within the United States.

With this backdrop in mind, the relationship between domestic Latinas/os and America Latina directed this second prong of the LatCrit VI inquiry and curiosity. Humanity's worldview in the Americas would only result in great harm without the influences of the Brazilian capoeira, n42 the musica of Chilean singer Violeta Parra, the radical thinking of Ernesto Che Guevara, the science of the Incas, the math of the Mayans, n43 the Aztec cosmos, and the innumerable contributions of its varied indigenous, mestizas/os, Black and Hispanic communities. Supplemental contributions extending beyond legal measures are manifested in Latina/o employment. That the nation's agricultural workforce grants agricultural producers and the nation a beneficial economic status underscores this point. n44 Even [*813] beyond labor, without the contributions of America Latina commodities such as corn, avocados, tomatoes, sugar, tortillas, squash, and beans, American food production would face significant economic harm.

The eight Clusters therefore represent the urgent call of the LatCrit VI Conference. The LatCrit interest in hemispheric relations and its effect on democracy for constituent communities emerges with unmitigated force in the Clusters. The Clusters shed new light on dominant discourse and reflect a divide between law and the reality of the human condition throughout the Americas. They make evident "the historical articulations of white supremacy, colonialism, and the expansion of international capitalist processes and social formations" n45 that accompany domination and prove harmful to Latinas/os across the globe.

In sum, the Clusters address the role of traditional analysis and seek critical insights into domestic issues and their counterparts throughout the Americas. The Clusters import shows them stimulating awareness of the social and political reality of their constituent communities. Several essays call for clarification of legal rules and ethics, others illuminate present difficulties, still others provide interpretive insight on the complex realm surrounding identity and conditions in the private and public spheres. All add to a strong effort in which to re-define America Latina as a unique configuration of political, linguistic, cultural, and economic elements. This multi-dimensionality demanding continuous reappraisal of the hegemony of United States interests, unrelenting globalization and the relocation of people and cultures comprising America Latina. LatCrit VI as an invaluable forum confronts established geocultural constructions, subjects them to critical scrutiny, and then rethinks the new constructions that surface. Investigators, consequently, extending beyond narrow legal boundaries and restrictive public policies.

III. The Clusters

The Clusters of innovative essays and articles represent but a small sampling of the various workshops, n46 keynote presentations, n47 [*814] and plenaries n48 that not only served as a basis of discussion, but directly engaged inter

alia, law, social, economic and political theory and the discourse of race relations, queer and gender theory. Not only reflecting LatCrit theory the Clusters demonstrate key aspects of law and its relationship to gente Latina generally, but outsider communities specifically.

A. Cluster I: North-South Frameworks in LatCrit Theory

Cluster I examines various definitions of democratization. Work place democracy for example is contrasted with liberal notions of democracy and yet distinctions fail to advance the dominant record. While "elected governments are reappearing throughout Latin America," n49 few are protecting civil liberties, and most "fail to guarantee anything approximating the rule of law, and fail to provide all sectors of the society a reasonable opportunity to participate in the formation and implementation of public policy." n50

Democracy remains an elusive goal n51 with the legacy of the Cold War period, civil strife, and military take-overs exerting influences on countries negotiating law reform in the present. n52 And while the United States represents that it believes in a co-equal citizenship in the Latin American hemisphere, as seen with NAFTA, democracy appears stymied. Border issues and xenophobia, for example, are difficult to reconcile with declarations that the various nations are in parity with the United States. The LatCrit community like many other organizations and scholars are troubled by the types of projects [*815] that fall under "democracy" or democratization - sometimes sponsored by the United States and, sometimes sponsored by the Latino American governments. Projects that represent promoting democracy, without questioning what is required structurally, fail to inspire a democratic vision. Within Cluster I, the authors take on this project with attendant future work required of LatCrit investigators.

Cluster I cogently reflects the North-South Frameworks directing the structural scheme of LatCrit VI with four key aspects surfacing regarding legal systems and impact on gente Latina. The essays permit lessons and offer comparative studies on the nature of a civil law legal system with a common law legal system in the United States.

Jorge Esquirol's essay, the first in Cluster I, considers legal systems in Latin America. n53 His observations, however, extend beyond the theoretical with direct application of privileged legal systems and their lack of connection to the populations in their countries of origin. Michael Gordon n54 analyzes the Spanish and United States legal systems and offers an astute comparison where both legal systems are in conflict or dual conflicts have emerged. A third focus in this Cluster draws from Hugo Rojas n55 and his concern of the "long-lasting cultural ghettos" segregating Chile and governed by a minority that "enforces the social codes, consumer habits, modes, values and principles" impact the legal status of Indigenous people, "gender minorities, religious minorities, gypsies, immigrants and other marginalized identities." n56 The author applies the "Principle of Multiculturalism" to overcome old models of the nation-state and to establish the foundations for "a transition to a Multicultural-State." n57 Mauricio Garcia-Villegas, n58 responds to a gap between application of theory that fails to reflect concepts of "symbolic efficacy" as used by Pierre Bourdieu. Susan Scafidi, n59 presents a study of 17[su'th] century Spanish jurist Juan de Solorzano Pereira. Applying legal realism to the historical record reveals legal [*816] identification of native populations as "miserabiles personae," a category including widows, orphans, and other persons similarly in need of special protection under the law. n60

Cluster I demonstrates that "democracy in the early 21[su'st'] century requires careful thinking. The compelling questions addressed as to the role of law in constructing and labeling native populations, and definitions of democracy within the construct of Latin American politics and cultural dimensions permit uneven realities to emerge." n61 Cluster I underscores pressing global challenges and illustrates the intrusiveness of democracy based frameworks lacking objectivity and neutrality. In the process underscoring the extent to which democracy is hindered in Latin America with overly restrictive mechanisms that shape citizenship narrowly.

B. Cluster II: Cubans Without Borders

Consistent with LatCrit practice LatCrit VI placed attention to the region in which the annual conference takes place. "Situational knowledge" promotes an alternative to standard interpretations disallowing the specificity of the vast and diverse populations within the United States. n62

Florida, the situs of LatCrit VI, accordingly introduces critical issues in this Cluster from a region with a steady and rich heritage of varied influences, cultures, and ethnicities. Like the indigenous and Chicana/o communities across the nation, the region also faced European invasion of its communities. n63 The State, moreover, has long witnessed an involved relationship with various nation/states defining the North/South framework of LatCrit VI. Florida has long benefited from its diverse communities ranging from its indigenous constituents, n64 Haitian and Mexican agricultural

workers and exiles from various homelands. Consistent with communities across the Americas Florida's constituent base retains strong ties to various [*817] countries of origin. In the process, bringing forth a range of land and property issues, the heinous practice of slavery both in the past and in modern times, economic, cultural, and new political and private circumstance directly linked to the present. n65

The State also harbors a concrete international zone of influence. The relationship between Miami Cubans and Cubans on the island make evident the influence of its Caribbean connections. Drawing from the highly publicized Elian Gonzalez affair in which a domestic community engendered serious interactions between two nations brought forth highly emotional private and public associations. Cluster II delineates not only the intense battle encompassing a highly passionate international struggle between Latinas/os in the United States and a Caribbean nation it also emphasizes the limitations of media and political representations in constructing the debate over the Elian Gonzalez "guerra" and impact on Cuban Americans. Set against the backdrop of the personal and the Elian affair, Cluster II broaches several serious intersections with somber legal considerations.

Berta Esperanza Hernandez-Truyol in a comparative analysis of the legal status of women in Cuba with those in the "other Cuba" (Miami) n66 offers a cogent study underscoring the different legal ideologies of both nations and the treatment of women. That one nation espouses the legal theory of freedom and liberty and the other associates with related socialism underscores her emphasis and conclusion that "cultural assumptions about sex roles have persisted in Cuban societies whether within the island or in the Cuban community within the U.S." n67 Myra Mendible n68 adds a further dimension to the issue of identity drawing from Cuban and American cultural identities. Breaking down the borders between the two identities the author seeks to erode the simplistic dichotomy of pre/post Castro scenarios that frame discussions about Cuba's present predicament. Francisco Valdes also negotiates the "high-pitched ideological conflict between the bipolarized world views of Havana's and Miami's elites" in the context of the Elian Gonzalez [*818] story. n69 Long committed to social justice, the author asserts he is "composing a LatCrit and QueerCrit position toward the reconciliation of Cubans and the reconstruction of Cuba as a post-subordination society." n70

The specific site of LatCrit Conferences proves of immeasurable benefit in expanding limited discourse and mono-cultural based knowledge as constructed and presented by the media and governmental officials, and offsets narrow interpretations of American history. n71 By expanding beyond the narrowly defined rhetoric of the media and restrictive political representations the explorations of Cuban identity and geo-politics in Florida can only enhance the LatCrit effort. Cluster II therefore adds to a more precise understanding of the issues surrounding Cuban communities in Miami with connections to a sovereignty not recognized by the United States.

C. Cluster III: Race, Law and Criminality

A wide gap divorces Fourth Amendment protections from the past and the few protections remaining in Fourth Amendment law in the present. Latinas/os nonetheless are often at the margins of Fourth Amendment "protections." This legal situation becomes even more alarming for Latinas/os facing immigration plenary power restrictions. Racial profiling, the unlawful use of force, n72 are only compounded by the confluence of immigration issues. Episodic restrictionist history is sadly matched by persistent criminal law investigations that target people of color. n73 Cluster III brings to the forefront the varying nuances of citizenship status and its relation to [*819] not only Mexican but also to African American communities with both identified as "foreigners." n74 The authors employ causation strands that reveal, through racial profiling, that law enforcement officials have carved out yet another exception to the protections flowing from constitutional law. Cluster III, responding to the long recognized ill-treatment of communities of color, ultimately defines the urgent need for coalition building with constructions insisting and demanding accountability and integrity in the law.

Kevin R. Johnson, n75 explores the mutual concerns confronting Latinas/os and African Americans drawing from race-based enforcement through racial profiling. The essay registers with full force the need for coalition building and collective action in order to draw forth much-needed racial reform in law enforcement. n76 Alfredo Mirande addresses the Fourth Amendment and the per se rule. n77 A number of exceptions swallow the rule with "suspected alienage status" extracting as the author posits, a Mexican exception. In a form of communicative praxis as to whether a Mexican exception to the fourth amendment emerges with Christopher Slobogin. n78 In this argument he asserts that while he may agree in part to a fourth amendment exception he nonetheless followed the "possibility of other 'unofficial' exceptions to the Fourth Amendment based on suspect or quasi-suspect classifications," suggesting in sum a "poverty exception" to the fourth amendment. n79

Coalition building requires constant vigilance and direct action with between and among communities of color. Cluster III advances explorations of the widening but persistent fissures between citizenship standing its linkages to constitutional protections permitted citizens and relationship to communities of color. The authors make evident that the procedural safeguards required in investigations, detentions and arrests are rendered meaningless for people of color. In the process not only demanding careful analysis but also obligating scrutiny.

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D. Cluster IV: Identities, Communities and Coalitions

Standard interpretive models disallow exploration of the vast diversity of gente differentiated by race, class, gender, national origin, sexual orientation and other multiple intersections. Cluster IV expands on further concepts of pedagogy and transformational possibilities in an arena full of complexities. An important dimension to LatCrit Theory and its theoretical underpinnings is consideration of identity. Identity and its attendant complexities as imposed by law, the media, and social constructs have long emerged in LatCrit investigations, essays, and conferences. n80 The confluence of elements leaves in its wake scores of cogent and precise arguments as to the social construction of race, class, gender and identity. This record is further embellished with Cluster IV introducing yet additional inter-related issue to requisite coalition building and praxis.

Jerome McCristal Culp, Jr. negotiates yet another layer to the question on "how to define our identities." n81 This issue has emerged with great force and with its underlying complexities permitting a more precise response. To this table of discussion the author asks "whether a claim to be a LatCrit when he is Black causes him to steal the vision of oppression of Latinas/os and make it a vision of my own oppression?" Juan Perea, n82 considers the contradiction between media celebrations of some Latino/a artists and the harsh treatment received by "less anglicized Latinos/as in the workforce struggling against powerful movements such as hostility to their languages and cultures."

Alejandro Covarrubias & Anita Tijerina Revilla n83 employ a model of Transformational Resistance to advocacy organizations within marginalized communities. The authors recognize the miseducation of Latinos/as in general and Chicanas/os specifically, and offer examples of Public Allies and Raza Womyn to illustrate the characteristics of ATR's and advocacy organizations.

LatCrit theorists have examined and addressed the [*821] multidimensional construction of social and legal identities. Cluster IV permits engagement with communities familiar with disparate treatment on the basis of their ethnicity, race, gender, and sexual identity. Its expansion beyond the status quo shows tangible vehicles as mechanism of change are employed in a very different and material context.

E. Cluster V: Migrations, Citizens and Latinas/os

Cluster V expands on the connections between Chicanas/os and Mexicanas/os. Chicanas/os incorporated into the United States in the mid-1800s; Mexicanas/os arriving for multiple reasons from various communities in Mexico. The migration status of immigrant Mexicans leaves them vulnerable to the capricious whims of nation/state actors. Both groups provide significant work place economic benefits to the nation with some employed in body-injury work and yet they "face a greater risk of injury or death than other immigrants." n84 Within the new global and hemispheric framework, pressures to the nation and its relationships with countries in Latin America are creating new world-views. Cluster V promotes a concrete glimpse as to power relations and attendant influences on culture and educational models in the realm of detrimental consequences on Latina/o communities.

Victor Romero n85 critically unmask the Family Reunification Act, the Child Citizenship Act and the proposed Family Reunification Act of 2001. The significance and size of immigrant households with close to ninety percent citizen children underscores the difficulties of a non-citizen parent with a citizen child. Ruben Garcia n86 discusses the lack of legal protections hampering immigrant communities in the United States which are comprised of subordinated members of our communities. The author observing that immigration law is intensely racialized" questions why "other bodies of law, such as civil rights and labor law, have failed to take into account how identities that are currently legally protected-race, gender, national origin, and ancestry-intersect with immigrant status and history." n87 Camille A. Nelson n88 engages the discourse of LatCrit theory and specifically [*822] asks "where is home," in speaking to Jamaicans who emigrate from their home land to seek "a better life." n89 In detail the author considers what impact "we 'privileged inter/nationals' ... can have upon the homelands we cherish and to which we seek a safe return." n90

Immigration, migration and citizenship status combine to construct and locate Latinas/os within the United States in competing and conflicting ways. n91 Forced and elective migration, for example, link domestic groups to various countries of origin within the broader expanse of Latin American communities. To this mixture a variety of issues intermingle with their standing in the nations and with their country of origin. Cluster V and corresponding essays draw attention to the connections between citizen Latinas/os and their interactions with immigrants groups. Cluster V brings in the broad interplay of an essential American strength - the role of immigrant communities in improving the economic standing of the nation. n92 The interplay of various pressures while in their newly adopted "homes" and their relationship to countries of origin accordingly permit observations and encourages communicative praxis.

F. Cluster VI: Class, Economics and Social Rights

Unlayering the linkages between economic power and subordination of Latina/o communities throughout the Americas is confronted in Cluster VI. The connections between unequal citizenship directly challenge the rhetoric of democracy and illuminate its deficient nature. Cluster VI addresses issues ranging from the intersection of institutional economics to land distribution and use are raised in Cluster VI. The historical association between land and power, for example, is no secret. As Paul Taylor writes: "[a] land policy means social control over one of the greatest instruments of production." n93 The overthrow of the military coup in Venezuela as an example of an empowered working class obligates further the study of class distinctions critical to the LatCrit forum.

Emphasizing Critical Race Theory Charles Pouncy [*823] "deconstructs the operation of racialized power and the processes that render it invisible to the individuals at the sites at which such power is concentrated and exercised." n94 The call has come, he argues, "to transform critical race and LatCrit theory from primarily analytical methodologies into pathways to praxis." n95 Speaking to the issues of class differences and its emphasis on power, politics and pleasure Eden Torres calls for a theoretical position in education. n96 The distances she presents considers that "the truth of liberal and judicial education is that we are not taught to think about class, even though many of us talk endlessly about the intersections of race, class, and gender." n97 In popular culture, "'our shared social language about wealth, reward, status, and stratification encourages everyone to think of themselves as middle-class'" while working to marginalize class distinctions. n98

Claire Dickerson directs her inquiry towards the nature of power relations between the North and the South with bribery as the source of her study. She explores the "impact of the North's economic power." n99 Her inquiry is also concerned with the North's insensitivity to culture when it works across borders to eliminate political corruption. Rather than focus on the health care crisis in the South, she asserts that global relations in contrast promote national and intellectual property law interests. This one-sided approach proves harmful to the "more vulnerable." Ellen Pader n100 draws attention to interior infrastructures or situations where bedrooms and other sleeping rooms do not meet federal and local municipal definitions of sleeping rooms. To this inquiry further questions link narrow definitions with possible forms of discrimination on the basis of national origin. She ultimately posits that the meaning of national origin deviates from its legal definition of "where one or one's ancestors are from, to an anthropological definition." n101 Manolo [*824] Caro n102 tackles the convergence of labor migration and anti-immigrant rhetoric resulting from agricultural directed employment in El Ejido, Spain. While labor intensive agriculture requires the services of individuals from Africa, anti-immigrant rhetoric, law and policies ultimately culminated in riots against the immigrant workers, with some asserting that law enforcement officials looked "the other way." n103

Cluster VI brings to the table the challenge of moving law forward, engaging intellectual inquiries. Important distinctions on the basis of class are emphasized in order to permit future investigations. This journey accordingly permits greater knowledge and associations with the disparities and needs of communities facing law from the outside in the domestic and international domestic arenas.

G. Cluster VII: Race, Gender, and Sexuality

Issues grounded in sexuality, queer theory, gender and race are not uncommon constructs of concern for the LatCrit community with Cluster VII presenting yet additional sophisticated aspects. The lens in which society marginalizes relationships and its consequences is examined with the Cluster also considering white supremacy and its affects of unmitigated force on Latina/os communities. Finally, Cluster VII addresses linkages between indigenous communities, construction in intellectual inquiry, and neglected groups and demands careful and sensitive attention. Enlightening LatCrit theory in arenas that demands ongoing attention, the essays, lay out compelling questions for further contemplation.

Beverly Greene n104 connects the lesbian and bisexual communities with observations of internalized racism within African American communities. From her clinical training the author reveals that "heterosexism is no less problematic within African Americans as a group than it is in any other group." n105 She further examines the connections between internalized racism and its relationship to the formation of identities among African American lesbian and bisexual women. Joe Feagin n106 underscores not only the historical amnesia but also the effects of white supremacy dating back to before the war [*825] between the United States and Mexico with causation linkages into the present. By this neglect "white Americans do not know, or prefer to forget, their brutal and imperialistic history[, which] makes it easier to rationalize attacks on Mexican immigrants." n107 Felipe Lopez n108 questions why newer forms of migration patterns fail to appear in Chicano and migration literature. Existing literature he posits fails to reflect that Mexico is not limited to a mestiza/o society. He calls for joining together to reconcile commonalities and differences. Josephine Ross n109 compares mixed-race and same-sex unions from a historical perspective of mixed-race marriages. Without legal status, the author argues, the lack of marriage rights feeds the sexualization of gay couples, and, in turn, the sexualization of gay love is also a justification for denying the right to marry. n110 Ofelia Schutte n111 engages Latinas/os in the United States with the ideals of Indigenous peoples. Neither of the two hold the dominate power of any state and the author asks to what extent are our concerns either similar or different in kind? Against the backdrop of oppression and the history of economic and political conquests in their countries of origin are there special ethical or moral considerations that should bind our interaction with the indigenous peoples of the continent or with those popular movements intended to enhance indigenous rights?

Cluster VII shows an engagement with heterosexism, racism, the vicious role of white supremacy, with the essays differentiating their communities and constituents allowing expansion of the dominant record. Building upon prior LatCrit attempts to engage sexual orientation the topic of sexual outsiders confronts cultural homophobia. The nature of Indigenous rights and vulnerabilities makes integral the task of producing knowledge and expanding the LatCrit record.

H. Cluster VIII: Cultural and Post-Colonial Critiques in LatCrit Theory

Globalization and its attendant web of competing strands and potential influences on Latina/o communities emerged as an additional imperative at LatCrit VI. Yet while the essays in this Cluster are not directly related to each other they nonetheless permit [*826] larger associations between countries of origin with power structures and the subordination of their constituent communities by the process of globalization and colonial models taking on newer and broader applications. n112

Global expansion across the Americas is broadening the nature of colonialism in employing harmful mechanisms to the Americas of the South. Narrow-definitions of globalization bring forth concerns that encompass a wide and diverse realm of inter alia development issues, immigration, economic, political issues, citizenship and human rights. The essays present theoretical arguments on the displacement and disenfranchisement of communities where building new nation state models placate development models at the expense of communities of color.

Boaventura de Sousa Santos introduces to the LatCrit effort a sophisticated variation of universal history analysis within the global framework. n113 Hegemonic globalization, the author admonishes, represents uncontested power with its effects ranging and becoming, inter alia, "more violent and unpredictable." n114 In turn these effects "enhance the vulnerability of subordinate social groups, regions, and nations" that are in turn "irreversibly kept outside or thrown out of any kind of social contract." n115 The author argues for "the construction of a new pattern of local, national, and transnational relations, based both on the principle of redistribution ... and the principle of recognition." n116 Adrien K. Wing, provides a set of circumstances confronting the Palestinian community and which disallows them from creating an independent state. n117 "Violations of their human rights, including exile, family dissolution, land dispossession, death, torture, and imprisonment," are ""grounded on a collective sense of deprivation"" and have induced "spirit injuries." n118 In the alternative the author posits that examining the unsigned Basic Law of 1997 as promoting human rights and leading to an interim constitution can serve "important [*827] legal function[s] in the future." n119 Lolita Buckner Inniss, n120 presents a study on the relationship between law and literature and law and film and its potential application to assimilation across the nation. Ana M. Otero, n121 addresses the multiple interpretations of the Cuban Revolution by leftist scholars from countries "where milk and honey abounds and to whom 'ration cards' and 'period of rectification' are only words... ." n122 The author declares that "the story of the Cuban revolution should best be told by ... Cubans who were dispossessed ... living dual lives[, with] one foot in the homeland, and another in our new world." n123 The "Elian Gonzalez saga" emphasizes that "it is incumbent upon us to begin to discuss paths of inclusion, unity, and integration." n124

Cluster VIII promotes communicative praxis and underscores the validity of the legal inquiries presented within this Cluster. The authors, moreover, refuse the limitations of ambivalent political postures.

IV. Conclusion

Disparate treatment has long confronted people of color with class distinctions privileging some and yet also producing great harm to others in our constituent communities. Taken together, the Clusters bring to the study of law multiple perspectives and entangled causation concerns for communities facing essentialized representations with negative externalities. To those concerned with the role of law, its vitality and potential future directions, LatCrit theory offers alternatives to the hard-fast ideologies based on the politics of exclusion. And while LatCrit VI addresses limiting legal causations harmful to the status quo, yet another emphasis emerges.

Many years ago an observer of law declared that:

The law may be compared to a majestic tree that is ever growing. It has a trunk heavy with centuries, great branches equal themselves to other trees, with their roots in the parent trunk; lesser branches, and from those lesser branches still, till you arrive at the delicate bud, which in a few years will be itself a branch, with a multitude of leaves and buds... .
n125

[*828] Now heading towards its seventh year the LatCrit VI emphasis consents to a fragile hope - that the law and its "lesser branches and form those lesser branches still" - to bring forth yet further queries. Specifically, the hope underscored is that the intersection of law with race, class, gender and other multi-intersectionalities generate even further analysis and engagement with the legal and political circumstances of nuestra comunidades.

As Ediberto Roman in his Afterword suggests, the LatCrit project will fail as a fluid and transformative effort absent further engagement of the forces of globalization and its relationship to our constituent communities. The repression of sexual identity, the impoverished, the death of human rights activists, n126 the murder of community activists, n127 civil war, politicized military institutions, interconnected church and state relationships, the loss of property and land, all underscore the importance of the LatCrit imperative.

The new global order calls for answers in reconciling mis-directed democracies with failures to reach all constituents. LatCrit theory strives for opportunities that might open venues to transform human conditions overwhelmed by hunger, poverty, disparity of labor issues ranging from child labor to disparate working conditions, n128 favelas housing the destitute, and ill-treatment of gendered and sexual identity communities. Without critical engagement, globalization leaves a large wake of tangible and intangible consequences on our communities. The LatCrit community can offset negative externalities but the task requires remaining on guard against ill-defined democracies and less than full participation of democratic principles.

Further and continued attention on the domestic scene can also only broaden the LatCrit undertaking. Globalization on its face is showing the colonial forces of the past is imposing dire modern day consequences on our communities of concern. Yet opportunities for collective activities that also reinforce and solidify the benefits of our cultures also surface. As Ediberto Roman asserts recognizing key events in our communities is instrumental to a cultural position. And while culture is significant in our communities and yet several anniversaries have come and gone without regard to their importance on the Latina/o continuum. At all costs LatCrit must [*829] remain vigilant to avoid the pull of limiting interpretations of the past without regard to cultural specificities. This requires at an absolute minimum engaging the work of each other and of those moving law forward.

LatCrit theory is "committed to developing a new transnational research agenda that bridges the academic and non-academic worlds and fosters mutual learning and collaboration among all the Latino national groups." n129 To this complexity of entrenched layers of relationships and connections new coalitional possibilities with and among various ethnicities and other multiple intersections with law must remain a vital component of this project. LatCrit will fall by the wayside. The privileges accruing professors of color with attendant class distinctions, and connections to the state can expedite social, economic, and political justice. Without direct participation and connections with communities in distress praxis and transformation remains incomplete. As a reminder, the LatCrit effort lost opportunities in the past resulting in large part from its tentative beginnings. And while LatCrit is producing a record the world is in a vastly different place than even one year ago and makes more urgent the connection between praxis and theory.

The world is a different place for those of us teaching in American law schools resulting from the crimes committed against the nation on September 11, 2001. Attempting to reconcile national security without serious

contemplation of civil liberties is generating yet greater scrutiny of those seeking to preserve academic freedom and the protection if not expansion of democratic principles. n130 The vulnerability of critical legal thinking and pressures on social and political activists are facing the forces of narrow interpretations of democratic values. n131 Extra-legal edicts from government officials remind the LatCrit community of similar occurrences in America Latina that advanced the military take-overs of former democracies. n132 Yet in a nation that values first amendment [*830] principles, commencement speakers are booed off the stage and a limited discourse which is labeling the framework of the present. n133 Now more than ever the fragility of civil liberties requires due diligence and represents but one strand of the innumerable difficulties facing the marginalized.

For those concerned with the rule of law, LatCrit VI can continue to bring to the table of scrutiny the influences of the economic, social and political arenas of the time. And while engagement is taking place it requires great energy and effort going beyond yearly conferences with an additional emphasis of supporting junior faculty, community advocates, and others as an imperative for the LatCrit effort.

Accordingly, the existing LatCrit community offers a bienvenida to individuals concerned with the role and process of law. We reach out and welcome to the LatCrit community the attendees and participants scheduled for the LatCrit VII Conference to be held in Portland, Oregon, in May 2002, and in Cleveland, Ohio, in May 2003. Last, we extend mil gracias to the innumerable presenters, panelists, keynote speakers, and conference attendees who guaranteed the success of LatCrit VI. We extend mil gracias the University of Florida, Levin College of Law for opening its doors to the Sixth Annual LatCrit Symposium. Even more specifically we thank the Levin College of Law for not only expediting jurisprudence generally but also acknowledging the importance of LatCrit theory specifically. n134 Its hospitality and assistance in facilitating LatCrit VI ultimately underscore its regard of the value of engaging intellectual debate, thought, and movement within the jurisprudence and study of law.

FOOTNOTES:

n1. For some examples of past symposium issues see, for example, Francisco Valdes, Foreward: 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)*; Francisco Valdes, Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment, *2 Harv. Latino L. Rev. 1 (1997)*; Elizabeth M. Iglesias, International Law, Human Rights, and LatCrit Theory, *28 U. Miami Inter-Am. L. Rev. 177 (1997)*. At each conference, attorneys, professors, students, community activists, and a multitude of others participate as presenters, keynote speakers, and panelists, addressing each thematic purpose of the directed subject of inquiry.

n2. Past conferences have not only built on key themes but have also been directly connected to ongoing conference goals. For example, Latin American considerations have garnered some treatment in past Symposium issues. See, e.g., Mario Martinez, Property as an Instrument of Power in Nicaragua, *53 U. Miami L. Rev. 907 (1999)*. For further specifics of the knowledge-based diversity of the LatCrit community, reference www.latcrit.org.

n3. The LatCrit VII Conference took place in May 2002, at the University of Oregon School of Law in Eugene, Oregon. Its theme is Coalitional Theory and Praxis: Social Justice Movements and LatCrit Community. Thereafter, in May 2003, LatCrit VIII will take place at Cleveland State University, Cleveland-Marshall College of Law, in Cleveland, Ohio.

n4. For examples of specifically Chicana/o and general Latina/o investigations prior to the LatCrit effort, see Margaret E. Montoya, Mascaras, Trenzas, y Gre<tild n>as: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse, *17 Harv. Women's L.J. 185 (1994)*; George A. Martinez, Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980, *27 U.C. Davis L. Rev. 555 (1994)*; Kevin R. Johnson, Los Olvidados: Images of the Immigrant, Political Power of Noncitizens and Immigration Law and Enforcement, *1993 BYU L. Rev. 1139*; 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).

n5. Attorneys as well as governmental and union representatives also presented either in plenary sessions or as keynote speakers. See generally William R. Tamayo, *The Role of the EEOC in Protecting the Civil Rights of Farm Workers*, 33 *U.C. Davis L. Rev.* 1075 (2000) ("Trac[ing] the historical lack of protection for farm workers under U.S. law.")

n6. Several concurrent workshops, plenary panels and the basic theme of the conference incorporated the five key categories which defined the LatCrit VI Conference, its intent, and its goals, including: Latina/o pan-ethnicity and multiracialism, including intra-Latina/o issues of sameness and difference as well as non-Hispanic Latinas/os, including mestizaje, Indianess and blackness in Latina/o communities and societies; identity-religion, culture, gender, sexuality and heteropatriarchy; immigrations, migrations, and citizenships; coalition, democracy, and community; class and economic equity, including trade, labor and environment. See LatCrit VI, Substantive Program Outline, *Latinas/os and the Americas: Centering North-South Frameworks in LatCrit Theory* (Apr. 26-29, 2001), available at <http://personal.law.miami.edu/~fvaldes/latcrit/lcvidocs/lcvisubstantiveprogram.html> (last visited on Oct. 17, 2002).

n7. Id.

n8. Id.

n9. An example includes the United States blocking requests for asylum on the basis of sexual identity. See Lorraine Kee, *Gay Trailblazer Prefers Label of "Good and Compassionate"*, *St. Louis Post-Dispatch*, Mar. 18, 2002, at D1 (discussing how Marcelo Tenorio became the first Brazilian person granted asylum by a U.S. immigration judge "in a decision based solely on sexual persecution in the emigre's homeland"); see also John Leland, *Gays Seeking Asylum Find Familiar Prejudices in U.S.*, *N.Y. Times*, Aug. 1, 2001, at A10.

n10. Globalization defies a precise definition. For one version, see Marcelo M. Suarez-Orozco, *Globalization, Immigration and Education: The Research Agenda*, 71 *Harv. Educ. Rev.* 345 (2001). The author provides that the term globalization "is quite broad and lacks well-defined epistemological, theoretical, and empirical boundaries." Id. at 346. It is subjected to various purposes and goals on the part of social scientists, anthropologists, political scientists, economists, and other professionals. Id. The author's definition encompasses "processes of change, generating at once centrifugal (qua the borders of the nation state) and centripetal (qua the post-national) forces that result in the de-territorialization of important economic, social, and cultural practices from their traditional moorings in the nation state." Id. at 347; compare Joseph Kahn, *Losing Faith: Globalization Proves Disappointing*, *N.Y. Times*, Mar. 21, 2002, at A8 (asserting that globalization "has come up short."); Mexico-Globalization Sampler: *Latin American Arrived At Globalization Through Back Door*, *EFE News Serv.*, Aug. 4, 2001; Chris Kraul, *Mexican Truckers Wouldn't Mind Death of NAFTA*, *Pittsburgh Post-Gazette*, Aug. 19, 2001, at A8.

n11. Howard Waitzkin, MD, PhD, et al., *Social Medicine Then and Now: Lessons From Latin America*, 91 *Am. J. Pub. Health* 1592 (2001). The authors compare and provide how social medicine differs from public health in "its dialectic vision of 'health-illness,' and its stance on causal inference." Id. They assert that "although social medicine has become a widely respected field of research, teaching, and clinical practice in Latin America, the accomplishments of this field remain little known in the English-speaking world." Id. They contend this occurs because "important publications remain untranslated from Spanish or Portuguese into

English, ... reflecting a frequently erroneous assumption that the intellectual and scientific productivity of the Third World manifests a less rigorous and relevant approach to the important questions of our age." Id.

n12. LatCrit VI Substantive Program Outline, *supra* note 6.

n13. Id.

n14. The international arena has long drawn the interest of LatCrit scholars. See Ediberto Roman, *Reconstructing Self-Determination: The Role of Critical Theory in the Positivist International Law Paradigm*, 53 *U. Miami L. Rev.* 943 (1999).

n15. Praxis generally refers to action or activity. A Dictionary of Marxist Thought 384 (Tom Bottomore ed., Harvard Univ. Press 1983).

n16. See, e.g., *Perez v. Lippold*, 198 P.2d 17, 26-27 (Cal. 1948) (describing past discrimination as illustrated by miscegenation laws); see generally Ediberto Roman, *The Alien-Citizen Paradox and Other Consequences of U.S. Colonialism*, 26 *Fla. St. U. L. Rev.* 1 (1998) (providing examples of unequal citizenship status of the residents of Puerto Rico); Yxta Maya Murray, *The Latino-American Crisis of Citizenship*, 31 *U.C. Davis L. Rev.* 503 (1998) (providing examples of relationships in the U.S.); Sylvia R. Lazos Vargas, *Deconstructing Homogeneous Americanus: The White Ethnic Immigrant Narrative and Its Exclusionary Effect*, 72 *Tul. L. Rev.* 1493 (1998) (providing examples of the homogeneity of U.S. society).

n17. See generally *One People, One Destiny: The Caribbean and Central America Today* (Don Rojas ed., 1988).

n18. See, e.g., John Linarelli, *Anglo-American Jurisprudence and Latin America*, 20 *Fordham Int'l L.J.* 50, 51 (1996) (reporting that with the exception of Cuba, all Latin American countries have national elections).

n19. See Press Release, White House Fact Sheet on U.S.-Mexican Relations (Sept. 4, 2001), available at <http://www.whitehouse.gov/news/releases/2001/09/print/20010904-9.html>. Other countries also sustain relationships not unlike Venezuela's cooperation with the U.S. to stop drug trafficking. See generally Macdonald Stainsby, *Chavez Urges U.S. Not To Start War*, Sept. 14, 2001, available at 2001 WL 27336961.

n20. The "dirty wars" of Chile and Guatemala provide examples of U.S. involvement. See, e.g., *Christopher v. Harbury*, 122 S. Ct. 2179 (2002); Duncan Campbell, *Widow Blames US Officials for Guatemala Dirty War Death*, *The Guardian*, Mar. 21, 2002, at P21 available at 2002 WL 17506464. A possible U.S. involvement in the overthrow of the president of Venezuela is also alleged. See Bart Jones, *U.S. Role in Venezuela Coup Under Scrutiny*, 38 Nat. Cath. Rep. 11 (2002) available at 2002 WL 10828981.

n21. Benjamin Keen, *A History of Latin America* at xiii (4th ed. 1992).

n22. Id. at xii. Globalization is vastly important to LatCrit because it represents "an agent of past and ongoing racial subordination." Sylvia R. Lazos Vargas, *Globalization or Global Subordination?: How LatCrit Links the Local to Global and the Global to the Local*, 33 *U.C. Davis L. Rev.* 1429, 1430 (2000).

n23. See, e.g., Steven C. Ropp, Book Review, 43 *J. Interamerican Stud. And World Affairs* 175 (2001) (reviewing Clint E. Smith, *Inevitable Partnership: Understanding Mexico-U.S. Relations* (2000)).

n24. For examples, see Tanya K. Hernandez, *An Exploration of the Efficacy of Class-Based Approaches to Racial Justice: The Cuban Context*, 33 *U.C. Davis L. Rev.* 1135 (2000); Larry Cata Backer, *Not A Zookeeper's Culture: LatCrit Theory and the Search for Latino/a Authenticity in the U.S.*, 4 *Tex. Hosp. J.L. & Pol'y* 7 (1998).

n25. Frances Robles, *Banana Bonanza Comes to End*, *Miami Herald*, Sept. 16, 2001, at 1E. Compare with Gustavo Gonzalez, *Labor-Chile: Women Seasonal Workers Gain Contracts, Benefits*, *Int'l Press Serv.*, Jan. 18, 2002) (indicating that approximately 400,000 women who work in Chile's rural areas will have contracts).

n26. Individuals from Latin America seeking, but not so successfully obtaining, asylum in the United States are an example. See Kee, *supra* note 9, at D1; Leland, *supra* note 9, at A10.

n27. See generally Alberto Szekely, *Democracy, Judicial Reform, the Rule of Law, and Environmental Justice in Mexico*, 21 *Hous. J. Int'l Law* 385 (1999) (describing the general impact on environmental law in Mexico).

n28. See generally Hope Lewis, *Universal Mother: Transnational Migration and the Human Rights of Black Women in the Americas*, 5 *J. Gender Race & Justice* 197 (2001).

n29. Alexandra Olson, *Poverty Summit Has Grim Forecast*, *San Antonio Express-News*, July 14, 2001, at 23A ("At birth, each child born in Latin America owes a symbolic \$ 1,550 in foreign debt.").

n30. See generally Phil Gunson, *Sowing a Vendetta: Peasants and Ranchers in Venezuela Warn that a Battle over Land Reform is Growing into a Civil War*, *Newsweek Int'l* Feb. 18, 2002, at 30 (discussing the volatile relationship between landowners and peasants).

n31. Globalization and NAFTA related activity are charged with failing to deliver economic benefits as represented by its promoters. See, e.g., Bruce Stokes, *The Town NAFTA Forgot*, *Nat'l J.*, June 1, 2002 (comparing NAFTA's impact on two neighboring communities); Bonnie Pfister, *Left Behind by Trade; Displaced Textile Workers Face Barriers in Better Jobs*, *San Antonio Express News*, May 3, 2002, at 1B (discussing NAFTA's consequences in lifting trade barriers on Mexican border workers); Joel Millman, *Mexican Border Workers Suffer as Plants Relocate*, *Wall St. J.*, Mar. 26, 2002, at A20 (discussing NAFTA's impact on the manufacturing industry in Texas border cities since 1994).

n32. Carlos Vilas, *Inequality and the Dismantling of Citizenship in Latin America*, 31 *NACLA Report on the Americas* 57, 57 (1997).

n33. See Abraham Lama, *Latin America: Judiciary Caught Between Pressure and Threats*, *Inter Press Serv.*, Dec. 1, 2001; see also William C. Prillaman, *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law* 1 (2000) ("Any effort to understand democratic consolidation in Latin America must pay particular attention to the process of institution-building, particularly those institutions that sustain

accountable government and nurture a strong democratic culture among the public and political elite."); Diego Cevallos, *Rights-Mexico: Fox's Relations with Military Put to the Test*, *Inter Press Serv.*, Nov. 20, 2001, available at 2001 WL 4806043.

n34. See generally Don M. Coerver & Linda B. Hall, *Tangled Destinies: Latin America and the United States*, 36 *Can. J. Hist.* 402, 402 (2001) ("The study of U.S.-Latin American relations operates as a veritable cottage industry in academia.").

n35. See generally Mark T. Berger, *Civilising the South: the US Rise to Hegemony in the Americas and the Roots of "Latin American Studies" 1898-1945*, 12 *Bull. Latin Am. Res.* 1 (1991) ("Since the 1960's, much of the scholarship on the relationship between the U.S. hegemony and the North American historical and social science professions has focused on the Cold War era.").

n36. See generally Thomas Carothers, *In the Name of Democracy: U.S. Policy Toward Latin America in the Reagan Years* (1991) (discussing the U.S.'s promotion of democracy in Latin America).

n37. See Ginger Thompson, *Top Democrats Politick Through Rural Mexico*, *N.Y. Times*, Nov. 19, 2001, at A12.

n38. See *LatCrit VI Substantive Program Outline*, supra note 6.

n39. See, e.g., Hernandez, supra note 24; Backer, supra note 24.

n40. For another example drawing in international legal theories within the domestic borders of the U.S., see Leslie Kurshan, *Rethinking Property Rights as Human Rights: Acquiring Equal Property Rights for Women Using International Human Rights Treaties*, 8 *Am. U.J. Gender Soc. Pol'y & L.* 353 (2000).

n41. See, e.g., Kieran Crowley & Todd Venezia, *L.I. Jury Nails Crybaby Bigot*, *N.Y. Post*, Dec. 13, 2001, at 26.

n42. A form of dance incorporating rich African traditions that became a means of defense against police persecution in colonial Brazil. See Joseph A. Ellis, *Capoeira*, in *Encyclopedia of Latin America* 106 (Helen Delpar ed., 1974).

n43. See Bernard R. Ortiz de Montellano, *Magic Myth and Minority Scientists*, in *Grito del Sol* 27, 35 (1979).

n44. See 7 *U.S.C.* 2301-05 (1998). Promoting collective activity for farmers and ranchers has stimulated the growth of larger cooperative agricultural interests that also benefit from exceptions to the country's antitrust laws. See, e.g., 15 *U.S.C.* 17 (1998). Yet the same collective activity is disallowed agricultural workers on the federal level.

n45. See *LatCrit VI Substantive Program Outline*, supra note 6.

n46. The number of workshops varied and ranged from, inter alia: Teaching Race; Florida History of Race; Spain Colloquium; Puerto Rico: Cultural Nation, American Colony; Cubans Without Borders; Race and Nation; Racial Profiling and Multi-Racial Citizenship.

n47. Keynote speakers included: Boaventura de Sousa Santos, speaking on Nuestra America: Reinventing a Subaltern Paradigm of Equality and Difference; Patricia Hilliard-Nunn, The Hair Thing: From Barbie to Queen Ty; Beverly Green, Internalized Racism and Heterosexism Among African-Americans: The Connection Between Parallel Oppressions; and Joe Feagin, Anti-Latina/o Racism: Historical Contexts and Current Realities.

n48. Examples of the LatCrit VI Plenaries included Coalition, Democracy and Community with Larry Cata Backer, former Guatemalan Jurist Maria Luisa Beltrarena; Denise Da Silva, environmental Ecuadorian attorney Byron Real; Comparative and Co-Constitutive Constructions of Identity with Angela Harris, Ratna Kapur, Ivan Perez, and Nancy Ota; and Implications of Indigenous Activism, with Ariel Dultizki, Camille Nelson, Susan Scafidi, and Ofelia Schutte.

n49. Tom Farer, Consolidating Democracy in Latin America: Law, Legal Institution and Constitutional Structures, *10 Am. U. J. Int'l L. & Pol'y* 1295, 1295 (1995).

n50. *Id.* at 1299.

n51. Larry Rohter, Mayor's Killing in Brazil State Churns Politics and Stirs Rage, *N.Y. Times*, Jan. 22, 2002, at A3 (detailing shooting death of opposition mayor of a city bordering Sao Paulo); Juan Forero, Colombian Rebels Sabotage Peace Hopes, Hijacking and Kidnappings Disrupt Progress Made in Peace Talks, *N.Y. Times*, Feb. 25, 2002, at A6 (covering the guerilla kidnapping of presidential candidate Ingrid Betancourt).

n52. See generally Jorge L. Esquirol, The Fictions of Latin American Law (Part I), *297 Utah L. Rev.* 425 (1997) (discussing the tradition of legalism within Latin American law and its sociological influence).

n53. Jorge L. Esquirol, Continuing Fictions of Latin American Law, *55 U. Fla. L. Rev.* 41 (2003).

n54. Michael Wallace Gordon, Legal Cultures of Latin America and the United States: Conflict or Merger, *55 U. Fla. L. Rev.* 115 (2003).

n55. Hugo Rojas, Stop Cultural Exclusions (In Chile)! Reflections on the Principle of Multiculturalism, *55 U. Fla. L. Rev.* 121 (2003).

n56. *Id.* at 121-22.

n57. *Id.* at 122.

n58. Mauricio Garcia-Villegas, Symbolic Power Without Symbolic Violence, *55 U. Fla. L. Rev.* 157 (2003).

n59. Susan Scafidi, Old Law in the New World, Solorzano and the Analogical Construction of Legal Identity, *55 U. Fla. L. Rev.* 191 (2003).

n60. *Id.* at 193.

n61. See Ginger Thompson, Flashback to Deadly Clash of '68 Shakes Mexico, N.Y. Times, Dec. 13, 2001, at A3 (reporting on recently unearthed photographs of the 1968 clash in which "the government acted under the guise of democracy.").

n62. Devon Pena asserts that studying communities long marginalized requires turning to "mixtures of ecology, conservation biology, cultural ecology, cultural geography, environmental history, and political economy." Devon G. Peña, Los Animalitos: Culture, Ecology, and the Politics of Place in the Upper Rio Grande, in *Chicano Culture, Ecology, Politics* 12 (Devon G. Peña ed. 1998).

n63. Scott McCabe, Indians Complain of Exclusion Harassment, Palm Beach Post, Sept. 2, 2001, at 8C.

n64. See, e.g., Kathleen Deagan, Spanish-Indian Interaction in Sixteenth-Century Florida and Hispaniola, in *Ethnology of the Indians of Spanish Florida* 269 (David Hurst Thomas ed., 1991).

n65. For a painful reminder of the interaction between residents of the U.S. and their countries or origin, see Ivan Roman, Grief Echoes in Santo Domingo, Sun-Sentinel Nov. 13, 2001, at A15 (pertaining to the crash of an American Airlines flight with a significant number of victims from Santo Domingo).

n66. Berta Esperanza Hernandez-Truyol, Building Bridges V - Cubans Without Borders: Mujeres Unidas Por Su Historia, *55 U. Fla. L. Rev.* 225 (2003).

n67. *Id.* at 231. That Cuba leads Latin America in primary education emphasizes the need for further study. Christopher Marquis, Cuba Leads America in Primary Education, Study Finds, N.Y. Times, Dec. 14, 2001, at A22.

n68. Myra Mendible, Paradise Lost, Paradise Found: Oral Histories and the Formation of Cuban Identities, *55 U. Fla. L. Rev.* 269 (2003).

n69. Francisco Valdes, Diaspora and Deadlock, Miami and Havana: Coming to Terms With Dreams and Dogmas, *55 U. Fla. L. Rev.* 283 (2003).

n70. *Id.* at 286.

n71. For examples of situational specificity of conference locales see Elvia R. Arriola, March!, *19 Chicano-Latino L. Rev.* 1 (1998) (discussing bus tour of Chicana/o communities in San Antonio); Christopher David Ruiz

Cameron, *The Rakes of Wrath: Urban Agricultural Workers and the Struggle Against Los Angeles's Ban on Gas-Powered Leaf Blowers*, 33 *U.C. Davis L. Rev.* 1087 (2000).

n72. See e.g., Marilyn Robinson & Mike McPhee, *Chicanos Oppose Bini Return Officer Involved in Mena Death Not Giving Up On Police Career*, *Denver Post*, Jan. 17, 2001, at B01 (Bini "signed a search warrant with the wrong address and SWAT officers executing a no-knock drug raid fatally shot the Mexican immigrant"). See also Laura E. Gomez, *Race, Colonialism, and Criminal Law: Mexicans and the American Criminal Justice System in Territorial New Mexico*, 34 *Law & Soc'y Rev.* 1129 (2000) (describing Mexicans' active participation in the San Miguel County criminal justice system).

n73. See generally ACLU Civil Rights Groups Sue Governor Davis for Eliminating Key Racial Profiling Data Collection Provisions from State's Budget, Nov. 1, 2001, at <http://archive.aclu.org/news/2001/n110101f.html> (providing an example of state sponsored protection of disallowing access to critical information).

n74. Cindy Gonzalez, *Groups Seek Talks On INS Raid*, *Omaha World Herald*, Mar. 7, 2001, at 17.

n75. Kevin R. Johnson, *The Case for African American and Latina/o Cooperation in Challenging Racial Profiling in Law Enforcement*, 55 *U. Fla. L. Rev.* 341 (2003).

n76. See Wendy Ruderman, N.J. Withholding Controversial Profiling Study, *The Record*, March 26, 2002, at A03 (discussing the state's reticence to release a study indicating that blacks were twice as likely as whites to speed on the New Jersey Turnpike).

n77. Alfredo Mirande, *The "Mexican Exception" to the Fourth Amendment*, 55 *U. Fla. L. Rev.* 365 (2003).

n78. Christopher Slobogin, *The Poverty Exception to the Fourth Amendment*, 55 *U. Fla. L. Rev.* 391 (2003).

n79. *Id.* at 392.

n80. See, e.g., Sumi K. Cho, *Essential Politics*, 2 *Harv. Latino L. Rev.* 433 (1999) (examining class based and identity approaches). Compare Nancy K. Ota, *Falling From Grace: A Meditation On LatCrit II*, 19 *Chicano-Latino L. Rev.* 437, 439 (1998) (noting complexities of Latino/a religious identity), with Reynaldo Anaya Valencia, *On Being an "Out" Catholic: Contextualizing the Role of Religion at LatCrit II*, 19 *Chicano Latino L. Rev.* 449 (1998) (discussing the strength of Catholic culture amongst Latinos/as).

n81. Jerome McCristal Culp, Jr., *Seventh Aspect of Self-Hatred: Race, LatCrit, and Fighting the Status Quo*, 55 *U. Fla. L. Rev.* 425 (2003).

n82. Juan F. Perea, *Killing Me Softly, With His Song: Anglocentrism and Celebrating Nouveaux Latinas/os*, 55 *U. Fla. L. Rev.* 441 (2003).

n83. Alejandro Covarrubias & Anita Tijerina Revilla, Agencies of Transformational Resistance, *55 U. Fla. L. Rev.* 459 (2003).

n84. Workplace Safety and Health for Immigrant and Low Wage Workers, 108[su'th] Cong. 1 (Feb. 27, 2002) (statement of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health).

n85. Victor C. Romero, The Child Citizenship Act and the Family Reunification Act: Valuing the Citizen Child as Well as the Citizen Parent, *55 U. Fla. L. Rev.* 489 (2003).

n86. Ruben J. Garcia, Across the Borders: Immigrant Status and Identity in Law and LatCrit Theory, *55 U. Fla. L. Rev.* 511 (2003).

n87. *Id.* at 512.

n88. Camille A. Nelson, Carriers in Globalization: Loss of Home and Self Within the African Diaspora, *55 U. Fla. L. Rev.* 539 (2003).

n89. *Id.* at 540.

n90. *Id.* at 545.

n91. See Enrico K. Marcelli & Wayne A. Cornelius, The Changing Profile of Mexican Migrants To The United States: New Evidence from California and Mexico, 36 *Latin Am. Res. Rev.* 105 (2001).

n92. Contributions of undocumented immigrants and benefit to the U.S. reveal amounts at the very least of 300 billion. See www.cis.org/articles/2001/mexico/release.html.

n93. Paul S. Taylor, Public Policy and the Shaping of a Rural Society, *20 S.D. L. Rev.* 475, 481 (1975) (quoting B. Hibbard, *A History of the Public Land Policies* 562-63 (1924)).

n94. Charles R. P. Pouncy, Institutional Economics and Critical Race/LatCrit Theory: The Need for a Critical "Raced" Economics, *54 Rutgers L. Rev.* 841, 841 (2002).

n95. *Id.*

n96. Eden Torres, The Place of Economic Development and Feminist Theory in Legal and Policy Design, *54 Rutgers L. Rev.* 853 (2002).

n97. *Id.*

n98. *Id.* (quoting George Lipsitz, *Class and Consciousness: Teaching about Social Class in Public University*, in *Class Issues: Pedagogy, Cultural Studies, and the Public Sphere* 10 (Amitava Kumar ed., 1997)).

n99. Claire Dickerson, *Culture and Transborder Effects: Northern Individualism Meets Third Generation Human Rights*, *54 Rutgers L. Rev.* 865, 866 (2002).

n100. Ellen Pader, *Spaces of Hate: Ethnicity, Architecture and Housing Discrimination*, *54 Rutgers L. Rev.* 881 (2002).

n101. *Id.* at 884.

n102. Manolo Caro, *Tying Racism in El Ejido to Spanish and European Politics*, *54 Rutgers L. Rev.* 893 (2002).

n103. *Id.* at 894.

n104. Beverly Greene, *Heterosexism and Internalized Racism Among African Americans: The Connections and Considerations for African American Lesbians and Bisexual Women: A Clinical Psychological Perspective*, *54 Rutgers L. Rev.* 931 (2002).

n105. *Id.* at 932.

n106. Joe Feagin, *White Supremacy and Mexican Americans: Rethinking the "Black-White Paradigm"*, *54 Rutgers L. Rev.* 959 (2002).

n107. *Id.* at 960.

n108. Felipe Lopez, *The Construction of Mexican Identity*, *54 Rutgers L. Rev.* 989 (2002).

n109. Josephine Ross, *The Sexualization of Difference: A Comparison of Mixed-Race and Same Gender Marriage*, *54 Rutgers L. Rev.* 999 (2002).

n110. See *id.* at 1002-1007.

n111. Ofelia Schutte, *Indigenous Issues and Ethics of Dialogue in LatCrit Theory*, *54 Rutgers L. Rev.* 1021 (2002).

n112. For an example of commonalities and differences that emerges within the LatCrit effort, see Kevin R. Johnson, *Puerto Rico, Puerto Ricans, and LatCrit Theory: Commonalities and Differences Between Latina/o Experiences*, *6 Mich. J. Race & L.* 107 (2000).

n113. Boaventura de Sousa Santos, *Nuestra America, Reinventing a Subaltern Paradigm of Recognition and Redistribution*, 54 *Rutgers L. Rev.* 1049 (2002).

n114. *Id.* at 1050.

n115. *Id.*

n116. *Id.* at 1052.

n117. Adrien K. Wing, *Healing Spirit Injuries: Human Rights in the Palestinian Basic Law*, 54 *Rutgers L. Rev.* 1087 (2002).

n118. *Id.* at 1088-89 (quoting Gad Barzilai, *Community, Law and Identities among Israeli-Arab-Palestinians*, 1 *Adalah Rev.* 10 (Fall 1999)).

n119. *Id.* at 1091.

n120. Lolita Buckner Inniss, *Bicentennial Man-The New Millennium Assimilationism and the Foreigner Among Us*, 54 *Rutgers L. Rev.* 1101 (2002).

n121. Ana M. Otero, *To the People Sitting in Darkness: A Resolve for Unity and Integration*, 54 *Rutgers L. Rev.* 1133 (2002).

n122. *Id.* at 1135.

n123. *Id.* at 1135-36.

n124. *Id.* at 1137.

n125. David Dudley Field, *The Magnitude and Importance of Legal Science* 13 (1859) (speaking to the issue of "law as a science").

n126. One such activist was Ms. Digna Ochoa, who represented the Zapatistas and other "outsider" groups, and was long the target of hostile entities. See Cynthia Hawes, *Remembering Digna*, *The Texas Observer*, Nov. 9, 2001, at 14.

n127. Tim Weiner, *Mexican Court Demanding Inquiry into '68 Massacre, Students' Deaths Long Kept Under Wraps*, *N.Y. Times*, Feb. 1, 2002 at A9.

n128. See, e.g., Frances Robles, *supra* note 25. See also Steven Greenhouse, *Migrants Plant Pine Trees but Often Pocket Peanuts*, N.Y. Times, Feb. 14, 2001 at A16 (noting disparate treatment of Mexican migrant workers in the U.S.).

n129. Statement of Latino Studies Journal, available at <http://www.palgrave-journals.com/pal/information/news.html>.

n130. See, e.g., Timothy Egan, *In Sacramento, A Publisher Stirs The Wrath of the Crowd*, N.Y. Times, Dec. 21, 2000, at B1 (recounting a crowd's response to the speaker's statement that "citizens safeguard their rights to free speech, against unlawful detainment and for a fair trial"); David E. Sanger, *There's A Small Matter of Checks and Balances*, N.Y. Times, Jan. 27, 2002, 4 at 1 (discussing the Bush Administration's increased powers following the Sep. 11 attacks).

n131. Diego Cevallos, *Rights-Mexico: Watchdog Group Condemns Military Courts*, Inter Press Service, Dec. 5, 2001.

n132. Compare Juan Forero, *U.S. Woman Jailed in Peru Won't Get a Presidential Pardon*, N.Y. Times, Feb. 20, 2002, at A9 (Lori Berenson 20-year prison term characterizing judicial process as a farce) with the conflicts generated from the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001*, U.S. Pub. L. 107 Cong. PL 107-56 (2001) and Executive Order permitting military trials. See The White House, *"Detention, Treatment, and Trial of Certain NonCitizens in the War Against Terrorism"*, Nov. 13, 2001 available at <http://www.whitehouse.gov/news/releases/2001/11/20011113-27.html>.

n133. See Geoffrey Mohan, *Graduation Speech Riles Sacramento Discourse: Remarks at Cal State About Terrorism and Civil Rights were Cut Short by Boos*, L.A. Times, Dec. 20, 2001, at B1. Compare Janis Besler Heaphy, *For Grads and Liberties, An Uncertain Future*, The Sacramento Bee, Dec. 17, 2001 at B5 (speech of publisher "booed" off the stage for speaking about curtailment of civil liberties) within framework of the trial of publisher John Peter Zenger in James Alexander, *John Peter Zenger* (Stanley Nider Katz, ed., 1972) (printer of the New York Weekly Journal). Associations are further drawn from Mexico for example stifling the voices of dissent. See, e.g., Weiner, *supra* note 121 at A8.

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TEXT:

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Foreword

The fifth annual Latina/o critical legal theory ("LatCrit") conference was held on May 4-7, 2000 in Breckenridge, Colorado. The mountain resorts of Colorado present an almost metaphorical location for a critical theory meeting. The majesty and apparent harmony of the natural environment contrast so vividly with the cotidian conflicts in the human environment, and the elites exhibit a banal oblivion to the vicious racial and classbased violence that provide the grist for critical theorists. These resort locations dedicated to a lifestyle of money, recreation and pampering and infused with the invisible oxygen of privilege offer a space for theoretical work that is rich with conflicting histories, untold stories and inequalities, both obvious and subtle. As with all academic meetings, fiscal considerations influence the choice of meeting location, but with LatCrit conferences great care goes into making the decision about where to hold the conference because of the relationship between the place/space and the interactions that will occur during the meeting.

I. The Process of "Constructing" a LatCrit Conference

Within the LatCrit scholarly movement, there is a planned continuity from one year's program to the next. For example, the Planning Committees over a span of years intentionally have some of the same [*468] participants. Professors Roberto Corrada and Nancy Ehrenreich helped to plan the LatCrit IV conference before they undertook a central role in organizing the LatCrit V meeting in Colorado. The planning process is also systematized through a set of organizational practices that have been developed over several years and that have become emblematic of the LatCrit community of scholars. These organizational practices are compiled in a LatCrit conference manual developed for use by the Planning Committees. These practices include 1) a rigorous group interaction that results in a substantive outline

detailing the themes and dimensions of each plenary panel or roundtable; 2) the careful consideration that is given to the identity characteristics and the perspective of each panel or roundtable participant; and 3) the collaborations that occur initially between the Planning Committee and the conference speakers and later between the editors of the symposium volume and the authors of the written works.

The process of planning the intellectual program begins with extended conversations among the Planning Committee about the connection of the chosen theme to those of prior conferences, i.e., why is the chosen theme of specific importance to the further growth of the LatCrit intellectual enterprise and the scholarly community? What cross-disciplinary or intergroup or transnational opportunities does the theme offer? What are the links between the theme and the local region and the concerns of the local Latina/o communities in which the meeting is planned? Such queries insure that there will be continuity over time. Thus, each conference develops a central theme while at the same time creating space for presentations by scholars and activists from the area who are able to connect the struggles of the local Latina/o communities to LatCrit theory.

Because each LatCrit conference seeks to advance the effort of creating an intellectual discourse as well as nurturing a scholarly activist community, the process of planning the conference has been carefully theorized. The techniques for planning the conferences are based on academic work that provides a rationale for the choices that are made in the construction of a LatCrit meeting. These techniques are a conscious attempt to take critical theory seriously by applying it in everyday situations. For example, Professor Robert Chang developed the concept of "subject position" to explain that the perspective, standpoint or approach of an author or theorist regarding the topic or issue being addressed has significance. Consequently, each Planning Committee carefully considers the "subject position" of panel participants to try to ensure discussions from a range of diverse, albeit progressive, perspectives. Also, each LatCrit project endeavors to bring new voices into the discussions and to explore issues from fresh perspectives.

Early each year the Planning Committee mails out registration materials for the upcoming meeting usually held in early May to coincide with the Cinco de Mayo holiday. Like with other conferences, the materials provide information on the timing, location and travel arrangements for the meeting. Unlike other conferences, the Substantive Outline articulates a highly detailed conceptualization of the objectives for each portion of the program. Each participant is encouraged to read the Outline in order to prepare in advance for the discussions that are to take place.

The process by which a LatCrit conference is planned also involves a close collaboration between the Planning Committee and each of the plenary panels. One or more members of the Planning Committee will have a series of conference calls with each panel to discuss the overall theme of the meeting and the planned presentations. Finally, meeting participants, whether they have been invited speakers or not, are asked to submit essays for publication in a symposium volume. This collaboration over many months and involving dozens of people, all paying attention to LatCrit theory and past practices, results in the written work that you are now holding.

II. Constructing a LatCrit Meeting with a Focus on Class and Colorado

The title of this Foreword "Class in LatCrit: Theory and Praxis in a World of Economic Inequality" borrows the theme of the program for the Colorado conference. The Planning Committee's purposes in focusing on the issue of class were 1) to deepen prior conversations about the economic inequalities and the material deprivations that are experienced by the Latina/o communities and other subordinated groups, and 2) "to begin new explorations of social and legal issues relevant to Latinas/os in intergroup and transnational contexts." While economic issues have been theorized, discussed and written about in past LatCrit conferences and the resulting symposia that have appeared in various law reviews, the year 2000 meeting sought to center the topic of class in each of the plenary panels and encouraged all presenters to consider the economic dimensions of the particular topics being analyzed. The main objective of this Foreword is to draw attention to the sustained discussion of the issue of class and the ramifications of wealth and income inequalities in the written contributions in this symposium volume. A related objective of this Foreword is to echo Professor Kevin Johnson whose Introduction to the symposium volume for LatCrit IV exhorted future participants to "seriously engage the existing scholarship, study the literature and acknowledge previous contributions." This Foreword concludes with a description of a new project called "Maestros" that seeks to develop a collaboration between professors and students in law schools and schools of education with K-12 teachers, students and community activists. As a founder and participant in Maestros, I am attempting to create mechanisms by which we make LatCrit Theory and Practices accessible to a wider audience, particularly K-12 teachers of Latina/o students.

A. Political Economies of Subordination in LatCrit Perspective: "Piercing the Veils" of Class and Identity in Traditional Curricula

A focus on class issues creates the opportunity to broaden LatCrit Theory to areas of law such as tax law and policy that have not been subjected to an intensive analysis from the multiple points of view of the Latina/o communities and other subordinated communities. A focus on class also allows us to reflect on one of the questions that Professor Guadalupe Luna obliquely poses in her article, "La Causa Chicana" and Communicative Praxis, n8 namely, whether LatCrit is sufficiently grounded [*471] in its professed objective of producing transformative knowledge--knowledge that improves the material conditions of Latina/o communities and other impoverished peoples. n9

Professor Luna's article is a fine example of what Professor Johnson is encouraging other LatCrit scholars to do. n10 Specifically, she takes his suggestion about reading, studying and citing other LatCrit works and provides us with a construct that she borrows from another discipline called "communicative praxis" referring to "the construction of meaning, projects, visions, values, styles, strategies, and identities through the interaction with and against one another." n11 Professor Luna then proceeds to give us an example of communicative praxis by reading LatCrit texts against Chicana/o Studies n12 and, more particularly, by reading LatCrit against the history of Chicana/o Studies in Colorado. n13 She counsels LatCrit theorists to learn from the experiences of Chicana/o scholars who organized NACCS, the National Association of Chicana/o Studies, and to be aware of those scholars and activists who came before and who have faced some of the same challenges that LatCrit currently faces, especially the need to make scholarship transformative. n14 The material needs of Latina/o communities translate into legitimate claims on the scholarly agendas of LatCrit and other progressive theorists. This imperative to be practical in our theory highlights the importance of the issue of class and explains why it is the organizing principle of this symposium.

Professor Alice Abreu provides a superb example of weaving traditional legal analysis with LatCrit perspectives and methodologies. In her article, Tax Counts: Including the Money Areas of the Law, n15 Professor Abreu convincingly demonstrates why it is important for LatCrit and other progressive theorists to develop what she terms "a second generation of critical analysis" n16 -the areas associated with business, tax policy, money, and economic wellbeing. Her paper, written in an accessible style for tax novices, examines how power is allocated (and how hierarchies are re/produced) through the design of taxation systems. Her analysis [*472] of income and tax burden distributions provides the type of data that inform and particularize a critical analysis of class hierarchies in the US. n17 This numerical analysis when told against her personal narrative that has Fidel Castro dismissing such concerns as "preocupaciones burgesas" n18 is illuminating for two reasons. One, she gives those of us who don't share the cultural lens of Cuban emigres the detail and nuance of good stories and, two, she explains why business-and tax-based analyses are not trivial bourgeois concerns. n19 Her skill in using storytelling, one of the signature tools of critical theory, is evident in her technique of engaging the reader with her stories while effectively demonstrating how tax law can be a tool for class-based analysis. Her story conveys rich details about her "subject position" as a member of an immigrant family, as a Spanish speaker, and as someone who values the family as a social unit. This information about citizenship, language and culture provides the nuance to her more quantified legal analysis and provides a template for other LatCritters who are interested in working in these somewhat arcane areas of law.

Professor Abreu juxtaposes her first person narrative with the formal expository tone of tax policy. She shows why those who earn more have the ability, through changes in economic behavior, to decrease tax burdens and to benefit from tax credits, deductions and myriad loopholes. n20 Those who earn less, a category that includes most populations of color, don't have that power of choice. Thus, Professor Abreu shows us why and how the design of tax systems is an exercise in the state's allocation of power through the mechanism of tax-structured economic choice. I look forward to future contributions from Professor Abreu and others working to put "money-law knowledge to work" for Latinas/os and other economically marginalized populations.

Professor Alfredo Mirande also employs personal narrative in his essay, Alfredo's Mountain Adventure: The Second Chronicle on Law, Lawyering and Love. n21 Professor Mirande uses an epistolary format for his series of chronicles--letters to an imaginary colleague named Fermina Gabriel. He uses his letters to Fermina to reflect on the Colorado [*473] conference--raising meaningful, class-conscious questions about the locations in which LatCrit conferences are held and he opines about the isolation of the meetings from Latina/o communities. n22 He also examines other aspects of the meeting but his chronicles leave this reader with more questions than answers and with a sense of disquietude rather than clarity. n23

One of the most exciting developments in this cluster of articles is the interest in LatCrit Theory being shown by students and scholars in graduate schools of education. The essays contributed by Anita Revilla, a graduate student at the UCLA Graduate School of Education and Information Studies and by Professor Daniel Solorzano and Tara Yosso, also a UCLA graduate student, accelerate a process of disciplinary cross-fertilization with ideas, vocabularies, and bibliographical sources flowing in several directions.

Anita Revilla's article *A Theoretical Dialogue Between Two Friends: Critical Race Theory, Critical Pedagogy, and the Move Toward LatCrit* n24 brings the concerns of educators to the attention of the LatCrit community. Employing the device of a colloquy between two fictional friends, a Latina and a Latino, Revilla draws a comparison between the approaches taken by Race Critics, such as Charles Lawrence and Race/Lat/Crits such as Richard Delgado n25 and Ian Haney Lopez, n26 with those of critical pedagogues such as Peter McLaren. n27 Given this focus on class within the race-conscious discourse of LatCrit Theory, Revilla's article is especially pertinent because of her description of critical pedagogy as more of a class-conscious discourse. n28 Critical pedagogy builds on a Marxist approach that keeps capitalism and the exploitation of the working class at the center of its concerns. As Revilla notes, critical [*474] theorists, including LatCrits, who work within the careerist pressures of elitist universities, can be blind to economic oppression. n29

Critical pedagogy has also been highly influenced by the work of Paulo Freire and other South American activist intellectuals and their work often draws on examples from that region of the world. n30 This is a different but equally compelling reason for LatCrit with its geographic orientation towards Latin America to form academic alliances with those working in critical pedagogy.

I reach the conclusion from Revilla's title that, with the publication of this essay, her future work will move towards LatCrit. Her article, like of Professors Solorzano and Yosso, n31 draws on work produced within Critical Race Theory although there is some overlap with LatCrit Theory in that Richard Delgado, Ian Haney Lopez and many others have connections with both genres of critical theory. This distinction is important because LatCrit's roots within Critical Race Theory have been rigorously traced and the differences in their respective approaches carefully theorized. n32 Although it is likely that these historical differences are of great moment to those of us who have been part of this process and who see LatCrit as our academic home but of considerably less urgency, even when apparent, n33 to scholars in other disciplines. Professors Solorzano and Yosso's article refers to LatCrit Theory although most of the work cited is from Critical Race Theory. Because I think their fusion of critical pedagogy with Critical Race Theory is so successful, my hope is that more LatCrit scholarship will be woven into their analyses in future work.

The work by Professors Solorzano and Yosso points the direction for using our classrooms and our roles as educators as locations for theoretical inquiry. Like Anita Revilla, Professors Solorzano and Dr. Yosso bring the tensions of academic work and the ambiguities associated with testing, grading and competing for tenured positions into the field of critical analysis. Also, the task of developing a critical consciousness in their students, most of whom will become K-12 teachers, appears to be a more urgent preoccupation for critical pedagogues. It may be the case [*475] that many of us who work in law schools can opt out of this aspect of teaching, especially when we are assigned to the traditional first year courses. Yet, the need that is identified by Professor Solorzano and Dr. Yosso to develop students with a critical consciousness, motivated by social justice and equipped with an understanding of transformative oppositional behavior should be just as great for lawyers as for teachers. n34 Therefore, cross-disciplinary alliances are crucial to our mutual efforts to develop transformative knowledge for use in and out the classroom. n35

As I describe in the third section of this Introduction, I am currently working with a group of critical pedagogues n36 including Dr. Marcos Pizarro, another of Professor Solorzano's students, to address the educational needs of Latina/o youth and, from my perspective, make LatCrit Theory more accessible to K-12 teachers and students. Hopefully, the work in this Symposium being undertaken by critical pedagogues signals future collaborations with educators at all levels of education who take on the LatCrit label and that the resulting synergies transform our classrooms in the way that LatCrit Theory has enhanced our scholarship.

B. Comparative Racializations

The name for this cluster of articles is taken from the first plenary panel of the Conference and calls our attention to the ways in which the social construction that is race takes different forms among different groups during different historical periods. n37 This cluster of articles invites the reader to make comparisons in the way that the boundaries of different racial categories are drawn with respect to the normative category of Whiteness and the ways in which the dominant society engineers n38 its race relations with the different subgroups, especially Latinas/os. These articles prompt us to ask: What does it mean for South Asians to be "Aryan" n39 or "white"? Is it equivalent to the "white" category that applies to Latinas/os under federal regulations? n40 How do we understand the vocabulary of the Model Minority when applied to South Asians and to Cubanos/as under very different conditions? What does the racing n41 of [*476] South Asians teach us about the racing of other racial subgroups, including Latinas/os? Are we to interpret the insertion of the ambiguous Latina/o imagery associated with a Ricky Martin or a Cristina Aguilera or the

hypersexualized "J-Lo" into mainstream popular culture as a weakening or an emboldening of the racing technologies of a hegemonic dominant culture? n42

In reviewing *The Karma of Brown Folks* by Vijay Prashad, n43 Professor Tayyab Mahmud has produced another article n44 that fuses post-colonial theory with a cultural studies approach to demonstrate a truth that has been repeatedly borne out by the intersectionality that characterizes LatCrit projects: namely, studying subordination and exclusion in a particular location and in a given historical period elucidates subordination and exclusion in other places and times. In other words, all racial subgroups gain an understanding of the structures, vocabularies, and power-knowledge forces of race, racing and racism by understanding the application of these structures, vocabularies and forces to a specific racial subgroup. And more specifically, Latina/o subgroups can gain a deep understanding of their own race-based subordination through Professor Mahmud's compelling analysis of the engineering of various identities for South Asians by succeeding hegemony--first the British during the Raj and later the U.S. through its labor market and immigration policies. Indeed, our understanding of the racing of any given group is deepened by reading with a consciousness that this particular racing is at once similar and different for other groups. Professor Mahmud invites this dual mindedness by often reminding us of how the racing policies and practices against the South Asians had corresponding effects on other people of color, for example, African Americans with whom South Asians were more favorably compared in their rendering as a Model Minority n45 and on Mexican women who were available as non-white brides for South Asian men within the anti-miscegenist social conventions of the late 1800's. n46 [*477]

Professor Mahmud notes that Professor Prashad emphasizes that the state's engineering of the Model Minority identity for the "desis," a self-chosen term that means "those from the homeland" rests on two images: 1) hardworking high achievers and 2) spiritual and pliant. n47 This imagery is then used as "another weapon to assign degradation of African Americans to their supposedly inherent incapacities and deficiencies." n48 It has also been used against Mexican Americans in the pervasive stereotypes of the lazy, immoral Bandido. n49 One can't help but remark on the self-mocking irony of a whitesupremacist system that subjugates black and brown peoples exploiting them mercilessly in farms, factories, fields, mines, and railroads and they respond with patriotism, economic productivity, and a genuine devotion to God and church. This same system then creates a hierarchy among them by labeling only some as hard-working and spiritual.

Both Professors Mahmud and Hernandez-Truyol explore this Model Minority discourse to expose its utility in advancing the interests of the dominant White society and its inconsistencies and unevenness even when being applied to racial subgroups that fall in and out of favor, such as South Asians or Cubans. In *On Becoming the Other: Cubans, Castro, and Elian--LatCritical Analysis*, n50 Professor Berta Esperanza Hernandez-Truyol examines the treatment of Cuban/os as a result of the Elian Gonzalez episode. Professor Hernandez-Truyol is also analyzing "desis," to borrowing Professor Mahmud's vocabulary for those who yearn for the homeland, if we think of Cuban/os as a different group of displaced homelander who like South Asians are treated as a Model Minority. Both Professor Mahmud and Professor Hernandez-Truyol are explicit about the class valences of this label of Model Minority; n51 the purported over-achievement that the label implies masks the economically discriminatory immigration policies that the U.S. government has employed for South Asians and Cuban/os. U.S. immigration permitted educated professionals to leave India, Pakistan, Cuba and other impoverished lands, yielding benefits to the selected emigres and to the U.S. But unlike the South Asians, Cuban/os merit the label as they primarily advance the political interests of the dominant society and its racial interests only secondarily. In this way, these two articles illustrate the rationale for placing the articles within a named cluster (e.g., "Comparative Racializations") within the symposium volume: the reader gains insight process [*478] by reading them separately and comparatively. Employing a tone of irony, Professor Hernandez-Truyol argues that the favorable treatment of Cuban/os based on their usefulness as an anti-Communist symbol during the Cold War and the perception of Cuban/os as adhering to the rule of law, having strong family values, and professing conservative political leanings n52 was not stable enough to withstand public dissent with the US government. Their Model Minority status was quickly jeopardized once the majority of Cuban/os (and the differences within the community become obvious with Professor Hernandez-Truyol's interviews with other Cubano/a law professors) took an unpopular political stance with respect to the immigration rights of Elian, an unaccompanied minor within the U.S. borders. n53 The result, she asserts, is the Otherizing of the Cubana/o community by the majority and its attendant distancing once the political interests of the White majority were not aligned with respect to the Castro regime. n54 Specifically, the politico-legal system of the Congress, Courts, INS and President were willing to allow Castro to win the tug-of-war over Elian while the larger Cubana/o community was committed to keeping the child in the U.S.

Professor Hernandez-Truyol provides us with a thorough analysis of the Elian Gonzalez incident, including the case's treatment by the Eleventh Circuit Court, and in doing so, she makes at least two points of relevance to LatCrit analysis. One, the narrative that the larger Cubano/a community was acting consistently in advocating for Elian to remain in the U.S and that the U.S. government through the INS was acting inconsistently, especially with respect to Cubano/a immigrants, in seeking his prompt return did not receive prominent exposure in the media. Two, this case is yet another demonstration of the indeterminability of legal disputes and the malleability of rule of law rationales. n55 The Cubano/a emigre community and the U.S. government have long considered the Castro regime to be an unlawful and non-democratic government and have marshaled considerable resources for its overthrow. n56 Professor Hernandez-Truyol posits that the Otherizing and essentializing of the larger Cubano/a community gained momentum once the legal system acted to return Elian to Cuba against the wishes of the community. [*479]

The next three articles in this cluster, *The Accidental Crit II: Culture and the Looking Glass of Exile* by Professor Pedro A. Malavet, n57 *Will the Wolf Survive: Latino/a Pop Music in the Cultural Mainstream* by Professor Steven W. Bender, n58 and *Confessions of a White Salsa Dancer: Appropriation, Identity, and the "Latin Music Craze"* by Professor Nancy Ehrenreich n59 examine the multiple ways that the majority culture uses and misuses the cultural capital of the Latina/o subgroups. An important aspect of being subordinated within a society is to be seen as belonging to an inferior culture--the language, literature, food and other identifying characteristics including the music are seen as vulgar, common and unworthy of emulation. Being subordinated can also be experienced when the majority alternatively rejects and/or appropriates the cultural production of a subgroup that is largely powerless to affect these taste preferences or to benefit on a large scale from the concomitant economic transactions. These three articles provide an in-depth analysis of this phenomenon with respect to contemporary Latina/o music.

Professor Malavet begins in a paradigmatic LatCrit way by interrogating his own positionality as a certain type of Puertoriqueno: an exile, a Ponceno, an educated man of color, a denizen of the island and the mainland, *hijo de patisucio y, al fin, un patisucio racial*. n60 Clearly, in choosing the term *patisucio*, encoded with racial and class meaning, he is signaling the interconnectedness of these two characteristics. Without using Professor Mahmud's term, Professor Malavet is also a *desis*, n61 a U.S. resident who yearns for his Puerto Rico homeland. This personal interrogation of identity is coupled with a careful explanation of the labels (*gringo*, *isleno*, *niuyorican*) that are used within various localities for and by Puertoriquenos/as both in Puerto Rico and here in the U.S. It is within that context of the personal and collective as experienced by the teller of the story that the analysis about the colonial process can be fully appreciated for its nuance and complexity. Out of this complexity comes the justification for the assertion that the current Latin music craze typified by Ricky Martin or Jennifer Lopez does not represent Professor Malavet's own musical preferences. n62 He emphasizes that music represents identity and, more particularly, popular music represents Puerto Rican identity (and identities), n63 given that different musical forms are [*480] associated with different racial subgroups within the larger Puerto Rican community.

Professor Malavet engages the work of Professors Bender and Ehrenreich, the two other authors in this cluster, and by doing so makes this notion of "comparative racializations" n64 explicit. By drawing attention to the problem (as analyzed by the three authors in this cluster) of the commodification of identities and images in the narratives of the new Latin music, Professor Malavet helps the reader understand how "the structure of [the entertainment] industry restricts the production and dissemination of authentically transformative cultural forms and events" n65 while "promoting the production of homogenized MacCulture or of hegemonic cultural stereotypes." n66

In his article *Will the Wolf Survive: Latino/a Music in the Cultural Mainstream*, n67 Professor Steven Bender also takes up the issue of the cultural hegemony of mainstream music but does so by focusing on the language of commercial success. n68 He carefully examines the linguistic choices by recording artists, comparing the English and Spanish language music produced by some of the leading Latina/o pop musicians. He concludes that English is necessarily the language of choice as artists become mainstream because of "the unwillingness of the American public to accept Spanish as a legitimate language of mainstream communication." n69 For this reason, commercial success becomes cultural hegemony as cultural appropriation. n70

Commercial constraints limit what can be sung about. Thus, Professor Bender interprets popular Latino music as a particularized misrepresentation of Latina/o culture with its emphasis on artists who are "bilingual, young, attractive ('eye candy'), light-skinned, middle to upper class and heterosexual." n71 They partake of "the good life," n72 which means the identities and entitlements available to the elites of the upper middle class. Only Selena and Santana acknowledge the widespread poverty that afflicts Latina/o communities. n73

Professor Bender takes us through an analysis of the specific ways that Latina/o artists construct their identities (and, by extension, the [*481] identities of their respective communities) n74 through their artistry--e.g., the sexist and hetero-normative content of the lyrics, the use of English in place of Spanish, etc. We are moved to ask whether this mainstreaming of Latina/o music isn't another, perhaps more seductive, cultural intervention that further subordinates the Latina/o communities. As much of LatCrit analysis demonstrates, this mainstreaming of Latina/o pop music is not liberatory or subjugatory; it is not one or the other, rather it is both at once. It represents a weakening of stereotypes, an acceptance of cultural differences even as it enforces linguistic and lyrical conformity as the price for success.

Professor Nancy Ehrenreich begins her article by acknowledging her positionality as an Angla "into salsa." n75 She engages the same issue being examined by Professors Malavet and Bender from their perspective as Latinos, namely, cultural appropriation. n76 She also joins Professors Mahmud and Hernandez-Truyol in bringing a concern about "orientalizing exploitation, n77 a concern about the Otherization of Latinas/os, a concern about exoticized stereotypes, n78 to her analysis of salsa dancing.

Professor Ehrenreich's article exemplifies LatCrit analysis that rejects either/or thinking in favor of more variegated and complex conclusions. For example, she posits choices as binary: is it appreciation or is it appropriation? n79 She then rejects such thinking as reductionist and essentializing.

She carefully shows us why the mass marketing of Latina/o music is appropriation, an unfair taking of the cultural capital of the powerless which is then rendered as something smoother, less risky, and less different--what she terms a McDonaldization. n80 Then she just as convincingly shows how the mass marketing is also cross-cultural appreciation with ancillary benefits, economic ones for the artists and, at least, modest social transformation for the larger White society. n81 Professor Ehrenreich then offers us an extended personally revealing narrative about her own experiences with salsa dancing as evidence of the transformative possibilities of cultural borrowings. n82 We are inclined to agree with her about this potential; however, Professor Ehrenreich begins her narrative by telling us that she was unusual among her circle of White friends in [*482] frequenting Latin dance clubs. n83 We can assume that even fewer Whites, unlike Professor Ehrenreich who, after all, shares LatCrit sensibilities, are likely to avail themselves of the opportunity to learn about Caribbean racial tensions, the Mexican political system, or immigrant conditions while salsa dancing. n84 On balance, the potential for social transformation is, unfortunately, largely inchoate. Nonetheless, Professor Ehrenreich's article makes a strong and convincing argument that having exposure to marginalized cultural experiences, in her case Latin dance, can provide a window into another set of experiences that define aspects of social hierarchy.

C. Post-colonial Relationships and LatCrit

If the conquest of peoples and nations in the last century was accomplished and maintained through militaristic force, the conquest during this first part of the next millenium is being extended through transnational capitalism and other forms of globalization. n85 The United States now occupies unchallenged domination in every part of the globe through its control of capital, munitions, information and technology. The articles in this cluster examine different aspects of the post/colonial relationship by asking some probing questions: can the most subordinated and impoverished subjects exercise choice and agency when deciding to use their sexuality as an economic resource? Do LatCrit academics play any role in supporting the agency of the sexual subaltern, "a market actor who understands the economic and other opportunities available to her in other parts of the world"? n86 If certain classes have acquired control of the mechanisms of state violence for their own colonial and imperial ends and have thereby distorted the purposes of the nation, what role do LatCrit theorists have in dismantling the power of these violence-prone classes? More specifically, if LatCrit theory fails to link cultural and racial tensions with the political and economic relations imposed by transnational corporate capitalism, doesn't LatCrit risk "remaining abstract and consequently trivializing and . . . obscuring the reality and effect of material inequities." n87 What is the relation of LatCrit theory to revolutionary theories that do not eschew violence, such as those propounded by Marx or Fanon, or, more recently, by Walter Benjamin [*483] or Charles Taylor? n88 What is the relation of postcolonial theory to LatCrit theory about the U.S. colonies, such as Puerto Rico? In other words, are the discursive and analytical tools of the postcolonial theorists different from those of the LatCrit theorists? Are postcolonial theory and LatCrit theory about U.S. colonies, such as Puerto Rico, similar in their focus on space/place as linked to structures of subordination and exclusion within socio-legal systems?

In Post Colonial Economies of Desire: Legal Re-presentations of the Sexual Subaltern, n89 Professor Ratna Kapur uses the narrative and imagery in the Indian film "India Cabaret" to introduce her bold analysis of the ways in which Indian sex workers are represented in cultural images and how such images are used to justify the need for legal

regulation, especially in antitrafficking legislation proposed by Western feminists. n90 Professor Kapur uses both postcolonial and feminist theory to shatter our stereotypical and moralistic perceptions of sex workers both in past historical and contemporary periods. Her discussion of "home" and "family" as privileged and uncontaminated ("uncontaminated by the colonial encounter") n91 cultural spaces n92 offers some provocative insights into the ways that women's work raising families and homemaking can be put into the service of those who would restrict women's rights, in and out of the home. While her focus is India and the Hindu Right, her analysis has applicability outside of India and should be of interest to those of us who see similar manipulation of Latinas by organized churches n93 and the political Right in the U.S. The policing that the global HIV/AIDS crisis is foisting on many communities of color, in and out of India, increases the criminalization of certain behaviors (e.g., those that place people "at risk") and increases the surveillance of certain populations (e.g., sex workers). n94 The challenge for feminists is to promote treatment and prevention programs for substance abuse and HIV/AIDS without falling into the grasp of religious and ideological zealots.

This article is particularly appropriate in a symposium that is dedicated to issues of class in LatCrit theory and practice. Professor Kapur clearly [*484] demonstrates that the immigration policies of the U.S. as articulated in antitrafficking legislation closes the borders to workers other than the most strictly defined victims. n95 Anti-trafficking legislation must be understood as a labor market control benefiting the interests of labor importing countries. For example, the U.S. excluded from protection the large number of women "who are in or know that they will be going into the sex industry, but are not accurately informed about the conditions of work or the amount of money they will receive." n96 Through this careful analysis, Professor Kapur brings us to the most stereotype-shattering portion of her article from my point of view, namely, the reconstitution of the sex worker as a willing traveler, a border crosser, who "migrates, including for sex work, in search of increased autonomy and economic independence." n97

Many of us in critical theory have been using borders, literal and metaphorical, in our work, n98 and our understanding of this diasporic traveler must be informed and, when necessary, re-framed in light of Professor Kapur's compelling analysis. She respects the agency and informed self-interest being exercised by these women, even when they travel in order to work in the sex industries. n99 Professor Kapur does not accept that economic deprivation robs women of their ability to choose; instead, she argues that women, some without education and some with graduate degrees, can decide to leave their country of birth and travel to other parts of the world to improve their economic conditions. n100

Professor Kapur concludes by rejecting what she terms "sexual negativity, which perpetually addresses sex and sexuality, especially in the third world in the language of pain, anguish, abuse and exploitation." n101 This "recuperation of desire offers the possibility of a more liberatory and emancipatory politics within the third world." n102 The challenge for LatCrit scholars is to extend Professor Kapur's superb analysis to the particularities of Latina/o communities because, in my opinion, their sexual repression by church and state ideologies and the resulting suppression of sexual desire has been under-analyzed in LatCrit theory.

In Postcolonialism and the Question of Nation-State Violence, n103 Professor San Juan proffers an analysis of violence that poses a challenge for [*485] LatCrit theorists. In examining the link that is often made between nationalism and state violence, Professor San Juan provides a spirited critique of postcolonialist thinking by such icons as Homi Bhabha who "resort to a questionable use of the discursive performativity of language to ascribe a semiotic indeterminacy to the nation, reducing to a formula of hybridity and liminality n104 the multifarious narratives of nations/peoples." n105 If so, doesn't this criticism also apply to LatCrit theory, especially given the way in which such linguistic jingles as "One nation under God," "manifest destiny" and "America" have come to be used ideologically to mask the conquest and domination of land and peoples that has been the nation-building project of the U.S. But Professor San Juan would answer that while such debunking is necessary, it doesn't go far enough because it fails completely in undermining the violent power of the nation-state. n106 He goes on, "the source of political violence . . . is the competitive drive for the accumulation in the world market system where the propertied class is the key actor mobilizing its symbolic capital made up of ethnic loyalties and nationalist imaginaries." n107

Professor San Juan is particularly disparaging of culturalist theorists for producing analyses that are abstract and trivial. n108 I fear, though, that the charge he makes against postcolonialists is one that he would also apply to much of LatCrit theory that also fails to expose the workings of corporate capitalism and its corresponding political effects. n109 Professor San Juan's project is the revivification of a Marxist/Fanonian approach to liberation theory that fuses social justice with class struggle. n110 Using the work of Walter Benjamin, he brings the analysis into the sphere of law by linking justice and communication as the antidote to state violence as differentiated from nation-related violence n111 but questions the efficacy of "the reconciling charisma of language" in the face of internecine conflicts throughout the

world. n112 Professor San Juan concludes by using Charles Taylor's formulation of violence as a struggle for recognition and the recovery of dignity. n113 Warriors are locked in an embrace of mortal danger to both. "In this struggle, the possibility of violence mediates the individual's discovery of his finite and limited existence, his vulnerability, and his need for community." n114 However, appealing this [*486] image might be, Professor San Juan also rejects it given the reality of nuclear weapons in the hands of the possessive/acquisitive classes which he identifies as the origin and locus of state violence. n115

With History, Legal Scholarship, and LatCrit Theory: The Case of Racial Transformations Circa the Spanish American War, 1896-1900 n116, Professor Sylvia R. Lazos Vargas has made another important contribution to the LatCrit project. Professor Lazos has undertaken a complex task, viz., using original documents she has set out to excavate the racial motivations of the diplomats who negotiated the Treaty of Paris of 1898 ending the Spanish American War. This historical excavation is embedded within a larger project of using the analytical tools of LatCrit theory and Critical Race Theory to examine the possibilities and limitations of cross-disciplinary scholarship.

Professor Lazos accomplishes a number of things with this article. First and foremost, her historical account of the events surrounding the Treaty of Paris of 1898 and the expansion of the U.S empire to include Hawai'i, Philippines, Guam, Puerto Rico and Cuba is an excellent example of traditional legal research with extensive documentation from original sources. n117 She also demonstrates why it is important to have scholars in the academy who are able to bring their personal experiences to bear on their research. In fact, I would assert that this article is evidence of why it is important to have Latinas in the legal academy to produce this kind of positioned analysis. Professor Lazos enacts a rationale for this contested assertion as she examines the historical accounts of this period from a racialized perspective. n118

Professor Lazos is particularly effective, for purposes of this symposium, in providing an analysis that is explicitly grounded in LatCrit methodology and sources. For example, she is careful to show that the Spanish American War teaches us important lessons on about a number of LatCrit themes: anti-subordination, interracial coalition-building, the racialization of specific populations of Latinas/os, and racial and disciplinary positionality. n119 Finally, using a positionality analysis, she examines her hypotheses going into this research and explains why she rejects the central premise of her original inquiry about the racial motivations of the Treaty of Paris negotiators. n120 [*487]

Both Professors Lazos and Venator's articles have been included in this cluster on post-colonial relationships, but their articles should be differentiated from those written by Professors Kapur and San Juan. These latter articles fall within the genre that is referred to as Postcolonial Theory, with its shared vocabulary (i.e. subaltern, third space, settler societies, etc.) and established scholars (Gayatri Spivak, Edward Said, Homi Bhabha). Professors Lazos and Venator, on the other hand, do not write within this genre but do write about the subject of post/colonial relationships, specifically looking at the mechanisms, legal and political, that were used to acquire sovereignty over Puerto Rico's land and peoples. n121

In Race, Space, and the Puerto Rican Citizenship, n122 Professor Charles R. Venator Santiago, while agreeing that citizenship for Puerto Ricans was purposely obfuscated by racist ideologies, contends that this particular citizenship must be understood within the liminality of space and geography. n123

He rejects the analysis of Rogers M. Smith n124 that the ambiguities of Puerto Rican citizenship resulted exclusively from the racism of the justices at the turn of the century. From the Foraker Act of 1900 forward, this variety of Puerto Rican citizenship, he argues, was neither that of colonial subjects nor that of second class citizens, such as women who could not vote; neither a citizen with rights nor an alien with specific constitutional protections. n125

Professor Santiago asserts that the decisions from the early 1900's when the Congress and the Courts were defining the boundaries of Puerto Rican citizenship must be understood within a notion of spacial specificity--that persons with connections to different places would be treated differently. For example, under Article IX of the Treaty of Paris, n126 the document that formalizes Puerto Rico as a U.S. Colony, persons from Spain would be treated differently than those from Puerto Rico. n127 Professor Santiago, however, is not talking only about geography; he is also using space as a concept to talk about the legal status that is conferred on Puerto Ricans. n128 The legal categories (citizen, alien) had to be deformed (not-citizen and not-alien) in order to allow for this [*488] ambiguous status to be imposed on Puerto Ricans, and this deformation creates what he calls this "liminal juridical space." n129

The articles in this cluster, while not centered on issues of class and economic inequality, elucidate the manner in which the U.S. has acquired and maintained colonial relationships with the Philippines, Hawaii, Puerto Rico, and other countries such as Panama and Cuba. Colonial histories are crucial to our understanding of regional and global economic

patterns and trends, such as the neo-colonial effects and the hyper-concentration of economic resources within multinational corporations under NAFTA and other free trade arrangements. The subversion of constitutional freedoms represented by the arbitral decisions protecting corporate capital, especially through the use of the "takings" doctrine, is only one example of the re-distribution of wealth upward from the most impoverished to the obscenely wealthy. n130

D. Border Crossings

Borders with their geopolitical and/or metaphoric meanings have become a signature theme in Chicana/o Studies n131, Latina/o Studies n132 and with this group of articles now in LatCrit Legal Theory. My own work has examined the geographic, n133 pedagogical, n134 linguistic and cultural, n135 racial and gendered n136 meanings of borders.

Professor Carmen Gonzalez, Maria Pabon Lopez and Juan Velasco stake out different aspects of this common theme. n137 Professor Gonzalez's [*489] article deals with geopolitical borders, and specifically with the regulation of the environment, in the free trade regime that has developed in the BushClinton-Bush decades. n138 Trade liberalization or "free trade" has become the bipartisan mechanism by which borders are made porous to expedite the movement of capital, know-how, products and jobs and to lessen the movement of persons from one country to another. n139 Professor Pabon Lopez's article deals with the innovative public policy responses by one Texas community to the linguistic and cultural needs of the population that resides in the U.S.-Mexico borderlands. n140 Finally, Professor Velasco's paper interprets the cinematic treatment that is given to the border and analyzes how the border as an imaginary and symbolic space can be configured either as menacing and contaminated or as nurturing and fertile with cultural potential. n141

Thus, this group of articles has several sub-themes in common. First, in reflecting on the treatment of "border people," these articles deal with those who have little political clout as people who resist in a variety of ways. The resistance is evident in their fashioning of new strategies to expose the environmental degradation caused by the West's consumption patterns. Their resistance is seen in the Ceniza, Texas legislation protecting the right to speak Spanish as a public language. Resistance is both narrative and method for Lourdes Portillo as she cinematically portrays migrants as complex and resourceful in their search for identities that capture the ambiguities of their diaspora. A second sub-theme that the three articles have in common is nature of the hegemony exerted by the United States whether in its environmental politics vis-a-vis Mexico, in the dominance of English even in regions in which the majority of the population speaks a language other than English, or in its control over cultural symbols (the dangerous and sexualized Mexican) that become the visual text of movies and other art forms. Finally, a third subtheme is the economic impoverishment of the border and its people. This is a land that is resource starved. The people who inhabit the borderlands experience the lack of job security, poor nutrition, contaminated air and water systems, with the corresponding diseases and illnesses. This sub-theme connects these articles to the larger themes of this symposium exploring LatCrit theory and praxis in the worlds of economic inequality. [*490]

In *Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade*, n142 Professor Carmen G. Gonzalez exposes how skewed most environmental analyses of trade liberalization policies, such as NAFTA, are in failing to focus on the "North's systematic and ongoing appropriation of the South's natural resources." n143 Professor Gonzalez's purpose is to reframe the arguments against free trade by taking the perspective of those who are most adversely impacted by the over-consumption of the wealthy nations; to do so, she uses the "North-South" designation that has become common in the environmentalist debates. n144 Professor Gonzalez introduces us to a vast set of resources and scholars working in this area and arguing against the ecoimperialism of the North. Her footnotes are an impressive display of scholarship and argumentation. n145

The WTO and GATT have become symbols of the global inequities and misappropriations of resources and products. The mass rallies that have been organized to oppose the WTO in Seattle, Genoa, and Washington, D.C. give testimony to the strength of the arguments against the quick passage of the free trade legislation (the so-called "fast track" approval) pending before Congress. Professor Gonzalez's article adds to the work that has been done by LatCrits in earlier symposia on globalization and international monetary policies that are related to trade liberalization laws and practices. n146

In *The Phoenix Rises from El Cenizo: A Community Creates and Affirms Latino/a Border Cultural Citizenship through its Language and Safe Haven Ordinances*, n147 Professor Maria Pabon Lopez's article expands the LatCrit analysis of language-based issues by focusing on the Texas border town "that adopted an ordinance which makes Spanish its 'predominant language.'" n148 Other LatCrit articles have analyzed aspects of language regulation, and most often language prohibition, from the [*491] perspective of Spanish-speaking communities, n149 or that of the Chinese n150 and Japanese n151 communities, or with cross-disciplinary tools. n152 Professor Pabon Lopez, however, uses the

Ceniza ordinance as an opportunity to consider how a predominantly Spanish-speaking community can protect its linguistic heritage by requiring that city business--its meetings and notices--be in Spanish, the language that is used by most of the people in the community. n153 This community of Mexican immigrants also enacted a Safe Haven ordinance "prohibiting the City's elected officials and employees from disclosing, investigating or requesting information concerning a resident's immigration status." n154

Here we have an example of a small border town with few public services; a community of workers who must travel daily to find low wage jobs; citizens with mostly elementary school educations. n155 Yet, these marginalized citizens are able to use the mechanisms of local government to carve a niche of safety for themselves and their families. Their ordinances are courageous acts of citizenship that preserve their ability to participate in their own governance and simultaneously to safeguard their language and cultural heritage. These ordinances are acts of praxis, collective acts of resistance by some of the least powerful members of our society. We in the LatCrit community with our economic and educational advantages have much to learn from the town of El Cenizo.

In *Making Evil: Crime Thrillers and Chicana Cinema*, n156 Professor Velasco asks us to consider the crossing of the U.S.-Mexico border as an act filled with metaphorical meanings. In contrasting the manipulation of the border as symbol by Orsen Welles with that of the Chicana filmmaker Lourdes Portillo, he shows how Welles infuses the border and Mexicans/Mexican-Americans with a dark, evil subtext. Welles is aware of the racist stereotypes of the day and of the region and he plays on the [*492] fears shared by his audience to give his movie its depth. n157 The audience is assumed to be complicit with Welles in the perception that the wife (played by Janet Leigh) is in danger--from her Mexican-American husband and the brooding Mexican characters on the streets of the border town. n158 Some thirty years later, the camera and the script are in the hands of the Chicana border crosser and she inverts the imagery of the border. n159 For Lourdes Portillo, "since her identity is of both lands and cultures[,] . . . the space in-between is . . . a nurturing space where ritual, tradition and culture meet." n160

Professor Velasco's article is an excellent example of the fusion of cultural studies with LatCrit theory where the tools of textual analysis (in this case cinema) are woven with the experiences and sensibilities of the Latina/o communities. n161 He is asking us to read these cinematic texts for their encoded messages about race, gender, sexual orientation, and place and space. Professor Velasco's article is enhanced because, even though he is an accomplished writer, his English has some of the irregularities of those who use English as a second language. His article is, thus, a linguistic enactment of the multiple border crossings of which he writes.

E. LatCrit and Criminal Justice

In a symposium volume that focuses on *Class in LatCrit Theory and Praxis*, it is particularly appropriate to feature articles on the over-policing of Latino/a youth in schools and the criminalization of Latina/o youth behavior. Such practices contribute to the excessively high drop-out rates among Latinos. Not finishing high school or pursuing vocational or post-graduate studies are the leading predictors for low socio-economic outcomes, such as low wage jobs, inadequate housing, higher incidence of divorce, poor health, etc. The 1998 high school completion rate for Latinas/os aged 25 and over was 55.5% versus the rate of 83.7% for whites. n162 Equally disturbing is the fact that 40% of Latinos/as who drop out of school do so before the eighth grade. n163 [*493]

In *Police in School: The Struggle for Student and Parent Rights*, n164 Professor Norberto Valdez and his colleagues Marcia Fitzhorn, Cheryl Matsumoto, and Tracey Emslie provide a case study of the police practices in Northern Colorado schools. Specifically, they provide specific examples of "high school children being questioned by the [law enforcement] officers without another adult present and without notification of parents." n165 According to the article, such practices violate federal laws, international standards, and the law of Colorado and yet go unchecked because there is no one who is responsible for ensuring that the rights of the students (and the applicable Colorado statute extends the rights to the parents). n166 This blatant disregard of the constitutional and statutory rights of students and parents can end in tragic results. According to the authors, sometimes the students land in jail; sometimes they drop out of school in frustration with the "system;" and occasionally they take their own lives. n167

In *State Violence, and the Social and Legal Construction of Latino Criminality: From El Bandido to Gang Members*, n168 Professor Mary Romero demonstrates that the construction of identities can have life and death consequences. As long as Latino youth are portrayed (and often self-portrayed) in newspapers, movies, hip-hop lyrics and in conventional wisdom as pachucos, cholos, n169 or gang members, they will continue to be at risk of being killed by poorly trained police.

Professor Romero's titling of her article suggests her analysis might agree with the distinction between state-driven violence and nation-driven violence drawn by Professor San Juan n170 (and emphasized by Professor Gott in his introduction to the cluster of articles on post-colonialism in this symposium). n171 In Professor Gott's words,

San Juan distinguishes state-from nation-driven violence. The state, in this sense, is a uniquely modern institution that exists by, for, and of capital, and violence, which the state orchestrates, directly and/or indirectly serves capital's interests. Meanwhile, San Juan sees violence [*494] on behalf of the people or nation as potentially anti-imperial and anti-capitalist in its origins and effects. n172

To whatever extent there is barrio gang violence, much of it internecine, where does it fit in this dichotomy? Can the low-end violence (violence directed at those without power or capital) of the Latina/o gangs be thought of as nationdriven violence, is it not potentially anti-imperial and anti-capitalist in its origins and effects? Or is it?

I concede that I may be misreading and/or misunderstanding both Professors San Juan and Gott in their deployment of this conceptualization of violence. Nation-driven violence may be limited to situations in which the colonizer-colonized relationship is more sharply drawn (as in the Fanonian environment) than in the Latino-youth-versus-police paradigm. On the other hand, isn't Professor Romero suggesting that the disaffection and anomie of Latino youth is knowingly ignited by the state into self-annihilating violence? Isn't this violence counted on and expected by the state in its deliberate engineering of bandido/bad guy identities, in ways that are consistent with Professor Romero's analysis of the construction on the Latino criminal stereotype? n173

Professor Romero's article also accomplishes a number of other objectives that are consistent with the LatCrit project: it's an interdisciplinary fusion of the legal (interrogating policing and criminality) with history, sociology and cultural studies; a nuanced analysis of identity formation; and a fine example of theory positioned within the historical experiences of the Chicana/o communities. n174 In examining how and why Julio Valerio was killed by the Phoenix police, Professor Romero exposes how language, immigration, poverty, alcohol, family violence and police racism intertwined with lethal consequences. n175

F. Gender, Class and LatCrit

From the beginning, LatCrit conferences have endeavored to incorporate a strong female and feminist perspective. I remember the call for a Latina caucus at the first LatCrit meeting when some of us realized that the discussion was male-dominated. When we convened, we sat in a circle, introduced ourselves and reflected on the fact that here we were--some seventeen or so Latina law professors in one room at one time. It was a magic moment. n176 After all, we had all experienced most of our profes [*495] sional lives as a "Society of One." n177 There has been an uneven record of including issues of gender and hearing the Latina voice in LatCrit projects. n178 Therefore, this has emerged as an important reason for the atten [*496] tion that is paid to the makeup of each panel and program at a LatCrit meeting. n179

The theme of the Colorado conference focused on the connections between LatCrit Theory and issues of class. Re-considering the concept of the "feminization of poverty," a topic at the center of a gender-based analysis of class, presented the opportunity to explore the intersections and disjunctions between LatCrit Theory and feminist theory. "Feminization of poverty" is one of those phrases that enter into academic parlance and capture our attention by refracting and focusing some previously overlooked aspect of reality. Over time, however, the term itself is revealed to contribute to obfuscation. The substantive outline for the conference informs us that

this discursive construct was deployed to mobilize shame and outrage against the conservative public policies and corporate greed that produced new levels of unprecedented poverty, as well as to draw attention to the way the structure of rights and obligations in American family law regimes inflicted substantial economic disadvantages on divorced women and the children over whom they often retained primary custody. n180

As this concept gained currency, however, it became clear that it failed to encompass the ways in which women of color experience poverty. This cluster of articles explains why the concept "feminization of poverty" should be abandoned or, as Professor Mutua explains, n181 already has been abandoned.

Engaging the concept directly, Professor Kendal Broad analyzes it from the point of view of transgendered persons, n182 Professor Park looks at its effect on low income immigrant women n183 and Professor Mutua explores the multiple ways in which poverty is gendered for women and for men. n184 Professor Padilla, on the other hand, looks at the issue of gendered politics more generally and asks us to consider why Mexican American women are absent from the debates on law, public policy and religion and how they might be included in the future. n185 [*497]

With *Critical Borderlands*, n186 Professor Broad advances the development of LatCrit Theory and particularly in its engagement with issues of sexual identity and its continuing experimentation with various disciplinary perspectives. n187 She situates herself as "a white, non-Latina/o, middle class, U.S.-born-and-raised, gender-bending, dyke" n188 and interrogates her ability to mitigate her race and class privileges by naming and acknowledging them. She does this in an act of coalition with groups she does not belong to (namely women of color and impoverished women) and to avoid "reproducing hegemonic discourse" n189 by "creating interdisciplinary borderlands." n190 She is, in my opinion, successful in modeling how to link LatCrit with other schools of Outsider discourse.

Professor Broad is familiar with earlier LatCrit work that raises questions of heteronormativity, such as the work by Frank Valdes and Berta Hernandez-Truyol. n191 Thus, having linked with this foundational work, Professor Broad then proceeds to have us consider the partial analysis represented by the concept of the feminization of poverty, a concept that leaves out Latinas and lesbians as well as other sexual minorities even though their poverty can be more extreme and more intractable. n192

Professor Broad's work is particularly powerful because it brings the issue of transgendered persons into our field of analysis. Even though LatCrit has struggled to avoid or at least to attenuate heteronormativity, thanks in large measure to the groundbreaking work of Frank Valdes and his leadership in the development of many LatCrit projects, much of the discussion has focused on gays, lesbians and occasionally bisexuals. Professor Broad is insistent that the experience of transgendered persons is of special importance because it disrupts binary gender norms. n193 Professor Broad's analysis reinforces the performance art presentation by Kim Coco Iwamoto, a transgendered person, who participated in the discussion held at LatCrit V entitled "Queering LatCrit Discourse: Confronting Latina/o Homophobia." n194 Coco Iwamoto conducted a live conversation [*498] with herself by alternating between Coco-male and Cocofemale, talking about a variety of subjects.

Professor Broad's carefully analyzes whether the discursive tool of "situated standpoints" can help us move beyond identity politics to a more textured theory that incorporates difference. n195 Professor Broad provides the theoretical impetus for seeking out the experiences and the voices of lower class women because they have something to teach us. She explains,

the assumption that 'one's everyday life has epistemological consequences and implications--the disadvantaged have the potential to be more knowledgeable, in a way, than the dominant group' is an important mean by which we can create and legitimate subjugated knowledges. n196

In short, Professor Broad has made an excellent contribution to this symposium: she has woven the core topics of LatCrit Theory such as intersectionality, transformative knowledges, difference as voice and as politics with her sociological perspectives while focusing the discussion on the theme of the symposium. Her critical theory--a queered LatCrit--improves our understanding of LatCrit Theory, and of Queer Theory and the marginality of impoverished sexual minorities. Thus, we are provided with a better analysis of gendered poverty.

In *Perpetuation of Poverty through "Public Charge,"* n197 Professor Lisa Sun-Hee Park provides a cross-disciplinary analysis of gendered poverty. Although this analysis involves legal materials, namely the 1996 Immigration Act (the Illegal Immigration Reform and Immigration Responsibility Act of 1996) n198 and the so-called Welfare Reform Act (the Personal Responsibility and Work Opportunity Reform Act of 1996), n199 the approach is more sociological than legal. It is for that reason and because Professor Park's degree is a Ph.D. rather than a J.D., that I am concluding that this is a crossdisciplinary contribution to LatCrit Theory.

One of the strengths of this paper is that Professor Park is explicitly engaged in a dialogue with Professor Mutua, one of the other authors in this cluster of articles, in her critique of the Feminization of Poverty notion. n200 Professor Park provides specific reasons as to why this concept [*499] fails to reflect the experiences of low-income immigrant women, especially undocumented pregnant Latinas in need of prenatal medical care. Thus, we have a better understanding as to why this Feminization of Poverty concept is flawed and why class-analyses must expand to include structural poverty, race, patterns of relational privilege and the frame that capitalism provides to other social relations. n201

Professor Park provides a detailed case study of how these two statutes "have created a chilling effect that has discouraged use of Medicaid by immigrants who are legally eligible in California." n202 Consequently, these low-income women receive inadequate prenatal care and have poorer birth outcomes. Professor Park demonstrates that the federal government was slow in clarifying whether those who received certain benefits including Medicaid would be prevented from obtaining legal permanent residency because of the "Public Charge" policy of the INS. n203 The

government was so slow, in fact, that it took the INS some three years to exclude these benefits as income maintenance and to discontinue the repayment demands that were being made illegally by the California Department of Health Services. n204

With her article, Why Retire the "Feminization of Poverty" Construct, n205 Professor Mutua completes this cluster of three articles that critique the concept of the Feminization of Poverty from different perspectives. Professor Mutua's article examines this concept historically and concludes that it is seriously flawed and deserves to be withdrawn from use. n206 She concedes that it may have served a useful purpose at one time but by now it has become clear that the concept masks the reality of poverty for whole communities for whom poverty is the norm, for women of color, for sexual minorities and for impoverished men, some of whom are in poverty for the same reasons as women. n207

Professor Mutua's article is written as a dialogue with Professors Park and Broad. Her article, more than others in this symposium, evinces that she had a thesis that she presented as a short talk at the conference and that thesis has now undergone a change. Her analysis is deepened and broadened by the observations and analyses of her co-presenters. This technique works particularly well for this topic on gendered poverty because of its nexus to the theme of the conference, i.e., LatCrit Theory and Class. The readers benefit from the interactions at the conference once the authors incorporate those insights into their articles. I would [*500] hope that this technique would be used more frequently in future LatCrit symposia.

In Reforming and Influencing Public Policy, Law and Religion: Missing from the Table, n208 Professor Laura M. Padilla explores the reasons why Mexican American women are absent from the spheres of influence. Professor Padilla's important contribution is to insist that, for Mexican American women, these spheres are both secular and religious. n209

Professor Padilla begins her analysis by situating the Mexican American woman historically. She posits that the colonization of the Mexican American communities has produced women (and men but they are not her focus) who are "powerless [and have] a lack of control over those institutions which have a direct impact on them, such as schools, the political system, and businesses." n210 She further observes that many Mexican Americans internalize "feelings of inferiority, lack of self-worth, hostility, apathy, apparent indifference, passivity, and a lack of motivation in relation to the goals of the dominant society," n211 This internalization, she opines, "explains an oblique sense of inevitability about oppressive living conditions." n212 I don't disagree with Professor Padilla that we Mexican American women experience powerlessness and have internalized negative impressions of ourselves, and may, at times, feel that change is nearly impossible. However, too many Mexican American women live lives that belie these statements (and others that are equally unqualified). Professor Padilla's article is at odds with this introduction as it offers a more variegated analysis. The powerful stories that she includes provide examples of Mexican American women who exercise power, overcome any internalized doubts they have about themselves and create change in the face of great odds.

Professor Padilla's article is important for another reason. She has become an important voice in LatCrit Theory for those who are linking critical theory, especially from the perspective of discrete racial/ethnic communities, with progressive religious theory and practices. There is a split among critical theorists, including LatCritters, about the possibility of organized religions being progressive. n213 Yet, organized religions continue [*501] to be an important force in Latina/o communities and to ignore them places our theoretical project at the risk of being irrelevant to the very communities we strive to serve.

III. Moving LatCrit Theory and Praxis into Latina/o Communities

In July 1999 Professor Danny Solarzano n214 introduced me to Professor Marcos Pizarro, who teaches Chicana/o Studies at San Jose State University in California. Prof. Pizarro was organizing a group of educators and community activists to work with K-12 teachers involved with Latina/o youth. Over the next two years a group formed, calling itself MAESTROS, and sponsored a series of workshops and a Summer Institute in June, 2001. While each of the workshops included presentations on curriculum and pedagogy, the purpose of the group has evolved into one that focuses on process not on a product per se.

As the LatCrit scholar and law professor in the group, I have attempted to share lessons learned through LatCrit projects with the MAESTROS group. Much of what I have contributed to the group has been an outgrowth of the theory developed within LatCrit; it has been my attempt, borrowing Sumi Cho and Robert Westley's evocative phrase, to "perform the theory." n215 Thus, we in MAESTROS, have been attentive to the issue of anti/essentialism choosing to call ourselves "raza" instead of either Chicanas/os or the more inclusive Latinas/os. Raza has the advantage of linking us to our mixed linguistic roots and to emphasize our racialized identities. MAESTROS, like LatCrit, is also committed to

anti-subordination--we are cautious about issues of differences based on race, gender, sexual orientation, language, religion, etc. We intervene to insure that we are not unthinkingly reproducing power inequities. We have consciously involved, mostly through Prof. Pizarro's networks and outreach, educators, activists, and organizers from California, Arizona and New Mexico, all of whom are involved with low-income Raza communities. Our workshops have experimented with several of the core issues thematized and theorized by LatCrit scholars, such as bi-linguality, voice and silence, identity, religion, and class. The pedagogical workshops have incorporated hip-hop music, plays about farmworkers, humor and gang subcultures.

At the Summer Institute, I demonstrated the work that had been developed by my law students for K-12 teachers in a seminar I taught last spring. In a loose collaboration with Professor Juan Velasco's class on Chicana/o literature at Santa Clara University, my four students developed [*502] PowerPoint presentations on NAFTA and the WTO, the Chicano/a youth movement, stereotyping of indigenous populations and the drug war. My purpose is to give importance to the writing by law students by making their work product available to K-12 teachers. This is an experiment in raza literacy on several levels--to teach law students to write for lay audiences as well as to make race-based and other progressive materials available to teachers.

The educational model we are developing through MAESTROS includes several components: participant input, welcoming & parting rituals, work circles, and curricular & pedagogical workshops. But what we are endeavoring to create is not a model as such; instead, we are engaged in producing an educational ethic that has relevance for any level of education. That ethic is based on these values and commitments: love and respect for students, trust, a foundation of familia y historia, and an appreciation for the power of palabras, vocabularies and truth.

What follows is an excerpt from an article n216 describing the work of the MAESTROS group and a poem, both written by Professor Pizarro.

Living Educational Revolution

We have attempted to define our work, encapsulating our approach and ethic, as Raza Studies. We adopted this label because some of our members were using this as a way of acknowledging that they were not doing the typical Chicana/o Studies work and that they were working with diverse populations that also included other Latinas/os. We use this term as a way of symbolizing these realities (and have no affiliation with the programs who use this label in their titles or courses). We provide this definition now because it reinforces the ideas introduced earlier and allows readers another opportunity to understand our work.

For MAESTROS, Raza Studies transcends pedagogy and curriculum, going beyond approaches to learning and toward approaches to living. The whole person (students and teachers) enters the classroom and that is who must teach and who must learn.

Raza Studies is holistic education [emphasizing mind, body, spirit, and heart] in which we meld methods, content, identity issues, policy/political struggles, family and history, via student-centered (context-specific), spiritually-principled, problem-posing that is based on community service learning/collaboration and develops organizing skills. This is grounded in raza ways of knowing and seeks a new form of literacy--raza literacy. [*503]

Note: We look at history in unique ways. It is not the westernized construct of the past. We are history as we live with ancestors, descendants, and living families simultaneously. We refer to this as raza wisdom. Finally, we assert our moral authority to transform education!

The daily lives of Raza youth demand that we transform our work in education. They need researchers who engage in social justice work. They need researchers who use their publications and research to move toward concretely addressing the problems they regularly face. This work, therefore, ends with a call for researchers and journals to use their work to engage in social justice, acknowledging that the blind belief in the need for their objectivity in fact typically reaffirms and supports a status quo that is waging war against raza youth and other working class students of color.

Our goal is to help teachers adapt our work in MAESTROS to their own classrooms. The ethic we describe as well as the process itself is one that can be done in any educational setting. Our members have applied it to their work in lower elementary, middle school, high school, college and law schools. For now, our work focuses on exposing raza and our allies to the MAESTROS ethic and process. Revolution begins with breaking people's consciousness. When they are able to liberate their minds from the constrictions imposed by the norms of schooling, then they can be creative and will

know how to begin to look for and tap into the resources and people who will help them develop this approach in their own work. In the end, MAESTROS is simply an idea, lived.

[*504]

For Miguel

By Marcos Pizzaro

For Miguel

i'm a 6th grade teacher, it's 1991, and Miguel Sanchez is going down.

He's going down brothers and sisters.

going down.

dan dallape,

the Vice Principal of Oak Street Elementary School on the West Side of Inglewood, CA,

a working-class community of Raza,

has made it his personal mission to take Miguel Sanchez down:

because Miguel is learning his own power

because Miguel scares him

because the only way to stop the revolution is to suffocate the spirits of our youth

and so Miguel Sanchez is going down.

He's going down and

we feel it; we complain about the schools

we see it; we complain about teachers

we smell it; we complain about counselors

we hear it; we complain about administrators

we taste it; we complain about "the system"

and Miguel Sanchez is going down.

He's going down,

and we watch,

all of us, watch,

and He's going down.

10 years later, too long, MAESTROS asks us: What are we going to do about it?

concretely, what are we going to do about it?

everyday, what are we going to do about it?

we are a pro-active effort to make sure [*505]

Miguel Sanchez does not go down!

because if He does, if She does

-> they do assault our young women just as forcefully, but in different ways

if They go down,

We all go down brothers and sisters

We're all going down...

wake up

[Note: the names have not been changed because we must speak truth]

FOOTNOTES:

n1 See generally Hannah Arendt, *Eichmann in Jerusalem; A Report on the Banality of Evil* (Hannah Arendt ed., Viking Press 1964) (referring to Hannah Arendt's exploration of the banality of evil during the Holocaust). See also Sherrilyn Ifill, *Ordinary Complicity*, *Balt. Sun*, June 17, 2001, for a more contemporary analysis linking racial violence to the everyday actions and inaction by ordinary white citizens.

n2 These dual objectives have been at the heart of the LatCrit movement since its inception. See Francisco Valdes, *Under Construction: LatCrit Consciousness, Community, and Theory*, 85 *Cal. L. Rev.* 1087, 1094-95 (1997); 10 *La Raza L.J.* 1, 8-9 (1998) [hereinafter Valdes, *LatCrit Consciousness*].

n3 See 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).

n4 The process of moving issues from the margin to the core and considering ideas from the perspective of the subordinated (or what Professor Mari Matsuda has called "looking to the bottom") has been termed a practice of rotating centers and shifting bottoms. See Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 *U. Miami L. Rev.* 1177 (1999).

n5 Cover Letter of LatCrit V Program Materials, Feb. 25, 2000, p. 3.

n6 See, e.g., Elvia R. Arriola, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 *UCLA Chicano-Latino L. Rev.* 1 (1998) (referring to the LatCrit II Symposium); Elizabeth M. Iglesias & Francisco Valdes, *Expanding Directions, Exploding Parameters: Culture and Nation in LatCrit Coalitional Imagination*, 5 *Mich. J. Race & L.* 787 (2000); 33 *U. Mich. J.L. Reform* 203 (2000) (referring to the Special Symposium); Elizabeth M. Iglesias, *Foreword: International Law, Human Rights and LatCrit Theory*, 28 *U. Miami Inter-Am. L. Rev.* 177 (1997) (referring to the Miami Colloquium); Dean Rex Perschbacher, *Welcoming Remarks for LatCrit IV*, 33 *U.C. Davis L. Rev.* 751 (2000) (referring to the LatCrit IV Symposium); Francisco Valdes, *Foreword: Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 *Harv. Latino L. Rev.* 1 (1997) [hereinafter Valdes, *Outsider Jurisprudence*] (referring to the LatCrit I Symposium); 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, *Post-Identity Politics*] (referring to the Puerto Rico Colloquium); Valdes, *LatCrit Consciousness*, supra note 2 (referring to the Special Symposium). See also Richard Delgado & Jean Stefancic, *The Latino/a Condition: A Critical Reader* (Richard Delgado & Jean Stefancic, eds., New York University Press 1998), for an anthology of writings about Latinas/os from a critical legal perspective.

n7 See Kevin R. Johnson, *Celebrating LatCrit Theory: What Do we Do When the Music Stops?*, 33 *U.C. Davis L. Rev.* 753, 784 (2000).

n8 Guadalupe T. Luna, *"La Causa Chicana" and Communicative Praxis*, 78 *Denv. U. L. Rev.* 553 (2001).

n9 See Valdes, *LatCrit Consciousness*, supra note 2.

n10 See Luna, supra note 8.

n11 *Id.* at 555 (citing Markus S. Schulz, *Collective Action Across Borders: Opportunity Structures, Network Capacities and Communicative Praxis in the Age of Advanced Globalization*, 41 *Soc. Persp.* 587 (1998)).

n12 See also Kevin R. Johnson & George A. Martinez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship*, 53 *U. Miami L. Rev.* 1143 (1999); Margaret E. Montoya, *Introduction: LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions*, 53 *U. Miami L. Rev.* 1119 (1999) (providing other examples linking LatCrit to Chicana/o Studies).

n13 See Luna, supra note 8, at 560.

n14 *Id.* at 567.

n15 See Alice G. Abreu, *Tax Counts: Including the Money Areas of the Law*, 78 *Denv. U. L. Rev.* 575 (2001).

n16 *Id.* at 577.

n17 *Id.* at 585-93. In a comparison by race, the distribution of wealth is even more concentrated than that of income. The median Black household's net worth [difference between assets and debts] is 12 percent of the median White's, but Latina/o household's net worth is only 4 percent of the median White's. When one looks at what economists call financial wealth, which eliminates the family home as an asset and the mortgage as a liability, the more liquid assets are even more concentrated in the hands of Whites with Blacks owning only 3 percent and Latinas/os, 0 percent. See Doug Henwood, *The Nation Indicators: Wealth Report*, *The Nation*, April 9, 2001, at 8.

n18 Abreu, supra note 15, at 576.

n19 See *id.* at 578-85.

n20 See *id.* at 582-92.

n21 Alfredo Mirande, *Alfredo's Mountain Adventure: The Second Chronicle on Law, Lawyering, and Love*, 78 *Denv. U. L. Rev.* 517 (2001).

n22 *Id.*

n23 Professor Mirande's chronicles differ from those constructed by Professors Bell or Delgado in that the reader hears only one side of the colloquy and it's therefore a monologue. The power of the dialogue is that the author is engaged in an interrogation of the propositions s/he posits. Professor Mirande leaves us wondering what Fermina would have responded. For Professor Bell's dialogues with Geneva Crenshaw, see Derrick A. Bell, *And we Are Not Saved: The Elusive Quest for Racial Justice* (Derrick Bell ed., Basic Books 1987). For Professor Delgado's dialogues with Rodrigo Crenshaw, see Richard Delgado, *The Rodrigo Chronicles: Conversations About America and Race* (Richard Delgado ed., New York University Press 1995).

n24 See Anita Tijerina Revilla, *LatCrit and CRT in the Field of Education: A Theoretical Dialogue Between Two Colleagues*, 78 *Denv. U. L. Rev.* 623 (2001).

n25 An exceptionally prolific scholar, Professor Delgado is one of the founding figures in Critical Race Theory. See Richard Delgado, *Critical Race Theory: An Introduction* (Richard Delgado & Jean Stefancic eds., New York University Press 2001).

n26 See Ian Haney-Lopez, *White By Law: The Legal Construction of Race* (Ian F. Haney Lopez ed., New York University Press 1996).

n27 See Peter McLaren, *Critical Pedagogy and Predatory Culture: Oppositional Politics in a Postmodern Era* (Peter McLaren ed., Routledge 1995).

n28 See Revilla, *supra* note 24, at 624.

n29 *Id.* at 625.

n30 *Id.* at 624.

n31 See Daniel G. Solorzano & Tara J. Yosso, *Maintaining Social Justice Hopes Within Academic Realities: A Freirean Approach to Critical Race/LatCrit Pedagogy*, 78 *Denv. U. L. Rev.* 595 (2001).

n32 See Valdes, *Post-Identity Politics*, *supra* note 6; Francisco Valdes, *Theorizing "OutCrit" Theories: Comparative Antisubordination Experience and Subordination Vision as Jurisprudential Method in Critical Race Theory: Histories, Crossroads, Directions* (forthcoming); Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 *U. Miami L. Rev.* 1247 (1999); Sumi Cho & Robert Westley, *Critical Race Coalitions: Key Movements that Performed the Theory*, 33 *U.C. Davis L. Rev.* 1377 (2000).

n33 See Solorzano & Yosso, *supra* note 31, at 598.

n34 See *id.* at 607 (referring to the figure on page 16 titled "Letty's Figure in Progress").

n35 See Valdes, *LatCrit Consciousness*, supra note 2.

n36 The teachers and activists in the Maestros project would never use such high-falutin' language to refer to ourselves. One of our objectives is to use plain English/Spanish in our teaching materials.

n37 See *LatCrit V Substantive Outline* at 6.

n38 See Tayyab Mahmud, *Review Essay: Genealogy of a State-Engineered "Model Minority": "Not Quite/Not White" South Asian Americans*, 78 *Denv. U. L. Rev.* 657 (2001). I am borrowing Professor Mahmud's term "engineer" to emphasize the role of state power in the formation and regulation of racial boundaries.

n39 *Id.* at 674.

n40 See George A. Martinez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, 2 *Harv. Latino L. Rev.* 321, 323 (1997).

n41 See Mahmud, supra note 38, at 662 (noting that "Racing, then, is a modern technology of power/knowledge technology of insertion of the body into the population in a subordinated position, with the positioning assigned to 'natural,' pre-political deficiencies. This insight can furnish a very productive point of departure for the critical projects of antiessentialism and anti-subordination: when you want to see racism, look for racing not race").

n42 See Steven W. Bender, *Will the Wolf Survive: Latino/a Pop Music in the Cultural Mainstream*, 78 *Denv. U. L. Rev.* 719 (2001) (analyzing de-racialized "eye candy" Latina/o entertainers).

n43 Vijay Prashad, *The Karma of Brown Folk* viii (2000).

n44 See, e.g., Tayyab Mahmud, *Colonialism and Modern Constructions of Race: A Preliminary Inquiry*, 53 *U. Miami L. Rev.* 1219 (1999), in which he inter-relates three ideas: the colony is a space in which the rule of law is saturated with the illegalities of the racial regime; the instability of racial categories are supported by pseudo science; and, other differences based on religious belief, tribal affiliations, or regional loyalties are contaminated with a racialized hegemony.

n45 See Mahmud, supra note 38, at 658, 669.

n46 *Id.* at 669, 674.

n47 *Id.* at 678-79. For an analysis of Mexican American women as religiously submissive, see Laura M. Padilla, *Re/Forming and Influencing Public Policy, Law and Religion: Missing from the Table*, 78 *Denv. U. L. Rev.* 1223 (2001).

n48 See Mahmud, supra note 38, at 658-59.

n49 See Mary Romero, State Violence, and the Social and Legal Construction Latino Criminality: From El Bandido to Gang Members, 78 *Denv. U. L. Rev.* 1087, 1096.

n50 See Berta Esperanza Hernandez-Truyol, On Becoming the Other: Cubans, Castro and Elian--LatCritical Analysis, 78 *Denv. U. L. Rev.* 687 (2001).

n51 See Mahmud, *supra* note 38, at 678 et seq.; Hernandez-Truyol, *supra* note 50, at 693.

n52 See Hernandez-Truyol, *supra* note 50, at 688-90.

n53 The number of immigrant children being detained by the INS has soared to 4,600 per year. On any given day, the INS cares for over 500 children. Many remain in detention for months and sometimes years awaiting resolution of their claims. See Eric Schmitt, I.N.S. Both Jailer and Parent to Children Without Nation, <http://www.nytimes.com/2001/06/24/national/24DETA.html> (last visited on June 23, 2001).

n54 See Hernandez-Truyol, *supra* note 50, at 708-11.

n55 *Id.* at 711-17.

n56 *Id.* at 709.

n57 See Pedro A. Malavet, The Accidental Crit II: Culture and the Looking Glass of Exile, 78 *Denv. U. L. Rev.* 753 (2001).

n58 See Bender, *supra* note 42.

n59 See Nancy Ehrenreich, Confessions of a White Salsa Dancer: Appropriation, Identity, and the "Latin Music Craze," 78 *Denv. U. L. Rev.* 795 (2001).

n60 See Malavet, *supra* note 57, at 759-61 where Hijo de patisucio literally means "son of someone with dirty feet." Professor Malavet uses the expression both literally to describe his father's poverty and metaphorically to name his own racializing within the US borderlands.

n61 See Mahmud, *supra* note 38.

n62 *Id.* at 767-71.

n63 *Id.*

n64 Id. at 787-92.

n65 See LatCrit V Conference Substantive Outline at 9.

n66 Id.

n67 See Bender, *supra* note 42.

n68 Id. at 722.

n69 Id. at 724

n70 See *id.*; see also Ehrenreich, *supra* note 59, at 796, n.9 (defining appropriation to mean "use for economic benefit, use that misunderstands or misrepresents, and use without appropriation").

n71 See Bender, *supra* note 42, at 731.

n72 Id. at 732.

n73 Id. fn 62.

n74 See Romero, *supra* note 49, at 1105, for more on the relation between individual and collective identities.

n75 See Ehrenreich, *supra* note 77, at 795.

n76 Id. at 796, n.9.

n77 Id.

n78 Id. at 799.

n79 Id. at 798.

n80 Id. at 798-02.

n81 Id. at 801-03.

n82 *Id.* at 802-06.

n83 *Id.* at 795.

n84 *Id.* at 802-03.

n85 The New War that is currently being waged against the Taliban and Afghanistan as a result of the attacks on the World Trade Center and the Pentagon on September 11, 2001 now make this statement written before these events seem curiously misplaced. Force has again become the principal tool of foreign policy.

n86 See Ratna Kapur, Post-Colonial Economies of Desire: Legal Re-presentations of the Sexual Subaltern, *78 Denv. U. L. Rev.* 857-85 (2001).

n87 See E. San Juan, Jr., Post-Colonialism and the Question of Nation-State Violence, *78 Denv. U. L. Rev.* 889-898. (2001).

n88 *Id.* at 904-05; see also Gil Gott, Identity and Crisis: The Critical Race Project and Postmodern Political Theory, *78 Denv. U. L. Rev.* 817 (2001), in which he interrogates the efficacy of the legal and its step-child, critical legal theory by reconfiguring responses to the weakening of the nation-state and the concomitant realignments of power and authority. Where, he asks, is the political, or more precisely, where is the emancipatory in the minor transgressions of postmodernity (hybridity, mobility, diasporas, indeterminacy, etc.)? To this important question, I would respond that these transgressions are both emancipatory and subordinating, sometimes in a serial way, where the emancipation can be experienced and savored; but too often in a simultaneous way, where the gain is immediately illusive.

n89 See Kapur, *supra* note 86.

n90 *Id.* at 857-58.

n91 *Id.* at 862.

n92 *Id.*

n93 See, e.g., Padilla, *supra* note 47.

n94 Kapur, *supra* note 86, at 864-66.

n95 *Id.* at 876-77.

n96 Id. at 879-80.

n97 Id. at 882-84.

n98 See e.g., fns. 131-37, *infra*.

n99 Kapur, *supra* note 86, at 881-83.

n100 Id.

n101 Id. at 887.

n102 Id.

n103 See San Juan, *supra* note 87.

n104 For an analysis employing hybridity and liminality as discursive tools, see Juan Velasco, *Making Evil: Crime Thrillers and Chicana Cinema*, *infra* note 156.

n105 San Juan, *supra* note 87, at 891.

n106 Id. at 891-92.

n107 Id. at 895.

n108 Id. at 896-97.

n109 Id. This charge is appropriate and resonates with Professor Guadalupe Luna's exhortation to produce transformative knowledge. See Luna, *supra* note 8.

n110 San Juan, *supra* note 87, at 890.

n111 See text accompanying fn. 170, *infra*.

n112 San Juan, *supra* note 87, at 906-07.

n113 See *id.* at 907.

n114 See *id.*

n115 *Id.* at 907-09.

n116 See Silvia Lazos Vargas, History, Legal Scholarship, and LatCrit Theory: The Case of Racial Transformations Circa the Spanish-American War, 1896-1900, 78 *Denv. U. L. Rev.* 923 (2001).

n117 *Id.* at 929-44.

n118 *Id.* at 944-46.

n119 *Id.*

n120 See *id.* at 952-65.

n121 See *id.*

n122 Charles R. Venator Santiago, Race, Space, and the Puerto Rican Citizenship, 78 *Denv. U. L. Rev.* 909 (2001).

n123 *Id.* at 910.

n124 *Id.* at fn 7, citing Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (1997).

n125 Santiago, *supra* note 122, at 911.

n126 *Id.* at fn 22.

n127 *Id.* at 913.

n128 See *id.* at 914.

n129 *Id.* at 921.

n130 See, William Greider, *The Right and US Trade Law: Invalidating the 20th Century in The Nation*, October 15, 2001, at 21.

n131 See e.g., Gloria Anzaldua, *Borderlands/La Frontera: The New Mestiza* (1987); *Criticism in the Borderlands: Studies in Chicano Literature, Culture and Ideology*, Hector Calderon and Jose David Saldivar, Eds. (1991); *U.S.-Mexico Borderlands: Historical and Contemporary Perspectives*, Oscar J. Martinez (1996) and Guillermo Gomez-Pena, *The New World Border* (1996) and *Dangerous Border Crossers: The Artist Talks Balk* (2000).

n132 See e.g., Ruth Behar, *Translated Woman: Crossing the Border with Esperanza's Story* (1993) and *The Latina/o Condition: A Critical Reader*, Part XII, Richard Delgado & Jean Stefancic, Eds. (1998).

n133 See Margaret Montoya, *Border Crossings in an Age of Border Patrols: Cruzando Fronteras Metaforicas*, 26 *N.M. L. Rev.* 1 (1996).

n134 See Margaret E. Montoya & Melissa Harrison, *Voices/Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, *Col. J. Of Gender and Law* 387 (1996).

n135 See Margaret E. Montoya, *Lines of Demarcation in a Town Called Frontera: A Review of John Sayles' "Lone Star,"* 27 *N.M. L. Rev.* 223 (1997).

n136 See Margaret E. Montoya, *Border/ed Identities: Narrative and Social Construction of Personal and Collective Identities in Crossing Boundaries: Traditions and Transformations in Law and Society Research*, Austin Sarat, et al. (Eds. 1998).

n137 Carmen G. Gonzales, *Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade*, 78 *Denv. U. L. Rev.* 981 (2001), Maria Pabon Lopez, *The Phoenix Rises from El Cenizo: A Community Creates and Affirms Latino/a Border Cultural Citizenship through its Language and Safe Haven Ordinances*, 78 *Denv. U. L. Rev.* 1021 (2001), Juan Velasco, *Making Evil: Crime Thrillers and Chicana Cinema*, 78 *Denv. U. L. Rev.* 1055 (2001).

n138 See Carmen G. Gonzales, *Beyond EcoImperialism: An Environmental Justice Critique of Free Trade*, 78 *Denv. U. L. Rev.* 981 (2001).

n139 See *id.*

n140 See Maria Pabon Lopez, *The Phoenix Rises from El Cenizo: A Community Creates and Affirms Latino/a Border Cultural Citizenship through its Language and Safe Haven Ordinances*, 78 *Denv. U. L. Rev.* 1021 (2001).

n141 See Juan Velasco, *Making Evil: Crime Thrillers and Chicana Cinema*, 78 *Denv. U. L. Rev.* 1055 (2001).

n142 See Gonzales, *supra* note 138.

n143 Id. at 983.

n144 See id. at 984-86.

n145 See Gonzales, *supra* note 138.

n146 See e.g., Sylvia R. Lazos Vargas, Globalization or Global Subordination?: How LatCrit Links the Local to the Global and the Global to the Local, *33 U.C. Davis L. Rev.* 1429 (2000); Chantal Thomas, Globalization and the Reproduction of Hierarchy, *33 U.C. Davis L. Rev.* 1451 (2000); Gil Gott, Critical Race Globalism? Global Political Economy and the Intersections of Race, Nation and Class, *33 U.C. Davis L. Rev.* 1503 (2000); Ediberto Roman, A Race Approach to International Law (RAIL): Is There a need for Yet Another Critique of International Law?, *33 U.C. Davis L. Rev.* 1519 (2000); Timothy A. Canova, Global Finance and the International Monetary Fund's Neoliberal Agenda: The Threat to the Unemployment, Ethnic Identity, and Cultural Pluralism of Latina/o Communities, *33 U.C. Davis L. Rev.* 1547 (2000) and Tayyab Mahmud, Race, Reason, and Representation, *33 U.C. Davis L. Rev.* 1581 (2000) (reviewing Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (1999)).

n147 See Pabon Lopez, *supra* note 140.

n148 Id. at 1019, citing El Cenizo, TX, Predominant Language Ordinance, No. 1999-8-3(a) (August 3, 1999).

n149 See 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); William Bratton, Law and Economics of English Only, *53 Miami L. Rev.* 973 (1999); Drucilla Cornell, The Imaginary of English Only, *53 Miami L. Rev.* 977 (1999); Madeleine Plasencia, "Suppressing the Mother Tongue"--AntiSubordination and the Legal Struggle Over Control of the Means of Communication, *53 Miami L. Rev.* 989 (1999); and Yvonne A. Tamayo, Literal Silencing/Silenciando la Lengua, *53 Miami L. Rev.* 995 (1999).

n150 See Sharon K. Hom, Lexicon Dreams and Chinese Rock and Roll: Thoughts on Culture, Language, and Translation as Strategies of Resistance and Reconstruction, *53 Miami L. Rev.* 1003 (1999).

n151 See John Hayakawa Torok, Finding the Me in LatCrit Theory: Thoughts of Language Acquisition and Loss, *53 Miami L. Rev.* 1019 (1999).

n152 See Keith Aoki, Introduction: Language is a Virus, *53 Miami L. Rev.* 961 and Catharine Pierce Wells, Speaking in Tongues: Some Comments on MultiLingualism, *53 Miami L. Rev.* 983 (1999).

n153 See Pabon Lopez, *supra* note 140.

n154 Id. at 1023.

n155 Id. at 1025-27.

n156 See Velasco, *supra* note 141.

n157 See *id.* at 1054.

n158 See *id.* at 1055.

n159 See *id.* at 1058.

n160 *Id.* at 1059.

n161 For other examples of LatCrit-type analyses that employ textual analysis, see Elvia Arriola, *Lone Star and the Faces of Despair in INS Raids*, 28 *U. Miami Inter-Am. L. Rev.* 245 (1997); Montoya, *Review of John Sayles' Lone Star*, *supra*, note 135; and Nicholas A. Gunia, *Half the Story Has Never Been Told: Popular Jamaican Music as Antisubordination Praxis*, 33 *U.C. Davis L. Rev.* 1333 (2000). See also, the articles by Pedro A. Malavet, Steven W. Bender, and Nancy Ehrenreich in this symposium.

n162 Facts on Hispanic Higher Education. wysiwyg; //91/http://www.hispanics.com /higheredu.asp (visited on 9/10/01), citing the Statistical Abstract of the United States 1999, U.S. Bureau of the Census.

n163 *Id.*, citing the ERIC Clearinghouse on Urban Education, 1995.

n164 See Norberto Valdez, Marcia Fitzhorn, Cheryl Matsumoto, and Tracey Emslie, *Police in Schools: The Struggle for Student and Parent Rights*, 78 *Denv. U. L. Rev.* 1069 (2001).

n165 *Id.* at 1070.

n166 *Id.* at 1075, referring to *Colo. Rev. Stat.*, § 19-2511.

n167 *Id.* at 1070, *et seq.*

n168 See Mary Romero, *State Violence, and the Social and Legal Construction of Latino Criminality: From El Bandido to Gang Members*, 78 *Denv. U. L. Rev.* 1089 (2001).

n169 The words pachucos and cholos are Mexicano/Chicano slang for "homeboys" denoting gang members. The word pachuco dates from the 1940's and was popularized by the LA Times in referring to Mexican-American youth. The word cholo has acquired more recent usage.

n170 See San Juan, *supra* note 87.

n171 See Gott, *supra* note 88.

n172 *Id.* at 820..

n173 See Romero, *supra* note 168, at text accompanying *fn*s 33 et seq.

n174 See *id.* at 1107.

n175 See *id.* at 1112 et seq.

n176 As I write this, I am aware of the antiessentialism that is supposed to define LatCrit Theory and I wonder how to describe this memory and reminiscence without contravening this ideal. When we convened as a circle of Latinas, it was because we formed a loose coalition, sharing common cultural, racial/ethnic and gendered experiences while recognizing and valuing that there were differences among us. We also recognized that we were in coalition with men, other women of color, white women, . . . but for that short time, we were giving emphasis to what it meant to be Latinas (and more specifically Chicanas, Cubanas, Puertoriquenas, etc.)--the ways in which race/ethnicity and gender have imprinted us as we move through our personal and academic lives. I write that anti-essentialism is supposed to define LatCrit because I have always been of two minds about this ideal. I came to critical theory through my activism in the Chicana/o movement. My racial/ethnic identity was not formed through my theoretical work as a law professor although my identities have been refined and deepened through that work. Since the 1960's, I have been active in a variety of community-based, Chicana/o-identified projects--United Farm Worker boycotts, voter registrations, prison/jail tutoring, etc. as well as MECHA (the student organization for Chicanas/os) and Chicano/a Studies projects. During this period, my father was also active in local Chicano-identified work as a social worker. At the same time, I was at the edge of the woman's movement. I remember devouring each issue of *Ms. Magazine*, marveling at the barriers that were falling, and knowing that my horizons were expanding, but I was not a participant in that movement. Let me offer a personal narrative: around 1986, I joined NY NOW and attended a conference that had been organized by Phyllis Chesler and others. During the meeting and later in a face to face confrontation, I objected to the fact that there were no brown women or poor women as panel participants or as subjects of study. Ms. Chesler later called me at home and was very angry that I had raised this objection. When she calmed down and conceded that there could have been more diversity on the panel (I am sure she didn't read me as a woman of color), she offered to have me participate in some other activity; I declined. (Forgive my faux pas for foisting these stories on you, but it is context that I cannot ignore. See, Sumi Cho and Robert Westley, *Critical Race Coalitions: Key Movements that Performed the Theory*, 33 *U.C. Davis L. Rev.* 1377, *fn* 75 and accompanying text.)

In my opinion LatCrit's anti-essentialism ideal has, at times and for me, made it harder to understand how the law impacts Latinas or Chicanas. Expanding the viewpoints and the participants in order to understand the complexity of identities is critically important and LatCrit's work on developing mechanisms for doing so is a significant accomplishment. The LatCrit project can rightly take credit for this innovation, insight and intervention. However, I think it's a serious mistake not to allow time and space for Latinas (with or without other women, of color and white) to meet and interact at LatCrit meetings. The Chicana/Cubana/Puertoriquena voice is still muted at the meetings, and many of our stories are still untold. But perhaps I feel this need and desire to meet as Latinas (and sometimes as Chicanos/as within LatCrit) because of my age and my memories from another time. It is ironic to me that, from my perspective, the LatCrit anti-essentialism ideal has isolated us within a discursive space where we can see one another and hear our common realities analyzed but where we don't connect through our group identities--as Latinas or as Chicanas/os. Moreover, I think that recovering a gendered time/space or ethnicized time/space within LatCrit could not be easily done. When Latinas have met, there is an awkwardness fostered by the group norm against essentialism that impedes cohesion and comfort.

n177 I am borrowing Rachel Moran's evocative phrase. See Rachel Moran, *The Implications of Being a Society of One*, 20 *U.S.F. L.Rev.* 503 (1986).

n178 I will offer only one example. At the meeting with the editors of the California Law Review that resulted in a highly prized LatCrit symposium, several of us argued that the proposed deadlines were unrealistic, especially for those of us who had child care responsibilities. We were told the deadlines were fixed and nothing could be done. Most of the Latinas opted out. Later I learned that the deadlines had been largely ignored.

One lesson we in LatCrit have learned and relearned is that hearing marginalized voices takes effort. We must occasionally quiet the dominant voices so that the muted ones come through. We must scan the room to see who hasn't spoken and make time for them. We must occasionally consider the effect of deadlines and other rules.

n179 See fns 3 and 4 and accompanying text, *infra*.

n180 See LatCrit V, Substantive Outline at 8.

n181 See Athena Mutua, *Why Retire the "Feminization of Poverty" Construct*, 78 *Denv. U. L. Rev.* 1171 (2001).

n182 See Kendal L. Broad, *Critical Borderlands*, 78 *Denv. U. L. Rev.* 1151 (2001).

n183 See Lisa Sun-Hee Park, *Perpetuation of Poverty through "Public Charge"*, 78 *Denv. U. L. Rev.* 1205 (2001).

n184 See Mutua, *supra* note 181.

n185 See Laura M. Padilla *Reforming and Influencing Public Policy, Law and Religion: Missing from the Table*, 78 *Denv. U. L. Rev.* 1223 (2001).

n186 See Broad, *supra* note 182.

n187 See *id.* at 1152.

n188 See *id.*

n189 See *id.*

n190 *Id.*

n191 See *id.* at 1149-50.

n192 See id. at 1150-51.

n193 See id. at 1159. This disruption of binary categories should be of special interest to Latinas/os who have historically been caught between the white/non-white racial categories of the dominant U.S. racial scheme.

n194 At this time, Coco Iwamoto was a third year law student at the University of New Mexico School of Law and had taken several of my courses. I met Coco during her second year when she staged an intervention to force the law school to create unisex bathrooms by circulating a brochure that artfully disclosed her transgendered identity and asked which bathroom s/he should or could use. The Dean resisted making a change for about twenty-four hours when it was clear that Coco was not to be silenced or appeased. She was a paradigm-shattering experience for many of us. She taught students and faculty to work in coalition by recognizing differences and valuing them.

n195 Broad, supra note 182.

n196 Id. at 1165.

n197 See Park, supra note 183.

n198 Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, Sept. 30, 1996, 110 Stat. 3009-346.

n199 Personal Responsibility & Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-113, Aug. 22, 1996, 110 Stat. 2105.

n200 See Park, supra note 183.

n201 See id. at 1209-14.

n202 See text accompanying fn. 42.

n203 See text accompanying fn. 47.

n204 See text accompanying fn. 50.

n205 See Mutua, supra note 181.

n206 See id. at 1171-72.

n207 See id. at 1172-73.

n208 See Padilla, *supra* note 185.

n209 See id. at 1225.

n210 Id. at 1226.

n211 Id. citing Jeanette Rodriguez, *Our Lady of Guadalupe: Faith and Empowerment among Mexican American women* at 61 (1994).

n212 See Padilla, *supra* note 185.

n213 See, e.g., Religion and Spirituality in Outsider Theory: Toward a LatCrit Conversation (a cluster of articles by Margaret E. Montoya, Verna Sanchez, Nancy K. Ota, Reynaldo Anaya Valencia, Emily Fowler Hartigan, and Max J. Castro) in *19 Chicano-Latino L. Rev.* 417-503 (1998) and Elizabeth M. Iglesias & Francisco Valdes, *Afterword: Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, *19 Chicano-Latino L. Rev.* 503 (1998).

n214 See, Solarzano & Yasso, *supra* note 31 et seq.

n215 See, Cho & Westley, *supra* note 32.

n216 See, Marcos Pizarro, *Seeking Educational SelfDetermination: Raza Studies for Revolution*.

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***7 MIRADAS DESDE EL SUR INTRODUCCIÓN AL SIMPOSIO LATCRIT SOBRE DERECHO
INTERNACIONAL Y DERECHO COMPARADO BUENOS AIRES, AGOSTO DE 2003**

Roque Martín Saavedra [\[FNa1\]](#)

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I. INTRODUCCIÓN

Esta oportunidad nos encuentra en la presentación del primer simposio LatCrit totalmente realizado en idioma español, este simposio corresponde a una parte del Coloquio que se ha realizado en el ámbito de la Facultad de Derecho de la Universidad de Buenos Aires en agosto de 2003. [\[FNI\]](#)

Los desafíos que significa la ampliación del campo teórico y práctico en el ámbito académico deben, en muchas ocasiones, sobreponer y superar una cantidad de barreras que, no en vano, dividen el campo del conocimiento, la práctica y la acción política.

En un contexto de imposible y al mismo tiempo deliberada globalización, es no solo necesario sino imperioso localizar la teorización en un contexto de múltiples dimensiones que permitan utilizar las herramientas de crítica y autocrítica en una infinidad de contextos. Es esta la única manera en la que la producción académica que se denomine crítica y que tenga aspiraciones de ser instrumento de cambio de realidades sociales opresivas y avasallantes, tenga futuro.

En nuestra empresa, la serie de problemas a superar a la hora del encuentro fueron liderados, en principio por la lengua, seguida por las estructuras y los *8 procedimientos que tanto en el norte como en el sur marcan nuestro quehacer de la producción académica.

De todos modos, ésta fue la oportunidad para una infinidad de diálogos y de intercambios que nos alientan a continuar acercando posiciones y afianzando lazos. Este simposio que ahora presentamos es una muestra clara de preocupaciones comunes, incluso en el marco de realidades totalmente diferentes que nos contienen.

Sin embargo, debemos hacer notar que la apertura a la discusión y a la puesta en duda del trabajo teórico desde múltiples ángulos estuvo inevitablemente presente.

De los cuatro Coloquios auspiciados por LatCrit en ocasiones anteriores, [\[FN2\]](#) éste tuvo la peculiaridad de albergar, a lo largo de los cuatro días de realización, una serie de paneles y presentaciones totalmente en español. Catorce de ellas se reproducen en este simposio y están conformadas por colaboraciones de académicos, activistas y estudiantes pertenecientes a Chile y Argentina de las más variadas disciplinas [abogados, sociólogos, antropólogos y licenciados en filosofía]. Abarcan temas tan variados como la discriminación laboral, la cuestión identitaria, la teoría Queer, la protección de las minorías, el análisis interdisciplinario de regulaciones sociales, el rol represivo del Estado, la historia del derecho colonial, la cuestión del aborto y la anticoncepción, la familia y el derecho electoral, entre otros.

Pretender una completa exhibición de lo que la teoría LatCrit significa, en esta introducción, implicaría repasar los más de ocho años de producción académica [\[FN3\]](#) *9 raramente igualado por otro esfuerzo de pensamiento dentro del derecho; por supuesto, esto excedería este ámbito y nos desviaría del objetivo propuesto, es decir, la introducción misma. Por otra parte, no intentaremos dar cuenta de las experiencias de praxis [\[FN4\]](#) tanto a nivel personal como a nivel de comunidad.

Sin embargo, no vamos a poder comprender acabadamente lo que estos ensayos y colaboraciones significan sin adentrarnos en la teoría LatCrit, sus inquietudes, sus desafíos, sus logros y sus alcances, para poder hacerlos nuestros y darle a la teoría y práctica LatCrit una renovada contextualización más allá, y no por esto fuera de, sino sobrepasando, las imaginadas- aunque en muchas ocasiones reales-, al menos para todos aquellos que la sufren, fronteras norte-sur, desarrollo-subdesarrollo, dirección-subordinación, acción-respuesta y cualquier otro contorno que divide el día a día en nuestras Américas, en este caso y entre el norte y el sur, en general.

A continuación intentaremos una descripción, siempre parcial, de qué implica la teoría LatCrit, y cuáles pueden ser las aperturas, creaciones de espacios y beneficios que, no sólo como académicos y activistas sino también como habitantes de la América Latina empobrecida, mal nutrida, discriminatoria, todavía altamente autoritaria, excluyente y violenta, debemos o podremos esperar.

Seguida y brevemente, nos detendremos en la experiencia del Coloquio desarrollado en Buenos Aires a modo de introducción de los ensayos y colaboraciones presentados y que se reproducen en este Simposio, para ver en qué sentido, colaboran, amplían o desafían la teorización LatCrit en general.

Finalizaremos con un balance que nos incite a continuar en este diálogo para que las imaginadas-impuestas barreras, contextualizaciones y diferentes necesidades puedan ser administradas de manera que podamos mutuamente beneficiarnos hasta tanto este tipo de perversas diferencias hayan sido apartadas.

***10 II. AMPLIACIÓN DEL CAMPO DE LA TEORÍA LATCRIT EN EL CONTEXTO DE AMÉRICA LATINA**

A. Inicios

Si bien la teorización crítica en el ámbito del derecho ha tenido y tiene sus seguidores en nuestro continente, [\[FN5\]](#) el propósito de la teoría LatCrit al ampliar su campo de desarrollo y participación hacia Latinoamérica crea un nuevo espacio de interesantes consecuencias dentro de lo que significa la cultura jurídica en nuestro continente y dentro de la teorización LatCrit misma.

LatCrit se enrola dentro de las teorías que bajo una determinada perspectiva han reclamado para sí el protagonismo; dentro de las diferentes escuelas que analizan el derecho desde la aparición de la Escuela de Estudios Legales Críticos o, por su denominación en inglés, Critical Legal Studies, como también se la conoce en Latinoamérica. Como es sabido, esta escuela debe parte de su desarrollo al campo transitado por el Realismo

Jurídico Norteamericano, pensadores de la talla de Oliver Wendell Holmes Jr., [\[FN6\]](#) Jerome Frank, [\[FN7\]](#) Benjamín Cardozo [\[FN8\]](#) y Roscoe Pound, [\[FN9\]](#) sólo para nombrar algunos ejemplos destacables de una forma de pensar el derecho que fijó su mirada en el proceder judicial, o si se quiere, en la tarea de diaria de dilucidar qué significa el derecho en concreto, en el diario proceder de los tribunales, de ahí su nombre atado a la "realidad".

Lamentablemente, el realismo jurídico norteamericano, no así su par del otro lado del Atlántico, el Realismo Jurídico Escandinavo, [\[FN10\]](#) no superó, según estimaciones, al pasaje de la Segunda Guerra Mundial. [\[FN11\]](#)

***11** Nuevos vientos soplaron en la sociedad norteamericana y con ellos el derecho también provocó cambios sustanciales que hasta el día de hoy continúan reconfigurando el significado del derecho en Estados Unidos. [\[FN12\]](#)

Donde frena el análisis del derecho por parte de los realistas es donde comienza para los críticos. La investigación de la tarea judicial muestra que donde los realistas como Frank encontraban corazonadas en las decisiones judiciales, los críticos encuentran prejuicios que sesgan cualquier posibilidad de alcanzar la noción moderna de justicia y de diferenciación entre el derecho y la política como sostienen los positivistas en general.

En el quehacer judicial los críticos encuentran una indeterminación que destruye la calidad de "ciencia" al menos en su sentido moderno; demasiados intereses sectoriales, políticos, de clase y de raza que minan el objetivo de imparcialidad judicial, hacen imposible la justicia.

Es dentro de este ámbito que la Escuela de Estudios Críticos se disemina, a mediados de los años ochenta, [\[FN13\]](#) fertilizando con sus postulados una multiplicidad de teorías que analizan particularmente el derecho desde diferentes perspectivas, muchas de ellas conexas y complementarias entre sí: la Escuela de Estudios Críticos Raciales, los Estudios Feministas del Derecho, Derecho y Desarrollo, y los Estudios Gay y Lésbicos del Derecho, Derecho y Literatura, Derecho y Psicoanálisis, entre otros. [\[FN14\]](#)

Precisamente, gracias a la apertura de la academia hacia los discursos de aquellos sujetos menos aventajados por el orden dado, es que el acercamiento a la Escuela de Estudios Legales Críticos, de académicos provenientes de esos mismos sectores, sienta las bases de la posterior migración hacia teorías más detalladas y especificadas del derecho. [\[FN15\]](#)

***12 B. Los Fundamentos**

De esta manera, a mediados de los noventa, LatCrit se funda en la intersección de la raza, la clase y la sexualidad, como una teorización inclusiva que abraza y da la bienvenida a pensadores y producciones que ponen en tela de juicio las concepciones jurídicas acerca de la etnización del sujeto latino, en principio y toda otra clasificación racial sesgada más tarde, respecto del acceso a la justicia y la comprensión de sus implicancias que muchas veces, debido a una estricta posición de clase, hace a los sujetos y comunidades vulnerables en sus derechos más básicos. Finalmente, abraza y da la bienvenida a miradas que también ponen en tela de juicio los prejuicios fundados sobre la base del género y de la orientación sexual, prejuicios destinados a la subordinación y opresión de las individualidades y de las comunidades mismas.

Este desarrollo es llevado a cabo por la teoría LatCrit desde el primer encuentro en puerto Rico a mitad de los noventa, centrando su crítica sobre el sistema jurídico norteamericano y sobre sus operadores con especial énfasis en la situación de la minoría conformada por personas provenientes de diversos países de América Latina y el Caribe y sus descendientes dentro de los Estados Unidos.

La experiencia de soledad que frecuentemente y durante mucho tiempo habían experimentado los profesores de derecho de origen latino en la academia norteamericana tiene su final con varios encuentros como el de puerto Rico

en 1995 y luego el de La Jolla, California de 1996 que lanzan la teoría LatCrit como un campo de conexión, comunidad y apoyo mutuo entre la academia latina norteamericana.

Este proyecto, no se detiene en eso sino que, en cambio, toma dimensiones por demás interesantes debido a las mismas inquietudes de muchos de los y las profesor/as asistentes a esos encuentros. Por otra parte, la teorización LatCrit, de la misma manera que toda otra escuela de pensamiento centrada en una identidad, debe transitar la pesada problemática de no estar atada a una trampa identitaria que la consuma en sus propios argumentos.

Para contrarrestar la cuestión identitaria, LatCrit rápidamente se mostró inclusiva de toda identidad que refleje un menoscabo de la persona, por ejemplo en el caso de la inclusión, desde sus inicios, de las problemáticas referentes a la cuestión Lésbica, Gay y de toda otra identificación sexual segregada indica la preocupación sobre un aspecto por demás problemático en las diferentes culturas latinoamericanas.

La inclusión de una multiplicidad de problemáticas referentes a la raza y al origen nacional, como los latinos y latinas que viven en Estados Unidos, no puede desoir la similitud que comparte con la población originaria, la población afroamericana, y la población de origen asiático.

***13** Sobre la cercana posibilidad de encerrarse dentro de una clasificación identitaria o definirse por exclusión del centro, LatCrit ha explorado la crítica acerca de los binarismos que dejan sin nombrar, que dejan sin lugar a todas/os aquellas/os que no entramos en una sólo categoría, o al menos que no entramos en varias categorías que nos definan y ubiquen en el afuera, o en el adentro. [\[FN16\]](#) De hecho, la mayoría de las veces, incluso la teoría LatCrit en sí misma puede ser catalogada como periférica dentro de la centralidad en la que se encuentra o de central dentro de la periferia en la que nos encontramos.

Esta imposibilidad de clausura nos muestra la urgencia de no dejarnos llevar, dentro del derecho, al menos, por una clasificación identitaria generalizante, definida previamente, a menos que queramos correr el riesgo de dejar fuera de su alcance a muchas y muchos.

Es con este tipo de herramientas que se ha entendido la lucha por romper con la opresión como uno de los pilares fundamentales en la teoría LatCrit: no sirve de mucho tratar de salvar una porción de la población si aquéllos que se encuentran en similares condiciones de opresión siguen sufriendo por las mismas condiciones.

Esta práctica inclusiva es de vital interés para todas y todos aquellos que trabajamos de una u otra manera por la igualdad de condiciones en nuestro continente.

Es de esta forma, que luego de nueve años de teorización LatCrit, ésta conserva de latino el nombre como un homenaje a todas y todos aquéllos que como ejemplo han sufrido las consecuencias de no pertenecer a la mayoría dominante y excluyente. Pero en su composición y en su preocupación, LatCrit es tanto de la comunidad Latina de profesores de derecho como lo es de la comunidad Asiática o de origen africano, y en esto se expresa el resultado de una preocupación constante por la inclusión. [\[FN17\]](#)

C. Pilares [\[FN18\]](#)

A medida que la teoría LatCrit fue creciendo con la incorporación de las Conferencias anuales y demás eventos que han sido auspiciados entre los que se ***14** encuentran como ya dijéramos, cuatro de los Coloquios como el presentado en Buenos Aires, se fueron delineando una serie de pilares cuya función es ayudar y no limitar el desarrollo de esta teoría en las distintas área de intervención.

Estos pilares cumplen la función práctica de resumir mucho de lo que fue configurándose como LatCrit en

cuestiones de principios y de políticas a lo largo del tiempo, cuestiones como, y para dar sólo un ejemplo, la multidimensionalidad, es decir la capacidad de abrazar la multiplicidad de puntos de vista sin caer en el frustrante relativismo. Esto, aplicado al análisis jurídico LatCrit, significa la posibilidad de analizar las situaciones y realidades de las múltiples identidades que configuran tanto a los y las latinas como a muchos otros grupos, simultáneamente, significa apreciar las relaciones intergrupales y entender de qué manera las operaciones de privilegios y opresión, benefician y perjudican a los sujetos y comunidades, sin generalizar ni simplificar las complejas realidades que los diferentes actores viven.

Estos pilares pueden ser delineados de la siguiente manera:

1. Reconocer y aceptar la naturaleza política del estudio y saber jurídico, más allá de las negaciones o aseveraciones en contrario.
2. Concebirnos a nosotras/os mismas/os como académicos activistas comprometidos con la práctica para maximizar la relevancia social de la teorización LatCrit.
3. Construir comunidades intra-Latina/o y coaliciones intergrupales para promover las diferentes luchas por la justicia social.
4. Abrazar nuestros puntos en común, así como respetar las diferencias para de esta manera conformar el diseño de la transformación social.
5. Aprender de la teorización del afuera y de los excluidos para orientar y desarrollar la teoría y práctica LatCrit en todo escenario y en todo esfuerzo.
6. Asegurar un continuo compromiso de auto-crítica para así mantenernos en un marco concreto de acuerdo con nuestros basamentos.
7. Balancear especificidad y generalidad en el análisis LatCrit para asegurar la multi-dimensionalidad de la contextualización como el estándar del discurso LatCrit.

D. Funciones

Para que la teoría del derecho, el análisis jurídico y la participación académica sean provechosos, LatCrit ha diseñado varios pilares de atención a modo de descripción del quehacer crítico.

La producción del conocimiento LatCrit es básicamente un movimiento discursivo e intelectual que procura el entendimiento de las y los excluidos dentro del derecho. La teorización LatCrit representa un acercamiento interdisciplinario *15 y focalmente crítico hacia la comprensión de las comunidades de excluidas y excluidos.

Esta producción de conocimiento va dirigida hacia el mejoramiento en el trato, acercamiento, interacción, sostenimiento y desarrollo de las comunidades menoscabadas, pero, de ninguna manera, LatCrit se contenta sólo con esto.

En el avance de la transformación es necesario, consecuentemente, ser prácticos así como profundos: la mirada de LatCrit sobre la teoría es determinante de esta función. La teoría sin su función transformadora de la realidad dada no tiene objetivo.

El avance de la transformación social mediante el desarrollo de herramientas jurídicas que permitan la inclusión y sostengan la participación de los grupos subordinados, debe ser el norte de la teoría dentro del ámbito jurídico.

La expansión y conexión de las diferentes luchas, el interés en mejorar las condiciones de los grupos subordinados no debe circunscribirse a sólo un ámbito o a sólo un aspecto de estos, sino por el contrario debe extenderse y ser abarcativo de múltiples necesidades e infinidad de opresiones. En este sentido, la extensión de LatCrit hacia América latina es un ejemplo más del impulso y la decisión de ser no sólo inclusivos sino también compartir herramientas y ensayar soluciones conjuntas a problemas comunes.

Comunidad y coalición, el esfuerzo LatCrit no ha sido ni es, a lo largo de estos años, la suma del trabajo de individualidades, sino que por el contrario, ha sido y es, el resultado del trabajo comunitario de un grupo extenso de profesoras y profesores de derecho.

Este esfuerzo comunitario no es sólo a nivel teórico-práctico, sino que también lo es a nivel humano y social, haciendo énfasis en la diversidad, la inclusión, la democracia interna así como en la auto-crítica. [\[FN19\]](#)

Esta constante auto-crítica tiene como ejemplo de aplicación el concepto de "cartografía", dentro de LatCrit, o para el caso dentro de cualquier otra teoría, también, tiene la ventaja de ser elemento simplificador de miradas, es decir como una manera de catalogar las diferentes influencias, datos, corrientes y preocupaciones que de alguna u otra manera se estén formulando hacia el interior de la teoría.

Esta obligada taxonomización deviene en exposición de las inconsistencias que tanto la identidad como la misma diferencia supone, es decir la estabilidad y la fijeza, en última instancia es un proceso de auto corrección cuando las estabilidades amenazan el mismo disenso.

***16 E. Nuestro Contexto**

La especial contextualización de LatCrit sobre las minorías y los excluidos en los Estados Unidos, hace del proyecto de superar fronteras nacionales y avanzar sobre las injusticias y desigualdades que el derecho sustenta también en América Latina y el Caribe, proyecto del cual, este Simposio es ya parte, una tarea ardua y compleja.

La dificultad de la construcción de una teoría LatCrit continental surge desde muchos ángulos, desde cuestiones como el lenguaje, la diferencia entre la academia del norte y la del sur, nuestro diferente modo de entender el derecho y las diferentes prácticas del mismo, hasta las obvias diferencias de desigualdad económica, social y humana que a lo largo de todas las Américas no es más que una constante.

Estas diferencias que complejizan hasta el extremo la posibilidad de relevancia de una teoría LatCrit continental no hacen, sin embargo, más que dar fuerza a la empresa en cuestión. Si del estudio y mejoramiento de las desigualdades que el derecho sustenta se trata, América Latina es un campo, tristemente, más que fértil para el desarrollo de este tipo de intervenciones.

Podemos, por ejemplo hablar de la promoción de la figura de la mujer, en este nuestro continente, es también un lugar histórico inevitablemente necesitado de discursos, luchas y posibilidades de desarrollo para el género que conforma más de la mitad de la población.

Si hablamos de la raza o de las razas, un término altamente discutido, pero no por eso ausente a la hora de segregar, América Latina tiene una enorme deuda de reparación con quienes son originariamente los dueños de las tierras que hoy sirven para el cultivo y vivienda de la mayoría de la población, mucha de esta de descendencia europea. Aunque el término raza no termina ni se circunscribe a esto solamente, es un término vivo que permite la segregación, el maltrato y la injusticia de muchos de nuestros habitantes. [\[FN20\]](#) Esta situación posee una actualidad semejante a cualquiera de nuestros problemas económicos.

Podemos, aunque creo que en realidad debemos, hablar de desigualdades económicas, de acceso a la educación y de promoción de un futuro posible, estas cuestiones, son tan competentes al derecho como pueden serlos las cuestiones técnicas de la legislación.

***17** Difícil será intervenir en pos de un cambio radical en el modo de operar, en el modo de intervención o en la

relación del derecho con la sociedad que tenga en cuenta la realidad siempre cambiante, en especial la realidad de aquellos más vulnerables, si no acentuamos la mirada sobre el estudio y la enseñanza del derecho, sobre cuáles son las necesidades y preocupaciones de las y los abogadas/os que egresan de nuestras universidades año tras año, sobre cuánto de democrático tiene la currícula de abogacía y cuánto de compromiso social tiene una carrera que forma las y los futuras/os operadores de una de las instituciones humanas más entrelazadas con la vida como lo es el derecho.

Injusto sería no hacer notar que estos, y muchos otros aspectos del derecho en nuestro continente ya están siendo tratados y desde hace tiempo preocupan a académicos y activistas que día a día tratan de hacer de nuestro derecho en abstracto algo concreto. Pero, la intención de LatCrit de expandir sus alcances hacia América Latina trae nuevos aires que se suman a la monumental tarea de cambiar la realidad dada.

Esta tarea más allá de abrir nuevas puertas de intervención y promoción, nos aproxima en nuestras vulnerabilidades comunes, en nuestras preocupaciones comunes y finalmente, en nuestras esperanzas compartidas.

III. LA EXPERIENCIA, COMPLEJIDADES Y ENSEÑANZAS

La experiencia que nos sitúa en esta oportunidad es una muestra más del compromiso de LatCrit de ampliar el campo de práctica, el acento en el acercamiento de las ideologías contextualizadas tratando de derribar barreras imaginarias. Es también parte de la inquietud que caracteriza a LatCrit por no quedarse estático, por concentrarse en cuánto hay todavía por hacer y cuánto es posible realizar.

La conceptualización más acertada acerca de qué concretamente significa LatCrit, más allá de la literalidad de sus siglas, es la idea de una experiencia en construcción, en constante construcción. Esta característica definitoria y no por joven sino por dinámica y abierta, a nuestro entender, de la teorización LatCrit es uno de sus mayores fuertes, la construcción implica colaboración, implica no estabilizarse, sobretodo, no anquilosarse. [\[FN21\]](#)

Uno de los detalles a destacar, sin lugar a dudas, es la proximidad que LatCrit logra continuamente en sus Coloquios al "localizarse" en un lugar determinado, esto a la relación, cualquiera que ésta sea y de la forma que se presente, entre una academia y otra, no hace más que bien.

***18** En este contexto y sobre estas bases es que LatCrit llega a nuestro ámbito, los desafíos que han sido sorteados con mayor o menor acierto son muchos.

Nuestro primer y mayor desafío quizás, es el lenguaje, la teoría LatCrit a pesar de ser una empresa con muchos y muchas protagonistas de origen o ascendencia de culturas provenientes de América Latina y más precisamente de la América Hispánica, ha sido desde sus comienzos relatada y formada en idioma inglés.

Los motivos de esto son más que obvios, la teorización LatCrit se forma en los Estados Unidos y la lengua dominante es una muestra más, en este caso de las necesidades de expresión en las comunidades de excluidos incluso dentro de la academia norteamericana.

Sin embargo, ha habido esfuerzos por conformar una historia si no enteramente en español al menos bilingüe de LatCrit, de esto dan cuenta las/los académicas/os LatCrit desde sus comienzos, estos esfuerzos han dado sus frutos y los seguirán dando. Este Coloquio es uno de esos esfuerzos. [\[FN22\]](#)

Cuando nos remitimos a la cuestión de la lengua, debemos dividir el tema en dos aspectos que sin estar separados, políticamente hablando, sí lo están en cuanto a objetivos se refiere, y esto es de suma importancia, política, por supuesto.

Si entendemos la lengua como herramienta de trabajo, entonces las limitaciones se centran en la capacitación mutua, cuestión que obviamente no escapa al acceso al conocimiento y a las oportunidades de crecimiento y desarrollo. De ahí su costado político, aunque eminentemente técnico. En cambio, si entendemos la lengua como instrumento de dominación, es decir, eminentemente política, debemos aceptar que tanto el español como el inglés, portugués o cualquier otra lengua europea, en nuestro continente, tiene el mismo status de imposición cultural. [\[FN23\]](#) En América Latina no hablamos sino por medio de la lengua de nuestro colonizador, transformada, adaptada y apropiada, cierto es que esas son características de la lengua misma cuando está viva, es decir cuando se "es hablada", pero esta característica no escapa ni exorciza a su intención básica, esto es, ser medio de sustitución de cultura como lo fue desde la religión hasta la dieta alimentaria en nuestro continente.

Otro de los desafíos en esta experiencia ha sido la elección por parte los interesados en participar en el Coloquio de los temas a tratar, como verán en este *19 Simposio la elección de los temas marca una definida preocupación por temas que dan cuenta de una cierta maduración de las discusiones sociales, [\[FN24\]](#) es decir, no hay casi discusiones sobre la libertad de expresión en sí misma, sino de ciertas aristas y complejidades propias de sociedades que dan por sentado la titularidad de este, u otros derechos en democracias formales como las nuestras.

De esta manera, en esta oportunidad los intereses se han centrado casi exclusivamente en cuestionar e indagar sobre los modos de represión y las regulaciones que se ciernen sobre las llamadas minorías, [\[FN25\]](#) así como también en la cuestión identitaria, [\[FN26\]](#) la teoría y análisis del derecho [\[FN27\]](#) y la comunidad. [\[FN28\]](#)

Las enseñanzas que podemos extraer de este Coloquio son en su mayoría cuestiones de encuentros y desencuentros. Los intereses de la academia del norte en muchos casos no coinciden con aquéllos de su par del sur y viceversa. Esto en muchos sentidos es saludable y sintomático de las diferentes realidades que nos rodean. Sin embargo, LatCrit habrá de concentrar los esfuerzos en encontrar intereses en común, puntos de convergencia que seguramente como ya lo hemos expresado a lo largo de esta introducción, son muchos y muy urgentes en su mayoría, sobretodo si quiere dar, como sin duda es la intención, a esta empresa de acercamiento y colaboración entre el sur y el norte duración y prosperidad.

***20 IV. LAS MIRADAS, SUS CONTRIBUCIONES**

Una de las riquezas de este Simposio reside en la interdisciplinariedad que impera, como muestra no sólo el trabajo en colaboración sino el diálogo que podemos entablar sobre inquietudes similares proviniendo de diferentes disciplinas del conocimiento.

Al derecho, en particular, esta apertura lo previene del aislacionismo académico y de la afección al monólogo que tanto lo ha caracterizado.

Las contribuciones en esta oportunidad vienen de campos tan variados y tan vastos en sí mismos como lo son la Sociología, la Filosofía, la Cultura y la Comunicación y los estudios Literarios, sólo a modo de ejemplo no exhaustivo.

Otra de las características que es menester destacar, es la presencia de colaboraciones. Varios de los artículos que conforman este Simposio son el resultado del trabajo en conjunto. [\[FN29\]](#)

La temática, como ya se ha adelantado, que se impone, en muchos casos ha sido un cruce entre sexualidad y política, cruce que parece ser casi a modo de tributo no intencional, al menos concientemente, a una de las novelas argentinas quizás, más destacadas, conocidas y controversiales de los últimos tiempos como lo es "El Beso de la Mujer Araña". Es en ese contexto que Puig relaciona magistralmente la sexualidad con la política en nuestros turbulentos años setenta, [\[FN30\]](#) esa relación es recordada en este Simposio de manera no expresa pero si se quiere,

includible. [\[FN31\]](#)

De todos modos, este no es en absoluto un Simposio monotemático, y esta asociación con la literatura del cono sur es sólo una muestra sintomática, si se quiere, de la complejidad y la problemática de la sexualidad en nuestro ámbito.

El lector se encontrará, asimismo con diversas aristas de la preocupación académica en el cono sur, como son la teoría del derecho, aspectos sustantivos de la ley y la cuestión comunitaria.

Los artículos han sido agrupados alrededor de ejes temáticos que no los definen ni agotan pero sí ayudan a orientar a la lectora/or dentro del Simposio. De esta manera, hay cuatro ejes temáticos que describen la Discriminación y *21 Subordinación: Derecho y poder en acción, Las Identidades y políticas en el Derecho y la Sociedad como reflexiones localizadas desde el sur geográfico, La Familia, Comunidad y la Nación, Críticas comparativas y recuentos y finalmente, por su singularidad tanto en exposición como en presentación y conformación, el grupo experimental de pensamiento experimental: Soy Cuyano.

El primer grupo de colaboraciones comienza con Regulaciones, Normas y Conflictos Culturales: La Ley de Uniones Civiles en Buenos Aires, donde los autores de esta colaboración, Ilona C. Aczel, Juan E. Pechin y Flavio Rapisardi, se centran en la sanción de la ley de Unión Civil en la Ciudad de Buenos Aires, poniendo el acento en las especiales circunstancias que llevaron a una ciudad como Buenos Aires con un movimiento político de "minorías sexuales" considerablemente menor al de ciudades como la brasileña São Paulo como ejemplo a legislar sobre la relaciones entre personas del mismo sexo dándoles un carácter oficial.

La redención operada por los partidos políticos tradicionales luego de la revuelta popular del 19 y 20 de diciembre de 2001 encontró, como lo señalan los autores, en la propuesta de ley de Unión Civil, la creación de una institución jurídica que abre el camino a la formalización de las parejas formadas por personas tanto del mismo como de distinto sexo, un espacio en dónde provocar un cambio, una alteridad frente a la clásica operación política en Buenos Aires.

Seguidamente, los autores en esta colaboración se concentran en el análisis del debate parlamentario, específicamente en lo atinente a la tensión dicotómica entre libertad e igualdad. Tensión que, como se muestra, fue utilizada por aquéllos que se oponían a la propuesta de ley en el sentido de oponer una "diferencia" que sobrevalora y promociona una elección de vida o de plan de vida que la misma Constitución Nacional suya garantiza.

Sin embargo, la crítica realizada por los autores a la tan mentada "igualdad" formal que esconde abismales desigualdades reales en sociedades como la nuestra, desigualdades frente a la ley, apunta a desarticular argumentos censores y reaccionarios que se cancelan frente a la realidad misma.

En Análisis Jurídico de la Discriminación y Relaciones Laborales en Chile Pablo Contreras se ocupa de un tema de actualidad e importancia innegable dentro de nuestro continente como lo es la esfera laboral.

En momentos en que dentro de América Latina, en países como Argentina, el porcentaje de personas desocupadas es de 19.6% [\[FN32\]](#) y de aquellas personas con problemas laborales, situaciones de contratación precaria, al margen del derecho o inestables superan estas cifras, hablar sobre el respeto de los derechos *22 fundamentales dentro del ámbito laboral resulta extremadamente complejo y delicado.

Esta complejidad se da debido a la necesidad de conservar la fuente de trabajo, que muchas veces atenta frente a la creación y afianzamiento de una cultura de defensa apelando a la ley, como el autor señala. Por otro lado, también se debe al fuerte desmantelamiento del derecho laboral operado sistemáticamente durante la "neoliberalización" del

continente.

Los conceptos de igualdad y discriminación son puestos a prueba a lo largo del texto para conjurar una relación entre el derecho laboral y el derecho constitucional. Entender que se reclame el respeto de los derechos fundamentales horizontalmente, es decir entre partes y no solo verticalmente frente al estado, gran violador de derechos fundamentales en nuestro continente, es básico y fundacional de una práctica que expanda la noción de derechos entre los destinatarios de los mismos.

La relación fallida que los perjudicados y destinatarios de los derechos tienen frente al reclamo es aclarada desde el principio de este artículo cuando el autor se pregunta sobre las razones de la casi inexistencia de demandas por discriminación en el ámbito laboral. De suyo que los actos discriminatorios son diarios y ubicuos y el trabajo no es un lugar aislado dentro del día a día, sino que en muchas ocasiones conforma la mayor parte del tiempo que una persona pasa en el mismo lugar fuera de su hogar.

Finalmente, el autor nos muestra cómo, sin un adecuado soporte procesal que allane el camino para el correcto y oportuno reclamo, la mera declaración de derechos no nos alcanza frente a este tipo de situaciones, y podríamos agregar incluso, es nocivo en extremo para formar una cultura que defienda la regla de derecho tan ausente.

Siguiendo con las presentaciones, Núñez Leiva desde el derecho, nos introduce en las Nuevas Formas de protección de los Derechos de las Minorías: Dejando atrás el Legalismo. Este artículo comienza criticando el exceso de leyes que la modernidad como normalizadora trajo consigo, Estado benefactor / paternalista dador de toda solución.

La crítica continúa en las leyes que benefician el status quo de cualquier minoría dada, sea esta racial, étnica, religiosa, política, sexual o nacional, estableciendo que, es dudoso que el sistema legal modifique conductas discriminatorias de fuerte raigambre social, y que, en caso que la ley sea lo suficientemente importante como para mover o agitar el sistema, eso no nos garantiza que el resultado final sea el querido por el legislador al momento de sanción de la supuesta ley revolucionaria.

Resulta obligada la referencia que podemos formular en torno al concepto de autoría y destino, tanto sea de una ley como de cualquier otra obra. En este *23 sentido es pertinente hacer presente el debate sobre la intención de la obra contra la intención del autor y la intención del lector que ha cautivado a la semiología. [\[FN33\]](#)

Si desde el derecho podemos alcanzar una, quizás solución o al menos una enseñanza de ese debate, es que tanto la obra como el autor y el lector en nuestro ámbito responderán a cuestiones políticas que harán uso y no interpretación de la obra del legislador tanto lo quiera expresamente el legislador o lo permita el texto legal o no.

Otras de las aristas investigadas por el autor se instan en el peligroso argumento a favor de las minorías y su diferente status que merece protección.

Esta aserción, en la mirada del autor, o bien implica que tal minoría no es lo suficientemente sagaz como para desenvolverse como el resto de los agentes que presionan dentro de la sociedad sin la protección que ostentan las minorías o bien efectivamente son "diferentes" y el trato diferenciado se justifica como la misma discriminación.

Este debate, sobre la pertinencia política de las acciones afirmativas ha tenido su lugar también dentro de la sociedad Argentina en momentos de la sanción de la llamada "Ley de Cupo Femenino", [\[FN34\]](#) una especificación legal que obliga a los partidos políticos y dentro de las conformaciones legislativas a asegurar un porcentaje del mismo al género femenino y con esto propiciar la representatividad de más del 50 % de la población.

En su oportunidad se han oído este tipo de argumentos acerca de cuál era el carácter de este tipo de legislaciones, es decir: promocionar una franja de la población o protegerla con herramientas legales que incrementen su seguridad, beneficiar o proteger. [\[FN35\]](#)

Como es sabido, en estos casos, lo que está en juego, es justamente aquello que no se ve, en estos casos, años de desventaja, mala educación, falsa inserción social y menosprecio sistemático que se suman para entender el compromiso de cambio de status. Resulta difícil entender que mejoría se puede obtener cuando la ventaja es tan grande, es decir, como se puede hablar de igualdad de géneros o de razas si históricamente han sido dejados sin herramientas para su propia promoción.

Finalmente, el autor no ofrece como solución frente a este dilema de legalidad la anomia, ni la vida al margen de la ley.

***24** En este sentido, es sabido la extensa parte de la población que desconoce el concepto de ley tal y como Occidente lo entiende, haciendo altamente dudosa la posibilidad de predicar que tal o cual Nación o sociedad se rigen mediante el derecho y bajo un estado de derecho.

Sin embargo, el autor postula, sin salir de la modernidad que critica, a la educación como tarea social para el cambio y, dentro del derecho, la interpretación de la Constitución, en su función de depositaria última de los derechos fundamentales.

Resulta interesante hacer notar la diferente mirada que las dos contribuciones desde Chile traen al Simposio, ambas analizan los conceptos legales antidiscriminatorios. Mientras uno busca modos de articulación con la Constitución Nacional y sus garantías, el otro, duda fuertemente del poder legitimador y normalizador del derecho en su conjunto y de las leyes, en específico, para alterar el estado de cosas dadas o de situaciones perjudiciales y procura, en cambio, una herramienta social de largo alcance como la educación para no necesitar esas garantías que protejan de la discriminación a las minorías menoscabadas.

El cuarto ensayo de este conjunto lo aporta Viviana Kluger con una inquietante pregunta ¿Todo Tiempo pasado fue Mejor? La Condición Jurídica del Esclavo a Través de la Mirada de los Fiscales de la Audiencia de Buenos Aires [1785- 1812].

Este es un trabajo de recapitulación histórica y como tal debe ser entendido, [\[FN36\]](#) el artículo que desde el derecho la autora nos trae, abre un campo por demás interesante en el ámbito académico argentino sobre nuestro pasado.

El artículo comienza con un relato de sustitución, la de los indígenas como mano de obra gratis para pasar a la forzada inmigración desde África de mano de obra de quienes, para la Iglesia de ese momento todavía no eran titulares de los mismos derechos que el resto de la raza humana. Es sabido que esta "humanización" de unas/os y "bestización" de otras/os por parte de la corona católica española provoca el éxodo forzoso de millones de personas de África hacia América Latina concretamente.

Respecto de este punto, la autora sostiene como argumento que la burocracia colonial que, es válido agregar, trata de sanar la locura de tratar personas como ganado, puede ser catalogada en términos de "benevolencia" según muestran los documentos sobre el trato que se les daba a los esclavos en el Virreinato del Río de la Plata, organización política que antecede a la constitución de la Nación Argentina frente a aquellos tratos que eran propinados en otras partes de América. ***25** En este sentido, la autora también pone de relieve, aunque más no sea con el mismo relato de la infamia la sistematización, ordenamiento y regularización del vejamen constante contra toda una parte importante de la población que por su color de piel eran titulares de la falta, falta de derechos, de

garantías, de seguridad, de respeto, en síntesis, de humanidad.

Este trabajo es un relato y análisis de las relaciones de los fiscales para con los esclavos y sus dueños que debela el salvajismo de la colonia con detalles del papel que cumpliría el derecho en la formalización de las relaciones.

Incluso, gracias al relato de los derechos con los que se defendía al esclavo, encontramos al leerlo, un fuerte tinte mercantilista en la conservación de "la cosa".

La suerte que correrían los esclavos ante los fiscales de la Audiencia de Buenos Aires será en muchos casos fortuita, como lo muestra el análisis de la autora, dependiendo más de quién fuera el fiscal que de las garantías que debían proteger al esclavo de sus propios dueños.

Es una interesante colaboración al Simposio que nos expone un pasado propio y a la vez ajeno, pasado en el que quizás como sociedad podamos buscar y desandar las mismas huellas de nuestro presente para entender y pagar debido tributo a toda una población que habitó y habita nuestro suelo, totalmente invisibilizada y silenciada a lo largo de mucho tiempo. Es de esperar más trabajos dentro de la academia local que indaguen sobre esta parte de la historia.

Bajo el título Identidades y Políticas en el Derecho y la Sociedad, Reflexiones desde el Sur el siguiente grupo de escritos comienza con la colaboración de Eduardo Russo sobre La Identidad y la Diferencia. El autor nos invita a poner en tela de juicio, básicamente, el concepto de diferencia, comenzando el ensayo preguntándonos si debemos explicitar positivamente la prerrogativa a diferir del resto, mostrándonos los peligros que se ciernen bajo este tipo de concesiones a la ley, como luego veremos en la colaboración de Salomón y Delfino. [\[FN37\]](#) Esta preocupación sobre el carácter progresista del derecho, en particular de la legislación, lamentablemente se hace urgente.

El autor nos muestra los problemas que aún tenemos para atrapar conceptos que son de uso y abuso diario, para luego ofrecernos una salida en el derecho a la indiferencia, un resquicio entre la mismidad y la diferencia fuera de los binarismos que tanto nos tranquilizan y, a su vez, tanto nos cancelan.

A su turno Paula Viturro en Ficciones de Hembras nos ofrece otra arista de esta preocupación sobre la cuestión identitaria y sus implicancias, en un homenaje y tributo a la memoria del Profesor Enrique Marí. La autora aprovechando un pronunciamiento del Tribunal Constitucional Español sobre la posibilidad de *26 cambio de sexo a una persona que paso una operación de transexualidad en el cual el Tribunal nos aclara que "el varón operado transexualmente no pasa ser una hembra, sino que ha de tenerse por tal por haber dejado de ser varón ... será una ficción de hembra ..." [\[FN38\]](#) se pregunta y nos pregunta que significados son asumidos por "ficción" y por "hembra".

Para desandar el camino de la construcción de las ficciones se basa principalmente en el legado dejado por Marí, para recordarnos la peligrosidad de crearnos nuestras propias mentiras-ficciones- así como para desandar el camino de la sexualidad, en especial mostrando la pluralidad de pensamiento dentro de la teoría feminista respecto a la binaridad naturaleza / construcción, sexo / género, se avoca a denunciar junto a autores como Barsani, Butler y Wittig la creación política que sustenta los términos "hombre" o "mujer" y diluir la "naturaleza" de uno frente a la construcción "género" de otro. Dicotomía de por sí jerarquizante, mediante el cuerpo lesbiano que precisamente pone al descubierto esta operación al prescindir de toda taxonomización y por ende, de toda opresión y subordinación posible.

Continuando con esta línea crítica a las asunciones de las instituciones jurídicas Silvia Delfino y Guadalupe Salomón en una colaboración, nos ofrecen una mirada sobre el derecho proveniente de la Cultura y Comunicación en el primer caso y desde la literatura en la segunda.

Este ensayo configura una severa crítica a la regulación de conductas en el ámbito de la Ciudad de Buenos Aires. Las autoras primeramente aclaran la inserción que el Área de Estudios Queer de la Universidad de Buenos Aires de la que ambas forman parte, encuentra en la teorización LatCrit para luego introducirnos de lleno la figura del Código Contravencional de la Ciudad de Buenos Aires, explicándonos en qué forma se utiliza al derecho como instrumento de represión, cómo se hace uso y cómo se coloniza un espacio institucional como es la legislatura para pasar a ser un elemento de reacción y lobby alienando cuidadosamente a los sujetos regulados, creando la simplificadora categorización de buenos y malos, para demostrarnos la trampa regulativa de subjetividades que nos pone en tela de juicio una vez más, las inocentes y neutrales expectativas sobre la regulación estatal de conductas e identidades. En el caso que nos ocupa, la trampa precariza aún más justamente a aquellos sujetos que debería proteger.

Finalmente, las autoras se preguntan acerca de los motivos ideológicos que traen este tipo de estacadas en las libertades públicas y privadas relacionando la ideología represiva con las prácticas ordenadoras de la democracia neoliberal.

Mariano López Seoane, también desde el Área de Estudios Queer, pero proveniente de la disciplina del estudio de la Historia, desde Fuerza de la Ley *27 toma la oportunidad de la sanción de la prostitución en vía pública como punible, norma que afecta, principalmente a travestis y mujeres en estado de prostitución en el ámbito de la ciudad de Buenos Aires.

El autor nos muestra como ejemplos demoledores como, mediante el discurso legislativo se estaba, una vez más, cosificando o reificando, sujetos [no objetos] de derecho.

Con una simple y sutil oposición binaria utilizada en los discursos legislativos en la que existían vecinos, por un lado, e individuos, por el otro, para catalogar a las mujeres y travestis en estado de prostitución, en la que los primeros representan la norma y la voluntad popular entregada a la legislatura y las segundas representan [encarnan] la suciedad y precariedad a erradicar que deja sin dormir al resto de los vecinos de la ciudad. No es de extrañar cuál puede ser la resolución de un conflicto social planteado en estos términos, como nos dice el autor, mientras unos dormían en sus camas otros, en especial otras, lo harán de ahí en más en un calabozo.

A su turno, Alicia Ruiz con el trabajo titulado El Derecho como Discurso y como Juego instala a discusión en torno a los modos y presupuestos del derecho para edificarse como regulador de conductas y dador de sentidos, el ensayo postula al derecho como juego, es decir como "actividad social en la que aparecen en proporción variable, un elemento de convención o de regularidad y un elemento de invención o de creatividad." [\[FN39\]](#)

La autora muestra la relación a nivel teórico que existe entre el derecho y la política, el derecho y la violencia y el derecho y la cuestión identitaria.

Resultan interesantes las conclusiones que se expresan en el ensayo a nivel teórico que ya hemos visto y otras y otros colaboradores mostrarán a nivel práctico. En este sentido, es un aporte que refuerza en un todo el tono y el impulso de la propuesta de LatCrit sobre este Coloquio.

Finalizando este grupo de ensayos y colaboraciones Carlos Cárcova desde el derecho nos trae un recuento histórico y detallado de los caminos de la teoría crítica en Argentina, en particular y en América Latina, en general en su trabajo Notas acerca de la Teoría Crítica del Derecho.

Desde el punto de vista privilegiado de ser uno de los protagonistas de la Teoría Crítica en Argentina, este recuento es de vital importancia para comprender las vías y las fuentes mediante las cuales el derecho ha tratado de modificar la realidad dada a partir de una teorización periférica dentro del canon Argentino de la teoría del Derecho.

De este modo, este ensayo nos introduce en décadas de desarrollo del pensamiento crítico fuera y dentro del derecho, fuera y dentro de América Latina, *28 con una exposición de cuáles han sido las influencias más destacadas que llevaron al pensamiento crítico a transitar los caminos latinoamericanos, sin descuidar los momentos políticos que marcaron a fuego tanto el ámbito social como intelectual en nuestro continente y en el cono sur en particular.

Pero, este ensayo no es sólo un recuento histórico sino que también cumple la función de introducción a los presupuestos de la Teoría Crítica en nuestro ámbito, las preocupaciones y las derivaciones prácticas de la misma conjugando de ésta manera una interesante lectura de la teorización del derecho en Argentina.

En el tercer grupo de ensayos denominado Familia, Comunidad y nación: Críticas Comparativas y Recuentos encontramos primeramente una discusión sobre el concepto de familia entendido éste como un proceso sin la estabilidad que tanto se le ha adjudicado y cuya adjudicación tanta injusticia ha perpetrado.

Verónica Spaventa en La "Familia" como proceso: el Cruce de lo Jurídico con lo Social, político y Cultural se dispone a analizar la suerte de la institución familiar a la luz de las llamadas nuevas formas de familia, que como es sabido, de nuevas no tienen nada más que el reconocimiento por parte de las instituciones modernas de su existencia. Aunque este punto sea parte de otro debate, la autora, revisa singulares opiniones de la jurisprudencia y de la doctrina Argentina sobre la familia, su "naturaleza" y su status quo para desestabilizar, tanto, las asunciones dadas y las experiencias propias de lo que podemos denominar como familia, ya que ambas presunciones conspiran a la hora de "la realidad familiar".

El ensayo se apoya en las conceptualizaciones de Oslen y Butler proponiendo una reconfiguración que deje cualquier figura pre-establecida acerca de aquello que entendemos [o que la ley entiende] por familia en pos de una instancia que despoje al derecho mismo de su opresiva influencia.

Continuando con el análisis del concepto de familia, avanzando desde una perspectiva sociológica Paula Miguel en Inclusión Sociocultural y Expansión del Derecho nos trae una crítica a las conceptualizaciones que intervinieron a la hora de la sanción de la ley de Unión Civil en Buenos Aires.

La autora comienza su trabajo introduciéndonos en la novedad legislativa en su impacto sobre el derecho de familia, no sobre la familia misma, si bien las relaciones no necesitan de la figura estatal para su formación, es innegable la necesidad de apoyo, sustento y promoción.

El ensayo se centra dentro de este contexto en el análisis de los sujetos, la individualidad y la identidad frente a los estados nacionales con el apoyo conceptual de Jameson, Laclau, Mouffe y Foucault en variados aspectos, para finalizar con una interesante, aunque inquietante reflexión sobre la reciente emergencia en la sociedad Argentina de actores que, reclamando derecho que la mayoría de la población goza, se insertan en la sociedad disciplinaria a cargo de la maquinaria estatal de control y aprobación.

*29 En este sentido, este artículo se relaciona con la mirada de, Delfino-Salomón [\[FN40\]](#) y Aczel et al. [\[FN41\]](#) sobre las implicancias prácticas de la inserción en el derecho.

Seguidamente Horacio Sívori, en un trabajo de investigación antropológica, El cana como entendido. "El Estado" y la cultura íntima de los varones homosexuales en Argentina 1983-1996, aporta desde la interdisciplinariedad, valor que LatCrit desea incrementar en pos de una adecuada y mutuamente reforzada fuerza de interacción entre distintas disciplinas del conocimiento. Un trabajo de campo revelador de las relaciones que se establecen en espacios públicos de la ciudad entre gays varones que buscan sexo callejero y las fuerzas de seguridad que utilizando su

agenciamiento del poder estatal de represión, administran esta "falta".

Este trabajo nos trae una serie de ejemplos y testimonios recabados por el autor, acerca del proceder policial y el ambivalente juego de seducción-represión que se instala en el espacio público.

Dos importantes aportes que sirven al análisis legal, en primer lugar, el uso y abuso de las prácticas represivas de los órganos que representan al Estado, una vez más, la confusa línea divisoria entre legalidad / ilegalidad, deja al descubierto la importancia de la tarea legislativa primero, y del control entre los diversos órganos que conforman los poderes del Estado después para no fomentar inseguridad jurídica y autoritarismo y abusos de poder, por otro lado.

En segundo lugar, la instalación del espacio público como territorio a ganar, tanto sea mediante las prácticas de relaciones como mediante las acciones públicas, en este sentido, el deseo de lo público da cuenta de la caducidad de lo exclusivamente íntimo y lo privado en las relaciones humanas, y del carácter eminentemente político de aquello que silenciamos.

En La participación Electora de los Inmigrantes: Comparación de las Leyes provinciales en la Argentina, una colaboración de Maria Cristina Campagna e Ismael Rosales, encontramos otra arista de la segregación interna de la Argentina. Si hablamos sobre los problemas de los géneros, los problemas sobre la orientación sexual, la exclusión social, el racismo histórico, no podíamos dejar de tratar la cuestión de los inmigrantes en una Nación formada básicamente por la idea moderna de la inmigración europea.

Como muestran los autores tras el análisis legal la situación de menoscabo de partida con que se trata la cuestión del inmigrante hace de estos una clase de ciudadanos de segunda dentro de una Nación que históricamente se ha vanagloriado de no hacer diferencias ni prerrogativas, claro que este tipo de *30 ficciones como ya nos lo han adelantado otras colaboraciones en este Simposio [\[FN42\]](#) ocultan insidiosos prejuicios y manipulaciones dentro de la sociedad. Sin embargo, el esfuerzo estatal por otorgar derechos políticos a los inmigrantes es como hacen notar los autores una interesante muestra de ampliación de la ciudadanía.

A su vez, los autores ponen de relieve la actual situación del concepto de Nación, concepto que se encuentra dentro de una inestabilidad sin igual dentro de la contextualización de la globalización y el derrumbe de las soberanías nacionales.

El último de los ensayos que componen este grupo trata uno de los temas más álgidos dentro las sociedades, y no sólo las latinoamericanas. [\[FN43\]](#)

Bajo el título Silencios y Susurros: La Cuestión de la anticoncepción y el Aborto María Alicia Gutiérrez, desde el Foro por los Derechos Reproductivos, nos trae, en este artículo, un estado de situación del aborto en Argentina que configura un genuino aporte al debate y la discusión por cuanto expone una serie de datos fácticos que hacen imposible de ignorar en la crudeza y la violencia que implica la ilegalidad del aborto sobre todo afectando a una clase social específica configurando una cuestión altamente clasista a que quienes determinan las leyes, obviamente, no las sufren.

La importancia y la rispidez de un tema semejante en el ámbito latinoamericano hace de esta contribución, una que interesa a casi toda América Latina por igual.

El estado de la mujer en los diferentes países que nos componen, el patriarcado sostenido y reforzado en incontables oportunidades por actores que, en muchas ocasiones se fusionan como son la Iglesia Católica, el Estado y los Movimientos políticos, son claves para entender la opresión y la subordinación que las mujeres sufren tanto a nivel laboral, social como íntimo.

La instalación del debate sobre el aborto en la sociedad importa reconocer el status de la mujer como persona, importa reconocer la propiedad del cuerpo y la independencia de las decisiones sobre su corporalidad y sus funciones. Este artículo es una colaboración en ese sentido.

Finalmente, el cuarto y último grupo de ensayos, se dedica exclusivamente a una intervención singular que tuvo lugar en el Coloquio, a cargo del grupo experimental de pensamiento experimental Soy Cuyano en la cual se indagó, se insistió, y se jugó con el concepto de Comunidad.

La recordada presentación tuvo la singularidad de ser no una mesa de intercambio de pensamiento entre panelistas, sino todo lo contrario, fue partiendo *31 de la confusión inicial de voces y sonidos superpuestos para derivar en relatos sobre la comunidad que referenciaban más a un juego de sentido que a una clásica exposición.

Esta singularidad hizo de esta presentación una interesante culminación del Coloquio en Buenos Aires, presentación que se compone una vez más, de ahí su unicidad, en este Simposio y nos entrega reflexiones que indagan sobre la comunidad desde una multiplicidad de posiciones y miradas.

Miradas que no monopoliza el ámbito del derecho sino que por el contrario provienen de varias disciplinas que, en muchos casos hacen temblar las presunciones jurídicas en la herramienta que el derecho aprecia más, como puede ser el lenguaje, entre otras.

V. PALABRAS FINALES, PALABRAS PARA CONTINUAR

A modo de reflexión final sobre esta introducción restan sólo unas palabras de perspectiva sobre lo que podemos esperar del futuro de LatCrit en nuestro contexto.

Muchas son las deudas no cuantificables, al menos con moneda, que tenemos con nosotras y nosotros mismos, sobretodo estas, las no cuantificables son las que permanentemente continúan abriendo la brecha que nos separa no del desarrollo en sí, sino al menos de la justicia social.

- ¿Cómo evolucionará la constante criminalización de las luchas sociales?, ¿será cada vez más la ley el instrumento de represión por excelencia?, ¿se debilitarán aún más las libertades públicas en pos de la seguridad nacional-continental?
- ¿Seguiremos empujando a la clandestinidad a los asentamientos rurales y urbanos?, ¿cuál será el devenir del derecho de propiedad en culturas que benefician e incentivan el poseer antes que el usar?
- ¿Cómo administraremos la, cada día más alarmante, precarización del trabajo y de las condiciones laborales?
- ¿Cómo enfrentaremos las demandas sobre los derechos intelectuales y de patentes sobre medicamentos altamente necesarios dentro de nuestro contexto que hacen de la salud pública una ilusión?

Este tipo de preguntas son eminentemente políticas, y como tales, muchos nos dirán que no tienen inserción en la teoría jurídica, pero como hemos visto a lo largo del Coloquio que este Simposio reproduce en parte, el derecho no puede darse el lujo de evitar estas cuestiones.

Esta lista de temas que nos inquietan desde el sur no es, en absoluto, exhaustiva, de aquello que nos preguntamos, nos desvela y que LatCrit en conjunto deberá concentrarse en investigar, ahondar, crear espacios de discusión y propiciar acción, si pretende la relevancia necesaria para re-contextualizar la *32 teoría LatCrit entre la exclusión de

la misma exclusión que Latinoamérica y el Caribe representan y llenar con significado el vaciamiento que se produce al preguntarnos qué significa Latina o Latino en Latinoamérica, la multiplicidad de su significado destruye cualquier intento de completarlo, al menos parcialmente.

Estos, y otros temas que la urgencia haga impostergables, serán el norte de LatCrit en el sur para marcar la diferencia en el derecho y una ampliación en su teorización.

[FNa1]. Abogado, Auxiliar Docente, Facultad de Derecho, Universidad de Buenos Aires. Tengo muchas deudas sobre esta introducción, agradezco a Frank Valdés la confianza depositada, a Silvia Delfino por su interés en el trabajo, su constante apoyo y por las debidas correcciones y a las y los autores por su colaboración, de suyo todos los errores y omisiones son enteramente míos.

[FN1]. El Coloquio LatCrit sobre Derecho Internacional y Derecho Comparado se llevó a cabo en el ámbito de la Facultad de Derecho de la Universidad de Buenos Aires del 12 al 15 de agosto dividido en dieciséis paneles y presentaciones de los cuales ocho de ellos fueron expuestos totalmente en español.

[FN2]. [International Law, Human Rights and LatCrit Theory](#), 28 U. Miami Inter-Am. L. Rev. 177, (1996); Toward a Transatlantic Dialogue: Spain, Latinas/os and LatCrit Theory, U. Miami Int'l. & comp.L.Rev 1 (Málaga 1997 & 1998) y Santiago 2002, en preparación por la revista de derecho de la Universidad Alberto Hurtado.

[FN3]. Ver: Colloquium, Representing [Latina/o Communities: Critical Race Theory and Practice](#), 9 Berkeley 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) (LATCRIT I); Colloquium, [International Law, Human Rights and LatCrit Theory](#), 28 U. Miami Inter-Am. L. Rev. 177 (1997); Joint Symposium, LatCrit Theory: Latinas/os and the Law, 85 Cal. L. Rev. 1087 (1997); [10 Berkeley La Raza L.J. 1 \(1998\)](#); Symposium, Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory, 19 UCLA Chicano-Latino L. Rev. 1 (1998) (LATCRIT II); Symposium, Comparative Latinas/os: [Identity, Law and Policy in LatCrit Theory](#), 53 U. Miami L. Rev. 575 (1999) (LATCRIT III); Symposium, Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections, 23 U.C. Davis L. Rev. 751 (2000) (LATCRIT IV); Colloquium, Toward a Transatlantic Dialog: Spain, Latinas/os and [LatCrit Theory](#), 9 U. Miami Int'l. & Comp. L. Rev. 1 (2000); Joint Symposium, Culture, Language, Sexuality and Law: [LatCrit Theory and the Construction of the Nation](#), 33 U. Mich. J.L. Reform 203 (2000); [5 Mich. J. Race & L. 787 \(2000\)](#); Symposium, [Class in LatCrit: Theory and Praxis in a World of Economic Inequality](#), 78 Denver U. L. Rev. 467 (2001) (LATCRIT V); Symposium, Latinas/os and the Americas: Centering North-South Frameworks in LatCrit Theory, 55 U. Fl. L. Rev. 1 (2003), 54 Rutgers L. Rev. ___ (2002) (LATCRIT VI); Symposium, Coalitional Theory and Praxis: Social Movements and LatCrit Community, 81 U. Oregon L. Rev. ___ (2003), [13 Berkeley La Raza L.J. 113 \(2002\)](#) (LATCRIT VII); Symposium, City and Citizen: Operations of Power, Strategies of Resistance, ___ Cleveland Marshall L. Rev. ___ (2004) (LATCRIT VIII).

[FN4]. El término "praxis" utilizado dentro de la Teoría LatCrit tiene como propósito englobar la tarea de poner en acción las proposiciones sobre el cambio que se conciben dentro de la teoría. Sin embargo, no queda solamente en esto, sino que por el contrario, la praxis significa un principio guía de la misma utilidad de la teoría.

[FN5]. En el caso argentino ver por ejemplo Christian Curtis Ed., Desde Otra Mirada (Buenos Aires 2001).

[FN6]. Ver en particular, su celebrado discurso inaugural de una era: Oliver Wendell Holmes Jr., La Senda del Derecho (Abeledo Perrot, Buenos Aires).

[FN7]. Jerome Frank, Derecho e Incertidumbre (Centro Editor de América Latina S.A., Buenos Aires 1968).

[FN8]. Benjamín Cardozo, *La Naturaleza de la Función Judicial* (Arayú, Buenos Aires 1955).

[FN9]. Roscoe Pound, *Justicia Conforme a Derecho* (texto extraído de las Conferencias de la Fundación Green, Editorial Letras S.A. México D.F. 1965) o *Introducción a la Filosofía del Derecho* (Tea Buenos Aires 1972).

[FN10]. Pensadores del derecho como Karl Olivercrona, Axel Hägerström o Karl Lundstedt, ver por ejemplo: J. Cabral De Moncada et al., *El Hecho del Derecho* (Losada S.A. Buenos Aires 1956).

[FN11]. Aunque en nuestro continente su estudio se dio precisamente luego de la contienda internacional, para contextualizarnos políticamente, en el apogeo de la llamada Guerra Fria, situación internacional que, como es bien sabido, encontró en América Latina un campo fértil para ambas ideologías hegemónicas en Oriente y Occidente, situación ésta que no escapa a la tardía aparición del Derecho Crítico, sobretodo por la persecución ideológica que éste sufriría en especial durante la década del '70 en el cono sur americano.

[FN12]. Ver al respecto Richard Posner, [Legal Scholarship Today](#), 115 *Har. L. Rev.* 1314.

[FN13]. Para una apreciación no lineal del desarrollo de las teorías fuertemente influenciadas por las ciencias humanas con hincapié en el protagonismo de la escuela del Derecho y la Economía en general ver Richard Posner § 12

[FN14]. Si bien muchas de estas escuelas de pensamiento eran paralelas a la Escuela de Estudios Legales Críticos ya en los años setenta, a mediados de los años ochenta se asientan fuertemente dentro de la academia norteamericana principalmente.

[FN15]. Para un recuento más detallado respecto del origen histórico de LatCrit y sus conexiones con otras escuelas del pensamiento, ver: Frank Valdés, *Legal Reform and Social Justice: An Introduction to LatCrit Theory, Praxis and Community*. En archivo con el autor.

[FN16]. Sobre esta temática ver en particular: Alice G. Abreu, [Lessons From LatCrit: Insiders and Outsiders, All at the Same Time](#), 53 *U. Miami L. Rev.* 787.

[FN17]. Sobre la cuestión identitaria en LatCrit ver en particular: Jerome McCristal Culp Jr., [Seventh Aspect of Self-Hatred: Race, LatCrit, and Fighting the Status Quo](#), 55 *Fla. L. Rev.* 425. También ver: Rachel F. Moran, *Neither Black nor White*, 2 *Harv. Latino L. Rev.* 6.

[FN18]. Estos pilares fueron traducidos por el autor del proyecto LatCrit sobre una serie de monografías explicativas de la teorización LatCrit en general, en este caso: Frank Valdés, supra n. 15. En archivo con el autor.

[FN19]. Estas cuatro funciones fueron tomados de la perspectiva expuesta por Frank Valdés en Foreword: [Under Construction- LatCrit Consciousness, Community, and Theory](#) 85 *Cal. L. Rev.* 1087. Traducción por el autor.

[FN20]. Para una visión del tratamiento de los conceptos de raza dentro de LatCrit ver por ejemplo: Leslie Espinoza y Angela P. Harris, [Afterword: embracing the Tar-Baby-LatCrit Theory and the Sticky Mess of Race](#), 85 *Cal. L. Rev.* 1585 (1997) y 10 *La Raza L. Rev.* 499 (1998) y Stephannie M. Widman, *Reflections on Whiteness and Latino Critical Theory*, 2 *Harv. Latino L. Rev.* 307 (1997).

[FN21]. Valdés, supra n. 15.

[FN22]. En este sentido la cuestión de la lengua estuvo y está siempre presente en la teorización LatCrit, ver por ejemplo la intersección de la lengua y la dislocación cultural en Berta Esperanza Hernández-Truyol, *Indivisible*

Identities: Culture Clashes, Confused Constructs and Reality Checks, 2 Harv. Latino L. Rev. 199 (1997)

[FN23]. Incluso hoy día, cuando vemos cotidianamente cómo la imposición cultural, económica o de cualquier otra índole no es exclusiva de una nación que utilice una lengua en particular, creer esto sería simplificar demasiado y por consiguiente vulnerabilizar aún más a nuestra amenazada cultura.

[FN24]. Sea esta maduración espontánea o inducida, es una cuestión que escapa a esta introducción y será tarea de las/los lectores juzgar por sí mismas/os en caso que así lo deseen.

[FN25]. En este sentido están orientados los trabajos de Aczel, Pechin & Rapisardi, Regulaciones, Normas y Conflictos Culturales: La Ley de Unión Civil en Buenos Aires; Contreras, Análisis Jurídico de la Discriminación y Relaciones Laborales en Chile, Núñez Leiva, Nuevas formas de protección de los derechos de las Minorías: Dejando atrás los Legalismos; Delfino & Salomón, Regulaciones culturales y Luchas políticas: El caso del Código Contravencional de la Ciudad de Buenos Aires; López Seoane, Fuerza de la Ley: Análisis de caso: código de Convivencia, regulaciones y silenciamiento.

[FN26]. En este sentido ver: Kluger, ¿Todo Tiempo pasado fue mejor? La Condición Jurídica del Esclavo a través de la Mirada de los Fiscales de la Audiencia de Buenos Aires [1875-1812]; Russo, Identidad y Diferencia; Víturro, Ficciones de Hembra; Spaventa, La "familia" como proceso: El Cruce de lo Jurídico con lo social y Cultura; Miguel, Inclusión Social y Expansión del Derecho; Campagna & Rosales, La participación Electoral de los Inmigrantes: Comparación de Leyes provinciales en la Argentina y Gutiérrez, Silencios y Susurros: La Cuestión de la Anticoncepción y El Aborto.

[FN27]. Ver en este sentido: Ruiz, El Derecho como Discurso y como Juego y Cárcova, Notas Acerca de la Teoría Crítica del Derecho.

[FN28]. Soy Cuyano: La Comunidad.

[FN29]. Ver: Regulaciones/ Regulaciones II/ La participación y Soy Cuyano.

[FN30]. En este sentido ver Roberto Echavarren, Género y Géneros en El Beso de la Mujer Araña 456 (Edición Crítica Jose Amícola y Jorge Panesi Ed., Barcelona 2002). Esta relación vuelve a retomarse en los Noventa con la edición de la obra literaria del chileno Pedro Lemebel, Tengo Miedo Torero (Seix Barral Buenos Aires 2002), esta vez sobre la dictadura comandada por el General Pinochet.

[FN31]. En este sentido ver el protagonismo que la sexualidad tiene en los artículos de Aczel et al, supra n. 25, Víturro, supra n. 25, Salomón & Delfino, supra n. 25, Lopez Seoane, supra n. 25, Spaventa, supra n. 26, Miguel, supra n. 26 y Gutiérrez, supra n. 26.

[FN32]. Porcentaje de desocupación total para el año 2002, fuente www.laborsta.ilo.org (visto 10 de febrero de 2004).

[FN33]. En este sentido ver Eco, Los Límites de la Interpretación (Lumen, Barcelona).1992

[FN34]. Ley No. 24. 012,1991, [LI-D] A.D.L.A., 3872.

[FN35]. Sin siquiera preguntarnos por cuestiones que interesan a este tipo de leyes que benefician o no a una determinada identidad o clase, ver en este respecto el comentario de Eliana Santanatoglia, Sobre el Género del Cupo, El Contexto y las Interpretaciones 227 (E. Russo Ed., Colección de Análisis Jurisprudencial).

[\[FN36\]](#). Sobretudo respecto al ceñirse la autora a nominar a los esclavos como negros y a los primeros habitantes americanos como indios, así como también, al descendiente del conquistador y usurpador europeo y de los primeros habitantes como criollo.

[\[FN37\]](#). Ver Salomón & Delfino, supra n. 25.

[\[FN38\]](#). Repertorio de Jurisprudencia 1987, 5045, citado en Paula Viturro, supra n. 26.

[\[FN39\]](#). Ruiz, supra n. 27.

[\[FN40\]](#). Ver supra n. 25.

[\[FN41\]](#). Id.

[\[FN42\]](#). Ver en especial Cárcova, supra n. 27.

[\[FN43\]](#). Como lo muestran las actuales expresiones en Estados Unidos sobre el Aborto Legal.

CITY AND CITIZEN: COMMUNITY-MAKING AS LEGAL THEORY AND SOCIAL STRUGGLE

FRANCISCO VALDES¹

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I. Introduction

The Eighth Annual LatCrit Conference met in Cleveland in May, 2003 to engage a timely and topical theme – *City and Citizen: Operations of Power, Strategies of Resistance*. Importantly, the theme explicitly drew critical attention not only to *operations of power* but also to *strategies of resistance*, and thereby implicitly invited LatCritical analysis of how the two converge in the messy and multifaceted processes of building communities on any human scale. As articulated in the Call for Papers and Panel Proposals, this theme expressly beckoned LatCrit and other critical scholars and activists to examine the “meaning of full membership in society” – in other words, the politics both of inclusion and of exclusion in the construction of the local, national and transnational “communities” that encase and govern human affairs.²

To open and introduce this symposium, this Foreword similarly proceeds in two parts: the first Part, reviewing the four “clusters” of essays comprising the symposium, focuses mostly on “operations of power” and the critiques proffered by the symposium authors that follow this Foreword; the second Part, focusing mostly on “strategies of

¹Professor of Law and Co-Director, Center for Hispanic and Caribbean Legal Studies, University of Miami; Co-Chair, LatCrit, Inc. I thank, first, the authors and contributors to this symposium, and the participants in the conference on which it is based. Secondly, I thank the editors of this volume, whose work and dedication immeasurably have improved the final product and ensures that persons unable to attend the conference in person may access its proceedings. I likewise thank the organizers of the conference, and in particular Tayyab Mahmud, for the dedication and perseverance that made both the conference and this symposium possible. Finally, I thank the Cleveland-Marshall College of Law, and the LatCrit community at large, for their support of this ongoing experiment in critical outsider jurisprudence. Any errors below are mine alone.

²To review the LatCrit VIII Call for Papers, please visit the LatCrit website at www.latcrit.org.

resistance,” examines the human acts and legal regimes giving rise to a marginal Latina/o community within the existing minority “enclaves” of one major city of the United States. In both instances, however, this Foreword seeks to elucidate how this year’s theme and conference – and the following symposium based on them – embrace and advance the longstanding commitment to community-building that has become a key hallmark of LatCrit theory and praxis during the past eight years.³ This Foreword, in short, aims to remind us all that community-making, at its best, is a key – perhaps indispensable – form of collective praxis in the service of social struggle for social justice. This Foreword endeavors to help ensure that LatCrit theory, community and praxis remain as intertwined in the future as this symposium shows they are today.

³“LatCrit theory” is a jurisprudential subject position that encompasses richly diverse scholars and texts. “LatCrit theory” therefore comprises many scholars with varying views, making it somewhat misleading to speak of “LatCrit theory” in the singular. Nonetheless, the multiple diverse critical legal scholars who have coalesced around the collective effort to articulate LatCrit theory have “exhibited ... [a] sense of shared groupness.” See Francisco Valdes, Foreword—*Latina/o Ethnicities, Critical Race Theory, And Post-Identity Politics In Postmodern Legal Culture: From Practices To Possibilities*, in 9 LA RAZA L.J. 1, 7, n.25 (1996). LatCrits, like “Latinas/os” and other social groups, are a collection of “different” individuals. See Sylvia A. Marotta & Jorge G. Garcia, *Latinos in the United States in 2000*, 25 HISP. J. BEHAVIORAL SCI. 13 (2003); 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 TEXAS TECH. L. REV. 1219 (1995) (critiquing the ramifications of the current labeling system in the United States, which “lumps together all people who can connect themselves to some “Spanish origin or culture” together as “Hispanics”); see also, Jorge Klor de Alva, *Telling Hispanics Apart: Latino Sociocultural Diveristy*, in THE HISPANIC EXPERIENCE IN THE UNITED STATES: CONTEMPORARY ISSUES AND PERSPECTIVES 107-36 (Edna Acosta-Belen & Barbara R. Sjoström eds., 1988); SUZANNE OBOLER, ETHNIC LABELS, LATIN LIVES (1995); EARL SHORRIS, LATINOS: A BIOGRAPHY OF THE PEOPLE (1992); LATINOS IN THE UNITED STATES: HISTORY, LAW AND PERSPECTIVE (Antoinette Sedillo Lopez ed., 1995); see generally THE LATINO/A CONDITION: A CRITICAL READER (Richard Delgado & Jean Stephancic eds., 1998). Conventional labels used socially in the United States are captured formally in the current census, which amalgamates “Spanish/Hispanic/Latino” into a single category, and then subdivides it into subgroup varieties like “Mexican, Mexican Am., Chicano” and “Puerto Rican” and “Cuban.” See United States Department of Commerce, Bureau of the Census, Form D-1, Question Seven (2000) (copy on file with author); see generally Alex M. Saragoza, Concepcion R. Juarez, Abel Valenzuela, Jr. and Oscar Gonzalez, *History and Public Policy: Title VII and the Use of the Hispanic Classification* 5 LA RAZA L. J. 1 (1992) (discussing federal adoption of the “Hispanic” label and critiquing the conglomeration of the Spanish-Hispanic-Latina/o labels into a single identity category). From the very beginning, LatCrit scholars have grappled with racial, ethnic and other forms of “diversity” both within and beyond “Latina/o” communities.

The term “LatCrit” was coined at a 1995 colloquium, held in Puerto Rico, on the relationship of critical race theory to “Latina/o” communities. From that colloquium, the annual conferences then flowed. And from the beginning, with a conference theme for LatCrit I focused on the limits and possibilities of Latina/o “pan-ethnicity,” LatCrit scholars have highlighted the importance of community-building on terms that amount to antiessentialist, antisubordination praxis at a collective level. Information on LatCrit theory, including the full text of the inaugural LatCrit symposium based on the First Annual LatCrit Conference, can be obtained at the LatCrit website, at www.latcrit.org. On the emergence of a “LatCrit” subject position, see Francisco Valdes, Foreword—*Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997) (hereinafter *Poised at the Cusp*) (introducing the papers and proceedings of the first LatCrit conference). For other accounts, see Berta Esperanza Hernandez-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 HARV. LATINO L. REV. 199, 200-05 (1997); Kevin R. Johnson & George A. Martinez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies, Activism and Scholarship*, 53 U. MIAMI L. REV. 1143 (1999). Cf. Margaret E. Montoya, *LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions*, 53 U. MIAMI L. REV. 1119 (1999); see also Elizabeth M. Iglesias & Francisco Valdes, Afterword—*Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 CHICANO-LATINO L. REV. 503, 568-71 (1998) (discussing the choice of “LatCrit” as partly a political decision to identify as much as possible with people of color, indigenous people, and other traditionally subordinated groups in the construction of this new discourse and praxis).

II. “Operations of Power”: Expanding the Critiques of Identity in Law and Culture

Because each of the clusters below opens with an Introduction providing more detailed discussion of each essay, this Part of the Foreword aims chiefly to emphasize how the symposium essays (and clusters) reflect in particular or recurrent ways the conference theme as a whole, and how they thus contribute to the articulation and advancement of LatCrit theory as a genre of critical outsider jurisprudence.⁴ Generally, and as detailed immediately below, the symposium essays not only focus on the “city and citizen” but also continue the development of various “streams of programming” begun in earlier LatCrit conferences, a practice that over time has aimed to “rotate the center” of our programmatic and collective inquiries in coalitional and multidimensional ways – ways that also are designed, consciously and self-critically, to build on the cumulative experiences and insights of outsider jurisprudential experiments that precede and accompany the emergence of LatCrit theory eight years ago.⁵ In rich and nuanced

⁴The term “outsider jurisprudence” was first used by Professor Mari J. Matsuda. See Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 MICH. L. REV. 2320, 2323 (1989). Here, the term is preceded with “critical” to emphasize this key feature of the body of work to which LatCrit theory belongs. LatCrit theory is one strand in critical outsider jurisprudence, along with critical race theory, critical race feminism, Asian American scholarship, and Queer legal theory. See *supra* note 1 and sources cited therein on LatCrit theory and its emergence in the mid-1990s; see generally Francisco Valdes, *Afterword—Theorizing “OutCrit” Theories: Coalitional Method and Comparative Jurisprudential Experience – RaceCrits, QueerCrits and LatCrits*, 53 U. MIAMI L. REV. 1265 (1999) [hereinafter *Theorizing OutCrit Theories*] (drawing lessons for LatCrits from the experiences of other outsider efforts, principally those of RaceCrits and QueerCrits).

⁵From the inception of this jurisprudential experiment, LatCrit theorists have endeavored to learn from prior or concurrent jurisprudential efforts, and thus have developed practices designed to ensure that our work is grounded in the cumulative insights of critical outsider jurisprudence. This effort to “perform the theory” includes practices such as “rotating the center” of our programmatic lines of inquiry and creating multi-year “streams of programming” to ensure that critical attention is focused on the varied specific aspects of subordination – as well as on the interlocking nature of systems of subordination – based on race, ethnicity, gender, class, sexuality, religion, geography, physical ability and similar axis of identity employed in law and policy to engineer social hierarchies. See, e.g., Kevin R. Johnson, *Foreword—Celebrating LatCrit Theory: What Do We Do When the Music Stops?*, 33 DAVIS L. REV. 753 (2000) (reviewing the essays of the LatCrit IV symposium and evaluating LatCrit methodologies to identify some of the challenges facing LatCrit scholars); Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177 (1998) (discussing and assessing LatCritical techniques and methods of analysis and praxis in the context of the LatCrit III conference); Valdes, *Theorizing OutCrit Theories*, *supra* note 4, at 1299-1306 (discussing these and similar practices); see also Johnson & Martinez, *supra* note 3, at 1150-61 (reviewing LatCrit methodologies and premises in relationship to other civil rights movements, in particular Chicana/o scholarship and activism); Montoya, *supra* note 3, at 121-27 (reviewing the techniques, and the precursors and origins, of LatCrit theory and method); Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 U. MIAMI L. REV. 1247 (1998) (analyzing and comparing the methods and experiences of the Critical Race Theory Workshops that preceded the emergence of LatCrit events to those of the annual LatCrit conferences to adduce the continuities between the two); see also generally Dorothy E. Roberts, *BlackCrit Theory and the Problem of Essentialism*, 53 U. MIAMI L. REV. 855 (1998) (describing critical approaches to the study of “blackness” within LatCrit theory).

Multidimensional and coalitional analysis, designed to unpack the many dimensions of interlocking systems of subordination and provide platforms for collective resistance to them, is part of this ongoing effort. This type of analysis, of course, is rooted in the early insights of critical outsider jurisprudence regarding law and identity, including the pathbreaking concepts of multiplicity, antiessentialism and intersectionality. See, e.g., Kimberlé 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); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN’S RTS. L. REP. 7 (1989); see also 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. Various RaceCrit and LatCrit scholars have continued to develop concepts and tools of critical legal theory to build on these foundational concepts, striving progressively to better capture the dynamics of “identity politics” in law and society. See, e.g., e. christi cunningham, *The Rise of Identity Politics I: The Myth of the Protected Class in Title VII Disparate Treatment Cases*, 30 U. CONN. L. REV. 441 (1998) (on wholism); Berta Hernandez-Truyol, *Building Bridges – Latinas and*

ways, the LatCrit VIII essays add both to the substance and method of this ongoing experiment in critical outsider jurisprudence.

In substantive terms, the LatCrit VIII program and this symposium, as reflected in these four clusters of essays,⁶ break new ground as well as add to previously tilled areas of programmatic inquiry. The new, and in some ways the more directly responsive to this year's Call and theme, is concentrated around issues of the city and urban studies,⁷ while the gains based on prior years' themes or ongoing efforts are concentrated around previous investigations of identity and power in law and society.⁸ In methodological terms, these essays display and continue the group

Latinos at the Crossroads: Realities, Rhetoric and Replacement, 25 COLUM. HUM. RTS. L. REV. 369 (1991) (on multidimensionality); Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 U. CONN. L. REV. 561 (1997) (on multidimensionality); Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257 (1997) (on cosynthesis); 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) (on interconnectivity); see generally Charles R. Lawrence III, Foreword—*Race, Multiculturalism and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819, 834-35 (1995) (urging greater efforts along these lines to promote multifaceted projects of social transformation).

⁶This symposium, like most LatCrit symposia, is presented in the form of "clusters" of essays organized around substantive themes. These clusters consist of essays that conform to the Symposium Submission Guidelines, which request that authors limit their texts. The Symposium Submission Guidelines are posted to the LatCrit website, www.latcrit.org, for easy reference. Information on LatCrit theory, including the full text of the inaugural LatCrit symposium based on the First Annual LatCrit Conference, can be obtained at the LatCrit website. For other LatCrit symposia, including those based on subsequent conferences or colloquia, see Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997) (LATCRIT I); Colloquium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997) (publishing the proceedings of the first LatCrit colloquium focused on international law); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 CHICANO-LATINO L. REV. 1 (1998) (LATCRIT II); Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, 53 U. MIAMI L. REV. 575 (1999) (LATCRIT III); Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. DAVIS L. REV. 751 (2000) (LATCRIT IV); Colloquium, *Spain, The Americas and Latino/as: International and Comparative Law in Triangular Perspective*, 9 U. MIAMI INT'L. & COMP. L. REV. 1 (2000-01) (publishing the proceedings of the first and second colloquia held in Malaga, Spain on LatCrit theory and international and comparative law); Symposium, *Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U. L. REV. 467 (2001) (LATCRIT V); Symposium, *Latinas/os and the Americas: Centering North-South Frameworks in LatCrit Theory*, 55 FLA. L. REV. 1 (2003), 54 RUTGERS L. REV. (forthcoming 2002) (LATCRIT VI); Symposium, *Coalitional Theory and Praxis: Social Justice Movements and LatCrit Community*, 13 LA RAZA L.J. 113 (2002), 81 U. OR. L. REV. (forthcoming 2003) (LATCRIT VII). In addition, two joint symposia have been published during this time. See Joint Symposium, *LatCrit Theory: Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1998); Joint Symposium, *Culture, Language, Sexuality and Law: LatCrit Theory and the Construction of the Nation*, 5 MICH. J. RACE & L. 787, 33 U. MICH. J.L. REFORM 203 (2000).

⁷The opening cluster of this Symposium presents several of these essays. See *infra* notes 10-34 and accompanying text. But, another "new" line of inquiry advanced in this Symposium is the investigation of reparations as a remedy for previous North American abuses of Latinas/os, which is introduced in the closing cluster of this Symposium. See *infra* notes 103-116 and accompanying text. This cluster builds on a similar one presented in last year's LatCrit VII Conference and Symposium. For a discussion of the essays in last year's Symposium, see Ediberto Roman, Introduction—*Reparations and the Colonial Dilemma: The Insurmountable Hurdles Yet Transformative Benefits*, 13 BERKELEY LA RAZA L.J. 369 (2002). This new work, of course, also follows up on the considerable work in this area. See, e.g., Robert Westley, *Many Billions Gone: Is it Time to Reconsider the Case for Black Reparations?*, 40 B.C.L. REV. 429 (1998) (discussing reparations as a remedial route for the historical exploitation of African Americans); for a foundational analysis of reparations, see Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987) (focusing on Japanese American reparations issues and claims).

⁸Some of these other lines of inquiry include, for example, questions relating to "foreign" versus "domestic" spheres of law and policy, to questions relating to race, ethnicity and gender, and to questions relating to "sameness" and "difference" within or between communities of color. See generally *supra* note 6 and symposia cited therein.

techniques of community-building through knowledge-production that now are associated with the LatCrit conferences as a distinct venue and discourse within the larger framework of critical outsider jurisprudence. As a set, these clusters and essays reflect our continuing efforts to produce understanding *and* solidarity grounded in the practices, guideposts and functions that we set forth for ourselves at the very inception of this ongoing jurisprudential experiment to ensure its efficacy for the long term.⁹

For a sampling of readings on transnationalism and internationalism in LatCrit theory, see Symposium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 1 (1996-97); see also Max J. Castro, *Democracy in Anti-Subordination Perspective: Local/Global Intersections: An Introduction*, 53 U. MIAMI L. REV. 863 (1999); Gil Gott, *Critical Race Globalism?: Global Political Economy, And The Intersections Of Race, Nation, and Class* 33 U.C. DAVIS L. REV. 1503 (2000); Ivelaw L. Griffith, *Drugs and Democracy in the Caribbean*, 53 U. MIAMI L. REV. 869 (1999); Sharon K. Hom, *Lexicon Dreams and Chinese Rock and Roll: Thoughts on Culture, Language, Translation as Strategies of Resistance and Reconstruction*, 53 U. MIAMI L. REV. 1003 (1999); Irwin P. Stotzky, *Suppressing the Beast*, 53 U. MIAMI L. REV. 883 (1999); Ratna Kapur & Tayyab Mahmud, *Hegemony, Coercion and Their Teeth-Gritting Harmony: A Commentary on Power, Culture, and Sexuality in Franco's Spain*, 5 MICH. J. RACE & L. 995 (2000), 33 U. MICH. J.L. REFORM 411 (2000); Tayyab Mahmud, *Colonialism and Modern Constructions of Race: A Preliminary Inquiry*, 53 U. MIAMI L. REV. 1219 (1999); Mario Martinez, *Property as an Instrument of Power in Nicaragua*, 53 U. MIAMI L. REV. 907 (1999); Julie Mertus, *Mapping Civil Society Transplants: A Preliminary Comparison of Eastern Europe and Latin America*, 53 U. MIAMI L. REV. 921 (1999); Ediberto Roman, *Reconstructing Self-Determination: The Role of Critical Theory in Positivist International Law Paradigm*, 53 U. MIAMI L. REV. 943 (1999); Ediberto Roman, *A Race Approach To International Law (Rail): Is There A Need For Yet Another Critique Of International Law?* 33 U.C. DAVIS L. REV. 1519 (2000); Berta Esperanza Hernandez-Truyol, *Building Bridges: Bringing International Human Rights Home*, 9 LA RAZA L. J. 69 (1996); Ediberto Roman, *A Race Approach To International Law (Rail): Is There A Need For Yet Another Critique Of International Law?* 33 U.C. DAVIS L. REV. 1519 (2000).

For a sampling of readings on race and identity in LatCrit theory, see Robert S. Chang, *Racial Cross-Dressing*, 2 HARV. LATINO L. REV. 423 (1997); Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395 (1997); Leslie Espinoza & Angela P. Harris, *Afterword—Embracing the Tar-Baby: LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1510 (1997); Ian F. Haney Lopez, *Race, Ethnicity, Erasure: The Saliency 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); Kevin R. Johnson, *"Melting Pot" or "Ring of Fire"?: Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1262 (1997); Cheryl Little, *Intergroup Coalitions and Immigration Politics: The Haitian Experience in Florida*, 53 U. MIAMI L. REV. 717 (1999); Guadalupe Luna, *On the Complexities of Race: The Treaty of Guadalupe Hidalgo and Dred Scott v. Sandford*, 53 U. MIAMI L. REV. 691 (1999); George A. Martinez, *African-Americans, Latinos and the Construction of Race: Toward an Epistemic Coalition*, 19 UCLA CHICANO-LATINO L. REV. 213 (1998); Rachel Moran, *Neither Black Nor White*, 2 HARV. LATINO L. REV. 61 (1997); Juan F. Perea, *The Black/White Binary Paradigm of Race: The 'Normal Science' of American Racial Thought*, 85 CAL. L. REV. 1213 (1997).

For a sampling of readings on sameness/difference issues in LatCrit theory, see *infra* note 21 and sources cited therein; see also generally *infra* note 90 and sources cited therein.

⁹The four functions of LatCrit theory (and similar efforts) posited early on are: (1) the production of knowledge; (2) the advancement of social transformation; (3) the expansion and connection of antistatist struggles; and (4) the cultivation of community and coalition, both within and beyond the confines of legal academia in the United States. For further discussion of these four functions and their relationship to LatCrit theory, see Francisco Valdes, *Foreword—Under Construction: LatCrit Consciousness, Community and Theory*, 85 CAL. L. REV. 1087, 1093-94 (1997).

The seven guideposts accompanying these four functions are: (1) Recognize and Accept the Political Nature of Legal "Scholarship" Despite Contrary Pressures; (2) Conceive Ourselves as Activist Scholars Committed to Praxis to Maximize Social Relevance; (3) Build Intra-Latina/o Communities and Inter-Group Coalitions to Promote Justice Struggles; (4) Find Commonalities While Respecting Differences to Chart Social Transformation; (5) Learn from Outsider Jurisprudence to Orient and Develop LatCrit Theory and Praxis; (6) Ensure a Continual Engagement of Self-Critique to Stay Principled and Grounded; and (7) Balance Specificity and Generality in LatCritical Analysis to Ensure Multidimensionality. For an early assessment of LatCrit "guideposts" as reflected in the proceedings of the First Annual LatCrit Conference, see Valdes, *Poised at the Cusp*, *supra* note 3 at 52-59.

These guideposts (and the functions described earlier) of course are inter-related and, in their operation, interactive. Ideally, they yield synergistic effects. They represent, *as a set*, the general sense of this project as reflected in the collective writings of the symposium based on the First Annual LatCrit Conference. In addition to the seven guideposts noted above, an eighth was originally presented as a "final observation" based on the preceding seven: "acknowledging the relationship of LatCrit to Critical

This year's symposium essays thus "center" urban issues that are relatively new to our conferences as well as ensure continuity in our programmatic initiatives, or streams, of previous years and programs, while also demonstrating and refining the sharpness of LatCritical method and analysis. As usual, we begin with the "signature" cluster of symposium essays, featuring the essays most directly focused on the year's conference theme, and then proceed to the remaining clusters of essays, which pursue and advance prior conference themes, or ongoing areas of inquiry and praxis based on them. As in the past, and as we shall see next, this year's symposium essays and authors once again reflect the rich diversities of LatCrit community and discourse in terms of disciplines, demographics, perspectives and subject areas – multiple levels of diversity that contribute in manifold ways to the substance and reach of our anticolonial insights, and that, in my view, constitute one of our foundational strengths as a community of scholars committed to the production of socially relevant scholarship that seeks to catalyze and nurture social justice activism.

A. City and Citizenship: Between and Beyond the Nation-State

The first cluster opens the symposium with three essays trained squarely on the conference theme, but in ways that connect this theme to ongoing areas of study and method within LatCrit theory. They exemplify the kinds of interdisciplinary, multidimensional and transnational frameworks of analysis to which LatCrits constantly aspire.¹⁰ Moreover, they not only critique the status quo, but also offer substantive alternatives to it.

The essay by Mary Romero & Marwa Serag, builds on previous LatCritical interventions that highlight the relationship between the "foreign" and "domestic" as dominant categories of social theory, state action and legal doctrine.¹¹ Using the example of immigration law enforcement, and in particular the infamous Chandler Roundup in Arizona during the summer of 1997, this essay illustrates the deployment of criminal law to subordinate the foreignized "other" – in this case Chicanas/os. In that series of community raids, police arrested or detained individuals while they were engaging in everyday activities (like shopping, using public phones, walking, or riding a bike) on the basis of "Mexican appearance" and purportedly to help rehabilitate declining neighborhoods – another example of racial profiling that, as Romero & Serag note, encapsulates how public funds are misspent to finance subordinating state practices.¹²

These raids, Romero & Serag conclude after presenting the data and conclusions of the investigative reports that followed the police action, represented a "stunning reminder of second-class citizenship" for "Mexican looking" citizens whose lives were disrupted by the state on that precise basis.¹³ Through the particular study of identity-forming state practices in "real" life circumstances, and focusing on a particularly egregious example of racial profiling, the authors connect established lines of inquiry within LatCrit literature to this year's conference theme: "immigration law enforcement," which, they conclude, "functions to racially identify urban areas, to reinforce racial and cultural stereotypes of U.S. citizenship (particularly racial and cultural "Mexicaness" as illegal in itself), and to

Race theory" and, in particular, the "intellectual and political debt that LatCrit theorizing owes to Critical Race theorists." *Id.* at 57-60. As this symposium illustrates, these four functions and seven guideposts have helped LatCrit theorists to mine substantive insights and benefits that deepen, broaden and texture existing understandings of law and policy.

¹⁰In addition to multidimensional and coalitional work, our collective record to date – principally in the form of our published symposia – demonstrates that LatCrit theorists also have emphasized interdisciplinary and international frames of discourse and action. *See supra* note 8 and sources cited therein on internationalism in LatCrit theory; *see generally supra* note 6 and symposia sources cited therein. The LatCrit Portfolio of Projects, through which we perform collective praxis in interdisciplinary and internationalist frameworks, similarly demonstrates this emphasis. For more information on the LatCrit Portfolio of Projects, visit www.latcrit.org.

¹¹Mary Romero & Marwah Serag, *Violation of Latino Civil Rights Resulting from INS and Local Police's Use of Race, Culture and Class Profiling: The Case of the Chandler Roundup in Arizona*, 52 CLEV. ST. L. REV. 75 (2005).

¹²*Id.*

¹³*Id.*

maintain racial and class divisions between whites and Mexican Americans.”¹⁴

This subordination function, however, is not limited to, or enabled by, any one or two categories of identity and identification, as they make clear; on the contrary, this analysis tackles the combined effects of race, culture and class in motivating and shaping this display of state power. Moreover, this essay provides a snapshot of community-making by exclusion and subordination: it shows how dominant social groups pursue their political cohesion through state power, including the force of law, based on identity politics to harass “others” and thereby inhibit their social mobility in order to maintain social dominance and structural power over material privileges. This essay not only affirms and advances the LatCrit commitment to interdisciplinarity and multidimensionality as method, but also conjoins to this year’s conference theme the ongoing study of criminal law enforcement, of immigration law and policy, of identity formation, and of the relationship between the “foreign” and the “domestic” in LatCrit theory.¹⁵ The essay by Berta Esperanza Hernandez-Truyol & Matthew Hawk, effectively builds on Romero’s & Serag’s analysis.¹⁶ This essay questions the possibility of denationalizing citizenship – that is, decoupling the citizen from the nation so that the construction and administration of citizenship status is not left to the ideological preferences of any particular elite in control of any particular nation-state. Critiquing both of the prevailing conceptions of citizenship under current citizenship theory – “citizenship-as-legal-status” and “citizenship-as-desirable-activity” – Hernandez-Truyol & Hawk explore the utility and limitations of dual nationality, a construct that in some ways helps to set the conceptual stage for a kind of global citizenship – a kind of citizenship that, unlike current versions, would be explicitly and normatively grounded in human rights and designed to protect the “trappings of personhood” robustly.¹⁷

¹⁴*Id.*

¹⁵These lines of LatCritical inquiry overlap because they flow from the same set of historical and structural facts: the Latina/o “presence” in the lands now known as the United States is due principally to American expansionism and imperialism; the Mexican, Puerto Rican and other Latina/o communities now in the United States originally did not cross any borders to arrive or migrate here – the border crossed them, thereby initiating the dynamics of today. See, e.g., RODOLFO ACUÑA, OCCUPIED AMERICA (3d ed., 1988) (assessing Chicana/o communities as internal colonies); Gilbert Paul Carrasco, *Latinos in the United States: Invitation and Exile*, in IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE 190 (Jean F. Perea ed., 1997) (reviewing history of United States labor policies designed to attract Latina/o migrant workers, who then are not only exploited and maltreated but also disdained as “illegal immigrants”); Gerald P. Lopez, *Undocumented Mexican Migration: In Search of a Just Immigration Law and Policy*, 28 UCLA L. REV. 615 (1981) (evaluating the structural dis/incentives to immigration from Mexico to the United States); MARIFELI PEREZ-STABLE, THE CUBAN REVOLUTION: ORIGINS, COURSE, LEGACY 14-60 (2d ed. 1999) (outlining the “mediated sovereignty” of Cuba under the tutelage of the United States following its “independence” from Spain after the conclusion of the Spanish-American War in 1898); MARIA DE LOS ANGELES TORRES, IN THE LAND OF MIRRORS: CUBAN EXILE POLITICS IN THE UNITED STATES 74-83 (1999); Ediberto Roman, *Empire Forgotten: The United States’ Colonization of Puerto Rico*, 42 VILL. L. REV. 1119 (1997) (critiquing the colonial position of Puerto Rico as a “commonwealth of the United States, also resulting from the conclusion of the Spanish-American War in 1898); see also Symposium, *Understanding the Treaty of Guadalupe Hidalgo on Its 150th Anniversary*, 5 S.W.J.L. & TRADE AM. 1 (1998). American adventurism and interventionism throughout the Americas under policy imperatives such as the Monroe Doctrine and the Cold War similarly has catalyzed Latinas/os’ presence in the United States – it is no coincidence that Latina/o groups in the United States hail mostly from the places in which the United States has most interfered, such as Mexico, Puerto Rico, Cuba, Nicaragua, Guatemala, the Dominican Republic and El Salvador. See generally ARLENE M. DAVILA, SPONSORED IDENTITIES: CULTURAL POLITICS IN PUERTO RICO (1997); WALTER LAFEVER, INEVITABLE REVOLUTIONS: THE UNITED STATES IN CENTRAL AMERICA (2d ed. 1993); THE PUERTO RICAN MOVEMENT: VOICES FROM THE DIASPORA (Andres Torres & Jose E. Velazques eds., 1998); THE DOMINICAN AMERICANS (Silvio Torres-Saillant & Ramona Hernandez (1998): see also generally RUBIN FRANCIS WESTON, RACISM IN U.S. IMPERIALISM (1972) (providing a comprehensive account of U.S. imperialism and white supremacy, and illustrating how the areas targeted by those imperialist ventures now are the sources of today’s immigrant communities, including Cuba, Puerto Rico, Hispaniola, the Phillipines and other areas in and beyond the Americas).

¹⁶Berta Esperanza Hernandez-Truyol & Matthew Hawk, *Traveling the Boundaries of Statelessness: Global Passports and Citizenship*, 52 CLEV. ST. L. REV. 97 (2005).

¹⁷*Id.*

In purpose and effect this concept of a “global citizenship” would transform the relationship of citizenship to sovereignty, and could help to ameliorate longstanding concerns over the well-known tendencies toward tyranny oftentimes displayed by neocolonial elites in control of national governments – ideological tyrannies exemplified by the Chandler Roundup explored in the Romero & Serag essay and similarly illustrated by other authors in the following clusters.¹⁸ Indeed, as posited here, this idea of global citizenship emerges from human rights traditions precisely so that it can serve as a “foundation for the attainment of full personhood by those marginalized or disempowered within their own national borders, including the poor, racial and ethnic minorities, indigenous populations, and women.”¹⁹ By design, global citizenship is an alternative means of constructing relatively egalitarian forms of status and formal kinds of communities for and among those who at present lack equal status in any local, national or global community.²⁰ The proposal intends a formal mechanism rooted in existing concepts and structures for the formation and recognition of a new “cosmopolitan” community to transcend national hegemonies and promote a culture of human rights globally.

This essay connects ongoing areas of LatCritical study – including, most notably, the bridging of “international” and “domestic” law and policy in practical and conceptual terms. Equally important, this critique of existing national and international “communities” – and of the formal indicia invented to demonstrate inclusion in or exclusion from them – also highlights the salience of “community” and community-making in this year’s conference theme: this critique of the national passport system highlights the policing functions of borders and “citizenship” – and how that policing enforces and reinforces social, cultural, political and economic group hierarchies based on particular conceptions of “community” (and inclusion or exclusion therefrom). This essay also superbly illustrates how notions of “community” remain a site of social struggle charged with the potential either to subordinate or liberate, and why community-building as collective antisubordination praxis has been a key theme in LatCrit theory from inception.²¹ Perhaps, this essay even provides hopes and answers for the members of the diasporas that help to

¹⁸See, e.g., Nicholas Espiritu, *(E)racing Youth: The Racialized Construction of California’s Proposition 21 and the Development of Alternate Contestations*, 52 CLEV. ST. L. REV. 189 (2005); Ronald L. Mize, Jr., *Reparations for Mexican Braceros? Lessons Learned from Japanese and African American Attempts at Redress*, 52 CLEV. ST. L. REV. 273 (2005); Kim David Chanbonpin, *How the Border Crossed Us: Filling the Gap Between Plume v. Seward and the Dispossession of Mexican Landowners in California After 1848*, 52 CLEV. ST. L. REV. 297 (2005).

¹⁹Henrandez-Truyol & Hawk, *supra* note 16. Among these outgroups could be included sexual minorities, who also would benefit from this analysis and proposal for substantially the same reasons. See *infra* notes 116-146 and accompanying text discussing one such group.

²⁰*Id.*

²¹It is no coincidence that community-building through theory and praxis is the third LatCrit guidepost. See *supra* note 9 and accompanying text. For a thoughtful discussion of this topic in LatCrit and other genres of critical outsider jurisprudence, see Angela P. Harris, *Building Theory, Building Community*, 8 SOC. & LEGAL STUD. 313 (1999). This topic therefore has drawn the attention of LatCrit scholars over the years, who have grappled with sources of “difference” and diversity in our community-building efforts. See, e.g., Alicia G. Abreu, *Lessons From LatCrit: Insiders and Outsiders, All at the Same Time*, 53 U. MIAMI L. REV. 787 (1999) (discussing author’s dual sense of “insider” and “outsider” positionality within LatCrit conferences); Elvia Arriola, *Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self*, 2 HARV. LATINO L. REV. 397 (1997) (viewing LatCrit from an outsider/Latina lesbian perspective); Enrique Carrasco, *Who Are We?*, 19 UCLA CHICANO-LATINO L. REV. 331 (1998) (considering the multiple roles or identities of LatCrit scholars); Max J. Castro, *Making Pan Latino: Latino Pan-Ethnicity and the Controversial Case of Cubans*, 2 HARV. LATINO L. REV. 179 (1997) (discussing the peculiar position of Cubans and Cuban Americans in Latina/o intergroup relations within the United States); Elizabeth M. Iglesias, *Human Rights in International Economic Law: Locating Latinas/os in the Linkage Debates*, 28 U. MIAMI INTER-AM. L. REV. 361 (1997) (reflecting on intra-Latina/o divisions based on differing degrees of cultural assimilation, nationalist ideologies, as well as race, class and gender hierarchies and the implications of such “difference” for progressive law reform initiatives); Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997) (reflecting on Chicana/o, Puerto Rican, and Cuban differences); Victoria Ortiz & Jennifer Elrod, *Reflections on LatCrit III: Finding “Family”*, 53 U. MIAMI L. REV. 1257 (1999) (discussing the role of “safe spaces” from community building within the legal academy in the face of “differences” that affect both the academy as well as society at large); Guadalupe T. Luna, *“La Causa Chicana” and*

define the constituencies and communities that LatCrit and other OutCrit²² scholars strive to aid – including many immigrants living in our midst today, who are left “undocumented” by the current formalities of existing nation-states.²³

Finally, the essay by Charles Venator Santiago, turns the lens of critical inquiry toward the Caribbean – and in particular the island of Hispaniola, which includes Haiti and the Dominican Republic – to explore this year’s conference theme from a critical *and* comparative angle.²⁴ In particular, Venator Santiago taps “the notion of legal transculturation as a point of departure to reflect on the relationship between race, multiple legal traditions, and the process of nation building.”²⁵ The focus here is the “contact zone” created by the twenty-some years of Hispaniola’s formal unification under Haitian independence, which brought together the Spanish colony in Santo Domingo and its Spanish legal traditions with the French colony in Haiti and its French legal traditions under a new and independent state committed to the protection of “any person of African or Indoamerican heritage.”²⁶ The former, as LatCrits and other scholars have previously noted,²⁷ represented an empire premised on the exploitation of Africans and Indians while the Haitian nation-state was designed, at least formally, to protect those very persons. The tensions between the two during this brief unification period, and their enduring consequences, are the objects of interrogation here.

Communicative Praxis, 78 DENV. U. L. REV. 553 (2001) (theorizing relationship between Chicana/o studies and LatCrit theory and our community-building praxis); Ediberto Roman, *Common Ground: Perspectives on Latina-Latino Diversities*, 2 HARV. LATINO L. REV. 483, (1997) (elaborating commonalities upon which Latinas/os may build a sense of constructive collectivity); *see also infra* note 86 and sources cited therein on Latina/o demographic heterogeneity. This original emphasis has evolved into institution-building. *See, e.g.*, Elizabeth M. Iglesias & Francisco Valdes, Afterword—*LatCrit at Five: Institutionalizing a Postsubordination Future*, 78 DENVER U. L. REV. 1249 (2001) (describing ongoing institution-building efforts).

²²Because the “OutCrit” denomination is an effort to conceptualize and operationalize the social justice analyses and struggles of varied and overlapping yet “different” subordinated groups in an interconnective way, “OutCrit” refers (at least initially) to those scholars who identify and align themselves with outgroups in this country, as well as globally, including most notably those who in recent times have launched lines of critical inquiry within legal culture, including critical legal studies. *See generally supra* note 4 and sources cited therein on outsider jurisprudence. Thus, while “outsider jurisprudence” may be, but is not always nor necessarily, “critical” in perspective, the OutCrit stance is, by definition, critical in nature. OutCrit positionality, then, is framed around the need to critique and combat, in collective and coordinated ways, the mutually-reinforcing systems of subordination and domination that construct both outgroups and ingroups. For further discussion of this designation, see Francisco Valdes, *Outsider Scholars, Legal Theory and OutCrit Perspectivity: Postsubordination Vision as Jurisprudential Method*, 49 DEPAUL L. REV. 831 (2000) [hereinafter *Postsubordination Vision*].

²³For example, the immigrants in the closing vignette presented in Part II of this Foreword would benefit tremendously from the analysis and proposals set forth in this essay. *See infra* notes 117-147 and accompanying text presenting this vignette.

²⁴Charles R. Venator Santiago, *Race, Nation-Building and Legal Transculturation During the Haitian Unification Period (1822-1844): Towards a Dominican Perspective*, 52 CLEV. ST. L. REV. 63 (2005).

²⁵*Id.*

²⁶*Id.*

²⁷The footprints of colonial conquest throughout the Americas are well documented. *See generally* RICHARD DRINNON, *FACING WEST: THE METAPHYSICS OF INDIAN-HATING AND EMPIRE-BUILDING* (1990); CHARLES GIBSON, *SPAIN IN AMERICA* (1966); RAMON GUTIERREZ, *WHEN JESUS CAME, THE CORN MOTHERS WENT AWAY: MARRIAGE, SEXUALITY AND POWER IN NEW MEXICO, 1500-1846* (1991); FRANCIS JENNINGS, *THE INVASION OF AMERICA: INDIANS, COLONIALISM, AND THE CANT OF CONQUEST* (1975); LYLE H. MCALISTER, *SPAIN AND PORTUGAL IN THE NEW WORLD, 1492-1700* (1984); NATIVE AMERICAN TESTIMONY: A CHRONICLE OF INDIAN-WHITE RELATIONS FROM PROPHECY TO PRESENT, 1492-1992 (Peter Nabokov ed., 1991); DAVID J. WEBER, *THE SPANISH FRONTIER IN NORTH AMERICA* (1992); *see also* RICHARD C. TREXLER, *SEX AND CONQUEST: GENDERED VIOLENCE, POLITICAL ORDER, AND THE EUROPEAN CONQUEST OF THE AMERICAS* (1995) (documenting and discussing the patriarchal and homophobic aspects of the conquest). For a discussion of colonialism’s enduring dynamics from one LatCritical perspective, see Francisco Valdes, *Race, Ethnicity and Hispanismo in a Triangular Perspective: The “Essential Latina/o” and LatCrit Theory*, 48 UCLA L. REV. 305 (2000) [hereinafter, *Hispanismo*].

In this summary historical account we encounter a narrative in which race, nation, citizenship, law and power are as intertwined as in North America.²⁸ Yet, in this account, the familiar categories and dynamics are scrambled; indeed, in this account we encounter a legal regime in which property ownership is formally denied to white persons – precisely the converse of the North American experience – but for the same purpose: to ensure the dominance of the dominant group. This resort to exclusionary policymaking, which rendered the otherwise privileged Spanish (or culturally “white”) Dominicans outcasts under the unification regime, Venator Santiago concludes, helps to explain the persistence of tensions – and the loss of coalitional opportunities – that contributed to the eventual collapse of that promising experiment. Venator Santiago explains: the unwillingness of the Haitian regime to “make an exception for white Dominicans” overlooked “an opening for integration of the Dominican perspective in the formation of a new Haitian national project.”²⁹ No, this essay does not tell the whole story.³⁰ And Venator Santiago makes plain that this essay “represents a work in progress that seeks to clarify an important but obscure period in the histories of Haiti and the Dominican Republic.”³¹ But while the analysis is “in progress” and the familiar categories are wildly inverted, the comparative experience and its tentative lessons should give pause – and inspire deeper investigation of this neglected area of study.

One observation is the equation of “Spanish” with “white” in American contexts south of the Rio Grande – a conflation that stops at the border marked by that river. This observation, while not pursued in this essay, illustrates a key point in “comparative racialization” that LatCrit and RaceCrit scholars have previously explored.³² An important lesson to be drawn from this essay, even at this preliminary point, is that exclusion in the process of community-making is likely a short-sighted policy; forcible exclusions, as this summary account illustrates, forego opportunities for inter-group coalitions or collaborations based on mutually-agreeable principles and aspirations. In this way, Venator Santiago, like the other authors in this opening cluster, effectively underscores the importance of inclusionary and coalitional politics in the construction of viable communities locally and nationally (and globally) on egalitarian principles and aspirations. It is a salutary reminder beckoned by this year’s conference theme, as well as by the still-recent jurisprudential experience of outsiders in the legal academy of the United States.³³

²⁸Venator Santiago, *supra* note 24.

²⁹*Id.*

³⁰Nor, in all fairness, would the Symposium Submission Guidelines make a complete analysis possible here: the Symposium submission Guidelines specify that essays “should be between 20-30 pages in length” due to space limitations. To review the Guidelines in their entirety, please visit the LatCrit website at www.latcrit.org.

³¹Venator Santiago, *supra* note 24.

³²For example, a cluster of essays in the LatCrit V symposium was focused on comparative racialization. For a discussion of those essays, see Kevin R. Johnson, *Introduction – Comparative Racialization: Culture and National Origin in Latina/o Communities*, 78 DENVER U. L. REV. 633 (discussing essays by Tayyab Mahmud, Berta Esperanza Henandez-Truyol, Steven W. Bender, Pedro Malavet and Nancy Ehrenreich); see also Imani Perry, *Of Desi, J.Lo and Color Matters: Critical Race Theory and the Architecture of Race*, 52 CLEV. ST. L. REV. 139 (2005). For other recent readings on comparative racialization in the United States and Latin America, see Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 UCLA L. REV. 1705 (2000); Neil Gotanda, *Comparative Racialization: Racial Profiling and the Case of Wen Ho Lee*, 47 UCLA L. REV. 1689 (2000); Tanya Kateri Hernandez, *Multiracial Matrix: The Role of Ideology in Enforcement of Antidiscrimination Laws, A United States-Latin America Comparison*, 87 CORNELL L. REV. 1093, 1133-44 (2002).

³³The need for a “safe space” for “community building” – a venue that would enable communities of outsider scholars to arise and flourish – has been a perennial theme in outsider jurisprudence, in part because the birth and growth of outsider jurisprudence have been punctuated by various ruptures. Most notable, perhaps, has been the rupture with critical legal studies that gave way to the emergence of critical race theory. For a collection of works that recount those events, see Symposium, *Minority Critiques of the Critical Legal Studies Movement*, 22 HARV. C.R.-C.L.L. REV. 297 (1987); see also Symposium, *Critical Legal Studies*, 36 STAN. L. REV. 1 (1984) (describing and presenting critical legal studies). Similarly conflicted experiences, however, marked the Critical Race Theory Workshops in the years that followed that original rupture. See, e.g., Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 U. MIAMI L. REV. 1247

This trio of essays underscores the importance of this year's conference theme as well as articulates, or points toward, the multiple interconnections between the "city and citizen" and other areas of ongoing LatCritical inquiry. In their creative, interdisciplinary and multidimensional investigations of this year's conference theme, these five authors continue our fledgling efforts to map the connections between law and identity through the study of particularities that, in turn, form the larger "patterns of subordination" encasing us all.³⁴ This opening cluster, as a whole, sets the stage for the more detailed themes of the remaining three clusters in this symposium.

B. Race, Ethnicity and Gender: Identity Ideologies in Law and Culture

Following up, the second cluster of this symposium shifts attention squarely to the continuing centrality of identities in the formulation of law and policy. Focused specifically on race, ethnicity and gender, and on their mutually-constitutive dynamics, this cluster is the most extensive of the four. Presenting five essays, this cluster's richness perhaps should come as no surprise: the exploration of race, ethnicity and gender has been a hallmark of critical outsider jurisprudence from its inception.³⁵ As this cluster demonstrates, this line of critical inquiry is alive and well within LatCrit theory today.

The essay by Nicholas Espiritu in this cluster represents a real delight: authored by one of the four LatCrit Student Scholars in the inaugural year of that program,³⁶ this essay illustrates the intellectual cutting edge of the next generation.³⁷ In this contribution, Nicholas Espiritu explores how the construction of "youth" is shaped by racialized notions of "crime" embedded in the doctrines of the law. In his view, the law "has been moving toward a conceptualization of youth being a group that needs policing and control."³⁸ An "analysis of the intersectionality of age, race and gender demonstrates ... how [law as a control mechanism] subordinates and criminalizes youth of color, and creates a racialized conception of youth."³⁹

To ground this analysis in concrete recent experience, Espiritu focuses on California's Proposition 21, enacted in 2000, and also known as the Gang Violence and Juvenile Crime Prevention Act. This example, as Espiritu notes, is especially chilling because it is "the product of California's direct democracy process through which voters are able

(1998) (describing the early workshops); Valdes, *Theorizing "OutCrit" Theories*, *supra* note 4, at 1288-91 (describing the later workshops); *see also* Harris, *supra* note 20 (describing community building both in Critical Race and in LatCrit contexts). Of course, similar dynamics also have surfaced with and within feminist legal theory. *See, e.g.*, Catharine A. MacKinnon, *Keeping it Real: On Anti-"Essentialism" in CROSSROADS, DIRECTIONS AND A NEW CRITICAL RACE THEORY* 71 (Francisco Valdes, Jerome McCristal Culp & Angela P. Harris eds., 2002); Catharine A. MacKinnon, *From Practice To Theory, or What Is a White Woman Anyway?*, 4 *YALE J.L. & FEMINISM* 13 (1991) (responding to controversies about race and gender within feminist legal theory); Leti Volpp, *Feminism Versus Multiculturalism*, 101 *COLUM. L. REV.* 1181 (2001) (critiquing the oppositional juxtaposition of "culture" against feminism). LatCrit conferences and discourses have not been immune to this phenomenon. *See* Valdes, *Theorizing OutCrit Theories*, *supra* note 4, at 1308-11 (recounting "contentious engagements" at various LatCrit conferences, including the first one).

³⁴The linkage of the specific to the general – the mapping of particularities in larger patterns and schema – is the seventh guidepost for the development of LatCrit theory and praxis raised during the first annual conference and symposium. For a listing of the LatCrit guideposts, *see supra* note 9 and accompanying text.

³⁵The early work on multiplicity, antiessentialism and intersectionality focused principally on race and gender as identity axes influencing the content of law and policy. *See supra* note 5 and sources cited therein on these early breakthroughs and follow-up efforts.

³⁶The Student Scholar Program provides scholarships and mentoring to selected students from any discipline and region on the basis of applications due every January, which include an original manuscript in the area of law, race and ethnicity. For more information on the LatCrit Student Scholar Program, please visit www.latcrit.org.

³⁷Espiritu, *supra* note 18.

³⁸*Id.*

³⁹*Id.*

to change the California constitution through a simple majority vote. The proposition system has been employed as the tool of majoritarian domination, subjugating communities of color ... through various discourses from xenophobia to colorblindness, formal equality, and reverse discrimination.”⁴⁰ Thus, this example effectively is part and parcel of the “culture wars” that have enveloped law and society during the past couple of decades.⁴¹ Indeed, throughout his paper, Espiritu describes the process of this proposition – as well as others similar to it enacted in California during the past decade or so – as an exemplar of racialized inter-group contestation over the meaning of equality, justice and democracy in the United States today, a contestation in which the courts are deeply implicated.⁴²

Like that of Romero & Serag, this essay recounts how the ensconced elites of California deploy law – and, in this instance, “democracy” – to reinforce a sense of “community” in exclusionary ways based on race, color, age, gender and similar identity axes. Espiritu’s analysis of the process and politics resulting in Proposition 21 explicitly notes the strategic uses of identity: “The interest groups behind such legislation are cognizant of what messages will appeal to voters, and draft legislation and media campaigns” accordingly.⁴³ This essay, like others in this symposium, effectively maps how supremacist community-making based on colonial and neocolonial imperatives continues to take place as the nation enters a new century, and despite the establishment of formal equality half a century ago.

This last observation also serves to underscore how Espiritu’s essay illustrates the foundational importance of community-building among LatCrit theorists: authored, as noted above, by one of the Student Scholars in that program’s inaugural year, this essay illustrates how collective projects, such as the Student Scholar Program, operate as mechanisms to create a community of antistatist scholars across multiple borders of location, discipline and identity – including those of age or generation. This essay is in this symposium because the Student Scholar Program made it possible for Espiritu to be at the LatCrit VIII conference; while focused on the substantive areas highlighted by the Student Scholar Program (race, ethnicity and law) this essay is an example of community-building through collective projects; this essay illustrates how community-making is a form of collective LatCrit praxis.⁴⁴ By way of example, this essay illustrates (yet again in this symposium) how, for LatCrits, *both* parts of this

⁴⁰*Id.*

⁴¹These “culture wars” of the past quarter century help to explain much of the reactionary turmoil surrounding the civil rights gains of the past half century. The declaration of cultural warfare issued formally, and perhaps most conspicuously, from Republican Presidential contender Patrick Buchanan during his address to the 1992 Republican National Convention. See Chris Black, *Buchanan Beckons Conservatives to Come “Home,”* BOSTON GLOBE, Aug. 18, 1992, at A12; Paul Galloway, *Divided We Stand: Today’s “Cultural War” Goes Deeper than Political Slogans,* CHI. TRIB., Oct. 28, 1992, at C1; see also JAMES DAVISON HUNTER, *CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA* (1991); JAMES DAVISON HUNTER, *BEFORE THE SHOOTING BEGINS: SEARCHING FOR DEMOCRACY IN AMERICA’S CULTURE WAR* (1994). Since then, this social conflict has been waged with a vengeance to “take back” the civil rights gains of the past century in the name of the “angry white male.” See Grant Reeher & Joseph Cammarano, *In Search of the Angry White Male: Gender, Race and Issues in the 1994 Elections,* in MIDTERM: THE ELECTIONS OF 1994 IN CONTEXT 125 (Philip A. Klinkner ed., 1996). In recent years, critical legal scholars have noted the effects of cultural warfare on law and policy, especially regarding issues or areas related to antistatist theory and praxis. See generally Keith Aoki, *The Scholarship of Reconstruction and the Politics of Backlash,* 81 IOWA L. REV. 1467 (1996); Kimberlé W. Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law,* 101 HARV. L. REV. 1331 (1988); Kenneth L. Karst, *Religion, Sex, and Politics: Cultural Counterrevolution in Constitutional Perspective,* 24 U.C. DAVIS L. REV. 677 (1991); Francisco Valdes, *Afterword—Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality, and Responsibility in Social Justice Scholarship, or Legal Scholars as Cultural Warriors,* 75 DENV. U. L. REV. 1409, 1426-43 (1998); Francisco Valdes, *Culture, “Kulturkampf” and Beyond: The Antidiscrimination Principle Under the Jurisprudence of Backlash,* in THE BLACKWELL COMPANION TO LAW AND SOCIETY (Austin Sarat ed., forthcoming 2004).

⁴²Espiritu, *supra* note 18.

⁴³*Id.*

⁴⁴For example, the Student Scholar Program Call for Papers and informational literature explain that this program “brings the Student Scholars into the LatCrit intellectual and social community” in four inter-related ways, including a scholarship to attend

year's conference theme are much more than just that; jointly, they serve as a guidepost for, and function of, our ongoing work.⁴⁵

The essay by Imani Perry, similarly focuses on race to explore its relationship to culture and power.⁴⁶ In this essay, Perry examines the “architecture” of race not only to critique its supremacist legacies and effects but also in a forward-looking effort to construct new means of transcending existing “categorical” constructions of sociolegal identities. Perry urges all LatCrits, RaceCrits and other OutCrit scholars, to struggle always against binary constructions of issues or positions, including those stemming from race and its uses. Instead, she argues for a critical forward-looking emphasis: we should employ critical scholarship and praxis as “the impetus for reconstructions of race discourse with national and international understandings of how groups have figured historically with respect to each other and [to] empire/white supremacy, and how we continue to deal with legacies, across national boundaries, of colonial racial constructs and contacts.”⁴⁷ Exactly.

To unfold this effort, Perry encourages the employment in legal theory and scholarship of analytical approaches developed in the field of cultural studies, coupled with a careful attention to power inequities resulting from “the matrices of domination” established by centuries of colonial and neocolonial experience.⁴⁸ Therefore, our work and praxis must account for the coloniality of the *present*. As posited by Perry, this current reality is exemplified in phenomena ranging from Desi Arnaz to the case law and jurisprudence of the United States today.⁴⁹ And within this dominant construction of reality, Perry continues, questions of race are commingled with those of color, ethnicity, nationality, gender and class. “The specific experiences of Latinos assist us in understanding how these issues are relevant for the racialization of all peoples of color.”⁵⁰ This interdisciplinary and contextualized approach, as Perry displays in her essay, enables a multidimensional critique of law and society that specifically makes conspicuous the “coloniality of power” – that is, the colonial or neocolonial architecture of power *today* – as integral to the anticolonial projects of LatCrit scholars and activists. Correctly, Perry warns that anticolonial knowledge and praxis must be mindful of colonial legacies; that we live not in a postcolonial age but under a neocolonial system.

Like Espiritu and other symposium authors, Perry explicitly takes up and advances the continuing critical study of race and its interaction with other axes of identity in contemporary law and society.⁵¹ Her interdisciplinary approach and multidimensional framework illustrate the standards of LatCritical method. And her examination of culture, while not explicitly framed in community-building terms, effectively describes how the national community of the United States (and other contemporary nation-states) has(ve) been driven by the impulses and imperatives of colonialism – supremacist impulses and imperatives that today engender cultural icons like Desi Arnaz or J.Lo as well as fuel formal acts of exclusion like Proposition 21. Like Espiritu and other authors above and below, Perry both illustrates and corroborates the centrality of community-making, both to oppressive operations of power as well as to strategies of resistance against them.

The essays by Nancy Ehrenreich and Marta Nunez-Sarmiento, shift focus; their respective examinations of “operations of power” train principally on gender and its deployment in law and society today. The first of these, by

the annual conference and present there the paper submitted in response to the Call for Papers. For further information on the LatCrit Student Scholar Program, see *supra* note 36.

⁴⁵For further readings on the functions and guideposts posited for LatCrit and OutCrit scholarship and praxis, see *supra* note 9.

⁴⁶Perry, *supra* note 32.

⁴⁷*Id.*

⁴⁸*Id.*

⁴⁹*Id.*

⁵⁰*Id.*

⁵¹In this symposium, see Romero & Serag, Mize, Chanbonpin, Monty, Revilla.

Ehrenreich, focuses on the use of gender (and race) in the North American invasion of Iraq in 2003.⁵² The second, by Nunez-Sarmiento, focuses on the fluctuations in gender ideology among professional women and men in Cuba today.⁵³ Both show that male supremacy continues to shape and influence social reality and legal regimes on both sides of the Florida Straits. These two essays teach that gender, as much as race, continues to function as a marker of inclusion and exclusion in the construction of particular “communities” ranging from the workplace to the nation – communities stratified in great measure by (sex and) gender in symbolic and material terms that constitute status and power over “others.”

Ehrenreich posits that the current occupant of the White House has “played upon the gender insecurities and racial biases of the population” in the United States to “sell U. S. military aggression to the American public.”⁵⁴ She continues: “To be more specific, [the current Administration] has reinforced a racialized national sense of masculinity by playing on the association of maleness with the domination of people of color.”⁵⁵ Ehrenreich identifies three tropes at work in this dynamic: first, “real men” are men who use violence against people of color; second, “real men” are men who civilize barbarians; and, third, “real men” are men who rescue women.⁵⁶ This drama, Ehrenreich concludes, requires LatCrits to “look at how masculinist norms harm the entire nation.”⁵⁷

In similar vein, the essay by Nunez Sarmiento repeatedly shows how women in Cuba juggle the same ideologies, conflicts and constraints as their North American counterparts. For instance, Nunuz Sarmiento’s study confirms that women “sacrifice themselves because they work at home and at their jobs” and that “macho attitudes prevail at the institutional and individual levels.”⁵⁸ Similarly, it seems that in both capitalist and socialist societies, the “managerial culture has been designed by men and for them.”⁵⁹ The bottom line is familiar: in “personal and intimate spaces, men freely conduct themselves as superior beings.”⁶⁰ As in the United States, the dismantlement of patriarchy remains a work-in-progress in Cuba.

These two essays “center” gender’s deployment to perpetuate hierarchical identity-based relations in settings that range from the home to the nation. Indeed, the basic point of both essays resonates loudly: supremacist gender ideologies, and their unwholesome effects, continue to infect the cultural, personal, and social realities of women and men in the Americas and beyond. These gendered realities, now entrenched, were transplanted here from Europe through the multiple processes of colonization and acculturation that Perry urges us to integrate into our accounts of power in contemporary law and society;⁶¹ they today help to perpetuate, specifically in sex/gender terms, the coloniality of power in the present that Perry emphasizes in her essay. They enable the kinds of oppressive policymaking to create status hierarchies that Espiritu and Romero & Serag critique.⁶² They underscore the importance of the alternatives to this status quo, such as the option of global citizenship that Hernandez-Truyol

⁵²Nancy Ehrenreich, *Disguising Empire: Racialized Masculinity and the “Civilizing” of Iraq*, 52 CLEV. ST. L. REV. 131 (2005).

⁵³Marta Nunez Sarmiento, *Changes in Gender Ideology Among Professional Women and Men in Cuba Today*, 52 CLEV. ST. L. REV. 173 (2005).

⁵⁴Ehrenreich, *supra* note 52.

⁵⁵*Id.*

⁵⁶*Id.*

⁵⁷*Id.*

⁵⁸Nunez Sarmiento, *supra* note 53.

⁵⁹*Id.*

⁶⁰*Id.*

⁶¹*See supra* notes 46-51 and accompanying text.

⁶²*See supra* notes 11-14, 37-43 and accompanying text.

& Hawk propose.⁶³ These two essays, like others in this symposium, continue multiple lines of LatCritical inquiry into the interactions of law, policy and identity that produce structures and systems of subordination, and for the purpose of neutralizing them as best we can through theory and praxis. Similarly, they also serve to illustrate how the process of community-making is a central device and site of social struggle: like the other essays in this cluster (and symposium), these two confirm that community-making *is* social struggle.

Written by a student, the essay by Anita Tijerina Revilla provides a powerful example of the potentially liberating relationship between theory and practice.⁶⁴ In this essay, Revilla explores the meaning of struggle in personal, collective and social terms. To do so, she underscores the connections between education and empowerment as elements of antisubordination struggle, as well as the importance of community-making as an expression of resistance and a form of personal as well as collective praxis.

This essay focuses on in-depth interviews and observations of Chicanas belonging to a group in Los Angeles, Raza Womyn. This methodology, presented as a kind of “portraiture,” seeks to convey a holistic picture of the subject of study. Her ten-week case study, Revilla concludes, “illustrates ways that women build community for themselves and how they use that community to struggle against the subordination they encounter in their schooling experience.”⁶⁵

From this study, Revilla draws three themes that combine the familiar with the (perhaps) surprising: “the experience of marginalization, a belief in revolution, and the commitment to love.”⁶⁶ The first of these – the experience of marginalization – is of course a familiar reality: critical outsider jurisprudence, as a whole, is explicitly self-conscious of its and its constituencies’ marginality and marginalization.⁶⁷ The second – a belief in revolution – signifies the self-transforming process of “becoming conscious” that leads toward a personal commitment to creating substantial social change. This process, Revilla writes, “entails learning about the oppression of your ancestors as well as other forms of oppression that take place within one’s own cultural group [as well as] the reconstruction of a future free of the destructive images, stereotypes and beliefs from the past.”⁶⁸ This process, in effect, entails embrace of the kinds of “critical education” espoused over the years by various scholars, including LatCrits.⁶⁹ The third, and perhaps the most surprising theme of Revilla’s study, is the employment of “love as a hermeneutic.”⁷⁰ This lens, Revilla explains, is expressed in the form of “hope, fun, safeness, and intimacy” among the women constituting the group.⁷¹ This “love” enables the practice of antisubordination theory and helps to inform the construction of egalitarian interpersonal relationships, which collectively give rise to communities based on mutual commitments to shared principles and practices. In this paper, personal praxis among and between

⁶³See *supra* notes 16-23 and accompanying text.

⁶⁴Anita Tijerina Revilla, *Raza Womyn Engaged in Love and Revolution: Chicana Student Activists Creating Safe Spaces Within the University*, 52 CLEV. ST. L. REV. 155 (2005).

⁶⁵*Id.*

⁶⁶*Id.*

⁶⁷“If many of critical race theory’s foundational insights are being confirmed empirically, why are its descriptive accounts of contemporary life and its prescriptive solutions – its standing calls for structural change and social transformation – not even on the table for contemporary policy debate? Why does critical race theory remain “outsider jurisprudence” while another jurisprudence, one of backlash and retrenchment, continues to rule with impunity from the legislature and bench?” Jerome M. Culp, Jr., Angela P. Harris & Francisco Valdes, *Subject Unrest*, 55 STAN. L. REV. 2435, 2449 (2003).

⁶⁸Revilla, *supra* note 64.

⁶⁹The LatCrit V symposium, for example, featured a cluster of essays with several (including one co-authored by Revilla) focused on critical theory and pedagogy. For a discussion of these essays, see Elvia Rosales Arriola, *Introduction: Talking About Power and Pedagogy*, 78 DENVER U. L. REV. 507 (2001).

⁷⁰Revilla, *supra* note 64 (citations omitted).

⁷¹*Id.*

likeminded individuals becomes a “pedagogical experience” in community-making.⁷² This essay thus closes this impressive cluster on a powerful note that affirms the relationship between theory and action, and in particular the synergism of theory and action to inspire and sustain not only the production of liberating knowledge but also the coalescence of communities of liberation – both, again, key guideposts and functions of LatCrit theorists from inception.⁷³

As a set, the five essays in this second cluster address the “big three” identity axes of critical outsider jurisprudence: race, ethnicity and gender. They do so in richly diversified settings, and in areas of critical focus that help to bare dominant manipulations of identity that perpetuate neocolonial (or “traditional”) power hierarchies in contemporary society. As a whole, they show how the “traditional” oftentimes is, simply, the neocolonial. Their multidimensional approaches to neocolonial identity ideologies embedded in law and culture illustrate the continuing salience of “identity” in everyday aspects of social life, and underscore the need for increasingly sharp LatCritical analyses of traditional identity politics in the construction of public policy and in the operation of contemporary society. These essays confirm that our continuing excavations of identity as a hidden determinant of law and policy remain an urgent – and therefore decried – task in critical theory and legal scholarship.⁷⁴

In highlighting the continuing operation and interaction of race, ethnicity and gender in law and society, these essays also document (to different degrees and in different ways) the power of community-making as social struggle, both among privileged insiders and marginalized Others. They show, time and again, how identities and identifications are deployed to construct exclusionary communities as well as to construct communities of resistance and liberation. In so doing, these authors effectively confirm the importance of community-making as personal and collective

⁷²*Id.*

⁷³See *supra* note 9 (on LatCrit guideposts and functions).

⁷⁴And as Revilla reminds us, identity remains a hidden determinant not only in law and policy but also in formal education as well. Indeed, as LatCrits and others have noted in prior works, the formalization of legal education was shaped in explicit ways by the social, cultural and political dominance of white, Anglo-American nativist-racism as well as societal sexism. See, e.g., Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 85 CAL. L. REV. 1449, 1475-92 (1997) (recounting how the American Bar Association, the bar examination, the Law School Aptitude Test, and other “gatekeeping” mechanisms were originated and calculated to be racist, anti-immigrant, sexist, and anti-Semitic); William C. Kidder, *The Rise of the Testocracy: An Essay on the LSAT, Conventional Wisdom, and the Dismantling of Diversity*, 9 TEX. J. WOMEN & L. 167 (2000) (discussing how the LSAT continues to project that history into the present); see also ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983) (providing a comprehensive account of the politics – including the identity politics – that dominated the institutionalization of formal legal education). See generally NICHOLAS LEMANN, *THE BIG TEST: THE SECRET HISTORY OF THE AMERICAN MERITOCRACY* (1999) (providing a similar history focused, more generally, on the standardized tests used in various educational settings in the United States).

Moreover, the historically dominant racist-nativist-sexist supremacist motives behind the formalization and organization of education in the United States generally continue to be embedded in the structure specifically of legal education today. See, e.g., Charles R. Lawrence, III, *Two Views of the River: A Critique of the Liberal Defense of Affirmative Action*, 101 COLUM. L. REV. 928 (2001); Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953 (1996); see also Marina Angel, *The Glass Ceiling of Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1 (2000); Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537 (1988); Richard Delgado, *Minority Law Professors’ Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349 (1989); Richard Delgado, *Affirmative Action as Majoritarian Device: Or, Do You Really Want to be a Role Model?*, 89 MICH. L. REV. 1222 (1991); Sumi Cho & Robert Westley, *Historicizing Critical Race Theory’s Cutting Edge: Key Movements that Performed the Theory*, in CROSSROADS, DIRECTIONS AND A NEW CRITICAL RACE THEORY 32 (Francisco Valdes, Jerome McCristal Culp, Jr. & Angela P. Harris eds., 2002); Cheryl I. Harris, *Law Professors of Color and the Academy: Of Poets and Kings*, 68 CHI.-KENT L. REV. 331 (1992); William C. Kidder, *Situating Asian Pacific Americans in the Law School Affirmative Action Debate: Empirical Facts About Thernstrom’s Rhetorical Acts*, 7 ASIAN L.J. 29 (2000); Charles R. Lawrence III, *Minority Hiring in AALS Law Schools: The Need for Voluntary Quotas*, 20 U.S.F. L. REV. 429 (1986); Rachel F. Moran, *Commentary: The Implications of Being a Society of One*, 20 U.S.F. L. REV. 503 (1986); Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313 (2000).

LatCrit praxis in the pursuit of antistatutory legal reform and social change.⁷⁵

C. Identity, Discourse and Society: Mapping the Lines of Critical Inquiry

The third cluster, consisting of three essays, turns our attention to issues of identity and law and as reflected in the discursive practices of critical theorists as well as of mainstream society. The article by Reginald Oh, approaches LatCrit theory and praxis as a “space” for the critique of relationships that are both social and spatial in multidimensional terms.⁷⁶ The essay authored by Monty Aaron, another Student Scholar in the first year of that program, turns to LatCrit theory and praxis as a collective effort to balance the “tensions” that inhere in the sameness/difference discourses of the past decade or two.⁷⁷ The essay by Julian Webb approaches LatCrit theory as a “complex theory” of discourse and struggle devoted to antistatutory praxis in both spatial and systemic terms.⁷⁸ In different ways, each author connects the operation of identity in particular or concrete social spaces to the discursive practices that define or dominate that space. As a set, and as discussed in more detail immediately below, this third cluster effectively bridges the relationship of power to discourse in the realms of law and theory, as well as throughout society more generally, from a variety of different, though always critical, perspectives. Reggie Oh’s pithy essay analyzes the “call for a return to a discourse on the material reality of racism”⁷⁹ and offers two ways of constructing a “materialist” approach to race, ethnicity and identity in critical legal scholarship.⁸⁰ The first is “paying careful attention to the language and narrative structure of any critical discourse” and the second is “incorporating a critical geographical consciousness” into various strands of critical outsider jurisprudence, principally LatCrit and RaceCrit discourses.⁸¹ However, Oh notes a crucial insight at the outset: “in actuality, it is impossible to separate the material reality of racism from the discursive reality of racism.”⁸² Thus, the bottom line of this essay is an explicit renewal of the call to “multidimensional, multifaceted, multi-causal” critiques of the social and structural realities imposed through racism and racial subordination. To arrive at this bottom line, Oh positively encourages the critical investigation of discourse as a tool of power, and specifically of narrative as a “meta-code” in which trans-cultural messages about the nature of a shared reality can be transmitted.⁸³ Oh thus encourages scholarly emphasis on the ways in which narratives – in this instance, those regarding race and/or ethnicity – are “emplotted” in order to make the discursive construction of material reality an “intelligible whole” – a step that, Oh explains, is necessary to cause widespread social acceptance of, or acquiescence to, any particular material “reality”.⁸⁴ Oh’s bottom line thus emerges: discourse and reality are interconnected, mutually constitutive, and it is this process of mutuality that demands interrogation.

⁷⁵See *supra* notes 21 and 33 and sources cited therein on community building in LatCrit and other outsider jurisprudential experiments.

⁷⁶Reginald C. Oh, *Mapping a Materialist LatCrit Discourse on Racism*, 52 CLEV. ST. L. REV. 243 (2005).

⁷⁷Aaron Monty, *Retranslating Difference*, 52 CLEV. ST. L. REV. 255 (2005).

⁷⁸Julian Webb, *Law, Ethics and Complexity: Complexity Theory and the Normative Reconstruction of the Law*, 52 CLEV. ST. L. REV. 227 (2005).

⁷⁹For background reading, see Kevin Johnson, *Roll Over Beethoven: “A Critical Examination of Recent Writing About Race,”* 82 TEX. L. REV. 715 (2004).

⁸⁰Oh, *supra* note 76.

⁸¹*Id.*

⁸²*Id.*

⁸³*Id.* (citations omitted).

⁸⁴Oh writes that “emplotted narratives structure the way in which we comprehend the nature of reality.” *Id.*

For Oh, the first question facing LatCrits, RaceCrits and other OutCrits while considering the “call” to materialist analysis therefore is: “To what extent do the stories we tell about society accurately represent material reality?”⁸⁵ Oftentimes, answers Oh, representations of “reality” possess strong elements of “fantasy” even though the narrative presented may be “coherent” and thus persuasive; while narrative and discourse can be fantastical, it nonetheless contributes to the construction of material realities. Under this view, the crucial question becomes: “What relationship exists between discourse and the organization and production of social space?”⁸⁶ To conclude, Professor Oh reminds LatCrit and other OutCrits that “we cannot totally escape from knowing the world through narratives. However, we nonetheless must be able to tell the difference between legal narratives that lead us to concrete, empirical knowledge about material reality and narratives that lead us to self-referential, abstract knowledge that is divorced from material reality.”⁸⁷

With this conclusion, Professor Oh correctly tilts the focus of our collective efforts towards the delineation of the mutually-reinforcing connections between “discourse” and “reality” rather than invite assertion or indulgence of a supposed divide that separates the two in some elusive yet fixed way. With this thoughtful consideration of the interplay between theory or discourse and social realities, Oh validates the need to interrogate both – in ways that are explicitly interconnected and expressly account for both. And, he stresses, in ways that are anchored to the antisubordination purposes that we impute to our work. Oh’s bottom line should remind us that projects of social engineering, as well as those that pursue social transformation, oftentimes have begun with a vision; a vision expressed initially through discourse, which in turn can – and often does, as experience shows – inspire both the operation of oppressive power as well as the resistance of it among individuals and groups.⁸⁸ The essay by Aaron Monty invites us to take a new or fresh look at the issue of sameness-versus-difference that in past years has attracted so much attention among various scholars identified with critical outsider jurisprudence.⁸⁹ Focusing specifically on intra-Latina/o axes of difference based on class, color and sexual orientation, Monty effectively embraces and urges the kinds of multidimensional and self-critical engagements of law and legal theory that LatCrit long has espoused.⁹⁰ Indeed, Monty’s essay addresses and advances many of the concerns over groupness that LatCrits have engaged during the past eight years – and others before us – in both personal and

⁸⁵*Id.*

⁸⁶*Id.*

⁸⁷*Id.*

⁸⁸This point also is made evident by other authors. A key example is provided in this symposium by Hernandez-Truyol & Hawk, who envision a kind of global citizenship that, if effectuated, could help dismantle the entrenched oppressions of national neocolonial elites. *See supra* notes 16-23 and accompanying text. Another is provided by Mize, who envisions the basis for securing reparations on behalf of Mexican workers exploited systemically during the Braceros Program of the mid-Twentieth Century, which if effectuated could help to ameliorate the impoverishment and disempowerment of those and similar groups. *See infra* notes 103-111 and accompanying text; *see also* Valdes, *Postsubordination Vision*, *supra* note 22 (describing the role of vision in critical legal theory and antisubordination praxis).

⁸⁹The “sameness” and “difference” discourse has attracted the attention of many scholars. *See, e.g.*, 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); Martha Albertson Fineman, *Feminist Theory in Law: The Difference It Makes*, 2 *COLUM. J. OF GENDER & L.* 1 (1992); 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. The collective effort to mint concepts like antiessentialism, multiplicity, intersectionality, cosynthesis, wholism, interconnectivity, multidimensionality and the like also reflects a similar grappling with issues of sameness and difference in various genres of contemporary critical legal theory. *See supra* notes 3 and 5 and sources cited therein on these issues and similar themes or concepts in critical outsider jurisprudence, including LatCrit theory.

⁹⁰*See supra* notes 5 and 9 and sources cited therein on LatCrit method and analysis.

generational terms.⁹¹

To do so, he questions the operation of structural afflictions, such as colorism and homophobia, within and among “different” Latinas/os.⁹² Throughout his entire text Monty questions the internal “borders” that Latinas/os effectively import from the neocolonial sources that brought these borders to the Americas, thereby helping mightily to construct today’s internal divisions within and among Latina/o-identified groups or persons. Rather than dwell on “difference” in ways that divide, Monty argues: “our differences need to unite us instead of separate us.”⁹³ “It is necessary for us as Latinos to share our common experiences in order to build bridges among the divergent groups of people that constitute our community,” Monty concludes.⁹⁴

Monty’s message is well taken: our challenge is to recognize areas of difference, as well as similarities, in ways that are solidaristic rather than conflictive. And to accomplish this antisubordination aim, Monty urges an embrace of stories and storytelling to help understand and constitute our individual and group identities – a call to narrativity that coincides in this symposium with the apparently contrary call toward “materialist” analysis.⁹⁵ This coincidence illustrates the diversity and vitality of LatCrit theory as a discourse and praxis. It also shows the importance of community-building, both within LatCrits as a diverse community of activist scholars, as well as among Latina/o (and other communities of color) more broadly. Both “calls” aim to ameliorate the oppressive effects of supremacist community-building; both aim to help foster the spaces and bases for Latinas/os and other traditionally subordinated groups in the United States to imagine and emplace reconstructed communities based on egalitarian identity relations. In their antisubordination aims, both effectively embrace the social justice goal and vision that animates LatCrit theory and praxis: to transform society itself.

Against this backdrop, Monty’s conclusions emphasizing the role of difference in the constitution of social groups and communities provide a timely reminder in this symposium that, in building communities, LatCrits always must embrace sources of perceived or actual difference – as well as those of commonality – in *proactive* ways; rather than occlude, ignore or minimize sources of difference to forge solidarity we must marshal diversity positively to build communities and coalitions based on principles rather than on surface commonalities or perceived convergences interests; we must, in other words, practice and carry forward the lessons learned about antiessentialism and antisubordination to construct critical, rather than simply strategic, coalitions and communities.⁹⁶ This essay thus

⁹¹See *supra* notes 21 and 32 and sources cited therein on community-and-coalition-building in LatCrit theory and as LatCrit praxis.

⁹²See Monty, *supra* note 77.

⁹³*Id.*

⁹⁴*Id.*

⁹⁵See *supra* notes 79 - 88 and accompanying text reviewing Professor Oh’s discussion of this “call”.

⁹⁶By “critical coalitions” I mean alliances based on a thoughtful and reciprocal interest in the goal(s) or purpose(s) of the coalition. A “critical” coalition – unlike strategic forms collaboration – is the sort of collaborative project that results from a careful and caring commitment to the substantive reason(s) for it, and that produces on all sides a reformatory agenda and cooperative dynamic that reflects this mutual commitment. See Valdes, *Postsubordination Vision*, *supra* note 22, at 835-38 (elaborating critical coalitions). For further discussion of this concept, see Julie A. Su & Eric K. Yamamoto, *Critical Coalitions: Theory and Praxis*, in CROSSROADS, DIRECTIONS AND A NEW CRITICAL RACE THEORY 379 (Francisco Valdes, Jerome McCristal Culp & Angela P. Harris eds., 2002); see also Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183, 1189 (1991) (urging antisubordination analyses to “ask the other question” as a means of theorizing across single-axis group boundaries). Related to community-building, this concern over inter-group relations and collaborations has been a consistently important theme in outsider jurisprudence, including LatCrit theory. See, e.g., Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997) (discussing the challenges facing LatCrit theory); George A. Martinez, *African-Americans, Latinos and the Construction of Race: Toward an Epistemic Coalition*, 19 CHICANO-LATINO L. REV. 213 (1998) (urging Latinas/os, Blacks and other groups of color to coalesce around “race” and our collective, cumulative knowledge of white supremacy); Roman, *supra* note 21, at 483-84 (urging Latinas/os to focus on our similarities rather than our differences as a way of promoting intra-group justice and solidarity); Eric

blends early areas of investigation and insight with current explorations of law and reality. Written by an undergraduate student, this essay should serve as a standing reminder – and challenge – to each of us: the lessons or insights mined earlier remain as important today as ever, if not more; our perpetual task is to incorporate them substantively and critically into all that we do, even as our work expands to include new terrains.

Finally, the essay by Julian Webb similarly encourages critical engagement of discourse and theory to understand – and resist – the realities of subordination. Focusing specifically on “complexity” and complexity theory, Webb’s goal – like Monty’s and Oh’s – is to ensure that LatCrit and other OutCrit scholars are able to navigate the shoals of complicated realities without losing sight of our emancipatory goals. How, he asks, may multiply diverse groups such as LatCrit and OutCrit scholars recognize the importance of diversity while at the same time recognizing our commonalities and coordinating our actions towards common ends?⁹⁷ The aim, Webb urges, must be a normative reconstruction of law – but an ethical one, as well.

Reviewing the various characteristics of complexity,⁹⁸ Webb proposes an ethical approach to its use in a normative reconstruction of legal doctrines, processes and institutions. Indeed, he elaborates an approach that may be deemed “ethical” from a LatCritical perspective: Webb calls for the personal and scholarly practice of theory’s insights to navigate the uncertainties adduced by complexity in the principled pursuit of antisubordination theory and praxis.

The first two steps of his approach set the stage for action: the first step, writes Webb, is to embrace the inevitable uncertainties that inhere in complexity, while the second is to employ the sources of complexity to help deconstruct and understand both existing realities as well as to articulate alternatives to them.⁹⁹ Finally, Webb calls upon us to explore and articulate the scope of the “ethical” itself through the embrace and deconstruction of intellectual uncertainty and social complexity, and in the forward-looking process of reconstructing the law in normative terms.¹⁰⁰ By struggling with and through the complexities that generate uncertainty on principled terms, and by taking responsibility for the consequences of the choices and actions we undertake as a result, Webb argues that we will come to discern an antisubordination ethic to guide both theory and praxis.

Accountability to others – to the community? – thus comes to the fore in this blueprint for ethical antisubordination analysis and action. Webb explicitly counsels that we “have to take responsibility for the effects of all our decisions, now and for the future, even though we do not know what these effects are, and we cannot wait to see what the future will bring. It is in this commitment to action *now* that the possibility exists of emancipatory law in the face of complexity.”¹⁰¹ The fear of accountability’s consequences, therefore, cannot justify inaction. This final point is important, if not imperative, for LatCrits. It echoes and makes salient in this symposium not only the urgent need for antisubordination action now but also the crucial role of self-criticality to instill ethics into action, to ground action in the substance of theory;¹⁰² in effect, Webb insists, correctly, that LatCrits must apply critically to our internal or personal antisubordination efforts the same principles that we apply critically to external social realities. This essay, in a word, demands that we act, that we do so ethically, and that we discover the meaning of these imperatives through the critical and self-critical engagement of uncertainty and complexity in substantively principled terms. A better description of our ongoing fundamental challenge would be difficult to compose.

K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 HARV. LATINO L. REV. 495 (1997) (analyzing inter-group grievances and relations among groups of color); *see also supra* notes 9 and 21 and sources cited therein on various lines of inquiry within LatCrit theory, including community-building and coalition-building, in the face of “difference” and diversity; *see generally supra* note 89 and sources cited therein on sameness and difference as a “dilemma” to community and coalition in and through critical legal theories devoted to antisubordination goals.

⁹⁷Webb, *supra* note 78.

⁹⁸*Id.*

⁹⁹*Id.*

¹⁰⁰*Id.*

¹⁰¹*Id.* (emphasis in original).

¹⁰²A commitment to self-critical theory and action is the sixth LatCrit guidepost. *See supra* note 9 and accompanying text.

D. Migration, Land and Labor: Outlooks on Latina/o Reparations

The fourth and final cluster of the symposium turns our attention to the distressed kinds of material realities that continue to affect and suppress peoples of color all the world over. The two essays in this cluster critique and query some of the “legal” ways in which the formal actions of the United States government and the elites historically in control of it have inflicted injustice on Latina/o populations, including specifically Mexicans and Chicanas/os. Blending history, social theory and legal analysis, this closing cluster effectively issues a call to consider Latina/o reparations more seriously, and thereby beckons the deeper investigations and exchanges that these exemplary forays ideally will engender.

The first of these two essays, by Ronald Mize, examines the possibility of reparations for Mexican Braceros in light of the Japanese and African American experiences with, or attempts at, redress through reparations.¹⁰³ This essay focuses on a relatively recent historical experience that provides one basis for a reparations claim on behalf of a particular Latina/o group: the “Bracero program” conducted by the United States government between 1942 and 1964 to bring Mexican laborers to the United States to work in agricultural and railroad industries. Through this historically specific example Mize explores and articulates the various issues that have confronted other groups on this same quest, including the threshold importance of “providing the necessary link between past crimes and present social conditions.”¹⁰⁴

This program, as Mize’s historical summary makes plain, “reduced the workers to a state of peonage” despite the formal guarantees embedded in the program itself.¹⁰⁵ This servitude, the account also makes plain, was imposed with the active complicity both of public authorities as well as corporate interests that benefited from the abusive arrangements. Moreover, as the essay acknowledges, these abusive arrangements were put and kept in place during those years through the complicity – active *and* passive – of governments and elites on both sides of the Rio Grande: the bi-national accords between the Mexican and United States government that created this program were “lived out much differently by the workers than how the program was designed to work on paper.”¹⁰⁶ And the effects of this bi-national wrongdoing, Mize also makes clear, continue into the present – perhaps most acutely among the survivors of that official and private abuse, who live today in studied silence of their experiences.¹⁰⁷

But reparations, he makes plain from the outset, is not just another possible remedy for individuals that might be said to be “in privity” (or otherwise sufficiently linked to) identifiable wrongdoers for legal liability to be imposed. In addition to compensating victims, reparations claims can activate a salutary process for a national community as a whole: reparations claims require “the nation to seriously examine the historical origins of contemporary racialized predicaments and lingering inequalities.”¹⁰⁸ Moreover, “requiring the collective conscience of a nation to come to grips with its sordid history . . . moves offending nations forward”¹⁰⁹ and sets the stage not only for national remorse, but also, ideally, for structural reform. No doubt – as the essays by Romero & Serag, Espiritu and others in this symposium suggest¹¹⁰ – this hope of a national capacity for, or interest in, remorse and reform may seem attenuated during these times of backlash jurisprudence and cultural warfare – ongoing phenomena designed precisely and

¹⁰³Mize, *supra* note 18.

¹⁰⁴*Id.*

¹⁰⁵*Id.*

¹⁰⁶*Id.* In this short essay, Mize does not focus on the Mexican government’s side of the complicity, perhaps because the benefits of the program seem to have inured principally to interests north of the Rio Grande. Whatever the reasons, this intriguing aspect of the reparations analysis is left for another day, both in the essay and, consequently, in this Foreword.

¹⁰⁷*Id.*

¹⁰⁸*Id.*

¹⁰⁹*Id.*

¹¹⁰*See supra* notes 11 and 37 and accompanying text for discussion of these essays.

expressly to “roll back” the significant yet limited civil rights gains of the past century.¹¹¹ But this hope, in time, may provide the baseline from which we examine and support the development of Latina/o reparations claims in the coming years.

The second essay in this cluster – and the final essay of the symposium as a whole – similarly focuses critical attention on the exploitation and disempowerment of Mexicans and Mexican Americans under Anglo rule. Here, the specific historical experience is dispossession of Mexican landowners in California after 1848, and following the North American conquest of vast areas of land belonging to Mexico. This dispossession, as the essay makes clear, was enacted and enforced under the purported “rule of law” – yet in patent violation of the formal guarantees of property rights accorded to Mexican landowners under the treaty of Guadalupe Hidalgo. This final essay, the third appearing in this symposium by a Student Scholar, Kim David Chanbonpin, thus points to many of the issues already engaged in other essays of this symposium while at the same time engaging in a line of inquiry – reparations specifically for land dispossession – that remains relatively new within LatCrit theory and outsider jurisprudence more generally.¹¹²

To do so, Chanbonpin examines a standard property law case of the California Supreme Court, *Plume v. Seward*, which was willfully disregarded by Anglo elites in the formal processes they abused to engineer this “legal” dispossession and thereby unjustly enrich themselves. That case, as Chanbonpin explains, is taught in the first-year curriculum even today at law schools around the country to explain a basic legal doctrine, which recognizes property rights in claimants who can prove constructive possession of disputed land as against other claimants who cannot. A principled, even-handed, routine application of this then-inconvenient yet well-established doctrine would have prevented the Anglo land grab. But – or therefore – Mexican landowners were denied the benefit of this particular doctrine, paving the way for a formally legal satisfaction of Anglo greed. Invoking the tools and methodologies of “legal archeology,”¹¹³ Chanbonpin details the federal and state practices of U.S. authorities in disregard of formal law to forcibly and systematically dispossess Mexican landowners of their lands: as much as 14 million acres were redistributed to Anglo settlers, including those that now constitute the rich elites of Texas and other southwestern areas of the lands now known as the United States.¹¹⁴ In some instances, and in stark violation of elementary notions of justice prevailing even at that time, the sitting Anglo judges sometimes presided over cases that would determine their own personal lands and fortunes – including, perhaps most shamelessly and scandalously, Stephen J. Field, the Chief Justice of the California Supreme Court.¹¹⁵

Because Chanbonpin so lucidly excavates the corrupted operation of a landmark case taught to many first-year law students across the country, this essay makes a wonderful companion to any first-year property law course – if the professor is interested in conveying to students the “reality” and problematics of law in action. And because the essay is equally concerned with contemporary issues regarding racial justice through reparations and other means, this essay facilitates engagement of identity politics and subordination in substantive areas of law that purportedly have “nothing” to do with identity. This essay, in short, delivers a powerful punch in the classroom and beyond it, especially but not only because it was written by a law student; this essay is an exemplary tool in the continuing development of critical approaches not only to law and theory but also to legal education itself.¹¹⁶

Like the Mize essay, this analysis underscores the fatal gaps between law on the books and law in action – gaps that coincidentally yet consistently disfavor people of color and favor white supremacy and that thereby belie the

¹¹¹See *supra* note 41 and sources cited therein on cultural warfare.

¹¹²Chanbonpin, *supra* note 18.

¹¹³*Id.*

¹¹⁴*Id.*

¹¹⁵*Id.*

¹¹⁶See *supra* note 74 and sources cited therein on critical legal education; see also Francisco Valdes, *Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism: Marking the Stirrings of Critical Legal Education*, 10 *ASIAN L.J.* 65 (2003).

claims to law and justice oftentimes loudly espoused on behalf of the North American legal system. These particular gaps, as these authors show, may help to create a reparations claim. Coupled together in this short cluster, these two essays help set the stage for a thoroughgoing interrogation of the possibility – and justice – of reparations claims on behalf of Latinas/os whose labor, land or other material assets have been arrogated by North American rulers and elites.

Notably, both essays stress the connection between “now” and “then” to establish the relationship between “past” wrongdoing and “present” harm. In both analyses, the crucial role of history in antisubordination theory and praxis is abundantly evident. In both, the role of history to reparations analysis is made plain. And in this way, both remind us that interdisciplinary analysis in general – and oftentimes those that center history specifically – are indispensable to understanding how both how neocolonial structures of power operate today; how, in other words, “material reality” came to be.

III. Outlaws Building Communities: A Case Study in “Strategies of Resistance”

Midway through the second half of our first decade, this symposium illustrates and contributes to the ongoing efforts of LatCrit and other OutCrit scholars to create accurate understandings of, and potent strategies against, the multidimensional structures of subordination that interlock with law to engineer and lock into place neocolonial social realities. It thus is appropriate to close this year’s Foreword with a vignette that exemplifies both this year’s theme as well as the diverse populations, contemporary issues, unjust situations and abiding aspirations that gave rise – and give drive – to LatCrit theory, community and praxis. This summary account underscores many of the themes and issues engaged by the symposium authors and illustrates in the here-and-now how theory and action are intertwined in this year’s conference theme. Provided here simply as a sketch to close the Foreword, this vignette vividly and concretely depicts a contemporary case study in “strategies of resistance” against dominant “operations of power” in one major city of the United States, a case study focused on a Latina/o community-building project that pivots on oppressive yet contested constructions of citizen and “citizenship,” and that also helps bring into sharper relief the social and legal issues of subordination addressed by various symposium authors – perhaps most directly by Hernandez-Truyol & Hawk’s critique of the inter/national passport system – in ways that should inspire and inform LatCrit theory and praxis as socially-relevant undertakings in the months and years to come.

A. Sketching the Group’s Portrait: Allegories of Class, Race and Sexual Orientation

Sociologists Alejandro Portes and Alex Stepick captured the creation of a “Latinized” Miami in their 1993 book, *CITY ON THE EDGE: THE TRANSFORMATION OF MIAMI*. This celebrated book detailed how Cuban “exiles” had, as a strategy of collective and individual self-empowerment, formed a tightly-knit community within that city during the second half of the Twentieth Century. In the process, they forged networks of social connections and economic relations that cumulatively created a new and “safe” space within an existing and “strange” space. This new space became known as their “enclave.” For better or worse, their willful construction of that enclave and community disturbed existing allocations of urban space, and inter-group relations became re-defined with the interjection of “foreigners” in ways that scrambled the premises and practices of “domestic” identity politics. As the book’s title indicates, this community-building effort eventually “transformed” the larger metropolis that those self-styled exiles newly inhabited.

Their example also helped set the stage for “other” kinds of immigrants from the Latina/o south that, like the Cubans of the 1950s and 1960s, have chosen a kind of self-imposed estrangement or exile from their native lands to search for “freedom” in the Anglo north. That expanded and ongoing process, as this summary account illustrates, has now become increasingly variegated across multiple axes of identity – and not always on the basis of race, nationality or ethnicity. One key example, and the one featured here to exemplify the second part of this year’s conference theme:

the closely-knit but widespread communities formed in the southern and western neighborhoods of Miami by relatively privileged gay Latinos and lesbian Latinas, who leave their native lands in the Caribbean, Central America and South America to re-settle in Miami with one ambition uppermost in mind. As with the original exiles and their enclave, and as elaborated below, the acts and ambitions of these new immigrants are calling into question the pre-existing allocations of urban space (and, with time, also the pre-existing dynamics of intra- and inter-group relations) – both within the original enclave and the metropolis of Miami.

To be sure, the Queer Latina/o immigrants who make up this new urban enclave embody multiple diversities, as do all social groups. And, therefore, many points and lessons that are substantively important to any complete antisubordination analysis may be drawn from their ongoing efforts. But the multiply diverse individuals that have come together in Miami's new Queer Latina/o enclaves also share various key characteristics that extend beyond minority sexual orientations and/or other identity traits, and that are the focus of this brief portrait because they help to explain how this community-building project came into existence. As a group, and as discussed below, these immigrants tend to share key aspirations and characteristics that are related to their respective "identities" and that help to mold the individual choices culminating in the migration and re-settlement patterns that incrementally have added up to this new enclave. As elaborated below, the individuated notions and ambitions that drive these relatively recent immigrants to their choices and migrations have produced new enclaves (or sub-enclaves) in Miami that are motivated by quests for "freedom" and a sense of dignity that are strikingly similar yet vastly different from the hopes and aims of the sexual majority immigrants preceding them: living as "openly" lesbian or gay persons in a stable, loving and long-term same-sex relationship.¹¹⁷

¹¹⁷This brief vignette is drawn from a larger work in progress. Through questionnaires and live interviews with nearly two dozen men and women from various countries of the Caribbean, Central America and South America, this work in progress looks at the sexual orientation diversification of "Latinized" Miami, and considers how and why Queer Latina/o patterns of immigration might (and should) be accommodated in U.S. law and policy, and in international covenants. Basically, then, this ongoing larger project is in the nature of ethnographic research for the purpose of elucidating knowledge regarding lawmaking and policymaking choices, both past and future. See generally James Clifford, *On Ethnographic Allegory*, in *WRITING CULTURE: THE POETICS AND POLITICS OF ETHNOGRAPHY* 98 (James Clifford & George E. Marcus eds., 1986) ("Embodied in written reports, these stories simultaneously describe real cultural events and make additional, moral, ideological, and even cosmological statements."); for selected essays on current issues in ethnographic research, see *REREADING CULTURAL ANTHROPOLOGY* (George E. Marcus ed., 1992). The particular portrait summarized here, however, mainly looks at the social and legal dynamics from which a new enclave has emerged in Miami, and presents this ongoing community-building experiment as an example of cultural and legal outlaws building communities under the shadow of hostile inter/national sociolegal regimes. Therefore, this group portrait is presented in broad strokes here to help elucidate in this Foreword the LatCrit VIII conference theme – City and Citizen: Operations of Power, Strategies of Resistance. Project notes are on file with the author, Francisco Valdes, at the University of Miami School of Law.

Despite efforts to maintain gender balance in this study, the portrait sketched below is based mostly on male experiences and stories. For an excellent study focusing on women, including Latinas, see generally OLIVA ESPIN, *WOMEN CROSSING BOUNDARIES: THE PSYCHOLOGY OF IMMIGRATION AND THE TRANSFORMATION OF SEXUALITY* (1999); see also LATINA REALITIES: *ESSAYS ON HEALING, MIGRATION AND SEXUALITY* (Oliva Espin ed., 1997). Interestingly, however, it appears from the Census 2000 data that the three wealthiest same-sex couples among the Latina/o population in South Florida are lesbian. For more information, see <http://www.gaydemographics.org/USA/2000CensusGaySF2.htm> (last visited on Mar. 26, 2004) and <http://www.gaydemographics.org/USA/USA.htm#Getit> (reporting three female same-sex couples in the hyper wealthy neighborhoods of Fisher Island and Golden Beach, and describing the data-gathering process as it relates to the ethnicity of same-sex couples documented in the 2000 Census).

This sketch additionally draws from periodic news reports and scholarly publications that corroborate the migrations and relationships summarized in this Part of the Foreword. For instance, reflecting many of the themes broached here, the main local newspaper in Miami reported recently that "Hispanic gays who left their homelands to escape persecution have discovered an intoxicating freedom. They just cannot tell their families." Andrea Elliott, *Living a Dual Life*, MIA. HERALD, Nov. 2, 2002, at E1. The 2000 census, which for the first time ever sought to document Queer lives and couples, revealed "6,191 Hispanics living with unmarried same-sex partners in Florida" thus "quantify[ing] a group that has long been invisible to both Hispanic and gay leaders." *Id.* at 2-3; see also *supra*, Census web sources. At the same time, the Census 2000 reported the emergence of non-

immigrant sexual minority enclaves in the greater Miami area in recent years. See Andrea Elliott & Tim Henderson, *More Gays Making Suburbs Their Home*, MIA. HERALD, July 25, 2001, at A16 (providing a map of Queer enclaves or hubs in South Florida).

It bears notation at the outset that this study focuses narrowly on a particular community within existing communities or larger enclaves in Miami, but that those larger communities or enclaves also are in the process of change and diversification as various stripes of Latinas/os, both Queer and not, seek to make Miami their home. See, e.g., Damarys Ocana, *A Kendall Love-In*, MIA. HERALD, Oct. 3, 1999, at M1 (describing the diversification of Miami's Cuban community as a new generation born in the U.S. comes into adulthood); Juan Forero, *Prosperous Colombians Fleeing, Many to U.S.*, N.Y. TIMES, Apr. 10, 2001, at www.nytimes.com (reporting an exodus from Colombia similar to the migration studied here); Evelyn McDonnell, *Baby Buenos Aires*, MIA. HERALD, Feb. 8, 2003, at E1 (depicting the creation of an Argentine enclave in Miami); *Miami Dominicans Create Political Party*, MIA. HERALD, June 12, 1999, at B3 (reporting political organizing within the Dominican enclave in Miami); Peter Wallsten, *Puerto Ricans in Fla. Carry Clout as New Swing Group in State, National Elections*, MIA. HERALD, Dec. 24, 2001, at A1 (describing the growth and political implications of the Puerto Rican community in Florida). As these recent news accounts attest, Miami has been home to influxes during the past several decades that have transformed the once-sleepy tourist outpost into a unique cultural, demographic and political phenomenon in the United States. For particularly incisive observations, see JOAN DIDION, *MIAMI* (1987) (providing a cultural and social analysis of Miami's transformation and its larger implications).

These developments are reflected in other communities across the United States as Latina/o immigration, in general, continues to grow. See, e.g., Sylvia R. Lazos Vargas, "*Latina/o-ization*" of the Midwest: *Cambio de Colores (Change of Colors) as Agromaquilas Expand into the Heartland*, 13 BERKELEY LA RAZA L.J. 343 (2002) (describing developments in the Midwest of the U.S.); Scott Wilson & Philip Pan, *A Diverse and Growing Population*, WASH. POST, Jan. 23, 2000, at <http://search.washingtonpost.com/wp-srv/WPlate/2000-01/23/2551-012300-idx.html> (describing the rise of a diverse Latina/o enclave in the nation's capital). This overall growth of Latina/o communities in the United States seems especially pronounced in the South. See, e.g., Audra D.S. Burch, *Hispanics Settling into the South*, MIA. HERALD, March 17, 2004, at A1 (reporting that agricultural and industrial employment opportunities increasingly attract Latina/os to southern locales); Suzi Parker, *Hispanics Reshape Culture of the South*, CHRISTIAN SCIENCE MONITOR, June 10, 1999 (describing both the changes and the tensions that come with new Latina/o enclaves in the southern regions of the United States). For a good, succinct overview of Latina/o enclaves or communities, oftentimes based or fueled by immigration, see Alejandro Portes, *From South of the Border: Hispanic Minorities in the United States*, in THE IMMIGRATION READER: AMERICA IN MULTIDISCIPLINARY PERSPECTIVE 113 (David Jacobson ed., 1998); see also generally *supra* notes 3, 90 and 96 and sources cited therein on Latina/o diversities and inter-group relations. Thus, "despite the formidable barriers posed by [U.S. immigration laws] and the INS, Latin[a/o] workers inevitably come to the U.S. and find work here. The very fact that Latin[a/o] immigrants come in spite of everything done through legal institutions to deter them from doing so suggests the strongest desire to improve their own lives, and the potential for doing so without official government assistance." Christopher David Ruiz Cameron, *The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers*, 53 U. MIAMI L. REV. 1089, 1114 (1999). A similar desire, fueled by homophobia rather than employment, motivates the Queer Latina/o immigrants portrayed here. See *infra* notes 133-144 and accompanying text.

Overall, of course, these ongoing demographic and political developments have helped to catapult Latinas/os' numbers nationally, poising Latinas/os to become the most numerous racial/ethnic group of color in the United States. See Andres Viglucci, *Hispanics Now Equal Blacks in Population*, MIA. HERALD, March 8, 2001, at A1 ("Fed by high levels of immigration to South Florida and the rest of the country, the U.S. Hispanic population has bloomed to the point that it is now equal in number to the nation's blacks, according to the 2000 Census."); see also Melissa Healy & Robert Rosenblatt, *Census: Study Finds that 25% of Californians are Foreign-Born, the Largest Figure in the Nation*, L.A. TIMES, Oct. 5, 2000, at A1 (reporting the Census findings for California, and noting that half of the nation's foreign-born persons "are from Latin America"); *Nearly 1 in 10 U.S. Residents Come from Another Country*, MIA. HERALD, Sept. 17, 1999, at A28 (reporting a Census Bureau estimate that "the nation's foreign-born population increased nearly four times faster than that of the native-born population."). These national trends are palpable in Miami and surrounding localities. E.g., Andres Viglucci, Amy Driscoll & Tim Henderson, *How We've Changed: Hispanics Surpass Blacks as Florida's Largest Minority with Leaps in All 67 Counties*, MIA. HERALD, Mar. 28, 2001, at A1 (reporting the local statistics from the 2000 Census).

Obviously, this increasing diversification of Latina/o communities across the United States, especially through diversified sources of immigration, compounds the multiple sources of "difference" among and between "Latina/o" persons or groups, as well as across varied groups of color. See generally Victor G. Romero, "*Aren't You Latino?*": *Building Bridges Upon Common Misperceptions*, 33 DAVIS L. REV. 837 (2000) (describing sources of difference and diversity among Latinas/os and other groups of color in the United States from a Filipina/o perspective); see also Rachel F. Moran, *Neither Black Nor White*, 2 HARV. LATIN

This migration has transpired mostly below all U.S. policy radars and beyond the edge of Miami's Latinized culture; unfortunately, it also has remained unexamined in outsider jurisprudence.¹¹⁸ Queer Latina/o immigration patterns fall below policy radars because policymaking frameworks tend still to operate on the basis of a pre-intersectionality mentality: unless seeking asylum on the basis of sexual orientation or otherwise centering sexuality, Queer Latinas/os tend to register as "Lats" rather than as "fags" in the North American immigration equation, and thus fall through the cracks created by the intersection of sexual orientation and race/ethnicity in immigration contexts.¹¹⁹

L. REV. 61, 62-63 (1997) (summarizing recent demographic trends and discussing the social positionality of Latinas/os within the race-ethnicity paradigms of the United States).

These demographic changes and their political implications also create increasingly complex, and sometimes contentious, inter-group relations in the large urban centers that they inevitably help to change. *See, e.g.*, GOVERNING AMERICAN CITIES: INTERETHNIC COALITIONS, COMPETITION AND CONFLICT (Michael Jones-Correa ed., 2001) (presenting a collection of essays that address both challenges and opportunities in inter-group relations associated with increased racial and ethnic diversities in urban centers). In particular, they threaten to exacerbate existing tensions among groups of color in the United States, thereby underscoring the importance of coalitional theory, praxis and politics. *See, e.g.*, Genaro C. Armas, *Hispanic Growth Viewed as Opening for 2 Top U.S. Minority Groups*, MIA. HERALD, Apr. 8, 2001, at A26 (observing that the 2000 Census findings set the stage for a "potential alliance" between African American and Latina/o groups "on issues such as fair housing and racial profiling" that could advance the antisubordination quests of both groups.); *see also* Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395 (1997) (focusing on the role of immigrants in community-building and nation-building within the United States, and describing the politics of conflict and cooperation between Latinas/os and Asian Americans in one California locality); *see generally supra* note 96 and sources cited therein on inter-group relations and coalitions in critical outsider jurisprudence.

This growth and diversification of minority communities or immigrant enclaves in Miami based on nationality or ethnicity is matched by a rise in sexual minority migration to the United States. *See, e.g.*, Johnny Diaz, *More Gay Immigrants Seeking Refuge in U.S.*, MIA. HERALD, Feb. 4, 2001, at A1 (describing recent modifications in immigration law and policy that permits some members of sexual minorities to gain entry to the United States as refugees); Doris Sue Wong, *More Gays Seeking U.S. Asylum*, BOSTON GLOBE, Nov. 7, 1992, at A17 (describing similar asylum claims and their increasing frequency during the 1990s). These Queer refugees, like those in Miami's enclave, strive to flee homophobic antipathy and violence in their homelands, and arrive in the United States expecting protection, but in the process they also encounter homophobic bigotry. *See, e.g.*, John Leland, *Gays Seeking Asylum Find Familiar Prejudices in U.S.*, N.Y. TIMES, Aug. 1, 2001, at A10 (describing refugees' experiences with discrimination and violence). For further readings on sexual orientation and immigration law, *see infra* note 118 and sources cited therein.

¹¹⁸In all three instances, the domination of heteronormativity helps to explain the marginality of sexual orientation issues. On the marginality of "sexual orientation" in outsider scholarship generally, *see* Elvia R. Arriola, *Gendered Inequality: Lesbians, Gay Men, and Feminist Legal Theory*, 9 BERKELEY WOMEN'S L.J. 103 (1994) (questioning feminist categories around sex, gender and sexuality that marginalize lesbian/queer issues); Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191 (1989-90) (critiquing the invisibility of minority sexual orientations in feminist analyses of law); Darren Lenard Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Antiracist Politics*, 47 BUFF. L. REV. 9-113 (1999) (critiquing the silence on sexual orientation within race/ethnicity discourses); Berta Hernandez-Truyol, *Latina Multidimensionality and LatCrit Possibilities: Culture, Gender and Sex*, 53 U. MIAMI L. REV. 811 (1999) (centering Latina lesbian identity in outsider jurisprudence, and specifically in LatCrit theory).

¹¹⁹Historically, "homosexuals" have been visible in U.S. immigration law and policy mainly as a species of socially defective individuals who by law are made excludable from entry, or ineligible for naturalization, on the basis of moral fitness (or unfitness). For a case that captures this history yet is relatively recent, *see generally* *Boutilier v. INS*, 387 U.S. 118 (1967) (holding that lesbians and gay men are excludable and deportable as a species of "psychopathic personality" because Congress' use of that term was intended to target "homosexuals and sex perverts"). For a more recent case making and illustrating the same point, *see In re Longstaff*, 716 F.2d 1439 (5th Cir. 1983), reh'g den, 719 F.2d 404, cert den, 467 U.S. 1219; *see generally* 8 U.S.C. §§1-1775 (2004); *see also* Annotation, *Rights of, and Validity of Provisions Concerning or Affecting, Homosexuals under the Federal Constitution*, 134 L.Ed. 1047 (2000) (providing compilation of Supreme Court constitutional case law on sexual orientation); Annotation, *What Constitutes Showing of "Good Moral Character" on the Part of An Applicant for Naturalization*, 22 ALR. 2d 244 (1952) (canvassing the immigration case law, which remains valid today).

Queer Latinas/os also are beyond the transformed edge of Miami that Portes & Stepick document in their book not only because Latina/o culture is decidedly homophobic – both in Latinized Miami and throughout Latin America¹²⁰ – but also because their migration, as a form of escape from homophobia, tends to entail enduring familial and similar ruptures.¹²¹ As a result, these immigrants do not tend become mainstreamed into – or become visible

In recent times, asylum claims based on homophobic violence in homeland societies have met with some limited success, thus becoming the principal way for a Queer person to migrate to the United States as a Queer person; even though some claimants have been able to satisfy immigration authorities of their personal persecution based on sexual orientation, the state of immigration law and policy remains tenuous, if not hostile, to sexual minorities and our transnational migrations. See David Tuller, *Gay Brazilian Claims Persecution, Wins U.S. Asylum*, S.F. CHRON., July 29, 1993, at A13 (reporting the ruling of an administrative law judge, “a decision believed to be the first of its kind” despite the “reputation” of Brazil and other American societies for homophobic violence); see also SEXUAL CULTURES AND MIGRATION IN THE ERA OF AIDS (Gilbert Herdt ed., 1997) (describing homophobic social conditions in Brazil and other societies in the Americas).

That 1993 case has opened the way to similar efforts elsewhere, but reformatory prospects remain dim due to homophobic prejudice entrenched in immigration law and policy. See generally Symposium, *Refusing Refugees: Political & Legal Barriers to Asylum Persecution on the Basis of Gender and Sexual Orientation*, 26 CORNELL INT’L L.J. 605 (1993) (presenting various articles addressing contemporary means of exclusion); see also Victor C. Romero, *The Selective Deportation of Same-Gender Partners*, 56 U. MIAMI L. REV. 537 (2002) (reviewing the animus of immigration law and policy to sexual minority individuals, unions and families); Christopher S. Hargis, *Queer Reasoning: Immigration Policy, Baker v. State of Vermont, and the (Non)recognition of Same-Gender Relationships*, 10 LAW & SEXUALITY 211 (2001) (critiquing the non-recognition of same-sex unions in U.S. immigration law and policy); see also *infra* note 133 and sources cited therein on same-sex unions and marriage.

This continuing exclusion and systemic invisibility remains prevalent, in part, because the only statutory category available for Queer claims to residency is the generic “particular social group” category under refugee law, which the courts have interpreted variously. See, e.g., *Gomez v. INS*, 947 F.2d 660 (2d Cir. 1991) (denying asylum to a young woman from El Salvador who had been beaten and raped by Salvadoran guerillas because, according to that panel of judges, she had not “demonstrated that she is more likely to be persecuted than any other young woman.”); see generally Brian F. Henes, *The Origin and Consequences of Recognizing Homosexuals as a “Particular Social Group” for Refugee Purposes*, 8 TEMP. INT’L & COMP. L.J. 377 (1994) (discussing advances in the law during the early 1990s); T. David Parish, Note, *Membership in a Particular Social Group Under the Refugee Act of 1980: Social Identity and the Legal Concept of the Refugee*, 92 COLUM. L. REV. (1992) (discussing the history and application of the statute’s “particular social group” provision); see also *infra* note 133 and sources cited therein on the interplay of state marriage statutes and immigration law to prevent migration-through-marriage for same-sex couples.

Finally, of course, the exclusion of sexual minorities from immigration law reflects a larger tendency toward constricted borders and exclusionary policies designed to perpetuate existing Eurocentric, heterosexist and neocolonial power patterns based on colonial and neocolonial waves of immigration and settlement in the lands now known as the United States. For selected readings on current and recent debates over immigration law and policy in the United States, see IMMIGRATION: DEBATING THE ISSUES (Nicholas Capaldi ed., 1997); THE IMMIGRATION READER: AMERICA IN MULTIDISCIPLINARY PERSPECTIVE (David Jacobson ed., 1998).

¹²⁰The homophobia of Latina/o communities in the United States, as well as in Latina/o societies throughout the Americas, is well documented. See, e.g., ALFREDO MIRANDE, *HOMBRES Y MACHOS: MASCULINITY AND LATINO CULTURE* (1997) (describing the homophobic and androsexist constructions of male identity and sexuality among Latinas/os, focusing on Mexican groups); COMPANERAS: LATINA LESBIANS, AN ANTHOLOGY (Juanita Ramos ed., 1987) (presenting texts authored by Latina lesbians, which repeatedly reflect the homophobia and androsexism of Latina/o groups); see also generally NOW THE VOLCANO: AN ANTHOLOGY OF LATIN AMERICAN GAY LITERATURE (Winston Leyland ed., 1979) (discussing the emergence of a gay consciousness in “Latin American” literature). In recent years, this longstanding culture of homophobia has been reflected in the responses of Latina/o individuals and communities to the HIV pandemic. See RAFAEL M. DIAZ, *LATINO GAY MEN AND HIV: CULTURE, SEXUALITY AND RISK BEHAVIOR* 63-89 (1998) (discussing the role of machismo and homophobia in the spread of HIV among gay Latinos).

¹²¹*Id.* at 91-112 (reporting the results of interviews with gay Latinos, including “abundant stories of family rejection” upon coming out.) Diaz recounts that “stories of family support were mostly stories of tolerance and non-abuse rather than of true acceptance. In most cases, tolerance was achieved only at the price of silence ... Family support, when reported, was mostly experienced as tolerance, parental resignation, or the absence of overt mocking and abuse ... For many, breaking the silence, even in families who already know, was the beginning of serious family conflict that led to disruption of family ties, including migration or expatriation.” *Id.* at 92-93. Of course, the central role played by families of origin in the lives of Latinas/os adults is

members of – the networks formed and communities sustained through pre-existing Latina/o diasporas or enclaves. Nonetheless, Miami’s Queer Latina/o enclave is a case study in successful resistance to multiple sources of power and pressure, and in outgroup community-building despite daunting odds. These immigrants have resisted the homophobic and/or androsexist imperatives of their families and homeland societies; they have resisted the horrific immigration gauntlets of this country and its mistreatment of nonwhite/non-Anglo immigrants generally; they are resisting the discrimination and oppression that permeates their new lives on economic, social and legal levels, and on an everyday basis. This vignette presents a portrait of a stressed sociolegal space that, though unrecognized as such, is a site of creativity, daring, tragedy and community based primarily on the imagination and determination – and on the criminalization and exploitation – of these social and legal outlaws.

Defying again essentialist tropes and essentializing stereotypes, this migration brings to the fore the convergence of multidimensional identities that reflect the diversities and complexities of Latina/o populations.¹²² The first identity twist in this group sketch is class and the role of class privilege: as explained below, many (though not all) of these immigrants are sons and daughters of relative wealth, status and opportunity in their homelands. The second twist, related to the first, is race and race privilege: many (though, again, not all) of these immigrants hail from families identified with Spanish settlers or immigrants, and in their native societies they oftentimes are deemed white (by themselves as well as by others). These two axes of identity – class and race – thus are sources of social and economic privileges, to which many of these immigrants are accustomed. These comforts, however, are offset for them by the constrictions and oppressions associated with minority sexual orientation. More specifically, these young adults (in this instance, yes, all of them) must negotiate their coming of age in their homelands as lesbian or gay individuals under the rule of Euro-heteropatriarchy:¹²³ in that context, they oftentimes find themselves living in fear – hiding in “the closet” – despite the structures and emoluments of class and race that otherwise would dictate a comfortable and secure life. As a group, these “Hispanic” migrants thus lead lives marked both by familiarity with privilege based on race and class, and by increasingly close encounters with oppression and exclusion based on sexual orientation. In group terms they are, at once, insiders and outsiders in their native lands, and within their families of origin. It is precisely this basic combination of identities that sets the stage for the complicated trade-offs leading up to the creation of this new community, this new enclave, in Miami. It is a combination marked additionally by three key cultural and attitudinal characteristics that jointly help to define the perceptions and realities behind the group of actors giving life to this new Queer Latina/o enclave.

a long-noted cultural tendency or “difference” as compared to Anglo norms in the United States. *See, e.g.*, HISPANIC FAMILIES: CRITICAL ISSUES FOR POLICY AND PROGRAMS IN HUMAN SERVICES (Miguel Montiel ed., 1978) (presenting a series of papers on family dynamics in Latina/o communities within the United States). However, the family-related conflicts triggered by homophobic reactions to the act of coming out are not limited to Latinas/os. *See, e.g.*, Elvia R. Arriola, *The Penalties for Puppy Love: Institutionalized Violence Against Lesbian, Gay, Bisexual and Transgendered Youth*, 1 J. GENDER, RACE & JUST. 429 (1998) (exploring how young adults are pressured and stressed by societal, familial and cultural forces in their efforts to “come out” to their families and communities). Nor, one must note for the record, should the existence or perception of such cultural characteristics or group “differences” be the source of essentialized inter-group tensions, especially when such tensions dissipate the strength of antisubordination struggles. *See generally supra* note 90 and 96 and sources cited therein on essentialism, difference and coalition among groups of color.

¹²²As noted at the outset, Latinas/os are multiply diverse (like other social groups), *see supra* note 3 and sources cited therein on Latina/o heterogeneity, and LatCrit theorists therefore have tried to capture the law-and-policy significance of these diversities through multidimensional analysis. *See supra* note 5 and sources cited therein on multidimensionality and related concepts in critical outsider jurisprudence).

¹²³*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 (1996) (describing some of the sex/gender and sexual orientation norms that underlie and animate androsexism and heterosexism to produce the patriarchal form of homophobia – heteropatriarchy – that still prevails in Euro-American societies, including the United States, today); *see also* Francisco Valdes, *Identity Maneuvers in Law and Society: Vignettes of a Euro-American Heteropatriarchy*, 71 UMKC L. REV. 377, 386-88 (2002) (elaborating the concept of Euro-American heteropatriarchy and its normative contents in more detail).

The first of these is their familiarity with, and pragmatic yet pained submission to, the exercise and effects of power – social and familial power – upon their lives and hopes as Queer folk. More specifically, these Latina/o immigrants uniformly appear to accept the consequences that oftentimes attend “coming out” among their families and societies of origin – families and societies defined culturally by intense religious socialization under Roman Catholicism.¹²⁴ These consequences typically range from outright expulsion from the family home and dispossession of inheritance or other property rights to disdainful mockery or disregard of their coming out, and they attach in a cultural context marked by “familism” – the “enormous regard and ... very high value on family life and the interpersonal relationships among family members” that social scientists have identified as a “central value of Latino culture.”¹²⁵ Moreover, in their homeland cultures “the importance of family relations and the actual close involvement of families in the lives and affairs of the individual members is not considered a temporary situation by both, but rather a life-long commitment that connects individuals, even after marriage, to a relatively large and supportive social network of caring and concerned human beings.”¹²⁶ Yet, “the strong ties within Latino families, and the major role that families play in the care and support of Latino individuals, can become (and usually is) a major source of conflict and tension among” gay and lesbian family members.¹²⁷ “Familism values, as strong in Latino homosexuals as in any other members of the Latino culture, prevent homosexuals from denouncing the family’s homophobia and demanding acceptance” as equal family members.¹²⁸ Consequently, their “acceptance by and social connectedness to the family are achieved and maintained only at the price of [their] silence [about sexual orientation issues]. The conflict is experienced [by these young adults] as a painful choice within a no-win situation, a choice between self-expression and family love.”¹²⁹ The end result is a

¹²⁴From a historical perspective, “The Catholic Church remains one of [Latinas/os]’ major cultural institutions ... nearly four-fifths of the [Latinas/os] in the United States are Catholics.” L.H. GANN & PETER J. DUIGNAN, *THE HISPANICS IN THE UNITED STATES: A HISTORY* 267 (1986). From a popular culture perspective, “Popular religiosity is important to social science because many Latino cultural attitudes towards family, gender, tradition and political society derive from religious sources, even if not every Latin[a/o] believes or practices a religion. Anthony M. Stevens-Arroyo, *Introduction*, in *AN ENDURING FLAME: STUDIES ON LATINO POPULAR RELIGIOSITY* 9 (Anthony M. Stevens-Arroyo & Ana Maria Diaz-Stevens eds., 1994). For reasons like these, critical explorations of “religion” have been key to the articulation of LatCrit theory over the past eight years. See, e.g., Elvia R. Arriola, *Foreword—March!*, 19 *CHICANO-LATINO L. REV.* 1 (1998) and Elizabeth M. Iglesias & Francisco Valdes, *Afterword—Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 *CHICANO-LATINO L. REV.* 503 (1998); see also Emily Fowler Hartigan, *Disturbing the Peace*, 19 *CHICANO-LATINO L. REV.* 479 (1998); Nancy K. Ota, *Falling From Grace: A Meditation on LatCrit II*, 19 *CHICANO-LATINO L. REV.* 437 (1998); Reynaldo Anaya Valencia, *On Being an “Out” Catholic: Contextualizing The Role of Religion at LatCrit II*, 19 *CHICANO-LATINO L. REV.* 449 (1998). For a discussion of these essays, and of religion in LatCrit theory, see Margaret E. Montoya, *Introduction—Religious Rituals and LatCrit Theorizing*, 19 *CHICANO-LATINO L. REV.* 417 (1998). For additional readings, see Guadalupe Luna, *Gold, Souls and Wandering Clerics: California Missions, Native Californians and LatCrit Theory*, 33 *U.C. DAVIS L. REV.* 921 (2000); Laura M. Padilla, *Latinas and Religion: Subordination or State of Grace?*, 33 *U.C. DAVIS L. REV.* 973 (2000); Terry Rey, *“The Virgin’s Slip is Full of Fireflies”: The Multiform Struggle Over the Virgin Mary’s Legitimierende Macht in Latin America and Its U.S. Diasporic Communities*, 33 *U.C. DAVIS L. REV.* 955 (2000). For a discussion of these essays, and more generally of religion in LatCrit theory as one strain of critical outsider jurisprudence, see Francisco Valdes, *Introduction—Piercing Webs of Power: Identity, Resistance and Hope in LatCrit Theory and Praxis*, 33 *U.C. DAVIS L. REV.* 897 (2000). As these readings indicate, today’s religious traditions in the Americas – like Euroheteropatriarchy as a whole – were transplanted from Europe, and forcibly imposed on indigenous communities and religions, as part of colonial conquest and domestication. See generally *supra* notes 27 and 123 and sources cited therein on Spanish colonialism in the Americas and on Euroheteropatriarchy.

¹²⁵DIAZ, *supra* note 120, at 92.

¹²⁶*Id.*

¹²⁷*Id.*

¹²⁸*Id.*

¹²⁹*Id.*

“forced separation between individuals’ sexuality and their social, affective life”¹³⁰ – they must compartmentalize their identities in ways that not only are self-suppressive but also socially unsustainable over the long term. Oftentimes, this painful “no-win” conflict points to escape northward, where the choices are perceived to be less forced, less acute.

Thus, while they are culturally programmed to prefer, and indeed do tend to strive, to preserve relationships with family and friends, these Queer Latina/o immigrants also are willing to forego the socioeconomic benefits of familism if necessitated by hostile reactions to their “coming out” and/or their decision to migrate for sexual orientation motives. And because the primary motivation for their migration is, precisely, to live openly Queer lives, their decisions frequently entail, at the very least, emotional estrangements, principally from families, friends, neighbors, colleagues and others who have formed their homeland support network. Among this group, submission to this possibility is a recognized prerequisite to their decision to migrate. A tendency toward a realistic, perhaps fatalistic, acceptance of sometimes enduring ruptures with parents, relatives and friends as a probable cost of personal “freedom” therefore is the first cultural or attitudinal characteristic of these immigrants as a group. But, these estrangements in turn tend to entail economic or material consequences as well.

Because these particular immigrants journey north specifically to escape the suffocation of familial and normative homophobia, these ruptures tend to produce both immediate and continuing kinds of disconnection from families – social, economic and legal disconnection and disorientation during the migration *and* afterward; in this conflicted context, these youthful immigrants cannot and do not bring with them the social or economic capital that otherwise would be their bequest, and that otherwise would smooth the social, economic and legal issues of their migration and resettlement.¹³¹ Similarly, they tend not to look up relatives in the diaspora, nor family friends, nor childhood chums. Rather, to make their escape under the sociolegal conditions that prevail both in their home countries and this one, the mostly young Queer Latinas/os who come to Miami for the most part have only themselves and each other to survive and prosper. Hence, the make-up and dynamics of this new enclave and community.

Thus, in addition to accepting their perhaps permanent exclusion from circles of family and friends, a second cultural or attitudinal characteristic key to these migrants is their acceptance of the likely permanent loss of material and economic privileges associated with (their loss of) insider status in their homelands. And precisely because these immigrants oftentimes (but not always) tend to hail from relatively affluent families, a disconnection from them usually translates into sharply downward mobility in basic material terms, including housing and employment or educational opportunities. The consequences of coming out that they need to be prepared to accept from the outset thus span the possible or probable loss of emotional relations, social privileges, and economic benefits. For the most part, these migrants are willing to bear those formidable losses – but not for nothing: rather, in their minds, they do so in exchange for an opportunity to live “freely” – meaning, in this case, to live “openly” (without employment or housing “discrimination”) in a loving same-sex relationship. The third cultural or attitudinal characteristic key to these migrants consequently is a vision of a “normal” life as lesbians or gay men, participants in a “normal” same-sex relationship, which in time trumps all else in their youthful quests for self-realization as Queer individuals in a hostile world.

¹³⁰*Id.* at 96.

¹³¹This networking phenomenon of course is not unique to Latina/o families and communities, but rather mark the construction of privilege networks in the United States as well. *See, e.g.,* WILLIAM G. ROY, *SOCIALIZING CAPITAL: THE RISE OF THE LARGE INDUSTRIAL CORPORATION IN AMERICA* (1997) (elaborating a “new economic sociology” that explains the rise of corporatism in the United States based on similar dynamics); *see also* PETER W. COOKSON, JR. & CAROLINE HODGES PERSELL, *PREPARING FOR POWER: AMERICA’S ELITE BOARDING SCHOOLS* (1985) (analyzing the role of “prep schools” in the organization of social and economic capital in the United States); C. WRIGHT MILLS, *THE POWER ELITE* (1956) (providing an early account of social and economic construction of elites in the United States). More generally, social science makes it clear that the intergenerational transference of accumulated wealth takes the form of “social capital” as well as economic assets, and has a tremendous impact on the ability of persons to operate competitively in socioeconomic terms as adults. *See, e.g.,* Russell W. Rumberger, *The Influence of Family Background on Education, Earnings, and Wealth*, 61 *SOC. FORCES* 755 (1983) (examining the United States).

Being the sons and daughters of privilege, many (though not all) of them have traveled to Miami and elsewhere more than once. Over time, they have acquired through such travel a familiarity with North American sexual minority communities, and with variations of “westernized” (or Anglicized) gay and lesbian identities.¹³² They desire inclusion in those communities by living amongst them – or nearby them; they desire adopting those identities by performing them – or modified versions of them. In short, they seek to live openly with a same-sex partner in an emotionally committed and economically stable relationship, without fear of violence, and in a culturally familiar urban location. Miami tends to emerge as their destination of choice precisely because of the phenomenon unleashed by the forces that Portes & Stepick studied. This drive for an envisioned Queer normalcy is a third cultural or attitudinal characteristic that is key to defining this immigrant group.

These three characteristics converge in their decision to migrate, and thus help to constitute the familial dynamics of their homeland exits and the social nature of their new enclave. As a group, these immigrants use class (and race) privileges in their native lands to secure the means of migration to Miami and thus, they hope, to escape the socially and emotionally constricting effects of familial and societal homophobia. Oftentimes, as a final assertion of privilege, they exploit family connections and related kinds of “social capital” to obtain or expedite visas, and to assemble some funds and other resources necessary to make the journey to Miami more viable, and then to make that city a permanent home. In effect, they decide to forego the virtually guaranteed lifelong material benefits of class (and race) privileges in their homelands, and under their families’ gaze, in exchange for the intangible benefits of an imagined freedom from societal homophobia in a diaspora abroad. This imagined exchange may indicate naivete; it certainly showcases the force of the human urge toward choice, freedom and self-expression. This exchange, moreover, starkly displays their negotiation of the Faustian deals, whether witting or not, forced by prevailing configurations of law, culture and power on both sides of the border.

In the imagined exchange of benefits and detriments based on the interplay of class, race and sexual orientation “over there” and over here, this group of Latina/o Queer immigrants generally seems willing to accept permanent downward adjustments in material and social living conditions. In this exchange, as noted above, these immigrants imagine that they will live modestly but happily with same-sex partners in domestic tranquility and social respectability. They understand, in the abstract, that life will be difficult in many ways, ranging from the social to the economic, but they simultaneously expect to live securely and safely. In return, they actually receive a peculiar mix of burdens and benefits, some anticipated, some under-estimated, some unexpected. Because current U.S. law does not provide for immigration and naturalization by same-sex couples,¹³³ and because

¹³²This familiarity with and desire for gay identity in openly social terms results not only from their travel to destinations in the United States but also from the exportation of gay identity from the United States to the Americas (and the rest of the world). *See, e.g., Living La Vida Loca*, THE ECONOMIST, Dec. 18-24, 1999 at 81-83 (reporting that “Latin America has imported the notion of “gay pride” from the United States, just as it has imported fashions and fast-food chains.” Nonetheless, the report continues, confirming the very social and cultural themes that help to produce Miami’s Queer Latina/o enclave, Latin America “is still a region where men are macho, women are long-suffering, Catholicism dominates, and the family reigns supreme.” *Id.* at 82. Of course, this process also reflects the internationalization of sexual orientation issues and communities more generally. *See infra* note 141 and sources cited therein on sexual orientation in international law.

¹³³Historically, the still-prevalent statutory requirement of “good moral character” has been interposed to exclude sexual minorities from migrating or naturalizing by labeling such individuals as “sexual deviates” and the like. *See* 8 U.S.C. § 1427 (a) and (e) (1999) (establishing the standard and specifying that determinations may include examination and judgment of “the applicant’s conduct and acts at any time prior” to that moment.) Additionally, immigration-by-marriage entails a two-step analysis: first, the marriage must be deemed valid under the law of the state where the marriage ceremony took place and, second, it must be valid under federal immigration law. The absence of either factor is fatal. *E.g., Adams v. Howerton*, 673 F.2d 1036 (9th Cir. 1982) (explaining the analysis based on the combination of the sources of law and denying the validity for immigration purposes, both under state and federal law, of a same-sex marriage ceremony performed in Colorado); *see generally* Annotation, *Validity, Construction and Application of 8 U.S.C. § 1325(c), Prohibiting Knowingly Entering Into Marriage to Avoid Immigration Laws*, 159 ALR Fed. 497 (2000) (compiling the case law). Because same-sex marriage, as of this writing, formally fails on both grounds, these two intersecting legal regimes combine to devalue and exclude from the national polity same-sex couples and families based on them. *See supra* note 118 and sources cited therein on hostility and non-recognition of same-sex

these immigrants typically have no other basis for securing permanent residency or citizenship in the United States, the principal *anticipated* reality of their migration is their acceptance of varying levels of criminality based on uncertain immigration status; over time, they adjust to the economic degradation and exploitation due, initially, to the losses resulting from their family ruptures before departing and, eventually, to the vulnerabilities generated by their dubious immigration trajectory after arriving.¹³⁴ The principal *under-estimated* reality is the structural intensity of societal homophobia – both of the Latina/o and the Anglo varieties – in the United States, and its chilling effects upon their envisioned freedom to live “normally” and “openly” as lesbian or gay; over time, they revise their expectations of life in the north, though they continue to believe that their migratory choices have produced relatively less homophobic life situations.¹³⁵ Finally, the principal *unexpected* reality appears to be the social and cultural power of Anglo-white racist nativism, including in particular the effects of Anglo language vigilantism, “even” in multicultural and Latinized Miami,¹³⁶ over time, they come to understand that they are “not white” in the

unions and families under U.S. law, including immigration law and policy; *see also* John D. Ingram, *A Constitutional Critique of Restrictions on the Right to Marry - Why Can't Fred Marry George - Or Mary and Alice at the Same Time?*, 10 J. CONTEMP. L. 33 (1984); Craig A. Bowman & Blake M. Cornish, *A More Perfect Union: A Legal and Social Analysis of Domestic Partnership Ordinances*, 92 COLUM. L. REV. 1164 (1992); *see generally* Mary C. Dunlap, *The Lesbian and Gay Marriage Debate: A Microcosm of Our Hopes and Troubles in the Nineties*, 1 LAW & SEXUALITY 63 (1991).

¹³⁴As with so many others in their situation, oftentimes these immigrants enter the United States with proper documents; they stay after the expiration of their visas, and only then join the “undocumented” in this country. In this vignette, every member of the group migrated in this way. *See generally*, William V. Flores, *Citizens v. Citizenry: Undocumented Immigrants and Latino Cultural Citizenship*, in *LATINO CULTURAL CITIZENSHIP: CLAIMING IDENTITY, SPACE AND RIGHTS* 255 (William V. Flores & Rina Benmayor eds., 1997) (surveying the issues associated with life as an undocumented immigrant in the United States).

¹³⁵In their imagined new lives, these immigrants usually discount the power of homophobia among Latinas/os in the United States, as well as the power of homophobia more generally in the law, policy and society of the United States. However, once in Miami, they learn that Latina/o diasporas oftentimes are similar to their societies of origin in this respect, as well as in others. For example, a recent gay man from El Salvador who sought and received asylum based on sexual orientation exclaimed that, “It’s like being in Latin America. They (heterosexual, homophobic Latinas/os) are here, but they bring with them the culture and the church of prejudices.” Leland, *supra* note 117, at 10; *see also supra* note 118 and sources cited therein on social and legal heteronormativity.

¹³⁶Whether born in the U.S. or abroad, the experience of Latinas/os with racial and ethnic discrimination in the United States is well recognized: “Latin[as/]os have found that the racial, cultural and linguistic differences that bind them as a group also mark them as different from the dominant society.” Flores, *supra* note 134, at 256. While as a relatively privileged group they knew personally of North American racism and nativism, and thus expected to experience “discrimination” as “Latinas/os” in the United States, the Queer Latina/o immigrants described here seem to have anticipated substantially less racialization than is the case in their lives precisely because, on the whole, they tend to identify as white in the racial maps of their homelands based on (real or imagined) family links with Spain. *See infra* note 137 and sources cited therein on “Hispanic” constructions of whiteness based on Spanish identifications.

Therefore, as the quotation above indicates, their “difference” in racial and ethnic terms usually is brought into sharp relief for this group via language: though privileged in many ways, these young Latina/o Queers are disadvantaged in English-preferred contexts because they are less fluent relative to others in the locality and oftentimes possess accents. Reflecting the salience of “language” to the racialization and subordination of “Latina/o” identities, LatCrit scholars have analyzed the power dynamics of language from various angles. *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); William Bratton, *Law and Economics of English Only*, 53 U. MIAMI. L. REV. 973 (1999); 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 CAL. L. REV. 1347 (1997), 10 LA RAZA L.J. 261 (1998); Drucilla Cornell, *The Imaginary of English Only*, 53 U. MIAMI. L. REV. 977 (1999); Sharon K. Hom, *Lexicon Dreams and Chinese Rock and Roll: Thoughts on Culture, Language, and Translation as Strategies of Resistance and Reconstruction*, 53 U. MIAMI. L. REV. 1003 (1999); Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 5 MICH. J. RACE & L. 847, 33 U. MICH. J.L. REFORM 263 (2000). For a discussion of some of these works, *see* Keith Aoki, *Introduction—Language is a Virus*, 53 U. MIAMI. L. REV. 961 (1999). For additional readings, *see* Mari

United States, including Miami – and regardless of the (real or imagined) ancestors from Spain.¹³⁷ This combination of realities pushes and pulls these young immigrants toward each other once they arrive in Miami.

Gradually, of necessity and in adversity, these Queer Latina/o immigrants, fleeing home-country homophobia, find each other in Miami's nooks and crannies – sometimes for the first time, other times for the first time since leaving a common homeland. Through sometimes-serendipitous connections and in myriad circumstances, during the past decade or so they have bonded sufficiently enough in social terms through interlocking networks of friendships and relationships to form a discernible new enclave – their own “community” within Miami's existing enclaves. And they have done so both to help ameliorate the effects of Anglo and Latina/o homophobia, of economic loss and exploitation, and of social denigration in Miami as well as to evade (as much and for as long as possible) the web of formal criminalization that threatens their well-being here and seeks to snare them.¹³⁸

In this multifaceted scenario, one thing stands out clearly: to achieve their escape from homophobic oppression, these immigrants consciously use home-country class (and race) privileges as the currency with which to make a run

J. Matsuda, *Voices of America: Antidiscrimination Law and a Jurisprudence for a Last Reconstruction*, 100 YALE L.J. 1329 (1991); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism and Official English*, 77 MINN. L. REV. 269 (1992).

¹³⁷The claim of ancestral links to Spain is a common practice associated with assertions of white identity among “different” Latina/o communities. For one testimonial regarding this cultural tendency from within the LatCrit community, see Kevin R. Johnson, “*Melting Pot*” or “*Ring of Fire*”? : *Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1262, 1274 & 1293-97 (1997). This tendency, and its racialized associations, are part and parcel of the ideology long (and still) promoted by Spain known as “Hispanismo” – the claim of Spanish roots and affinities – that prevails culturally among Latina/o societies as a result of colonial and neocolonial activity. For further readings on Hispanismo, and its relationship to colonial and neocolonial power patterns, see Valdes, *Hispanismo*, *supra* note 27; see also THE IBERO-AMERICAN SPACE: DIMENSIONS AND PERCEPTIONS OF THE SPECIAL RELATIONSHIP BETWEEN SPAIN AND LATIN AMERICA (Joaquin Roy & Albert Galinsoga Jorda eds., 1997) (presenting a series of essays that explain and explore the “ties that bind” present-day Latina/os cultures and societies to the former colonial ruler, Spain). For further readings on Spain's colonialism and its legacies in the Americas, see *supra* notes 15 and 27 and sources cited therein. For further readings on race and identity in LatCrit theory, see *supra* note 8 and sources cited therein.

¹³⁸Ironically, Miami's well-established Latina/o enclaves beckoned these immigrants to journey here in the first place. Miami's iconic role as the symbolic “capital” of the Americas leads these Queer Latina/o immigrants to believe that it is *the* place for them. See, e.g., Steve Rothaus, *Hispanic Gays in Hemisphere Rally in Dade*, MIA. HERALD, Oct. 10, 2002, at E1 (reporting that Miami, which is located in Dade County, is the site for hemispheric “encounters” among Queer Latina/os organizations and groups, a choice reflecting Miami's centrality in inter-American terms). The city's bilingual and multicultural neighborhoods and ethnicized economic networks create multiple nooks and crannies for relatively smooth fits. See generally *supra* note 117 and sources cited therein on Miami's diverse enclaves. But, as this portrait helps to show, the picture is more complex: Miami's Latina/o enclaves represent, for better and/or worse, a modified microcosm of their homeland cultures. See *supra* notes 120 and 121 and sources cited therein on homophobia among Latina/o immigrants and communities within the United States. The relationship between the larger enclaves and this one therefore is complex and conflicted. Yet, no matter how homophobic, Miami's established Latina/o enclaves draw these young Latina/o Queers because they help to alleviate the pressures of cultural shock, Anglo nativism and language vigilantism, among other ills, that their migration imposes on them. See *supra* note 136 and sources cited therein on Latina/o experience with “dominant” or Anglo versions of white supremacy in the United States. For further discussion of “language” in critical outsider jurisprudence, specifically LatCrit theory, see *supra* note 136 and sources cited therein. Of course, and in addition to all of the above, the Latina/o experience with race and ethnicity in the United States is made even more complex and oppressive for black and other nonwhite Latinas/os, who experience both the Anglo racism of “dominant society” as well as the Hispanic racism of fellow immigrants. This reality is detailed in recent news reports tracking the lives of Black and “white” Latina/o immigrants in the United States, including Miami. See Mireya Navarro, *Black and Cuban-American: Bias in 2 Worlds*, N.Y. TIMES, Sept. 13, 1997, at A8 (describing race relations within the established Cuban enclave in Miami); Mirta Ojito, *Best of Friends, Worlds Apart*, N.Y. TIMES, June 5, 2000, at A1 (focusing on the different lives led by two “best friends” – both Cuban, one black, one not – as result of race relations in the United States); see also generally Christina Gomez, *The Continual Significance of Skin Color: An Exploratory Study of Latinos in the Northeast*, 22 HISPANIC J. BEHAVIORAL SCIENCES 94 (2000) (correlating intra-Latina/o socioeconomic success to skin color, and citing studies with similar findings).

through the immigration gauntlet of the United States. Before embarking on their journeys northward, they knew that, if successful, their “new” lives would include both certain criminalization and a certain degradation of their material quality of life – as well as a potentially permanent rupture with family and friends at their homes of origin – that would deprive them of both social and economic capital. They stood, and remain, ready to forego family, friends and all the comforts of homeland privilege. In exchange, they strive for a relative improvement in the opportunity to “be” Queer with dignity. Theirs is a choice that, when studied critically in relationship to this year’s conference theme, reveals much about the power of community-making in the construction of misery and the constriction of opportunity.

B. Making Community: At the Intersection of Multiple Borders

These Faustian trade-offs, as noted above, are prompted by social conditions created in great part through mutually-reinforcing legal regimes, and by the multiple borders constructed at their intersection: the refusal of family law to recognize the substantive validity or formal existence of same-sex ceremonies and unions makes it impossible for these Queer Latinas/os and others like them to use a perfectly legal and legitimate path toward securing residency and citizenship under current immigration law in the U.S. – by falling in love with, and making long-term affectional and socioeconomic commitments to, a person with U.S. citizenship. Hence, the impediments to legal migration and resettlement created specifically for Queer Latina/o immigrants like these result mainly from the interplay of U.S. immigration formalities with domestic legal regimes like family law.¹³⁹ This interplay not only renders same-sex unions and families invisible and divisible, but also signals denigration; this interplay not only stigmatizes but also demeans Queer loves and commitments.¹⁴⁰ And it does so on both sides of the national borders: The denial of formal recognition for relationships based on same-sex love denies to sexual minority citizens of the United States a federal right conferred statutorily on similarly situated members of the sexual majority – the right to claim a non-citizen, in the name of romantic love, for formal inclusion and acceptance into the national community.¹⁴¹ Societal and legal homophobias on both sides of the South-North border thus combine to devalue

¹³⁹See *supra* note 133 and sources cited therein on hostility and non-recognition of same-sex unions and families under U.S. domestic relations law and immigration law.

¹⁴⁰Legislating exclusion, like legislating criminalization, is a means of stigmatizing and demeaning disfavored groups or identities. Of course, race-based exclusions are the quintessential example of stigma. *E.g.*, *Allen v. Wright*, 486 U.S. 737 (1984) (acknowledging that stigmatization based on race “is one of the most serious” harms inflicted by state-sponsored discrimination). However, the constitution does not grant the sexual majority the power to legislate for the purpose of excluding, stigmatizing or demeaning sexual minorities on the basis of sexual orientation. *See, e.g.*, *Romer v. Evans*, 517 U.S. 620 (1996) (holding that the Fourteenth Amendment’s Equal Protection Clause protects lesbians and gays against exclusions from local political processes on terms equal to other citizens or social groups); *Lawrence v. Texas*, 539 U.S. 558 (2003) (holding that a state sodomy statute prohibiting same-sex intimacies “demeans” sexual minorities and violates the Fourteenth Amendment’s Due Process Clause); *see also* Yvonne L. Tharpe, Comment, *Bowers v. Hardwick and The Legitimization of Homophobia in America*, 30 *How. L.J.* 537 (1987) (discussing the role of law, including case law, to normalize and license prejudice socially in the wake of the Supreme Court’s infamous 1986 decision embracing sodomy statutes). In Latina/o contexts, “the stigma is infused by a Catholic doctrine that rejects homosexuality, experts say, and runs so deep that homosexuals risk imprisonment in Latin American countries.” Elliott, *supra* note 117, at E2. Thus, the process of stigmatizing and demeaning same-sex couples and Queer persons, families or groups can and does combine the power of religion and culture, as well as the force of law and policy. *See* Arriola, *supra* note 121, at 437-68 (surveying the convergence of forces amassed against Queer youth, both Latina/o and not, in the process of coming out in the United States, ranging from the stigma imposed by families and relatives, to that imposed by peers, schools, governments, organized religions, medical sciences and “traditional” cultural skews); *see generally supra* notes 120-121 and 123-124 and sources cited therein on the effects of Roman Catholic religion and Euroheteropatriarchal culture on Queer Latina/o lives.

¹⁴¹This particular exclusion of course is part of the larger pattern of exclusion fabricated by law against sexual minorities. The vulnerability of members of sexual minorities to de jure discrimination roughly during the same time that this enclave has come into existence during the past decade or so is compiled in *Developments in the Law: Sexual Orientation and the Law*, 102 *HARV. L. REV.* 1508 (1990); *see also* Patricia A. Cain, *Same-Sex Couples and the Federal Tax Laws*, 1 *LAW & SEXUALITY* 97

and deform Queer lives, relationships, families and opportunities in structural and normative terms. Yet many of these Queer Latinas/os are relatively young, and in fact do fall in love and commit to long-term intimate relationships with U.S. citizens – and they do so without the incentives offered by formal law only to similarly-situated heterosexuals.¹⁴² These affectional and socioeconomic relations and commitments redouble these immigrants' initial determination to escape home-country homophobia almost at any cost. They look for any means of securing some recognition of their value to this society, which they vaguely but passionately hope eventually will produce the decision from a bureaucrat that permits them to stay in the United States without fear, deception, exploitation and danger. Their efforts include acts of civil conscience forced by undue and unjust laws, which also create formal and ethical dilemmas not only for these young immigrants but also for U.S. citizens and residents affected by or concerned with the same prejudices that produce these immigrants' sociolegal predicaments.¹⁴³

Ironically, their persistent efforts in life-and-relationship building also fit squarely with the substance of “traditional values” that dominant views of marriage impute automatically and instantaneously to any cross-sex coupling, no matter how casual or strategic (and even when based on drunken vows taken in locales like Las Vegas): mutual support in tangible and intangible forms for the long term. The centrality of homophobia at this intersection of multiple borders – including those erected through the homophobic rules of immigration and family law – creates

(1991) (describing tax code disparities based on the formal exclusion from marriage) and Barbara J. Cox, *Alternative Families: Obtaining Traditional Family Benefits Through Litigation, Legislation and Collective Bargaining*, 2 WIS. WOMEN'S L.J. 1 (1986) (elaborating an early effort to dismantle the web of detriments flowing from the formal exclusion from marriage). During this time, therefore, Queer scholars, advocates and scholars – including LatCrits – have explored international law and venues as alternative or supplementary means of achieving inclusion, equality and dignity in formal as well as social terms. See, e.g., Berta Esperanza Hernandez-Truyol, *Building Bridges: Bringing International Human Rights Home*, 9 LA RAZA L.J. 69 (1996); see also Laurence R. Helfer & Alice M. Miller, *Sexual Orientation and Human Rights: Toward a United States and Transnational Jurisprudence*, 9 HARV. HUM. RTS. J. 61 (1996); James D. Wilets, *Using International Law to Vindicate the Civil Rights of Gays and Lesbians in the United States Courts*, 27 COLUM. HUM. RTS. L. REV. 33 (1995); see generally THE GLOBAL EMERGENCE OF GAY AND LESBIAN POLITICS: NATIONAL IMPRINTS OF A WORLDWIDE MOVEMENT (Barry Adam, Jan Willem Duyvendak & Andre Krouwel eds., 1999).

It bears mention that this longstanding pattern of de jure discrimination against persons with same-sex desires or in same-sex unions in the United States is propped, and intensified, by the campaigns of “cultural war” that during the 1980s and 1990s increasingly have targeted immigrants, as well as sexual minorities, for backlash lawmaking – ranging from drives to wipe out immigrant and nonwhite communities to campaigns that choke off the possibility of same-sex marriage. Thus, from Hawaii to Washington D.C., the mobilization of white and straight supremacies through cultural warfare to roll back the equality gains of the past several decades and re-center Euro-heteropatriarchy as the fountainhead of national values has generated transnational repercussions: it means that persons in other countries who otherwise may qualify as legal immigrants here are transmuted into criminals. The result is that domestic cultural politics and formal rules of laws have combined to rob Queer Latinas/os of legal equality, economic security and social worth. See, e.g., Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender and Class*, 42 UCLA L. REV. 1509 (1995) (analyzing the social consequences of legal “reforms” during the culture wars of the 1980s; see also *supra* note 41 and sources cited therein on the “culture wars” and their impact on vulnerable outgroup communities).

¹⁴²Articulating the social functionality of same-sex couples and families was an early accomplishment of Queer legal scholarship. See, e.g., Barbara J. Cox, *Love Makes a Family - Nothing More, Nothing Less: How the Judicial System Has Refused to Protect Nonlegal Parents in Alternative Families*, 8 J.L. & POL. 5 (1991); 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). This work continues, including among LatCrit theorists. E.g., Elvia A. Ariola, *Law and the Family of Choice and Need*, 35 U. LOUISVILLE J. FAM. L. 69 (1997). For fictional(ized) contemporary accounts of same-sex love among Latinos, see VIRGINS, GUERRILLAS & LOCAS: GAY LATINOS WRITING ABOUT LOVE (Jaime Cortez ed., 1999).

¹⁴³It bears note that, among the latter, must be included these immigrants' long-term partners, as well as small employers and others who have helped over the years to form these neglected communities out of necessity, and who in myriad ways thereby become implicated in the dynamics of this continuing injustice. For more information on same-sex unions and families, their formation, and the issues that they have confronted as a result of homophobic laws and policies, see *supra* note 133 and *infra* note 144 and sources cited therein.

a class of benign “criminals” who otherwise are positive and “productive” members of society under the very terms imposed by dominant views of marriage. Despite the purported promotion of stable relationships and families through the law – including immigration law and policy – this exercise in state-imposed homophobia poisons the formation of untold numbers of families based on committed adult relationships that, but for the coincidence of sex, replicate, intentionally and in effect, the institution of marriage and the social utilities imputed to it by dominant traditions and forces.¹⁴⁴

This synopsis, on its own terms, is not a call for sympathy over unearned privileges based on class and race, and their loss. It is, like many of the essays that follow below, a call for equity in policymaking, regardless of “traditional” identity hierarchies and the neocolonial ideologies that they reflect and project. In the context of this symposium, this brief sketch also illustrates how one group of individuals has put into action the latter part of this year’s conference theme – “strategies of resistance” – through multiple acts of individual and collective will, acts that demonstrate with considerable poignancy the multidimensional complexities of antisubordination struggle and praxis: though oftentimes (but not always) halting from privileged quarters, the young adults in this vignette have found their lives defined by resistance to the homophobic dictates that accompanied their class and race privileges, by resistance to the legal regimes at home and the U.S. that would surrender and confine their loves, lives, choices and identities to the dictates of “traditions” entrenched long ago through brutal colonial conquest, and by resistance to the neocolonial cultures of heterosexism that have attempted to trivialize their worth as immigrants, as humans and as loved ones. While born and accustomed to privilege – ironically, also based on neocolonial legacies and imperatives – their personal experiences and resolute choices over time have transcended those origins in ways that illuminate in multidimensional and transnational terms the human potential and capacity for antisubordination struggle.

Perhaps most amazingly, these young immigrants have undertaken their perilous choices and journeys to vindicate their felt capacity for romantic love under the shadow of vicious threats and massed pressures rooted in culture, religion, family and society. Despite the possible naiveté underlying their expectations or notions of “normalcy” (and apart from the many complexities of their social positions and personal histories not interrogated in this brief sketch), theirs is a group story of immigration and determination that evokes the power of human romance in contemporary terms. In some basic sense, this synopsis thus represents a call to take seriously the seriousness of Queer loves as human loves. And to accept finally and fully the value of Queer hopes, the worth of Queer lives, and the reality of Queer families – in this particular instance, those of Latina/os Queers, but more generally those of other Queers as well, both of color and not.

At bottom, then, a key lesson here is that human beings will search long and hard for the ways and means to contest acts of exclusion with acts of resistance. It is in this personal and historic search that all of us – all LatCrits – also are involved; it is in this ongoing search that the crucibles and contours of antisubordination struggle are formed and lived from day to day, year to year, generation to generation. At bottom, the choices, experiences and lessons in this brief vignette amount to a LatCritical call for equitable reforms in law and policy that substantively would take into consideration the diverse yet basic human needs and motives that underlie this new immigrant enclave, as well as

¹⁴⁴In the mindless “defense” of marriage as a heterosexist institution, this homophobia effectively undermines the asserted importance to immigration law and policy of “family values” associated culturally with committed, long-term relationships. See generally Alexander Tsesis, *Toward a Just Immigration Policy: Putting Ethics into Immigration Law*, 45 WAYNE L. REV. 105, 154-56 (1999). “Preservation of the family has historically been a priority of U.S. culture ... [but immigration law and policy has] threatened the structure of alien [and Queer] families by putting hurdles before those citizens and lawful permanent residents who desired the freedom to marry and remain married to aliens.” *Id.* at 155-56. Ironically, at least one recent study of same-sex couples in the nation’s capital concluded that cross-sex unions “may have a lot to learn from gays.” Peter Freiberg, *Couples Study Shows Strengths*, WASH. BLADE, Mar. 16, 2001, at 1 (summarizing the findings of a 12-year research study comparing same-sex and cross-sex couples); see also *supra* note 142 and sources cited therein on the social functionality of same-sex unions and families based on them. Of course, it must be noted that this exclusion also is part of larger pattern of de jure exclusions based on sexual orientation. See *supra* note 140 and sources cited therein on de jure subordination based on sexual orientation.

those of others that may be like it around the country (and globe).¹⁴⁵ Like the authors of this symposium, the creators and inhabitants of this enclave struggle in personal and collective terms toward a postsubordination society. Thus, especially notable in light of the points developed in Part I of this Foreword is that this outlaw community illustrates, in present, vivid and concrete terms, the power of community-making. Realizing that their survival as individuals cannot depend on any pre-existing collectivity, these Queer Latina/o immigrants have learned or intuited that community-building is elemental not only to their personal existence, but also to the creation of the conditions for social justice to emerge in an otherwise unjust world. Their everyday struggles underscore the salience of transnationalism in Latina/os communities and community-making projects; they concretely display the centrality of multidimensionality in the comprehension of Latinas/os and other multiply diverse social groups, and of their law-and-policy needs; they illustrate the interactivity of law and society in the construction of opportunity and exclusion; they invoke the necessity of coalitional theory and practice to the articulation and implementation social justice. Without doubt, these reminders and insights provide bedrock lessons in and for LatCrit theory, and always have.¹⁴⁶ Happily, these are lessons and insights that this year's theme and symposium timely underscore as the LatCrit community approaches the end of our first decade, and begins to look at the challenges ahead and the opportunities beyond.¹⁴⁷

IV. Conclusion

The symposium that follows represents another act in the ongoing construction of LatCrit theory, praxis and community. While focusing our collective attention on the “city and citizen” this symposium continues lines of LatCritical inquiry begun previously, including varied interrogations of identity in law and society. The summary discussion presented in this Foreword could not possibly capture their richness. But the emphasis on community-building in this Foreword – both as a key to this year's conference theme and as a recurrent aspect of the essays that follow – ideally will help us all to keep in focus the importance of collective praxis to the ongoing vitality of LatCrit theory, both in the short and the long term. In this vein, the contemporary example of community-making as social struggle etched immediately above poses to us all a standing call to courage, and to action. I hope, and trust, that LatCrits as a community, will heed this call to personal yet collective transformation of the world we have inherited.

¹⁴⁵This observation of course flows from the recognition that law should not be employed to demean or stigmatize disfavored social groups, segments or identities. See *supra* note 140 and sources cited therein on the abuse of law to demean and/or stigmatize traditionally subordinated groups. Similarly, the lessons to be drawn by LatCrit and other OutCrit theorists from this observation, and from the experience of the Queer Latina/o enclave in Miami, is that our work must include the validation not only of socially nonconforming “desire” but also of socially nonconforming “love” as a key condition for the attainment of a postsubordination society. For discussion of “desire” and its reclamation in critical legal theory, see 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. 3, 344-77 (1995) (outlining one view of Queer legal theory and its antisubordination agenda).

¹⁴⁶See *supra* note 21 and sources cited therein on community-building in LatCrit theory and praxis.

¹⁴⁷It is no coincidence that many of today's challenges and tomorrow's opportunities stem, in large measure, from our past and present work on community-and-institution building, as reflected by the Portfolio of Projects that LatCrits collectively have organized, funded and administered. As this Portfolio has grown, so has the interest in our work. And this interest, in turn, brings new challenges and opportunities as newcomers join our ranks, and bring with them new visions of antisubordination praxis. For more information on the LatCrit Portfolio of Projects, please visit the website at www.latcrit.org.

FOREWORD

LATCRIT GOES INTERNATIONAL

*Kevin R. Johnson**

This LatCrit Theory Colloquium on International and Comparative Law is comprised of papers presented at the Facultad de Derecho de la Universidad de Buenos Aires in Buenos Aires, Argentina in August 2003. Titled “The Role of Constitutional and Legal Systems in Maintaining or Reforming Political, Social, Economic and Legal Arrangements,” the Colloquium continues an international series of events that began in Miami, Florida in 1996,¹ and in 2004, was held in Capetown, South Africa.²

Designed to literally take LatCrit international, the Colloquium series encourages LatCrit theorists to engage with scholars from around the world in the global anticolonialism project.³ In this way, LatCrit Theory has moved not only across disciplines, a trademark of Critical Race Theory,⁴ but also across borders to analyze the linkages between and among subordinations in an era of much-heralded globalization.

The Critical Global Classroom, a summer program for law students, is another part of the effort to move LatCrit Theory prominently into the international realm.⁵ Through coordinated classes for socially conscious law students in different countries each year, LatCrit scholars and students are exposed to the conditions of racial and economic subordination outside the United States, which informs their scholarship generally by allowing

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1. See Colloquium, *International Law, Human Rights, and LatCrit Theory*, 28 U. MIAMI INTER.-AM. L. REV. 177 (1996-97).

2. See Colloquium on International and Comparative Law, available at <http://personal.law.miami.edu/~fvaldes/latcrit/latcrit/index.html> (last visited Sept. 10, 2004).

3. See Francisco Valdés, *Foreword: Under Construction — LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087, 1093-94 (1998), 10 LA RAZA L.J. 1, 7-8 (1997).

4. See, e.g., CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdés et al. eds., 2002).

5. See Critical Global Classroom, available at <http://personal.law.miami.edu/~fvaldes/latcrit/events/cgc/> (last visited Sept. 10, 2004).

them to consider the intricacies of the interrelationships between racial and other subordinations on an international scale. The overall international presence also allows LatCrit scholars to build

intellectual community with scholars from different nations who share common interests in social justice.

Each colloquium hopes to build on past scholarly efforts, including the LatCrit annual symposium issues.⁶ At this point in LatCrit's history as the tenth annual conference approaches, a substantial body of antistubordination scholarship has been developed.⁷ Extensive thought, discussion, and, at times, conflict go into the planning of all LatCrit projects, especially the annual conferences. The organizers are open to new ideas and solicit proposals for panels, workshops, and other programs, as was the case with the 2003 Colloquium in Buenos Aires.

The contributions to the 2003 Colloquium are eclectic, bringing together scholars from many different disciplines, nations, perspectives, and analytical approaches. One senses a great intellectual energy and enthusiasm in reading the studies of subordination around the world. The methodologies and focal points of the papers vary dramatically. One of the articles aptly analyzes the difficulties in this type of transnational intellectual endeavor considering the world's most pressing social, political, and economic issues. At their core, all of the contributions share a common anti-subordination, social justice agenda.

This introduction first will generally describe the Colloquium on International and Comparative Law articles and then will offer observations about the direction of the scholarship. I then comment on the direction of LatCrit generally.

I. THE CONTRIBUTIONS

The 2003 Colloquium papers are difficult to unify by identifying any but the broadest common themes. This section describes them with a broad brush and, when possible, attempts to link them to other LatCrit projects and scholarship.

6. See, e.g., Pedro A. Malavet, *Latcritical Encounters with Culture*, in *Northsouth Frameworks*, 55 U. FLA. L. REV. 1 (2003); Dean Rex Perschbacher, *LatCrit IV Symposium, Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. DAVIS L. REV. 751 (2000); Frank Valdes, Symposium, *LatCrit Theory: Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997).

7. For a partial list of the publications, including numerous symposia issues, see LatCrit Theory List of Publications, available at <http://personal.law.miami.edu/~fvaldes/latcrit/publications.html> (last visited Sept. 10, 2004).

A. *Argentina and Beyond*

The contributions analyze subordination the world over, from Argentina to Latin America to North America, South America, and India. Like the Colloquium, they begin in Argentina.

In a contribution most appropriate for a conference set in Buenos Aires, Carina J. Miller analyzes the impacts on Jews of the economic crisis that currently grips Argentina.⁸ This is but another example of the construction of different races⁹ as well as on the intersection of race and

class.¹⁰ Jewish racial identity long has been analyzed in the United States,¹¹ as apparently is the case in Argentina. Similarly, the increasing study of conceptions of race and racial categories in Latin America in recent years has shed much light on the fluidity of race in those countries.¹² The economic crisis in Argentina and its linkage to globalization warrants sustained analysis and critique. Miller's article reveals how the economic crisis has had disparate impacts on one segment of Argentine society.

Becky Jacobs analyzes judicial reform in Latin America, a pressing public policy issue that unquestionably affects adherence to the rule of law.¹³ The article builds on the work of Professor Elizabeth Iglesias,¹⁴ one of the influential Critical Race Theory and LatCrit scholars who has

1. 8. See Carina J. Miller, *Protecting the Argentine Jewish Community and Jewish Identity in Times of Crisis: Local Efforts, Global Community, and Foreign Support*, 16 FLA. J. INT'L L. 677-96 (2004).

2. 9. See, e.g., MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S* (2d ed. 1994); 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).

3. 10. See, e.g., Symposium, *Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U. L. REV. 467 (2001).

4. 11. See KAREN BRODKIN, *HOW JEWS BECAME WHITE FOLKS AND WHAT THAT SAYS ABOUT RACE IN AMERICA* (1998). This transformation has occurred with other "white" groups in the United States. See NOEL IGNATIEV, *HOW THE IRISH BECAME WHITE* (1995).

5. 12. See, e.g., Robert J. Cottrol, *The Long, Lingering Shadow: Law, Liberalism, and Cultures of Racial Hierarchy and Identity in the Americas*, 76 TUL. L. REV. 11 (2001); Tanya Katerí Hernández, *Multiracial Matrix: The Role of Race Ideology in the Enforcement of Antidiscrimination Laws, A United States — Latin America Comparison*, 87 CORNELL L. REV. 1093 (2002); Tanya Katerí Hernández, *An Exploration of the Efficacy of Class-Based Approaches to Racial Justice: The Cuban Context*, 33 U.C. DAVIS L. REV. 1135 (2000); Estelle T. Lau, *Can Money Whiten? Exploring Race Practice in Colonial Venezuela and Its Implications for Contemporary Race Discourse*, 3 MICH. J. RACE & L. 417 (1998).

6. 13. See Becky Jacobs, *Policy and Praxis: A Role for LatCrit "Institutional-Class Analysis" in Latin American Judicial Reform*, 16 FLA. J. INT'L L. 601-14 (2004).

7. 14. See Elizabeth M. Iglesias, *Global Markets, Racial Spaces and the Role of Critical Race Theory in the Struggle for Community Control of Investments: An Institutional Class Analysis*, 45 VILL. L. REV. 1037 (2000).

focused on international linkages between racial and economic subordination in other countries.¹⁵ LatCrit theorists have carefully scrutinized the global linkages that result in domestic subordination. Jacobs' contribution, as well as others in the Colloquium, fit well into this body of scholarship.¹⁶

Hugo Rojas shows us how much is similar across borders in considering new forms of discrimination against workers in Chile.¹⁷ Workers in the global marketplace continue to suffer exploitation and limited legal recourse, which arguably has been worsened by globalization of the world economy.¹⁸ We would expect to see this throughout the world.

1. 15. See Elizabeth M. Iglesias, *Foreword: LatCrit Theory: Some Preliminary Notes Towards a Transatlantic Dialogue*, 9 U. MIAMI INT'L & COMP. L. REV. 1 (2000/01); Elizabeth M. Iglesias, *Foreword: Identity, Democracy, Communicative Power*,

Inter/National Labor Rights and the Evolution of LatCrit Theory and Community, 53 U. MIAMI L. REV. 575 (1999); Elizabeth M. Iglesias, *Human Rights in International Economic Law*, 28 U. MIAMI INTER-AM. L. REV. 361 (1996-97).

2. 16. See Sylvia R. Lazos Vargas, *Globalization or Global Subordination?: How LatCrit Links the Local to Global and the Global to the Local*, 33 U.C. DAVIS L. REV. 1429 (2000); Chantal Thomas, *Globalization and the Reproduction of Hierarchy*, 33 U.C. DAVIS L. REV. 1451 (2000); Timothy A. Canova, *Global Finance and the International Monetary Fund's Neoliberal Agenda: The Threat to the Employment, Ethnic Identity, and Cultural Pluralism of Latina/o Communities*, 33 U.C. DAVIS L. REV. 1547 (2000); Enrique Carrasco, *Global Money, the Good Life, and Understanding the Local Impact of International Financial Institutions*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 43 (1999); Enrique R. Carrasco, *Intersections Between LatCrit Theory and Law and Development Studies*, 28 U. MIAMI INTER-AM. L. REV. 313 (1996-97); Gil Gott, *Critical Race Globalism?: Global Political Economy, and the Intersection of Race, Nation, and Class*, 33 U.C. DAVIS L. REV. 1503 (2000); Ibrahim J. Gassama, *Transnational Critical Race Scholarship: Transcending Ethnic and National Chauvinism in the Era of Globalization*, 5 U. MICH. J. RACE & L. 133 (1999); Ediberto Roman, *A Race Approach to International Law (RAIL): Is There a Need for Yet Another Critique of International Law?*, 33 U.C. DAVIS L. REV. 1519 (2000). See generally MORAL IMPERIALISM: A CRITICAL ANTHOLOGY (Berta Esperanza Hernández-Truyol ed., 2002) (offering international human rights framework to analyze current international and national crises).

3. 17. See Hugo Rojas, *Labor Law and Genetic Discrimination in Chile*, 16 FLA. J. INT'L L. 56178 (2004).

4. 18. See, e.g., Christopher David Ruiz Cameron, *Borderline Decisions: Hoffman Plastic Compounds, the New Bracero Program, and the Supreme Court's Role in Making Federal Labor Policy*, 51 UCLA L. REV. 1 (2003); Robert I. Correales, *Did Hoffman Plastic Compounds, Inc., Produce Disposable Workers?*, 14 LA RAZA L.J. 103 (2003); Ruben J. Garcia, *Across the Borders: Immigrant Status and Identity in Law and LatCrit Theory*, 55 U. FLA. L. REV. 511 (2003); Ruben

J. Garcia, *Ghost Workers in an Interconnected World: Going Beyond the Dichotomies of Domestic Immigration and Labor Laws*, 36 U. MICH. J.L. REFORM 737 (2003); Sylvia R. Lazos Vargas, *"Latia/o-ization" of the Midwest: Cambio de Colores (Change of Colors) as Agromaquilas Expand into the Heartland*, 13 BERKELEY LA RAZA L.J. 343 (2002); Maria L. Ontiveros, *Lessons from the Fields: Female Farmworkers and the Law*, 55 ME. L. REV. 157 (2003).

Charles R. Venator Santiago continues his important analysis of racial and class subordination in the Caribbean.¹⁹ Having previously studied Puerto Rico and the Dominican Republic,²⁰ he analyzes Haiti, the poorest nation in the Western Hemisphere and one that has suffered much-publicized violence and political tumult for decades. Venator Santiago considers the Constitution of Haiti and how it mediated and affected the rights of blacks and whites during a time in the early 1800s when Haiti and the Dominican Republic were united.²¹

Dominique Legros moves the Colloquium to the north of the United States with analysis of international issues raised by Canada's dealings with the Tutchone Indians of the Central Yukon Territory in Canada.²² Some LatCrit scholarship has focused on the treatment of indigenous peoples,²³ although much work remains to be done. This inquiry has proven difficult given the racial mixture and the mestizaje of many Latina/os.²⁴ U.S. law is notoriously ambivalent about its native peoples, vacillating between treating Indian tribes as sovereign nations and as the equivalent of state and local municipalities.²⁵ Other nations no doubt face similar issues.

Showing the global reaches of LatCrit Theory, but tying it to real world needs, Deon Erasmus considers a land reform bill under consideration in

1. 19. See Charles R. Venator Santiago, *Race, Nation-Building and Legal Transculturation During the Haitian Unification Project (1822-1844): Towards a Haitian Perspective*, 16 FLA. J. INT'L L. 667-76 (2004).

20. See Charles R. Venator Santiago, *Race, Nation-Building and Legal Transculturation During the Haitian Unification Period (1822-1843): Towards a Dominican Perspective*, 51 CLEV. ST. L. REV. (forthcoming 2004); Charles R.

Venator Santiago, *The Uses and Abuses of the Notion of Legal Transculturation: The Puerto Rican Example?*, 13 BERKELEY LA RAZA L.J. 441 (2002); Charles R. Venator Santiago, *Race, Space, and the Puerto Rican Citizenship*, 78 DENV. U.L. REV. 907 (2001).

21. See Santiago, *supra* note 19.
2. 22. See Dominique Legros, *Indigenous Peoples' Self-Determination and the Broken Tin Kettle Music of Human Rights and Liberal Democracy*, 16 FLA. J. INT'L L. 579-600 (2004).
3. 23. See, e.g., Guadalupe T. Luna, *Gold, Souls, and Wandering Clerics: California Missions, Native Californians, and LatCrit Theory*, 33 U.C. DAVIS. L. REV. 921 (2000); Ofelia Schutte, *Indigenous Issues and the Ethics of Dialogue in LatCrit Theory*, 54 RUTGERS L. REV. 1021 (2002); Siegfried Weissner, *¡Esa India! LatCrit Theory and the Place of Indigenous Peoples Within Latina/o Communities*, 53 U. MIAMI. L. REV. 831 (1999).
4. 24. See George A. Martínez, *Latinos, Assimilation, and the Law, A Philosophical Perspective*, 20 CHICANO-LATINO L. REV. 1, 16-21 (1999); Margaret E. Montoya, *Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis*, 2 HARV. LATINO L. REV. 349 (1997).
5. 25. See, e.g., *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831) (referring to Indian tribe as a "domestic dependent nation"). See generally S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* (1996) (analyzing international law protecting indigenous peoples).

South Africa.²⁶ Disputes over land are central to the grievances of subordinated peoples in nations around the world.²⁷ The South African proposal would allow communities to secure title to land that they already use.²⁸ The political movement for the land reform law appears to be part of the continuing effort to bring positive political change to South Africa in the post-apartheid era.²⁹ We can expect more scholarship on this general topic from the 2004 LatCrit Colloquium on International and Comparative Law in Capetown.

Karin van Marle also considers the future of race relations in South Africa.³⁰ She analyzes the limits of law in securing lasting social change, a topic of sustained scholarly inquiry in the United States,³¹ and focuses on one significant effort to redress inequality — the South African Employment Equity Act, which defines blacks, women, and the disabled as its protected groups. Contending that white women have been the primary beneficiaries of the law, van Marle argues that the law has done precious little to promote racial equality in post-apartheid South Africa.³² This problem harkens back to the influential Critical Race Theory analysis of the different treatment and experiences of black and white women.³³

1. 26. See Deon Erasmus, "Will She Speak, Or Won't She? That is the Question": *Comments on the Communal Land Rights Bill*, 16 FLA. J. INT'L L. 539-46 (2004).

27. See Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 NW. U. L. REV. 505 (2001); Guadalupe T. Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a "Naked Knife,"* 4 MICH. J. RACE & L. 39 (1998).

28. See Erasmus, *supra* note 26.

2. 29. See Charles R. Lawrence III, *Foreword: Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819 (1995); Lisa R. Pruitt, *No Black Names on the Letterhead? Efficient Discrimination and the South African Legal Profession*, 23 MICH. J. INT'L L. 545 (2002); Adrienne Katherine Wing, *Polygamy from Southern Africa to Black Britannia to Black America: Global Critical Race Feminism as Legal Reform for the Twenty-First Century*, 11 J. CONTEMP. LEGAL ISSUES 811 (2001).

3. 30. See Karin van Marle, "Meeting the World Halfway?" — *The Limits of Legal Transformation*, 16 FLA. J. INT'L L. 651-66 (2004).

31. See, e.g., RICHARD DELGADO & JEAN STEFANCIC, *FAILED REVOLUTIONS: SOCIAL REFORM AND THE LIMITS OF LEGAL*

IMAGINATION (1994); GERALD N. ROSENBERG, RACE AGAINST THE COURT: THE SUPREME COURT AND MINORITIES IN CONTEMPORARY AMERICA (1993); GIRARDEAU

A. SPANN, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? (1991); Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA RAZA L.J. 42, 45-56 (1995); George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. DAVIS L. REV. 555 (1994).

32. See van Marle, *supra* note 30.

33. See Kimberlé 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 generally CRITICAL RACE

Van Marle sees the experience with the South African Employment Equity Act as an example of “legal fundamentalism” no different from the legal formalism criticized by, among many others, Duncan Kennedy.³⁴ In an interesting discussion, van Marle contends that aesthetic portrayals would make the impacts of the enforcement of the Employment Equity Act clearer for the world to see.³⁵

Fred Evans looks at Salman Rushdie’s depiction of “hybrid voices” in India from a philosophical perspective.³⁶ India and Indians have been analyzed from a number of different critical perspectives.³⁷ This taps into the LatCrit commitment to antiessentialism and the recognition of heterogeneous communities of races.³⁸ As with other racial phenomena, this is a global, not just a local, pattern.

B. Bridging the Gap

Two contributions bridge the gap between domestic and the global. These contributions address strategies to promote social change, which are relevant both domestically and globally.

A leading Critical Race Theory scholar,³⁹ John Calmore’s contribution to the Colloquium analyzes the complexities of a lawyer advocating for social change and integrating the voices of the disenfranchised into reform

FEMINISM: A READER (Adrien Katherine Wing ed., 2d ed. 2003) (collecting readings on gender and Critical Race Theory).

34. See DUNCAN KENNEDY, *SEXY DRESSING ETC.: ESSAYS ON THE POWER AND POLITICS OF CULTURAL IDENTITY* (1993). See generally THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE (David Kairys ed., 3d ed. 1998) (providing readings on Critical Legal Studies).

35. See van Marle, *supra* note 30.

36. See Fred Evans, *Multi-Voiced Society: Philosophical Nuances on Rushdie’s Midnight’s Children*, 16 FLA. J. INT’L L. 727-42 (2004).

37. See, e.g., Anupam Chander, *Diaspora Bonds*, 76 N.Y.U. L. REV. 1005 (2001); Ratna Kapur, *Post-Colonial Economies of Desire: Legal Representations of the Sexual Subaltern*, 78 DENV. U. L. REV. 855 (2001); Ratna Kapur & Tayyab Mahmud, *Foreword: Re-Orienting Law and Sexuality*, 48 CLEV. ST. L. REV. 1 (2000); Madhavi Sunder, *Intellectual Property and Identity Politics: Playing With Fire*, 4 J. GENDER RACE & JUST. 69 (2001); Tayyab Mahmud, *Genealogy of a State-Engineered “Model Minority”: “Not Quite/Not White” South Asian Americans*, 78 DENV. U. L. REV. 657 (2001); Tayyab Mahmud, *Race, Reason, and Representation*, 33 U.C. DAVIS L. REV. 1581 (2000).

1. 38. See Elizabeth M. Iglesias & Francisco Valdés, *Expanding Directions, Exploding Parameters: Culture and Nation in LatCrit Coalitional Imagination*, 33 U. MICH. J.L. REFORM 203, 227-32 (2003).
2. 39. See, e.g., John O. Calmore, *Race/ism Lost and Found: The Fair Housing Act at Thirty*, 52 U. MIAMI L. REV. 1067 (1998); 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).

strategies.⁴⁰ This is important not just domestically but internationally as well. The growth of international human rights class actions in recent years reflects efforts to use domestic tools to bring about international reform.⁴¹ Human rights activists have used the U.S. courts in attempts to seek redress for serious human rights abuses in other countries.⁴² The litigation in which Holocaust victims sought damages from banks, insurance companies, and others in connection with the atrocities committed by Nazi Germany, is perhaps the most well-known litigation of this type.⁴³

Domestically, African Americans have engaged in litigation seeking reparations for the atrocity of chattel slavery in the United States.⁴⁴ Litigation success is not the only goal of the litigation. As Professor Charles Ogletree has emphasized,

1. 40. See John O. Calmore, *Social Justice Advocacy in the Third Dimension: Addressing the Problem of "Preservation-Through-Transformation"*, 16 FLA. J. INT'L L. 615-38 (2004).
2. 41. See Kevin R. Johnson, *International Human Rights Class Actions: New Frontiers for Group Litigation*, 2004 MSU-DCL L. REV. (forthcoming 2004).
3. 42. See, e.g., *Hwang Geum Joo v. Japan*, 332 F.3d 679 (D.C. Cir. 2003) (addressing challenge of sexual enslavement of "comfort women" by the Japanese military during World War II), *vacated and remanded*, 124 S. Ct. 2835 (2004); *Doe v. Unocal Corp.*, 248 F.3d 915 (9th Cir. 2001) (deciding claims of use of slave labor by U.S. company in Burma); *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000) (addressing dismissal of Alien Torts Claim Act case involving claim that corporations participated in human rights abuses in Nigeria), *cert. denied*, 532

U.S. 941 (2001); *Hilao v. Estate of Marcos*, 103 F.3d 767 (9th Cir. 1996) (seeking recovery of damages for human rights abuses of Ferdinand Marcos when he ruled the Philippines); *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995) (challenging under international law the genocide by Bosnian Serbs in the former Yugoslavia), *cert. denied*, 518 U.S. 1005 (1996); *Abebe-Jira v. Negewo*, 72 F.3d 844 (11th Cir. 1996) (reviewing Alien Torts Claim Act judgment resting on human rights abuses in Nigeria), *cert. denied*, 519 U.S. 830 (1996); *Sarei v. Rio Tinto P/C*, 221 F. Supp. 2d 1116

(C.D. Cal. 2002) (addressing class action claims against companies that allegedly incited civil war and crimes against humanity in Papua New Guinea); *Bao Ge v. Li Peng*, 201 F. Supp. 2d 14 (D.D.C. 2000) (reviewing class action claims involving forced labor camps in China), *aff'd*, 35 Fed. Appx. 1 (D.C. Cir. 2002).

43. See, e.g., *In re Holocaust Victims Assets Litig.*, 282 F.3d 103 (2d Cir. 2000); *In re Holocaust Victims Assets Litig.*, 225 F.3d 191 (2d Cir. 2000); *Goldstein v. United States*, 2003 U.S. Dist. LEXIS 19266 (D.D.C. 2003); *Rosner v. United States*, 231 F. Supp. 2d 1202 (S.D. Fla. 2002); *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424 (D.N.J. 1999); *Burger-Fischer v. Degussa AG*, 65 F. Supp. 2d 248 (D.N.J. 1999). See generally JOHN AUTHERS & RICHARD WOLFFE, *THE VICTIM'S FORTUNE: INSIDE THE EPIC BATTLE OVER THE DEBTS OF THE HOLOCAUST* (2002) (offering an "insider's" view of Holocaust litigation); MICHAEL J. BAZYLER, *HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA'S COURTS* (2003) (analyzing legally Holocaust litigation); STUART EIZENSTAT & ELIE WIESEL, *IMPERFECT JUSTICE: LOOTED ASSETS, SLAVE LABOR, AND THE UNFINISHED BUSINESS OF WORLD WAR II* (2003) (discussing diplomatic initiatives taken by United States on behalf of Holocaust victims).

44. See Adjoa A. Aiyetoro, *Formulating Reparations Litigation Through the Eyes of the Movement*, 58 N.Y.U. ANN. SURV. AM. L. 457 (2003); Charles J. Ogletree, Jr., *Repairing the Past: New Efforts in the Reparations Debate in America*, 38 HARV. C.R.-C.L. L. REV. 279 (2003).

[t]he reparations movement demands that all of American history be fully acknowledged, accounted for, and valued. Thus the movement must make one of its vital political and educational tasks the goal of combating the willful ignorance and ahistoricism exhibited by those who would deny the immediate and subsequent effects of slavery and Jim Crow.⁴⁵

International human rights actions pursue similar goals.⁴⁶

Progressive lawyering has been a much analyzed issue in recent years.⁴⁷ Calmore, the editor of a casebook on the subject,⁴⁸ considers social justice law practice and discusses his methods in a Social Justice Lawyering class that he teaches; student exercises in the course include the drafting of a complaint that offers voice to the client.⁴⁹

With its global ambitions, LatCrit Theory is a natural place for taking the analysis of lawyering for social change international.⁵⁰ The International and Comparative Law Colloquium series would seem to be a natural place for law professors promoting social change to consider how lawyers might bring about that change. This is vitally important to LatCrit theorists, a group of scholars seriously committed to social change.

45. Ogletree, *supra* note 44, at 318 (footnote omitted); see Charles J. Ogletree, Jr., *The Current Reparations Debate*, 36 U.C. DAVIS L. REV. 1051 (2003); see, e.g., *Cato v. United States*, 70 F.3d 1103 (9th Cir. 1995); see also William Bradford, "With a Very Great Blame on Our Hearts": *Reparations, Reconciliation, and an American Indian Plea for Peace with Justice*, 27 AM. INDIAN L. REV. 1 (2002/03) (analyzing legal issues implicated by the struggle of Native Americans for reparations).

46. See Johnson, *supra* note 41.

47. See GERALD P. LÓPEZ, *REBELLIOUS LAWYERING* (1992); Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991); Bill Ong Hing, *In the Interest of Racial Harmony: Revisiting the Lawyer's Duty to Work for the Common Good*, 47 STAN. L. REV. 901 (1995); Kevin R. Johnson, *Lawyering for Social Change: What's a Lawyer to Do?*, 5 MICH. J. RACE & L. 201 (1999); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699; Eric K. Yamamoto, *Critical Race Practice: Race Theory and Political Lawyering Praxis in Post-Civil Rights America*, 95 MICH. L. REV. 821 (1997).

48. See MARTHA R. MAHONEY & JOHN O. CALMORE, *SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES AND LAW: CASES AND MATERIALS* (2003).

49. See Calmore, *supra* note 40. In this way, Calmore suggests a deeper issue of integrating race and social justice into the basic law curriculum. See Kevin R. Johnson, *Integrating Racial Justice into the Civil Procedure Survey Course*, 54 J. LEGAL EDUC. 242 (2004).

50. There is some, but relatively little, literature on this topic. See, e.g., William J. Aceves, *Actio Polularis? The Class Action in International Law*, 2003 U. CHI. LEGAL F. 353; Catherine A. MacKinnon, *Collective Harms Under the Alien Tort Statute: A Cautionary Note on Class Actions*, 6 ILSAJ. INT'L & COMP. L. 567 (2000); Catherine A. Rogers, *Proposals to Expel Palestinians from the Occupied Territories as Catalyst for a Civil Adjudication Campaign*, 7 IOWA J. GENDER, RACE & JUST. 167, 186 (2003); Beth Van Schaack, *Unfulfilled Promise: The Human Rights Class Action*, 2003 U. CHI. LEGAL F. 279.

Focusing on social change, Frances Olsen considers the successful, and much publicized, strategy to remove U.S. military testing from the island of Vieques in Puerto Rico.⁵¹ This, in fact, is a domestic U.S. matter given that since 1898 Puerto Rico has been a U.S. territory.⁵² An influential feminist scholar,⁵³ Olsen moves beyond that realm to consider social change movements generally, but begins with the military testing issue in Puerto Rico. She attributes the success to the solidarity of the Puerto Ricans directly affected as well as the Puerto Ricans on the mainland of the United States.⁵⁴ This shows the importance of collective political action, moving

beyond the differences that separate us, and the need for continuing the study of coalitions in pursuit of social change.⁵⁵

51. See Frances Olsen, *Civil Disobedience on Vieques: How Nonviolence Defeated the U.S. Military*, 16 FLA. J. INT'L L. 547-60 (2004). For other LatCrit perspectives on Vieques, see PEDRO

A. MALAVET, AMERICA'S COLONY: THE POLITICAL AND CULTURAL CONFLICT BETWEEN THE UNITED STATES AND PUERTO RICO 147-61 (2004); Manuel Rodriguez Orellana, *Vieques: The Past, Present, and Future of the Puerto Rico-U.S. Colonial Relationship*, 13 BERKELEY LA RAZA L.J. 425 (2002).

52. See, e.g., José A. Cabranes, *Citizenship and the American Empire*, 127 U. PA. L. REV. 391 (1978); Sylvia R. Lazos Vargas, *History, Legal Scholarship, and LatCrit Theory: The Case of Racial Transformations Circa the Spanish American War, 1896-1900*, 78 DENV. U. L. REV. 921 (2001); Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 MICH. J. RACE & L. 1 (2000); Pedro A. Malavet, *The Past, Present and Future of the Puerto Rico-U.S. Colonial Relationship: Vieques, Transculturation, and Reparations: Reparations Theory and Postcolonial Puerto Rico: Some Preliminary Thoughts*, 13 LA RAZA L.J. 387 (2002); Ediberto Román, *Reparations and the Colonial Dilemma: The Insurmountable Hurdles and Yet Transformative Benefits*, 13 BERKELEY LA RAZA L.J. 425 (2002); Ediberto Roman & Theron Simmons, *Membership Denied: Subordination and Subjugation Under United States Expansionism*, 39 SAN DIEGO L. REV. 437 (2002).

53. See FRANCES OLSEN, FEMINIST LEGAL THEORY I: FOUNDATIONS AND OUTLOOKS (1995); FRANCES OLSEN, FEMINIST LEGAL THEORY II: POSITIONING FEMINIST THEORY WITHIN THE LAW (1995); Frances Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497 (1983).

54. See Olsen, *supra* note 51.

55. See, e.g., LANI GUINIER & GERALD TORRES, THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY (2002); ERIC K. YAMAMOTO, INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST CIVIL RIGHTS AMERICA (1999); Charles R. Lawrence III, *Foreword: Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819 (1995); Mary Romero, *Afterword: Historicizing and Symbolizing a Racial Ethnic Identity: Lessons for Coalition Building with a Social Justice Agenda*, 33 U.C. DAVIS L. REV. 1599 (2000); Julie A. Su & Eric Yamamoto, *Critical Coalitions: Theory and Praxis*, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY, *supra* note 4, at 379; Robert A. Williams, Jr., *Linking Arms Together: Multicultural Constitutionalism in a North American Indigenous Vision of Law and Peace*, 82 CAL. L. REV. 981 (1994); see also George A. Martinez, *African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*, 19 UCLA CHICANO-LATINO L. REV. 213 (1998) (contending that intellectual coalition is necessary to fully appreciate racial subordination of all minority groups). *But see* Richard Delgado, *Linking Arms: Recent Books on Interracial Coalition as an Avenue of Social Reform*, 88 CORNELL L. REV. 855, 856 (2003) (criticizing the "preoccupation with interracial coalition"); Haunani-Kay Trask,

Both Calmore and Olsen offer important food for thought for social change. Their analyses have both domestic and international implications and, consequently, deserve careful study.

C. New Methodologies

One of the exciting aspects of LatCrit Theory is the steady stream of new perspectives and methodologies brought to bear on old problems. These new ways of looking at the world are offered in concise articles. At times, the shortness of the pieces leaves much to be said. At least one influential critic has criticized "discourse about discourse," and suggested that critical theorists need to focus critical scrutiny on concrete real world problems, especially those that focus on socioeconomic class.⁵⁶

José María Monzón analyzes the impacts on images and the law.⁵⁷ This form of argument was analyzed specifically in the conception of the "alien" in the U.S. immigration laws in the first LatCrit International and Comparative Law symposium⁵⁸ and long has been an important element

of Critical Race Theory.⁵⁹

Emiliani J. Buis considers law and drama,⁶⁰ a variation of the burgeoning law and literature movement in the United States.⁶¹ Analysis of culture generally has been considered in LatCrit scholarship as well

Coalition-Building Between Natives and Non-Natives, 43 STAN. L. REV. 1197 (1991) (contending that great care is required in forming political coalitions across racial lines).

1. 56. See Richard Delgado, *Crossroads and Blind Alleys: A Critical Examination of Recent Writing About Race*, 82 TEX. L. REV. 121, 122-25 (2003) [hereinafter Delgado, *Crossroads*] (book review essay); Richard Delgado, *Two Ways to Think About Race: Reflections on the Id, the Ego, and Other Reformist Theories of Equal Protection*, 89 GEO. L.J. 2279 (2001).

2. 57. See José María Monzón, *Let There Be Justice: The Double Standard of Application of Legal Norms*, 16 FLA. J. INT'L L. 639-50 (2004).

3. 58. 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).

4. 59. See Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258 (1992).

5. 60. See Emiliano J. Buis, *How to Play Justice and Drama in Antiquity: Law and Theater in Athens as Performative Rituals*, 16 FLA. J. INT'L L. 697-726 (2004).

6. 61. See GUYORA BINDER & ROBERT WESIBERG, *LITERARY CRITICISM OF LAW* (2000); JAMES BOYD WHITE, *HERCULES' BOW* (1985); Sheila Foster, *Foreword: Law and Literature: Examining the Limited Legal Imagination in the Traditional Legal Canon*, 30 RUTGERS L.J. 569 (1999); Cynthia G. Hawkins-Leon, "Literature as Law": *The History of the Insanity Plea and a Fictional Application Within the Law and Literature Canon*, 72 TEMP. L. REV. 381 (1999).

as Critical Race Theory literature.⁶² Indeed, films have been the subject of critical inquiry.⁶³

II. LESSONS FROM THE COLLOQUIUM AND THE FUTURE OF LATCRIT THEORY

One of the strengths of LatCrit Theory has been its sustained creative energy and continuing devotion to scholarship. The contributions to this Colloquium demonstrate the vibrancy of intellectual discourse within the global LatCrit community, as well as its expanding frontiers. LatCrit has kept it interesting and exciting, exuding enthusiasm, collegiality, and ambition.

At the same time, however, after reading the contributions to the Colloquium, some cautionary observations are in order, especially because similar issues arise consistently in LatCrit symposia over the years. This body of scholarship has not received much attention outside of LatCrit circles, perhaps because many believe that the attacks on Critical Race Theory⁶⁴ apply with equal force to this scholarly offshoot. The variation in quality of LatCrit contributions also may explain why it has remained outside of the dominant gaze.

We must constructively criticize LatCrit scholarship if we want to truly consider ourselves to be in a scholarly, intellectually rigorous movement. It is a sensitive topic, however. LatCrit has,

for the most part, been ignored

62. See Steven W. Bender, *Will The Wolf Survive?: Latina/o Pop Music in the Cultural Mainstream*, 78 DENV. U. L. REV. 719 (2001); Kevin R. Johnson, *Comparative Racialization: Culture and National Origin in the Latina/o Communities*, 78 DENV. U. L. REV. 633 (2001); Pedro

A. Malavet, *The Accidental Crit II: Culture and the Looking Glass of Exile*, 78 DENV. U. L. REV. 753 (2001); Madhavi Sunder, *Cultural Dissent*, 54 STAN. L. REV. 495 (2001); Madhavi Sunder, *Piercing the Veil*, 112 YALE L.J. 1399 (2003).

63. See Lolita K. Buckner Inniss, *Bicentennial Man — The New Millennium Assimilationism and the Foreigner Among Us*, 54 RUTGERS L. REV. 1101 (2002); Margaret E. Montoya, *Lines of Demarcation in a Town Called Frontera: A Review of John Sayles' Movie Lone Star*, 27 N.M. L. REV. 223 (1997); Juan Velasco, *Making Evil: Crime Thrillers and Chicano Cinema*, 78 DENV. U.

L. REV. 1049 (2001). See generally STEVEN W. BENDER, *GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION* (2003) (analyzing the legal impact of stereotypical depictions of Latina/os in popular culture); *LATINO/A POPULAR CULTURE* (Michelle Habell-Pallán & Mary Romero eds., 2002) (studying stereotypical depictions of Latina/os in popular culture); PAUL BERGMAN & MICHAEL ASIMOW, *THE COURTROOM GOES TO THE MOVIES* (1996) (studying the portrayal of law and legal processes in film); *LEGAL REELISM: MOVIES AS LEGAL TEXTS* (John Denvir ed., 1996) (same).

64. For a sampling of criticism, see DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997); Richard A. Posner, *The Skin Trade*, NEW REP., Oct. 13, 1997, at 40; Jeffrey Rosen, *The Bloods and the Crits*, NEW REP., Dec. 9, 1996, at 27.

in mainstream scholarship and internal criticism must be careful in order to avoid giving fuel to the argument that LatCrit is intellectually bankrupt.⁶⁵

The following thoughts are inchoate suggestions about the direction of LatCrit scholarship, with a specific emphasis on the symposia and colloquia.

A. *The Need to Build on LatCrit Scholarship*

Care must be taken to ensure that the full body of LatCrit Scholarship is considered and incorporated into later iterations of LatCrit Scholarship. This has been said on more than one occasion.⁶⁶ Many of the pieces in this Colloquium seem to be stand alone studies of particular questions without a serious effort to place the analysis into the larger context of LatCrit scholarship.

Building a body of intellectual discourse requires actual engagement with existing literature. New scholarship must analyze, critique, and credit extant literature. Otherwise, it is not, in fact, intellectual interchange or a true scholarly movement. One might think that certain scholarship warrants no comment because it is weak. It does no one any favors, however, to ignore scholarship and simply not acknowledge its existence. Indeed, this is one attempted rationalization for the approach of the “imperial scholar” identified by Richard Delgado.⁶⁷ Ignoring scholarship in its entirety marginalizes it and suggests that it is unworthy of recognition.

Although page limits exist to ensure inclusion of all submissions, there may be a need for more pages and fewer submissions to be published in the symposia and colloquia issues. More detailed scholarship in LatCrit Theory is essential, perhaps placed in mainstream law reviews that are not symposia issues so as to maximize exposure to the legal academy. The

1. 65. See Kevin R. Johnson, *Roll Over Beethoven: "A Critical Examination of Recent Writing about Race,"* 82 TEX. L. REV. 717, 729-33 (2004) (analyzing Richard Delgado's criticism of LatCrit Theory).

2. 66. See Elizabeth M. Iglesias, *Foreword: Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community*, 53 U. MIAMI L. REV. 575, 672-82 (1999); Pedro Malavet, *Outsider Citizenships and Multidimensional Borders: The Power and Danger of Not Belonging*, 51 CLEV. ST. L. REV. (forthcoming 2004); Kevin R. Johnson, *Foreword: Celebrating LatCrit Theory: What Do We Do When the Music Stops?*, 33 U.C. DAVIS L. REV. 753, 784 (2000); Margaret E. Montoya, *Foreword: Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U. L. REV. 467, 470 (2001); Ediberto Román, *Afterword: LatCrit VI, Outsider Jurisprudence and Looking Beyond Imagined Borders*, 55 U. FLA.

L. REV. 583, 600 (2003).

67. See Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984).

market of legal scholarship then could evaluate the quality of the scholarship.

In this vein, we must avoid the lure of a quick publication solely because of the publication opportunity presented by LatCrit symposia and colloquia. Quality scholarship is central to the LatCrit endeavor. It may be sacrificed if the focus is on meeting deadlines and publication for publication's sake. Excessive attention paid to meeting a deadline may take attention away from the development of scholarship of the highest quality. Smaller symposia contributions limit time available for more in-depth LatCrit inquiries.

International colloquia like this one pose special challenges in LatCrit scholarship. Joshua Price and María Lugones analyze the difficulties in having an interdisciplinary dialog across national boundaries.⁶⁸ Establishing a field of discourse such as LatCrit is fraught with difficulties when intellectuals come from so many different backgrounds, methodologies, and perspectives. Language alone can serve as a formidable barrier limiting communication between scholars.⁶⁹ As Price and Lugones demonstrate, cultural, national origin, and racial differences can also limit communication.⁷⁰ In addition, access to the LatCrit literature is more difficult for scholars outside the United States. One important effort in the international dissemination of LatCrit has been to ensure that past symposia are posted on the Internet, and thus are easily accessible to scholars all over the world.

To address these issues, structural and institutional responses may be in order. Indeed, some are in the works. Efforts should be made to plan panels and programs, consistent with the openness of the proceedings, to ensure that the scholarship produced by the symposia and colloquia in fact builds on past LatCrit scholarship. To ensure that the scholarship is rigorous, LatCrit theory may need selection procedures and the rejection of some contributions. This is not an easy endeavor and, in certain respects, is contrary to the egalitarianism of LatCrit as an intellectual endeavor.

The publication of LatCrit scholarship in mainstream journals outside of LatCrit symposia is also a possibility. To this point, this has been a rare occurrence. It may have, to a certain extent, isolated LatCrit within domestic U.S. legal scholarship.

A different, but possibly constructive, direction is signaled by the new LatCrit journal, tentatively known as *Clave*.⁷¹ Movement from a student

68. See Joshua Price & María Lugones, *Encuentros and Desencuentros: Reflections on a LatCrit Colloquium in Latin America*, 16 FLA. J. INT'L L. 743-52 (2004).

1. 69. *See id.*

2. 70. *See id.*

3. 71. *See* Spring 2004 Co-Chair Report, LatCrit, Inc., at 10 (Mar. 30, 2004).

reviewed to a peer reviewed editorial system offers much promise at ensuring quality as well as timely publication. Despite the benefits, the new journal probably will not mainstream LatCrit theory.

B. *The Relevance of Latina/os to LatCrit Theory*

Latina/os are relevant to LatCrit Theory, and were the focal point of much early LatCrit scholarship.⁷² Today, they at times seem to get lost in the shuffle. It is striking that a LatCrit scholar might pose the question, “where is the ‘Lat’ in LatCrit?” This can be alienating to some scholars who flocked to LatCrit Theory in hopes of analyzing the Latina/o condition in the domestic and international spheres.⁷³

The need to refocus LatCrit on Latina/os makes the tentative plans to build links between LatCrit theorists and Chicana/o Studies scholars, which have been under consideration by the LatCrit Inc. Board of Directors for several years, all the more important. Chicana/o Studies scholars look at similar issues and consider common questions. They also have experienced divides between cultural studies and social scientists that resemble that which is ongoing in Critical Race Theory.

C. *Missed Opportunities: The Need to Address Pressing Social Issues*

To be blunt, LatCrit Theory cannot avoid the pressing social problems plaguing the world. Richard Delgado has made this point emphatically,⁷⁴ and it is worth emphasizing that issues of economics should be of increasing concern to Critical Race and LatCrit theorists.⁷⁵

Although the commitment to egalitarianism is important, it might be worthwhile for conference organizers to work on ensuring that conference

72. See, e.g., Rachel F. Moran, *Neither Black Nor White*, 2 HARV. LATINO L. REV. 61 (1997); Berta Esperanza Hernández-Truyol, *Borders (En)gendered: Normativities, Latinas, and a LatCrit Paradigm*, 72 N.Y.U. L. REV. 882 (1997); Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997); George A. Martínez, *Legal Indeterminacy, Judicial Discretion, and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. DAVIS L. REV. 555 (1994); Margaret E. Montoya, *Máscaras, Trenzadas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185; 15 CHICANO-LATINO L. REV. 1 (1994); Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. REV. 965 (1995).

73. See THE LATINO/A CONDITION: A CRITICAL READER (Richard Delgado & Jean Stefancic eds., 1998).

74. See *supra* note 56 (citing authorities).

2. 75. See, e.g., Margaret E. Montoya, *Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U. L. REV. 467 (2001); Charles R.P. Pouncy, *Institutional Economics and Critical Race/LatCrit Theory: The Need for a Critical*

"Raced" Economics, 54 RUTGERS L. REV. 841 (2002); Alice G. Abreu, *Tax Counts: Bringing Money-Law to LatCrit*, 78 DENV. U. L. REV. 575 (2001).

participants also plan to submit publishable papers addressing critical social justice issues. The LatCrit symposia frequently have failed to include contributions on timely, and important, issues. It is difficult to predict the pressing issues of tomorrow. But even when a presentation is made on a timely issue, a paper may not be submitted by the panelist for publication. LatCrit symposia often include papers not presented at the live event as well as papers that were. Some of the concerns with coverage and quality have become voiced regularly, in informal conversations if not so much in print. Efforts must be made to ensure high quality scholarship in all LatCrit symposia and that the articles cover important new questions of law, policy, and theory.

One surprising aspect of the series of papers in this Colloquium on International and Comparative Law is the pressing issues *not* addressed or raised in them. Two issues that immediately come to mind are the impacts of globalization on Latin America, as well as the effects of the "war on terror" on the region. In certain respects, their omission is a lost opportunity.

1. Impacts of Globalization on Latin America

Much attention has been paid to the impacts of globalization and the specific impacts of trade expansion, including the World Trade Organization, the European Union, the North American Free Trade Agreement, on developing nations and the poor in the developed world. This is an ongoing process with global trade blocs in formation in Latin America,⁷⁶ which makes the failure to discuss them in more detail in this International and Comparative Law Colloquium all the more striking. There has been a great deal of concern with the impacts of the North American Free Trade Agreement, for example, on poverty in Mexico.⁷⁷ Those developments have, in the estimation of some informed observers, injured workers in the developing world and restructured economies to benefit the economically privileged.⁷⁸ In contrast, other commentators

1. 76. See Mark B. Baker, *Integration of the Americas: A Latin Renaissance or a Prescription for Disaster?*, 11 TEMP. INT'L & COMP. L.J. 309 (1997); Christopher M. Bruner, *Hemispheric Integration and the Politics of Regionalism: The Free Trade Area of the Americas (FTAA)*, 33 U. MIAMI INTER-AM. L. REV. 1 (2002); Frank J. Garcia, *Trade and Inequality: Economic Justice and the Developing World*, 21 MICH. J. INT'L L. 975 (2000); Rafael A. Porrata-Doria Jr., *The Common Market of the Twenty-First Century?*, 32 GA. J. INT'L & COMP. L. 1 (2004).

2. 77. See SARAH ANDERSON & JOHN CAVANAGH, *GLOBALIZATION AND POVERTY* (1999); Michael E. Conroy & Sarah Elizabeth West, *The Impact of NAFTA and the WTO on Chiapas and Southern Mexico*, in *POVERTY AND DEVELOPMENT* 43 (Richard Tradanico & Mark B. Rosenberg eds., 2000); Paul Rich, *NAFTA and Chiapas*, 550 ANNALS 42 (1997).

3. 78. See, e.g., Fran Ansley, *Inclusive Boundaries and Other Impossible Paths Toward Community Development in a Global World*, 150 U. PA. L. REV. 353 (2001); Ibrahim J. Gassama,

contend that the negative impacts are outweighed by potential positive economic impacts, such as the reduction of migration controls within the new emerging trade blocs⁷⁹ and growing economies that benefit all.

One is left to wonder from this international and comparative law colloquium held in Latin America what caused the economic woes that have hit the region. The omission is all the more surprising because the event was held in Argentina, which has been particularly hard hit by the economic downturn. Two papers discuss Argentina, one touching on the disparate impacts of the poor economy.⁸⁰ There is general literature on the subject, but, to this point, not the LatCrit analysis that is necessary.⁸¹ Globalization of the world economy, the development of free trade in the region, International Monetary Fund policy, as well as other economic factors, warrant inquiry.⁸²

It also would seem important to build on the efforts to link the global with the local and to consider the impact of global policies on Latina/os in the United States. At times, the past scholarship seems to get lost in the shuffle.⁸³ LatCrit theory at its best has considered local phenomena and race relations, within the context of global economic and political developments. For example, Bob Chang and Keith Aoki thoughtfully scrutinized the impacts of global developments on relations between Asian Americans and Latina/os in the small Los Angeles suburb of Monterey Park.⁸⁴

Consider as another example the background offered for a comprehensive study of another small Latina/o working class community on the outskirts of Los Angeles; a Chicana/o Studies scholar, Gilda Ochoa

Confronting Globalization: Lessons from the Banana Wars and the Seattle Protests, 81 OR. L. REV. 707 (2002); Carmen G. Gonzales, *Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade*, 78 DENV. U. L. REV. 979 (2001); Berta Esperanza Hernández-Truyol, *The Rule of Law and Human Rights*, 16 FLA. J. INT'L L. 167 (2004).

□.79. See John A. Scanlan, *A View From the United States — Social, Economic, and Legal Change, the Persistence of the State, and Immigration Policy in the Coming Century*, 2 IND. J. GLOBAL LEGAL STUD. 79 (1994); see also Kevin R. Johnson, *Open Borders?*, 51 UCLA L. REV. 193, 240-43 (2003) (suggesting that freer migration among NAFTA member nations might be an appropriate measure).

□.80. See *supra* text accompanying notes 8-12.

□.81. See Celeste Boeri, *How to Solve Argentina's Debt Crisis: Will the IMF's Plan Work?*, 4 CHI. J. INT'L L. 245 (2003); Mario E. Carranza, *MERCOSUR, the Free Trade Area of the Americas, and the Future of U.S. Hegemony in Latin America*, 27 FORDHAM INT'L L.J. 1029 (2004).

1. 82. See *supra* note 77 (citing authorities discussing some of these issues).

2. 83. See *supra* note 15-16 (citing authority).

2. 84. See Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395 (1998), 10 LA RAZA L.J. 309 (1997).

steps back to place the local relations as part of larger economic relationships between the United States and Mexico and beyond:

In the final decades of the twentieth century, U.S. transnational corporations, with the support of governmental policies, deindustrialized the United States and moved many of their manufacturing plants to destinations including “free trade zones.” These free trade zones, numbering two hundred in Mexico in 1992, are industrial regions where minimal or no tariffs are paid to export materials and where environmental and child labor laws are

routinely violated. The U.S. Congress approved the . . . [North American Free Trade Agreement (NAFTA)] . . . , which went into effect in 1994. NAFTA's aim is to remove tariff barriers between Mexico, Canada, and the United States. While supporters of such neo-liberal policies argue that they will benefit U.S. residents and will limit emigration from Mexico, these policies have spurred internal migration as subsistence farmers have been pushed off their land and have not been able to compete with U.S. agriculturalists. Likewise, increases in international migration have been positively correlated with the increases in U.S. factories and businesses in Mexico. Part of this international movement of people may be attributed to the fact that international migration from the countryside to free trade zones often exposes individuals to the English language and to television images of the United States as the land of opportunity where they might earn higher wages for similar work. Despite the reduction of barriers for corporations and capital to move across borders, the movement of Mexicans into the United States continues to be restricted, and more expensive surveillance technology has forced some migrants to seek other, more dangerous routes to enter the United States.⁸⁵

Professor Ochoa may not be correct on all counts; her analysis, however, is precisely the type that Chicana/o Studies scholars ordinarily engage in.⁸⁶ We must look globally as well as locally. LatCrit theorists should look to Chicana/o Studies, one of the precursors of LatCrit theory,⁸⁷ as a guide to analyzing the pressing social issues of our times.

1. 85. GILDAL. OCHOA, BECOMING NEIGHBORS IN A MEXICAN AMERICAN COMMUNITY: POWER, CONFLICT, AND SOLIDARITY 32 (2004) (citation omitted).

2. 86. See, e.g., RODOLFO ACUÑA, OCCUPIED AMERICA; A HISTORY OF CHICANOS (3d ed. 1988); VICTOR M. VALLE & RODOLFO D. TORRES, LATINO METROPOLIS (2000).

87. See Kevin R. Johnson & George A. Martínez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship*, 53 U. MIAMI L. REV. 1143 (1999).

2. Impacts of the U.S. "War on Terror" on Latin America

Somewhat surprisingly, the so-called war on terror, including but not limited to the war in Iraq, conducted by the United States is not discussed in the Colloquium papers. The events of September 11, 2001 have had impacts far beyond the United States. Security controls have had immigration consequences for many other groups besides Arab and Muslim noncitizens, the initial group focused upon in the heightened national security measures.⁸⁸ Moreover, the United States, and a coalition of nations, waged war in Afghanistan and Iraq. The terrorism that hit Spain in 2004, and the subsequent withdrawal of Spanish (as well as Honduran and Dominican) troops from Iraq, shows the international reverberations of the U.S. government's war on terror.⁸⁹

The war, ongoing for several years, implicates political and economic, as well as foreign relations concerns. The continuing conflict has had a dramatic impact on the view of the United States in the world community, particularly in the Arab and Muslim world. At this time, it is

uncertain what long term impacts this will have on racial subordination in the United States, Latin America, and other countries.

The revelations in spring 2004 about the mistreatment of Iraqi prisoners by U.S. forces and its global impacts occurred too recently to have been

1. 88. See, e.g., Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295 (2002); Raquel Aldana-Pindell, *The 9/11 "National Security" Cases: Three Principles Guiding Judges' Decision-Making*, 81 OR. L. REV. 985 (2002); Steve W. Bender, *Sight, Sound, and Stereotype: The War on Terrorism and Its Consequences for Latina/os*, 81 OR. L. REV. 1153 (2002); David Cole, *Enemy Aliens*, 54 STAN. L. REV. 953, 953-54 (2002); Berta E. Hernández-Truyol, *Glocalizing Terror*, 81 OR. L. REV. 941 (2002); Bill Ong Hing, *Vigilante Racism: The De-Americanization of Immigrant America*, 7 MICH. J. RACE & L. 441 (2002); Kevin R. Johnson, *September 11 and Mexican Immigrants: Collateral Damage Comes Home*, 52 DEPAUL L. REV. 849 (2003); Thomas W. Joo, *Presumed Disloyal: Executive Power, Judicial Deference, and the Construction of Race Before and After September 11*, 34 COLUM. HUM. RTS. L. REV. 1 (2002); Sylvia R. Lazos Vargas, *Missouri, the "War on Terrorism," and Immigrants: Legal Challenges Post 9/11*, 67 MO. L. REV. 775 (2002); Peggy Nagae, *Justice and Equity for Whom? A Personal Journey for Local Perspective on Community Justice and Struggles for Dignity*, 81 OR. L. REV. 1133 (2002); Natsu Taylor Saito, *Whose Liberty? Whose Security? The USA PATRIOT Act in the Context of COINTELPRO and the Unlawful Repression of Political Dissent*, 81 OR. L. REV. 1051 (2002); Adrien Katherine Wing, *Civil Rights in the Post 9-11 World: Critical Race Praxis, Coalition Building, and the War on Terrorism*, 63 LA. L. REV. 717 (2003); Eric K. Yamamoto et al., *American Racial Justice on Trial — Again: African American Reparations, Human Rights, and the War on Terror*, 101 MICH. L. REV. 1269 (2003).

2. 89. See Nancy Gibbs, *Digging In for a Fight*, TIME, May 3, 2004, at 26 (reporting that Spain, as well as Honduras and the Dominican Republic, had decided to pull out of the war in Iraq).

discussed at a 2003 colloquium.⁹⁰ However, the wars in Afghanistan and Iraq have dragged on, thus affording LatCrit theorists the opportunity for the sustained analysis of the wars' impacts on the world.⁹¹

CONCLUSION

The contributions to the LatCrit 2004 Colloquium on International and Comparative Law in Buenos Aires, Argentina in August 2003 offer much food for thought about the racisms and classisms of our times. At the same time, we must keep our eye on the scholarly ball. Efforts should be made to consider critical economic, social, and political issues and to not reinvent the wheel.

To maximize the utility of the LatCrit International and Comparative Law Colloquia in the future, steps should be taken that ensure that important, and pressing, issues of the day are discussed in the event. Moreover, care should be taken to ensure that publishable papers are submitted on those issues as well. A number of possibilities have been mentioned in this Foreword. It also may well be that, as in other disciplines of academic discourse, it is time for a general editor to be assigned to each symposium issue, with power to make selection and editorial decisions for each of the symposia and colloquia.

90. See Seymour M. Hersh, *The Gray Zone: How a Secret Pentagon Program Came to Abu Ghraib*, NEW YORKER, May 24, 2004, at 38; Douglas Jehl & Eric Schmitt, *Officer Says Army Tried to Curb Red Cross Visits to Prison in Iraq*, N.Y. TIMES, May 19, 2004, at A1.

91. See Delgado, *Crossroads*, *supra* note 56, at 137-42, 146.