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. 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. 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 anything 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.

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. 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.
careful path between the tendencies to rely, on the one hand, on the feel-good emotions of superficial sentimentalism, and, on the other hand, the tendency to indulging community-destroying disruptions that undermine, rather than enable, our efforts to explore substantive critical analysis that was the aspiration of LatCrit III. Though fleeting and often problematic, alliances to achieve substantive critical analysis that was the aspiration of LatCrit III such an enlivening experience - our memories of the shared community and collegiality 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-building must walk a careful path between the tendencies to rely, on the one hand, on the feel-good emotions of superficial sentimentalism 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 pro posing 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, 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, and about the particularities of Black experiences and the significance of those particularities to the LatCrit project.

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. 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 polities, 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 wo/man-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 essential-isms 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 inability 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 effec tive 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 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 their exploration a critical dimension of the continuity we seek to main tain. 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, minor ity 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 transnational 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 dis/organize 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, 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 realties 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, under stood 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 particular ities 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 antisubordination theory and practice is implicated in and activated by the sociol egal 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 "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 particu larly relevant to Latina/o and other minority communities, whose prior many 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 rhetoric 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, limits 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.

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

A. Centering Particularities and Comparing Positions in LatCrit Theory and Coalitional Politics

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 dispossessions 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 of Haitian refugees that have been singularly 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,
Latin/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 of law 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 inter-group 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 intergroup 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 recurring theme in LatCrit scholarship. The second 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 re/production 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 land owners 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 \[\text{[*589]}\] in the free states and territories. n24 Since Dred Scott's claim to U.S. citizenship was premised on his status as a free man 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. n25

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 conformed 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. n26

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 land 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. n27 However, the value of Professor Luna's analysis is that it never the less 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. n28 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. n29 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. n30

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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." n31 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. n32 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 dispossessed" 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 constructing a common identity or forging a common agenda around these different 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 histories into one false norm. n35 The payoff is a new perspective on the way 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 organized 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 socioreligious contexts, Professor Luna demystifies the potential value of inter-group comparisons. These comparisons 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 provides a valuable point of departure for reflecting on the ethics and politics 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 promote the commitments and alliances that strengthen a community of solidarity. 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 perspectives. 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

[*597] 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 articulated in LatCrit theory. It enables us to move from abstract discourses 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 com bating 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 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 problem atic 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 jus tice, 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 co alitional 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 empha size 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 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 dis course 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 InterestConvergence

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, entitlement 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 perceiving 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-American 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 scholar ship 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 coalition 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 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 zero-sum competition of interests, rather than a substantive vision of commitment to intergroup social and racial justice. Thus, while Attorney Lyra Logan views the MPLE as evidence of progress in intergroup coalition 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 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 microagression, 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, con demns 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 minori ties into this pre-existing status quo without serious attention and proac tive 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 effic ively 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 stra tegic 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 commit ment to substantive justice.

In this context, Attorney Coto's essay is a particularly instructive counter-example. n69 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 enforce ment 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-determin nation 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 infor
mation on relevant topics in immigration law, workers' rights, domestic violence, public benefits, victim's rights, community resources and les sons 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 inter ested 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 disen gagement 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. 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.

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 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 between internal and external oppression, to familiarize ourselves with the psychologies of liberation 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 the ory 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.
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 indig enous 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/outside 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 nation 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 Chicanas/os feeling 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 per spective 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 dis courses 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" 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/outside positions within Latina/o communities. Tracking earlier accounts of the
profundely sexist constructs through which Latina/o culture structures heterosexual 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 heterosexual that empowers men and smothers women. Under the weight and burden of the virgin/whore dichotomy, heterosexuality is constituted as a prac tice 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 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 indi cates, 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 sensa tionalized when imagining lesbian sexu ality." 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 Profes sors 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 difference 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 legitimate hierarchical relations, both with in 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 subordination 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 differ ence. 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 difference 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 follows 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 bottom 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 prejudices and hierarchies of the various supracies we seek to transform.

Deconstructing Racial Hierarchies and De-Centering Hispanic Identities in LatCrit Theory

Like Professor Hernandez-Truyol, Professor Wiessner calls on Latina/o communities to practice anti-subordination principles inter nally. 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. This asserted failure to engage the struggles 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." Indeed, the struggles of indigenous peoples are particularly appropriate matters for LatCrit attention precisely because they implicate a whole array of current and historical discrimination and exploitation 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 indigenous peoples. 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 Weissner makes his case by examining the legacy of Hispanic conquest in Latin America. This legacy is a history of physical and cultural genocide. From the initial encounter with the Spanish Conquistadors through the more recent history of military dictatorships, indigenous peoples in Latin America have been tortured, massacred, robbed, enslaved and displaced from their communal lands by the brutality 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 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 of indigenous peoples who 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. To support this brash generalization, Professor Wiessner quotes the work of Professor Steven McSloy. The problem is that nothing in Professor McSloy's text supports Professor Wiessner's comparative assessment. The fact that 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 sug gests 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 com pel 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 Wiess ner's analysis as a reference point for further reflection on the commit ments implicit in the LatCrit aspiration to promote an anti-subordina tion politics that is broadly inclusive and relentlessly anti-essentialist, as well as to reflect further on the politics and practice of intergroup compari sons. From this perspective, there is no question that Professor Wiess ner'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 inter nal hierarchies within a subordinated community. This is because Pro fessor 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 interven tion, 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 prac tices, 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 overgeneralizations 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 exper iences 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 inter nalized oppression as well as expanding our analysis of the way "dif ference" is used to configure insider/outside r 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 rele vant to articulating a LatCrit perspective on the anti-subordination strug gles 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 pro ject, 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 poli tics 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 Lat Crit 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 ways 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 enbled by the anti-essentialist movement in Critical Race Theory. n107 Neverthel eless, 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 particular ties 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 misun derstanding 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 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 meaning ful 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 intersectional 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. 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 inclusive venue of Critical Race Theory. 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 intergroup 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 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. 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 vic tims 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 gath ering committed to the production of anti-subordination theory and prac tice 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 develop ment of identity politics and positions the anti-essentialist critique beyonrather 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 particulari ties. 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-suboration agenda defined by the group. This is simply to say, for exam ple, 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 genu inely 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 univer sal, 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 com munities, to construct our collective identities and solidarities around an inside/outside dichotomy. n17

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

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 disjunctions 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 disjunction 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 transnational 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 overlay of transplanted cultures 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 his tory 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 sub tantive 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 Griffith 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 socioeconomic 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, grassroots 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 benefited 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 neoliberal agenda onto the international political economy, n131 and the obstacles confronting the democratic project in Haiti are nothing less than daunting. n132

[*635] 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 corpo
rative 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 proressive 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 participation of Nicaraguan citizens in a 'people's war' against a brutal and ruthless tyranny." n136 Mr. Martinez's objective is to explain why the Nicaraguan people initially supported this revolution and how the Sandinistas 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 perspectives on the profound challenges confronting the articulation of democratic theory in LatCrit scholarship. They tell of the democratic project held hostage to drug traffickers, domestic corporative elites, international financial organizations and the self-interests of defeated revolutionaries. What they do not mention is the role played by U.S. government agents in facilitating the growth of international drug trafficking 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. taxpayer dollars spent supporting the Duvalier and Somoza dictatorships, as much as the corporatist elites in post-dictatorship Haiti and Nicaragua; n140 they do 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 "governable 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 corruption, 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, century-long process of interventions, transactions and exchanges between Third World states and peoples and a multitude of "foreign intercessors," whose resources, objectives and ideologies are profoundly implicated 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-democratic 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 offering 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 problems" 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 Argen tina 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 relationship 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 different 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 [*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 counterbalance the power of the ever-embryonic totalitarian state. n151 This narrative of the happy relationship between 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" relation 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 cases and legislative debates raises 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 international 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, [664] 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," pre-cisely 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 admin istrators"; 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 Murtus’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.” n159 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 Murtus 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. n160

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. n161 Not only has the structure of the interstate system figured prominently in enabling both the processes of uneven development and the practice of war, n162 but as the essays by Professor Murtus 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 solidifying new regimes of freedom and compulsion. At an international level, this agenda might take up the
Language rights have been a central issue in LatCrit theory since its inception. However, the first time that LatCrit conference organizers sought intentionally and self-consciously to link the 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. 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 effectuated 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 and the ownership and control of new technologies of communication.

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. 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 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.

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. 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 cacophony of multiple languages. To be sure, Professor Bratton also challenges the initial assumption that "sameness" lowers costs.
ever, 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 nutshell, 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-discrimi-
natory 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 com-
mercial 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" inter ventions in the
otherwise efficient private ordering of American soci-
ety. 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 lan-
guage 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 sub stantial 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 order-
ing 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 indetermi-
nacy 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 assimila-
tion. 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 pro-
moting language assimilation through anti-
discrimination enforcement and bilingual initiatives or
through the imposition of policies like Eng lish-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 val ues at stake in the formulation of
public policy.

Professor Bratton is not unaware of the
normative problems inher ent 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
personalities 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. n177 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. n178

[*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 presumes 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, in effect, "while the economist thinks of human beings as aggregations of preferences backed by dollars, the Kantian conceives of them as non-negotiable subjects of respect and value." n180 Indeed, as Professor Bratton's essay illustrates, in a world ordered by law and economics, a per son'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, on 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 onto others as you would have done onto 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 discourse may have become the imperative of treating others as equals precisely because critical legal scholars have rarely contested its articulation on its own terms. Learn ing 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 La guage & 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." 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." n189

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 per [*656] spectives 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, 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 in determine 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 dis courses, 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 pay-offs 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 LatCrit 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 break-throughs 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. From fiber optics to cyberspace networks, new communications technologies are speeding the flows of information. Being plugged into these flows means having the power to 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 "plugged-in" can mean knowing too little too late. For some this is a personal choice. Others have no choice.

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.

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 per spective, this inquiry might entail mapping and deconstructing homolo gies in the way the discourse of "politicization" has been used to delegitimate 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 achieve ment 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 relation ship 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 cul tural 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 integra tion 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 provid ing 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 identi fying and collecting a list of English terms that have been central to the development of feminist legal theory and political activism, but that Chi nese 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 Chi nese because these terms refer to particular social, political and histori cal 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 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 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 foreshadow 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/outside 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 illegality, 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 the ory 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 spilt 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 dispossess 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. 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.  

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 EconomicPowerlessness

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.

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 reproductive labor involved in maintaining a home, while neglecting the "women's interests" of lower class immigrant women of color. By acknowledging this essentialist discourse has yet to acknowledge and to its internal contradictions reveals the elitist classist and 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

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 recind the purchase. Though Sprint eventually went through which 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 recind 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 recind 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 sociol egal 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 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 unfairness 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 that 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 Latina/o 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.

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 analytic analysis of the kinds of collective action and strategies most likely to work, 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. 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 divergent sites 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. 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 formulae 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.

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. A fair and fully informed historical account of the initial beginnings and subse quent 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. 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,
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. Rather, 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 defensibly 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 Professor 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 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...
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 con front 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. 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. 

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.)" 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." Thus, while (some) Latinas/os may be relatively privileged by the "racial mobility" of putative white ness 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 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 inter group 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 foreswear the privileges conferred on them by the racial systems that oppress groups other than themselves - if there is ever
At the same time, however, it is important to recognize the limitations of Professor Mutua's theoretical framework - not so as to under mine or discount the substantial advances it makes in the articulation of La tCrit 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.

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 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 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 frame work 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. 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; (2) the relationship between LatCrit and other networks and organizations of critical scholars; 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.

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.

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 with out 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 his tory, 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 recorded his tory. 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” move ment, n237 and ultimately to this LatCrit III conference, Frank’s efforts to build an inclusive community of scholars and activists, to promote a theoretically sophisticate 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 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 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 engage
ment 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 21[su's't'] century. The future is as bright as we make it together.

FOOTNOTE-1:


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.


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).


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 crabbit 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).


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).
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).

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 neoliberalism 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].

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).

See, e.g., Alice Abreu, Lessons from Laterit: 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).

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

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.").


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)).


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).


(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.


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).


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


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 de facto 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).


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, sexisms, 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.


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 Stefancic 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")


n51. Little, supra note 20, at 734.


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.


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).


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).


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, 31NewEng.L.Rev.709 (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.


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).


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.


n87. Abreu, supra note 17, at 801.


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).

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) (proffering "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 Descolonizacion: 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."

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).


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 collective, 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").


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).


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 Renge, 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).


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).


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 Erismman, 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 Erismman, 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).

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 Transn'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).


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. Porras, 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).


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).


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.


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.


n162. See id. (citing references).


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 international political economy).

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>.


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).


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.


n178. For further reflections on this important theme, see, for example, Soren Kierkegaard, Works of Love 72 (Howard & Edna Hong trans., Harper Torchbook
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.


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).


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).

n193. Plasencia, Supressing the Mother Tongue, supra note 170, at 994.


n196. See Plasencia, Video Dialtone Redlining, supra note 168.


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").


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).


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.


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-representation and 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.


n213. Margaret E. Montoya, LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-

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 Philips, 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, supranote 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).


n226. Mutua, supranote 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.

n231. Montoya, LatCrit Foundations, 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.").


n238. Iglesias & Valdes, supra note 2, at 584.

n239. Id.
SUMMARY: In May of 1998, at the LatCrit III Conference, Selina Rominy urged the congregation of law teachers, as a comparatively privileged body, to be more savvy - to "expand our power base" outside the academy. "A key piece of LatCrit should be strategic knowledge". Most recently the application of theory to public policy making has also drawn LatCrit attention. The fourth, at the local level, describes an innovative legal organization addressing domestic violence and immigrant women. From this lucid account, within the deeper backdrop of the early 1990s multiracial Miami riots, Logan offers general insights about the importance of the search for common ground and the necessary linkage of politics to law and, conversely, about the dangers to fragile coalitions of diverging group interests and continually shifting political terrain. The organization described by Coto, "LUCHA: A Women's Legal Project (Florida Immigrant Advocacy Center)," itself employed theoretical critiques of law, social justice and the material and emotional well-being of battered immigrant women in shaping, creating and maintaining its legal project. In doing this, Coto offers us a powerful view not only of battered immigrant women and the law, but also of the real-world linkage of theory and social action. In the 1997 Harvard Latino Law Review symposium on LatCrit theory, four essays explicitly laid the foundation for a developing LatCrit praxis.

In post-civil rights America progressive race theorists, political lawyers, and community activists encounter a disjuncture between race theory and lawyering practice.

Unlike the close connection between neoconservative race theory and political activism, progressive race theory and political lawyering practice often seem to connect tenuously at best. Race theorists, par particularly legal race theorists, and political lawyers often seem to operate in separate realms: the former in the realm of ideologies, discursive strategies, and social constructions; the latter in the realm of civil rights statutes, restrictive doctrinal court rulings, messy client management, discovery burdens, and politically conservative judges; the former in the ethereal realm of
postmodern critiques of knowl edge and power, the latter in traditional civil rights rhetoric and strategies. n2

The LatCrit III Conference's plenary session on The Politics of Theory in Action and Policy: LatCrit Lessons and Challenges addressed this question of disjuncture. The session's program description provides a glimpse. It first acknowledged that the "relationship of theory to real ity is a perennial, but increasingly pressing, concern of outsider legal scholars who today work amidst backlash." It then set the specific con text for the session.

The question arises in various forms: in the emphasis on prac tice; the call to translate theory into social and political action; the effort to connect outsider jurisprudence to teaching, to practice and to doctrine; and the insistence on material transformation. Most recently the application of theory to public policy making has also drawn LatCrit attention.

The following essays, by Guadalupe Luna, Cheryl Little, Lyra Logan and Virginia Coto, in widely varying ways, take on this task of translating theory into "strategic action." Through four case studies, the essays recount the pain, passion and practical politics of multiracial jus tice struggles. The first reaches back historically to pre-Civil War ques tions of citizenship for African Americans and Mexicans in America and offers emerging insights about comparative socio-legal treatment of racialized groups as a present-day foundation for progressive coalition- building. The second, at the regional level, concerns South Florida's reaction, along with the federal government, to the Haitian immigration "crisis" throughout the 1990s. The third, at the state level, is about Flor ida's state-funded affirmative action scholarship program designed to [*685] increase the numbers of African Americans, Latinas/os and other minor ities underrepresented in the bar. The fourth, at the local level, describes an innovative legal organization addressing domestic violence and immigrant women.

These case studies are significant because they provide ground-level insight into the dynamics, and possibilities and difficulties, of coalitional legal and political action across racial, gender, class and citizenship lines. They open opportunities for simultaneous theory building and theory using. Together, they also offer a comparative assessment of dif ferent praxis methodologies.

Most intriguing, each of these studies employs a different method ology for illuminating "strategic knowledge." Guadalupe Luna's essay employs a methodology that might be called "comparative racialization" to explore, in a particular historical period, the complex dynamics of white supremacist legal ideology. An authority on land issues associ ated with the Treaty of Guadalupe Hidalgo, Luna turns her analytical lens on a comparison of the historically contemptaneous events that led to the denial of citizenship for African Americans in the Dred Scott case and to the awarding of partial citizenship for Chicanas/os pursuant to the Treaty. In On the Complexities of Race: The Treaty of Guadalupe Hidalgo and Dred Scott, Luna examines the political-legal history of this period and exposes insightfully the complex ways that law forms, and sometimes deforms, racialized identities and intergroup relations, whether through the courts' interpretation of miscegenation laws, their resolution of land disputes or congressional legislation mocking the lan guage of a treaty. From this grounded comparative racialization inquiry, with its compelling focus on the effects of law and legal process, Luna offers a pre liminary LatCrit "lens ... for connecting anti-subordination struggles ... and cultivating intellectual community and progressive coalitions - reinvigorating in new context this fundamental tenet of internal colonial ism theory." n3 Litigator Cheryl Little's account of "Immigration Politics: The Haitian Experience in Florida" is a straightforward, compelling histori cal and legal account of the federal government's and South Florida communities' treatment of "refugees from Haiti, the world's first Black Republic, [who] have been singled out for special discriminatory treat ment and [for whom] the fundamental principles of refugee protection [have been] abandoned time and again." The account traces Haitian per secution from 1963 through the 1980s Haitian immigrant litigation and [*686] the 1990s harsh INS repatriation policies. It also compares Haitian experiences with the more-favorable legal treatment of lighter-skinned Cuban immigrants leaving communist Cuba.

Perhaps most important, it identifies a small but significant "silver lining" in the United States' stormy treatment of the Haitian immigrants - the forging of new alliances across ethnic and citizenship boundaries. "Nicaraguans, Cubans, African Americans, Republicans and Democrats alike in South Florida have raised their voices on behalf of the Haitians. Groups that seldom, if ever, communicated before in any meaningful way...are now doing so...Moreover, Haitians and their advocates are calling for equal treatment for the Guatemalans, Salvadorans, Hondurans and others."

What Little's powerful, detailed account of the Haitian immigrant legal experience does not do is offer a
framework for interpretation and translation. It does not draw explicitly from critical theories of immigrant identity and political-legal treatment or from emerging human rights literature examining linkages between race and citizenship. Nor does it endeavor to tease out larger conceptual insights from the factual description. In short, Little's methodological approach is to tell the story, and tell it well, and leave the theorizing - and translation work for strategic action - to the reader.

By contrast, attorney-administrator Lyra Logan describes the intricate African American and Latina/o coalitional politics involved in establishing Florida's statewide Minority Participation and Legal Education Scholarship Fund. She draws from those messy political struggles several coalition-building principles for multiracial, demographically-shifting areas "still...very much a part of the Deep South." Logan tells the story of the state's closure of the historically Black Florida A & M University Law School and its reincarnation in the largely white University of Florida Law School - one effect of that closure-reincarnation was to exacerbate the already stark underrepresentation of African Americans in the bar.

Logan also tells the story of the initial divergence in the political responses of Black and Latina/o groups - with African Americans favoring reopening a law school at Florida A & M and Latinas/os favoring opening a law school at the largely Latina/o-populated Florida International University. Finally, Logan describes Black and Latina/o coalitional efforts forged from two real-politik acknowledgments: that separate strategies meant defeat for both and that, as a Florida Supreme Court commission found, without some concrete ameliorative action " [*687] the critical shortage of minority law students, attorneys and judges [would continue to be] a major impediment to the fair dispensation of justice to [all] minorities in Florida." From these acknowledgments emerged collaborative political efforts among African Americans, Latina/os (both liberal and conservative) and liberal whites, efforts culminating in the legislature's creation of the Minority Scholarship Program.

From this lucid account, within the deeper backdrop of the early 1990s multiracial Miami riots, Logan offers general insights about the importance of the search for common ground and the necessary linkage of politics to law and, conversely, about the dangers to fragile coalitions of diverging group interests and continually shifting political terrain. While these prescriptions and caveats are not new, when grounded in the particulars of the dynamic political and legal struggles underlying the Minority Scholarship Program, they are poignantly made. This methodology - telling a multilayered story and teasing out theoretical insights - works here to underscore afresh strategic knowledge about coalition building and maintenance in an intensely mixed racial setting.

The methodology informing Virginia Coto's account of "LUCHA - The Struggle for Life: Legal Services for Battered Women" is the most complex and, ultimately, the most illuminating of the four case studies. The organization described by Coto, "LUCHA: A Women's Legal Project (Florida Immigrant Advocacy Center)," itself employed theoretical critiques of law, social justice and the material and emotional well-being of battered immigrant women in shaping, creating and maintaining its legal project. The group's organizers drew upon theoretical insights about the limitations of law and legal process, about the difficulties of obtaining social justice for non-citizen/non-white/non-male/non-English speaking and sometimes undocumented immigrant women of color, and about the limited purchase of the traditional legal services model in the domestic violence context. The organizers therefore shaped the project around principles of education, personal empowerment, assistance of others and community-building - Coto aptly details the specifics of this innovative effort to engage immigrant women in the process of dealing with a serious personal and social problem in a largely alienating legal system.

In addition to the details, Coto's account explicitly develops new strategic knowledge - and this is her account's great strength. It first describes the underlying theoretical insights that were translated into the LUCHA program of social action. It then engages in a preliminary critique of the program's first year of operation and the utility of the theories informing it. Thus in Coto's essay we have two levels of theory [*688] operating - insights guiding the formation of the organization and con cepts for critiquing its operation - both wrapped around immensely engaging particulars. In doing this, Coto offers us a powerful view not only of battered immigrant women and the law, but also of the real-world linkage of theory and social action.

The four essays just described - which center Latina/o experience in statewide, regional and local legal politics - are thus significant not only for the compelling particulars they describe. They are also significant because their accounts and the methodologies they employ contribute to an emerging crucible of LatCrit theory - the politics of theory in action and policy. In the 1997 Harvard Latino Law Review symposium on LatCrit theory, four essays explicitly laid the foundation for a developing LatCrit praxis. George Martinez stressed the importance of
"legal self-definition" for contemporary litigators representing Mexican Americans); n5 Enrique Carrasco challenged LatCrit scholars to "use theory and criticism to ignite a progressive consciousness between ourselves and 'organic intellectuals' in our communities"; n6 Laura Padilla argued for making praxis, rooted in communities, an integral part of antisubordination scholarship and teaching; n7 and Margaret Montoya connected activist teaching and scholarship (in clinics and beyond) and suggesting that this activism concretely "focus on the needs of Latinas/os." n8

In 1998, that kind of praxis theorizing translated into concrete action on the streets during the nation's law school's annual meeting (American Association of Law Schools). The Society of American Law Teachers' action campaign against the implementation of California's anti-affirmative action Proposition 209 culminated in a 1,000 law professor and supporters march and protest rally in downtown San Francisco. The "theory-in-action" materials for the campaign - in terms of both coalition-organizing and substantive positions - were generated in principal part by LatCrit scholars, including Frank Valdes, Lisa Iglesias, Margaret Montoya and Sumi Cho. The campaign's organizational chart, appended to this essay, illustrates the need for continuing commitment to a legal praxis that addresses needs of communities of color in concrete ways.

[*689]

[SEE FIGURE IN ORIGINAL]

FOOTNOTE-1:

n1. Copyright 1999.

n7. See Laura M. Padilla, LatCrit Praxis to Heal Fractured Communities, 3 Harv. Latino L. Rev. 375 (1997).

Guadalupe T. Luna *

* Associate Professor of Law, Northern Illinois University, B.A., University of Minnesota; J.D., University of Minnesota. This essay derives from a larger work in progress and evolves from my ongoing investigations on the Treaty of Guadalupe Hidalgo, which are referenced throughout this essay.

SUMMARY: Several years before Dred Scott surfaced on the legal landscape, the legal system had generated land grant jurisprudence involving Chicana/o claims of ownership in the annexed territories. In disallowing the legal process and the Treaty of Guadalupe Hidalgo to govern, the land grant adjudication process effectively changed the burden onto grantees to demonstrate the validity of their claim. At the state level in land grant adjudication hearings, the Fremont ruling caused, Judge Murray in a dissent to declare: For example, Fremont's actions and his testimony in yet other land grant adjudication, informs that he had gathered land grant documents during the Bear Flag Rebellion, but thereafter he alleged that he had lost them "in the mountains." The Court's resistance against banning a congressional act that would have challenged slavery, furthermore, shows its purported regard of property rights not made evident for grantees of Mexican descent in land grant adjudication. This deference to the Constitution depending on the claimant, in the land grant experience and rejected in Dred Scott, exposes an inconsistent position with respect to people of color.

[*691]

Failure to see the complexity of race leads to failure to understand racism. LatCrit theory endeavors to transform our understanding of race. Nonetheless, are disputing Chicana/o racial identity and rejecting race-based inquiries. In addressing the complexities of race as constructed by mainstream law, this preliminary investigation compares the jurisprudence involving African Americans in Dred Scott v. Sandford, with the jurisprudence involving Chicanas/os, in defense of their property interests, following the conquest of the former Mexican provinces in 1848. The theoretical lens employed here draws from LatCrit Theory and its search for "connecting anti-subordination struggles, and cultivating intellectual community and progressive coalitions." From this perspective, this investigation considers one key point, namely, the citizenship status denied one group, e.g., Dred Scott, contrasted with the purported citizenship granted to another -- Chicanas/os.

Upon initial examination, the jurisprudence drawn from Dred Scott and the Chicana/o land litigation disputes appear irreconcilably different. The issues, whether Mr. Scott could sue in federal court, whether the Missouri Compromise was constitutional, and whether the effect of his residing in non-slave states affected his standing in Missouri, appear to bear little relevance to the property disputes involving people of Mexican descent. That people of Mexican descent are legally characterized as "white" also presents analytical differences. Several commonalities, however, surface and offer an alternative to the hegemonic amnesia of legal histories so long missing from mainstream jurisprudence.

In the first instance, the opinions consider the intersection of property law with racial considerations. In Dred Scott, the property in question - a human being - encompassed the issue of slavery in Mr. Scott's bid for citizenship. In the Chicana/o cases, the corresponding correlation regarding the property at issue encompassed challenges that questioned Chicana/o citizenship and their ownership of land.

A second shared point engages aspects of federal/state relations. In Dred Scott, the issue of diversity jurisdiction illustrates the tension between federal/state relations and federal/state court jurisdiction. Similarly, in the Chicana/o cases, the relevant federal concern included the Treaty of Guadalupe Hidalgo...
A third commonality yields an historical time-frame in which the Supreme Court and other federal courts heard and ruled on several opinions involving people of color. Several years before Dred Scott surfaced on the legal landscape, the legal system had generated land grant jurisprudence involving Chicana/o claims of ownership in the annexed territories. Justice Taney, Fields, and Daniel had all participated in generating land adjudication case law. Several of the justices, more over, had heard property dispute litigation in Louisiana and Florida, which followed the United States' Treaty of Amity, Settlement and Limits with Spain.

Fourth, and for the purposes of the instant case, the majority's purported application of "original intent" in Dred Scott illustrates the type of challenges confronting courts and the consequences imposed on communities of color. In several instances involving Chicanas/os defending their property long before Dred Scott, the Court ignored its "original intent" interpretation that it adopted in its rejection of Mr. Scott's bid for citizenship and which placed him on the outside of traditional main stream law. Moreover, although Chicanas/os were deemed entitled to receive the "blessings" deriving from Anglo-American law, most of their property was lost within a short time frame.

Sustaining extensive and irretrievable losses from erratic and arbitrary rulings, in effect, placed those of Mexican descent as outsiders of traditional law.

Other aspects of mainstream law have long contributed to the pain ful legacy of Lynchings, segregation, poverty, and generations of unequal treatment confronting communities of color. The struggles Mr. Scott and Chicana/o land grant recipients confronted offer a perspective from which to study and, thus, reject the racial politics of the contemporary period. In uncloaking causation strands, developed during this historical framework, a perspective grounded in the combined struggles of subordinated communities, surfaces. Ultimately, this alternative lens contrasts with less inclusive paradigms grounded in essentialism and which deny the nation's complex legal histories.

Accordingly, Part I presents a brief historical account of the land grant period and addresses Chicana/o exclusion within the culture of Anglo-American law. It next examines two key rulings that contextualize the status of Chicanas/os within mainstream law. Part II examines Dred Scott and the Court's shifting of constitutional "norms" which governed the Chicana/o land grant construct. The goal of this section reveals the outsider status of Chicanas/os and African Americans within the hegemony of mainstream law. In conclusion, this essay rejects universality, which denies our racial identity and its attendant correlative in looking for our silence by rejection of race-based knowledge and scholarship.

PART I. A Historical Construct: Chicanas/os and Exclusion

In the struggle to give voice to our experiences, working class people of color encounter multiple mechanisms meant to silence us. More particularly, we encounter silencing when our voices speak of resistance to injustice - both against ourselves and our peoples. And yet, colonization is the historical legacy that continues to haunt us, even today. The ability to effectively promote justice requires vigilance so that we may immunize ourselves against the paralysis that comes from being silenced.

Prior to the United States' conquest of the Mexican Republic, men and women owned and operated rural enterprises of various sizes. Recipients of land grant parcels, individuals and groups, settled and cultivated key regions throughout the present American Southwest. Yet many of their voices are not heard in mainstream law. Maria Concepcion Valencia de Rodriguez' attempts, for example, to defend her Rancho remain excluded from academic investigations.

Holding possession of the Rancho exposed her to a new legal regime resulting from the conquest and obligated her to confirm the validity of her grant, years after she had long settled on the property.

Through the Treaty of Guadalupe Hidalgo, that formally terminated the war between the two Republics, the United States contractually promised to protect the property interests of those remaining within the annexed territories, not unlike that belonging to Maria Valencia de Rodiguez. The Treaty, inter alia, additionally granted citizenship to the conquered population.

As the terms of the conquest, moreover, Chicanas/os were granted citizenship status. Notwithstanding the promises and constitutional considerations extended to those of Mexican descent, the law accelerated the irrecoverable losses of their property interests. Through a series of irreconcilable legal principles that confronted Chicanas/os in defending their property interests, the legal order promoted land dispossession. Denying their former standing as rural property owners in the period before
the conquest, Chicana/o ownership of rural property persists in its absence into the present period. n38

While Chicana/o land struggles are well-documented outside of law, their existing impoverished conditions in rural regions, resulting from the loss of their property interests, provides systemic evidence of the hegemonic manipulation of mainstream law. In essence, the fragile existence of Chicanas/os within the rural economy reflects the capricious and arbitrary nature of law and its application to people of color. n39

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<qmarkx>Que Pasa Aqui? n40 Has Anyone Seen the Constitution?

The cession of territory from one sovereign to another passes the sovereign only and does not interfere with private property. n41

Through the Treaty of Guadalupe Hidalgo, the United States promised to protect the property interests of those remaining in the annexed territories. Additionally, in referencing the Treaty of Amity, Settlement, and Limits between Spain and the United States involving land grants in Florida and Louisiana, the Supreme Court had long ago ruled that "the obligation imposed by the principles of international law to respect property rights within annexed territory is substantially that recognized by the treaty." n42

Finally, the Constitution's drafters in plain language, tell us that:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding. n43

Case law further emphasizes that: "A treaty lawfully entered into, stands on the same footing of supremacy as does the Constitution ... of the United States." n44 While De Geofroy v. Riggs, in its analysis of treaty law, reports that the Constitution's supremacy "directs courts to give them [treaties] legal effect," n45 it mirrors the Constitution's language enumerated above.

Notwithstanding the promises enumerated in the Treaty of Guadalupe Hidalgo and its supremacy as mandated by the United States Constitution, Congress promulgated the California Land Act of 1851 [*700] (CLA). n46 In contradiction to the Treaty of Guadalupe Hidalgo, the CLA shifted the burden of proof onto the grantees to demonstrate the validity of their claims of property ownership. n47 In essence, the CLA defied precedent and denied the literal wording of the Supremacy Clause of the Constitution. While it is within the jurisdiction of Congress to fine-tune treaties, a treaty's substantive revision requires the consent of the signatories to avoid violations of a negotiated agreement. n48 By shifting the burden onto grantees to demonstrate ownership, Congress violated the Treaty of Guadalupe Hidalgo and therefore re-defined its substantive meaning. n49 The legislation ultimately facilitated the disenfranchisement of Chicana/os from their property interests.

Outside of direct litigation, Chicana/o land dispossession also resulted from the use of law as a weapon, and joining with extra-legal methods, forced alienation. Arnoldo De Leon and Kenneth Stewart contend, for example, that Tejanos lost their lands through "a combination [*701] of methods including, litigation, chicanery, robbery, fraud, and threat." n50 Extra-legal methods resulted in the Cortina Rebellion in South Texas and the El Paso Salt War in the 1970s, in which the Texas Rangers challenged Chicana/o use of the region's natural resources as means to intimidate Chicanas/os off their property and from accessing communal resources. n51

In failing to protect Chicanas/os, the United States breached its obligations under federal and international law. Failing to protect Chicanas/os, also makes evident that the federal authority to control public lands yielded to state actions in which the actions of squatters, agricul tural interests, and other public law encroached on Chicana/o land.

Legislation that excluded Chicanas/os from the franchise and its impact on their standing in mainstream culture is examined next.

De La Guerra

"When the United States acquired Mexico's northern frontier, the mestizo ancestry of the conquered Mexicans placed them in ambiguous social and legal positions." n52

The above ambiguity draws primarily from Euro-American treatment and hostility towards Chicanas/os. Examples of the role of racism and its numerous instances, which faced Chicanas/os remain beyond the scope of this preliminary essay. Nonetheless, Chicanas/os confronted a hierarchy of laws that sought to exclude them from assimilating within the
mainstream culture. Stereotypes targeted them on the basis of their race by those seeking to benefit from that forced exclusion. Building from these myths, facilitated a legal culture that directly disallowed them the full attributes of citizenship status.

One of the earliest instances involved Pablo de la Guerra, a delegate to the 1849 Constitutional Convention in California, n53 who won an [*702] election to the bench. n54 As the nephew of Mariano Vallejo, De La Guerra belonged to one of the well-established families in the region. n55 Notwithstanding the history of his family, his connections, and class standing, De La Guerra, confronted litigation that sought to disqualify him from the bench and which culminated in the case, People v. De La Guerra.

The facts of the case reveal that a judicial election in 1869 elected De La Guerra judge of the First Judicial District. Notwithstanding the election, De La Guerra faced a challenge to his right to that position on the basis that he was not a citizen of the United States. The allegations relied on the legislation passed on April 20, 1863, providing that "no person shall be eligible for the office of District Judge, who shall not have been a citizen of the United States, and a resident of this State for two years." The challengers contended that the Treaty of Guadalupe Hidalgo did not permit citizenship but instead required an Act of Congress. Without such legislation, the challengers argued, De La Guerra violated the requirements of the statute.

The court relied on the Treaty of Guadalupe Hidalgo and its Article VIII and declared that the "Treaty was intended to operate directly, and of itself to fix the status of those inhabitants<elip>." The court further reasoned that "the political rights are not essential to citizenship" and ultimately ruled that the "respondent is clearly a citizen of the United States." Outside of this ruling, the conquest of the former Mexican provinces recognized its former residents as citizens.

Before, during Treaty negotiations, and up to the Treaty's ratification, military and other governmental officials represented citizenship to those residing in the conquered territories. Congress, nonetheless, changed the substantive and literal meaning of the Treaty of Guadalupe Hidalgo and consequently hindered the attributes deriving from citizenship.

Finally, one other factor bears on the legislative history of the type of legal structures impacting Chicanas/os during this period in time. Scholar Leonard Pitt, writes that the Americans "saw the advantage of [*703] letting Californios control Californios, but they would give the native-born no license to govern Yankees." n56 Shortly after the Conquest, the army "sanctioned a constitutional convention. This move in the direction of democracy unfortunately released the Californios to the flood tide of gringo hostility." Those elected to serve at the convention included Manuel Dominguez, who although a Mexican mestizo, was recognized by American law as a "half-breed." n57 Notwithstanding such characterization under American ideology, Mexican law and the Treaty of Guadalupe Hidalgo recognized the indigenous population as Mexican citizens. Dominguez, however, even as a well-established California elite, faced proposed legislation limiting the franchise to "white males." This would have barred him from signing the state's constitution.

During the constitutional convention, in opposing the legislation, De La Guerra argued that "many Californios were dark-skinned, and that to disfranchise them would be tantamount to denying them a part of their citizenship as granted by the Treaty of Guadalupe Hidalgo." n58 Ultimately, the proposed legislation was changed to permit "enfranchising certain Indians."

Other legislation diminishing the attributes of citizenship is underscored when considering Chicanas/os defense of their property interests.

(b) Fremont v. United States

Fremont v. United States is the key litigation in which the land grant process and the United States Supreme Court first analyzed the Treaty of Guadalupe Hidalgo and that sets the framework for the purposes of this review. Fremont is also critical because it marks the beginning of the end for Chicano/land grantees through precedent ultimately contrary to constitutional, treaty law, international law, and the dictates of the California Land Act of 1851.

Fremont v. United States involved an instigator of the United States war conflict who sought confirmation of a purported land grant in an opinion authored by Chief Justice Taney. n59 In a note attached to a subsequent case following the Fremont decision, the Court informs that:

[*704] Fremont was critical because it was among the earliest of the cases decided by a United States district court on appeal from the board of commissioners. It was the first in which the Supreme Court announced the principles by which this class of cases was to be decided. It has, therefore, remained the most important and the leading case on this branch of the law, and has exercised a controlling influence on all subsequent decisions of this court. n60
The corresponding issues involving Chicana/o-owned property generated a vast realm of law but which, nonetheless, remains primarily excluded from legal study. The value of the instant case, moreover, and its impact on Chicanas/os, provides evidence in which the Court "recon ciled" the laws in force, with adverse consequences for Chicanas/os. Ruling otherwise, would have recognized the Treaty of Guadalupe Hidalgo and the legal process required from the various land acts.

In disallowing the legal process and the Treaty of Guadalupe Hidalgo to govern, the land grant adjudication process effectively changed the burden onto grantees to demonstrate the validity of their claim. Determining the validity of a claim of land ownership involving a land grant from the Mexican period, required a court to consider and apply "the law of nations, the laws, usages, and customs of the Govern ment from which the claim is derived, the principles of equity, and (prior) decisions." n61 Adhering the above principles to the instant case, required the Supreme Court to follow Mexican law from which the claim derived. n62 Mexican law obligated grantees to settle and cultivate the land within a one-year period. n63 The conditions attached to the original grantee's claim, moreover, disallowed the original grantee from transferring the land without obtaining the permission of Mexican officials. n64

The material facts of the original grant indicate Juan Alvarado, the original grantee, neither settled nor cultivated the land within the one- [*705] year period. n65 Alvarado, moreover, transferred the property to Fremont without the consent of the Mexican government. Finally, Fremont although claiming ownership of the land grant, lacked documentation as to the purported alienation of the grantee's interest. n66 Applying the law literally, and as intended, therefore, rendered Fremont's claim nothing but unlawful, illegal, and in violation of Mexican land grant procedures and law. n67

Fremont's lack of proof, evidence, and the invalidity of the original land grant, nonetheless, did not preclude the Court from ruling in his favor. The Court reasoned, inter alia, that the above did not bar an American citizen from purchasing property. Evidently, citizenship status permitted certain privileges that allowed skirting the Constitution and falling beyond its intent and design depending on the whim of the Court. It further rendered the Treaty of Guadalupe Hidalgo, meaningless with out an act of Congress and/or the consent of the Mexican Republic during its negotiations. n68 Accordingly, the Court's holding privileged Fremont with a gold mine and land of inestimable worth. n69

At the state level in land grant adjudication hearings, the Fremont ruling caused, Judge Murray in a dissent to declare:

At the risk of exposing myself to the ridicule or censure of many, for what may be considered temerity on my part in questioning the soundness of these decisions, I cannot refrain from the opinion that in these cases [land grant adjudication cases] the Supreme Court [has] taken a new departure, and entirely disregarded their previous decisions. n70

The Supreme Court, in distinguishing Fremont's claim of ownership from the legal process, resulted in allowing secondary evidence (parole evidence) to prove a claim and through this ruling introduced instability in law. n71 The ripples and residue from Fremont thereafter, produced [*706] arbitrary rulings, and that further governed the land grant cases, accelerated property losses, and denied Chicanas/os the benefit of the attributes extended to other citizens, such as extended to Fremont and other non-Chicana/o grantees. n72

Thereafter, a number of arbitrary key rulings varied the standard of proof in claims of ownership status depending on whether the grantee was a non-Chicana/o. n73 In some instances, for example, proof of residing on the grant in undisturbed possession, unlike Fremont, who had neither settled nor cultivated the tract as required by Mexican law, failed to protect a grantee. n74 Also unlike Fremont, Chicanas/os who provided documentary proof of a land grant confronted challenges to the authority of Mexican officials to grant them the tract at issue. In other instances, Chicanas/os that lacked documentation of a granted tract charged Amer ican officials with the destruction of land grant documents. n75 For example, Fremont's actions and his testimony in yet other land grant adjudication, informs that he had gathered land grant documents during the Bear Flag Rebellion, but thereafter he alleged that he had lost them "in the mountains." n76

In the New Mexico territories, the attorney general re-wrote Mexi can law by omitting key legal rules that governed land grant petitions and procedures. The missing rules benefited the United States with legal presumptions that otherwise defined the land grant process under Mexi [*707] can law. Land grant scholar Malcolm Ebright reports that the Supreme Court, nonetheless, relied on the text in its land grant decisions in deter mining whether a grantee of Mexican ancestry had demonstrated the validity of their claim. n77
Failure to demonstrate the "validity" of a claim of ownership defaulted the property to the public domain. n78 Yet without protecting Chicanas/os and their property, public law brought other pressures from third parties with intentions to procure Chicana/o property. Seeking preemption claims, squatters and jumpers, for example, targeted Chicana/o owned land without regard to its owners or possessors in interest. n79 Legal scholar Christian Fritz illustrates:

Squatterism posed a final source of difficulty in the struggle over San Francisco land.<elip>

Society was divided into three classes; land grabbers, those that had grants for the lands and believed they were the owners; the squatters, who knowing they had no title, would take possession of lots and hold them by masking improvements<elip>; [and] the jumpers, who stood ready to ignore all law either of strict title or prior possession, and to intrude themselves, either by force, stealth or fraud, into another man's possessions and despoil him of improvements. n80

Fritz further provides that:

Both lot holders and grantees shared a common enemy in the form of settlers and squatters. The squatters were motivated by the prospect of gaining valuable city land by settling upon it and then filing a preemption claim under federal law. The logistics of this process required a rejection of the pueblo title with the implication that such land was part of the public domain.

While some individuals showed a willingness to abide by the federal preemption laws, many squatters made little distinction between the lots held under grants or sales and the land that the city claimed under its pueblo title. n81

Outside of squatters, grantees sustained further challenges from United States attorneys even in cases where grantees received confirmed claims. In summary, although disallowing the intent and literal meaning of the Treaty of Guadalupe Hidalgo, the process employed in American law was deemed "fair" to the claimants with this perception defining the status quo. n82

Thus, a body of federal law and shifting judicial "norms" defined the meaning of property "rights" for citizens of Mexican descent. This jurisprudence, moreover, underscores the contextual legal landscape foreshadowing Mr. Scott's claims in his bid for freedom. The Court's analysis ultimately highlights hegemonic manipulations regarding the legal treatment of people of color. n83

In sum, although international negotiations and a treaty defined a legal relationship between Chicanas/os and the United States, legal institutional structures ostracized them as outsiders. This contextual frame work permits yet another lens in which to examine Mr. Scott's bid for freedom.

PART II. Dred Scott v. Sandford n84

The Dred Scott case was probably the most important case in the history of the Supreme Court of the United States. Indeed, it was probably the most important constitutional case in the history of any nation [*709] and any court. But most of us have little if any sense of what it means or was even about." n85

While the orbit of its constitutional importance is beyond the focus of this preliminary essay, the instant case yields critical insight and evidence. n86 And while we might not know "what it means or was even about" we are quite aware of what the decision accomplished. As an example, Derrick Bell, Jr., argues that Justice Taney's "well-documented argument as to the status of black people in this country stands as an irrefutable testament to the extension of the Nation's belief in the inferiority of blacks and the degree to which those beliefs had been inculcated into the laws of the land." n87 Accordingly, the case provides a valuable tool in examining the status of people of color within the hegemony of mainstream law.

The issues before the Court involved: (a) whether Mr. Scott could sue in federal court; (b) whether the Missouri Compromise was constitutional; and (c) whether the effect of his residing in non-slave states affected his standing in Missouri. The issue as to the constitutionality of the Missouri Compromise was critical because slavery was not recognized in the former Mexican provinces. n88 In rejecting his claim for citizenship, the Supreme Court's decision accordingly rendered Mr. Scott outside of traditional mainstream law, therefore, denying him standing to sue in federal court.

In comparing the relevancy of Dred Scott with the Mexican cases, for the purpose of this review, shows the majority's deference to the Constitution and "original intent" analysis; although, this reverence is missing from the Chicana/o cases. n89 Chief Justice Taney, for example, tells us "that their arguments were faithful to the original intentions of [*710] the framers and to judicial precedent." n90 In considering whether Mr. Scott's class, as enumerated in the plea for abatement, constituted "constituent members of this sovereignty," the Chief Justice declared:
We think they are not, and that they are not included, and were not intended to be included, under the word 'citizens' 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 Government might choose to grant them. n91

Based on original intent, as Taney interpreted the Constitution at this point in time, it provides that "the duty of the Court is, to interpret the instrument they have framed, with the best lights we can obtain on the subject, and to administer it as we find it, according to the true intent and meaning when it was adopted." n92 The Constitution, the court declared "speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of its framers and was voted on and adopted by the people of the United States." n93

The Court's resistance against banning a congressional act that would have challenged slavery, furthermore, shows its purported regard of property rights not made evident for grantees of Mexican descent in land grant adjudication. n94 In their decision, Taney, Daniel and Catron declared that "laws banning slavery in the territories<elip> were particularly egregious violations of property rights because such measures unconsti tutionally gave one class of citizens the right to the exclusive use of jointly-owned American possessions." The Court without a doubt had [*711] to have considered and factored into their ruling the fact that the former Mexican territories did not recognize slavery. To the detriment of Mr. Scott and his claim for citizenship status, furthermore, this purported high regard for constitutional standards and perceived norms also bene fited non-claimants of color and disallowed Chicana/o grantees equal consideration. In sum, extending a privilege limited primarily to the dominant population.

Extending beyond the Dred Scott decision, instances from white supremacists targeting Blacks, lynchings, segregation, denial of the right to vote, and other forms of institutional racism speak to the legacy of exclusion and its connection to law. In its totality, legal and extra-legal methods additionally disallowed equal treatment and placed yet further incomprehensible burdens on African-American communities.

Summary

One of the first things we need to do in order to refuse to be colored is to detect the mechanisms by which they attempt to silence us. They attempt to define what constitutes legitimate and appropriate forms of resistance. When they tell us how to behave, they are using mecha nisms to silence us, mechanisms to keep us from effectively resisting against our dehumanization. n95

In comparing the two forms of jurisprudence involving our commu nities of Mexican and African descent, the purpose of this preliminary investigation is not to collapse the histories of both groups into one false norm. Nonetheless, a body of scholarship and legislation is denying our ethnicity and cultural heritage and law's linkages to the subordination of marginalized communities. In the war over knowledge, its purpose underscores the extent to which legal history remains imprecise. This results from inconsistent and arbitrary holdings adversely impacting our communities. Left to mainstream theory, the circumstances in which law primarily privileged the dominant culture and its connection to other subordinated struggles fail to reveal the manipulation of poorly defined legal "standards." Chicana scholar, Teresa Cordova, tells us that, "Despite claims of universalist objective truth, power and knowledge are intimately connected." n96 She urges that:

Our presence, as working-class people of color (especially women of color), in an institution which values itself on its elitist criteria for admission, forces the debates and challenges previously sacred canons of objective truth. Our presence, therefore, and the issues we raise, threaten the class legitimation function of the University. It is [*712] probably for this reason that our presence here is so complex - and so important. n97

LatCrit theory, as an alternative, rejects exclusionary and universal lan guage and its attendant demands for our silence.

Examinations of legal history dispels "previously sacred canons of objective truth" n98 showing how privilege accrued by our forced invisibil ity in law. Prior "sacred canons of objective truth" nonetheless, are re- surfaced not unlike anti-Affirmative Action rulings and repressive measures that are eroding the very few civil rights extended to commu nities of color. Within institutions of higher education, beneficiaries of privileges derived from their dominant status while enjoying the positive attributes of citizenship, assert "diversity is not essential to
Historical legal evidence furthermore, exposes the privileges extended landowners of the dominant population. This evidence of disparate treatment, nonetheless, is not accessed in legal education and study, thereby limiting race-based inquiries to the margins of investigations and legal training. Left to ride the margins of legal inquiry pro motes decisions, not unlike Hopwood, which fail to reflect the nation's diverse and complex legal histories. Historical legal evidence in sum exposes the contradictions specific to each racial group, our racial identities, and the causation linking law and legal institutions. Contrary to those rejecting knowledge and specifics about racial identities, the full measure of judicial decisions and their connection with legal institutions and our communities requires unpacking the particularities of hidden legal histories, legal rhetoric, and discourse.

Following the invasion and Conquest of the former Mexican territories, times were not good for those of Mexican descent throughout the American Republic. Deriving from Dred Scott and the Chicana/o cases, "the judicial decisions that formally conferred racial status in nine teenth-century California<elip>had important consequences for the histori cal trajectories for [non-white] groups in California." n100

Although the Treaty of Guadalupe Hidalgo granted them citizen ship status, Chicanas/os were forced to endure challenges attacking the validity of that status. n101 Lynchings, segregation, denying Chicano soldiers returning from World War II the right to burial in their home- town cemeteries, poll taxes, and other measures, such as keeping Chi canas/os from the franchise, represented innumerable and complex challenges to their citizenship status. n102

In the African American community, the Court's reasoning in Dred Scott also served as a trajectory for outside forces that extend into the contemporary period, by narrowly limiting citizenship and emphasizing the nature of exclusionary ideology. Taney tells us that:

The words 'people of the United States' and 'citizens' are synony mous 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. n103

To his detriment, the Court's reasoning did not extend to Mr. Scott and its exclusionary force consequently includes the realm of violence, lynchings, and segregation, which mandated the civil rights struggles of the past with linkages into the present.

This deference to the Constitution depending on the claimant, in the land grant experience and rejected in Dred Scott, exposes an inconsistent position with respect to people of color. In Dred Scott, those of African descent were not regarded as citizens. In the Chicana/o cases, although treaty law defined a legal relationship with those of Mexican descent and the United States, the Court disregarded the Treaty of Guadalupe Hidalgo and the force of the Constitution both literally and by design. In several instances, shifting its reasoning to benefit a select class over the claims of Chicana/o grantees or challenging their status as citizens, as in the Dominguez case. In Dred Scott, moreover, the Court, ignoring its [^714] reasoning from the land grant cases in which it privileged non- Mexican grantees, shows the realm of interpretations of purportedly neutral law benefiting one class over another in its failure to protect Mr. Scott. Within this inconsistent treatment, the Court, therefore, consistently defined both groups as outsiders.

Yet not all is as simple as it seems. This inconsistent legal treatment, on its face, exposes a "consistency." By its rulings, the Court defined both groups and their heirs as second class citizens. In doing so, its language and attendant legal culture created a tool for the subaltern to protest the politics of exclusion with linkages extending into the contemporary period. This is made evident by study of historical periods in which legal institutions constructed beneficial rulings excluding people of color. Yet it also mandates further race-based inquiry of the hidden legal histories of both African-American and Chicana/o communities.

In the present, the politics of exclusion seek to deny our communities the full benefits of citizenship. Anti-Affirmative Action rhetoric is closing the class of those benefiting from governmental contracts. Outside of admission to higher education institutions, our communities face innumerable challenges as to their presence. Chicanas can't buy pizza, can't rent apartments, and cannot open bank accounts without proof of citizenship. n104 Assaults against speaking their native lan guage(s) demonstrates an egregious, yet sustained and ongoing challenge from the Conquest of their native lands to their culture and ethnicity. n105 Teachers are discharged for teaching Chicana/o history, n106 or drivers are stopped while driving on public highways because of their race. n107 African Americans are tied to the backs of trucks
and dragged to their death n108 and victimized by other hate crimes that disallow the full benefit of citizenship enjoyed by non-people of color. Young African American women are further degraded by being followed in public spaces and not allowed entry into public venues; n109 African American males, not unlike Chicanos, are sitting on death row in disproportionate numbers to the dominant population. n110

Within the spirit of the times, law is held hostage to those denying the corresponding complexities branded on our racial identities. An invaluable and immeasurable alternative exists with LatCrit theory. The theoretical foundation of LatCrit as an alternative enterprise emphasizes the relationship between legal rules and process. It exposes trajectories that for too long have promoted the subordination and marginalization of communities of color. The near invisibility of Chicanas/os in legal scholarship reflects the intersection of law with their subordinate status; leaves them to ride the margins of legal scholarship; consigns communities of color outside academic investigations; and otherwise disallows the potential for transforming impoverished communities. Falling outside less inclusive paradigms, ultimately replicates the history of the European conquest of advanced cultures as witnessed by communities of color.

In the alternative, LatCrit embraces an anti-essentialist and anti-subordination theoretical base in which investigations place subordinated communities in the center of inquiry. LatCrit theory and its emphasis on promoting knowledge, advancing social transformation, expanding and connecting anti-subordination struggles, and cultivating intellectual community and progressive coalitions, provides an immeasurable tool going beyond mere exposure of disparate treatment. n111 It [*716] extends, furthermore, beyond a clash of differing values and promotes in progressive coalition building. Linking the contextual background of law's role as in Dred Scott and the Chicana/o legal experience allows us to listen to the voices of cultures for too long kept hidden in legal history. The onslaught of challenges that disallowed them the full attributes of citizenship therefore makes clear the indispensability of LatCrit as an alternative enterprise in analyzing the history of hypocrisy constructing adverse race relations in the present.

Conclusion

Chicanas/os and African Americans have long contributed immeasurable and invaluable benefits to mainstream culture while sustaining ongoing challenges to their right to the full attributes of citizenship extended the dominant culture. The intersection of their racial standing with law makes evident the uneven application of legal rhetoric and norms. With Mr. Scott, the Court rejected his bid for freedom while conforming to a purported "originalist" interpretation of the Constitution. Yet the Chicana/o legal experience makes evident that the court sidestepped its purported "originalist" deference and disallowed the supremacy obligations drawing from the same legal document. This his torical legal amnesia requires not silence as those advocating lesser inclusive models of law advocate, but in contrast obligates yet further unpacking of our collective past. As an invaluable tool, the undisclosed stories and their voices ultimately assisting progressive coalitions in revealing long stymied transformative possibilities.

FOOTNOTE-1:


n3. Immanuel Wallerstein, Culture As The Ideological Battleground of the Modern World- System, in Global Culture, Nationalism, Globalization and Modernity, 31-55 (Mike Featherstone ed., 1990) (asserting that while universality relates to humanity race by way of contrast requires consideration of the specific). The court's


n5. Professor Ian Haney-Lopez reports: "It is clear that in the United States there exists no widespread consensus that Latinos/as share a separate identity that can be specified in terms of race, as opposed to, say, ethnicity, national origin, or culture." Professor Haney-Lopez, in referencing a number of authors promoting a "raceless conception of Latina/o identity, observes that there is a "pronounced resistance in the legal academy to racial conceptualizations of Latinas/as and Latino/a subgroups." Ian F. Haney-Lopez, Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory, 10 La Raza L. J. 57 (1998).


n7. 60 U.S. 393 (19 How.) (1856).

n8. "Mexican nationals" refers to citizens of Mexico and "Chicana/Chicano" references individuals of Mexican descent. Terms are used interchangeably and are commonly "self- designations." See Genaro M. Padilla, My History, Not Yours (1993). For alternative designators, see Berta Esperanza Hernandez Truyol, Building Bridges - Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement, 25 Colum. Hum. Rts. L. Rev. 369 (1994); Margaret Montoya, Mascaras, Trenzas y Grenas: Un/Masking the Self White Un/Braiding Personal Experience, Latina Heritage, and Legal Socialization, 17 Harv. Women's L. J. 188 (1994); Ana Castillo, Massacre of the Dreamers (1994) (defining Xicanisma). Ana Castillo asserts Xicanisma "is formed in the acknowledgement of the historical crossroad where the creative power of woman became appropriated by male society. And woman in the flesh was subordinated." In the essay, the Mexican governance of the annexed territories is distinguished from the Spanish period. Mexico declared its independence from Spain in 1821. Additionally, the Treaty of Guadalupe Hidalgo, which terminated the war between the United States and Mexico recognized those remaining in the Mexican provinces as Mexican citizens. See Treaty of Guadalupe Hidalgo infra note 12. Finally, the complexities of race are compounded when legal institutions identify Chicanas/os as "white." For background on this legal designation see George Martinez, African-Americans, Latinos, and The Construction of Race: Toward An Epistemic Coalition, 19 Chicano-Latino L. Rev. 213 , 215 (1998).
Legal classification impacts the relationship between African-Americans and Mexican-Americans and creates a barrier to coalitions with African-Americans and other non-white minorities."


n11. The opinion reports that "neither the class of persons who had been imported as slaves, nor their descendants" could be citizens of the United States. Dred Scott, 60 U.S. (19 How.) at 407.


n16. United States v. Circuit Judges, 70 U.S. (3 Wall.) 673 (1865). See also United States v. Ritchie, 58 U.S. (17 How.) 525, 533 (1854) (raising separation of powers and federalism considerations). Conflicts surfaced because federal district courts did not have complete jurisdiction over the land grant adjudication until the Act of 1860 was passed. See United States v. De Rodriguez, 25 F. Cas. 821 (N.D. Cal. 1864).

n17. For instances involving people of color and Supreme Court jurisprudence, see, for example, Arguello v. United States, 59 U.S. (How.) 539 (1855); Choteau v. Marguerite, A Woman of Colour, 37 U.S. 507 (1838). Federal law dictated the land grant process and a vast number of land grant litigation shaped federal jurisprudence during this historical period. See, e.g., United States v. Bernal, 24 F. Cas. 1123 (N.D. Cal. 1855) (No. 14,581 (Carmen Bernal's grant challenged as fraudulent notwithstanding confirmation....
of her grant); United States v. Ortega, 27 F. Cas. 358 (N.D. Cal. 1856) (No. 15,970) (bequest to Maria Clara Ortega and Maria Isabel Clara Ortega from their father's 1809 San Ysidro grant); Cervantes v. United States, 5 Cas. 380 (N.D. Cal. 1855) (No. 2560). See also United States v Chaboya, 67 U.S. 593 (2 Black.) (1862); United States v. Gomez, 64 U.S. 326 (23 How.) (1859); Serrano v. United States, 72 U.S. (5 Wall.) 451 (1866).

n18. The land grant cases involving United States citizens of Mexican descent are vast and beyond the focus of this review. In sum, the land grant adjudication system outside the state level encompassed several federal levels. For example, claimants faced the Board of Land Commissioners charged with determining the validity of a land claim. See discussion on the California Land Act of 1851 infra note 45. The second federal level encompassed the federal district court system. See generally Feliz v. United States, 8 F. Cas. 1130 (N.D. Cal. 1855) (holding performance of conditions attached to grant despite the Board of Land Commissioner's rejection of claim). Finally, appeals at times reached the U.S. Supreme Court. See generally Fuentes v. United States, 63 U.S. 443 (1859). For further examples see United States v. Morillo, 68 U.S. (1 Wall.) 706 (1863) (conflict of jurisdiction dispute); Romero v. United States, 68 U.S. (1 Wall.) 65 1863 (Innocencio, Jose, and Mariano Romero's land grant claim); United States v. Olvero, 154 U.S. 538 (1864) (invoking Los Alamos and Agua Caliente claim in Los Angeles); Serrano v. United States, 72 U.S. (5 Wall.) 451 (1866); Higueros v. United States, 72 U.S. (5 Wall.) 827 (1864).


n21. In Dred Scott, Taney reasoned "that their arguments were faithful to the original intentions of the framers and to judicial precedent." See discussion infra pp. 26-27. See also Mark A. Graber, Desperately Ducking Slavery: Dred Scott and Contemporary Constitutional Theory, 14 Const. Comment. 271 (1997) ("Taney and his fellow justices explicitly declared that their arguments were faithful to the original intentions of the framers and to judicial precedent.").

n22. Nor did its omission protect Mr. Scott. See discussion infra PART II.

n23. See, e.g., Mari Matsuda, Public Response to Racist Speech: Considering the Victim's Story, 87 Mich. L. Rev. 2320 (1989) (the term "outsider" is used to avoid term "minority"; the term "minority" contradicts "the numerical significance of the constituencies typically excluded from jurisprudential discourse").

n24. See Guadalupe T. Luna, Chicanas, Land Grant Adjudication, and the Treaty of Guadalupe Hidalgo: This Land Belongs To Me, Harv. Latino L. Rev. (forthcoming 1998) (citing Secretary of State James Buchanan in his lobbying against a provision in the Treaty of Guadalupe Hidalgo that would have ensured protection of Mexican-owned property). During his lobbying in voting for the removal of the provision (Article X) Buchanan asserted that the country's laws referred to as "blessings," would otherwise protect grantees. Hunter Miller, Treaty of Guadalupe Hidalgo, Documents 122-150:
1846-1852, 5 Treaties and Other International Acts of the United States of America, 256 (1937) (reporting on the nature of James Buchanan and his lobbying).


Of the lands mentioned, some have been in the quiet possession of the proprietors and their families for forty or fifty years. On them they have reared themselves homes - they have enclosed and cultivated fields - there they and their children were born - and there they lived in peace and comparative plenty. But now - our inheritance is turned to strangers - our houses to aliens. We have drunken our water for money - our wood is sold unto us. Our necks are under persecution - we labor and have no rest.

Id. at 71 (citing S. Cal., April 11, 1855).


n27. For an example as to the nature of law and its use in targeting people of color see A Blemish in Oregon History Recalled, Seattle Post-Intelligencer, Feb. 18, 1999, at B2. Over 150 years ago, a legal measure that remained in Oregon's Constitution until 1926 barred blacks from entering the Oregon territory. Several Midwestern states including Michigan and Indiana had also passed laws restricting African Americans from entering their state.


n29. See generally Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 Stan. L. Rev. 581 (1992).

n30. See, e.g., Wallerstein, supra note 3, at 4. This investigation rejects concepts of essentialism. "The concept of essentialism refers to the issues raised by false universalisms, identity splitting, the assumption of natural principles, and a form of reductionism." False universalisms refer to "overgeneralizations or unstated reference points [that] implicitly attribute to all members of a group the characteristics of individuals who are dominant in that group." Theresa Raffaele Jefferson, Toward A Black Lesbian Jurisprudence, 18 B. C. Third World L.J. 263 (1998). Professor Berta Esperanza Hernandez-Truyol asserts "Normativity, in all its forms -- be it maleness, whiteness, or straightness -- creates a false sense of universality of what is right, desired, and desirable. At one time, this idea was used to support racial subordination." See Berta Esperanza Hernandez-Truyol, Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks, 2 Harv. Latino L. Rev. 199, 214 (1998).
n31. See, e.g., Daniel A. Farmer and Suzanna Sherry, Beyond All Reason (1997) (challenging methods employed in critical legal scholarship); Haney-Lopez, supra, note 5.


n33. See Juan Gomez Quiñones, Roots of Chicano Politics, 1600-1940 (1994).

n34. Empresario grants entitled groups to live on large tracts of land. For examples of legal assessments disallowing communal rights under Anglo-American law, see United States v. Sandoval, 167 U.S. 278 (1897). Communal living was valued as a way of life because it permitted groups of grantees living in semi-arid tracts to share scarce water resources. Compare with Edward T. Price, Dividing the Land, Early American Beginnings of Our Private Property Mosaic (1995) (American colonists holding property communally).


n36. Article VIII, Treaty of Guadalupe Hidalgo, supra note 12 at 929-30. The covenant also provides that "The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally amply as if the same belonged to citizens of the United States." Id.

n37. Article IX, Treaty of Guadalupe Hidalgo, supra note 12 at 930. The covenant also provides that they would be "protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction." See discussion infra. Finally, earlier drafts of the Treaty show that its negotiators' intentions included citizenship as a treaty covenant. See, e.g., Senate Executive Documents, 30th Cong., 1st Sess., 1847-1848, No. 20 (letter to the Nicholas Trist, the U.S. treaty negotiator from the treaty negotiators in Mexico).


n39. The absence of diversity in rural property ownership reflects the role of law in displacing Chicano/o and African American property owners from their agricultural enterprises. The experience of the Southern Tenant Farmers Union in organizing sharecroppers, provides yet another example of how diversity in the agricultural marketplace disallows inclusion of people of color. See generally H.L. Mitchell, Mean Things Happening in This Land (1979) (Union members and supporters subjected to arrests, imprisonment on false charges, evictions, and murder). For an example of Chicanas/os and their organizing attempts in Texas see Medrano v. Allee, 416 U.S. 802 (1973) (arrests, unlawful imprisonment, physical assaults, and other forms of intimidation of union organizers).

n40. The English translation meaning "What is happening here?"


n42. Soulard v. United States, 29 U.S. (4 Pet.) 511 (1830) ("Even if the treaty by which Louisiana was acquired had not contained stipulation by the United States that the inhabitants of the ceded territory should be protected in the free enjoyment of their property, the United States as a just nation would have held that principle equally sacred."); see United States v. Percheman, 32 U.S. (7 Pet.) 51 (1833)
(The cession of territory from one sovereign to another passes the sovereignty only and does not interfere with private property).

n43. U.S. Const. art. VI, cl.2.
n44. Amaya v. Stanolind Oil & Gas Co, 158 F.2d 554, 556 (5th Cir. 1946); See also Atocha's Adm't'r v. United States, 8 Ct. Cl. 427 (1872).
n46. That each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government, shall present the same to the said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claims. Section 8. The Act of Congress of March 3, 1851, entitled "An Act to Ascertain and Settle the Private Land Claims in the State of California." 9 Stat. 631 (1851). In New Mexico, see Statutes At Large, Chap. 539, An Act To Establish A Court of Private Land Claims and to Provide For The Settlement of Private Land Claims in Certain States and Territories, Mar. 3, 1891.
n47. See California Land Act 11. The largest number of land grant adjudication occurred under the California Land Act, but other land acts also required grantees to demonstrate proof of ownership. This presented further difficulties as in New Mexico, which first required congressional determination of validity and/or until the existence of other states. For an example of this history in case law, see United States v. Sandoval, 167 U.S. 278, 291 (1897).
n49. The adverse conditions facing the landowners resulted in an appeal in which they declared:

In view of the doleful litigation proposed by the general Government against all the land owners in California in violation of the Treaty of Guadalupe Hidalgo and the law of nations, which year by year became more costly and intolerable in view of the repeated falsehoods and calumnies circulated by the public press against the validation of our titles and the justice which supports us in this interminable litigation and which equally influences the tribunals of justice and prejudices our character and our dearest rights, in view of the injustices which have accumulated against us to carry out a general confiscation of our properties; and especially to adopt the most efficient means to assure the abrogation of the existing law which holds all titles acquired from the former government to be fraudulent and which were guaranteed to us by the treaty.

Mario T. Garcia, Merchants and Dons, supra note 25 at 70-71, citing Robert Class Cleland, The Cattle on a Thousand Hills (1951).
n53. See People v. De La Guerra, 40 Cal. 311 (1870). For yet another example of discrimination see the realm of miscegenation laws impacting Chicanas/os. As an example in California years after the Conquest see Perez v. Lippold, 198 P.2d 17 (1948). In the instant case, the County Clerk in Los Angeles refused to issue a marriage license to Andrea D. Perez and Sylvester S. Davis, Jr. The clerk denied the license because state law provided that no license "may be
issued authorizing the marriage of a white person with a Negro, mulatto, Mongolian or member of the Malay race." While the California Supreme Court held the statute unconstitutional, the opinion reports on the history of California's first miscegenation legislation from 1850. The decision is also valuable for showing the nature of how law socially constructed the relationship between African-Americans and Chicanas/os in disallowing their marriages and to how people of color were perceived. In citing to precedent from Georgia, the state, for example, argued that "The amalgamation of the races is not only unnatural, but is always productive of deplorable results. Our daily observation shows us, that the offspring of these unnatural connections are generally sickly and effeminate, and that they are inferior in physical development and strength, to the full blood of either race." Id. at 22, quoting Scott v. State, 39 Ga. 321, 324 (1869).


n55. Mariano Vallejo, was the former Director of Colonization in Alta California whose harsh treatment by American officials is well documented as initiating the Bear Flag Rebellion and conquest of the Mexican province. See id. For an example of Vallejo's defense and loss of his property interest see United States v. Vallejo, 28 F. Cas. 356 (N.D. Cal. 1859) (No. 16, 818).

n56. Pitt, supra note 54, at 42-47.

n57. Id. at 45.

n58. Id.

n59. Fremont v. United States, 58 U.S. (17 How.) 542 (1854). Mariposas was ultimately held as a grant of ten sitios "north of a river, within the Sierra Nevada in the east part of Merced, on the west." United States v. Cameron, 21 P. 177, 178 (1889). As to the nature of Fremont's spying activities on behalf of the United States see A. Brooke Caruso, The Mexican Spy Company, United States Covert Operations in Mexico, 1845-1848 (1991). The author provided an interpretation of the United States and its covert operations in California and Fremont's involvement and its secret nature are especially illuminating. See id. at 80-137.


n61. The Land Act of 1851, 11 provides:

in deciding on the validity of any claim brought before them under the provisions of this act, shall be governed by the Treaty of Guadalupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States, so far as they are applicable.

n62. See generally United States v. Perot, 98 U.S. 428, 430 (1878) ("The laws of Mexico ... were the laws not of a foreign, but of an antecedent government... Its laws are not deemed foreign laws.").

n63. An easy source of the Mexican colonization laws can be found in Cessna v. United States, 169 U.S. 165, 171 (1898).

n64. See Fremont, 58 U.S. (17 How.) at 566.

n65. See id.

n66. This is a legal point that did not apply to grantees of Mexican descent. See, e.g., Peralta v. United States, 70 U.S. (3 Wall.) 434 (1865).

n67. See Fremont, 58 U.S. (17 How.) at 566.

n68. See, e.g., Botiller v. Dominguez, 130 U.S. 238, 239 (1889) (observing courts failing to follow the Treaty).

n69. "It was vital for Fremont to win early confirmation for Mariposa because great quantities of gold were being extracted from it by squatters." Paul Gates, Land and Law in California 75 (1991).


n72. For example, although the claimant had committed an act of treason against the Mexican Republic by joining forces with American rebels in the conquest even after he became a Mexican citizen, the Supreme Court allowed confirmation of his claim. See *United States v. Reading, 59 U.S. (18 How.) 1* (1855).

n73. Some authors assert the legal process was fair. See e.g., Paul Gates, Land and Law in California: Essays on Land Policy (1991).

n74. See *Peralta v. United States, 70 U.S. (3 Wall.) 434* (1865); John S. Hittell, Mexican Land Claims in California, in A Documentary History of the Mexican Americans 271 (asserting that the Peralta grant "had title according to the Mexican law <clip>"). In part because of the distances and lack of communication difficulties between Alta California and the Mexican interior, the custom and practice of Mexican law also allowed grantees to occupy the grant before formal processing was completed. See *United States v. Carrillo, 25 F. Cas. 312* (N.D. Cal. 1855) (No. 14,737) (reporting that grantees were permitted to sow and build a house before completion of petition process).


n78. California Land Act of 1851, 13 (all land claims deemed invalid and not presented to be taken as public lands).


n80. Fritz, supra note 79, at 135 n. 37, citing Judge R.F. Peckham, An Eventful Life 33.

n81. Fritz supra note 79, at 135.


n83. Although not encompassing a land grant litigation, the California Supreme Court in 1948 in an opinion disallowing a Chicana and African American to obtain a marriage license, declared: "For many years progress was slow in the dissipation of the insecurity that haunts racial minorities, for there are many who believe that their own security depends on its maintenance. Out of earnest belief, or out of irrational fears, they reason in a circle that such minorities are inferior in health, intelligence, and culture, and that this inferiority proves the need of the barriers of race prejudice." *Perez v. Lippold, 198 P.2d, 198 P.2d 17, 26-27* (Cal. 1948). In the opinion, the court responds to the
State's argument contending that "Negroes, and impliedly the other races specified [in the legislation], are inferior mentally to Caucasians" with the following reasoning:

"It is true that, in the United States, catalogues of distinguished people list more Caucasians than members of other races. It cannot be disregarded, however, that Caucasians are in the great majority and have generally had a more advantageous environment, and that the capacity of the members to contribute to a nation's culture depends in large measure on how freely they may participate in that culture. There is no scientific proof that one race is superior to another in native ability.

Id. at 24-25.

n84. The literature on the instant case is vast and beyond the purposes of this review. As to how the decision is characterized see Paul Finkelman, The Dred Scott Case, Slavery and the Politics of Law, 20 Hamline L. Rev. 1 (1996). As to its controversy see Mark A. Graber, Desperately Ducking Slavery; Dred Scott and Contemporary Constitutional Theory, 14 Const. Comment 271 (1997) (providing "Commentators across the political spectrum describe Dred Scott as 'the worst constitutional decision of the nineteenth century,' 'the worst atrocity in the Supreme Court's history,' 'the most disastrous opinion the Supreme Court has ever issued,' a 'ghastly error,' a 'tragic failure to follow the terms of the Constitution,' 'a gross abuse of trust,' 'a lie before God,' and 'judicial review at its worst.'"). As to how the decision can be used to encourage intellectual debate for students resisting assertions of unequal treatment see Jane Larson, A House Divided: Using Dred Scott To Teach Conflict of Laws, 27 U. Tol. L. Rev. 577 (1996).

n85. Cass R. Sunstein, The Dred Scott Case With Notes on Affirmative Action, The Right to Die & Same-Sex Marriage, 1 Green Bag 2d 39 (1997) (asserting "this was one of the first self-consciously 'originalist' opinions from the Supreme Court. On this issue, the Court spoke for its understanding of what the framers believed."). The competing constitutional theories arising from Dred Scott are beyond the purposes of this preliminary essay.

n86. See Paul Finkelman, The Dred Scott Case, Slavery and the Politics of Law, 20 Hamline L. Rev 1, 11 (1996) ("Perhaps no legal case in American history is as famous --or as infamous - as Dred Scott v. Sandford. Few cases were as politically divisive when they were decided; few have taken on such symbolic meaning.").


n88. This further affected ownership of property in states, not unlike California, that limited the franchise to "white males." See supra notes 53-55.

n89. "Proponents of original intent analysis argue that the Court must interpret the Constitution according to the intentions of the framers. They claim that their approach eliminates personal preference from judicial interpretation." Paul Finkelman, The Dred Scott Case, Slavery and the Politics of Law, 20 Hamline L. Rev. 1 (1996). Compare with McCulloch v. Maryland, 4 Wheat. 316 (U.S. 1819) ("We must never forget that it is a constitution we are expounding <elip> intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.").


n91. Id. 404-05.

n92. Id. at 393. Compare with Fremont v. United States, 58 U.S. (17 How.) 542 (1854), in which the court takes liberty with the rules in force as provided in the various land acts and the Treaty of Guadalupe Hidalgo.


n94. Id.

The right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of
the United States, in every State that might desire it, for twenty years. And the Government in express terms is pledged to protect it in all future time, if the slave escapes from his owner. This is done in plain words - too plain to be misunderstood. And no word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.

Id.

n95. See Cordova, supra note 32, at 38.
n96. Id. at 18.
n97. Id.
n101. The example of questioning the citizenship of their children makes evident this point. De Baca v. United States, 37 Ct. Cl. 482, 482 (1901). ("The question now presented is<elip>, whether a child of Spanish parents born in New Mexico in 1809 was by birth an American citizen."). See also In re Rodriguez, 81 F.3d 337 (1997) (Guanajato, Mexico citizen Ricardo Rodriguez's bid for U.S. citizenship).
n102. See Almaguer, supra note 8, at 9 ("The very way in which racial lines were defined became an object of intense political struggles.").
n104. See generally Nancy Cervantes, Hate Unleashed: Los Angeles in the Aftermath of Proposition 187, supra note 4 ("demonstrates the way in which the rhetoric permeating the debate over Proposition 187 created an environment that gave license to discrimination and intolerance and has had severe consequences for the Latino community<elip>.").
n105. See, e.g., Spread of Spanish Unwelcomed By Some, Las Vegas Rev. J., Feb. 7, 1999, at A6 (reporting on a grocery store named "Supermercado Jalisco" in Norcross, Georgia, a suburb of Atlanta, where Norcross fined the owner for violating a local ordinance that required English in naming a business establishment.").
n107. Official Vows Probe of Racial Traffic Stops, San Diego Union-Trib., Mar. 10, 1999, at A9. The article reports on the Justice Department assuring "black and Hispanic leaders from New Jersey" that "his agency is serious about investigating whether state troopers stop motorists on the basis of their skin color. Police officers in New Jersey and several other states are accused of employing "racial profiling" in deciding "which cars to stop." Id.
n108. Victim's Face Was Painted In Truck-Dragging Debate, Orlando Sentinel, June 25, 1998, at A14 (Death of James Byrd Jr., who was dragged to his death behind a pickup truck by three Euro-Americans). See also Giuliani Assails Parade Float As
Racist Display, Buffalo News, Sept. 10, 1998, at A5 (float "lampooning the June dragging death of a black man in Texas was featured in a Labor Day parade").

n109. See Tina Schatz, Women File Suit Against Area Tavern, Popular Eatery Faces Racial Discrimination Complaint, Harrisburg Patriot, Feb. 9, 1999, at B1 (African American females filed a federal complaint alleging that the operators of a local tavern cancelled their reservations upon discovery that the women were black).

n110. It is well recognized that the death penalty is employed in some jurisdictions "particularly if you are a person of color... "Douglas G. Robinson, The Death Penalty in the Twenty-first Century, 45 Am. U. L. Rev. 239, 259 (1995). See also Michael Lumer & Nancy Tenney, The Death Penalty in New York: An Historical Perspective, 4 J.L. & Pol'y 81, 107 (1995) (statistical breakdown of executions and disproportionate use on African-Americans). For a perspective on the nature of criminal law regarding people of color, see Tracey L. Meares, Social Organization and Drug Law Enforcement, 35 Am. Crim. L. Rev. 191, 193 (1998) (urging application of sociology's "concept of community social organization" as retaining "untapped potential to reconceptualize the problems created by both drugs and our current drug-law enforcement regime" as opposed to practices in the present focusing on individuals charged with a crime).


n112. As to the connection between judicial indeterminism and the Chicana/o community see George Martinez, Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience,
Congressman Smith, Haitians should not be provided similar relief because "Haitians have been treated better by the United States than refugees from almost any other nation."

Nothing could be further from the truth. Despite the well-documented political repression in Haiti during the Duvalier regime and military governments that followed, refugees from Haiti, the world's first Black Republic, have been singled out for special discriminatory treatment and the fundamental principles of refugee protection abandoned time and again.

The first boatload of Haitians claiming persecution in Haiti arrived in the United States in September 1963. All twenty-three refugees were denied political asylum and deported, signaling the wave of rejection to come.

Despite the bloody outcome of the aborted election in Haiti in 1987, not a single Haitian was granted asylum that year by the INS. Between June 1983 and March 1991, only 1.8 percent of Haitian applicants in the United States were granted asylum by the INS, the lowest approval rate among nationalities submitting the largest number of applications.\(^1\) Those fleeing communist regimes fared much better: the approval rate during that period for China was 69.0 percent and for the former Soviet Union, 74.5 percent. The overall approval rate for all applicants was 23.6 percent. Even when approval rates for Haitians increased after reform of the asylum system in the early 1990’s and the 1991 coup d'etat that ousted President Aristide, they remained far below the approval rates for other nationalities.\(^2\)

In the early 1980’s, a landmark suit was filed on behalf of over 4,000 Haitians requesting political asylum. The INS, through procedures in effect at that time, had denied all 4,000 applications. The court found that United States government agencies had set up a "Haitian Program" designed specifically to adjudicate, and to deny, as quickly as possible, the asylum claims of Haitians. The program "in its planning and executing [was] offensive to every notion of constitutional due process and equal protection."

The Court concluded that the backlog of 6000-7000 Haitian cases - which the government had argued constituted the reasons for instigating the Haitian Program - was not a result of a massive influx of Hai
tians to South Florida over a short period, but rather was primarily attributable to a slow trickle of Haitians over a ten-year period, and to the confessed inaction of the INS in dealing with these cases. Moreover, the court concluded that the INS was engaging in scare tactics, noting that the INS Deputy Commissioner encouraged government attorneys to point out "THE DIMENSIONS OF THE HAITIAN THREAT" and called the Haitian cases a threat to the community's social and economic well-being. The court also found that the discriminatory treatment of Haitians was nothing new, but rather that it was part of a pattern of discrimination which began in 1964.

In late May, 1981, the INS began to systematically detain Haitians entering the United States. This was a fundamental change from the established policy of detaining only those persons deemed likely to abscond or pose a threat to national security.

In July, 1981, the State of Florida brought an action against the Federal Government due to the overcrowded conditions at Krome Service Processing Center, the INS detention facility in Miami. During litigation, the government promised that efforts would be made to keep the population at Krome at or under one-thousand people. In order to abide by this representation, the INS transferred Haitians out of Krome when ever the population exceeded one-thousand.

Advocates for the Haitian refugees again turned to the courts for help, and again the courts noted the INS's callous disregard for the [*719] rights of Haitian refugees. A federal court judge in 1982 characterized the transfers as "a human shell game in which the arbitrary Immigration and Naturalization Service has sought to scatter [Haitians] to locations that ... are all in desolate, remote, hostile, culturally diverse areas, containing a paucity of available legal support and few, if any, Creole interpreters."

A successor judge in the same case subsequently ruled that the Haitians were "impacted to a greater degree by the new detention policy than aliens of any other nationality...." Unlike other aliens, the Haitians were subject to mass exclusion hearings behind closed doors, improperly denied access to their attorneys, and deported in a manner INS itself admitted was faulty. The detention policy was found to be invalid and the court ordered the release of over one-thousand Haitians, provided they were deemed neither a security risk nor likely to abscond.

The government appealed the district court decision and in an historic decision, an Eleventh Circuit Court of Appeals panel found that statistical evidence disclosed that the federal government had engaged in a "stark pattern" of discrimination against the Haitian asylum seekers. This was the first time in the history of American law that the federal government was found to have discriminated on the basis of race or national origin under the Constitution in a non-employment context. Although the Court of Appeals en banc later vacated the decision on the grounds that the Haitians had no constitutional rights, they never dis turbed the factual findings of the panel opinion.

Moreover, despite the court's order that the INS stop illegal transfers of Haitians to remote areas of the country, such transfers continued. In May 1989, a federal judge in Miami blocked the forced transfer of dozens of Haitians, this time from Krome to Louisiana and Texas during a "lock down" of the INS facility. The judge found that the circumstances under which the transfers took place violated the Haitians' due process rights.

Even when INS Commissioner Gene McNary implemented a more liberal parole policy in May 1990, the Haitians failed to benefit. "Nearly one month into the program no Haitians had been approved for parole in Miami even though Haitians constituted nearly two-thirds of those detained in the district," reads a section of the report written by the Lawyers Committee for Human Rights in New York.

Haitians have also carefully documented their mistreatment at Krome, which led to a 1990 FBI and Justice Department investigation into allegations of physical and sexual abuse by Krome officers. While Justice Department officials claimed in March 1991 that the investigation [*720] was completed, to date no findings have been made public. n3 Two New York Times articles in June 1992 addressed the ongoing abuses directed against the Haitians at Krome, reporting that "during a hunger strike ... to protest the death of one such detainee, 185 Haitians interned at Krome charged that they had been beaten, harassed, and deprived of medical care, of their Bibles, and of contact with their lawyers and relatives." n4 Some Krome guards even told the Haitians "you are all HIV-positive anyway ...." n5 A Justice Department news release in January, 1996 announced that a Krome officer had pled guilty to one felony count of depriving a Haitian detainee of his civil rights by beating and kicking him and trying to cover up what he had done.

In a letter written by Haitian detainees at Krome following the September 1991 military coup in Haiti, they pleaded with INS officials to ensure that their asylum claims be fairly considered:

"Today we do not want to be demanding or to arouse anyone's anger but we want to make known our patriotic thoughts, the testimony of our feelings
concerning the loss of our relatives and our ancestors who are being abused and murdered by the recent events. Look at the life of the Haitian people; there is a law for all people: in the eyes of God they are all equal, and they all have the same liberty and the same privileges, which are owed to every one of them... We wish to emphasize ... that right now we are living in the most difficult and painful times of human life... We prefer to die than to live in the uncertainty that drowns our thoughts."

Earlier in the year, Florida Senators Bob Graham and Connie Mack unsuccessfully pushed for legislation to limit detention at Krome to ninety days. In late September, 1992, Amnesty International, USA, criticized the lengthy detention of Haitians at Krome, claiming that govern ments should reveal legitimate grounds for any detention of asylum seekers. In 1993, Miami Mayor Xavier Suarez, a Cuban American, requested the closing of Krome, calling it an unnecessary burden on tax payers and an insult to Haitian asylum seekers. Suarez said it would make more sense to release the Haitians from Krome into the custody of relatives or church groups, and allow them to work and support themselves. Suarez estimated the average cost of detaining two-hundred individuals for nine months to be about five million dollars.

Haitians at Krome have engaged in serious hunger strikes to protest their treatment. One of these occurred in January, 1993 following the arrival of fifty-two Cubans who had "commandeered" a Cuban commuter flight from Havana to Varadero, Cuba, diverting it to Miami. All the Cubans were released from Krome within forty-eight hours, while the Haitians remained in custody. To the Haitians, this was a painful reminder of the double standard of treatment.

The following year, hundreds of Haitians were housed in tents at Krome, including many women and children, leading to widespread complaints of inadequate and oppressive living conditions. A lawsuit was filed in 1995 on behalf of a number of detained Haitians, which resulted in improved access to attorneys and medical care. The INS, however, failed to live up to the settlement agreement and attorneys for the Haitians have had to continue to fight on the Haitians' behalf. In May, 1998 attorneys attempting to help dozens of Haitians at Krome were denied access to them for ten days. The INS said it was waiting for test results to confirm the Haitians were disease free, even though the head of the medical unit at Krome said the Haitians did not need to be quarantined.

Haitians outside the United States who wished to apply for refugee status or who tried to reach the United States to apply for asylum faced even greater obstacles. As a result of a 1981 agreement between US and Haitian officials, Haitians attempting to flee Haiti and seek asylum were not permitted to reach the United States. The Haitian interdiction program was established by the Reagan Administration in September, 1981 after determining that undocumented Haitians coming to the United States had "threatened the welfare and safety of [our] communities," even though Haitians comprised less than two percent of the undocumented population of the United States at that time. Haiti was the only foreign government with which the United States had such an agreement and it was entered into under United States' threats to remove economic aid to Haiti. Critics of the Haitian interdiction program frequently referred to it as the "floating Berlin wall."

Interdicted Haitian refugees were conveniently termed "economic immigrants" by United States authorities, despite overwhelming evidence of gross violations under "Baby Doc" Duvalier, who assured United States officials that the refugees would not be persecuted. And while the 1981 agreement clearly specified that bona fide refugees were not to be returned to Haiti, and the INS's own instructions cautioned INS officers to be "keenly attuned" to any evidence that someone was fleeing political persecution, the INS determined that only twenty-eight of the more than 24,000 Haitians intercepted in the decade following the program's inception were qualified to apply for asylum in the United States. Twenty of these were brought to the United States after the United States INS instituted several changes in the pre-screening interdiction process, which took effect March 1, 1991, after President Aristide took power. Consequently, almost three times more Haitians were deemed political refugees under a democratic government than during an entire decade marked by human rights abuses and tyranny.

In the decade preceding President Aristide's election, Haitians sent back to their country were often persecuted. Even the courts found that Haitians deported back to Haiti during this time were sometimes subject to surveillance, arrest, questioning, jailing and beatings, all without due process of the law.

In June, 1989, the National Coalition for Haitian Refugees presented an affidavit to the United States House of Representatives Subcommittee on Immigration, Refugees, and International Law. The affidavit was from returned Haitians who alleged that their stated fears of political persecution in Haiti were ignored by United States immigration authorities. One politically active Haitian, who was interdicted and returned to Haiti in March, 1989, told of Haitian soldiers having shot him four times in the legs at the
During Aristide's tenure, prior to the coup, the number of refugees attempting to reach the United States dropped dramatically. The Coast Guard reported that during some months of Aristide's term, they did not encounter a single Haitian vessel. United States officials reportedly attributed this to the new hope Haitians had for improved conditions under the newly elected government. This supports other statistics indicating that the number of Haitians fleeing by boat in large measure reflects the political climate in Haiti.

Shortly after the 1991 coup d'etat in Haiti, and amid widespread reports of brutal attacks on Aristide supporters, attorneys at the Haitian Refugee Center (HRC) in Miami learned that the United States Coast Guard was about to forcibly return 538 "screened out" Haitians who had been found not to have a credible fear of return to Haiti. *n7* One day later, on November 19, 1991, HRC filed a lawsuit challenging the forced repatriation of Haitians without any meaningful consideration of their asylum claims. At the time the suit was filed, only about fifty of the more than eighteen-hundred Haitians interviewed had been "screened in." Testimony revealed that the pre-screening interviews were a complete sham - a formal validation of a predetermined result.

The interviews, many of which had been conducted on board Coast Guard cutters before Haitians had time to rest or recover from illness, often lasted no more than five minutes. The INS officers interviewing the Haitians had virtually no knowledge of Haitian politics or culture and could not name or recognize the following: The President and Prime Minister of the de facto regime, the General (Cedras) at the head of the military coup, the popular name for President Aristide (Titid), Ti- Legliz (church movement of President Aristide), Lakanmi Selavi (orphanage established by President Aristide), and many others. A high-ranking government official at one point even said the interviews were so defective they needed to be halted.

The HRC lawsuit did not challenge the interdiction program or ask the court to bring all interdicted Haitians to the United States. It simply asked that the Haitians receive fair screening interviews before repatriation continued.

Although District Court Judge Clyde C. Atkins issued three separate restraining orders in favor of the Haitians, three times the Eleventh Circuit Court of Appeals stayed or vacated the judge's orders. The Appeals Court found that the Haitians had no legally enforceable rights in the United States because they were outside United States territory. The "catch-22" nature of this finding was not lost on Judge Hatchett, the one African-American judge on the Appeals panel, who remarked in a dissenting opinion: "Haitians, unlike other aliens from anywhere in the world, are prevented from freely reaching the continental United States.

In a brief two sentence order issued without comment on January 31, 1992, the Supreme Court voted to permit repatriations. Justice [*724*] Blackmun alone wrote: "If indeed the Haitians are to be returned to an uncertain future in their strife-torn homeland, that ruling should come from this Court after full and careful consideration of the merits of their claims."

Lawyers for the Haitians argued that the legal issues took a back seat to political maneuvering. Indeed, the government sent then Solicitor General Kenneth W. Starr to argue its position before the District Court in Miami, although Solicitors General generally only argue cases in particularly important United States Supreme Court cases. The argument signaled the effort United States officials would engage in to keep Haitians out of the United States. More specifically, the Haitians' attorneys argued that government lawyers manufactured affidavits, rushed courts to judgment, and deliberately misled the courts with false claims of national emergency and military necessity. On January 28, 1992, for example, the government filed an emergency petition for a stay of the ban on repatriations with the Eleventh Circuit, alleging that 20,000 Haitians "were massed" on the Haitian beaches and waiting to head for Guantanamo, and that the naval base could not accommodate such numbers. Three days later, and before the Eleventh Circuit had ruled, the government went to the Supreme Court with the same allegations. Attorneys for the Haitians argued that this was a "self created" crisis and that Guantanamo had a far greater capacity to hold people than the Administration claimed. They charged that Under Secretary Bernard Aronson admitted that the term "massing" was ambiguous and retracted his use of the word; contrary to the statements in his declaration to the Supreme Court, he admitted that he was quite unsure of the number of Haitians preparing to leave. Independent observers, including the Coast Guard attaché in Port-au-Prince who flew over the Haitian shores of La Gonave, the point of departure for many Haitians, concluded there was no evidence of Haitians "massing." Moreover, during 1994-1995, Guantanamo held over 32,000 Cubans and over 21,000 Haitians and
United States officials claimed they could facilitate an endless number of arrivals.

In their brief to the Supreme Court, lawyers for the Haitians also referred to the government reliance on the declaration of Robert K. Wolthuis, whom the government presented as the Assistant Secretary of Defense. Mr. Wolthuis, according to the Haitians' lawyers, had assumed that position for one day only - the day he signed the declaration. Mr. Wolthuis readily admitted that most of the facts he swore to in his declaration were what the lawyers who had drafted it told him. The declaration was so defective that attorneys for the Haitians filed a separate memorandum concerning it.

[*725] In denying attorneys for the Haitians access to Guantanamo and the Coast Guard cutters, the government claimed that it would seriously interfere with military operations. Judge Atkins noted, however, the portions of the military base to which the attorneys sought access were not used for military purposes. Furthermore, Coast Guard Admiral William P. Leahy acknowledged in his deposition that press members, VIPs, and a host of other persons had access to Guantanamo, and he admitted that family members of Coast Guard members periodically traveled on Coast Guard cutters, including his fourteen year old son who spent two weeks on a cutter during a law enforcement mission.

Lawyers also charged that summary dismissals on critical decisions were issued, affidavits not a part of the record were treated as if they were, and key parts of the record were ignored. At one point Judge Hatchett, the Eleventh Circuit Court's dissenting judge, felt compelled to claim that the panel majority was deciding the case under "some procedures here before unknown to the law" and that "the majority's actions, ruling, and holdings ... are inconsistent with its actions, holdings and rulings of two days ago ...."

Indeed, the State Department and Bush Administration did an excellent job of diverting attention away from the legal issues and convincing the courts and the public that denying the Haitians their legal rights was in the best interest of everyone. n8 From day one of the coup, United States government officials were predicting that hundreds of thousands of Haitians would leave their country and head for the United States. Although when running for the Presidency, Bill Clinton said he was "appalled" at Bush's policy of forcibly repatriating the Haitians, once elected his Administration began predicting the Haitian exodus would make the Cuban Mariel exodus "look like a picnic." Yet only about 40,000 Haitians fled their country following the 1991 coup up until Bush's Kennebunkport order, eight months later. That is far less than the 125,000 Cubans who arrived in four months during the Mariel Boat lift in 1980. n9

Government officials claimed their effort to forcibly return the Haitians was inspired by the desire to save the lives of those who would otherwise be encouraged to take to the sea in unworthy vessels (the so-called "magnet" effect). But as Appeals Court Judge Hatchett pointed out: "The primary purpose of the [interdiction] program was, and has continued to be, to keep Haitians out of the United States." n10

When repatriations began again on February 1, 1992, more than 11,000 Haitians were held at Guantanamo Bay, Cuba. Amnesty International expressed outrage at the forced returns. In a January, 1992 report, Amnesty International said it had received reports of grave human rights violations after the coup d'état. Amnesty stated they knew of "several cases in the past years where asylum-seekers who were refused asylum in the United States and returned to Haiti were imprisoned and in some cases ill-treated on their return."

The United Nations High Commissioner for Refugees (UNHCR) similarly condemned the repatriations, expressing fear that those returned would be exposed to real danger. Just before the Supreme Court decision allowing repatriations to continue, UNHCR confirmed that dozens of Haitian refugees returned to Haiti due to faulty procedures were persecuted upon their return and forced to flee a second time. The UNHCR said that they and United States government officials had documents detailing the harassment, beating, torture, and murder of returned Haitians for the "crime" of having fled. n11 After the UNHCR publicly confirmed that they had such evidence, they were informed they could no longer conduct interviews of the Haitians at Guantanamo without a military presence.

To exacerbate matters, testimony by a senior official of the General Accounting Office before a House subcommittee revealed that the INS had lost at least twenty-five hundred files at Guantanamo due to disorganization and disarray, mistook "screened-in" Haitians for "screened-out" Haitians, and apparently rescreened and even repatriated previously "screened-in" Haitians. Those erroneously returned included at least thirty-eight unaccompanied children and a 16-year-old girl, Marie Zette, who was killed in her bed by Tonton Macoutes the first night after her forced return.

Attorneys for the Haitians argued that many of the Haitians interdicted after the September coup were not headed to the United States in the first place, but to the Bahamas, Cuba or other destinations. The government advanced no explanation, the attorneys said, as to their
author ity or justification in interfering with those Haitians attempting to escape political persecution in Haiti, let alone to forcibly return them to Haiti. n12

The decision by the high court not to review the HRC case paved the way for further abuses of Haitian refugees. Indeed, after the Supreme Court order, the INS was free to "screen in" all light-skinned Haitians and "screen out" all dark-skinned Haitians, since this would not be subject to legal challenge. Yet many were surprised when President Bush issued his May 24, 1992 Executive Order stopping all Haitian interviews and permitting the INS to repatriate Haitians interdicted at sea without any investigation into the likelihood of their persecution in Haiti ("Kennebunkport Order"). n13

The United States government's response to the widespread condemnation of the Kennebunkport Order was to claim that Haitians in [*728] fear for their lives could apply for asylum at the United States Embassy in Port-au-Prince, and in January, 1992 announced the opening of an office there to process refugee applications. Haitian refugee advocates argued that to expect Haitian refugees to openly approach the United States Embassy - just a block away from the police station and surrounded by military personnel - was preposterous. Indeed, the Secretary General of Amnesty International United States remarked in June, 1992:

"The idea that people suffering repression and at risk of human rights violations, at risk of arbitrary detention, at risk of beating, at risk of torture, and perhaps even death ... the idea that such people should contemplate visiting the United States Embassy in Port-au-Prince, should dare to stroll down the boulevard under the gaze of men in dark glasses who lounge on street corners, such an idea is ridiculous."

Haitian advocates pointed out as well that Haitians in the rural areas, where most of the severe repression was taking place, had no way of getting to the capital and that there was such a high threshold for approval of cases and such extensive documentary proof required of Haitians that very few qualified for refugee status. In fact, many Haitians who sought protection at the United States Embassy were sub sequently arrested or otherwise mistreated by military authorities and, in some cases, killed.

In June, 1992, Americas Watch and the National Coalition for Haitian Refugees criticized the skewed United States monitoring of Haitians repatriated since the coup, alleging it had served a public relations purpose only and had utterly failed to discover whether repatriates encountered persecution. Florida Senator Connie Mack, a Republican, was an outspoken critic of the Bush Administration's Haitian policy, calling it "morally wrong" and "a disgrace." Republican Congresswoman Ileana Ros-Lehtinen at one point labeled the forced return an "unfair situation." Still, in early October, 1992, lacking the political clout of their Cuban counterparts, Haitian refugees suffered one final blow under the 102d Congress when legislation to reverse President Bush's Kennebunkport order failed to reach a vote of the full Congress. n14

According to a report by the Lawyers Committee for Human Rights, Coast Guard cutters which once figured so heavily in drug interdiction were subsequently diverted to capture and return people [*729] fleeing one of the most dreaded tyrannies in the Caribbean. INS n15 Interdiction Chief Leon Jeannings admitted that most of the intercepted Haitian boats were destroyed so other Haitians wouldn't use them to leave. This prompted Miami Mayor Xavier Suarez to distribute bumper stickers in 1992 that read "Interdict Drugs, Not Haitians." Congressman Claude Pepper, shortly before his death, had unsuccessfully attempted to pass a bill that directed the United States to bring Haitians ashore for their asylum interviews.

Representative Lamar Smith's recent assertion that the Guantanamo Haitians were "paroled into the United States ... spared deportation proceedings and allowed to pursue asylum," belies the fact that those Haitians who were "screened-in" at Guantanamo in 1991 and 1992 were only allowed to come to the United States after a federal judge issued a temporary injunction prohibiting their forcible return. More over, as mentioned earlier, thousands more were forcibly returned, often to face additional persecution.

Indeed, the INS conducted 36,596 screening interviews at Guantanamo between October, 1991 and June, 1992 and "screened-in" only 28 percent of these Haitians. n16 And screening rates fluctuated widely despite the fact that political conditions did not significantly change. In mid-January, 1992, for example, the INS "screened-in" 85 percent of the Haitians, but only about 40 percent were "screened in" in February. n17 In April, after the Court allowed repatriations to continue, the rate dropped to a record low of two percent. This drop began raising concerns in Congress.

Several interpreters at Guantanamo provided sworn statements detailing a pattern of heavy pressure by U.S. State Department Officials on asylum officers to decrease the number of Haitians "screened-in". A 1992 Harvard Law School report on the asylum process expressed con cern that "special foreign policy pressures" had been influencing treatment of the Haitian cases. n18
In addition, the more than 10,000 Haitians "screened-in" the United States from Guantanamo, after INS officials found they had a credible fear of persecution continued to be in real danger of being denied asylum. Even before asylum officers had interviewed many of them after their arrival in the United States, the INS Deputy Commissioner publicly stated that 90 percent of these cases would probably be denied, a self-fulfilling prophecy.

Indeed, preliminary assessments by asylum officers in Miami recommended grants of asylum in thirty-three of the first forty-three Haitian cases. Yet, in a May 26, 1992 memorandum to the Associate Deputy Attorney General, the Director and Assistant Director of the Asylum Policy and Review Unit ("APRU") in Washington disagreed with eighteen of the recommendations to approve, but with only one recommendation to deny. He also expressed concern that the grant rate was "higher than expected." To combat this, special incentives were given to asylum officers to deny these cases, specifying that the "INS could be encouraged to...count a completed denial as a double case completion and a completed grant as a single case completion for the purposes of ... officer evaluations."

Many Haitians screened in from Guantanamo who clearly deserved asylum have been denied such relief. For example, a young woman who was beaten and repeatedly raped by a member of the Haitian military because of her political activity following the 1991 coup d'etat was nonetheless denied asylum. On December 5, 1997 the Miami Asylum Office Director stated that the current approval rate for Haitian applicants was less than 15 percent. n19

In 1994, after mounting pressure from the Congressional Black Caucus and other groups, President Clinton permitted intercepted Haitians to again be taken to Guantanamo rather than forcibly repatriated. According to United States Government officials, Guantanamo's facilities at peak times during 1994-95 held as many as 32,362 Cubans and 21,638 Haitians. While the United States Government paroled into the United States virtually all of Guantanamo's Cuban refugees during this time, it forcibly returned to Haiti virtually all of Guantanamo's Haitian refugees.

Among Guantanamo's Haitian refugees were 356 children who arrived there unaccompanied by an adult. Most of these children had witnessed close family members being murdered by Haiti's paramilitary forces, and some of them had barely escaped Haiti with their own lives. Many of the children's closest living relatives were in the United States. While all of their Cuban counterparts had long been admitted to the United States, by the end of April, 1995 the United States Government had granted parole to only twenty-three of these Haitian children. Even in the months before it decided to return President Aristide to power, the United States Government never seemed to have seriously considered allowing these children, as a group, to enter the United States. n20

The unaccompanied Haitian minors were held at Guantanamo under extremely distressing conditions. They were largely isolated from their family and friends in the outside world, as well as from journalists and attorneys. They lived largely without information about the outside world, especially about Haiti, living in several cases without access to proper medical care or counseling for health-threatening complaints. The children were housed in leaking tents where many suffered damage to their few belongings. Some lived without shoes or a change of clothes, and were awakened at 6 a.m. daily, even on weekends.

Several Haitian children attempted suicide. These attempts included drinking clorox, hanging by the neck from a tree and inserting fence wire into the vagina. In response to complaints made by attorneys who visited the Haitian children in January, 1995, the United States Atlantic Command acknowledged in March, 1994, that some of its soldiers had subjected Haitian children to physical and verbal abuse. ["Two soldiers were found to have been involved in isolated cases of mistreatment. They used excessive force in subduing a number of adolescent Haitians... The force used included...flexible plastic hand cuffs, and forcing the minors to kneel on the ground for several hours. Some instances of verbal abuse also occurred."]

Although the United States Government claimed to be acting in the best interests of Guantanamo's unaccompanied Haitian children, it never explored the strong support system available to these children in the United States. At the same time, its preparation of a support system for these children within Haiti seems to have been both indifferent and incompetent. n21 In March of 1995 Amnesty International USA criticized the United States government for denying the unaccompanied Haitian children a fair INS screening interview and the right to apply for political asylum.

By June, 1995 the majority of these children had been forcibly repatriated, prompting protests by members of the Congressional Black Caucus and a number of Hollywood notables. n22 The Attorney General finally ordered the parole into the United States of most of the remaining Haitian children at Guantanamo, a measure that to many seemed too little, too late. n23 Many of the children who were forcibly returned are living on the streets in Haiti today and are at great risk.
At least one young Haitian girl was brutally raped following her forcible return.

In its 1996 Annual Report, the Inter-American Commission on Human Rights, Organization of American States, concluded that the United States' interdiction and repatriation policy toward Haitians violated the following provisions of the American Declaration of the Rights and Duties of Man: (1) the right to life, (2) the right to liberty, (3) the right to security of the person, (4) the right to equality before the law, (5) the right to resort to the courts, and, (6) the right to seek and receive asylum.

The United States' interdiction, detention and parole policies aptly call attention to the disparities between our treatment of Cuban and Haitian refugees. 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.

[*733] Cubans have constituted a migration stream far larger than Haitians, yet Cubans are routinely paroled into the United States and freed from detention, while Haitians are not. While Cubans are authorized to work and eventually obtain permanent resident status, Haitians are systematically detained and deported. Even when Haitians are released from detention, they are frequently denied work permits.

The Cuban Refugee Adjustment Act (CAA) of 1966, which permits Cubans who are paroled or admitted to the United States to apply for permanent residency one year later, accounts in large measure for the stark difference in treatment between the two groups. But what makes this law so remarkable is that it is open-ended, has no cut-off date, and has not been repealed. Because Cubans are eligible for residency under the CAA, few have even needed to apply for asylum.

Additionally, Cubans have been eligible to enter the United States as part of the government-sponsored Refugee Resettlement Program, or through the sponsorship of the Cuban-American National Foundation. n24 No comparable program exists for Haitians.

Although in the past few years the United States has begun interdicting and returning Cubans attempting to come to the United States by boat, Cubans have immigration options open to them that are denied to Haitians. Shipboard screening procedures, while far from perfect, are in place for interdicted Cubans, while Haitians are automatically returned without screening. In addition, under an agreement with the Cuban government, at least 20,000 visas must be given to Cubans to come to the United States each year. n25 As mentioned earlier, Cubans who are admitted or paroled into the United States may apply for permanent resident status after one year under the Cuban Adjustment Act even if they came to the United States for purely economic reasons. None of these options are open to Haitians. Cubans are also exempt from the recently implemented expedited removal provisions of the immigration law that passed in 1996.

In the South Florida community, the striking disparity of treatment between the Cubans and Haitians is frequently evident, and often borders on the incomprehensible. For example, in July, 1991, an old [*734] wooden boat, overloaded with 161 Haitians, came upon two Cubans bobbing on an inner tube raft. The Haitians rescued the Cubans and steered towards Miami. The United States Coast Guard stopped the boat, offering refuge to the two Cubans in Miami and returning the Haitians to Haiti. To exacerbate matters, two days later, five young Haitian boys who were "stowaways" on board a Honduran freighter arriving in Miami. The captain, warned by the INS that he would be responsible should the Haitians escape. n26 Were put in heavy chains and cages and left for hours on the deck of the ship in the parching sun because the captain had been warned.

Similarly, when in late February, 1993, a Haitian commandeered a plane to West Palm Beach, claiming he was fleeing political oppression in Haiti, he was met by an FBI swat team, arrested and charged with air piracy. Federal public defenders argued that their Haitian client should be treated like Cuban nationals who had not been prosecuted, even when they had used force, kidnaping, and hijacking to find freedom in the United States. The Haitian man was eventually released on bond pending his trial.

Perhaps the most visible example of the discriminatory treatment of Haitians in Miami occurred in 1990. Television footage of a demonstration across from the INS building showed Haitian protestors being brutally beaten by police and at least five bloody Haitians being carried away. In early February, 1993, as a result of these acts, the City of Miami agreed to pay $ 650,000 to fifty-six of these Haitians. Under the agreement, the City did not admit any guilt in the case.

Lamar Smith has argued that Nicaraguans and Cubans were granted amnesty because they were allies in the Cold War fight against communism. This did not surprise attorneys who represent asylum applicants of different nationalities and are familiar with the differences in treatment accorded to Haitians and other fleeing brutal dictatorships compared to those from communist countries. Relatively mild mistreatment of Cubans in their homeland, for
example, may result in a grant of asylum, while gross mistreatment of Haitians does not.

Historically, State Department opinion letters and reports relied upon by the INS have minimized the extent of political oppression in Haiti and taken an unreasonably optimistic view of the political situation there. The INS has relied upon State Department reports on Haiti even [*735] when they are contradicted by human rights organizations such as Amnesty International and Human Rights Watch. n27 Ironically, shortly after Baby Doc Duvalier fled Haiti, a high ranking State Department official appearing on "Nightline" claimed that the Tonton Macoute - who had repeatedly been dismissed by The State department as a non- government entity whose brutal attacks on innocent Haitians therefore did not rise to the level of political opinion - were Duvalier's own personal henchmen. Since Aristide's return to Haiti, State Department reports concluded that country conditions there have changed to such an extent that asylum should now be routinely denied to Haitians, even for those who have suffered past persecution and clearly warrant relief. Congressman Lamar Smith likewise asserts that Haitians who fled Haiti following the 1991 coup d' etat should no longer fear to return since Haiti is now a democracy. Unfortunately, however, Haiti today is a fragile democracy at best. Those who terrorized the masses during the have never been arrested and human rights groups recognize the deteriorating political situation there. In testimony before the Senate Judiciary Subcommittee on Immigration on December 17, 1997, Amnesty International officials indicated that the situation in Haiti is unstable and has worsened in recent months. "Any one returning to Haiti cannot be assumed that they will be protected by the existing Haitian justice system... Any blanket assessment that the change in government can allow all who fled the country to return without fear of harm is... incorrect in our view." The United Nations High Commissioner for Refugees similarly concluded in August, 1997 that "the weakness of Haiti's institutions, inherent from decades of political repression, undermine the capacity of the State to meet the basic obligation to protect its citizens... This office believes it would be inappropriate to conclude generally that Haitian asylum seekers would no longer face persecution upon return to Haiti."

United States relations with Haiti over the years bears mentioning. American domination of Haiti was first established in 1915 when United States Marines began a nineteen year occupation of the country. During the Duvalier family era, the United States supported their rule, money, weapons, and training flowed from Washington to the Haitian National Palace.

And even with glaring evidence of abuses committed by the Duvaliers, United States economic support continued. One week after [*736] jailing almost every opponent of Jean Claude Duvalier's government, Haitian officials sat down with representatives from the United States and other Western countries, who were the primary donors to the Duvalier coffers. Despite these abuses, Haiti continued to receive about 137 million dollars in multi-lateral and bi-lateral aid, the United States remaining by far, the largest contributor to the Haitian budget. United States aid continued to flow despite the fact that the Haitian government broke every promise made to the United States in accepting aid. Devel opment experts have said that the bottom line regarding foreign assistance to Haiti is it resulted in somewhat less hunger for the poor, but above all, more prosperity for the ruling families in the Duvalier dynasty. n28

Perhaps the most blatant example of the extent to which politics affects our treatment of immigrant groups in South Florida followed Aristide's election, when Haitians requested a permit to celebrate in a local park and were told by Miami officials that they could do so only so long as Fidel Castro was not invited to the inauguration in Haiti. Haitian leaders protested that such a policy violated the First Amendment and ultimately Miami Mayor Xavier L. Suarez reversed the questionable restriction on the Haitians' celebration.

Historically, Haitian refugees have had few powerful supporters in Washington. However, following the 1991 coup in Haiti, both Republicans and Democrats forcefully spoke out on their behalf. But, even with bipartisan backing for legislation that will grant Haitians relief similar to that given to those groups who benefited from the Nicaraguan legislation (NACARA), they have thus far come up short. n29

Florida is home to many persons from Central and South America and the Caribbean who fled political turmoil in their native countries. Under NACARA, Nicaraguans who arrived as recently as December 1, 1995 are able to apply for permanent residence, regardless of their reasons for coming to the United States. That arrival date is five years after the Sandinistas were voted out of office. Similarly, Cubans who arrived before December 1, 1995 will be eligible for permanent residency. This is an extraordinary victory, because even under the old, more generous suspension of deportation rules, Nicaraguans and Cubans had to prove 7 [*737] years of continuous residence in the United States and extreme hardship if deported to be allowed to remain here.
Salvadorans and Guatemalans fared less well under the new law. Although their mistreatment by the United States government in the asylum process led to a landmark legal settlement requiring reconsideration of their cases, they will have only the possibility (but no guarantee) of suspension of deportation under prior immigration rules. Similarly, people from eastern Europe and the former Soviet Union who have been in the United States since December 31, 1990 will only be eligible for suspension of deportation under the old rules. They too will have to convince judges, on a case-by-case basis, that they, or family members, will suffer extreme hardship if deported. If denied, they may be deported.

Haitians received neither residence nor the possibility of the suspension of deportation under NACARA, yet many arrived years before Nicaraguans and Cubans, who will soon be granted residence.

Representative Lamar Smith's argument that, unlike the Haitians, Nicaraguans and Cubans are deserving of amnesty because their nations were seized by communist dictators flies in the face of Congress' attempts to discard favoritism toward those fleeing communist regimes and to depoliticize refugee policy. The Refugee Act of 1980 was designed to bring United States law into conformity with international treaty obligations and to establish objective criteria for determining refugee status.

Even the United States government admits that many Haitians fled oppression. Thousands are in the United States with the government's permission after they proved a credible fear of persecution.

Not surprisingly, NACARA - still called the 'Victims of Communism Relief Act' by some members of Congress - has an ideological bias which negates the suffering of victims of right-wing regimes. Its official title, The Nicaraguan Adjustment and Central American Relief Act, belies the sweep of its provisions. Benefits for Cubans slipped into the provisions for Nicaraguans, and benefits for those from Eastern Europe and the former Soviet Union are tucked into the provisions for Central Americans. It is estimated that 153,000 Nicaraguans and Cubans, most of whom reside in South Florida, will get their green cards as a result of this law.

But, the new law does not just deliver an extraordinarily good deal to some; it also makes things worse for all those not specifically included in its provisions.

Last summer, Attorney General Janet Reno vacated a harsh Board of Immigration Appeals decision which had changed the rules for persons applying for suspension of deportation and made new, harsh provisions retroactive. This was an across-the-board decision, which applied equally to all nationalities. The new NACARA legislation cancels the Attorney General's decision and makes the harsh provisions of the new immigration law passed in 1996 retroactive. For example, Alexandra Charles, a nineteen year old Haitian girl who witnessed her parents' murder in Haiti, would have been eligible for suspension of deportation under the Attorney General's decision but now, as a price of the new legislation, she is not.

Nicaraguans and Cubans are certainly deserving of amnesty and justified in celebrating their good fortune. It is important, however, to look at how legislation that is so beneficial to them, at the same time, hurts others. The new law is divisive and discriminatory. It pits one group against the other, and gives benefits to some nationalities at the expense of others. This has an especially large impact upon a community like South Florida which is home to so many similarly situated groups who have fled political oppression and established lives here.

The Haitians responded passionately to their omission in the new laws in large part because they believed they were going to be included. In a matter of forty-eight hours after NACARA's passage, Haitians collected 20,000 signatures on a petition asking for equal treatment. A number of rallies, in which thousands participated, followed.

As a partial explanation for the disparate treatment, Haitians were told that Nicaraguan government officials had urged the Clinton Administration to grant the Nicaraguans amnesty because, if tens of thousands of Nicaraguans were deported, it would create enormous economic instability in Nicaragua. To Haitians this only strengthened their own case, as Haiti's fragile economic situation is no secret. Haitians in the United States reportedly send up to $500 million to Haiti a year. So like his Central American counterparts, Haiti's President Rene Preval wrote to President Clinton, highlighting the destabilizing effect the return of thousands of Haitians would have on Haiti and asking for equal treatment.

Congress also claimed that despite the recent establishment of democratically elected governments in Nicaragua, Cuba, El Salvador, Guatemala, and specified Eastern European nations, many of these nationals had built equities here, and therefore deserved an opportunity to remain. The Haitians argued that they too built businesses, paid taxes, and, raised their families in South Florida. They contribute to our communities and enrich the ethnic diversity of our state. So too have Hondurans, Asians and others excluded in NACARA.
Haitians excluded from this latest round of amnesty provisions were reminded of an earlier time when they had to struggle against effort [*739] to deny them U.S. residency. In a decision subsequently upheld by the United States Supreme Court in February, 1991, a federal district court judge ruled that Haitians who sought to legalize their status under the farm worker amnesty program of 1986 were denied a "meaningful opportunity to be heard." Based on the largest, most ambitious fraud investigation ever undertaken by the INS, the United States government charged mostly poor, uneducated Haitian farm workers with committing fraud in their applications for residency under the amnesty program ("Operation Cucumber"). Federal judges hearing criminal charges against the Haitians criticized the government for bringing the charges, and the government was forced to dismiss all of the cases.

If there is a silver lining here, it is that in South Florida, Nicaraguans, Cubans, African Americans, and others, have raised their voices on behalf of the Haitians. Groups that seldom, if ever, commented in any meaningful way before, in part because each group was so busy trying to deal with its own problems, are now doing so and learning they have far more in common than differences, and that there is strength in unity. Moreover, Haitians and their advocates are calling for equal treatment for the Guatemalans, Salvadorans, Hondurans and others similarly situated as well.

Democrats and Republicans have also renewed their efforts in recent months on behalf of the Haitians. Al Cardenas, Vice Chairman of the Florida Republican Party, along with Ana Navarro, a leading Nicaraguan American activist, and African American County Commissioners have called upon legislative officials "to do the right thing" for the Haitians, pointing to the many benefits such legislation would provide for South Florida. The Greater Miami Chamber of Commerce introduced a resolution on August 18, 1998, endorsing legislation to grant relief to the Haitians, claiming that the wholesale deportation of Haitians "would upset the balance of our diverse citizenry which gives us our strength in the global economy." This deportation, they argued, would further destabilize Haiti's fragile political and economic situation, thereby increasing the number of Haitian refugees fleeing Haiti in the future.

On June 18, 1998, the Roman Catholic Bishops of Florida asked for compassionate and just treatment of the Haitians for similar reasons. The Congressional Black Caucus and leaders of the Hispanic Caucus have also called for equal treatment.

Congresswoman Carrie Meek (D-FL) has long led the battle to provide equal treatment for the Haitians. Her latest effort began in the spring of 1997, when she and members of a Miami-Dade delegation met with Attorney General Janet Reno to discuss including Haitians in proposed changes to the Illegal Immigration and Reform and Immigrant Responsibility Act of 1996. 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. The Administration then agreed, in December, 1997, to provide temporary relief for Haitian nationals pending further Congressional action and granted Deferred Enforced Departure (DED) to Haitians who were paroled into the United States or applied for asylum prior to December 31, 1995. These Haitians are protected from deportation for one year while Haitian advocates work to obtain more permanent, legislative relief.

On April 23, 1998, the Senate Judiciary Committee approved the Haitian Refugee Immigration Fairness Act, 1504, which was introduced by Florida Senators Graham (D-FL) and Mack (R-FL). This bill would grant permanent residency to an estimated 40,000 Haitians who were paroled into the United States or who applied for asylum prior to December 31, 1995. (Approximately 10,490 Haitians were paroled into the United States between 1990-1997 and 42,856 Haitians applied for political asylum). At the mark up of this bill, Senators Spencer Abraham (R-MI) and Edward Kennedy (D-MA) introduced a substitute bill similar to the Graham-Mack bill but which would also include a small group (about one thousand to two thousand) of unaccompanied children and orphans. The substitute bill was passed by unanimous vote and now moves to the full Senate for consideration. The Senators were assured by the Administration that Haitians will not be deported while Congress considers this measure.

The Senate bill is one of several that has been introduced to provide relief to Haitians who currently find themselves in legal limbo. On the House side there are three additional bills, none of which have yet been marked up in subcommittee or committee. Representative Carrie Meek introduced the most generous bill, HR 3033, which would give "green cards" to any Haitian in the United States as of December 31, 1995. It is estimated that some 100,000 Haitians, many in South Florida, would be affected. Only this bill provides equity for the Haitians. n30 But even Representative Meek has conceded it has little chance of passing. Representative John Conyers (D-MI) has introduced a companion bill (HR 3049) to Senators Graham and Meek's bill. Another bill, introduced by Representative Luis Gutierrez (D-IL), HR 3054, would grant permanent residency to
Salvadorans and Guatemalans who were covered in [*741] NACARA and to Haitians in the United States as of December 31, 1995. [A delegation of Guatemalans from South Florida traveled to Washington in July of this year to ask Congress to grant permanent residence to more than 180,000 undocumented Guatemalans now subject to deportation].

The battle to provide equal treatment for the Haitians is far from over. While it is heartening that key Republicans such as Senators Connie Mack, Spencer Abraham, and Alfonse D'Amato, and Representatives Jack Kemp, Ileana Ros-Lehtinen and Lincoln Diaz-Balart have taken up the cause, Lamar Smith's persistent efforts to convince the public that the Haitians do not deserve help poses a serious problem.

Next year is an election year which means immigrant bashing may again become popular. The White House's commitment to new legislation is unclear and the United States military action in Haiti has made it hard for the United States to acknowledge the desperate political and economic situation there.

Representative Smith has misrepresented the history of the United States policy toward Haitians. His revisionist version of events should not be an excuse for denying Haitians equal treatment now. The Reverend Jesse Jackson more aptly described the plight of the Haitians when he claimed that they have been "trapped between the tyranny at home and the abandonment and rejection of the American people."

Nicaraguan activists have said that Republican members of Congress carried out a jihad in obtaining legal status for them. Let's hope they do that now for Haitians and others excluded and punished by the new law.

Our responsibility to protect persons among us who have fled political persecution should not depend on politics. Similarly situated immigrant groups should be treated equally. Nicaraguans and Cubans who arrived in the United States as of December, 1995 will be given residence under the new law. Haitians deserve no less than that.

FOOTNOTE-1:

n1. Between 1986 and 1991, only 28 Haitians were granted asylum. In 1986, 5 Haitians were granted asylum; in 1988, 8; in 1989, 11; in 1990, 3; and in 1991, 1. These figures are generous, since many other Haitians who would have applied for asylum did not do so because the odds were so great against their claims being fairly considered.

n2. Given the grave political situation in Haiti following the 1991 ouster of President Aristide, the number of Haitians granted asylum in the aftermath of the coup was alarmingly low. In 1992, 120 Haitians were granted asylum by the INS, representing a 30.6 percent approval rate, which still lagged far behind the approval rate in 1992 for Chinese applicants (84.8 percent) and applicants from the former Soviet Union (49.8 percent). In 1993, 636 Haitians were granted asylum; in 1994, 1060; in 1995, 749; and in 1996, 1,491. Moreover, any meaningful increase in the approval rate was temporary.

n3. Over two-hundred written and videotaped statements of Krome detainees, ex-detainees, former Krome employees, attorneys, and paralegals were collected by attorneys at the Haitian Refugee Center in Miami between 1989 and early 1991, painting a picture of cycles of humiliation and abuse directed in large part against the Haitians at the whim of certain guards. In the spring of 1990, Florida Representative Dante Fascell, who headed the House Foreign Affairs Committee, called for an FBI investigation, labeling the documentation of wrongdoing against Haitians at Krome "disturbing and indicating that longstanding abuses at the center remain uncorrected." Less than a year later, a Haitian woman detained at Krome was allegedly raped by a guard. She remained in detention for another two months, claiming her attacker was still on the job, although the INS knew of her charges shortly after the incident in question. INS's reaction to the public airing of allegations of abuse at Krome was not encouraging. A teacher and a nurse who spoke to reporters about such abuses were subsequently dismissed. Another teacher was let go after complaining to Miami INS officials about confiscation disposal of Haitian detainees' belongings, including Bibles and books.


n6. Former Haitian President Prosper Avril has stated that he believes the Haiti interdiction agreement is illegal under Haitian law, since an exchange of diplomatic letters is not a proper method of entering into a bilateral agreement with another country.

n7. From October 29, 1991 until November 18, 1991, the United States refrained from repatriating the Haitians and brought them to Guantanamo. On November 18, 1991, the government resumed repatriations.

n8. It has been suggested that the media played a role in influencing public opinion. One report indicated that newspaper stories in four major American newspapers "systematically distorted the human rights record of President Aristide while underplaying the terror practiced by the coup government." The Press and Haiti: Systematic Distortions and Omissions, September 1991 - June 1992, HAITI COMMUNICATIONS PROJECT (Boston Media Action, Somerville, Mass.), Feb. 1993, at 1. The four newspapers evaluated were the N.Y. Times, the Boston Globe, the Washington Post, and the Miami Herald. A public opinion poll conducted by the Miami Herald and a local Miami television station in December 1992 also revealed that 57 percent of Florida residents believed that Haitians should be allowed to stay in the United States until it was safe to return to Haiti. Elizabeth Grudzinski, Bush, Florida Split on Haitians; 57% in State Poll Favor Letting Refugees Stay - For Now, Miami Herald, December 13, 1991, at 1A. However, a Mason Dixon poll conducted about six months later, from May 29 to 31, 1992, indicated that Florida voters overwhelmingly felt the United States could not afford to let the Haitians in and concluded they were simply economic refugees. Lizette Alvarez, Florida Split on Haiti Policy, Miami Herald, June 5, 1992, at 1A.

n9. Over 200,000 Cubans also came to the United States in an organized airlift between 1959 and 1962.

n10. A look at our treatment of those Haitians who were "screened-in" at Guantanamo but who allegedly tested positive for the HIV virus unfortunately supports the argument that we are not interested in saving the lives of Haitians. In late 1991, United States government officials began testing these Haitians for the HIV virus. Prior to 1992, no person who applied for asylum at a border or in the United States was ever excluded for being HIV-positive, and Cubans interdicted at the same time and literally in the same boat as Haitians were immediately transported to the United States and allowed to enter the asylum program without ever being medically screened for HIV. The Haitians were housed at Guantanamo in tin-roofed shacks surrounded by barbed wire, denied adequate legal representation, and occasionally suffered punitive measures handed out without any procedural rights. Doctors from the Center for Disease Control warned the Navy that the Haitians should not be crowded together in a camp such as Guantanamo because that could exacerbate their medical condition, and senior Health and Human Service officials, including former Secretary Sullivan, wanted the restriction on the Haitians lifted, as did international health authorities. In reviewing the legality of the confinement of these Haitians, the court found that "The Haitians' plight is a tragedy of immense proportion and their continued detainment is totally unacceptable ..." On June 8, 1993 the court ordered the government to release the approximately two-hundred screened-in Haitians immediately from Guantanamo Bay "to anywhere but Haiti" and to allow them access to counsel after almost two years of imprisonment at Guantanamo Bay. In response to the court order, the government allowed those remaining at Guantanamo Bay to enter the United States and pursue asylum claims.

n11. Attorneys for the Haitians learned of this less than fifty-six hours before filing their petitions for writ of certiorari with the Supreme Court. The Haitians' attorneys claimed that the government precluded them from obtaining this information in a timely fashion.

n12. Haitians and their advocates were aware that the same Coast Guard that searched for Haitians also searched for
Cubans, but that regardless of what the individual Cubans and Haitians had to say, the Coast Guard operated with the intention of returning Haitians to Haiti, and with the intention of bringing all the Cubans they found safely to the United States. In 1991, 2203 Cubans came to the United States on boats or rafts, and in 1992, 2205 did. At the same time that Haitians were being forcibly repatriated from Guantanamo in 1991 and 1992, Cubans who made it to the United States Naval Base were flown to the United States and paroled into the community.

n13. The Bush Administration's handling of the Haitian refugee crisis was a striking contrast to the Cuban freedom flotillas in the early 1960's and United States' handling of the Vietnamese in the 1970's. Indeed, the United States vehemently criticized the forced return by British Hong Kong of the Vietnamese Boat People.

n14. Given the failure of several broader Haiti-focused bills to progress during 1992, H.R. 5360 sought only to make explicit the United States obligation under international law not to forcibly return political refugees found at sea as well as within United States territory. See H.R. 5360, 102d Cong., 2d Sess. (1992). President Bush had threatened to veto any bill protecting the Haitians that passed Congress.

n15. Despite a December, 1988 presidential proclamation extending the United States territorial waters from three to twelve miles, Haitians interdicted had to make it to within the three mile limit.

n16. It is believed that about 85 percent of these Haitians reside in South Florida. Less than a dozen pro bono attorneys were available to work on these cases and many of them could not devote their time exclusively to the Guantanamo caseload.

n17. Asylum officers informally stated that on certain days the "screen-in" rate was close to 100 percent.

n18. Even INS officials acknowledged that 10-15 percent of the "screened out" Haitians may nonetheless be at risk if returned.

n19. In a National Asylum Study Project prepared by the Harvard Law School Immigration and Refugee Program after the forcible return of the Guantanamo Haitians, it was found that the "screened in" Haitians were victims of special scrutiny of their asylum claims upon arrival in the United States, including heightened legal scrutiny, that Special Department of State investigations of their asylum claims jeopardized their family members and threatened the confidentiality of their asylum applications, and that asylum officers often turned what should have been an impartial, non-adversarial hearing into a hostile credibility examination. One particularly alarming example of the unfair treatment of these Haitian cases was the following statement in a Notice of Intent to Deny about the lure of "the luxuries at Guantanamo Bay":

Your testimony is just not plausible. What is more likely is that word had gotten to your hometown of the free food, medical care, clothing, the chance to get to the United States, and other luxuries at Guantanamo Bay and you took a chance by getting on a boat with many other people who were leaving the poverty of Haiti.

n20. Even Haitian children attempting to come to the United States legally have not been spared discriminatory treatment. Haitian children eligible for family-sponsored visas were stranded in Haiti for months following the 1991 coup d'état, while their applications were subjected to heightened scrutiny imposed on no other nationality. This group included children who had lived with their parents in the U.S. for years, attended school here, and had little familiarity with Haiti or its language. Following a report prepared by attorneys at Florida Rural Legal Services and at the urging of Congresswoman Carrie Meek (D-FL), Attorney General Janet Reno granted humanitarian parole to ninety-eight of these children. For more details, see "Haitian Children Awaiting Visas: A Plea for Help," a report prepared by Cheryl Little and on file with the Florida Immigrant Advocacy Center.

n22. Hollywood notables included, among others, Danny Glover, Susan Sarandon, Julia Roberts, Harry Belafonte, Michelle Pfeiffer, Jack Lemmon, Jonathan Demme, and Gregory Peck. Even those children fortunate enough to have made it to the United States now find themselves in a quandary. Absent a grant of political asylum - very difficult to obtain in Haitian cases - most will be subject to deportation when their parole expires. This is in marked contrast to the Cuban children paroled from Guantanamo who are eligible for legal United States residency under the Cuban Adjustment Act a year and a day after their parole.

n23. At the urging of attorneys from the Florida Immigrant Advocacy Center and others, Attorney General Janet Reno eventually paroled five of these children into the United States, including the young rape victim.

n24. Under the Refugee Resettlement Program, 1070 Cubans were admitted through the first eight months of fiscal 1991; under the Cuban-American National Foundation, 1734 Cubans were admitted as of the end of May, and more than 8500 since the programs' inception in 1988 until 1992. The number of Cubans requesting non-immigrant visas for travel to the United States also increased steadily over the years. A total of 14,000 Cubans arrived in Florida by plane with tourist visas in 1990. The United States Immigration and Naturalization Service statistics show that 30 to 40 percent of these Cubans did not return to Cuba.

n25. United States immigration laws also provide annual ceilings for refugee admissions. Most of the slots for those in Latin America and the Caribbean have gone to the Cubans.

n26. The following year, at the same time politicians in South Florida were screaming about the prospects of another Mariel and our county's inability to handle any further crisis as a result of Hurricane Andrew, the Greater Miami Chamber of Commerce hosted a two-day conference attended by federal, state, county, and city officials, to develop a working plan for absorbing hundreds of thousands of Cuban refugees should Castro fall.

n27. In assessing the claims of Haitians "screened in" at Guantanamo upon their arrival in the United States, asylum officers relied on State Department opinion letters, which at times contradicted Department of State materials, INS Haiti memos, non-governmental source of documentation, and other State Department opinion letters.

n28. After Duvalier fled Haiti, lawyers in Miami filed a lawsuit against him and his cohorts, and a Federal District Court in Miami found that they had pilfered over $500 million in aid meant for the Haitian people. While this money to date has not been collected, the decision in this case indicates the extent to which United States financial support to Haiti was misused.

n29. Two of Florida's Republican members of Congress, Ileana Ros-Lehtinen and Lincoln Diaz-Balart, are Cuban immigrants, and, unlike many of their Republican counterparts, have fought for the rights of immigrants.

n30. While the number of Haitians who would obtain relief if they were granted equal treatment with the Cubans and Nicaraguans under NACARA is somewhat larger than what is proposed in the Haitian Refugee Immigration Fairness Act, that number is still far fewer than the number of Cubans and Nicaraguans granted amnesty.
LENGHT: 2673 words

BEYOND/BETWEEN COLORS: Florida's Minority Participation in Legal Education Program

Lyra Logan, Esq.

SUMMARY: ... I am Lyra Logan, and I run Florida's Minority Participation in Legal Education Scholarship Program which I administer from Miami. ... I will use my time this afternoon first to detail the historical background that led to forming this coalition and establishing the unique Minority Participation in Legal Education Program (the "MPLE Program"). ... In response to these various findings of low minority participation in law, the Florida Legislature, in 1991, required the State University System to study the feasibility of reestablishing the FAMU law school. ... FIU, which is 50% Latino and 11% Black, argued that because of the large minority population in Miami-Dade County, the law school should be located on its Miami campus and pointed to its record of graduating the most minority students in the State University System. ... To meet that need, the University System officially proposed the MPLE Program, which would be designed eventually to fund enrollment for 200 minority law school students and 134 undergraduate pre-law students each year. ... To conclude, I simply will note that the story of the Minority Participation in Legal Education Program in Florida has been a model lesson in coalition building and maintenance. ...

[*743]

I am Lyra Logan, and I run Florida's Minority Participation in Legal Education Scholarship Program which I administer from Miami. So, welcome to sunny Miami-Dade County, Florida, a racial and ethnic melting pot the likes of which you will rarely have the pleasure of visiting. Here each day over two million people from approximately 140 countries speak all major and various other languages. But that's Miami-Dade County, Florida, ladies and gentlemen. Get in your rental car and head north on I-95. Look around, and you will quickly realize that you have left 56% of the State's Latino population behind. Keep driving, and it won't be long before it becomes crystal clear that you're in a State that still is very much a part of the Deep South, where Blacks and whites still mostly keep to their own separate and unequal sides of the railroad tracks; a State in which no racial minority has ever won a statewide election; a State whose official song refers to Blacks as "darkeys" and where thousands protest angrily at attempts to change that song; a State where, in 1991, despite a population consisting of roughly 26% minorities, the State Bar had a membership consisting of only 6% minorities and where, in 1998, those numbers still have not risen all that much.

How did this State, the Florida I just described, become the only State in the union to establish a Minority Participation in Legal Education Program, that is, a statewide state-funded affirmative action scholarship program designed to increase the numbers of Blacks, Latinos and other minorities practicing law? The answer: Black and Latino members of the Florida Legislature retreated from a bitter battle over control of a new minority law school and coalesced to meet their common goal of increasing the number of minority attorneys in the State.

I will use my time this afternoon first to detail the historical background that led to forming this coalition and establishing the unique Minority Participation in Legal Education Program (the "MPLE Program"). That description will make clear the point of divergence between the two groups as well as the theory and realities that bind them. Then I'll talk about the changing political landscape in Florida which in its various mutations has supported the coalition. That discussion will lead me to talk about the dangers the coalition and Program [*744] face in the future and the lessons progressives should draw from this entire experience.

Now, I will provide some necessary historical background. Many would say that this story began over thirty years ago when the State closed the law school at historically Black Florida A&M University (FAMU). In June 1964, Florida's State University System examined legal education in Florida and determined that three actions would help the University System meet an anticipated increase in demand for lawyers. Those three actions were: (1) to expand the size of the all white University of Florida Law School; (2) to close the all Black FAMU Law School, purportedly for failure to graduate a significant number of students who would later be admitted to the Bar; and (3) to create instead a law school at predominantly white Florida State University (FSU).
In keeping with that plan, in 1965, the all-white Florida Legislature transferred the FAMU Law School funds to FSU to begin the law school there. n1 Needless to say, many Blacks and others called the move racist, unjustified, and unfair. Notwithstanding those expressed sentiments, FSU's law school began operating in 1966, and FAMU's law enrollment was phased out by 1968.

The next relevant action took place when the State University System reviewed statewide public legal education again in 1985 and 1990. In both reviews, the State University System found that Florida had a sufficient number of lawyers to meet its needs but that minority participation in legal education and in the legal profession was seriously limited: the Board estimated that 4% of lawyers were minorities; 3% Latino and 1% Black. Due to other more pressing public university concerns, however, the Board listed minority under-participation in legal education as a lower overall priority for the 1990's and beyond, but did commit to seek options for addressing the shortage.

The next relevant event occurred when Florida's Supreme Court formed a Racial and Ethnic Bias Study Commission. In 1990, that Commission published the first part of its study entitled Where the Injured Fly for Justice, n2 a report and recommendations focusing on the broad issue of reforming practices which impede the administration of justice. The study listed the critical shortage of minority law students, attorneys and judges as a major impediment to the fair dispensation of justice to minorities in Florida.

In response to these various findings of low minority participation in law, the Florida Legislature, in 1991, required the State University System to study the feasibility of reestablishing the FAMU law school. n3 The State University System presented the results of the study in a December 1991 report. n4 The report determined that the new law school would cost more than $25 million to start and $8 million to run each year. The report further found that, once begun, the new school would not graduate candidates who could sit for the Florida Bar Exam for several years. The report, therefore, also suggested more immediate options to respond to the under-representation of minorities. One of those options was creation of the MPLE Program.

Little else happened until the State Legislature's 1993 session, during which Florida International University (FIU), regarded by some as the State's "Hispanic" university, began its own campaign for control of the proposed new minority law school. The resulting competition between FIU and FAMU spurred a racially tinged fight between Black and Latino legislators.

FAMU, which is 90% Black, argued that in fairness it should get its law school back and pointed to its successes at educating Black professionals. The State's Black legislators, who are approximately 1/4 of the Legislature's Democrats, supported FAMU and leaned heavily on white Democrats to do the same.

FIU, which is 50% Latino and 11% Black, argued that because of the large minority population in Miami-Dade County, the law school should be located on its Miami campus and pointed to its record of graduating the most minority students in the State University System. All Latino legislators but one, all of whom were from Miami and made up approximately 13% of the Legislature's Republican party, supported FIU and had the backing of most other Republicans. Thus the partisan and racially divisive battle raged but was left unresolved.

A major event occurred in September 1993, when the State University System adopted its 1993-1998 Five Year Master Plan, a great portion of which dealt with legal education. In the Plan, the University System rejected the new law school proposal, noting that the State already had six accredited law schools, with applications down at five of them, and also had one of the highest lawyer-to-population ratios in the nation. It decided though, that, while Florida's taxpayers should not be asked to pay to produce more lawyers via a new school, the State needed more minority lawyers and judges. To meet that need, the University System officially proposed the MPLE Program, which would be designed eventually to fund enrollment for 200 minority law school students and 134 undergraduate pre-law students each year.

Finally, during the State Legislature's 1994 session, even while FIU and FAMU continued to bicker over a school few actually thought the State needed or could afford, a Black legislator in the House and a Latino Senator sponsored a bipartisan, biracial compromise bill to create the MPLE Program and begin immediately to address the shortage of minorities in law. n5 The bill passed the Senate and the House and the Governor signed it into law.

What I have just described for you is an experience that began as divisive competition but eventually resolved itself through a dual minority coalition that positively affected the making of social policy. The legal education coalition between Florida's Latino and Black communities successfully launched and survives for at least three main reasons.

One reason the Black/Latino coalition succeeds is that the two groups found common ground. They temporarily put aside individual desires and began to work toward a shared and widely supported ultimate
goal that lends itself to joint attainment. That goal is to use the State to help increase the numbers of minorities in the legal profession.

Another reason the Black/Latino coalition succeeds is that, for at least 1993-98, the State could not justify giving either group the law school it initially sought. The State University System rejected a new law school as unnecessary and too costly, recommending instead that the State direct its scarce resources to more pressing undergraduate education concerns.

I should note that, despite the University System's rejection, at any time the Legislature could have forced the issue, approved a school and sent the matter to the Governor for review. But, since Governors rarely approve expenditure programmes the University System has not requested, Governor Lawton Chiles likely would have vetoed plans for a new law school, particularly in view of the cost.

If the State had decided to give a school to one group, the coalition obviously would not have been necessary; one group simply would have triumphed, perhaps to the detriment of the other. The State's refusal to give either community a school forced the groups to work together or each walk away with nothing as they had done in 1993.

Another reason the Black/Latino coalition succeeds in maintaining the Program is that the coalition and the Program have existed in a supportive, though dynamic, political climate. The Program was created in 1994 by affirmative vote of a Democratic controlled House and an evenly split Senate, with the support of a Democratic Governor who has recommended the Program in his proposed budget every year since.

Each year since creation, the Program has had to endure the Legislature's budget review process in order to receive continued funding. The interesting part of the story is that the reviewing Legislature has changed twice since initial approval, after the elections every other year. During the 1995 and 1996 Legislative sessions, Democrats retained control of the House, but Republicans took the lead in the Senate. In 1997 and 1998, Republicans controlled both the Senate and the House.

Naturally, questions arose about the Program's fate after Republicans took control, since, as we know, the Republican Party generally disfavors affirmative action. The Program has survived, though, in the midst of this change of control largely because of the support of Florida's most powerful Latino group, Cuban Americans, most of whom, again, are Republican. They currently are 13% of the Republicans in the State Senate and 14% of the Republicans in the House. To maintain Cuban support, Republicans in Florida often must tolerate ideas, solutions, coalitions they quickly condemn and combat in other states. For that reason, the Program still could thrive even if, in November 1998, the State selects a Republican Governor to serve with the Republican controlled Legislature, as long as Cuban legislators continue to support the Program.

That brings us to possible future threats to the Black/Latino coalition for legal education. There are at least three.

One springs from the two groups' main point of divergence: each still wants its own law school. Both FAMU and FIU have told the State University System that a law school is among its top priorities for the five-year period from 1998-2003. If the State decides in the future to add a new school, the coalition will fail if the groups again divide and fight fiercely for control. 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.

Another future threat to the Black/Latino coalition is the Florida Civil Rights Initiative, Florida's version of Prop. 209. Proponents have sought to amend the State Constitution to end preferential treatment in public education, employment, and contracting, through both the citizen's initiative and the Constitution Revision Commission processes. A newspaper recently opined that the Republican party asked the proponents to table the issue so that it will not be a part of the 1998 gubernatorial campaign. Many feel they will revive the crusade shortly after the governor's race concludes. If they succeed in winning a constitutional preferential treatment ban, the MPLE Program as presently operated will likely end.

Another future threat to the Program is a possible federal constitutional challenge. Many in higher education say Florida is ripe for legal challenge because of its demographics and its numerous race-based programs. As we all know, the Hopwood n7 cases make race-based programs hard to defend. The holdings in those cases already have caused the Florida Bar Foundation to modify a program which provided law school scholarships to Black students. After Hopwood, the Foundation reviewed its program and decided no longer to limit the program to Blacks. If the MPLE Program is challenged, a court may find that it violates constitutional law.

To conclude, I simply will note that the story of the Minority Participation in Legal Education Program in Florida has been a model lesson in coalition building and maintenance. It shows how two minority groups
can stop fighting over limited resources, can acknowledge a common goal and then can pool their power to attain it. It also demonstrates the strategic importance of minorities maintaining considerable presence in both major political parties so that changes in control will less likely jeopardize a minority coalition's work.

Today, Florida is a State, and indeed America is a nation, made up mostly of various minority groups. We in those groups must find ways to put differences aside, to pool our strength and to work together more to guarantee that all institutions, including our legal system and our courts, reflect the society in which we live.

**FOOTNOTE-1:**


I. Introduction

Every Wednesday I returned to my old neighborhood. At Abriendo Puertas, n1 I interviewed immigrant families of East Little Havana. East Little Havana is one of the poorest neighborhoods in the city of Miami and is mostly composed of Latino families. As a student intern I assisted in providing legal services to the large indigent immigrant pop ulation. One day, Dora walked in the door. Dora had visible signs of physical abuse. She was concerned because her husband, who was a lawful permanent resident, threatened to take her children away. Dora was undocumented and explained that her husband said that he was going to have her deported. According to Dora's husband, her children would then have to remain here in the United States with him. She knew that this was not merely a threat because he had beaten her, drag ged her in the car, and driven her to the Immigration and Naturalization Service's ("INS") detention center. Once there, he told her he had changed his mind and was not going to turn her in to INS. Dora didn't know where to turn.

I began to see an increasing number of battered immigrant women come into Abriendo Puertas for legal assistance. With a scarcity of pub lic interest organizations in Miami, it was extremely difficult for bat tered immigrant women to obtain legal representation. As a Latina, who was raised in this community, I knew I had to try to change that fact. The state of Florida cove rs approximately 55,000 square miles and is a geographically diverse state, with urban, suburban, and rural areas. Poor immigrants in rural counties, particularly farm workers, have liter ally no access to direct legal services. South Florida's proximity to Cen tral and South America and the Caribbean makes it the locus of immigrant access. With one of the largest refugee populations in the United States, n2 Florida is second only to Los Angeles as a port of entry for large numbers of immigrants and refugees from these countries. The national statistics on domestic violence are well known: six million women are battered in the United States each year with the numbers increasing steadily. The devastating effects of domestic violence affect our entire society indiscriminately. n3 Domestic violence is blind to dis tinctions based on class, race, ethnic, religious, and economic lines. n4 Florida is not immune to this disturbing trend. In 1995, the Florida Department of Law Enforcement reported over

* Echoing green fellow, LUCHA: A Women's Legal Project, Florida Immigrant Advocacy Center. I would like to thank those who contributed to the development of the Project, including former Co-Director Terri Gerstein, and all of the LUCHA members. Thanks to Idalis Perez for her invaluable research assistance.

SUMMARY: ... East Little Havana is one of the poorest neighborhoods in the city of Miami and is mostly composed of Latino families. ... With a scarcity of pub lic interest organizations in Miami, it was extremely difficult for bat tered immigrant women to obtain legal representation. ... The Report of the Flor ida Governor's Task Force on Domestic Violence noted that "battered immigrant women are in triple jeopardy" because of the battery itself, cultural factors, and immigration problems." ... Obstacles Facing Battered Immigrant Women ... LUCHA: A Women's Legal Project was formed in 1997 as a grassroots membership organization that would address battered immigrant women's individual struggles of domestic violence, while providing the vehicle for them to become involved in the larger struggle on behalf of other women. ... A signifi cant portion of LUCHA's educational work focused on training domes tic violence service providers about battered immigrant women needs and the relief available under immigration law. ... It became crucial to train pro bono lawyers and domestic violence advocates in assisting battered immigrant women. ... Domestic violence advocates are given the tools neces sary to assist battered immigrant women in accessing services and gath ering evidence. One of the barriers that battered immigrant women face is the ability to establish their case under immigration law. ...
130,000 domestic violence crimes. In 1996, according to the Florida Coalition Against Domestic Violence, domestic violence centers provided 20,302 days of emergency shelter to 19,212 women and children. They also provided counseling services to 58,103 women and 9,433 children; assessed 7,846 children for abuse and neglect; and answered 150,352 calls made to the Domestic Violence Legal Hotline. In particular, Miami Dade County reported over 19,000 domestic violence incidents to the police in 1996.

With a large immigrant population in the state of Florida, battered women are particularly vulnerable and isolated. The Report of the Florida Governor's Task Force on Domestic Violence noted that "battered immigrant women are in triple jeopardy" because of the battery itself, cultural factors, and immigration problems." n5 Florida has the fourth largest immigrant population in the United States. Miami Dade County has one of the nation's largest immigrant populations, with fifty percent being foreign born.

This paper will discuss a response and approach to providing legal services to impoverished battered immigrant families. The first part will discuss the particular obstacles that battered immigrant women face in attempting to escape from their abusive homes. The next part discusses delivery of legal services to the poor, including traditional approaches as well as new and innovative models. The third part describes the response to providing legal services to victims of domestic violence in Miami. This model encompasses education, community outreach, and [*751] legal representation. Finally, I will discuss the community and client's response to the LUCHA model.

II. Obstacles Facing Battered Immigrant Women

Many battered immigrant and migrant women face numerous obstacles in their attempts to seek relief from abuse. These barriers include language, a lack of domestic violence service providers, a legal system that lacks cultural sensitivity, and a lack of information about legal relief that is available. These women may be naturalized United States citizens, lawful permanent residents, or they may be undocumented immigrants. Those who are undocumented have not obtained permission from the Immigration and Naturalization Service (INS) to remain legally in the United States. Some may have entered without INS detection. Others may have overstayed their visas. Many may qualify for Legal Permanent Resident Status but may not know they qualify. n6 Many immigrant women are simply unaware that there are legal avenues available to stop the violence, which will not affect their immigration status. n7

This ignorance and unfamiliarity is largely due to incorrect information provided to battered women by their abusers. n8 Large numbers of immigrant women are trapped in violent homes by abusive husbands who use the promise of legal status or the threat of deportation as a means to exert power and to maintain control over their wives' lives. n9 Immigrant women often fear that any sort of contact with governmental authority will expose their presence in the country and result in deportation. As a result, many women choose to stay in abusive relationships rather than face deportation.

In general, immigrant women lack information about services available to them, and are often unable to communicate or access information because of language barriers. n10 On the other hand, service providers are often unwilling to help immigrant and migrant women because of misconceptions about their ability to serve immigrants or because they wrongly believe funding sources prevent them from doing so. n11 Others do not offer services for immigrant women because the cases are complicated, and the providers do not believe that immigrant women are a priority population in their service area. n12

Isolation, and lack of knowledge, combined with cultural expectations and past experiences in home countries, compel immigrant women to tolerate inhumane and abusive treatment at home for the sake of the children, to preserve the marriage, or for the family. Moreover, an abuser's threats to alert INS authorities will expose their presence in the country and result in deportation. As a result, many women choose to stay in abusive relationships rather than face deportation.

An examination of most Legal Services programs demonstrates that they remain entrenched in a law practice that emphasizes traditional litigation strategies as a means of fighting poverty. n13 Although some Legal Services providers have expanded their vision of the lawyer's role, such change has been slow. n14 The everyday practice of Legal Services lawyers still consists primarily of high-volume representation of individual clients. n15

As a result of this high volume of cases, attorneys have little time to spend with each client to strategize about options and to discuss the way in which the client could participate in the lawyering process. n16 In order to handle large numbers of cases within the time constraints, staff attorneys are forced to respond to client concerns with stock answers and to guide client interviews with focused questions designed to elicit legally [*753] relevant information. n17

Little time
is available for clients to voice their non-legal concerns, express their emotional reaction to the situation, or question the lawyer's judgment. n19 With lawyers dominating their relationships with clients, the clients' role in the process is effectively silenced. n20

The Legal Services lawyer does not typically encourage clients to identify their problems. Furthermore, the lawyer often fails to suggest that the client work with peers to find solutions to these social problems. n21 This model does not recognize the power and impact that lay individuals, armed with experience and information, can have on themselves and one another. n22

Traditional practice hurts poor people by isolating them from each other, and fails to meet their need for a lawyer by completely misunderstanding that need. n23 Poor people have few individual legal problems in the traditional sense; their problems are the product of poverty, and are common to all poor people. n24 The lawyer for poor individuals is likely, whether he wins cases or not, to leave his clients precisely where he found them, except that they will have developed a dependency on his skills to smooth out the roughest spots in their lives. n25

Unlike traditional litigation techniques, community education offers a significant opportunity for clients to participate in discussions, learn new information, and play an active role in solving problems that affect them. n26 Because clients are brought together through educational work, learning occurs in collaborative, dynamic ways that are not possible within the confines of the attorney's office. n27

Grassroots legal education and empowerment projects nonetheless offer an important means for expanding the boundaries of the traditional attorney-client relationship. n28 Attorneys can learn to effectively facilitate, educate, and organize, and can create an environment that empowers members of historically marginalized communities. n29 Clients can begin to take a greater role in making decisions within their individual legal cases, and can work together to solve their own problems. n30 In addition, empowered clients can be more effective in building community organizations and coalitions dedicated to bringing about fundamental social change. n31

One example is the Hermanas Unidas program at Ayuda, n32 Inc. located in Washington, D.C. Ayuda offers an additional route to its clients: a route that enables them to do for themselves what we as attorneys cannot and should not do. n34 Hermanas Unidas provides a vehicle for addressing many of the "non-legal" concerns confronting our clients. n35 The members not only improve their access to desperately needed social services, but also learn to advocate for one another. n36 The women gain independence, and avoid relying on professionals who are often not as effective as another comp<tilde n>era. n37

Those clients who believe that they are alone in their struggle against domestic violence discover that they are not alone. n38 With other women, they "share their stories" and offer emotional support to one another. n39 This support enables participants to build self-esteem and confidence. n40 They begin to exchange opinions, debate issues, and critically examine the world around them. n41 With this increasing confidence, they turn outward and begin educating and organizing others in the community. n42

Another example is the Workplace Project located in Hempstead, New York. The Workplace Project is a community-based membership organization that organizes workers to fight widespread labor exploitation. n43 The Workplace Project works in the Latino community and its goal is to organize immigrant workers. n44 It is an active grassroots organization that is run democratically by low-income immigrant workers. The Workplace Project chose not to work with all workers, because the Project gains strength from having deep roots in a single community, creating the potential for effective alliances with other communities. n45 The Workplace Project also conducts outreach in the Latino community to provide information about workers' rights and a Worker Course designed to develop legal knowledge, organizing skills, and leadership ability in its participants. n46

IV. LUCHA: A Women's Legal Project

In an effort to address the plight of battered immigrant women I felt I had to develop a model for delivery of legal services to serve this vulnerable population. LUCHA: n47 A Women's Legal Project was formed in 1997 as a grassroots membership organization that would address battered immigrant women's individual struggles of domestic violence, while providing the vehicle for them to become involved in the larger struggle on behalf of other women. n48 LUCHA's approach requires the active involvement of battered immigrant women. Women become LUCHA members by taking a six-part course on women's rights, and committing their time to assisting other women. Members are then eligible to receive free legal representation in immigration matters. LUCHA's main activities fall into three categories: education, legal services, and organizing.

A. Educational Course and Organizing:
LUCHA provides a six-part course on women's issues. The participative course covers topics selected by low-income immigrant women, such as immigration law, workers' rights, domestic violence, public benefits, victim's rights, community resources and how to be heard by your government. The class setting provides battered immigrant women with an emotional and social support system consisting of other women in the same situation as themselves, thus alleviating the isolation that they endured in their abusive relationship. Moreover, the course empowers [n49] the women by educating them about their rights and how to ensure that these rights are not infringed upon. Completion of the LUCHA course is a prerequisite for LUCHA membership.

We wanted the women to feel comfortable and encouraged them to attend classes. To allow for maximum participation, the classes are held in Spanish, and childcare is provided for them. Perhaps the most important element of the course was establishing a sense of community among participants. We tried to generate a group feeling by conducting some exercises to get to know one another and by initiating communication. As a result, the women were very active and interacted with each other as well as the class speaker. They took notes and used that resource to follow up on their individual legal cases as well as for areas of concern of their family and friends.

Informal and formal evaluations are conducted at the end of the course in the form of a group brainstorming session. The results indicated that the members wanted more than six classes and wanted them to be longer than the two hours scheduled. Also, the members felt that they wanted to implement what they learned through the formation of committees.

Upon completion of each LUCHA course, graduates join a women's organization which conducts outreach activities, examines public policy, and shares responsibility for LUCHA's Spanish language radio show, "La Voz de la Mujer" (The Voice of Women). Class graduates have participated in LUCHA activities in various forms. Members' commitment to assisting other victims of domestic violence range from exchanging phone numbers, or assisting each other with transportation by car pooling to classes, or by attending a court hearing with a fellow member. Moreover, graduates have made presentations to incoming classes on the LUCHA support network, to church groups or at informal gatherings in their homes, and have assisted in formatting "La Voz de la Mujer." New members are encouraged to participate in LUCHA activities and commit to assisting other women who have survived domestic violence.

The commitment to helping other victims of domestic violence has resulted in the creation of committees. One such committee is the community education committee. Its purpose is to provide access to information to battered immigrant women so they too can escape the intolerable situation of violence in their homes. The committee's efforts focus on speaking out on domestic violence in the media including radio, television, and newspaper. As part of its goal, the committee will take over the radio show in its entirety and be responsible for its programming.

B. Community Education and Legal Services

In exchange for their participation, LUCHA members receive free legal services in immigration matters. However, in a world where free legal services are more and more restricted we felt that we wanted to develop a system for delivery of legal services. Although Miami has several nonprofit organizations dedicated to assisting poor immigrants in immigration matters there are none that specifically address the needs of this most vulnerable population, abused women and children. A significant portion of LUCHA's educational work focused on training domestic violence service providers about battered immigrant women needs and the relief available under immigration law. Because domestic violence service providers work directly with the community, they are often the first contact for persons in domestic violence situations. It is therefore vital that these providers develop the ability to give basic problem-solving advice and to have a basic understanding of immigration law.

Soon after LUCHA opened its doors we found ourselves overwhelmed with the amount of clients that needed our legal representation. We realized that we lacked the resources to provide legal representation for all those who required our assistance. It became crucial to train pro bono lawyers and domestic violence advocates in assisting battered immigrant women. Trainings have been conducted in an attempt to reach this goal. Domestic violence advocates are given the tools necessary to assist battered immigrant women in accessing services and gathering evidence. One of the barriers that battered immigrant women face is the ability to establish their case under immigration law. n49 Thus, advocates become central in assisting attorneys representing battered women. The idea is that domestic violence advocates work together with attorneys thus facilitating successful legal representation.
One of the directions that the Project intends to take in its second year is that of broadening the availability of legal representation for battered immigrant women and children throughout the state. Although the state of Florida has one of the highest immigrant populations, there are few organizations throughout the state that provide legal representation in immigration matters. Most Legal Service organizations have restrictions on the types of immigrant clients they may serve. However, these restrictions permit representation of battered women regardless of their immigration status. Therefore, it is possible to train and develop a statewide network of attorneys. We hope to bring our local efforts to a statewide level.

V. Conclusion

In Miami, LUCHA was an innovative means of providing services to an underserved population while at the same time providing education and empowerment. However, LUCHA received much opposition in the community as to the way it provides legal services to clients. How ever, LUCHA received much opposition in the community as to the way it provides legal services to clients. The opposition felt that it was unreasonable to force battered women to participate in a six-part course and to request a commitment to help other domestic violence victims in order to receive legal services. Battered women already have so much on their plate and this was one more thing among several that was imposed on them. They have to deal with their social worker, participate in groups at the shelter, take parenting classes, and a long list of other potential obligations. This was not fair. Women need legal services and not education they said.

We adhered to the project's original design and explained that like other legal services organizations which ration out services this was just a different way to do it in this community. Legal services for the poor are rationed out in a variety of ways already, such as by geographic location, income eligibility, immigration status, and project funding levels. We felt that when legal service programs provide assistance to indigent clients without charging for those services, we are unwittingly transmitting a message: "Nothing you have and nothing you can provide is of any value to me, the poverty lawyer." n50 That is not only patronizing; it is wrong and it is self-defeating. n51 It is a strategy more likely to generate frustration and a sense of powerlessness than progress. n52 Helping the poor with legal representation will not work if it does not enable our clients to produce and to contribute. n53 If we are to be true to our commitment to the client community, we must understand that we need them at least as much as they need us. n54

The tide has turned and LUCHA is respected in the community. Community organizations and leaders seek our participation and those of our members. As the project is completing its second year LUCHA [*759] members continue to participate in the program by giving of their time. Graduates attend the first meeting of each course to welcome new members and share their experiences. One member writes:

"After traveling a long journey of nightmares, terror, and darkness, today I have hope. There is a bright light in my future. LUCHA has changed my life. I am no longer alone in my journey of survival."

LUCHA members make a difference in each other's lives. LUCHA will continue to strive to be an environment for women to grow and to learn.

FOOTNOTE-1:

n1. "Abriendo Puertas" means "opening doors" in Spanish. This is a community center in Miami for Latinos and is funded by the Mental Health Initiative of the Anne Casey Foundation.

n2. Florida Health and Rehabilitative Services - Refugee Programs Administration Report: "Refugee, Amerasian, & Entrant Arrivals to Florida FY 1991-1993 by HRS Districts and Counties." Fifty-seven percent (57%) of those who have entered Florida since 1991 came through Miami-Dade, Broward, and Monroe counties at Florida's southern tip.


n4. See id.

n5. Fear of deportation is the single largest concern for battered immigrant women seeking to leave an abusive relationship. For some women who have fled persecution in their home country, deportation means torture, jail, or death. For others, it means a return to a life of extreme poverty, disease, and few or no opportunities. Id. at 591.

n6. Leslie E. Orloff & Rachel Rodriguez, Barriers to Domestic Violence Relief and Full Faith and Credit for Immigrant and
n7. In an effort to address this dilemma, Congress passed the Violence Against Women Act ("VAWA"). See Violent Crime Control and Law Enforcement Act, Pub. L. No. 103-322, 108 Stat. 1796, 1902 (1994). Congress intended VAWA to make prevention of violence against women "a major law enforcement priority," and included provisions specifically designed to protect battered immigrant women. VAWA contains provisions that grant battered immigrant women the ability to adjust their immigration status without the cooperation or participation of her abuser. The first form of relief is the battered immigrant woman's ability to self-petition for permanent resident status. The second is suspension of deportation. See Note, cited above at supra note 3, at 600-01.

n8. See Note, supra note 3, at 591.

n9. See id.

n10. Orloff, supra note 6, at 10.

n11. See id.

n12. See id. VAWA is not immune from this "racism of anti-immigrant sentiment." A battered immigrant remains first and foremost an immigrant, with all the assimilable, unacceptable traits historically imputed to her. From this perspective, VAWA requirements emerge as the final product of competing interests - the dedication to ending domestic violence competing with a desire to restrict immigration. The foreignness notion, however, is not operating alone. Societal and legal resistance to domestic violence furthers the marginalization of VAWA and its ability to assist battered immigrants. See Linda Kelly, Stories From the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act, 92 Nw. U.L. Rev. 665, 692 (1998).


n15. See id.

n16. See id.

n17. See id. at 441.

n18. See id. With fewer resources to meet the needs of an increasing number of poor people, Legal Services has become overwhelmed with demands for assistance. Case priorities are usually set according to a "triage model," similar to the system in place in hospital emergency rooms. Under this model, Legal Services programs decide which types of cases to undertake by using factors including degree of need, severity of poverty, and likelihood of success. Id. at 440.

n19. See id. at 441.

n20. See id.

n21. Id.

n22. Id.


n24. See id.

n25. Id.

n26. See Eagly, supra note 14, at 449.

n27. See id.


n29. See id.

n30. Id.

n31. Id.


n34. Brustin, supra note 28, at 54.

n35. Id. at 55.

n36. See id.

n37. Id. "Compa<n>era" means "companion" or "friend" in Spanish.

n38. See id. at 55.
n39. Id.
n40. See id.
n41. See id.
n43. See id. at 429.
n44. See id.
n45. See id.
n46. See id. at 433.
n47. The word "Lucha" means "the struggle" in Spanish.
n48. LUCHA is housed at the Florida Immigrant Advocacy Center. ("FIAC") FIAC is a not- for-profit legal services organization whose mission is to protect and promote the basic human rights of immigrants of all nationalities. FIAC was founded in 1995 because of pending restrictions and funding cuts to Legal Services Corporation (LSC) funded agencies, which eventually passed and prevented organizations, such as Legal Services of Greater Miami, Inc. (LSGMI) and Florida Rural Legal Services (FRLS), from serving the immigrant population. Sweeping changes in immigration law and welfare reform also increased the demand for services from FIAC.
n49. A battered woman's undocumented status limits her access to the evidentiary resources required to document her immigration case. While a woman's undocumented status and fear of deportation may explain her public anonymity, the dynamics of her abusive relationship force her further underground. It is not unusual for a battered woman's name to be absent from leases, mortgages, bank accounts, car loans, and other valuable records, such as photo albums and wedding pictures. See Kelly, supra note 12, at 683, 684.
n51. See id.
n52. See id.

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SUMMARY:  ... My enthusiasm was clearly connected to the esteem with which I regard Latina/o Critical Theory (hereinafter "Lat Crit"). ... Therefore, it seems likely that inclusive recognition of multiple and overlapping community identifications, such as that which may be embodied by the black Latina/o, may help to alleviate the binarism of dominant racial discourse. ... Taking a different approach to the binarism of racial discourse, Alice G. Abreu in Lessons from Lat Crit: Insiders and Outsiders, All at the Same Time, addresses the question of Latina/o identity through the cipher of her experience as a white, middle class, bilingual, Cuban emigre who has kept her Cuban surname and has chosen tax law as her area of specialization. ...

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When asked to write this preface, I approached the task with enthusiasm and a certain amount of trepidation. My enthusiasm was clearly connected to the esteem with which I regard Latina/o Critical Theory (hereinafter "Lat Crit"). I have participated in each of the Lat Crit annual conferences since its inception in Puerto Rico, and I support this group's commitment to antisubordination and inclusive critical engagement of oppression within the Latina/o community. My sense of trepidation was harder to locate. For even though I have been a participant and an observer at Lat Crit conferences, I have done so as a Black American who does not claim Latino identity. Part of what is exciting to me about Lat Crit is the extent to which the group is willing to both assert and problematize Latina/o identity. Indeed, this cluster of essays appears under the heading: Inter-Group Solidarity: Mapping the Internal/External Dynamics of Oppression. As a Black American, however, I can problematize, but not assert, Latino identity. Thus, my own subject position inevitably colors my reactions to this provocative set of writings. On the one hand, I feel the lure of dialogic engagement that they provoke; on the other hand, reticence enters the picture in the face of the limits of form and analogic reasoning.

Sticking to the task at hand meant that it was necessary to defer certain exchanges. But the incitement to critical dialogue represented by these writings, I believe, is a general feature of this collection. In Social and Legal Repercussions of Latinos' Colonized Mentality, Laura M. Padilla argues, for example, that internalized racism and oppression explains the support by some Latinas/os of repressive anti-Latino policies and anti-Black social behavior. Backed up by compelling examples, her argument is nonetheless complicated by the critical race theory of hegemony and its relationship to racial domination. n1 As critical race theorist Kimberle Crenshaw explains, the concept of hegemony has been used to account for "the continued legitimacy of American society by revealing how legal consciousness induces people to accept or consent to their own oppression." n2 But in relating the concept of hegemony to the dynamics of racial oppression, Crenshaw finds that coercion rather than consent better explains the way in which people of color are drawn into the ideology of the dominant class. n3

This reworking of the Du Boisian double consciousness thesis emphasizes the historical ways in which people of color resist rather than give in to their own oppression but are faced by a lack of options. Padilla picks up on the psychological dimensions of internalized oppression and racism among Latinas/os to examine the political and social consequences of giving in to the master narrative according to which being a white English-speaker is better than being a Latina/o bilingual or Spanish-speaker. In Padilla's psychological exploration, the concept of hegemony implicitly re-emerges at the level of the sociopolitical consciousness of some Latinas/os who fail to resist dominant ideology, not through lack of options, but through social conditioning and defaulting to majority rhetoric.

The re-emergence of neo-Marxian hegemony analysis in its pristine critical legal studies form, n4 as Padilla recognizes, leads to the reconstructive paradox: If
internalized racism and oppression. It seems impossible to depart the enchanted circle of domination implied by hegemony analysis makes it pervasive confirmation of the aims and values of one's own stereotype, foreclosing an encounter with the self when they identify with domination identify with their revaluation of self and community. The subordinated meaning of being Latina/o can bring about individual level, Padilla suggests that intro spection on ethic of community acceptance can be nurtured. At the critical of status quo racism, Padilla believes that an oppression. Through solidarity with others who are important first step in overcoming internalized racism and oppression. n6 Adherence to color hierarchies, as a retrograde acquiescence to the imperatives of Anglo supremacy, inhibits the formation of solidarity among and between Latina/os and other communities of color. Thus, critiquing the construction of whiteness as normative seems integral to the project of reconstituting Latina/os and other communities of color in solidarity. However, the critique of white racism may only be an initial stage in the process of eliminating internalized oppression.

For her part, Padilla views the problem of reconstructing antiracist political consciousness as a matter of defining the Latina/o community in terms of self-analysis and solidarity. Starting at the group level, Padilla suggests that sustained development of critical alliances within the Latina/o community is an important first step in overcoming interized oppression. Through solidarity with others who are critical of status quo racism, Padilla believes that an ethic of community acceptance can be nurtured. At the individual level, Padilla suggests that intro spection on the meaning of being Latina/o can bring about revaluation of self and community. The subordinated when they identify with domination identify with their own stereotype, foreclosing an encounter with the self as belonging to a community of persons united by a unique experience of oppression. Self-analysis, it is proposed, fosters the insight among individuals that stereotypes of Latinas/os serve to opera tionalize their oppression. To the extent that it raises the problematic of Latina/o self-hatred from an intracommunity standpoint, Padilla's is a privileged critique in reference to which those defined as outside the community may only obtain secondhand access. By contrast, in BlackCrit Theory and The Problem of Essentialism, Dorothy E. Roberts takes on the more open-textured issue of racial particularization implied by Lat Crit, and ques tions whether it would be essentialist to speak of "Black Crit" where the focus of analysis is on Black women's experience. Roberts reminds us of the importance of the derivation of the antiessentialism critique and posits that her use of the title "women of color" is intended as an antiesentialist gesture, even though the subject of analysis is in fact Black women. For Roberts, essentialism pertains to the treatment of intra group realities as uniform and universal. Thus, the resort to racial particularity is not intrinsically essentialist so long as occupation of the center of analysis remains open to the articulation of intergroup commonalities and differences, as well as the occasional decentering of particular racial subjects.

The matter of decentering the Black subject in particular has garnered special attention and importance inLat Crit discourse under the rubric of the Black-White paradigm. n7 The Black-White paradigm refers to the tendency in mainstream discussions of race to treat race as a binary opposition between Black and White. This racial lens, of course, leaves those who are nonBlack and nonwhite out of the picture and on the margins. Lat Crit itself can be seen as in part an attempt to shift the central focus of analysis away from the monotony of Black-White relations and onto the Latina/o community. The Black-White paradigm critique challenges the marginalization of nonBlack/nonWhite racial experience. However, the Black-White paradigm critique is fraught with its own dangers of excess and mischaracterization of race relations. For her part, Roberts poses the question troublesome to the Black-White paradigm critique of who should take responsibility for the Black-White paradigm. Critique of the Black-White paradigm should hold Whites account able for the manifold ways in which the problem of racism in dominant discourse is characterized exclusively as a problem of antiBlack racism, thus marginalizing the racial oppression of nonBlack, nonwhites. In other words, the critique of the Black-White paradigm should not be used as an instrument for castigating Blacks who focus their
efforts on resistance to antiBlack racism; rather, it should occasion a broader analysis of and opposition to the racisms that affect various communities of color, including Latina/os. Recognizing that the Black-White paradigm is a shorthand expression for obsessive attentiveness to antiBlack racism does not make attentiveness to antiBlack racism a critical blindspot, nor should it imply that Blacks and Whites are co-equal partners in the narrative of exclusion of nonBlack nonWhites from the story of racial oppression. Indeed, the paradigm itself must be seen as a measure of the extent to which an antiBlack sociopolitical environment generates the idealization of Blacks as the racial group most necessary for Whites to avoid.

Roberts is concerned that avoidance of Blacks in an antiBlack sociopolitical context is dangerous. She argues, for instance, that the Black-White paradigm, rather than benefitting Blacks, instead benefits whites in the market for reproduction assistance and adoption. The paradigm, which undoubtedly exists, is thus seen as the locus of negative white obsession with the avoidance of Blacks, an avoidance that may get repeated within minority Black-White paradigm critiques. Echoing Padilla's point about antiBlack social behavior among some Latinas/os, Roberts believes that the Black-White paradigm actually inhibits recognition and formation of political identities that embrace Blackness as an element of its community self-definition. Therefore, it seems likely that inclusive recognition of multiple and overlapping community identifications, such as that which may be embodied by the black Latina/o, may help to alleviate the binarism of dominant racial discourse.

Taking a different approach to the binarism of racial discourse, Alice G. Abreu in Lessons from Lat Crit: Insiders and Outsiders, All at the Same Time, addresses the question of Latina/o identity through the cipher of her experience as a white, middle class, bilingual, Cuban emigre who has kept her Cuban surname and has chosen tax law as her area of specialization. Like Roberts, Abreu also rejects the Black-White paradigm as an inhibitory structure, but specializes. Like Roberts, Abreu also rejects the surname and has chosen tax law as her area of study.

Abreu associates her minoritization with the revelation of her nonwhiteness as an ethno-cultural matter which followed on the heels of her belief in her whiteness as a biological matter, and the refusal by others to apply the Hispanic category to her because Cubans were seen as lacking the need for remedial efforts that the term Hispanic implies. As a Cuban emigre, however, Abreu appeals to the "Cuban master narrative" to explain her own strategy of resistance to the practice of minoritization. Within the Cuban master narrative, Abreu explains, Cuban emigres, regardless of naturalization status, reject a hyphenated identity as Cuban-American. Instead, Cuban emigres retain and cultivate a consciousness of themselves as semi-permanent sojourners, as self-conscious outsiders to American cultural formations, yet insiders to their own Cuban cultural formations. Thus, Abreu recounts a personal history in which "Cuban" consciousness both shielded her from the racial slights aimed at "Hispanics" and encouraged an outlook of gratitude and confidence rather than entitlement in relation to the hospitality of American hosts.

Consciousness as both an outsider and an insider at the same time enables Abreu to perform an intersectional analysis that reclaims the inside as a locus of strength, consolation, and challenge. She challenges Lat Crit participants, for instance, to recognize the many ways in which we are all outsiders and insiders at the same time. She calls attention to the fact that her professional specialization in tax law made her an outsider at Lat Crit gatherings where other Latinas/os could coalesce around professional as well as cultural synergies. Thus, Abreu seeks to raise the stakes on critical scholarship that merely emphasizes outsider status.

However, Abreu's challenge to own up to insider status provokes a series of questions that might usefully be addressed in future Lat Crit gatherings and scholarship. How does the class position of the Latina/o scholar influence her/his racial experience? How do nationalist affinities and identities within the Latino community alter the experience of racism? What are the politics of naming the Latina/o? What are the politics of Latina/o "passing"? How should Lat Crit scholars reconcile the interest in acknowledging individual difference while pursuing group goals of solidarity and community building? Does the existential equation of insider with strength and consolation, rather than anxiety and...
alienation, bear scrutiny? These questions are co-

implicated in Abreu's challenge to own up to insider

status.

[*767] Alternatively, Siegfried Wiessner in
<exclx>Esa India! LatCrit Theory and the Place of
Indigenous Peoples Within Latina/o Communities,
challenges us to reclaim the Latina/o relationship to
indigenous peoples, not merely as an element of
Latina/o identity, but also as genuine soli-
darity with surviving Indian communities. Again echoing concerns
raised by Padilla, Wiessner postulates that internalized
racism explains the rejection by some Latinas/os of the
Indian element of Latina/o iden-
tity, and the consequent lack of solidarity with Indian justice
struggles. Through examples drawn from Central and
South America, Weissner argues that the ethnocide of
indigenous peoples and the colonization of their lands
has not been total, but nonetheless these processes
continue with little or no attempt at justification and in

violation of existing law.

He notes, for instance, an especially disturbing irony in
the treat ment of the indigenous peoples of Ecuador,
namely the use of mestizaje to underreport the Indian
population and consequently invisibilize their presence
and negate their justice claims. n11 The use of a
generalized ethnic category like mestizaje to count
population in order to invisibilize a subgroup reflects the
use in some Latin American countries of genera-
lized nationalist or middle-tier racial categories to
accomplish the same goal. n12 Thus, the deployment
of mestizaje in this fashion represents regressive rather
than progressive politics. It is also the politics of the
multiracial category movement in the United States:
namely, the evisceration of the official capacity to
take account of minority subpopulations through the
inane redundancy of a "multiracial" census category
that supposedly accounts for racial mixture. n13

According to Wiessner, common threads of oppression
and hope that apply to all indigenous peoples of the
Americas include 1) the relegation of Indians to the
bottom of the social hierarchy with continuing threats
to their physical and cultural survival; 2) a current
trend toward recognition of indigenous rights; 3) the
denial of sovereignty to indigenous peoples mixed
with uneven concessions to autonomy; and, 4) the
perception that recent gains in rights and autonomy are
too significant to [*768] turn back the clock. Significantly, Wiessner points out that in Mexico
Indians have taken up arms to gain justice from the
national government, a development that may forever
alter the status and perception of Indians in that
country. It cannot be ignored that the use of violence in
social justice movements is frequently linked to

revolution. Even when unsuccesful at gaining control

of the state, independence, or regional autonomy, resort to violence in the context of a mass movement
for social justice raises questions of legitimacy on an
international and domestic level in a manner difficult
to ignore or suppress for the state that purports to
claim authority over resistant populations. The fact that
states typically respond to such violent resistance with
violence ensures that it will be a last resort. But in
order to maintain legitimacy, state violence will need
to be followed by explanations for its treatment of
resisters and some measures of redress for long-

standing grievances.

Finally, Wiessner posits that international norms may
help to cement recent gains in social justice for
indigenous peoples. Thus, he exhorts Lat Crit to join in
the development and enforcement of such norms in
recognition of the fact that oppression and
discrimination transcend the borders of the nation-
state. His aspiration is that the establish-
ment of a universal public order of human dignity will not
exclude from its compass the human and self-
determination rights of indigenous peo-

dles. The antisubordination principle of Lat Crit theorizing, and
the willingness of its participants to confront and
examine difficult and controversial issues of racism,
both internal and external, well suits Lat Crit
scholarship to meet the challenge of this aspiration.

[Because] Lat Crit seeks, based on both principle and
the nurturance of personal relationships among a
diverse group of devoted scholars, to reach out to
outsider communities, it is a venue for action for social
justice in which I, as a Black American, can find
solidarity and purpose, even without the subtle
psychological comforts of being an insider to the
Latina/o experience. Most appealing to me is the
notion that the center of critical engagement should
shift from time to time, since none of us has a
monopoly on the experience of oppression, although
its dynamics seem to follow a well-worn pattern.
Indeed, as these essays demonstrate, Lat Crit has as
much to offer those on the outside as to those whose
subject position makes them insiders to the Latina/o
condition.

FOOTNOTE-1:

n1. See Kimberle Crenshaw, Race,
Reform, and Retrenchment: Transformation and Legitimation in
Antidiscrimination Law, in Critical Race
Theory: The Key Writings That Formed
The Movement (hereinafter "The Key

n2. Id. at 108.

n3. Id. at 110.

n5. Crenshaw notes that the critical legal studies solution to the no-exit problem of hegemony analysis is to "trash" legal ideology. See Crenshaw, supra note 2, at 110.


n8. Abreu attributes the term "minoritization" to Professor Celina Romany.

n9. For an alternative view of what it means to "pass" for white, see Robert Westley, First- Time Encounters: "Passing" Revisited and Demystification As a Critical Practice (unpublished article on file with author).

n10. Intersectional analysis is derived from the work of critical race theorist Kimberle Crenshaw writing about the need to account for both race and gender in order to understand and address the experience of women of color. See Kimberle Williams Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, in The Key Writings, supra note 2, at 357.

n11. Mestizaje refers to the culture of persons of Latin origin who have ancestry mixed with indigenous peoples. See Martha Menchaca, Chicano Indianism, in The Latino/a Condition, supra note 7, at 389.

n12. See Tanya Kateri Hernandez, "Multiracial" Discourse: Racial Classifications in an Era of Color-Blind Jurisprudence, 57 Maryland L. Rev. 97, 121-34 (1998) (describing the use of "mulattoes" in much of Latin America as buffer class between elite whites and economically exploited Blacks in order to promote a whitening of these societies and undermine race-based justice claims).

n13. Since the vast majority of Blacks in the United States are of mixed ancestry, the demand for a multiracial census category is redundant for the Black population. See Jon Michael Spencer, The New Colored People: The Mixed Race Movement in America 70-71 (1997) (estimating that 70 percent of the Black community has multiracial ancestry).
Internalized oppression is the turning upon ourselves, our families and our people the distressed patterns of behavior that result from the racism and oppression of the minority society. Internalized racism is directed more specifically at one's racial or ethnic group.

I. INTRODUCTION

Internalized oppression and racism are insidious forces that cause marginalized groups to unconsciously turn on themselves, thereby reinforcing self-fulfilling negative stereotypes and producing self-destructive behaviors. Many people have been socially conditioned to believe the stereotypes of Latinos as a drain on United States social services, as undeserving beneficiaries of preferences, and as lazy and ignorant people who barely speak English. The stereotypes can be even worse. I recently read that "many perceive Latinos as poor, criminals, drug users." Latinos are also seen as people who "bring inferior cultural mores, including a propensity to go on welfare and commit crimes, poor health and hygiene, disregard for hard work and education, and a backward attachment to their language." Moreover, popular storytelling paints Latinos as docile, willing to accept any working conditions without complaint. Other writers remind us that Mexicans in particular have been characterized "as traditional, sedate, lacking in mechanical resourcefulness and ambition." Sadly, "Mexicans themselves internalize the 'Anything But Mexican' mindset. An internalized racism, popularly called a 'colonized mentality' by Chicano movement activists during the 1960s, splinters Latino and even Mexican unity."
Latinos internalize negative stereotypes, they cause intra-communal harm. For example, a significant number of Latinos voted in favor of California's Proposition 187, which ended many benefits for immigrants, n7 and Proposition 209, which ended affirmative action in government contracting and public colleges and universities, n8 precisely because they accepted negative stereotypes about Latinos. That is, they were seduced into believing that Latino immigrants take but do not give, and that they are subhuman, thus undeserving of education and medical attention. n9 Furthermore, they [*771] must have been convinced that our society is now color-blind and hence race-based preferences to ameliorate past discrimination are no longer necessary. More recently, until just before election time, a high percent age of Latinos supported Proposition 227, which proposed to end bilingual education in California. n10 Additionally, a mostly Latino school board in New Mexico fired two teachers for teaching Chicano history to a group of predominantly Latino high school students. n11 These examples illustrate the manner in which Latinos' efforts harmed other Latinos, often to the delight of conservatives who masterminded the underlying activity. n12 This behavior results from a belief in Latino inferiority and Anglo superiority, both manifestations of internalized oppression and racism.

This essay begins by defining internalized oppression and racism and exposing the harms they cause. It dissects the reasons we engage in internalized racism and explains how once exposed, it will be easier to engage in a conscious effort to eradicate internalized racism. It will then describe how the intersectionality of internalized oppression and racism is expressed in the Latino community. The essay will then re-imagine Latino identity without internalized oppression and racism. It will include ideas on how to overcome internalized oppression and racism generally, both at the corporate and individual levels. The essay concludes that exposing internalized oppression and racism is the first step to alleviating the harm that results from a negative self-perception, which must be followed by the active construction of positive self-images. This, in turn, will lead not only to less support for racist and discriminatory legislation but to a more active and united denouncement of racist lawmaking. The final step is to engage in pro-active agenda-setting and campaigns to capitalize on a newly-forged, positive identity.

[*772]

II. INTERNALIZED OPPRESSION AND RACISM

Internalized racism has been the primary means by which we have been forced to perpetuate and "agree" to our own oppression. n13

To understand the many ways in which internalized oppression operates on subordinated communities and how internalized racism conditions subordinated communities, it is important to understand these forces. Thus, this part describes internalized oppression and racism generally. It then describes how they are particularly manifested in the Latino community. This allows the reader to better comprehend why Latinos engage in the types of self-destructive behavior described throughout this essay.

A. Working Definitions of Internalized Oppression and Racism

When a victim experiences a hurt which is not healed, distress patterns emerge whereby the victim engages in harmful behavior. n14 Internalized oppression has been described as the process in which these distress patterns reveal themselves.

These distress patterns, created by oppression and racism from the outside, have been played out in the only two places it has seemed "safe" to do so. First, upon members of our own group - particularly upon those over whom we have some degree of power or control... Second, upon ourselves through all manner of self-validation, self-doubt, isolation, fear, feelings of powerlessness and despair... n15

Thus, internalized oppression commences externally; that is, dominant players start the chain of behavior through racist and discriminatory behavior. This could range from exclusion because of race (i.e., from a job or a store), to negative generalizations about a race (i.e., "we don't need any more wetbacks - they just take away our jobs") and capitalization on the fears created by those generalizations, n16 to derogatory comments about a particular individual on racial grounds (i.e., "we shouldn't [*773] give her the job - she'll miss too much work because Mexican women are always pregnant").

Those at the receiving end of the prejudicial behavior then internalize negative perceptions about themselves and other members of their own group, and act accordingly. n17 When this internalization process occurs within a particular racial or ethnic group, it manifests itself at both the corporate and individual levels.
Patterns of internalized racism cause us to find fault, criticize, and invalidate each other. This invariably happens when we come together in a group to address some important problem or undertake some liberation project. What follows is divisiveness and disunity leading to despair and abandonment of the effort.

Patterns of internalized oppression cause us to attack, criticize or have unrealistic expectations of any one of us who has the courage to step forward and take on leadership responsibilities. This leads to a lack of support that is absolutely necessary for effective leadership to emerge and group strength to grow. It also leads directly to the "burn out" phenomenon we have all witnessed in, or experienced as, effective ... leaders. n18

There are many other ways that internalized racism impacts our behavior, always resulting in self-inflicted harm. The following sub section will describe how internalized racism manifests itself specifically within the Latino community.

B. Internalized Racism in the Latino Community

Internalized oppression operates rather uniformly regardless of ethnicity or sexual orientation through some common patterns of behavior, yet it also manifests itself uniquely depending on the negative stereotypes it causes a particular group to internalize. Internalized racism has its roots in internalized oppression; that is, there is always some triggering oppressive behavior. For Latinos, we "share a unique experience of oppression and survival in the United States. Mexicans and Puerto Ricans, who constitute the largest and oldest Latino/a community ties within the official borders of the United States, were attacked, invaded, colonized, annexed, and exploited by the United States." Racist and discriminatory behavior toward Latinos is clearly deep-rooted. After the Mexican American War ended in 1848, people of Mexican origin faced lynchings, land theft and virulent racism. Later, in times of economic depression, people of Mexican origin - citizens and noncitizens alike - were deported en masse... As a result, many Mexican-origin people internalized the racism and learned to despise all things Mexican. n22

It is our unique history which we have internalized that gives rise to our particular brand of internalized racism. Latinos, for example, may be conditioned to believe that other Latinos, particularly recent immigrants, are unfairly taking advantage of U.S. Social Services, or we may refrain from using Spanish in professional settings because it will betray our heritage, or we may believe that whiter is better.

"From the Latina/o viewpoint, the desirability of whiteness represents the internalization by the colonized of the colonizers' predilections." The remainder of this subsection elaborates on how internalized oppression leads to internalized racism in the Latino community, both at the corporate level and at the individual level.

At the corporate level, internalized racism involves harmful or destructive conduct by members of a group toward other members of the group. [Internalized racism] has been a major ingredient in the distressful and unworkable relationships which we so often have with each other. It has proved to be the fatal stumbling block of every promising and potentially powerful ... liberation effort that has failed in the past." n25 Internalized racism at the corporate level can thus thwart Lati nos' empowerment efforts. For example, Latino groups often wither when leadership issues revolve around how "ethnic" one is. To wit, at California Western School of Law, one year a majority of the La Raza law students refused to elect a blond student to a board position because she was not perceived to be "Mexican" enough, even though she was born in Mexico and was a committed activist. Politics of race impeded her advancement and prevented her from performing work beneficial to the Latino community. The same politics of race exists among the La Raza Lawyers Association of San Diego, where members' credibility is sometimes based on whether they are perceived as "too dark" or "too light," depending on the issue.

Internalized racism at the corporate level also reveals itself through the way we view other Latinos. Many people in our community believe the tired notion that immigrants are a drain on social services. As early as 1913, "the Commissioner of Immigration ... publicly announced his fear that Mexicans might become public charges, since according to these authorities, Mexicans came to the United States only to receive public relief." Today, many harbor that same belief about recent immigrants, and too many Latinos believe it. If those who believe this propaganda looked beyond the myths to the facts, they would learn that many immigrants contribute more to our society than they take. n29 In researching campaigns to limit immigration, Richard Delgado and Jean Stefancic found that many conservative think tanks conclude that "immigration is a net benefit, not a drawback to the regions in which immigrants settle." n30 Their research uncovered conservative spokespersons emphasizing that "legal immigrants are more likely than natives to participate in the labor force, ... and that immigrants earn roughly $ 700 more a year per capita than natives, with those who entered the United States before 1980 earning nearly $ 4,000 more."
Moreover, many immigrants, particularly Latinos, exhibit entrepreneurial spirit and often start their own businesses. n32 "According to the Greenlining Institute in San Francisco, most of the new small business development in California that helped to move the state's economy forward was fueled by Latino entrepreneurs." n33 Thus, rather than deceitfully taking more than their share from the economy, Latinos, in many cases, contribute to the economic health of the United States.

[*776] Internalized racism in the Latino community also reveals itself at the individual level. For example, members of my family, as well as their friends, have attempted to one-up each other about how "guero" n34 their children or grandchildren are. My mother's best friend once bragged about how guera her first granddaughter was as she pulled out a photograph of a hirsute, dark baby with thick black hair. Rather than question why her friend felt compelled to assert her granddaughter's "guera-ness," my mother and I instead later compared the grand daughter's "guera-ness" to the "guera/o-ness" of our own family members. We succumbed to the conditioning that white is better. Latinos also use this grading process to rank the acceptability of boyfriends, girl friends, spouses and partners. Lighter is preferred, darker is acceptable so long as that person is Latino. To go any darker may put you at risk of family alienation. As one Latino expressed:

The unpleasant truth is that whether or not Mexican-Americans consider interracial relationships to be acceptable has everything to do with the specific race involved. The clearest analogy: a ladder. The social ladder, if you will. At the top of the ladder is the color white, owing to generational assumptions that the fair-skinned shall inherit the earth. At the bottom is the color black, the color of subjugation. Inferiority. In the middle, nesting precariously between the extremes, is the color brown. n35

I married a caucasian and in reflecting on why, I realize that the reasons are many, complex and positive, and that I never consciously chose to not marry a Latino. n36 However, it is not as clear to me whether I subconsciously chose to not marry a Latino. While I spent much time with my Latino classmates, especially in connection with the Stanford Latino Law Students' Association ("SLLSA"). n37 I did not date them. One reason, at least in law school, was that there were not many Latinos to choose from and many of them had girlfriends. Another reason was that I saw too many marriages in my family break up because of the man's infidelity. Of course I did not then assume that all Latino males were unfaithful, but it made me nervous. That nervousness was compounded when I became active with the La Raza Lawyers Association of [*777] San Diego. At parties and out-of-town conferences, I noticed that a sig nificant number of men suddenly lost their wedding rings and seemed to spend too much time with women who were not their wives. So I remind myself that this behavior is characteristic of many men, not just Latinos. Am I succumbing to internalized racism by believing negative stereotypes about Latino men or am I being practical? That is one of the dangers of internalized oppression; we frequently do not realize when or how we are prejudiced against ourselves.

Many Latinos inwardly, and sometimes outwardly, question the qualifications of other successful Latinos. n38 It is heartening that this is not uniform - several Latinos I know try to provide a mutual support network. For example, we intentionally and systematically refer business to each other. Nonetheless, there are too many instances where we not only neglect to provide support but, even worse, actually conspire against each other. This tendency is illustrated by a popular Mexican folk story:

A man stumbles upon a fisherman who is gathering crabs and placing them in a bucket with no lid. When the passerby asks the fisherman whether he is concerned that the crabs might climb out of the bucket and crawl away, the fisherman replies that there is no need to worry. "You see," he says, "these are Mexican crabs. Whenever one of them tries to move up, the others pull him down".

Internalized racism is also displayed when Latinos experience self-doubt upon receipt of either admission into a top university or a prestigious job offer. n39 This impostor dilemma haunts many of us - how did I get here? Do I truly belong? The answers, respectively, are through hard work and perhaps some serendipity, and yes. But because of internalized racism, we doubt our qualifications and hard-earned credentials, n40 and succumb to the often not very delicate suggestions that we do [*778] not belong.

We also denigrate ourselves through our treatment of the Spanish language and our support of the "English only" movement. By the for mer, I mean that Latinos can cavalierly use Spanish when convenient - for example, to temporarily bond with other Latinos, n41 while also being embarrassed by it when it reveals too much of our heritage. n42 Through support of the English-only movement, we admit Latino inferiority - that our inherited language is something we should be ashamed of. When we support this movement, we
accept negative stereotypes and the notion that Latinos are "dangerous because of their language. It per ceives the Spanish language as a threatening foreign influence that must be eradicated to preserve cultural purity." n43 Accordingly, internalized racism plays itself out by causing Latinos to distance themselves from the Spanish language. By doing so, we accept "the assimilationist ideal [which] would have Latinos learn English and completely lose their Spanish-speaking ability." n44 But rather than being a source of embarrassment, our language, as one academic suggested, should be a source of cultural pride. "Latino/as must learn to celebrate their lan guage if they are to find strength in their common identity." n45

There are many ways that internalized oppression causes Latinos to accept the "colonized mentality." By accepting that mentality, we engage in internalized racism, we believe negative stereotypes about ourselves and other Latinos, and we act on those beliefs. The conse quences can be severe, especially, when proposed legislation directly harms the Latino community. Thus, it is critical, as a starting point, to recognize internalized oppression and racism and how they impact our communities. The focus should then turn to what we can do as individu als and as a community to overcome internalized oppression and racism.

III. OVERCOMING INTERNALIZED OPPRESSION ANDRACISM

Internalized oppression and racism are deeply embedded in United States history. The roots of internalized oppression and racism for Mexican-origin groups, for example, originated over 150 years ago. Preced ing the Mexican-American War of 1848, "Anglo-Americans perceived the Mexicans' military weakness and technology to be evidence of the inferiority of the 'half-breeds' and their inability to govern them selves." n46 Thus began the stereotyping of "Mexicans as stupid and inferior hybrids." n47

With such a prolonged history of Latino oppression in this country, it will take a concerted effort, including group change and individual change, to undo the effects and behavior associated with internalized oppression and racism. These types of changes will be extraordinarily difficult, as are changes that must combat the reconstructive paradox. n48 In essence, the reconstructive paradox posits that the most insidious types of social evil tend to be so ingrained in our society that we barely notice them. n49 Accordingly, it takes a herculean effort to overcome the evil. n50 Moreover, because of the scope of the effort, it is bound to be highly visible and its very visibility will cause tremendous resistance and ultimately, backlash. n51 That is not to say that the Latino community should not undertake efforts to overcome internalized oppression and racism. Despite the enormity of the task and the risks involved, we can and should not avoid the effort to overcome internalized oppression and racism. As one academic reminds us, the "issue for us is how to overcome the decades of racism" that have shut us out of "centers of power, learning and decision making." n52

Roberto Chene eloquently describes why it is essential to undo internalized oppression at the corporate level as follows:

It is necessary to realize that classism, ageism, rac ism, sexism and all other forms of oppression are within our social institutions and have a life of their own. It is essential to recognize that it is not enough to promote change at the individual level but rather that empowered individuals collaboratively pursue changes at the systemic and insti tutional levels. Allying with each other and changing the institution of which we are a part is an essential part of the process of becoming an ally. n53

Understanding why it is crucial to overcome internalized oppression and racism at the institutional or group-wide level is only the first step. The more difficult challenge requires sustained efforts to eliminate behavior resulting from internalized oppression and racism. As Chene suggests, a critical beginning requires alliances such as those formed at Latino Critical Race Theory ("LatCrit") conferences and other Critical Race Theory conferences. n54 In fact, this spirit of alliance is partly what prompted the movement to organize LatCrit in 1996 in La Jolla, California. n55 Given that initial alliance is easier than sustained alliance, it is crucial that participants not desert the LatCrit project or the larger project of creating and sustaining alliances within the Latino com munity. n56 This requires honest communication, constructive criticism, and respect. Chene elaborates that we must also have: "a mutual com mitment to maintaining the relations; an understanding that allies are flexible and persistent at working on the relationship although conflict may arise; and an understanding that allies are able to give positive instruction to each other so that they will learn from one another." n57

While understanding how internalized oppression operates at the group level is an important starting step,
as important is the crucial next step of reducing internalized oppression at the group level. This can be accomplished by continuing to meet in group settings, supporting the group as well as group members, and creating alliances with other oppressed groups. Additionally, it is important to refuse to allow dominant groups to persistently create, perpetuate, and manipulate stereotypes [*781] about Latinos. n58 It is insufficient to be merely disgusted and offended by these types of actions. We must name the actions for what they are - racist and nativist behavior - in an equally public setting and hold the actors accountable. Moreover, we must be aware of the institutionalization of white supremacy and systematically undo both the subordination of Latinos through white supremacy, as well as our contributions to the perpetuation of white supremacy. n59 White supremacy is carried out ritually, such as through Ku Klux Klan activities, legislatively through enactment of bills like California's Propositions 187 and 209, n60 politically through zoning or development approval which harms Latino communities n62 while enhancing predominantly white communities, n63 and symbolically through billboards such as the one which briefly appeared at the California-Arizona state line and read: "Welcome to California. The Illegal Immigrant State. Don't Let This Happen To Your State. Call Toll Free (877) NO ILLEGALS." n64 As is evident, the tasks are many: Latinos must be on the alert for racist behavior; swiftly and publicly react against any such behavior; and ensure that we are not actively supporting this behavior by voting for legislation such as Proposition 187, or inactively supporting this behavior through complacency.

In addition to overcoming destructive patterns of behavior at the corporate level, we must also focus on change at the individual level. The first and most essential step is consciousness-raising. If we do not [*782] recognize internalized oppression and racism, we cannot overcome or undo them. To recognize these destructive forces, Suzanne Lipskey suggests that we ask ourselves questions like the following:

What has been good about being ... [Latina/o]? What makes me proud of being ... [Latina/o]? What has been difficult about being ... [Latina/o]? What do I want other ... [Latina/os] to know about me? How specifically have I been hurt by my own people? When do I remember standing up against the mistreatment of one ... [Latina/o] by another? When do I remember being strongly supported by another ... [Latina/o]? When do I remember acting on some feeling of internalized oppression or racism? When do I remember resisting and refusing to act on this basis? n65

In answering these questions, we can deconstruct others' definitions of "Latina/o" and reconstruct our identity in an affirming way. This will positively impact how we see ourselves, how we see other Latinos, and how non-Latinos see Latinos.

In addition to asking and honestly answering questions like those listed above, the process of overcoming internalized oppression and racism includes recognizing destructive patterns of behavior, including exaggerating "our feelings of rage, fear, indignation, frustration, and powerlessness... " n66 One Latina author self-deprecatingly described her feelings and the feelings of other Chicanos as follows:

I have internalized rage and contempt, one part of the self (the accusatory, persecutory, judgmental) using defense strategies against another part of the self (the object of contempt). As a person, I, as a people, we, Chicanos, blame ourselves, hate ourselves, terrorize ourselves. Most of this goes on unconsciously; we only know that we are hurting, we suspect that there is something "wrong" with us, something fundamentally "wrong." n67

In light of the racist history of our country, it is not surprising that we experience this self-loathing. After all, "racism disempowers us by infecting individual consciousness with self-doubt." n68 When Latinos feel self-contempt or contempt for other Latinos, we must stop, name the feelings and their source, and eradicate race-based contempt and self-doubt.

Another expression of internalized oppression and racism is our acceptance of "a narrow and limited view of what is authentic ... [*783] [Latino] culture and behavior." n69 To a large degree, outsiders have defined what it is to be an authentic Latino. n70 We have not only accepted those definitions, even worse, when defining ourselves, we have not always been inclusive. To remedy these definitional identity problems, it is important both to participate in the process of defining ourselves, and to not make that definition so narrow that it excludes other Latinos. This is part of the broader charge of LatCrit theory - to develop a "paradigm that accepts, embraces, and accommodates persons as multidimensional entities rather than as conveniently divisible parts of that whole being." n71

Internalized racism plays itself out through our treatment of the Spanish language: it is often a source of embarrassment. Instead, we should resurrect it as a source of pride partly for the reasons one writer outlined:
The children should learn Spanish, not only because in many cases this helps their learning in general, but also because they will thus be able to secure a sense of identity and belonging. The Spanish language should also be brought to the adult population ... The point is not to create a prerequisite to membership in the Latino/a community, but rather to give Latino/as an opportunity to reconnect with their roots and open up a path towards a common identity. n72

Internalized racism also causes us "to mistrust our own thinking and analytical abilities. We carry around doubts about our own and other [Latinos'] ... ability to think well." n73 We can undo this misplaced lack of confidence through consistent and conscious support of each other. This could take place through participating in works-in-progress sessions, remembering each other when we are organizing conferences, reading each others' works, recommending each other for visiting professorships at our institutions, and generally uplifting each other.

Latinos can engage in other efforts to boost our collective self- image. For example, Latinos can organize at many levels to demand better representation, to improve the provision of basic services, and to hold the media accountable for its portrayal of Latinos (or lack thereof). n74 Additional steps include drafting and supporting legislation [*784] which advances Latino causes, lobbying, working together to promote Latinos to positions of power, and recommending each other for plum positions.

We must also establish bonds with our young people and include them in the process of self-definition. To learn from our young people, we should frequently seek their voices and give them more opportunities to be heard. We also need to feed and support their creativity. In addition, we could create student book clubs and mentoring programs between professionals and students, and between older students and younger students; insist on better school counseling to inspire instead of dissuade young Latinos; and create scholarship programs for Latinos. This shows young people that they are important and that we care about them, and provides them with Latino role models. If we do not create positive images, we leave a void which others can fill with distorted images of what a Latino is or is not.

Many other steps are necessary to overcome internalized oppression and racism, limited only by the boundaries of our collective imaginations. This part provided only an outline of some of the ways we suffer from internalized oppression and racism, and how to halt our suffering. As part of our institutional and individual ongoing missions, we must continue to identify internalized oppression and racism, and strategize on ways to halt that oppression and overcome its associated dysfunctions.

IV. CONCLUSION

This essay has described internalized oppression and internalized racism, and the devastating impact of these forces on the Latino community. They cause Latinos to adopt a colonized mentality and to internalize negative self-perceptions. This results in a community where individuals doubt themselves as well as those around them. Even worse, it causes us to turn against each other. For example, large numbers of Latinos supported California's Propositions 187, 209 and 227, which by and large, hurt the Latino community. Elsewhere, Latinos fired Latinas for teaching Chicano studies. This type of self-destructive behavior forces other Latinos to concentrate too much time on defensive posturing, reacting to racist behavior. The unfortunate reality is that so long as [*785] there is racism, we will have to spend some time reacting to bigoted legislation, which legislation further disempowers the already marginalized while simultaneously preserving and enhancing the position of the powerful. Nonetheless, it is time to act more from a position of self-determination. If Latinos can spend less time convincing other Latinos not to support measures that are harmful to the Latino community, we will be able to engage in positive activities and can initiate pro-active efforts to empower the Latino community. Accordingly, we should defy and deny others' negative perceptions of Latinos while concurrently building positive images and working toward a better place for Latinos in our society.

With time, we can reduce internalized oppression and racism, together with their resulting negative patterns of behavior. In their place, we can create a positive Latino identity which will have a multiplier effect. We will be healthier individuals and healthier communities. If we are in a position of confidence and power, it will be difficult for others to mount and sustain the types of anti-Latino campaigns we have seen in recent years. As a consequence, instead of spending so many precious resources reacting to attacks on the Latino community, we can build and sustain a stronger and more united community.

FOOTNOTE-1:

n1. Roberto Chene, Creating Intercultural Communities, Enhancing Community in the Workplace, [Module II] at 2 (on file
with the author) [hereinafter Intercultural Communities].

n2. Estevan Flores, Changing the U.S. Consciousness About Latinos/as, Latino/a Res. and Pol'y Center News1. U.of Colo. at Denver., Denver, Colo., Aug. 1998, at 2. Note that while this essay frequently uses the term "Latinos" more broadly, my point of reference is often the Mexican-American.


n4. See 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, 436-437 (1990) (summarizing stereotypes of Latinos while condemning the hypocrisy of US immigration policy). This particular stereotype one-dimensionally projects the dominant view of Latinos' work habits, neglecting the experience of the Latino who acts from values of respect, hard work and honor. In other words, from the Latino perspective, rather than considering ourselves docile and subservient, we see ourselves acting respectfully toward employers, putting in an honest day's work and conducting ourselves with honor.


n8. California voters approved Proposition 209 by a vote of 55-45%. See Bill Jones, California Secretary of State, Statement of Vote, Nov. 5, 1996 (General Election).

n9. I initially believed that because of the long term costs to society of having an uneducated and unhealthy immigrant population, it was shortsighted to withhold educational and medical benefits to immigrants. On further reflection, I wonder whether this is part of a larger scheme to perpetuate an underclass and prevent many Latinos from breaking out of a cycle of poverty. For a discussion of the intentionality of campaigns such as those underlying Propositions 187 and 209, see Jean Stefancic and Richard Delgado, No Mercy: How Conservative Think Tanks and Foundations Changed America's Social Agenda (1996) [hereinafter No Mercy].

n10. California voters approved Proposition 227 by a vote of 61-39%. See


n12. See generally No Mercy, supra note 9 (discussing the role of conservative think tanks and foundations in setting our social policy agenda and controlling outcomes).


n14. See id. at 2.

n15. Id. at 3-4.

n16. See No Mercy, supra note 9, at 32 (discussing negative stereotypes of immigrants (primarily Latino), and how conservatives manipulate those stereotypes).

Like the English-only movement, the movement to cut services to immigrants draws on a set of anxieties that typify the struggling blue-collar and middle classes... The movements also tap economic anxieties that the middle and working classes feel more acutely than do those at the top - fear that immigrants will take jobs, that they will require too many services thus increasing the tax burden for U.S. workers, and that English, the great binding tie, will diminish in importance.

Id.

n17. See Acuña, supra note 6, at 127.

n18. Lipskey, supra note 13, at 5-6.

n19. See id. at 5-12 (providing a detailed list of patterns of internalized racism).

n20. See supra text at IIA.


n23. I have heard my grandmother, a New Mexican by birth, whose mother was born in New Mexico and whose father was born in Mexico, lament how "those people" (her own people) are taking away her social security. For another description of Latinos' attitudes towards Latino immigrants, see Ken Chavez, Wilson Ads' Latino Effect Tough To Tell Could Even Help Governor, Sacramento Bee, May 21, 1994, at A3.


n25. Lipskey, supra note 13 at 1. While this quote arose in the context of black liberation movements, it is equally applicable to liberation movements of other subordinated communities.

n26. Acuna, supra note 6, at 110.


n28. To illustrate,

An August 1993 Field Poll showed that 74 percent of Californians believed that illegal immigration had a negative impact on the state, and 76 percent agreed that it was a serious problem. Among Latinos, 58 percent responded that immigration negatively impacted the state, while 64 percent said that it was a serious problem.

Acuña, supra note 6, at 122 (emphasis added).

n29. See, e.g., Center for the New American Community, Strangers at Our Gates in the 1990s (1990); Wilson, supra note 27, at 578; No Mercy, supra note 9, at 30.
n30. No Mercy, supra note 9, at 30.

n31. Id.


n33. Id. See also No Mercy, supra note 9, at 31 ("Indeed, statistics released in the Manhattan Institute's report show that immigrants, especially those who arrived before 1980, are more likely even than the native-born to own their own businesses").


n36. This is in contrast to the assimilationist strategy of intentionally marrying Caucasians in order to better "blend." See Johnson, Ring of Fire, supra note 34, at 1272, 1290, & n.120.

n37. During my second year of law school, my classmate, Linda Davila, and I, co-chaired SLLSA.

n38. For a more general description of the pattern of doubting our colleagues' qualifications, see supra text accompanying note 18.

n39. In spite of all that these high-powered, well-educated Latino students would achieve in lives full of promise, it would be many subsequent springs before they could overcome the stigma attached to them when their acceptance letters arrived in their parents' mailboxes. Because others thought less of them in high school, they thought less of themselves in college.

Navarrette, supra note 35, at 16.

n40. Latinos are not the only ones who suffer from the impostor dilemma, it is common among all outsiders. Even white males suffer. "Like all white Americans, I was living with the fear that maybe I didn't really deserve my success, that maybe luck and privilege had more to do with it than brains and hard work." Robert Jensen, Diversity Debate: There's a Dirty Little Secret of White Privilege, *Houston Chron.*, July 26, 1998. But as Jensen admits, white privilege ameliorates that suffering. He described the benefits of white privilege as follows:

I walk through the world with white privilege. What does that mean? Perhaps most importantly, when I seek admission to a university, apply for a job, or hunt for an apartment, I don't look threatening. Almost all of the people evaluating me look like me - they are white. They see in me a reflection of themselves - and in a racist world, that is an advantage... Every time I walk into a store at the same time as a black man and the security guard follows him and leaves me alone to shop, I am benefitting from white privilege.

n41. Temporary bonding might occur when one does not normally speak Spanish but then suddenly feels compelled to speak Spanish, for example, in a Mexican restaurant.

n42. I remember being embarrassed when my mother would call me mija (roughly translated as "my daughter" but it really means much more because it connotes "my daughter who I love so much," and is typically spoken with the requisite degree of cari<tilde n>o) or make me cari<tilde n>os (demonstrations of love and affection) too loudly in public. Of course, this may not be different than the typical embarrassment that a child generally feels when her parent shows too much public affection.

n43. Oquendo, supra note 21, at 124.

n44. Johnson, Ring of Fire, supra note 34, at 1294.

n45. Oquendo, supra note 21, at 124-25.


n47. Id.

See id. at 559.

See id.

See id.

Flores, supra note 2, at 2.

Intercultural Communities, supra note 1 [Module II] at 2.

See Johnson, Ring of Fire, supra note 34, at 1297-99 (arguing for assimilation among Latino groups despite diversity in the Latino community). The first LatCrit conference (LatCrit I) convened in La Jolla, California in Spring 1996, LatCrit II occurred in San Antonio, Texas in Spring 1997, and LatCrit III was in Miami, Florida in Spring 1998. Various Critical Race Theory Conferences have occurred over the years, starting in 1989. See Critical Race Theory: The Cutting Edge xiv (Richard Delgado, ed. 1995) [hereinafter CRT]. Derrick Bell and Alan Freeman are credited with starting the CRT movement, which was quickly joined by many other kindred spirits. See CRT, id., at xiii.

Attendees at the Hispanic National Bar Association’s convention in Puerto Rico started brainstorming the idea of a Latino Critical Race Conference and California Western School of Law ultimately sponsored LatCrit I, which was primarily organized by my colleagues Professors Frank Valdes, Gloria Sandrino, Bob Chang, and myself.

LatCrit, as other critical race movements, has suffered through some divisiveness which if not immediately named and addressed, could have threatened the movement. For example, during LatCrit II, some participants voiced the concern that they had been excluded and in planning for LatCrit III, the sources of that exclusion and how to more immediately respond to threats to the movement, were incorporated.

See generally Cheryl Harris, Whiteness as Property, 106 Harv. L. Rev. 1709 (1993) (discussing notions of white supremacy and white privilege); see also Stephanie M. Wildman, Privilege Revealed: How Invisible Preference Undermines America (1996); Menchaca, supra note 46, at 204 (discussing white superiority vis-a-vis Latinos).

See Menchaca, supra note 46, at 216; see also David Mark Chalmers, Hooded Americanism: the History of the Ku Klux Klan (1981) (describing general history and activities of the Ku Klux Klan).

See supra notes 7-8, and accompanying text.

See, e.g., Menchaca, supra note 46, at 216-7; see also Acuña, supra note 6, at 65-72 (discussing how Latino activism spared East L.A., a predominantly Latino community, from a state prison and how the region has nonetheless been the dumping ground for hazardous waste and the chosen site for an oil pipeline).

Dominant groups routinely place desirable amenities such as shopping centers, parks or land preserves in Anglo communities. See Martha Menchaca, supra note 46 at 217.

See Amanda Covarrubias, I-10 Billboard to Urge Fight Against Illegal Immigrants. Group Hopes it’s ‘Quite Controversial,' San Diego Union-Trib., May 1, 1998, at A3. The billboard, installed in May 1998, was removed within one month because Hispanic activists

n65. Lipskey, supra note 13, at 16.
n66. Id. at 5.
n69. Lipskey, supra note 13, at 8.
n70. For some unflattering descriptions of Latino, see supra notes 2-5 and accompanying text.
n72. Oquendo, supra note 21, at 125.
n73. See Lipskey, supra note 13, at 8-9.
n74. Latinos do much work in these areas and should be commended for the efforts to improve the Latino condition. For example, the National Hispanic Media Coalition works "to improve the image of Latino-Americans as portrayed by the media; and ... to increase the number of Latino-Americans working in all facets of the media industry." National Hispanic Media Coalition, History (on file with the author). Nonetheless, these efforts are often disjointed. This is contrary to what the right has done in designing and implementing many of its successful campaigns. As Delgado and Stefancic stated, the right has been successful because:

They use resources more precisely, concentrate their efforts on a few targets at a time, and make sure various campaigns reinforce and dovetail with one another. They move personnel from one front to another and train the young to take their places in a future conservative regime.

No Mercy, supra note 9, at 147.
INTER-GROUP SOLIDARITY: MAPPING THE INTERNAL/EXTERNAL DYNAMICS OF OPPRESSION: Lessons from LatCrit: Insiders and Outsiders, All at the Same Time

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BIO:

* Professor of Law, Temple University School of Law. This Essay is drawn from my remarks as a Discussant in the Moderated Focus Group Discussion: Critical Recollections: Reclaiming Latina/o Experiences with the Legal Academy of the United States, on May 7, 1998 at LatCrit III in Miami Beach. I am deeply indebted to the many friends and colleagues who were generous with their time and thoughts during and after LatCrit III, most especially Berta Hernandez-Truyol, who's always made me feel included, Taunya Banks, who encouraged me to write my story, Paulette Caldwell and Celina Romany, whose narratives inspired me and helped me to put many things in perspective, Michael Olivas, whose efforts have helped to put us on the academic map as a group, and Lisa Iglesias and Frank Valdez, who organized LatCrit III and this symposium. My colleagues Jane Baron, Rick Greenstein, Phoebe Haddon and Nancy Knauer prompted me to examine my reflections more deeply and offered valuable commentary after reading an early draft. I am also indebted to the many colleagues who offered thoughtful commentary before, during, and after the Temple Faculty Colloquium at which I discussed this Essay. Temple Law School has provided a nurturing environment in which to work and financial support for my attendance at LatCrit III as well as for the writing of this Essay. As usual, all errors, as well as the views expressed here, are mine alone.

SUMMARY: ... I was an insider because I am quite unequivocally Latina: I was born in Cuba, both of my parents are Cuban, and I did not learn to speak English until I was nearly nine; I still speak fluent Spanish and I even kept my Cuban surname when I got married over 26 years ago. ... My brother, my twin cousins, and I, were the only Cuban - indeed, the only non-American - children in what is now an almost exclusively Cuban school in Southwest Miami. ... By the time I finished the 9th grade the choices for schooling were either high school in Dutch in Aruba or Catholic girls' school in Miami, where I could board during the week and spend weekends with my aunt. ... Going to high school in Miami was crucial to the development of my identity. ... "Aren't you Cuban?" she asked. ... When I was in high school in Miami with a diverse group of Latinas, it would not have occurred to me to describe all of us as belonging to the same group. ... I am not Cuban-American. ... It should be enough for me to be Cuban. ... Still, after it was over I found myself reflecting on the possible parallels between his life as a Black classical concert pianist and mine as a Cuban tax lawyer and academic. ... He, because he is Black and a classical concert pianist and I, because I am Cuban and a tax lawyer. ... Being a Cuban tax lawyer made me feel like an outsider at LatCrit III. ...

Legal scholars seem to love binary paradigms. We speak of outsiders and insiders, minorities and majorities, rights and wrongs, black and white. While such polarized categorizations are useful heuristics, eventually we must move beyond the simplicity of the polarity to embrace the complexity of real life. Narrative scholarship has provided a vivid picture of that complexity and has helped to develop a more nuanced characterization of the human experience upon which law ultimately acts. LatCrit scholars have advanced this effort by offering perspectives that further break down the binary paradigms with which much analysis begins but beyond which it must eventually move. n1

Like much critical scholarship, LatCrit scholarship is grounded in the outsider experience. LatCrit scholars have contributed to the critical enterprise by exploring the implications and effects of being outsiders for multiple reasons, such as being simultaneously Black and Hispanic n2, [*788] or Latina and Lesbian. n3 This scholarship shows that numerous aspects of
The richness of LatCrit scholarship suggests that it might now be time to move beyond the outsider/insider dichotomy and perhaps even beyond intersectionality. The outsider/insider dichotomy and the concept of intersectionality have advanced our thinking and our understanding, but they might now yield to an even more nuanced view of human interaction. That more nuanced view would recognize that many of us are outsiders, and many of us are insiders, all at the same time. Aspects of identity don't just intersect, they coexist. They affect and inform one another.

As a participant in LatCrit III, a conference at which most of the participants were Latina/o, I was both an insider and an outsider. I was an insider because I am quite unequivocally Latina: I was born in Cuba, both of my parents are Cuban, and I did not learn to speak English until I was nearly nine; I still speak fluent Spanish and I even kept my Cuban surname when I got married over 26 years ago.

But at LatCrit III I was also an outsider. I am a tax lawyer and my scholarship has, until now, been entirely in tax. I have not written about immigration policy, civil rights, or critical theory, and I have read only sporadically in those fields. The tax law is at the core of my professional identity and has served as the foundation for many of my professional friendships. As a tax lawyer at LatCrit, I was outside and alone.

Exploring why I felt like an outsider just where I should have felt most like an insider has proven interesting and instructive for me, and I think that my story, and the lessons I have drawn from it, can serve as a vehicle for exploring some of the themes that LatCrit scholars are developing and can help to chart the course of that development. n5 I do not claim to be either the first or the only one to do this and indeed, I have [*789] decided to do it because I found reading the narratives of those who have gone before me so helpful and interesting.

I will begin this reflection with a narrative, even though narrative is a new form of discourse for me. n6 I am a tax lawyer, teacher and scholar. As I will describe in somewhat greater detail later, that is a definitional aspect of my identity. While my tax scholarship reflects my experiences as a foreign-born Latina, it is not narrative scholarship. For example, my work on tax-motivated expatriation proceeded from my views on the value of U.S. citizenship and discloses my personal connection to the subject, but it is not written as a narrative. In this Essay, by not only telling the story in narrative form, but connecting it to others I've long wanted to tell, I hope to provide a vehicle for continuing the illuminating discussion that other critical scholars have started.

I. One Story: Of Minoritizing and Of Counting

I became minoritized relatively late in life. n7 I was born in Cuba, of Cuban parents, both of whom had been born and educated in Cuba, and I had not traveled outside of Cuba until 1960, when I was 8 years old and Fidel Castro's government nationalized the Esso refinery of which my father, though Cuban-born and Cuban-educated, was the manager. n8 I remember heated discussions over Castro's demand that the Esso refinery process the Soviet crude oil which filled the hulls of a ship that had been dispatched to Havana harbor, and I remember my father's strongly held belief that acceding to Castro's demands would be wrong, but it [*790] was not until the summer of 1998, when I was writing this Essay, that I learned, while reading a tax case, a fuller version of what had occurred. n9

The case describes the role that the U.S. Department of State played in the decision to refuse to process the Soviet crude. While reading the case, I discovered that the order to refuse to process the Soviet crude, which eventually triggered the nationalization of the refinery and my father's departure from Cuba, came from none other than the President of the United States, Dwight D. Eisenhower. n10

My father left Cuba in July, 1960, and my mother, younger brother, and I, who did not even have passports when my father left because we had never been out of the country, followed shortly thereafter. We lived in Miami for about a year and a half, and it was there that I learned to speak English.

My parents valued bilingualism and figured that part of the silver lining borne by the Castro cloud would be that their children would become bilingual. My brother and I learned quickly, since we were forbidden to speak Spanish at home and had to make do with signs and Anglicized approximations of Spanish words. As soon as we had mastered English, however, my parents changed the rules and English became the forbidden language at home so that we would not lose our fluency in Spanish. Later, when we lived in other countries, the pattern continued. If Spanish was the language we spoke at school, as it was in El Salvador and Argentina, we had to speak English at home. When we spoke English at school, as we did in Aruba, the rule was that we had to speak Spanish at home. At the time, I thought it was perverse that my parents denied me the ability to speak in whatever language seemed easier. Now that I also value bilingualism, I know differently.
My brother, my twin cousins, and I, were the only Cuban - indeed, the only non-American children in what is now an almost exclusively Cuban school in Southwest Miami. I started the 4th grade in September, 1960, having learned to speak English during the summer, spurred by my parents' draconian no-Spanish rule. (I'll save you the need to do the math by telling you: I am 47.) The problem was that although I could speak English, I could neither read it nor write it. I therefore did terribly on all tests, except for math. The Cuban school system had forced me to cover fractions and long division the year before, so in math, I excelled. Unfortunately, my ability to get the right answer was not enough for my teacher, who could either not abide that an otherwise illiterate foreign child could outshine all the blonde and blue-eyed Americanitos, or he wanted to leave no stone unturned in my own Americanization. He therefore told me that in America the number seven did not have a little bar across its stem, and decreed that if I wrote the number seven as I had been taught to do in Cuba, with the little bar across its stem, he would mark the answer wrong. He succeeded in teaching me to write what I've always thought of as an American seven, and even now, almost 40 years later, I still think of him when I write a seven and defiantly put a little bar across its stem.

Reflection shows that throughout this time I was an insider and an outsider, at the same time. As a member of my family and a native Spanish speaker, I was an insider, but as a non-English speaker when the rule at home was to speak English, I was an outsider there as well. At school, my ability to speak unaccented English and my apparent mathematical prowess made me an insider, but my inability to read English and my unusual sevens branded me an outsider.

While feeling like an outsider could have minimized me - could have caused me to long for inclusion in the group that formed the numerical majority - it did not, chiefly because I saw my being in Miami as a temporary detour and that allowed me to preserve my insider identity. At that time, being in Miami as a refugee was simply the lesser of two undesirables (living in Cuba under Castro was the other), and it was not one which I expected to have to endure for very long. Since I did not see myself as belonging in Miami or as wanting to belong there, the legitimacy of my identity was not impaired by the demeaning experiences I endured there. In Miami, I was a "mere transient or sojourner," and that made all the difference. For many Cubans, it still does. Seeing myself as a mere transient or sojourner meant that I did not perceive the ill-treatment I sometimes received as representative of a pattern which would follow me for the rest of my life and which I should therefore work to eradicate. As a child who felt powerless because of her status as a child, particularly one that had been uprooted from her home, country and language and been deposited in a strange place where all the rules were different, it was easy for me to catalogue these events as one more example of adult, or American, imponderability. More over, the circumstances under which we left Cuba, leaving both family and possessions behind, and the knowledge that only the United States' willingness to take us in had allowed us to leave the malestorm that was, for us, Cuba, generated a sense of gratitude that was incompatible with feelings of entitlement.

Like travelers who crash a party because their car has stalled in a storm, we were grateful for the food and for the shelter. It did not bother us that the food consisted of leftovers or that it was perhaps cold and sometimes spoiled. It was food. It did not permanently damage our sense of self that some of those at the party treated us less courteously than if we had been invited guests, for we had not come seeking their friendship or acceptance, or wanting to insinuate ourselves into their circle. We knew that had the Castro storm not occurred, we would have continued on our way. Like stranded travelers, we intended to get back in our car and return to our lives just as soon as we could get the car, our country, fixed. Since we were grateful for the refuge and did not expect to be treated like invited guests, it was neither surprising nor symbolic of some greater evil that we were not. Like travelers or visitors everywhere, we were insiders to our own culture even though we were outsiders to the foreign culture. Like an American who does not think less of herself because a French waiter in Paris treats her rudely, whatever shabby treatment we received here did not compromise our sense of self. Being outside is not so bad if one is also inside.

Like the travelers we felt ourselves to be, we expected to return to Cuba soon, and even though we have not yet returned to Cuba, my family did not stay in Miami long. My father continued to work for Exxon and was transferred to El Salvador, and later, to Aruba and to Argentina. In those days, my mother's career always took a back seat to my father's. My mother had been a kindergarten teacher in Cuba but was not certified as a teacher in the U.S. She later earned a U.S. college degree and became the Director of the Day Care Division of Catholic Community Services in Miami, a position from which she only recently retired after having made a difference in the lives of thousands of children and having had new day care center building dedicated in her name as a tribute.
By the time I finished the 9th grade the choices for schooling were either high school in Dutch in Aruba or Catholic girls' school in Miami, where I could board during the week and spend weekends with my aunt. My parents, feeling that I was in need of a Catholic education, decided that a Catholic girls' school in Miami would be the best place for me. We had also considered a Catholic girls' boarding school in West Palm Beach but unlike the school in Miami, the West Palm Beach school seemed primarily to attract wealthy American girls. I felt out of place the moment I walked in and was grateful that my parents chose the Miami school.

Going to high school in Miami was crucial to the development of my identity. In that high school there were only two American girls in the entire 10th grade class of 24 girls, and the American girls were the outsiders. n15 Most of us were Cuban, but there were also girls from Nicaragua, Venezuela, Haiti, the Dominican Republic, and even Surinam. Although classes were held in English, outside of class we spoke a comfortable mixture of Spanish and English, reserving for each language those things that seemed most fitting to it. n16

[*794] My Cuban classmates and I had a strong sense of entitlement to our identities as Cubanas. We could communicate and feel at home anywhere in Miami, and indeed, as Cubanas, felt that we were where it was at. We did not think of ourselves as Cuban-American for we did not claim an American identity. While we were not unaffected by American culture, the rituals and traditions of Cuban culture provided the primary structure for our lives. Thus, our parents required that we be chaperoned on dates, and chaperones even accompanied us when we went out, as a group, after that most American of institutions, the Senior Prom. We eschewed the teen and young adult American culture of the 60's, whose apparent acceptance of drugs and free love made it as foreign to us as if we had been living in another country. We dated Cuban boys, danced to Cuban music at parties and thought of ourselves as quite simply Cuban. We were insiders to the culture that mattered to us, and outsiders to the American culture. Being outside, in that context, was good. We were inside where it counted.

Things changed radically when I went to college, for I ended up going to Cornell University in Ithaca, New York. I went to Cornell for a number of complicated reasons, many of which boil down to going to the place where the nuns least wanted me to go.

As a freshman at Cornell I filled out numerous forms, some of which asked me to identify myself by race and ethnicity. I had not given much thought to either my race or my ethnicity as separate constructs - I simply thought of myself as Cuban - and I certainly hadn't been introduced to the concept of race as a social construct. n17 I thought that my race, as a biological construct, was Caucasian and therefore white. n18

[*795] I don't remember giving the matter much thought during the application process, and I don't remember how I identified myself, but I suspect I had simply identified myself as white, although my status as a foreigner was patent: I was a non-citizen and my parents, also non-citizens, were living out of the country, (in Argentina), at the time. n19

Nevertheless, as a freshman at Cornell I was intensely conscious of my Cuban identity, for I knew I was very different from most of my classmates. For someone who had gone to a Catholic girl's boarding school in Miami, where phone calls were monitored by a nun who spoke six languages lest we attempt to arrange a tryst with a boy, Cornell in 1969 was quite a shock. The contrast between my Latina Catholic girl's school experience and the freshman dorm at Cornell in 1969 could not have been more stark: even though the dorms did not become officially co-ed until the following year, I often saw men in other student's rooms, in the halls and in the bathrooms. I felt like I was in an alien land. I missed being able to switch into Spanish whenever the Spanish words seemed more apt and I resented having been transformed from Alicia Abreu (pronounced "A-lee-see-a A-breh-oo"), into "A-lee-sha A-brew,", which is how Americans pronounce my name until they are told otherwise. n20 I was living the difference of my Cuban identity every day. I [n796] was an outsider everywhere, even with respect to my Cuban friends, none of whom had gone away to college. It was awful.

Even speaking was awkward. I recall vividly how difficult it was to carry on conversations wholly in English during the first few weeks at Cornell after having come from an environment where it seemed that everyone was fully bilingual. I was disconcerted by the monolingualism that surrounded me. Probably because of that, when filling out the obligatory stack of forms, I noticed that although the form didn't list Cuban, it did list Hispanic as an option. To me, Hispanic meant having to do with Spanish, and the label beckoned. Checking it seemed like a way of connecting to and claiming the identity that had once seemed so right. Moreover, the label, though imperfect and overbroad, seemed unques tionably to fit. n21 I was not even an American citizen at the time, and as I have already explained, I was born in Cuba of Cuban parents and had not even learned to speak English until I was nearly 9. I therefore checked the box for Hispanic.


What happened next is a metaphor for the uneasy relationship between Cubans and other Latina/os and people of color. n22 and affected the way I identified myself for more than a decade thereafter. What happened is that I was summoned to the Dean of Students' office, where I was asked where I had gotten the idea that I might be Hispanic. When I explained that I was born in Cuba, of Cuban parents, was not even an American citizen yet and had not learned to speak English until I was nearly 9 years old, I was nevertheless told that I was mistaken. Only Mexicans and Puerto Ricans counted as Hispanic, I was told. Cubans did not. n23 I was then accused of trying to gain the benefit of programs not meant for me and was so humiliated that even a return to the nuns in Miami began to look good.

I then learned a lesson: Since I did not want to be accused of attempting to steal privilege, I never checked Hispanic again.

I graduated from Cornell in 1973, magna cum laude in psychology, worked in drug abuse and delinquency prevention programs, became the Executive Director of one such program, and then went back to Cornell [*797] for law school. I became a tax lawyer, worked for a big firm in Philadelphia and eventually decided to do what I had wanted to do since I was an undergraduate, so I entered the Academy. It was then, more than 15 years after that initial encounter with the term Hispanic as a freshman at Cornell, that the classifications on those ubiquitous forms returned to haunt me.

After I had accepted the offer of a position on the Temple faculty, I received the obligatory stack of forms. I filled them out, returned them and then received a telephone call from a then-Assistant to the Dean. "Aren't you Cuban?" she asked. "Of course," I replied. "Then why haven't you checked "Hispanic"?" she continued. If you've read this far, you know what my answer was: "Because I thought that being Cuban didn't count as being Hispanic - only Mexicans and Puerto Ricans count," I replied. "Oh, no," she said, "Cubans count here. Do you mind if we count you as Hispanic?" Of course I didn't mind, and of course she could count me as Hispanic, but I again felt accused and humiliated. This time, I felt accused of hiding my identity and humiliated at having been unmasked.

II. Some Reflections

Counting as Hispanic at Temple, while potentially affirming, was not completely positive. It essentialized, or made dominant to the exclusion of others, one aspect of my identity - my ethnicity. It was as if no other part of me was worthy of note. I now think that not having counted as Hispanic during all those pre-Temple years had some salutary effects and helps to answer some of the questions I've had since.

For example, I have long wondered why I did not feel like an outsider, or like a minority, as those terms have been constructed in legal scholarship, until I entered the Academy, 25 years after I first arrived in the United States. By any objective criteria (to the extent that such a thing even exists), I was both. As a Cuban in the United States I was an outsider and a minority. I was certainly not in Cornell's political mainstream in 1969, and as a woman, a Cubana, and a founder of a Cuban organization that had only 3 members, I was certainly not in any numerical majority. n24 As the only Cuban or Latina/o lawyer at the law firm [*798] with which I practiced, I was hardly in the mainstream. But although I knew I was different, I did not feel inferior. I now think that this was because even though I was outside in some ways, I was inside in others. Being both inside and outside was key to preventing the essentializing of my outsider status.

Being granted membership in the group "Hispanic" when I joined the Academy not only essentialized the outsider aspect of my status, but it undercut the ways in which my ethnicity also makes me an insider. The classification "Hispanic" obliterates the ways in which my ethnicity makes me an insider because it is a homogenized view of Spanish-speaking people, a view that has been constructed and defined by Americans. When I was in high school in Miami with a diverse group of Latinas, it would not have occurred to me to describe all of us as belonging to the same group. The non-Cuban Latinas were very different from us. Not only were the non-Cuban Latinas all very wealthy, but they spoke Spanish differently, with different accents and different colloquialisms. They were in the U.S. voluntarily and could and could go home to their countries, and their extended families, when school was over. With the Cuban girls I shared a culture, a history, a language, an accent and a longing for the relatives we had left behind. Our stories were variations on a theme of diaspora. Only an outsider to our culture could have considered us to be part of the same group as the non-Cuban Latinas.

The homogenization of the Latina/o identity that is wrought by lumping all of us within the classification Hispanic, dilutes our ethnicity and thus dilutes the sphere in which we are insiders. As a Cuban, I am an insider, and being an insider in some ways is what makes it alright to be an outsider in other ways. As a Catholic attending a bar mitzvah, I am an outsider, but that is not troublesome to me because I am also an insider, to my own religion, at the same time. Outside is negative when it is constructed as such, but it is less
likely to be constructed as such if we are insiders in other respects.

The homogenization of ethnicity, and the destructive way in which it undercuts the spheres in which we are insiders, does not stop with the attempt to classify all Spanish-speaking people as members of one undifferentiated group. n25 It is also evident when we are referred to as [**799**] hyphenated Americans, as if we needed to be labeled American to be legitimate. I was born in Cuba. I am Cuban. I am not Cuban-American.

Like the classification Hispanic, the designation Cuban-American is a construct, and it is an American construct. The Cuban-American label not only dilutes my Cuban identity, but it also suggests that the "American" modifier is necessary to legitimize it. Although I am now an American citizen and I value that status, I am still Cuban. I have absorbed a tremendous amount of American culture, and I am grateful for all it has given me, but I am still Cuban. My children, who were born in this country, are, to me, the real Cuban-Americans, but I am Cuban.

It should be enough for me to be Cuban. So why do I now only count as a Cuban-American? If I had been born in Canada, Britain, or Australia, would I be described as a Canadian-American, a British-American, or an Australian-American? No, because I would not need to be cleansed. Being Canadian, or British, or Australian would be enough.

Of course, I may be overstating my case. Perhaps since I have been away from Cuba for nearly 40 years, I can no longer claim to be just Cuban. I've probably become too Americanized for that. I am not Cuban in the same way that my parents, who grew up and came of age in Cuba, are Cuban, nor am I Cuban in the same way that someone who has grown up in Cuba and still lives in Cuba now is Cuban. American life and American culture have had too much influence to allow me to claim that. But neither can I say that I am American. To claim that would be to deny the foundational influence that having been born in Cuba has had on me and to appropriate an identity that is not my birth right. I am different from people born here. For many years, first as a refugee and later a resident alien, I was here at sufferance, and even now that I am a naturalized citizen I feel quite keenly the difference between me and those who can claim U. S. citizenship as a result of their birth. Even the Constitution acknowledges the fundamental difference between citizenship by birth and citizenship by ex-post act of law, so I can never be President.

If I am too Cuban to be American and too American to be just Cuban, what, then, am I to be? One obvious response is to say that I am Cuban-American, but, I reject that label as well. To call me a Cuban-American is to put my core at the periphery. It is to pluck the nucleus and relegate it to the status of modifier. To refer to me as a Cuban-American offensive, what am I? For me the answer is that classification depends upon context. To full-fledged, natural born Americans, I am Cuban. That's what makes me different from them and it is, all by itself, legitimate and enough. To Cubans who are still, or until recently were, living in Cuba, I am an Americanized Cuban.

The term Americanized Cuban, which can be shortened to American-Cuban, is not one which I've ever heard anyone use. Nevertheless, I find it appealing. Unlike the term Cuban-American, the term Americanized Cuban leaves the Cuban at the center. It acknowledges the impact of nearly 40 years of exile but keeps the Cuban core on center stage. It is less homogenizing, less assimilationist. Perhaps we should give it a try.

But change is hard. A very long time ago, in reading through a self-study prepared by a Faculty Committee, I noted that I was described as a Cuban-American and I asked why I couldn't just be Cuban. After all, if the point is to highlight the difference between me and other members of the faculty, referring to me as Cuban is most apt, for to the extent I am American, I am the same. While my listener was vaguely amused by the notion that I would find the label Cuban-American not only inaccurate but vaguely demeaning, the classification remained unchanged. In a more recent self-study, pie charts set out the percentages of faculty who are Puerto Rican Hispanics or Mexican Hispanics, but a Cuban Hispanic is just an "other" Hispanic. Still marginalized, after all these years.

It has been suggested to me that my objection here is not to essentializing, but to essentializing the wrong thing. I disagree. I am arguing in the alternative. I would prefer not to have one aspect of my identity - my ethnicity - highlighted to the apparent exclusion of all others. Nevertheless, if an aspect of my identity is going to be essentialized, I'd at least like it to be something that is as central to my own view of myself as its essentialization would suggest that it is. In other words: I'd prefer that you don't essentialize, but if you're going to essentialize, at least get it right.

I now think that perhaps being told I was not Hispanic when I was at Cornell was probably a good thing. It helped me to preserve my Cuban identity by making my ethnicity non-essential. It allowed me to view
myself, and, I believe, to be viewed, as a whole person. A person different from others, to be sure, but difference is not per se negative.

Difference is negative only when it is constructed as such. The [*801] talent that makes Luciano Pavarotti or Kathleen Battle different from the rest of us is not negative because it is not viewed negatively. Albert Einstein's intellect was different from that of most people, but its difference did not make it negative. Throughout my professional life, until I joined the Temple faculty and became minoritized, I did not feel that the differences that came from being Cuban were negative. In my life as a student and later as a tax lawyer with a big Philadelphia firm, the differences that come from being Cuban (bilingualism, understanding Latina/o culture, knowledge of the Caribbean and Central and South America), were and are assets, not liabilities. I saw them that way and I believe others did as well.

For my honors thesis at Cornell, Coping with Culture Conflict, n26 I studied the ways in which the conflicts between the Cuban and American cultures were reflected in the degree to which children spoke English with a Spanish accent, and my work was not only encouraged but praised. When I became a tax lawyer, my fluency in Spanish brought me into transactions that were on the cutting edge of tax practice. n27 I could revel in these differences because with them I was also an insider. I was an insider to a culture and group that I valued.

Of course, being denied admission to a group, (in my case, the group labeled Hispanic), can be disempowering when it stands in the way of redressing wrongs. Refusing to acknowledge victimization does not transmute a victim into a non-victim. But we should question whether there is another way of righting those wrongs - a way that doesn't disempower us, n28 and a way that doesn't essentialize one aspect of our identities to the exclusion of others. n29 While being encouraged to check Hispanic when I came to Temple was empowering because it recognized my ethnicity, it was also marginalizing because it essentialized that aspect, and it essentialized it in a homogenized and therefore incomplete and inaccurate way.

So, what am I (we) to do? If the price of counting is the homogenization of my Cuban identity, do I want to count? If the price of counting is being cast in the role of victim, do I want to count? Does counting as Hispanic essentialize my ethnicity so that all other aspects - woman, mother, wife, daughter, tax lawyer, friend - dissolve? LatCrit scholars have begun to ponder these questions, and have offered a number of useful insights. Work on intersectionality has helped to reveal us as multidimensional individuals capable of functioning and delighting in a variety of roles. It has shown that we can move between worlds and between languages while valuing and being a part of each, and it has applauded the diversity that exists within us. Yet, I want to offer a few words of caution.

First, in our zeal to reveal ourselves as multidimensional whole people whose many characteristics intersect in interesting ways, we should resist the urge to appropriate intersectionality itself. We should celebrate it, but we should not claim exclusive ownership of it. Intersectionality is part of the human experience and we should not fall into the trap of essentializing the very vehicle we have chosen as a de-essentializing device. Intersectionality, while a useful tool for deconstructing essentialism, should not itself be essentialized as a phenomenon either unique to or amplified by the Latina/o experience, for to do so will only divide us further. We should avoid getting into an intersection contest.

Second, we should neither forget nor denigrate professional intersections. I am a tax lawyer, teacher, and scholar. I became a tax lawyer because I found tax challenging and fascinating as a law student when I took my first tax course. I love the intellectual challenge and the rigor of it, but I am also drawn by the deeper meaning of taxation, for in a tax system a society reveals its values. While a tax system developed through the democratic process will reveal all of the imperfections of that process, it can also provide an antidote to the ills that befall a society plagued by dramatic income inequality. Tax policy, developed and implemented through a democratic process that values human rights, can prevent the rise of dictators like Fidel Castro, who used force to obtain and retain the power to redistribute wealth, and who abrogated human rights in the process. n30

Tax systems reflect who and what we care about, and in studying a tax system we study who we really are. In debating tax policy we debate who we think we should be. As Professors Blum and Kalven noted in their classic article on progressive taxation,

In the end it is the implications about economic inequality which impart significance and permanence to the issue and institution of [*803] progression. Ultimately a serious interest in progression stems from the fact that a progressive tax is perhaps the cardinal instance of the democratic community struggling with its hardest problem. n31
My work with Professor Marty McMahon addresses issues of income inequality and progressive taxation and reflects that perspective. n32

Despite the importance of tax policy for the preservation of human rights, property, and other things we value, within the Academy I have felt more like an outsider as result of being a tax lawyer and scholar than as a result of any other aspect of my identity. Colleagues seem to think nothing of saying about tax lawyers as a group things that they would be pilloried for saying about many other groups. I have heard colleagues refer to us as dull, narrow, intellectually shallow, and pedestrian. Evaluation of tax scholarship for tenure or promotion often expresses surprise that the work is interesting, creative, or well-written, and the one area that aspiring law teachers seem to have no compunction about listing under "Subjects Not Preferred" in the AALS recruitment conference form, is Tax. In two years as Chair and several more years as a member of Temple's Faculty Selection Committee I looked at several thousand AALS forms, as there are typically about one thousand a year. I think fewer than 20, out of all of those thousands of applicants, listed anything other than tax as "not preferred," and only one listed Constitutional Law. I confess that I wanted to interview that applicant just because of that.

Being a tax lawyer made me feel like an outsider when I arrived at LatCrit III. Exploring that intersection - the intersection of our identities and our chosen fields of scholarly interest - can help the LatCrit movement to grow and can advance some of its objectives. Perhaps a second story will provide useful insight into the point I will try to make.

III. A Pianist's Story

One evening during the summer I was writing this essay, I went to a concert by the Philadelphia Orchestra at the Mann Music Center, an outdoor venue which serves as the Orchestra's summer home. The program that evening was billed as "Scandinavian Summer" and promised a selection of "Scandinavian Favorites," n33 including Grieg's Piano Concerto, a beautiful, difficult, and well-known piece of the classical repertoire. The pianist was Terrence Wilson, a Juilliard student who had made his professional debut with the Philadelphia Orchestra in 1992, at the age of 17. n34

When Mr. Wilson walked onto the stage the audience surprise was polite but apparent. Not only is Mr. Wilson young, (now 22), but he is Black. Although there was a picture of Mr. Wilson in the program for the evening, there was no picture of him in the pamphlet that announced the season, which is where subscribers get information about the schedule of works and performers, and given the relaxed atmosphere of the Mann, where many people picnic on the grass surrounding the stage and the covered seating area during the performance, I suspect that many had not paid close attention to the program.

At that performance Terrence Wilson was a soloist not only because he was the pianist, but because he was the only Black person on the stage. Although other Black classical concert pianists exist (Andre Watts comes prominently to mind), it is fair to say that Blacks are under-represented within the ranks of classical instrumentalists. n35

Terrence Wilson gave a marvelous performance that night and received a richly-deserved standing ovation. Still, after it was over I found myself reflecting on the possible parallels between his life as a Black classical concert pianist and mine as a Cuban tax lawyer and academic.

IV. Reflections

Both Terrence Wilson and I are playing against type. He, because he is Black and a classical concert pianist and I, because I am Cuban and a tax lawyer. Our identities create expectations that we breach. Although the civil rights movement has resulted in a climate in which the existence of Black professional musicians and Latina/o lawyers is, happily, no longer remarkable, we have not yet succeeded in creating a climate in which our race or ethnicity does not limit the ways in which we are expected to use our talents. Audiences are not surprised when a Black musician plays jazz, or hip hop. Black jazz musicians and hip hop artists are commonplace, as are Latina/o constitutional, immigration and criminal defense lawyers. But Black classical concert pianists cause a stir and Latina/o business lawyers in the U. S. are often regarded with incredulity. Reviews and announcements of Terrence Wilson's performances often mention that he is Black even though they never mention the race of a white concert pianist, n36 and at least one very prestigious prospective employer insisted that I had to be interested in developing an immigration practice, not in being a tax lawyer.

To open the doors of opportunity fully for those who come behind us, legal discourse should move beyond these narrow taxonomies. Entire fields should be available. This process of expanding the field, of opening the doors fully, is slow and often woefully incremental, but it is the next step in developing an inclusive society. Just as women had first to fight to be admitted into law school and then fight to be allowed...
to practice law and then fight to be hired by large and prestigious Wall Street law firms and then fight to be accepted as tax, banking and finance lawyers, so must Latina/os. n37 We should be able to celebrate our race, gender, ethnicity, sexual orientation, and myriad other defining characteristics and allow them to enhance what we choose to do, but they should not cost us the chance to do what we want to do. As a community we should nurture the development of interest in many dif ferent aspect of the law (yes, including even tax) not only because it is the right and inclusive thing to do but because it is also the practical thing to do. Many law faculties face limits in the number of experts in particular fields than they can afford to hire, but by diversifying the areas of our academic expertise, Latina/os can increase our numbers in the academy. If we all do the same thing, we reduce our chances of securing greater representation.

What I am suggesting is not assimilation, with its subtext of homogenization and erasure of ethnicity. Just as it is important for law students to be exposed to a diverse faculty because it offers them a vari ety of role models and allows them to experience diversity in the posses sion of power, so it is important that diversity extend to the subject matter areas we pursue. n38 This more complete vision of diversity, which [*806] extends to subject matter, will make the range of career and life options most graphically visible to students. As Latina/os become more visible throughout the spectrum of areas of practice and professions generally, others will become accustomed to seeing us in those roles and we will be seen as rightful participants in those endeavors. We don't have to surrender our ethnicity to do that.

When Terrence Wilson commands the piano in the classical reper toire he proclaims both that race is not a bar to the classics and that classical music must not remain a whites-only club. Of course, I am not suggesting that a Black pianist can be taken seriously only by perform ing the classics or that the classics are more worthy than other types of music with which Black musicians are more closely identified. What I am suggesting is that Black musicians can and should perform whatever type of music they choose to perform and that all types of music, includ ing classical music, should be seen as within their province, just as they are for whites and just as whites are not barred from performing jazz. Terrence Wilson's race should not limit what he plays, any more than Alicia De Larrocha's nationality (she is from Spain) ought to prevent her from playing Mozart. Madame De Larrocha has probably done more to disseminate the music of the Spanish composer Enrique Granados than any other pianist, but she is also renowned as an exceptional interpreter of Mozart.

When he speaks to groups of students and young musicians Ter rence Wilson demonstrates that Blacks can reach for the stars as classi cists, and all students can profit from that message. n39 I hope that seeing me teach tax opens similar doors for my students n40 and that reading my tax scholarship broadens the perspective of my colleagues. n41

[*807] Terrence Wilson does not want his race to be essentialized, although he is keenly aware of its importance. As he has said in inter views, "There are dangers in being a black concert pianist ... I'm wor ried that I'll only be a role model. I'll probably get work because of my color ... [and] these can be great opportunities for me. But these advan tages also have a downside - I don't want to be ghettoized... Just because I'm black ... doesn't mean that my favorite pianist is Andre Watts." n42 I concur, on both counts, and I believe that it is possible, if difficult, to achieve that goal.

The essentializing of race has imposed on Terrence Wilson a burden other pianists do not have. Thus he has been criticized for playing classical standards, such as Tchaikovsky's Piano Concerto No. 1, rather than concerti written by Black composers. n43 In effect, his critics would deny him the pleasure of playing Tchaikovsky's Piano Concerto No. 1 because of his race. n44

[*808] I have felt similar pressures. I have been told that I should not waste my time on tax but that, because I am Latina, I should devote my professional life to areas of the law which bear a more direct relation to the Latina/o, condition. I have rejected that advice. I have as legitimate a claim to being a tax lawyer as any white American male and neither my gender nor my ethnicity should stand in the way. My experiences in Cuba and later as an exile have no doubt shaped my view of the role and importance of tax policy, just as they have shaped other aspects of my identity, but even if I could see no connection between my experiences as a Cubana and my interest in tax policy, it would still be legitimate for me to be a tax lawyer.

I will continue to be a tax lawyer, just as Mr. Wilson has continued to play Tchaikovsky's First Piano Concerto, but my plea here is for greater understanding and acceptance from my own community. Being a Cuban tax lawyer made me feel like an outsider at LatCrit III. While some of that feeling may have been attributable to my being Cuban, I think most of it was attributable to my being a tax lawyer. When people asked me what I taught and I said tax, I felt them
winkle their brows and silently wonder "so what are you doing here," as if I couldn't be both Latina and a tax lawyer. It is time for that to change.

V. Conclusion: Time to Come in From the Cold

The good news is that things are indeed changing. After all, I, a Cuban tax lawyer, was asked to be a discussant at LatCrit III. For that I am grateful. LatCrit scholars are nudging legal discourse to move beyond binary, bipolar paradigms, and the diversity of the participants in LatCrit III is a testament to the success of their efforts. As the theme of LatCrit III implies, it is now time to take the next step. For me, that next step is to make a concerted effort to find the places where I am inside, and to celebrate and revel in that insiderness, so that it is with me even when I am outside.

What I am suggesting does not require assimilation or denial of difference. On the contrary, claiming the inside requires that we acknowledge our differences. It requires that we see that many of the things that make us outsiders also make us insiders, so that we are insiders and outsiders, all at the same time.

I recognize that it may seem easy for me to urge this because I may be seen as privileged: my parents are both college graduates who spoke English even before becoming exiles, we did not emigrate for economic reasons, and we were not, in our home country, the victims of racial discrimination. I am now inside the community of tax professors and was once inside the community of practicing tax lawyers, and being inside those communities has been very nurturing. So, for others it might be more difficult to find and celebrate that inside than it has been for me. Nevertheless, difficulty does not mean impossibility, and deciding to look for that insider place is the first step. Some members of our diverse community will find it easier to do that than others, but all of us should try. By the very act of uniting to find that place of comfort and belonging, that insider's place, we can create it.

At LatCrit I Professor Jerome Culp exhorted us to "build a theory that recognizes our differences and builds coalitions for change," but cautioned that "this new theory has to avoid falling prey to the temptation to become complicit in the description of the other. We will not build a theory for change if we replicate the structures of the other created by society." The construction of outside as a place that stands in opposition to inside is one such structure. That structure was necessary to break down the barriers that kept us on the outside looking in, but accepting and using that structure should not prevent us from also finding the places where we are inside.

A model in which we categorize ourselves as either insiders or outsiders replicates the structure of a society that treats us as being outside. But our world does not exist outside of some other, more important, world. Every day, we are insiders in some respects, even as we are outsiders in others.

To claim the inside, we need to value the diversity among us. The ways in which we are different from others are what make us the individual persons that each of us is. We should celebrate those differences. We are diverse in ethnicity, gender, sexual orientation, area of professional interest and a host of other things. These differences do not just make us outsiders, they also make us insiders to the communities whose members share them, even if they don't share other characteristics we possess.

Writing about the gay and lesbian communities, my colleague, Professor Nancy Knauer, recently observed that:

The myth of a single community prompts arguments over the production of a single agenda. When much of the disagreement stems from fundamental questions of perspective and goal articulation, the challenge is not to determine whose goal prescription is right or more desirable, but rather, to try to respect the myriad of differing articulations emanating from our diverse communities.

LatCrit scholars have shattered the myth of a single minority community and have shown that there isn't even a single Latina/o community. They have been instrumental in beginning the process of allowing us to experience one another as multidimensional people who also have many things in common. We have started to move beyond the binary paradigm that essentializes one aspect of our identity, but we need to go further.

Latina/os are insiders and outsiders. It is time for us to claim all the places where we are inside, and to build others. We should nurture the communities to which we belong and build bridges to those we do not yet know well. We should bring our insights and our diversity to different areas of the law - including tax and business - areas where we continue to be seriously under-represented. By doing so we need not become either whitewashed or lost. Bridges need not fuse what they bridge.

FOOTNOTE-1:


n4. The move that I am urging is not unlike that which has occurred over time in other areas of the law and in other progressive movements. Thus, the early common law saw the doctrine of consideration evolve from a binary concept that was, like a light switch, either on or off, through the development of the doctrine of promissory estoppel, which allowed recovery even when consideration might be lacking, and eventually to relational contract, which is a considerably more complicated, but arguably more apt, model for contractual relationships. See Robert S. Summers & Robert A. Hillman, Contract and Related Obligation: Theory, Doctrine, and Practice 42-43 (3rd ed. 1997); Grant Gilmore, The death of Contract (1974); Ian MacNeil, Economic Analysis of Contractual Relations: Its Shortfalls and the Need for a "Rich Classificatory Apparatus", 75 Nw. U. L. Rev. 1018 (1981); Ian MacNeil, The Many Futures of Contracts, 47 S. Cal. L. Rev. 691 (1974). The evolution of feminism provides perhaps a richer and closer parallel, but I cannot explore it here.

n5. See, e.g., Arriola, supra note 3, at 398.


n7. I owe the term to Professor Celina Romany, who has spoken eloquently of her move to the United States from Puerto Rico and poignantly described the experience of being "minoritized" for the first time in her life. The phenomenon that Professor Romany described as minoritization is not unlike the process that Zora Neale Hurston refers to as "becoming colored". See Zora Neale Hurston, How It Feels to Be Colored Me, in I Love Myself When I am Laughing ... And Then Again When I Am Looking Mean and Impressive 152 (A. Walker ed., 1979), quoted and cited in Angela Harris, Race and Essentialism in Feminist Legal Theory, 42 Stan. L. Rev. 581, 610 (1990). I adopt Professor Romany's term - minoritization - because it captures the essence of my own experience.

n8. Esso was the trade name used by Standard Oil of New Jersey for many of its foreign, as well as some of its domestic, operations. Standard Oil used various trade names in the United States until 1972, when it decided to unify its domestic operations under the name Exxon. For a succinct history of the trade names used by Standard Oil as well as some of the legal issues that arose from its use of multiple names and its subsequent decision to use the name Exxon in the United States, see Exxon Corporation v. Humble Exploration Company, 695 F.2d 96, 98 (5th Cir. 1983), on remand, Exxon Corporation v. Humble Exploration Company, 592 F. Supp. 1226 (N.D. Tex. 1984).

n9. Exxon Corp. v. United States, 7 Cl. Ct. 347 (1985). The case arose out of Exxon's deduction of a $ 27.4 million debt owed to it by the subsidiary that owned the Cuban refinery which my father managed. The debt was not repaid following the nationalization and Exxon sought to deduct it as a bad debt. The tax litigation had a long and tumultuous history and was not resolved until 1991. Exxon won. See Exxon Corp. v. United States, 931 F.2d 874, 98 (Fed. Cir. 1991), aff'g, Exxon

n11. I will refer to non-Cuban, non-Hispanic Anglos as Americans because that reflects the way I saw the differences between me and others whom I saw as belonging here. While I recognize that awarding to residents of one country in the Americas an appellation that implies ownership of two continents is controversial, I nevertheless use it here because it illustrates who and what it was that I regarded as the other. It was not others of a different race, gender or sexual orientation. It was others who were native and therefore belonged in the United States.

n12. The cognoscenti will recognize this as a part of Miami where a large concentration of Cubans now reside. It is referred to as "la sauguesera", a term that connotes thorough Cubanization - a place where everyone is Cuban and Americans would feel like foreigners, down to having trouble understanding the spoken language and reading the signs on storefronts, only some of which proudly proclaim "We Speak English" in stark contrast to the early 1960's when shops eager for Cuban business would advertise "Se Habla Espanol" (Spanish spoken here).

n13. The term comes from regulations that interpret the Internal Revenue Code, Treas. Reg. 1.871-2(b). Until 1984, a non-resident alien who was a "mere transient or sojourner" was not treated as a U.S. resident for federal income tax purposes. Although section 138 of the Tax Reform Act of 1984, Pub. L. 98-369, 98 Stat. 672 (1984) changed the rules for determining residency status for tax purposes, the "transient or sojourner" classification remains significant for other purposes, such as determining whether an individual qualifies for the foreign income exclusion provided by I.R.C. 911. See Treas. Reg. 1.871-2(e).

n14. Max J. Castro has written about what he has referred to as the Cuban "master narrative" that "explains [Cubans'] condition as immigrants not in terms of personal circumstances but of historical necessity. That perspective confers meaning and dignity to the exile's condition regardless of external hardships and protects self-esteem against the stigma attached by some in this society to newcomers and to Latinos." Max J. Castro, Making Pan Latino: Latino Pan-Ethnicity and the Controversial Case of the Cubans, 2 Harv. Latino L. Rev. 180 (1997). I find the "master narrative" label pejorative, for it implies an artificially imposed world view - something that has been "narrated" to us and thus imposed from outside - that is at odds with my experience. My aunt, now 71 and barely able to walk, refused to learn English because it would mean that she had accepted that she would have to make a life in the U.S. - that she would no longer be a transient or sojourner. That she has been in the U.S. for over 35 years, longer than she lived in Cuba, and that she has learned to understand English in spite of herself, has not altered the way she sees herself: She is Cuban, not Cuban American, and she still feels that she really belongs somewhere else. That is not a master-narrative, it is her reality.

n15. Again, I use the term American because it is a translation of what they were to us: Americans. We were, and are, Cubanas.

(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). Professor Yvonne Tamayo has written of the more recent reaction to the prevalence of Spanish speakers in Miami, where, she has observed, "Spanish is not the language spoken only by people who work in low-paying jobs and who occupy and inferior place in the professional, political and social strata: rather, in Miami Spanish is spoken as well by people who own thriving businesses, are elected to public office, and are active participants in the city's social and cultural life." Yvonne Tamayo, "Official Language" Legislation: Literal Silencing/Silenciando La Lengua, 13 Harv. BlackLetter J. 107, 120 (1997).

n17. For some of the recent work discussing race as a social construct, see Kevin R. Johnson, "Melting Pot" or "Ring of Fire"?: Assimilation and the Mexican-American Experience, 10 La Raza L. J. 173 (1998), 85 Cal. L. Rev. 1259 (1997); Theresa Glennon, Race, Education, and the Construction of a Disabled Class, 1995 Wis. L. Rev. 1237, 1290-1297, and sources cited therein.

n18. Apparently, many Cubans still do. 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. 457 (1997), Coombs observed that "many of my Cuban students - who would be appalled (regardless of their skin tone) at being considered people of color - would self-identify as Cubano/Cubana or perhaps, as Hispanic." Id. at 460.

n19. The subject of race is, of course, complicated, as many scholars have shown. For now, I limit myself to describing how I felt, as a Cuban teenager in Miami in the late 60's. As others have noted, many Cubans are biologically Caucasian, and tend, or tended, to self-identify that way, distinguishing race from ethnicity. See Johnson, supra note 17, at 1284 n.90 (describing Cubans who emigrated before 1980 as "mostly White."), n.134 (citing Earl Shorris, Latinos 64 (1992) for the proposition that "the first wave of Cubans were mostly White). Many Cubans are also Black, others are Asian, and still others are bi- or multi-racial. Given the racial diversity that existed in Cuba itself, for me the separation of race and ethnicity seemed both obvious and natural. Id. at 1293 (describing racial tensions between the pre-1980 Cuban emigres and the refugees who emigrated as part of the Mariel boatlift of 1980, many of who were Black); see also Trina Grillo, Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House, 10 Berkeley Women's L. J. 16, 22 (1995) (Professor Grillo, who generously shared many insights through her writing before dying of cancer way before her time, identified herself as Black, Cuban and Italian). The question whether race as a construct can or should be separated from ethnicity has recently occupied a number of scholars, including Professor Grillo, id. and Professors Espinoza, Harris, Lopez, and Perea. See Leslie Espinoza & Angela P. Harris, Afterword: Embracing the Tar-Baby - LatCrit Theory and the Sticky Mess of Race, 10 La Raza L. J. 499 (1998), 85 Cal. L. Rev. 1585 (1997); Ian Haney Lopez, Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory, 10 La Raza L. J. 57 (1998), 85 Cal. L. Rev. 1143 (1997); Juan F. Perea, The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought, 10 La Raza L. J. 127 (1998), 85 Cal. L. Rev. 1213 (1997). The contemporary debate promises to, and should, continue.

n20. Eventually, I gave up on my first name, opting instead to use Alice because at least that is a name different from my real one and not a corruption of it, although I continue to insist on the correct pronunciation of my surname. I do of course, endure countless mispronunciations and misspellings. It will be interesting to see if that changes now, at least in Philadelphia, because the Philadelphia Phillies have a new player, Bobby Abreu, who insists on the correct Spanish pronunciation of his surname. Bobby Abreu is from Venezuela and is not a known relation, but I confess that I love
hearing Bobby Abreu's name pronounced correctly. The subject of names, and how they relate to our identities as Latina/os is an important and complicated one, which I will not elaborate on here. For thoughtful commentary, see Montoya, supra note 16, at n.8, and Johnson, supra note 17, at 209-25.

n21. On the excessive breadth of the term, see Berta Esperanza Hernandez-Truyol, Building Bridges, supra note 16, at 404-06.


n23. This theme appears again in more contemporary legal scholarship. See Berta Esperanza Hernandez-Truyol, Building Bridges, supra note 16, at 411.

n24. Cubans as a group are politically conservative. See Johnson, supra note 17, at 1293. As Max Castro and others have noted, Cubans tend to be politically conservative in part because they blame President Kennedy, and his party, for the Bay of Pigs debacle. See Castro, supra note 14, at 193. During the 60's, I was much more conservative than the majority of my classmates at Cornell. The three-person organization that I helped to found was the Cuban Student Society (CSS). There were only three of us in the CSS because we were the only three Cubans we could find, but we took on the then-powerful Students for a Democratic Society (SDS) to offer an alternative to the SDS version of the effects of the Cuban revolution. We not only organized a debate on the Cuban revolution that drew a capacity crowd to the student union, but obtained departmental sponsorship for a course on the Cuban revolution and arranged for a Cuban scholar, from Harvard, to visit Cornell and teach it. These activities hardly put me inside the Cornell mainstream in 1969. I was outside that, but I was inside another group, one that was valuable to me, so I did not consider myself a minority.

n25. The lumping of very different groups under one homogenizing label is not restricted to Latina/os. For a good discussion of the phenomenon, and a description of the many ways in which it distorts public responses to problems, see Dvora Yanow, American Ethnogenesis and Public Administration, 27 Admin. & Soc'y 483 (1996).

n26. Unpublished manuscript on file with the author.

n27. When working on transactions with Latin American lawyers and businessmen (and they were all men), I felt the full force of the gendered roles of women in Latin American societies. We may have a long way to go before achieving the kind of equality of opportunity we want in this country, but, in Latin America, women have an even longer road to travel. That, unfortunately, is another story.

n28. Although power, like choice, can be both positive and negative, in this context I regard it as largely positive. For a somewhat more detailed discussion of the positive and negative aspects of choice and power, see Alice G. Abreu, Taxes, Power, and Personal Autonomy, 33 San Diego L. Rev. 1, 50-57 (1996).

n29. For a thorough and contemporary treatment of some of the problems of identity politics and essentialism, see Martha Minow, Not only for Myself: Identity, Politics and the Law (1997).


n34. Id.

n35. A number of the press accounts of Mr. Wilson's appearances remark on the scarcity of Black concert pianists and the impact that scarcity has on Mr. Wilson's career. See, e.g., Valerie Scher, Terrence Wilson Doesn't Want to be Known as Just a Black Pianist, San Diego Union-Tribune, Oct. 23, 1994, at E-6; Kenneth Young, Wilson Plays With Consummate


n38. For a recent compilation of the body of empirical work that describes the ways in which the composition of the classroom affects student performance, and goes beyond it to provide "comparative information about race dynamic in law school classrooms," see Elizabeth Mertz, with Vamuci Njogu and Susan Gooding, What Difference Does Difference Make? The Challenge for Legal Education, 48 J. Legal Educ. 1, 2 (1998). Mertz et. al. found that "students of color participated more in the classrooms with teachers of color." Id. at 3.

n39. See Michael Sangiacomo, Keys to His Dream Right on the Piano: Terrence Wilson, 21, Astounds Aspiring Students at Cleveland Orchestra Rehearsal, Plain Dealer, Aug. 1, 1997, at B; Valerie Sher, supra note 35.

n40. Although my physical appearance does not announce my ethnicity (because of stereotyped notions of what Latinas should look like), I nevertheless make it a point to let my students know I am Cuban. For example, in class I always pronounce student and case names like Hernandez as a native would; when we discuss citizenship and jurisdiction to tax, I raise questions about the possible distinctions between citizens and non-citizen residents, openly drawing on my own experiences as both a citizen and a non-citizen. Although it has been suggested to me that I might be embarrassing some students by pronouncing their names in an obviously Spanish way, which I can do because I am a native Spanish speaker, I've never received anything but gratitude from students who appreciate not having their names mangled or mispronounced.

n41. I have both identified myself as a Cuban and a naturalized citizen in print and explored the connection of that identity to my scholarly exploration of matters involving the tax consequences of the renunciation of US citizenship. See supra note 6. I have also brought my perspective as a Latina and my understanding of Latina/o culture to discussions of Internal Revenue Service's treatment of immigrants who claim the Earned Income Tax Credit. As importantly, by simply being a tax lawyer I think I help to break down stereotypes and to make it easier for the many Latina/o tax lawyers who I hope will follow.

n42. Marc Shulgold, supra note 36. Other interviewers have noted that "Wilson hopes he will not be pigeonholed as an African-American artist." Jeff Bradley, supra note 35. "It really shouldn't mean much at all, but in terms of marketability, its inevitable that because we are so rare, some orchestras feel it can help demographically. There's a danger of being ghettoized, being featured only in events honoring Martin Luther King or only being invited to play in the month of February [Black History Month]." Id. Most poignantly, he has observed that "I always get people who come over to me and say, "You'll be the next Andre Watts." They don't tend to say I'll be the next Krystian Zimerman or Martha Argerich." Id. Both Zimerman and Argerich are young, but established, concert pianists whose playing has been widely celebrated.
n43. See e.g. Derrick Henry, Concert Review, Atlanta J. & Const., Jan. 12, 1996, at B (noting that "Tchaikovsky's First Piano Concerto was the vehicle 20-year-old pianist Terrence Wilson chose to play. While it's appropriate to spotlight promising black talent in a King celebration - and Wilson played with impressive power and fluency if not much individuality - surely he could have learned something more relevant to the occasion, say the powerful concerto of black composer George Walker"). Amazingly, Mr. Henry laid none of the blame for Mr. Wilson's selection of music at the feet of the Atlanta Symphony Orchestra's Music Director Yoel Levi, whose program he described sympathetically in a piece that appeared the day before the concert, and whom he quoted as saying "I'm very happy that we've found pieces that are good music, stimulating music, and quite inspiring at the same time... music that comes from the soul." Derrick Henry, Conducting a Celebration: Yoel Levi's Tribute to King Comes from Heart, Atlanta J. & Const., Jan. 11, 1996, at 1F. Mr. Henry levied his criticism of Mr. Wilson's choice of music, despite having noted that Spelman College President Johnnetta Cole, who hosted the program, had reminded the audience of "King's exhortation to embrace both the white and black keys of 'life's piano,' id., and having commented, when previewing the performance the day before that "A promising new talent: Pianist Terrence Wilson, 20, will play the most famous of all piano concertos, Tchaikovsky's First. Derrick Henry, ASO Listener's Guide: Glee Clubs to Have Part in King Tribute, Atlanta J. & Const., Jan. 11, 1996, at 7F.

n44. See supra note 43. Exploring why Terrence Wilson chose to play Tchaikovsky's Piano Concerto No. 1 is really beside the point. He might have chosen simply because it is a beautiful piece of music, or he might have chosen it because it is a piece he plays particularly well and he wanted to display his talents to maximum advantage. He could also have chosen it to celebrate the sexual orientation of the composer, who is now widely regarded as having been gay. The point is that if he wanted to play Tchaikovsky as a tribute to Dr. King, he should be able to. The fact that Terrence Wilson is a concert pianist whom thousands of people, of many races, pay to hear, should be the point.


n46. Culp, supra note 45, at n.68.

n47. Id.


INTER-GROUP SOLIDARITY: MAPPING THE INTERNAL/EXTERNAL DYNAMICS OF OPPRESSION: Latina Multidimensionality and LatCrit Possibilities: Culture, Gender, and Sex

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BIO:

* Professor of Law, St. John's University School of Law. This essay is an adaptation of a talk presented at the LatCrit III Conference in Miami Florida during the "Between/Beyond Colors: Outsiders Within Latina/o Communities." Muchisimas gracias to the organizers of the conference, Frank Valdes and Lisa Iglesias for their indefatigable organizing. I am deeply grateful for the invitation to share some time and thoughts with an amazing group of conference participants and to practice the LatCrit challenge of building community and forging coalitions. I am eternamente agradecida especialmente a Elvia Rosales Arriola, Frank Valdes, David Cruz, and Keith Aoki for their valuable comments on an earlier draft. They are colleagues and friends whose support, involvement, and dedication are the performative of community and coalition building. Last, but by no means least, special thanks to my wonderful (former) research assistant Christina Gleason (SJU '98) whose valuable work on this project has lasted even past her graduation. I wish to express my appreciation for the research support provided by the St. John's University, School of Law Summer Research Program.

SUMMARY: ... This epistemology privileges the Latino master narrative and predefines and preordains the content of and context for Latinas' journeys. ... [※811]

This essay explores the multiple margins that Latinas inhabit both within majority society and their comunidad Latina because of their compounded outsider status in all their possible communities. Exploring the concept and theme of "Between/Beyond Colors: Outsiders Within Latina/o Communities" elucidates both the challenges and the possibilities the young LatCrit movement presents for Latinas. n2

From its inception, LatCrit has broadened and sought to reconstruct the race discourse beyond the normalized binary black/white paradigm n3 -- an underinclusive model that effects the erasure of the Latina/o, Native, and Asian experiences as well as the realities of other racial and ethnic groups in this country. Primarily because of Latina/o panethnicity n4 and diversity, the LatCrit challenge should not, and can not, stop with the black/white racial binary. LatCrit's interrogation of the black/white paradigm, dating to the movement's beginnings, has invited us to contest other sites of normativity such as the socially constructed categories of foreignness, proper sex/gender roles, and sexuality -- both within the majority culture and our cultura Latina. n5

This essay thus addresses those insights that LatCrit theorizing offers to the Latina experience looking through the lenses of cultura, (en)gendered fronteras, and sexuality. This cuento of the multifaceted ness and complexity of the Latina experience reveals how such site is an essential counter-narrative to the either/or formulae that colonize so much scholarly and jurisprudential discourses. The cuento normativo obscures and denies the multidimensional, intersectional, multiplicities and interconnectivities of Latinas/os' real lives. n6

[※813] LatCrit's reinterpretation and repositioning of discourses, eschewing the atomizing either/or approach to embrace an inclusive and realistic both/and perspective, will not only reflect the multidimensionality and multicultural roots of Latinas/os and other diverse groups but will empower all marginalized communities. n7 This endeavor is complex and painful, even within the friendly intellectual communities of crits -- race crits, fem crits, race/fem crits, and queer crits. n8 These communities, notwithstanding their useful, emancipatory, and beneficial foundations, proved to be "insufficiently attentive" to those, like Latinas/os, who exist at the margins of crit borderlands of race, sex, gender, sexuality, color, language, and culture. n9

Pursuant to rigorous interrogation of "the interplay of patriarchy and white supremacy in the shaping of race...
and racialized power relations" critical theorists have made some inroads into addressing issues of the intersection of race, sex, and class. n10 One example is the serious examination of the black/white paradigm. Yet, this questioning of race alone, or in isolation from other identity components, does not, and can not, explain or craft the setting for the inquiry into the interaction of sex and race to effect gendered inequalities. n11 Consequently, much work remains to be done in the areas of intersections of race, sex, and class with culture, language, and sexuality.

LatCrit itself, however much it has struggled for inclusiveness, and as diverse, inclusive, involved, and proactive as the coalition has been, has the potential for deep fault-lines based upon cultural clashes. One example of unexplored territory is the potential (and unavoidable) conflict that can confront a predominantly Catholic group in being asked to embrace sexual minorities or to accept certain population-control based solutions to hunger and poverty. n12 Undoubtedly, such explorations will implicate the position of Latinas both within society at large and within the comunidad Latina.

Thus, in the course of writing about Latinas/os, I have discovered (and LatCrit discourse has unveiled and underscored) that critical theorizing is stressful, simultaneously liberating and restraining, confining, coercive. For me, there is one great irony in the endeavor to include Latinas/os in the discourses about law and justice, participation and cooperation, citizenship and foreignness. One of the major schisms I need to bridge in writing about multifaceted Latinas in a world that imprints homogeneity as normal, is the necessary use of an alien tongue -- English -- to communicate practice, theory, and insight based on the personal, real life journeys that I travel in Spanish. n13 This task forces me to translate untranslatables, like feelings.

I have unearthed in the course of all this critical intellectual inquiry that I feel in Spanish. My English expression is intellectual, cerebral, analytical, cold; my Spanish yarn is emotional, visceral, experiential, passionate. My own narratives often may have different meanings depending upon the voice. Foreign languaged stories may be incomplete and sometimes incoherent translations, at best silhouettes of my lived reality. Any necessary exportation of my personal knowledges to English bridle, constrains, and suppresses them; it distorts their reality, location, time and space. Spanish realities are performed as foreign fables.

Latinas are in a constant state of translations, existing in the interstices of languages, genders, races, cultures, and ethnicities. n14 For them, the distortions effectuated in engaging normative discourse are multifaceted. Their location as multiple aliens in majority communities is by virtue of many degrees of separation from the normativo: sex, ethnicity, culture, language. Within their own cultura Latina, Latinas are for eign simply because of their sex or, even more distancing, their sexuality. Such multiple barriers existing both within and outside group fronteras are definitional in the formation of, access to, and expression of Latinas’ identities. The complicated amalgam of pressures that emanates from both outside and inside - the majority culture and la cultura Latina - result in Latina invisibility, marginalization and subordination in all their communities. n15 It is at this place of interconnectivity of outsiderness that a liberation project must focus for it is only when those at [*815] the margin of the margins are embraced that freedom is a true possibility.

This essay explores the potential of LatCrit for demarginalizing Latinas by exposing another frontera: sexuality. First, and briefly, the piece suggests various issues of culture that confront Latinas and next, it focuses on the gendered borderlands in which Latinas travel within their culture spaces. Third, this work presents sexuality as a location where Latinas experience multiple oppressions from both outside communities and the comunidad Latina. It then confronts the everyday complexities, tensions, and struggles faced by Latinas who are sexual minorities within their comunidad Latina. This analysis serves both to elucidate the very material problem of alienation and marginalization of Latina lesbians because of their multiple outsidersness as well as to enliven and problematize the reality of multidimensionality.

Finally, I conclude by reiterating the need for a paradigm that recognizes, embraces, and articulates the multiplicity of all of our identities and rejects any possibility of atomization of our multilocal citizenships. In this regard, the international human rights model which integrates as foundational the concepts of interdependence and indivisibility of rights, is a valuable tool to enhance the possibilities of our critical, community-oriented work.

Culture

It is not an easy task to talk about culture when the group being scrutinized is one as diverse as Latinas/os. n16 This is a group with internally distinct and assorted languages, migrations, education, emancipation, and political histories. Roots within the territory now known as the United States are varied, the language of home is not easily predictable, racial composition is best described as mestizaje -- and
within the U.S. borderlands Latinas/os cannot be white because they are Latina/o.

Yet, while recognizing the diversities that exist between and among the panethnic groups collectively catalogued under the umbrella of the Latina/o label, it is inescapable that the group indeed shares many cultural commonalities. Many of these converge around the importance of family and firm notions about appropriate sex and gender roles -- two interconnected foundations of cultural oppression for Latinas. n17

[*816] La familia is of sacrosanct importance in the cultura Latina. n18 It also is the site initially and continuously responsible for the creation, construction, and constitution of gendered identities. n19

Our families operate on the extended family model in which abue las y abuelos are respected and revered, tias y tios are effectively second sets of parents, and primas/os are like additional hermanas/os. This big tent is where we first learn about appropriate and proper conduct, includ ing sex roles, from several generations. These generationally unchanging molds in turn become proof of the correctness of the point, about our proper and befitting places; what conduct is suitable and acceptable; and what comportments and performances constitute cosas feas (ugly things).

Inevitably bridging the diversities among Latinas/os, these learnings and knowledges about fitting demeanor are universally and uniformly gendered and sexualized. n20 La cultura Latina rigorously and authoritatively defines, delineates, and enforces gender identities. These fronteras are then used as a tool of oppression and pressure to marginalize those mujeres (and hombres) who do not conform to culturally accepted (and acceptable) designations of gender and sex roles and norms.

As I have confessed previously, I rebelled against some of the little messages imbued with meanings with respect to the definitions of the parameters for proper conduct for (proper) girls. n21 For example, I refused to make my bed; my hermano never had to. Yet, I guess it is generally appropriate for beds to be made and the simple solution to my rebellion itself also confirmed the proper gender roles regarding bediti quette - abuela took on the task.

I also recall that while I was expected to excel at school -- be a go-getter, the best, like papi -- at home I was supposed not to argue, to be demure, and to defer. Some meanings of my parents' expressions did not escape me -- "why couldn't I be more like mami" was a phrase I frequently overheard papi utter, while shaking his head in what I interpreted as disappointment, my failure.
As the Paz passage depicts, the Latina is defined by the Latino from his dominant situation in family, church and state. The Latina did not participate in or consent to the definition that determines who she is or what she does. She is fabricated and sculpted in the image, desire, and fantasy of the Latino.

The cultural expectations/interpretations of Latinas, simply because of their sex, by the cultura Latina tracks the dominant paradigm's con struction of sex. Man is the norm, woman in his image, an afterthought -- lesser in every sense: strength, stature, ability. p24

The gendered imprinting occurs starting at birth. Baby girls are dressed in pink, treated demurely, and adorned with jewels -- dormilonas (literally "sleepers"), small posts in gold that decorate their tiny ears -- starting their designated route to femininity. Little girls continue to be socialized to be feminine, prepared to be mothers and wives. Their most important aspiration and achievement, is to get married, have children, and serve their families. p25

Should the family needs demand the Latina to work outside of the home, employment is viewed as a means of continuing to serve the family. Since Latinas work for the family rather than for personal satisfaction or gain, they pursue positions that replicate their "appropriate" conduct - those "feminine" low- respect, arduous, thankless occupations as caretakers: nannies, cooks, maids, jobs at the bottom of the pay scale (probably because they so well replicate their "natural" role as wife, mother, housewife). p26

The cultura Latina, reflecting and incorporating its predominantly Catholic religious foundation, fixates the idea of womanhood on the image of the Virgin Mary -- the paradoxical virgin mother. p27 Latinas [819] are glorified by the marianista paradigm as "strong, long-suffering women who have endured and kept la cultura Latina and the family intact." p28 This model requires that women dispense care and pleasure, but not receive the same; that they live in the shadows of and be deferential to all the men in their lives: father, brother, son, husband, boy friend. p29

Perfection for a Latina is submission.

Language and family are cultural constants throughout most of Latinas' travels that unconsciously sometimes, subconsciously some times, and instinctively sometimes define navigations and destinations, transitions and translations. p30 For Latinas these clear and rigid delineations of the borderlands of proper conduct embed a male vision of culture, sex, and gender identity. p31 This epistemology privileges the Latino master narrative and predefines and preordains the content of and con text for Latinas' journeys. Thus family, society at large, community, church, and state collude to limit and frustrate the daily travels that iden [820] tify, define, and design the extent and parameters of the viajera's tours. These cultural perspectives on proper sex/gender roles design Latinas' lives and deeply affect their existence.

This constitutive power of accepted narratives makes me question why womanhood requires that I be submissive when I'm supposed to be revered (in the image of the Virgin Mary); why I should love boys and see all men as superior if they are not trustworthy; and why I should be deferential, servile, and subservient to men at home when I am supposed to be their equal or better at work. Those of us who question or challenge the norm risk alienation from and marginalization by our comunidad Latina rendering us outsiders even within the outsider comunidad Latina. As the last portion of this essay addresses in the following section, sexuality is central to the Latina subordinate position within family and community.

Sexuality - La Ultima Frontera

Beyond sex, sexuality is another location where Latinas experience multiple oppressions from outside as well as from within la cultura Latina. Significantly, "sexuality and sex-roles within a culture tend to remain the last bastion of tradition" p32 thus making "sexual behavior (perhaps more than religion) ... the most highly symbolic activity of any society." p33 The mores, rules and mandates on sexuality that fall on women, as aptly captured by Paz's definition of woman as repository of cultural values that are defined for her, are used as

"proof" of the moral fiber or decay of social groups or nations. In most societies, women's sexual behavior and their conformity to traditional gender roles signify the family's value system. Thus in many societies a lesbian daughter, like a heterosexual daughter who does not conform to traditional morality, can be seen as proof of the lax morals of a family. p34

The honor of la familia is inextricably intertwined with the sexual purity of its women. p35

Beyond defining the parameters of "tradition," women's sex roles, as defined by men, serve to preserve men's dominant status in all [821] spheres of life. p36 For Latinas, the expectations of and demands for appropriate women's sexual roles and conduct, sourced in church, state, and family, are constant and consistent, repressive and oppressive. p37
For example, the teachings of the Catholic church, the predominant faith of Latinas/os, n38 while prohibiting any and all sexual contact that is not within holy matrimony and for the purpose of procreation, emphazize the importance of virginity for all women. n39 The church further insists that women remain virgins until marriage and "that all men be responsible to women whose honor they have 'stained'." n40 This appertently generous suggestion of responsibility only thinly veils differentiations concerning the distinct expectations regarding men's and women's adherence to the sexual norm. Plainly, religion is more freely accepting of men's deviations from church teaching: there is no suggestion that men's honor is "stained" by deviation from the purity norm. Moreover, by instructing male responsibility to the women they "stain" it colludes with and confirms societal gendered hierarchies. Thus even religion, while purporting to have a uniform sexual norm (virginity) for men and women alike, accepts gendered inequalities. n41

Originally, the religious tenet of sexual purity was church-inspired. The cultural norm that has emerged is fully embedded in the master narrative of the comunidad Latina and serves to dictate and ascertain the location of women in society.

Given these cultural sexual mores, there are three readily ascertainable tenets of Latina sexuality. The first is that sex is taboo for women. [⁎822] For Latinas, virginity translates to and symbolizes purity, cleanliness, honorability, desirability, and propriety. This is the template for the marianista buena mujer (good woman), a standard to which women must adhere lest they lose status in the community, the family, and the church. The cultural script for la buena mujer dictates that she must always reject sexual advances which, incidentally, are mandatory for the men to make, if only to confirm the nature and character of the women in their company.

The worst thing, well, almost the worst thing as we will see shortly, that could happen to a woman is to receive the label of puta - whore - a mujer mala (bad/evil woman). Should a woman consent to sex, every one, including the man with whom she had consensual adult even missionary sex will say she is a puta, she lacks virtue. n42 The man, of course, simply adds a notch to his belt.

To be sure the requirement of virginity for women but not for men and the language used to describe the loss of virginity for women but not for men, depict the strong cultural double sexual standard. Women's loss of virginity is a "deflowering" a "stain". On the other hand, culture supports, if not encourages and celebrates men's manly worth as grounded on sexual, really heterosexual conquests -- pre- and extra-marital alike. n43

Aside from being taboo, contemporary studies confirm that the traditional mores also dictate that sex, for women, is something to be endured, never to be enjoyed. In the cultura Latina "to shun sexual pleasure and to regard sexual pleasure as an unwelcome obligation toward her husband and a necessary evil in order to have children may be seen as a manifestation of virtue. In fact, some women even express pride at their own lack of sexual pleasure or desire." n44

For Latinas the cultural significance of virginity as well as the man dated undesirability of sex, results in a third rule concerning sexual conduct: modesty. n45 Significantly, this modesty mandate does not end with marriage. As one fictional character puts it: "take me and Alberto. We [*823] lived together for 18 years and never once did he see me naked." n46 So sexuality is a big deal for Latinas.

There are other aspects of sexuality that cast a long shadow on some Latinas' existence. A few paragraphs earlier I noted that being a puta was almost the worst thing that a Latina could be called. As the popular adage mejor puta que pata -- better whore than dyke -- reveals, there is a worse cultural/sexual outlaw in the comunidad Latina than the whore: the lesbian.

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. In addition to the majority community's secular and religious reasons for othering and rejecting sexual minorities -- immorality, sinfulness, perversion, unnaturalness -- Latina lesbians are further persona non grata because they are imputed with rejection of and failure to conform to cultural (and religious) as well as sexuality norms. n47 After all, what could a culture that views sex as taboo, intercourse as a duty, modesty as mandatory, and women as objects and not subjects of pleasure do with two women enjoying sex with each other? n48

Latinas have manifold "outsider" identities -- cultural, racial, and religious -- vis a vis the culture at large. They must grapple with and negotiate the consequences of their ethnicity and their lesbianism -- conflated factors that magnify their marginalization and alien ness within virtually every location occupied by the majority culture. Yet, for Latina lesbians their womanhood and their lesbianism are dual frontiers that invoke rejections and cause isolation within what other [*824] wise could be considered the refuge of their cultura Latina. n49

Thus, Latina lesbians are foreign in all their spaces. n50 They are derided sexual minorities the
heterosexual familia Latina; they are queer in the very heterosexual comunidad Latina. They are colored in the predominantly white gay/lesbian family; they are colored and lesbian in the white and heterosexual majority. They are nowhere in the heterosexual black/white paradigm that excludes their brownness and in the gay/straight binary that fails to accommodate their womanness. Latina lesbian, as Latinas, are ethnic outsiders who "must be bicultural in American society" and as lesbians are cultural outsiders who must "be polycultural among her own people." n51

Latina lesbians enjoy (suffer) multi-layered deviations from the norm. Their subject position is one of alienness (alienation) everywhere. They embody the "fundamental interdependence of sexism, racism and homophobia in the construction and practice of social and legal subordination by, within and between various identity categories." n52 Perhaps because of these multiple divergences from the normative, Latinas' lesbianism is more difficult to accept than other "aberrations." Within the comunidad Latina lesbianism triggers all ranges of cultural fears both in the cultural "traditionalists" and in the "cultural outlaws" themselves.

On the one hand, traditionalists fear the erosion of the culture and religious beliefs and mandates that could be effected by the sin of lesbianism. To be sure, lesbianism itself presents a challenge to and can constitute an outright rejection of patriarchal values and male superiority. n53

On the other hand, Latinas' own lesbianism arouses in them a different set of cultural fears. One salient concern of Latina lesbians is the fear of loss of the all-important family n54 - "the primary social unit and [\textsuperscript{825}] source of support" within the culture because of rejection due to their sexuality. n55 These are genuine and weighty preoccupations.

As in any culture, reactions to a family member's lesbianism vary. One familiar approach is for the family to offer to pay for the necessary therapy to "cure" the lesbian. n56 Another popular response to a family member's sexual "aberration," one that fits well with the shame-based nature of the cultura Latina, is for the family to be embarrassed about the person's lesbianism. n57 Families may address this discomfiture at the deviance of a family member in a number of ways, none particularly embracing of or healthy for the lesbian.

In one model the family alternately denies and conceals her lesbian identity. This often translates to the banishing gay/lesbian friends from the family home. Such approach causes stresses to the individual who is torn between her familiares (family members) and her otra familia (other "family") -- the one being rejected by the relatives. n58 Loss of [\textsuperscript{826}] family presents Latina lesbians with a difficult choice: loss of support from the one group where they were not "en el otro lado" (on the other side). n59

Beyond relatives, lesbianism threatens Latinas with loss of community and friends. Even in times of political struggles and ethnic awareness, Latinas who are sexual "others" have been marginalized and rejected. La comunidad Latina has derided Latina lesbians "as an agent of the Anglos" and "as an aberration, someone who has unfortunately caught his [Anglo] disease." n60

Lesbianism thus alienates Latinas from the heterosexual majority in the comunidad Latina which has difficulty with and even irrational revulsion for homosexuality. Lesbians are exiled from the culture and community by placing the group "in a context of Anglo construction, a supposed vendida to the race." n61

While clearly unacceptable, the othering of Latina lesbians is the plainly explicable if one looks through the lens of those who are disturbed by differences. The challenge and tensions Latina Lesbians pose to culture is patent. In accepting and embracing their own outlaw sexuality, they effectively reclaim "what we're told is bad, wrong, or taboo <clip>." n62 Acceptance of the multidimensional self implicitly, if not concretely, rejects the sexism and homophobia of the patriarchal culture.

Finally, it would be irresponsible in studying the subordination of women in the cultura Latina because of their sex, sexuality, and lesbianism, if one did not consider the feminization of the gay male as part of the project of emancipation from sex-based oppression. n63 Gay Latinos are feminized. The feminization of gay Latinos serves to show how feminaleness, femininity, and womanhood are identity components that can be manipulated, distorted, and translated to reduce all women and gay men (who are viewed as women) to second-class citizenship status.

Literature is replete with examples of how gay Latinos are described with derision in precisely the same terms that are used to laud the "proper" women: docile, submissive, feminine. n64 Gay Latinos are called pajaros (birds), n65 maricas (faggots), n66 and locas (crazy females). n67 They are described with the same (mostly negative) words and behaviors used to portray or depict "normal" or sex/gender-appropriate behaving women: "hysterical, ludicrous, alternately sentimental and viper-tongued, coquetish with men she knows will likely end up beating her half to death.
when they are no longer satisfied with shouting insults at her at the same time that they are strangely attracted to the tattered eroticism that she can still manage to project."  

It is telling that characteristics not only valued in but demanded from "real" mujeres can so quickly be transmogrified into undesirable, immoral, sinister, corrupt traits when they appear in men who love men. Gay Latinos are reduced to stereotypical caricatures of debased, degenerate, vile woman-like men. The deprivation of the revered attributes of femininity into derision if occurring in men reveals and underscores the tensions and stresses of world traveling by Latinas/os who are sexual others.  

Furthermore, it is noteworthy that maricon -- faggot -- the most common appellation for a homosexual male has multiple negative meanings. The word maricon, in common usage, is employed not only to refer to a gay man. It also is used to denote a wrongdoer, a reprobate, a weakling, a spineless actor. These multiple meanings elide and elude the translations of gender and sexual identity. The word for lesbian, marimacha, reveals similar discomfort with non-traditional and culture-affronting gender, sex, and sexual identity. The marimacha, a designation that plays with and preys on both the marianista and the macho proper roles, evokes wholly discordant cultural images.  

Conclusion

Notwithstanding the powerful impact of sexuality on a Latina lesbian's location in all her societies, it is a theme at best sparsely considered, at worst, unabashedly ignored in the literature. Because of the multiple oppressions effected by sexuality on all Latinas, and the additional burdens of lesbianism, a confrontation of this ultimate frontera has implications for all Latinas/os' liberation.  

One useful model is the indivisibility/interdependence framework of a critically adjusted international human rights model.  

International norms protect both equality and difference, autonomy and interdependence, privacy and family life. These principles recognize that human beings are the totality of their identities, not an essentialized or fragmented portion of ourselves.  

As was plainly presented with respect to Latina lesbians, fragmentation of identity perpetuates privilege and entrenches subordination. Latina lesbians are displaced and erased in all their communities by virtue of their multiple outsiderness in all locations. An approach that partitions identity within any community will simply replicate and compound power relations be they based on sex, race, ethnicity, sexuality or a combination of any or all of such identity components. All these spaces must provide Latina lesbians refuge from subordination, dislocation, and disempowerment, not create them.  

For LatCrit's success, it is imperative that it adopt and promote a multidimensional model -- "a principal epistemic site" that embraces rather than atomizes our multiple co-existing, indivisible identities. This means that we must enfold all, particularly those who are different from the norm, those who we would rather ignore because we learned about them as cosas feas.  

**FOOTNOTE-1:**

n1. This work uses the term Latina to refer to the women citizens of the outsider community known or referred to as the Latina/o (or "Hispanic") community. See Berta Esperanza Hernandez-Truyol, Building Bridges-Latinas and Latinos at the Crossroads: Realities, Rhetoric, and Replacement, 25 Colum. Hum. Rts. L. Rev. 369, nn. 1, 2 (1994) [hereinafter Hernandez-Truyol, Building Bridges] (explaining preference for use of term Latina/o). However, the boundaries, limits, and understandings of such a varied and diverse community are far from fixed or easily explained. See id. Rather, they are contested sites, subject to and deserving of necessary interrogation, particularly within the LatCrit movement and project. Far from being a classification easily identifiable, we can not simply know it when we see it. See Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring) (defining pornography by the "I know it when I see it" standard). Luz Guerra has articulately posed the challenge to LatCrit to engage in the critical interrogation of our own namings and colonizations. She has directly confronted the erasures effected by placing indigenous peoples' issues on the agenda without first "critically examining the term Latino/a for its relationship to Native history." Luz Guerra, LatCrit y la Des-colonizacion Nuestra: Taking Colon Out, 19 U.C.L.A. Chicano/a-Latino/a L. Rev. 351 (1998) (suggesting that LatCrit can not put indigenous peoples on the agenda without examining the term and its relationship to First Peoples' history; examining Spanish as the colonizing language of Native
peoples and its effects on negating their languages, cultures, identities, and customs). To this challenge I add the need to interrogate our African roots and our simultaneous participations in and subjections to the practice of slavery outside the U.S. borders but within our places of origins such as the Caribbean. See Hernandez-Truyol, Building Bridges, supra, at 424, n.283 (noting that slavery was abolished in Puerto Rico and Cuba later than it was in the U.S.). Recognizing the challenges posed by Latinas/os' mestizaje, this piece uses the term Latina/o to refer to a class of persons of diverse and mixed racial origins whose nationalities or ancestral background is in countries with Latin/Hispanic cultures and who within the U.S. borderlands are collapsed into one classification due to such roots. See Hernandez-Truyol, Building Bridges, supra, at 429; Francisco Valdes, Foreword -- Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence, and Latina/o Self-Empowerment, 2 Harv. Latino L. Rev. 1, n.1 (1997) [hereinafter Valdes, Foreward]; Max Castro, Making "Pan Latino", 2 Harv. Latino L. Rev. 179 (1997).


n4. See Angelo Falcon, Through the Latin Lens: Latinos Still Need the Voting Rights Act, Newsday, Sept. 3. 1992, at 106 (noting that Latina/o panethnicity is sourced in "the pan Latina[O] consciousness emerging in this country" while recognizing and accepting both Latina/o diversities and the reality that within the U.S., "more brings [the amalgam of persons referred to as Latinas/os] together than separates them within the political process"). See also Valdes, Possibilities, supra note 2, at n. 32, nn. 99-118.


n9. See Valdes, Possibilities, supra note 2, at 3-7.
n10. See Valdes, Possibilities, supra note 2, at 5.


n13. See also Hernandez-Truyol, Indivisible Identities, supra note 2, at 200-03.


n15. See Hernandez-Truyol, Borders (En)gendered, supra note 5 (addressing the subordination of Latinas).


n18. See, e.g., Ian Lumsden, Machos, Maricones, and Gays -- Cuba & Homosexuality 55 (1996) ("The family was typically the most important institution in pre-revolutionary Cuba.").

n19. See Hernandez-Truyol, Borders (En)gendered, supra note 5; La Familia Latina, supra note 16, at 1324.

n20. See Lumsden, supra note 18, at 55; La Familia Latina, supra note 16, at 1324.


n22. See, e.g., Oliva M. Espin, Cultural and Historical Influences on Sexuality in Hispanic/Latin Women: Implications for Psychotherapy (hereinafter Espin, Sexuality), in Pleasure and Danger: Exploring Female Sexuality 149 (Carole S. Vance ed., 1984); Lumsden, supra note 18.


n25. See Burgos-Sasscer & Giles, supra note 24, at 55 (noting that a Latina's most important goal is to marry and serve her family).

n26. See M. Patricia Fernandez Kelly, Delicate Transactions: Gender, Home, and Employment Among Hispanic Women, in Uncertain Terms: Negotiating Gender in American Culture 183, 194 (Faye Ginsburg & Anna L. Tsing eds., 1990) (finding that the "search for paid employment [by Latinas] is most often the consequence of severe economic need; it expresses vulnerability not strength within their homes and in the marketplace."); Bonilla-Santiago, supra note 17, at 8 ("Many [Latinas] still tend to pursue the more feminine occupations as a way to enter the work setting because they do not understand the organizational cultures.").

n27. See Gloria Anzaldua, Haciendo Caras, una entrada, in Making Soul/Haciendo Caras xv-xxvi (Gloria Anzaldua ed., 1990). Anzaldua calls for the development of new theories which
incorporate race, class, ethnicity, and sexual difference:

In our literature, social issues such as race, class and sexual difference are intertwined with the narrative and poetic elements of a text, elements in which theory is embedded. In our mestizaje theories we create new categories for those of us left out or pushed out of the existing ones.

Id.; see also Bonilla-Santiago, supra note 17, at 21, 24, 44 (noting shortcomings in current social science and feminist research with regard to race and class, and calling on Latina women to develop independent movement and critical theory).

In a study conducted from 1989 - 1991 with women from a barrio in New York City, the researchers found that class and gender position were the issues of greatest concern to women "with education as a potentially empowering strategy." Rina Benmayor et al., Centro de Estudios Puertorriqueños, Hunter College, Responses to Poverty Among Puerto Rican Women Identity, Community, and Cultural Citizenship 10 (1992).

n28. See Bonilla-Santiago, supra note 17, at 11 (noting ways in which Latinas are taught they are inferior to Latinos); Mary Becker, Strength in Diversity: Feminist Theoretical Approaches to Child Custody and Same-Sex Relationships, 23 Stetson L. Rev. 701 (1994) (discussing "dominance feminism" and its assessment that women's work in private sphere is systematically devalued); see also Catharine A. MacKinnon, Feminism Unmodified 55 (1987) ("We notice in language as well as in life that the male occupies both the neutral and the male position ... whereas women occupy the marked, the gendered, the different, the forever-female position."); Lucinda M. Finley, Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning, in Feminist Legal Theory 571-79 (D. Kelly Weisberg ed., 1993) (arguing that legal language and reasoning reflect male-based perspective, and discussing limitations of this perspective in various areas of law).

n29. See Anzaldua, supra note 27, at 19-20 (noting that lesbians of color make "ultimate rebellion" against native culture and often fear rejection by family and culture); Bonilla-Santiago, supra note 17, at 31-32 (citing Latino's homophobia and unilateral focus on race as sole oppression facing Latinas).

n30. For a more thorough discussion of the gendered nature of the Spanish language, see Hernandez-Truyol, Borders (En)gendered, supra note 5, at 918-20; Hernandez-Truyol, Indivisible Identities, supra note 2, at 211-12.

n31. For an example of the continued perpetuation of this cultural vision, see Rosa Maria Gil & Carmen Inoa Vasquez, The Maria Paradox 5 (1996). But see Hernandez-Truyol, Las Olvidadas, supra note 3, at 376-79 (criticizing The Maria Paradox as furthering stereotypes concerning the proper roles and behavior for Latinas).

n32. Espin, Sexuality, supra note 22, at 160.


n36. See, e.g., MacKinnon, supra note 28, at 36 ("Virtually every quality that distinguishes men from women is already affirmatively compensated in this society. Men's physiology defines most sports, their needs define auto and health insurance coverage, their socially designed biographies define workplace expectations and successful career patterns, their perspectives and concerns define quality in scholarship, their experiences and obsessions define merit, their objectification of life defines art, their
military service defines citizenship, their presence defines family, their inability to get along with each other -- their wars and rulerships -- defines history, their image defines god, and their genitals define sex.

n37. See Hernandez-Truyol, Borders (En)gendered, supra note 5, at 915.
n38. Approximately 85% of Latinas identify themselves as Catholics and many hold socio-political views based on or strongly influenced by the church's teachings. See Bonilla-Santiago, supra note 17, at 15.
n40. Espin, Sexuality, supra note 22, at 151; see also See Ana Castillo, La Macha: Toward a Beautiful Whole Self [hereinafter Macha], in Chicana Lesbians: The Girls our Mothers Warned us About 32-22 (Carla Trujillo ed., 1991) (discussing one author's view of the impact of religion on women's sexuality).
n41. See generally Elizabeth M. Igesias, Rape, Race, & Representation: The Power of Discourse, Discourses of Power, & the Reconstruction of Heterosexuality, 49 Vand. L. Rev. 868 (discussing the sexual power structure promulgated and enforced by Latinos against Latinas).
n42. Espin, Sexuality, supra note 22, at 157.
n43. For a discussion on the double standard see Claudia Colindres, A Letter to My Mother, in The Sexuality of Latinas 9 (Norma Alarcon et al. eds., 1993); Erlinda Gonzales-Berry, Conversaciones con Sergio (Excerpts from Paletitas de guayaba), in The Sexuality of Latinas, supra, at 80 (noting the notion of "cornudo" (having horns put on one) exists only with respect to unfaithful wives and that no female form of cornudo exists, but rather, to the contrary, men who have affairs are deemed manly).
n44. Espin, Sexuality, supra note 22, at 156.
n45. See Lumsden, supra note 18, at 31, n. 5 (defining pudor as an uniquely Spanish notion which is a combination of shame and modesty).
n46. Elvia Alvarado, Don't Be Afraid, Gringo, in The Sexuality of Latinas, 9, 50 (Norma Alarcon et al. eds., 1993).
n47. It is important to note that, as with other themes concerning Latinas there is a dearth of information concerning Latina lesbians. See Hernandez-Truyol, Las Olvidadas, supra note 3 (discussing the dearth of information concerning Latinas). As Oliva M. Espin, a well know professor of psychology who has extensively written on Latinas, including Latina lesbians, has stated, "the literature on Latina lesbians is scarce." Oliva M. Espin, Issues of Identity in the Psychology of Latina Lesbians [hereinafter Latina Psychology], in Lesbian Psychologies: Explorations & Challenges 35, 39 n.8-11 (Boston Lesbian Psychologies Collective eds., 1987) (citing to only studies to the author's knowledge that "focus particularly on Latina lesbians or on the specific aspect of their identity development").
n48. This is not to say that Anglo/a culture is embracing of lesbianism. See, e.g., Macha, supra note 40, at 37 (describing lesbianism as "a state of being for which there is no social validation nor legal protection in the United States (nor in Mexico)"). Moreover, it is important not to essentialize Latina lesbians. Latina lesbians, indeed all lesbians, are diverse, multidimensional beings with differences in race, class, ethnicity, culture, religion, education, and gender identity to name a few. See, e.g., Migdalia Reyes, Nosotras Que Nos Queremos Tanto, in Compa<n>eras: Latina Lesbians 248 (Juanita Ramos ed., 1994) (noting diversity within lesbian community, including Latina lesbian community).
n50. See Hernandez-Truyol, Las Olvidadas, supra note 3; Hernandez-Truyol, Borders (En)gendered, supra note

n51. Macha, supra note 40, at 35.

n52. See Valdes, Foreword, supra note 1, at 5.


n54. Macha, supra note 40, at 37-38 (noting regarding latina lesbians that "above all, I believe, they do not want to lose the love and sense of place they feel within their families and immediate communities"). The fiction writing also reflects this fear. For example, the lesbian daughter in Marimacho whose father questions what two women can do, when her lover asks her to run away with her responds: "Tu sabes bien que te quiero, esa no es la cuestion. Que vamos a hacer dos mujeres, sin dinero, sin amigos, sin tierra? Nadie nos va a recoger, somos una cochinada." (author's translation: You know that I love you, that is not the issue. What are we going to do as two women, without money, without friends, without land? Nobody will take us in, we are filthy/swine). Gloria Anzaldua, La Historia de una marimacho [hereinafter Marimacho], in The Sexuality of Latinas, supra note 43, at 65. Author's note: "Cochinada" does not translate easily. The word cochino as an adjective, means very dirty, it also means, as a noun, a hog, a pig. Thus cochinada blends, exacerbates, and transcends both meanings.

It is interesting to observe that one Chicana author openly noted that while Chicanos "took issue with society as brown men, Catholic men, and poor working class men [ ] they entered into a confrontation with society from the privileged view of a dialogue amongst men." Marta A. Navarro, Interview with Ana Castillo, in Chicana Lesbians, supra note 40, at 115, 124. On the other hand, Castillo observes that contrary to the men who were "not willing to look at themselves and say, 'I am a horrible cabron' ... [and] romanticize themselves, or ... glorify themselves, or ... objectify themselves, and their courage and their history, but none of them is ever willing to look into each other as an individual" the Chicana writers are "openly self-critical and abnegating at the same time. Id. at 116. Finally, the writer observes that she is beginning to see a "glimpse" of men writing about themselves as individuals from the gay male Chicano writers. Id.


n56. Arruda, supra note 49, at 183 ("My mother's reaction was to tell me that she was willing to pay for me to go to therapy and straighten myself out. That was the same thing my aunt and uncle in Brazil told my cousin when they found out he was gay.").


As lesbians, our sexuality becomes the focal issue of dissent. The majority of Chicanas, both lesbian and heterosexual, are taught that our sexuality must conform to certain modes of behavior. Our culture voices shame upon us if we go beyond the criteria of passivity and repression, or doubts in our virtue if we refuse. We, as women, are taught to suppress our sexual desires and needs by conceding all pleasure to the male. As Chicanas, we are commonly led to believe that even talking about our participation and satisfaction in sex is taboo.

Id. (citations omitted).

n58. See Althea Smith, Cultural Diversity and the Coming-Out Process (hereinafter Coming Out), in Ethnic and Cultural Diversity Among Lesbians & Gay Men, supra note 55, at 294 (noting that "members of the gay, lesbian, and bisexual community are often referred to, colloquially, as members of the family").

n60. Carla Trujillo, Introduction, in Chicana Lesbians, supra note 40, at ix (emphasis in original) (quoting N. Saporta Sternbach, A Deep Memory of Love: The Chicana Feminism of Cherríe Moraga, in Breaking Boundaries 48-61 (A. Horn-Delgado, et al. eds., 1989)); Espin, Sexuality, supra note 22, at 158-59 (telling of Latinas who view "lesbianism [as] a sickness we get from American women and American culture"); Espin, Latina Psychology, supra note 47, at 40 (quoting a participant at a meeting of Hispanic women in a major city in the U.S. in the early 80's as saying that "lesbianism is a sickness we get from American women and American culture").

n61. Trujillo, Introduction, supra note 60, at ix (citation omitted). Trujillo posits that the cultural rejection "more realistically is due to the fact that we do not align ourselves with the controlling forces of compulsory heterosexuality. Further, as Chicanas we grow up defined, and subsequently confined, in a male context: daddy's girl, some guy's sister, girlfriend, wife, or mother. By being lesbians, we refuse to need a man to form our own identities as women. This constitutes a 'rebellion' many Chicanas/os cannot handle." Id. (emphasis in original); see also Macha, supra note 40, at 24 ("As a political activist from El Movimiento Chicano/Latino, I had come away from it with a great sense of despair as a woman. Inherent to my despair, I felt was my physiology that was demeaned, misunderstood, objectified, and excluded by the politic of those men with whom I had aligned myself on the basis of our mutual subjugation as Latinos/as in the United States."); Trujillo, Fear and Loathing, supra note 57, at 187 ("Too often we internalize the homophobia and sexism of the larger society, as well as that of our own culture, which attempts to keep us from loving ourselves... The effort to consciously reclaim our sexual selves forces Chicanas to either confront their own sexuality or, in refusing, castigate lesbians as vendidas to the race, blasphemers to the church, atrocities against nature, or some combination.").

n62. Trujillo, Introduction, supra note 60, at x (emphasis in original); Macha, supra note 41, at 44 ("We [Latinas] had been taught not to give those [sexual] feelings and fantasies names, much less to affirm their meanings.").

n63. See Lumsden, supra note 18, at 27, 51 ("Discrimination against homosexuals has also been bolstered by the machista devaluation of women."). Significantly, this power dynamic is sometimes replicated within some gay communities. See id. at 28-9 ("The right of masculine males to enjoy their sexuality as they see fit matches the power they have in society as a whole... [In Cuba] before 1959 masculine ostensibly heterosexual males were able to satisfy some of their sexual needs with 'nonmasculine' males while simultaneously oppressing them in other ways. In this respect there was not much difference between how they treated homosexuals and how they treated women.").


n65. Id. at 51 (writing about a book entitled Pajaro de Mar por Tierra).

n66. Id. at 83 (referring to the maricas as the lowest class, the most grotesque, within homosexuality).

n67. Id. at 91; see also Lumsden, supra note 18, at 56 (explaining the imagery of the loca as "parodying stereotypical female mannerisms").

n68. Compare Foster, supra note 64, with Lumsden, supra note 18, at 6 (referring to Cuba), and Lumsden, supra note 18, at 28 (noting that "there is a correlation between the oppression of women and the oppression of homosexuals").

framework can be used to challenge recent immigration and welfare reform laws that have a negative impact on Latinas/os).

n70. See Harris, supra note 6; Hernandez-Truyol, Building Bridges, supra note 1; Valdes, Sex and Race, supra note 6, at 49.

n71. See Margaret E. Montoya, Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis, 2 Harv. Latino L. Rev. 349, 370 (1997).
INTER-GROUP SOLIDARITY: MAPPING THE INTERNAL/EXTERNAL DYNAMICS OF OPPRESSION: !Esa India! LatCrit Theory and the Place of Indigenous Peoples Within Latina/o Communities

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SUMMARY: ... In Miami and the Southwest, where immigrant communities from south of the border dare to refuse to speak English and establish their own social and economic infrastructure, immigrant communities have made the inherited majority begin to experience, ever so slightly, what it feels like to be different, on the outside - to be a minority. ... A friend was driving a car in Miami, when a woman cut her off. ... The indigenous people of Peru and Ecuador constitute more than forty percent of the population. ... Additionally, land reform measures, such as land grants to individuals, threaten the lands indigenous people hold communally. ... This resulted in efforts to "launder" the indigenous people by underreporting their population, or by calling them "minorities." ... Most of Peru's indigenous people reside in its Highland Andean regions. ... 4.440 million indigenous people, most of them speaking Quechua and Aymara, live in the altiplano, or Andean region of the country. ... On May 13, 1992, President Paz Zamora granted the indigenous people in the Andean region one million hectares of land. A constitutional reform in 1994 designated Bolivia a "multiethnic, pluricultural society" and allowed indigenous people to assume the ownership of their traditional lands. ... In contrast, Bolivia's neighbor to the South, Chile, reports, as of 1995, only 598,000 indigenous people, making up four point two per cent of the population. ...

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1. The Promise of a Policy-Oriented Perspective

LatCrit, as I understand it, stands in a great tradition. With American Legal Realism, it shares the focus on the empirical rather than the normative. Transcending, however, the Realist emphasis on analysis, and harnessing the sensitivities of the outsider, the LatCrit movement has formed around a powerful policy objective: the goal of overcoming structures of oppression and patterns of injustice encountered by Latinas/os in the United States and beyond.

LatCrit theory is, as Frank Valdes has explained, "embryonic." n1 It attempts to produce critical knowledge, create material social change, and build coalitions as well as scholarly community. Beyond those activities, LatCrit is "a project perpetually under construction, but one whose construction ... seems consciously guided by a progressive, inclusive and self-critical theory about the purpose and experience of theory." n2 As a postmodern theory, LatCrit focuses on education, n3 illuminating the limitations of an exclusively rights-based approach to resolving problems of group-wide oppression and discrimination. n4 As a [*832] post-postmodern movement, it reveals inklings of cultural essentialism in its difficult quest for identity, n5 the fight for language rights, n6 and the affirmation of distinct expressions of culture. n7

Appropriately, LatCrit joins critical race theories in their skepticism of a wholesale rejection of the rights discourse n8 and the power processes [*833] of the state as useful instruments to establish a public and private order that approximates the proper respect for equal status and dignity of all human beings. In that quest, LatCrit theory can only gain from considering the contributions of a theory about law that has been termed the "jurisprudence for a free society" n9 - a most helpful, interdisciplinary approach that analyzes and resolves societal problems and finds its guiding light in the overarching goal of a universal order of human dignity.

Lamentably, Professor Myres Smith McDougal, this theory's main protagonist, died yesterday morning. n10 In Eugene Rostow's words, "A mighty oak has fallen and the forest will never be the same." n11 His intellectual legacy, however, will go on. And what a tremendous legacy he has left us. Professor McDougal has revolutionized the way we view law. Law, for him, had a purpose: it was to maintain minimum order,
n12 and on that basis, to construct an optimum public order of human dignity. n13 Empirically speaking, he considered law the outcome of a process of making decisions, vested with both authority and the attendant threat of sanctions in case of non-compliance, which he called "control intent." Professor McDougal urged every participant in this process, from scholars, to legislators, to lawyers, to judges, and others, to clarify their "observational standpoint." "Where do you locate yourself vis-a-vis the problem at hand?" Such standpoint varies, depending upon factors such as one's life experiences, education, family background, and whether one is a member of the dominant social group or an outsider on the margin. It may differ according to important aspects of our identity such as race, ethnicity, gender, age, sexual orientation, and so forth. This observational standpoint also may change over time. n14 We all have different experiences in life, even though we share some with other members of particular groups. What Professor McDougal has taught us is how to be both cautious and introspective; to find out where we are coming from, what makes us tick, what our background is; and to put our particular perception of a problem and its solution into the perspective of our own critically reviewed experience. Thus, the call of policy-oriented jurisprudence to "clarify our observational standpoint," issued many years ago, n15 is a proper approach for critical race theorists committed to the discipline of self-reflection and self-critique, n16 as well as to the insights of intersectionality, multiplicity, and multidimensionality. n17 It also evokes Pierre Schlag's problematization of the "subject" n18 and Robert Chang's call for elucidation of the "subject position," n19 i.e., determination of the stance of the author vis-a-vis the topic addressed.

Professor McDougal also insisted that, in fashioning a solution to a particular social problem, we should not, a priori, limit the variables that constitute and impact the issue at hand to one text (of a law or judgment or other prior decision) or consider only a few cloistered societal factors. n20 Instead, he counseled that we should include all of the factors relevant to legal decisionmaking regarding the problem under consideration. Underlying this approach is a broader, empirical conception of law that views law not merely as a body of rules, but as a continuous process of decisions made by persons vested with authority and backed up by the threat of sanctions. n21 This co-presence of authority and control intent is essential, because naked power, absent authority, is not enough to vest a decision with the mantle of law. Also, morality, even at the vaunted level of "natural" law, is not self-enforcing. Thus, we need the power processes of established communities to help morality, or certain value or policy preferences, to become reality.

In order to arrive at a decision that promotes the public order of human dignity, Professor McDougal recommends the fulfillment of five intellectual tasks. The first such task is to identify the social problem in all its dimensions. In the context of the Latina/o condition, whether we refer to the general problem of conscious or unconscious oppression, its roots and manifestations, or to specific exclusionary or discriminatory practices against members of the Latina/o community, we must endeavor to gain as complete an understanding of the problem as possible and draw on all sources of knowledge available. These sources include narrative n22 as well as traditional, trans-subjective analysis. It is imperative that we use all the tools of empirical research at our disposal. The second phase of the inquiry highlights the conflicting claims, the claimants, their identifications, bases of power, and so forth. In a third step, the approach identifies the particular solutions in the processes of "making" and "applying" law that have been arrived at in the given community via legislation, court decisions, and so on. Beyond the text n23 of these decisions, it is critical to also analyze the conditioning factors of these authoritative and controlling decisions. Why did the law develop the way it did? Those conditioning factors include environmental factors, such as the mood of the times, and the predispositions of the decisionmakers, personal, political, social, and so on. Taking into account changes in these conditioning factors, we would proceed to predict future decisions regarding the social problem under investigation. The last phase, which often is neglected in critical legal studies, is to offer a recommendation to solve the problem at hand.

For this recommendation, we need a guiding light. Professor McDougal's genius called this guiding light, the overarching policy preference, a "public order of human dignity." n24 This structural concept of dignity has been defined as maximum access of all people to the processes of shaping and sharing of all the values humans desire. Professor McDougal's friend, Harold D. Lasswell, founder of policy sciences, delineated those values empirically, as human aspirations for power, wealth, well-being, affection, respect, rectitude, skills, and enlightenment. n25 In seeking access for all, not just Bentham's greatest number, this approach would not leave minorities out in the cold. n26 In its inclusive thrust, this conception of dignity aspires to reach a solution, as difficult as that may be, that takes into account and safeguards the interests of all of the members of the community.
Documenting the face of oppression of Latinas/os in the United States of America is beyond the scope of these few comments. A thorough analysis of the problem, its conflicting claims and past trends in decision, conditioning factors, and so forth, is nonetheless warranted. Legitimate and widespread grievances exist. From the Miami perspective, it may appear that an increasingly isolationist Anglo 
ill. elite considers Latinas/os as the present major threat to the melting pot, the constitutive myth of the United States. Famed historian Arthur Schlesinger, Jr. has expressed this anxiety by stating that the unity of this count 
try is about to "break away at the fringes."  
II. LatCrit and the Essential Relevancy of IndigenousPeoples

If equal treatment, both in fact and in law, is our goal, it must be universal and it must be reciprocal and mutually granted. We must confine to be mindful of discrimination within our midst. If we do not respect the legitimate claims of others, we forfeit our own. 
It is fitting that in this quest for equal dignity, the plight of indigenous peoples within the Latina/o midst cannot be ignored. To their credit, major intellectual leaders of the LatCrit movement have not done so. They have formulated as international and border-crushing a theory as they come. Elizabeth Iglesias has stated the issue clearly: 

Making the international challenge in our scholarship confronts us with the question whether our particular experiences of oppression will inspire us to imagine a broader more inclusive community, based on our common humanity and in solidarity with each other and the struggles and suffering of our Third World "others," or whether these experiences of oppression will become the media through which we will stake our claim in the privileges of our First World citizenship. 

One must wonder whether everyone heard this message. A recent "Annotated Bibliography of Latino and Latina Critical Theory" manages to painstakingly describe seventeen distinct "themes" of "critical Latina/o scholarship," including "intersectionality," "black/brown tensions," and "Latina/o essentialism," yet fails to mention the indigenous condition as any such "theme" nor does it include it in the discussion of any of these clusters of scholarship. The indigenous peoples of the Western hemisphere are, however, a key ingredient of Latina/o identity. As Margaret Montoya points out, "As Latinas/os, we, like many colonized peoples around the globe, are the biological descendants of both indigenous and European ancestors, as well as the intellectual progeny of Western and indigenous thinkers and writers." 

The indigenous peoples of the Western hemisphere are of flesh and blood. They have survived and continue to face an onslaught of massive attacks directed at the core of their existence. Their plight is not merely historical. It is a day-to-day occurrence of which we often are not aware, or wrongfully believe it exists only in foreign countries.

Conscious, and even more often, unconscious racism may infect the ranks of victim groups as well. I would like to share with you a personal example that highlighted the problem for me. A friend was driving a car in Miami, when a woman cut her off. Angry as hell and without even taking a close look at the car in Miami, when a woman cut her off. Angry as hell and without even taking a close look at the "inconsiderate "stupid" female driver, my friend blurted out "<exclx> Esa India!" Now, my friend is from Chile, a country where very few Indians remain. My friend had never even met an indio, or, for that matter, an india in her country. She also now regrets the incident and has kindly agreed to have me share it with you. What it reflects, however, is an attitude of unreflected, yet pervasive scorn of native inhabitants of the hemisphere, which places indigenous peoples at the bottom of the social ladder, and which appears widespread among the Southern Cone, but throughout Latin America. Similar attitudes, I am told, are to be found in Mexico, Venezuela, and other parts of the Western hemisphere. They are a legacy of history - a history of suffering, physical and
cultural genocide, conquest, penetration, and marginalization that has been endured by indigenous people in this hemisphere and beyond.

Still, indigenous peoples have not been stamped out. A majority of the population of Bolivia and Guatemala are indios. The indigenous people of Peru and Ecuador constitute more than forty percent of the population. In twelve countries, including Belize, Honduras, Mexico, and Chile, between five percent and twenty percent of the population are considered indigenous. Overall, approximately fifty million people maintain indigenous lifestyles. This population is growing in absolute and relative numbers, despite continuing attempts at physical extermination, the mass killings that never stopped, the disappearances, and the tortures. In civil wars, indigenous communities are often caught between the government and its armed forces on the one hand, and private armies or gangs on the other. Ethnocide was often committed through the theft of indigenous land, policies of assimilation and termi nation, public and private discrimination, and other severe deprivations of many kinds.

It bears repeating that the process of colonization has left indigenous peoples defeated and relegated to minor spaces and reservations, mere breadcrumbs of the land conceded by the dominant society. Indigenous peoples were separated from the sacred land of their ancestors, with which they shared a deeply spiritual bond. Deprived of traditional environments, they were politically, economically, culturally, and religiously dispossessed. They became entrapped peoples, "nations within." The indigenous peoples aspire to leave this confinement, to extricate them selves from the trap, and to live lives of self-defined dignity and happiness. Indigenous peoples all over the world claim the right to live freely on their ancestral lands, to celebrate their culture and deeply felt spirituality, and to move from cultural autonomy to economic autonomy, and to political self-government. At times they may even call for the ultimate option of secession.

Despite the European powers' successes on the battlefield, the legal systems of the conquerors often had a hard time justifying the conquest in terms of the constitutive myths of the community. Catholic Spain had Francisco de Vitoria rationalize the duty of the Indians to welcome the Iberian "guests," inter alia, with the New Testament admonition to "love thy neighbor" and to be hospitable to strangers. His view of the essential humanity of Indians and their natural rights, however, did not fit with the atrocities committed by these self-invited guests. Victoria's fellow Dominican, Bartolome de las Casas, argued for better treatment of the beaten people. By contrast, the British colonization relied much less on brute force and the destruction of indigenous political structures and society. Its subjugation strategies largely included mechanisms of negotiation and persuasion. Nevertheless, like the Spanish, the hands of the British government and those of its successor administrations have not been free from blood.

III. Indigenous Peoples in Latin America

The legacy of conquest and the meanderings of the legal status of the subjugated, but resurgent, Indian nations are retraced in the following selective overviews of pertinent domestic legal systems throughout Latin America. Brazil's policies regarding indigenous peoples have set important trends throughout Central and South America. Brazilian Indians, most of them inhabitants of the tropical rainforest of the Amazon, numbered 1.1 million at the time of conquest. By 1970, their numbers had dropped to 120,000. Now, the total Brazilian Indian population is estimated at 250,000, divided into 200 tribes and speaking 170 languages. The Brazilian Indians do not enjoy any "inherent right" of "self-government." They are considered to be "relatively incapacitated," legally minor under the guardianship of the Brazilian state and subject to a special regime of tutelage.

The tutelage is exercised by FUNAI (National Indian Foundation), the "Brazilian Bureau of Indian Affairs." The role of FUNAI is, presumably, to protect Indians' interests, but this protection has been carelessly carried out in an exclusivist way under the guiding light of a national policy of assimilation. Indians could not own land legally or initiate legal proceedings in their own right to defend their precarious rights of "possession" and "usufruct" of lands. The old Brazilian Constitution postulated: "The Union shall have the power to legislate upon incorporating forest-dwelling aborigines into the national commuinity with the goal of "integrating them, progressively and harmoniously, in the national communion." Like the model of Venezuela, this model of development has been considered to be paternalistic and ethnocentric.

Partly in reliance on Vitoria's naturalist theory of international law, Brazil recognized the right to primordial occupation of land. Many of its other statutes, however, help undercut this advantageous legal starting-point. The national government owns all minerals and hydropower resources found within the country. Brazil also claims for est areas to be vacant land owned by the government. Thus, for
forest-dwellers n44 to have their rights recognized, they must seek recognition of their title from a government agency that is also in charge of economic development. Additionally, land reform measures, such as land grants to individuals, threaten the lands indigenous people hold communally.

The new Brazilian Constitution of 1988, prompted, in relevant part, by a 1985 communication from the Inter-American Commission on Human Rights, reduces the role of FUNAI. Interventions on Indian land no longer can be authorized by the Executive Branch; they require approval by Congress. Also, the Indians' rights to their cultures and languages, as well as access to the judicial system and their original rights to land, finally have been recognized. n45 Art. 231 provides:

(1) Lands traditionally occupied by Indians are those inhabited by them permanently; those used for their productive activities; those indispensable for the preservation of the environmental resources necessary for their well-being; and those lands necessary for their physical and cultural reproduction, according to their uses, customs and traditions.

(2) Indians are entitled to the permanent ownership of the lands traditionally occupied by them including the exclusive fruition or enjoyment of existing soil resources, rivers and lakes.

The Yanomami are the largest indigenous nation in the Amazon. n46 Nine-thousand of them live in the Brazilian state of Roraima, while twelve-thousand live across the border in Venezuela. The Yanomami occupy a territory the size of Washington State, and lived undisturbed in relative isolation until the 1980s. As many indigenous peoples, they believe that the natural and spiritual world are a unified force. n47 Their peaceful life ended in the late 1980s when gold, diamonds, and tin were discovered in their territory. Between 40,000 and 80,000 miners poured in, killing, burning their homes and the forest, and bearing the "gifts" of epidemic diseases and environmental and moral destruction. n48

The new federal policy heralded by the 1988 Constitution was sup posed to stem this tide. According to this policy, ten percent of Brazil's territory was slated for demarcation as Indian land. An October 1993 deadline for demarcating these Indian lands has come and gone. FUNAI President, Sydney Possuelo, began a serious effort to protect these indigenous peoples from economic interests encroaching on their habitat, in particular, gold-mining interests. n49 He was dismissed in May 1993.

Brazil's turbulent internal politics did not help the plight of the Yanomami. In May of 1992, President Collor de Mello signed a decree ordering the demarcation of 9.66 million hectares of Yanomami territory. n50 FUNAI and the Federal Police began to expel the invading miners, reducing their number to approximately 300 in July 1992. In December of 1992, President Collor was impeached, and government vigilance ended. In the spring of 1993, the miners returned, numbering approximately 11,000. After being driven out of their life-sustaining environment, some desperate Yanomami are committing the first known suicides in Yanomami history. n51

The government of Fernando Henrique Cardoso has, lamentably, given into some of the pressures of powerful groups opposed to the new federal policy on Indian lands. Its Decree No. 1775 of January 8, 1996, was liable to stop, if not roll back, demarcation of Indian land. It afforded private interests the right to formally contest the boundaries of Indian lands not yet demarcated. Decree No. 22 of 1991 had ensured the primacy of indigenous rights to ancestral lands based on aboriginal habitation alone. Under the decree, parties with "secondary" title would be compensated for their losses. Decree No. 1775 is a response to a Brazilian Supreme Court case brought by an agribusiness firm that occupies the land of the Guarani Indians. This firm has argued that the demarcation and registration of Indian land is unconstitutional because it does not provide for adversarial process. n52

At the time Decree No. 1775 was passed, only 210 of the 554 indigenous areas slated to be demarcated, registered, and guaranteed by October 5, 1993, were fully registered. The new decree was argued to cast a legal cloud over the remaining 344 territories, even exposing pre-sidentially-approved and demarcated areas to legal challenge, n53 including the gold-rich lands of the Yanomami.

Injunctions to reverse indigenous land titles already have been filed by powerful commercial interests. In addition, the effects of Decree No. 1775 extend far beyond the courtroom. In the first few weeks after Decree No. 1775 became law, eight Indian territories were reported to have been invaded, primarily by pirate mahogany loggers and gold miners. n54 The degree has been called a "recipe for tragedy" because it has served only to encourage illegal invasions, massacres, selective killings, abductions, and other serious assaults on the original inhabitants and guardians of the Amazon. n55 Still, by February, 1999, 315 indigenous areas have now been demarcated and registered. These areas cover 738,344 square kilometers, i.e. 79.4% of all Indian lands. The Brazilian government claims that Decree No. 1775 has
given these Indian titles heightened legal protection and has made the process more transparent.

Unlike 150 years ago in the United States, the possible replay of "Manifest Destiny" in Brazil does not go unnoticed and unaddressed by the world community. Indigenous peoples have found significant and growing support worldwide - in the heartland and the capitals of the once-conquering nations.

One comparatively bright spot is Colombia's current governmental policy favoring Indian political and economic autonomy. The indigenous factor in this country is significant, encompassing approximately 800,000 persons, divided into eighty-one different communities and scattered throughout twenty-seven of the thirty-two political subdivisions of the state. The 1991 Constitution was drafted with significant indigenous input and provided for a major political breakthrough. Article 7 of the 1991 constitution recognizes and protects the ethnic and cultural diversity of the Colombian nation. This is a marked departure from assimilationist or integrationist schemes. It affords indigenous communities a high degree of political and administrative autonomy (arts. 246, 286, 321, 329). Respect for their institutions of self-governance is guaranteed through provisions such as those that recognize indigenous courts and their application of traditional customary standards such as those that recognize indigenous courts and their application of traditional customary standards (arts. 246, 330). Indigenous collective property rights are recognized, in particular collectively owned and inalienable resguardos (art. 329). Native languages and dialects are made official languages in indigenous territories (art. 10). Education in these territories is to be bilingual and must be directed to preserve and develop indigenous cultural identity (art. 10, 68).

On a national level, the indigenous peoples are represented by at least two senators in a special national district and by a number of representatives fixed by law. They participate in key decisions concerning the exploitation of natural resources within their territories (art. 330) and the drafting of the national plan (arts. 340, 341). Indigenous peoples also receive transfers from the national budget and from the oil and mineral resources exploitation royalties (art. 357). The judicial system, in particular, the newly-created Constitutional Court, using the innovative writ of protection for human rights (accion de tutela,) was instrumental in making this prescriptive scheme a reality. Still, there are counterforces, including the "fog of war" with narcoterrorism, and ONIC (Organizacion Nacional Indigena de Colombia), founded in 1982 as the leading counterforce, including the "fog of war" with narcoterrorism, and ONIC (Organizacion Nacional Indigena de Colombia), founded in 1982 as the leading force of indigenous empowerment, has to continue its strenuous efforts to protect the rights and interests of the first peoples of Colombia.

Another place of cautious hope is Venezuela, at least at the federal level of government. Article 77 of its Constitution of 1961 establishes the principle of special protection for the indigenous peoples in order to facilitate their inclusion in the life of the nation. Making use of this rather oblique provision, the Venezuelan Supreme Court recently invalidated as unconstitutional the political structuring of the federal state of Amazonas and ordered a reorganization that will take into account the legitimate interests of the indigenous communities in that state. On December 10, 1997, the Supreme Court issued an order of execution on that judgment. The Court ordered the Legislative Assembly of the State of Amazonas to abstain from any action to give legal effect to its draft law on the political-territorial restructuring of the State which was written without the indigenous communities participating. Unfortunately, the State Legislature, on December 17, 1997, decided to go ahead and to publish the law despite the court's ruling. This action of defiance of the Supreme Court order is now under attack in the very same court.

Thirty-five to forty percent of the population of Ecuador is estimated to be indigenous. The country's unity, forced by the ruling criollo elite, was based on mestizaje, common religion, and language. Assimilationist and paternalistic policies characterized the policies of the government. This resulted in efforts to "launder" the indigenous people by underreporting their population, or by calling them "minorities." For the ten indigenous nationalities this exclusion is the reality, as recognized by the Inter-American Commission for Human Rights in its April 24, 1997, report on the human rights situation in Ecuador. The indigenous nationalities are shockingly poor, but they no longer are for gotten. They have managed to maintain their identity. Organized on a national level in the Confederation of Indian Nationalities of Ecuador (CONAIE), established in 1986, the indigenous peoples are pressing the interrelated demands of pluri-nationality, territoriality, and self-determination.

Most of Peru's indigenous people reside in its Highland Andean regions. They speak predominantly Quechua or Aymara and number approximately nine million, which equals thirty-eight percent of the country's population. They are the poorest, least educated, and least influential groups in Peru. Historically, the Spanish, in the 1600s, recognized the pre-colonial social units of the Indians of the Andes called ayllus. The Peruvian government, in 1854, renounced this...
scheme and sold many indigenous lands. The Peruvian constitutions of 1920, 1933, and 1980 again protected communal lands. In 1925, fifty-nine indigenous communities were recognized. This number has increased, and these communities have been granted a large measure of internal autonomy.

Bolivia, judging by percentages of population, is the most indigenous of all the countries in Latin America. 4.440 million indigenous people, most of them speaking Quechua and Aymara, live in the altiplano, or Andean region of the country. They constitute fifty-five percent of all Bolivians. The indios are highly discriminated against. Via a 19th-century decree, they were forced to sell their traditional communal lands. In the 1960s, an indigenous movement started, taking its name and inspiration from the legendary Indian leader Tupac Katari, who had led the 1781 uprising against the Spanish colonizers. The indios, meeting in August 1960, established the Confederación de Nacionalidades Indígenas (CNI), which has become one of the strongest indigenous organizations in Latin America. In 1970, the CNI led a national strike and a general uprising to demand the recognition of indigenous peoples and their rights to self-determination, to their culture, and to the lands they historically occupied and possessed. This Ley Indigena also affords protection for sacred sites and spiritual hunger, lack of medical services, and a spiritual dimension, and it has garnered considerable support, both inside and outside of Mexico. The movement embodied by the Ejercito Zapatista de Liberacion Nacional (EZLN), in the Mexican State of Chiapas, unites men and women from the Tojolobal, Tzeltal, Tzotzil, and Chol communities, all with Mayan roots, in the desire to confront the situation head-on. Since its inception, on January 1, 1994, the uprising has had military, political, and spiritual dimensions, and it has garnered considerable support, both inside and outside of Mexico.

Violence, unfortunately, begets violence when the two worlds collide and little effort is undertaken to accommodate the vital interests of the indigenous peoples. This violence has been the reality in, among other places, the decades-long war in Guatemala, and the revolt in Chia pas, Mexico.

In Guatemala, on December 29, 1996, "the guns may have finally fallen silent." The peace accord signed on that day between the government and the guerrilleros, many of them Maya Indians, proclaimed to put an end to this country's long, bloody, and "forgotten" civil war, which left at least 100,000 persons dead, 40,000 missing, 250,000 chilen orphaned, and more than one million people driven from their homes. The final accords guarantee, inter alia, Indian rights and land reform.

Mexico is the battleground where it appears that indigenous peoples recently have taken up arms against the ruling elites. 85 percent of the Mexican population is mestizo, while ten million Mexicans are considered indios, primarily because of their language. These indigenous peoples, divided into fifty-three different ethnic groups, have suffered degradation and severe deprivation of values. The Indian past is "in many ways glorified," but an enormous gap exists between the Mexican myth and its "operational code." The movement embodied by the Ejercito Zapatista de Liberacion Nacional (EZLN), in the Mexican State of Chiapas, unites men and women from the Tojolobal, Tzeltal, Tzotzil, and Chol communities, all with Mayan roots, in the desire to confront the situation head-on. Since its inception, on January 1, 1994, the uprising has had military, political, and spiritual dimensions, and it has garnered considerable support, both inside and outside of Mexico.

Nicaragua's Political Constitution, adopted by the Sandinista government in 1979, recognized the communal property and cultural rights of the indigenous peoples of the Atlantic Coast.

Legislation in 1987 also created autonomous political regions for the indigenous communities of the Atlantic Coast. Still, problems persist. The Nicaraguan government's thirty-year concession to a Korean-owned company to log a large area of tropical rain forest in the Atlantic Coast region inhabited by indigenous communities is presently under attack before the Inter-American Court on Human Rights.
of law, and certain aspects of social justice. Negotiations, which began with much hope, have stalled, and the reaction to the uprising has become more violent. The "first post-modern revolution" faces a difficult road ahead.

Despite local variations, we may note some convergent, if not common trends in the domestic legal treatment of indigenous peoples throughout Latin America:

Indian nations still occupy the bottom rung of the ladder of economic and social status in the countries in which they reside. Their physical and spiritual survival is threatened by outside encroachment - private and, sometimes, public action.

A trend toward legal recognition of the special spiritual bond between indigenous peoples and their land is, however, clearly discernible. This movement includes the demarcation and legal guarantee, if not return, of lands of traditional indigenous use, and a recognition of Native title to use the resources of nature in the traditional, communal ways (hunting, fishing, etc.). Counterforces, though, have been mobilized, and they have achieved some measure of success.

Nation-states rule out the option of political independence or a right to secession to indigenous peoples in their territory. However, in some countries, indigenous peoples are afforded an increasing range of autonomy. This recognition of self-rule, albeit limited, covers issues of membership, structures and processes of authority and control, as well as manifestations of culture and spirituality.

The gains made by indigenous communities are probably too far advanced and entrenched for the clock to be turned back to the policies of assimilation and termination.

To cement these gains domestically, the development of international prescriptions would help substantially. These prescriptions might not only seal progress discernible in the common law countries of North America and Oceania, but they also could provide the necessary sword to fight for a proper regime of protection and empowerment of indigenous populations in Central and South America, as well as in the remaining parts of the planet.

Both on the regional and universal level, declarations on the rights and status of indigenous peoples are in the formative stage. Taken together with widespread state practice, pertinent customary law has emerged. Any international prescriptions regarding indigenous peoples should be structured in such a way as to maximize for the intended beneficiaries the access of shaping and sharing of all the values humans desire.

V. Conclusion

LatCrit, in its quest for authenticity, equal dignity, and removal of all vestiges of colonialism and oppression, is a most valuable ally in the struggle of indigenous peoples. Indigenous persons encounter, some of the very same experiences Latinas/os face day in and day out in this country: exclusion, invisibilization, discrimination, the perception and reality of oppression. LatCrit has not shied away from addressing difficult issues. The movement continues to unfold and bring to light, the variegated, often hidden and many times unconscious manifestations of discrimination, racism, and social/economic subordination. The phenomena of oppression and discrimination, however, transcend the borders of this country. Latina/o identity, in particular, is essentially and radically, i.e., from its roots up, international. To be true to its guiding lights, the movement cannot afford to ignore the complexities of the inner structure of the Latina/o community/ies. It cannot foreshadow the analysis of the sometimes vast differentials of power, wealth, well-being, and other values within its midst as well as the resulting patterns of oppression and injustice - whether they manifest themselves in this country, "homebred" or imported, or at the places of the Latina/o family outside the United States, in the other countries of this hemisphere traumatized by the experience of colonial conquest. The plight of indigenous people is very much a part of the Latina/o condition.

Myres Smith McDougal has left us with a powerful set of tools to advance the critical study of the human condition and its attendant conflicts and to develop solutions in the global common interest. Would that we make use of his treasure trove of instruments, his inclusive, figurative jurisprudence to join together in the quest for a world order that responds to all of our aspirations and that celebrates difference as fervently as it affirms the universal goal of respect for equal dignity and justice for all.

FOOTNOTE-1:


n2. Id. at 1096.

n3. Key elements of this strategy are the twin goals of empowering individual human beings via education and
encouraging them to act as agents for social change. See Paulo Freire, Pedagogy of the Oppressed (1970).


n5. The definition of Latina/o identity is complicated by the multiple affiliations and identifications of the individual person sought to be encompassed. See Leslie G. Espinoza, Latina/o Identity and Multi-Identity, in The Latino/a Condition: A Critical Reader 17-23 (Richard Delgado et al. eds., 1998). For local flavor, see Andra D.S. Burch & Lydia Martin, Defining Who We Are In S. Florida Isn't Just a Black and White Issue, The Miami Herald, Sept. 7, 1998, at 1A, 6A.

Frank Valdes uses the term "Latina/o" "generally to signify persons with nationalities or ancestries derived from countries with 'Hispanic' cultures; currently in the United States, these persons or groups are primarily (but not exclusively) Mexican Americans, Puerto Ricans, and Cubans or Cuban-Americans." Valdes, supra note 1, at 1090 n.6. This working definition still leaves us with the question of what, exactly, "Hispanic cultures" are. As Valdes points out, Latina/o communities are characterized by a "high degree of mestizaje, or racial intermixture." Id. at 1106. In celebrating this substantive, multicultural condition, Margaret Montoya calls for the "pursuit of mestizaje, with its emphasis on our histories, our ancestries, and our past experiences, ... [because it] can give us renewed appreciation for who we are as well as a clearer sense of who we can become." Margaret E. Montoya, Masks and Identity, in The Latino/a Condition: A Critical Reader 37, 42 (Richard Delgado et al. eds., 1998).

n6. See Christopher David Ruiz Cameron, How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy, 85 Cal. L. Rev. 1347, 1366 (1997). ("To suppress the speaking of Spanish is to suppress an essential, if not the essential, component of Latino identity"); see also Montoya, supra note 5, at 41 (Montoya's sensitive statement on the relevancy of language, syntax, and accent to identity: "Aquí estoy ocultada por mi mascara linguistica con sus aspectos subtextuales. Desde ni<aSlides nowrap="">&lt;<aSlides nowrap="">n</aSlides>&gt;a, he entendido el significado de accentes, vocabulario, pronunciacion, sintaxis. En ingles estos elementos idiomáticos estan relacionados con mi psique, con la persona quien soy. Por la primera vez entiendo que espa<nSlides nowrap="">&lt;<aSlides nowrap="">n</aSlides>&gt;o tiene el mismo poder"); Juan F. Perea, Death by English, in The Latino/a Condition: A Critical Reader, 583 (Richard Delgado et al. eds., 1998); Margaret E. Montoya, Law and Language(s), in The Latino/a Condition: A Critical Reader, 574 (Richard Delgado et al. eds., 1998).

According to classical "liberal" theory (another article needs to be written about the gusto with which both the left and the right attack their common foe, albeit differently defined, i.e. "liberalism"), the empowerment of individuals through the legal system has been effectuated, over time, through the accordance of certain legally protected claims called "rights." Recently, this focus has come under fire. See discussion supra note 4. However, shared concepts of legal "rights" and their enforcement in authoritative and controlling decision-making structures have been, and continue to be, critical to the protection of vulnerable groups. Thus, rights are necessary, albeit hardly sufficient. See Siegfried Wiessner, Faces of Vulnerability: Protecting Individuals in Organic and Non-Organic Groups, in The Living Law of Nations 217, 222 (Gudmundur Alfredsson & Peter MacAlister-Smith eds., 1996). They are, if not prerequisites, at least useful tools in the realization of other "ideas of the good" such as a global (minimum) ethic, cf. Ja zum Weltethos, Perspektiven â†’ der Suche nach Orientierung (Hans K<um â†’ ng ed., 1995), some basic mandates of religion or the concept of development, cf. L. Henkin, The Age of Rights 186-87, 191-93 (1990) even Joseph Singer's social vision of "nihilism" in its quest for the prevention of cruelty, alleviation of misery, and democratization of illegitimate hierarchies, cf. Joseph William Singer, The Player and the Cards: Nihilism and Legal Theory, 94 Yale L.J. 1 (1984), the tenets of natural law, or the goals of a world public order of human dignity as suggested here. The indeterminacy critique does not relieve us from responsibility for our acts of interpretation, i.e., participation in the process of making and changing decisions. See Drucilla Cornell, From the Lighthouse: The Promise of Redemption and the Possibility of Legal Interpretation, 11 Cardozo L. Rev. 1687, 1714 (1990) ("Interpretation is transformation, and we are responsible as we interpret for the direction of that transformation. We cannot escape our responsibility implicit in every act of interpretation.").


n10. The lecture was presented on May 8, 1998, the day after Professor McDougal passed away.


n14. Individual and group identity influence and modify each other in social interaction. As an individual human being's identity develops in constant interplay between the individual and society's constituent groups, starting with the basic relationship between parents and children, not only is the individual self shaped and changed, but general patterns of group behavior are reconstructed and modified as well. See George Herbert Mead, Mind, Self and Society: From the Standpoint of a Social Behavioralist (C. Morris ed., 1934); Wiessner, supra note 8, at 218-19 (providing further references).


n16. See Francisco Valdes, supra note 1, at 1140 (stressing the "need for continual self-reflection, self-examination, and self-critique").


n20. This is the way partial approaches, including ones relying solely on cost-benefit analysis and other economic criteria, would proceed.


n24. Harold D. Lasswell is to be credited with the categorization of these values that are of immense heuristic value. Cf. Harold D. Lasswell & Abraham S. Kaplan, Power and Society (1950); Harold D. Lasswell & Allan D. Holmberg, Toward a General Theory of Directed Value Accumulation and Institutional Development, in Comparative Theories of Social Change 12 et seq. (1966).


n26. The word "Anglo" is used in Miami to denote all non-Hispanic Whites who have lost their traditional preeminence in local politics due to local demographics, i.e., a (mostly Cuban- American) Hispanic voting population of more than 50% of all voters in the City of Miami.

n28. See The Hon. Harry Lee Anstead, Legal Ethics and the Struggle of Native Americans, 9 St. Thomas L. Rev. 5, 13 (1996) ("When we ignore the struggle of others, we forfeit our own claims.").


n31. Margaret E. Montoya, supra note 5, at 40. LatCrit III has taken up the challenge and made indigenous peoples a theme of the official discourse.


n33. See id.


n36. Francisco de Victoria, De Indis et de Iure Belli Relectiones, 152-53 (Classics of International Law Series, J. Bate trans. 1917); cf. Robert A. Williams, Jr., The American Indian in Western Legal Thought 100-01 (1990).


The theory of Iberian conquest by papal grant goes back to the two bulls Inter Caetera, issued by Pope Alexander VI in May of 1493. These edicts were designed to resolve the dispute between Portugal and Castile over title to the territories in the New World. They not only allocated exclusive powers to pursue missionary activities to both states, but they also drew an imaginary north-south boundary line 100 leagues west of the Azores between their present and future possessions in the New World. This line was amended in the Spanish-Portuguese Treaty of Tordesillas on June 6, 1494 to a line 370 leagues west of the Cape Verde Islands. This secured Spain's title to most of the Americas and guaranteed Portuguese control of the easternmost part of South America, which is now Brazil. This agreement was extended to the Pacific Ocean in the Treaty of Zaragoza on April 22, 1529. Id.

n38. See Steven P. McSloy, Back to the Future: Native American Sovereignty in the 21st Century, 20 N.Y.U. Rev. L. & Soc. Change 217, 229-44 (1993). See also Steven Paul McSloy, "Because the Bible Tells Me So": Manifest Destiny and American Indians, 9 St. Thomas L. Rev. 37, 38 (1996). ("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').

n39. See L. Roberto Barroso, The Saga of Indigenous Peoples in Brazil: Constitution, Law and Policies, 7 St. Thomas L. Rev. 645, 648 (1995) (referring to Darcy Ribeiro's estimate that there were roughly 1.1 million Indians at the time of Portuguese arrival in Brazil, and using demographics based on a 1993 estimate by the Centro Ecumenico de Documentacao e Informacao (CEDI) for the present population figure of 250,000). In reference to the estimate of 120,000 Indians in 1970, see Marc Pallemearrts, Development, Conservation, and Indigenous Rights in Brazil, 8 Human Rts. Q. 374 (1986).

n40. Estatuto do Indio [Statute of the Indian], Law No. 6.001, Dec. 19, 1973, cited in Barroso, supra note 39, at 652. Interestingly, if an entire indigenous community has "demonstrated its integration into the national community," the President may, upon request of its members, declare its "emancipation." Individual Indians who fulfill the same criterion, may also request their emancipation before a court. See id. at 653.

n41. See Pallemearrts, supra note 39, at 655-56; Carneiro da Cunha, Aboriginal Rights in Brazil, 2 L. & Anthropology 55 (1987). Today, the Brazilian Constitution of 1988 confers upon the Public Ministry and its head, the Procurator-General, the function of defending the legal rights and interests of Indians in court. Constitucicao Federal art. 232. See also Barroso, supra note 39, at 655-56.

n42. See Pallemearrts, supra note 39, at 380.

n43. See discussion supra notes 36-37.

n44. "Forest-dweller" is a term used co-extensively with the word "Indian" in the Statute of the Indian, arts. 1, 3. See Barroso, supra note 39, at 654; see also Comment, Land and the Forest-Dwelling South-American Indian: The Role of National Law, 27 Buff. L. Rev. 759 (1978).


n46. Amazonas. Modernidad en Tradicion (Antonio Carrillo and Miguel A. Perera eds., 1995) provides a good overview of indigenous issues in the Amazon within the policy context of sustainable development. As to the demographics and institutions of the Yanomami, see Marcus Colchester, Sustentabilidade y Toma de Decisiones en el Amazonas Venezolano: Los Yanomamis en la Reserva de la Biosfera del Alto-Orinoco-Casiquiare, in Amazonas, at 141, 149-60; see also N. Chagnon, Yanomamo, The Fierce People (4th ed. 1994).

n47. Cf. K.I. Taylor, Body and Spirit Among the Sanuma (Yanomama) of North Brazil, in Spirits, Shamans and Stars: Perspectives from South America (David L. Brownman & Ronald A. Schwarz eds., 1979).

n48. See Catherine Ales, Tierras Sagradas, Territorios Amenazados: Los Yanomamis Mas Alla de su Doble, in Amazonas, supra note 46, at 205, 207.

n49. According to Professor Barroso, Sidney Possuelo "played a decisive role in the demarcation of the Yanomami reserve." The then FUNAI President defined his position once as follows: "We caused so much confusion to the Indians that have been contacted and every time we approach isolated Indians we bring so much trouble and so many changes to their style of life, by creating needs, introducing diseases, that they only lose with such contacts. We should keep away from them for as long as possible," Barroso, supra note 39, at 663-64 (interview with Sidney Possuelo).


n51. Interview with Professor Gail Goodwin-Gomez, visitor to the Amazon Indians for the last twenty years (Jan. 10, 1996). Professor Goodwin-Gomez stated that the health situation of the Yanomami has never been worse. The Indians decry the "devastating effects of continued invasion by gold miners who pollute the rivers and forests, and introduce disease.


n54. Genocide Decree, supra note 52.

n55. Amnesty International summarizes:

Since the decree was passed, on 8 January 1996, several new invasions of indigenous lands have been reported. In the past, unscrupulous local politicians and economic interests in many states, often backed by state authorities, have stimulated the invasion of indigenous lands by settlers, miners and loggers, playing on uncertainty about the demarcation process. This has resulted in violent clashes and killings. The authorities at all levels have consistently failed to protect the fundamental human rights of members of indigenous groups or bring those responsible for such attacks to justice. Partial figures indicate that, during the last five years, at least 123 members of indigenous groups have been murdered by members of the non-indigenous population in land disputes. With few exceptions, no-one [sic] has been brought to justice for such killings. For example, to date no-one [sic] has been brought to trial for the massacre of 14 members of the Ticuna tribe in Amazonas in 1988, and for the massacre of 14 members of the Yanomami village of Haximu on the Brazil/Venezuelan border in 1993.

Brazil: Amnesty International, supra note 53.


n58. In the case of the Paso Ancho community, for example, the Constitutional Court has ruled that there is a right to the creation of indigenous territories called resguardos, which are constitutionally protected through the principle of ethnic and cultural diversity. T-118, May 12, 1993, Judgment by
Eduardo Cifuentes Muñoz (mimeo), at 10, a holding reaffirmed in T-257/93, Judgment by Alejandro Martinez. The Court, upon accion de tutela by the indigenous community of Cristiania and to the surprise of a somewhat fatalistic nation, recognized a right to communal integrity and stopped a highway construction project through indigenous land. T-428, June 24, 1992, Judgment by Ciro Angarita Baron, Gaceta Judicial, No., p. 479. Coal mining in the border area to Venezuela, adversely affecting the Wayuu community, was ordered to be undertaken in a way so as to protect the indigenous peoples' right to life, physical integrity, and a healthy environment. T-528, September 18, 1992, Judgment by Fabio Maron Diaz, Gaceta Judicial, No., p. 363. In a case in which the entire tropical forest ecosystem was put at risk by the activities of a wood production company, the Court upheld a lower court order for both the wood company and the overseeing agency to pay the costs of an environmental impact study, as well as reforestation and repairs. T-380, September 13, 1993, Judgment by Eduardo Cifuentes Muñoz (mimeo). It stated expressly that the right to cultural integrity did not belong to the members of the community but to the community as a whole. Other communities would not benefit from this extension since their frame of mind was individualistic. See id. at 14-15. For indigenous people, the Court said, the right to life includes a right to collective subsistence, and the protection against individual forced disappearance includes a right to protection against ethnocide. See id. at 23. On the other hand, individual indios did receive due process protection against expulsion decisions by their community. T-254, May 30, 1994, Judgment by Eduardo Cifuentes Muñoz (mimeo). For further insights, see Fuero Indigena Colombiano (Roque Roldan Ortega, et al. eds., 3rd. ed. 1994).


n60. The decision announced by the Supreme Court in Case No. 748 on December 5, 1996, declares unconstitutional, as violative of Article 77 of the Venezuelan Constitution, the Law Regarding the Political-Territorial Division of the State of Amazonas. La Gaceta Oficial del Estado Amazonas, numero 3, Extraordinaria del 24 de septiembre de 1994. Article 77, in the interpretation given by the Court, consagra un deber constitucional de proteccion a la especificidad indigena a las variables historicas ambientales, de ordenamiento territorial, de seguridad y defensa y de la integracion del espacio amazonico, al derecho politico y representativo de los pueblos y comunidades indigenas.

Case No. 748 (1996). For an analysis of the critical parameters for such indigenous self-determination, see Miguel Plonczak, El potencial de la autogestion para el desarrollo de las comunidades indigenas organizadas en el Edo. Amazonas, Venezuela, in Amazonas, supra note 46, at 127.

As to the general situation of indigenous peoples in Venezuela, which faces many challenges, see Programa Venezolano de Educacion Accion en Derechos Humanos (PROVEA), Situacion de los Pueblos Indios de Venezuela con respeto a la Convencion Intern acional sobre la Eliminacion de todas las formas de Discriminacion Racial (1996); Nemesio Montiel Fernandez, Movimiento Indigena de Venezuela (1992).

n61. See Oficina de Derechos Humanos Vicariato de Puerto Ayacucho & ORPIA, Accion Urgente, Desacato de la Asamblea Legislativa del Estado Amazonas (Venezuela) a la decision de la Corte Suprema de Justicia sobre la Division Politico Territorial, Junio de 1988 (on file with the author).

n63. See id. at 187. The author refers to the country's official statistics on indigenous people, as reported to the United Nations agencies. These statistics fluctuated widely, from 50% in 1976 to 18.5% in 1985. See id. at 187-88. The 35-40% estimate is from the Inter-American Commission on Human Rights. Ibid.


n65. See Bermudez, supra note 62, at 195.

n66. See id. at 190-93.


n69. Cf. Charles Lacombe, To Heal Society, Follow the Path of the Enlightened Inca, Miami Herald, March 14, 1992, at 21A.

n70. Burke, supra note 67.


n73. Burke, supra note 71.

n74. Id.

n75. Id.


n77. On the history of the Mapuche who had successfully fought off attempts by the Incas and the Spanish to conquer them, see Jose Bengoa, Historia del Pueblo Mapuche (1985).


n79. See id. at arts. 21 and 13.


n81. See Pol. Const. of Nicaragua arts. 89, 180 (amended 1995).


n83. See S. James Anaya, The Awas Tingni Petition to the Inter-American Commission on Human Rights: Indigenous Lands, Loggers, and Government Neglect in Nicaragua, 9 St. Thomas L. Rev. 157 (1996); see also Julia Preston, It's Indians vs. Loggers in Nicaragua, N.Y. Times, June 25, 1996, at A8 ("The underlying issue is the future of woodlands throughout Central America, which are being razed at a rate of 1160 square miles each year."). In June of 1998, the Inter-American Commission of Human Rights decided to file a complaint with the Inter-American Court of Human Rights against the government of Nicaragua, charging it with a violation of Awas Tingni's traditional rights to their land. Indian Rights Human Rights. The Indian Law Resource Center

n85. The text of the Agreement on Identity and Rights of Indigenous Peoples between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG), signed at Mexico City on March 31, 1995, can be found at <http://www.un.org/Depts/minugua/paz7.html>. It obligates the Government, inter alia, to "give special protection to cooperative, communal or collectively held lands," and "recognizes the right of indigenous and other communities to maintain the system of administration of lands which they hold and which historically belong to them." Part IV.F.3 of the Agreement. Moreover, "recognizing the particularly vulnerable situation of the indigenous communities, which have historically been the victims of land plundering, the Government undertakes to institute proceedings to settle the claims to communal land formulated by the communities and to restore or pay compensation for those lands." Part IV. F.7 of the Agreement.


n87. Id. at 685 referring to Jose Emilio Ordinez Cifuentes et al., Derechos Indigenas en la Actualidad (UNAM ed., 1994) and Carmelo Vinas Mey, El Regimen Juridico y de Responsabilidad en la America Indiana (1993). For the difference between "myth" and "operational code," see W. Michael Reisman, Folded Lies (1979).

n88. See Hector Diaz Polanco, supra note 32, at 148-49.

n89. See Margarita Gonzalez de Pazos, supra note 86, at 692.

n90. See id. at 692-93. The social justice demands pertained primarily to demands for land, housing, health care, labor and education. Id. Gonzalez de Pazos, supra note 86, at 159.

n91. See Ana Carrigan, Chiapas: The First Post-Modern Revolution, 19 Fletcher F. World Aff. 71 (1995) (referring to the movement's professed aspiration not to take power for itself, but to create a "democratic space" where differences between competing political visions can be resolved).


INTER-GROUP SOLIDARITY: MAPPING THE INTERNAL/EXTERNAL DYNAMICS OF OPPRESSION: BlackCrit Theory and the Problem of Essentialism

Dorothy E. Roberts *

BIO:

* Professor, Northwestern University School of Law. This essay is based on a transcription of my remarks presented during the Moderated Group Discussion, "From RaceCrit to LatCrit to BlackCrit?: Exploring Critical Race Theory Beyond and Within the Black-White Paradigm," at the LatCritIII Symposium, May 1998. I am grateful to the other participants for their comments on my presentation.

SUMMARY: ... I entitled my first major law review article, which discussed a reproductive rights issue, "Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy." In the years after publishing that article, I have asked myself why I used the words "women of color" in the title. The article concerns Black women in particular, not women of color in general. ... I think I put "women of color" in the title because I thought it would be essentialist to confine my attention to Black women. I was probably reacting to a criticism that I sometimes heard when I presented the paper before it was published: "You didn't talk aboutLatinas," "You didn't talk about Asian women," or "You didn't talk about Native American women." I often found these comments distracting because I had not come to talk about those groups of women although I hoped my presentation was relevant to them. But the criticisms from and about other women made me feel self-conscious about focusing on Black women.

Such comments were not distracting when they helped to further a discussion about the commonalities and differences among the reproductive experiences of women of color. I appreciated, for example, the Puerto-Riqueño who asked, "Do you know about 'la operacion,' the government-supported campaign in Puerto Rico that resulted in the sterilization of one-third of the women of childbearing age?" In addition, the Korean graduate students, who remarked, "What you are saying about genetic relatedness and race in the United States reminds me of the way Koreans define national identity," helped me understand how the genetic tie "links individuals together while it preserves social boundaries." Also, I learned more about the use of birth control to

Some critical scholars might object to a BlackCrit theory, which is focused on the identities, experiences, and aspirations of Black people, on the grounds that it is essentialist. BlackCrit theory, it could be argued, poses the danger of three forms of false universalism that are characteristic of essentialism. It could erroneously imply that Blacks share a common, essential identity; it could erroneously attribute to all people of color the experiences of Black people; and it could reinforce the white-black paradigm as the only lens through which to view racial oppression. In this essay, I will use reproduction as a concrete substantive point of reference to explore the concern that a BlackCrit theory would be essentialist.

I entitled my first major law review article, which discussed a reproductive rights issue, "Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy." In the years after publishing that article, I have asked myself why I used the words "women of color" in the title. The article concerns Black women in particular, not women of color in general. It focuses on the prosecutions of poor Black women who smoked crack during pregnancy. I think I put "women of color" in the title because I thought it would be essentialist to confine my attention to Black women. I was probably reacting to a criticism that I sometimes heard when I presented the paper before it was published: "You didn't talk aboutLatinas," "You didn't talk about Asian women," or "You didn't talk about Native American women." I often found these comments distracting because I had not come to talk about those groups of women although I hoped my presentation was relevant to them. But the criticisms from and about other women made me feel self-conscious about focusing on Black women.

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regulate women's bodies from a Native American woman who told me about the coercive distribution of the long-acting contraceptive Norplant on her reservation.

These women of color were trying to connect their experiences of repressive reproductive health policies to what I was saying about poor Black women's experiences. This sharing of distinct experiences, that had common features, helped all of us to better understand the extent and nature of reproductive regulation, to form coalitions, and to formulate strategies to oppose these policies.

Sometimes, however, the question, "What about other women of color?" came from people who were bothered because I was focusing exclusively on Black women. I viewed these comments as a diversion, sometimes even a deliberate one. The question often stemmed from a misunderstanding of the critique of essentialism in feminist scholarship. Minority scholars have noted that white feminists' efforts to find commonalities among women often ended up erasing the identity and experiences of women of color. n7 Searching for a common oppression implied not only a universal, essential gender identity common to all women, but also that white, middle-class women have no racial and class identity. As Elizabeth Spelman explained, this type of feminist thinking "invites me to take what I understand to be true of me 'as a woman' for some golden nugget of womanness all women have as women. How lovely: the many turn out to be one, and the one that they are is me." n6

Some feminists mistake this criticism of the exclusive focus on white women's experiences as a prohibition against ever paying exclusive attention to the experiences of one group of women. But the problem of essentialism did not derive from studying the lives of particular women; it derived from claiming that the lives of a particular group of women represented all women.

Other commentators at my talks seemed to be implying that the issue of poor Black women's autonomy by itself is not important enough to be the center of discussion. I recognize a similar viewpoint in discussions about the most effective strategy to challenge the prosecutions of women for drug use during pregnancy. n7 Most of the women prosecuted for these crimes are poor Black women who smoked crack. n8 These women, however, make especially unsympathetic complainants because of disparaging stereotypes about pregnant crack addicts and the histori cal devaluation of Black motherhood. n9

Therefore, some attorneys and scholars have suggested ways of diverting attention away from these women and the devaluing racial images that degrade them by focusing instead on the dangers that punitive policies pose for middle-class white women. n10 Although this approach has certain strategic advantages, it implies that the repression of poor Black women alone is not a persuasive enough basis for advocating policy change.

Moreover, as I thought about the title of my article, I realized that it made me more of an essentialist than if I had just been honest and stated what the article was really about. The title suggests that the article explores the reproductive rights of all women of color when it does not. It might imply the erroneous claim that what I wrote about Black women represents the experiences of other women of color as well. 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.

When I decided upon the title of my book about Black women's reproductive liberty, I chose Killing the Black Body. n11 I think that is a more honest title. The book is about the Black body - the unique way in which repressive reproductive policies have interpreted and attempted to regulate Black bodies. I could not have adequately described these policies without focusing on black-white relationships and on the particular meaning of blackness - what it means for bodies, as Anthony Farley n12 put it, to be marked as black.

These repressive reproductive policies arose out of the history of the enslavement of Africans in America. The institution of slavery gave whites a unique economic and political interest in controlling Black women's reproductive capacity. n13 This form of subjugation made Black women's wombs and the fetuses they carried chattel property. The pro cess of making a human being's very reproductive capacity the property of someone else is not replicated in other relationships of power in the United States. While slavery serves as a very powerful metaphor for other reproductive practices, such as contract pregnancy or surrogacy, Black women really were slaves. n14 There is a distinction between a metaphor and the actual experience.

Further, the maternal images that justify these reproductive policies are images that are uniquely Black: Jezebel, Mammy, matriarch, welfare queen, and pregnant crack-addict. When I say these labels, a Black woman almost certainly comes to mind. They do not apply to women of any other race. Other groups of women have their own set of degrading stereotypes that have helped to legitimize the regulation of their bodies and reproductive decisions. The myths about Black motherhood support particular reproductive
Latin American heritage and are willing to pay more to generally prefer non-Black children with Asian or child. When they do adopt outside their race, whites white adoptive parents are only willing to take a white according to their racial features. The vast majority of This valuation of children is replicated in the adoption market for Latino children operates alongside an European-Indian paradigm that values children more highly the more European and the less Indian they look.

The black-white paradigm also helps to explain cases in which race adds a disturbing dimension to the use of reproduction-assisting technologies. One case involved a white woman who brought a lawsuit against a fertility clinic she claimed had mistakenly inseminated her with a Black man's sperm instead of her husband's. n19 The mother demanded monetary damages for her injury, which she explained was caused by the unbearable racial taunting her daughter suffered. Although receiving the wrong sperm was an injury in itself, the damage of bearing a Black child was linked to the opposition of Black and white genetic features.

This opposition was even more graphic in a bizarre fertility clinic mix-up in the Netherlands. A woman who gave birth to twin boys as a result of IVF realized when the babies were two months old that one was white and one was Black. n20 The Dutch clinic mistakenly fertilized her eggs with sperm from both her husband and a Black man. n21 A News week article subtitled "A Fertility Clinic's Startling Error" reported that "while one boy was as blond as his parents, the other's skin was darker and his brown hair was fuzzy." n22 The reporters' wording evokes the ominous sense that as the skin of the wrongfully conceived child turned darker and darker and as his hair turned fuzzier and fuzzier, the horror of the mistake increased.

The black-white paradigm is so powerful in the arena of reproduction that it sometimes erases other identities. In Johnson v. Calvert, n23 Anna Johnson entered into a gestational surrogacy agreement with Crispina and Mark Calvert, an infertile couple who wanted to have a genetically-related child. n24 An embryo formed through IVF using Crispina Calvert's eggs and Mark Calvert's sperm was implanted in Johnson, who became pregnant and gave birth to a child. n25 The lawsuit arose when Johnson notified the Calverts that she would refuse to relinquish her parental rights to the child. n26 The case was complicated by the fact that all of the parties were of different races: Anna Johnson is Black, Crispina Calvert is Filipina, and Mark Calvert is white. n27 The media, however, paid far more attention to Johnson's race than to that of Crispina Calvert.
As Lisa Ikemoto observed, “the media stories focused on Anna Johnson’s blackness and Mark Calvert's whiteness.” n29 It also por [*861] trayed the baby as white. n30 Thus, the case was publicized as a dispute over whether a Black surrogate mother had any legal claim to a white child. (The California Supreme Court held that Johnson was not the legal mother of the child.) n31

Examining the white-black paradigm in the context of reproductive technologies also illuminates the project of defining racial identity in non-biological terms. I have argued that race influences the importance that many whites place on new reproductive technology's central aim - the reproduction of genetically related children. n32 The critical importance of racial purity to white domination helped to create the conception of identity rooted in genetic heritage. This claim forced me to ask the question, how important is genetic relatedness to Black people's self-definition? Do Blacks not place equal weight on genetics in their own identity and the meaning of blackness?

Of course, it is important to most Black people to have genetically-related children. We, too, determine whether someone is Black, at least as an initial matter, by their physical features. But I think that Black identity is tied less to biology than we typically acknowledge. Black people have also resisted identifying themselves strictly in biological terms. Instead, Blacks have re-defined themselves as a political group. It is not true that Blacks are born with an essential racial identity based entirely on their physical attributes or genetic make-up. Identifying as Black does not mean simply assuming an oppressive straight jacket constructed by whites.

Black people have more options for self-identification than one might think. For example, you might look at me and say, "Of course, she has no choice in her identity: she is a Black or African American woman." What alternatives do I have for fluidity, for shifting identities, or for choice? But the truth is that I am the first Black person in my family born in the United States. I see it as a political decision that I made in my teens to identify with Black people whose ancestors were enslaved in the southern United States. As far as I know, I have no ancestors who were slaves in the South. Yet that is how I usually think about myself and say, “Of course, she has no choice in her identity rooted in genetic heritage. This claim forced me to ask the question, how important is genetic relatedness to Black people's self-definition? Do Blacks not place equal weight on genetics in their own identity and the meaning of blackness?”

FOOTNOTE-1:


n5. See, e.g., Harris, supra note 1.


n8. Id. at 938.

n9. Id. at 954.

n10. Id.


n12. See, Anthony Farley's piece in the Final Plenary of LatCrit III Conference.

n13. See Roberts, supra note 11, at 22.


n15. See Roberts, supra note 4, at 269-72.


n18. I am grateful to Richard Delgado for his observation about the European-Indian paradigm within the adoption market for Latino children.

n19. See Robin Schatz, Sperm Bank Mix-up Claim; Woman Sues Doctor, Bank; Says Wrong Deposit Used, Newsday, March 9, 1990, at 5; Ronald Sullivan, Mother Accuses Sperm Bank of a Mix-up, N. Y. Times, March 9, 1990, at B1.


n21. Id.

n22. Id.


n24. Id. at 778.

n25. Id.

n26. Id.

n27. See Lisa C. Ikemoto, The In/Fertile, the Too Fertile, and the Dysfertile, 47 Hastings L.J. 1007, 1023 (1996).

n28. Id.

n29. Id. at 1023-24.

n30. Id.


n32. See Roberts, supra note 4, at 223-30.


SUBSTANTIVE SELF-DETERMINATION: DEMOCRACY, COMMUNICATIVE POWER AND INTER/NATIONAL LABOR RIGHTS Democracy in Anti-Subordination Perspective: Local/Global Intersections An Introduction

Max J. Castro, Ph.D. *

SUMMARY: Democracy is the anti-subordination perspective. Some of the most important limits to democracy are not incidental or accidental: they are critical, systemic, structural, and deliberate. With the coming to power of successive conservative administrations pledging a "return to democracy" some aspects of "really existing democracy" have been consolidated while poverty and economic inequality have only increased. Democracy in Nicaragua remains a distant horizon. The concept of foreign intervenor is broad enough to admit very different types of interlopers with competing agendas rather than one group with a single template. As civilian governments replaced military dictators, the U.S. agenda changed from propping up regimes that were merely authoritarian (i.e., right-wing) in order to prevent totalitarian (i.e., left-wing) revolutions to schemes for supporting the consolidation of really existing democracy in Latin America. However, the clash between intervenors and "anti-politics" groups in Eastern Europe is at the core a disagreement about whether democracy is merely procedural or also substantive, in effect an argument about the adequacy of really existing democracy.

Democracy is the anti-subordination perspective. Understood as procedural and substantive, properly restored from the various reductions, qualifications and distortions introduced by theorists to cut down the concept to dimensions functional to capitalism, democracy is a horizon not yet reached anywhere and a powerful idea to be deployed in the anti-subordination struggles of the coming century.

The shortcomings and limitations of democracy in nations recently emerged from authoritarian rule, such as those of Latin America, are evident in the very language used to describe the new regimes: "fragile, hybrid regimes, unsettling, delegative, debilitating, illiberal, in crisis, in need of deepening and consolidation, inchoate, ..." Using a geological metaphor, Agüemo has identified the principal "fault lines" in Latin American democracy: incompleteness of civilian supremacy over the military; the weakness of the party system; the exclusion of new actors by established elites; poverty and inequality; crime, official abuse of citizens and impunity; and an excessively powerful bureaucracy.

Yet systemic insults against basic democratic principles, such as incredible and increasing levels of economic inequality, which can and are translated routinely into political inequality through various institutional mechanisms, are also endemic in developed Western nations, especially the very country which is advanced as paradigmatic of democracy. Some of the most important limits to democracy are not incidental or accidental: they are critical, systemic, structural, and deliberate. The Federal Reserve, for example, makes decisions crucial to the lives of nearly all Americans. Yet this most powerful institution is by design almost completely insulated from democratic control, responding instead to the outlook and interests of certain miniscule economic elites.

"Really existing socialism" or "real socialism" is a term coined in the 1970s by the East German political thinker Rudolf Bahro. The concept signals the distance between the theoretical socialism that can be inferred from the classical texts of Marx and Engels and the reality of the system then in existence in the Soviet Union and Eastern Europe. Ultimately, the legitimacy chasm created by the contrast between an ideology that foresaw the withering away of the state and a practice that gave birth to a pervasive state resulting in the horrors of the Gulag and the Stasi, could not be breached, despite glasnost and perestroika.

The collapse of the Soviet Union meant the extinction of real socialism in Russia and Eastern Europe. Together with the end of many authoritarian regimes in
Latin America and elsewhere, the end of the Soviet bloc did result in significant advances toward political democracy in a large number of countries. But the distance that still remains between democratic ideals and the actual politico-economic system in existence not only in the new democracies but in the established ones as well is large enough that to a significant albeit varying degree we can speak of them all as "really existing democracies." n7 While not ignoring important differences between established and emerging "real existing democracies," this formulation relativizes them, undermining the tenency toward the exercise of arrogance abroad and of conservatism and complacency at home.

Three of the papers in this cluster deal precisely with serious democratic faults in countries or areas that for much of their history have suffered under colonial and/or authoritarian rule, namely the Caribbean, Haiti and Nicaragua. Ivelaw L. Griffith's paper covering "Drugs and Democracy in the Caribbean, identifies two important ways in which the drug trade threatens Caribbean democracy, namely through the corruption of institutions and interference with the contestation for power. These problems are aggravated by a trend stressed by Griffith: the deportation of felons from the United States back to the various states of the Caribbean.

However, the problem of the influence of "dirty drug money" on the democratic process is but a special case of the distorting power of money vis-a-vis the political system. This is a familiar problem in the United States, and it would be interesting to expand the analysis in Griffith's paper to examine the differences and similarities between "clean money" and "dirty money" in terms of consequences for the political process and the public interest. How does legitimate campaign finance money originating in the U.S. tobacco, liquor and firearms industries compare with the drug money used to buy political influence in the Caribbean, Mexico or Colombia in terms of its consequences and social costs?

In Irwin P. Stotzky's Supressing the Beast, the threat to democracy comes from a different source. Stotzky focuses on the undue and in some cases grotesque degree of influence exercised in Latin America in general and Haiti in particular by what in a United States contest would be called "special interest groups."

Although forms of corporatism are present under different names and guises in such advanced nations as Japan and even the United States, the problems presented by corporatism are of a especially critical nature in underdeveloped countries and in those undergoing political transitions. Haiti fits on both counts, and Stotzky describes how the military, economic elites and even the Catholic Church have wrought devastation on that country through corporatist practices that have guaranteed these groups special benefits amidst a panorama of economic misery for the vast majority of the population.

The recent Latin American experience has shown the extent to which corporatism can wreak havoc with democracy not only in a very poor country with an uninterrupted history of tyranny like Haiti but also in a relatively rich one like Venezuela where democracy long appeared to be consolidated. The siphoning off and squandering of the country's vast oil revenues under the guise of democracy by the political class at the same time that the majority continued to live in poverty led the Venezuelan people to elect a candidate pledged to dismantle the country's political institutions.

Mario Martinez's contribution reads like a Nicaraguan case study in support of Michels "iron law of oligarchy. " n8 as well as an extension of Stotzky's analysis of corporatism to that Central American country. The concentration of property in Nicaragua under Somoza was notorious. More disheartening is the ultimate failure of the Sandinistas to permanently transform the situation. By insisting on state ownership of agrarian property rather than distributing titles to the peasants and by neglecting to create solid juridical bases for revolutionary measures, the Sandinistas ironically made it easier for property to be restored to the original owners when conservative forces regained power. That also made it possible for some Sandinistas to become part of the new economic elite in post-Sandinista Nicaragua, which also included members of the traditional elite but especially new players associated with the governments of Violeta Chamorro and Arnoldo Aleman.

The Nicaraguan case described by Martinez is yet one more instance of the failure of 20th century revolutionary elites to permanently transcend hierarchies of privilege and a case study of the persistence of corporatist tendencies. Although one could hardly have expected a democratic miracle in a Sandinista Nicaragua besieged by U.S. backed counterrevolutionaries, the fact that remains that authoritarian tendencies within the FSLN were strong quite apart from the war and U.S. intervention. With the coming to power of successive conservative administrations pledging a "return to democracy" some aspects of "really existing democracy" have been consolidated while poverty and economic ine quality have only increased. Democracy in Nicaragua remains a distant horizon.

Julie Mertus compares "civil society transplants" and the work of "foreign intervenors" in Eastern Europe
and Latin America. The paper discusses "the template for foreign intervenors today in Eastern Europe and then suggests ways in which ... the work of foreign intervenors in Latin America differs." She states that "the main differences are informed by the nature of the relationship of dominant world powers to prior regimes, in particular the legacy of colonialism in Latin America as opposed to the afterstate of Cold War politics in Eastern Europe." A critique of the liberal and positivist assumptions deployed by foreign intervenors attempting to remake Eastern Europe on the model of Western democracies is a central feature of the paper.

The comparison is provocative but several observations need to be made immediately. The concept of foreign intervenor is broad enough to admit very different types of interlopers with competing agendas rather than one group with a single template. This is especially true in Latin America, where U.S. progressive activists have sometimes lost their lives at the hands of counterrevolutionaries trained by American military experts just across the border. Moreover, in Latin America the template has not remained the same over time, with CIA experts on counterinsurgency and interrogation methods lately being replaced by experts on civil society and privatization. As civilian governments replaced military dictators, the U.S. agenda changed from propping up regimes that were merely authoritarian (i.e., right-wing) in order to prevent totalitarian (i.e., left-wing) revolutions to schemes for supporting the consolidation of really existing democracy in Latin America.

 [*867] Moreover, in Latin America the template has not remained the same over time, with CIA experts on counterinsurgency and interrogation methods lately being replaced by experts on civil society and privatization. As civilian governments replaced military dictators, the U.S. agenda changed from propping up regimes that were merely authoritarian (i.e., right-wing) in order to prevent totalitarian (i.e., left-wing) revolutions to schemes for supporting the consolidation of really existing democracy in Latin America.

Mertus describes the clash between Western intervenors' notion of civil society and that of "politics of anti-politics" dissident groups in Eastern Europe. She asserts such groups, which aspires to an ethical civil society rather than one that merely reflects a clash of interests, pose a danger to the intervenors' reform agenda. She adds that such "anti-politics" groups have been much more prevalent in Eastern Europe than in Latin America. However, the clash between intervenors and "anti-politics" groups in Eastern Europe is at the core a disagreement about whether democracy is merely procedural or also substantive, in effect an argument about the adequacy of really existing democracy. That argument has its counterpart in Latin America, where surveys consistently show citizens view equality as an integral element of democracy, much to the chagrin of advocates of neoliberal policies.

At the end of the essay, Mertus raises an especially provocative question, namely the role of racism. "To what extent does the different treatment in Latin America stem from the legacy of colonialism of the South whereby Europeans established and controlled Latinos and Indi ans?" An answer to this question might be inferred from the work of Horsman, who has traced the relationship between race and Manifest Destiny. n9 A more recent analysis of U.S.-Latin American relations by Schoultz attempts to show that a constant in U.S. policy toward Latin America has been the perception of "Latin" inferiority. n10

Ediberto Roman attempts to deconstruct and reconstruct the concept of self-determination of peoples in international law. A main objective of the exercise is to transcend the selective application of the principle in favor of a universal and consistent recognition of the right.

The need to deconstruct self-determination results to a considerable degree from the undemocratic character of international relations, and Roman explicitly attempts to subject decisions regarding self-determination to democratic discourse to be undertaken under the auspices of a United Nations, itself less subject to the influence of the big powers. The different treatment of the Kosovo and East Timor crises by the central actors in the world today and the international community suggests the persistence of selective application and the distance still to be traversed for democratic aspirations to become central to international relations.

The papers in this cluster together with the introduction indicate that in the local as well as the global, in national and international arenas, in the East, the South and the West, the making of our common history and the construction of a democratic order is still an unfinished project.

FOOTNOTE-1:

n1. For an analysis of how limited version of democracy has been deployed to promote conservative forces, see William I. Robinson, Promoting Polyarchy: Globalization, US Intervention, and Hegemony (1996).


n3. Felipe Agüero, Democratic Governance in Latin America: Thinking About Fault Lines 5-7 (1994) (unpublished manuscript, on file with
North-South Center at the University of Miami).


n7. See Atilio A. Boron, Capitalism and Democracy in Latin America 189 (1995).


SUBSTANTIVE SELF-DETERMINATION: DEMOCRACY, COMMUNICATIVE POWER AND INTER/NATIONAL LABOR RIGHTS Drugs and Democracy in the Caribbean

Ivelaw L. Griffith *

BIO:

* Ivelaw L. Griffith is a political science professor at Florida International University, where he also is Associate Dean of the College of Arts and Sciences. A specialist on Caribbean and Inter-American security and narcotics affairs, he is the author of five books, the most recent being Drugs And Security In The Caribbean: Sovereignty Under Siege (1997).

SUMMARY: ... I appreciate that part of this panel pertains to global intersections because there is a tendency often to focus either on the United States or on Europe; at democracy and the impact of phenomena on it in those contexts, without recognizing or accepting that there are other parts of the globe that warrant even greater attention. I want to bring a region called the Caribbean into the picture, and to suggest that although the narcotics phenomenon is not unique to the Caribbean, it has significantly impacted democracy there.

As we move closer to a new era - the 21st Century and a new Millennium - I find myself casting my mind back to old eras, especially the Enlightenment period. One of my favorite Enlightenment scholars is Voltaire. He had a way of saying to people "Before we start our discussion, let's define our terms." Let's clear "the definitional mine field," so to speak. He liked to pose questions - "What?" "How?" "Why?" - in engaging in any serious discourse. I find considerable usefulness in Voltaire's approach in looking at the link between drugs and democracy in the Caribbean.

One question that might be raised is: what exactly do we mean by "the drug problem?" My second question is a "how" question. How is the drug phenomenon related to democracy? One can devote an entire conference to either issue, but I'll try to use five or six minutes to suggest just a couple of linkages; areas in which the phenomenon of drugs has implications for the pursuit and operation of democracy, in a variety of ways.

Drugs Phenomenon

One of the first things that must be recognized with regards to "the problem of drugs" is that we are not dealing with one problem, but with a multidimensional phenomenon. We often get carried away with the media portrayal of drugs in the Caribbean in terms of trafficking. But trafficking is only part of the problem component of the phenomenon. There is a production part, and an abuse part of the phenomenon. Crack babies, for instance, are not unique to Miami, New York, and Los Angeles. They exist in the
Caribbean: in Puerto Rico, the Dominican Republic, Jamaica, Trinidad and Tobago, and elsewhere. Moreover, one cannot leave money laundering out of the matrix.

I am suggesting, therefore, that in terms of defining "the problem of drugs", one needs to go beyond looking for one problem, and to see a matrix with a variety of elements; one is production-related; another is trafficking; one is consumption and abuse; and the fourth pertains to money laundering. Moreover, there are linkages among those areas. There is, of course, variability among these problems within the Caribbean, as there is variability elsewhere. Production levels vary; some places are more significant for trafficking of certain substances than others; certain countries are more vulnerable to money laundering than others.

Fundamentally, then, we are not looking at a one-dimensional phenomenon; we are dealing with a phenomenon with many dimensions. A few vignettes will serve both to underscore this point as well as provide an appreciation of the scope of the phenomenon.

. Cocaine seizures in 1993 for just five Caribbean countries - the Bahamas, Belize, the Dominican Republic, Haiti, and Jamaica - totaled about 3,300 kilos. The 1997 seizures for those same nations were 9,135 kilos - an increase of 177 percent.

. Operation Dinero, and international money laundering sting operation conducted out of tiny Anguilla from January 1992 to December 1994 led to the seizure of nine tons of cocaine and US $ 90 million worth of assets, including expensive paintings, Pablo Picasso's Head of a Beggar among them.

. In 1995 Puerto Rico had the highest per capita murder rate in the United States, with 64 percent of the 680 murders related to drugs. They had 868 murders in 1996, and 80 percent of them were drug-related.

. In 1995 Puerto Rico had the highest per capita murder rate in the United States, with 64 percent of the 680 murders related to drugs. They had 868 murders in 1996, and 80 percent of them were drug-related.

. In 1993, there was a strange shower over the Demerara river in Guyana: 364 kilos of cocaine and US $ 24,000. The shower came from a plane making an airdrop, part of a Colombia-Venezuela-Guyana-United States drug network.

. Between 1993 and 1997, close to 7,000 Jamaican deportees were returned to the island, most of them for drug-related crimes committed in the United States, Canada, and Britain.

. In February 1997, the Dutch ambassador in Suriname told Suriname's Foreign Minister that 195 drug couriers from Suriname had been arrested during 1996 at the Schipol international airport near Amsterdam, compared to 51 in 1995. Indeed, Holland convicted former Suriname military ruler, Desi Bouterse on trafficking and other offences.

. Operation Summer Storm, which was mounted June 18-26, 1997, in the Caribbean, produced 828 arrests and the seizure of 57 kilos of cocaine, 340 kilos of cured marijuana, over 440,000 marijuana plants, and 122 weapons, among other things.

. On July 21, 1997, 4,175 kilos of pure cocaine were retrieved from the Rickey II, a Colombian cargo ship which had stopped in Puerto Cabello, Venezuela to take on cargo destined for Trinidad and Tobago.

. During October - November 1997, operation Rain, an operation targeting drug traffickers, weapons smugglers, and money launderers in the U.S. Virgin Islands, resulted in the arrest of 19 people, including members of the business and social elite there, and the confiscation of $ 240,000, vehicles and speed boats, businesses, and bank accounts.

. Between 1995 and 1997 in Jamaica, 10,332 people were arrested for drug possession, peddling, and trafficking: 9,464 locals and 868 foreigners. The figure for 1990 - 1997 is a whopping 24,242; 21,197 locals and 3,045 foreigners.

. In February 1998, eleven people in Martinique were sent to prison for smuggling 1,980 pounds of cocaine between 1995 and 1997. The leader of the trafficking group, a St. Lucian, received the highest sentence - 12 years.

. In a series of raids across Puerto Rico on December 17, 1997 the police and National Guard there arrested 1,039 people and confiscated 1,356 bags of cocaine, 133 bags of heroin, 58 guns, 60 cars and vans, and $ 205,582 in drug money.

. On February 28, 1998, U.S. and Caribbean officials seized 3,780 kilos of cocaine, worth US$ 266.4 million, from a 183-foot freighter - Nicole - in the Turks and Caicos Islands. The ship was flying a Honduran flag, had originated in Colombia, and was bound for Miami.

. Jamaican police found 600 kilos of cocaine in the bushes near the Boscobel airport in St. Mary's, on the north coast, on March 17, 1998.

. During March 1998, a New York-based Guynanese was found at the Cheddie Jagan International Airport-Timehri trying to smuggle 909 grammes of cocaine to the United States in the false bottom of a suit case. On March 9 he was fined G$ 1,000 and sent to prison for four years.

. Early September 1998, two women from the island of Dominica were fined ECS 100,000 each in St. Lucia for trying smuflle one kilo (each) of cocaine.
from Dominica to the United States, via St. Lucia. The drugs were found around and within their private parts.

. Trinidadian magistrate Jai Narine and his family had to be placed under special police protection in September 1998 following the receipt of credible murder and kidnapping threats. At the time the magistrate was presiding over a drug trial.

. In October 1998 U.S. law enforcement authorities helped their Guyanan counterparts seize 3,254 kilos of cocaine aboard a St. Vincent registered vessel - M.V. Danielsen. The 260-foot ship, in transit from Panama, had docked in port Gerogotown to take on rice consigned to buyers in Holland.

. An U.S. company, Cupid Foundations, closed operations in Jamaica in November 1998 after 22 years of operating there. The company could no longer afford the losses incurred with the seizure by the U.S. Customs of its merchandise because of attempts to smuggle drugs into the United States among its clothing.

. In December 1998 Regional Security System troops, U.S. Marines, and Drug Enforcement Administration officers joined the St. Vincent and the Grenadines Special Service Unit in conducting Operation Weedeater. The operation destroyed 1,162,496 marijuana plants, 1,400 pounds of cured marijuana, and 151 huts used to cure marijuana. Officials also seized weapons and ammunition.

. Dillion Chambers, a 25-year-old Jamaican "drug mule" collapsed and died in the Bahamas on February 3, 1999 after arriving from Jamaica with 129 packets of cocaine, weighing more than one kilo, in his stomach. Several of the packets burst killing him.

. A 61-year-old Guyanese man, Llewellyn Gray, began serving a four-year prison term in Trinidad and Tobago on February 9, 1999. Gray had been arrested at the Piarco International Airport in July 1998 while attempting to smuggle 2.8 kilos of cocaine from Guyana to Canada through Trinidad. The drugs were found strapped to his stomach and legs.

Impact on Democracy

The drug phenomenon, then, is a multidimensional one. Taking a lead from Voltaire, we have settled the 'what' question about it. But before we can proceed to the second question - How is the drug phenomenon related to democracy? - there is a preliminary, and intermediary, question to be settled: what do we mean by democracy?

Whether one views democracy in terms of the classic Schumpeterian approach developed in 1947 n1 or goes beyond it, at least three things are central to democracy, and central to democracy as practiced in the Caribbean. One is the contestation for power. This is a very elementary aspect for people who define democracy simply as free elections. We might examine later ways in which contestation for power is influenced by people who traffic or produce drugs. But it would be useful to note now that they finance electoral campaigns; they want certain candidates in power in order to influence the policies and programs those people pursue. Whether one knows it or not they thereby affect contestation.

Participation is a second central component of democracy, not only in the Caribbean, but universally, especially if one views democracy in a way that goes beyond Schumpeter. Participation in interest groups, in political parties, and by having the media facilitate discussion, investigation, and commentary of one kind or another. But, critical to democracy is a third element - the third part of the tripod - institutions, which are maintained to protect the civil and political rights of individuals and to enhance and pursue social justice. Thus, that intermediate question "what do we mean by democracy?" forces us to appreciate that we are talking about contestation for power, participation, and institutions.

How does the drug phenomenon affect the workings of power contestation, participation, or institutions? There are multiple effects, but time only permits me to mention two. The first pertains to corruption. There is a powerful ability to corrupt on the part of people who traffic, produce, launder money, and sell drugs. It is a necessity for the pursuit of their practice. Whether the corruption is a function of acts of omission or acts of commission is immaterial. It is one of the very corrosive consequences of the drug phenomenon, with a direct impact on the institutions of good governance.

This is not so only for institutions of government, or those having to do with the public sector. The private sector is also implicated. In thinking about corruption and drugs people often look at the police and the military, key public sector agencies. Yet private sector corruption is just as dangerous as public sector corruption. A former U.S. ambassador in the Caribbean asked me a couple years ago: "Professor, what can we do to deal with this money laundering problem?" I said, "I submit ambassador that most of the money laundering in the Caribbean and Latin America does not profit little cambios or bodegas; big banks, real estate companies, and other powerful private sector entities benefit mostly. And they all have political clients and constituents, give money to campaigns, and form political action committees (PACS). They certainly would not permit..."
government agencies to take the kind of drastic anti-
money laundering measures than might be necessary."
Either way, whether by or for the benefit of people in
the public or private sector, corruption is inimical to
democracy, irrespective of whether it facilitates money
laundring, drug production, or drug trafficking.

Hence, corruption is one of those deleterious elements
flowing from the drug phenomenon that has a direct
impact on the way in which democratic institutions are
managed, and it can affect the contestation for power.
One may say, in the Caribbean context, that what
happened in the Dominican Republic in 1996 with
drug money influencing elections was small measure
compared to what happened in Colombia and Panama
earlier. But, if you have the impact of drugs and drug
money affecting contestation for power, given that
power contestation is a criti cal element of democracy,
then democracy is dysfunctional. It is inter est ing to
note what most countries in the hemisphere agreed on
when they signed the Inter-American Convention on
Corruption in 1996: "corruption undermines the
legitimacy of public institutions, and strikes at society,
moral order, and justice, as well as the comprehensive
development of peoples." Thus, corruption is one of
the powerful links between drugs and democracy in the
Caribbean.

Criminal justice is a second area. Quite notable is the
fact that crime has skyrocketed in many parts of the
region, and much of it relates to drugs. It is no
consolation for people in Jamaica to say that crime is
high in Brazil, or for those in Santo Domingo to
remind us that crime is high in Miami. Moreover, the
crime connection has invidious linkages that extend
beyond the Caribbean, both in relation to Caribbean
citizens abroad, and in relation to actions by other
countries in response to the criminal pursuits of some
of those nationals. The deportee drama clearly reveals
this latter linkage.

Deportees

In a July 1993 speech to the Jamaican Parliament,
National Security Minister, K.D. Knight, stated:
"Nearly a thousand Jamaicans were deported from
other countries last year, with over 700 coming from
the United States. Most of them, nearly 600, were
deported for drug-related offenses." n2 That report
was not the last. Neither was it a report of the largest
numbers. Indeed, between 1993 and 1997, over 6,000
Jamaican deportees were returned to the island from
countries in Europe and the Americas. While the
number returned in 1993 was 923, in 1996 it was
1,158, and in 1997, it was 1,647, according to
law-enforcement sources in Jamaica.

Most of the deportees come from the United States.
But the United States is not the only country that sends
criminals back to their home lands. For example, of the
1,647 people returned to Jamaica in 1997, 1,213 were
from the United States, 257 were from Canada, and
121 were from the United Kingdom. Of course,
Jamaica is not the only Caribbean nation to be forced
to accept nationals in the Diaspora who have walked
on the wrong side of the law. As a matter of fact,
Jamaica is not the Caribbean country to which most
deportees are returned. That dubious distinction falls
to the Dominican Republic. United States immigra
tion sources indicate that between 1993 and 1997,
deportees to the Dominican Republic from the United
States alone numbered 6,582 (while those sent to
Jamaica from the United States during the same period
numbered under 5,000).

The population size of the Dominican Republic and
Jamaica and the size of their Diaspora make it
understandable that they might have such huge
numbers of their citizens returned from countries in
Europe and the Americas. But the stark contrast
between the numbers from those two nations and the
numbers elsewhere is no consolation to policy makers
or scholars in any of the countries involved. Some of
the countries with "small" 1993-97 United States
deportee numbers are: Aruba, 10; Bahamas, 265;
Belize, 374; Dominica, 57; Guyana, 427; St. Lucia, 52;
Trinidad and Tobago, 1,036. Needless to say, these are
not the only Caribbean countries with deportees from
the United States, or from elsewhere. For example,
Suriname and French Guiana frequently return people
to Guyana, and the Cayman Islands is constantly
deporting Jamaicans.

Deportees are returned to their place of birth because
of the com mercial variety of consensual, property,
and expressive crimes. How ever, most of them are
sent back home because of criminal activities related to
drugs. The increasing criminal deportation reflects
aggres siveness on the part of the United States and
other countries in attempt ing to cope with some of the
political, economic, and criminal justice dimensions
of the drug phenomenon. If nothing else, the deportee
connection clearly indicates that the narcotics
phenomenon is not a one- dimensional matter; it is
multidimensional.

In a 1993-94 article, I proposed the concept of
"geonarcotics" as a way to examine the nexus between
drugs as social phenomenon and security studies as an
intellectual issue-area. n3 The concept captures the
[876] dynamics of three factors besides drugs:

geography, power, and politics. It posits that the
narcotics phenomenon is multidimensional, with four
main problem areas (drug production, consumption-
abuse, trafficking, and money-laundering); that these
give rise to actual and potential threats to the security
of states around the world, including crime, arms
trafficking, and narcoterrorism; and that the drug
operations and the activities they spawn precipitate
both conflict and cooperation among various state and
non-actors in the international system.

Geography is a factor because of the global spatial
dispersion of drug operations, and because certain
physical and social geographic features of numerous
countries facilitate drug operations. Power involves the
ability of individuals and groups to secure compliant
action. In the drug world, this power is both state and
non-state in origin, and in some cases non-state sources
exercise more power than state entities. Politics
revolves around resource allocation in the sense of the
ability of power brokers to determine who gets what,
how, and when. Since power in this milieu is not only
state power, resource allocation is correspondingly not
exclusively a function of state power-holders.
Moreover, politics becomes perverted, and all the
more so where it already was perverted. In Drugs and
Security in the Caribbean I examine the geonarcotics
of the Caribbean. n4

While criminal deportation has many benefits in terms
of counter-drug and anti-crime strategies generally
and economic and criminal justice measures specifically
for sending countries, it presents several clear and present dangers to receiving countries. One
danger relates to the spiral in local crime. Government
officials throughout the Caribbean have complained
that deportees tend to become involved locally in traf-
ficking and other criminal networks. Jamaica's 1995
Economic and Social Survey noted, for instance, that
deportees are heavily involved in crime, "particularly
the importation and use of firearms, the drug trade, and
money laundering." n5

I noted earlier that the Dominican Republic, Jamaica,
and the other larger nations are not the only ones
facing deportee problems. One important difference
between the problem in the larger countries and that in
the smaller ones is the size factor. Because of the very
small size of the populations of Eastern Caribbean
countries, for example, and hence of their migrant
populations, and the smaller scale on which their
nationals become involved in drug crimes, they have
far fewer deportees. Yet, precisely because of their
small size, the (re)introduction of [*877] criminal
behavior into those societies by deportees has a
dramatic and traumatic effect on them.

The problem is taxing the resources of Eastern
Caribbean and other countries. Moreover, many of the
deportees are former servicemen of the United States
Army or Marines, and they bring their military training
and knowledge of weapons and military hardware to
their criminal enterprise. This creates both a greater
sense of apprehension by law enforcement officials
and a bigger practical headache for them, as compared
with elsewhere. In one May 1997 case in Guyana, a
bungled burglary and shooting incident at the residence of the former Chairman of the Elections
Commission, Rudy Collins, involved the use of laser-
guided weapons by the would-be robbers, all five of
whom were killed in a shoot-out with police; several of
the bandits had been deportees.

The situation is so grave that new legislation has been
adopted in some places to allow the police to monitor
the movement of deportees and take preemptive action.
Moreover, the deportee issue has been high on the
agenda of several policy fora over recent years,
including the special "Drug Summit" held by
CARICOM leaders in December 1996. Item 5 of the
Communique of that summit, which was held in
Barbados, notes, "Heads of Government noted with
equal concern the challenge facing the region from
indiscriminate deportations leading to increased
criminality. In this regard they called for greater
cooperation in deporta tion procedures."

As a consequence of the increased crime, and serving
to further aggravate the criminal justice situation, is the
problem of prison over-crowding. Most Caribbean
prisons are over-crowded, and in most cases the
prisoners are there because of a variety of drug-related
offenses. In the Dominican Republic, for instance, a
1996 survey done by the General Directorate of
Prisons revealed that the people convicted of drug
offenses. In the Dominican Republic, for instance, a
1996 survey done by the General Directorate of
Prisons revealed that the people convicted of drug
crimes constituted the single largest group of prisoners
in the country - 30 percent of the 10,359 prisoners at
the time of the study.

In Guyana, a former prisons director, Cecil Kilkenny,
one indicated that the Georgetown prison, which was
built to house 350 prisoners, was forced to
accommodate over 800 people in 1994, and had
accommodated as many as 1,000 prisoners during
early 1992. The Georgetown prison now has a higher
official capacity - 510 - but significant over-crowding
still exists there and in most of the other prisons in
Guyana.

In Jamaica the total inmate population of the adult
prisons in December 1991 was 3,705, about 33 per-
cent above the official capacity of 2,781. Minister K.D.
Knight himself acknowledged in 1993, that "The
overcrowding in our two maximum security
correctional institutions [*878] takes, the General
Penitentiary and the St. Catherine District Prison, is
serious, and has triggered serious problems over the
years. Each of these prisons contains about twice as
many inmates as they were designed to hold."

n5 In
1994, the average was "only" 611; in 1995 it was "merely" 508.

A 1993 inquiry into the situation in Jamaica highlighted the appalling conditions of Jamaican prisons. It was led by Justice Lensley Wolfe, now Chief Justice of Jamaica. The Wolfe report found that prisoners were required to eat with their hands for security reasons, a situation it deemed "inhuman and degrading treatment." Meals were found to be generally "revolting in appearance and taste." In some places, "the diet fed to the cell occupants should be consumed only by pigs." The Wolfe investigation found that prison indiscipline abounded, and that all sorts of malfeasance and abuse occurred in Jamaican prisons. A few reforms were implemented since the presentation of the Wolfe report, but the situation is still very unpalatable. No wonder, then, that several serious prison riots broke out in Jamaican prisons in 1997. This is not to suggest, though, that overcrowding and the horrible conditions alone explained the riots.

In the case of Trinidad and Tobago, most of the country's six penal institutions house three and four times the number of people for which they were intended. The Port of Spain prison, for instance, built in 1812 to accommodate 250 inmates, had a 1993 daily average inmate population of 978, up from the 1992 figure of 916. That prison housed an average of 1,100 people during 1994, and a little less in 1995. The serious overcrowding presents several critical problems affecting (a) the provision of medical services, especially given the high incidence of prisoner-addiction, (b) the maintenance of discipline, particularly because of increased gang and other violence in prison, (c) the physical safety of prison officers, and (d) the provision of recreational facilities, among other things.

The deplorable conditions of the prisons in Trinidad and Tobago were highlighted in July 1998, when a judge blocked the execution of a death row inmate on grounds that he had already been subjected to cruel and inhuman punishment during his imprisonment over the years his trial worked its way back and forth in the criminal justice system. Justice Peter Jamadar noted that the convict - Darrin Thomas - had been forced to live with insufficient light, handcuffed during breaks, and given inadequate food, among other things. The actions by Justice Jamadar in offering this response to the prison conditions itself raises [*879] larger questions of criminal justice fairness and equity in Trinidad, questions that certainly are applicable to other countries in the region.

Coping Measures

The deportee headache has both foreign policy and domestic policy aspects, and Caribbean nations have attempted and initiated actions at both the international and domestic levels. In the former they have attempted individually and collectively to stem the tide of the return from places from which most nationals are sent - the United States and Canada. In the case of the United States the matter was a high-priority item on the agenda of the Barbados summit between President Bill Clinton and the 15 Caribbean leaders in May 1997. Efforts by the Caribbean leaders to halt the practice were futile, but the summit agreed to streamline the management of the deportees. Implementation of some of the terms of the US-Caribbean agreement on deportee management, as well as on other issues, has begun. But while these are necessary, they are not sufficient. Other action within Caribbean countries in a variety of areas is also important.

Some of this action has been initiated. One response has been with legislation. In 1994, Jamaica adopted the Criminal Justice (Administration) (Amendment) Act. This law provides for deportees to be deemed restricted persons, and under Section 54(c) restricted persons are subject to the imposition of orders, for up to 12 months at a time, to restrict their residence, force their registration, and compel them to report to police authorities on a weekly basis. They are also required to inform the police about intended absences from the registered address when the absence is for more than a week, and about any planned change of address. Moreover, the new law provides for a central register of restricted persons as well as for twelve-month prison terms for violation of monitoring provisions or for false reporting. The Act also creates a five-member Restricted Persons Review Tribunal to hear appeals from persons placed under restriction, and to advise the government on the maintenance of the system. Guyana plans to emulate Jamaica's legislative lead in this respect.

The Criminal Justice (Administration) (Amendment) Act, however, has serious implications for constitutionally guaranteed freedoms of association and movement. The government has argued that its actions are constitutional given the "exception clauses" of the fundamental rights section of the Constitution. For example, under Section 23 of the Constitution, which guarantees freedoms of assembly and association, there is the provision that:

Nothing contained in or done under the authority of any law shall be [*880] held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision (a) which is reason
ably required (i) in the interest of defense, public safety, public order, public morality, or public health, or (ii) for the purpose of protecting the rights and freedoms of other persons.

Nevertheless, Jamaica's former chief prosecutor Glen Andrade himself once speculated that the law's constitutionality would be challenged with the very first case brought under it, because of the delicate constitutional issues involved. Some of these same issues worry lawyers and human rights activists in Guyana, as the authorities there plan to follow Jamaica's lead in the area.

But it is not just increased crime, whether deportee or non-deportee related that worries policy-makers in the region. There is an impact that relates to efforts to pass legislation that has the potential to undermine some of the democratic precepts on which Caribbean societies are built. I want to share an observation by a former Attorney General of Jamaica, who is now the president of the Jamaican Court of Appeals, about some of the potential dangers in the criminal justice arena, of trying to grapple with the phenomenon of drugs:

In our effort to rid our societies of the scourge of drugs and with some international pressures we are being invited to reverse burdens of proof and adopt a retroactive confiscatory regime. All this is understandable. The perceived danger is real, the consequences of the mischief which we would excise is disastrous. As we contemplate effective measures, the nagging question, though, for all of us remains. Are they just? I remember too that in Jamaica the mongoose was imported from India to kill out the snakes. It did a very good job. The snakes were eliminated. The mongoose then turned its attention to the chickens. There is a lesson in this. Effective measures against vermin may be turned to effective use by the ill-intentioned against decent and law-abiding citizens.

Conclusion

The drug phenomenon in general, and the deportee drama in particular, place Caribbean leaders between a rock and a hard place. They face the realities of other nations anti-drug efforts, which they endorse in principle; but they also face the necessity to honor obligations of statehood for people in their Diaspora who have violated laws elsewhere. But the dilemma exists in relation to democracy also. As many societies cope with the problems and consequences of drugs, initiatives are being undertaken that stand to violate or redefine some of the civil and political rights which are central to democracy. Thus, there are clear and present dangers of drugs with regards to democracy in some Caribbean societies. Institutions are often undermined, and contestation for power is inappropriately influenced. When those things happen, democracy surely is endangered.

**FOOTNOTE-1:**

n1. For examination of the classic approach, see Joseph A. Schumpeter, *Capitalism, Socialism, and Democracy* (1947).


n5. Government of Jamaica, Parliament, Presentation of the Hon. K.D. Knight, supra note 2.

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SUBSTANTIVE SELF-DETERMINATION: DEMOCRACY, COMMUNICATIVE POWER AND INTER/NATIONAL LABOR RIGHTS Suppressing the Beast *

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SUMMARY: ... It even touched the historically troubled Caribbean nation of Haiti. ... In my discussion, I concentrate my analysis on corporatism, and I use Haiti as the primary example. ... In other nations, such as Haiti, where there has never been a democratic system of governance until very recently, these corporative power relationships have developed for a variety of historical and cultural reasons. ... Haiti is a particularly striking example of the devastation created by corporatism. ... In Haiti, it has attempted to boycott many measures designed to achieve progressive levels of taxation. ... In Haiti, the armed forces have literally been dissolved. ... In Haiti, the question has a rather unusual twist to it. ... Meet the basic needs and fully mobilize the human potential of the people of Haiti; ... The scope and content of government activity is to be altered by moving away from "tedious micro-management toward a more strategic approach." ... Recently, they have put together an unprecedented $ 1.2 billion aid-and-loan package for Haiti. ...
not only to protect human rights and the democratic process, but also to reach a satisfactory level of economic and social development.

These problems and possible solutions cannot be successfully addressed, however, without a justifiatory theory of democracy. Such a democratic vision requires a continuous order of mutually assured and encouraged autonomy in which political decisions are manifestly based on the judgments of members of that order who are free and equal per seons. Moreover, the expression of self-governing capacities must operate both within the formal institutions of politics and in the affairs of daily life. The democratic order must satisfy the conditions of equal freedom and autonomy that give it definition.

In this essay, I analyze some of the difficulties nations face in the transition process, and offer some possible solutions to them. In my discussion, I concentrate on corporatism, and I use Haiti as the primary example. Indeed, I discuss and critique the rather flexible plan that the Aristide and Preval governments have attempted to implement in creating the conditions for democracy to grow in Haiti. I then suggest macro and micro changes, such as a new vision of a political economy and the breaking down of cultural barriers, that may lead to a more democratic society.

I. A Major Transitional Problem: Corporatism

There are a number of significant features of the consolidation of democracies that have taken place in Latin America and Haiti. These features include the fact that the process of democratization has taken place during the worst economic, social, and political crises in the history of these various nations. In general, these crises include the commission of massive human rights violations (murder, torture, rape), enormous external debts, hyperinflation, epidemics, the collapse of entire systems of social welfare, and extremely high rates of unemployment.

Another prominent feature of the consolidation process is the failure to fulfill the requirements of the rule of law in both the formal and informal aspects of public and private life. This failure manifests itself in the concentration of power solely in the executive branch of government, leading to massive human rights abuses, and a total disregard for the functions of the other branches of government, corruption in public and private economic activities, non-observance of efficient economic norms, and non-compliance with the most basic rules of social life, such as elementary traffic regulations. The failure to follow the rule of law also leads to the stunting of economic and social development. These features adversely affect the opportunities for democratic changes.

I have elsewhere discussed in depth these features of the transition process. Here, I concentrate on one of the other main obstacles nations face in the transition process when attempting to create, solidify, and consolidate democratic institutions - corporatism. Indeed, for the transition process to succeed, the people must dissolve the network of de facto power relationships which, in some nations, corporations create and jealously protect by taking advantage of the power vacuum left by representatives of popular sovereignty. In other nations, such as Haiti, where there has never been a democratic system of governance until very recently, these corporate power relationships have developed for a variety of historical and cultural reasons. Under the umbrella of authoritarian rule, a number of social groups representing particular interests sculpt a place for themselves after a bargaining process which includes their support for the present regime. Such groups include the military, religious organizations, coalitions of entrepreneurs, trade unions, and sometimes even the so-called independent press. Once democratic rule is established, of course, these groups stubbornly resist relinquishing their power to the representatives of the people.

The concept of corporatism has been the source of much confusion and specious theoretical differences. The problem arises from two distinct meanings attributed to the word, one more traditional and the other more technical. In the more traditional sense, corporatism refers to the control exercised by the state over organizations and interest groups. A prime example is the control that prevailed in Hitler's Germany. The more technical meaning, and the one commonly used in the political arena, attempts to describe the supposedly opposite phenomenon: where these same organizations and interest groups acquire considerable influence over and exert persistent pressure against government decision makers. While defining the concept explicitly in this way tends to lead to more emphasis on one meaning to the exclusion of the other, the term actually encompasses both meanings when applied to most nations undergoing the transition process, particularly those in Latin America.

This is not the whole of the matter. Latin American and Haitian corporatism does not rise to the level of the fascist institutional structure of legally sanctioned exclusive organizations or interest groups. But neither does it reduce itself to the pressures that interest groups apply on political entities in every pluralistic society; for example, when these groups lobby for or against
Corporatism is, unfortunately, very difficult to overcome. It is an insidious and powerful force. When the transition process is successful, and the authoritarian regimes are weakened or completely abolished and are replaced by liberal democracies, the corporative groups whose interests have been favored struggle to retain as much of their privileges as possible. These entities ferociously compete with the popular sector of society, which has recently entered or reentered public life. In many instances, while the people's entry or reentry overcomes their prior illegitimate exclusion, these very same corporative organizations reclaim their privileges and deny the people their rightful claims.

[*887] Haiti is a particularly striking example of the devastation created by corporatism. n4 During the most recent military dictatorship, between 1991 and 1994, the armed forces and their paramilitary civilian front - the attaches - assumed total power and influence in, and completely violated and destroyed any semblance of, democratic practices and institutions. Indeed, the military forces consolidated their rule by intention ally and ruthlessly suppressing Haiti's once diverse and vibrant civil society - a society that brought the promise of direct participatory democracy to a near reality. Until the 1991 coup, Haiti boasted a huge assortment of peasant associations, grass-roots development projects, trade unions, student organizations, church groups, and independent radio stations. In the rural areas, local groups, generally known as "popular organizations", formed literacy programs, rural development projects, and farming cooperatives, often with international support. The military and para-military forces assassinated approximately 5,000 people, brutalized and tortured thousands of others, and forced almost 500,000 people to go underground. The military systematically repressed virtually all forms of independent association in an attempt to deny the Haitian people any organized base for opposition to the brutal dictatorship. Their apparent goal was to push Haiti back into an atom ized and fearful society reminiscent of the Duvalier era. The strategy seemed to be that even if the international community successfully returned Aristide to power, he would find it almost impossible to trans form his popularity into the kind of organized support necessary to exert civilian control over the army and to create a democratic institutional structure that would aid in that endeavor. The cost to the Haitian people has been astronomical. The very civil society that Haiti needs to confront its desperate economic and social problems has nearly been destroyed.

Recently, the democratically elected government has attempted to restore the armed forces to their proper constitutional role. One way of achieving this goal is, for example, to prosecute military officials who were involved in human rights violations. n5 But security is an absolute necessity to pursue this strategy. Thus, these military types must be disarmed. With approximately 250,000 automatic weapons cached around the country and at the disposal of these former military officials, however, the goal of diffusing military power will be extremely difficult to achieve.

[*888] The Catholic Church has played both positive and negative roles in the lives of these nations. The Catholic Church hierarchy in Haiti, for example, has for years been siding with the military and the economic elite. During the military rule, the Church hierarchy exerted great influence over the regulation of matters of private life and the purity of social customs. For example, while the vast majority of Haitians are Roman Catholic Christians, almost all Haitians privately practice Vodoun, the major Haitian folk religion. Publicly, however, the elites associate Vodoun with evil. Indeed, successive Haitian authoritarian governments persecuted many individuals who openly practiced the religion. The persecution has been encouraged and even generated by the hierarchy of the Catholic Church.

Moreover, the Vatican is the only nation to have recognized the political legitimacy of the military coup, and the Church hierarchy has consistently opposed Aristide. Local churches, however, have long helped the people of Haiti by nurturing the populist groups in the rural areas. For example, the Catholic
Church has long sponsored literacy programs for the peasants.

The entrepreneurial sector constitutes another corporative source directed at the democratically elected government. It seeks to obtain a variety of privileges or protective measures and preserve those previously secured. In Haiti, it has attempted to boycott many measures designed to achieve progressive levels of taxation. This elite class has ruled Haiti since its independence, using the state resources as its personal bank account and keeping the vast majority of Haitians in a state of extreme poverty, even slavery. n7

[*889] Fortunately, positive changes in the corporativist structures of these nations have taken place. Presently, the armed forces have lost power and influence in some countries in Latin America and have generally been more accepting of democratic practices and institutions. In Haiti, the armed forces have literally been dissolved. The Haitian army is now a fifty-person marching band. Nevertheless, former military officials have continued to create havoc. Since the return of the democratically elected government in 1994, they have formed criminal gangs, mounted military attacks against the National Police Headquarters, Parliament, and the Presidential Palace, assassinated several newly elected Senators and approximately eighteen newly trained members of the National Police Force. n8

In several nations, the Catholic Church is reluctantly ceding its claim that the state enforce its vision of private, personal life. In many of these nations, the trade unions have been enormously affected by unemployment and by the reduction - sometimes adversely affecting parties normally allied with the government - of the welfare state.

The great enigma, which is directly related to the controversy surrounding the first feature of the consolidation - the economic and social crisis - is whether the previous dominant economic groups remain all-powerful, or have even increased their power, by having changed their positions as privileged contractors of the state to positions as owners and thus monopolistic providers of the recently privatized public services.

In Haiti, the question has a rather unusual twist to it. It is whether the previous dominant entrepreneurial groups remain powerful or have been reduced to puppets of the military during the dictatorship, and, if so, whether they will reassert their power or yield some of it to the people. During most of Haiti's history, the military did the bidding of the elite classes by protecting their economic monopolies and brutally sup [*890] pressing the vast majority of the poor. In turn, the rich paid off the dictators. During the 1991-1994 coup period, things changed. The military took over the country's ports and landing strips, thus enabling its high-ranking officers to prosper in the illicit drug trade. Even more significant, the military increasingly prospered through its control of state monopolies. It was alarm over these incursions into the economy that led the economic elite to support, however tentatively, the return of Aristide to office. The question remains, however, what will the economic elite do now that the military dictatorship is over and two successive democratic governments have come to power?

It is clear from this brief discussion of corporatism that one of the main obstacles that a nation undergoing the transition to democracy must overcome is the interpenetration of corporative power relations, which are remnants of previous populist and authoritarian stages. The corporations try to preserve their power relations and privileges through the transition, generating different types of crises, such as a military or economic threat, which exert tremendous pressure upon the fragile democrac system.

II. Deliberative Democracy

The best means for countering this corporative power is to create a polity governed by universal and impersonal principles where individual citizens, who are not identified with any particular interests but preserve the capacity of adopting different ones, make choices in a process of public justification and dialogue. In practical terms, this requires broad popular participation in governmental decision making and its consequent actions led by strong participative and ideologically committed political parties and parliamentary bodies. These parties and parliaments must themselves, of course, be internally democratic, open, and disciplined.

These conclusions are based on a particular vision of democracy and upon the utmost respect for the autonomy of each individual. In this view, autonomy consists of the exercise of self-governing capacities, such as the capacities of understanding, imagining, reasoning, valuing, and desiring. Free persons have, and are recognized as having such capacities. In a political order dedicated to serving the conditions of free deliberation for its members, those members can legitimately expect of that order that it not only permit, but also encourage the exercise of such capacities - that it permit and encourage autonomy. Indeed, one of the hallmarks of liberal democracy is the notion of the citizen, who is not identified with any interest, but is
Moreover, the vision of democracy as a dialogic process concerned with moral principles to regulate conflicts allows us to qualify the liberal rejection of any intermediary between the individual and the State. Indeed, in a large, complex society, some institutions must protect the individual against the awesome power of corporatism. The most likely candidates are political parties, but only when they are the standard or represent the basis of fundamental principles of political morality. They are indispensable in a modern and large society, not only because they nurture those principles in professional politicians, who purport to put them into practice if duly elected, but also because they exempt individuals from justifying their votes before each other on the basis of principles in professional politicians. In this view, it is sufficient to vote for a party which organizes its programs on the basis of public, general, and impartial principles.

The deterioration of the role of political parties in favor of corporations occurs when the significance of Parliament, the national arena for these parties, is severely eroded. Unfortunately, the integrity of Parliament is often diminished by corporative forces in the transition process. Corporations prefer to exert pressures and achieve agreements in the private offices of government rather than in the contentious, pluralistic, and more public parliamentary corridors. In
addition, there is the tendency of administrations to preserve some of the practices inherited from previous authoritarian governments.

[*893] Strengthening political parties and the parliamentary institutions in order to protect the democratic system against corporative power, however, will work only to the extent that these institutions do not become transformed into corporations themselves. Unfortunately, this often occurs, particularly when parties weaken their ideological commitment, do not promote debates on essential questions of public morality, block channels of participation, operate through methods of patronage and clientelism, or resort to personalism and caudillism. If this happens, these parties and parliaments tend to develop elites with distinctive interests who are likely to become aligned with members of traditional corporative groups in a manner inimical to democratic principles. This also causes other dangerous distortions. When parties become corporations, Parliament becomes weakened by the lack of representatives, by a discourse that is both ideologically vacuous and detached from the experiences and interests of the people represented, and by a general appearance of opacity and self-service.

To alleviate or even avoid this danger, political parties and Parliament must be substantially strengthened. This can be achieved by opening the parties to broad popular participation, promoting permanent political debates within them, perfecting internal democratic mechanisms for selecting party leaders and candidates, and giving a public accounting of the reasons for significant actions, such as how funds are to be managed. It is also important that the electoral system combine the need for promoting party cohesion and ideological identity with the need for the voter to identify with individual representatives, rather than voting for the party slate. A mixed electoral system incorporating proportional representation with individual candidate selection may satisfy both needs. This concept can be extended to parliamentary procedures, which should combine party discipline with a degree of autonomy for individual representatives.


Haiti provides an excellent illustration of the problems that corporative power poses to nations attempting to move from authoritarianism to democracy. It is clear that there is a long, hard distance still to be traveled by the Haitian people in order to fulfill the underlying conditions of the epistemic value of democracy and to overcome corporatism. Under the dictatorship, the levels of material satisfaction were so low, the opportunities for informed debate so debased, the institutional structure so dysfunctional to democratic values, human rights violations so ubiquitous, and the problems of the consolidation of democracy so intense, that any hope of creating the conditions for a deliberative democracy appeared to be impossible. Stated otherwise, the distance between the ideal model and the reality of Haitian life seemed to suggest that democracy could never become a reality in Haiti. Indeed, looking at Haiti directly after the coup regime had been forced out and Aristide had been reinstated to office, one had to ask what could possibly be done to change this bleak landscape. Fortunately, President Aristide was not without a plan, and the Haitian people were not without hope.

The 1990 election of Aristide, the first democratically elected president in the nearly 200-year history of Haiti, was not only a rejection of Duvalierism, but a landslide for popular representation. For the first time in the history of the nation, a majority of Haitians entered into politics. This was an incredibly important step toward democracy for the Haitian population. Furthermore, the people who took part in the democratic explosion at the grass-roots level used the Aristide candidacy to give formal expression to their lives.

The most important popular expectation to emerge from that election is that the repressive role of the state and its corporative forces would be terminated. But merely removing the weapons of the army and paramilitary forces is not enough to fulfill that expectation. What is needed is what I would call a new structure of social relationships, which will have to go beyond political pluralism. It will require the use of state power by several successive governments to achieve at least two major goals. First, the government needs to change the Haitian elite's perspective and restrict their historic capacity for social repression. They must begin to realize that the vast majority of Haitians, who have traditionally been excluded from any decision making role, are human beings, who should be treated with dignity and respect. They must be allowed to become productive members of society who, as equal citizens, have an equal voice in the operations of the government. The elites must realize that their fate is dependent upon improving the lives of all the Haitian people. Thus, the corporative entities controlled by the elites must be dismantled. Second, the government needs to make sure that the anger and resentment of the poor is contained and channeled in a positive way to improve their living conditions and create hope for their future.
The Aristide government's plan for social and economic reconstruction (which I will refer to here as the Aristide Plan), n11 which the Preval government has fully embraced, attempts to achieve these goals in a variety of ways. The objective of the government is "to substantially and irrevocably transform the nature of the Haitian State as the prerequisite for a sustainable development anchored on social justice and the implementation of an irreversible democratic order."

n12 The Aristide Plan calls for shifting the social balance of power away from the executive branch of government to civil society and local government. To do this, the government means to empower several components of civil society, such as political parties, labor unions, grass-roots organizations, cooperatives, and community groups. n13 The government also intends to create a vibrant private sector with an open foreign-investment policy. n14 It conceives of a sound macroeconomic policy that creates the proper environment for the private sector as one that eschews "foreign exchange controls, price controls, and other policy-induced distortions." n15 The Aristide Plan holds that the strategy implemented to realize these goals must:

. Meet the basic needs and fully mobilize the human potential of the people of Haiti;
. Demilitarize public life and establish the supremacy of legitimate civilian control over the military;
. Establish an independent Judiciary;
. Strengthen the institutional capabilities of Parliament, other autonomous institutions, and local governments to enable them to play a constructive and informed role in policy debates and implementation;
. Limit the scope of state activity, and concentrate it on the mission of defining the enabling milieu for private initiative and productive investments;
. Reduce the involvement of the central government in the commercial production of goods and services;
. Redefine the relationship and the distribution of political authority between the central government and local authorities; and
. Improve the quality of public administration. n16

To create a democracy, the Aristide and Preval governments have taken, and further intend to take, a number of concrete steps. Many of these actions are intended to reduce or even eliminate the power of the corporative forces. According to the Aristide Plan, the first priority is the professionalization of the armed forces. Originally, the government planned to, and did in fact, reduce the then current army from approximately seventy-five hundred officers and men to around fifteen hundred. Remarkably, it has gone even further - the army has been totally disbanded, except for the approximately fifty-person marching band. Law enforcement is to be carried out by a newly created National Police Force. This plan is still in its early stages of development, however. Problems originally occurred because some of those selected for the police force were former members of the armed forces who had committed human rights abuses. The government has successfully purged the force of human rights violators, but the police continue to be plagued by poor training, lack of equipment, and general distrust of the citizenry. n17

The second priority is the establishment of an independent judiciary that is able "to fairly arbitrate conflicts among the members of society, and provide adequate protection for private sector activity, property rights and fundamental human rights." n18 Furthermore, under the Aristide Plan, the Haitian government needs to strengthen the Superior Court of Accounts "to improve the level and the quality of public debates in the country, to monitor executive performance and to provide institutional counterweight." n19 Parliament has a crucial role to play in the modernization of the economy and society, but, of course, it was severely weakened during the military dictatorship, and although most of the economic reforms have to be enacted through laws, the Parliament was still not equipped to deal effectively with these issues right up until the end of Aristide's term. Parliament's power, therefore, had to be strengthened substantially. Presently, Parliament has become more independent than in the past, but it has also become entangled in a bitter partisan battle over elections and the plan to privatize all government-owned enterprises.

In addition to these several key areas of reform, the Aristide Plan calls for the modernization of the state sector. It requires a reduction in the civil service to approximately half of the then current 45,000 civil servants. This is to be achieved through voluntary departure encouraged by generous severance packages. The plan also requires an improve ment in the level of professional competence. n20 The scope and content of government activity is to be altered by moving away from "tedious micro-management toward a more strategic approach." n21 The smaller civil service will concentrate on a more limited number of objectives. "It should refrain from excessive regulation and focus on broad policy questions." n22

In the first year of Aristide's reinstated term, his Administration [*897] was quite successful in
implementing some of these seemingly impossible reforms. Aristide dismissed most of the army's high command and reduced the number of troops. Later in his term, he abolished the army. He achieved this by appointing new officers, who then dismissed the troops involved in past human rights abuses. A new civilian police force, operating under the authority of the Ministry of Justice, is in the process of being trained and is partly in operation. Work has begun also on reforming the judicial system. Furthermore, Aristide created the National Truth and Justice Commission to investigate and write a report on human rights violations. The Commission finished its investigations and submitted its report on February 5, 1996, only two days before the end of Aristide's term as President. The 1500-page report, which was not made public for some time, includes sixty-three pages of recommendations addressing punitive measures, compensation to victims, and necessary judicial reforms. A separate, confidential report names 900 perpetrators of human rights violations, 300 of whom the commission recommends should be prosecuted. Moreover, parliamentary elections took place in July 1995, and presidential elections took place in December 1995. The election led to the second democratically elected president in the nation's nearly 200-year history. This represents a key step in creating stability for the growth of a real democracy.

Perhaps even more significant, Aristide called on the international community for expertise. He appointed an international team of prominent lawyers to assist the Ministry of Justice in the investigations and prosecutions of some of the most notorious human rights cases. Preval has continued these investigations and prosecutions.

Initially, the team concentrated on representative, symbolic cases. It focused on seeking justice for the murders of Antoine Izmery, a successful businessman, political activist, and financial supporter of Aristide; Guy Malary, a former Minister of Justice who sought to prosecute military officials who committed political assassinations; Jean-Claude Museau, a student who protested against the military abuses and in favor of Aristide; and Jean-Marie Vincent, a priest who organized peasants to demand that their human rights be enforced. All of these men were murdered because of their outspoken opposition to the coup.

The attorneys started their work by compiling all of the public information regarding these murders and then turned these files over to the Minister of Justice. The team members interviewed witnesses, collected documents, and pieced together other relevant information. They helped create investigative teams of international and national police, and they worked with prosecutors and judges in the development of cases for prosecution. Several ordonnances (indictments) have been issued, many people have been arrested, and, in the Museau case, several defendants have been convicted in absentia and sentenced to long jail terms. In the Izmery case, not only have several defendants been convicted in absentia and sentenced to long jail terms, but one defendant, Gerard Gustov ("Zimbabwe"), a ranking member of the paramilitary group, Front for the Advancement and Progress in Haiti (FRAPH), has been tried, convicted, and sentenced to life imprisonment at hard labor. This is the first time in the history of the Haitian nation that someone allied with the dictatorship has been fairly tried and convicted for a human rights violation; in this case, a political assassination. This conviction has had a profound impact on the nation's psyche. People are now beginning to believe, to some degree, that justice can be achieved and that the rule of law is an important aspect of a democracy. The corporative para-military forces have thus been substantially weakened.

Moreover, five special investigative teams have been organized to investigate political crimes committed by the former authoritarian regime. These teams have started investigating approximately seventy-six cases. Each team originally consisted of a member of the U.N. Civilian Police (CIVPOL) and two members of the newly trained and newly created Haitian National Police. The investigative teams reported to the Director of CIVPOL and to the Director of the National Police. The latter was the liaison between the commissaires, judges, and Minister of Justice. Presently, the teams work directly with the Minister of Justice, and CIVPOL is no longer involved in the investigations.

In addition, victims' committees have been organized in every criminal jurisdiction of the country. These groups are soliciting victims to come forward and detail the atrocities committed against them and to name the perpetrators of these crimes. Lawyers hired by the government are filing lawsuits in these cases. These committees not only gather information, but also create pressure on the actors in the system to do their jobs—to do justice.

Originally, the international team of legal advisers directed these operations and conducted parallel investigations into some of the major cases. Under President Aristide's rule, the team reported directly to him. Under President Preval's rule, they reported first to the Minister of Justice. In this way, different kinds of pressures are put on the Haitian officials who are responsible for enforcing the law.

These impressive advances on the political front, however, have not been accompanied by progress toward a better material life for the vast poor majority.
For them, grinding poverty and the daily struggle to sur vive continue uninterrupted. This is the point at which the Aristide Plan has serious deficiencies.

[*899] The macro-economic aspects of the Plan are clearly intended to attract large amounts of capital from the World Bank, the International Monetary Fund, and the United States Agency for International Development. So, for example, the Aristide Plan calls for removing quantitative restrictions to imports, and removing the tariffs, except for those on rice, corn, beans, and sorghum. As the Aristide Plan makes clear, "for a very limited number of sensitive products a transitory adjustment period not exceeding seven (7) years might be provided. For these products, the tariff level will be cut in half immediately." n23 The Aristide Plan claims that this tariff policy will have significant benefits. The authors of the Aristide Plan claim that it will eliminate contraband and its associated corruption, reduce the cost of living, enhance the competitiveness of exports, establish a competitive playing field for all economic agents, and curb the powers of domestic monopolists. n24

The Aristide Plan, however, recognizes that the tariff plan will require adjustment assistance to the productive sectors, such as agriculture (basic grains and rice-producing areas). It also recognizes that the trade regime distortions are not sufficient to allow for resumption of export performance. Thus, Haiti is "requesting" that its North American trade partners provide "maximum favorable treatment with respect to quantitative restrictions and tariffs (including those on the value added by the assembly sector) for the next ten years." n25 In conjunction with its request, the Aristide Plan recognizes the need to improve domestic tax collection "for both social equity and medium term economic stability." n26

Finally, the economic aspect of the Aristide Plan calls for the divestiture of publicly owned companies. This is seen as necessary because of mismanagement and because of the associated opportunities for corruption. The Aristide Plan also suggests that the divestiture must include implementation of an appropriate regulatory framework and anti-trust legislation. To limit the possibility of having the divestiture increase the concentration of wealth within Haiti, the government "will seek out foreign investors, domestic savers from the professional categories and the members of the Haitian Diaspora." n27 Part of the ownership will be transferred to traditionally excluded members of society, particu larly to the families of those murdered, tortured, or otherwise harmed by the military coup. n28

[*900] The required reforms of the retirement and social security system "will expand the opportunity to widen the ranks of financial asset owners." n29 Half of the proceeds from the divestiture will be put into infrastructure investments "in the poorest areas and low cost urban and rural housing." n30 In addition, the other half of the proceeds "will be invested in a permanent trust fund whose annual proceeds will be used to subsidize education and health for the rural poor." n31

Criticisms of the economic aspects of the Aristide Plan are powerful. To begin with, the democratic process of a new social contract implies that the State will create a level playing field - a fair chance of access to power - not only in politics, but also in economic and social life. In Haiti, such a fair chance of access to power, given Haiti's past and current situation, cannot simply mean a non-interventionist economic policy, an extreme version of laissez-faire economics.

But the Aristide Plan seems to go beyond the free market expectations of the International Monetary Fund and the World Bank. For example, as stated above, it asks for the removal of all import tariffs, except on a few cereals. The economic program is thus clearly tilted in favor of the traditional elites - the entrepreneurial corporate sector - who will dominate the trade in imported products. It is surely not believable that they would suddenly learn to behave as fair competitors once the State removes itself from regulating economic life. Even more disturbing, the Aristide Plan seems to neglect the capacities and interests of thousands of small urban entrepreneurs and artisans, as well as millions of peasants. More specifically, for example, removing tariffs on handcrafted products may quickly put out of business a large number of the artisans who have supported Aristide. In addition, the unrestricted importation of food may further diminish peasant revenues and encourage both rural and urban unrest.

The divestiture or privatization plans may cause long-term problems. n32 In theory, removing the State from vital enterprises will significantly reduce corporativist influences and help reduce inflation. On the other hand, the political pressures that consumers may have been able to exert on the government to keep down the prices of State-pro vided services will not exist under the divestiture aspect of the Aristide Plan. At the same time, the monopoly status of the new private companies will prevent the activization of free market forces to keep prices competitive. Absent the unlikely dissolution of these monopolies, the privatization aspect of the Aristide Plan may prove to be a disaster for Haiti's economy.

This is not, of course, the whole of the problem. The international community is not helping to alleviate these problems. Instead, it is exacerbating them. In
order to foster real stability and stem the flow of refugees to United States shores, the real concern of the Clinton Administration, the root causes of poverty in Haiti must be addressed. Unfortunately, the Clinton Administration is supporting the imposition of a sort of boilerplate World Bank/International Monetary Fund "structural adjustment" program in Haiti. It restricts wages, favors the export-oriented private sector at the expense of small-scale food producers, and forces resource-stripped local producers to compete with subsidized, highly capitalized foreign companies. n33

The United States Agency for International Development, the World Bank, and other donors claim that one of their primary goals is to alleviate poverty. Recently, they have put together an unprecedented $1.2 billion aid-and-loan package for Haiti. But past support of export-led development, with anti-poverty programs added on, has met with little success.

In January 1995, the Inter-American Development Bank issued a joint donor report on the proposed economic recovery program in Haiti. n34 It suggested three major shortcomings of past assistance programs: no national ownership, little measurable impact on basic economic and social indicators, and no sustainability. Given this stunning admission of failure from the agencies that put more than two billion dollars into Haiti during the 1980's, it is certainly appropriate to ask why they are not following a different strategy.

In point of fact, until quite recently, Haiti's poor majority has been excluded from any decision making role regarding the economy. The same is not true for the elites. The Haitian government-sponsored, United States AID-funded Presidential Commission on Modernization and Growth, dominated by Haiti's business elites, has an official policy advisory role. This allows the elites to travel to the United States to seek increased support from the Administration, Congress, and potential investors.

[*902] There is, however, a serious problem with this access. It is one-sided only. No parallel programs or efforts exist to draw expertise, priorities, or advice from the more than ninety percent of Haiti's population that makes its living from small-scale agriculture, artisan production, and other small enterprises.

The Clinton Administration's support of macro-economic policies, and the Aristide and Preval governments' agreement with these policies, will create as great a threat to democracy as the armed right-wing paramilitary forces that continue to haunt the Haitian nation. Without a basic change in economic development policy, the stranglehold of poverty on the Haitian people will remain unbroken, and their hard-won progress toward democracy will quickly erode. Corporativism will prevail.

The Aristide government's, and now the Preval government's, most difficult challenge in creating a democracy has not only been that of encouraging political pluralism in the formal sense, which is certainly a very difficult but indispensable task. Even more important, these successive democratically elected governments must decide whether the economic plans that have become one of the central fixtures of their democratic program - and that have brought the Aristide and Preval governments international support - will simply be imposed on the Haitian people, or whether the Haitian State will finally begin to listen to the voices of the people.

To be completely fair, there has been a real attempt by the economists who drafted the economic program, Leslie Delatorre and Leslie Voltaire, to ask for critical views of many Haitians who are not part of Aristide's faction. This openness, of course, signals an extraordinary change in Haitian politics. But those who have criticized the plan are not necessarily the peasants who will be most adversely affected by it. Thus, the debate must include not only international agencies, Haitian expatriates, old-line political parties, and the elites, but the voices of the very people whose future is most at stake - the vast poor majority.

There are signs of hope. As the December 1995 presidential election grew near, this debate became central to the campaign. At that time, President Aristide refused to accede to the demands made by the international community for total privatization of the nine major government-owned enterprises. He not only disagreed with total privatization on substantively solid grounds, but also listened to the public uproar against such a policy. As a result, the international community withheld the promised funds, claiming that the Haitian government's refusal to privatize totally these government enterprises violated the terms of their agreement.

[*903] The debate continues into President Preval's term. Preval, unlike Aristide, seems to favor the plan of total privatization, at least publicly. Others in his party, and many of the masses, disagree. While disruptive, the national debate, which continues through 1999, is also a positive step in the transition to democracy. It is a step in the development of a public dialogue. n35

IV. Suggested Reforms

While Haiti, Eastern European, and Latin American nations strive toward democracy, it is clear that experimentation is in order, partcularly in the political
and economic spheres. The overriding characteristic of the political and economic life in developing nations is the desire to avoid either a national-populist or a neo-liberal project. In today's global economy, neither approach seems promising.

The import-substituting, protectionist style of industrialization and the pseudo-Keynesian public finance of a nationalist-populist approach seem unable to deal effectively with the huge problems facing these nations. Neoliberalism (neoliberalismo), Latin American's single-minded pursuit of foreign investment and the accompanying austerity and inequality, is unable to service the real conditions of sustained economic growth.

Neoliberalism's rise to the status of religious doctrine is in part due to the influence of the United States. The Reagan Administration pushed the Latin Americans into pro-business austerity programs and set the tone for a world-wide reduction of government's role. The policy's acceptance in Latin America is also due to the wealth of its corporative backers in a region where money matters above all else in politics.

But neoliberalism is also a response to the failure of a national-populist approach. Indeed, the continent still faces the problems of hyperinflation and stagnation created by irrational, closed economies and massive public spending.

What is needed now, however, is to fix neoliberalism's major flaw - chiefly that it does not help the poor, vast majority live a dignified life. Instead, corporative power creates wealth for a small minority, while almost enslaving the majority. Indeed, if government does not spread the benefits of globalization and stagnation created by irrational, closed economies and massive public spending.

Unlike neoliberalism's claim that government should play a minor role in the economy, real democratic change requires government to play an important role. At a minimum, these nations must pursue locally designed policies to draw the poor into the global economy. To do this, these governments must pursue a rather different vision of a political economy than the one traditionally accepted.

To begin with, these nations must be serious about macro-economic stabilization. They must impose taxes upon the privileged classes to allow for public investment in people and infrastructure. One possibility would be to impose a direct, consumption-based tax, taxing the difference between income and savings, as a way to finance the state and promote capital formation and productive investment.

There must be a major push to train the poor majority in a variety of skills needed in the global economy. Education is central to reform. This approach would also suggest attempting joint public-private ownership of enterprises and encouraging decentralized capital allocation and management. If the break down of corporative control of the economy is to succeed, however, the strict requirements of capitalism must be imposed on these so-called free-market capitalists. Thus, the private sector must actually be privatized, allowing for real competition. This requires laws opening the market so that everyone can compete on a level playing field. In addition, it is necessary to develop public companies and impose upon them the requirements of competition and independent financial responsibility. Parliament has to pass laws which encourage such activity.

On the political front, there must be an ability to counter the threat of oligarchic control of political power. There must be a facility for the rapid resolution of major political impasses through granting priority to programmatic legislation, liberal resort to plebiscites and referenda, and perhaps the vesting of power in the executive and legislative branches to call new elections in the face of serious disagreements over the direction the country should take.

This is not all. Measures must be taken to broaden the scope and heighten the level of political mobilization in society. As discussed above, this requires strengthening the role of political parties, public financing of campaigns, increased free access to radio and television, and the breakup of the broadcasting cartel. Political organizing, at all levels, must be encouraged through specific government programs. Direct democracy must be systematically organized and planned.

V. Conclusion

Almost all nations undergoing the transition from dictatorship to democracy face the power of corporations. The actors are not necessarily the same; for example, the Catholic Church does not have the same role in Haiti as it does in Argentina, and trade unions hold different positions in Haiti than in Brazil. But the script is nevertheless repeated in each country because the formal creation or reestablishment of democratic rule is not sufficient to destroy the corporative power relationships built up during the dictatorship periods. Indeed, these citadels of power are insidious.

In this essay, I have argued that the best way to strengthen the workings of democracy against corporative power is to somehow include the formerly
excluded majority into the decision making process and implementation of government action. Stated otherwise, direct popular participation is a necessary aspect of creating a true democracy. This follows from the epistemic vision of democracy I have described. Moreover, the best method for achieving this goal is to perfect mechanisms of representation and strengthen political parties, which must themselves be internally democratic and open, disciplined, and ideologically defined.

In addition, creative attempts at economic and social reform must work hand-in-hand with the requisite political reform. Direct popular participation must reach all aspects of public and private life. Experimentation is called for because old methods have not transformed these societies to allow the individual citizen the freedom and dignity each human being is due.

FOOTNOTE-1:

n1. For a discussion of the different characterizations of the process of transition, see Transitions From Authoritarian Rule: Latin America (Guillermo O’Donnell, et al., eds., 1986); Juan J. Linz, The Breakdown of Democratic Regimes (1978).


n3. For an interesting discussion of the concept of corporatism and its relationship to state and society in Latin America, see generally Authoritarianism and Corporatism in Latin America (James M. Malloy ed., 1977).

n4. For a thorough discussion of Haitian history and culture that analyzes many of the problems of the transition process, including corporatism, see Silencing the Guns in Haiti, supra note 2.

n5. For a discussion of the moral, legal, and political problems associated with prosecuting human rights violators in these circumstances, see Silencing the Guns in Haiti, supra note 2.

n6. Indeed, when President Aristide first took office in 1990, he met with representatives of the elite families, almost all of whom can be classified as members of the entrepreneurial sector, to discuss the payment of taxes. He told them that one of the most serious problems in Haiti was the failure of those who earned their fortunes in Haiti to pay taxes. In point of fact, throughout the history of Haiti, the elites simply refused to pay taxes. Aristide then stated that his government would not attempt to collect taxes owed in the past, but from this date forward, he expected those people to pay taxes. The representatives of the elite families essentially told Aristide that he would not be in office long enough to collect taxes. Approximately three weeks after that meeting, Aristide was overthrown by a military coup. Continuing Interview with President Jean- Aristide, in Port-au-Prince, Haiti, (November 8, 1993 to December 1997). Under the Preval government, taxes on the elites and the middle class are slowly beginning to be collected. For example, those who import automobiles are now sometimes required to pay the import tariffs. Nevertheless, tax collection remains sporadic and inconsistent. Corruption of public officials is a continuing problem.

n7. Ironically, Haiti is the product of a revolution against slavery and colonialism. It emerged as a nation in 1804, after a thirteen-year struggle against France that resulted in the destruction of the French colony of Saint Dominique. Almost immediately after independence, the Haitian elites attempted to recreate the plantation economy, treating the rural masses in much the same way as the French colonial oppressors had treated them. The former slaves, however, simply refused to return to a state of slavery. Instead, they settled as small peasants on land bought or reconquered from the State, or abandoned by large landowners. The urban elites then devised a dual strategy to counter this problem.
The first part of the plan was economic. The elites used the fiscal and marketing systems of the country to create wealth-producing mechanisms for themselves. They became traders, politicians, and state employees. They prospered by living off the peasants' labor. Taxes collected by the import-export bourgeoisie at the urban markets and customhouses - paid solely by the peasants - provided the entire source of government revenues. The elites then took over the state and used the state revenues as their personal bank accounts.

The second part of the plan was political. The strategy was to isolate the peasants on small mountain plots and keep them away from politics. It was a brilliant but corrupt strategy. The peasants, who unknowingly subsidized the elites, had no say whatsoever in how the state was to be run.

For analysis of these points, see Silencing the Guns in Haiti, supra note 2; see generally Michel-Rolph Trouillot, Haiti, State Against Nation: The Origins and Legacy of Duvalierism (1990).

n8. See Silencing the Guns in Haiti, supra note 2.

n9. See Silencing the Guns in Haiti, supra note 2; Stotzky, Establishing Deliberative Democracy: Moving from Misery to Poverty With Dignity, supra note 2; Stotzky, Creating the Conditions for Democracy, supra note 2.


n12. Id. at 1.

n13. Id.

n14. Id.

n15. Id.

n16. Id.

n17. See Silencing the Guns in Haiti, supra note 2.


n19. Id. at 3.

n20. Id.

n21. Id.

n22. Id.

n23. Id. at 4.

n24. Id.

n25. Id. at 5.

n26. Id.

n27. Id.

n28. See id.

n29. Id.

n30. Id. at 6.

n31. Id.

n32. Disagreement over privatization plans led to the resignation of Prime Minister Smark Michel, a strong advocate for total privatization. As Aristide's term in office ended, he refused to totally privatize the State-owned enterprises. Under President Preval, a lively debate on this question is currently taking place in Haiti.

n33. This appears to be the same model that led Mexico into financial collapse by undermining the production of small farmers, building export industries on exploited labor, and concentrating wealth and resources in the hands of the very few.


n35. For a more thorough discussion of the privatization issue, and economic policy in general, see Silencing the Guns in Haiti, supra note 2.
LENGTH: 2248 words

SUBSTANTIVE SELF-DETERMINATION: DEMOCRACY, COMMUNICATIVE POWER AND INTER/NATIONAL LABOR RIGHTS Property as an Instrument of Power in Nicaragua

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SUMMARY: ... The Somoza period was one of change with respect to the traditional ownership of property. ... The second group was the military sector, the Somoza family, and its supporters. ... By 1979, ownership of property had changed considerably and the influence of the Somoza sector was so great that the unease of the economic and social sectors began to clearly manifest itself. ... The traditional sector had been severely affected by the economic voracity of the Somoza regime. ... With the dismantling of the National Guard of Somoza's regime and the new Sandinista military control, modifications were made to gain political control. ... The Sandinistas confiscated huge lots of property in the rural areas which weren't being farmed, and in the urban areas, apartment buildings and residential areas, including empty lots, were confiscated as well. ... The grand beneficiaries of this law would be: 1) the Sandinistas, who were able to legitimize their ownership of property; 2) the military and police; 3) the Sandinista administration and its members; and, 4) the new economic group which supported the new liberal government. ... "Agricultural reform deeds are unprotected in urban areas of Managua and other cities. ..."

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To better understand the subject of property in Nicaragua, it is necessary to review recent history.

1.1. Somoza Period

The Somoza period was one of change with respect to the traditional ownership of property. Property owners began to modernize their forms of ownership. Communal ownership was established, wherein individual land and money, which was historically used to create financial centers for small producers and commercial communities for the local and export markets, was reallocated with the goal of creating large agricultural entities, for example, coffee and cotton plantations.

These changes were brought about through several measures including:

a.a. Expropriation from economically weak sectors.

a.b. Expropriation of land which belonged to indigent communities.

a.c. Expropriation of land belonging to rural farmers and workers, who had no deeds to the land.

a.d. Small producers with title to their land were brought before the authorities.

All of these sectors were relieved of their properties, to be used for the cotton, coffee and banana plantations. The expropriated owners were forced by the military to move to zones in the jungle where there were no basic services, e.g. potable drinking water, electricity, telephone, and very little means with which to begin working the land, which was different from any they had worked before, as it was muddy and wet.

Together with these changes, new groups began to form, which were not necessarily agricultural in nature. These groups would centralize the money generated by the plantation ("hacienda") owners, which included rent from urban properties. These groups eventually became the banks and financial institutions which assisted the economic investments of the hacienda owners. In urban areas, for example, landlords become less common, replaced by urban-planning companies, which focused their efforts on middle and high income areas. In low income areas, the companies would sell property, without deeds, to the emigrating farmers which arrived in the cities. When the farmers could not make the payments, they would be evicted, only to be replaced by another farmer. This resulted in a chain of property "owners" without any deeds who, as a result, had no claim on their property. For example, an owner of a lot who paid a fixed amount for five years or more
and was able to construct a house on the property, but missed one payment, could be evicted and lose not only the lot, but the house as well. That lot, along with the house, would be resold. This process generated huge returns for the urbanization companies and allowed them to maintain ownership of their properties.

1.2 Property Was Concentrated in Two Groups

The first group was the historical family descended from the Spanish and European, which owned their property and investments since the colonization period, and have passed it down from generation to generation, e.g. Pellas, Chamorro, McGregor, etc.

The second group was the military sector, the Somoza family, and its supporters. This group eventually obtained economic, political and military power in Nicaragua, preventing other groups' participation in the economic as well as the political sector.

By 1979, ownership of property had changed considerably and the influence of the Somoza sector was so great that the unease of the economic and social sectors began to clearly manifest itself. Insurrections were started by the Sandinistas and reactionary guerrillas came forth. Additionally, the Catholic Church began demanding an equitable distribution of wealth. These groups, traditional, civil organizations and popular groups n2 united in the guerilla attack as the only way to topple the Somoza regime. The traditional sector had been severely affected by the economic voracity of the Somoza regime. As a result, even though some thought and others suspected, that the guerilla movement was founded in Marxist philosophy, the traditional sector also supported the efforts to destroy the regime. They believed that, in Nicaragua, the redistribution of property would not be through Socialist measures.

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1.3 The Revolutionary Change: The Sandinista Period

The Sandinista revolution destroyed all the power structures previouly in existence. Property ownership went from one where property ownership was dominated by two large sectors, the Somoza and the traditional, to a centralized state of ownership, which would nationalize all businesses, from agricultural to industrial.

With the dismantling of the National Guard of Somoza's regime and the new Sandinista military control, modifications were made to gain political control. With both of these in hand, new measures were implemented: more sectors would be confiscated, with several groups demanding the arrests of the Somoza family and supporters of his government. The Sandinistas confiscated huge lots of property in the rural areas which weren't being farmed, and in the urban areas, apartment buildings and residential areas, including empty lots, were confiscated as well. Shortly thereafter, a state bank system was established as the only banking system in the country.

Agricultural reforms followed, characterized by redistribution of land, not with the goal of creating societies of individual ownership, but instead with the goal of creating cooperatives, where technical and financial assistance could be funneled. The thought of granting individual deeds could stop the fundamental property goal of the Sandinistas, which was to establish a Socialist state. These measures exemplified the fastest way to transfer property from individual ownership to state ownership, in the creation of Area Propiedad del Pueblo ("APP" or Land Owned by the State.)

With the Contras uprising, other measures involving property were implemented, for example, businesses lost their capital and properties were abandoned. The goal of these measures was to acquire all property belonging to those who did not support the Sandinista government. To do so, the Sandinistas eliminated as much capital as possible, while property owners who feared military rule fled the country, abandoning their homes, or leaving them with a friend or employee. The Sandinista government also took political measures against the business sector, which remained in Nicaragua as the only opposition to their government. These measures included confiscation of the business' property, and in some cases, incarcerating their directors.

The Sandinista period was one during which a limited number of deeds were being granted in rural areas: the farmers and cooperative members owned the property without deeds. At the same time, in the urban areas, the occupants of low-income apartments, lots and residential areas, occupied the properties, but never held title to them. Clearly, the objective of the Sandinista government was not to create new property owners, but instead to create new tenants and people to work the land, with the sole property owner being the State. During this period, an attempt to create a Socialist state was made by establishing the requisite political and social bases, but no changes were made to the judicial system, which would have legalized many of the atrocities committed during that period.

1.4 The Beginning of Conflict: The Violeta Chamorro Period
Upon being elected, Violeta Chamorro addressed anew the problem of property, which by now had become much more complicated. The new government was dealing with a "Sistema Judicial" ("Judicial System") or "CADUCO" which was unable to legally resolve the property situation. This group began to negotiate with Chamorro's First Governor, and allegedly Sandinista representatives, in an attempt to resolve the property situation through political means, without even attempting to make changes in the judicial system.

The Chamorro government began privatizing state-owned businesses and attempted to return those properties previously confiscated by the Sandinistas, with the exception of those owned by the Somoza family, members of the military during his regime and his supporters. At that time, the popular sector began to organize to defend their rights to property. This was manifested in a petition by factory workers and businesses, requesting 25% ownership in these properties, which at that time still belonged to the State.

In the case of small properties like houses and small business the problem was much more difficult. The claims received by the tribunals were nearly impossible to process and the judicial system so slow and obsolete, that it was estimated it would take fifteen years to resolve the problem. n3

1.5 Liberal Government: Arnoldo Aleman

With the inception of the Aleman government, the situation was rendered yet more tense, resulting in a round of negotiations with the Sandinistas to create a new law known in the national political scene as "The Final Point Law". This law, while pretending to be a resolution of the problem, is rather a continuation of a never ending problem that leaves unprotected the popular sector, which had benefited from the agricultural and urban reforms, and hurts small property owners as well.

The grand beneficiaries of this law would be: 1) the Sandinistas, [*911] who were able to legitimize their ownership of property; 2) the military and police; 3) the Sandinista administration and its members; and, 4) the new economic group which supported the new liberal government. This new group sought to consolidate itself to confront the Sandinistas and the traditional sector.

To better to understand this "Final Point Law" I have chosen to include small fragments of the same. These are parts of a critique made by the magazine Envio from the Central American University, UCA.

"Agricultural reform deeds are unprotected in urban areas of Managua and other cities. This article estimates that agricultural reform deeds issued within the urban limits of Managua, established during the zoning process in 1982, would be declared null. These deeds will be void and their registration inscription will be canceled. It is assumed that in those cases, the INRA ("Instituto Nacional de Reforma Agraria") will reassign the occupants of those properties other lands so they can continue productive activities... All of these lands have increased in value, but the person(s) responsible for that increase in value over the years will not benefit from that increase and will be sent to remote lands, without the necessary conditions for production or commercialization of the property. This measure is similar to that to which the Somoza government used when it displaced thousands of farmers into the jungles." Additionally, urban sectors in the same area will suffer. "Article 93 of the new law states that occupants of residential housing which have been consolidated since 1994, even if they were permanently placed, will be subject to decisions made by the authorities responsible for addressing urban issues, and can be relocated, when the urban areas in question which the current occupants reside in are affected by the natural urban development of the city." n4

1.6 Conclusion

The problem of property in Nicaragua is very complex and no government has really had the political will to establish the necessary bases to start a true exchange in terms of possession of the land and ownership [*912] of the property. The solutions proffered by the Sandinista, Chamorro and Aleman governments have been superficial and incapable of reaching the crux of the problem. These solutions can be characterized as attempts to solve crises between centers of power which seek more power: control over new areas of property, because these centers stand under that if they don't obtain such power, they will lose political control as well. On the other hand, the popular class and its civil organizations continue to be dominated, subordinate in a country where the wealth is concentrated in few hands with each passing day, and
the dispossessed sectors' opportunities become fewer and fewer.

**FOOTNOTE-1:**

n1. "Traditional ownership," in this context, the ownership of land and properties made useful and productive without major complexity in production and distribution, and without need of tools such as banks and financing.

n2. Popular Groups: workers, farmers, civil servants, domestic workers, the unemployed, etc.

n3. See Latin American and Caribbean Program, The Disputes of Property in Nicaragua (March 15, 1995) (on file with The Carter Center, Atlanta, Ga.)

Para entender un poco más el tema de la propiedad en Nicaragua, es necesario irnos al pasado más inmediato. Para 1979 la situación de la propiedad había cambiado notablemente. El avance del sector Somocista era tan grande que el descontento de todos los sectores económicos y sociales era manifestado. Hace que el sector tradicional, organizaciones civiles y sectores populares se sumen a lucha guerrillera como única salida para derrocar a la dictadura Somocista. Esta ley tenía como objetivo poder adquirir todas las propiedades de aquellos ciudadanos inconformes con las medidas de socialización impulsadas por el gobierno Sandinista. El gobierno de Chamorro empieza a privatizar las empresas estatales y ha tratar de entregar a los confiscados sus propiedades, con excepción de la Familia Somoza, exguardias del ejército de Somoza y a sus allegados. En el caso de propiedades pequeñas como casas y pequeños negocios, resultó mucho más difícil. Por un lado el gobierno de Chamorro y por otro la cúpula Sandinista y sus nuevos empresarios. Dicha ley que supuestamente sería el enterradero de un problema, más bien sería el abono fertil para problemas aún más profundos como es una distribución más justa de la propiedad entre todos los actores sociales de Nicaragua. El problema de la propiedad en Nicaragua es sumamente complejo. Para entender un poco más el tema de la propiedad en Nicaragua, es necesario irnos al pasado más inmediato.  

1.1. Periodo Somocista: 

En el período somocista empieza ha darce cambios en cuanto respecto a la propiedad tradicional n1 y sus titulares. Los propietarios particulares empiezan a modernizar sus formas de tenencias, creando sociedades propietarias, osea agrupándose los capitales familiares que históricamente estaban dispersos. Todo esto con el objetivo de crear grandes empresas agroindustriales, como por ejemplo: grandes plantaciones de algodón y de café. Al mismo tiempo pasan a crear centros de financiamiento para pequeños productores y sociedades comercializadoras para el mercado local y la exportación. 

Todos estos cambios, trajo como consecuencia un sin número de medidas como son: 

- Expropiación a sectores debiles económicamente. 
- Expropiación de tierras de comunidades indígenas. 
- Expropiación a campesinos y trabajadores del campo sin títulos de propiedad. 
- Y expropiaciones a pequeños productores con títulos registrados ante las autoridades civiles de la propiedad. 

Todos estos sectores fueron desplazados de sus propiedades. Siendo estas utilizadas en las plantaciones de algodón, café y banano.

Los expropiados son obligados con la fuerza militar a trasladar a zonas selváticas donde no existía ningún servicio básico (agua potable, electricidad, teléfono, etc.) y mucho menos medios para empezar a trabajar la tierra. Estas con características diferentes (pantanosa) la cual no estaban acostumbrados a trabajar. Paralelo a esto se empieza ha gestar nuevos grupos económicos que no necesariamente eran agroindustriales. Estos se encargarían de cen trar el dinero de los excedentes de la producción de grandes haciendas y en rentas de propiedades urbanas. Se pasa a la creación de bancos y financieras que agilizan la inversión monetaria de grandes propietarios.

En zonas urbanas se pasa de la práctica de los casatenientes a la formación de compaías urbanizadoras que edifican en los sectores de ingresos altos y medios. Pero en los sectores de escasos recursos las compaías inmobiliarias vendian las propiedades sin ningún título. Generalmente a la emigración campesina que llegaba a las ciudades pensando en tener un mejor futuro. Estos campesinos se hacían deudores de las compaías inmobiliarias y al no poder pagar sus cuotas eran desalojados: De esa manera otro comprador con las mismas características del anterior, se hacía poseedor de la vivienda, formándose así una cadena de "propietarios" sin títulos. Imposibilitados de inscribir su propiedad. Por ejemplo: El dueño de un lote que pago por el...
El cambio revolucionario trastoca todas las formas de poder que existían. Se pasa de un estado en que la propiedad era dominada por dos grandes sectores (sector Somocista y sector Tradicional) a un estado en el que centralizaría la mayor parte de la propiedad. Nacionalizando las empresas, tanto industriales, de servicios y de agro.

Al desmantelarse la Guardia Nacional (GN) y acentuarse el dominio militar de los Sandinistas, se empiezan a establecer modificaciones en el recién creado Consejo de Estado, con el objetivo de tener el dominio político. Teniendo ambos poderes (militar y legislativo) se dirigen a dictar un sin número de leyes:

- Se amplían los sectores a confiscar. A raíz del derrocamiento de la dictadura de Somoza, se dictaron tres decretos que demandaban la confiscación a la familia Somoza, militares y personas afines a su gobierno. Con esta nueva ley que amplía estos tres decretos, el gobierno sandinista logra confiscar a dueños de grandes extensiones de terrenos sin trabajar. Esto en el área rural y en la ciudad, se le confisca a propietarios de cuarterías, repartos habitacionales y lotes de terrenos. Y se establece la banca estatal como único sistema financiero del país.

Se crea una ley de Reforma Agraria que tenía como finalidad redistribuir la tierra, pero no con el objetivo de crear sociedades de pequeños propietarios. Sino el de crear cooperativas por donde se podía canalizar la asistencia técnica y financiera. El solo hecho de entregar títulos individuales frenaría el avanzar hacia la propiedad socialista. Objetivo fundamental del gobierno Sandinista. Estas medidas significaron un proceso acelerado del traspaso de propiedades agrarias de manos particulares a manos del estado. Creándose así el Área Propiedad del Pueblo (APP).

[*916] Al agudizar la guerra con los Contras se aplican otras medidas que tienen que ver con la propiedad. Una de ellas fue la ley en contra de la descapitalización de empresas privadas y abandono de propiedades. Esta ley tenía como objetivo poder adquirir todas las propiedades de aquellos ciudadanos inconformes con las medidas de socialización impulsadas por el gobierno Sandinista. También fueron afectados los particulares que salieron del país para evitar que sus hijos fueran reclutados por el Servicio Militar Obligatorio. Dejando sus casas con algún familiar o empleados y estas siendo confiscadas por el gobierno. Otro sector fuertemente afectado fue el sector Empresarial que permaneció en el país como único opositor al gobierno. Este fue confiscado y en algunos casos fueron encarcelados sus dirigentes.
Dado estas acontecimientos podemos decir que el periodo Sandinista se caracterizo: - Por una limitada emision de Titulos reales de la propiedad. En el caso de las zonas rurales, los campesinos y cooperativas eran trabajadores de las tierras sin tener un titulo. En las zonas urbanas los inquilinos de cuarterias, lotes, barrios populares y repartos residenciales eran poseedores del inmueble. Pero nunca fueron propietarios de los mismos.

Logicamente que el gobierno Sandinista no tenia ningun interes en crear nuevos propietarios, sino todo lo contrario. Crear inquilinos y trabajadores de la tierra. Conservando siempre como unico y gran propietario al ESTADO. Este periodo tenia como unica finalidad est ablecer un estado socialista . Sentandose las bases politicas y sociales pero olvidandose de crear un nuevo sistema juridico capas de legitimar un sin numero de leyes y decretos que se emitieron en esos a<n>os.

1.4. Cambio De Gobierno ...(Periodo VioletaChamorro)

Al ganar las elecciones Violeta Chamorro empieza nuevamente un capitulo mas del problema de la propiedad . Ahora mucho mas complejo.

El nuevo gobierno se encuentra un sistema judicial CADUCO incapaz de resolver por vias legales el problema.

Los grupos de poder en este momento compuesto por gobierno y alle gados por un lado y por el otro cupula Sandinista. Ambos se sientan a negociar para tratar de solucionar el problema de la propiedad de manera politica. Olvidándose de ni siquiera solucionarlo por medio de trans formaciones al sistema judicial.

El gobierno de Chamorro empieza a privatizar las empresas estatales y ha tratar de entregar a los confiscados sus propiedades, con excepcion de la Familia Somoza, exguardias del ejercito de Somoza y a sus allegados. Por otro lado los trabajadores de empresas del estado que [*917] estaban empezandose a privatizar, exigieron del gobierno una participacion del 25 % de las acciones de las empresas del estado.

En el caso de propiedades peque<n>os como casas y peque<n>os negocios, resulto mucho mas dificil. Ya que, las solicitudes de reclamos que recibieron los tribunales civiles eran improcesables. Se habla que con el sistema judicial tan lento y obsoleto, se terminaria de solucionar el problema en mas de 15 a<n>os.

Producto de esta situacion de inestabilidad de la propiedad. Se empieza ha especular con las propiedades. Se comienza a concentrar la propiedad en pocos manos consolidandose asi los nuevos actores del poder economico. Por un lado el gobierno de Chamorro y por otro la cupula Sandinista y sus nuevos empresarios.

1.5. Gobierno Liberal (ArnoldoAleman)

A la entrada del gobierno de Aleman se tenciona aun mas el problema de la propiedad. Esto provoca una nueva ronda de negociaciones con la cupula Sandinista. Producto de estas negociaciones se crea la nueva Ley de propiedad, conocida en el ambito politico nacional , como la famosa LEY DEL PUNTO FINAL. Esta ley pretendiendo ser finalista es mas bien continuadora de un problema de nunca acabar. Ya que deja desprotegidos a los sectores populares beneficiados por las leyes de reforma agraria, urbana y peque<n>os propietarios.

Los grandes beneficiarios de esta ley serian: La cupula Sandinista, al poder legitimar de una vez por todas sus propiedades. El ejercito, la policia su cupula y sus miembros. Los otros grandes beneficiados serian el nuevo grupo economico emergente afines al nuevo gobierno Liberal. Ebuscan consolidarse fuertemente para hacerle frente a los sandinistas y al sector tradicional.

Para poder comprender un poco la nueva Ley de Punto Final he escogido un peque<n>o fragmento de la misma. Dicho fragmento es un analysis que hizo la revista envio de la Universidad Centro Americana UCA sobre dicha ley.

"Estan desprotegidos los titu los de reforma agraria en areas urbanas de Managua y de otras ciudades. El articulo estipula que no tendran validez los titulos de reforma agraria otorgados dentro del limite urbano de la ciudad de Managua establecido en el reglamento de zonificacion del a<n>o de 1982. Estos titulos seran anulados y cancela su inscripcion registral. Se dispone que en estos casos el INRA (Instituto Nacional de Reforma Agraria) reasigne a los ocupantes otras tierras para que con [*918] tinuen su actividad productiva.....todos esos terrenos han incre mentado un gran valor, pero el que lo ha producido durante a<n>os no se beneficiara de la plusvalia y sera trasladado a lugares remotos, sin condi ciones adecuadas, ni para la produccion, ni para la comercializacion. Es una medida similar a la utilizada por el Somocismo cuando desplazo a miles de campesinos a la zona selvatica".....Tambienn otros sectores de la misma area urbana salieron perdiendo...."El articulo 93 de la nueva ley dispone que los habitantes de hacentamientos humanos que se han consolidado hasta 1994, aunque tenga la posesion del inmueble, quedan sujetos a las decisiones de las autoridades competentes en materia..."
Esta nueva ley lógicamente resuelve un problema momentáneo, que beneficia solamente a los diferentes grupos de poder. Dicha ley que supuestamente sería el enterradero de un problema, mas bien sería el abono fertil para problemas aun mas profundos como es una distribución mas justa de la propiedad entre todos los actores sociales de Nicaragua. Creo que en ves de un punto final es el inicio de una nueva contienda. Ahora con otros dominadores pero los mismos dominados.

1.5 Conclusion

El problema de la propiedad en Nicaragua es sumamente complejo. Ningun gobierno ha tenido realmente la voluntad política de establecer las bases necesarias para un verdadero cambio, en cuanto a la tenencia de la tierra y la propiedad.

Las soluciones que el gobierno Sandinista, el de Chamorro y el de Aleman.Han sido soluciones superficiales incapaces de llegar al tras fondo del problema. Estas soluciones se han caracterizado por solventar crisis entre cupulas que desean mas cuotas de poder. Es decir, mas capacidad para adquirir mas campo de accion en el area productiva, el dominio y la aquisicion de nuevas propiedades. Porque las cupulas estan claras que al adquirir mas partes de ese pastel, tienen mayores posibilidades en las contiendas politicas.

Por otro lado las clases populares y sus organizaciones civiles siguen manteniendo un rol de dominados y subordinados en un pais en donde la riqueza se concentra cada dia mas en pocas manos y las posibilidades de los sectores desposeidos son cada vez menores.

1.6. Bibliografía


UCA: Articulo EL PROBLEMA DE LA PROPIEDAD Y SUS PROPIETARIOS.


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LENGTH: 10695 words
SUBSTANTIVE SELF-DETERMINATION: DEMOCRACY, COMMUNICATIVE POWER AND INTER/NATIONAL LABOR RIGHTS Mapping Civil Society Transplants:
A Preliminary Comparison of Eastern Europe and Latin America
By Julie Mertus *

BIO:
* Julie Mertus is an assistant professor of law at Ohio Northern University. She wishes to thank the MacArthur and Soros Foundations and the Fulbright Commission for their support on related projects which gave rise to this analysis, and to the suggestions of Nathaniel Berman, Austin Sarat, Henry Steiner, Thomas Cushman, Keith Krause, Janet Lord, the participants in the 1997 ASIL/ACUNS workshop on "Global Governance" and the participants in Lat Crit II who provided feedback for this project. Comments welcome and appreciated: j-mertus@onu.edu. A longer version of this article, focusing on Eastern Europe can be found in 8 Social & Legal Studies 121 (1999).

SUMMARY: ... At the same time, the international now has domestic content. ...

Attempts to (re)construct the states and territories of Eastern Europe have called into action numerous civil actors, both foreign and local, stridently non-governmental and quietly government-sponsored, geographically-bounded (intra-territory or intra-state) and boundary crossing (inter-territory or inter-state). Despite their seemingly disparate appearances, the great majority of these actors share a common ideology, or at least, a perceived need to accommodate or struggle against a controlling paradigm. Two dominant competing ideologies are at play: liberalism and nationalism. In a complex and dynamic process, civil actors - non-governmental organizations (NGOs), private voluntary organizations (PVOs) and other quasi-governmental civil actors - participate in the ways these ideologies are produced, interpreted, transformed and/or rejected by the local communities.

A central role in this process is played by a complex and shifting array of "legal fields" - the ensemble of institutions and practices through which law is incorporated into social decision-making.

The presence of outsiders in Eastern Europe, pushing their own agenda for political, economic and social change, is not without precedent. Civil foreign intervention played and continues to play a critical role in the political, social and economic transformation of Latin American countries. To some extent, recent developments with respect to foreign intervention in Eastern Europe appears remarkably reminiscent of earlier efforts in Latin America that have been highly criticized.

However, the approach taken by civil intervenors in Eastern Europe has differed greatly from that evidenced in Latin America. This essay suggests the assumptions of foreign intervenors today in Eastern Europe and then suggests ways in which the work of foreign intervenors in Latin America differs. This essay suggests that the main differences are informed by the nature of the relationship of dominant world powers to prior regimes, in particular, the legacy of colonialism in Latin America as opposed to the aftertaste of Cold War politics in Eastern Europe.

Part I discusses each of these three methodological assumptions of civil intervenors in Eastern Europe in turn and suggests counter-orientations. Then, Part II compares this Eastern European civil intervenor template to the approach generally taken in Latin America.

Part One: Methodological Assumptions of Civil Intervenors in Eastern Europe

Despite their best intentions, Western intervenors in the post-Cold War states of Eastern Europe tend to labor under assumptions which undercut their ability to act as a positive, transformative force.

Three such assumptions can be identified as follows:

1. Ideologies have converged into one alternative: liberalism.

2. Knowledge is located in one form and one place.
3. Political space can be compartmentalized between the local and the global and the state, the individual and the international.

A. The Notion of Convergence

To date, the dominant program throughout Central and Eastern Europe has been based on the idea of convergence. Convergence is the notion that Communism has been defeated and that all political, legal, economic and social programs are merging into what is now the only available alternative: liberalism. Francis Fukuyama popularized this thesis with his declaration in the End of History: "For a very large part of the world," Fukuyama wrote, "there is now no ideology with pretensions to universality that is in a position to challenge liberal democ racy..." As Rob Walker explains, for many, "the interpretation of specific events [such as the fall of the Berlin wall] affirms a triumphant view of history: the conversion of Them into Us (or U.S.), the final admission that freedom and democracy are to be gained only where the magical logic of Capitalism and modernity are allowed to cast their spell over time and space." Western intervenors have a particularly easy time imagining Eastern Europeans turning into "Us"; after all, we imagine that They are already close kin to Us.

For many states and individual actors in Eastern Europe, maintaining power in an increasingly globalized and regionalized world entails propagation and perpetuation of the liberal program. This includes both an investment in both social democracy and the market- economical view of a good society. The liberal program is based on the notion of relatively weak states overseeing free market economies in which land and property have been privatized. The liberal program places the rhetoric of democracy at its core although the practice of democracy may indeed be "thin on the ground." New democracies are to operate through a system of "good governance," which entails a formula of political parties, independent media, open elections, transparency in government and a series of checks and balances in the governing body. Law plays a crucial role in this picture, as relations in government and society at large are to be governed by the rule of law and not brute power. Moreover, the State is to respect individual rights, and legal institutions are to be built to keep this system well-oiled and working. Unification of law is sought to be achieved through international institutions designed specifically to promote such unification, such as the Hague Conference on Private International Law and the UN Commission on International Trade Law, and through transsovereign cooperative arrangements and transsovereign legislation applicable to the members of these groups.

[*924] Contrary to the notion of convergence and the liberal program that has been built up around it, is the assumption that multiple and even conflicting ideologies can and do exist simultaneously. For example, in the former Yugoslavia, the main competing ideologies are various forms of nationalism. Whereas dominant powers use race as a construct in other parts of the world, in Eastern Europe the category of choice for apportioning benefits and burdens is the "nation." To be sure, nationalisms alone cannot be blamed for the war in Croatia and Bosnia-Herzegovina. Rather, nationalisms were a tool for something else - power and domination - but still nationalisms were a force at play. In the former Yugoslavia, politicians rekindled nationalist tensions in order to create the perceived (and then in some cases real) need for their protection against the "Enemy Other." War then closed the ranks. People through out the former Yugoslavia were forced to decide who they were among three narrow choices: Serb, Croat or Muslim (Bosnjak). This left four categories of people without any identity: those of mixed parentage or marriage; those who were of another national identity, such as Albanian or Hungarian; those who wanted to identify themselves as something else, either above the nation, such as European, or below the nation, such as a member of a particular neighborhood or organization; and those who did not want to participate in the labeling process. In creating and sanctioning a post-war Bosnia drawn strictly on national lines, the Dayton Peace Accord merely cemented national divisions. Like it or not then, nationalisms are a force to be reckoned with in the former Yugoslavia.

Moreover, the notion of convergence should be rejected as liberalism comes in many varieties. Different models may change their degree of emphasis on the importance of a classic free market; offer alternative analyses of individualism and the countervailing imperative of the collective; and provide their own re-definitions of the public sphere, fundamental rights and civic culture. Indeed liberalism can be and is combined with other ideologies, including nationalism.

Liberalism and nationalism are usually posited as irreparably at odds with one another, as the claims of the nation often infringe upon the currently recognized borders of existing sovereign states. Nations clash with states in many ways. The legitimization of states stems from geographic boundaries; in contrast,
the legitimization of nations stems from "communities of sentiment," from imagined and real histories of belonging. n26 State sovereignty traditionally stresses the link between the state authority and a set of political institutions that serve individual political beings; n27 national sovereignty stresses the link between the national authority and a defined population united as a self-identifying group. n28

This is not to suggest that liberalism and nationalism are inevitably incompatible; they could in fact be combined as liberal nationalism. Underlying nationalism, as Yael Tamir argues, is a range of perceptive understandings about the human situation, of what makes life meaningful and creative, as well as, a set of praiseworthy values. n29 Tamir reasons that by nature individuals are members of communities of sentiment and belonging. n30 Outside such communities, "their lives become meaningless; there is no substance to their reflection, no set of norms and values of light of which they can make choices and become the free, autonomous persons that liberals assume them to be." n31 This vision of nationalism complements liberalism:

Liberals can acknowledge the importance of belonging, membership, and cultural affiliations, as well as the particular moral commitments that follow from them. Nationalists can appreciate the value of personal autonomy and individual rights and freedom, and sustain a commitment for social justice both between and within states. n32

The desire of liberals to protect individual autonomy could benefit from the efforts of nationalists to promote the culture and status of the group. Thus, the notion of convergence should be rejected not only because nationalism exists as an alternative ideology to liberalism, but also because liberalism itself may appear in many forms.

B. A Single Form of Knowledge

The second assumption commonly acted upon, although rarely acknowledged by foreign intervenors, is the idea that there is one form of knowledge - a universal, transtemporal, abstract, objective truth. n33 According to this orientation, the search for universal truth is an unavoidable dilemma for those who believe in human rights and social change. n34 In searching for principles that can guide their work, foreign actors tend to behave as if knowledge has its situs exclusively in the spheres of the powerful, and not in the realm of the "subaltern," that is from those who have been subordinated according to any system creating a hierarchy of difference based on relations of domination and subordination. n35 Under this scenario, outside "experts" (such as the election monitor or human rights observer) play a particularly important role in knowledge formation. In the privileged position of "objective" messenger and observer, the foreign "expert" delivers the message to the locals (for example, the message about human rights) and then reads the locals for consumption back home.

Alternative ways of thinking about knowledge challenge this limited vision. First, knowledge exists in many sites. Alternative forms of knowledge can be read from below, from the experiences of those in the subaltern. n36 Competing claims to truths can be seen within states and communities. At times, competing truths can be found in the main "public sphere," that is the "institutionalized arena of discursive interaction." n37 Yet often the institutionalized public sphere is not truly open to all voices, and some interlocutors are muted in their attempts to speak. n38 In such cases, the subordinated groups create their own fora for expression. Nancy Fraser describes these fora as "subaltern counterpublics," that is "parallel discursive areas where members of the subordinated social groups invent and circulate counter discourses, which in turn per mit them to formulate oppositional interpretations of their identities, interests, and needs." n39 Where the subaltern fear retribution for exercising their voice, they may create coded means of expression. n40 Although the foreign observers may not be able to hear or understand them, the subaltern nearly always find some way to speak.

It follows that the outside "expert" does not have a privileged claim to objective knowledge. Rather, the reading of the "expert," like all readings, is filtered through his/her own cultural/social/political preconceptions. n41 Moreover, just as "experts" read their subjects, the subjects read the "experts." Locals carefully select the information they disclose to visiting "experts," calculating how best to serve their own agendas. Acknowledging locals as subjects and not mere objects can be disturbing for "experts." "The realization that 'they' can read 'us,'" Jean Franco writes, "spreads like glaucoma over the once confident imperial eye." n42 In the exchange of information and the location, perpetuation and manipulation of truths, locals are every bit as active as "experts."

Through their failure to engage in a two-way exchange of experience, many foreign intervenors unwittingly promote an image of them selves as the beneficent outsider and their "clients" as the passive recipients. They, thereby, draw a line between the knowing and the needy. The foreign intervenors give their "clients"
the programs they want to give, often to actors that they have created or that still exist only in their imagination, and they extract the information they had imagined they would find. Few see their "clients" as actors with their own agendas, and even fewer imagine that they could learn something from their "clients" that could help transform their own societies. Yet just as for experts" leave their mark on the societies they encounter, the [*929] experience changes the experts: they will never return home again quite the same.

"Experts" are disarmed in yet another manner: localisms challenge universalisms. One can believe in "core values" or "universal truths" common to all faiths and cultures and still acknowledge the impact of localisms in translating the message of the outsider (i.e. the message of human rights) into something that makes sense locally. Foreign interventions, from humanitareran aid to democratization programs, often exacerbate individuation n42 and particularism, instead of promoting universalisms. Rather than leading to the construction of some "global community," n43 "world without borders" n44 or "global culture," n45 outside interventions spark the creation of reactive, fortified local communities. As Lash and Urry note with respect to the political economy, "Broadly speaking...local powers tend to be reactive, to resist decisions from centers, and to devise institutional and policy responses through identifying niches in existing forms of social organizations." n46 Moreover, by creating and privileging selected local organizations, the intervenors create new boundaries within society between those who have and those who do not have foreign contacts and capital. Those left out often react by retreating to an insular group, which gains its identity through opposition to the privileged.

In times of economic crisis, as in many countries of Eastern Europe, external intrusions are especially likely to be regarded as threatening, leading to withdrawal and closure of the niches of family, ethnicity, nation and religion. n47 These niches attempt to preserve their distinctiveness on the basis of "frontal insulation" ("disassociation" or "delinking") n48 and distance themselves from the global forces through [*930] (re)creation of their oppositional local culture. These reactions may rep resent positive developments in that they may help preserve local culture. However, they may at times forewarn of regressive developments as the threatened local also often attempts to preserve its identity by lashing out against a local enemy "other."

In their interpretation of the universals promoted by outsiders, locals draw from their own historical and contemporary experiences. Dov Shinar notes that, "blueprints for social change cannot be copied or imposed in their entirety; and particular cultural identities have to be considered." n49 With no alleged universalism, this is truer than with democracy. As Rob Walker observes, "principles of democracy have been worked out with any degree of conviction only in relation to a particular somewhere..." n50 Thus, "place" still plays an important role, preventing the move from particularity to homogeneity. n51

In Eastern Europe, in both the institutionalized public sphere and the subaltern counterpublic, locals craft truths to address (that is, to fit or challenge) the competing ideologies of nationalism and liberalism. All of these truths are claims to power that shape human behavior. What matters most is that people believe them, not that they are universal, static, objective or even factually true. Many "rule of law" and "democratization" intervenors rely too heavily on the creation of institutions and the propagation of good laws. They fail to recognize that individual and group perceptions about international law shape behavior and model social change more than the positive law itself. n52 Locked into believing in one form of universal, objective knowledge, intervenors often fail to hear these perceptions and competing truths. As a result, outside plans to transplant universalisms do not take root, but instead bring about unintended and often ill-fated consequences.

C. Compartmentalization of Political Space

The traditional Western political map is highly compartmentalized, "highly linear, incredibly precise (at least in appearance), partitioned into distinct parcels, and continuous in the sense that, with only a few exceptions...it is entirely 'filled'. Moreover, the separate compartments are perceived as being imbued with a sense of independent integrity and [*931] internal homogeneity." n53 Acting within this framework, foreign intervenors most often presume dichotomies between the local and the global and between the state and the global. While the intervenors may view themselves as part of a larger global project (of human rights, democratization, liberalization, humanization, etc.), they often understand their role in affecting change as limited to the local. They perceive social change as connected to place that is to the local actors and existing institutions. For its part, the State may see itself as an actor in the global scene, but it conceals and overlooks the local by reifying the local as a "dimension of the state or of pre-political civil society." n54

This compartmentalization of political space must be rejected in favor of a more fluid vision of global, local and state and with a decreased role for the increasingly
porous state. This section examines the impact of globalization on the changing role of the state and the local. Although the discussion treats the state and the local separately, their transformations are interrelated and overlap.

(1) the state

Supporters of the Statist paradigm argue that a state-based system must be preserved in order to promote world security. According to this argument, individual rights are best protected through a system of relatively strong states; transsovereign activities, such as international financial and labor markets are best policed through the negotiation between sovereign states. The Dayton Peace Accords, for example, sought to perpetuate at least the notion of a Bosnian state, if not a functioning state. n55

The state-centric view of international law and social organization has come under reconsideration from many commentators, and for this reason, it will be dealt with briefly here. n56 As a formal matter, internal and regional legal systems and mechanisms are indeed state-centric, but in practice, states are often weak and transitional, and state boundaries are increasingly permeable. n57 Instead, power has shifted to forces above and below traditional state boundaries. On the one hand, power has moved down to sub-state grouping, such as national groups and other entities of identification and belonging, and, on the other hand, out to the transsovereign forces impervious to state boundaries. In turn, the loyalties of individuals and groups are torn away from the state to these dichotomous forces of sub-states and transsovereigns. For many, to be an individual living in Europe these days means to be European and a member of their national group, and only then a citizen of their country.

As a concomitant of their integration into and participation in transsovereign actors, states experience limitations on their classical sovereignty. n58 So, for example, such states face restrictions on their ability to guard their borders against intrusions from an increasing number of external regulations, including human rights and humanitarian laws. Today's market endeavors are also characterized by a culture of postmodernity, n59 including enhanced mobility in capital and labor. A new paradigm would "have to take into consideration the whole gamut of nonstrategic and nonnuclear factors that now imperil the functioning of states big and small, from food and energy price rises to the pollution of the environment in which we live, threats that do not respect either the boundaries or the sovereignty of states." n60

The rise of alternatives to the state paradigm is not likely to threaten state security. After all, perpetuation of the state paradigm itself is multi-edged - it serves the interest of some and is as likely to preserve peace as it is to spark conflict. n61 In their study of a state-bound concept of sovereignty and a notion of sovereignty linked to nation, Barkin and Cronin found that "the degree of violence 'defined as total physical harm that comes to people' is not necessarily any greater with any given understanding of sovereignty." n62 Only the sites of violence have changed, from inter-state to intra-state violence. In many parts of Central Asia and Eastern Europe today, we see intra-state violence because the legitimacy and status of nations has grown and the power and authority of states has declined.

Foreign intervenors must still deal with the states of Eastern Europe. After all, the states grant visas, permission for foreigners to work in the country, and allow the passing and importation of equipment and supplies. Nonetheless, foreign intervenors must also deal with actors that exist above and below the state. For example, diaspora groups (governmental and non-governmental), military complexes and arms dealers, and trade bodies and transsovereign NGOs act as forces above the state influencing politics and society within that state. Below the state, intervenors may work both with groups that are part of the dominant power and those of the subaltern.

(2) the local

Just as globalization has altered the meaning and power of the state, it has changed the meaning of the local. With the development of new technologies, forms of communication and ease of movement, the notion of local has lost its geographic meaning. The media plays a crucial role in the blendings of local and global, and thus local life is no longer separate from "the world out there." n63 "Modernity thus simultaneously liberates time and space from the particularities of place, allowing displaced interaction via the modern social organization." n64 This does not mean that the local has lost its importance, rather only that the local now can be understood more in a phenomenological sense as the "habitual settings through which an individual physically moves." n65

The phenomenological understanding of local is especially relevant in the case of Eastern Europe, an area from which so many people are on the move, as refugees, displaced people, guest workers, asylum seekers and immigrants. The place of culture and the location of truth is constantly shifting, n66 and thus "the local" can be found both at home and abroad. n67 Intrusion of external forces and the process of
individuation may still result in the (re)creation of social units tied to the geographic environment - what Mlinar terms "reterritorialization." n68 Nevertheless, unlike the socio-spatial differentiations in the past, the resulting entity will be flexible, temporary and less bounded by fixed boundaries. n69 There is an experience of global in the everyday, "situated" lives of people in the local. As Giddens observes:

In conditions of late modernity we live "in the world" in a different sense from previous eras of history. Everyone still continues to live a local life, and the constraints of the body ensure that all individuals, at every moment, are contextually situated in time and space. Yet the transformations of place, and the intrusion of distance into local activities, combined with the centrality of mediated experience, radically change what "the world" actually is ... Although everyone lives a local life, phenomenal worlds for the most part are truly global. n70

At the same time, the international now has domestic content. n71 The nature of this experience is complex. To the extent that the liberal agenda has become part of a global movement, it has found its way to the local level of everyday life. Intertwined in this experience in Eastern Europe is the local phenomena of nationalism working its way back to the global. For example, the global agenda of liberalism has concrete and immediate impact on many day to day realities in Eastern Europe, from the types of produce offered in the grocery, to the purchasing power of one's weekly paycheck. The local phenomena of nationalism has an impact on global matters by influencing such issues as which workers go abroad, the number of people filing for amnesty or refugee status, and the amount of financial and strategic resources international, regional and state security forces spend in the upcoming year.

"Cross-level linkages" further break down the division between local and global. Alger writes that "local people have invented a variety of ways to cope with the foreign intrusions." n72 When government or the institutionalized public sphere fails to address the global intruders, local people may take matters into their own hands, establishing their own contacts with transsovereign actors. Indeed, in Eastern Europe many such "cross-level linkages" exist between local people and global systems and actors, from black market economic activities to refugee rights advocacy.

By recognizing that their actions have both global and local ramifications, foreign intervenors can act with an eye to the interwoven consequences of their actions and better serve their "clients." n73 In addition, breaking down compartmentalization will help intervenors to recognize cross-level linkages that exist between global and local and, thus, to discover new sources for exchange of information and experience.

Part Two: Comparisons With Civil Interventions in Latin America

The trends described above apply to Latin America with a twist, a twist informed by geopolitics and by the different sets of assumptions intervenors make about the people, actors and institutions of Latin America versus Eastern Europe. This section outlines some of the main points of departure for an assessment of the Latin American experience with foreign interventions and raises questions for further exploration.

Perhaps the most significant variable in forming the work of outside intervenors in societies in transition is the relationship of Western world powers (or, more accurately stated, the U.S.) to prior regimes. In general, Western intervenors have been more willing to work with the remnants of the old regimes in Latin America than those in Central and Eastern Europe. In marked contrast with the experience in Latin America, Western intervenors in Eastern Europe have been more willing to support lustration laws designed to keep members of the prior regime out of office. n74 This is not surprising given that the U.S. helped to establish and maintain many of the old regimes in Latin America while prior regimes in Eastern Europe were branded as the enemy in accordance with Cold War rhetoric.

Another justification commonly given for the difference in treatment is that pre-transition governments in Latin America (for example in Argentina, Uruguay and Chile) were hierarchically-led military regimes and authoritarian in nature, while the governments in Eastern Europe were totalitarian in nature. n75 Totalitarian governments are arguably more likely to taint the next regime with their prior bad acts than authoritarian governments. n76 Under totalitarian regimes, little separates the party from the State. Those who favor lustration laws and other measures to censure party leaders of prior regimes argue that these harsh steps are necessary to purge a formerly totalitarian state of its nondemocratic elements. After all, the bureaucracy and coercive elements of totalitarian govern ments are recruited in line with political criteria that define the old regime. Party membership was required for a large number of nomenklatura jobs in Eastern Europe while in Latin America far fewer jobs were based on political criteria defined by the old regime. By design, the imprint left by the totalitarian line in Eastern Europe will take longer to fade.
Foreign intervenors reason that much more of the state apparatus from authoritarian regimes is "available' and usable by the new democratic forces." n77 This argument, however, ignores the fact that in many cases in Latin America the military was essentially the State and "the military establishments [of Latin America] often bear direct responsibility for the repression and policies of the authoritarian regime." n78 Ignoring the deep imprint left by military regimes, foreign intervenors reason that much more of the state apparatus from authoritarian regimes is "available' and usable by the new democratic forces." While expressing regret at the inability of Latin American countries to deal with human rights offenses committed under prior regimes, foreign intervenors in Latin America seem to have less of a problem dealing with the remnants of the prior regimes in Latin America than in Central and Eastern Europe. n79 Consequently, their programs in Latin America are more likely to involve the support and participation of political leaders regardless of their relationship to the prior regime.

The nature of foreign interventions in societies in transition is further defined by the perception of local and foreign actors of the relationship between state, democracy, and human rights. What is the relationship between these three variables - state, democracy and human rights - as they are perceived by both insiders and outsiders? The perceived relative strength of the State and its participation in the reform effort plays a key role in answering this question. Where foreign intervenors perceive that the general populace needs a strong state, more effort will go into state-building. Where intervenors think that a strong state and democracy must come before human rights, some human rights violations will be overlooked in the reform effort. This has been the general trend in Latin America, at least whenever the strong state was thought to be more favorable to the U.S. than an alternative entailing long- or short-term instability. n80 By contrast, where human rights are made a priority, undemocratic elements and weak state boundaries will be overlooked in reform efforts. Such is the experience in many parts of Eastern Europe when the human rights violations at issue involved civil and political rights. n81

Given their different political histories, the local understanding of "civil society" differs for the people of Eastern Europe and Latin America. Dissident groups in some parts of Eastern Europe cultivated their own brand of "civil society against the state." In Poland and Czechoslovakia in particular, dissidents used the moral discourse of "truth" and the existential claim of "living in truth." They sought to cultivate an ethical civil society that lay not only outside the state but also against the state, a "politics of anti-politics." This ethical civil society held the belief that what is essential to a just order is not a benign government and good people in power, but rather a vital, active, aware, self-governing and creative society. Most foreign intervenors, particularly those from Western traditions, have a much different view of civil society, that is civil society as groups acting in the own self-interest (not in the interest of a higher "truth"), striving to direct the State, at times even working with the State. For outside intervenors then, anti-politics, civil society groups pose a danger to their agenda of reform.

Although anti-politics, civil society was a factor in some palacts in Latin America, such as post-transition Brazil, in general, it was far more prevalent in Eastern Europe than in Latin America. In Latin America, other problems with the definition and operation of civil society confounded outside intervenors. Illegal political parties had created some of the movements self-identified as "civil society." Once these political parties became legal, they no longer were interested in the mobilization of civil society but rather they became coopted by the new State. These problems and other differences in the understanding of civil society have a tremendous impact on the degree to which local groups are receptive to the "civil society" projects of foreign intervenors. In addition, local understanding influences the ways in which the foreign transplants are adapted, assimilated or applied locally.

A related problem, which holds particular relevance for foreign intervenors interested in transporting Western constitutional law are the differing conditions and possibilities for constitutionalism in Eastern Europe and Latin America. n82 The historic time period and political context in which constitutional formulas are adopted goes a long way toward explaining whether they reflect the efforts of outside intervenors and, if so, which ones. Choices for constitutional reform may include: restoration of a previous democratic constitution (Uruguay and Argentina not used in Eastern Europe); creation of a provisional constitution with great outside influence (witnessed throughout Eastern Europe and parts of Latin America); retention and revision of old constitution (as seen for a short time in Yugoslavia and Czechoslovakia); imposition of a constitution imposed by outside actors (i.e. post-Dayton Bosnia-Herzegovina). n83 To some extent it seems as though provisions in Western European (and to a lesser respect, U.S.) constitutions are readily transplanted to Eastern European countries. These countries desperately want to castaway the influence of the Soviet Union and to join the Western World. In light of this, French and German constitutions provide particularly good models for many countries as their legal system is grounded in the Romano-Germanic legal
family. In contrast, countries in Latin America are eager to disengage themselves from "traditions of vertical dependence and exploitation [by European countries and, later, the U.S.]" n84 Historically derived social contexts presented Latin Americans and Eastern Europeans each with a different set of opportunities and incentives. n85

Another major difference between Eastern European and Latin American transitions is the challenge faced in Eastern Europe of making political and economic transformations at the same time. "In Eastern Europe and the Soviet Union, in addition to making a political transition to democracy, the countries have simultaneously had to make a transition to market economies." n86 Foreign intervenors in Latin America and Eastern Europe provide different answers to the riddle: which comes first, the market or the democracy? In Eastern Europe we see widespread acceptance of the paramount importance of the market and the notion that the market will legitimize democracy. In Latin America, in contrast, the pyramid was inverted and in general, democracy was said to legitimate the market. n87 This initial point of orientation has a profound effect on the entry point of foreign intervenors into the two regions.

While foreign intervenors in Eastern Europe are most likely to ride in on a market reform bandwagon, intervenors in Latin America were often more interested in the electoral process. Although intervenors in Eastern Europe also hold courses in political parties and free elections, their efforts are more likely to be packaged with economic incentives. To some extent the differences are a sign of the times and a product of post Cold-war politics and globalization, but they also stem from deeper differences in conceptualization about "the south" versus "the east" as posited against "the west". The different treatment also may be explained by its racial dimension - i.e. the notion that some people are more easily "led" than others - and a post-colonial element in that the different treatment in Latin America stems from the legacy of colonialism of the South whereby Europeans established and controlled Latinos and indigenous peoples.

The Eastern European identity captured in the minds of Western intervenors is markedly different from their perception of Latin American identity. A rhetoric of primordialism, for example, clouds the Western imagination about the people in the Balkans. Politicians shrug their shoulders over the Balkans, sighing that these people have been killing each other for years and years, it is "in their blood" and there is nothing we can do about it. n88 Acceptance of this thesis in the Balkans may explain some of the ways in which western aid to the Balkans has differed from that in Latin America. For example, when Milan Panic challenged Sobodan Milosevic in the December 1992 Presidential elections, the West sent fewer than thirty election observers, apparently because the West accepted the notion that support for a greater Serbia was so strong that Milosevic was unbeatable (Panic did end up with 42 percent of the vote despite a Kosovo Albanian boycott of the elections and alleged election fraud on behalf of Milosevic). n89 In contrast, in the 1988 plebiscite in Chile that led to the defeat of Pinochet, there were thousands of western election observers, many of whom arrived months before the election. n90 While we do not hear the same "Balkan primordialism" rhetoric in Latin America, intervenors in the development area have historically differentiated between "primitive" and "evolved" populations there: the primitive were incapable of development; the evolved were suited to their projects. Additional misconceived notions held by outside intervenors stand in the way of effective contributions to reform efforts in that region. Misconceptions about the desires of indigenous populations, the role of race in society and the role and nature of Catholicism in Latin America are included.

Foreign intervenors also construct the identity of their subjects by negotiating the rhetoric of complexity versus the rhetoric of simplicity. In Eastern Europe, and in particular, the Balkans, Western politicians have long contended that the situation on the ground is simply too complex to comprehend who is doing what to whom. As a result, would-be foreign intervenors decline to "take sides," refusing, for example, to call the Yugoslav and Serbian military the aggressor in such clear-cut cases as the attack on Vukovar in Croatia. In Latin America, the United States has a history of accepting an opposite rhetoric of simplicity, labeling the sides "bad" and "good." Even in the face of proven human rights abuses, the U.S. remains steadfast in its support of the designated "good guy." The competing rhetoric of simplicity and complexity have had a profound influence on the ways in which the neoliberal agenda has been exported to Latin America and Eastern Europe. In general, programs in Latin America have centered upon support for the designated good guy while Eastern European programs have tended to reach out broadly - or at least to those not directly connected to the prior regime.

Another point of departure for considering the role of foreign intervenors rests in their relationship to what Juan Linz and Alfed Stephan call the "statelessness problem." n91 As explained above, in many countries in Eastern Europe the liberal agenda competes with nationalism and, as a result, there are "profound differences about the territorial boundaries of the
The concept of legal transplants via civil society, rule of law, and democratization projects has new currency today as foreign intervenors hasten to create new societies in Eastern Europe. The concept of legal transplants and political transplants in Eastern Europe has been under-theorized, and, as a result, we have failed to see the assumptions made in such endeavors. This essay begins to fill the void by offering a framework of assumptions and counter-assumptions. Additionally, the analysis of the liberal agenda in Eastern Europe has also tended to be ahistorical, wholly lacking any comparative element to previous and contemporary interventions elsewhere. Yet, the notion of reforming worlds has a distinctly old taste. The people of Latin America have experienced foreign intervenors for years, first as imperial and colonial powers trying to reshape Latin America to serve their purpose and, then, as a wave of U.S. democratization intervenors who continue to carry out this goal. This essay suggests some of the ways in which interventions in Latin America are quite distinct from the interventions taking place in Eastern Europe today. These observations are intended to form a point of departure for continuing a dialogue about how foreign programs of intervention can become a more supportive tool for positive social change in societies in transition.

**FOOTNOTE-1:**

n1. Liberalism is used herein to embody two meanings: (1) the view of the good society based on a body of economic doctrine known as the "Washington Consensus" which, in the words of one recent UN publication, extols "the virtues of market liberalization" and privatization (Taylor & Pieper 7 (1996); see also Lijphart & Waisman (1996); Akyuz (1994)) and; (2) "social democracy," favoring such attributes as the rule of law over the state, citizen participation in community and "rights." Neil MacCormick, What Place for Nationalism in the Modern World? in National Rights, International Obligations 34-42 (Simon Caney et al. eds., Westview Press, 1993).

n2. Nationalism is used herein in the sense of "ethnic nationalism," that is communities of sentiment, as opposed to civic nationalism, a concept more neatly tied to the need to create a state. Will Kymlicka, Multicultural Citizenship 24 (Oxford Univ. Press, 1995). This definition draws from the work of Max Weber, who explained that the concept of a nation means above all that it is proper to expect from certain groups a specific sentiment of solidarity in the face of other groups." Max Weber, Political Communities, in Economy and Society 921-26 (Guenther Roth & Klaus Wittich, eds., 1968). A full discussion of nationalism is beyond the scope of this paper; for bibliographies on nationalism, see Montserrat Guibernau,


n5. One of the most influential studies of democratic transitions in Latin America is Guillermo O'Donnell et. al., Transitions from Authoritarian Rule (1986).


n7. See Mertus, supra note *.


n12. Numerous definitions of globalization exist. Mlinar, for example, defines globalization as "a process extending the determinative frameworks of social change to the world as a whole." He identifies five dimensions of the globalization: (1) globalization as increasing interdependence at the world level, wherein the activities of people in specific areas have repercussions that go beyond local, regional or national borders; (2) globalization as the expansion of domination and dependence, that is "an inter-connectedness on the global scale, in which radial rather than lateral links predominate; (3) globalization as homogenization of the world wherein "instead of differences among territorial units which were mutually exclusive, there is now a uniformity;" (4) globalization as diversification within "territorial communities" wherein "the level of globalization can be measured by the extent to which narrow territorial units are open and permit access to the wealth of diversity of the world as a whole;" (5) globalization as a means of surmounting temporal discontinuities through "(a) connectedness of the asynchronous rhythms of different activities and (b) temporal inclusiveness resulting from the functioning of particular services to global spaces." Mlinar, supra note 3; see also, Richard Falk, Regionalism and World Order After the Cold War, St. Louis-Warsaw Transatlantic L. J. 71 (1995).

n13. Regionalization is in part a by-product of globalization. Stefan Schirm explains that "transnational actors and systems...undermine the ability of national governments to shape politics and make national regulations less attractive and viable. Therefore transnational globalization stimulates regional governance." Stefan A. Schirm, Transnational Globalization and Regional Governance: One of the Reasons for Regional Cooperation in Europe and the Americas (Working Paper Series No.6.2., Harvard Univ. Press 1996).

n14. MacCormick, supra note 1, at 35.


n19. De Cruz, supra note 8, at 485.


n22. See e.g., Vojin Dimitrijevic, Ethnonationalism and the Constitution; The Apotheosis of the Nation-State, 3 J. Area Studies 50 (1993); Zagorka Golubovic, Nationalism and Democracy: The Yugoslav Case, 3 J. Area Studies 65 (1993); Dusan Janjic, Socialism, Federalism and Nationalism in (the Former) Yugoslavia: Lessons to be Learned, 3 J. Area Studies 102 (1993); Shkelzen Maliqi, Albanian Self-Understanding Through Non-Violence: The Construction of National Identity in Opposition to Serbia, 3 J. Area Studies 120 (1993); Renata Salecl, Nationalism, Antisemitism and Anti-Feminism in Eastern Europe, 2 J. Area Studies 78 (1993).


n27. See David Held, Political Theory and the Modern State (Cambridge Univ. Press 1991); Kenneth Dyson, The State Tradition in Western Europe (Martin Robertson 1980).

n28. Barkin & Cronin, supra note 26, at 112.

n29. Tamir, supra note 24, at 7.
n30. Id.
n31. Id.
n32. Id. at 6.
n33. See, Peterson, supra note 23.
n34. See e.g., Francesco Belvisi, Rights, World-Society and the Crisis of Legal Universalism, 9 Ratio Juris 60 (1996).
n38. Id. at 210.

n40. See Renato Rosaldo, Culture & Truth: The Remaking of Social Analysis (Beacon Press 1993); Clifford et. al. eds., Writing Culture: The Poetics and Politics of Ethnography (Univ. of California Press 1986); Wolfgang Fikentscher, Modes of Thought: A Study in the Anthropology of Law and Religion (J.C.B. Mohr 1995).
n42. By individuation, I refer to "the process of increasing the autonomy and distinctiveness of the actors at both the collective and individual levels." Mlinar, supra note 3. Mlinar identifies the dimensions of individuation as: (1) the weakening of predetermination on the basis of origin; (2) the weakening of determination on the basis of territory; (3) increasing the diversity of "time-space paths" (that is, not being limited to the role and position of individuals in space at a specific moment in time); (4) increasing control and decrease of (random) intrusions from the external environment (wherein actors assert greater control over the impulses from the environment); and (5) increased authenticity of the assertion of identity (more direct assertion of identity without the use of intermediaries or representatives).
n46. Lash et. al., The End of Organized Capitalism 284 (Univ. of Wisconsin Press 1987).
n47. Henry Teune, Multiple Group Loyalties and the Securities of Political Communities, in Mlinar, supra note 3, at 105-114.


n53. See Walker & Mendlovitz, supra note 43, at 130. See also, Edward W. Soja, Postmodern Geographies: The Reassertion of Space in Critical Social Theory (Verso 1989).


n55. The post-Dayton Republic of Bosnia-Herzegovina - a shell which is less than the sum of its component parts, the Serbian entity of Republika Srbska and the Bosnian-Croat entity of the Federation of Bosnia-Herzegovina Julie Mertus, ed. et al., The Suitcase: Refugee Voices from Bosnia and Croatia (Univ. of California Press 1997) - serves the interest of world powers and those who can retain power in the new creation, not most locals. The existence of the state of Bosnia helps assuage the guilt of many international actors for failing to act during the war. Also, by perpetuating the statist paradigm, Dayton furthers the liberal agenda.


n57. Leo Louis Snyder, Global and Mini-Nationalisms: Autonomy or Independence? (Greenwood Press 1982).

n58. Mlinar, supra note 3, at 23.


n61. Walker, supra note 10, at 139.

n62. Barkin & Cronin, supra note 26, at 130.


n64. Id. at 66; Anthony Giddens, Modernity and Self-Identity: Self and Society in Late Modern Age 189 (Polity Press 1991).

n65. Tomlinson, supra note 63, at 66.

n66. Homi Bhabha, The Location of Culture (Routledge 1994).


n68. Mlinar, supra note 3, at 25.

n69. Refugees from the former Yugoslavia, for example, may create enclaves of identity based on many factors, such as the areas from which they came, the place to which they have come, the place to which they want to go, and/or their national identity. At times, one or a combination of these factors may take precedence over all others. The exact priority allotted to the factors and degree of forgiveness the group gives to people who do not fit the requirement changes over time. See, Mertus, supra note 55.

n70. Giddens, supra note 64, at 187.


n72. Alger, supra note 3, at 100; see also R.B.A. DiMuccio & James N. Rosenau, Turbulence and Sovereignty in World Politics: Explaining the Relocation of Legitimacy in the 1990s and Beyond, in Mlinar, supra note 3, at 60-76.

n73. Here, "clients" refers to donees.


n75. For explanation of these terms, see Alfred Stephan, Paths Toward
Redemocratization: Theoretical and Comparative Considerations, in O'Donnell, Transitions from Authoritarian Rule, supra note 5, at 64-84.


n77. Id. at 252.


n80. See, e.g., id. at 120-125; Larry Diamond, et. al. eds., Consolidating the Third Wave Democracies: Regional Challenges 37 (Johns Hopkins Univ. Press 1997).

n81. See Mertus, supra note 21, at 806. See generally, Fionnuala Ni Aolain, The Fractured Soul of the Dayton Peace Agreement: A Legal Analysis (on file with author) (perhaps one of the most extreme examples of this is the case of Bosnia-Herzegovina where the international community promoted minimal human rights guarantees while tolerating a weak state with many defects in its democratic structure).


n83. See generally Paul C. Szasz, The Quest for a Bosnian Constitution: Legal Aspects of Constitutional Proposals Relating to Bosnia, 19 Fordham Int'l. L.J. 363 (1995); Larry Diamond, et. al. eds., supra note 80, at 219-224; Yossi Shain & Juan J. Linz, Between States: Interim Governments and Democratic Transitions 20-21 (Cambridge Univ. Press 1996); Mertus, supra note 21; Aolain, supra note 81.


n85. Id. Robert Putnam makes this point not with respect to Latin Americans vis a vis Eastern Europeans but Latin Americans vis a vis North Americans.

n86. Linz & Stephan, supra note 76, at 244.

n87. See Carothers, supra note 79.


n89. Linz & Stephan, supra note 76, at 434 n. 1.

n90. Id.

n91. Id. at 16.

n92. Id.

n93. Id. (quoting O'Donnell et. al., supra note 5).


n95. Further work of the author develops these thoughts further.
SUBSTANTIVE SELF-DETERMINATION: DEMOCRACY, COMMUNICATIVE POWER AND INTER/NATIONAL LABOR RIGHTS Reconstructing Self-Determination: The Role of Critical Theory in the Positivist International Law Paradigm by Ediberto Roman *

BIO:

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SUMMARY: ... In addition to making these introductory remarks, I will follow the theoretical framework of this conference by undertaking an innovative critical analysis of another common thread that weaves through all of these discussions, namely, the acceptance of the liberal international law doctrine of self-determination. ... I will undertake this task by assessing the positive legal paradigm that exists for addressing international law. ... Professor Weissner's scholarship and teaching focu ses on international law. ... The last speaker will be Donna Coker, a Professor at the University of Miami School of Law. ... Following World War I, self-determination became a principle of international law. ... Nevertheless, most international law scholars admittedly have taken a positivist theoretical formulation or approach. ... This theory or formulation in the international law context is troubling when one considers some of the goals of public international law. International law and self-determination, in particular, seek to establish an order of human dignity. ... Despite this attempt, traditional international law scholars refuse to critique the efficacy of that law. Accordingly, these scholars never will objectively determine whether the noble goals of international law are ever achieved. ... During the middle part of this century, self-determination again became a driving force in international law debates. ...

[*943]

Introduction

Welcome to the third annual LatCrit conference's panel on Race, Nation, and Identity: Indigenous Peoples and LatCrit Theory. As mod erator of this panel, I will undertake two tasks. First, I will introduce the panelists and provide a few words concerning a common theme that this illustrious group will address. This theme revolves around the role that critical race theory may have on, what I will, call self-determination movements. In addition to making these introductory remarks, I will follow the theoretical framework of this conference by undertaking an innovative critical analysis of another common thread that weaves through all of these discussions, namely, the acceptance of the liberal international law doctrine of self-determination. In particular, I will cri tique the purportedly universal norm of self-determination in order to expose and explain its inherent subjectivity and the incoherence that results from its arbitrary nature. I will undertake this task by assessing the positive legal paradigm that exists for addressing international law. In addition to pointing out the flaws of the paradigm, I will engage in a deconstruction of the right of self-determination. I will conclude with a brief reconstruction of this right.

As the title of this panel suggests, our topic of discussion is the intersection of subordinate groups movements in the global arena and the role that critical race theory plays in such movements. The first presenter is Taygab Muhmud, Professor of Law at Cleveland Marshall College of Law. In his piece, "Lessons from South Asia's Post-Colonial Experience," Professor Muhmud will address the role that race and racial constructions have played in such construction. n1

[*944] The Second presenter is Siegfried Weissner, a valued colleague and Professor of Law at my institution, Saint Thomas University. Professor Weissner's scholarship and teaching focuses on international law. He will address the resurgence of indigenous communities in the interna tional law
context. Professor Weissner has been committed to this area for several years, as demonstrated by his work in St. Thomas University's annual symposia concerning indigenous people. After briefly reviewing the development and available applications of LatCrit theory, Professor Weissner will use his five intellectual tasks technique for problem solving to highlight the efforts, successes, and shortcomings of indigenous people in obtaining self-determination.

The third presenter is Julie Mertus, a visiting Associate Professor at Emory Law School, where Professor Mertus also serves as a Fellow in religion and law. Her presentation is a critical comparison of Eastern Europe and Latin America. n2 Professor Mertus, using what she terms the "rhetoric of primordialism", the "rhetoric of complexity", and the "rhetoric of simplicity", will compare how race and its various constructions are deployed in the United States and in Eastern Europe.

The last speaker will be Donna Coker, a Professor at the University of Miami School of Law. Professor Coker will provide a provocative critique of the presentations that has been made at today's conference.

I. Self Determination Defined

Whether discussing the movements of indigenous people, the neo-colonial plight of the people of South Asia, or a comparative analysis of Eastern Europeans, this panel is addressing what traditional parlance describes as a people's quest for greater autonomy and for a separate state. n3 In other words, we are describing various forms of self-determination. n4 Self determination is recognized as "the right of a people to determine freely by themselves without outside pressure to pursue their political and legal status as a separate entity." n5 The principle of self-determination is dichotomous. It is boldly radical and pro gressive, yet it is also deeply subversive. n6 The principle as such has egalitarian underpinnings and is theoretically universal in its intended applicability and scope. n7 Perhaps no contemporary norm of international law has been so vigorously promoted or widely accepted as the right of all peoples to self-determination. n8 Self determination is grounded on human rights precepts that recognize that all peoples are "equally entitled to be in control of their own destinies". Self determination is based on principles of human freedom and equality. As such, it is at odds with colonial rule or similar forms of foreign domination. n9

Following World War I, self-determination became a principle of international law. n10 It was considered essential to the maintenance of world order and peace. n11 President Woodrow Wilson was the catalyst in the early development of self determination. During the period when Wilson was promoting the creation of the League of Nations, he declared, "No peace can last or ought to last, which does not recognize and accept the principle that governments derive all their just powers from the consent of the governed and that no right anywhere exists to hand people about from sovereignty to sovereignty as if they were prop[946]erty."

In 1918 he asserted, "Self-determination is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril." n12

After this period, self determination gained further acceptance as reflected by its incorporation into the United Nations Charter. Specifically, the first article of the Charter provides that one of the purposes of the United Nations is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determinations of peoples..." n14

This point is reaffirmed in the Charter's article on economic and social cooperation and human rights. n15

In addition to the Charter, various General Assembly resolutions adopted shortly thereafter invoked the principle of self determination and further explained its importance and applicability. n16

Resolution 545, adopted in 1952, particularly stands out. It recognized "the right of peoples and nations to self-determination as a fundamental human right." n17

This evolution of self determination from a principle to a fundamental right led to the adoption, in 1960, of the Declaration of the Granting of Independence to Colonial Countries and Peoples. n18 This declaration "solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations". It adds that "all peoples have the right to self-determination; by virtue of that right they...freely pursue their economic, social and cultural development." n19

In 1970, the General Assembly adopted the Declaration on Friendly Relations with respect to self-determination. This declaration, which is arguably the most authoritative explication on the right to self-determination, n20 provides:

The use of force to deprive people of their national identities constitutes a violation of their inalienable rights and of the principle of non-intervention...By virtue of the principle of equal rights and self-determination of peoples enshrined in the charter of the United Nations, all peoples have the right freely to determine, without external influence, their political status and to pursue their economic, social and cultural development, and every state has the duty to respect this right in accordance with the provisions of the charter.
Every state has the duty to promote...realization of the principle of equal rights and self-determination of peoples.

(a) to promote friendly relations and cooperation among states; and

(b) to bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned; and bearing in mind that subjection of peoples to alien subjugation, domination and exploitations constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the charter... n22

In addition to the United Nations General Assembly resolutions, decisions of the International Court of Justice (I.C.J.) further endorsed the principle of self-determination. In its advisory opinion on the status of Nambia, n23 as well as in its later opinion on Western Sahara, n24 the I.C.J. opined that self-determination was more than a guiding principle to be heeded and promoted by the United Nations. n25 It was a right that could be invoked by its holders to claim separate statehood and sovereign independence. n26

As a result of this widespread endorsement by President Woodrow Wilson and the United Nations, self-determination became to many international law scholars "the pre-emptory norm of international law." n27 Indeed, self-determination has become "accepted and recognized by the international community of States... as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." n28

II. A Critique of Legal Positivism in Public International Law

After reading the papers of this conference's presentors and discussing related topics with them before and during this panel, a question arose that troubled me so much that it provoked me to offer the following critique of public international law. This conference and the panel are to examine issues related to race, identity, and indigenous peoples. We are to approach problems in this area with a critical, postmodern, eye towards finding innovative solutions to various anti-subordination projects. n29 When examining problems related to self-determination movements, however, we continue to work within the traditional liberal paradigm, which utilizes the same methodology, nomenclature, and conceptualization of our traditional, doctrinal, and formalistic counterparts.

In theory, self-determination is intended to bestow upon all peoples the right to determine their future. At this point, practice intersects with theory, and a problem arises. A failure arises because of the inherent shortcomings of a positivist formulation. The positivist does nothing more than state what the law is, rather than state what it should be. With this as the dominant paradigm, it is often impossible to discern whether a law is effective because the formulation is merely descriptive.

Nevertheless, most international law scholars admittedly have taken a positivist theoretical formulation or approach. n30 One writer addressing legal positivism in general explains:

Now the legal positivist is not necessarily taking the so-called bad man's view of the law, namely, that people would only obey the law because they fear the punishment which would be visited upon them if they were found violating the law. For most of the time, most obey the law because they regard the law to rest upon moral order and to derive its legitimation from it. n31

Another writer aptly argues:

Any elaborate doctrinal edifice built upon a legal positivism is misleading. One does not have to be a legal realist or a critic to realize that the positivist attempt rigidly to segregate "law" from "politics" misses the essence of self-determination, and of much else in international law. n32

This dominant liberal tradition in international law has been described as accepting "that which is fundamental [because it has been] agreed to be fundamental". n33 This formulation also has been referred to as the pure theory of law, n34 its sole purported purpose being to know..."what law is, [and] not what it ought to be". n36 In other words, the traditional and prevalent discourse use circular logic to conclude that international law scholars accept the authority or power of international law because it has been made law. Paul Brietzke poignantly described the dilemma when he noted, "The bland positivist assumption of a sovereign statehood ignores the contemporary upheavals and transformations that will not stay swept under some 'statist rug.' International 'persons' will often behave schizophrenically over self-determination
because of the divergent interests of the humans and the groups compromising them. n37"

Possibly in light of the criticisms of the stayed acknowledgments of positivist formalism, a new wave of critiques of liberal theory arose from a group of writers who have been categorized as "new stream" scholars. n38 Influenced by critical legal studies, this new group has attempted to shift the forms of international legal scholarship from analysis of doctrine to acceptance of the determinative quality of culture and policy. n39

Taking from this new stream, I will attempt to provide a swell or at least a ripple in this theoretical waterway. I argue that the traditional positivist paradigm is nothing more than a formalistic social construction that has been designed by international scholars. The traditional paradigm essentially reaffirms the normative values of the law that have been written by international scholars. Because, historically, these international scholars have not questioned what the law should be, their failure to question the underpinnings and normative values of their doctrinal formulations renders their laws to be limited, incoherent, anachronistic, and apologetic attempts to be objective in spite of historical occurrences.

If, as a positivist international law scholar, one does not question the moral value of the law in application, as traditional international scholars have done, is not the law merely a value free, after-the-fact attempt to categorize actions of states? If principles of law or rights such as self-determination, which is premised on the appreciation of human rights, are selectively applied, then, even to the positivist, the law may not be law but mere politics.

According to Hans Kelsen, the pure theory of law, seeks the real and the possible, not the just. n40 Indeed, it declines to justify or condemn. n41 This theory or formulation in the international law context is troubling when one considers some of the goals of public international law. International law and self-determination, in particular, seek to establish an order of human dignity. n42 As such, they appear to aspire to attain some sort of world justice.

Despite this attempt, traditional international law scholars refuse to critique the efficacy of that law. Accordingly, these scholars never will objectively determine whether the noble goals of international law are ever achieved. For instance, while self-determination, as addressed earlier, is purportedly uniformly applicable to all peoples, precedent demonstrates that the right is anything but uniformly applied.

According to some, self-determination is not capable of any objective application. Hurst Hanum argues that the European Community Arbitration Commission has engaged in a "fruitless search for definition of 'self,' 'determination,' 'peoples,' and related terms that have never proved capable of providing reasoned criteria for international action." n43 Some even have argued that self-determination is not law but is nothing more than "nonsense." n44 Brietzke opines that "as a description of what a vague international community believes, or believes it believes, this right lacks many concrete correlative duties." n45 The subjectivity in which the right of self-determination has been invoked leads to the argument that such a universal principles can be used as nothing more than a means to apologize or as an attempt at post-hoc rationalization for power politics, economic politics, and racial politics. A historical review of the purported application of self-determination illustrates this point.

III. Deconstruction of Self-Determination

By examining the twentieth century development of the right of self-determination and highlighting selected case studies of its application, I will illustrate, history's failure to apply this universal right to all peoples. Rather than blindly accepting the basic tenets of term self-determination without questioning its efficacy, I will address the three dominant trends of self-determination: 1) the era of geopolitical militarism, 2) the era of racial tutelage, and 3) the era of global disinterest.

While to some extent aspects of these dominant trends will overlap, I believe that each of these three periods describe modes of thought that prevailed when forms of self-determination were implemented periodically in the twentieth century. In each of these dominant trends, either racial subjugation or Eurocentric messianic self-image has been a considerable undercurrent.

These trends, therefore, demonstrate that the so-called "right" of self-determination, which is purportedly universal in terms of its intended beneficiaries, has never been applied universally. Under represented minorities who have not had the backing of any world power primarily were passed over by this "right".

From as early as 1917, Woodrow Wilson declared, "No power can last or ought to last which does not recognize and accept the principle that governments derive all their just powers from the consent of the governed, and that no right anywhere exists to hand peoples [from] sov ereignty to sovereignty as if they were property." n46 One writer described this dynamic political concept as containing philosophical
roots which penetrate the deepest layers of human history and tribal consciousness. n47 Another writer has stated, "The proposition that every people should freely determine its own political status and freely pursue its economic, social, and cultural development has long been one of which poets have sung and for which patriots have been ready to lay down their lives." n48 Notwithstanding these ubiquitous proclamations, self-determination has been unevenly and unevenhandily applied since its onset.

A. The Era of Geopolitical Militarism

During the period when President Woodrow Wilson first was championing the principle of self-determination the world was at war. Consequently, "the success or failure of assertions of minority rights for self-determination in the late nineteenth century depended [not so much on the virtuous nature of the principle but] to a great extent on external support from one or more of the [World] Powers." n49 Hurst Hanum points out that "in most instances, winners and losers [to claims of self-determination were determined] more by the political calculations and perceived needs of the Great Powers than on the basis of which peoples had the strongest claims to self-determination." n50 Thomas Franck describes the early application of the principle as imperfect. n51 "More important, it was not made generally applicable but was confined almost entirely to the territories of the defeated powers. Few post [World War I] claims of self-determination were made against states that had not been on the losing side in the War." n52 For example,

The brooding and unpredictable menace of Bolshevism persuaded the Allies... to create bastions of the West in Eastern Europe, necessarily at the expense of smaller nationalities. As the much-trumpeted principle of national self-determination conjured up an impossible nationalist dream, so the compromises deemed necessary by Allied perceptions of practicality and strategy made disillusionment among the minorities all the keener. n53

In his book on self-determination, Antonio Cassese similarly notes that, after World War I, most of the Allies claimed that the primary purpose of their war effort was the realization of the principle of nation ality and of the right of people to decide their own destiny. n54 Despite this avowed purpose, when it came to actually applying the principle of self-determination this right was subordinated to other concerns in order to make "the peace treaties with the vanquished." n55 For instance, the Treaty of Versailles of 1919, which was signed between Germany and the Allies, conferred territories to the newly created states of Poland and Czechoslovakia without consulting with the populations that occupied the new countries. n56 Likewise, the peace treaty of 1919 with Austria conferred Tyrol Alto Adige to Italy without consulting with the native inhabitants of that territory. Other allocations of defeated territories were provided for in the 1919 Treaty of Neuilly. Once again, the inhabitants of these lands were never asked if they wanted to become citizens of a new country.

At the onset of its modern-day conceptualization, self-determination was the clarion call for worldwide conflict. Ultimately, the principle proved to be of little importance when the interest of a people who would otherwise have the right to assert it was inconsistent with the Western powers' political agenda. Thus, from the beginning of this century and through the mid-twentieth century, the conceptualizations of self-determination was a right that was subject to Western geopolitical omnipotence. This was the era of self-determination as defined by geopolitical militarism.

B. The Era of Racial Tutelage

Professor Ruth Gordon, who has written extensively on the of trus teeship, advances a critical race perspective to the debate of self-determination. n57 She points out that, after World War I, the self-determination became applicable to certain Europeans. n58 For non-Europeans, however, "any semblance of self-determination was embodied in the League of Nations Mandate System." n59 Article 22 of the League of Nations Covenant called for advanced guardians over certain colonies and territories that were deemed to be incapable of self-rule. n60

Like Professor Gordon, Thomas Franck notes, "if self-determination was imperfectly applied in Europe...it was applied hardly at all to Europe's overseas colonies." n61 Under this Eurocentric paternalistic framework, self-determination was essentially unavailable for the "less-advanced" people of the third world. Instead, these people were entrusted to the tutelage of "Advanced Nations." n62 These nations, which were comprised of Europeans or decedents of Europeans, believed themselves to be responsible for the well-being and development of their charges, and they carried out their responsibility as a "sacred trust of civilization." n63

As a result of World War I, German and Turkish possessions were transferred to Australia, Belgium, Britain, France, Japan, New Zealand, and South Africa under the Mandate System's sacred trust principle. n64 [n954] Franck argues that, as a result of these
acquisitions, the victors of the war, ignored the principle of self-determination, and actually increased the size of their overseas empires. n65 They did this without making any serious commitment to giving the people of the acquired territories control of their future. n66

During the middle part of this century, self-determination again became a driving force in international law debates. The Atlantic Charter, an instrument used by England and the United States to promote the end of World War II, reaffirmed a commitment to "respect the right of all peoples to choose the form of government under which they wish to live." n67

Although he had committed his nation to this agreement, Winston Churchill made it clear that England's economic and political interests would not be undermined. In 1941, the very same year the Atlantic Charter was drafted, Churchill informed the House of Commons that the principle proclaimed in the Charter did not apply to colonial peoples, especially those who reside in India, Burma, and other parts of the British Empire. n68

The League of Nations and the Atlantic Charter eventually gave way to the United Nations Charter, which specifically adopted the principle of self-determination. n69 Despite this reaffirmation of the right, the U.N. Charter retained vestiges of the subordinating paternalistic mandate system through its implementation of the Trusteeship System. n70 Chapters XI of the U.N. and XII established that self-determination for non-self-governing and trust territories was to "proceed at a pace dictated by the colonial administrators." n71 Article 73(b), called upon the signatories "to develop self-government... according to the particular circumstances of each territory and its peoples and their varying stages of advancement." n72 Article 76 likewise included a duty "to promote the... advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples." n73 These demeaning and subordinating proclamations from self-[*955*] proclaimed advanced nations were embraced by the International Court of Justice. n74 In its advisory opinion on the status of Namibia, the court recognized that the U.N. Charter embraced the principle of Sacred Trust and extended it to all territories whose peoples had not yet attained full self-government. n75 As Gordon argues, for non-European peoples, Euroean tutelage became a means of executing self-determination. n76 Indeed, even the methodology of the trusteeship system, with terms such as "advanced nations" and "sacred trust", was embedded with paternalism over people of color, resembling the concept of Manifest Destiny. Despite these shortcomings of self-determination, the global acceptance of the right did have a considerable impact that eventually caused a re-mapping of the world. For instance, the principle led to the dismantling of much of Britain's empire and lead to the independence of nearly one billion persons. n77 These new countries, in turn, assisted in the decolonization of the French, Dutch, Belgian, Spanish, and Portuguese empires. n78 Thus, from the era of racial tutelage evolved the realization for millions of the right to self-determination. This success partially was to the efforts of the third world to elevate the principle of self-determination further on the United Nations agenda.

C. The Era of Western Disinterest and Localized Self-Interest

Not long after these substantial successes of the right of self-determination, a new era of inconsistency arose. During the period after World War II, global militarism and racial tutelage digressed into an era of Western laissez faire over the acts of the formerly colonized nations. This inconsistency arose as a result of a more localized self-interest and the failure of the world community to adequately support self-determination as an enforceable right.

Several examples of this incoherence exist. In these instances, the world powers and the United Nations allowed the absorption of areas within former colonial territories without ascertaining, in any meaningful way, the wishes of the populations that were to be annexed. n79 The case of India's post-independence conquests is a classic example of this acquiescence. n80 India used its military might to deny the right of self-[*956*] determination to Kashmir. n81 Shortly thereafter, India seized Goa. n82 Other examples of the disregard of the right of self-determination include Indonesia's absorption of West Irian, n83 the annexation of the Western Sahara by Morocco, n84 and Indonesia's forcible incorporation of East Timor as part of its territory. n85 In describing these events, Yves Beigbeder wrote, "If self-determination is an internationally recognized principle, why does it not apply to the people of West Iran, East Timor, Tibet, Kashmir and other territories as it has been applied to other colonial territories." n86

In these illustrative, but far from exhaustive examples, the self-determination hardly was applied universally. In these cases, the world's balance of power was not a dominant concern, racial tutelage did not appear as the...
driving force, and Europe was not subjugating of third world countries. Instead, third world people were dominating other third world people, and the subjugated were aliens.

Perhaps self-determination was deemed irrelevant in this area, because the subjugation was perpetrated by people of one color against another. In many, if not all, of these examples, the world powers evinced determined, as evidenced by their inaction, that the peoples who had their lands annexed were not worthy of self-determination. In the case of India's seizure of Goa, a Security Council resolution condemning India was blocked by a Soviet veto, and a majority of the General Assembly apparently accepted India's position. n90 With respect to Western Sahara, differing worldwide opinions prevented effective condemnation. n88 With respect to Western Sahara, differing worldwide opinions prevented effective condemnation. n88 With respect to Western Sahara, differing worldwide opinions prevented effective condemnation. n88 With respect to Western Sahara, differing worldwide opinions prevented effective condemnation. n88 With respect to Western Sahara, differing worldwide opinions prevented effective condemnation. n88 With respect to Western Sahara, differing worldwide opinions prevented effective condemnation. n88 With respect to Western Sahara, differing worldwide opinions prevented effective condemnation. n88 With respect to Western Sahara, differing worldwide opinions prevented effective condemnation. n88 With respect to Western Sahara, differing worldwide opinions prevented effective condemnation. n88 With respect to Western Sahara, differing worldwide opinions prevented effective condemnation. n88 With respect to Western Sahara, differing worldwide opinions prevented effective condemnation. n88

This would perpetuate the Era of Western Disinterest that is described above. Additionally, accepting this limited formulation would be inconsistent with the critical theory's anti-subordination project's effort to champion the interest of the vulnerable or outsider.

A more controversial formulation of "self" grants the right of self-determination to indigenous people and distinct minorities that reside in significant number within an existing state. n94 This formulation is consistent with the humanitarian goals behind the right. For instance, significant deprivations of human rights, such as those faced by the Kurds in Iraq, may leave the Kurds with no alternative other than secession. n95

Accordingly, with respect to the question of who can claim the right of self-determination, a group claiming to be a "self" entitled to the right should possess certain objective characteristics of a distinct group as suggested by the United Nations General Assembly Resolution 1541. n96 Such characteristics include a common ethnicity, language, history, or other cultural distinctiveness. n97 The group who claims to be a "self" also must possess a subjective characteristic. n98 Its numbers must share "elements of group identity ... which give rise to a parochial sentiment and which are thus likely to produce government based on consent." In other words, the group must see themselves "as one people, one community." n99 Pragmatic considerations must be accounted for in order for a group to legitimately be considered a people. For instance, at a minimum, the group must demonstrate that they are capable of becoming economically viable and politically independent. Otherwise, they will inevitably be destined to become wards of one or more existing states. n100 The more conventional formulation of "self" could deny the right to a group that would otherwise meet all of the traditional characteristics of a people. This could result in an aspiring "self" being told, "You are not self-determination?" Recent scholarly debate concerning this subject has centered around whether the right is recognized outside the decolonization context. n91 If the right, as some have argued, is limited to the colonial or alien subjugation context, then thorny problems related to secession and failed states are avoided. n92 This position, however, may be too anachronistic, and such a reading may defeat the very goals behind self-determination movements. Moreover, a conservative reading of the right, which would limit self-determination to the colonial setting, lends itself to, and arguably promotes, a continuation of the world powers' disinterest when one third world people denies the right to another third world people. n93

After critiquing the traditional positivist paradigm, I shall attempt to reconstruct the right of self-determination. This effort seeks to pro mote a more pragmatic theory that will address historical occurrences and explain how the law ought to be. Key to any interpretive analysis is an appreciation of the imprecision of interpreting the intended meaning of words and accurately uncovering the intended goals of the legal precepts and other postulates one is analyzing.

A. Self-Determination Redefined

In order to reconceptualize the principle of self-determination, one must appreciate its intended goals. As eluded to earlier, self-determination essentially seeks to ensure that "people" have the right to choose their own political, cultural, and economic future. This is consistent with the spirit of democracy. Given this noble, yet terribly broad, aspirational, the question should then turn to a critique of the principle's intended scope.

Self-determination recently was described as a term that has a wide penumbra of uncertainty. n90 Nonetheless, a construction can be formulated to address the intended framework that initially was proposed to guide states. The first interpretive hurdle in defining self-determination is defining "self". This term answers the question, "Who can claim the right to self-determination?"
really a people, but merely a minority," or "You are not really under 'colonial' or 'alien' rule at all."  

A word of caution concerning the controversial view of the term "self" is necessary. Every state contains minority groups. If each group within a state can claim the right to self-determination and succeed, self-

[959] destruction of virtually every state could result. n102 Thus, those who claim self-determination within an existing state (i.e., a secession) must demonstrate all of the above criteria. If such criteria is met then, consistent with the role of the United Nations, such claims must be weighed against potential threats to regional and world peace.

B. A Role for the United Nations in the Reconstruction Process

A workable and logical paradigm for the right of self-determination that addresses precedence must be established. Regardless of which definition of "self" is adopted, the global community must end the selective recognition of the right to self-determination and acknowledge prece de nce. The right should be recognized universally. As Brietzke points out, the rules of self-determination should not be so regulated or qualified by precedence so that exceptions become the rule. n103 If this were to occur, then we would return to inconsistent application of the right. Consistent with its goal to promote world peace, the United Nations must be pragmatic and weigh claims of self-determination against any real threats to world peace. Accordingly, the right must not be used as a destabilizing force that can completely undermine notions of state sovereignty. Nevertheless, as the fifty-plus security council resolutions on Yugoslavia demonstrate, actions by the United Nations must not end [960] with mere verbal condemnations. Indeed, one of the functions of the United Nation's Security Council is to appoint subsidiary organs to investigate any dispute or situation that may threaten world peace. n104 The Security Council's ability to conduct peace-keeping operations may be an effective tool to meet this function. n105 This tool may provide "teeth" to the Council's proclamations. n106 For instance, as of June 1996, the Security Council initiated forty-one United Nations peace-keeping operations. n107 Twenty-six of these had been commenced since 1989. As the conflicts in Croatia, Slovenia, and East Timor have taught us, claims made by minority groups who consider themselves to be people with a right to attain self-determination can lead to scenarios that threaten world peace if their calls are not heeded. Thus, after studying claims of self-determination, the council should recommend that the entire General Assembly consider passing resolutions on each particular claim. If the annexing foreign power or existing state refuses to recognize a given resolution, the Security Council should be able to recommend or implement economic sanctions and possibly use peace-keeping forces as a threat of last resort. Some writers go as far as to argue that "military might may be the true key for implementing and enforcing self-determination claims." n108 Obviously, the peace-keeping or the use of force avenue is one that actually can facilitate destabilizing world order. Therefore, this option must be one of last resort. It should be considered only: (1) after a prolonged period of economic sanctions, coupled with failed diplomatic efforts that demonstrate human that rights or regional peace are threatened, or (2) when there is a preexisting state of armed conflict.

Without the United Nations' firm commitment to address existing disputes and its resolve, to take the necessary action to settle the claims, self-determination will remain a laudable goal with few, if any, means to achieve its realization. In order to ensure that the process is as unbiased and objective as possible, there should be no need for certain United Nations Security Council members to maintain veto power. Such a power can politicize the process, promote further inconsistent application of the right, and thereby undermine the right. This proposal has been my starting point for an evolutionary process that can
reconstruct the currently incoherent principle of self-determination.

FOOTNOTE-1:
n1. Professor Muhmud and I are apparently kindred spirits when it comes to this subject. My forthcoming article entitled, "The Alien-Citizen Paradox and Other Consequences of U.S. Colonialism," similarly calls for recognition of the role that colonialism has played in U.S. racial stratification.

n2. This comparison serves as the foundation of Professor Mertus' forthcoming book, National Truths: The Building Of Serbian Nationalism.


n9. See Anaya, supra note 7, at 320.


n12. Roman, supra note 5, at 1126.


n15. See U.N. Charter art. 55.

n16. See Roman, supra note 5, at 1132-33.


n19. Id. In 1966, self-determination was made part of the two International covenants on human-rights, which the General Assembly approved with only some reservations on the part of a few Western states. See Christian Tomuschat, Modern Law of Self-Determination (1993).


n21. C.F. Koldner, supra note 11, at 155.


n26. See id.

n27. Cass, supra note 10, at 27.


n32. Brietzke, supra note 3, at 101-02.


n34. See generally Kelsen, Theorie Generale du Droit International, Recueil Des Cours 121 (1932).


n36. Id. at 44; see also Mario Jori, Legal Positivism, Part I (1992) (distinguishing positivism from naturalism); Lloyd L. Weinreb, Law as Order, 91 Harv. L. Rev. 909 (1978) (positivist posits merely what law is).

n37. Brietzke, supra note 3, at 102.

n38. See generally Carty, supra note 33, at 1; Martti Koskenniem, From Apology to Utopia: The Structure of International Legal Argument (1989); David Kennedy, A New Stream of International Law Scholarship, 7 Wis. Intl'l L.J. 1 (1988).


n41. See id.

n42. Burns H. Weston, Et Al., International Law and World Order 683-84 (2d ed. 1990) (“The principle of self-determination in its modern conception also appears as a principle of legitimacy underlying and inspiring the evolution of international law”).


n44. Nathaniel Berman, Sovereignty in Abeyance: Self-Determination and International Law, 7 Wis. Intl'l L.J. 51, 60 (1988) (quoting Sir Gerald Fitzmaurice, a former member of the International Court of Justice).

n45. Brietzke, supra note 3, at 85.


n48. John P. Humphrey, Political and Related Rights, 1 Human Rights in

n49. Hannum, supra note 8, at 28.
n50. Id.
n51. Franck, supra note 47, at 159.
n52. Id.
n53. Raymond Pearson, National Minorities in Eastern Europe 1848-1945 at 196 (1983). Antonio Cassese, in his book entitled Self-Determination of Peoples, (1995) determined that the discriminatory application of the principle dates back to the French revolution whereby French leaders used the principle to justify the annexation of lands belonging to other Sovereigns. See Cassese, supra note 6, at 11-12. This enabled France to assert that Alsace was French and no longer belonged to Germany in 1790.
n54. Cassese, supra note 6, at 23-24.
n55. Id. at 24.
n58. Id.
n59. Id.
n60. League of Nations Covenant, art. 22, para. 2.
n61. Franck, supra note 47, at 160.
n62. Id.
n63. Id.
n64. See id.
n65. Id.
n66. See id.
n67. See Roman, supra note 5, at 1130.
n69. U.N. Charter art. 1, para. 2 (enunciating purpose of the Charter to establish friendly relations and economic cooperation between nations based on principles of equal rights and self-determination); See id. art. 55 (same).
n70. U.N. Charter art. 73, 75 (delineating the parameters of the Trusteeship System).
n71. Simpson, supra note 30, at 265.
n72. U.N. Charter art. 73(b).
n73. U.N. Charter art. 76.
n74. See Gordon, supra note 5, at 319.
n75. See id.
n76. Id.
n77. Franck, supra note 47, at 161.
n78. Id.
n79. Michla Pomerance, Self-Determination in Law and Practice 20 (1982) (describing these occurrences as violations of the territorial criterion of defining the "self").
n80. Id. at 20.
n83. Cassese, supra note 6, at 78-79.
n84. Id. at 76-78, 214-18.
n85. Id. at 223-30.
n87. Pomerance, supra note 79, at 20.
n88. Id.
n89. Id.

Nathaniel Berman, A Perilous Ambivalence: Nationalist Desire, Legal

n92. See, e.g., Nanda, supra note 91, at 446.

n93. Pomerance, supra note 79, at 11.

n94. See generally Cass, supra note 10, at 25.

n95. Nanda, supra note 91, at 445.

n96. See generally G.A. Res. 1541, U.N. GAOR, 15th Sess., Supp. No. 16, at 29, U.N. Doc. A/4651 (1960) (the characteristics of inhabitants of defining a non-self-governing territory who may be entitled to the fight as these who are ethnically or culturally distinct and live in an area that is geographically separate).

n97. Id.


n100. Id. at 150.

n101. Pomerance, supra note 79, at 12.

n102. See id. at 143.

n103. Brietzke, supra note 3, at 20.


n105. See Nanda, supra note 91, at 445 ("There is a growing recognition of the close link between human rights and international peace and security").

n106. Id.

n107. Id.

ANTI-SUBORDINATION AND THE LEGAL STRUGGLE OVER CONTROL OF THE "MEANS OF COMMUNICATION": TECHNOLOGY, LANGUAGE AND COMMUNICATIVE POWER

Introduction: Language Is a Virus

Keith Aoki *

BIO:

* Associate Professor, University of Oregon School of Law, Visiting Professor, 1998-1999, Boston College Law School. This piece has benefited from innumerable conversations with Anthony Paul Farley and Phyllis Goldfarb. I have benefited immensely from reading a draft version of Anthony Paul Farley, The Poetics of Colorlined Space (draft, forthcoming in Francisco Valdes, Jerome Culp and Angela Harris Critical Race Theory).

SUMMARY: ... But the gulf between East Egg and West Egg remained unbridgeable, Daisy's "green light" remained tantalizingly out of Gatsby's longing reach. ... Gatsby's haunted erotic longing, his unrequited desire for the "green light," his obsession with Daisy Buchanan, for assimilation was his hamartia, his fatal flaw. ... And as I sat there, brooding on the old unknown world, I thought of Gatsby's wonder when he first picked out the green light at the end of Daisy's dock. ... Gatsby believed in the green light, the orgastic future that year by year recedes before us. ... If "B" equals the world of Jay Gatz which he sought to escape (or any other upwardly-mobile 1920s vulgar parvenu insufficiently far removed from the windowless smoked-stained-walled thatched brick hut of his uncouth potato and cabbage-eating ancestors), and "A" equals the world of Daisy's "Orgastic Green Light," Gatsby's dream might be diagrammed thusly: ...

[*961]

I. Is Language a Virus?

Laurie Anderson said, "language is a virus from outer space - that's why I'd rather hear your name than see your face." n1 What might a spiky-haired, violin-playing, iconoclastic post-punk NYC performance artist's tribute to the even more iconoclastic beat novelist William Burroughs have to do with a bunch of pedantic and stuffy law professors, LatCrit or otherwise? More than you might think.

For one, Anderson's phrase, "language is a virus" n2 captures neatly the simultaneous power and danger of language. The power of language lies in how it oozes, it permeates, it stains and colors, it flows into the interstices, it saturates the air and the airwaves, it is between, within and without us - perhaps no area of human experience remains unmeditated by language. The language of power is, literally, language (or rather, languages). Gluing us together, splitting us apart, driving us into ecstasy and despair, seeping into, pervading, screaming our pain and voicing our deepest dreams and nightmares - speaking us even while we think we speak it. Language is the turbulent, restless ocean sur [*962] rounding the islands that are individual human consciousness. Language simultaneously separates and connects us in complex and painful ways.

Language's mercurial and terrible power make it a threat. In order to replicate, viruses attach themselves to living DNA. Viruses are a program, activating themselves even as the host organism's DNA loses the ability to tell what is "self" and what is "other." Like a virus, language is a nonliving pattern of information, a configuration of meaning that attaches itself to consciousness, a program waiting to be executed, changing both the consciousness it infects and morphing its very own structure as it replicates itself. There is no defense against the virus of language except perhaps death. Predating us, the virus of language will be infecting other consciousnesses long after we are dust. Language is a menace - it is a void that when you look into it, it looks back into you, it changes you, changes your world - it is the unliving worm that flies. Language is a virus.

The authors of the following cluster of pieces tease out the politics and poetics of struggles over language. What is the nature of the terrible connection between knowledge and power in a society simultaneously subject to centrifugal and centripetal political, cultural and economic forces played out on the fraught landscape of gender racial and class politics?

These authors share certain critical attitudes about who is the "subject" threatened by the power of language-viruses and who is the "object" of fear, possessed by
and possessing contagious language-viruses. What is to be the normative baseline? What conceptual spaces do such a legal "subjects" and "objects" occupy? Who is the 'American "I" that desperately fears collapse into a terrifying babble of languages and discourses that turn the familiar strange and the strange familiar? Who or what is the linguistic equivalent of Atlanta's famed Center for Disease Control? Who are the language-cop versions of Scully and Muldaur chasing down the "X-Files"-like menace of instant language-viruses to the American body politic?

Before introducing the pieces in this cluster, I ask you to briefly contemplate F. Scott Fitzgerald's character Jay Gatsby, who unsuccessfully tried bridging the vast epistemological and ontological gulf between him self and the language(s) of power.

II. Jay Gatz as an "Alien" from an "Other World"?

Bypassing the convoluted history of the rise of "Official English" and "English Only" movements that have been increasingly chronicled [*963] and critiqued by eloquent and studious voices, n3 I suggest there is some thing to be gained by momentarily contemplating Jay Gatsby, the doomed protagonist of F. Scott Fitzgerald's jazz-age novel, "The Great Gatsby," n4 an elegant cultural artifact of the most enduring kind (poignant and complex), from one of the decades when American nativism n5 reached a fervor peak.

Jay Gatz, a poor Midwestern white kid from America's "third coast" (presumably somewhere on the shores of Lake Michigan or Superior in Michigan, Wisconsin or Minnesota) had striven mightily to trans form himself into an "American." Climbing the ever-precipitous social ladder, Gatz changed his name to the elegantly anglicized "Gatsby" (the son of Gatz?). He ably gathered the markers and accoutrements of wealth and power - a spacious tony mansion on East Egg on Long Island's North Shore, staging glittering all-night parties in a grand diaphanous-tented pavilion on his blue lawn, fragrant in the warm Long Island summer evening, impeccably tailored seersucker suits, straw boaters and tasseled two-toned shiny leather wingtips, a Stutz-Bearcat with a rumble seat ("those were different times, when the ladies studied their roles of verse, and the poets they just rolled their eyes"). n6 But the gulf between East Egg and West Egg remained unbridgeable, Daisy's "green light" remained tantalizingly out of Gatsby's longing reach. Gatz, or rather Gatsby, ultimately was not able to grab that final brass ring symbolizing his arrival arrived as an "American." Gatsby's haunted erotic longing, his unrequited desire for the "green light," his obsession with Daisy Buchanan, n7 for assimilation was his hamartia, his [*964] fatal flaw. Unfortunately, Gatsby "sprang from his Platonic conception of himself" and not from wealthy progenitors of the proper lineage, "who are different than you or I" thus, ultimately, his self-perfection was irrelevant. n8

And so Gatsby ended up as a deathly pale, soggy, bullet-riddled corpse floating face down in an elegantly-tiled swimming pool, his blood staining the turquoise waters in dilute crimson streams, like a 1920s foreshadowing of William Holden at the beginning of the dark 1950s Billy Wilder film "Sunset Boulevard" - a potent fictional warning of the futility of transgressing or challenging the impermeable class-ethnic boundaries of the day. If the class-ethnic boundaries were so hardened, even for the son of a white northern European immigrant, it is difficult to even begin imagining the impenetrable nature of the color lined race boundaries of the day. While Gatsby certainly learned how to talk the talk and walk the walk, he still ended up as just another failed American dreamer. The novel's narrator, after learning of Gatsby's distant and humble midwestern origins from Gatsby's father, Nick Carraway concludes:

And as I sat there, brooding on the old unknown world, I thought of Gatsby's wonder when he first picked out the green light at the end of Daisy's dock. He had come a long way to this blue lawn and his dream must have seemed so close that he could hardly fail to grasp it. He did not know that it was already behind him, somewhere back in that vast obscurity beyond the city, where the dark fields of the republic rolled on into the night.

Gatsby believed in the green light, the orgastic future that year by year recedes before us. It eluded us then, but that's no matter - tomorrow we will run faster, stretch out our arms farther... And one fine morning<3mdash>

So we beat on, boats against the current, borne back ceaselessly into the past. n9

Gatsby's dream of assimilation was an intoxicating dream of upward mobility. His self-gentrification was undertaken by his skill at mastering the languages of another world. If only he could learn to use the right silverware, speak with the proper elocution, learn the correct etiquette, buy his impeccably tailored shirts with french cuffs and his impossibly natty white linen ice cream suits from the proper tailor, master the right dance steps and the infinite and subtle body languages of clothing and carriage of this "other world" -- he could pass -- he could enter that evanescent, shimmering dream world inhabited by [*965] Daisy...
and Tom Buchanan, he could reach out and grasp the "green light" across the hypnotically lapping Long Island waters in that beckoning, warm, dark, narcotic 1920s American night. It was a great fan tasy while it lasted. But it didn't last. If even Jay Gatsby couldn't assimilate, if even he couldn't manage a satisfac tory "mind-meld" with that "other world" of the orgastic green light, if even he ran aground on the dragon teeth shoals of the American dream, then what hope would a non-white, non-English speaking, non-Christian immigrant of the time have for an epiphanic apotheosis into "American" (of course, "Ameri can" with a capital "A") life?

If "B" equals the world of Jay Gatz which he sought to escape (or any other upwardly-mobile 1920s vulgar parvenu insufficiently far removed from the windowless smoked-stained-walled thatched brick hut of his uncouth potato and cabbage-eating ancestors), and "A" equals the world of Daisy's "Orgastic Green Light," Gatsby's dream might be diagrammed thusly:

A + B = A.

The challenge immigrants have consistently posed to the United States throughout its history in complex but meaningful ways has been to realize the possibility of the following equation:

A + B = C, a new amalgam, or something other than A.

The connection between language as a virus, Jay Gatsby's haunted longing quest for the orgastic "green light" and the authors in the follow ing section is that each in their own way, ask when are we, as a society, going to be able to (1) acknowledge that the second formulation is a largely credible (albeit skeletonally minimal) account of what has been going on in the US for at least the past 200 years; and (2) that process has been regularly disguised and distorted by racism, sexism, nativism and homophobia promulgating the first equation as a normative excel sior to which all difference in the real world are "more complicated and "language" of law and economics should be able to manipulate them, if only for the purposes of self-defense.

However, as with all languages, the language of law & economics prove s to be surprisingly indeterminate in terms of the political and ide ological freight it is asked to carry. Professor Bratton shows how the discourse of economics has everything to do with the economics of language - showing how the economics of language difference in the real world are "more complicated and friendly to regulation than your law and economics colleagues want you to know." n12 Language from another world, language inverted and subverted. Professor Bratton argues that English Only laws have an inefficient "seamy public choice underside" as Anglo-special interest group legislation, which, when one considers racial discrimination as type of market failure fueled by information asymmetries in which race/ethnicity/language become imperfect information proxies and are anything but efficient models to emulate/promulgate.
proposed English-Only legislation at the expense of a relatively larger, but much more dispersed and less organized group whose individual losses may seem low-level, but which in the aggregate may be extremely significant socially and economically. Talking the talk, but walking a different walk?

Shifting from the language of self-interested, rational, autonomous, utility-maximizing monads to the language/discourse of deontological moral and political philosophy, Professor Drucilla Cornell confronts and critiques "the norm of assimilation as the basis of citizenship through English only statutes [that] treat] Latinas and Latinos as less than free and equal persons, equally worthy and capable of evaluating their own basic identifications, including their language." n14 Professors Bratton and Cornell masterfully shift between various discourses and languages to show us how language(s) are constitutive of both our public and private selves - rational market actors and individual moral selves. They set a challenge for LatCrit to be as multilingual and ecumenical in the types of discourses and analytical tools it deploys as it is asking Anglo society to be of those who speak languages from other life-worlds.

Professor Catharine Wells reflects on ways that languages, or more precisely, discourses, operate to confine as much as they free us to communicate. While Professor Wells entitles her piece, "Speaking in Tongues," n15 it may have been entitled, "Thinking in Tongues." As a monolingual English speaker who drones on in the flat tones of the upper American Midwest ("ruff" instead of "roof"), I can only imagine what it might be like to speak in English but experience in Spanish. As a Sansei (third-generation Japanese American), I am regretful that, according to my mother, I was conversant in both Japanese and English until I entered kindergarten in the hyper-assimilationist world of the early 1960s American Midwest, after which I completely lost all Japa nese speaking ability. If multilingual language ability is like an additional mental "limb," allowing one to grasp ideas and emotions in different ways, I am left with the distressing experience of an amputated "phantom (linguistic) limb."

Professor Wells also comments on the multiple "scholarly dialects" that we all negotiate in our professional lives, reflecting on "how we both lose and gain when we choose to speak within the confines of an academic discourse." n16 She usefully assesses the contributions as well as potential weaknesses in the discourses that Professors Bratton and Cornell urge us to be able to use, implo ring us to retain a focus on "the gift of otherness, the opportunities of multi-lingualism," n17 - language may be a virus from other worlds, but it may be beneficent, rather than destructive.

Also commenting on Professors Bratton and Cornell, Professor Madeline Pascencio asks us to consider the crucial question of agency - how truly voluntary or involuntary are the "choices" that we make that in aggregate over time construct our identity? n18 Professor Plascencia makes the point that with regard to language(s), our traditional legal structure for evaluating and categorizing "volition" and agency may hopelessly fail us. Are languages chosen anymore than race, religion, class, ethnicity, or even gender? Perhaps the virus that is language speaks us, speaks through us, even while we entertain the notion that our existentially privileged selves are speaking transparently through language?

Professor Yvonne Tamayo writes eloquently about silence and silencing. n19 Sometimes, as Mr. Rogers says, "It's good to be quiet," but enforced silence can be oppressive and deadly. Elsewhere, Professor Margaret Chon has written of the importance of being sensitive to and aware of silence in narratives - what is left unsaid, who is absent. n20 Silence, the gap in signs that punctuate and give animating rhythm and tempo to our words and thoughts are what impart meaning. Every standup comedian or jazz musician knows that timing is everything - timing includes knowing when not to speak, what not to say, what to imply. Rather than being a void, a negation, empty, hollow - silence is capable of being invested and pregnant with gravity and import. However, silence can also carry terrible and painful freight, as Professor Tamayo points out as she unpacks the "oppressive effects of law and culture experienced by various groups" that are "silenced." n21 Professor Tamayo describes how easy the slide from metaphorical into actual policed silence may occur as our legal system imposes "real silence upon non-English-speaking people." She considers the view that language is a threatening virus to an English-speaking America, suggesting that "speech in a language other than English may be highly suspect when the communication appears to fortify human bonds, enhance intimacies, or serve as an exchange of useful information between speaker and listener." However, such a view of language as a dangerous virus cannot long be credibly sustained in a world in which "greater mobility demands not only that many different languages and cultures co-exist, but that different experiences and practices reinforce one another toward an America that thrives on ethnic, cultural and linguistic diversity." n22 Rather than an impediment, Professor Tamayo suggests that understanding the necessity of language as a virus from other worlds may be a vital and necessary precondition to living, thriving...
and surviving in the global condition of postmodernity we find ourselves in.

The next two writers, Professor Sharon Hom and Professor-in-waiting John Hayakawa Torok pass back and forth through the extremely permeable conceptual boundary between LatCrit and Asian Pacific American Legal Scholarship (APACrit). LatCrit and APACrit at first blush share many ideas. LatCrit and APACrit both question the coherence and salience of national boundaries, concepts of "foreign-ness," conflations of race and nation, a critique of the Black-White paradigm, questions about the salience and limits of panethnicity and what it means to occupy the racial "middle" in a sharply racially hierarchical society such as the contemporary United States. Both LatCrit and APACrit also share a concern with the complex identities engendered in individuals and groups who have historical, political and intellectual links with people and cultures existing dynamically both within the and without the United States. Many LatCrit and APACrit scholars have been among the most articulate critics of a steamroller hegemonic unilinear vision of globalization. Without positing an unproblematic, "why-can't-we-all-just-get-along" sanguine coalesitionalism on the part of either LatCrit or APACrit, it is significant that LatCrit has reached out affirmatively and consistently to invite the comments and contributions of many APACrits to be part of the project of developing the shape of LatCrit theory.

Professor Sharon Hom asks us to consider what kinds of weird, complex, funny, strange, multiple, multilingual, multilevel conversations may be occurring as we have breakfast in the ruins (of earlier political and economic orders) - how do our languages interact syntactically as \[^970\] well as stylistically? What does rock n' roll (a mutant piece of Anglo-American-African cultural miscegenation feasting gleefully on the car coss of colonialism and slavery if ever there was one) have to do with Tiananmen Square? n24 What happens when you let loose the unabashedly anarchistic, materialistic, hedonic, libidinal (and fiendishly capitalist commodity fetishized) impulse of western culture in general and western rock n' roll in particular in the PRC? A+ B definitely doesn't equal A, but it is unclear what valance the new equation may have. In fact, it may remain unclear for a long, long time (and, perhaps, a good thing it may be too), exactly what the effects of exponentially increasing quantities of people, culture, money and media sloshing around ever faster in the global media infrastructure may have. While Stuart Hall has said that postmodernism is the way the world dreams itself to be American - one perhaps needs to consider that when the U.S. looks (or rather broadcasts) into the "void," the "void" looks (and broadcasts) back into the U.S. - it is far from clear that U.S. "kulchur" is a one-way street (although there may be troubling univocal aspects to it). If globalization is a trend that has been going on for at least the past 400 years since the age of conquest and colonialization, one wonders what happens when the global "washing machine" we seem to be sloshing around in hits the "spin" style. The "King" is dead; long live the "King(s) [or Queens]" as we slouch toward Shanghai (or Chiapas or Lagos or Luna City), stealing furtive but hopeful glances at the twenty-first century - what mutant dawn will the Eastertide bring? One may only guess that it may be of a shape that we have not seen before.

In his essay, "Finding the Me in LatCrit Theory: Some Thoughts on Language Acquisition and Loss," n25 Professor-in-Waiting and marathon-runner John Hayakawa Torok importantly notes that "the roots of both Latina/o and Asian American marginalization are in the earlier loss of the 'language' of settler-over-native racialization when white over Black became the mother tongue of American racial discourse." Linking the Indo experience with the Latina/o, Asian American, white and Black experiences in North America is a very important move from identity politics to a politics of anti-subordination. Torok urges "workers against all forms of subordination ... [to] speak of and learn about and work against subordination ... [to] learn, work and speak in many tongues."

[^971]

IV. \(A + B = C[\text{su}'2']\)!

To the extent that all languages are a virus from outer space, or at least other life-worlds that may seem as far away at times as outer space, we should also consider the strong possibility that, to paraphrase the cartoonist Walt Kelly, as we meet the "aliens;" the "foreigners;" the "invaders;" all those who are "others," we may find that they are "us." By forsaking indefensible and unstable ethnocratic monolingual visions of the future, we can begin working towards creating a world where symbiotic semiotic multilingualism \((A + B = C[\text{su}'2'])\) may thrive. Long Live LatCrit!

**FOOTNOTE-1:**

n1. Laurie Anderson, "Language is a Virus (for William S. Burroughs)," United States, I-IV (1991); Language is a Virus, Home of the Brave (1986).

n2. I am aware of the pernicious power of ways that the "virus" metaphor has been deployed against immigrants in the past and in no way do I endorse the labeling of
languages other than English or people speaking those languages as "viruses." I do, however, intend to (1) name the "virus" metaphor as a xenophobic response and then (2) contest, subvert and complexity by asking us to consider that all languages may be viruses.

I also note that in the mid-19[th] century West Coast states, "Chinatown (and Chinese immigrants living in them) were viewed as pathological breeding grounds for diseases such as leprosy, cholera, and the bubonic plague ... the San Francisco Board of Supervisors in 1870 declared that the 'Chinese were considered 'moral lepers' whose habits encouraged disease wherever they resided." See Keith Aoki, "Foreign-ness" & Asian American Identities: Yelloface. World War II Propaganda, and Bifurcated Racial Stereotypes, 4 UCLA Asian Pac. Am.L.J. 1,33- 35 (1996). One should note the long shelf life of the virus metaphor, when U.S. newspapers have characterized the economic crisis that began during summer 1997 in Thailand, Indonesia and Malaysia as the "Asian (Economic) Flu." See e.g., Editorial, The Asian Virus Spreads, N.Y. Times, Nov. 20, 1997.


n8. The Great Gatsby, supra note 4, at 104.

n9. The Great Gatsby, supra note 4, at 189.


n12. Bratton, supra note 11, at 973.

n13. Id. at 974.

n14. Cornell, supra note 11, at 979.


n16. Id. at 985.

n17. Id. at 988.


n21. Yvonne Tamayo, supra note 19, at 995.

n22. Id. at 1001.

n23. LatCrit commentators and participants have included Sumi Cho, Sharon Hom, Neil Gotanda, John Hayakawa Torok, Nancy Ota, Robert Chang, Eric Yamamoto, Margaret Chon, Natsu Saito and your humble narrator.


SUMMARY: ... We had each come to appreciate our 3 million New York area Latino neighbors; we had each become conscious of their social, economic, and legal status; we had each become acutely dismayed by Anglo attitudes and behavior patterns toward them. ... Simply, under the economics of language acquisition, Latino immigrants have a high-powered incentive to incur the cost of learning English. ... If that's the case, they say, why do they live in enclave communities and why have they not dispersed across the continent like their European immigrant predecessors? The answer is that the same economics that give immigrants the incentive to learn English also make it rational for them to live in enclaves. Quite apart from family and cultural ties, the economic opportunity set in the enclave will be better for anybody whose English is less than fluent and idiomatic. ... And its rate will depend on the quantum of economic opportunity on offer a fuera del barrio, So the real question is whether some sticking point might cause Latino dispersion to proceed more slowly than that of previous immigrant generations. If there is such a friction, it must be ethnic and racial discrimination. ... This literature begins with Becker's famous story of inevitable free market correction. ... The final phase of the economic case addresses the Title VII status of English Only in the workplace. ...

just upped one day and decided to collaborate on a paper on English Only.

We knew from the outset that we'd have nothing new to add to the bottom line so well articulated in the existing literature. But we went ahead anyway, assuming that if we each did here what we already do as scholars - in each case at several steps removed from race critical theory and civil rights discourse - we might have something to offer at a perspective level. Our draft paper's title tells you what's up - its called Deadweight Costs and Intrinsic Wrongs of Nativism: Economics, Freedom, and Legal Suppression of Spanish. I do the deadweight cost economics; Drucilla does the intrinsic wrongs and the freedom.

I regret to inform you that you have to hear about my part of the paper before you get to hear from Drucilla, who is going to talk about the relationship between the perspective she articulates in the paper and that of race critical theory. So I will keep it short.

Why a law and economics of English Only? Two reasons. First, what I do these days is write papers designed to destabilize propositions dear to the law and economics movement. I do this by making reference over to - now get ready - economics. Say there's an individualist position out there that you don't like that's backed by an economic story. I've discovered that when you confront that position, you don't have to avoid addressing those economic presuppositions, and you don't have to content yourself with a dismissive, global rejection of microeconomic analysis. You can instead jump over the law and economics, and go to real economics. There you find out that things are, well, much more complicated and friendly to regulation than your law and economics colleagues want you to know. But, hey, what about the math? No preoccupations. Many law and economics people don't understand it either.

The second reason for doing economics is situation specific. English Only is supported by a plausible cost case. This says that since multiple languages amount to a barrier to trade and other economic cooperation, we therefore are all better off economically if everybody speaks the same language. Now, this is right so far as it goes, and no one understands the point better than Latinos. The problem comes at the public policy level. English Only has it that law can be a means to the end of enhancing social
welfare if used as a stick that heightens immigrant incentives to learn English. It is held to follow that public service provision should be monolingual and that employers should have complete discretion to mandate English speech in the workplace.

The paper draws on the economics of language difference and of discrimination to refute this. The case has four four phases. The first plays the cards of wealth redistribution and cultural diversity. Now, since the game is to stay inside an orthodox microeconomic framework, these can't be trump cards. But it's still important to work them in. As to redistribution, the economics highlight a commonality of interest between language minorities and other minorities that has important implications for majoritarian political preference aggregation. The econotive also make racial segregation cost reductive. It follows as mat ter of political preference aggregation that those protected by Title VII on the basis of race and gender have a rational and solidaristic interest in supporting Title VII protection for language minorities. And this isn't just old-time socialist ideology - the result follows from evolutionary game theory.

As to diversity, the assumption that sameness lowers costs at some point has to be qualified by the counter-assumption that diversity leads to creative interaction. No one knows where the optimum lies as between the two. But there is a strong possibility that the economic optimum may not converge with the culturally preferred result. For example, I think it's safe to project that white Anglos would resist mandatory multicultural education for their children as invasive of cultural autonomy, even if it were more probable than not that such a program would make their children better off economically in the long run. Ironically, a major difference between that resistance and Latino resistance to English Only lies in the numbers - the objecting majority wins where the objecting minority loses.

Now to the second phase of the case. This assumes that English Only may be Kaldor-Hicks efficient, but turns around and attacks it on the standard law and economics ground that regulation is unnecessary where spontaneous order is adequate to the job. Simply, under the economics of language acquisition, Latino immigrants have a high-powered[*975] incentive to incur the cost of learning English. Accordingly, no regulatory problem is presented. Given this, you can reinterpret English Only in public choice terms as Anglo interest group legislation. The paper explicates this with a series of little population sorting models. They show that, at the margin, state level Official English could deter Latino in-migration and labor market competition; it also could protect the job prospects of Anglo civil servants. This is particularly likely in a state with an overall Anglo majority but Latino majorities in selected localities. Not by the way that nativist ideology isn't the prime mover behind Official English - I just think its useful to highlight this seamy public choice underside.

The third phase of the case anticipates the main nativist objection to the assertion that Latinos have a sufficient economic incentive to learn English. If that's the case, they say, why do they live in enclave communities and why have they not dispersed across the continent like their European immigrant predecessors? The answer is that the same economics that give immigrants the incentive to learn English also make it rational for them to live in enclaves. Quite apart from family and cultural ties, the economic opportunity set in the enclave will be better for anybody whose English is less than fluent and idiomatic. Dispersion takes generations. And its rate will depend on the quantum of economic opportunity on offer a fuera del barrio. So the real question is whether some sticking point might cause Latino dispersion to proceed more slowly than that of previous immigrant generations. If there is such a friction, it must be ethnic and racial discrimination.

Which means this analysis has to confront the economic theory of discrimination. This literature begins with Becker's famous story of inevitable free market correction. It goes on to confront the reality of persistent discrimination in American history, thereby facing a choice between two discomfiting alternatives. Either you admit that white Americans are persistently racist, or you abandon a pure neoclassical microeconomic model and describe the practice in terms of imperfect tions. As a race critical theorist would predict, the economists have pur sued the latter path.

The resulting literature can be ranged according to its distance from the free market ideal. Interestingly, it is the law and economics writers who most doggedly keep lines open to Becker's market correction scenario and the concomitant possibility of a policy justification for the repeal of Title VII. Real economists, in contrast, take seriously the possibility that even given rational, unprejudiced whites. They assume that free markets never work perfectly and that we live in a second-best world ridden with information asymmetries. There, all other things[*976] being equal, there will be a tendency to hire one's own racial or ethnic type because sameness gives you a better read on character. This means that discriminatory results can occur even when the employer invests heavily in candidate information. And the results can persist and cascade into racist schema perpetuated across generations in a free market. The cycle breaks
only when the stock of qualified whites is exhausted, something that our massive educational infrastructure would appear to be designed to assure to be unlikely to happen anytime soon, particularly in light of the current attack on affirmative action.

The final phase of the economic case addresses the Title VII status of English Only in the workplace. This starts out with a standard Epsteinian cost case against Title VII protection and notes that the Epsteinian costs are pretty modest. More importantly, it goes on to draw on labor economics to show that these costs easily can fall on the protected minority itself. So the policy question is whether Latinos would or would not be willing to bear these costs. We think that question answers itself.

Muchas gracias. (Audience claps).
ANTI-SUBORDINATION AND THE LEGAL STRUGGLE OVER CONTROL OF THE "MEANS OF COMMUNICATION": The Imaginary of English Only

Drucilla Cornell

SUMMARY: ... In the second half of the paper where we defend the heuristic device or aesthetic idea of the imaginary domain to justify Spanish language rights, we approach value and the point of view of the person as modeled in Kantian moral philosophy, once it has been given a constructivist twist. ... Hence, as beings who take our selves as our own ends, as the source of value we give to our lives, we all have equal dignity. ... The identification, LatCrit, is an ethical and political identification and as such it is clearly open to whites to identify as a LatCrit, but how I, as a white woman, take up that identification is part of the ethical and moral challenge it presents to me. ... As a newly declared LatCrit, who understands this identification to challenge the legally imposed exclusion of Spanish language and Latin heritage and culture in the identification "American," the answer has to involve a challenge to the legal justifiability of these kinds of statutes. ... The imaginary domain extends to each person a right to self-representation and self-evaluation of her basic identifications. ... But to once again focus on the white Anglo perspective - as if speaking Spanish were a form of identity politics and speaking English were not (Audience laughs) - is to rein force the legitimacy of that perspective as the perspective on others. ...

I'm honored to be here and I want to thank Lisa and Frank for inviting me. In the section of the paper summarized by Bill, we approached value and the point of view of the person as modeled in economic theory. In the second half of the paper where we defend the heuristic device or aesthetic idea of the imaginary domain to justify Spanish language rights, we approach value and the point of view of the person as modeled in Kantian moral philosophy, once it has been given a constructivist twist. We need both viewpoints and accounts of value. Without a reasonable moral, political, or legal ideal of the person, and with it some interpretation of freedom and equality, the fact that the legal suppression of Spanish is a functional equivalent of Jim Crowism is just a fact. What makes it wrong is that the legal imposition of linguistic peonage contorts the equal dignity of the person imposing a form of moral servitude on Latinos and Latinas.

Kantian moral theory understood with a constructivist twist, which is just to say with an ethical or political twist, argues that each one of us, thrown as we are into a finite human existence with all its historical and relational complexity - what I shortly will call basic identifications - cannot but address the question, what should I do? Should I, for exam ple, identify with or as a LatCrit? What does it mean for me to identify with or as a LatCrit if I also feel called to identify as a white Anglo woman, to attempt by so doing to make visible the privileging of White ness and of English. Once LatCrits have carved out symbolic space and formed the identification so that it must be addressed in a legal academy, and in law more generally - the "establishment" of LatCrit as an identification in law in such a short time is an extraordinary ethical and political achievement - how each of us is to identify or not is an ethical and political question we must confront. Shut your ears and the question remains. That the question remains, that we must address the question of what we should do and give it an answer, even the answer that we do not know or, more strongly, cannot theoretically know whether it is right for a white Anglo woman to identify as a LatCrit, is to take up the stance of what Kant called practical reason. From this standpoint, I cannot be your object since I, like you, am existentially positioned to ask and answer that question only for myself. This is the basis of Kant's famous moral postulate that each of us is an end in herself, because we are beings who cannot avoid making evaluations of our own lives and of the world around us. Kant's basic premise was that because each of us holds her own ends to be good, each of us also regards her own human ity as a source of value. The Kantian ideal of the free person with equal dignity who should be treated legally by the state as such, insists on our equal worthiness to do just that, make our own evaluations.

The capacity to value our ends and to develop life plans to achieve them is what John Rawls has called our rationality. Because of our rationality, we take ourselves to be the source of value we give to our own
lives. We have a further capacity, which Rawls names reasonable ness, to recognize, consistent with our own rationality, the rationality of other human beings. We must attribute the same kind of value to our humanity as to the humanity of others. Hence, as beings who take our selves as our own ends, as the source of value we give to our lives, we all have equal dignity. A fair social order must be premised on our equal dignity.

Our moral freedom turns on the postulation of ourselves as the source of our own values and the ends we choose. This is a postulate of practical reason, not a given truth of reality. Some of us value certain ends, for example, a college education, because it has been hammered into our heads that that is what we should value. None of us can clearly know the entire complex trajectory through which we have actually come to value such ends. The ultimate question for us then is whether or not it is ethically necessary for us to affirm this basic postulate of practical reason. We think it is, precisely because it is what allows us to "see" what is wrong in the moral servitude imposed by linguistic peonage.

There is an existential dimension to the understanding of our free dom that was not addressed by Kant, but was taken up by later philo sophical queries to him. Moral freedom can be viewed as moral responsibility. If no one else but me is to be recognized as the source of my judgments and evaluations - no matter what their actual source is - then I am responsible for those evaluations and judgments. I can't worm out of my responsibility. As finite beings we are bombarded by ethical dilemmas to which we must respond. One of the ways in which ethical dilemmas present themselves is in the form of demands for identifica tion or dis-identification. Note that I am using the word identification, not identity, and that I have described LatCrit as an identification, a recently formed one at that, and one that is constantly being reshaped in these conferences. Some of the most crucial ethical and political issues of our time have been obscured by the either/or rhetoric of identity poli tics. The identification, LatCrit, is an ethical and political identification and as such it is clearly open to whites to identify as a LatCrit, but how [*979] I, as a white woman, take up that identification is part of the ethical and moral challenge it presents to me. The existential dimension of our responsibility, if we value our freedom as a postulate of practical reason, is intimately connected with the question of identification. Who I am is a moral, ethical, and practical question, which takes us into the most profound entanglements of our lives with others.

As a white Anglo, do I identify - and yes, given the privilege that has come with that identification of me in the eyes of others, I see the need to identify myself as such - with the attempt of some white Anglos to impose English only in the name of an identification "Ameri can" that we supposedly share? Does this identification demand the legal suppression of Spanish as the advocates of English only seem to suggest? Our answer in this paper is "no." Indeed, the implied political position we take is the opposite; the identification "American" demands that it be reconceptualized if it is to be maintained at all to recognize the centrality of the Spanish language and Latin culture more generally to it. Our identifications may be given to us, they certainly are defined by others, and that meaning is passed on to us as part of what it means to be who we are and how we are identified "by others." But that doesn't get us off the hook. We are still responsible if we take our freedom, in the Kantian sense I earlier described, seriously. We wrote this paper in order to take up that responsibility - more deeply felt, no doubt, because discrimination is not experienced as outside our family but within it - to challenge the meaning of the identification "American" as necessarily involving the suppression of Spanish as what is entailed in the establishment of English as the "American" language.

As a newly declared LatCrit, who understands this identification to challenge the legally imposed exclusion of Spanish language and Latin heritage and culture in the identification "American," the answer has to involve a challenge to the legal justifiability of these kinds of statutes. I could just say that is the reasonable conclusion for any citizen to reach, relying on Rawl's sense of the word reasonable. And I believe it is. But the ethics of identification are inseparable from how as a white Anglo I came to feel called upon to write this paper in the first place.

An explicit enforcement of the norm of assimilation as the basis of citizenship through English only statutes treats Latinas and Latinos as less than free and equal persons, equally worthy and capable of evaluat ing their own basic identifications, including their language. That's our bottom line.

So far, I have been using the word identification to point out the moral and political inevitability of having to identify or disidentify or rethink my identifications whenever I try to answer the question, "What [*980] should I do?" - particularly when I also have to answer the question, "What should I do in the struggle for justice?" This is another question inevitably posed to each of us, since none of us, as Marx pointed out to us so long ago, can live without appropriating a share of society's goods and resources.

But we also mean basic identifications in the sense that all of us in our hybrid identities are constituted by the sedimented meanings we inherit in relationships we
did not choose. Language, ethnicity, national origin, sexual and gender orientation are all basic identifications. We form ourselves from out of the symbolic material we are given, which also shapes us. The ideal of the imaginary domain recognizes the fragility of our freedom, precisely because we can never be truly autonomous. Instead we are envisioned as inseparable from the cultural personas in which we are all engaged in order to represent and claim ourselves. On this understanding, the person of practical reason remains inseparable from the project and potential through which we will ethically and morally form a self. We cannot escape working through personas because we are embodied creatures who appear to others as formed in a particular way, shaped for example as a woman, who then inherits a set of norms and prohibitions which are supposed to be essential to her being. Our freedom, therefore, also must be given body, consistent with a mate rially and culturally embedded subject.

The imaginary domain extends to each person a right to self-representation and self-evaluation of her basic identifications. This is a right to establish herself as her own representative as between herself and the state. To be included in the moral community of persons established by any system of rights in a modern legal system is to be recognized as someone who can shape and reshape her basic identifications out of the available symbolic material in accordance with her changing evaluations. Such recognition takes us beyond any legally imposed hierarchical definitions of the self based on caste, class, race, gender, national origin, or linguistic descent, which continue to be used to banish some of us to the realm of the phenomenal, determined supposedly by our so-called nature. To be banished to the realm of the phenomenal is, in Franz Fanon's words, to be denied existence as a legitimate point of view, including the point of view implicit in the evaluation of one's mother tongue. The intertwining of self and language as a basic identification is eloquently stated by Gloria Anzaldua, "So if you really want to hurt me talk badly about my language. Ethnic identity is twin to linguistic identity. I am my language. When I cannot take pride in my language, I cannot take pride in myself."

Race critical theory has taught us that given our embodied freedom [*981] we cannot escape identifications, in both senses in which I've used the word, nor from the perspectives attached to them. Franz Fanon tells us that there are at least three perspectives from which we judge our world. The perspective of the standpoint in the world, the perspective seen from other standpoints in the world, and the person's perceptive awareness of itself being seen from other standpoints. To reject the perspective of the other as a perspective from which we are constituted is a form of denial we see all too often these days in attacks on identity politics. Those others are making us see white, Anglo privilege and this may cause us great discomfort. That privilege can easily be reinforced if we reframe our discrimination law to distance ourselves from "victim talk" to tackle instead the white perspective in which people of color are negated as the sources of a legitimate perspective. But to once again focus on the white Anglo perspective - as if speaking Spanish were a form of identity politics and speaking English were not (Audience laughs) - is to reinforce the legitimacy of that perspective as the perspective on others. Thus, we strongly disagree with Martha Minow's recent suggestion that we should refashion our discrimination law so as to concentrate on white "bad" attitudes about people of color rather than the proclaimed identities of those discriminated against. Alternatively, we would legally enshrine freedom and the equality which comes with it and leave us all with a political responsibility from which we cannot escape. Thank you. (Audience claps).

I would like to add one point because this is another part of our paper which really goes to both the excellent comment you made and Sharon Hom's presentation, which is that we fully recognize the need to keep the role of law very small. And within law, the discourse of rights should also remain in its proper place. Hopefully, in a world in which we enshrined freedom, as we put it, and recognized just how central language is to communication with others, the cost of multi-lingualism would be very different because people would speak many different languages. That the Anglo majority has been able to legislate its language to the point where the costs you speak of are real to them (although I need to stress that we think there's certainly a huge fantasy dimension to how the cost is perceived) has undermined the kind of rich multi-cultural world that is part of our dream. We are arguing that in a world in which there is truly respect for the reality that there's always an other of the Other, more of us would seek to get in to the worlds of Others by trying to learn these different languages. And of course, this access to a multi-cultural world based on mutual respect is cut off from us by this so-called common cultural movement...
language. That's how seriously we take this idea of self-representation. The fact is that Spanish language, as we define it in one of our footnotes, is part of "American" culture and it's about time that we recognize that— not just because we robbed a good part of Mexico in one of our many brutal and unjust wars, but because of the significant size of the populations in states like California and in my city, New York City. I want a person to be able to go into an office, perhaps they speak perfect English but they're not in the mood to speak it, and say in Spanish, give me my Medicare benefits and give them to me now. (Audience laughs). This is an affirmative duty which goes beyond the usual conception of right as correlated only with negative right. Some rights entail affirmative duties. Bill may be a little more conservative in how far he would go in the imposition of affirmative duties. How this affirmative duty to respect the language of the Other is defined would effect how we think about bilingual education. These days bilingual education is only seen as remedial as opposed to a celebration of Spanish language. We used to have schools in New York City where people wanted their children to continue in their Spanish, solely for the purpose of celebrating Latin culture. There are only a handful left. I think this is a travesty.
Introduction

I am honored to be here and especially grateful to all of you for the special sense of collegiality and friendship that I experience whenever I come to these meetings.

The topic is language, and I would like to begin my comments on this morning's papers by pulling together some of the threads of yesterday's discussion. Two themes in particular seem relevant.

The first, is the power of language not only to communicate, but also to exclude. Yesterday morning, we held a panel discussion in which the participants spoke about their first experiences with enforced bilingualism. Olga Moya, for example, spoke movingly of her first day in school when she and several of her classmates were punished for lapsing into Spanish in a moment of crisis. She also observed that many of these same students did not remain in school for very long.

The second is the power of language to shape identity and self expression. Yesterday morning, Yvonne Tamayo spoke about the many things she could say in Spanish but was unable to express in English. Berta Hernandez-Truyol made a similar point at the first plenary when she talked about how she often thinks in English but experiences her emotions in Spanish. And Madeleine Plasencia elaborated on the subject when she spoke about how languages are an integral element of who we are; how they shape not only our personal sense of self, but also our identity in the outside world.

Personal Dialects

I will begin, as the panelists did yesterday, with a few remarks about my own linguistic background. I share this as a way of acknowledging my own limited perspective on these matters. I was raised in an English speaking home. The language of my childhood had a lot of depth and subtlety when it came to abstract discussion, but it was also very limited. Most of my family expressed personal preferences in the abstract language of moral theory. Thus, if my mother wanted me to stop drumming on the table, she might say, "good girls don't do that kind of thing," or "you ought to refrain from that type of behavior." Requests were often met in terms of entitlements or fairness. One's parent might say, "it would not be fair to buy you an ice cream cone when I can't very well buy one for your sister." Even sibling rivalry had a firm and decisive answer. "Comparisons are odious!", was my father's frequent refrain. Statements of feeling: "I feel angry, upset, sad or tired," or requests, "I want to go home", or "I want to go out and play" were treated as inconsequential and annoying interruptions to real...
In this way, you might say, I learned to speak like a lawyer at my mother's knee.

By contrast, I was married for a long time to a man whose first language was not English but Greek. As a result, I learned Greek play fully as a language of love and affection.

When I was in graduate school, philosophy was primarily a study of language. I learned that every so-called natural language (such as English, Spanish or Greek as opposed to artificial languages like Cobal, Logic or Mathematics) consists of a number of different dialects. This helped me to understand that the dialects of a language are not confined to regional variations in accent and vocabulary. They also represent ways of speaking the same language in the context of different values and ways of life. And so, as an adult, I've come to understand that the lawyer-like language that I learned from my family is merely one dialect of what we call the English language. As such, it is both a very powerful tool and the source of many of my personal limitations. It was as if my Anglo ancestors had given me a magic wand that I could use to ace my way through a lifetime of standardized tests and academic rituals.

In non-academic areas, however, the limitations of my language are palpable. Language is not only a means of communication; it is also an incredibly powerful form of social control. The words of one's langauge draw a decisive boundary between what one can and cannot say. And I cannot say many things - things I would like to say; things tat may of you take for granted. It is clear that my particular English dialect [^985] was a firm expression - for better and for worse - of the kind of person my Anglo ancestors had hoped I would become.

Scholarly Dialects

Each of the papers this morning has used a different scholarly dialect to examine the problem with English-only legislation. The result has been an interesting and informative discussion. For my own part, I would like to reflect a little on the choice of scholarly dialect and on how we both lose and gain when we choose to speak within the confines of an academic discourse. Before starting, I should say that, as a pragmatist, I am a pluralist about scholarly dialects. Life is multifaceted and complex. Genuine insight is hard to obtain - hard enough so that we should not handicap ourselves by deciding, in advance, that all knowledge must conform to the relatively rigid requirements of a single academic discourse. But, while it is good to have a choice of many tools, it is important to use them with awareness. When we talk in a particular scholarly dialect, we may gain insight and understanding, but we may also lose our ability to talk about other aspects of a problem - aspects that in other circumstances we might consider to be the crux of the matter. This is particularly true when we talk about language itself.

Language, by its very nature, is a distillate of human culture. Hidden within it are many of the values that animate those who speak it. We should be careful therefore, when we subject language to the rigors of an academic analysis. n4 Whether the discourse analyzes language as an economic commodity, a badge of personhood, or a matter of practical politics, we should keep in mind that language is not an abstract object that can be readily disconnected from its cultural and spiritual dimensions.

Law and Economics

In this spirit, let's think about the law and economics discourse that Bill Bratton so skillfully wove into this morning's discussion. He made an important point: we should not be so quick to concede the efficiency rationales for English-only legislation. Whether English-only legislation is a matter of genuine efficiency or whether it is, as Bill suggests, simply a question of Anglo special-interest legislation makes a real difference to our understanding of the issue. Even so, we must remember that law [^986] and economics is a particular dialect and thus can only represent a partial perspective. Like every academic dialect, it will highlight certain aspects of the problem, but this will occur at the expense of doing a poor job of illuminating the rest. Thus, even under the best of circumstances, we should be careful not to place too much emphasis on questions of efficiency. We should remember the reasons for skepticism.

One reason to be skeptical is that economic analysis tends to assume that anything worth counting can be fully understood as an item of commerce. Thus, if we are talking about widgets, one assumes that every widget is a fungible commodity and that there is no serious obstacle to understanding the value of the widget solely in terms of its monetary value. n5 This assumption may work well for widgets, it might even work well for artificial languages such as those that are used in computer programming. However, it is less likely to work well as a way of analyzing the use of natural languages. Since natural languages construct identity and value, they are unlikely to be well understood by a discourse that limits the concept of value to fully formed and numerically quantifiable preferences.
The advantages of such an approach are obvious. In a Kantian world, the value to a person of speaking one's own language cannot be sacrificed to the overall efficiency of human communication. While this seems promising, it is important to note that, for Kant, respect for others is derived from the sense that they share what is most essential about ourselves. When Kantians respect the personhood of others, they are being fundamentally reverential to human sameness rather than human difference. 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. On Kantian grounds, for example, I can see that it is wrong to promote English speaking at the expense of Spanish speakers. I can understand that it deprives them of something that, were I in their position, I too would value. But it takes something more than Kant to help me understand the poverty of my own English-only perspective. When I begin to understand that what is "other" is sacred, then I know that English-only legislation is not just unfair to Spanish speakers, but that it also deprives me, as an English speaker, of something valuable that I can get in no other way.

Conclusion

As part of her presentation this morning, Sharon Hom told a wonderful story about her son's attempt to author Penelope's diary and his ability to express what he imagined as her needs across great barriers of gender, race, culture, time, and history. Her story conveys a lot of what I find valuable in the concept of multilingualism.

Multilingualism offers an alternative to cultural imperialism. It seeks genuine communication rather than an understanding of others as partial replications of ourselves. Genuine communication is hard. It happens only when we commit ourselves to real flights of imagination and expression. And, to be successful, we must surround these efforts with an atmosphere of love and respect for one another. Because I believe this is possible, I think we should not get too caught up in what the economists call the cost of multi-linguism. Instead, we might explore the possibility that by paying close attention to what is said in other languages, we can heal the pains of our own limitation and partiality. In short, what we need to focus on is the gift of otherness, the opportunities of multilingualism and the possibility that through difference we can find wholeness.

FOOTNOTE-1:
n1. The Structures of Latina/o Subordination: Intersections in Law and Life, Moderator: Olga Moya; Presenters: Laura Padilla, Yvonne Tamayo, and Rey Valencia; and Commentator: Donna Young.

n2. Between/Beyond Colors: Outsiders Within Latina/o Communities, Moderator: Pedro Malavet; Panelists: Roberto Corrada, Berta Hernandez-Truyol, and Rudy Busto; Commentators: David Cruz and Jenny Rivera.

n3. A friend of mine reading this comment said: "You must be exaggerating. People don't talk like that to their children." However, I am not exaggerating. In my community of origin, this way of putting things was not necessarily perceived as cold or insensitive. It was simply the way people talked - not just my family but most of the people I knew in the rural area near Boston where I grew up.

n4. For example, in the past hundred years, Anglo-American philosophy has devoted much effort to relatively straightforward attempts at describing and analyzing natural languages. The difficulties of analyzing language are amply demonstrated by the puzzles and paradoxes that are offered by Wittgenstein as a commentary on this approach. See, e.g., his Philosophical Investigations.

ANTI-SUBORDINATION AND THE LEGAL STRUGGLE OVER CONTROL OF THE "MEANS OF COMMUNICATION": "Suppressing the Mother Tongue" - Anti-Subordination and the Legal Struggle Over Control of the Means of Communication

SUMMARY: ... [She] communicated in both Spanish and English to those whose command of English was not sufficiently well-developed to understand all the English language expressions and ideas [she] desired to communicate. ... Perhaps Republican Representative Randy (Duke) Cunningham of California, the original proponent of the bill, makes the most paternalistic and personal statement in the debate of the English Language Empowerment Act records. ... What is made available to me to communicate using words rather than pictures are only the primary colors of an artist's pallet; and the colors may not be mixed. ...

[*989]

My comments address the engagement between language, identity and self-esteem. I would like to comment directly on Drucilla Cornell and William W. Bratton's piece, Deadweight Costs and Intrinsic Wrongs in Nativism: Economics, Freedom, and Legal Suppression of Spanish. n2 In their piece, Costs and Wrongs of Nativism, Cornell and Bratton highlight the infirmities of English Only laws from an economic and ontological perspective. The authors demonstrate the infirmities of arguments advancing the position that English Only laws are necessary to prevent a threat and cost to American society. Costs and Wrongs of Nativism also speaks to the role and status of English Only laws within a moral theory. Cornell and Bratton argue that the implementation of English Only laws in the United States results in moral slavery.

Undoubtedly we shape language and language shapes us. For Cornell and Bratton, identity is a matter of ancestry. n3 The term "Latino" as used in their piece refers to "Americans born in or descended from Americans born in Spanish-speaking countries in North and South America, in addition to the descendents of the Mexicans native to the southwestern states." n4 "Anglo" means native-born - born in the United States. n5 Identity can be linked to non-volitional acts because where one is born is non-volitional. The U.S. Census Bureau (the Census) uses the following methodology to identify race and origin: "Race is defined as a concept used by individuals as a self-identification of 'biological stock.'" n6 That would include "White, Black, American Indian, Eskimo, Aleut, Asian or Pacific Islander." n7 With respect to "Hispanics", the Census instructs individuals to identify themselves in terms of origin including "ancestry, nationality, lineage, or country of birth of the person or person's parents or ancestors before their arrival in the United States." n8 Consequently, individuals of Hispanic origin can be of any race. Accordingly, Census data categorizes Hispanics separately to prevent double counting. Thus, under the new regime of identity, the categories are White Non-Hispanic, Black Non-Hispanic, and American Indian Non-Hispanic. Cornell and Bratton share this methodology of identity based on ancestry. n9 Identity based on ancestry is identity without choice.

The second part of Cornell and Bratton's piece discusses how one acts or how one speaks. That is a matter of volition. So which language one speaks or how one acts is the second part to being Latino/a. n10 The predicate to being Latina is ancestry. I agree with Cornell and Bratton that it is fascinating that there is no equivalent for Anglo to Anglo. n11 That state of being able to claim to be Latino/a triggers the moral and legal right to speak Spanish as a Latino/a. Without the right to speak or act in a particular manner, you have lost the first predicate, which is who you are. The authors refer to Jorge Luis Borges who said, "I am inseparable from the Spanish language;" n12 and they refer to "The Bluest Eye" by Tony Morrison. She asked, "what, in fact, may make me a black writer?" n13 and replied: "The ways in which I activate language and the ways in which that language activates me." n14 In each of the instances mentioned, the speaker considers the relationship between language and identity. The interdependent nature of language and logos is essential to the speaker. n15 This was the case in Yniguez.

In the case of Yniguez v. Arizonans for Official English, n16 the issue presented to the Court of Appeals for the Ninth Circuit involved Article XXVIII, which amended the Arizona constitution to provide that English is the official language of the state of
Arizona ("Amendment"). Further, the Amendment provided that the state and its political subdivisions - including all government officials and employees performing government business - must "act" only in English. n17 State employees who failed to comply with the Amendment could be sanctioned for failure to obey the law. For this reason, the state employees, for fear of disciplinary action, or worse, losing their jobs, immediately ceased speaking Spanish on the job.

At the time of the passage of the Amendment, Maria-Kelley F. Yniguez, a Latina, was employed by the Arizona Department of Administration where she had handled medical malpractice claims asserted against the state. n18 She was bilingual - fluent and literate in both Spanish and English. n19 Before the passage of the Amendment, she communicated in Spanish with "monolingual Spanish-speaking claimants" and in a combination of English and Spanish with bilingual claimants. n20 In her affidavit, Yniguez described the way she communicated at work:

[She] spoke English to persons who spoke only English, Spanish to persons who spoke only Spanish and a combination of both lan guages to persons who were able to communicate in both. [She] communicated in both Spanish and English to those whose command of English was not sufficiently well-developed to understand all the English language expressions and ideas [she] desired to communicate. At times during her job, [she] also communicated in Spanish to persons who spoke both English and Spanish because the emotive ideas and feelings she desired to express were most clearly expressed in Spanish... [She] communicated in Spanish to express otherwise inexpressible concepts and ideas. n21

In reading those papers, I asked myself: why someone would do that - shift between languages? You may want to exclude others, you may want to create privacy, but you drift into English because it, too, is familiar. n22 One drifts between both linguistic worlds - Spanish and English words, grabbing onto this or that word-buoy to sustain oneself. Yniguez could have spoken in English only, but chose not to. Therefore, language is inexorably linked to who she is. n23 Moreover, to take away her right to "act" in Spanish takes away her whole sense of identity.

The Court of Appeals for the Ninth Circuit recognized this relation ship between identity and language. n24 Maria Yniguez's statement that her reason for speaking Spanish with bilingual persons can signify "solidarity" or "comfortableness" was both political and personal in its nature and quality. n25 The Ninth Circuit noted that the Amendment singled out not one word but an entire vocabulary. "Words are not often chosen as much for their emotive as their cognitive force." n26 Recognition of the power of language to activate awareness and knowledge, the Ninth Circuit refused to allow English only speaking Arizonans to erase Spanish (and Spanish speaking persons) from the lexicon of Americans. Never theless, the English Only movement in Arizona has escalated to a national platform of intolerance.

Democrat Representative George Miller of California used a simi lar argument to speak in favor of an exception to the English Only Empowerment Act of 1996, House Bill 123 (the "English Empowerment Act") exempting Native American languages. n27 Representative Miller did not believe that Native Americans should "lose themselves." n28 In addressing the House he stated:

The Native American exemption, which applies to languages spoken by the more than 557 American Indian and Alaska Native tribes in this Nation, is important for several reasons.

First, we have a fiduciary duty, a binding trust responsibility, to preserve Indian cultures. An integral part of their culture is the ability to speak their own languages, many of which are disappearing or have even been lost. The tribes are making a concerted effort to revitalize their languages, and I believe that without this exemption, passage of this bill would frustrate those efforts. n29

Notwithstanding the argument for the Native American exception, other members of the House stressed their support of the English Language Empowerment Act in tones echoing paternalism. Republican Representative Barbara Vucanovich of Nevada stated: "The English language empowers each generation of immigrants to access the American dream." n30 Perhaps Republican Representative Randy (Duke) Cunningham of California, the original proponent of the bill, makes the most paternalistic and personal statement in the debate of the English Language Empowerment Act records. He appeals to the sense of the "American family" that he perceives is threatened by overhearing languages other than English spoken in places outside the home - - grocery stores, suburban shopping malls, restaurants, schools, libraries, bookstores, or the post office. He stated:

This [bill] is an honest attempt to combine and empower the American people, and especially those that have limited English skills to help them...
We encourage those folks to learn, and I want Spanish-speaking or Chinese-speaking, I want them to speak those languages at home. This bill does not prohibit that. What the bill does, it says that the official language of the government, of the Federal Government, shall be in English. That empowers people... n31

As the Ninth circuit noted in Yniguez, this case reveals the tension between the "common bonds and a common language" and "the American tradition of tolerance." n32 I think that it is also worth mentioning that the political rhetoric surrounding English Only laws assumes a dichotomy of "we" or "us" (English only speakers, synonymous with Americans) and "they" or "those folks" (synonymous with non-Americans). n33 Intolerance of diversity is not eliminated by recent technologies. Unlike the bright future bursting off the pages of Fortune magazine, the World Wide Web does not change everything. n34

As we enter the computer and electronic wires age, I would like to consider the impact of English Only law on identity in telecommunication. Many use e-mail and list serves to communicate with family located all across the country. One may become frustrated when "speaking" in Spanish through the Internet and other computer-based technologies. In composing e-mail in Spanish, for example, one can not 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. What happens to me when I write electronic mail? when I try to communicate the way I would if the addressee and I were face to face?; a destruction of my identity takes place. What is made available to me to communicate using words rather than pictures are only the primary colors of an artist's pallet; and the colors may not be mixed. In that gap, one is left to the primary colors - crayons. A destruction of self takes place because one can not use the richness of colors available cognitively, but unavailable on the computer.

Who you are, who one is, "who I is", is absolutely linked to how one speaks. The beginning point of this discussion grew from note 5 of Cornell and Bratton's piece. Who am I? I need a word to describe who I am. At some point, I would like to revisit how words that define identity change. I would assess the effect those externally imposed identifiers have on self-identity and on self-esteem.


n3. Cornell & Bratton, supra note 2, at 598 n.7.

n4. Id.

n5. See id.


n7. Id.


n9. Cornell & Bratton, supra note 2, at 598 n.7.

n10. See id. at 612-16 and accompanying notes.

n11. Id. at 598, n.7.

n12. Id. at 676 n.347 (citing and quoting Jorge Luis Borges in an interview by Sonia Moria, Buenos Aires, Argentina (May 1985)).

n13. Id. at 677 (citing and quoting Toni Morrison, Unspeakable Things Unspoken: The Afro- American Presence in American Literature, in 11 The Tanner Lectures on Human Values 121, 146 (Grethe B. Peterson ed., 1990)).

n14. Id.

n15. See id. at 599 n.12 (citing Benjamin Franklin as a nativist linking failure of
German immigrants in Pennsylvania to adopt "our Language or Customs" as threatening to survival of "American" civilization).

n16. 69 F.3d 920 (9th Cir. 1995). The Ninth Circuit of Appeals, sitting en banc, declared the Amendment unconstitutional. The Ninth Circuit of Appeals, sitting en banc, declared the Amendment unconstitutional. On March 3, 1997, the United States Supreme Court vacated the order of the Ninth Circuit, with directions to dismiss Yniguez's action for lack of standing. The seventy odd page opinion of the Court focused on issues of mootness (by the time the case was tried Yniguez had taken a job in the private sector). The Arizona Supreme Court directly disposed of the question of the constitutionality of the English Only Amendment in Ruiz v. Hull. In this opinion, the Supreme Court of Arizona found the English Only Amendment unconstitutional in two respects: 1) the Amendment violates the First Amendment by depriving "limited-English-proficient and non-English-speaking Arizonans of First Amendment of meaningful communication with elected officials; and (2) the Amendment impinges upon the fundamental right to petition the government for redress of grievances as secured to all persons via the Fourteenth Amendment. Ruiz v. Hull, 957 P.2d 984 (Ariz. 1998) (en banc). For this reason, much of the discussion of Yniguez is discussed in the context of insights made by the Ninth Circuit.

n24. The opinion of the Ninth Circuit although ultimately vacated for mootness has been frequently referred to as the substantive opinion of the case. The Arizona Supreme Court agreed with the result and reasoning of the Ninth Circuit in its review of the federal trial court's findings and struck down the Amendment as unconstitutional. See Ruiz v. Hull, 957 P.2d 984 (Ariz. 1998) (en banc).

n25. Yniguez v. Arizonans for Official English, 69 F.3d 920, 935 (9th Cir. 1995).

N27. English Language Empowerment Act of 1996, H.R. 123, 104[su'th'] Cong., 142 Cong. Rec. H9738, 9750 (1996). The bill was subsequently reintroduced January 7, 1997, named after the late Bill Emerson, former House member. Hence, the bill was again voted down under its new short name, the "Bill Emerson English Language Empowerment Act of 1997." The Emerson bill was tailored to exempt Native American languages from its coverage. See H.R. 123, 105[su'th'] Cong, 167 (1997).


n29. Id.


n32. Yniguez, 69 F.3d at 923.

n33. Id.

n34. See J. William Gurley, Banking the New Millenium; The Web Changes Everything, Again, Fortune, June 6, 1997, at 194.
ANTI-SUBORDINATION AND THE LEGAL STRUGGLE OVER CONTROL OF THE "MEANS OF COMMUNICATION": Literal Silencing/Silenciando la Lengua *

* "Silencing the tongue."

Yvonne A. Tamayo **

BIO:

** Assistant Professor, Willamette University College of Law. This essay is an abbreviated version of an Article entitled "Official Language" Legislation: Literal Silencing/Silenciando La Lengua, 13 Harv. BlackLetter J. 107 (1997). Reprinted with permission of the publisher.

SUMMARY: ... The effect of "official language" provisions such as Article XXVIII results in "silencing" much more than the non-English native language of many immigrants in the United States. ... The anxiety over the threat posed by immigrants was more specifically verbalized by the leader of Florida's "English Only" group as he revealed his feelings about the Latino presence in Miami: "I didn't move to Miami to live in a Spanish speaking province ... The Latins are coming up fast. ... Attempts at silencing foreign languages are vividly demonstrated in the role that language politics have played in Miami, the birthplace of the contemporary "English Only" movement in the United States. The irony is that Miami is the city with the largest number of persons born outside of the United States, which is now about 59 percent. ... As a result, fire safety information pamphlets in Spanish were prohibited; Spanish marriage ceremonies were halted; and public transportation signs in Spanish were removed from Miami's streets. ... Assimilation, however, did not reduce the powerful influence that Spanish, my native language, continues to have on defining who I am. ...

[*995]

Writers, bilingual in English and Spanish, have noted the limitations of a single language and the "untranslatability" of certain meanings. Although English is the tool of my public discourse, during my childhood, Spanish was spoken exclusively by all of my family members in our home. Today, the Spanish language continues to provide me with a rich source of expressions that I believe have no equivalents in English. Spanish is still the language of choice between my father and me.

I'd like to talk about how law shapes culture by restricting, or "silencing," language. For some years, the metaphor of "silencing" has been invoked to refer to oppressive effects of law and culture experienced by various groups. Generally, this metaphor has been applied to suggest that prevailing discourse works to exclude narratives and linguistic styles that non-dominant individuals and groups might prefer. Recently, forcible- and not merely metaphysical-silencing has been sought at both the state and federal government levels of the United States, where governmental entities have attempted to impose real silence upon non-English speaking people. n1

[*996] I was born in Havana, Cuba. My family, along with many others, left Cuba in the 1960's to flee Fidel Castro's regime. In 1963, we arrived in the United States. As a result, until age eight, I only spoke Spanish. In spite of our delayed introduction to the English language, my parents, my two brothers, and I all learned to read and write the English language. And, like many others who spoke Spanish as their first language, we all seemingly assimilated into our new American culture.

In my apparent assimilation, I resemble Maria-Kelley Yniguez. In 1988, Maria-Kelly Yniguez worked as a medical malpractice claims evaluator for the Arizona Department of Administration. n2 She was fully bilingual in both Spanish and English. n3 At work, her bilingual abilities allowed her to aid non-English speaking clients who came in seeking help in filing medical malpractice claims against the State of Arizona. n4 She also sometimes chose to speak...
Spanish to other Spanish-speaking people. n5 She did this in order to communicate concepts that were inexpressible in English, including aspects of her cultural heritage, the sense of community and experience shared by Latinos in this country, and a sense of "solidarity." n6

Also in 1988, Arizona voters, by a narrow margin of 50.5 percent, approved an amendment to the state constitution by adopting Article XXVIII, an "English Only" provision. n7 The amendment provides that "the English language is the language of the ballot, the public schools, and all government functions and actions" and is to be used by all government officials and employees during the "performance of government business." n8 It further mandates that all government officials and employees shall "act" in English and no other language. n9 This is to date the most restrictive "language initiative" in the country. Immediately after the Arizona Constitution was amended, Yniguez stopped speaking Spanish at work, fearing that she would be subject to sanctions for violating a mandate of the Arizona Constitution. n10

Yniguez filed a lawsuit in federal district court against the State of Arizona, and alleged that the provision violated her rights of freedom of speech and equal protection under the First and Fourteenth Amendments. n11 On February 6, 1990, the district court granted declaratory relief, finding Article XXVIII overbroad and violative of Yniguez's First Amendment protected speech. n12 The case was appealed to the Ninth Circuit Court of Appeals. n13 On appeal, the court, in a six-to-five decision, struck Article XXVIII as an invalid regulation of speech of Arizona public employees and of the non-English speaking members of the Arizona population's right to hear the speech at issue. n14

On appeal, the group "Arizonans for Official English," supporters of "English Only" legislation and Intervenors in the lawsuit, advanced three arguments in support of the legislation: (1) "protecting democracy by encouraging 'unity and political stability;'" (2) "encouraging a common language;" and (3) "protecting public confidence." n15 The Ninth Circuit rejected the arguments for promoting a common language as a means of promoting unity and political stability. n16 It found that some of the Arizona population desired to hear the speech at issue, and the Amendment restricted not only Yniguez's right to speak, but also the right of the public to receive information. n17 The court also found that government offices were more efficient and effective when the employees could speak a language that the claimants could understand. n18

Lastly, as for the argument that the "English Only" provision protected public confidence, the Arizonans for Official English claimed that allowing government employees to speak languages other than English would lead to "disillusionment and concern" of those who did not under stand them. n19 The Ninth Circuit correctly noted that the disillusionment and concern felt by non-English-speaking people when, for example, they were prevented from obtaining information about a landlord's wrongful retention of a rental deposit or from getting instructions on filing a complaint in small claims court would clearly outweigh any "concern" felt by the English-speaking population over the provision of "English Only" government services in the Spanish language. n20

On March 3, 1997, the U.S. Supreme Court vacated the Ninth Circuit's decision as moot and remanded the case to the district court for dismissal. n21 Although the action was dismissed without the Court reaching the merits, the development of Yniguez v. Arizonans for Official English n22 warrants careful consideration in that the examination of Article XXVIII, the Arizona Language Initiative, discloses the political context within which this "language legislation" was enacted.

The effect of "official language" provisions such as Article XXVIII results in "silencing" much more than the non-English native language of many immigrants in the United States. "Official language" politics, in restricting the auditory aspects of "foreign" languages, also attempt to silence immigrants through exclusion, forced conformity, and domination.

In Yniguez, the Arizonans For Official English expressed a "concern" about the prevalence of immigrants who speak their native language in public arenas, n23 and debate has arisen in which others have touted the "glue of language" as being the most effective means of achieving cultural unity in this country. n24 "Official language" advocates also charge that immigrants do not learn English quickly enough upon arriving in the United States and that "English Only" measures will encourage greater efforts by non-English speaking immigrants to learn English. n25 This logic, though, directly contravenes empirical evidence establishing that immigrants very much want to learn English.

Examples of the demand for English language instruction abound. In Washington D.C., during the 1994-95 school year, approximately five thousand immigrants were turned away from ESL (English as a Second Language) classes. n26 In Los Angeles, some ESL programs are taught twenty-four hours a day. n27
Not only do most immigrants actively attempt to learn English, but they are also losing their native languages at a faster pace than did immigrants early in this century. Previously, it took three generations for an immigrant family to completely lose its native tongue. In recent decades, there appears to be a trend towards monolingual English-speaking by the children of immigrants. 

Orders of linguistic silence to immigrants are not only the state of Florida. Constitutions making English the "official language" of the state of Florida are not only the state of Florida. Constitutions making English the "official language" of the state of Florida. Florida's voters further reinforced their anti-immigrant stance by approving an amendment to the state constitution making English the "official language" of the state of Florida. The majority of Florida's voters further reinforced their anti-immigrant stance by approving an amendment to the state constitution making English the "official language" of the state of Florida. As a result, fire safety information pamphlets in Spanish were removed from Miami's streets. The irony is that Miami is the city with the largest number of persons born outside of the United States, which is now about 59 percent. 

Not long after more than 125,000 Cubans arrived in South Florida through the Mariel boatlift, voters in Dade County, Florida, approved an "English Only" ordinance. The ordinance prohibited county officials from spending money for promotion or use of any language other than English. As a result, fire safety information pamphlets in Spanish were prohibited; Spanish marriage ceremonies were halted; and public transportation signs in Spanish were removed from Miami's streets. The majority of Florida's voters further reinforced their anti-immigrant stance by approving an amendment to the state constitution making English the "official language" of the state of Florida. Orders of linguistic silence to immigrants are not only issued by legislative bodies, but they are also readily dispatched by the judiciary. Consider the recent Amarillo, Texas case in which, during a custody hearing, Judge Samuel Kiser accused Marta Laureano of having relegated her five-year-old daughter to the position of housemaid and having caused her to be "ignorant" because Ms. Laureano had conversed only in Spanish with her daughter. Judge Kiser later apologized to "house maids" for his comment; however, he maintained his position that Ms. Laureano's language preference created an "abusive" home environment for her daughter. In effect, equated the use of Spanish between mother and child with child abuse, which is one of the most deadly forms of domestic violence and aggression. Like "English Only" legislation, decisions such as those handed down by Judge Kiser in Texas boldly endorse the sentiment that immigrants should not be heard.

n2. See Yniguez v. Arizonans for Official English, 69 F.3d 920, 924 (9th Cir. 1995).

n3. See id.


n5. See Yniguez, 69 F.3d at 924.

n6. See Brief for Intervenors-Defendants-Appellants at 3, Yniguez, 69 F.3d 920 (9th Cir. 1995) (No. 92-17087) (citing to Plaintiff's Statement of Facts (CR Doc. 17, par. 9)).

n7. See Yniguez, 69 F.3d at 924.


n9. See id. at 315.

n10. See Yniguez, 69 F.3d at 924; 730 F. Supp. at 310.


n12. See id. at 316.

n13. See Yniguez, 69 F.3d 920.

n14. See id.

n15. See Yniguez, 69 F.3d at 944.

n16. See id. at 944-46.

n17. See id. at 932.

n18. See id. at 942. The Arizonans for Official English did not contest, and in fact acknowledged, that Yniguez's use of Spanish contributed to the efficient operation of her employer. See id. at 924, 942 & n.4.

n19. Id. at 947. Maria Kelley Yniguez did not speak Spanish to monolingual English speakers. Rather, she sought a right to speak another language only when doing so facilitated the performance of her duties, and she only spoke Spanish with Spanish-speaking claimants and attorneys. Id. at 943.

n20. See id. at 947.

n21. See id. at 920; Arizonans for Official English v. Arizona, 117 S.Ct. 1055 (1997), vacated as moot and remanded to district court for dismissal. The Court based its decision on the following findings: (1) grave doubts existed as to the standing of petitioners, Arizonans for Official English and its Chairman, Robert D. Park, to pursue appellate review under the case or controversy requirement of Article III of the United States Constitution; (2) the resignation of Maria Yniguez from public sector employment in April 1990 to pursue work in the private sector, where speech was not governed by Article XXVIII, mooted her claim; and (3) prior to adjudicating the case on the merits, the District Court and the Court of Appeals should have sought, through abstention or certification to the Arizona Supreme Court, an authoritative construction of Article XXVIII. 117 S.Ct. at 1058.


n23. See Yniguez, 69 F.3d at 947.


n25. See Robison, supra note 24, at 2.


n28. See English as Official Language (1996), supra note 26; see also Patrick J.


n32. See id. The following cities are listed in order of population born outside the United States: Miami 59.7%, Los Angeles 38.4%, San Francisco 34%, New York City 28.4%, and San Diego 20.9%. 1990 Census of Population and Housing, Summary Social, Economic, and Housing Characteristics, United States. Table 1: Selected Social Characteristics 1990. U.S. Department of Commerce, Economics and Statistics Administration.

n33. Dade County Ordinance No. 80-128 stated, in pertinent part:

1. The expenditure of county funds for the purpose of utilizing any language other than English, or promoting any culture other than that of the United States, is prohibited.

2. All county governmental meetings, hearings, and publications shall be in the English language only.

3. The provisions of this ordinance shall not apply where a translation is mandated by state or federal law...


n34. See Dade County "Antibilingual" Ordinance, supra note 33 (Dade Cty. Ord. No. 80-128(1)).


In 1993, the Dade County Commissioners sat on a then newly-configured Commission expanded to contain a majority of Hispanics and African Americans. Not until then was the county ordinance finally repealed by a majority of the Dade County Commissioners, having been deemed "a cancer" serving no useful purpose. John Fernandez, United Commission Votes to Dump Dade's English-Only Measure, Palm Beach Post, May 19, 1993, at A1.

n36. The Florida Constitution states in pertinent part: "English is the official language of the State of Florida... The legislature shall have the power to enforce this section by appropriate legislation." Fla. Const. art. II, 9 (1988).


n38. Wilmot, supra note 37.
ANTI-SUBORDINATION AND THE LEGAL STRUGGLE OVER CONTROL OF THE "MEANS OF COMMUNICATION": Lexicon Dreams and Chinese Rock and Roll: Thoughts on Culture, Language, and Translation as Strategies of Resistance and Reconstruction

Sharon K. Hom *

BIO:

* Professor of Law, CUNY School of Law. This essay moves along several levels of "translation." The first is the inevitably distorted translation of my LatCrit remarks, a presentation that incorporated performative elements - visual, music, and story-telling - onto the pages of a written text, especially a law review text. In the absence of a multi-media CD law review format, I have given up the attempt to "translate" my part of the presentation on Chinese Rock and Roll. My presentation also implicated linguistic, cultural and translation issues, the languages of Chinese and English, international/domestic feminist and human rights discourses, and implicit cross-discipline "translations" as I borrow from other literatures and methodologies outside of law. I thank all the participants at the LatCrit III workshop for their generous feedback and encouragement, and the opportunity to learn from the rich LatCrit jurisprudence "under construction." I especially thank Frank Valdes and Lisa Iglesias and the student editors for this space to tease an essay out of part of my conference remarks, and to Juemin Chu for her Chinese calligraphy.

SUMMARY: ... Whether the diary entries were an appropriation of Penelope's story by my son, reaching back thousands of years, across gender differences, and through language and cultural frames, there is something provocative about a Chinese-American, teenage man-child imagining the diary entries of a Greek woman after the fall of Troy. So I begin to rethink cultural appropriation as a possible strategy of resistance and re-vision that may not operate across the neat polar logic of oppressors and victims, or dominant and marginal sites of struggle. ... In this limited space, I would like to draw upon my human rights scholarship and exchange work in China and focus on two related categories of analysis and performance--culture and language - to explore the opportunities and dangers presented by cultural and linguistic appropriation for anti-subordination strategies. ... For example, engendering law refers both to the deconstruction and exposure of the gendered dimensions of legal rules, process, and legal analysis and to the process of introducing a gender perspective to transform the content and methodology of law." ... I ask a Chinese legal scholar how he could still be so clearly committed to continuing his research and theoretical work on political reform and protection of democratic rights through law. ... On a moonlit Miami night, at the edge of the ocean, a group of us laugh, talk, and sing a Hawaiian children's song endlessly until we're hoarse. ...

[*1003]

Good morning. I want to first thank the wonderful conference organizers, especially Frank Valdes and Lisa Iglesias, for their hard work. This is my first LatCrit conference and it has been a very special experience. Because of LatCrit's broad theoretical concerns and inclusive political project to expand coalition strategies, n1 I trust my remarks today on culture and language across a transnational frame will not sound too "foreign." I'd like to take advantage of these supportive, critical and challenging conversations, to think out loud about a couple of ideas that might not fit neatly within traditional legal discourses. Although Mother's Day (tomorrow) is a Hallmark-created holiday, it seemed appropriate to insert a mother-child story as narrative preface. When my son, James, recently pointed out that I might be violating his copyrights in telling stories about him as I often do, I promptly invoked the privileges of the powers of creation. So I begin with a story about my teen age son that suggests I think the complex dialectic between cultural inscription and cultural transformation. After assigning the Odyssey last year, my son's English teacher asked the students to edit and produce a newspaper of the times. The collaborative project that James' small group produced was creative and
very funny, and included a number of his contributions - real estate ads for Mt. Olympus (no vacancies), obituaries on Ajax, Paris, and Achilles, an editorial on fate (can't be avoided), and an opinion poll among "readers" about whether Odysseus should have killed the suitors. There was an "exclusive" - "What Penelope was Really Thinking while Odysseus was Away"--a set of Penelope's "diary entries" re-imagined by my son. The entries are set in the eighth, twelfth, and nineteenth year of the Odyssey, and convey Penelope's loneliness, anger and helplessness in the face of the suitors who have taken over her home, and fear and hope for Odysseus' safe return. I was shocked to read in the entry of the nineteenth year this line - after expressing hope that Odysseus will come home soon, the entry asserts "a woman has needs." My sixteen year old teenaged son writing "a woman has needs"??? Okay, it was clearly time to have a talk.

As I reflect on what was actually embedded in my copyright exchange with my son on his rights to his own life's stories, I am struck by how deeply we both have absorbed the stories of possessive individuum that underlie the dominant western copyright and intellectual property regime. Yet, it is his attempt to (re)imagine Penelope's reality that gives me hope for the possibilities of transcending existing paradigms. Whether the diary entries were an appropriation of Penelope's story by my son, reaching back thousands of years, across gender differences, and through language and cultural frames, there is something provocative about a Chinese-American, teenage man-child imagining the diary entries of a Greek woman after the fall of Troy. So I begin to rethink cultural appropriation as a possible strategy of resistance and re-vision that may not operate across the neat polar logic of oppressors and victims, or dominant and marginal sites of struggle.

Against neo-post-colonialist and imperial histories, the foreign-born, multi-lingual, and cross-cultural common grounds shared by many Latinos and Chinese (and other Asians) in the United States, suggest discursive and transformative resources and insights that Asian and Latino/a critical theorising makes visible in ways that dominate United States race paradigms often elide. In this limited space, I would like to draw upon my human rights scholarship and exchange work in China and focus on two related categories of analysis and performance--culture and language - to explore the opportunities and dangers presented by cultural and linguistic appropriation for anti-subordination strategies. As an example of a cross-cultural feminist intervention in the international human rights arena, or in Berta Hernandez' phrase, an attempt at translating the untranslatable, I will talk about a Chinese-English project on women and law that I co-edited for distribution at the Fourth World Conference on Women in 1995.

As a specific example of the complexities of mass culture as a site of global capitalist commodification, cultural appropriation, and resistance, I'd like to invoke the music of the "founder" of Chinese Rock 'n' Roll, Cui Jian, to invite the listener to imagine as it were, the sound of resistance across time, space, and cultures. I was also originally on the democracy anti-subordination and globalisation intersection panel for this LatCrit workshop, so I think that you will probably hear some continuing resonances of that train of thought. Finally, drawing upon cultural studies frameworks, and focusing on multiple social spheres of meaning production and struggle, I am implicitly suggesting that the roles of law, progressive lawyers and critical legal theory need to be situated within a complex matrix of social transformation processes that include multiple sites of contestation and mediation.

First, to invoke culture is to deploy "one of the two or three most complicated words in the English language." As I use the term culture in this essay, I am suggesting several interrelated concepts and processes reflective of shifting negotiations of meaning and power. Culture can refer to a set of values and institutions, constructed by social forms, practices, and ideological beliefs that are constantly in negotiation. In this sense, language and rock and roll both reflect and constitute contested social forms, practices and ideological beliefs. Culture is also a problematic construct deeply implicated in the history of colonialism. As Nicholas Dirks has argued, culture is a colonial formation and colonialism was itself a cultural project of control. At the same time, it is per haps more accurate to refer to cultures by the way different cultures are interrelated, interdependent, and also often in tension and conflict with each other. The plurality of cultures or reference to "a" culture also signals resistance to an assumed Eurocentric norm as in western "civilisation." Beyond simply acknowledging the discursive complexity of the concept, we need to mine our relationships to these multiple cultures for theoretical and political resources. For example, despite being caught between the crossfire of international human rights debates about universalism and cultural relativism, cultures as a category of analysis, and cultures as materially situated sites of struggle, culture(s) can be sources of transformative insight and power. Cultures are not static. Cultures make us even as we resist and create different, more just social forms, practices and beliefs. We therefore need to interrogate our different invocations of "culture" in different settings and pay critical attention to methodological and substantive
questions. In part, what we "need to understand is not what culture is, but how people use the term in contempor ary discourses." n7 Who gets to define culture(s)? Who uses (mis uses) specific assertions of what is culture (or coded for tradition)? What purposes do various deployments of culture serve? Who benefits? Who is harmed? How do we surface harms and injuries - these questions implicate the responsibility of progressive scholars for knowledge production, legitimization of different forms of knowledge, and responding to the implications of our theoretical work for social transformation strategies.

Language and Translation

"We are the ink that gives the page a meaning." n8

I once wandered into a powerful dream about finding a set of lost dictionaries carefully nestled in silk lined bamboo baskets in an old magical bookstore. For a very long time afterwards, I carried that dream and a sense of loss that I could not and did not buy them while in that dream store. But, when I was working on my English-Chinese Lexicon on Women and Law project, I realized I couldn't buy those dictionaries - we needed to write them ourselves, to reinvent ourselves linguistically and culturally. n9 But we do not write on a blank page.

In locating myself in relationship to language and culture, I am speaking as a Hong-Kong born Chinese who immigrated to the United States as a child. The dialect of my father is Toisan, the rather guttural southern dialect of peasants. My mother speaks Hong Kong Chinese, the Cantonese of Hong Kong princesses. I did not receive formal Chinese language training until graduate study in East Asian Languages and Cultures at Columbia. But then it was not in the familiar languages of home, but in Mandarin, putonghua, n10 the national dialect of The People's Republic of China and a nationalist tool of linguistic and cultural unification and standardization. As a Cantonese speaking person, my putonghua will forever be accented by my southern origins. Reflecting years of traveling and working in China, and speaking putonghua, my Cantonese has acquired a northern accent. To most Chinese speaking audiences, my Chinese is probably "accented" and marked as "outsider." When I listened to the conversations yesterday about people seeing, or thinking in Spanish, I realized that thinking or speaking in Chinese does not translate for me into "an/other" language, but rather invokes the many languages that flow from my cultural inheritance.

As I awkwardly juggle languages - never with 'native' fluency, I hear Margaret Montoya's calls to reclaim our native heritages, to deploy bi-lingualism and mixing of languages and disciplines as strategies of empowerment and to subvert dominant monolingual discourses, and to linguistically reterritorialize public legal discourse. n11 Articulated in a Chinese register, perhaps one small contribution of these remarks to the LatCrit/Asian critical jurisprudence project is to problematize the linguistic territorialities of our native heritages and tongues. For me to linguistically claim my Hong Kong heritage is not to claim some native authenticity, but to confront a former English-speaking British colony. "Returned" to Chinese sovereignty in 1997, in what Rey Chow has named a recolonization, n12 the "hand-over" was marked by public theater of a grand scale and colonial exits with a stiff upper lip, all carried along by mediatized narratives of nativist pride that played well domestically and abroad. The 'return' was referred to as wuiguie (return) in Cantonese, and in English, the hand-over. Whatever the location, Hong Kong was the object being returned or handed over, while the people of Hong Kong were conspicuously absent except as industrious little inhabitants of an essentialized object of praise, the beloved poster child of capitalism. The official hand-over speeches, the swearing in of the new chief executive, Tung Chee Hwa, the provisional legislative council members, and the judges were in putonghua, and for the non-ethnic Chinese judges who did not speak Chinese at all, in English. Cantonese, the language of the Hong Kong Chinese was not spoken at all. In this staged performance, what would it mean as Rey Chow asks, for Hong Kong to write in its own language, that is, not English or standard putonghua, but the vulgar language of the people - the combination of Cantonese, broken English, and written Chinese? What can it mean to maintain Hong Kong's society and way of life, to envision a democratic Hong Kong if its language is not even its own?

On hand-over night, one of my uncles recounted a story about a Hong Kong restaurant that offered a special of a complimentary bottle of English wine. In Cantonese, soong yingkok jiaow, a language play on "to send off (kick out?) the English." We all laughed at this typical Cantonese humor and double entendre. Although the language play echoed the official Chinese nationalistic sentiment, at least I think it suggested that language still retains its potential as a tool for resistance. Indeed, multi-ple meanings that undermine the assertion of monolithic and imposed interpretations, and gestures towards the possibilities of language as a site for the appropriation of new values and meanings. n13
And in my dreams,
I can never quite see clearly enough
I pop my contact lens out of my eyes,
and put them in my mouth,
conscious of their fragility, their inherent danger
They always splinter - glass slivers of vision, and I freeze
Or in dreams, my mouth is full of a sticky dark paste
which gets thicker and thicker
hopelessly cementing my teeth together
burying and trapping my voice
I wake - and dream
of spitting the glass slivers out
Transformed into crystalline words
reflecting the clarity of sunlight through ice
Transparent bridges out into the world
spitting the silencing cement-mud out
spitting out my bloody teeth
Exhaling one long easy breath through
the open wind cave
of my finally freed mouth

The genesis of the English-Chinese Lexicon on Women and Law (Lexicon) can be traced back to a specific moment during a particular conference, "Engendering China: Women, Culture, and the State," held at Harvard University and Wellesley College in 1992. I was sitting in the audience, sans translation headphones, when I began to wonder what were the translations traveling through those headphones to my Chinese colleagues. What were the translations for contingency, subjectivity, counter-hegemonic reification, gender, feminism and so forth - the numerous terms used, assumed as translatable and as translated, in this "cross-cultural" exchange? In the years that followed, I became more and more interested in the pragmatic level of working across differences and increasingly aware of the English-centric context of "international" settings. I wanted to pay attention to the foundational bridges for our interactions, to language itself. Otherwise it seemed to me that as the Chinese expression goes, we were sleeping in the same bed dreaming different dreams. Interestingly, through the years, in discussions with translators and women activists working in Spanish, Russian, French, Arabic, and others languages, I discovered that they also struggled with similar linguistic, cultural, and political translation issues.

n14
Through a process that included workshops, and discussions with Chinese women's studies researchers and activists, my co-editor, Xin Chunying and I began the collection of terms that Chinese women identified as confusing, unclear, or simply incoherent in Chinese translation - a kind of foreign-sounding Chinglish. We coordinated a team of United States-based and China-based volunteers from a wide range of disciplines including law, women's studies, anthropology, history, literature, and psychology. In the end, due to limited resources and time, and a decision that it was more important to have something useful for distribution for the Conference rather than nothing at all, we completed a manuscript of only 175 English terms (out of the over three-hundred terms that were suggested) on women's health, human rights, development, and feminist theories and practices. As an effort to introduce Chinese expressions to non-Chinese speaking readers, we also decided to include 30 Chinese expressions that were in common usage that we felt reflected prevalent Chinese social attitudes about women. I want to briefly talk about a few of these terms to illustrate some of the difficult ties we faced in this task of 'translating the untranslatable' and to reflect on what these difficulties suggest about the complexity of multi-cultural interventions.

"Affirmative action" is a good example of the political incoherency of literal translation. I had seen "affirmative action" once literally translated into Chinese as affirmative action, jiji (as in affirmatively to act). But without any social or historical context to support this phrase in translation, this term was meaningless and conveyed to me a bizarre image of hyperactive people. Another more common translation is chabie duidai yuanze (the principle of dealing with difference). Both translations needed the invocation of a situated civil rights struggle, culturally specific notions of rights, equality and equity, private and public spheres of action, and assumptions regarding the role of government and law. In the end, instead of the more common translation, we adopted a fairly long winded phrase, weile shixian pingdeng er shixing de chabie duidai yuanze (clearly not a Chinese "translation," but Chinglish. However, supported by a general descriptive entry, n15 as the term made its awkward appearance in Chinese, our provisional translation choice retained the situated cultural,
political, and legal resonances of its English genealogy.

"Empowerment," shi juyouquanli ([image]), was another term that presented similar political issues. In our translation discussions, the questions that we struggled with included: What was the source of the power? What verb does one use given different Chinese verbs for power relative to power as from above or from below? Where do we insert and invent the verb for "the power" from within each of us and collectively from groups? In the entry discussion, we adopted several unsatisfactory verb choices, such as, "to get" power and "to receive" power, but settled on the phrase that literally suggested, that empowerment is "to make all with power." n16

In common English usage, engender as a verb means to produce, to cause, or to give rise to. Feminists have expanded its usage and meaning to refer to the process of drawing attention to the ways in which existing social concepts and structures have embodied and perpetuated gendered notions of men and women and their proper roles in society. As a feminist theoretical method, engendering refers to the integration of gender as an analytical category into diverse disciplines and issues. For example, engendering law refers both to the deconstruction and exposure of the gendered dimensions of legal rules, process, and legal analysis and to the process of introducing a gender perspective to transform the content and methodology of law." n17

Feminism is often translated as nuquan zhuyi ([image]), but many of the Chinese women on the project had a distaste for the negative political resonances in Chinese of the chuan (power) and suggested nuxing zhuyi ([image]), literally the 'ism of the female-sex.' We settled on including both translations to acknowledge the ongoing discursive and political negotiations and to signal the non-authoritative intentions of the lexicon and our goals of surfacing different intentions, and translation difficulties. In the entry, we referenced the multiple Western and Third World feminisms and included a discussion of the history of the Chinese translation of Western feminist texts in the early twentieth century and the debate about the two competing translations for feminism. n18

Because time is short, I can only quickly discuss two other terms - gender and sex. In Chinese, sex has been translated as xing /xingbie ([image]). Gender has also been often translated as xing, sometimes xingbie, sex-difference. But some of us on the project team wanted to make a clearer distinction between the social constructedness of gender versus the biological connotations of sex so we suggested shehui xingbie - ([image]). "social-sex." Others in the group pointed to how "weird" this sounded and yes, I had to agree that socially constructed sex is weird. Our entry notes this discussion:

"There is no exact term for gender in Chinese that adequately conveys the social constructed aspect of the concept. In recent years, the term gender has been translated into Chinese as xingbie, or shehui xingbie. Xingbie, which also is used to mean sex, does not convey the contingency implied in the English term and retains the biological connotations of xing. Shehui xingbie, meaning literally "social sex," still has a close affinity to biological sex. The concept of gender as developed by Western feminists is viewed as culturally specific and Western by many Chinese women activists and scholars in women's studies. Nevertheless, a familiarity with Marxist materialism enables many educated Chinese to also perceive human beings as socially constructed and environmentally determined." n19

Take the difficulties briefly introduced by the discussion of these few terms and multiply them a hundredfold, and you will get some sense of the translation, political, and ideological complexities of the project. In addition to the substantive work, the administration, funding, and organization of the project presented enormous challenges. Initially without any funding support, the publication of the finished volume was later generously supported by United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Development Programme (UNDP), and the Ford Foundation. Thousands of free copies were distributed at the Fourth World Conference on Women held in Beijing in 1995.

In some ways, the translation negotiations we engaged in for the Lexicon project were also about cultural appropriations. In a definition that "bristles with uncertainty," cultural appropriation may be defined as "the taking - from a culture that is not one's own - of
intellectual property, cultural expressions or artifacts, history and ways of knowledge." n20 However, the reference points to the "appropriations" of international feminist human rights discourses and their deployment in "domestic" Chinese context, were destabilized by the disporic positionings of the women in the project. n21 Mostly Chinese-born, but educated both in China and in the United States, the Chinese women working on the translation work of the project were simultaneously engaged in cultural importation, exportation, translation, and critical assessments of the "transplants." Questions of who is appropriating what, for whom, and why become a more complex process and negotiation not neatly enclosed within "domestic" frames. The discourses of authenticity and nativism are simply not adequate to address the political and theoretical challenges and opportunities presented by these necessary negotiations.

[*1013] The nightmarish struggles with the Chinese printers for the control of the Lexicon during the final production stage is too long a story to tell. What I also took away from this project was a sense of the pervasive ways political control can be asserted over language, and therefore, over what can be said and thought. n22 Suffice it to say that the frustrations of negotiating through the stifling Beijing heat to resist assertions of "acceptable" formulations, seem in retrospect, almost worth it. In a 1995 reader survey, Zhongguo Dushu Bao, a national Chinese paper (and I should note not a feminist paper by any definition), the Lexicon was named as one of the most important books published in China. An International Ladies Garment Workers (ILGW) union language study group of Chinese immigrant women in New York City also ordered copies of the Lexicon as English-language study material. Beyond its limited print run, I hope that the reprinting and circulation of the book inside China continues, undermining current copyright regimes, even one that purports to protect my intellectual property rights.

CODA: A Little Rock and Roll Anyway

At the end of my LatCrit presentation, despite our moderator dis playing not only the hangman's noose, but the executioner's ax as a sign of my time being up, I managed to squeeze in a few minutes of the music of one of China's most famous rock and roll stars, Cui Jian. Cui Jian's song, Yiwu souyou (I Have Nothing) from 1986, was an anthem for a whole generation of young Chinese, and the Chinese Democracy Movement. In 1989, Cui Jian performed for the thousands of student protesters and hunger strikers in Tiananmen Square. Dressed in battered People's Liberation Army (PLA) fatigues and a Mao jacket, performing [*1014] with his signature gesture of metaphoric defiance, Cui Jian sings while blindfolded with a red piece of cloth. In invoking a powerful subversive critique of Communist Party imposed regimes of meaning, his performance and the song is subversive because in socialist China where every thing is supposed to be better, you cannot claim you have nothing. Under the surface of a love song, in his husky raw voice so unlike the pretty voices of pop Chinese male singers, he pleads: "It's ages now I've been asking you: When will you come away with me? But all you ever do is laugh at me, 'cause I've got nothing to my name ... When will you come away with me?"

China Journal, October 1989

Beijing slowly appears in the gray morning mist--the buses, bicycles, an occasional army truck passes by along on the wet streets. Sometime in the night as we slept, it must have rained. On the corner, in the slight drizzle that is still coming down, an old woman is doing her morning exercises. I watch her rhythmic waving of her arms, back and forth, as if aim lessly directing invisible traffic. Walking in the brisk, cold October morning, I pass two women busy frying fresh fragrant you-tiaos (crullers) for the line of Chinese getting breakfast on their way to work. I am in China again, but the images of our airport arrival, the PLA soldiers waiting at the bottom of the airplane steps and the armed soldiers at key intersections, are chilling reminders this is not the China I left a year ago.

Xidan market in Beijing at night--cooking smells of roasted chestnuts and skewers of meat filled the crowded streets. People were everywhere, shopping, eating, as if life goes on, as if nothing happened. On ChangAn Street, there are no signs or vestiges of the violence and bloodshed just a few months ago. Yet the next day, as I make my way through the crowded rush hour, the loudspeakers blare over and over a message of stability, order, and warning: "Welcome to Xidan ... Keep care of your belongings ... While in a crowd, be more polite to others. When accidents happens, do not crowd or push around. Observe safety and hygiene rules ... Be on your guard against bad elements who make trouble. If you observe bad elements report immediately to 666-6549 ... Bei jing is our great capitol." It is afterwards that I then noticed the public information "arrests" boards on the street, displaying pictures of those who have been captured, together with the weapons confiscated.

[*1015] As Chinese leaders continue to insist, no major changes have been or will be made, only tiao zeng (adjustments). As the facts and the correct
position are set forth in official speeches reprinted in newspapers, and studied in political study, the leadership is clearly retrenching into their either-or worldview in which the maintenance of order is paramount. The "no fire hoses and rubber bullets" or "no one died in the Square truth" is offered to justify the necessity of using tanks and guns to end the threat to Party power posed by the chaos and disorder. The official "truth" - a small group of counterrevolutionaries were responsible for the chaos and bloodshed. Each citizen must continue to engage in self-examination, analysis and criticism.

A Chinese musician friend of mine encourages me not to feel such despair for China. He tells me to not only look at the surface of things as described and reinvented by leaders and officials. The reality is underneath, in the spirit of the people. You have to listen very closely, sometimes without appearing to listen, to hear the messages of the spirit, sometimes released silently like anonymous air balloons carrying messages of defiance floating above the city. I ask a Chinese legal scholar how he could still be so clearly committed to continuing his research and theoretical work on political reform and protection of democratic rights through law. He answers: "At present in China, it is hard to do this work. But the starting point is the future."

As an underground phenomenon that emerged in contrast to state sponsored and controlled tongsu music (officially sanctioned popular music), Chinese Rock and Roll, is one of the key arenas of cultural resistance before and after the 1989 democracy movement. China in the post-Cultural Revolution, post-Mao, open reform period, is a country that one might say has swallowed hope, line, and sinker some of the dominant economic stories of Western industrialized market systems despite resulting inequities and unsustainability of these market "reforms." Yet, within China and in the global Chinese diaspora, Chinese democracy activists, scholars and artists struggle for a more just social order in the face of enormous material and ideological obstacles. These domestic Chinese and global human rights struggles are connected through the interconnected global flows of people, capital, and technology. I think it is deeply ironic that Rock an infiltration of the West, closely tied to the huge multinational record industries, has been now played back, used, reinvented and appropriated by Cui Jian and other Chinese rock musicians like him.

Cui Jian has said that Rock and Roll is an ideology, not a set musical form. He understood this notion of culture as an arena of struggle. Cui Jian's music is a powerful reminder of the subversive capacity of mass cultural forms to undermine, and evade state mechanisms and regimes of political control over thought, language, and the imagination. Trained as a classical musician, a wonderful trumpet player in fact, Cui Jian played with the classical Beijing music conservatory until his Rock and Roll life force him to leave. By reinventing Chinese folk songs, even sacred Army songs, inserting traditional Chinese instruments, and the distinctive singing styles of barren desolate or vast mountainous landscapes into his music, Cui Jian geographically displaces the West in his appropriations of Western Rock. At the beginning of one his concerts in 1989, he tells the audience: "If Western Rock is like a flood, then Chinese Rock is like a knife. We dedicate this knife to you."

Under the full perfect moon in the endless Beijing sky
Young people sitting on the wooden railings lining the covered walks of Erta Park,
Perched on the gray shadows of rocky islands
in the middle of the lily ponds black waters,
thin students in white short sleeve summer shirts,
young women in spandex leggings,
teenagers with frizzed out shoulder-length hair,
metallic and leather collars and wristbands,
They defy the night, screaming, dancing to
the electronic blasts of banned Rock and Roll
Beer bottles thrown
Landing in splinters of glass and beer showers
Xiao He, in a tight red tank top, muscled arms gripping the guitar
His hoarse "blow it up!" crashing
through the huge speakers on both sides of the stage,
And the response of the crowd
Fists up, lit matches and cigarette lighters
hundreds of flickering firelights
[*1017] fill the darkness of the gardens
New offerings to The Temple of the Sun

In the human connections engendered by the LatCrit conference that made it so powerful and empowering, I also hear music. On a moonlit Miami night, at the edge of the ocean, a group of us laugh, talk, and sing a Hawaiian children's song endlessly until we're hoarse.
Weaving through our theoretical work, music is a way to share and reclaim our spirit resources. In the Asian American movement of the sixties, community artists like Chris Iijima (now a law professor), Joanne Nobuko Miyamoto, and "Charlie" Chin performed songs that brought people together, that expressed outrage against the exploitation and suffering of our peoples, and that celebrated our strengths. In building a multi-coalition progressive movement, we still need songs of outrage and celebration. I suggest the formation of a "Chorus for Justice," a chorus in which anyone can sing, in which we teach and learn each other's songs, a chorus in which we sing in multiple languages, invoking the power of diverse and rich cultural ground, reappropriating mass culture as a site of struggle and reconstruction—a chorus that will teach us to listen for, and to nurture the music of transformative resistance and celebration.

FOOTNOTE-1:


n4. Raymond Williams, Keywords: A Vocabulary of Culture and Society, Revised Edition 87 (1983).


n6. In the context of debates about "Asian" perspectives on human rights, I have argued that the polar logic and state-centric paradigm that dominates these debates needs to be critically examined and opened up to include powerful transnational actors, international, regional, and domestic NGOs, and grassroots activists. See Sharon K. Hom, Commentary: Re-positioning Human Rights Discourse on "Asian" Perspectives, 3 Buff. J. of Int'l L. 251 (1996).


n8. From a detail of artist Glenn Ligon's piece, "Prisoner of Light No.1," shown at the Max Protech Gallery.

n9. Whenever I invoke dreams upon academic ground and begin to feel nervous about legitimacy, I remind myself of the words on a wonderful T-shirt that Dean Rennard Strickland sent out one holiday season. It said "Dreams have power."

n10. I use the pinyin phonetic system to indicate the putonghua pronunciation. This system was developed in the mid-1950's by the Chinese Communists and has been adopted as the standard romanization system on the mainland.


n13. I reflect on the return in a piece constructed out of a series of journal entries that travel from the Chinese Consulate in New York City, to Beijing, to Hong Kong and back to New York, a kind of 'homing towards disappearing origins.' See Sharon K. Hom, Return(ing) Hong Kong: Journal Notes and Reflections, 23 Amerasia J. 55 (1997).

n14. For a discussion of the issues presented for women human rights activists working in Spanish, see Claudia Hinojosa, Translating Our Vision: Organizing Across Languages and Cultures, Global Center News, No. 4, 8-9 (Summer 1997).

n15. The entry reads: "Affirmative Action originally referred to the policy adopted by the United States. Federal government requiring all companies, universities, and other institutions that do business with the government, or receive Federal funding, to take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, religion, sex, or national original."
The term has since come to refer to programs designed to remedy effects of past and continuing discriminatory practices in the recruiting, selecting, developing, and promoting of minority group members. It seeks to create systems and procedures to prevent future discrimination and is commonly based on population percentages of minority groups in a particular area (i.e. quotas). Factors considered are race, color, sex, creed, and age. Affirmative action often involves timetables and numerical goals, which has aroused some of the fiercest public policy debates. Opponents of affirmative action have charged that these policies can only be achieved by "reverse discrimination" against white males. International women's rights NGOs have also advocated the adoption of quota percentages, timetables, and affirmative action training programs as tools to address the existing gender imbalance in the decision-making levels of United Nations and governmental bodies."

Hom and Chunying, Lexicon, supra note 2, at 12-14.

n16. The entry reads: "Empowerment refers to a process by which people reclaim power over their own lives and communities. It refers to both an individual and collective process. The term empowerment was first systematically used by the Black Power Movement in the United States. This movement emerged in the 1960's as a militant response to perceived failures of the Civil Rights Movement to make real improvements in the lives of black people. Militant black power leaders advocated the removal of power from the white-dominated power structure to improve the condition of black people, with some groups advocating the use of violence. These radical groups were crushed by the authorities, and many blacks turned to electoral politics as an empowerment strategy. The empowerment concept was adopted by other social movement groups in the 1960's, including the Asian American Movement, and the women's movement. In the national and international arenas, the specific strategies for individual and collective empowerment include consciousness-raising and education about the causes of inequality and oppression and grassroots organizing to address particular issues such as nuclear disarmament, violence against women, or environmental protection." Hom and Chunying, Lexicon, supra note 2, at 100.

n17. Id. at 102.

n18. Id. at 128-132.

n19. Id. at 146.


n22. In 1963, Mao had asserted, "one single [correct] formulation, and the whole nation will flourish; one single [incorrect] formulation, and the whole nation will decline." Michael Schoenhals, Doing Things With Words in Chinese Politics 2, 3 (1992). Under the Chinese Communist Party, control over political expression by the state is accomplished through a politicized criminal enforcement system, regulation of the mass media, attempted restrictions on use of technology, and direct control over language through tifa (formalized approved language formulations proscribing and prescribing appropriate terminology). For example, in 1965, the formulation, class society (jieji shehui), was inappropriate for use in a socialist society, because socialist society was and must be distinguished from the class societies of the past. Therefore, only the formulation, you jieji de shehui (a society that contains classes) was correct. Schoenhals, supra at 2-7. However, the power and relationship of language to material and political order goes back to imperial China when official lists of taboo terms (bihui) were compiled and enforced. "In the Analects, Confucius argued that when names are not correct and what is said is therefore not reasonable - the affairs of the state will not culminate in success, and the common people will not know how to do what is right. Consequently, the Prince is never casual in his choice of
words." Schoenhals, supra at 2. In contrast to the legal struggles in the United States against English only laws for example, as China attempts to build a "rule of law," law is not the means of control over language, but the possible tool by which political power can be controlled and made democratically accountable.

n23. The production, distribution, performance, and content of Tongsu music were circumscribed by the ideological imperatives of the CCP. Tongsu music served two functions: propaganda and a complex and integral role in the debates in China about cultural "self-reflection" (wenhua fansi) and "roots seeking" (xungen). Andrew F. Jones, Like a Knife: Ideology and Genre in Contemporary Chinese Popular Music 4 (1992).

n24. In 1978, five transnational music corporations controlled through ownership, licensing, and distribution, more than 70 percent on an international music market of more 10 billion dollars. By 1987, this market had grown to more than 17 billion dollars. See Reebee Garofalo, Understanding Mega-Events: If We Are the World, Then How Do Change It?, In Technoculture 253 (Constance Penley and Andrew Ross, eds (1991).


n26. The old city of Beijing was marked by temples where the imperial offerings and sacrifices were made, for example The Temple of the Sun (Ertan), The Temple of the Moon, (Yuetan), and The Temple of Heaven (Tian Tan). These Temples still stand: public spaces, tourist sites, and as I suggest in this poem, sites for potentially subversive new "offerings."

ANTI-SUBORDINATION AND THE LEGAL STRUGGLE OVER CONTROL OF THE "MEANS OF COMMUNICATION": Finding the Me in LatCrit Theory:

Thoughts on Language Acquisition and Loss *


John Hayakawa Torok **

BIO:

** Columbia Law School, J.S.D. expected 2001. I thank the editors at the Texas Hispanic Journal of Law and Policy of the University of Texas School of Law for their critiques.

SUMMARY: ... In Part V, I assert that the United States white-over-Black paradigm is the mother tongue for United States race discourse. ... My mother's mother tongue is Japanese while my father's mother tongue is Hungarian. ... Thus, I lost my mother's mother tongue, something my mother now deeply regrets and which she makes me regret too. ... As I listened to her, I realized I had heard talks like hers before, not in this particular room in Miami Beach, but in Washington D.C. leadership training seminars organized by Japanese and Chinese American civil rights organizations. ... I believe this language is the mother tongue of United States race discourse. ... However, just as, English has become my mother tongue, the white-over-Black paradigm has become the mother tongue of American race discourse, displacing what I call the "colonizing settler-over-native" language. ... In other words, as we center Latina/os in critical race discourse, we must continue to attend to the white-over-Black mother tongue; however, we must learn to incorporate the settler-native racialization into our discussion. ... [*1019]

I. Introduction

I have been invited to join an exciting, collective intellectual and political enterprise, centering Latina/os in critical race discourse. The third LatCrit conference continues the LatCrit Theory project, building both community and knowledge in the service of transformation. The four principal goals of LatCrit Theory are (1) knowledge production, (2) the advancement of transformation, (3) the expansion and connection of struggle(s), and (4) the cultivation of community and coalition. n1 Celina Romany n2 suggested a fifth goal at the opening plenary, strategic knowledge. n3

In this essay, I reflect on LatCrit Theory through the lens of my personal and intellectual history. In part II, I present background information on my heritages, ancestry, citizenship, and multinational childhood. In Part III, I focus on the idea of language acquisition and loss by discussing how I learned or did not learn Japanese and Hungarian, and how English became my mother tongue. In Part IV, I relate language to outsider jurisprudence by discussing how the "languages" - in other words knowledge about paradigms of racial and other forms of subordination - that I have learned shape the intellectual communities I move within. I argue that learning many languages is necessary for sophisticated and effective anti-subordination work. In Part V, I assert that the United States white-over-Black n4 paradigm is the mother tongue for United States race discourse. n5 I use language as a metaphor for race paradigms, and I examine the limitations of the white-over-Black n6 lan guage for understanding Latina/o and Asian American racialization. I argue specifically that another language, which I call the "colonizing- settler-over-native" language, declined when white-over-Black became the dominant language through which racism is understood. I suggest that this buried language may help us better understand the racialization of Latina/os and Asian Americans. I
conclude in Part VI by drawing out some implications of American racial history for how we understand contemporary developments in immigration-related practices and policy.

The following poem, which raises questions about the complexity of identity and community, might also be a reading of the LatCrit conference:

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cultural politics
i have a hard time
defining what my community is.
i work with people
to build a place for myself,
a sense of home,
[1021] making a heritage festival
working to gather
people
and i remember a story
i think i read once
about a naive activist
giving a rap
then feeling abashed when
one of the audience said
"we have a word for that:
colonization."

II. Background

I am the child of a refugee and an immigrant, born in the U.S.A. on the Fourth of July. As a non-white person, I claim American-ness in a country that conflates citizenship and whiteness. My mother is an immigrant from Japan, who came to the United States after marrying my father against her father's wishes. My father had arrived earlier as a refugee from Hungary, having been active in the 1956 Hungarian uprising. Despite both my parents being naturalized citizens, we left the United States when I was six. I returned to my birth country at nineteen to attend college at the University of California at Santa Cruz. Although English-speaking and born here, I too consider myself in many ways an immigrant - and thus, a settler.

I am a child of transnational capital. My father worked for the Anglo-Dutch multinational Shell Oil from 1970 until 1981. Our family moved from one Shell location to another - we lived in England, Japan, Malaysia, and Brunei over the years. I was exposed to many languages and cultures, which eventually lead to a cosmopolitan outlook and limited multilingual skills. However, as a child I was so invested in learning, and perhaps, thereby becoming English, that I did not value the experiences or take seriously the opportunities to learn other languages.

Certain experiences in my childhood reflected the continuing legacy of British colonialism. For example, in Brunei, I attended a summer camp for Shell children organized by the Tenth Princess Mary's Own Gurkha Rifles Regiment. Gurkha or Gorkha is a town in central Nepal on a hill overlooking the Himalayas from which British troops were recruited. These soldiers gave us jungle survival and military training ostensibly to help fight the "communist guerillas," which was heady stuff for a fourteen-year old boy. In addition, I attended an "English public school" - actually a private boarding school for boys in England. I believe that the school was founded in the 1860s for the purpose of training administrators for the British colonies.

This account makes clear that my early life was a privileged one, but it was not without experiences of prejudice and discrimination. The following should be suggestive. In Sarawak (Malaysia) and Brunei, on the island of Borneo, we lived in Shell residential camps that were racially segregated based on occupational stratification - white officers and Asian men. My father was white, and my mother was Asian. As children, my sisters and I participated in the discussion between our parents about whether the white officers' club or the Asian men's club was more "comfortable." My father was more comfortable in the white club.

Another instance is that in boarding school in England, I was routinely asked, as a joke, whether I lived in a grass hut.

I recently learned that my English former guardian is now the Deputy Director of the Bank of England. My father retired in 1998 as a United Nations civil servant based in Bangkok, Thailand. His job involved technical consulting to Asian governments on energy resources development. Both are alumni of Columbia Business School. Some believe that one objective of the United States war in Vietnam was to create a favorable investment climate for multinational corporations, including for the extraction of resources such as oil. The war's effects continue into the present:

school assignment
with an uzi killed
one cambodian and five vietnamese children
six to eight years old
in Stockton, California
he just sprayed the playground with bullets
killed six wounded thirty Asian kids
just like that
some say
he said "victory"
before he pulled the trigger of the revolver
he'd put to his right temple
the police said it was not racial
Koppel on Nightline failed to ask if it was racial
today my child
has an assignment from school
write about a current event
who what where when why
he's scared to go to school now
asks, is everybody inside yet?
when he asks me why
I look into his eyes
and know no answer

Finally, I am the child of an artist. My mother is one
of four or five independent female artist-potters in a
town of over four hundred potters in Bizen, Japan. She
makes a wood-fired stoneware pottery called Bizen-yaki, well known in Japan. This is a non-English
cultural form that I have some access to. While I can
appreciate her art, I am unable to speak with her in her
native language.

My mother's mother tongue is Japanese while my
father's mother tongue is Hungarian. Japanese and
Hungarian were my first languages. At an early age,
my parents spoke Japanese at home. Further, while
living in Hungary with my grandparents, I learned
Hungarian. When I started school, my parents were
determined to see me succeed in English-speaking
societies; therefore, they began to speak mostly
English at home. This meant my mother had to learn
English too. Before college, I learned Hungarian again,
with the help of a tutor, while living in Hungary for
about seven months. I studied Latin, French, German
and a little Russian in grade school. I studied Japanese
three times, once in grade school and twice in college,
but did not acquire the language.

Thus, I lost my mother's mother tongue, something my
mother now deeply regrets and which she makes me
regret too. I stumble along in English when I visit
Japan and am dependent upon my sister Juli's Japa
nese language skills. I am unable, without help, to
communicate with my grandfather, aunts, uncles and
cousins because of my almost non-existent Japanese.

I suspect immigrant children often lose family and
history through losing their parents' language because
there is strong pressure to learn the language of their
new country. In some cases, such as the late nine
teneth and early twentieth century placement of Native
American children, who of course were the children of
conquered peoples, not immigrants, in Christian
boarding schools designed to teach Anglo-American
settler language, culture, and religion, the
disassociation from their native language, family and
culture was intended. My parents, presumably like
many other immigrant parents, desired to see their
child succeed in English-speaking societies. This
combined with the intolerance I experienced from
school peers for linguistic difference made me escape
learning my parents' native languages. Through learn
ing the English language, I became an insider in an
English-speaking society. Persons who do not speak
English, where English is the dominant
language, are outsiders to the extent that society does
not provide translation and interpretation services on
demand. The pressure of English-language conformity
made me lose my mother's language, and broke my
connection to my maternal relatives and their culture. I
thus became an outsider in my mother's family.

Early in the LatCrit III conference, Paulette Caldwell
asks what may be the other question to this
gathering. What are we saying when we say we are
outsiders? Are we not really, in some sense, insiders?
I am both an insider and outsider at the LatCrit
Conference - an outsider as a graduate student and
first-time LatCrit conference participant and an insider
because I know many other participants from my
participation in the Critical Race Theory movement.
LatCrit, at first glance, is a conference for Latina/o
law professors. I am not Latina/o, although I could be.
Nor am I a law professor.

I was invited, however, to join the community of
critical race scholars some time ago, and that
community brings me to this conference and
draws me to law teaching. Through this community
and my reading, I have acquired some ease with critical legal discourse. I have learned the language. In our work against subordination, we need careful description and analysis, but I wonder about that language. I live with a philosophy professor whose training is continental philosophy. Critical legal scholars often draw upon translated continental philosophers's work. Thus, many of the words I use, that seemed familiar, are suddenly foreign.

As I see it, the purpose of anti-subordination legal theory is to articulate justice and related legal claims through attention to the experience and perspectives of subordinated persons, communities and peoples. LatCrit Theory continues that enterprise, along with the Queer Legal Theory, Feminist Legal Theory, and Critical Race Theory movements in legal scholarship. Whether we call these Outsider Jurisprudence or Perspective Jurisprudence, the fundamental objective of all these movements is the same - advancing human liberation. Careful attention to the exclusions in our discourse inevitably results in the articulation of further and deeper critiques. As I understand it, LatCrit Theory arises in part out of a critique of Critical Race Theory as experienced by Latina/o participants in the Seventh Annual CRT Workshop, which was held in 1995 in Philadelphia.

Mari Matsuda has urged us to embrace an ethical commitment to learn about and address subordination - to look to the bottom. She conceptualized outsider jurisprudence: Outsiders are "women, people of color, poor people, gays and lesbians, indigenous Americans, and other oppressed people who have suffered historical under-representation and silencing in law schools." She uses the term to avoid using 'minority,' because outsiders collectively are the numerical majority. It is "not intended to deny the need for separate consideration of the circumstances of each group. It is a semantic convenience used here to discuss the need for epistemological inclusion of the views of many dominated groups." Outsider jurisprudence has been critiqued.

One agenda of this LatCrit Conference is to relate outsider jurisprudence to national public policy. Therefore, Maria Echaveste, a Latina, of the White House Office of Public Liaison, was invited to speak about the President's Initiative on Race and White House policy formulation on bilingual education. As I listened to her, I realized I had heard talks like hers before, not in this particular room in Miami Beach, but in Washington D.C. leadership training seminars organized by Japanese and Chinese American civil rights organizations. Talking with us, she gave us an illusion of access, allowed us to genuflect to power and to become insiders in the language of policy in and through her talk. Ms. Echaveste herself seemingly cares about the Latina/o condition. She attends and may speak at White House meetings; her inclusion makes it seem like we are represented.

Learning the language of public policy may help us to participate in formulating policy. Learning the language of Critical Race Theory helped me become an insider in the community of critical race scholars. Learning the language of American race relations - the white-over-Black paradigm - helped me to function in the context of anti-racist politics. However, language also limits understanding.

V. American Race Theory and LatCrit Theory

A language acquisition project I have sustained is the white-over-Black paradigm within the United States. When I studied race, the focus in most of my coursework was white racism and Black subordination. Often, the experiences of Native Americans, Latina/os and Asian Americans were invisible. I thus learned the American language of race is the white-over-Black paradigm. I believe this language is the mother tongue of United States race discourse.

However, just as, English has become my mother tongue, the white-over-Black paradigm has become the mother tongue of American race discourse, displacing what I call the "colonizing settler-over-native" language. I mean by this the set of understandings developed by European settlers and their descendants about "Indians" in North America during the seventeenth through nineteenth centuries. This paradigm explains: (1) the ideas that supported the dispossession, slaughter, and removal of indigenous peoples, (2) how those ideas changed over time, and (3) how those ideas were embedded in American law and culture. The work on articulating this paradigm has begun in Critical Race Theory.

My post-secondary schools made the white-over-Black language available to those who chose to learn it, and also permitted study of other non-whites. I read widely in Asian American history in college and then law school. In this way, I became bilingual in my knowledge of African American and Asian American subordination. I continued to read in these areas, and then expanded my reading to include Latina/o and Native American subordination in and through law. Parsing racial subordination in its full complexity requires multilingual knowledge. As a critical race scholar and legal historian, given my limited multilingualism, I try to avoid making overbroad claims.
To understand race in America we need both the white-over-Black language and the settler-over-native language. As I show below, the settler-over-native language is necessary, but neither language alone has vocabulary adequate to describe Latina/o and Asian subordination in American law and culture. Latina/o and Asian American subordination derived in part from the legal ideas and practices developed in the subordination of Indians. n40 There are four analogies n41 to settler treatment of North American indigenous peoples - (1) wars of conquest followed by treaty-making, n42 (2) failures of treaty enforcement, n43 (3) forced removal [*1030] and concentration in reservations/camps, n44 and (4) forced cultural - including linguistic - assimilation. n45

First, Native Americans were deprived of land by treaty on numerous occasions after wars of conquest. n46 Latina/o and Asian land similarly came into the possession of the United States through the Treaty of Guadalupe-Hidalgo after the Mexican-American War in 1848 n47 and through the Treaty of Paris in 1898. n48 Second, although the treaties often contained guarantees of certain rights to the conquered peoples, those guarantees generally were honored in the breach. n49 Third, forced removal and mass imprisonment of peoples and populations affected both Native Americans and Asian Americans. n50 Finally, conquered peoples and populations and their children were often required to learn English.

The education of Native American children was a colonizing mechanism because the children became alienated from their native languages and cultures and thus susceptible to guidance and control by the colonizers. n51 The educational program ideal emphasized speaking only English in sexually segregated boarding schools distant enough from the children's parents to ensure that the parent's cultural and linguistic influences would not subvert the educational mission. n52

While the white-over-Black paradigm does not emphasize these instances in its discussion of race, it nonetheless remains significant to understanding Latina/o and Asian American racialization. For example, the questions of color hierarchy and its relationship to the control of [*1031] enslaved persons or non-free labor are analyzed in the white-over-Black paradigm. Those analyses may provide insights, for example, into color hierarchy among Latina/os and Asians. A further benefit of the white-over-Black paradigm is, however, that it helps ensure a necessary focus on white supremacist ideology in both race critique and anti-racist politics. n53

One insight LatCrit Theory may bring to the white-over-Black paradigm is that discussions of Black politics often do not disaggregate American Blacks from immigrants and refugees from Haiti, Cuba, Jamaica, or other places in the Caribbean or Central and South America, many of whom are of African descent. Such immigrants and refugees face issues around linguistic and cultural assimilation comparable to those faced by Asian and Latina/o refugees and immigrants compounded by color hierarchies. Thus, the white-over-Black paradigm arguably misses ethnicity for some African descent migrants.

The white-over-Black and settler-over-native languages developed concurrently because European settlement and African enslavement and Indian de-territorialization occurred simultaneously in the colonies, and then the United States. n54 The colonial era Black and Indian languages preceded the development of scientific racism. n55 With the development of scientific racism in the nineteenth century, white-over-Black grew in salience. n56 At the end of the nineteenth century, with the end of wars of conquest against Indians, historian Frederick Jackson Turner articulated his thesis that the frontier experience had a lasting, permanent impact on American character and society. n57

Thereafter, I believe the need for the settler-over-native language for understanding race and justifying the subordination of Native Americans declined in the domestic context. Interestingly, the century's end also saw the Spanish-American war, which involved the Philippines, inaugurated a series of twentieth century American wars in the Caribbean and Central America, as well as in Asia - against Japan, Korea and Vietnam. Unlike the American wars against Indians and Mexicans in [*1032] what became the continental United States, the wars in Asia did not result in European settlement and Asian de-territorialization.

Historian Vincent Harding wrote, the "historical sufferings of our [Black] foreparents and the coming life of our children demand that we make sober estimations of the possible directions of a society which has produced the near decimation of the native population of this land, atomized tens of thousands of Japanese, and destroyed a massive portion of Indochina and its population." n58 It is worth remembering that Dr. W.E.B. DuBois chose the word "Colored," over "Afro-American" or "Negro," when naming the National Association for the Advancement of Colored People ("NAACP") to proclaim the NAACP's "intention to promote the interests of dark-skinned people everywhere[.]" n59

LatCrit Theory argues that we must center Latina/os in critical race theory because the white-over-Black language marginalizes Latina/o racialization. I argue here that the settler-over-native racialization language, lost when white-over-Black became the mother tongue,
may have much to tell us about both Latina/o and Asian American racialization. In other words, as we center Latina/os in critical race discourse, we must continue to attend to the white-over-Black mother tongue; however, we must learn to incorporate the settler-native racialization into our discussion. Therefore, when we speak of and learn about and work against subordination, let us learn and speak many tongues.

The more limited our understanding of the problem - racism and its intersection with other forms of subordination - the likelier it is that our anti-subordination strategies both domestically and internationally will be inadequate. Mari Matsuda observes that the way to understand "the interconnection of all forms of subordination is through a method I call "ask the other question." When [we] see something that looks racist, [we should] ask, "Where is the patriarchy in this?" When [we] see something that looks sexist, [we should] ask, "Where is the heterosexism in this?" When we see something that looks homophobic, [we should] ask, "Where are the class interests in this?"

"Working in coalition forces us to look for both the obvious and non-obvious relationships of domination, helping us to realize that no form of subordination ever stands alone." n60 A multilingual understanding of subordination, or - to use another Mari Matsuda concept, articulated at the first National Women of Color and the Law Conference, [*1033] multiple consciousness as jurisprudential method n61 - is required for effective anti-subordination work. This principle applies not only to gender, sexuality and class intersectionalities, but also to the interaction among the racialization processes of the groups now called Native American, African American, Asian American, and Latino/a.

V. Conclusion

"Like slavery, conquest tested the ideals of the United States. Conquest deeply affected both the conqueror and the conquered, just as slavery shaped slaveholder and slave. Both historical experiences left deep imprints on particular regions and the nation at large. The legacy of slavery and the legacy of conquest endure, shaping events in our own time." n62

I hope this essay helps promote the progressive internationalism n63 that Anthony Farley's n64 remarks directed us towards. Europeans colonized indigenous peoples in the Americas, Asia, and Africa.

The following poem may help us be clear in our anti-subordination work. n65

```
rice n66 rice
au naturel
is brown
[*1034] hulled
and polished
it is white.
did you know
when they introduced white rice in Asia
hundreds of thousands
died
of malnutrition?
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Laura Gomez n67 remarked n68 that we need to examine, within Chican/o identity, the hatred of the Indian-ness and African-ness in ourselves. This would be valuable at the personal, historical, and cultural levels not only for its own sake, but also because it opens a window into race both in the United States n69 and in the Other Americas. n70 These Americas are the source of much contemporary migration. n71 At least in this century, migration to the United States Central and South America, and from the Caribbean and from Asia, may at least partly be attributed to the effects of American foreign policy on those peoples and areas. That most of these immigrants are non-white is, I believe, connected to the change in immigration law towards more restriction and the increasingly harsh enforcement of the law. n72

We do well to remember the reasons why people migrate, as the following poem reflects:

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exile n73 exile is
when your brothers
[*1035] and friends
are not there any longer
because they died in the war
exile is
when home
is not home any longer
when you know
if you go back
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Describing the Black scholar's vocation in 1974, Vincent Harding wrote that our calling requires us "to speak truth to our people, to speak truth about our people, to speak truth about our enemy - so that black men, women and children may build beyond the banal, dangerous chaos of the American spirit, towards a new time." n74 As colonized peoples cannot honestly be studied in isolation from their colonizers, he encouraged the production of "precise, carefully documented studies of the educational, political, economic, military, and cultural systems of white oppression." n75 He recognized, finally, that becoming "personally involved in the concrete, active struggle for liberation, entering deeply into its life, and opening our own lives to its risks, is, of course, the most unrespectable aspect of the vocation[.]

n76 It is "not enough for people to be angry - the supreme task is to organize and unite people so that their anger becomes a transforming force." n77

A multilingual approach to race allows us to see that the movement to restriction and strict enforcement in contemporary immigration law and policy is connected to American racism. n78 The white-over-Black language gives us some, but not enough, vocabulary to understand a political and cultural climate that permits the routine denial of human rights n79 to non-white, undocumented persons coming into the United States. Indian conquest and resettlement and extermination, n80 Latina/o conquest, Asian exclusion, as well as African enslavement and subordination should frame our reading of contemporary developments in the immigration arena.

White supremacy was established as an organizing principle for the American settler colonial state through a violent historical process. Understanding how that principle developed and is maintained helps put contemporary immigration-related human rights abuses in their proper context. If cultural, linguistic and racial diversity, rather than white supremacy, were central to American national identity, there would be no need for immigration restriction, English Only movements, and the violence at the border.

FOOTNOTE-1:


n2. Professor of Law, C.U.N.Y. Law School. I submitted the poems included in this essay as part of my paper for her Jurisprudence class at C.U.N.Y. law school. All poems Copyright John Hayakawa Torok © 1989. All rights reserved.

n3. By this I understood her to mean knowledge about relations of racial and gender power at law schools with the purpose of intervening to support Latina/os in law teaching when necessary to either maintain continued Latina/o presence, to improve representation, or to advance individual careers.

n4. Winthrop D. Jordan, White over Black: American Attitudes Towards the Negro 1550-1812 (1968, 1971 reprint). I use "White over Black" to allude to Jordan's germinal historical work. For some years, I have wondered whether to use "ovular" instead of "seminal" in discussing foundational work in a field, and I am grateful to Professor Adrienne Davis of American University - Washington College of Law for the "germinal" formulation.

n5. Viewing "race in the United States only through a binary lens is an imperfect analytical tool ... [but] it may be unwise to totally abandon the Black-White paradigm." Taunya Lovell Banks, Both Edges of the Margin: Blacks and Asians in Mississippi Masala, Barriers to Coalition Building, 5 Asian L. J. 7, 39 (1998) (emphasis in original). While Banks says it may be unwise, I believe it is unwise.


n7. Professor Linda Greene, in her review of Patricia Williams, The Alchemy of Race and Rights: Diary of a Law Professor (1991), notes that "to illuminate the oppressive effects of fundamental jurisprudential forces, Williams moves
Beyond conventional legal and scholarly techniques[,]" Linda Greene, Breaking Form, 44 Stan. L. Rev. 909 (1992). By including poetry in an essay on critical legal theory, I too aspire to commit "a literary act of "carefully composed intelligent rage" directed at a legal system that selectively admits and excludes those it chooses to protect." Id. at 925 (footnote omitted). There is precedent for poetry in legal scholarship, and poetry is related to anti-subordination work. See Mari Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 Harv. C.R.-C.L. L. Rev. 324, 333 n. 34, 336 nn. 55-56.

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n10. I realize this may, for some, be a controversial proposition. The formal law of American citizenship was racially exclusionary between 1790 and 1952. See Act of March 26, 1790, ch. 3, 1 Stat. 103 (1790); Act of July 14, 1870, ch 254, 7, 16 Stat. 254, 256 (1870) (providing, respectively, that "free white persons" and "aliens of African nativity, and persons of African descent" were eligible for naturalization); Act of May 6, 1882, ch. 126, 14, 22 Stat. 58, 61 (1882) (codifying ruling in In re Ah Yup, 1 F. Cas. 228 (D. Cal. 1878) that Chinese were neither white nor Black and therefore ineligible for naturalization); Petition of Easurk Emsen Charr, 273 F. 207 (W.D. Mo. 1921); Ozawa v. United States, 260 U.S. 178, 43 S. Ct. 65 (1922); United States v. Thind 261 U.S. 204, 43 S. Ct. 338 (1923) (Koreans, Japanese, and Asian Indians racially ineligible for naturalization); Note, Status of Filipinos for Purposes of Immigration and Naturalization, 42 Harv. L. Rev. 809, 810 (1928) (Filipino naturalization preclusion under dictum in Toyota v. United States, 268 U.S. 402, 45 S. Ct. 563, 410-12 (1925) "sound"); Act of March 24, 1934, Pub. L. 127, ch. 84, 14, 48 Stat. 456, 464 (1934) (providing that upon "deferred" Philippine independence, racial ineligibility for naturalization would apply to Filipinos); Immigration and Nationality Act, Pub. L. No. 414, ch. 477, 311, 66 Stat. 163, 239 (1952) (person's right to naturalize "shall not be denied or abridged because of race or sex"). See generally Ian Haney Lopez, White by Law: The Legal Construction of Race (1996). Fewer would accept that race in the definition of citizenship continues to matter, in light of the formal neutrality of American naturalization law today. Immigration and Nationality Act, 311, § 8 U.S.C. 1142 (1998). However, that formal neutrality obscures how in the common sense of race, "American" still means European-derived or white. See Bigotry on Display; Senator D'Amato's Slur, N.Y. Times, Apr. 6, 1995, at A30; D'Amato Gives a New Apology on Ito Remarks, N.Y. Times, Apr. 7, 1995, at A1.

n11. Depending on which cold war perspective one takes, it can be characterized as a rebellion, or a counter-revolution. See generally James A. Michener, The Bridge at Andau (1957); Herbert Aptheker, The Truth About Hungary (1957, 1977 reprint). Both my parents' land-owning families were dispossessed after World War II, respectively, after the Hungarian Socialist Workers Party came to power in Hungary and during the American military occupation of Japan.

n12. See infra notes 34-36, 40-52 and accompanying text for discussion of settler-native politics.

n13. Great Britain heavily recruited troops from there starting in the mid-1800s, and since Independence in 1947, Gurkhas have been a significant minority in the armed forces of India. See 5 Encyclopedia Britannica (Micropaedia) 575 (15th ed. 1991).
n14. Copyright John Hayakawa Torok © 1989. All rights reserved. This poem was based on a conversation I had with Professor Sharon Hom at the C.U.N.Y. while I was a J.D. student. On the underlying incident, the California State Attorney General later determined it was racially motivated. See The United States Commission on Civil Rights, Civil Rights Issues Facing Asian Americans in the 1990s 30-31 (1992). My poems' facts are not completely accurate: the gunman used an AK-47; one of the children was nine, not eight; and four Vietnamese children, not five, were killed. I choose to leave the poem as I wrote it in 1989.


n18. Presumably this is because law teachers, as a group, cannot be considered under-privileged and thus "outsiders."


n20. I am grateful to Professors Francisco Valdez and Lisa Iglesias for making my participation possible.

n21. I believe Professor Derrick Bell, for whom I worked in late 1991, and Professor Richard Delgado, who I met when I was a fellow in 1992-1993 at the University of Colorado at Boulder's then Center for the Study of Race and Ethnicity in America, both encouraged the organizers to invite me to the Fifth Annual Critical Race Theory ("CRT") Workshop in 1993. I attended the workshop in 1994, 1996, and 1997 in whole or in part. The CRT workshop exists to support scholarship and knowledge production.

n22. Marcos Bisticas-Cocoves is a Hegel scholar and Visiting Professor, John Jay College of Criminal Justice, City University of New York.


n24. This grounds my approach to legal theory. See Matsuda, supra note 7, at 331 (Symposium: Minority Critiques of the Critical Legal Studies Movement).

n25. Mari J. Matsuda, Affirmative Action and Legal Knowledge: Planting Seeds in
n26. Id.

n27. See generally Daniel A. Farber & Suzanna Sherry, Beyond All Reason: The Radical Assault on Truth in American Law (1997). One useful conceptualization is that of shared communal narratives as sources of law, or as "jurisgenerative." When the narratives of different communities within the national community come into conflict, and become the subject of lawsuits, the court's function is to determine which "law" wins, to declare what the law for the broader community within which the conflicting communities contend is. By so doing, the court's function is "jurispathic" - it kills the "law" that is the product of the communal narrative of the community that lost the lawsuit. Robert M. Cover, Foreword: Nomos and Narrative: The Supreme Court 1982 Term, 97 Harv. L. Rev. 4, 15-16, 39-42 (1983).

n28. Ms. Echaveste observed that this office was originally organized during the Nixon administration as a way to reach out to "minorities."

n29. In an article about the organizing that accompanied her hiring discrimination lawsuit against a law school, Vietnamese American (now C.U.N.Y.) law professor and left activist Maivan Clech Lam discusses the complicity of community-oriented Asian American professionals in silencing her advocates at a community service organization's fundraiser that honored three other Asian immigrant women. She writes "suddenly, I felt myself catapulted back through space and time to Southeast Asia where, reframed, I startlingly recognized myself as a native who looks on in silence while the colonial power dispenses charity to other natives." Maivan Clech Lam, Resisting Inside/Outside Classism, in 11:3 Forward Motion, 59, 60 (July 1992) (Special Issue: Asian Americans and Pacific Islanders: Changing Realities, Revolutionary Perspectives). See also Lam v. University of Hawaii, 40 F.3d 1551 (9th Cir. 1994).

n30. The Japanese American Citizens League ("JACL") and the Organization of Chinese Americans organize an annual Washington D.C. leadership training for officers of their local chapters. I participated in 1994, as board secretary of the New York chapter of JACL.


n32. My teachers on racism and law have included Professors Thomas F. Pettigrew, Haywood Burns, Denise Carty-Bennia, F. Michael Higginbotham and Ronald L. Ellis. My first job after graduating from law school was as a research assistant to Professor Derrick Bell.


n35. The periodization scheme that I was going to use initially - colonial, ante-bellum, post-civil-war - does not work for the "colonizing settler/native paradigm." The Civil War probably merely slowed the settlement of Indian country, by distracting the United States military from protecting settlers from Indian resistance to settler land grabs.

n36. At the November 1997 Yale CRT Conference, a key plenary centered this project in critical race discourse. The CRT and Indigenous Peoples Plenary was moderated by Professor Jo Carillo; Speakers included Professor John Borrows, Professor Patricia Monture-Angus, Kekailoa Perry, and Estevan Rael y Galvez. Estevan, at the invitation of Professor Sumi Cho of DePaul Law School, has been deeply engaged in the last several workshops in opening up the space for this discussion in critical race discourse. I do not know whether Indigenous Peoples were a focus in the first four workshops.

n37. This is defined as non-Black racial minorities other than Native Americans, including Latina/os and Asian and Pacific Islander groups. Neil Gotanda, "Other Non-Whites" in American Legal History: A Review Essay on Justice at War, 85 Colum. L. Rev. 1186, 1188 (1985).

n38. An article that takes a multilingual approach to case and race analysis is Adrienne D. Davis, Identity Notes Part One: Playing in the Light, 45 Am. U. L. Rev. 695, 702-16 (1996) (analyzing Hudgins v. Wright, 11 Va. (1 Hen. & M.) 134 (1806) and People v. Hall, 4 Cal. 399 (1854)).

n39. I find problematic, for example, the claim that the 1885 Rock Springs, Wyoming, massacre, in which the Chinese section of town was destroyed and twenty-eight Chinese miners were killed, was "one of the worst race riots in nineteenth-century American history." Charles J. McClain, In Search of Equality: The Chinese Struggle Against Discrimination in Nineteenth Century America 173 (1994). Cf. Almaguer, supra note 34, at 122-125 (describing 1849 Clear Lake and 1853 Smith River massacres, in which predominantly white mobs killed, respectively, over 200 and over 450 indigenous persons).

n40. See Horsman, supra note 34, at 189-207 (chapter entitled "Racial Destiny and the Indians" discussing how ideas of Indian inferiority and unassimilability developed to justify conquest and forced removal). "The racialization of identity and the racial subordination of Blacks and Native Americans provided the ideological basis for slavery and conquest. Although the systems of oppression of Blacks and Native Americans differed in form - the former involving seizure and appropriation of labor, the latter entailing the seizure and appropriation of land - undergirding both was a racialized conception of property implemented by force and ratified by law." Harris, supra note 6, at 1715 (footnote and citation omitted)

n41. At my first CRT Workshop, Professor Cheryl Harris stated that it is important in our work to be careful about, and I am mindful of, the distinctions between analogy, equivalence, and alliance. The four analogies are not meant to be exclusive.

n42. Limerick, supra note 34, at 235-36.


n44. Limerick, supra note 34, at 192-95 (discussing federal policies of Indian removal, concentration and confinement on reservations).


n47. Rodolfo Acuña, Occupied America: A History of Chicanos 18-20 (3d ed. 1988); Treaty of Peace with the


n49. See e.g. Acuna, supra note 47, at 20.


n52. Id. at 380-81.

n53. See Iijima, supra note 9, at 68-74.


n60. Matsuda, supra note 17, at 1189.


n64. Final plenary, of the LatCrit III Conference.

n65. I do not mean to suggest by the poem that a golden age preceded the period of
conquest, colonization, enslavement, and settlement in the Americas, Africa, and Asia. Rather, I hope that by careful examination of the historical processes of subordination, we can recognize that more unites us than divides us in the common struggle against white supremacy. Cf. Lothrop Stoddard, *The Rising Tide of Color Against White World-Supremacy* (1922).


n74. Harding, supra note 58, at 8.

n75. Id. at 14, 16.

n76. Id. at 26.

n77. Id. at 27-8 (quoting Martin Luther King, Jr., *Honoring Doctor DuBois, in Freedomways* 109 (Spring 1968)).


n79. Although the concept of human rights became part of international law in the latter half of the twentieth century, the practices now defined as human rights violations pre-existed the legal idea of human rights. See *Amnesty International U.S.A., Human Rights Concerns in the Border Region with Mexico* (1998).

n80. Put another way, using today's language, ethnic cleansing of North American indigenous peoples is at the foundation of the settler colonial state.
A few weeks ago the woman I recently hired to clean my home once per week didn't show up for work. Some phone calls later I learned that her car's transmission had died, the repairs were probably not under warranty and would I mind picking her up for a make-up job the next day because, "she couldn't afford to lose more work." Since it was not a teaching day I took directions and agreed to pick her up in the morning. As I drove into the older sections of lower East Austin, historically known as the Mexican section of Texas' capitol, I remember taking in the visible changes being wrought throughout the city by the expansionism Austin's business and political leaders have been boasting about in the last five years. I had gotten lost so I found myself driving through areas of lower Southeast Austin which had all the signs of development - new tract housing, new businesses, restaurants and motels. When I realized I was lost I returned to the road I shouldn't have left. I realized that in straying far off of the directions I'd passed several large tracts of land I had just assumed couldn't possibly be what I was looking for - vast stretches of dry, flattened brush, no trees, and no signs of development. I was surprised by the stark differences. In a few minutes I had roamed from old central Austin with its mixed residential/commercial zoning into areas just south of the river that lazily cuts across the city. This area has also been re-developed in recent years with moderately priced housing tending to attract working-class families and university students. But between this renewal zone and the expanding new South Austin, where I drove for almost half an hour skirting new businesses and housing, was this huge stretch of treeless, uninviting barren land. While I had expected a humble set-up of trailer homes and the semblance of a neighborhood possibly with small "front yards" and trees, I found instead that Maria's trailer park abutted a kind of "no-man's land" of flattened dry brush and undeveloped tracts.

[*1037] that gray and wintry morning, as I drove into the space where Maria lives as a single mother with her two adolescent boys, the treeless, grassless, muddy trailer "park" and the surrounding land looked particu larly bleak. I saw all the signs of residents who were living on the edge of poverty and homelessness. I couldn't tell if the area should be seen as a refuge from the dense city or a region for exiled citizens. In twenty minutes I'd been starkly reminded of our differences in class, social and educational opportunities despite the sameness of our race and ethnicity.
To expose the human side of what the law refers to as "worker's rights" or "labor-management relations," or the "wage-earning interests" of the market economy is part of what LatCrit theory is about for me. As I have said in an earlier writing, LatCrit theory should be a vehicle from which to humanize the law and policy which affects the diverse Latina/o communities everywhere. n2 Yet, I do not think this is an easy task. Especially when one is addressing issues like the gender, race, and class struggles for meaningful existence affecting people who are workers and are Latina/o, and/or undocumented, or "resident aliens," or non-citizen workers seeking questionable "union rights," n3 or brown immigrant women who have known abuse or indifference to their plight at the hands of middle-class oppressors who may be Anglo white or even of their own racial and ethnic background. n4 It may be one which privileged academics don't even have a right truly to address, or at least should not address without some consciousness of how hypocritical our words may come across if we do not walk the talk of our sensitivity to others' lack of privilege. I am reminded of the famous speech "Ain't I a Woman?" by Sojourner Truth recorded in 1851. At once chiding white women and applauding their efforts to organize for their rights, she decried at a national conference their failure to appreciate how as white middle-class women, they were in a far more privileged place than ex-slave women like herself. In strong and poignant words she reminded all women that Black women had been treated "equally" when it came to enduring brutally hard work along with Black men, and unequally by all whites when it came to respect for their humanity and womanhood. n5

On this note I pause and reflect on the luxury I enjoy, sitting here in the comfort of a freshly tidied home office doing my work as a writer. n[*1039] Of the luxury of having an income that allows me to hire someone who may not be my employee, but whom, as an independent contractor in a business which is highly undervalued in the American economy, and this city, is one of "the oppressed." While I pound away at the computer keyboard, connecting my ideas of "social justice " to others,' whose ideas were produced in offices cleaned that day by people like Maria, I reflect on the arrogance of thinking that I can see the whole truth of the causes, needs and remedies for the members of the working-class or the working-poor. I should define my use of the term "working-poor" to make my point. The latter is a term I first learned when I lived in New York City with a roommate whose family had moved from Puerto Rico when she was about eight years old. Noemi told me story after story about her father's struggle in raising four daughters in a big city which hated Puerto Ricans and displayed its hatred in poor housing, medical treatment and education for its minority populations. "The working-poor are REALLY different," she would say to me as I would remark on the fact that I had been a working-class girl and earned with my hard labor and little help from my family, my college and law degrees. "Well, the working-poor don't have much of a chance to even think about that because they're too busy just trying to make enough to eat." And I wonder about that intersectionality of factors that is subjecting people like Maria to generational cycles of inadequate education, housing, training and employment opportunities and bordering their lives with the edges of poverty and homelessness.

As a U.S. citizen Maria doesn't fall in the category of the abused undocumented immigrant domestic servant. But, the racist sexism that surrounds domestic service gives her life as a single mother and woman of color only a slight advantage over those women who are exploited by the constant fear of being deported should they complain. These thoughts make me question the value of my sometimes romantically alluding, now from this position of privilege, to my roots in the working-class. I wonder if that is enough - to tell readers that because of chance, affirmative action and hard work some Latino/as escape the cyclical poverty that surrounds the life of the "working poor." What does writing about the suffering of others do for those who are politically my Latina/o "brothers and sisters?" If Maria and I are at best members of a political or global familia I wonder what is more important - that I write about their lives or that I commit a day at a time not to participating in any way in the practices which may perpetuate their own oppression? I ask myself whether there is an ethic of care LatCrit theorists must embrace to speak on behalf of the oppressed worker and how his/her labor is valued, or not, by a society which systematically oppresses on the basis of race, gender and class. Whom do we speak of and how? n[*1040] How do we live our own lives as members of the oppressor classes and do we tread in those lives with a gender, race and class blindness capable of costing lives? Am I willing to ask myself the uncomfortable questions about my own role as a quasi-employer? Might I be like one of those employers Professor Romero writes of in her essay on immigration and the domestic labor debate, who has justified a low wage by saying "she's like a member of the family," and not a service provider whose hard labor deserves a decent wage? Am I capable of becoming defensive like Romero's colleagues whom, when asked questions about their own role as "employers" in the hiring of domestics and live-in babysitters, responded with the common response of thousands in the middle and upper classes who depend on an underground economy...
which provides them with women of color to clean their homes and change their babies’ diapers for cheap wages, but won't examine their own responsibility to pay for this service as valued work? As a LatCrit theorist, do I have an ethical responsibility to examine my own idealistic pronouncements against my personal behavior in the hiring of Latina/os as domestic servants, or gardeners as I also argue for their right treatment by U.S. labor law and policy? As an extension of that ethic of care am I willing to examine how much I pay Maria and for what, and how it compares to the monies I am willing to pay the white men who come to my home to make my "handyman" repairs?

It is in this spirit of self-reflection, caution and distrust that I introduce the articles in this cluster aimed at contributing to the topic of Transnational Mexican-American Identities: Race, Class, Ethnicity and Gender. The trio of essays in this cluster offer the LatCrit theorist numerous avenues from which to appreciate the harsh realities of Latina/o life in the world of work, labor struggle and survival in the American market economy. Each of the writers in this Cluster strikes a theme of justice and labor. Some readers may have a host of mixed emotions stirred in them as they were in me. Or a reflection on one's own class privilege, or even a sense of responsibility that our musings on LatCrit theory not keep us from seeing or doing something about life's harsher realities right outside (or inside) our very doors. Each author offers a different perspective from which to consider whether and how LatCrit theory offers hope to the causes of labor struggle and injustice within U.S. Latino/a communities, or whether it may only be guilty of participating in the reproduction of oppression through structures of power which keep people like Maria living on the edge of destitution, poverty and homelessness.

I introduce these three essays focusing on Latina/os and their work, wages, organizing rights and livelihood, with some concern about what [*1041] it means to be a "critical scholar" on an old topic in the academy - labor and the law - from a Latina/o perspective. How do we introduce not just the issues but also the intra-class tensions which may impact how we try to assess the interests and needs of workers in the "Latina/o community." My initial sense is that a critical analysis should at minimum require that LatCrit scholars tread with great care and sensitivity to the position of the writer and the subject. The writers and researchers are members of the privileged class, and the workers we write of are not. I think my fear is that because of our high incomes and positions of privilege that we may miss the truth, or only partially expose it or avoid it because to go further into the truth may force confrontation with our internalized oppression. My hope is that our writings on the people, for example, who are cleaning our homes, sewing the garments we wear, trimming the gardens that surround our homes and office buildings or operating the telemarketing lines of small Latino businesses, is honest and relevant. That it both be personal and political. By "the personal" I mean with a sense of responsibility.

I am sure that my intellectualism is capable of distancing me from the pulse of life, in all its truth, both beautiful and ugly. It is capable of making me unable to see the role that I might play in not disturbing the status quo. Two of these essays in this cluster have forced me to consider whether I am fully aware of the class implications that can surround the work I do as a LatCrit theorist, from a personal perspective that can have political implications. Professor Romero's essay struck such a chord in me because it examines the ways in which the underground economy of hiring undocumented immigrants so crucially affects the public rhetoric we are willing to have in order to stop the exploitation of women of color doing domestic service in this country. Romero begins with a troubling story in her essay for anyone who might identify with being Latina/o, middle or upper-class, and a careerist who at one time or another has hired domestic help. Her essay highlights how crucial it is to have a relentlessly intersectional perspective when using gender as a category of analysis in LatCrit theory. In the Southwestern U.S. domestic servants are Mexican and typically immigrant. In some parts of the Southwest their exploitation is dependent on their undocumented worker status and loopholes in laws intended to stop the flow of illegal immigration, like the Immigration Reform and Control Act. n6 The law's treatment of illegal immigrant domestics is thus a perfect embodiment of a systematic pattern of oppression in U.S. American law and culture [*1042] which Romero identifies sociologically as an intersectionality of race, gender, class and immigrant status capable of effecting the wholesale exclusion and marginalization of women of color in public debates about household labor and childcare. When the feminist rhetoric about giving value to women's work generated studies, Romero argues, the data produced was false because it failed to account for the underground economy of hiring illegal immigrants whose activities for childcare, cooking, cleaning and running errands has never demanded a decent, livable wage. Thus she identifies the "servant problem" as an issue of household employer dependence on continuous flows of migration, and the ability to break the law while policymakers
continue to make laws that either legitimate the underground economy or ignore it.

Robert Corrado's essay encourages the reader to consider the labor issue from a different vantage point - from that of the LatCrit theorist whose own origins are not in any kind of identification with Latina/os as members of the working-class, but rather with those of the privileged class. While Corrado's essay struck me at times as a strong rationalization for the choices he has made at different points in his career which might be harshly judged by progressives, or Latina/os as politically "incorrect," it is also thorough in exposing the opposition to his choices. It is a Socratic dialogue that I felt, however, hovering over a more uncomfortable truth as he explored how bad it looked to have testified on the "wrong side" - that of how we catch (or don't catch) ourselves acting on our internalized oppressions - like classism. Corrado presents a dialogue which begins after a labor law class between the professor and a curious student with some pro-union activism in her background before attending law school, and some formed opinions about social justice in the labor field. Corrado confronts everything from what it means to be a privileged, white, male and a Puerto Rican Latino who took the side of the American company who bought out and got rid of the Latino workers serving a Spanish-speaking community as a Mexican-owned company. It may strike readers as an illustration of how one's consciousness might be painfully awakened by participating in the exploration of an identity as a "LatCrit" theorist.

Christopher Cameron's thesis is straightforward: whatever strength may exist to the labor movement today is probably being backed up by the efforts of women and men of Hispanic origin. This study is an important revision to the dire picture labor analysts and historians will give to the future of unionism in this country. He identifies three basic strategies which have been successful in organizing Latino workers who occupy in the Southwest especially, such major industries as construction, delivery truck driving and service work such as janitors and gardeners. Cameron argues that the strength of organizing efforts by Latinos has been in the grass-roots nature of the unionizing drives aimed at large-scale industrial problems. What has worked is the use of non-traditional tactics to pressure employers (e.g., dissident stockholding, media advertising) and especially avoiding complex institutional remedies which may be of little help (e.g., NLRB) to the undocumented immigrant worker. Although Cameron's study is inconclusive in offering a clear vision of what "social justice" should mean for Latina/os who may become leaders of the new unionism in the next century, it a refreshingly more optimistic view of the role that immigrant Mexicans have long played in the American economy. Together with Corrado and Romero these three essays offer the reader an opportunity to see that the question of the "work we do" as Latina/os in the academy on the work being done by Latina/os, and the problems and challenges they face, is an engagement in risk. It is also an opportunity to expand one's vision of what it means to participate, personally, in the quest for social change.

FOOTNOTE-1:

n1. "Maria" is a pseudonym.
n6. See 8 C.F.R. Sect. 274a.1(h) (1995) (providing exemption for "casual employment by individuals who provide domestic service in a private home that is sporadic, irregular, or intermittent").
Labor Law and Latecrit Identity Politics: Immigration, the Servant Problem, and the Legacy of the Domestic Labor Debate: "Where Can You Find Good Help These Days!"

By Mary Romero * August 28, 1998

**BIO:**

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**SUMMARY:**... While I made a conscious effort to study domestic service from the standpoint of the workers, I found myself reflecting on the conversation with my colleague - my first encounter with the "servant problem."... In response to data showing the lack of mobility for domestic workers and the classical reference to domestic service as a "bridging occupation," I always could expect at least one colleague to argue that the work experience in their home would result in social mobility for the domestic worker. ... This point becomes particularly important in the discussion of women of color employed in domestic service. ... In an effort to attract American workers, an attempt to professionalize domestic service by upgrading training and advocating certification was introduced as a means to improve the status, pay, and working conditions to make child care and domestic service more attractive and competitive with other occupations. ...

**I. Introduction**

Before beginning my first college teaching post in 1980, I stayed at the home of a colleague who employed a live-in domestic worker. Until then, I had been unaware of the practice of hiring teenage, undocumented Mexican women as live-in household help, nor had I had access to the social or "private" space of an employer. I was struck by the ease in which this middle-class family violated the law, participated in the underground economy, and most of all, disregarded their employee's rights.

I was shocked at the way my colleague and his family treated their sixteen-year-old domestic, who I will call Juanita. Only recently hired, Juanita was still adjusting to her new environment; her shyness was reinforced by my colleague's constant flirting. I observed many encounters that served to remind Juanita of her subservient role. For example, one evening I walked into the kitchen as my colleague's young sons were pointing to dirty dishes on the table and in the sink and yelling at Juanita, "Wash! Clean!" Angry and humiliated, she glanced at me from her frozen position at the kitchen door. Aware of the risks of my reprimanding the boys, I chose to suggest instead that Juanita and I would wash and dry the dishes, while the boys cleared the table. When my host returned from his meeting and found us cleaning the last pan, his expression told me how shocked he was to find his houseguest and future colleague washing dishes with the maid. His obvious embarrassment confirmed my suspicion that I had violated the normative expectations of class-based behavior within the home. n1 After excusing my behavior as one of those Chicano radicals who identify with los de abajo (the downtrodden), he began to relate a litany of problems he experienced when hiring Mexican immigrant women. He recalled his efforts in assisting their illegal crossing from Ciudad Juarez to El Paso and in, introducing them to the modern conveniences used to clean his house in the Country Club area. He did not feel his generosity and goodwill had been repaid because their loyalty failed to extend beyond a few months. He assured me that their failure to return after a weekend off was due to their interest in finding a husband.
Not long after my encounter with Juanita, I began systematic research on private household workers. While I made a conscious effort to study domestic service from the standpoint of the workers, I found myself reflecting on the conversation with my colleague - my first encounter with the "servant problem." The servant problem in the U.S. has always involved the shortage of workers who are willing to accept the substandard wages and working conditions frequently found in the positions they occupy. Like my colleague in El Paso, employers rarely accept their position as "employers," but rather characterize the employment of undocumented women as a domestic or nanny as "helping those poor Mexican women." In addition, the employer-employee relationship is further denied by employers' claims that their maid is "just like one of the family." However, interviews with private household workers expose a wide range of emotional, physical, and economic exploitation experienced by women of color. Frequently these forms of exploitation occur under the guise that the employee is engaging in a labor of love as a family member, rather than engage in paid labor as an employee. Disguising the employer-employee relationship provides the foundation for the "servant problem" and the search for the "faithful servant."

At first, I was caught off guard when colleagues responded to my research as employers rather than as scholars, researchers, or feminists. Even after I presented a detailed analysis of the personalism and asymmetrical nature of the employer-employee relationship and the relationship between the underground economy of domestic labor, legislation protecting household workers, and the substandard working conditions facing women of color, there always was one colleague who continued to insist that her maid/nanny/cleaning woman/girl (or some version of this) was indeed "like one of the family." In response to data showing the lack of mobility for domestic workers and the classical reference to domestic service as a "bridging occupation," I always could expect at least one colleague to argue that the work experience in their home would result in social mobility for the domestic worker. This was particularly the case for employers who wanted recognition for arranging work hours that permitted their Guatemalan worker to attend classes to learn English or to drive. Question-and-answer sessions turned into a defense of practices such as hiring undocumented workers for less pay than college students, not filing income taxes, paying social security, sixty hour work weeks for live-in employees, or gift-giving in lieu of raises and benefits. The recurring responses made me realize that my feminist colleagues had never considered their relationship with "cleaning women" on the same plane as those with secretaries, waitresses, or janitors; that is, they thought of the former in terms of the mistress-maid relationship. When I pointed out the contradiction, many still had difficulty thinking of their homes - the haven from the cruel academic world - as someone's workplace. While they were aware of their responsibility for paying income taxes and social security, they openly accepted the lawbreaking activity of not filing either on the basis that no one else does. Their overwhelming feelings of discomfort, guilt, and resentment, which sometimes came out as hostility, alerted me to the resistance these employers exhibit to any challenge to their "privilege" to hire household workers for such little money or benefits as the underground market will allow.

As I reflect back on these colleagues/employers' comments, I recall questions posed by anthropologist Leo Chavez in the introduction of his book, Shadowed Lives, Undocumented Immigrants in American Society. Drawing from Benedict Anderson's notion of "imagined communities," Chavez asked whether there lives an image of community in the minds of American citizens that includes undocumented immigrants as part of the larger society. Many of the workers employed in domestic service have been left outside the other communities, including "feminism," "workers," "working mothers," and "family." The discourse on the "servant problem" discloses ways that communities are constructed to exclude workers on the basis of race, class, gender, and immigrant status. Furthermore, intersectionality excludes and marginalizes the majority of domestics in immigration and employment legal discourse.

This article discusses the exclusion and marginalization of women of color, namely immigrant women, from public debates surrounding household labor and childcare. Part II, offers an overview of the domestic labor debate that occurred in the 1960s and 1970s, highlighting the themes that shaped future feminist analysis on work and family. Ignoring the class difference among women, namely resources available for escaping the drudgery of household labor and aid for child care, reproductive labor was theorized as only unpaid work. Assumptions were made about the worth of monetary value in determining the status of reproductive labor rather than the intersection of gender, race, class, and citizenship. Part III, offers a brief historical account of employer dependence upon migration as the solution to the "servant problem." Building on Kitty Calavita's analysis of the relationship between the processes of lawmaking and lawbreaking, I will argue that domestic service is an occupation that borders on white-collar...
Concern over the role of women in reproductive labor in the home and nation immediately appeared at the forefront of the feminist agenda in the 1960s. Theorizing about women's experiences, particularly the structure of gender inequality, feminists began by challenging the separate spheres of the private and public realms that ignored the complicated relationship between family and work. Both European and U.S. feminists writings in the 1960s and 1970s addressed the politics of housework, focusing on the position of women in the family as the central point for analyzing gender inequality. 

Housework was identified as an important issue that affected women and that was crucial to understanding gender stratification. Analysis of the distribution of household labor and the value of the work performed by domestic laborers convinced many feminists that the oppression experienced by women was best symbolized in housework issues. 

Housework determined not only women's lives in the home, but more importantly, also determined the social ideology and role expectations of women and reproduced the structure in a gendered workforce.

Attention on the devaluation of women's unpaid labor in the home turned to discussions over wages for housework and the analysis of women as an economic class. These discussions were central components of what has come to be termed the "domestic-labor debate." 

Exploring the conversion of housework into wage labor was an attempt to unmask the relationship between women's labor and the economic system. Although the debate was engaged more fully in Italy and England, the demand of "wages for housework" influenced feminist thinking about housework in the United States. Concepts like "wageless housewives" or "unpaid household laborers" were developed to draw an analogy between women and racial minorities. Although popular comparisons between gender and racial oppression were intended to highlight the seriousness of sexist acts and comments in everyday interactions between men and women, the analogy also devalued the experiences of women of color who suffered from both racism and sexism and relegated them to complete invisibility. 

Analogies did not take into account the fusion of racial and sexual hierarchies. This point becomes particularly important in the discussion of women of color employed in domestic service.

Feminists who advocated in favor of wages for housework perceived wages as a solution to the low status and lack of regard for women's unpaid labor at home, which has all too often been treated as an expression of women's subservient nature. In an attempt to place value on reproductive labor, comparisons were made between the unpaid tasks women do in their homes with the wages workers receive when doing similar tasks in the labor market. Comparisons with workers in the labor force engaged in similar activities - cook, teacher, nurse, chauffeur, and the like - have been used to calculate the exchange value of housework. 

Computing the monetary value of housework was an attempt to give marketplace value to homemaking activity. Economists based calculations on the accumulated market values of each household task. They concluded that housework was far from valueless but may actually be priceless. These studies impacted feminist theories about gender inequality by providing evidence (regardless of how incorrect the methods were) to support the assumption that domestic labor becomes valued when it is paid labor, and that as waged labor it also is treated as "real" work/employment. The exercise of computing the monetary value in the service sector completely erased the real experiences of women employed as private household workers. 

Domestic critics engage in a wide range of reproductive labor, which include child care, cooking, and the completion of household errands; yet, the "market value" calculated by economists and other social scientists did not reflect the wage earned by these women workers nor the lack of benefits and job security. Furthermore, the domestic labor debate positioned women as housewives; that is as heterosexual females with children, unemployed, and married to a white middle class male. Data supporting "wages for housework" were collected using research methods that completely ignored conditions in the underground economy or in the lawbreaking activities of middle- and upper-class families.

Research based on actual employment experiences of domestic workers does not support the thesis that "wages" increase the monetary or social value placed on reproductive labor, or does it elevate the status of the woman receiving the wage. In the following sections, I will argue that the value and status of labor...
is tied to the social relations surrounding the work; that
lawmaking is constructed to ignore the inter
sectionality of immigrant women of color who experience their race, class, gender, and citizenship differently than other workers, placing a low market value on their work and relegating them to the underground economy; and that the low risk involved in hiring undocumented women and not filing income tax or social security supports the lawbreaking activity of white collar crime committed by many employers in domestic service. An overview of the transition from servants to maids to house keepers and nannies points to a clear pattern of immigrant and women of color being employed in the most exploitative working conditions of the occupation.

III. Historical Overview of the Servant Problem

Public debates over the shortage and quality of private household workers has a long history as "the servant problem." n19 The first labor shortage occurred when men moved out of domestic service and into the factory. Operating within a seller's market, those men who remained in domestic service were criticized for their air of "independence and insubordination." n20 As a result, employers immediately stratified workers in domestic service. They relegated immigrants and women of color to poorer working conditions, pay, benefits, and demeaning forms of social interaction. The experience of native born white women in domestic service was so distinct that Faye Dudden has argued that two different forms of nineteenth-century household service existed: help and domestics. n21 Young American born white women commonly were hired during busy times, especially harvest season, and during events that increased homemaking activity, such as illness or the birth of a child. n22 Dudden distinguished "help" on the basis that the "work was organized more around task than time," n23 and "domestic" were employed to assist the homemaker who usually worked alongside her employee. The classification of domestic was reserved for immigrant, Black, Mexican, American Indian, and Asian men and women.

The industrial expansion of the late nineteenth century increased employment options for women. Just as male servants turned to new occupations, women also left domestic service as soon as the job market expanded. With other options available, young women were unwilling to submit to the long hours, lack of privacy, drudgery, and lack of mobility that characterized domestic work. n24 On average, domestics worked two or more hours longer than other working women and many worked seven days a week. David Katzman estimated that "nearly all domestics in the nineteenth century worked at least ten hours a day, with a full working day averaging eleven to twelve hours." n25 Live-in domestics found it especially difficult to place limits on the length of the work day. Industrialization brought on a shortage of household workers and began a general decline in domestic service in the United States. In 1870, fifty percent of women employed were servants and washerwomen.

By 1900, domestic service only accounted for one-third of all [\*1054] employed women. n26 The major feature of domestic service in the twentieth century has been a continuing labor shortage. Julie Matthaei noted that in 1900, there were 95.6 female servants per one thousand families; by 1960 the number had dropped to 33.3. n27 The structure of work itself underwent changes as the middle class joined in the ranks of those "keeping servants." Unlike the aristocracy, the middle class could not afford to employ large a staff. Instead, middle-class homes were staffed with fewer servants or, more commonly, one "maid-of-all-work." n28 Increased work loads placed upon fewer servants living in smaller quarters intensified master-servant relations. Household servants differed from their predecessors because they "were hired to supplement or take over what were considered the wives' responsibilities and during this period middle-class wives came to have primary responsibility for the hiring, deportation, and work assignments of servants." n29 Domestics were reduced to unskilled labor, and they were subjected to constant supervision. They became increasingly replaceable because all they brought to the relationship was their ability to perform general work and not particular skills.

World War I and its aftermath brought a general prosperity, thereby improving working conditions and opening employment opportunities for women. The war also slowed immigration, thus reducing the pool of women available for domestic service. Between the turn of the century and 1920, the percentage of employed women who worked as domestics had been cut in half to sixteen percent. Perhaps the Depression caused the figure to increase slightly to twenty percent over the next decade. n30 As always, domestic work attracted women with few employment options. For those women, the shortage of household workers provided an opportunity to regain a measure of autonomy. A seller's market [\*1055] offered some leverage for changing the most oppressive aspects of the occupation. Furthermore, the rights gained by workers in the manufacturing and service economy established expectations that benefitted domestic workers in their negotiations. The most significant change resulting from the burgeoning labor market was the reduction of work hours and the shift to day work.
This shift was eased by increased urbanization which permitted domestics to travel daily to and from work.

The labor shortage created a less docile work force, which led homemakers to complain about the laborer's attitude or quality of work as the "problem." A good domestic worker was expected to be the faithful servant, sacrificing her own family and personal life for her employer. Homemakers lamented the passing of the days when they had more control over the domestics in their employ. Commenting on the ambiguous meaning of the "servant problem," George Stigler wrote, "Does it mean - as one often suspects - that a good servant cannot be hired at the wage rate one's parents paid? ... Or does it mean that the market mechanism does not work - that the offer of the going rate of wages does not secure a servant because servants do not move to the highest bidder?" n31

Two of the most commonly supported solutions to the "servant problem" have been immigration and training. Middle-class women stepped up efforts to professionalize homemaking and industrialization created a shortage of household workers. Training and certification were offered as a solution to the "servant problem;" this approach was believed to upgrade domestic worker skills and increase wages, and improve opportunities for social mobility. However, training did not change the occupation or assist in moving women into better paying jobs. As one 1940s report found, "domestic workers with special training for their jobs received no higher wages than those without it... It may therefore be concluded that the wages of household workers are determined by forces largely beyond the control of the workers themselves." n33

Schools established in response to unemployment during the Depression and later in the 1960s as part of the job training offered to the poor did not succeed in professionalizing domestic service. While immigration provided immediate relief to shortages of workers, employers complained about the quality of foreign workers unfamiliar with American culture. In addition, immigration did not provide a steady flow of reliable source of cheap labor.

Neither immigration nor training are solutions that address the reasons for workers opting to leave the occupation or avoid it at all costs. Immigration and upgrading worker skills does not improve pay, decrease hours, address issues of loneliness and the lack of privacy on the job, reduce supervision, loosen tightened job descriptions, or eliminate the demeaning mistress-servant relationship. Because workers' concerns are disregarded or omitted during public debates over labor shortages, improving the working conditions has not surfaced as a component of the "servant problem."

The legal system has been extremely slow to respond to the needs of domestics by consistently excluding them from labor legislation. Domestics were not covered by federal minimum laws until 1974. The new coverage also included time and a half overtime pay after forty hours. n34 However, not all household workers were included under the protection of the minimum wage and overtime provisions. Exceptions were made for under employed workers (less than eight hours a week and earning less than $50 per calendar quarter), live-in maids, and home care workers. n35 Five years later, the Department of Labor reported high rates of noncompliance and summarized the reasons as ignorance of the law, employee willingness to work for less, and workers' understating earnings and over reporting actual hours worked. n36 Because the Department of Labor did not engage in an information campaign to inform employees of the law, the processes of lawmaking and lawbreaking were established as low risk white collar crime.

The next section presents the most recent public debate on the "servant problem," commonly referred to as "Nannygate". Placing the controversy within the historical context of the "servant problem" highlights the continued practices of structuring immigration law and labor law to benefit employers rather than employees. When President Clinton's first two women nominees for Attorney General were questioned about their childcare arrangements, their advocates argued from a feminist position that male nominees were not questioned regarding the issue. Outrage against the nominees' hiring of undocumented women became characterized as a class distinction of lawbreaking and the leniency of the government towards white collar crime. In addition, the inadequate child care services became blurred with issues surrounding class privilege of the upper-middle class hiring live-in undocumented women to resolve their child care needs. As in past debates over the servant problem, the discourse was dominated by employers who requested that solutions be sought through changes in immigration legislation and professional training. Again, proposed solutions offered little in the way of improving actual working conditions for women employed in domestic service.

IV. Nannygate: A Continuation of the Servant Problem

Nannygate involved two issues: 1) the hiring of an undocumented worker during a period when it was illegal for an employer to do so; and 2) the failure to pay taxes. n37 However, as in the case of Kimba
concluded with the claim that "what has happened is been the case in Britain and elsewhere." n42 He instance, one commentator claimed that "without the conditions and low wages in domestic service. For immigrant workers as the source of the poor working professionalization solution was an attack on occupations. n41 Embedded in the service more attractive and competitive with other working conditions to make child care and domestic introduced as a means to improve the status, pay, and by upgrading training and advocating certification was workers, an attempt to professionalize domestic service of eligible workers. In an effort to attract American Proposed solutions focused on increasing the number previous publicity over "the servant problem." Interests expressed in the Nannygate scandal mirrored the law was out of step with the needs of the nation. That Baird really did not do anything wrong because not because she Outrage over failure to pay social security existed Lillian Cordero, the nanny, was deported immediately. Inquire about the type of employer Zoe Baird was. class and gender identity politics. The press did not create nonpersons and invisibility. n46 Public debates never included nannies and domestics class and gender identity politics. The press did not inquir about the type of employer Zoe Baird was. Lillian Cordero, the nanny, was deported immediately. Outrage over failure to pay social security existed because Zoe Baird broke the law, not because she violated workers' rights. The class and gender dynamics of Nannygate were carefully constructed to exclude the workers involved. This was done by exclusively defining class and gender as a white issue and limiting discussions of race and ethnicity to immigration. n47 Nor did immigration proposals address workers' grievances; they were shaped with employers in mind. n48 Advocates for Zoe Baird and Kimba Wood denounced the unequal treatment of working mothers in the confirmation hearings by pointing to the unrealistic employer sanctions, but few acknowledged that differential enforcement of immigration policy as political. n49 Undocumented
private household workers always have been used as pawns in employers' personal fights, whether they be feuding neighbors or rival politicians. n50 Gender politics did not inquire into why women immigrant workers were targeted. n51 Nominees could easily have been asked about the hiring practices of gardeners.

The proposed remedies appear quite different if looked at from the perspective of the employee. If one examined the situation from the "bottom up," workers' issues would be addressed rather than seen as simply an immigration problem. A workers' perspective would not suggest training, certification, and more supervision. Rather, it would suggest higher wages for workers n52 and enforcement of federal employment law. Employers will continue to hire undocumented workers as long as they remain cheap labor and the enforcement of sanctions remains lenient. n53 Workers' complaints about working conditions shed light on the attractive nature of hiring undocumented labor, particularly as live-in help. n54 For instance, embedded in the proposals is the assumption that employers hire a live-in nanny or au pair only to provide child care. Mike Bailey, owner of the Child Care Connection in Northridge, California, described the typical request: "I want a nanny who's energetic, clean and neat, can cook and clean, speaks English, is available before I go to work and after I get back home'. That means arriving at 6 a.m. and staying till 10, and they're expected to be on call the rest of the evening. 'And oh, by the way, we want to pay her $100 a week.'" n55 In another case, Nancy Cervantes, a volunteer employment-rights attorney working with CHIRLA (Coalition for Humane Immigration Rights of Los Angeles) described the working conditions of one client who was treated like chattel. "Concepcion" worked eighteen months in a household of five adults and three children. She was responsible for all their cooking, cleaning, washing, and child care. Her day began at 6:00 a.m. and ended well past midnight, six days a week, for $100 a week. n56 Concepcion's situation is more typical than unique and highlights important issues that make the work unappealing to workers with other options. n57

Workers' complaints challenge the assumption that employers are actively seeking workers who are citizens. The nature of these complaints demonstrates that employers instead are seeking workers who are non-citizens and have an undocumented status. Behind Zoe Baird's use of the Peruvian couple and the case of Concepcion lies the reason that day care centers are not open twenty-four hours a day, they force parents to maintain regular hours. As in the case of Zoe Baird, Aetna offered employees a variety of options to assist in child care, including a day care center, but none of these options provided the privileges found in home child care. n58 As one immigration advocate has stated, employers are "turning to illegal exploitation because it's too inconvenient to let wages go up. People think they are entitled to quality in-home care for dirt-ball wages... That's got to stop." n59 Changes in immigration legislation will not reduce the attractiveness of undocumented workers. Only when undocumented workers are first treated on the basis of their status as employees, rather than their immigration status, can the servant problem be addressed in a way that respects human rights before the rights of employers.

Much of the opposition to Zoe Baird was clearly a form of class conflict. It was an expression of working-class and lower-middle-class anger toward what was perceived as a "Yuppie"-class privilege. Rather than identifying with the larger issue impacting working mothers, child care was defined as an elite-class issue involving live-in nannies. The controversy completely ignored the realities of the working poor, workig class and lower-middle class. Although child care options for these classes are limited by finances, they too face overtime and long commutes to and from work, making day care center options less than adequate. However, in the Zoe Baird dispute, child care was defined as an isolated issue that affected wealthy lawyers and politicians: The universal issue of child care was ignored. Affordable child care remains a private and family problem rather than a public issue requiring a public solution. Upper-middle-class families can afford the personalized service to work around the limited child care options in this country. Opposition to Baird and Wood appeared to be class based. It looked like working and lower-middle-class workers resented the leniency towards "Yuppie" crime. However, class interests were defined on racial grounds, thereby excluding the violation of the rights of working-class immigrants and women of color who were denied social security and other benefits. Instead, the workers' issues were treated as simply an issue of immigration status.

V. Conclusion

The role of employers continues to be a major component in upgrading the domestic service occupation because household labor negotiations frequently occur within the underground economy and
involve few government regulations. Consequently, employers have enormous leeway in determining working conditions, setting wages, establishing job descriptions, and determining the work structure. Recent studies reveal that household workers report a wide variation in wages and working conditions. Employers decide whether to give raises, and they usually decide if social security or benefits are obtained. Domestics have little influence over their working conditions other than the choice to accept the job or quit. Given the power that employers exert over working conditions domestics feel dependent on and at the mercy of their employers more than other workers. For most domestics, the occupation continues to be regulated by community norms and values that determine informal labor arrangements made between a private household worker and her employer. \[n60\] Pierrette Hondagneu-Sotelo argues that upgrading working conditions in the occupation weighs heavily on educating employers and state support. \[n61\]

Latina domestic workers propose an interesting case for several areas of critical race theory, particularly the intersection of race, class, gender, immigration, and citizenship status. As an occupation that always has been dominated by the most vulnerable worker in an area, one is not surprised to find that the image of the Black woman toiling in the kitchen, cleaning the house, and caring for her employer's children has now been replaced largely by an image of Spanish speaking immigrant woman. Like the case of Juanita in El Paso, poor and working-class (and sometimes middle-class) Latina immigrant women find an open market for their services as maids and nannies in homes throughout the country. However, marked by their class, race, ethnicity, gender, and immigrant status, these women are employed in a segment of the occupation that has low wages, long hours, and additional work that includes both housework and childcare. Additionally, many face isolated live-in conditions in this facet of the underground economy. The intersection of statuses make Latina immigrant women ideal candidates for fulfilling the needs of American families; not only are they less expensive than employees hired by agencies, but they are more easily exploited for additional work, and need not be provided any benefits. They also provide the social markers that distinguish the worker from other household members. Focusing on the intersection of statuses is crucial because many social scientists, politicians, and members of the general public have argued that the poor working conditions of the occupation can be attributed to the workers themselves. Throughout the history of domestic service in this country, this attitude has dominated and has resulted in attempts to professionalize the occupation rather than improve the working conditions for domestics. This history also includes systematic exclusion from employment legislation, as well as attempts to gain special provisions for bringing a specific class of immigrants to work as domestics and nannies. \[n62\] Concern about improving the working conditions of domestics and nannies has been abated by \[\text{[*1064]}\] social scientists who have characterized the occupation as a vestigial from feudalism and predict its disappearance in modern society. How ever, signs to the contrary are visible throughout the United States: the riders of color on public transportation in affluent white neighborhoods, women of color (frequently in white uniforms) in parks caring for white children, and the portrayal of women in the media as domestics (usually in the form of walk-on scenes in film or in the case of the Salvadoran maid in the O.J. Simpson trial). Proposals to address the "servant problem" that focus on immigration law maintain exploitative working conditions. Unless proposals include both safeguards for both undocumented and documented immigrant workers and mobility to better positions in, as well as outside, domestic service, the "servant problem" will continue to reflect the worker's struggle for a better life.

**FOOTNOTE-1:**

n1. Advice given to masters at the rise of industrialization could certainly have applied to the live-in conditions I confronted in El Paso and in many contemporary situations:

To be on familiar terms with one's servants shows the cloven foot of vulgarity ... Encourage your servants now and then by a kind work, and see that they have good and wholesome food, clean and comfortable quarters. Once in awhile give them a holiday, or an evening off, a cash remembrance at Christmas, and from time to time some part of your wardrobe or cast-off clothing. They are just like children, and must be treated with the rigor and mild discipline which a schoolmaster uses toward his pupils.

norms, values and racial etiquette governing domestic service in the United States; however, occasionally, editorials and magazine articles offer do's and don'ts and other helpful hints to working women seeking household workers, including nannies. See Danielle Crittenden, The Servant Problem, No Longer Just the Lament of the Rich, No It's Every working Mother's Nightmare, The Women's Q. (1997).


n4. The cult of domesticity offered middle-class women opportunities to practice "good works" without leaving their own homes by engaging in "home missionary work" with their servants. Helen Munson Williams' papers stated that one objective of the project was "to restore the right relationship between classes, and to bring them nearer to each other in the ways appointed by God and nature." Faye Dudden, Serving Women: Household Service in Nineteenth-Century America (1983). Application of the cult of domesticity in the lives of Chicana and Mexican immigrant women can be found in the programs developed under the WPA. See Sarah Deutsch, No Separate Refuge Culture, Class and Gender on an Anglo-Hispanic Frontier in the American Southwest, 1880-1940, 182 (1987).

n5. One of the earliest critiques of the employer's claim was written by Alice Childress in her depiction of an African-American day worker named Mildred. The conversations were first published in Paul Robeson's newspaper Freedom under the title "Conversations from Life" and later in the Baltimore Afro-American as "Here's Mildred." A collection of her writings were later published in Like One of the Family: Conversations from a Domestic's Life (1986). For a brilliant analysis of Childress's character, Mildred, see Trudier Harris, From Mammies to Militants 111-34 (1982).


n7. At the time, I thought employers emerged in the oddest places as journal reviewers for papers I submitted to women's studies and sociology journals and at professional conferences. Academicians reviewing my submissions wrote their comments from the perspective of an employer rather than engaging in the issues of gender, race, and class analysis of work and family. I observed similar responses to other scholars of color analyzing employee and employer relations. Researchers focusing solely on domestic associations or domestic service in the immigrant experience were less likely to be confronted by academicians speaking from the position of an employer.

n8. English speaking abilities open up possibilities for domestics who can frequently negotiate higher pay than monolingual Spanish speakers or other non-English speakers. Driving, and having a driver's license also increase the wage scale for workers because they can do errands for their employer, along with the
cleaning and child care. However, these skills by themselves do not necessarily assure the worker's mobility outside domestic service or the underground economy. But, both skills do expand the range of domestic tasks the worker can do for the employer's family.

n9. "In the minds of each lives the image of their communion... It is imagined as a community, because, regardless of the actual inequality and exploitation that may prevail in each, the nation is always conceived as a deep, horizontal comradeship." Benedict Anderson, Imagined Communities 15-16 (1983).

n10. See Gerald P. Lopez, The Work We Know So Little About, 42 Stan. L. Rev. 1, 1 (1989) (noting how the plight of immigrant women employed as domestics reflects the larger society).

n11. See Juliet Mitchell, Women's Estate 14 (1971). In her classic essay, Della Costa, summarized the position commonly held by feminists: "all women are housewives, and even those who work outside the home continue to be housewives ... [It] is precisely what is particular to domestic work ... as quality of life and quality of relationships which it generates, that determines a woman's place wherever she is and to which ever class she belongs." Della Costa, Women and the Subversion of Community, in Radical America 6 (1972).

Similarly, Nona Glazer argued that domestic labor is "central to understanding women's continued subordination in both advanced capitalist and socialist societies, and that women's assignment to housework and child care (whether or not given women ever actually do the work involved) structures women's lives outside the household." Nona Glazer, Everyone Needs Three Hands: Doing Unpaid and Paid Work, in Women and Household Labor (Sarah Fenstermaker Berk ed., 1980).


n16. See Silvia Federic, Wages Against Housework, in Ellen Malos, The Politics of
In a society in which money determines value, women are a group who work outside the money economy. Their work is not worth money, is therefore valueless, is therefore not work, can hardly be expected to be worth as much as men, who work for money. Margaret Benson; The Political Economy of Women's Liberation, in Malos, supra, at 121.

This economic perspective suggested a strategy for reducing the stigma of housework that transcended semantic changes, such as referring to housewives as domestic engineers.

Reported wages are below estimates suggested in studies generated by calculating market value in the service sector by specific tasks. Research findings indicate variation by region and appear to reflect a number of influences in the market that increase or decrease the pool of undocumented workers employed in the underground economy. See Pierrette Hondagneu-Sotelo, Regulating the Unregulated?: Domestic Workers' Social Networks, 41 Soc. Problems 58-59 (1994). See also Romero, supra note 2, at 170.

See Martin & Segrave, supra note 3; see also George Stigler, Domestic Servants in the United States: 1900-1940, in Occasional Paper No. 24, at 36 (New York, National Bureau of Economic Research 66).

See Pamela Horn, The Rise and Fall of the Victorian Servant 7-9 (1975) (noting that the choice to leave domestic service was not always voluntary and pointing out that Lord North levied a tax against "keeping male servants" in 1777 in order to force more men into the factories). Glenna Matthews described housewives in colonial America homes as being "in charge of a team that kept the household supplied and functioning. Many housewives had help from a 'hired' girl even if they had no full-time servants, and they could count on regular assistance from their own family." Glenna Matthews, Just a Housewife: The Rise and Fall of Domesticity in America 3 (1987).

See Julie Matthaei, An Economic History of Women in America: Women's Work, the Sexual Division of Labor and the Development of Capitalism 282 (1982). Regardless of the introduction of modern conveniences, the shift from live-in to day work, or the eight hour day, domestic service remains undesirable work and only women without other options enter the occupation. George Stigler commented on the degree of concern the shortage caused: "Indeed one can hardly escape one or both of two references from the perennial complaints about the servant problem: either domestic service is a disappearing occupation or rivals the weather as a major conversational subject." Stigler, supra note 19, at 1.

Maids-of-all-work translated into working alone on the job. Their isolation was worsened by being treated invisible. Domestics complained of loneliness even when they were surrounded by people in their employer's home.

See Rollins, supra note 6, at 35. See also Theresa McBride, The Domestic Revolution: The Modernization of Household Service in England and France, 1820-1920 (1976) (analyzing the middle-class acquisition of household servants as a significant factor in establishing the housewife as "the mistress of servants ... because it represented a clear concession of sphere of power which was specifically female").

See Katzman, supra note 24, at 271.

Stigler, supra note 19, at 36.

See Martin & Segrave, supra note 3, at vii.

n34. See Martin & Segrave, supra note 3, at 131.

n35. See id. at 135.

n36. See id. at 148. Martin and Segrave note that domestic, like most workers, are highly unlikely to choose to work for less pay. Rather, they are forced to accept lower wages. The third factor noted is that the Department of Labor basically accuses domestics of lying about their working conditions.


n39. See Felicity Barringer, What Many Say About Baird: What She Did Wasn't Right, N.Y. Times, Jan. 22, 1993, at A10 (arguing that Baird only acted like a mother: "I think she probably put the priority of her child first. I can't condemn her for that").


n41. See, e.g., Theresa Monsour, Minnesota, the Land of 10,000 Nannies, Where Women Sought for Work Ethic, St. Paul Pioneer Press, Feb. 1, 1993, at 1B, 4B (describing the students of Red Wing/Winona Technical College, highlighting wonderful working conditions, including traveling all over the country and the world and gym equipment in their apartment-sized private living area). See also Anna Quindlen, Justice is Blind: Kimba Wood and the Sins of Zoe Baird, N.Y. Times, Feb. 7, 1993 ("One reason the employment pool may include so many foreign workers is that in many other countries the care of children is an honorable profession. In America, it is treated like scut work.").


n43. Harrison, supra note 42, at F11.

n44. See Rollins, supra note 6; Glenn, supra note 6; Romero, supra note 2; Hondagneu- Sotelo, supra note 18; Leslie Salzinger, A Maid by Any Other Name: The Transformation of "Dirty work" by Central American Immigrants, in Ethnography Unbound: Power and Resistance in the Modern Metropolis 139-60 (Michael Buraway et al., eds., 1991).

n45. See DeLaney, supra note 37, at 306.


n47. See Ontiveros, supra note 14, at 618.

n48. Analysis of the IRCA application to conditions of undocumented workers employed in domestic service clearly demonstrates the lack of benefits these workers will receive and does not serve as an incentive for employers to increase wages or provide benefits. See Goldberg, supra note 37, at 79; Diana Vellos, Immigrant Latina Domestic Workers and Sexual Harassment, 5 Am. U. J. Gender & Law 407, 427 (1990); Nancy Ann Root & Sharyn A. Tejani, Undocumented: The Roles of Women in Immigration Law, 83 Geo. L.J. 605, 615 (1994).

n49. However, unlike workers, the employer does not face deportation or suffer the crisis of unemployment.

n50. See Kevin R. Johnson, Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and

n51. Although all undocumented workers are vulnerable to discrimination because of their limited employment options, fear of deportation, limited English skills, and ignorance of legal rights, the burdens of discrimination fall hardest upon women. Immigrant women, many of whom are undocumented, often work in conditions that are far worse than, and for wages that are below, those offered to immigrant men or nonimmigrants.

Ontiveros, supra note 14, at 618.

n52. See id.

n53. See Peter Margulies, Stranger and Afraid, Undocumented Workers and Federal Employment Law, 38 DePaul L. Rev. 553, 554 (1989).

n54. See U.S. Agencies Look Other Way on Domestic Help, Wash. Post, Feb. 14, 1993; Mary Poppins Speaks Out, Newsweek, Feb. 22, 1993, at 66-68. Five problems identified were: (1) employers' low regard for domestic labor and childcare; (2) employers' refusal to pay a decent wage and over time; (3) long hours; (4) hard work; and (5) no benefits. See David Rosenbaum, No Pensions, No Unemployment, No Compliance: Usually the Illegality in Domestic Work is Benefits Denied, N.Y. Times, Jan. 1, 1993.


n56. See Mary Poppins Speaks Out, Newsweek, Feb. 1, 1993, at 66-68.

n57. For further discussion on immigration law and the impact on undocumented women, see Root & Tejani, supra note 48. For specific impact of IRCA, see Grace Chang, Undocumented Latinas: The New Employable Mothers in Mothering Ideology, Experience, and Agency, 259-85 (Evelyn Nakano Glenn, Grace Chang, et al., eds, 1993) The case of household workers sponsored by an employer for an immigrant visa is a long process and one that lends itself to ample opportunities for exploitation. See Vellos, supra note 48; Medina, supra note 37.

n58. "Some employees do not want to bundle up their children on cold winter mornings before sunrise for a long commute to a center. Others have work schedules that make it impossible for them to pick up their children when required by the centers. And then there is the simple fact that many higher-paid employees with demanding schedules will often choose in-home care, because it means they don't just get their children diapered, but their houses tidied as well." Cindy Skrzyczki, Baird's Firm Offered Better Child-Care Deal than Most, Star Tribune, Feb. 7, 1993, at 29A.

n59. Id.

n60. For the definition of the informal sector, see Alejandro Portes, The Informal Sector VII Review 157 (1983), which applies to the current condition in domestic service. "It is work that is unstandardized, and unorganized, requires no formal training and from which employees may be fired for lack of cause. Its workers are not included in the protective legislation covering wages, illness, accidents or retirement. And its labor is far more 'elastic'; hired in good times and discharged during bad; hired for unspecified periods and fired without notice." Id.


n62. For instance, one such denied was proposed with the Bracero Program in El Paso. See El Paso Wives Appeal Ruling Barring Maids, El Paso Herlad Post, Nov. 18, 1953, at 13.
Laura L. Corrada

BIO:  
* © 1998. Associate Professor, University of Denver College of Law. The author would like to thank Nell Newton, Adrienne Davis, Michael Olivas, Sylvia Law, Lisa Iglesias, and Chris Cameron for their encouragement and support of this project. The author especially would like to express his appreciation to Richard Delgado for his insightful comments and also for his inspirational book The Rodrigo Chronicles, whose narrative dialogue style served as the model for this effort. Thanks also go to Kevin Johnson, Chris Cameron, Nancy Ehrenreich, Jackie St. Joan, and Federico Cheever for their thoughtful comments on the article, and to Joy Kolgushev and Michael T. Lowe for their assistance and their interest.

SUMMARY:  
... Although she had been in the employment law class for only a short time, she already knew that any unusual reaction would attract the harsh and questioning gaze of the professor. ... She had noticed, even before deciding to attend Denver Law, that her labor law professor, Roberto Corrada, was Latino. ... "Yes, that's always seemed obvious to me as well," Corrada replied. ... "He hired a student with a working class, labor union background who had grown up in Boston. ... Corrada seemed almost in a trance reciting background facts about the dispute. ... "The way you just talked about the case is what I might expect from a conservative white male law professor," Tina replied, "someone who didn't or couldn't understand the race, gender, and class implications of the LCF case. ... "They paid me what I asked -- a lump sum reflecting an expert witness fee of $200 an hour," Corrada said matter-of-factly. ... "Well," Corrada added, "any labor law professor in America could have testified the way I did about the law. ... I think you're right, Professor, that only a forum like the one NAFTA provided in the Sprint/LCF case would allow a deeper interrogation of domestic law against a background of internationally recognized principles of fairness and justice," Tina remarked. ...

Sometimes the governing paradigms which have structured all of our lives are so powerful that we can think we are doing progressive work, dismantling the structures of racism and other oppressions, when in fact we are reinforcing the paradigms. These paradigms are so powerful that sometimes we find ourselves unable to talk at all, even or especially about those things closest to our hearts. When I am faced with such uncertainty and find myself unable to speak, anti-essentialism and intersectionality are to me like life preservers. They give me a chance to catch my breath as the waves come crashing over me and they help me sort through my own confusion about what work I should be doing and how I should be doing it.

Tina Romero struggled to relax her face so as not to draw attention to herself. Although she had been in the employment law class for only a short time, she already knew that any unusual reaction would attract the harsh and questioning gaze of the professor. She always arrived prepared, but, like most law students, Tina tended to avoid professor/student dialogue in the large classroom setting. The dialogues were so short and impersonal and often seemed to be orchestrated by the professor to elicit a narrow, technical, fill-in-the-blank response. She tried again to relax, look attentive, and hope for the best.

As the professor droned and her mind wandered, a sense of displacement crept over Tina. How strange for her to be in this classroom in Denver, Colorado. In distance it seemed just up the road from home, but was in fact quite far, both in time and culture, from her native Las Vegas, New Mexico. She had completed her undergraduate and postgraduate education at the University of New Mexico, and she deeply missed her old community. Still, Tina knew that to grow she ultimately would have to leave New Mexico (if only for a brief while), because this opportunity to attend the University of Denver Law School would allow her to stretch her legs without
wandering too far from her beloved state. It didn't hurt, of course, that she could continue her postgraduate degree in Labor Studies here by concentrating on labor and employment law.

She had noticed, even before deciding to attend Denver Law, that her labor law professor, Roberto Corrada, was Latino. His name had initially sounded familiar, but she gave up trying to place it. She remembered calling him once to inquire about labor law at DU, and had been pleased with the answers she received: both labor professors at DU had an interest in NAFTA, and the school offered opportunities for directed research and internships -- possibly even a field placement in Mexico.

But for Tina, the big surprise at law school was not the labor curriculum; she was, after all, already familiar with many of those topics. The surprise was how little the Latino students there had in common. Tina had dropped out of the Hispanic Law Students' Association simply because of the dearth of Chicanas involved in the organization. And the Law School itself was largely populated with white students from the upper middle class and higher.

Tina had not expected this. She knew it would not be the University of New Mexico, but wasn't Colorado's Hispanic population around 20%? She realized early on she would simply have to stick it out and get her degree, then wait to see what would happen.

"Ms. Romero, how does the systemic discrimination case differ from the ordinary indirect evidence case set out in McDonnell Douglas?" asked Professor Corrada suddenly. Jarred violently back to reality, Tina realized she had let herself drift, and the professor had seen his opportunity. "The systemic case is premised on a statistical showing of discrimination," she blurted out.

There was a tense, momentary silence. Then the professor said, "That's exactly right." There was no indication of approval except for this flat, direct statement, and he returned to his lecture.

Tina returned to her thoughts. She had completed the first year of Law School satisfactorily though not without the standard anguish. She could not understand why the process of learning the law had to be so competitive and hostile, almost more like a war than an educational experience.

[*1067] During her second year, Tina dutifully signed up to take employ ment law with Professor Corrada. After about two weeks of class, she had suddenly recalled why the name seemed so familiar. She had encountered his name in some testimony about NAFTA that she had read in a postgraduate class. She vaguely recalled that Professor Corrada had testified as an expert in a NAFTA case stemming from the labor side accord between the United States and Mexico. While attending law school, Tina had discovered that the proceedings of that hearing (including the testimony) had been reproduced in a book entitled The Effects of Sudden Plant Closings on Freedom of Association and the Right to Organize in Canada, Mexico, and the United States (1997), released by the Commission for Labor Cooperation. Two weeks before her employment law class began, she sat down and read the testimony again.

The NAFTA case concerned a dispute between Sprint Corporation and La Conexion Familiar (LCF), a small Hispanic telephone company that Sprint had acquired and converted into a subsidiary. LCF was a niche company designed to market long distance telephone service to Spanish speaking people. Accordingly, most of the company's workers were Latinas who were fluent in Spanish and English. The complaint (the first of its kind under NAFTA) was filed by a Mexican labor union alleging that the United States was not enforcing its own labor laws. The complaint followed determinations by both an administrative law judge and a federal district court judge that Sprint did not violate labor laws when it sold its LCF subsidiary and terminated its employees just before a union election among LCF's workers.

Tina was surprised at Professor Corrada's testimony. Apparently he had testified at a hearing in San Francisco held by the United States Department of Labor as an expert for Sprint, and had maintained that US labor laws had been properly enforced. Tina found it hard to understand how this professor could have testified for Sprint. She tried to think about why she felt this way. After all, she didn't really know the professor very well.

The reasons pored forth easily. Not only did this type of corporate testimony seem at odds with his character generally, Tina had noted several times his decidedly progressive stand on race and employment. On one occasion he had even indicated that he was co-counsel in an ACLU case, and Tina had learned that he was currently Chair of the Board of the ACLU of Colorado. In her conversation with him prior to attending law school, she found out that he was intimately involved with the Colorado Hispanic Bar Association, and had been chair of its public policy committee. In this role, he had become a staunch defender of affirmative action and bilingual education. Tina wondered how someone who was so devoted to the Latino community could testify for a large U.S. corporation against the better interests of Latina blue-collar workers.
Maybe, she thought, his background was elite, upper class. His panic. And wasn't he Puerto Rican? Tina noted that Professor Corrada was fairly light-skinned. She entertained the thought that he was perhaps one of those paternalistic old-party Democrat Hispanics who thrived on the subordination of other Latinos because it served to lift them to positions of leadership within the community and allowed them to feel they truly knew what was best for the greater Latino population.

As the class wound to an end, Tina realized she could not stand to merely speculate about these issues. After all, if she was going to work closely with this professor on a directed research project she should learn about his perspective and his thoughts on Latino subordination in this country in advance. She would not compromise herself for academic opportunity.

As Tina watched the last of the students file out of the classroom, she resolved to ask the professor about his testimony in the LCF matter; after all it was a matter of public record. He was almost to the door when she gained his attention: "Professor Corrada, may I ask you a question that's not really related to the class?"

"Sure, go ahead," he said.

"Well, I don't know if you recall my background, but I have a Master's Degree in Labor Studies with an emphasis on NAFTA."

"Sure I remember," he said, nodding assuredly. "We get so few students with an actual academic grounding in labor policy. Say, this isn't about a possible directed research project is it?"

"Not exactly." Tina replied. "In my studies I came across some testimony you apparently gave on behalf of Sprint Corporation in a labor dispute involving La Conexion Familiar."

Professor Corrada suddenly looked annoyed. "Yes<elip>what about it?"

"Well," Tina continued, trying to keep a nervous flutter from her voice. "I wanted to know whether it was really you who had testified."

"Well," he said, "Roberto Corrada is not a very common name. In fact, my father says all Corradas in the world are related. Yes, it was me." He paused for a moment and set his books on a desk. The scowl disappeared from his face. "Do you find that surprising?"

"I do find it somewhat surprising given that everything I know about you suggests that it should have been more likely that you would have," she got courageous, "that you should have testified on the other side, and not for Sprint." She folded her arms in an act of unintended defiance.

Corrada put his hand on his chin and stared at her. Tina couldn't tell if his look was approving or disdainful.

"It's true," he said. "My general predilections are in favor of workers and certainly the Latino community, but it's not as easy as that."

"What do you mean?" Tina asked.

"It's kind of a complicated story," he replied, the scowl returning to his face. "But look, I'm not doing anything for the next hour and a half, and I'm famished. This class really takes it out of me. If you have a minute to get a bite at the cafeteria, I'll explain what I mean."

Tina's classes were completed for the day, and although she had wanted to get a head start on tomorrow's tax reading, she simply had to hear the professor's story. "I guess I could use some coffee," she said.

As they walked to the cafeteria, Tina wondered how much of Corrada's explanation would be self-justification. She simply wanted to know the truth about the situation. Maybe he was not proud of what he'd done. If that were the case, she was probably about to hear a series of half-baked rationalizations. She had seen this before in some Hispanics in Colorado and New Mexico who seemed unable to reconcile their upper-class Mexican roots with their strong feelings for their subordinated brothers and sisters in this country. How many times had she witnessed these Hispanics (who were usually lighter-skinned) run for statewide office, begin their campaign with a heavy message of economic justice for Latino blue collar workers, only to have the message become diluted and then fade altogether when they became politically successful. This success meant more money from outside sources and outside consultants who advised that strong stances, in this day of the moderate voter, were political suicide. "After all," the consultants would say, "the people in your community will vote for you no matter what."

Tina bristled at the thought, but chastised herself for her own strongly held stereotype. She shouldn't fall into the majority trap of making such generalizations on the basis of the color of one's skin. There were plenty of light-skinned Latinos in both Colorado and New Mexico who were among the strongest supporters of the community. Nonetheless, she feared that she might have struck a chord that Professor Corrada may have preferred not to hear.

As they waited in line, Professor Corrada began to talk. "Did you know I'm Puerto Rican?" he asked.

"Yes, I had heard that you are," Tina replied.
"I think a lot of Chicano students come here and see there's a pro [*1070] fessor named Roberto Corrada, but when they meet me they don't know what to make of me. I think they think I'm from Spain or South America," Corrada said.

"You could be of Mexican descent or from Latin America," Tina replied. "I think most of us know not to decide simply on the basis of color," she indicated somewhat hesitantly.

"Some people have even said to me, you don't look Puerto Rican, but I am Puerto Rican, proudly, and my family goes back for generations on the island."

"No lo crees," joked Guillermo the grill chef, as if on cue. Guillermo was from Mexico, and he obviously enjoyed teasing Professor Corrada about almost anything, at any opportunity. Today he was in a particularly jovial mood, but it was clear that he didn't know what Cor rada was talking about.

"Quiero queso americano hoy, no el provolone!" yelled Corrada over the sizzle of the patties on the grill. He then glanced back at Tina and said "What was I talking about?"

"Proudly Puerto Rican," Tina remarked.

"Oh yes. Right. But clearly of Spanish descent. That was always important in my family. Everyone in my father's and mother's families were intimately familiar with Spain and its culture. My father could trace his roots to the town of Infiesto in Northern Spain, and, in fact, I've been told that if you go to that town and say that you're a Corrada the townspeople will welcome you back as if you're long lost family. My mother is less clear about her roots, but apparently her mother's family comes from around Barcelona."

"I don't mean to interrupt, Professor," Tina said delicately, "but what does all this have to do with your testimony at the NAFTA hearing?"

Professor Corrada looked seriously at Tina and said, "Everything. I learned very early that my family was considered to be, at least some what, among the island's elite. My great grandfather, Jose del Rio, had a hand in founding the Statehood Party, one of the island's big political parties. My uncle Baltasar served as Resident Commissioner of Puerto Rico-the nonvoting representative to the U.S. Congress-in the 1970s. My uncle Alvaro is a bishop on the island, and seemingly always in the news trying to quell some controversy or another for the Catholic Church."

Great, Tina thought, he's a light-skinned Hispanic whose family is among Puerto Rico's elite and so it was easy to testify in behalf of a major U.S. corporation. Could it be as easy as that?

"So," Tina interrupted softly, "your family's elite status has some thing to do with your connection to Sprint?"

[*1071] "No, of course not. Again, it's not that easy," replied a somewhat frustrated Corrada. "First of all, I didn't say they were among the elite, I said somewhat in the elite. Believe me there are some very wealthy, incredibly influential old-time Spanish families on the island. I wouldn't say we're quite in that league, although we certainly seem to have had some influence. But my family history is not as simple as all that, which makes things all the more confusing." Tina resolved not to interrupt Cor rada again during his recital of family history. Corrada continued, "My family's history contains some harrowing stories of difficulty and hard ship as well. Both of my grandfathers worked very hard for what they got. My father's father was a farmer, growing sugar cane and tobacco, among other things. My father never really had very much growing up because he had thirteen brothers and sisters. Fortunately, the one thing valued in his family above virtually everything else, except perhaps reli gion, was education."

"My mother's father grew up poor. His childhood playmates were poor sons and daughters of Chinese immigrants. He struggled and saved and ultimately built a successful business."

Corrada suddenly stopped. "I'm sorry Tina, I didn't mean to be short with you a second ago, but you've hit on matters that are very close to my heart. Family stories are difficult to verify. I'm sure what I've just said is not completely accurate, but it's what I have in my head," he continued, gazing through the cafeteria window. "I have always been conflicted in some way about my class and racial roots in Puerto Rico. For example, despite stories of hardship, all of my father's and mother's siblings went to college. And while everyone knows that the Spanish came to Puerto Rico and over the years intermarried with African and indigenous peoples or Taínos who were subordinated first by the Spanish and then by the Americans, does this description of inter marriage leading to racial assimilation encompass my family?" Corrada shrugged. "I'm not so sure. It's true that my great grandfather, Candido, was a captain of the Spanish militia in Morovis during the Spanish- American war. His brother, Rodrigo, I am told, fought against Teddy Roosevelt in Cuba. But there seems to have been a lot of intermarriage within the family itself. My parents are second cousins; they share a maternal great grandmother. My father's parents are first cousins; they received a special dispensation from the Pope in order to marry. As far as skin color is concerned, I'm fairly light-skinned, and some of that seems to have been engineered, more or less. I'm Puerto Rican and have
always identified that way, but I have always felt myself to exist on some kind of race border."

Tina was slightly taken aback by the professor's frankness about [*1072] his background. "I really had no idea, Professor," she said thoughtfully. "But I suspect strongly that a lot of that goes on in Mexico where my antepasados are from. All you have to do is look around. If social con versions did not discourage racial intermarriage, I suppose everyone would look more or less the same by now. I also think it's no coincidence that the whites are in the elite class by now."

"Yes, that's always seemed obvious to me as well," Corrada replied. "For example, all of the Governors of Puerto Rico have been light-skinned Spanish men. But as I'm discovering as I get older, it's really not as simple as all that. I vividly remember conversations with my father about my heritage and how intermixed we Puerto Ricans are culturally," Corrada said. "On several occasions my father told me not to forget that we are an African culture. Our poetry, music, and dance are mixtures of Spanish and African, heavily favoring African rhythms. Everyone in Puerto Rico dances; they all know the same dances and songs, and that knowledge does not appear to vary according to class like it does in the United States."

"What I mean," he said to Tina, "is that race and class relations in Puerto Rico are in some ways the same, but also in some ways very different from the way they're viewed here in the United States." He thought for a moment then continued, "I'll give you another example. Growing up, my idol, and I really had only one, was Roberto Clemente. One of the greatest baseball players to ever play the game, Clemente was a legendary hitter who could hit for both average and power. But as good a hitter as he was, it paled in comparison to his ability to play the field. He could catch the ball from virtually anywhere in right field and had a cannon for an arm — both powerful and accurate. And Clemente was black, but honestly I didn't know that. It's not that I was not cognizant of his being black and my being white, but we were both Puerto Rican. Puerto Ricans had been excluded from major league baseball and were relegated to the Black Leagues. One of the greatest baseball players ever - possibly better than Clemente - was a Puerto Rican named Pancho Coimbre. The exclusion of Coimbre from the Major Leagues is an injustice that every Puerto Rican feels regardless of color. In that sense both white and black Puerto Ricans are and have been raced and erased," Corrada exclaimed.

"Of course, I have not lived my life exclusively in Puerto Rico. My father was in the Air Force, and so we've lived all over, but only occasionally in Puerto Rico," Corrada said. "That served to accentuate my [*1073] internal conflict regarding class and race. On top of the conflict related to my race and class roots in Puerto Rico, there is a more supreme conflict involving whether I'm more American than Puerto Rican."

"You know you might be both," Tina said, a hint of compromise in her voice. "Aren't all Puerto Rican citizens of the United States? Why should you be any more conflicted than me, for example? I'm both Chicana and American."

"Exactly," agreed Corrada. "You have a double consciousness because of your identification as an American and as a Chicana - two different communities and two different perspectives. But you live more or less comfortably in both communities. For example, you know American norms and customs because you grew up here. Also, you're comfortable in the American Chicano community because you all share a common bond of both race and place identity within that community. What I'm talking about is different. What if your entire family was in Mexico, meaning all of your family stories were about Mexico? But then, say, your immediate family moved to Boston, then Chicago, and then Dallas, but you still spent about roughly one third of your life in Mexico. This kind of existence, trust me, leads to a truly bordered identity construct accompanied by a hypersensitivity to similarities and differences between cultures," Corrada concluded.

"What my straddling of Puerto Rican and American homelands has done for me is make me feel ill at ease in both places - uncomfortable both in the United States or in Puerto Rico," he said as a deep frown spread across his face. "Of course, the constant kidding I took from two of my "Independentista" aunts - Panchy and Ita - didn't help. They sometimes affectionately called me "pitiyanqui," a term of derision for Puerto Ricans who buy into imperialist American ideas, because of the various U.S. influences in my life."

As Corrada paused briefly, Tina took another sip of her now lukewarm cup of coffee. "I wonder what all of this has to do with Sprint and La Conexión Familiar. Is it that the professor had no appreciation for the race and class aspects of that dispute? That would be hard to believe regardless of all the deep culture and identity
clashes in his own back ground. Still, maybe that's what he's getting at, she thought.

Tina's momentary attention lapse must have been detected by the professor because he then said, "I realize our time is getting short, so let me skip ahead a little to show you how this identity conflict has played out in my professional life. I entered law school in the early 1980s thinking that I would like to become a labor lawyer. I was on the debate team in college, and had twice debated topics having to do with labor unions or unemployment. I found the field of labor relations interesting. [1074] My sympathies were generally progressive and so I thought that I might work for a labor union. But, of course, I had no family history of union activity. None of my relatives had, to my knowledge, been in a union. In addition, I myself had very little, actually no, experience with labor unions. In college, I had floated from one minimum wage job to another and was never presented with an option to join a union," Corrada recounted as he stared forlornly at his long-cold cheeseburger.

At least the professor was on the East Coast, Tina thought. If it hadn't been for a close uncle of mine who left New Mexico for a job in Los Angeles, where he ultimately became a shop steward, I, too, would not have ever thought about the field of labor relations. "But surely there were professors at your law school who knew about unions," Tina asked.

"Oh, yes, in fact the professor who taught labor at my law school had substantial ties to unions. I applied to be his research assistant toward the end of my first year," Corrada replied.

"Well, what happened?" Tina asked.

"He hired a student with a working class, labor union background who had grown up in Boston. As I asked fellow students about their summer jobs, I discovered that most of those with paid clerking positions or with summer internships with labor unions were from families with long ties to the various unions headquartered in Washington, D.C. It was easy for me to stereotype labor unions as places where white kids from working class families with union ties went for jobs. In fact, I cannot recall ever seeing a person of color in a position of authority in a labor union the entire time I was in law school."

"Wait a minute," Tina interrupted, "surely you're not going to suggest that a management labor job was easier for you to find than a labor union job."

"In a way it was easier to find a management job," Corrada replied conspiratorially, "because it looked easier. Think about it. The big firms come to campus every fall to interview. You don't have to know anyone or ask anyone for an interview. You simply dump your resume in a pile, and, if selected, you interview with firm representatives on campus. It's the same process that occurs here at DU, but I was applying for labor jobs in the mid-1980s, the golden era of law firm hiring. I had done well enough (earning high grades and membership on the law review) after my first year to secure a number of interviews. I'm sure I also benefited from some affirmative action. Although my resume did not indicate that I was Puerto Rican, my name and fluency in Spanish was probably enough to get me the benefit of the doubt."

"I remember that the interviewer from one of the large firms at [1075] which I interviewed was a light-skinned Hispanic woman. A partner in the firm, she actually knew more about Puerto Rican politics than I did. It turned out her husband was a lawyer at another large firm and he apparently did a lot of work for the government of Puerto Rico," Corrada recounted.

"So you thought that large corporate law firms had more Latinos in them than did labor unions," Tina remarked. Surely Corrada could not have been that naive!, she thought.

"No," replied Corrada, "but people are swayed by their actual experiences, and I couldn't help but be impressed by a large firm with a Latina partner. Our talk about Puerto Rico was an unexpected surprise and made me feel very comfortable in the interview. When the firm offered me a job as a summer associate, I quickly accepted it. I eventu ally accepted a permanent offer from the firm." The seduction of the large corporate law firm, Tina thought. She had heard about it, but had managed to circumvent it herself by eschewing the on-campus interview process.

"I thrived as a management labor lawyer. I especially enjoyed the advice side of the practice," Corrada continued. "There were the diffi cult times as well, but for the most part it was a good experience. I felt that the firm partners with whom I worked cared about me as a person and about my development as an attorney. Even though I was a member of the Hispanic National Bar Association, I basically forgot that I was Hispanic at all," Corrada recalled. Tina nodded, so Corrada went on: "So I wasn't particularly suspicious when I was asked to be an expert witness for Sprint Corporation in December 1995. I remember asking what being an expert witness would entail? I was told that it was relatively straightforward because the issue in the hearing was whether U.S. labor laws had been enforced. I found out that the hearing was being held by the U.S. National Administrative Office because a Mexican labor union had filed a complaint pursuant to the NAFTA labor side accord."
Tina looked at Corrada eagerly -- this was finally what she had been hoping to hear about.

"I said I would review all available material in the matter to determine whether I would be comfortable serving as an expert witness at the hearing. A few days later I reviewed some briefs filed by both sides in the case as well as copies of an injunction decision by a California federal district court judge and a decision on the merits by an administrative law judge (ALJ). According to all of the documents, Sprint purchased an entity called La Conexion Familiar, (LCF) in 1992. LCF was a telecommunication reseller that had been based in San Rafael, California," Corrada said.

"I thought LCF was based in San Francisco," Tina said.

"No. Sprint moved LCF to San Francisco," Corrada answered. "According to the ALJ decision, Sprint wanted to expand LCF and wanted to be closer to a large labor market of Spanish speakers who could be trained as telemarketers. The decision also noted that at about this time, Sprint discovered that fifty employees, a large majority of the workforce, were undocumented immigrants. Sprint instituted a rescission lawsuit to stop the sale of the business. They eventually completed the purchase, but paid substantially less money. In addition, because of the lawsuit, which was a dispute with the former owners of LCF who had been retained by Sprint, Sprint cancelled the employment agreements it had with the former owners and replaced them with Sprint managers."

"So, what happened to the undocumented workers after all that?" Tina asked.

"I don't know," said Corrada, "the documents didn't discuss the issue any further."

"You know, a cynic might suggest that Sprint used the issue of the undocumented workers to get a better deal and to create an opening for them to dismiss the former owners in favor of their own internal managers," Tina stated wryly.

Corrada winced slightly. "I suppose someone could possibly infer that from the facts, but it did not seem to be a contended issue, and there was no direct evidence."

"What were you thinking when you read this?" Tina asked, shifting the conversation away from uncomfortable ground.

"Well, like you, I was concerned about this first part. I knew from a colleague of mine, Cecelia Espenoza, that the prohibitions on the hiring of undocumented workers were often manipulated by companies to the detriment of these workers, but I continued reading anyway," said Corrada. "The ALJ's opinion recounted some basic facts. Essentially, LCF was a "niche" telemarketing business which targeted the Latino community and attempted to sell long distance service to recent immigrants who spoke only or primarily Spanish and who frequently made long distance calls to family or friends in Mexico. LCF was advertised and marketed as a business "by Latinos for Latinos," and was designed to appeal to customers who felt more comfortable communicating by telephone in their native language. Thus, its telemarketing and customer service representatives spoke entirely Spanish. The customers' bills were also in Spanish. Based on the influx and the expected continuation of a pronounced increase in the migration of Spanish speaking immigrants into the United States, Sprint management predicted growth in LCF's operations."

Corrada seemed almost in a trance reciting background facts about the dispute. "In early 1994, LCF started to perform below projected levels financially and Sprint became concerned about the profitability of the enterprise, but at about the same time the Communications Workers of America started to receive complaints about LCF including allegations of unfair treatment and failure to pay promised sales commissions. The union began an organizing campaign and there were instances of interrogation and threats of plant closure."

Tina shook her head. "Didn't this bother you, Professor? You're so adamant in your labor law classes about interrogating employees and threatening plant closure."

"Yes, that's right, although you well know there are exceptions to those rules. There are times when you can poll employees anonymously and even times when you can predict plant closure, but I was concerned about whether those exceptions were applicable in this case. However, the ALJ did conclude, based on this evidence, that Section 8(a)(1) of the NLRA, preventing employer interference with union organizing, had been violated, and therefore, issued a cease and desist order. This seemed proper if the activity was widespread and encouraged by management. Remember, my task as an expert was to testify whether U.S. labor laws were enforced. I remember thinking to myself, so far so good."

"But wait a minute, Professor," Tina said. "I thought the ALJ had ruled in favor of Sprint."

"That's right, he did," Corrada replied, leaning over the table, "but on the bigger issue involving whether Sprint had violated Section 8(a)(3) of the Act which prohibits discrimination in terms and conditions of employment
based upon union activity. This is the section of the law that prevents an employer from discharging employees because of their involvement with a union. In certain circumstances, this part of the law prevents employers from making business decisions based on union organizing activities. Since Sprint closed LCF in July of 1994, this part of the Act was much more important to the union," emphasized Corrada.

"Wouldn't the evidence of threats of plant closure be enough to support a finding of a violation?" Tina asked.

"Not necessarily," replied Corrada, "despite such evidence, the ALJ must determine whether the employer would have done the same thing even absent union activity. In this case, a substantial amount of evidence existed showing that LCF was losing an enormous amount of [*1078] money. For example, instead of turning a projected profit of some $12 million, LCF lost several million by early March 1994 and was projected to lose several million more by year's end," Corrada emphasized.

"But isn't it true that Sprint has no unions and that it's been relatively aggressive in trying to maintain a nonunion work force," Tina pressed.

"I had heard that, Tina, but had seen no evidence in NLRB or court decisions," answered Corrada, "and in any case taking a stance against unionization is not unlawful."

"Yes, but if Sprint didn't like unions wouldn't that diminish their incentive to prop up a failing division? Couldn't the discrimination have been that Sprint didn't approach LCF the same way it would have approached a losing division with potential that wasn't the target of a union organizing drive?" Tina queried.

"That's a really good point and it certainly would have been relevant in this case," said Corrada, warming to Tina's enthusiasm, "but while the union alleged this, neither the union or the NLRB presented much evidence of it. Admittedly, though, that type of intent is almost absurdly hard to prove. In addition, Sprint submitted a lot of evidence regarding exploration of alternatives that would have helped LCF, including a sale to another company and possible relocation."

"Surely some of the evidence caused you concern on the merits," Tina insisted.

"Yes," replied Corrada, "I became concerned when I found out that a Sprint labor relations manager had postdated a letter to make it look like a particularly critical economic decision had occurred sooner than it actually did. In addition, when LCF was closed, part of its customer database was transferred to Dallas, Texas where additional Spanish speaking telemarketers were hired to handle the influx. But you should remember what I had been asked to testify about, whether U.S. labor laws had been enforced."

"I understand," Tina said, "but isn't that all wrapped up with the decision on the merits of the dispute?"

"Yes, of course," replied Corrada, "but I was very focused at the time. I had not been asked how I would decide the dispute; rather, my role was to be a judge more or less, one who would give no real deference to the ALJ or the federal district court judge who had actually decided aspects of the dispute on the merits. So, for example, could I say that a reasonable decisionmaker would reach the same result that the ALJ and the district court judge did in this matter? But my charge was also broader. I wasn't asked simply to review what the judges had ruled in the matter, but I was asked to discuss whether U.S. labor laws had [*1079] been enforced. That meant I would have to review the National Labor Relations Board's approach to the case. I had to ascertain whether they had prosecuted the case in their usual manner or if they were dogging it, merely going through the motions."

"So what was your view, then, of the NLRB in this case?" Tina asked.

"Well the General Counsel of the NLRB was Fred Feinstein. In prior administrations and with prior Generals Counsel (GCs), I certainly would have had grave concerns about enforcement. Indeed, under some GCs an enforcement action in this case may have never even been brought. However, under Feinstein, the NLRB prosecuted this case heavily, including seeking a 10(j) injunction in federal district court, which is an extraordinary move in any NLRB case."

"So, based on all of this, you agreed to testify as an expert?" Tina asked. Tina tried to mask her disappointment. She thought staring out the window might help, but she found herself saying, "I guess I'm a little disappointed."

"Really, why's that?" Corrada asked.

"The way you just talked about the case is what I might expect from a conservative white male law professor," Tina replied, "someone who didn't or couldn't understand the race, gender, and class implications of the LCF case. But I would expect more from you. Why didn't you pass this up? Was it the money? Surely they paid you plenty," Tina said accusingly.

"They paid me what I asked -- a lump sum reflecting an expert witness fee of $200 an hour," Corrada said matter-of-factly. "Certainly the money was good, but could I have passed it up if I had problems agreeing to serve as an expert? I like to think so. It's certainly true that I would not have been an expert witness without

""Yes," replied Corrada, "I became concerned when I found out that a Sprint labor relations manager had postdated a letter to make it look like a particularly critical economic decision had occurred sooner than it actually did. In addition, when LCF was closed, part of its customer database was transferred to Dallas, Texas where additional Spanish speaking telemarketers were
the pay, but in my mind, while the money was necessary, it was not the only factor in my agreeing to testify," Corrada stated.

"You hit on the harder question, Tina. The fact that this dispute impacted Latino workers had not completely escaped me. I had some inklings that I was called to be an expert at least in part because I was Latino," Corrada continued. "I certainly did not want to play into that too much. In fact, I remember resenting it when I was invited to inter view at some law schools who apparently only wanted me on their list so that they could say they had interviewed a Hispanic candidate," Corrada said firmly.

Surely the professor knew he was being used, thought Tina. She tried hard to temper the question that followed. "Do you think you would've been called if the dispute involved no Latinos?," Tina asked.

[*1080]"I might have been. Remember, I had been a management labor attorney, and there aren't very many with that background in academia," Corrada remarked. "But I concede your point. It's probably true that I would not have been called to testify in a non-Latino matter. That's why I thought I was reviewing the facts carefully before agreeing to testify. As I read the relevant documents I discovered that there were Latinos on both sides of the dispute. The President of the LCF subsidiary, for example, was Maurice Rosas. Many of the managers involved in the dispute, including those who made threats of plant closure during the organizing campaign, were Latino and Latina. And, of course, the workforce was largely Latina. So I felt at least on a superficial level that the dispute was not about race in that it did not involve whites against Latinos. Rather, I viewed the dispute almost as being one among Latinos," Corrada concluded.

Tina's face clouded over. How could she even begin to respond to such an absurd conclusion, she thought. The professor stumbled quickly on. "I know what you're thinking, Tina," he said, "but let me finish. I'm only telling you about my thoughts at the time of the dispute. My thinking has evolved, to say the least."

Tina relaxed as she took another sip of her bitter and cold coffee. "Okay, continue," she mouthed as Corrada once again took up his explanation.

"It's hard, even now, to analyze and deconstruct the real reasons why I agreed to testify as an expert in this matter. Maybe I didn't think through the ramifications much at all, but only in retrospect have tried to give some meaning to my decision. Possibly, it was because I was up for tenure here at DU and testifying as an expert is generally considered to be prestigious. Other members of my faculty had been experts in various disputes and this had seemed to be encouraged by the administration. Maybe I did it out of a sense of obligation or loyalty to my old law firm. And, as I mentioned, the money was good. All of those things may have been involved, but looking back, I think two things, on a conscious level anyway, served to help me rationalize my decision to agree to testify. The first related generally, but substantively, to NAFTA itself. I remember thinking that it seemed absurd for a Mexican labor union to file a complaint about the enforcement of U.S. labor laws. The NAFTA labor side accord, after all, was pushed by American labor not Mexican or Mexican labor. As I recalled, U.S. unions were concerned that American companies would quickly move their operations to Mexico to take advantage of cheap labor because they had no import barriers on goods coming from Mexico."

[*1081]"A fairly biased view of another country's legal structure, don't you think?," chimed Tina wryly.

"True to a point," replied Corrada. "It's not that Mexico's labor laws are necessarily deficient, but that enforcement of those laws leaves more than a bit to be desired. Thus, the labor side accord explicitly discusses enforcement. In the Sprint/LCF case, the Mexican labor union complained that the United States failed to enforce its own labor laws in a circumstance involving an enterprise made up of immigrant workers from Mexico. This is theoretically parallel to American labor concerns in Mexico, but it seemed arrogant and nonsensical to me that anyone could question U.S. enforcement of its own labor laws, especially under a generally pro-labor Clinton Administration, and also, especially, when the General Counsel of the NLRB was Fred Feinstein," Corrada added.

"That's a very narrow view, Professor. Moreover, it assumes that our system is flawless," said Tina. "The labor side accord is really nothing more than a political tool. As such, it should not come as a surprise that it would be used by Mexican as well as American labor workers," said Tina very matter of factly.

Corrada's face lost its twisted intensity and softened as he continued. "Be that as it may, Tina, I still remember feeling a great surge of nationalism at the time. I really don't usually have such jingoistic feelings, and so I was surprised by my strong reaction in this case. In the past any feelings of nationalism have arisen only in the context of Puerto Rican Olympic teams and Puerto Rican baseball players," Corrada sighed. "The second thing that I remember crossing my mind when I was thinking about testifying for Sprint was related to my tendency to go against the grain. I dislike stereotypes about viewpoints of people of color. Many African-Americans and Latinos expect that other
restroom except on breaks. She talked about how She spoke about terrible working conditions. She been employed at LCF and she testified in Spanish. was Dora Vogel. She was one of the Latinas who had testimony of the person who spoke after me. Her name mistake, however, when I sat down and listened to the

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"Sometimes maybe we're all a little bit too smart for our own good," Corrada mused. "Anyway, I prepared my testimony, I attended the hearing in San Francisco and testified. I began to realize the gravity of my issues in your mind about testifying quite ade quately," Tina thought. "You seem to have resolved the people, and Hispanics in this country have a common base of experience. You can not be black in this country and hope to somehow dodge race discrimi nation or the country's history of slavery - it's there always - an imposed constant. Is it too much to ask, then, that members of a subordinated group, especially the leaders among them, speak out against oppression and subordination every opportunity they get?" Tina questioned.

"It's a good point Tina, and I'm not quite sure how Carter would answer, except possibly to disagree," Corrada said, "but I part company with Carter and other race neo-conservatives. I believe, for example, that minority viewpoints and voices should be sought out for their own sake, but not necessarily because of the substance they will articulate. Rather, a minority viewpoint is important because of the different per spective it invariably brings to any given issue. Subordinated peoples have a perspective that is not generally given any account, and therefore should be sought out in all cases. I remember thinking that when people saw a Hispanic testify, for Sprint, this would serve to dash their pre- existing stereotypes. I thought that my testifying as an expert for Sprint might serve to further diffuse race as an issue. Remember, at the time I had rationalized the point that race was not an issue in the dispute," Corrada concluded.

So far the professor has rationalized his decision quite nicely, Tina thought, even if he seems more than a bit defensive about it. "You seem to have resolved the questions in your mind about testifying quite ade quately," Tina found herself saying.

"That's a rather conservative viewpoint, Professor," Tina remarked. "Stephen Carter writes about this same kind of stereotyping in his book, Reflections of An Affirmative Action Baby. The view, however, is much too narrow and individualistic. The point is that blacks and Hispanics in this country have a common base of experience. You can not be black in this country and hope to somehow dodge race discrimi nation or the country's history of slavery - it's there always - an imposed constant. Is it too much to ask, then, that members of a subordinated group, especially the leaders among them, speak out against oppression and subordination every opportunity they get?" Tina questioned.

"Well," Corrada added, "any labor law professor in America could have testified the way I did about the law. The truth is that the technical application of the law allows for a large degree of subjectivity on the part of the decisionmaker. What I mean by the "could/should" statement is that the ability to rationalize the correctness of the legal result should not end the inquiry. I should have interrogated myself at a deeper level, somewhat like what I am now doing. I should have thought more about the context of the dispute. I should have thought more about people, and less about law," Corrada surmised.

"What do you mean by that?" Tina asked, now riveted by what the Professor was saying.

"I certainly have," Corrada replied. "This experience triggered my own identity crisis. When I returned to Denver, I became more interested in writings about law and identity, especially Latino and Latina Critical Theory, and I started reading some of the groundbreaking work in critical race theory. I even began teaching a class on critical race theory. As a result, I've developed a few insights into the LCF matter and my rationalizations regarding the dispute."

Tina relaxed a bit as the Professor recollected his path of discovery regarding race matters. She began to understand now the reasons for Corrada's testimony and his passion for civil rights today. Corrada continued the discussion: "The first of these insights is that I have seen myself too much as an outsider. In being so bordered - existing on race, national, and political borders - I have found that I tend to focus too much on difference and not enough upon similarity. The majority of people, on the contrary, don't exist on these same borders and tend to think their experiences are common. They have the opposite problem. They think everyone should be the same and do not appreciate

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important and meaningful differences among people. However, as I stated earlier, because I tend to focus on difference, I distance and disaggregate myself from communities to which I belong. For example, I think that deep down, possibly because of some internalized classism or maybe the gender difference, I saw myself as different from the Latina workers at LCF. When I was at the hearing, however, I realized that I connected with the workers on many levels, not the least of which was fluency in Spanish. Language is a strong access point, and I remember having the feeling as Dora Vogel testified that she was talking directly, and only, to me," Corrada emphasized.

"It's probably more or less true," Tina stated, "most of those at the hearing must have been supportive of the LCF workers and the union. You were probably one of only a handful there who Dora could possibly sway by her compelling testimony." Tina knew she had hit the mark with this comment as Corrada nodded his agreement. Corrada paused briefly to think about Tina's observation, but then hurriedly continued with his own reflections. "I don't know how familiar you are, Tina, with the critical notion of 'essentialism.'" Tina gave no reply. "Very simply it means to try to capture, maybe with even one word or idea, someone's essence based simply on their physical features or based on one feature of their personality. The most classic essentializing would be, for example, labeling someone as being "good" or "bad" because he is African American or Hispanic or because she is a woman. As we know, people are very complex - there is good and bad in everyone and thus it is in vitably inaccurate, despite people's propensity toward it, to label someone as "evil" or "virtuous" based simply on their physical or cultural makeup."

"I committed the error of "essentialism" in this Sprint matter. I essentialized Latinos in this dispute. Remember I had resolved that the dispute did not involve race because there were Latinos on both sides. I therefore looked for the easy marker of Latino identity. In so doing, I ignored meaningful differences between and among the Latinos and Latinas involved. Those important differences included class and gender, for example. I had been so focused on race that I could not see those other lines of oppressive pressure. My failure to recognize intersections like gender and class along race lines caused me to essentialize race. Making race predominant over the confluence of gender and race, or race and class, essentializes race even while attempting to deal with race in a non-stereotypical way. In other words, while my intentions were good, I was entirely off the mark," Corrada remarked.

"The path to hell is paved with good intentions," Tina blurted out. "Sorry, but it's one of my favorite Anglo expressions, Professor. I agree with what you're saying and I appreciate it. It's extremely hard not to generalize or synthesize what we learn from our own experiences and question whether those experiences or beliefs are properly applied in another context. As I listened to your description of the Sprint/LCF dispute I could clearly see all the implications involved in the matter - race, gender, and class. So I did not understand your race-only perspective. It's certainly true, though, that my understanding and consciousness comes from my additional perspectives as a woman from a blue-collar background," Tina added.

"Exactly," said Corrada, "I can only understand those other perspectives by learning them from others, but there's more to the essentialism I embraced in assessing the dispute. In my haste to essentialize or generalize about race I accepted a particular context. I absolutely assumed that the dispute occurred in only one entity, LCF, making it easy to dismiss as a dispute between and among Latinos. Why shouldn't I have viewed it instead as a dispute between Sprint, a largely white company made up of mostly white senior management, and La Conexión Familiar, a mostly Latina operation? It is no less a white versus Hispanic dispute or a male versus female dispute just because a largely white, male senior management is orchestrating a conflict played out between Hispanics or women in the trenches," Corrada stated.

"It seems like there really can be no end to essentialism," Tina remarked, "it is a potent urge seemingly embedded in the human psyche."

"I agree," said Corrada regretfully, "you can know not to essentialize and still engage in the practice with fervor," Corrada emphasized. "Yet it's not even as easy as just being on guard against essentializing, because if you carry that defense to an extreme you can get caught in a trap of anti-essentialism."

"What do you mean?" asked Tina.

"Well, let's get back to the Sprint/LCF matter. At some point in my consideration of whether to serve as an expert I distanced myself from the Latina workers at LCF, and clearly treated them and their circumstances, at least subconsciously, as 'Other.' I did this by viewing myself either as an entirely independent actor -- too focused on my mechanical and distanced role as a legal expert - or I allowed myself to become sympathetically aligned with management, probably because of class differences between me and the Latina workers at LCF. After all, I had been a management labor attorney and my background was much more similar to the managers than to the workers at LCF. Also, I
myself am Latino. While LCF management included Latinas, the workforce was largely Latina, according to what I had read. In retrospect, it seems that I should have essentialized the broad Latino/a experience more than I did. I disaggregated too much with respect to race and class - I dis tanced myself from the race and class picture even while I was essential izing race and ignoring class and other important race intersections. Here again, I should have been striving to discover and emphasize con nections between me and the Latinas at LCF," Corrada concluded.

"And when you heard one of the Latina workers, Dora Vogel, speaking in Spanish at the actual hearing you suddenly realized your common heritage," Tina added.

"That's right," Corrada agreed, "I knew then that I had not properly thought through whether I should testify, or that I had possibly overthought the question. I should probably have tried harder to decide the issue at a more basic level."

Tina sighed and stared into her empty cup. "I guess I practiced a little of the essentialism game with you also, Professor," remarked Tina.

[*1086] "What do you mean, Tina?" asked Corrada.

"Well, I could not, in my mind, reconcile the professor that I had seen in class and what I knew about him, his progressive tendencies, with the professor who testified at the NAFTA hearing. In fact, since there is little consistency in the world, I should not have been so quick to judge," answered Tina.

"Again, I hate to be too Socratic, Tina, but why do you view my NAFTA testimony as inconsistent with what you know about me -- my progressive background, as you say? I know this will sound like a rationalization for my actions, but it is fundamental that the tendency to essentialize frees us to wrongly decide what is consistent and what is inconsistent. My testifying was a mistake, but it did not change my lean ings or my sensitivities. And, although it was inconsistent with who I am, it should not, but probably will, change perceptions about me. My deciding to testify came as a result of both emotional and intellectual errors in essentializing and not essentializing, mistakes that could only have been corrected by interrogating myself at a deeper level of thought and emotion. And those mistakes were not the only personal errors that I made in deciding whether to testify at the NAFTA Hearing," Corrada remarked.

"You mentioned something about regretting your feelings of nationalism," Tina said. "What did you mean by that?"

"That's one of them, Tina, but there's another - let me start with it. Remember I mentioned being upset about the general tendency to attribute particular points of view to members of minority groups. My view, as you'll recall, was that we should make a special effort to seek out minority viewpoints, not because they'll take a particular substantive position, but because that voice will come at any problem from a differ ent, and important perspective," Corrada explained.

A flash of recollection came over Tina's face. "This is where you part company with Stephen Carter," Tina stated.

"That's right," Corrada continued, "but this Sprint/LCF dispute has caused me to change my position a bit. It seems to me that it still holds true that if a person of color is asked to opine or comment on an issue or is invited to speak or testify in a context that in no way implicates race or color, that they should feel an independence of thought that is differ ent from what society or even members of that group might expect from that person. For example, an African-American or Hispanic scholar should not be expected to espouse a liberal view on any given subject. However, at the same time, and this is where my thinking has changed, if a person of color is asked to opine or comment about a dispute that involves race or color - even if only in seemingly the minutest of ways, [*1087] that person owes some kind of responsibility to the group. The reason is that in those instances, there is a likelihood - possibly even a presump tion - that stereotypical thinking about the group or some sort of race consideration has gone into the decision about whom to invite to speak. In these circumstances, the speaker may have been chosen specifically to articulate a particular substantive viewpoint. In these situations if the person cannot help the group by forwarding the group's progress in this society, the invited speaker should simply pass up the opportunity. That, Tina, is probably what I should have done with respect to testifying at the NAFTA hearing. If I agreed, which I still do, that the appropriate legal test supported what the ALJ and district court judge in the Sprint/LCF matter decided on the merits, I should have declined, as a personal matter, the invitation to testify because of the race dimension of the dispute," Corrada exclaimed.

"You said there was another mistake that you made -- some issue regarding nationalism," Tina inquired.

"Yes," Corrada answered, "I was asked by someone after the NAFTA hearing why I had failed to talk about justice. My response was something like, 'I had not been asked to talk about justice.' The response felt awkward and absurd the moment I uttered it. Was I actually saying that law and justice were separate ideas? I've told students not to get so carried away with the rule of law that they lose sight of what justice requires. Yet there I was in San Francisco, stating that
I had done exactly that. Obviously, Tina, there is an important lesson in simply that one insight. Do not, especially if you are a lawyer, lose sight of justice. That insight, however, led me to another one regarding the nature of international versus national law. I think American law can often be too hypertechnical. There is so much sheer detail in the various legal structures we erect - especially those that are created by statute. And, although my status as a law professor suggests that I can navigate that detail in an effective way, it seems to me that a lot can be lost wading through those details. International law has often frustrated me because a lot of it, especially public international law, is stated in very vague, general principles. As I learned from testifying in the Sprint/LCF dispute, however, international law can serve as a check on domestic law that is characterized by the hypertechnicality of U.S. law. International law can help to remind us not to lose sight of justice," Corrada emphasized.

Tina's face brightened as the Professor's words sunk in. "I recall that at that very NAFTA hearing there was some testimony regarding whether the legal test you've talked about was a good one for forwarding the general policies of American labor law. You were not asked to [\textsuperscript{1088}] testify about the propriety of the test itself, but merely whether the law had been properly applied. I think you're right, Professor, that only a forum like the one NAFTA provided in the Sprint/LCF case would allow a deeper interrogation of domestic law against a background of internationally recognized principles of fairness and justice," Tina remarked.

"Oh my gosh, look at the time. I've got to get back to my office for a meeting with the Dean!," Corrada exclaimed.

"Thanks for taking the time, Professor," Tina remarked. "By the way, maybe a comparative analysis involving how different countries' labor laws treat situations like the one presented in the Sprint/LCF case would be a worthwhile directed research project?," Tina inquired.

"Sure, come by my office next week and we'll talk about it," Corrada yelled as he strode rapidly out of the cafeteria.

\textbf{FOOTNOTE-1:}

SUMMARY: ... When a strike by 185,000 sorters, loaders, and drivers shut down the nationwide operations of United Parcel Service during the summer of 1997, I received inquiries from a number of news organizations whose reporters inevitably posed the same two questions: (1) how long is the strike going to last, and (2) does the union's victory signal the resurgence of the American labor movement? ... Is the labor movement back? A better question would be, who's backing the labor movement? ... This essay makes the case that the future of the American labor movement will depend on its ability to harness Latino organizing power. ... Having established this, I now turn to the proposition that, if the workforce of America's future has a brown face, then the American labor movement of the future (if it has one) must have the same. ... Against the backdrop of somnambulance projected by so much of the mainstream labor movement, however, the Latino labor movement is projecting dynamism. ... Los Angeles can serve as a successful proving ground of the labor movement's ability to organize whole industries, geographic areas and communities at once. ... Some Challenges Facing a Latino-Led Labor Movement ... At least three serious challenges confront the labor movement in general and a Latino-led labor movement in particular. ... Even the brightest lights in the labor movement don't yet know. ... For me, this dispute signaled the great potential of the new American labor movement, and with it, the important role that Latino workers are destined to play. ...
beside the point. Every industry, 

*1090* every employer, and every workforce is different; it is all but impossible to draw any meaningful conclusions about whether and how the resolution of particular grievances in a single confrontation will affect labor relations generally. n4 What's truly important in a labor dispute, I thought, is who the parties are, and what resources they bring to the battle. Is the labor movement back? A better question would be, who's backing the labor movement?

Today, in more American workplaces than ever before, the answer to my question is the same: women and men of Latin origin. While organized labor as a whole is desperately struggling to avoid becoming irrelevant, n5 Latino workers as a group are enjoying unprecedented successes in forming new labor organizations, breathing life into old unions, and winning generous contracts. Largely overlooked during the UPS labor dispute was the fact that so much of the company's workforce, especially in the big cities of the Southwest, consists of Latinos. n6 In Southern California alone, at least half of the package delivery giant's 15,000 employees were of Hispanic heritage - a fact that could not be missed on television. Local news channels broadcast pictures of pickets at the company's downtown Los Angeles distribution facility, where the faces of all but a handful of the rank-and-file belonged to brown people. n7 When Teamster-represented employees won their key demand - 10,000 more full-time jobs for UPS' heavily part-time workforce - Southern California Latinos were among the primary beneficiaries.

Just a year earlier, in a local precursor to the UPS dispute, Latino truck drivers represented by the Teamsters had won a smaller-scale, but equally impressive, victory. The drivers, who eked out a minimum-wage living delivering fresh tortillas sold in Los Angeles County retail [*1091*] food stores under the Mission and Guerrero labels, took on mighty Gruma Corporation, the U.S. subsidiary of one of Mexico's biggest food processors. Following an extensive community-based campaign, which included pledges from prominent Anglo and Latino officials to join a boycott against the company's products, n9 drivers persuaded the company to sign a new collective bargaining agreement granting substantial pay and benefit increases. n10

Due to a growing, and until now, mostly low-wage Latino workforce coveted by employers, Southern California has become "ground zero" for labor organizing during this decade. n11 Since 1990, three of labor's biggest organizing victories - wherein previously non-union workers chose union representation and then successfully negotiated a first contract - have been scored among Latinos there: 1,500 foundry workers, who joined the International Association of Machinists, at American Racing, Inc., in Long Beach; 3,000 drywall installers, who joined the United Brotherhood of Carpenters, in the home construction industry stretching from Santa Barbara to San Diego; and 1,000 janitors, who joined the Service Employees International Union through its "Justice for Janitors" campaign, at high-rise office buildings in Century City on Los Angeles' Westside. n12 And this winter saw the addition of the largest organizing prize in modern labor history: 74,000 low-wage, government-paid home care workers, who joined the SEIU in Los Angeles County. n13

Southern California is also home to some high-profile union organizing that has yet to bear fruit, at least in the form of new members or new contracts. Periodically, independent truck drivers working the internationally-important Ports of Los Angeles and Long Beach, respectively, have staged wildcat strikes in support of their demands to join the Communication Workers of America. n14 Porters and chambermaids at the New Otani Hotel in Los Angeles' Little Tokyo - a lodging frequented by Asian business travelers - continue to make claims, before both the National Labor Relations Board and the international court of public opinion, in support of their demand to be represented by the Hotel Employees and Restaurant Employees Union. n15 Even gardeners who maintain the yards of well-to-do neighborhoods have captured public attention through a campaign opposing local ordinances that ban the use of their ubiquitous gas-powered leaf-blowers, a cause championed by the Association of Latin American Gardeners of Los Angeles. n16

Southern California, however, is not the only place where Latinos are forming and joining labor unions. Since 1990, over 20,000 mostly Hispanic immigrant workers have walked off their jobs, or participated in organizing campaigns, across the country. n17 Mexican and Central American culinary workers in Las Vegas, n18 Guatemalan and Salvadoran custodians in Maryland, n19 Mexican poultry processors in Missouri, n20 and Dominican and Puerto Rican health care workers in New York n21 are among the growing ranks of Latinos who are demanding the chance to [*1093*] bargain for better wages and working conditions. Their appearance on the national scene is hardly surprising; by the middle of the next decade, Latinos are expected to become the largest non-White segment of the American workforce. n22

This essay makes the case that the future of the American labor movement will depend on its ability to
harness Latino organizing power. I address the subject in three parts. Part I traces Latinization of the U.S. workforce. Part II discusses what Latinos have to gain from unionism, and what unionism has to gain from Latinos. Finally, Part III summarizes the challenges that a Latino-led labor resurgence faces, and how successfully meeting these challenges can benefit workers of all races.

I. The Latinization of the American Workforce

The 1990s could be remembered as the decade in which the "salification" of the American diet was completed. Since 1991, combined yearly sales of salsa and picante sauce have outstripped those of the all-American flavor-enhancer, ketchup. After climbing at an annual rate of eight to 12 percent, retail salsa and picante sales reached $940 million in 1994 and are projected to top $1.5 billion in 1999. The meteoric growth of salsa and picante sales tracks the retail sales record of Mexican food in general, which reached $2.4 billion in 1994, and is projected to top $3.4 billion in 1999.

Why is salsa beating ketchup? Certainly, it's not because salsa is something new; chilies and herbs native to the New World, salsa's key ingredients, have been centuries-long staples in the diets of many people who trace their roots to Mexico, the Caribbean, and South America. Although the reasons for salsa's success are probably complex, observers are tempted to reach for pat answers. According to the president of a food marketing firm quoted in one acclaimed cook book, the key factor (besides the burgeoning presence of Latinos on the U.S. side of the Latin American border) is the perception that Mexican food, unlike French or Japanese cuisine, is "idiot-proof." He added: "Mexican food is pretty tasty, no matter what you do to it."

Of course, not all Latinos are Mexicans, and not all Mexican food is "idiot-proof." But the marketing president's simplistic understanding of salsa's popularity should caution us to avoid some common misperceptions held by non-Hispanics about Latino workers - for example, that Latinos are "new" to the U.S.; that the terms "Latino" and "Mexican" are synonymous, referring mainly to the farm workers whose cause was taken up by the late Cesar Chavez in California; or that Latinos will remain loyal workers, "no matter what you do to [them]."

Nevertheless, if the 1990s are remembered for the "salification" of the American diet, then the 2000s will be remembered for the "Latinization" of the American workforce - even though Latino workers have toiled in the United States for a long time.

Since 1848, when the Treaty of Guadalupe Hidalgo ended the Mexican-American War, turned half of Mexico into the Southwestern United States, and transformed some 120,000 Mexicans into Mexican-Americans, Latino workers have played vital roles in the U.S. economy. Initially, these first U.S. Latinos worked in copper mines and steel mills, and on farms and ranches; eventually, they worked in oil fields, garment sweatshops, and tire factories, on loading docks and auto assembly lines, and in restaurants, hotels, offices, and stores. They were, and are, both native-born and immigrant, documented and undocumented. Employers prized Mexicanos, like many Latinos after them, "because we can treat them as we cannot treat any other living man." And not infrequently, Latinos responded to the severe discrimination that they faced by form ing and joining labor unions.

Indeed, the only thing truly "new" about Latino workers in the United States today is their sheer number. In 1980, the U.S. Census reported that the civilian workforce totaled 106.1 million people, of which 85.2 percent were White, 10.2 percent were Black, 5.7 percent were Hispanic, and 2.6 percent were Asian or Pacific Islander. But by 1990, the civilian labor force numbered 125.2 million people, of which 82.1 percent were White, 10.7 percent were Black, 8.1 percent were Hispanic, and 2.9 percent were Asian or Pacific Islander. As Table 1 indicates, the number of Latinos working in the U.S. grew by 75.4 percent from 1980 to 1990, making them the fastest-growing segment of the American workforce:

Table 1

|---------------|-----------------------------------------------|

[SEE TABLE IN ORIGINAL]
1990, the County's labor force reached 4.6 million people, of which 59.6 percent were White, 34.5 percent were Hispanic, 10.8 percent were Asian or Pacific Islander, and 10.1 percent were Black. n39 As Table 2 indicates, Latino labor grew at a rate of 73.4 percent during the decade, a substantial increase that was surpassed only by Asians and Pacific Islanders, whose whopping 107.3 percent gain reflected their comparatively small absolute numbers:

Table 2 n40 Growth of L.A. County Labor Force 1980-1990 (ByRace)

[SEE TABLE IN ORIGINAL]

Although Hispanic workers are found in a wide range of jobs throughout the County, they are highly concentrated in the area's vital manufacturing sector n41 - a fact that places them in the driver's seat of one of North America's most important economic vehicles.

[*1097] For all of Los Angeles' importance as America's entertainment capital, n42 the region is even more important as the country's manufacturing capital. n43 Manufacturing is still critical to the area's economic well-being, and is still growing, despite the continued downsizing of South ern California's once-vaunted aerospace and defense industries. This unheralded manufacturing sector consists of two components: the highly-visible "durable goods" portion, in which transportation equipment, aerospace and defense instruments, fabricated metal products, machinery, electronic goods, furniture, metals, stone and glass, and lumber products are produced; n44 and the less-visible "non-durable" goods sector, in which apparel, printing, food products, rubber and plastics, chemicals, paper, textiles, petroleum, and leather are made. n45 The contrast between the durable and non-durable goods components can be seen in the industries affected by some of the labor disputes recounted above: under the heading "fabricated metal products," the durable goods sector took center stage when foundry workers organized a union at American Racing Equipment; under the heading "food products," the non-durable goods sector came to the fore when truck drivers delivering Mission- and Guerrero-label tortillas took on Gruma Corp.

Not surprisingly, immigrant Latinos hold down half of Los Angeles County's estimated 700,000 manufacturing jobs n46 - a figure that gives the region roughly 50 percent more manufacturing positions than its nearest rival, Chicago-Cook County, Ill. n47 And half of these manufacturing jobs are geographically concentrated along the so-called "Alameda Corridor," a 20-mile strip linking a vast district of production and distribution facilities located to the northeast of downtown with the Ports of Los Angeles and Long Beach located to the south. n48 About 300,000 new manufacturing jobs are expected to be created there during the next decade, and Latinos are expected to fill most of these too. n49 This expansion will be fueled by three enormous regional construction [*1098] projects: a $8 to $12 billion plan to increase the capacity of Los Angeles International Airport; a $1.9 billion plan to connect the manufacturing district to the Ports of Los Angeles and Long Beach by building a high-speed, subterranean commercial rail line in the Alameda Corridor; and a $650 million plan to overhaul Los Angeles Harbor. n50

In sum, Latino workers, long important to the U.S. economy, are quickly becoming essential to it. Having established this, I now turn to the proposition that, if the workforce of America's future has a brown face, then the American labor movement of the future (if it has one) must have the same.

II. Why Organized Labor and Latino Workers Need Each Other

A. What Organized Labor Can Do for Latino Workers

As Professor Juan Gomez-Quiones has noted, Latino workers, beginning with Mexicans in what is now the Southwestern U.S., have toiled in North America since before the establishment of the United States. n51 Although, until recently, labor historians have paid little attention to this community, "few southwestern U.S. capitalists have ignored Mexican resources or the Mexicano laborer. Indeed, when the hours were long and the pay short, business interests explicitly sought out Mexicanos." n52

Unfortunately, for too many Latinos, the hours are still long and the pay is still short.

For the past three decades, although the U.S. median annual household income earned by Latinos has surpassed that earned by African Americans, it has consistently fallen short of the income earned by Whites. In 1980, Hispanic households earned 76.3 percent of what White households did; n53 in 1990, the figure was slightly higher at 76.8 percent. n54 The pattern persisted at the local level, including Los Angeles County. In 1980, Hispanic households there earned 76.9 percent of what Whites earned; n55 in 1990, the figure dipped to 70.9 percent. n56 Undercutting this decline further was a one-two punch that the Census Bureau's 1990 figures were collected too early to detect: the end of the Cold War, and the consequent elimination of about half of Southern California's 400,000 aerospace and defense jobs; n57 and the Los Angeles civil disturbances of spring 1992,
which drove capital out of the County's industrial heartland. n58 These events seriously damaged the durable-goods component of the region's manufacturing sector, where, as noted above, roughly half of the workers are Latinos.

Following the 1992 civil disturbances, a group of seasoned academic and labor leaders worried that, if nothing were done to improve the economic position of immigrant Latinos, a "permanent underclass" of Latinos would be created. n59 Among other things, these leaders found that, in communities of Los Angeles County having a poverty level of 20 percent or higher, 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. n60 Could anything be done to help Latino workers share more equitably in this ample wealth, and thereby raise themselves out of poverty and into a social and political stake in their communities?

The answer, according to these academics and labor leaders, was to undertake a major "economic upgrading" of Latino household income. n61 In 1995, they christened their initiative "LA MAP," or the Los Angeles Manufacturing Action Project. By combining the organizing talents and resources of 15 separate labor organizations, researchers in UCLA's Department of Urban Planning and its Center for Labor Research and Education, and other community groups, LA MAP hoped to raise $3 million and coordinate the organization of up to 717,000 mostly Latino immigrant workers. n62 According to a mission statement published by LA MAP:

Economic and social stability can be achieved in L.A.'s immigrant [*1100] communities by increasing manufacturing wages and offering a selection of comprehensive employer financed benefits, including family health insurance. This economic upgrading can be accomplished with out destroying the competitiveness of the Los Angeles manufacturing complex. Unionization helps workers achieve economic upgrading and a voice in their workplace and their communities. n63

Would LA MAP's plan to spread the gospel of unionism to Latino workers actually improve their economic fortunes? The overwhelming empirical evidence is that it would.

For the past quarter century, labor economists representing a range of conservative to liberal economic philosophies have published a rich scientific literature documenting a positive, statistically significant relation between the extent of unionization and employees' wages. Put more simply, the earnings of employees working for union firms are significantly higher than the wages of employees working for their non-union competition. n64

Some comparisons of the wages earned by non-union and union workers will illustrate the magnitude of this wage gap. In 1986, the U.S. median weekly earnings of the typical non-union worker were $325; by contrast, the weekly earnings of the typical union worker were $439. n65 By 1996, the median weekly earnings of the non-union worker had grown to $462; by contrast, the weekly earnings of the union worker had grown to $610. n66 This wage gap, which is now about 32 percent, n67 has not only held firmly but also widened steadily. As Table 3 indicates, during the ten-year period from 1986 to 1996, the typical non-union employee could expect to find about $110 to $150 less in her weekly paycheck than her union counterpart:

[*1101]

Table 3 n68 Union vs. Non-Union Median Weekly Earnings Gap 1986-1996 (All Races)

When analyzed by race, the union wage gap becomes even more pronounced. For example, in 1996, the U.S. median weekly earnings of the typical non-union worker were, for Whites, $480; for Blacks, $356; and for Hispanics, $319. n69 But in the same year the median weekly earnings of the typical union worker were, for Whites, $630; for Blacks, $502; and for Hispanics, $482. n70 As Table 4 indicates, although the wage gap between non-union and union workers in each race category was huge, it was by far the widest for Hispanics:

[*1102]

Table 4 n71 Union vs. Non-Union Median Weekly Earnings Gap By Percent, 1986-1996 (All Races)

From a strictly economic viewpoint, then, every worker (especially the worker of color) realizes tremendous benefits from unionization, but none more than the Latino worker. Whereas union Whites and Blacks earned 31.3 percent and 41.0 percent, respectively, more than their non-union counterparts, union Hispanics earned a whopping 51.1 percent more than non-union Hispanics. n72 As Table 5 indicates, during the ten-year period from 1986 to 1996, union Latinos consistently benefitted from a wage gap in the 50 percent range:

Table 5 n73 Union vs. Non-Union Median Weekly Earnings Gap By Percent, 1986-1996 (Hispanics)
B. What Latino Workers Can Do for Organized Labor

After peaking at 38 percent in 1954, private sector, non-agricultural union density - the percentage of workers represented by labor unions - fell to 13 percent in 1993 and is barely 10 percent today. n74 Although during the past three years the AFL-CIO has spent millions of dollars and launched a number of high-profile organizing initiatives designed to turn these numbers around, n75 it may be some time before any measurable improvement occurs. n76 Part of the problem is that changing the culture of any established institution is enormously difficult. For years, labor suffered from a "bunker" mentality; it was too afraid of losing ground to attempt to gain any. "They're all wearing the same uniform, all reciting the right passages from the prayer book," says a union representative familiar with the rhetoric of new organizing efforts in Boston. "But absolutely nothing has changed. They're the walking dead." n77

Against the backdrop of somnambulism projected by so much of the mainstream labor movement, however, the Latino labor movement is projecting dynamism. Paced by major organizing victories in Southern California, over 20,000 mostly immigrant Latinos have walked off their jobs or participated in other organizing activities across the country since 1990. n78 Their efforts are producing new adherents, more job security, and better pay and benefits. How are they managing to do it?

[*1104] At least three types of strategies are responsible for Latinos' organizing success and ought to be studied. To be sure, the AFL-CIO, under the leadership of president John Sweeney, has been exploring and exploiting many of these elements since the mid-1990s, but the value of considering them systematically should not be underestimated. They include (1) building organizing efforts from the grassroots level, but with the financial and technical support of organized labor; (2) drawing on the expertise of sympathetic members of the academic community; and when all else fails, (3) trying assorted remedios caseros, or home remedies, culled from Latino folk traditions.

1. Bottom-up organizing, top-down support.

In a number of successful cases, Latino workers took the first steps toward forming or joining unions by organizing from the bottom-up, rather than by being organized from the top-down. By using what Professor Kate Bronfenbrenner of Cornell University calls "union building tactics," these workers dramatically increased their chances of winning organizing campaigns. n79 At American Racing, Inc., in Long Beach, Calif., 1,500 Latino and Black foundry workers demanding better pay and working conditions conducted their own five-day strike in 1990. n80 This happened before organizers from the International Association of Machinists got involved by helping to consolidate support for the union and negotiate a first contract. And in the Southern California home building industry stretching from Santa Barbara to San Diego Counties, 3,000 Mexican drywall hangers all but shut down new home construction on their own in 1992 and 1993 by walking off the job and by driving en masse to job sites throughout the region to persuade co-workers to do the same. n81 This happened before the United Brotherhood of [*1105] Carpenters began lending logistical support and helped negotiate a first contract. These examples stand in contrast to the longstanding approach of AFL-CIO-affiliated unions, which for decades have tended to target shops or industries for organizing campaigns first from the outside before attempting to gain adherents on the inside n82 - if they have both ered to try to organize them at all.

A lot of the work of organizing Latinos was accomplished in safe, familiar settings away from the workplace. Workers discussed their situations, and their desires to do something about them, in meetings held in homes, churches, and social clubs consisting of immigrants who maintained strong ties to their home state or village in Mexico or Central America. n83 In this respect, the workers' status as recent immigrants was advantageous; outsiders in the community at large, they enjoyed the solidarity of insiders in the mostly Hispanic communities along the Alameda Corridor. They lived and worked together, and they sought out familiar institutions to help them make the tough decisions and stick by them. For example, a priest who lent his visible support to a union campaign could not only reinforce an activist's resolve but also transform a Catholic fence-sitter into a union adherent. n84 And a patriarch or matriarch who lent his support, especially
If s/he commanded respect in the village back home in Mexico, could boost the solidarity behind a given strike, boycott, or job action in the U.S. n85 During the Pacific drywall strike, union activists were aided by the fact that most of them hailed from same handful of villages and towns in Mexico, where the strike had gained support. n86 When truckloads of striking drywall hangers [*1106] appeared at a targeted job site to exhort other men to walk off the job, inevitably one or more of the workers would turn out to be an uncle, cousin, or family friend of one of the strikers. Family and peer pressure usually prevailed, and another job site would be shut down. n87

Equally important to the success of these grass-roots efforts, however, was the involvement of official labor, but in a supporting rather than a leading role. For example, the Machinists lent bilingual organizers and business agents to the foundry workers’ campaign at American Racing; the Carpenters offered use of their union hall and the advice of their legal counsel to the dry wall hangers’ campaign in the Pacific home building industry. During the “Justice for Janitors” campaign at high-rise office buildings in Century City, the SEIU, one of the few big unions with proven a track record of successfully organizing low-wage workers of color, played a greater role in directing the certified activities of custodians, but still depended on the initiative of the thousands of marchers whose street rally brought business in normally efficient Century City to a standstill. Later, the SEIU offered legal assistance to workers who were arrested and in some cases injured by police during the rally.

A case study of a successful drive to unionize Latinos at a Los Angeles waterbed manufacturer illustrates why established labor organizations, for all the technical and financial assistance that they provide, still need the support of bottom-up efforts to succeed: on the one hand, unless the workers see themselves as having a stake in the union, a short-term organizing victory might turn into a long-term defeat at the bargaining table; on the other hand, if workers lay their jobs on the line only to find that union professionals don’t care about what happens to them, then they will feel betrayed. A professional organizer recalled a meeting at which one of the shop’s workers, a man respected by his peers, asked him a number of questions on behalf of the group:

“Could we be fired?” I said, “Of course.” “What will the union do if they fire us?” I remember saying that the union would not do anything for you or anyone if you’re fired. [Instead, I asked:] What are you going to do for yourself? How are we going to work together? First, we have to identify who the union is. If we’re going to identify the union as this building or me, it’s better that we don’t do anything. You want to organize the company. What are you going to do for him or him for you if you’re fired? What we can provide is a lawyer and the experience we have on how to minimize the risk. If there is a firing, try to win it. That’s all [a union can do]... "How are you going to guarantee that you don’t sell out?" They had to insure that some idiot like me didn’t [*1107] sell out. The best way was for them to take the reins of the campaign in their own hands. They wanted me to promise that they would get certain wages and benefits, but I said I couldn’t promise it. n88

In an age when so many other U.S. workers seem reluctant to embrace unionism, it is remarkable that an historically outsider group of working people have managed not only to choose collective representation, but also to achieve tangible progress with it.

2. Ivory tower expertise.

The professionals who lent their expertise to successful Latino organizing campaigns included not only veteran labor organizers but also academics who wanted to make a difference. In Southern California, much of the strategic groundwork that made it possible to finish the job that Latino workers had started was laid by economics and urban planning professors associated with UCLA’s Community Scholars Program. The Community Scholars, who were organized by Professor Gilda Haas, were drawn from two institutions affiliated with UCLA: the university’s School of Urban Planning and its Center for Labor Research and Education. n89

The Community Scholars undertook the research necessary to target particular industries for organizing. For example, a document entitled Manufacturing in Los Angeles: Opportunities for Organizing, n90 published by LA MAP, attempted to make the case why organizing Latino manufacturing workers in the Alameda Corridor was not only feasible but also necessary to the community’s economic health. The twenty-four charts and graphs attached to the document were produced by Professor Goetz Wolff. Professor Wolff’s extensive research showed, as noted above, that the region’s manufacturing sector is thriving; that low-wage Latino labor produce its profits; and that by carefully targeting certain types of businesses, especially in the non-durable goods segment, unions could successfully organize their workers without driving the businesses away to other communities or other countries.

Among other things, Professor Wolff believed that certain types of manufacturing businesses are extremely sensitive to their locations; that [*1108] is,
they cannot easily pack up and move away to avoid a union without jeopardizing their access to important markets for their manufactures. He identified nearly 400,000 manufacturing jobs falling into eight clusters of business types as being location-sensitive to Los Angeles County. They included apparel and textiles (112,000 jobs); printing (50,700 jobs); trucking and warehousing (49,200 jobs); fabricated metal products and auto parts (64,300 jobs); food and kindred products (43,000); furniture and fixtures and lumber and wood products (32,900 jobs); miscellaneous plastics products (24,000 jobs); and paper and allied products (15,900 jobs).

Professor's Wolff's research was quickly put to the test. During the summer of 1996, Latino truck drivers went on strike against Gruma Corp., a U.S. subsidiary of Mexican food giant Grupo Maseca, S.A., for higher wages and more generous reimbursements of the expenses they incurred while delivering Mission- and Guerrero-label tortillas to super markets and restaurants. The success of the strike, which involved only 170 workers, depended on a community boycott of the company's popular tortillas, which accounted for 60 percent of the huge Los Angeles market. According to the executive director of LA MAP, the strategy behind the boycott, based on Professor Wolff's research, was that Gruma could afford neither to wait out a long boycott nor to import tortillas from its facilities outside the region. Waiting out the boycott could cause the company to lose market share to other local manufacturers; importing tortillas could alienate picky Southern California consumers - especially Latinos - who demand that their tortillas be fresh. The reason why Gruma had located its state-of-the-art tortilla plant in East Los Angeles in the first place was to be able to deliver fresh tortillas to area consumers. After seven weeks, the strike and the boycott ended with a new contract providing substantial increases in drivers' pay and benefits.

In sum, academics like Professor Wolff have played a key role in Latinos's successful organizing efforts. Law professors would do well to emulate their activism.

[*1109]

3. Home remedies.

In the health-conscious 1990s, unconventional therapies for chronic illnesses are gaining widespread acceptance, especially among urban, educated, Anglo professionals. A path-breaking study published by the New England Journal of Medicine in 1993 revealed that America's commitment to unconventional forms of therapy is nearly as deep as it is to conventional ones. The study estimated that 34 percent of all United States residents use one or more of sixteen different forms of alternative therapy each year. Tellingly, among patients using unconventional therapy in 1990, nearly two-thirds did not bother to visit an alternative care provider. But the one-third who did made 425 million visits to such care providers at total cost of $13.7 billion. Of this sum about three quarters - $10.3 billion - was paid out of pocket. By contrast, the general public made 388 million visits to primary care phy sicians, and for the conventional hospitalizations ordered by those physicians, paid $12.8 billion out of pocket. Remarkably, patients tended to seek out unconventional and conventional treatments together, usually unbeknownst to their traditional primary care physicians.

Of course, many Latino households have never given up the old remedios caseros - home remedies - of our ancestors to cure the common afflictions of human kind. The rich literature available today on home remedies and how to use them owes much to Latino folk traditions, especially those of Mexican-Americans.

Why do unconventional therapies continue to flourish alongside the conventional ones embraced by modern medical science? Often, it is because the intervention of Western healing practices alone has failed. "Many of us are searching for a cure, and we take it wherever we can get it - and that is not entirely with traditional medicine," explained a reader who had devoured the Journal's study.

Like conventional medicine, conventional labor law often fails the very patients that it is supposed to help. The debilitating "on the job" injuries from which so many workers, especially Latinos, suffer - low pay and anti-democratic working conditions - resist the twin conventional cures that the American legal system offers: enacting new laws and bringing legal actions. As suggested by both labor law scholars and legal commentators, the notion that workers' rights can be vindicated primarily by resort to lawmaking and adjudication is belied by the facts. In their book Failed Revolutions, Richard Delgado and Jean Stefancic have identified the source of such failures of law and legal institutions as a defect not in our wills but in our imaginations: "the array of preconceptions, meanings, and habits of mind that limit and frame the horizon of our possibilities." Limitations of imagination necessarily impose limitations on action, whether we are doctors or lawyers, labor leaders or elected officials, legal scholars or society at large.
Organizing among Latino workers has been successful in part because it has not been confined within the conventional limits of labor's imagination. Three strategies have been particularly useful: (a) undertaking large-scale organizing efforts, (b) pressuring employers through non-traditional self-help tactics, and (c) steering clear of official legal institutions, especially the National Labor Relations Board ("NLRB") and the law it administers, the National Labor Relations Act ("NLRB").

(a) Large-scale organizing efforts. Organizing is expensive, for employers as well as unions. Facing the wage pressures that unionization entails, most employers are understandably resistant to relinquishing any competitive edge in labor costs to their competition by becoming unionized and are willing to spend great effort now to avoid having to spend more on wages and benefits later. n110 Facing such resistance, unions are understandably reluctant to commit scare resources to difficult organizing campaigns. The result is piecemeal organizing. Unions tend to organize on a "shop by shop" rather than on an "industry by industry" basis, and to focus on so-called "hot shops" - places where in-plant organizing is already underway - when they do make a move.

Although shop-by-shop organizing has its place, too often it is ineffective compared to industry-wide organizing. Pacific drywall hangers working in Southern California homebuilding and janitors embracing the "Justice for Janitors" campaign were successful largely because they gained adherents and demanded a place at the bargaining table by [*1112] attacking all employers in the target industry at once. When an entire industry can be shut down, employers take notice. As LA MAP strategists put it:

Los Angeles can serve as a successful proving ground of the labor movement's ability to organize whole industries, geographic areas and communities at once. Single shop by shop organizing does not generate the energy and excitement necessary to create the momentum needed to make the labor movement the instrument it can become in the lives of workers and their families. This kind of "scale" organizing is necessary ... n111

In this respect, labor is returning to its roots; industry-wide bargaining is the paradigm attached to traditional federal labor law, especially in the years after World War II. Once an entire industry (or at least, a critical mass of it) is organized, labor costs for each employer in the industry can be equalized. Theoretically, no single employer need compete for the consumer's dollar based on the cost of labor once each employer must pay the same price for it. n112

The main problem with this paradigm is that industrial unionism is dead or dying in industries that are global in nature. n113 As physical and cultural barriers to the movement of capital have fallen, the potential labor markets of many industries have grown. In these industries, the labor pool now includes low-wage, non-union workers abroad. Many of these workers are desperate for any work at any wage. Unless these workers are successfully organized, and unless their wages are substantially raised, even successful large-scale organizing of workers unions in discrete parts of the U.S. economy could be for naught.

(b) Non-strike alternatives. Traditionally, workers dissatisfied with terms and conditions of employment imposed by an employer resorted to their economic weapons of self-help, especially the strike and the picket line. But the harsh realities imposed by the global marketplace for wage labor in so many industries today means that neither the strike nor the picket line poses the economic threat it to employers that it used to. n114 More than ever, these are weapons of last, and sometimes futile, resort.

Alternative self-help tactics, however, have been developed, and [*1113] labor's experimentation with them over the past ten to fifteen years has been promising.

For some time, unions have successfully undertaken a variety of "campaigns" designed "to challenge management in the workplace, in the community, in the board room, and on Wall Street." n115 In a corporate rate campaign, consumers may be urged to boycott the employer's products and take other actions aimed at influencing corporate shareholders; sometimes, union members buy stock in a company solely for the purpose of gaining a forum at shareholders' meetings. In a community campaign, members of churches and temples, civic organizations, and other community groups may be urged to contact the employer to express their concern about its labor relations policies and to participate in rallies and other public events designed to draw unfavorable attention to the employer's behavior. And in a traditional advertising campaign, members of the public at large may be urged to see things the union's way through radio and television spots.

For example, Teamster delivery drivers at Gruma Corp. used variants of both the corporate and community campaigns - the former, by appealing to consumers to boycott Mission- and Guerrero-label tortillas; n116 the latter, by recruiting and deploying a group of UCLA students to go into the Hispanic communities of East and South Central Los Angeles to build support for the boycott. n117
Moreover, taking a cue from members of academy, some unions are reaching across borders to build solidarity abroad for labor disputes having effects at home. For example, at the New Otani Hotel in Los Angeles' Little Tokyo, officials of the Hotel Employees and Restaurant Employees Union traveled to Japan to rally support among Japanese labor leaders and demonstrate against Kajima Corp., the hotel's owner. n118 It was a small step, but an important one. As long-time California labor leader Jack Henning put it: "The only answer to global capitalism is global unionism." n119

(c) Avoiding official legal institutions. Latino workers have over come tremendous legal obstacles to form and join their unions. The [*1114] built-in shortcomings of federal labor law in the late Twentieth Century have been well-documented; it hardly needs to be pointed out again that the structure of the National Labor Relations Act itself often stands in the way of the effective enforcement of the very employees' rights that the law is supposed to protect. n120 Moreover, up to half of Latino workers are recent immigrants; it is no secret that the entry, residency, and citizenship requirements of the Immigration and Naturalization Act, not to mention their unforgiving application, place high hurdles between Latinos and the jobs they seek to gain and maintain in the United States. n121 Whether documented or undocumented, the choice by so many Latino workers to take up union activism defies the conventional wisdom that immigrants tend to avoid getting involved in workplace or community affairs for fear of deportation, calling unwanted attention to themselves, or both. n122

Instead, what these workers avoided was getting involved in the government bureaucracies that administer federal labor and immigration law. As to labor law, organizers of Latino workers consciously preferred to place their hopes in self-help tactics rather than in the NLRB. LA MAP made this "non-NLRB" strategy an explicit organizing principle. n123 As to immigration law, there is little organizers could do to influence the policies and enforcement practices of the Immigration Naturalization Service. But they could recognize that, despite the formidable barriers posed by the statute and the INS, Latino workers inevitably come to the U.S. and find work here. n124 The very fact that Latino 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.

[*1115]

III. Some Challenges Facing a Latino-Led Labor Movement

For everything promising that I have mentioned about organizing among Latinos, there is much that is unsettling. At least three serious challenges confront the labor movement in general and a Latino-led labor movement in particular.

First, the arduous task of labor organizing has a long, long way to go before it is in a position to help even half of the low-wage workforce, whether in Los Angeles County or across the United States, whether Latino or otherwise. At barely 10 percent of the private sector non-agricultural workforce, the labor movement remains on the margins of the working lives of most Americans and is likely to remain so for some time to come. Although the AFL-CIO and its affiliated unions have made real progress under John Sweeney, "the road ahead remains unsure and bumpy. And the residual weight of decades past makes the ultimate success of Sweeney's project anything but certain." n125

Indeed, there are already significant casualties. Only a few years after it started, LA MAP is all but dead, mortally wounded by the inability of disparate Southern California unions to put aside their parochial interests in order to pursue the broader organizing agenda conceived by its framers. n126 So notwithstanding the contributions of Latino organizing successes, labor's first, and perhaps overwhelming, challenge will be merely to sustain the modest momentum it has achieved during the 1990s.

Second, to be truly successful, labor has to be inclusive; that is, it must build coalitions among all workers, not just Latinos (and for that matter, not just workers living in the U.S.). As Professor Rudy Acuna and others have noted, even in Los Angeles County, the longstanding tensions between Latinos and Anglos are now supplemented by potentially greater tensions between and among Asians, Blacks and Latinos. n127 These tensions show up in many places, including the struggle by poor people for decent jobs at decent wages. Indeed, one of the greatest challenges facing communities of color, including Latino communities, is how to achieve "interracial justice" in an era when their growing influence causes such communities of color to feel dis placed. n128 A Latino-led labor movement that improves the lives of [*1116] Latino workers at the expense of, or at the perceived expense of, other "others," is doomed to suffer the same insularity that the Anglo-led labor movement has.

Finally, labor's toughest challenge is not organizing workers, but rather, organizing a new vision of social justice. Once labor recruits all the new members it now plans to get, what is it going to do with them? n129
The tension is age-old. During the Nineteenth Century, organized labor saw itself as a means toward the end of civic republicanism, and for a time, the end of capitalism itself; during the Twentieth Century, it saw itself as means toward "business unionism," working in partnership with the owners of capital. It remains to be seen whether, during the Twenty-first Century, labor will be about more than the pursuit of bigger paychecks and better benefits. As one observer has put it: "Are you organizing workers to empower themselves and confront employers or just building dues-paying units and looking for a seat at the table?"

Even the brightest lights in the labor movement don't yet know. "It's too early to devise a strategy," explains SEIU President Andy Stern. "First you've got to get people into the boat and get them rowing. We still don't have the hundreds of organizers we need going out every night; still don't have our pension plans where they should be; still don't have enough experience in winning strikes with community support." Even if the beginning of a new era is too soon to develop a new vision of social justice, when will it be? If the heyday of Cesar Chavez and the United Farm Workers is any indication, there is some reason to believe many people at the core of labor's new movement, especially Latino workers, hunger for more than business unionism; they also want justice, morality, and spirituality. It would seem that the time to discuss organized labor's role, if any, in pursuing these goals is now.

Conclusion

I began this essay by discussing the significance of the UPS strike during the summer of 1997 for Latino workers. For me, this dispute signaled the great potential of the new American labor movement, and with it, the important role that Latino workers are destined to play. Like the other great organizing victories of the 1990s, the UPS strike demonstrated not only that Latino workers have much to gain from the labor movement, but also that the labor movement has much to gain from Latino workers. Octavio Paz says that modern man "never surrenders himself to what he is doing," and that "the profoundest part" of him "always remains detached and alert." As a law professor who has the luxury of examining "the profoundest part" of women and men at work, I am finding that there is no better place to study the interdependence of Latino workers and the labor movement than Los Angeles, where experiments in the future are being conducted every day.

Footnotes:


n4. Occasionally, however, a labor dispute is so momentous that it is credited with redefining labor relations for the generation in which it occurs. During the early 1980s, the mass firing of striking air traffic controllers by President Ronald Reagan, see, e.g., Samuel Estreicher, Labor Law Reform in a World of Competitive Markets, in Matthew Finkin, The Legal Future of Employee Representation 13, 19 (1994), and the plunging of Continental Airlines into bankruptcy by carrier chief Frank Lorenzo, see, e.g., Ray Seippa & Myrtle Davidson Malone, Point to Point: The Sixty Year History of Continental Airlines (1995), fit this bill because each event ended the long-term careers of thousands of unionized employees.

n5. Once a pillar of American industry, labor unions now face irrelevance, if not extinction. From their peak in the fifties, when they signed up roughly one in three American workers, unions now represent only one in six. Not counting public sector employees, the figure is closer to one in 10. If private sector unions continue to decline at the present rate, they will represent less than 5 percent of the workforce by 2005.


n7. See id.


n17. See, e.g., David Bacon, Unions and the Upsurge of Immigrant Workers, dbacon@igc.apc.org (Dec. 3, 1997) (online labor column).


n19. See, e.g., Scott Wilson, Hispanic Community Supports Custodians in Labor Dispute, Wash. Post, Nov. 7, 1997, at B-5 (describing union drive by 11 maintenance workers at 590-unit apartment complex in Prince George's County as response to employer's having both made them clean sewers without protective gear and failed to grant pay raise in at least 2 years).


n24. See id. at 172.

n25. See id. at 41-42.

n26. See id. at 173.

n27. See id.


n30. See Gomez-Quiñones, supra note 29, at 3.

n31. We want the Mexicans because we can treat them as we cannot treat any other living man. We can control them at night behind bolted gates, within a stockade eight feet high, surrounded by barbed wire. We make them work under armed guards in the fields.

Gomez-Quiñones, supra note 29, at 3 (quoting agricultural employer) (citation omitted).

n32. See, e.g., Gomez-Quiñones, supra note 29, passim. A rich literature documents the place of Latino workers, especially Mexicanos, in the U.S. economy. For examples focusing on agricultural workers, see, e.g., Mark Reisler, By the Sweat of Their Brow: Mexican Immigrant Labor in the United States, 1900-1940 (1976); Carey McWilliams, Factories in the Fields (1939); Dennis Nodin Valdes, Betabeleros: The Formation of an Agricultural Proletariat in the Midwest, 1897-1930, 30 Lab. Hist. 536 (1989). For an example focusing on domestic workers, see Mary Romero, Maid in the USA (1994).

n33. Of course, Latino workers are not a homogeneous group. In 1980, the Census Bureau reported that the Hispanic workforce consisted of 6.1 million people, of which 57.4% were Mexican, 11.8% were Puerto Rican, 6.5% were Cuban, and 22.9% were "other" Hispanics. In 1990, the Hispanic workforce consisted of 10.1 million people, of which 59.4% were Mexican, 10.9% were Puerto Rican, 5.9% were Cuban, and 24.8% were "other" Hispanics. See Matthias H. Wagener, Survey of U.S. Hispanic Labor 17 (Aug. 1997) (compiled from U.S. Census Bureau, U.S. Statistical Abstract, and California Census of Population data) (on file with author) [hereinafter Survey of U.S. Hispanic Labor]. In fact, the broad coverage of the term "Hispanic" explains why in both text and tables my percentages of workers, as identified by race, add up to more than 100%. In relying on data compiled by the U.S. Census Bureau, I am compelled to rely also on the Bureau's definition of the term "Hispanic," which refers to individuals of Latin origin of any race. This means, for example, that an individual who is both Black and Puerto Rican would be counted twice: once as "Black," plus once as "Hispanic."

n34. See Survey of U.S. Hispanic Labor, supra note 33, at 15.

n35. See id. at 14.

n36. See id. at 66 (graph).

n37. See id. at 66-67 (compiled from U.S. Statistical Abstract data).

n38. See id. at 55 (compiled from California Census of Population data).

n39. See id. at 54-55 (compiled from California Census of Population data).

n40. See id. (construct graph from bar charts).

n41. See Los Angeles Manufacturing Action Project, Manufacturing in Los Angeles: Opportunities for Organizing 14-15, 18 (June 24, 1994) (on file with author) [hereinafter LA Map, Organizing Opportunities].
n42. For example, whereas in 1993 the motion picture industry accounted for 3% of all jobs in Los Angeles County, the manufacturing sector accounted for 19% of all such jobs. See LA Map, Organizing Opportunities, supra note 41, at 6.

n43. See LA Map, Organizing Opportunities, supra note 41, at 4-5; LA Map, Organizing the Future, supra note 12, at 2; see also, e.g., Berg, supra note 12, at 19 (describing Los Angeles County as "industrial heartland" of U.S.).

n44. See LA Map, Organizing Opportunities, supra note 41, at 12.

n45. See id.

n46. See id. at 15, 18; LA Map, Organizing the Future, supra note 12, at 2.

n47. See LA Map, Organizing Opportunities, supra note 41, at 5.


n51. See Gomez-Quiñonez, supra note 29, at 3.

n52. Id.; see also Rodolfo F. Acuña, Anything But Mexican: Chicanos in Contemporary Los Angeles 109 (1996) ("What many Euroamericans regarded as the 'Great American Desert' was thus transformed by Mexican labor although Euroamericans remember only the role played by North American irrigation and drainage technology").


n54. See id. at 19.

n55. See id. at 58.

n56. See id. at 57.


n58. See Berg, supra note 12, at 19.

n59. See id. (remarks of then-AFL-CIO Regional Director and LA MAP Co-Founder David Sickler).

n60. See LA Map, Organizing the Future, supra note 12, at 2.

n61. LA Map, Organizing Opportunities, supra note 41, at 30.

n62. See id. at 29-30; LA Map, Organizing the Future, supra note 12, at 4-5. See also Organizing Effort Aims at Immigrant Workers, 150 Lab. Rel. Rep. (BNA) 24, 24 (Sept. 4, 1995) (describing Alameda Corridor as "ground zero" for organizing immigrant Latinos who make up most of corridor's 300,000 manufacturing employees) [hereinafter Organizing Effort].

n63. LA Map, Organizing Opportunities, supra note 41, at 29-30.

n64. See Christopher David Ruiz Cameron, The Wages of Syntax: Why the Cost of Organizing a Union Firm's Non-Union Competition Should Be Charged to "Financial Core" Employees, 47 Cath. U.L. Rev. 979, 983-84, 993-96 (1998) [hereinafter Cameron, Wages of Syntax].


n66. See id.

n67. Although the survey data show the wages of union workers, across all races, to be 32% greater than those of non-union workers, this figure, like the others reported here, does not necessarily mean that unionization is the sole cause of the gap; other variables associated with unionization are also responsible. According to labor economists, the extent of union density does cause higher wages, but the actual differential varies depending upon the particular industry and geographical area. See Cameron, Wages of Syntax, supra note 64, at 997-99.
n68. See Survey of U.S. Hispanic Labor, supra note 33, at 9 (graph).

n69. See id. at 7.

n70. See id. at 6.

n71. See id. at 11 (graph).

n72. See id. at 11.

n73. See id. at 10 (graph).

n74. See Cameron, Wages of Syntax, supra note 64, at 980 (citations omitted).

n75. See id. at 979 (citations omitted).

n76. As one organizer has put it, "These things are very slow to turn around, like an ocean liner." Cooper, Labor Deals, supra note 18, at 15 (remarks of Communication Workers of America's chief organizer). To his credit, Sweeney has helped stem the longstanding hemorrhage of union membership. A year and-a-half into his presidency, unions had gained more than 50,000 members. Id. And in 1998, AFL-CIO unions organized 475,000 new members. Michelle Amber, AFL-CIO Organized 475,000 in 1998, But Net Gain Only 65,000, Sweeney Says, 1999 Daily Lab. Rep. (BNA) No. 33, at A-14 (Feb. 19, 1999). But this good news was tempered by the continuation of both losses among unionized workers and gains among non-unionized workers, which produced a net increase gain of just 65,000 new members. Id.


n78. See Bacon, supra note 17.

n79. See, e.g., Kate Bronfenbrenner, From the Bottom Up: Building Unions and Building Leaders Through Organizing and First Contract Campaigns iii (Apr. 30-May 2, 1998) (unpublished executive summary for UCLEA/AFL-CIO Education Conference, San Jose, Calif.) (reporting average win rates as high as 78% in bargaining units with a majority of workers of color where 10 or more "union building tactics" were used).

n80. See LA Map, Organizing the Future, supra note 12, at 2.

n81. See, e.g., Bacon, supra note 17. According to labor journalist Bacon:

One of the most important of the immigrant rebellions was the yearlong strike by southern California drywallers, who put up the interior walls in new homes. In 1992 and (1993), from the Mexican border north to Santa Barbara, an area of 5000 square miles, these mostly-Mexican immigrants were able to stop all home construction. Workers ran their movement democratically, from the bottom-up. They defied the police and the Border Patrol, blockading freeways when their car caravans were rousted as they traveled to construction sites.

When the drywallers picketed, their lines often numbered in the hundreds, walking onto construction sites and talking non-strikers into putting down their tools.

n82. The contrast between bottom-up and top-down organizing is portrayed in the film Norma Rae, in which the story of a successful drive to unionize a Southern textile mill begins with the arrival of a professional organizer from the big city. He tries to court workers by passing out pro-union literature at the factory gate. The effort is a miserable failure until local resident and mill worker Norma Rae, an acquaintance, develops some interest, and later, a passion, for the union cause. See Norma Rae (Twentieth Century Fox 1979) (feature-length motion picture starring Academy Award-winning actress Sally Field in title role).

n83. See Organizing Effort, supra note 62, at 24.

n84. See, e.g., Map Notes, July 1, 1995, at 1 (discussing role of Director of Hispanic Ministries for Archdiocese of Los Angeles Father Pedro Villaroya, C.M., "in beginning to place the LA MAP organization inside the Archdiocese of Los Angeles" and "generating a list of 55 Catholic parishes that are situated in the Alameda Corridor"). See also LA Map.

n86. See Bacon, supra note 17.

n87. Id.


n89. Prominent Community Scholars included UCLA School of Urban Planning Professors Gilda Hass (the Community Scholars’ coordinator) and Goetz Wolff and Center for Labor Research and Education Executive Director Kent Wong. They also served on LA MAP’s advisory board. See LA Map, Organizing Opportunities, supra note 41, at 30.

n90. See LA Map, Organizing Opportunities, supra note 41.

n91. See LA Map, Organizing the Future, supra note 12 (attachment 1).

n92. See Brooks, supra note 10, at D-10 (before the strike, Gruma Corp. reportedly paid the typical truck driver $ 500, including commissions, for a 6-day work week against projected sales of about $ 500 million for the year). Union officials complained that the pay was closer to $ 200 to $ 300 per week. See Weikel, supra note 9, at B-1.

n93. See id.


n95. See Brooks, supra note 10, at D-10 ("The East Los Angeles plant is the most technologically advanced tortilla-making facility in the world, churning out over 15 million tortillas a day.").

n96. See David M. Eisenberg, Ronald C. Kessler, Cindy Foster, Frances E. Norlock, David R. Calkins & Thomas L. Delbanco, Unconventional Medicine in the United States - Prevalence, Costs, and Patterns of Use, 328 New Eng. J. Med. 246, 248 (1993) [hereinafter Eisenberg, et al., Unconventional Medicine]; see also, e.g., Daniel J. Hufford, Folk Medicine in Contemporary America, in Herbal and Magical Medicine: Traditional Healing Today 18 (James Kirkland, Holley F. Matthews, C.W. Sullivan III & Karen Baldwin eds., 1992) ("Patients on unorthodox treatment [for cancer] ... tended to be white ... and better educated ... than patients on conventional treatment.") (quoting Barrie Cassileth, et al., Contemporary Unorthodox Treatments in Cancer Medicine: A Study of Patients, Treatments, and Practitioners, Annals of Internal Med. 102, 105-12 (1984)).

n97. Eisenberg, et al., Unconventional Medicine, supra note 96, at 246.

n98. Id. at 248. These unconventional therapies were:

<table>
<thead>
<tr>
<th>Type of Therapy</th>
<th>Percent Using in Last 12 Months</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relaxation techniques</td>
<td>13%</td>
</tr>
<tr>
<td>Chiropractic</td>
<td>10%</td>
</tr>
<tr>
<td>Massage</td>
<td>7%</td>
</tr>
<tr>
<td>Imagery</td>
<td>4%</td>
</tr>
<tr>
<td>Spiritual healing</td>
<td>4%</td>
</tr>
<tr>
<td>Commercial weight-loss programs</td>
<td>4%</td>
</tr>
<tr>
<td>Lifestyle diets (e.g., macrobiotics)</td>
<td>4%</td>
</tr>
<tr>
<td>Herbal medicine</td>
<td>3%</td>
</tr>
<tr>
<td>Mega-vitamin therapy</td>
<td>2%</td>
</tr>
<tr>
<td>Self-help groups</td>
<td>2%</td>
</tr>
<tr>
<td>Energy healing</td>
<td>1%</td>
</tr>
<tr>
<td>Biofeedback</td>
<td>1%</td>
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<td>Hypnosis</td>
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<tr>
<td>Homeopathy</td>
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<tr>
<td>Acupuncture</td>
<td>&lt;1%</td>
</tr>
<tr>
<td>Folk remedies</td>
<td>&lt;1%</td>
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</tbody>
</table>

Id. at 248.
n99. Id.
n100. Id. at 250; see also Terence Monmaney & Shari Roan, Hope or Hype?, L.A. Times, Aug. 30, 1998, at A-1 (describing alternative medicine as "an $18 billion industry edging into the mainstream, with California leading the way").

n101. Id.
n102. Id. at 251.
n103. Id. at 249, 250.

My great-grandmother, Refugio Presa ("Mama Cuca") Ruiz, learned many remedios caseros in her hometown of Aguascalientes, in the Mexican state of the same name, and practiced them while raising her family in Gardena, Calif. For a college project, my cousin Shannon Carr Davey interviewed Mama Cuca and catalogued a number of her remedios caseros, including the use of tomato poultices to cure migraine headaches. My grandfather, Frank X. Ruiz, suffered from severe migraines. He recalled having endured Mama Cuca's treatments, but not having enjoyed them. See Shannon Carr, Beliefs of Mama Cuca 3-4 (Spring 1985) (unpublished Folklore 241 term paper, El Camino College, Torrance, Calif.) (on file with author).

n105. Letter to Editor from Diane Korte, 329 New Eng. J. Med. 1141, 1200 (1993). To the same effect were the sentiments of a reader of Consumer Reports, which in 1994 undertook its own investigation of "homeopathic" medicine: "Homeopathy survives because it works and people want it... I do everything I can to avoid hospitals, chemicals, medicine, and surgery. I see my allopath for medical tests; treatment, when necessary, comes from my licensed M.D. homeopath. God save me from the butchers." Letter to Editor from Name Withheld, Consumer Reports, June 1994, at 6.


n107. See, e.g., Thomas Geohegan, Which Side Are You On? Trying to Be for Labor When It's Flat on Its Back 163 (1991) (criticizing "post-strike America" as place where "the rank-and-file stay home and send out their lawyers").


n109. Id. at xvi.

n110. See Weiler, Governing the Workplace, supra note 106, at 108-14, 238-41.


n112. See, e.g., Cameron, Wages of Syntax, supra note 64, at 990.


n120. See, e.g., Christopher D. Cameron, Why Labor Unions Are Failing, J. Comm., Aug. 10, 1992, at 8.


n122. For an explanation why the lack of documents did not significantly interfere with an organizing drive among a largely undocumented Latino workforce at a waterbed factory in Los Angeles, see Delgado, New Immigrants, Old Unions, supra note 88, at 8-9, 57-99.

n123. See LA Map, Organizing the Future, supra note 12, at 3; accord Cooper, Labor Deals, supra note 77, at 12 (remarks of Hotel & Restaurant Employees Local 226 Secretary-Treasurer John Wilhelm) (The success of Las Vegas organizing drives is "proof that you do not have to go through the useless N.L.R.B. mess to come out with a victory.").


n125. See Cooper, Labor's Hardest Drive, supra note 77, at 16.

n126. See Silverstein, Undaunted, supra note 14, at A-1, A-24 ("Last year, [LA MAP] drew notice with its bold proposal to link a coalition of unions in a campaign to organize the hundreds of thousands of immigrant workers in the area along the Alameda Corridor ... When it came time to kick in money, though, most of the support fell apart.").

n127. See Acuña, Anything But Mexican, supra note 52, at 127-33, 149-54.


n129. See Cooper, Labor's Hardest Drive, supra note 77, at 18.

n130. See, e.g., Christopher D. Cameron, How the "Language of the Law" Limited the American Labor Movement, 25 U.C. Davis L. Rev. 1141, 1147 (1992) (book review) (identifying the goals of "business unionism" as "delivering the goods' at the workplace level by providing higher wages and benefits to workers as well as a voice for them at the bargaining table and on the shop floor") (citations omitted).

n131. See Cooper, Labor's Hardest Drive, supra note 77, at 18.

n132. Id. (remarks of Service Employees International Union President Andy Stern).

n133. See generally, e.g., Peter Matthiessen, Sal Si Puedes: Cesar Chavez

n134. Paz, supra note 1, at 204.
The third annual gathering of LatCrit scholars has resulted in this cluster of essays and articles that continue the work of defining the foundations and the future directions of this legal scholarship movement. As described in some of the articles within this cluster, LatCrit has had the benefit of learning valuable lessons from other slightly older schools of critical legal theory, most particularly from the Critical Race Theory ("CRT") Workshop. The LatCrit movement has been strengthened because scholars identified primarily with CRT working with and along-side scholars identified primarily with LatCrit have struggled to recognize, name and address the hetero-normativity and racial binarism which plague the U.S. society and its structures, even progressive groups. n1

LatCrit has much to gain from continuing its interactions with other progressive scholars working in other disciplines. In this cluster, Professors Kevin Johnson and George Martinez encourage LatCrit scholars to [*1120] recognize the roots of LatCrit within the established field of Chicana/o studies. n2 LatCrit has already integrated a few prominent Chicana/o scholars from other disciplines into its annual meetings. Antonia Castro spoke at LatCrit II on the misuse of children as translators for non-English speaking family members; Tomas Almaguer and Rudolfo Acuna will be keynote speakers at LatCrit IV. All are established scholars within the Chicana/o Studies movement.

As LatCrit examines its connections to other scholarly movements, Stephanie Phillips reminds us that different forms of exclusion are parts of the histories of those movements and organizations. CRT, Chicana/o Studies and other scholarly groups have had to deal openly with issues of such exclusionary practices as homophobia, sexism and/or subtle forms of racism. n6 Some progressive organizations have dealt with such practices quietly by recruiting Outsider scholars (such as scholars of color and Queers n7) to join as prominent participants in conferences as [*1121] well as in the directorship bodies of the organizations. Occasionally groups have been formed partially in reaction to the deafness of the majority to the concerns of minority viewpoints. While some might describe LatCrit's relation to CRT in those terms, it also describes the history of other groups. For example, in 1984 many of the Chicanas fighting against the sexism in Chicano Studies formed MALCS, Mujeres Activas en Letras y Cambio Social [Women Active in Letters and Social Change]; fifteen years later the group
continues to sponsor a summer workshop and a journal of Chicana studies. n8

In the Afterword that follows, I caution LatCrits against accepting the body of scholarship produced by Chicanas/os without a careful and critical look at the anti-sexist and anti-homophobic struggles that were crucial forces in the development of the National Association of Chicana/Chicano Studies ("NACCS"). n9 In the Afterword I use two transcribed interviews to bring in the voices of Cordelia Candelaria, a writer, and Deena Gonzalez, a historian, who have been active in the formation of Chicana Studies.

Part I: Anti-Subordination and Self-Critique As Defining Features of LatCrit

Considered as a whole, the articles in this cluster regard LatCrit as a significant community for the production of critical scholarship examining, inter alia, issues of race, color and ethnicity as well as sexual identity from a perspective of anti-subordination. LatCrit already functions as a community for scholars of color and a "safe" space in which race, ethnicity, color, language, sexual identity can be explored and expressed in ways that are often not acceptable within the dominant culture or within many of the institutions in which we work. LatCrit also functions as an emotionally nurturing site where relationships and friendships are initiated and developed. Thus, these articles acknowledge that in a fairly short period of time, LatCrit has created a new space for critical legal scholarship and, in doing so, has created greater access to the experiences, histories and narratives of Latino/a communities for a diverse group of progressive scholars.

Whether LatCrit will endure and have an impact beyond the group that gathers for its annual conferences depends not only on its ability to generate significant scholarship but also to continue to utilize mechanisms for meaningful self-criticism and to create inter- and intra-disciplinary alliances with other progressive organizations including CRT. Following the lead of ethnic studies programs, LatCrit has recognized the potential for increasing the utility of theoretical work by linking oppositional scholarship with teaching and by working with activists and community organizers. The articles in this cluster advance several of the objectives identified with LatCrit and typify the best scholarship this movement is producing. The articles by Kevin Johnson and George Martinez, Stephanie Philips and Athena Mutua suggest trans-disciplinary directions for Lat Crit by strengthening its ties to Chicano/Chicana studies, cooperating with a renewed Critical Race Theory project, and providing new meanings for the shared term "Crit." Kevin Johnson and George Martinez explore the important but not always obvious connections between the scholarly agenda of Chicana/o Studies and that of LatCrit. Stephanie Phillips’ article which examines the CRT Workshop’s uneven history with issues of homophobia and Afrocentrism is an outstanding example of conscientious self-criticism. Athena Mutua urges that LatCrit con tune to deploy analytical techniques that instantiate intersectionality by interrogating which groups occupy the "bottom" or the "center" at different times and with respect to different identity characteristics. The reflections of Victoria Ortiz and Jennifer Elrod about their welcome reception into the Miami meeting of LatCrit provide some evidence that LatCrit has benefited from prior struggles that link race/ethnicity and sexual orientation.

The Mahmud article sustains LatCrit’s emerging and deserved reputation for generating boundary-expanding, race-based scholarship. Tayyab Mahmud focuses outside of the U.S. with a rigorous analysis of the historical racializing and racist practices of Europe in its colonies, especially those of Great Britain in the Indian subcontinent.

Part II: Mapping LatCrit Antecedents, Approaches, SpacesandTrajectories

This introduction creates a "map" of this cluster that analyzes and inter-relates the articles. (See Appendix A.) But maps, even when they serve the function of guiding us through physical and/or theoretical spaces, inevitably distort reality by filtering out information while focusing and symbolizing other information. n10 The map compares the articles [1123] using the following topics: the theoretical antecedents of the LatCrit scholarship, the principal theoretical approaches used in each article, the space/place applicable to the article, and the future directions or trajectories suggested for LatCrit. The map category called "Theoretical Antecedents" attempts to link the article with a larger body of scholarly work besides LatCrit to explore the varied critical discourses that are being expanded upon by this cluster of articles. The category "Theoretical Approaches" oversimplifies each of the articles by identifying the main approach chosen by the author(s) of each entry in order to demonstrate the breadth of styles being used in this cluster. "Space/Place" also demonstrates breadth, this time in the geographic reach of the authors in this cluster, covering Chicanas/os in the Southwest to Indians in their global diaspora. The final category of "Future Trajectories" tries to encapsulate the challenge and the potential that faces LatCrit as we examine ourselves
critically even as we continue to develop a LatCrit community and to theorize about the society in which we work, live and love.

Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship by Kevin Johnson and George Martinez examines the "intellectual debt [owed by LatCrit] to the generations of scholarship focusing on Chicanas in the United States." n11 The article should prove to be of immense interest to LatCrits as it recounts the history of scholarship focusing on Mexican-Americans and Mexicans (los Chicanos/ Mexicanos) residing in the U.S. Johnson-Martinez emphasizes how the 1960-70's Chicana/o student movement intensified community activism that resulted in constructing new narratives and new individual and collective identities around the term "Chicano."

The article illustrates the ubiquity of Law in its multiple manifestations in the lives of this subgroup as evidenced in the writings of Chicana/o scholars. Immigration, civil rights, farmworker rights, economic integration and language rights were all issues being written about by the early Chicana academics.

As I try to show in the Afterword to this cluster, the Johnson-Martinez article muts the intense controversies generated by the exclusion of Chicana experiences, voices and contributions from the narratives and reality-naming practices of Chicanos, especially within Chicano Studies [*1124] and NACS, as its national organization was originally named. Unfortunately, the Johnson-Martinez article re-produces the marginalization of Chicanas by confining their contributions to Chicana/o Studies to one paragraph. n12 And ironically, the anthology of Chicana/o history appended to the article contains more entries by women with non-Spanish surnames than by women with Spanish surnames. n13

Despite this gendered criticism of the article, I strongly agree with its basic theme that LatCrits should look to the body of scholarship by Chicana/o scholars for inspiration and direction. Also I agree that it is important for LatCrit scholarship to dis-aggregate Latinas/os into sub groups - Chicanas/os, Puerto Rican/os, Cubanas/os, etc. - with their concrete histories, stories, commitments, and potentialities. I would, however, question whether all LatCrit scholarship has its roots in Chi cana/o scholarship. Indeed, I would posit that the strength of the LatCrit tree derives from the fact that it is rooted in many varied and separate histories with their corresponding bodies of scholarship.

With The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History, n14 Stephanie Phillips makes a very useful contribution to the future development of LatCrit providing a context for understanding the overlapping histories of CRT and LatCrit. Written from her perspective as one of the early CRT Workshop convenors, the article concludes that CRT can continue to provide a home for the production of a progressive Black Nationalist body of scholarship.

At times writing in the first person as a participant and an observer, Phillips succeeds in relating a history that is marred by the exclusion and mistreatment of gays and lesbians as well as the dismissal or rejection of peoples of color, other than African Americans, as worthy subjects of race-based theorizing. This is not written as revisionist history. Phillips acknowledges the collective errors made within the CRT Workshops from year to year, and there is, at least to my ear, an undertone of regret but no justifications or rationalizations for the errors.

Phillips proposes that LatCrit sponsor alternate annual conferences with CRT because of the considerable overlap among the persons active in both groups. She wants to preserve CRT for the development of black critical theory with the collaboration of other scholars of color. In my opinion, LatCrit should give serious consideration to reaching some accommodation that will insure the collaboration of the widest group of progressive scholars of color in both LatCrit and CRT.

In Reflections of LatCrit III: Finding "Family," n15 Victoria Ortiz and Jennifer Elrod relate a wrenching personal narrative about their lesbian interracial family and the lead-pipe mugging of their son Camilo just before Christmas 1997. Another family narrative appearing in an upcoming CRT anthology n16 and their interactions with Frank Valdes had been their "doorway ...into LatCrit." n17

The article weaves stories of their "actual family" and their previous experiences of discomfort at academic gatherings with reflections on the "intellectual family" they find at LatCrit and their exhilaration at finding kinship, solidarity and hospitality at the Miami meeting. I think many of us Latcrits will remember Elvia Arriola's cris de coeur at the first annual meeting describing her pain and alienation from her by rejection by peers and colleagues at the University of Texas and elsewhere. n18

Given LatCrit's commitment to eliminating homophobia, it is gratifying to hear from Ortiz and Elrod that LatCrit offers a welcoming environment, but I wish they had allowed themselves to be critical. I would like to think that as LatCrits we are inclusive but I wonder if a significant number among us have
done the moment-to-moment work that is necessary to change our homophobic tendencies and to eliminate care less utterances and hidden bigotry. Homophobia, however, runs deep in many cultures and the various Latina/o cultures persist in their rejection of Queer life, experience and values. Even as we work to increase the comfort level for all LatCrits - Queers and straights, we must be vigilant and candid about the biases that are pandemic in our communities.

With Shifting Bottoms and Rotating Centers: Reflections on Lat Crit III and the Black/White Paradigm, Athena D. Mutua has produced an ambitious analysis debunking the concept called the "Black/White" paradigm and exposing the misunderstandings it has provoked. n19 Her article also provides a comparison of racial and linguistic hierarchies [*1126] that trap Blacks and Latinas/os in different ways/places/times. I found Mutua's paper to be especially intriguing because of her ability in capturing the sense of the conversations taking place at LatCrit III and attending to those conversations with this written riposte. She talks seriously about the rivalries and disagreements among Blacks and Latinas/os and then borrows the devices of "bottoms" and "centers" theorize those conflicts and tensions. She writes, "the bottom speaks not to which group is more oppressed but rather speaks to power's obsessions and how those obsessions form the basis of different racial categories of oppression." n20 About rotating centers she notes that the idea of focusing on issues of concern to other peoples of color besides Latinas/os at Lat Crit "institutionalizes a process of both advancing theory and building coalitions." n21

With Colonialism and Modern Constructions of Race: A Preliminary Inquiry, n22 Tayyab Mahmud initiates an analysis of the seemingly irreconcilable idealization of freedom and equality that characterizes European modernity with its appetite for conquest and colonization. Mahmud begins with an excellent introduction to the discourse of alterity that I associate with European post-colonial studies n23 focusing on the "West" and its confrontations with, and repression of, the "non-Western."

Mahmud's analysis of the construction of race in India during its colonial period when Europe established and maintained its forceful domination over the subcontinent resonates with other analyses about the construction of race. n24 The processes for the construction of inferiority is familiar: the plasticity of stereotypes, the instability and contiguity of the racial hierarchies, and the reinforcement of subtle gradations of difference among the conquered to control and discipline from within. But the variety of racisms can only be understood when studied in terms of their particularities and peculiarities. So if Mahmud is guiding us through familiar territory, he is also leading us through the largely unknown terrain of the Indian varieties of racism.

[*1127] In India the colonizer creates new racial mythologies regarding the Aryan race and its evolutionary branches: the pure European Aryans with advanced cultures and contaminated hybrid Aryan India with its stagnant society. Mahmud identifies the principal racial stereotypes manipulated within the colonial framework of India: the martial races, the criminal tribes and the meek Hindu. This is a fascinating juxtaposition of military campaigns, history, geography, occupations, religions, languages and criminality, all being deployed with racialized meanings to maintain the subservience of the conquered/colonized population and the superiority of the conqueror/colonizer.

For me personally because of my own affinity for India, Mahmud's article is a particularly welcome addition to the explorations of race that are continuing under the RaceCrit/ LatCrit/"OutCrit" n25 umbrella. After law school I traveled on a Harvard fellowship to Asia and spent six months in India. I harbor fond memories from that journey because it gave me, among many other things, new understandings of "racial" and color hierarchies. Mahmud has called this article a preliminary inquiry, and I eagerly await his deepening and broadening of this project that he has so effectively initiated. I hope future articles interrogate the intractability of the caste system and its connections to Hinduism as well as to colonial and contemporary racial hierarchies.

Part III: Afterword: NACS to NACCS Stories

A significant body of CRT and LatCrit scholarship, including several of the articles in the following cluster, analyzes and theorizes the de/formation of Latina/o individual and collective identities caused by sexism and homophobia. Consequently, it is prudent and productive to consider the long and painful history of the National Association for Chicana/Chicano Studies (NACCS) with respect to these two issues. What follows is not intended to pass as a complete retelling of that history. Much of that work has been done already by many prominent Chicano scholars, most notably Teresa Cordova, n26 and Deena Gonzalez [*1128] lez, n27 and a few Chicanos, such as Gilberto Garcia. n28 I intend to write a longer article connecting that body of scholarship with work done by LatCrits for next year's annual meeting.

My purpose in this Afterword is to use the rhetorical device of listing to two Chicana scholars talk about
their experiences within NACS and NACCS (more about that name switch in a moment) in order to consider group dynamics in LatCrit. I am focusing on both the complex intra-group gender dynamics (in this case among Latinas and Latinos in LatCrit) by thinking about Chicanas and Chicanos out of LatCrit) as well as inter-group ethnic/racial dynamics (among Chicanas/os and non-Chicanas/os in and out of LatCrit). There is also the probability that the salience of a Chicana-ized anti-patriarchal and lesbian-centered analysis will be contested, even among the Chicanas and the Latinas who are active in LatCrit. Nonetheless, as with racisms, hetero-normativity and homophobia, classism, white superiority, skin privilege and other forms of oppressive thinking, our expositions of sexism must be constantly re-centered and re-integrated into our discourses, otherwise it will reappear in new manifestations.

A few years ago NACS changed its name to NACCS - adding the "C" that symbolized the inclusion of women, thereby becoming the National Association for Chicana/Chicano Studies. By calling ourselves LatCrit, we elide the question of gender, and thus may never have to decide whether to make the kind of symbolic change made by NACCS. LatCrit's nominal elision does not, however, inoculate us against the ways that exclusionary practices against women, whether straight or Queer, replicate themselves. Anti-subordination requires the difficult work of recognizing, naming, challenging and changing marginalizing practices. Let me be blunt - I think that Chicanas/Latinas have been and continue to be marginalized and the Chicana/Latina voice has been and continues to be muted in legal scholarship, including LatCrit. For example, there is often an over-representation of invited Chicano scholars from other disciplines as compared to Chicanas at our annual meetings. In making this claim about the position of Chicanas/Latinas within LatCrit, I have not canvassed other Chicanas/Latinas active in LatCrit and do not presume to speak for the group.

[*1129]

A. An Interview with Cordelia Candelaria n29

**MM:** Can you tell me how NACCS came to have two C's in its name?

**CC:** Is that your operating question for the interview?

**MM:** No, I am basically interested in exploring what the lessons are that LatCrit should be learning from NACCS. While I am focusing on sexism and homophobia, I am not limiting it to that. I am particularly interested in the sexism, because more than homophobia, that issue seems to be submerged in LatCrit. As good Chicanas and Latinas I think we haven't raised that issue in order to maintain the collegiality of the group.

**CC:** Let me begin with a couple of comments just to situate my own awareness and also my ignorance in terms of NACCS and the two Cs in its current name. I have not been actively involved in the organization since approximately 1990-91. Secondly, I was a member of NACS in the early days when the organization was evolving. This was a natural outgrowth for many of us from MECHA n30 and from our college experiences. We were not formally trained in anything like making pluralism work. My own formal studies were medieval studies, language, literature and that's what I have been doing ever since in one form or another. But I was always wanting to learn more about Chicano and Chicana literature - at first we called it "Chicano." We had raised feminist issues in MECHA in the 60's and 70's, however.

**MM:** I remember. I was active in MECHA when I was at San Diego State.

**CC:** So you know what I am talking about. The universe in terms of the 90's is quite different from the pre-80's... I became actively involved in NACS after I had been a dues-paying member for a long time. I had been asked to serve on the Mesa Directiva when I first came to the University of Colorado in 1978. I spent a couple of years at the National Endowment for the Humanities (NEH) where I worked to increase the resources of the Endowment for Humanities by simply calling everybody I knew to expand the names that the NEH was using for its reviewers, analysts, readers, and referees. Many of these scholars [n1130] were involved in NACS, and they provided other contacts, too. I was approached to be more active in NACS. I used to go to the conferences and encourage the colegas to apply to the NEH for grants and so on. After that, I became more directly involved. Gender issues generally tended to be things that we women talked about among ourselves. The few women I knew tended to be more compartmentalized about the discourse of women and gender than we are now in terms of recognizing that it's a more complex cultural and cognitive process. Now we are more aware of the various dynamics and ways in which people engage and, of course, that everything's gendered. The Chicana Caucus is some thing that came out of that. As far as I know it evolved from these informal amorphous discussions. So that is my first comment regarding my NACS background.

**MM:** Is this when you became more involved in the organization?
CC: Yes, I was asked by Mary Romero, who was the chair of the NACS editorial committee, to join the committee as a reader. From that involvement I took on a much higher profile role. Out of that came my major role in NACS as the conference coordinator for the UC-Boulder conference in 1988. But before that the editorial committee would meet at the same time as the coordinating committee, so I would join some of those meetings. I saw NACS as basically a mutual aid society, folks who had common purpose in promoting Chicano studies and needed a professional society to do that. This second comment explains how I became more centrally involved in the Association.

When I made the proposal to host the conference at Boulder, I had to interact more formally with NACS - the coordinating committee, the chair and the treasurer. Preparing for the conference required the sort of accountability expected from established institutions as well as professional organizations. I saw myself as a with good will and wanting to contribute to build a stronger organization. But I would get frustrated by a lot of problems that seemed endemic to the organization and that needed redress. I interpreted them as gendered even though I didn't think it was perceived as such by some of our male colleagues. I thought some of the organizational inefficiencies proceeded from machismo, or whatever you want to call the patriarchal privilege emerging from old boy dominance of the Association. That is, they were so used to being in charge and working together that they tended to ignore internal organizational procedures and structures. Anyway, it was in this institutional phase (when the name was still one "C") when I had some problems.

MM: The name [NACCS] doesn't include two C's until fairly recently, right?

CC: Correct. Someone said to me, and I have never checked this [*1131] out, that the NACCS "C" was added after we, here at ASU, put two C's in the name of out Chicana/Chicano Studies Project, which is now a department. The reason that second C is there is because, when my ASU colegas, all males, asked me to take on the next phase of institutional izing the Project in 1991, I wanted to have a serious discussion about the matter because I was a newcomer, and we needed to understand each other's assumptions. The first issue for me was that we needed to have some symbolic way of including women explicitly. I had several responses prepared for all the flack I expected to get. Immediately one of my colleagues said, it is about time to do that so how do you want to do it? I was so surprised because I had expected resistance and hadn't thought it through completely, but I suggested we put Chicana in there as well as Chicano and that's how it came about here.

Later on I was told by a MALCS [Mujeres Activas en Letras y Cambios Sociales] member that some of the NACS Chicana Caucus members had pointed to the Arizona model. But I wasn't part of NACCS discussions when it added the second "C", so I'm not sure.

MM: Let me go back to the point that you made about the time that you were the conference coordinator at UC-Boulder. How did the issues that you identified as gendered manifest themselves?

CC: The first [issue] had to do with my expecting a certain level of professionalism and accountability. When I came up in the ranks like Diana [Rebolledo, a Chicana literary critic and mutual friend] and other folks, we didn't have role models. We didn't have institutional support systems for the institutional reforms we were seeking. That support often came from other non-academic sources or we scraped around and did it ourselves. One of the things that we learned was how institutions function. From working in the research section of the National Endowment of the Humanities, I knew how to do paperwork to provide institutional accountability. When I prepared the proposal for the conference, I went to the university and got different people to contribute and to be involved. We wanted to have a broad base of support, and many people were involved on my campus as well as NACS. I got a $25,000 commitment from the university, and, of course, it had to be justified and accounted for, right?

MM: Sure.

CC: Up to then, I had a very even-toned relation with most of the men running NACS at the time, including the coordinator and the board. When I began to interact with them formally on conference business I expected reciprocity and basic efficiency, but I didn't always get it. So this is one way gender manifested itself in my view. I was quite straight- [*1132] forward and business-like in getting my concerns across and making requests for documentation.

That's when I had encounters which eventually led me to believe they saw me as sort of a professional bitch who "did not understand the organization," as it was often put me. I am not going to name names, but this was reported to me at different times by several NACS insiders. What ended up happening was key people dropping the ball. I enlisted the help of other members of the board since I needed to get answers and documentation, and that's when I would hear excuses made for the ones who dropped the ball from their cronies.
Basically, the conference planning committee wanted to leave a legacy for the future by having a good conference and by producing a conference manual so that every other NACS conference group wouldn't have to rediscover the wheel. The legacy was the conference, but the second thing was to get support and broadly based interest in the conference at Boulder from different sources because I was also trying to build up our Chicano Studies program. The manual would include a computerized registration system and up-to-date mailing list. The registration idea was a wonderful contribution from one of my colleagues, Leonard Baca, at the CU bilingual ed center, who donated a couple of staff and state-of-the-art software for conference registration. It would be on disk and then NACS would have it for future use. At that time, NACS did not have any regularized procedures, nor even an up-to-date mailing list of the membership. It took major effort to get an old mailing list for the conference.

My hope was that Boulder would contribute an efficient conference system, and we could all benefit from it. But some of the old boys didn't want to cooperate, and so they pulled out the "ideology card" - i.e., they said, we want to allow every conference the right to have autonomy. I asked how will it be less autonomous to have a regularized registration process in place; wouldn't that give more autonomy and time for issues of substance? Future organizers wouldn't have to waste time on Mickey Mouse things like setting up a database on basic conference preparations.

I was also told that they felt that I was being a bitch, and somehow wanting to take over the organization. The ones who were most resistant were those who had the highest profile in the organization. It was astonishing to me that they wouldn't see the benefits of this. Some of the other members told me that the "vatos" just don't want a woman to do this; they want to be the ones who take NACS forward in that way. I saw it as wanting to control everything and not have other people make any improvements that would be perceived as a reflection on them. But the reality was that nobody would have ever known about [*1133] except that the next year's organization hosting conference would have a mailing list on disk and the software would be in place for registration.

What it came down to finally was that I took it to a board meeting. I asked the chair to put on the agenda the matter of procedural regularity and conference format systematization. Well, it actually took a vote and some of the senior people in the organization voted against it. Amazing, isn't it?, that we had to vote to be able to make the registration process more efficient.

MM: The important thing is the subtext of the vote not really the text of it...

CC: Right. Those are the things that you don't get from just looking at a vote. Somebody shrewd would ask, why did you even need to vote on something like that?

This gets to my second point and that is the way in which some organizational meetings were run and business was handled. The "real" business often would take place socially - for example, at the bar over beer with those who wanted to do that. Some of us who had family responsibilities or were not drinkers or whatever would not be part of that. I had gotten complaints from other members about this, and when possible I would confront it directly.

I objected to re-opening settled matters that had been agreed to or voted on, especially when accountability issues were at stake. I didn't think it was appropriate to handle organization business as if the emperor was perfectly dressed in a new suit cuando estaba empeloto [when he was almost naked]. But by and large people were respectful of me, but I just had a feeling that I wasn't making a dent. For one thing [some of the women in NACS] would talk to me privately but wouldn't speak up in the group. This sometimes happens because of inexperience and lack of confidence, as you know. But when these people who are behind-the-scenes allies don't stand up when it counts, then it ends up pitting the same one or two reformers against the status quo.

I never felt maligned in particular, although other women told me they did feel unfairly treated. It just happens that I was older than most of them, or as old as the oldest ones, and I have a very thick head and a very thick skin. Still, I also don't want to make it sound like there was an overly embittered atmosphere. One has to work with a lot of different people. Those of us, mostly women, who have come into the academy with a feminist viewpoint still have a long way to go before we move beyond the present transitional phase and become absorbed into the pulse of academe and other institutions. I don't mean only structurally in terms of affirmative action numbers, but, rather, conceptually as well. [*1134] We're a long way from ideological parity for women and other excludeds with viewpoints and styles which diverge from patriarchal modus operandi. That is what will produce systemic change, I think.

I also learned something else that is not unique to NACS and should not have been a surprise, but it was pretty disappointing. I'm not going to say too much except that there was irresponsible socializing, sexual liaisons, and partying that affected the organization. The partying and "playing" was perceived as residual...
perks for some, I was told and so it appeared. But it was undermining the organizational leadership. I think the dominant order plays itself out in ways that are historically documented: i.e., patriarchal privilege and sexual double standards will to thrive where there are unregulated and unmonitored conflicts of inter est and other abuses. I saw some of that in NACS. Personal relations affected the way some key players (mostly men, but some of "their" women, too) used NACS as a political or ideological rationale for their own individual interests.

Although I never did hesitate to talk about gender equity, I wish I had done more. I still have to say that NACCs has been a valuable organization, (even in the one "C" days), because it brought a lot of us together and it allowed us to have substantive exchanges outside of our institutions. That enhanced our daily professional lives by giving us a larger perspective.

MM: Can you explain that? Any examples?

CC: I have found repeatedly that many Chicana and Chicano studies scholars are very sophisticated institutional players. Many possess a political savvy that some, or even many, of our university peers don't have, perhaps because of our biculturalism or transnationalities or trans culturalities. We have learned to move in ways that transform institutional resistance and exclusion into political and instrumental capital. Maybe the rasquachi reality of having to scrap your way through the establishment because the institution didn't/doesn't recognize the legitimacy of our pluralist agenda has given us some tools and skills that many of my colleagues in canonical specialties have not had to develop. Some are politically naive because there's an institutional infrastructure for their academic needs, whereas that wasn't/isn't usually the case already for non-traditional newcomers to the institution. I'm sure you find this at the law school and many other places.

MM: Many places. In life.

CC: Yes, this is proven, I think, as well as theorized throughout an essay collection called Feminisms: An Anthology of Literary Theory and Criticism. In my "Wild Zone" essay in Feminisms I borrowed an idea from a couple of anthropologists studying African villages to address some of the gender/culture issues for Chicanas. They had dis covered that over and over again as they researched the literature on Africans, they didn't find direct female reporting about women's rituals and practices. The information was usually obtained from the chief or the husband or a medicine man, some male who was empowered to speak and who described the women's rituals. Looking at the body of anthropology on African tribes, there had been nothing that went directly to the female subject voicing herself.

I used that concept in "The Wild Zone," first to talk about the fact that that record by and large was very partial, wrong, and/or distorted. As a result, women developed extensive private worlds of experience and female culture that was muted from the empowered male leadership. Over time women have learned to negotiate between their female-identified private worlds and the male-authorized perceptions of that world, and are therefore transcultural in their experience and identity.

In my essay I address Chicana feminism and the need to privilege gender when politically and conceptually necessary. And to do so with out guilt. I think that many men who are reflected in the dominant structures and who cannot relate to women as peers or as leaders haven't developed these multiple transcultural codes because they're comfortable with the dominant order and status quo.

Anyway, Margaret, I think it is important to do what you are doing: to record [our history] as a means of learning from it. 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. Hasta la proxima - gracias, colega. n32

B. Interview with Deena Gonzalez n33

What follows is an interview I conducted with Deena Gonzalez, an out lesbian who has been at the center of the struggles involving NACCS.

MM: Why don't you tell me about your history with NACCS.

DG: Some of the very same issues that arose in NACS in about the same period of time spilled over into MALCS. [There was] a shock in NACS in Albuquerque when gay and lesbian issues surfaced, especially around Emma Perez's plenary address on sexuality and discourse. Finally the lesbianized perspective was put before the membership with about a thousand people in the ballroom.

The other thing that occurred was that NACS didn't have a strong faculty presence after a certain point in the 1980's. When the conference began moving out of California, the faculty presence began to decline and the student membership rose. So many of the old guard that kept NACS going in a particular way were no
the closet... that people come out and then of course she is one in badly and I don't like to think I am homophobic; crying. Somebody got up and said I don't treat people tending up and saying all these things and a lot of people was a very important turning moment with people get into the room. Then other people stayed and just poured out issues of safety and visibility and so on. It was a very interesting development. There were also all these white women from Albuquerque who had come to hear about lesbians.

The workshop became this incredible space. There might have been sixty or seventy people. It was videotaped up to a point and then as women got up and came out, they asked that the video, the camera, the shooting be stopped. It was a very interesting development. There were also all these white women from Albuquerque who had come to hear about lesbians.

So, the audience very quickly got quiet and hushed when they realized there was something else going on in the room that they hadn't quite reckoned with. I think they thought they were going to hear papers. Emma Perez, Lourdes Arguelles, and I gave papers. I was probably the most angry. I gave this rendition of what it was like to be in an association and have closeted people come out to Emma and to me but not to the association. Obviously [there are] issues of safety and visibility and so on. It was a very important turning moment with people getting up and saying all these things and a lot of people crying. Somebody got up and said I don't treat people badly and I don't like to think I am homophobic; basically saying I don't understand why you're insisting that people come out and then of course she is one in the closet...

There were cross currents and then she got up and left the room. Then other people stayed and just poured out how terrible it was to be in the closet. How wrenching an experience it was to come out in any context but especially this one - among your own community. One of the things that struck me was there were so many dialogues, so many discussions going on all at once. This first workshop organized by lesbian Chicanas on lesbian identity and Latina identity where two Chicanas and Latina (Cubana) were supposed to address everything.

We had someone who positioned herself at the door as guard and she said, "I will keep all men out because women need to have a safe space, a respected space." If the men of NACS don't understand this, it is too bad. And it was also her first time at NACS, she's Latina and lesbian and butch...

Some of the men said if you are going to have a lesbian and a gay caucus, what's next a marijuanaista, a marijuana caucus? We said let's do something with that and so we decided we would approach individual speakers who had spoken against the notion of a lesbian caucus or of a women-only workshop. In the lobby Emma Perez looked up and said there is Tacho Mendiola, let's go ask him. AND so she said, Tacho, who do you think you are? You know, what do you think this is about? And, why are you putting us down this way? What is the matter with you? He was just stunned. The conversation really grew very tense and then the word from those kinds of interactions went out that a group of lesbians are terrorizing others. Everybody took sides, people got mad, people were calling people back at their home institutions.

People didn't quite get it, but from that moment on gay and lesbian presence could not be ignored at NACS and it hasn't been. Since then there's just been incident after incident every year. Last year in Mexico City, the students attempted to hold a reception. They put up fliers that were offensive to the hotel management who came back and said we're a family institution. The hotel closed the doors and didn't let the students hold this reception and threatened to kick them out. So there had to be negotiations all night long about whether the students would end up on the street or not. It got to be quite tense and finally the mayor's office got pulled in. Mayor Cuathemoc Cardenas finally had to step in [and] make a statement. The city did have an ordinance via the Mexican Chamber of Commerce that specified homophobic acts were not tolerable and that people and businesses could not discriminate.

MM: I am amazed that there is such an ordinance. Aren't you?

DG: It was pretty amazing, pretty stunning. It is a huge modern cosmopolitan city, but I don't think anyone would dare test it. Rusty Barcelo pushed herself to the front of the cameras and explained the situation to [the Major]. Then he had to respond in that way because the International Chamber of Commerce has to sign off on certain international law agreements. I don't know which one it is, but it's on the books and the hotel belonged to the Mexican Chamber of Commerce.

A lot of people, the officers of NACCS, those on the Mexican side and on the U.S. side had to be up all night basically dealing with the hotel management. They got the students to stay, but they had to agree not to post any flyers. The flyers said "Joto Caucus"
"Noche de Joteria." The students wanted to take to the streets. That's when I stepped in and said safety is a big issue. You do not want to end up in a Mexican jail.

It was in San Antonio in 1992, the year after Albuquerque, by the time the Lesbian Caucus was formed. At our first Lesbian Caucus meeting, there were straight women. We went around to say who we were, and where we were [working], and whether we were out or not. One of the women said I'm not a lesbian, but I'm here to support and help. The students who convened the Caucus said this is a Lesbian Caucus and we need to decide. I said that I would be more comfortable if the first Lesbian Caucus were only lesbians in the principle of women-only work shops and space and now lesbian-only workshops and space. And she didn't really take offense, it was her friend who had invited her to this space who did get very upset. She got up and said, "if our allies and friends can't be here, I'm not going to be a part of [this] organization." And she left very pissed off. And immediately everything erupted.

The first meeting of the Lesbian Caucus just laid out the tensions that had built up all along, but that still exist. Even in the spaces we consider to be zones of support and safety. It caused me in the early '90's to think very carefully about this business of what is a safe zone or space, or what is a women-only declared space. For whom is it safe, and how could these things be constructed and have meaning, application, and existence. That's what I tried to write about in "Speaking Secrets" without getting too upset all over again because it was very upsetting. [*1139] It was a very difficult moment and people divided themselves up. Radical lesbian separatists had a sense of how the politics of it operated, but there were a lot of people in the room who had no familiarity with this lesbian prospective.

The politics meant coming out on a lot of different levels and the repercussions were pretty great. There were a number of women at that first Lesbian Caucus who would later begin to assume roles in NACCS as Chicana lesbians, but who didn't go to the caucus meetings the first couple of years because to enter the room would mean that you were a lesbian. That was precisely one of the reasons that I said I wanted it to be lesbian-only because I really felt that was the key issue. As long as we stayed in the closet, we would never offer anyone an alternative example, only the traditional one. Rusty Barcelo and Norma Cantu who are out now did not go to those first meetings and reported they found it very frightening. I'm not saying it caused rifts, individual rifts or even problems between and among us, but it certainly did differentiate issues in an interesting way.

On the other side of things, there was an effort to raise the issue of men coming to the Chicana Caucus. I said I don't understand why we keep debating this issue. When Elena Urnutia came to MALCS one summer from Mexico City and heard us heard discuss [this issue] seri ously, she finally said, "I'm dismayed that you're debating this issue. In Mexico we just don't do this anymore; we just say this is for women. The men who support us they say good. Let it be for women." Why do we have to keep conversing in this way?

A lot of it resolves itself or ends up having to do with women wanting not to offend and Chicanas especially want very much not to offend. We're raised not to offend the colonizer, not to offend the straight man, not to offend the father. It's very deep. And it keeps coming back.

MM: At the first formal LatCrit meeting in San Diego I and others were troubled by the fact that there were five keynote speakers and all of them were men, all of them Latinos. In the large sessions few of the Latinas were speaking and so during the second day, I called for a Latina Caucus. When we met, it was an incredible moment. We gathered outside in the evening light. There were about sixteen of us. We didn't even know one another's names. We sat in a circle and told our stories while we laughed and cried. It felt so different from the earlier sessions with their heavily male overtones and subtexts.

The next conference in San Antonio was developed around this idea that the meeting itself should feel more female and Latina. There was a wonderful session at which women brought things so that they could engage in narratives; there were a lot of mother-daughter narratives [*1140] tives. I brought pictures of my mother and her recipes. Those interactions were very much motivated by women trying to make the space feel different, even though we were not asking for woman-only space.

DG: What year was that?

MM: 1996.

DG: The question keeps coming up again and again. It suggests to me that radical lesbian principles that were grass roots haven't become part of organizational and institutional life. By that I mean the idea of separate space, separate spheres of women-only space, but also the notion that only away from men can women really sort out their thinking and, in a way, de-polute themselves. Men will only move away from not relying on women in traditional ways if they [the women] separate themselves out. So, sort of men's movement stuff.
I wonder to myself when have men worked out their sexism. Where has that happened in a kind of institutional way? There're so few examples even in places that have had very active women's studies programs or departments or caucuses. There seems to be so little progress. I don't think the progress is going to happen just because we say we want it or we say that's our vision. Or because now men get up and nominate a woman for x office whereas five years or ten years ago, they wouldn't even have thought of that.

The support that men give Chicanas or don't give Chicanas is still lagging in the kind of spoken ideal about equality. It becomes perfectly okay to talk about why Chicanas are not present. I heard Richard Gris wold del Castillo talk about this. I don't want to isolate Richard because he's certainly trying to understand this stuff, but he spoke about it at the Julian Samora Institute at Michigan and called for a [study of] the state of Chicana studies. He said I don't know why Chicanas are not produ cing books in the '90's. I just wanted to whomp him with a book or something. It takes money; it takes research assistants; and it takes a research institution to produce books. How many of us are lodged in those places? Very few of us. If we do produce books, we produce anthologies or contributory essays. And it takes a lot of time; it takes decades. That's why it took David Montejano fifteen years to write Anglos and Mexicans in the Making of Texas, 1836-1986, Tomas Almaguer fifteen years to produce Racial Fault Lines, and Ramon Gutierrez eleven years to finish When Jesus Came, the Corn Mothers Went Away.

It takes promotions and money; large grants produce books. There's an uninvestigated lack of empathy, or sympathy, or understand ing, or political outlook towards Chicanas. We need a tough line on the issue of Chicanas supporting one another and especially within institu [*1141] tionalized work. The organization of life in the U.S. just doesn't lend itself to much of what we are about.

We're just kind of looking out for others, thinking about others before ourselves and preserving what we've got and building on it. It's my feeling that if men just listened, really listened and then translated [what they'd heard] into jobs, tenure decisions, promotions, letters of evaluations, fellowship committees and fellowships, then I'd say ok, it has helped. But I don't see them doing that; in fact, things are probably even getting worse in some ways. We [Chicanas] are going to have to do it for ourselves. We may have allies who run interference and help behind the scenes and provide a lot of unacknowledged support. But the more visible interactions are still shaped by a kind of sexism that runs deep in Chicano men. They're not willing to give it up because it gives them power and authority when they have so little of it in so many other places.

MM: It's an issue we continue to grapple with. Let me ask about your work with other people of color and with white lesbians. What opportunities do you have to move out of Chicana/Latina circles? Lat Crit is by design a site and an approach to theoretical work that is not exclusively Latino/Latina. From the beginning we joined with other progressive scholars of color. And a few whites I might add. Despite the fact that LatCrit is about theorizing the Latino/Latina condition from a legal perspective, it has always been in the company of and in collaboration with other people of color and other progressives. So I was won dering the extent to which NACCS has been, or whether you individually have been, trying to collaborate with other people of color and other progressives.

DG: It is still very limited within NACCS. People go there for the particular purpose of being refreshed and re-energized and provoked into thinking different things within Chicano Studies. Academic and cultural work that is more broadly based or more multi-voiced goes on in other places.

Appendix A: A Mapping Model

[SEE TABLE IN ORIGINAL]

FOOTNOTE-1:

n1. In a forthcoming article, Frank Valdes analyzes the ways in which antiracist communities, strategies and discourses are influenced by social and legal homophobia, and their analyses largely limited to white/black relations, thereby "reproducing white domination, black subordination and nonwhite/nonblack erasure in intra- and inter-group levels." He offers the terms "hetero- normativity" and "racial binarism" to express these complex outgrowths of the dominant culture's white supremacy and their internalization by the multiple subordinated subgroups. See Francisco Valdes, Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience - RaceCrits, QueerCrits, and LatCrits, 53 U. Miami L. Rev. 1265 (1999); 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, 5 n.16 (1996).


n5. See Rudolfo Acuña's book, Occupied America: A History of Chicanos (3rd ed. 1988); Anything But Mexican: Chicanos in Contemporary Los Angeles (1996). Acuña has been a controversial figure for some Chicanas. The 1984 National Association for Chicano Studies annual conference focused on women for the first time. At the plenary panel on the position of la mujer Chicana within Chicano Studies, historian Cynthia Orozco observed that Acuña's book, Occupied America, perhaps the most widely read book about Chicanos (a work which should be considered the 'Chicano Bible') epitomizes the lack of a conceptualization of gender. Acuña cogently describes racial and class oppression, but he does not mention gender oppression. We must not underestimate the power of Acuña's book: teachers have organized courses around it, and it has taught thousands how to think about the oppression Mexicans experienced. See Cynthia Orozco, Sexism in Chicano Studies and the Community, in Chicana Voices: Intersections of Class, Race, and Gender 12-3 (Teresa Cordova, et al., eds., 1990).

n6. I can speak from personal experience about the Society of American Law Teachers (SALT) and its struggles with racial analyses that are confined to the experiences of African Americans. These struggles were most evident at its teaching conference held in Minnesota in 1994. A series of reflection pieces about this conference appear in the SALT newsletter The Equalizer, Vol. 1994:4, at 5-20. Scholars of color including Sumi Cho, Frank Valdes, Lisa Iglesias, Leslie Espinoza, Anthony Farley, Sharon Hom, myself and others active in LatCrit have been a part of re-vitalizing SALT's agenda, advocating for affirmative action by organizing a march in San Francisco in January 1998 involving hundreds of law professors, lawyers, and law students, and mobilizing against the "Solomon Amendment," inhibiting law schools from preventing the military from recruiting on law school campuses, despite its discriminatory activities against sexual minorities and women.

n7. I use the word "Queer" strategically, in alliance with others who deploy this term to denote those who see sexual identity as a fluid and relational position that can be named, so as to destabilize the stereotypic and homophobic perspectives of the general society.


n9. I consulted with Frank Valdes as an editor of this symposium and obtained permission from Kevin Johnson and George Martinez as authors of the piece before deciding to write the Afterword. I see the Afterword as a colloquy with Kevin and George that is intended to indirectly examine LatCrit practices by listening to the voices of two Chicana scholars active over the years in NACCS.


Jorge Luis Borges told us the story of the emperor who ordered the production of an exact map of his empire. He insisted that the map should be exactly to the most minute detail. The best cartographers of the time were engaged in this important project. Eventually, they produced the map, and, indeed, it could not possibly be more exact, as it coincided point by point with the empire. However, to their
frustration, it was not a very practical map, since it was of the same size as the empire.

(Citing Borges, Obras Completas 90 (1970)).

n11. See Johnson & Martinez, supra note 2.

n12. Id.

n13. Counting last names is admittedly a tricky business. Nonetheless, I report it here because I think it offers a rough measure of the extent to which Chicanas' agency in the construction of our reality can be overlooked. Moreover, I believe in "head counting" as one mechanism for exposing the presence or absence of particular subgroups.


n20. Id. at 9-10. (footnotes omitted) (emphasis added).

n21. Id. at 17.


n23. See, e.g., Racism, Modernity & Identity (Ali Rattansi & Sallie Westwood eds., 1994); Floya Anthias & Nira Yuval-Davis, Racialized Boundaries: Race, Nation, Gender, Colour and Class and the Anti-racist Struggle (1992). Mahmud's references reveal a library that, I believe, will prove quite intriguing to LatCrits, ranging from such well-known authors as Frantz Fanon and Edward Said to the military handbooks of the Indian army.


n25. Valdes, supra note 1, at 2. Frank Valdes offers the term "OutCrit" to indicate an aspirational coalition among critical scholars working in the areas of CRT, LatCrit, Queer, Feminist, Race-Fem and other legal discourses focused on anti-subordination.


n29. Professor, Chicana and Chicano Studies Department, Arizona State University. Cordelia Candelaria is an accomplished poet, essayist and writer. She is the author of numerous books,

n30. MECHA is the acronym for Movimiento Estudiantil Chicano de Atzlan, a Chicano student activist organization.


n32. Revised 4/10/99 by Cordelia Candelaria.

n33. Associate Professor of History, Pomona College; Chair of Chicano Studies, Claremont. Deena Gonzalez has authored numerous articles on nineteenth century history, some with a focus on the will-writing practices of widows in Santa Fe, New Mexico. One of her books, Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880, is forthcoming from Oxford University Press, and the other, The Dictionary of Latinas in the U.S., is forthcoming from Garland Press.

n34. MALCS is the acronym for Mujeres Activas en Letras y Cambio Social (Women Active in Letters and Social Change), a progressive group of Chicana academics that formed in 1982 in Northern California, who sponsor an annual summer workshop. In the summer of 1999, Guadalupe Luna (University of Northern Illinois) and I will participate on a panel on LatCrit Theories and Practices at the MALCS summer meeting being held in Minnesota.


n36. Id. at 1.
As the century comes to a close, critical Latina/o theory has branched off from Critical Race Theory. This article considers how this burgeoning body of scholarship finds its roots in a long tradition of Chicana/o activism and scholarship, particularly the work of Chicana/o Studies professors. In the critical study of issues of particular significance to the greater Latina/o community, we owe an intellectual debt to the generations of scholarship focusing on Chicana/os in the United States.

This praise might strike some knowledgeable observers as odd. Chicana/o Studies developed with an exclusive focus on the subordination of persons of Mexican ancestry in the United States and still adheres to the view that investigation of the histories of other Latin American [1144] national origin groups is beyond its scope. In contrast, LatCrit theory from its inception has attempted to focus on the commonalities of persons tracing their ancestry to Latin America. Despite Chicana/o Studies offers important lessons for LatCrit theorists scrutinizing the legal treatment of all Latina/os.

Part I of this article considers the link between Chicana/o Studies activism and Latina/o legal scholarship. Part II analyzes how LatCrit theory finds its intellectual roots in Chicana/o Studies scholarship. In this analysis, we hope to establish the relationship between Chicana/o Studies activism and scholarship, which blossomed as a result of the 1960s Chicano movement, and LatCrit theory. We also show how the Chicana/o Studies model helps us think about some vexing challenges posed to LatCrit theorists. Finally, we highlight a rich body of Chicana/o Studies scholarship on which future critical Latina/o scholarship may build in critically analyzing how law affects the Latina/o community.

I. Generations: Latina/o Scholars, Scholarship and Activism

SUMMARY: As a scholar-activist, Samora helped found the Southwest Council of La Raza, an advocacy group supporting full civil rights for Mexican-Americans. ... D. The Latina/o As Scholar Activist Continues with LatCritTheory. ...
This section considers the generations of activism by Chicana/o scholars. In so doing, we go beyond law teachers because of the need to view Chicana/o scholar activists as part of long tradition not limited to legal academics.

A. World War II and Beyond

World War II remains widely recognized as a watershed moment in the history of Mexican-Americans. n2 With changes - good and bad - wrought by war, Mexican-Americans came of age and achieved a new political understanding. n3

After the war, a group of Mexican-Americans, some of whom had taken advantage of the G.I. Bill, formed a small cadre of scholar/activists. George Sanchez n4 (University of Texas), Ernesto Galarza, n5 Julian Samora (University of Notre Dame), n6 and Quino Martinez (Arizona State University).

In 1951, George Sanchez founded the American Council of Span ish-Speaking People, which filed civil rights lawsuits designed to halt discrimination against Mexican-Americans. n7 Sanchez served as of arguably, the most prominent self-help group of his generation, the League of United Latin American Citizens (LULAC). n8 LULAC was "middle class, accepted only U.S. citizens for membership, and tended towards assimilation." n9 Through a variety of means, Sanchez sought to induce the U.S. government to ensure the full civil rights of Mexican- Americans. n10 For example, he took the position that discrimination against Mexican-Americans would hurt U.S. foreign relations with Latin America. n11 On the controversial topic of immigration, he argued that Mexican immigrants hurt Mexican-Americans by taking away their jobs and undermining their prospects for assimilating into mainstream society. n12 Today, many would criticize his positions, but at the time, these views reflected conventional Mexican-American attitudes about assimilation and immigration.

Like George Sanchez, Ernesto Galarza also dealt with the issue of immigration, but in the specific context of its impact on farmworkers. n13 He argued that dominant society created negative stereotypes about undocumented workers that reinforced racism against Mexican-Americans. n14 As part of his activism, Galarza established the National Farm Workers Union in the mid-1940s, which served as a precursor to the [*1146] United Farm Workers Union of Cesar Chavez, and which opposed the immigration of Mexican workers that undercut the wage scale. n15 In addition, Galarza helped establish the Mexican-American Legal Defense and Education Fund (MALDEF), which ultimately became perhaps the most potent weapon for protecting the legal rights of Mexican-Americans (and, ironically enough, in light of Galarza's views on Mexican immigrants). n16

Julian Samora pioneered the field of Mexican-American studies by constructing a sociological perspective on Mexican-Americans. n17 Through his scholarship, he sought to influence policy toward Mexican-Americans and improve their condition. As a scholar-activist, Samora helped found the Southwest Council of La Raza, an advocacy group supporting full civil rights for Mexican-Americans. n18

A specialist in historical linguistics, Quino Martinez actively supported a number of major Mexican-American community projects in Arizona. For example, he supported the Guadalupe Organization, an important activist group that advanced the interests of the Mexican-American community of Guadalupe, Arizona. n19 In addition, Martinez served as a mentor to the Chicana/o student activists at Arizona State University in the 1960s and 1970s.

Scholars of this generation generally believed that Mexican-American can should assimilate into the mainstream. Viewing undocumented labor as thwarting full integration of Mexican-Americans, they advocated restrictive immigration laws. n20 Though these views are antithetical to today's Chicana/o Studies and LatCrit scholar activists, these pioneers understood that dominant society demanded assimilation as a prerequisite to Mexican-American membership. They also saw, more generally, the relationship between Mexican immigration and the domestic civil rights of the Mexican-American community.

This generation of scholar activists eventually learned that restrictive immigration laws and policies failed to help, and indeed adversely affected, the Mexican-American community. n21 For example, the U.S. government in 1954 embarked on "Operation Wetback" and deported many long-time U.S. residents, breaking up Mexican-American families, and resulting in U.S. citizens of Mexican ancestry leaving the country. n22 "The Mexican American community was affected because the campaign was aimed at only one racial group, which meant that the burden of proving one's citizenship fell totally upon people of Mexican descent. Those unable to present such proof were arrested and returned to Mexico." n23 This experience caused Mexican-American scholar activists to reconsider their positions on immigration and assimilation. n24

B. The Chicano Movement of the1960s
Providing powerful leadership, the post-World War II generation of scholar activists made important contributions to the advancement of Mexican-American civil rights. They set the stage for Chicano activists of the 1960s and 1970s. Building on previous generations of Mexican-American activism and inspired by the civil rights and anti-war movements, the farm worker movement in the west, and the efforts by Mexican-Americans to recover land in New Mexico, activism grew in the 1960s among politicized Mexican-American communities throughout the United States. Chicano/o youths voiced concerns with racial discrimination, poor education, and the lack of equal opportunity. The Chicano/o student movement saw Mexican-Americans dramatically walk out of schools throughout the southwest. Activists constructed a new "Chicano" self-identity, which represented an effort to redefine them selves by their own standards. As Latina/o theorists would later put it, they sought to "name [their] own reality." Political leader Corky Gonzales's epic poem "I Am Joaquin" became the anthem for the Chicano/o movement and the effort to create a new identity. The expression "Chicano," the core to the new self-identity, symbolized pride in Mexican ancestry and traditions. "Long used as a slang or pejorative in-group reference to lower-class persons of Mexican descent, in the 1960s the term Chicano was adopted by young Mexican-Americans as an act of defiance and self-assertion and as an attempt to redefine themselves by criteria of their own choosing."

Chicana/o Studies also promoted the idea of "Chicanismo," which was then used by activists in establishing Mexican-American solidarity. The Chicano movement gave dignity to a positive self-identity, and helped redefine Mexican-American heritage as something to be proud, not ashamed of, as past generations had been.

With the goal of Chicano/o pride, activists drew up a "Spiritual Plan of Aztlan": a separatist vision of a Chicano/o homeland. In setting out this plan, they rejected assimilation into the mainstream on the ground that it reinforced subordination.

Activism was closely linked to Chicano/o Studies scholarship. Indeed, "the most visible vestige of the [Chicano movement] is to be found in academia in the many university Chicano studies programs and departments that exist throughout the Southwest."

Through Chicano/o Studies courses, many Mexican-Americans became aware of the significance of the Treaty of Guadalupe Hidalgo to the subordinate status of Mexican-Americans. Fernando Gomez explored how the Treaty of Guadalupe Hidalgo could be used to advance the civil rights of present-day Mexican-Americans. Showing the link between scholarship and activism, Reies Lopez Tijerina relied heavily on the Treaty in his fight to reclaim land for persons of Mexican ancestry in New Mexico.

The important work of other Chicana/o Studies scholars had activist ends. A renowned activist, Rodolfo Acuña developed new theoretical approaches for understanding the situation of Chicana/os and specifically argued that Chicana/os had been colonized by the United States in a way that parallels the colonization of third world countries.

In analyzing the intersection of race and class in Chicano/o subordination in the Southwest, Mario Barrera allowed Chicana/os to better understand the complexity of immigration law and the Mexican-American community. He also offered a new political theory of Chicana/os in the United States.

Chicanas also have been instrumental in creating a body of Chicana Studies scholarship. For example, Roxanne Dunbar Ortiz studied the history of Chicana/o resistance to loss of land in New Mexico.

In revisiting Chicana/o history, Vicki Ruiz documented the important activist role that Chicanas played and how they defied the stereotype that women of Mexican ancestry are passive.

Mary Romero studied the lives of Mexican-American women in the domestic service industry in the Southwest.

Most recently, Carla Trujillo has edited a book of scholarship on Chicana theory.

Besides political activism, the Chicana/o movement resulted in efforts to bring change through traditional means. The creation of the Mexican-American Legal Defense and Educational Fund (MALDEF) and the Southwest Voter Registration and Educational Project (SWVREP), are important examples. SWVREP helped register new Mexican-American voters and facilitate political action. MALDEF has vindicated the rights of persons of Mexican ancestry in the legal process in cases such as White v. Regester, a voting rights action, and Plyler v. Doe, which protected the right of undocumented Mexican children to a public education. MALDEF also helped strike down California's Proposition 187, which stripped public benefits from undocumented immigrants.

In sum, Chicano movement leaders combined activism with scholarship in fighting for land rights, educational reform, language rights, and equality. As Chicana/o Studies began to define itself, it produced new scholar activists. Chicana/o Studies began to serve
as the place where people could learn their history and become "active" within the community.

C. Latina/o Legal Scholars, Scholarship and Activism

Against this background of the Chicano movement, we encounter the Latina/o law professors of the 1970s and early 1980s. As with the formation of Chicana/o Studies, student activists demanded for law schools to hire Latina/o law professors. n48 Among these first Chicana/o law professors are scholar activists, including but not limited to Leo Romero, n49 Cruz Reynoso, n50 and Richard Delgado. n51 For example, an early article by Delgado and Vicky Palacios argued that Mexican-Amer ican should be recognized as a "class" for purposes of bringing civil rights actions. n52 (Such "class" actions are most effective in bringing about structural reform.) An article by Romero, Delgado and Reynoso identified problems that Chicana/o students face in studying law, especially the cultural conflict faced by them in law school. n53 As scholar activists, they made concrete suggestions to make legal education more [*1151] hospitable for Chicana/o, including recommendations that law professors should analyze the racial interests at stake in legal rules to make law relevant to Chicana/o.

Another person who fits within this long tradition of Mexican-Amer ican scholar activists is Michael Olivas (roughly of this generation), con sidered to be the "Dean" of Latina/o law professors, who began teaching law in 1982. He pushed law schools to hire Latina/o law professors and helped them gain tenure and promotion. When Olivas began teaching there were only 22 Latina/o law professors, n54 and, due in no small part to his efforts, there were 125 in the spring of 1998. n55 The first Latinas, including Rachel Moran and Berta Hernandez, two prominent LatCrit scholars, joined the academy in the 1980s. To pressure law schools to increase the number of Latina/o law professors, Olivas, with the backing of the Hispanic National Bar Association, established the so-called "Dirty Dozen" list, i.e., a select list of law schools in areas with a significant Latina/o population but with no Latina/o faculty. The well-publicized list placed pressure on law faculties to hire Latinos/as; some schools did. n56 Olivas also conducted workshops for lawyers interested in law teaching at the annual Hispanic National Bar Association convention. Besides his activism in academia, Olivas helped establish a law student clinic to help Central American immigrant children detained by the Immigration and Naturalization Service in South Texas. n57

D. The Latina/o As Scholar Activist Continues with LatCrit Theory.

Activism generated Chicana/o studies. Activism created LatCrit Theory. Due to the hard work of activists, a critical mass of Latina/o legal scholars has been established. Critical Latina/o theory is the result. LatCrit has emphasized the need for connection between theory and practice. n58 This focus fits comfortably within a well-established tradition of Chicana/o scholar activists. For example, contending that "all legal scholarship is necessarily and fundamentally political," Frank Valdes has argued that LatCrit theorists must view themselves as activists. n59

More importantly, LatCrit theory has generated powerful perspectives and analysis important for activists. For example, LatCrit theorists recognize that perhaps the key area for activists to focus on is cultural preservation and retention of language rights. n60 There is a long history in this country of attempted forced assimilation, such as the infamous "Americanization" programs in the 1920s designed to teach Mexican-Americans the values of Anglo Saxon society. n61 Interestingly, these efforts do not stop at our border. Thus, the North American Free Trade Agreement ("NAFTA") may be viewed as a way to "Americanize Mexico." n62 The philosophical ideal of authenticity requires Latina/o to be true to that history. n63 For this reason, Chicanas/os suffer severely in attempting to assimilate. n64 Traumatic attempts to lose Spanish language skills and accents, for example, have injured Mexican-Americans. n65 [*1153] Activists must resist the English-only movement that represents an effort to use the law to force abandonment of the Spanish language. Similarly, activists must resist those who contend that the immigration should be restricted because Latina/o fail to assimilate. n66

Similarly, society often treats Latina/o as foreigners, n67 which con tributes to the perception that they are racially and culturally different. Activists must combat this perception. Beyond this, LatCrit theorists have called us to recognize the importance of coalitions with other subordinated groups. n68 For example, Rachel Moran and Bill Piatt have urged African Americans and Latina/o to work together in order to pre serve remedial programs like affirmative action. n69

Careful study of school desegregation efforts by LatCrit scholars also have benefited activists. n70 Activists should promote a multicultural approach in areas like education and immigration. If, as Nathan Glazer has proclaimed, "we are all multiculturalists now," n71 it is time to work to realize that ideal.
LatCrit theorists also have noted that legal self-definition is important. For example, the Mexican-American's legal definition as "white," while superficially appealing, may actually serve to allow for continued oppression of Mexican-Americans and create barriers to coalitions with other non-Whites. n72 As Chicanismo recognized, activists understand the importance of group self-definition and challenge how white definitions of Chicanismo may reinforce subordination.

In pursuing social change, we must not forget that, as LatCrit theorists have emphasized, there are limits to the utility of litigation. Courts often exercise their discretion against Mexican-Americans. n73 Legal success often does not translate into meaningful change. This suggests that activities need to supplement litigation efforts with political movements. n74 A well-known success story in Chicana/o Studies circles illustrates this point. In successfully resisting an effort to segregate the public schools in Lemon Grove, California in the 1930s, Mexican-Americans combined political action with litigation. n75 More recently, the "Mothers of East Los Angeles," a group composed of Mexican American women, successfully organized to fight the placement of toxic waste sites through grassroots activism combined with litigation. n76 Chi cana/o Studies and LatCrit activism is inextricably linked to scholarship. The next section analyzes this relationship.

II. Chicana/o Studies and the Emergence of Critical Latina/o Legal Scholarship

Critical Latina/o theory, the subject of five symposia in the last couple of years, n77 represents the first sustained critical consideration of legal issues of particular significance to the Latina/o community. The development of LatCrit scholarship is attributable in no small part to the new generation of Latina/o legal scholars. This new generation has focused on issues of particular concern to the Latina/o community, and has contributed a growing body of scholarship on Latina/o legal issues. The group added to the relatively small body of scholarship that previously existed on issues such as the impact of the immigration laws on the Latina/o community, national origin discrimination against persons of Latin American ancestry, and language discrimination. This new scholarship has been long in coming. For example, not until the 1970s did Latina/o scholars analyze the fundamental question whether Mexican-Americans might be able to bring class action, an important tool in civil rights litigation. n78

Much of this new Latina/o scholarship is "critical." How could you be Latina/o in the United States and look at the status quo on certain legal issues important to the Latina/o community and not be critical? n79 Even some deeply conservative Mexican-Americans, for the most part disowned by Chicana/o activists, are critical of how this society treats Mexican-Americans. Linda Chavez has expressed concern with the anti-Mexican undercurrent to the immigration debate in the 1990s. n79 Richard Rodriguez and Ruben Navarette are critical of how Mexican-Americans have been treated in the United States. n80

Latina/o legal scholarship has responded to the perceived need to study specific issues of particular relevance to Latina/os that have not been squarely addressed in the civil rights scholarship, including Critical Race Theory. To address these issues, LatCrit theorists must grapple with some difficult questions. In doing so, we should look to the teachings of our Chicana/o Studies predecessors.

A. The Need for a Distinctive Chicana/o Legal Scholarship

LatCrit scholars have begun to address internal issues, namely the deep diversity within the pan-Latino community. n81 Far from homogeneous, Latina/os are a "community of different communities." n82 There are differences among many Latina/os in terms of national origin, ancestry, language, skills, immigration status, class, skin color and physical appearance, "race" (as that term is traditionally used), and other characteristics. At the same time, there are many commonalities to the Latina/o experience in this country, including discrimination, perpetual treatment as foreigners, and devaluation of culture and language. Latina/os thus face the difficult task of focusing on commonality while recognizing difference. n83

Though important to emphasize commonality to build community, each national origin sub-group of the Latina/o community must be afforded the space to critically study its specific history in the United States. For example, Mexican-Americans in the Southwest have a distinctly different experience in this country than other Latina/o groups, such as Cubans and Puerto Ricans. n84 This history has been explored in the Chicana/o Studies scholarship, which has focused on the-Chicana/o experience in the United States as opposed to the experiences of other subgroups of the greater Latina/o community. Nor are the experiences of all persons of Mexican ancestry in the United States identical. Mexi can-Americans and Mexican immigrants live different lives. Tension, as suggested by some early Chicana/o scholars' views on immigration, n85 exists between these groups. n86
The different experiences necessarily affect scholarly inquiry. Mexican-Americans must be permitted to explore their own histories and analyze how the law has operated to reinforce their subordination. Some LatCrit theorists have embarked on the study of the Mexican-American experience. n87 Mexican-Americans indeed may have a distinctive "voice" in analyzing issues concerning the Mexican-American experience in the United States. n88

Some of the differences of perspective were brought out at a conference in 1998 marking the 150th anniversary of the Treaty of Guadalupe Hidalgo, which ended the United States-Mexican War in 1848. n89 Divisions of opinion between leading Chicana/o Scholars in the United States and scholars from Mexico, including the prominent Mexican intellectual Jorge Castillo, became evident. Chicana/o scholars, including Rudy Acuna, pointedly accused the Mexican intellectuals of not being even remotely concerned with the status of Chicanos in the United States. The Chicana/o Studies experience suggests that LatCrit Theory should encourage - or, at a minimum, should not discourage - distinctive scholarly inquiry into the histories and realities of subordination. This study should not be considered as a threat to Latina/o unity but should be viewed as essential to a full understanding of racial subordination in the United States. One interesting aspect of [*1157] this development is that Chicana/o Studies has been consciously nationalistic in outlook. It has focused exclusively on the Chicana/o experience, not that of other Latina/o groups. Premised on inclusiveness, LatCrit theory, however, generally has considered issues common to the greater Latina/o community. The focus of Chicana/o Studies has produced fruitful scholarship, but may be limited in its ability to assist in the building of political coalitions among all Latina/os. LatCrit theory strives to build pan-Latina/o community. Ultimately, Chicana/o Studies and LatCrit theory may move in opposite directions - with Chicana/o Studies becoming more inclusive n90 and LatCrit theory allowing for focused inquiry when appropriate.

B. LatCrit Theory and Other Civil Rights Scholarship

One controversial question is how does Latina/o legal scholarship fit into other civil rights scholarship. Some have viewed LatCrit theory as a challenge to the traditional black-white binary view of civil rights in the United States. n91 This does not mean that various minority groups must engage in a race for the bottom to show that they suffered the most discrimination or that coalition-building is not possible. As Professor Angela Harris has outlined the argument, the African American experience in the United States, marked by the brutality of forced migration and chattel slavery, may well be exceptional to that of other groups. n92 Assuming this to be true, there remains room to analyze the Latina/o experience with discrimination in the United States. Indeed, the oppression of all racial groups - - Asian Americans, Native Americans, and Latina/os, as well as African Americans - - deserve study. The various groups have been oppressed in different, though often similar ways. These historical experiences all deserve serious scholarly attention. n93

[*1158] This approach to the study of racial subordination is not a novel idea on university campuses (though they have been subject to attack at various times). n94 It was an implicit if not explicit understanding in the 1960s and 1970s as African American Studies, Asian American Studies, Chicana/o Studies, Native American Studies, and Ethnic Studies scholars blossomed and flourished. Each of these fields studied issues of special concern to particular minority communities. Each has made, and continues to make, valuable contributions to the understanding of racial subordination in the United States. We have outlined some of the important contributions of Chicana/o Studies scholars. Scholars like Michael Omi and Ron Takaki have offered important insights from an Asian American perspective. n95 Kwami Anthony Appiah, Henry Louis Gates, and Cornel West have explored the place of African Americans in the modern United States. n96 Native American Studies scholars also have added to the race discourse. n97 Moreover, scholars in these disciplines generally have engaged in respectful dialogue about the intricacies of racial subordination. Realizing the need for separate investigation of the experiences of different racial groups, these scholars recognized commality while respecting difference.

A multifaceted approach is warranted by the need to look at the whole of racial discrimination and subordination. n98 The various forms of racial subordination in the United States are related. As philosophers put it, the "web of belief" requires a study of all these groups. n99 Consequently, LatCrit theory should not be seen as a challenge to Critical Race Theory ("CRT") but viewed as building on its achievements while [*1159] moving in an independent direction to shed additional light on the racial subordination of Latina/os.

The study of language rights, immigration, and citizenship issues - all central to the Latina/o experience in the United States - had not been focused upon by CRT. Consequently, the unexplored questions deserved the scrutiny offered by LatCrit theorists.
Indeed, Latina/o subordination, and racial oppression generally, cannot be fully understood without consideration of these important issues.

Such an analysis becomes apparent when one considers how inter-ethnic conflict allows for minority groups to be pitted against one another, which can be seen in the African American, Korean American, and Latina/o conflict in South Central Los Angeles. n100 Similar episodes occurred last century when African Americans interests were pitted against those of Chinese immigrants. n101 Similarly, race relations in Texas cannot be fully understood unless we consider the history of subordination of African Americans, Mexican-Americans, and poor whites in the state. n102 Today, we see various minority groups at odds on the issue of affirmative action. n103 Only through analyzing the historical experiences of each minority can we fully understand the whole of racial subordination.

C. The Need to Look to Chicana/o Studies Scholarship

In analyzing issues of particular importance to the Latina/o community, we should learn from the rich body of Chicana/o Studies scholar ship. It is presumptuous of legal scholars to believe that we are the first to consider the issues of particular importance to Latina/os. The well-developed body of Chicana/o scholarship is the first generation of scholarship in the area. Critical Race Theorists emphasize the need for inter-disciplinary discourse. n104 Accordingly, it behooves us to consider the foundational scholarship analyzing issues of importance to the Chicana/o community. While the first generation of scholars included people like Julian Samora, Ernesto Galarza, and George Sanchez, n105 the next generation included scholar activists like Rodolfo Acuña, n106 author of the classic Occupied America, and Mario Barrera. n107 The latest generation includes too many prominent Chicana/o scholars to name. None of this is meant to suggest that we should limit our scrutiny to Chicana/o studies scholarship. A body of Chicana/o history, sociology, and other social science warrants our consideration.

To offer a concrete example of the wealth of literature for exploration by Chicana/o legal scholars, we include as an appendix to this article a bibliography of Chicana/o history compiled by Dennis Valdez, a Chicano Studies Professor at the University of Minnesota. n108 This bibliography offers a sample of the rich body of literature available to those interested in serious study of Chicana/os in the United States. Put simply, Latina/o legal scholars should learn from and build upon this rich body of scholarship. In analyzing these difficult issues of race and class in the United States, we should build on the generations of thought, rather than ignore them. Moreover, with legal training, law professors have what economists might call a "comparative advantage" in analyzing legal history. Legal skills prove invaluable in analyzing the history and development of law and how it has been used to subordinate Latina/os. Historian Richard Griswold Del Castillo wrote a fine book analyzing the court decisions dealing with the enforcement (or lack thereof) of the Treaty of Guadalupe Hidalgo. n109 Law professors have much to add to his study. The dispossession of Chicanos from the land was done through a variety of legal (and illegal) mechanisms. Though some of this work has been done, n110 much remains. Similarly, important work has been done in recent years analyzing desegregation efforts in the public schools involving Mexican-Americans. n111 The intricacies of school desegregation litigation gain much from a lawyer's eye.

Immigration is another area in which legal skills allow for critical analysis. The U.S. immigration laws are incredibly complex, with many discriminatory impacts obscured by technical detail. In addition, enforcement of the laws often is discriminatory, even if the letter of the law is not. This suggests that work with others trained in other academic fields might help, as they have, in analyzing how the law on the books differs from the law in practice. n112

While Latina/o law professors may apply legal training to the analysis of Chicana/o history, we must take care not to overlook broader political and social meanings of the events that Chicana/o Studies activists have identified. For example, while adding to the insights of Chicana/o historians about the Treaty of Guadalupe Hidalgo ("the Treaty"), n113 law professors should not be oblivious to the larger politically important aspects of the Treaty. n114 The hope symbolized by the Treaty mobilized a generation of Chicana/os to move for social change. It allowed activists like Reies Lopez Tijerina to rally New Mexicans to organize a potent political force. The Treaty has been a centerpiece of Chicana/o Studies on university campuses across the nation, one of the semi-permanent sites of focus on issues of importance to Chicana/os. It would be short-sighted for formalistic lawyers to focus on technicalities of the law and miss the broader political-social impacts of the Treaty of Guadalupe Hidalgo. n115

Conclusion

This article has outlined the relationship between the tradition of Chicana/o Studies activism and scholarship and the LatCrit movement. The roots of LatCrit theory
can be found in Chicana/o Studies activism and scholarship. This article hopefully will encourage Latina/o legal scholars to consider this rich body of literature. The existence of Chicana/o scholarship provides valuable lessons for LatCrit theorists. Space exists for analysis of the experiences of various national origin groups [*1162] that comprise the umbrella Latina/o community. In addition, the ability of Chicana/o Studies to co-exist with other allied disciplines analyzing issues of race, including African American Studies, Asian American Studies, Ethnic Studies and Native American Studies, suggests that it is not inconsistent for different groups with similar goals to explore the specific intricacies of their histories. Only through the study of the history of each minority group will we be able to understand the whole of racial subordination in the United States.

A similar analysis applies to LatCrit theory. Critical Race Theory and LatCrit theory can work together to study the intricacies of racial oppression. Moreover, in analyzing the place of Latina/os in the United States, we must understand that not all Latina/os are created equal. Different Latina/o national origin groups have had different experiences. To fully understand the whole, we must look at the various parts. Consequently, the Mexican, Cuban, Puerto Rican, and other experiences must be dissected and analyzed individually. Only then will we have a fuller understanding of Latina/o subordination in this country.

[*1163]

Appendix

A Bibliography of Chicana/o History Compiled by Professor Dennis Valdes, Chicano Studies University of Minnesota


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FOOTNOTE-1:


n2. See David G. Gutierrez, Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity in the American Southwest 117 (1995). This is not to suggest that Mexican-Americans did not fight for civil rights before World War II; despite poll taxes, literacy tests, and violence designed to limit Mexican-American political power, they fought for equality. See generally Juan Gomez-Quiñones, Roots of Chicano Politics, 1600-1940 (analyzing this history). Nonetheless, World War II, and the surrounding social, political, and economic forces, commenced a resurgence in the insistence on demands for equal rights.

n3. See, e.g., Rodolfo Acuna, Occupied America: A History of Chicanos 251-306 (3d ed. 1988) (analyzing the
transformative impact of World War II on Mexican-American community).

n4. See, e.g., George I. Sanchez, Forgotten People: A Study of New Mexicans (1940).


n8. See Gutierrez, supra note 2, at 131.


n10. See id. at 125.

n11. See Gutierrez, supra note 2, at 132. Similar arguments later eventually facilitated successful desegregation efforts by African Americans. See Mary L. Dudziak, Desegregation as a Cold War Imperative, 41 Stan. L. Rev. 61 (1988); see also Derrick A. Bell, Jr., Brown v. Board of Education and the Interest-Convergence Dilemma, 93 Harv. L. Rev. 518, 524 (1980) ("The [Brown] decision helped to provide immediate credibility to America's struggle with Communist countries to win the hearts and minds of emerging third world people. At least the argument was made by lawyers for both the NAACP and the federal government. And the point was not lost on the news media.") (footnotes omitted); Mary L. Dudziak, The Little Rock Crisis and Foreign Affairs: Race, Resistance, and the Image of American Democracy, 70 So. Cal. L. Rev. 1641 (1997) (analyzing the relationship between U.S. foreign affairs and civil rights during the Eisenhower administration).

n12. See Gutierrez, supra note 2, at 144-45.

n13. See supra note 5 (citing Galarza's work in the area).

n14. See Gutierrez, supra note 2, at 158 (reviewing Galarza's writings and personal papers).

n15. See Rosales, supra note 9, at 119-20.


n18. See id.


n23. Id. at 230-31.

n25. See generally Rosales, supra note 9.


n27. See Muñoz, supra note 24, at 61-62; Rosales, supra note 9, at 180.

n28. See Gutierrez, supra note 2, at 184.


n30. See Rosales, supra note 9, at 252-53.

n31. See Rosales, supra note 9, at 183-84; see also Muñoz, supra note 24, at 75-78 (1989) (discussing 1969 conference in Denver at which the plan was developed).

n32. See Gutierrez, supra note 2, at 185.

n33. Rosales, supra note 9, at 253; see Muñoz, supra note 24, at 127-69 (analyzing demands by activists for Chicana/o Studies departments on campuses and the evolution of the field over time).


n35. See Griswold del Castillo, supra note 34, at 145.

n36. See Rosales, supra note 9, at 154.

n37. See generally Acuña, supra note 3. Until Acuña'a pathbreaking first edition of his book in 1972, the standard in the field was Carey McWilliams, North from Mexico: The Spanish-Speaking People in the United States (1948). An activist in his own rite, McWilliams was involved in the successful overturning of the conviction in the infamous Sleepy Lagoon case in which Chicano youths were wrongly accused of murder. See Gutierrez, supra note 2, at 128.

n38. See Mario Barrera, Race and Class in the Southwest (1979).


n43. See Living Chicana Theory (Carla Trujillo ed., 1998).

n44. See Rosales, supra note 9, at 264.


n48. Cf. Derrick A. Bell, Diversity and Academic Freedom, 43 J. Leg. Educ. 371, 377 (1993) ("When under pressure from students or alumni law schools look beyond law school credentials and hire the best minority they can find ....").
Leo Romero began his law teaching career in 1970. He has taught for many years at the University of New Mexico School of Law, including six years as its dean.

Cruz Reynoso entered the legal academy in 1972 and later served for five years as a Justice on the Supreme Court of California. He now teaches at the UCLA School of Law and is a member of the U.S. Commission on Civil Rights.

Richard Delgado began teaching law in 1974. A founder of the Critical Race Theory movement, Delgado is currently teaching at the University of Colorado School of Law. Among his many books and articles, he is co-editor with Jean Stefancic of The Latino/a Condition, supra note 26, an anthology of readings on LatCrit Theory.


See Valdes, supra note 1, at 53.


See Martinez, supra note 20.

n63. See Martinez, supra note 20.

n64. See Johnson, supra note 20, at 1281-86 (analyzing limits imposed by society on Mexican Americans seeking to assimilate).


n68. See Kevin R. Johnson, Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century, 8 La Raza L.J. 42, 66-67 (1995); Valdes, supra note 1, at 53-54.


n71. See Nathan Glazer, We Are All Multiculturalists Now (1997).


n74. See Johnson, supra note 68, at 55-56.

n75. See id. at 48-49 (summarizing events); Robert R. Alvarez, Jr., The Lemon Grove Incident: The Nation's First Successful Desegregation Case, 32 J. San Diego Hist. 116 (1986); see also Westminster School Dist. v. Mendez, 161 F.2d 774 (9th Cir. 1947) (holding that public school system had unlawfully segregated Mexican American students).


n77. See supra note 1 (citing symposia).

n78. See Delgado & Palacios, supra note 52. Indeed, not until the 1950s was it clear that the Equal Protection Clause applied to persons of Mexican ancestry, see Hernandez v. Texas, 347 U.S. 475 (1954); see also Ian F. Haney Lopez, Race and Erasure: The Salience of Race to LatCrit Theory, 85 Cal. L. Rev. 1153 (1997), 10 La Raza L.J. 57 (1998) (analyzing significance of Hernandez).

n79. See Linda Chavez, Immigration Not About Race, USA Today, May 31, 1995, at 13A (objecting to restrictionist claims that immigrants of color are somehow transforming United States).

n80. See Ruben Navarrette, Jr., A Darker Shade of Crimson (1993); Richard Rodriguez, Hunger of Memory (1982).

n81. See Johnson, supra note 67, at 129-38.

n82. See id. at 129.

n83. See Valdes, supra note 1, at 54.

n84. Indeed, the Mexican-American communities in Texas, New Mexico,
Arizona, and California developed differently based on historical, economic, and political circumstances peculiar to each state. See Iris H.W. Engstrand, The Impact of the U.S.-Mexican War on the Spanish Southwest, in Culture y Cultura: Consequences of the U.S.-Mexican War, 1846-1848 at 18-24 (1998). The different experiences between Cuban American and other Latina/os are implicit in Castro, supra note 60, which analyzes the potential for integrating Cubans into a larger Latina/o community in light of the specific historical experience of Cuban Americans.

n85. See supra text accompanying notes 12, 13, 15, and 16.

n86. See Gutierrez, supra note 2 (analyzing tensions among Mexican-Americans on issue of immigration). Some of the differences and tensions are explored in Kevin R. Johnson, Immigration and Latino Identity, 19 UCLA Chicano-Latino L. Rev. 197 (Spring 1998).

n87. See, e.g., Arriola, supra note 21 (studying impact of immigration enforcement on Mexican-American community); Martinez, supra note 73 (analyzing Mexican-American litigation experience); Haney Lopez, supra note 78 (analyzing racialization of Mexican-Americans in Texas); Margaret E. Montoya, Mascaras, Trenzas, y Gre<tilde>nas: Un/Masking the Self While Un/Braiding Latina Stories and legal Discourse, 17 Harv. Women's L.J. 185, 15 UCLA Chicano-Latino L. Rev. 1 (1994) (analyzing how Chicanas adopt "masks" that are acceptable to dominant culture).

n88. Cf. Alex M. Johnson, Jr., The New Voice of Color, 100 Yale L.J. 2007 (1991) (contending that minority professors have distinctive "voice" to add to legal scholarship).


n90. There are some nascent suggestions that this might occur with the advent of Latina/o Studies. For example, a recent book, The Latino Studies Reader: Culture, Economy, and Society (Antonia Darder & Rodolfo D. Torres eds., 1998), includes readings on various Latin American national origin sub-groups).

n91. See, e.g., Richard Delgado, Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino- Critical Scholarship, and the Black-White Binary, 75 Tex. L. Rev. 1181 (1997). This challenge is not limited to LatCrit scholars but has been asserted by academics in disciplines other than law. See, e.g., Mary Romero, Introduction, in Challenging Fronteras: Structuring Latina and Latino Lives in the U.S. at xiv (Mary Romero, Pierrette Hondagneu-Sotelo, & Vilma Ortiz eds., 1997) ("Clearly, we cannot rely on the dominant culture's notions of 'whiteness' or 'blackness' to assess racial identity among Latinos in the U.S. The binary thinking of race relations in this country is so ingrained in the dominant culture that it continues to shape what we see.").


n93. Showing the need for a multiracial approach to race scholarship, Michael Olivas analyzed one of Derrick Bell's famous fictional parables, "The Chronicle of the Space Traders," which suggested that whites might surrender all African Americans to "space traders" for world peace, and concluded that comparable actions had been taken in this nation's history by the U.S. government against Asians, Mexican-Americans, and Native Americans. See Olivas, Slave Traders Chronicle, supra note 54.

n94. See Frank Bruni, California Regent's New Focus: Ethnic Studies, N.Y. Times, June 18, 1998, at A20 (reporting that Ward Connerly, the Regent of the University of California who led the effort to end affirmative action in the UC system, questioned the soundness of ethnic studies programs).

n95. See, e.g., Michael Omi & Howard Winant, Racial Formation in the United States (1994); Ronald Takaki, Strangers


n101. See Kevin R. Johnson, Race, The Immigration Laws, and Domestic Race Relations: A "Magic Mirror" Into the Heart of Darkness, 73 Ind. L.J. 1111(Fall 1998) (analyzing this episode of interethnic conflict).


n103. See, e.g., Yamamoto, supra note 58 (analyzing conflict between various minority groups in public school educations that implicated affirmative action); see also Gabriel Chin, Sumi Cho, Jerry Kang, & Frank Wu, Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice (1997) (offering arguments by four Asian American law professors in support of affirmative action).


n105. See supra text accompanying notes 4, 5, and 6.

n106. See Acuña, supra note 3.

n107. See Barrera, supra notes 38, 39.

n108. For an annotated bibliography of critical Latina/o scholarship, including work by academics in disciplines other than law, see Jean Stefancic, Latino and Latina Critical Theory: An Annotated Bibliography, 85 Cal. L. Rev. 1509, 10 La Raza L. J. 423 (1998).

n109. See Griswold Del Castillo, supra note 34.

n110. See supra note 34 (citing articles).


n112. See, e.g., Kitty Calavita, Inside the State (1992) (analyzing how U.S. immigration bureaucracy transformed law to suit its own agenda in Bracero Program).

n114. See generally Richard Griswold del Castillo, The U.S.-Mexican War: Contemporary Implications for Mexican Civil and International Rights, in Culture y Cultura, supra note 85, at 76 (analyzing efforts to protect Mexican American civil rights through Treaty).

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MAPPING INTELLECTUAL/POLITICAL FOUNDATIONS AND FUTURE SELF CRITICAL DIRECTIONS: Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm

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SUMMARY: ... The key to the "bottom" metaphor is that the "bottom" is constructed by the particularities of "white power's" (hereinafter White Power) obsessions, which result in the creation of different racial categories and systems. ... Thus, while "blackness" is the central construct in a colorized racial system, it is not the only category subject to racial oppression or the only system operating. ... Black people represent the metaphorical bottom of a colorized racial hierarchy, in part, because: - blackness is an aspect of black people's humanity, based partially upon their dark colored skin, around which they have been forced, and have often chosen, to identify, and which is opposed by white power as well as defined in opposition to whiteness; the assertion of blackness as black humanity, particularly when people marked by blackness have been in sufficient numbers, has posed the most direct challenge to white Power's conceptualization of itself and its social vision as white and consequently privileged; - white power has oppressed people marked by blackness and institutionalized that oppression fairly consistently throughout American history, despite radically changing circumstances and opportunities to do otherwise, providing the dynamic of oppression a feel of permanence; and, - black people have resisted this oppression, thereby reinforcing White Power's obsession ...

[*1177]

Introduction

This essay chronicles my participation at the LatCrit III Conference and examines some of the issues raised. It touches on battles that rage within our efforts to build coalitions across boundaries of race and ethnicity, and it poses questions of centers, bottoms and models.

Specifically, it asks: "What group should be at the center of a given study or enterprise?" n1 Whose "faces are at the bottom of the well;" n2 and, [*1178] What model shall we use to analyze a given situation? n3 " At first glance, the questions seem simple and the answers self-evident: everybody should be the center of attention sometime many of the groups are at the bottom together, or at one point or another; and the model you use depends on what it is you are trying to analyze. Actually, the questions are complex, and the answers unclear because limited resources of time, space, money and energy often pit group against group when priorities must be set. More significantly, the problems of building coalitions and developing political agendas bring us face-to-face with the reality that different racial and ethnic groups have distinct histories and interests, some of which collide.

I believe LatCrit is attempting to address these complexities, not only in theory but in practice. Institutionally, LatCrit has implemented the concept of "rotating centers," whereby a session in each conference is devoted to an issue of primary concern to a non-Latino group. Further, LatCrit theory encompasses both race theory and ethnicity theory. n4 I advocate using the racial paradigm of the Latino/a experience because, I believe this model is the common ground between blacks and Latinos/as. A racial analysis illuminates each group's respective
Part I of this essay is a prologue, reporting some thought-provoking conversations I encountered at the conference and my initial reactions.

Part II presents a critique of a LatCrit sentiment that appears to blame African-Americans for the erasure of Latino/a histories, experiences and struggles. This sentiment is present in Juan Perea's article entitled The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought. Perea's description of the Black/White paradigm as a binary relationship obscures the key insight of the Black/White paradigm: its relationship to power. It obscures the reality of the unequal, hierarchical, power relations between different groups, which places whites at the top, blacks on the bottom, with other groups in between. I therefore endorse the formulation that the paradigm is better called the "White Over Black" or "Black Subjugation to White" paradigm.

The aspects of American racial reality that are accurately captured in the "White Over Black" paradigm must not be ignored even though the paradigm is inadequate to describe all dimensions of the experiences of various American peoples of color.

Part III encompasses my preliminary thoughts on the operation of multiple racial systems as well as my initial thoughts on what constitutes the "bottom." In this section, I take the metaphor of the "bottom" from the White Over Black paradigm and apply some of its characteristics to examine the different historical experiences and issues related to blacks and Latinos/as.

The key to the "bottom" metaphor is that the "bottom" is constricted by the particularities of "white power's" (hereinafter White Power) obsessions, which result in the creation of different racial categories and systems. That is, the "bottom" speaks not to which group is more oppressed but rather to "white power's" obsessions and how those obsessions form the basis of different racial categories as sites of oppression. The "bottom" is the embodiment of a particular obsession, and it represents the role a specific group plays in a particular racial system.

First, I believe the "bottom" is that which "white power" opposes. Second, it is those aspects of group identity that often incorporate meanings different from those imposed by "white power" and challenge "white power's" conception of itself and its social vision (i.e. white, upper class, Anglos). These aspects are particularly threatening when the bearers are significant in number. Third, the "bottom" is the relentless institutionalization of oppression and suppression of that aspect or energy which is a source of group unity and white opposition, even in the face of radically altered social conditions. The continuity of oppression during different historical periods gives the bottom a feel of permanence. And last, the "bottom" is obsession reinforced by resistance from the groups who feel the weight of the particular oppression. This resistance often intensifies "white power's" obsession.

I argue that one of the constants in "white power's" obsessions has been blackness. It forms the basis of a colorized category (loosely based on skin color) upon which oppression is organized and blackness is the central construct marking the "bottom" of a colorized racial system. This colorized system of racial oppression has been the principal racial system in America and has significantly affected how we think about race. Consequently, a substantial part of the paper analyzes the construction of blackness as the opposite of whiteness, both as a concept and in the experience of slavery and its aftermath. This analysis is developed with the use of Omi and Winant's theory of racial formation and shaded by an awareness of other non-white experiences.

Additionally, the works of Cheryl Harris and William Wiecek are used to demonstrate that black people are on the "bottom" of a colorized racial system. This argument is furthered by examining Ian Haney-Lopez's analysis of the Mexican American condition in 1950's Texas. It is argued that although Mexican Americans believed themselves to be white or one notch above blacks conceptually at that time, their experiences, particularly as they relate to their material conditions, suggest that Mexican Americans at least shared the "bottom" with blacks. I comment on this suggestion in two ways. First, as Haney-Lopez implies, the subjective recognition of these shared experiences, even now, may well suggest a commitment to anti-racist struggle, whereas ignoring these objective conditions may indicate Latino/a acquiescence or complicity in the maintenance of white supremacist ideology and practice. Additionally, however I posit that the similar conditions of blacks and Latinos result from the operation of different, though overlapping and mutually reinforcing, systems of racial categories.
These systems of racial oppression are linked and informed by white power's self-conception and goals. Thus, while "blackness" is the central construct in a colorized racial system, it is not the only category subject to racial oppression or the only system operating. Rather, "white power's" obsessions have racialized groups that are neither white nor black, categorized and oppressed other groups as "foreign," and attempted to wipe out non-Anglo ethnicity.

The term "shifting bottom" captures the different impact that "white power's" obsessions have on various groups. The meaning of the term is illustrated by briefly turning to the issue of language, which suggests, by reference to Susan Kiyomi Serrano's n21 account of the English Only movement, that Spanish has been racialized and is on the bottom of a language hierarchy. I then hypothesize in schematic form, that Spanish is a mark of a racial system that combines cultural, national origin, lineage and colorized categories comprising a system of racial oppression I call hybridity. Finally, it appears that on the issue of lan guage, the "bottom" has shifted and Latinos are on the "bottom" of a racial system marked by it. Thus while blacks are consistently at the bottom of color-lined racial hierarchy, as posited by the "White Over Black" paradigm, the bottom and those on it, shifts to other groups around other characteristics depending on the issue and my shift among various racial systems.

Part IV is my conclusion, where I return to the LatCrit institution of "rotating centers", and endorse it as, among other things, a reflection of the reality of the "shifting bottom."

I. Prologue: Conversations and Reflections

The LatCrit Conference was more than I expected. It was intellectually stimulating, personally motivating and just plain fun. The panels, organized from an anti-subordination perspective, ranged from discussions on identity and culture to democracy and structural impediments to [*1184] empowerment, providing me, an African-American woman, a greater insight into the Latino/a condition in the United States and the law's relation to that condition. I had an opportunity to embrace old and new friends while debating the complexities of immigration policy regarding Cubans and Haitians, religion as a natural site for the Latino/a struggle, and Latino/a ambivalence toward their indigenous Indian heritage, among other issues. I also discovered possible avenues for future scholarship and action! It was a divine experience!

As with many conferences, there was as much discussion taking place outside the scheduled sessions as there was inside. The assembled group was diverse, yet consisted of mostly self-identified Latinos/as.

A. Institutional Orderings

As I roamed around the tropical Eden Roc hotel, I bobbed in and out of various conversations. One set of conversations involved the possibility of setting aside at least one session in each LatCrit conference to discuss an issue of particular concern to a non-Latino/o ethnic/racial community, possibly, Asian Americans, African-Americans, Native Americans or other groups. This process, in which a series of non-Latino groups would have their issues, concerns or insights spotlighted, was dubbed "rotating centers." The concept of "rotating centers" reflects both intellectual insight and experience. As an intellectual matter, we have learned each group's perspectives enhance the thinking and theory of all the groups. The experiences of LatCrit organizers participating in critical race theory workshops, and critical race theory organizers participating in the critical legal studies movement brought forth new and different perspectives to a variety of legal issues. Although these groups' formations owe their starts to a variety of scholars and theories, and these experiences were unfortunately ones of exclusion, n22 the fact remains that with each additional group and insight, the theory has flourished. n23

[*1185] The idea of "rotating centers" institutionalizes a process of both advancing theory and building coalitions, while maintaining the focus of the LatCrit conference on Latinos and Latinas. n24 It does so by bringing together various groups to participate, analyze and theorize about their individual and community experiences, thereby facilitating the understanding, trust and camaraderie needed to build coalitions. A similar thought must have occurred to the organizers of LatCrit III, who initiated a panel called "From RaceCrit to LatCrit to BlackCrit" and invited many Blacks and other Critical Race Theorists to participate. n25

B. Rivalries

Another conversation featured a debate between two fairly friendly factions. One party insisted the "Lat" needed to be put back into Lat Crit, while the other maintained the more serious problem was LatCrit seemed to lack a "Crit." Thus one group questioned whether the conference focused enough on issues of general concern to the Latino/a community, while the other wondered whether the conference was critical enough, that is, whether it employed the tools of critical thought that were supposed to be associated
with both LatCrit and Critical Race Theory. n26
What struck me at first was not the merit of either
position, but how both positions reminded me of the
difficulty of building and maintaining coalitions among different groups, given multiple
interests and intergroup rivalries.

The rivalry between blacks and Latinos/as came to
mind, a rivalry that is played out in urban centers all
over the country. It is fueled by innumerable factors,
including contests over jobs, access to education and
housing, and politicking of a wedge variety, all of
which cause mutual suspicion and distrust. Thus,
blacks often see Latinos/as as a racially mobile group
capable of leapfrogging over them, with access to
whiteness and all that it entails (as if all Latinos were
capable of such a leap or as if this were the only
option). White, Latinos often see themselves in
competition with blacks as the "largest and most
powerful minority" (as if South African apartheid
hadn't demonstrated numerical strength demands
recognition and portends power, but cannot always be
equated with power). Unfortunately, these rivalries
also manifest themselves in some intellectual circles, -
and- scholarship.

Some Latino and Latina intellectuals seem to blame
African-Americans for the distortion of the "White
Over Black" paradigm that appears to contemplate
only two races, thereby making invisible the histories,
struggles and experiences of Latino/as. Simultaneously, black intellectuals have an abiding
suspicion that the more-racially-mobile Latino/as will
demand resources and support for their fight against
subordination, only to forget an antisubordination
perspective as soon as they can assimilate. After all, it
has been repeatedly demonstrated that assimilation into the American mainstream requires a group to
distance itself from blacks. n27 This of course,
reinforces both the oppression of blacks and the power
of whites. When Latinos and Latinas describe their con-
dition using an ethnic model rather than a racial one,
n28 are they merely using the best analytical tool for
the task, or are they attempting to disavow themselves
from blacks? If the latter, should Latino/as and blacks
consider themselves part of the same intellectual
community?

n29 whose insights arise, in part, from that
position, I lay no claims to Latina-ness. Yet, I care
deply about Latino/a experiences from a humanist
perspective and am moved by almost everyone's
stories, recognizing myself, both intellectually and
spiritually, in others who are oppressed. Further, like

Juan F. Perea's article, n30 suggests the
"Black/White" paradigm is a binary theory of race
relations and argues this binary theory contemplates
and reinforces the idea that there are only two races in
the United States, black and white. n31 Thus, the
paradigm effectively erases the histories and
racialization of Asian-Americans, Latino/as, and
Native Americans. n32 Perea thus advocates,
therefore, that LatCrit and Critical Race scholars shift
away from the Black/White paradigm, in favor of
research that scrutinizes the particular histories and
experiences of each people of color, to gain insights
into the operation of oppression and possibly new avenues for its eradication. n33 While there is
ample justification for Perea's contention that
distilling race in America into black and white often
overlooks or marginalizes the struggles of other
groups, n34 there are, nevertheless, two serious
deficiencies to his analysis.

First, Perea's description of the Black/White paradigm
as a "binary" theory of race relations is problematic
because it implies that the two groups, blacks and whites, have equal power. His articulation, therefore,
both feeds and reflects a sentiment that blames blacks,
equally with whites, for Latino/a invisibility. In Perea's
case, this view is perplexing. After all, he does not
claim that scholars should never focus on the black
experience and he understands that the Black/White
paradigm encapsulates racial hierarchy. He further
agrees "slavery and the mis-treatment of Blacks....
were crucial building blocks of American society,"
n35 and that the "struggles over the legal status of
Blacks have been central in shaping the Constitution
and the Supreme Court's decisions on race and
equality." n36 In fact this history and Perea's
argument that black/white relations have become
paradigmatic of race relations support his view that
colorized racial hierarchy with white on the top and
black on the bottom has been the principal racial
system in the United States. The problem is that
Perea's use of the word "binary" combined with his tone, n37 place blame on blacks for the
erasure of other groups of color from America's racial history. However, blacks did not invent white racism, n38 nor do we control the primary institutions supporting racial hierarchy. Moreover, while we have produced texts on race, we are not the principal purveyors of conventional wisdom on race issues. This is not meant to deny that blacks have contributed to the erasure of other non-white groups, to claim that we have exercised no agency in the construction of race relations, or to dispute that we have indulged in negative, stereotyped thinking which reinforces the oppression of other groups of color. n39 We have. We thus share responsibility for the failure of certain interracial coalitions, and for triggering resentment in other groups. However, as people of color assign and accept blame for various mistakes made, we must remember that our principal enemies are the institutions of white supremacy, not one another.

A potential way of reducing the sentiment that blames blacks for erasing "other non-whites" is simply to rename paradigm the "White Over Black" or "Black Subjugation to White." n40 These alternative formulations better reflect the reality of unequal and hierarchical power relations, and point to the key objective of anti-racist struggle: the overthrow of white supremacy.

Furthermore, the "White Over Black" paradigm posits not only that whites are at the top of a particular racial hierarchy and blacks at the bottom, but arguably all others - including Asian Americans, Latinos/as, and Native Americans - are in the middle. Perea slights or ignores [*1190] this dimension of colorized racial hierarchy when he suggests the Black/White paradigm be discarded. n41 I would suggest the American colorized racial system is essentially equivalent to that of South Africa during the apartheid state, which, by law, created a middle racial tier of people with less power and status than whites, but more than blacks. To the extent the "White Over Black" paradigm alludes to these rankings or colorized groups, it should remain an important part of how we conceptualize race in America. Nevertheless, I contend the "White Over Black" paradigm should not be the sole paradigm for race, because racial paradigms generally are inadequate to capture all valences of the experiences of people of color but also because it is possible that multiple racial systems, which are structured around other group characteristics exist. If these exists then who is on the "bottom" depends on the specific constellation of issues and groups present in a given controversy. As we explore alternatives, however, we should remember the lesson learned from reformulating the "White over Black" paradigm: any paradigm concerning the circumstances of people of color or subordinated racial groups should encapsulate an understanding of the dynamics of power.

III. Power's Obsessions
A. Historical Context

The history of the United States is complex and anything but linear. However, a cursory look reveals that the United States was a de jure racial dictatorship from its founding until the Voting Rights Act was passed in 1965. n42 The white American dictatorship went far beyond the mere failure to extend the franchise. It exterminated Indians and appropriated their land; enslaved blacks and appropriated their labor; excluded and oppressed Chinese and other Asians; conquered and annexed the land of Mexicans; interred the Japanese, and, employed Jim Crow, immigration, citizenship and property laws, among other tools, to maintain this racial dictatorship. n43 The theory was Anglicized white [*1191] supremacy; the goal, a White nation. However, the nation moved from one ruled through brutal dictatorship to one ruled through hegemony after the 1960's. Today, it is hegemony informed by Anglicized white supremacy and privilege. It is also hegemony influenced by the struggles and survival of the other, as well as new constituent groups. n44

In this process of constructing a nation, American race, races, racism, and racialism were born. n45 So too were white power's obsessions. These obsessions are many, varied and changing, but even today are ultimately informed by the same Anglicized, White, upper-class male perspectives that ruled the historical dictatorship. This perspective reflects the "core culture" of U.S. society, n46 which is "white, Protestant, English-speaking, Anglo-Saxon," n47 and, one might add, heterosexual. Moreover, this perspective views itself as being superior to others, having dominated the country since its inception. Consistent with its dominant position, this perspective has projected its own reflection onto the nation, all too often defining itself as the only legitimate America. n48 The social goals envisioned by this perspective include ideas of liberty and equality. Yet, these ideas are organized around its core culture and are limited by its values as well as one of its primary goals - maintaining itself in Power. At the same time, this perspective defines, and is defined by, aspects of others' group identities, usually those aspects that most challenge white power's conception of itself and its social vision. In the assertion of these aspects of group identity, an assertion that often embodies meanings and visions contrary to those imposed by white power, people bearing these aspects of identity will be bitterly opposed. This is particularly so when the bearers are
significant in number. The opposition will manifest itself in many kinds of institutional and societal oppression, despite opportunities for society to do otherwise. This oppression calls forth resistance, which further fuels the obsession, unless the resistance is crushed or is successful in altering power relations. It is these factors which constitute the "bottom."

Although there is a danger in imposing upon contextualized histories a universalized American construct about how white power main [*1192] tains itself, thinking about our varied oppressions in this way provides some intellectual insight and clears the path for our coalition efforts.

B. The Mark of Blackness  n49

It is often said that blacks are at the "bottom" of the American racial hierarchy.  n50 Is this true? And if so, what does it mean? The statement is correct to the extent we are talking about a colorized racial hierarchy and noting the tremendous influence that this colorized racial system has had in the United States. As to its meaning, most obviously it suggests when the races are ranked from most degraded to most exalted, blacks are in the lowest rank and whites in the highest. Let us, however, parse this a bit more. I wish to posit equivalence between these two propositions: blacks, as a race, are at the "bottom;" and, one of white power's greatest racial obsessions has been with "blackness" and the black body.  n51 In fact, I would assert that the black body consistently has been the primary symbol of "race."  n52 From this perspective, it is the intensity of white obsession marked by conceptual opposition (or "otherness") and continuous oppression despite societal changes that determine the "bottom." Furthermore, in the context of colorized racial categories, blackness has had no close competition for at least the past four hundred years.  n53

[*1193] Detailing albeit in a stylized way, the long history of white oppression of blacks and blackness will demonstrate why the colorized racial system has been central to our current understandings of race and why blacks are at the bottom. Black people represent the metaphorical bot tom of a colorized racial hierarchy, in part, because: blackness is an aspect of black people's humanity, based partially upon their dark colored skin, around which they have been forced, and have often chosen, to identify,  n54 and which is opposed by white power as well as defined in opposition to whiteness; the assertion of blackness as black humanity, particularly when people marked by blackness have been in sufficient numbers, has posed the most direct challenge to white Power's conceptualization of itself and its social vision as white and consequently privileged;  n55 - white power has oppressed people marked by blackness and institutionalized that oppression fairly consistently throughout American history, despite radically changing circumstances and opportunities to do otherwise, providing the dynamic of oppression a feel of permanence; and, black people have resisted this oppression, thereby reinforcing White Power's obsession with blackness.

1. Blackness as an Aspect of Identity Opposed by White Power and Defined in Opposition to White Power

It seems observably true that blackness is an aspect of identity by which blacks, or people marked by dark skin (presumably of African descent),  n56 have been forced, and often choose to cohere. I adhere to the theory that blackness and the race of black people are social constructs, that find their most defining moments in the collision of people from Africa and Europe and the enslavement of African peoples.

As such, White Power's obsession with blackness begins with slavery. White power created blackness, parasitically defining itself in opposition to it and seeking to oppress and suppress it in order to maintain  [*1194] the power it derived from blackness, in both tangible and psychological terms. White power, wealth, and privilege required both blackness as subjugation and black people as slaves; and therefore, black humanity could not be tolerated.

Conceptually, whiteness as the polar opposite of blackness had meaning in European history long before slavery.  n57 Whiteness was a symbol of cleanliness, purity, virtue, godliness, etc., and was in stark contrast to blackness.  n58 Blackness, on the other hand, signified the devil, evil, dirtiness.  n59 These notions undoubtedly influenced Europeans during their initial contact with Africans, their most salient feature in European eyes being blackness.  n60 Whites almost immediately began to contemplate and obsess over the possible origins and meanings of people encapsulated in black skin.  n61 Even though there were other, more cultural differences between the two groups, such as dress, family structure, and religion, among others,  n62 in the context of slavery, both the color and cultural differences would mesh into an overarching concept of blackness marking blackness as twice removed from "normalcy" defined in whiteness and Anglo Saxon norms.  n63 In slavery the conceptual opposition between blackness and whiteness would be experienced.

William M. Wiecek, argues the institution of slavery evolved over time in U.S. colonies as the importation of African slaves spread.  n64 He [*1195] explains
that Africans initially entered many of the colonies as free people or in some form of indentured servitude. As black slavery spread, however, European notions about Africans hardened from ethno-centrism into racism. n65 Wiecek notes that in areas with fewer slaves, race relations were more maternal and relaxed, with opportunities for social mobility, even for those enslaved. n66 This reality, Wiecek comments, suggests that "a future other than slavery [had been] possible for African immigrants." n67 In the process of expanding and institutionalizing Africa's slavery, however, slavery fused with race. n68 In other words, in white minds, slavery, a system of labor coercion, combined with color-delineated races, cementing in experience the conceptual opposition of whiteness and blackness while reinforcing both. This fusion between slavery and color-delineated "races" was partly a result of how slavery came to function in America a function White Power consolidated and encoded into law. n69 Slavery operated primarily along differences in skin color, embracing descent. It thereby created the color line where "white" came to mean free and "black" came to mean slave. Cheryl Harris, explains.

"Black" racial identity marked who was subject to enslavement, whereas "white" racial identity marked who was "free" or, at a minimum, not a slave....Because the "presumption of freedom [arose] from color [white]" and the "black color of the race [raised] the presumption of slavery, whiteness became a shield from slavery, a highly volatile and unstable form of property<ellip> Because Whites could not be enslaved or held as slaves, the racial line between white and black was extremely critical. n70

The color line, therefore, functioned not only to define people marked by black skin as presumptive slaves, but also defined white people as privileged. This "privileging" of white people started the process of whites consolidating themselves as a racial group. n71 Poor whites aligned themselves with upper class whites in opposition to, and paratopic upon, people marked by black skin. For example, Wiecek, summarizing Edmund Morgan's work, suggests that in Virginia, Bacon's Rebellion, a lower class white rebellion, was resolved in part by expanding the African slave trade. n72 He explains that black slavery satisfied the colony's labor needs while privileging poor whites in relation to slaves. This resolution united lower and upper class whites against blacks. n73 In a way that slavery alone might not have accomplished. Thus, racial [black] slavery provided the glue for white racial solidarity vertically aligning white interests across class lines. n74 As a result of this merger of slavery with race, or rather slavery with the color line that delineated the races, White Power was enriched, white people privileged, and white racial identity coalesced.

In this context, whiteness became more than just a concept, it became a valuable commodity. Cheryl Harris has argued persuasively that whiteness became a property interest, shielding people defined as white from slavery and privileging them during slavery and thereafter. n75 Blackness, on the other hand, came to mean everything that whiteness was not. Whiteness was free, powerful, superior, privileged, civilized, industrious, intelligent, and beautiful, while blackness was slave, subjugation, inferior, savage, lazy, dumb, and ugly. n76 In other words, while slavery functioned to enrich White Power, blackness functioned to further define and privilege it. n77 As color-delineated race fused with slavery, blackness merged with subjugation and inferiority. Slave owners obsessively branded their names, and inscribed their desires and disgust on these bodies, including the designation "chattel." n78 Thus, a people marked by blackness were branded subordinate.

Ultimately, White Power came to view those who possessed white ness as human while those marked by blackness were viewed as subhuman, three-fifths human, n79 chattel. The color line separated people of African descent from their humanity. n80 And, White Power, defining itself in opposition to blackness, denied humanity and human treatment, particularly the freedom desired by the human spirit, to the people marked by blackness. n81 Consequently, what emerged from slavery was not the Asante, Yoruba, Bakongo, n82 and other groups that initially entered slavery, but rather, a race of people. These people, marked by blackness as subjugated and inferior, were organized in solidarity around the black body. Their culture was a mixture of various African cultures and the emerging "American" culture, which was heavily influenced by the experience of slavery and resistance. They were identified as, and identified themselves as, Coloreds, Negroes, Blacks, and African-American icons in a century-long contest over the meaning of blackness. n83 Since White Power viewed people marked by blackness as less than human, it obsessively opposed blackness and the humanity of and human treatment for anyone marked by it. This humanity challenged White Power's conceptualization of itself and fueled its obsession.

2. Blackness Challenges Power's Conception of Itself

The increasing numbers of African slaves in the colonies confirmed White Power's conception of itself
as free, privileged, and superior. Humanity, however, marked with a black face, and asserting itself through insurrection, was perceived to threatened this tidy system of color categorization experienced in the expanding slave societies. Insurrection not only threatened white wealth and health, but it also compromis ed the very self-conceptions that the expanding slave societies confirmed. This is where the real seeds of obsession lie.

Wiecek argues the increasing numbers of African slaves in slave holding states were accompanied by the implementation of more virulent laws to control blacks, which marked the emergence and further development of slavery. As the number of African slaves grew, so did the apparatus to control Blacks. The laws however, made clear that the threat of insurrection was one of White Power's overriding concerns. 

In order to prevent rebellion and to reassert this conception, White Power had to codify and exercise violence that severely regulated all black life. Consequently, no detail of black life was too petty to note and White Power obsessively regulated every aspect of life for those marked as black. The more numerous the slaves, the harsher the codes, even in areas with sizable free black populations. What emerged therefore, was a particular kind of slave law, namely race control laws. 

Wiecek explains, labor extraction, the goal of slavery, was privatized, meaning the owner himself had to coerce labor from slaves, while race control, managing the movements and activities of blacks in society generally, became a matter of public concern and legislation. Ostensibly, the public control of black lives facilitated the extraction of labor by keeping slaves in their place in white homes and plantations. But ultimately all black life, both slaves lives, and the lives of free Blacks had to be regulated and denigrated. What lingered after slavery's demise was the concept and practice of race control meant to devalue black humanity and to maintain blackness as subjugation and inferiority.

3. Institutional Oppression, Resistance, and Obsession

Black freedom posed innumerable challenges to White Power's conception of itself and its social order on the eve of Reconstruction. These challenges included concepts of white privilege and the nation as a white country. However, subjugation had been indelibly inscribed on black bodies and faces, that it is not surprising that White Power moved to oppress it in new ways.

The Civil War, Emancipation, Reconstruction, and the passage of the Thirteenth and Fourteenth Amendments, all of which embroiled the nation into considerations of what slavery and blackness meant, marked instances where White Power could have reconstructed whiteness and blackness as something other than in opposition. But it did not. These efforts only appear to have hardened the color-line and increased the obsession. If blackness could be maintained as subjugation and people marked by blackness oppressed, then whiteness could retain its supposedly justified privilege and power on a psychological, political and economic plain. The result was that meanings of whiteness and blackness as superior and inferior remained after the abolition of slavery. White Power invented new and different institutional and systematic oppressions to maintain blackness as subjugated and black people as oppressed. These new institutional mechanisms were evidenced by legal segregation, new forms of labor exploitation, excessive legal violence and discrimination. At the same time, people marked by blackness and organized around blackness resisted oppression. However, such resistance, in the form of establishing functioning and prosperous black towns, was often met with fire and destruction; independence was met with lynching; and defiance was met with violence. Resistance seemed to fuel the obsession and rebound with additional violence despite the altered conditions.

Similarly, the civil rights movement asserted black power; pronounced black as beautiful, and demanded just and human treatment for black people. It therefore presented White Power with another lost opportunity to re-create itself as something other than in opposition to blackness and to provide blackness with alternative meanings in white minds. Although the Civil Rights movement brought about some progress, many have noted the progress was limited.

It appears the claims of the movement proved too contradictory to both the practice and conception of black as subjugated and inferior.

The endurance of the obsession and oppression of blackness and black, despite the tremendous opportunities for change, has led some to believe the position of blacks on the colorized racial bottom is permanent. Some argue this relationship is permanent because of the role blackness plays in white racial cohesion. Others believe in it's permanence because the relationship is evidence of inherent black inferiority. However, the seeming permanence of these relations and meanings, is a crucial insight of the "bottom" metaphor.
I have attempted to demonstrate the foundation of White Power's obsession with blackness and the reasons why that obsession persists: the foundation lays in slavery and the creation of blackness. Blackness served to facilitate an economic operation in slavery, but it became much more. By its very definition, it marked a people as subjugated and inferior both innately and culturally to whiteness. White Power was opposed to blackness as the assertion of black peoples' humanity, in part because the elevated definition and experience of whiteness depended on the definition and experience of blackness as less than human. n102 This notion among whites of the limited humanity of blacks justified the white perception that black people were entitled to less of society's resources, particularly, human treatment. This challenge to the very premises of whiteness reasserted itself in different periods. Throughout each period, White Power sought to re-confirm blackness as subjugation and inferiority and to oppress black freedom both representatively and institutionally. These recurring episodes of resistance and imposition fueled white obsession and continued to define the boundaries of color-lined categorization and subjugation as well as color-lined experience and awareness. The episodes currently support the feeling that the meanings and oppression of blackness and blacks is permanent. Although this need not be the case, it is further evidence that blackness was and remains the central construct of a colorized racial system. Further, given the Nation's engagement with this system of racial categorization and oppression, the system informs and is fundamental to America's understandings about race.

[*1202]

B. Sharing "the Bottom"

Ian Haney-Lopez, argues that the language of race describes the meanings, conditions and dominant community attitudes related to ostensibly different human bodies. n103 Haney-Lopez explains that it is the language of race, rather than ethnicity or national origin, that marks people as twice removed from normalcy defined as whiteness and Anglo Saxon norms. Further, he argues that the language of race most adequately describes the experiences and conditions of segregation, subordination, social alienation, systematic inequitable distribution of resources and institutional practices of discrimination imposed on Mexican Americans in the 1950s who were legally characterized as white. n104 He supports his argument by describing their circumstances, demonstrating that: 1) the dominant white community viewed Mexican-Americans as a "race"; 2) Mexican Americans were marked as a racial group by such practices as being required to use separate bathrooms from Whites; and, 3) segregated schools institutionalized racial oppression of Mexican Americans, with dilapidated school houses and inferior education. He argues that denying this racial history may facilitate the denial of legitimate need and access to anti-discrimination practices and institutions.

There are two points Haney-Lopez makes that are important for our purposes. First, his description of Mexican Americans' views of themselves and White Power's views of them confirms, in part, the insight of the White Over Black paradigm, which assigns blacks to the colorized racial "bottom." Second, his argument characterizing Mexican American experiences as "racial," conspicuously features the experiences Mexican Americans shared with blacks.

Mexican Americans in the 1950's viewed themselves as white or as a different race, one notch above Blacks. This view is confirmed in the context of Mexico's history with black slavery and in the context of their dealings within American society. n105 For instance, Takaki tells the story of Wenceslao Iglesias who, in the 1920's, wanted to eat in a restaurant. He complains "they told us that if we wanted to eat we should go to the special department where it said 'For Colored People'. I told my friend [*1203] that I would rather die from starvation than to humiliate myself before the Americans by eating with the Negroes." n106

Furthermore, white power, as evidenced by the census, viewed and classified Mexican Americans differently at different time periods. They were viewed as a separate race in 1930, as white from 1940-1970, as members of the "other" racial designation in 1980 and as a "racially unspecified Hispanic ethnic" group from 1990 to the present. n107 Although Haney Lopez suggests that White Power's reasons for classifying Mexican Americans as white in the 1950's may have been suspect, n108 the various classifications suggests a number of tentative conclusions. First, it demonstrates that Mexican American's colorized characteristics were not consistently defined and suggests the possibility of upward mobility toward whiteness over time, similar to that experienced by other ethnic, presumably white, groups. In other words, the physical features of Mexican Americans were not assigned a fixed meaning; nor were these features consistently categorized in a way that necessarily singled Mexican Americans out for oppressive policies, at least within the context of a colorized racial system. Second, it gives credence to the idea that White Power was obsessed to some degree with different, distinct human bodies, as manifested perhaps in color or phenotype as evidenced by attempts to categorize them in relation to color. That is, it was
obsessed with these distinctive, and perhaps brown, bodies and the meanings it assigned and associated with those bodies. And finally, it suggests that even though White Power may have been concerned with different coloring and other distinctive physical characteristics, it was not simply the feature of coloring that made Mexican Americans different and subject to subordination. White Power's ambivalence toward the colorized racial category Mexican Americans inhabited may suggest that cultural and other differences played a role in conceptualizing Mexican American identity and justifying their subjugation. Nonetheless, despite the views of Mexican Americans as one notch above blacks it can be argued that Mexican Americans in the 1950's shared the "bottom" with blacks as objects of White Power's obsession. This obsession is evidenced by the institutionalization of oppression in segregated facilities justified on the basis of innate inferiority to whites. If one accepts the idea that blacks, throughout this period, were on the bottom of a colorized racial system, then segregation suggests that Mexican Americans shared with blacks the same conditions of oppression and therefore, at least materially, the "bottom." n109

The failure of Mexican Americans to appreciate the similarities between their oppression and blacks' oppression may have been an indication of their complicity in the colorized racial system and hierarchy, as well as their aspirations to distance themselves from blacks in an effort to assimilate into whiteness. Recognition of these shared experiences, both then and today, may be an indication of a commitment to anti-racist struggle. n110

Finally, if the experiences shared with Black's favor the conceptualization of a group as a race, as Haney Lopez suggests, then arguably, those attributes not shared with Black's favor an "ethnic" characterization. For instance, arguably forcing Spanish-speakers to learn English is analogous to the pressure that was put on white ethnic immigrants to abandon their native tongues. While the suppression of language might be characterized as a form of either ethnic or racial oppression, both characterizations implicate White Power's obsessions, and neither the "White Over Black" paradigm nor the notion of Blacks as the colorized racial "bottom" contributes much illumination. Here, in the case of Mexican Americans, White Power's obsession is either with brown bodies or the Spanish language; black bodies have nothing to do with it. n111 Yet the reality is more complicated than this when races are ethnicized and ethnicities racialized and when multiple systems of racial categorization and oppression are visible.

C. Shifting Bottoms: A Language Hierarchy and Multiple Racial Systems

Blacks are not on the "bottom" with regard to language oppression, as the "Black Over White" paradigm might suggest. n112 Instead, it appears Latinos/as are on the "bottom" because they embody, so to speak, a shared language uniting them that is the object of White Power's obsession. In other words, Spanish translates to a central site or category of oppression, thereby relegating its speakers to the metaphorical "bottom". This appears in contrast to speakers of so-called black English, which is denigrated, but whose speakers can be said to "at [*1205] least speak English". Similarly, although Asians and Native Americans' language are suppressed, no single shared language exists to unite the groups nor do it appear that any of their languages have been singled out for sustained denigration. But what if Latinos are on the "bottom" are they "on the bottom" of?

1. Language Hierarchy

I believe there are four reasons Spanish-speakers constitute the "bottom" in a language hierarchy. These four reasons meet the criteria of the bottom discussed above.

a. Language as an Aspect of Ethnic Identity

Many writers have noted that language is an aspect of ethnic identity. n113 Language is central to culture and fundamental to ethnicity. n114 We not only communicate through language, but language structures how we think. n115 The Spanish language, having been spoken by Latinos three centuries before Anglo expansion and up to the present day, is central to the Latino identity. n116 It is a basis for cohesion in the community, and historically, has been a basis upon which they have been dis criminated. n117 Christopher David Ruiz Cameron explains: If ethnicity is "both the sense and the expression of collective, intergenerational cultural continuity," then for Latino people, the Spanish language is the vehicle through which this sense and expression are conveyed. Spanish speaking bilinguals associate the use of Spanish with the family, friend ship and values of intimacy. n118

Further, Cameron argues that historically, white society has dis criminated against Latinos/as on the basis of the Spanish language. He notes the epithet "spic" is one that emphasizes how Latinos speak, as opposed to how they look. n119

b. Spanish and the Racialization of Spanish as a Challenge
Spanish spoken in the United States challenges White Power's conception of itself and its social goals in two significant ways. First, the increasing numbers of Latinos/as portend significant political power for a group that speaks a language other than English. This threatens White Power's mythical vision of a solitary nation united around one language, occupied by one people descended from the same ancestor. Second, Spanish is associated with a racialized group and culture.

With regard to the first point, Spanish now represents the most widely spoken language in the United States after English, and the number of Spanish speakers is growing. This numerical strength may portend political power in the future for those who speak Spanish. Although Spanish cannot realistically threaten the dominance of English as the prevailing language spoken in the United States, it does under mine the myth that the United States is an English-speaking country from coast to coast. That myth has been present since the inception of the Union, despite the existence even then of multiple languages. According to Perea, the myth is reasserted in times of national stress when White Power labels non-English speakers as foreign and un-American, urging them to conform to the core culture. Specifically, large numbers of Spanish-speaking immigrants arrived in the United States after 1965, during economic recession. Combined with the overall growth of Spanish-speakers within the Latino community, White Power's conception of itself and its social vision of mythical cultural homogeneity, albeit real cultural hegemony, is challenged.

This challenge is made more serious by the second point, the fact that Spanish language is associated with a racialized group and culture.

Susan Kiyomi Serrano, argues Arizona's "English Only" amendment was racialized; that is, it was imbued with racial meaning and impact. Specifically, she argues the amendment was associated with generally recognized racial groups and sought to exclude these groups participation in the American polity. She demonstrates the racialized nature of the amendment debate by noting how proponents of the statute connected the issue of non-English languages to negative stereotypes often endemic to the images of racialized groups. Examples included such phrases as "rampant bilingualism;" "linguistic ghettos;" and, "lan guage rivals," which Serrano argued called for "reservation of American [white Anglo-Saxon] culture while racializing the issue by rhetorical sleight of hand." According to Robbins, these phrases conjure images of black ghettos, black, Latino, and Asian gangs, and hordes of Mexicans storming the border.

If Hispanics get their way, perhaps someday Spanish could replace English here entirely....It's precisely because of the large numbers of Hispanics who have come here, that we ought to remind them, and better still educate them to the fact that the United States is not a mongrel nation. We have a common language, it's English and we're damn proud of it.

Robbins makes a connection between Hispanics, their increasing numbers, the Spanish language, and mongrels. Spanish, as the language spoken by the growing mongrel Latinos/as, is associated with an unwanted racialized "other". The Arizona Civil Liberties Union, in its Amicus Brief, also noted this association of Spanish with an unwanted racialized group.

Spanish, when combined with the dark skin color of Mexicans, became a badge of inferiority in the minds of Anglos. Inversely, whiteness, English, and superior attributes went hand-in-hand. Thus, when Mexicans were rejected on racial grounds, so was their language.

Although Serrano argues only that the amendment and the events surrounding its enactment have been racialized, I would suggest the Spanish language itself has been racialized. That is, the Spanish lan guage has been imbued with racial meaning because it is associated with a racialized group, and White Power seeks to eliminate both Spanish and Spanish-speakers from the public sphere completely.

The "English Only" Movement is both a sign of White Power's movement to institutionalize its social vision of America, and of White Power's increasing obsession. It is noteworthy that twenty-two states passed laws declaring English the official language, national "English Only" bills have been introduced in Congress every year since 1983. The goal of the legislation is, in part, to force Latinos/as to assimilate; to disenfranchise those who primarily speak Spanish; and to exclude...
Racial System? Language differences, like religion, Racial Cate n150 gory of Oppression, or A Mark of Another
conception of itself and of its social goals.

Spanish-speakers from the American polity. n142 In this context, the "English Only" movement is linked to efforts to dismantle bilingual education, toughen immigration laws, and to deny social welfare benefits to immigrants. n143 In trying to eliminate Spanish as a basis of cohesion for the Latino/a community, while simultaneously limiting their participation in American society, White Power is reinforced and its cultural hegemony left firmly intact. Although these institutional moves constitute oppression, it is unclear whether this oppression mani fest the element of seemingly permanence that is crucial to the bottom metaphor. White Power's obsession with Spanish, as seen in the English only movement, has a relatively recent history even though White Power has been concerned with the presence of other languages since the beginning of the Union. n144 Whether this activity actually reflects a much longer history requires further research. Alternatively, these institutional moves to suppress Spanish may contain the seeds of obsession that will manifest themselves repeatedly in the future, even as society changes and efforts to eliminate this oppression are undertaken. In such a case, Spanish oppression would manifest the element of seeming permanence necessary to the bottom metaphor. A third alternative may be that periodic episodes of Spanish oppression are endemic to a system of racial oppression which has been continuous since the incorporation of Mexicans and other Latino/as into the United States, and, as such, seems to be permanent.

d. Resistance

Latino/as have resisted language oppression out of necessity, but also in defiance. As they have done historically, Latino/as have brought cases to court; n145 insisted on communicating in Spanish with those who speak Spanish; n146 written articles challenging language and other types of discrimination; n147 and, voted and engaged in activism against exclusion and discrimination. n148 They have argued that language discrimination often encompasses racial discrimination, n149 and is usually a proxy for national origin discrimination. n148 These activities are likely to fuel White Power's obsession with Spanish as a trait inconsistent with White Power's conception of itself and of its social goals.

2. Language - An Ethnic Category of Oppression, A Racial Category of Oppression, or A Mark of Another Racial System? Language differences, like religion, national origin, color, and alienage, are all categories upon which oppression has been based. Many of these categories are perceived as ethnic categories because they reflect ethnic or cultural differences, while others are perceived as racial, because they are embodied in or relate to, distinctive body types. This distinction between ethnic and racial oppression may be less defined in current practice. n151 Nonetheless, White Power's opposition to language differences generally, as manifested in the institutional oppression of "English Only" statutes despite of growing numbers of Spanish-speakers, sug gests that Spanish-speakers/Latino/as, at a minimum, are on the bottom of a language hierarchy, or of a category of oppression marked by language. This hierarchy or category of oppression can be seen as an ethnic, as opposed to racial, category of oppression. Further, the fact the language has been racialized can be interpreted as simply part of the process that White Power has historically engaged in, stigmatizing and oppressing differences. From this perspective, the oppression of Latino/as based on language is no different than the experiences of various European ethnic groups, n152 such as, Italians. Therefore, the "bottom" as between Blacks and Latino/as shifts between an ethnic category of oppression and a racial one.

On the other hand, because Spanish has been racialized, its suppression can be viewed as a racial category of oppression with the "bottom" shifting from one category of racial oppression to another. Here, as between blacks and Latino/as, the "bottom" shifts between a colorized category of racial oppression and a category of racial oppression involving language. Seen as an ethnic or racial category of oppression, language oppression structures a hierarchy with English on the top Spanish on the bottom. In this hierarchy, blacks who spoke black English could be described as one notch above Latinos because they "at least speak English," even though their manner of speaking is denigrated. However, the reality is more complicated.

I posit and further explore the possibility that language is just one of the marks of a racial system that oppresses Latino/as on the basis of a combination of culture, origin, lineage and color. It is a notion of hybridity, for lack of a better term, that characterizes this racial system.

For example, it appears White Power has subordinated and oppressed Mexican Americans on the basis of a combination of lineage, color, cultural and national origin differences. Elements of colorized racial categorization and cultural difference were implicated in the justifications for the seizure of Mexican land n153 during "Anglo expansion westward across North America and the ideological rise of white supremacy and White Providentialism" n154 in the early nineteenth century. n155 Takaki, for example, notes that Austin viewed the war to seize Mexico as a conflict "between a 'mongrel Spanish-
oppression, these four categories (culture, national foreign, and partially colored race. Further, as sites of Power sees Latino/as as a culturally inferior, partially categories or sites of oppression suggest that White Americans and Latino/as in general. Together these of White Power's obsession with regard to Mexican others, are always present to varying degrees as objects times. Nevertheless all four categories, and perhaps color - raised the ire of white obsession at different categories of oppression - culture, origin, lineage and and calculating mentality that characterized Americans. Inefficient in enterprise, they spent their time in pleasure-giving activities such as festive parties called fandangos. What distinguished Anglos from Mexicans, in Dana's opinion, was their Yankeeness: their industry, frugality, sobriety and enterprise. Impressed with California's natural resources, Dana exclaimed, "In the hands of an enterprising people, what a country this might be!"

Here, the usual suspects of racial degradation are apparent, employing allusions both to innate and cultural inferiority as well as noting lineage. Dana's views can be characterized as a description of a mixed people who are inherently and culturally lazy, lacking a calculating mentality, and spend most of their time seeking pleasure. Moreover, Takaki notes Mexican Americans were viewed and also experienced themselves as foreigners. He explains the seizure of Mexican lands had the effect of turning Mexicans into "foreigners in their own land", and Mexican Americans suddenly found themselves subject to foreign laws. This association of Mexican Americans and "foreignness" cemented with successive waves of immigration. Finally, with regard [*1212] to language, Perea suggests that the United States repeatedly declined New Mexico admission as a state until the English-speaking population became the majority.

Even so, it appears that different combinations of these categories of oppression - culture, origin, lineage and color - raised the ire of white obsession at different times. Nevertheless all four categories, and perhaps others, are always present to varying degrees as objects of White Power's obsession with regard to Mexican Americans and Latino/as in general. Together these categories or sites of oppression suggest that White Power sees Latino/as as a culturally inferior, partially foreign, and partially colored race. Further, as sites of oppression, these four categories (culture, national origin, lineage and color difference) are implicated in the issues of language for Mexican Americans and Latinos. Spanish is a reflection of cultural and national origin differences (meaning for eign) linked to lineage and colorized differences (captured in the term "Mestizo") . Thus, the Spanish language is the mark of a foreign culture colored by alien brown or mongrel inferiority in the minds of White Power.

In this context, the Spanish language marks or is perhaps part-and parcel of a racial system characterized by a notion of "hybridity". This racial system combines culture, national origin, lineage, and color (and perhaps alienage which refers to citizenship) differences, the oppression of which presents a case of seeming permanence crucial to the "bottom" metaphor where Latinos/as are often vanquished. Conceptualizing the notion of a "hybridized" racial system would draw upon several traits and ideas.

Generally the idea is, as blacks are "raced" as colored and Asians "raced" as foreign, Latinos/as when they are not raced as black or white [*1213] 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).

1) It captures, in part, the reality that because of the proximity of Latino/as countries of origin and the partial incorporation of these countries by the United States, the label of "foreign" is no longer clear, so much so that Latino/as are only partially for eign; and,

2) It includes the idea that Latino/as may be culturally different in such respects as language, religion, custom and dress.

b. The idea of being partially colored includes perceptions and practices around lineage and colorized differences in that:

1) The U.S. value system is informed by dualism, and it therefore handles complexity poorly, often turning the multi-faceted into something that is more bi-polar. For example, a person born of a white and black parent has historically been considered black. In the Latino context, the African, Native American and European mixed lineage gets flattened and translated into half-breed as does the fact that Latinos originate from many countries.

2) It captures the idea that purity is valued at the expense of hybridity or mixture, which is seen as the pollution of purity.

Here the standard is a facetious notion of white purity with Latinos being considered something less than pure white due to their lineage. In addition having black and Native American ancestry results in Latinos being
The issue of color, and the entire Black/White definition, feed on a dualism that shaped the U.S. value system as it developed from the time of this nation's birth. The dread of "race-mixing" as a threat to White supremacy enshrined dualism. Today we see that a disdain for mixture haunts and inhibits U.S. culture. Because it does not recognize hybridism, this country's racial framework emphasizes separate ness and offers no ground for mutual inclusion. I, for one, remember [*1214] growing up haunted by that crushing word "half-breed" meaning me. It was years before Mestizaje - mixing - began to suggest to me a cultural wealth rather than a polluted bloodline. U.S. society, the Dean of Denial, still has no use for that idea, still scorns the hybrid as mysteriously "un-American".

Such disdain helps to explain why the nature of Latino/a identity seems to baffle and frustrate so many in this country. The dominant culture doesn't easily accept complex ideas or people, or dialectics of any sort, and the Latino/a must be among the most complex creatures walking this earth, biologically as well as culturally. n167 All this means [in the context of all the mixing in different places] is that Latino/as are not an immigrant population. On the one hand, they are a colonized people displaced from their ancestral homeland. On the other, many come to the U.S. as recent economic and political refugees. n168 The proximity of Latinos/as' countries of origin coupled with the presence of substantial immigrant populations makes them appear, at a minimum, bi-national individually as well as multinational as a group. n169

Martinez captures the essential components of a racial system of hybridity. Although she states that hybridity, is not recognized in the U.S. culture, it seems more accurate to say it is not valued. The foreign and colorized aspects of a hybridized system are the basis for exclusion and oppression within the U.S. context and form the categorizes of a hybridized racial system. These categories are present simultaneously in Latino/as, but one aspect may be the focused site of oppression at one time and a different aspect at another time. Further, individual Latino/as may experience different combinations of these categories of oppression [*1215] depending on how the individual looks, behaves, dresses or speaks. n170 Speaking spanish may be one mark of this hybridized racial system.

These ideas and observations reflect my initial thoughts about the notion of "hybridity" characterizing a racial system different from a colorized racial system, while still mutually reinforcing it and other systems. Although it draws on the Latino/a experience, and particularly the Mexican American experience, it may have some analytical value for other groups and issues. For instance, a notion of "hybridity" might suggest that other groups and issues are "hybridized" in the same way that groups in addition to Blacks are colorized. The operation of multiple systems therefore includes the idea that the various systems and issues have differential impacts on different groups. For example, the oppression of black English could be analyzed from the perspective of colorized racial hierarchy, but might better be analyzed from the perspective of hybridized racial hierarchy. Here, the problem for White Power is not that the language is foreign, per se, but rather a deviation from pure English. The difference posited by the "bottom" metaphor in the context of a racial system of hybridity, is the language, encompasses both "foreign" and colorized categories, as does Spanish. n171 A hybridized racial hierarchy may also further explain the conditions of Mexican Americans in the 1950's. It might suggest that although Mexican Americans were perceived as one notch above blacks in a colorized racial system, their actual conditions were the results of the operation of a "hybridized" racial system where they were at the bottom. As such, both systems were operating to keep both groups oppressed in different and similar ways, resulting in the sharing of the "bottom".

These ideas require further development. However, I suggest, when examining language and language hierarchy, whether it be analyzed as an ethnic or racial category or as a part of a specific system of oppression, Latino/as are on the metaphorical "bottom".

IV. CONCLUSION

I have attempted to demonstrate that the "Black Over White" paradigm still provides valuable insights into the workings of racial oppression in the United States, while conceding its limitations and attempting to move beyond them. The insights are fundamental. They are about White Power and its obsessions. These obsessions are many, varied and constantly changing. However, they continuously revolve around White Power's core culture and its perceptions and goals of the culture's homogeneity and its perception of itself as
white, privileged, and superior. This is the key to the "bottom" metaphor, and it must remain our focus as we struggle for social justice and define, and redefine, ourselves in the face of oppression. n172

What relevance, if any, do these ideas have to the LatCrit practice of "rotating centers" at the Latcrit conference? I believe the "bottom" metaphor leads us to the idea that the groups represented at the "bottom" shift, depending on the issue and circumstance. The shifting "bottom" directs us to shift our focus, shift our thinking, and perhaps shift our analytical tools when we are trying to understand the experiences of different groups. It instructs us to look specifically at how different groups and issues are constructed and experienced both in similar and dissimilar ways. This essay suggests that although Blacks are at the bottom of a colorized racial hierarchy, Latino/as are at the bottom of a racialized language hierarchy, at a minimum, and perhaps at the bottom of a racial system marked by the Spanish language, among other things. The "bot tom" has indeed shifted.

If we agree that the "bottom" shifts depending on the issue or group, for example, then shifting "bottoms", similar to an antisubordination position, provides an intellectual basis for "rotating centers". This basis provides the intellectual space necessary to focus on an array of experiences, and it justifies institutional space in the center for the elabo ration of those experiences, while leaving the primary focus of the conference on the Latino/a condition. n173 In doing so, different groups and .*1217] individual experiences are brought to bear either on Latino/a issues specifically, or on issues that relate to our similarities and differences.

While "rotating centers" invite various groups to periodically take the center, to inform, and be critically informed about their theory and experience as it relates to others, the "shifting bottoms" theory allows us to be intellectually honest about those experiences and the conflicts they pose. Our thinking, one hopes, can be a "take no prisoners" kind of thinking, delivered with caring and sensitivity in an environment that will be mutually beneficial. Hopefully, we can map out our similarities and differences while building the theory and coalitions necessary to articulate a different, more fair future.

Ultimately, therefore, one of the best justifications for "rotating centers" is this: the center should rotate so can both identify shared experiences and become informed of those experiences unique to particular groups.

FOOTNOTE-1:

n1. The "center" idea encompasses struggles about which issue, group and idea should be the focus of attention in a given space, research project, conference, etc. See Trina Grillo & Stephanie M. Wildman, Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other-isms), 1991 Duke L.J. 397, 402 (1991) (describing the process whereby whites, in workshops designed to discuss racial issues, re-center the discussion around themselves and issues of primary concern to them, in this context, sexism.)

n2. See Derrick Bell, Faces At The Bottom Of The Well (1992). Bell uses this term however, to contrast the power and wealth of the ruling elite with the larger group of the economically and socially disadvantaged. See also Mari Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 Harv. C.R.-C.L. L. Rev. 323 (1987) (arguing the people at the bottom, those who experience discrimination, should be the source of normative law); Jack Miles, The Struggle for the Bottom Rung: Blacks vs. Brown, 270 The Atlantic Monthly 41 (1992) (discussing the Los Angeles riots and economic competition between Latinos and African-Americans, as well as attitudes about immigration).

I use the "bottom" metaphor to suggest there are many groups that suffer from oppression and that they suffer differently. Specifically, Blacks are at the bottom (the most disadvantaged) of a colorized racial category, although there are other racial categories and perhaps, multiple racial systems. The bottom shifts among these categories and systems, often in relation to particular issues. See discussion infra.

I use this metaphor with some trepidation because it may suggest I am talking simply about victimhood and implying all that binds the various groups is this victimhood and oppression. See generally Leslie Espinoza & Angela Harris, Afterword: Embracing the Tar-Baby, LatCrit Theory and the Sticky Mess of Race, 85 Cal. L. Rev. 1585, 1641-44 (1997), 10 La Raza L.J. 499, 555-58 (1997) (discussing the politics of victimization). However, I think our various group experiences of
oppression mark us not as victims but as survivors and the progeny of survivors! We are people who have survived. Often, we have thrived despite tremendous efforts to dehumanize us. These stories of heroism should not be abandoned, forgotten, or traded away like pieces in a coallahedral chess match. Rather, our survival is the source of our strength. This strength, combined with our experiences, are the basis for both our empathy with, and understanding of, others' oppression and survival. From this perspective, we come together on the foundation of our strength and commitment to social justice for all. Together, these things permit us to commit time and resources to each other's different struggles as well as our common struggles. This seems particularly important in the current climate, where debates on immigration, affirmative action, and bilingualism constitute a multi-pronged attack against racialized others. Here, we have a common enemy attacking us on issues that often appear irrelevant to our own individual struggles, but which are nonetheless linked.

At the same time, I do not think survival or victimhood is all that binds, or should bind, these various groups. I believe these groups have similarities that transcend oppression. See, e.g., Elizabeth M. Iglesias, Rape, Race, and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality, 49 Vand. L. Rev. 869 (1996) (discussing African-American and Latina visions of motherhood).


n5. This sentiment exists. A colleague and I discussed it during one of the many conversations in which I was involved at the conference. The BlackCrit forum panelists' comments also alluded to this sentiment.


n7. I thank Lisa Iglesias for this insight. Although I have heard this formulation over the years, Lisa empathetically made...
this point, citing Neil Gotanda, to counter the binary conceptualization of the Black/White paradigm at the LatCrit conference. See also Wintrop Jordon, White Over Black: American Attitudes Toward the Negro, 1550-1812 (1973) (providing insight on white America's early perceptions of blacks); Yamamoto, supra note 6 (discussing in part, the limits of the white-on-black paradigm as it relates to multiracial interracial justice and the term "white on black," a phrase that captures the parasitic nature of white and black relations).

n8. Meaning the "white over black" paradigm refers to blacks being at the "bottom" of the American (colorized) racial hierarchy.

n9. These particularities are supported by the dominant core culture of American society (See infra notes 69-74 and accompanying text), and are in some ways captured in the rhetoric of "White Over Black," "White Over Non-white," "American over Indian," "English over Spanish," and "English over non-English speakers." Each rhetorical move has its strengths and limitations. For instance, "White Over Black," explains a colorized racial hierarchy and may suggest that the alienation among non-white groups is due to that hierarchy. But its limitation is, as Perea in his article points out, that it may limit our discussion to the black and white "races." The "White Over Non-white" rhetorical move informs us about the domination of all non-whites by whites and suggests something about the competition among Non-whites, but it fails to convey the hierarchical relations among those groups. "American over Indian" is a loaded rhetorical move, but I believe it suggests the subjugation of Native Americans by Americans and includes something about their competing social visions centered on land.

n10. See supra text accompanying note 9. The idea is that the different categories that groups inhabit have been created historically as sites of oppression. Some of these categories are more ethnic or cultural as opposed to racial, and perhaps more readily assimilated into the dominant culture. These categories are captured in concepts of lineage, national origin, religion, language and what I call colorized.

Color, lineage and national origin are embodied traits and therefore seem more suited to a racial analysis. However, cultural traits are indispensable to our ability to both identify and act on preconceived notions about who an individual or group is. See Yamamoto, supra note 6, at 848 (noting that color and culture are inextricably intertwined).

I suggest later that the combination of different categories, including categories marking ethnic or cultural differences as experienced by Latinos/as, constitutes a racial system different from, but overlapping and reinforcing, a colorized racial system. In considering whether to use the terms "category" or "systems of oppression," one must look at the two different ways of analyzing them. For instance, with regard to a colorized category, the "category" could be seen as including notions of blackness, redness, or brownness, of which blackness is on the bottom. Or could see blackness as a single category of a colorized system encompassing other colorized categories.

This separate way of analyzing categories and systems becomes more complicated when you think about groups that occupy multiple categories, some of which are not typically thought of as racial, such as Latinos/as. Of course, all groups occupy multiple categories. For instance, blacks are both a "race" and an "ethnicity," but many of their cultural practices are identified in a colorized way, e.g., the black church, black music, Black English. Latinos can be said to be partially colorized, partially foreignized and partially ethnicized. Here it can be argued that the first two of these categories are racial while the latter refers to Latino ethnicity. See, e.g., Natsu Taylor Saito, Alien and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy in American Law, 76 Ore. L. Rev. 261 (1997) (discussing "foreignness" as a racial category and suggesting Asian-Americans are raced as foreign). Taken together however, it seems to me that these various categories constitute a racial system, as
opposed to another racial category. This makes little difference from the standpoint of an anti-subordination perspective, which views all subordination, ethnic or racial, as problematic. But in analyzing the institutionalization of oppression with regard to Spanish language use, I suggest that Spanish has been racialized. See infra notes 166-73 and accompanying text. That is, Spanish, an ethnic trait, is so associated with a racialized group that it has become a mark of a racial system or category.

Ultimately, all of these categories are made more complicated by the intersection of class, gender, and sexual orientation categories of oppression.

n11. Nonetheless, it does involve ideas about which groups are most vulnerable to the harms inflicted by a particular type of oppression. See Elizabeth M. Iglesias & Francisco Valdes, Religion, Gender, Sexuality, Race and Class Coalition Theory: A Critical and Self-Critical Analysis of Lat-Crit Social Justice Agendas, 19 Chicano L. Rev. 503 (1998) (discussing this characterization of the bottom metaphor).

n12. Many commentators have discussed white obsession with blackness. See infra notes 69-104 and accompanying text. See also Espinoza & Harris, supra note 2, and infra text accompanying notes 39-59. But "white power" has always had other obsessions. See infra notes 44-62 and accompanying text.

n13. These elements are meant to reflect and provide substance to the rhetorical moves of White Over Black, English over Spanish, etc. See discussion supra note 9. However, they also draw on the black experience of oppression and as such may be inappropriate for application to other groups or issues.

n14. See generally Wintrop Jordan, supra note 7; see also Anthony P. Farley, The Black Body as Fetish Object, 76 Or. L. Rev. 457 (1997) (discussing the black body as an object of race pleasure for whites gained through the physical humiliation of blacks); Harris and Espinoza supra note 2, at 510-516 (discussing the case for black exceptionalism - and ultimately rejecting it-and noting that whites' "obsession" with blackness and black people are central features of American culture).

n15. Understanding this system is also important because it fosters in part some of the common misunderstandings we have about race. Because a colorized system of racial oppression organized loosely around skin color has been central to our understandings of race, skin color is often used as a synonym for race. This leads to the faulty conclusion that because skin color is immutable, race or categories of colorized racial oppression are also immutable. At the same time, our understanding that skin color is neutral as an indication of innate ability when used as a synonym for race leads again to the faulty conclusion that colorized categories of race are neutral and bereft of meaning. In this way, skin color, as a synonym for race or colorized racial categories of oppression facilitates the disassociation of the racial category from its social and historical moorings including oppression. See Neil Gotanda, Failure of the Color-blind vision: Race, Ethnicity, and the California Civil Rights Initiative, 23 Hastings Const. L. Q. 1135 (1996) and Neil Gotanda, A Critique of "Our Constitution is Colorblind, 44 Stan. L. Rev. 1 (1991) (arguing that "colorblindness" empties race from its historical and cultural content/meanings and thereby reinforces white supremacy and domination). See also Susan Kiyomi Serrano, Rethinking Race for Strict Scrutiny Purposes: Yniguez and the Racialization of English Only, 19 U. Haw. L. Rev. 221, 239 (1997) (arguing that socially constructed categories of racial classification are not immutable and noting that the immutable nature of skin color is transferred to the racial category to assert its immutability). This issue is made more complicated by the seeming permanence of the meanings associated with whiteness and blackness. See discussion infra notes 125-34 and accompanying text.


reprinted in Critical Race Theory: The Key Writings That Formed the Movement 276 (Kimberle Crenshaw, et al. eds., 1995).


n20. See id. at 106 (noting two risks to using the ethnicity model; the first being that the model may obscure experiences and conditions of racialized groups; the other involving hiding or denying the extent to which the group is racialized as non-white).


n22. Those who organized the Critical Race Theory Workshops did so because they experienced exclusion from Critical Legal Studies: their issues of concern were excluded. Latcrit was organized in part because the issues of concern Latinos were excluded in the Critical Race Theory Workshop. Those scholars later became the organizers of LatCrit, and "rotating centers" is, in part, an attempt to correct these past exclusionary mistakes.


n24. The fact that the overall focus of LatCrit conferences is upon Latinas and Latinos suggests that the "rotating centers" idea does not accurately capture LatCrit dynamics, but rather captures efforts to build and maintain coalitions as well as advance theory.

n25. While it was unclear to most if not all of the invitees what the organizers had in mind for that panel, it turned out to be a discussion of how the critique of the "Black/White paradigm" must not be permitted to delegitimize consideration of the particularities of the African-American experience, together with consideration of the particularities of the experiences of other racial/ethnic groups.

n26. See Valdes, supra note 3 (describing the LatCrit project as functioning to produce knowledge, advance theory, expand and connect struggles and cultivate community and coalition). These functions, he argues, direct LatCrit theorists to reject essentialism, apply concepts of intersectionality, multiplicity, multidimensionality and interconnectivity, ideas that are linked to outside jurisprudence. See also Yamamoto, supra note 6 at 867-73 (describing Critical Race Theory scholarship as encompassing and ranging from the liberatory aspects and tools of modernist theory to post-modernist theory and method). Some have argued that within the tension of these theories lie the seeds of a reconstructive jurisprudence. Id. Another set of theories embraces ideas around multiple consciousness. Id. Eric Yamamoto embraces this notion of reconstructive justice and notions of multiple consciousness in his articulation of a critical race praxis. Id. See also Kim Crenshaw, Critical Race Theory: The Key Writings That Formed the Movement xix-xxvii (Kimberle Crenshaw, et al. eds., 1995).

n27. See e.g., Ronald Takaki, Emigrants from Erin: Ethnicity and Class within White America, in A Different Mirror 139-65 (1993). Takaki describes the Irish immigrant experience and the low place they occupied in the economic and social hierarchy. Id. He explains Irish
debasement of blacks and opposition to suffrage in pursuit of assimilation as follows:

Targets of nativist hatred toward them as outsiders, or foreigners, they sought to become insiders, or Americans, by claiming their membership as whites. A powerful way to transform their own identity from "Irish" to American" was to attack blacks. Thus, blacks as the "other" served to facilitate the assimilation of Irish foreigners.

Id. at 151. See also Perea, supra note 6, at 1230 (discussing immigrant debasement of Blacks in efforts to distance themselves from Blacks and attain "whiteness").


n29. In fact there are multiple facets of my identity. I see myself as a black, female, heterosexual, professional who teaches race law (among other things), a mother, and a spouse to an East African man. I move in and out of various communities such as mothers' play groups, LatCrit conferences and church, in which the racial, sexual, class and other attributes of the participants may or may not be diverse. All of these things define who I am in some indeterminate yet concrete way.

n30. See Perea, Black/White Binary, supra note 6.

n31. The "Black/White" paradigm, as it is commonly called, is designed to suggest a theory about racial dynamics. As far as I know, Perea is the first person to explore whether the theory conforms to some commonly understood definition of a paradigm. However, it is not clear whether his critique of the paradigm is that it is only a binary theory, or only the binary aspect of the theory is paradigmatic. In my opinion, the insights of the paradigm go well beyond these criticisms. Perea never argues specifically that the "Black/White" paradigm is a binary paradigm of race relations although others do. See supra note 6 and accompanying text. Instead, he contends that a "Black/White" paradigm exists and that it structures racial discourse. See Perea, Black/White Binary, supra note 6, at 128. He then proceeds to analyze how the Black/White binary paradigm structures racial discourse around the black and white races. As such, he appears to suggest that the Black/White paradigm is a binary paradigm of race relations. His article, taken as a whole, supports this interpretation. See id.

n32. See id. at 129 (I intend to show how the Black/White binary paradigm operates to exclude Latinos/as from full membership and participation in racial discourse...My critique of the Black/White binary paradigm of race shows this commonly held binary understanding of race to be one of the major impediments to learning about and understanding Latinos/as and their history).

n33. See id. at 169-72. Perea views paradigms as problematic because they limit the boundaries of research, suppress anomalies, and, as reproduced in textbooks, tend to present linear and distorting pictures of history. He cites Kuhn in explaining paradigms are a "set of shared understandings that permit us to distinguish those facts that matter in the solution of a problem from those facts that do not." Id. at 130. As such, they define relevancy. See id. Normal Science describes the practice of elaborating on the problems that the paradigm allows us to see. Textbooks and popular readings play a role in producing and reproducing paradigms, however, they often truncate the history of the science or subject matter in order to present the discipline in a linear and shortened matter. See id. at 131-32.

As applied to the discussion about race, Perea also argues our shared understanding of race is limited primarily to the Black/White binary paradigm; that most race research and literature have elaborated on the relationship between the two races, and, that the history of Latinos and others has been unseen and marginalized as a consequence. See id at 133-34.

n34. Perea examines five works on race by prominent scholars spanning twenty-five
years to demonstrate a binary theory of race relations exists which primarily contemplates blacks and whites. See id. at 134-35. He also examines a constitutional law book. He correctly argues that all of these marginalize Latinos/as and other groups in part by suggesting they are writing on race relations in the United States, when in actuality, they are exploring Black/White race relations in the United States. He states:

My objection to the state of most current scholarship on race is simply that most of this scholarship claims universality of treatment while actually describing only part of its subject, the relationship between Blacks and Whites. Race in the United States means more than just Black and White. It also refers to Latino/a, Asian, Native American, and other racialized groups.

Id. at 168.

n35. Id. at 166.
n36. Id. at 155.
n37. This "equality-of-blame" tone is bolstered by the way Perea structures his article. Consistent with Kuhn's insight that books, particularly textbooks, are crucial to the development and maintenance of paradigms, Perea analyzes the texts of several leading scholars on race to demonstrate widespread use of the paradigm. Although most of the writers are white, Perea starts his article by analyzing the writings of a prominent White scholar, Andrew Hacker's Two Nations: Black and White, Separate, Hostile, Unequal, and a prominent Black scholar, Cornel West's Race Matters. He states: "These books, by leading scholars on race, both illustrate the existence and use of the Black/White binary paradigm. They show how the paradigm results in an exclusive focus on Blacks and Whites, both from the point of view of a White writer and a Black writer." Id. at 134. These authors are then figuratively presented side by side, as if their perspectives have equal weight in society, and as if they are joint creators of the same phenomena. This comparison seems fair in that both are prominent authors on race issues, both, in substance, discuss only the two races, and thereby both contribute to the marginalization of Latinos/as and others. However, neither West (nor Hacker, for that matter) nor the black community created the Black/White paradigm or the power relations it seeks to explain.

n38. See Espinoza and Harris, supra note 2, at 529 (noting "African-Americans did not create the binary color line").
n39. See also Tanya Lovell Banks, Both Edges of the Margin: Blacks and Asians in Mississippi Masala, Barriers to Coalition Building (relying on Eric Yamamoto's work and calling the uncomplimentary racial opinions that groups of color entertain for each other "simultaneous racism").
n40. See Jordon, supra note 7, at 1550 for the origin of this idea.
n41. See Perea, supra note 6, at 136 (suggesting that writers who focus only on the black and white races implicitly reduce Latinos/as and others to voluntary spectators). Perea forgets, however, that one implication of the tendency to reduce race to white and black is that the question is perennially posed whether some other group should be considered black or white. Latinos/as, for instance, have sometimes been treated as "white" and sometimes as "black," as discussed below. Their current position in the overall racial hierarchy is somewhere lower than white and higher than black.

n43. See Omi & Winant, supra note 16, at 61-63 (discussing the rise of modern racial awareness and racial dictatorship). They state: "It was only when European explorers reached the Western Hemisphere...that the distinctions and categorizations fundamental to a racialized social structure, and to a discourse of race, began to appear." Id. at 61. However, slavery, the removal of the Native Americans, and expansion became more difficult to justify once the goals had changed to nation-building. This was done through science. The inferiority of these people justified their conditions. See id. at 63.
n44. See id. at 61-69 (discussing the evolution of modern racial awareness and racial dictatorship).

n45. See id. at 65-69 (discussing dictatorship, democracy and hegemony).


n47. Id.

n48. See id. at 276-77.

n49. I first heard this term in discussions leading up to the LatCrit III conference. Although I discuss the relationship between blackness and subjugation throughout this paper, I use this phrase to encompass the idea that those with dark skin are stigmatized, and the darker the skin, the more derogatory the stigmatization. The firm, therefore, includes Latinos, Blacks, and others with dark skin, suggesting people with darker skin are more likely to face discrimination than those of the same race or ethnicity with lighter skin. See also, Leonard M. Baynes, If It's Not Just Black and White Anymore, Why Does Darkness Cast a Longer Discriminatory Shadow than Lightness? An Investigation and Analysis of the Color Hierarchy, 75 Denv. U. L. Rev. 131 (1997) (making a similar point); Kevin Johnson, "Melting Pot" or "Ring of Fire"?: Assimilation and the Mexican-American Experience, 85 Cal. L. Rev. 1259 (1997). Although I am aware that economic necessity and political compromise play a significant role in defining and maintaining blackness as subordinate, these ideas are not developed in the text, but rather, are simply noted. See infra notes 62, 76 and accompanying text. Further, I am aware of, but again simply note, the idea that blackness also represents, in a very different way, black culture and ethnicity. See infra note 51 and accompanying text.

n50. Most recently, students in my Critical Race Theory class have vigorously argued this point.

n51. See Espinoza & Harris, supra note 2, at 514-15 (discussing white America's obsession with the black body). See also Farley, supra note 14.

n52. See id.

n53. Angela Harris may well interpret this statement and the following text rendition of African American history as a claim to exceptionalism. See Espinoza and Harris, supra note 2. In fact, it is. The difference, however, between what Harris sees as a negative, competitive claim of exceptionalism, and my view of exceptionalism is that I, like Espinoza, also believe in and celebrate Latino/a Native American, and Asian-American exceptionalism. Id. at 549. The profanity is not in our claim of exceptionalism; rather it is in the experiences our groups endured in order to claim this exceptionalism; the encouragement we receive now to bury our stories of courage in order to build coalitions or assimilate into the larger minority group; and finally, in the chance that we would allow these tributes to our strength to hinder the possibility of our unity. With regard to the last idea, I would prefer to see us come together helping to heal one another by sharing our stories ... some humor and tall tales in a positive version of the game the Dozens. Espinoza and Harris might call this "therapeutic critical theory." Id. at 557.

n54. This cohesion, I suspect, results not only from essentialist notions, but also from what Omi and Winant term "strategic essentialism." See Omi & Winant, supra note 16, at 72. They explain racialized groups are often forced to act together to defend their interests, and sometimes even their lives. Id.

n55. Here, I suggest black humanity challenges power's self-conception more than ideas about, black spirituality or black musical acumen. In other words, this point is meant to primarily reference different aspects of a single group's identity.

n56. The mark of blackness presumably denotes African ancestry, although, in some contexts, it identifies indigenous ancestry. The darker the mark is, the deeper the stigma. See supra note 49 and accompanying text.

n57. See Jordan, supra note 7, at 8-9.
n58. See id.
n59. See Wieck, supra note 18, at 1729.

n60. Wieck suggests, however, the notions and valuations about these differences more likely approximated ethno-centrism rather than racism or race prejudice. He explains the Europeans brought to their initial encounters with Africans, a culture that gave them "only weak and conflicting guidance about how to think about these startlingly alien people." Id. at 1735. These were "a people visibly and radically different from themselves". Id. But he agrees their most salient feature was blackness. See id. at 1730.

n61. See id at 1730-31.

n62. See id. at 1731-32.

n63. Although I do not argue this point, I believe cultural oppression of African Americans has always been a dimension of the colorized racial system in which Blacks operate. As such, the distinctive elements of African American culture have also been interpreted as inferior. For example, references to black family life as matrilineal, irrespective of its truth, are criticized as the source of dysfunction in the community. Black English is seen as substandard. Black music, though often viewed as infinitely creative, is credited sometimes as the source of violence among its youth. In addition, I see, but do not discuss here, black culture as a reflection of black ethnicity, constructed over time and representing valued wealth and distinctiveness. In my opinion, the distinctions correspond, to Neal Gotanda's distinctions between status and historical race versus cultural race. See Gotanda, supra note 15 and accompanying text. The former two represent a relationship between Blacks and subordination, while the latter represents the positive and/or distinctive elements of black culture such as black music and black religion.

n64. See Wieck, supra note 18. The importation of slaves was driven by the economic need for labor. See id. at 1712. (Economic necessity, however, does not explain why the English selected Africans for slaves. The answer lies in part in the fact that Spain's trade in African slaves pre-dated North American African slavery by more than a hundred years. See id. at 1736). In addition, it is economics that in many ways, drive the ongoing subordination of Blacks even after the demise of slavery. For instance, the need to rebuild the South after the Civil War required massive labor. Former slaves, the labor force of the South, were forced into this role which explains in part the continuity of blacks as subordinate after the war.

n65. Wieck states his thesis most concretely in his discussion of the development of slavery in Virginia. He says:

Just as the status of Africans began with some unspecific state of unfreedom early in the century and hardened into explicit slavery toward its end, so Englishmen's racial attitudes evolved - "degenerated" would be the better term - from ethno-centrism at the outset to racism later. As slavery emerged as a legal institution, so did "institutionalized" racism: formal legal discrimination by law based on race.

Id. at 1756-57. As servitude branched into slavery, ethno-centrism hardened into racism. These parallel trends confirmed the fundamental basis of Virginia society (and derivatively, the rest of America).

n66. See id. at 1748 (commenting on the state of Virginia's race relations when it was a slave- holding society as opposed to a slave society). Wieck describes Philip Morgan's distinction between a slave-holding society and a slave society as "the former becoming the latter when black slaves constituted twenty percent [or more] of the total population." Id.

n67. Id. at 1754.

n68. See id. at 1713. Wieck asserts that with the fusion of slavery and race came the fusion of the two objectives of slavery - labor coercion and race control. The race control objective lingered even after the abolition of slavery. See id.

n69. See generally Wieck, supra note 18. (discussing the development of the law of slavery, racial slavery, in the United States. See also Harris, supra note 17, at 278
(noting the fusion of race and economic domination).

n70. See Harris, supra note 17, at 278-79.

n71. This process of consolidation continued after slavery as well. See Harris, supra note 17, at 284-85 (discussing how the development of whiteness stifled class tensions). See also, Espinoza and Harris, supra note 2, at 511, n.40 (discussing how the struggle for wages and the concept of "free labor" became identified with whiteness).

n72. See id; Wiecek, supra note 18, at 1757-59 (discussing the 1676 Bacon's Rebellion in Virginia and summarizing and "oversimplifying" Edmund S. Morgan, American Slavery, American Freedom: The Ordeal of Colonial Virginia (1975)).

n73. See id.

n74. See id. at 1759. Further, such political compromises, as the Compromise of 1877, continued to operate to maintain blacks as subordinate. It has been argued these political considerations together with various economic needs function to maintain black as subordinate. See, e.g., Derrick A. Bell, Jr. Race, Racism and American law (1980).

n75. See Harris, supra note 17.

n76. See id. at 278 (noting "black" and "white" were polar constructs). See also Kimberle Crenshaw, Race, Reform, and Retrenchment: Transformation and Legitimization in Antidiscrimination Law, in Critical Race Theory: The Key Writings that Formed the Movement 103, 113 (Kimberle Crenshaw et al. eds., (1995) (explaining the historical oppositional dualities that characterize the racial ideology in the context of Western thought); Jordan, supra note 17, at 252-59 and 436-40 (discussing the valuation of color and Jefferson's views that blacks possess an inferior intellect respectively); Baynes, supra note 49, at 154-55 (quoting Jefferson as justifying exclusion of Blacks from America because they were ugly); Espinoza & Harris, supra note 2, at 511 (describing how blacks' ugliness reflected whites' beauty).

n77. See Harris, supra note 17, at 283 (discussing the element of exclusivity in property law, and noting white identity was shaped and privileged by black subordination).

n78. See Jordan, supra note 7, at 40-43 (discussing whites' own struggles and human failings as projected onto blacks).

n79. See U.S. Const. art. I, 2, Cl. 3.

n80. Although it is generally understood that slavery was a dehumanizing experience and Wiecek consistently makes the point that slave laws were meant to suppress the slaves' human spirit, this particular formulation was taken from Anthony P. Farley's article, The Black Body as Fetish Object, 76 Or. L. Rev. 457, 462 (1997). Farley describes a scene in a Tarzan film whereafter a "native" falls to his death in an abyss, the white explorer yells "The supplies!" Farley continues: "Living in a colorlined society, one experiences this moment of rebirth a million times - the colorline which cuts us loose from our humanity with the cry "the supplies!" is an umbilical cord for white America."

n81. See Wiecek, supra note 18, at 1781-88 (discussing race control laws as intended to prohibit insurrection and distance Whites from Blacks).

n82. See Omi & Winant, supra note 16, at 66.

n83. See id. at 81-82.

n84. See Wieck, supra note 18, at 1748 (summarizing Philip Morgan's theory).

n85. Wiecek discusses the relationship between the numbers of slaves and the legal emergence of slaves in Virginia. New York, and Carolina, (noting that Carolina had a majority black population from its earliest days and full-blown slavery). See id. at 1752-53, 1766-67, 1768.

n86. See Wiecek, supra note 18, at 1782.

n87. See id. at 1759. (Explaining that with increasing numbers of slaves and after Beacon's rebellion and the Negro Plott," of 1680, in Virginia "whites "ratcheted down the social station of blacks, demonstrating by the violence of their domination, both through statute and in its enforcement, that white safety and black degradation were the absolute values, the sine qua non, of
the maturing slave society of Virginia). See also id. at 1767 (explaining that after the 1712 insurrection scare in New York, New Yorkers enacted the most stringent race-control statutes on the continent).

n88. See id. at 1755-59 (explaining that free Blacks had some measure of freedom in the early seventeenth century in Virginia, but after Bacon's rebellion this freedom was even more limited. See also id. at 1781-89 (discussing the details of race control which included attempts to define race and to prevent and punish insurrection by obsessively regulating a "long catalogue of petty offenses or simple behaviors"). These laws also prohibited arms possession by blacks generally and detailed rules for apprehending and punishing runaways. See id. They also provided mechanisms for compensating masters for harms done to slaves by states, and ultimately prohibited slaves from learning to read and write. Wiecek states that the law regarding race control, unlike labor coercion, "intervened constantly and pervasively to deny freedom to African-Americans. The laws were meant to stifle the human spirit's irrepressible impulse to freedom and to deny individual dignity, and autonomy." Id.

n89. See id. at 1766 (noting that no detail of black life was too petty for New York's legislature to notice).

n90. See id. at 1767 (discussing New York in the early eighteenth century as growing to have one of the largest black populations both enslaved and free: "White New Yorkers behaved accordingly: they reacted with ever-greater ferocity to perceived threats to their control of the subordinated black population."). See also Jordan, supra note 7, at 406-14 (discussing the social and legal restraints placed on free Blacks after the revolutionary war. Jordan explains there had been a spat of manumissions after the war and notes that Southerners in particular found free Blacks far more irritating than enslaved blacks). See id. He suggests that this irritation was due in part because free Blacks were "outside the range of the white man's 'unfettered power'" Id. at 410.

n91. See id. at 1780-81.

n92. See id. at 1781.

n93. See id.

n94. See id. at 1757 (explaining that as slavery expanded, institutionalized racism expanded as legal race discrimination against free Blacks in the Chesapeake colonies).

n95. See id. at 1713.

n96. Again, the economic and political needs driving the maintenance of this subordination should not be underestimated.

n97. That the meanings remained substantially the same has suggested to some that white interests and needs primarily drove events such as the Emancipation and Civil War, as opposed to the needs of blacks. See, e.g., Derrick Bell, Race, Racism and American Law and Brown v. Board of Education and the Interest Convergence Dilemma, in Critical Race Theory: The Key Writings That Formed the Movement (Kimberle Crenshaw, et al. eds., 1995).

n98. One might argue here that White Power did re-create and redefine itself in relation to blackness and that the changes in society were significant. I would agree. Power changes over time as "Whites" and "White Power" are two social constructs. However, the core racial and cultural make-up of White Power and its goals have remained fairly consistent throughout the history of the United States.

n99. See Crenshaw, supra note 78, at 112-116 (discussing the accomplishments of the civil rights movement as the removal of formal barriers and symbolic (white only signs) manifestations of subordination and arguing that these changes were significant but suggesting that structural barriers remain in place).

n100. See, e.g., Bell, supra note 2 (suggesting that race and racism are integral and central components of U.S. society and are therefore permanent).

n101. See id.

n102. See, Anthony Farley, The Black Body as Fetish Object, 76 Or. L. Rev 457 (1997) (explaining how whites need blacks and black bodies in order to enjoy their
whiteness, in order to feel and be privileged, in order to experience race pleasure).

For white Americans, the "Negro" eventually became "a human 'natural' resource who, so that white men could become more human, was elected to undergo a process of institutionalized dehumanization. In these and other ways, American culture - - to the very great extent that it is coextensive with "whiteness" - - is founded upon the image of "blackness." Espinoza and Harris, supra note 2, at 512.


n104. See generally id.

n105. See id. at 78-86 (discussing LULAC's argument that Mexicans were white on the one hand, and a race a notch above Negroes on the other). See also Takaki, supra note 27, at 173 (noting that Mexicans also practiced black slavery, but abolished it in 1830 even though Mexicans living in what is now Texas opposed this); Baynes, supra note 49, at 150 (discussing what he calls Mexico's "colorism," which places darker people, mostly Indians, at the bottom of the social hierarchy).

n106. Takaki, supra note 27, at 326-27.

n107. Haney-Lopez, supra note 4, at 1148.

n108. See id. at 1170-72.

n109. At a minimum, Blacks and Latinos were sharing segregated facilities during this historical period.

n110. Haney-Lopez makes a similar point with regard to ethnic characterizations of these types of experiences.

n111. Asians are also a target of white obsession with subduing non-English languages.

n112. This is debatable. The issue of black English has been subject to derision and perhaps institutionalized oppression (particularly in educational settings) for a very long time. It arose most recently in the Ebonics debate. However, the typical response in the debate between black English and Spanish is that black English is at least a form of English.


n114. See id. at 280.

n115. See id.

n116. See id. at 278.

n117. See id. at 279.

n118. See id.

n119. See id.

n120. Or rather, Latino/as often speak both Spanish and English.

n121. See Perea, supra note 46, at 271 (describing the myth and arguing that multiple languages have always existed in the United States).

n122. See infra text accompanying notes 134-45.

n123. See Perea, supra note 46, at 345.

n124. The underlying assumption is that Spanish speakers are also Latino/as. The number of Latino/as in the United States increased by 141 percent between 1970 and 1990. See Serrano, supra note 15, at 227 n.43 (citations omitted). By the year 2000, they will comprise the largest minority with 24.5 percent of the population, up from 10.2 percent today. Id. However, it remains to be seen whether Spanish will remain a central feature of the Latino identity in the future. It is also important to note that Asians and Asian-Americans are targeted by language suppression, and this population grew by 384.9 percent during the period. Id. However, Asian immigrants come from a variety of Asian countries and speak different languages. A common "Asian" language does not unite them. It is also not clear that any one of the languages they speak has sustained prolonged denigrating attack.
n125. Although numerical strength does not equate power, it does portend power. But see Perea, supra note 46, at 327 (noting that historically, where language minorities have possessed numerical strength and political power, their languages were provided official status under state laws).

n126. See Perea, supra note 46, at 278, 347 (arguing that the dominance of English nationally and internationally is unchallenged).

n127. See generally id. at 309-28 (discussing German, French and Spanish as languages spoken in different states during the early part of the union).

n128. See Perea, supra note 46, at 340-41.

n129. Id. at 276. See also infra note 135 (discussing Serrano's argument that "English Only" is meant to counteract the perceived threat to mainstream culture).

n130. Susan Kiyomi Serrano, Rethinking Race for Strict Scrutiny Purposes: Yniguez and the Racialization of English Only, 19 U. Haw. L. Rev. 221, 249-62 (1997). Serrano states: "Article 28 has both racial meaning and impact: it determines along racial lines who is allowed or not allowed to participate in the American polity by excluding those deemed less than "American." In effect, "English Only" laws enacted to counteract the perceived threat to mainstream culture operate to exclude nonwhites from it" (citations omitted).

n131. See id. at 255 (concluding that by "linking language and exclusion, supporters of Arizona's "English Only" legislation characterized non-English speaking minorities as social threats to the American landscape...In this fashion, [they] attached cultural images to generally recognized racial groups, thereby imbuing Article 28 with racial meaning").

n132. See id. at 247.

n133. Id. at 253.

n134. See id.

n135. Id. at 251.

n136. Id. at 252 (citing Anthony Califa, Declaring English the Official Language: Prejudice Spoken Here, 24 Harv. C.R.-C.L. L. Rev. 293, 321 n.183 (1989)).

n137. See id. at 250 n.236.

n138. See id. at 228.

n139. See id. at 227 n.52.

n140. See id. at 259 n.291 (citing Human Rights Watch which argued that "repression of minority languages is usually motivated by the desire to repress, marginalize or forcibly assimilate the speakers of those languages, who are often perceived as threats to the political unity").

n141. See Perea, supra note 46, at 347-50 (arguing English only laws are meant to disenfranchise Latinos/as).

n142. See generally Serrano, supra note 15, at 251 (arguing that the effect of the amendment is exclusion but suggesting that exclusion is also its goal as proponents carry anti-immigration sentiments). See also, Perea, supra note 46, at 345-46.

n143. See Serrano, supra note 15, at 227; Perea, supra note 46, at 345-46.

n144. See generally Perea, supra note 46 (explaining the different federal and state policies regarding the many languages spoken in the United States during the early years of the Union).


n146. See id.

n147. On the racial character of English Only laws see, e.g., Serrano, supra note 15; Perea, supra note 46; Andrew Averback, Language Classifications and the Equal Protection Clause: When is Language a Pretext for Race or Ethnicity?, 74 B.U. L. Rev. 481 (1994). On language and accent discrimination, see, e.g., Mari Matsuda, Voices of American: Accent Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction, 100 Yale L.J. 1329 (1991); Ruiz Cameron, supra note 113. For a description of other legal battles, see, e.g., Perea, supra note 6, at 157-64 (describing the legal battles of Mexican Americans against segregation).
n148. See Perea, supra note 6, at 157-64.

n149. See, e.g., Averback, supra note 147.

n150. See, e.g., Ruiz Cameron supra note 113.

n151. Elizabeth Martinez notes that "[a] rigid line cannot be drawn between racial and national oppression when all victims are people of color." Martinez, Beyond Black/White, supra note 6, at 475.

n152. One could argue that the experience is different because Latinos reject assimilation as a basis for integrating into the American mainstream. However this idea conforms to the traditional ethnicity model, which presumes that Latinos can assimilate. The argument becomes, they have simply chosen not to. This line of thinking does not contemplate that Latino/as may not be able to assimilate.

n153. See Takaki, supra note 27, at 166-84.

n154. Haney-Lopez, supra note 4, at 89.

n155. See id. See also, Takaki, supra note 27, at 166-84.

n156. Takaki, supra note 27, at 174.

n157. Id. at 171.

n158. Id. at 166-84.

n159. See id.

n160. See Takaki, supra note 27, at 311-26. The immigrant population found work, predominately as farm and menial labors. This reinforced in white minds Mexican Americans' innate suitability to unskilled work, even though occupancy of this stratum within the labor economy had been imposed on them and institutionalized since the years of their incorporation. Id. at 184-190. Takaki notes that Mexican farm workers were viewed as docile and uniquely suited to field tasks. He comments that three-fourths of California's farm laborers were Mexican, while 85% of the agricultural labor in Texas were Mexican migrant workers. Id. at 321.

n161. See Perea, supra note 46, at 321.


n163. "Mestizo" means those of Indian, Spanish and African "mixed" descent. See Takaki, supra note 27, at 168. I am suggesting that Mexican American and Latino/a lineage encompasses in part a racialized or colorized groups that have suffered oppression based upon colorized categories. The notion by Whites that Latinos are "mongrels" denigrates but captures this idea. Id. at 174.


n165. See Martinez, Beyond Black/White, supra note 6.

n166. See Gotanda, supra note 15, at 23-28 (describing the myth of racial purity on which white supremacy and the hypo-descent rule is based).

n167. Martinez explains this complexity as follows:In the sixteenth century they moved north, and a new mestizaje took place with the Native Americans. The Raza took on still more dimensions with the 1846 U.S. occupation of Mexico and some intermarriage with Anglos. Then in the early twentieth century, newly arrived Mexicans began to join those descendants of Mexicans already here. The mix continues today with notable difference between first-, second-, third- and twentieth-generation people of Mexican descent. Martinez, Beyond Black/White, supra note 6, at 473.

n168. See id. at 472-73. Martinez continues:

[In addition w]e must also remember that the very word "Latino" is a monumental simplification. Chicanos/as, already
Although oppression itself should not be the focus of our identities, freeing ourselves from oppression will provide us more room to re-imagine ourselves in vastly different ways.

One might argue that the "shifting bottom" idea requires that the entire conference relate to all the issues different groups suffer from oppression. Given the diversity of the Latino/a category the conference already does this in many ways. However, there are other forums where the primary focus is sharing the multiple experiences of oppressed groups. The Critical Race conference has developed into such a forum.

Further, as the existence of Latcrit can attest and many commentators, including Perea, suggest, there has been insufficient attention given to understanding and deciphering the Latino condition. I hope "rotating centers" in the context of a conference focused on "Latino-ness", will center on that condition by bringing other experiences to bear as points of departure or similarity. Further, the information about those other experiences may act as a deterrent against parochial thinking and the development of negative nationalism as that experienced in the Critical Race Theory Workshop.

The disadvantage to the idea of "rotating centers" is that the presence of diverse groups may in some ways diminish the sense that the LatCit conference is a safe space for Latino/as to thrash out their issues and agendas. It is unclear how this can be resolved institutionally without creating the tension involved in establishing exclusive space. However, if other groups understood the need for safe space by Latino/as perhaps "only Latino/a" space could be established with the conference and the tension, that tension could be minimized.
LENGTH: 14650 words
MAPPING INTELLECTUAL/POLITICAL FOUNDATIONS AND FUTURE SELF CRITICAL DIRECTIONS: Colonialism and Modern Constructions of Race: A Preliminary Inquiry
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SUMMARY: ... While History furnished the basic contours of modern constructions of race, the notion of the rights-bearing individual posited by liberalism added content to these constructs by reconciling liberty with colonialism. ... The martial race theory was codified in a series of official Recruiting Handbooks for the Indian Army. ... The Aryan element of the martial race theory was closely associated with notions of racial purity. ... The martial race theory and the attendant recruitment policies did not so much recognize groups with propensity to martial skills as they created such groups. ... To accommodate this anomaly a climate/environment variant of the martial race theory was enunciated. ... Having imagined a martial Punjab to suit colonial contingency, colonialism had now created a Punjab to fit the martial race theory. ... Plasticity of the concept of race and ever-changing exigencies of colonial rule led to anomalous results such as the same group being designated both a "martial race" and a "criminal tribe." ... Responses by Bengali nationalists, pioneers of Indian nationalism, to the martial race theory varied. ... "A commonplace gesture of History: there have to be two races - the masters and the slaves." n1

Taking seriously the proposition that Western knowledge and representation of the non-European world is the key to understanding racial ideology, n2 I aim at a preliminary examination of the colonial career of the modern constructions of race and its traces in post-coloniality. I propose to locate race in regimes of legality and illegality in the context of British colonial rule over India to underscore the defining role of colonialism in modern constructions of race. Conquest, subjugation, and exploitation are as old as recorded history. So are racial difference, conflict, and domination. While modernity framed these processes against claims of universal principles of public good and virtue, the age of empire brought into sharp relief the exclusions built into modern notions of citizenship, sovereignty, representation, and the rule of law. I posit that it was to reconcile colonial domination with the ideals of freedom and equality, that a modern discourse of racial difference and hierarchy gained hegemony, whereby capacity and eligibility to freedom and progress were deemed biologically determined, and colonialism was legitimated as the natural subordination of lesser races to higher ones. In the colonies, heterogeneity presented by the colonized was made manageable by assigning them racialized classifications. Imperatives of colonial rule combined with a grammar of racial difference to constitute racialized stereotypes of natives to facilitate legally sanctioned regimes of discipline and control. These stereotypes are remarkable for their contingent deployments, malleability, and resilience. Traces of racialized discursive structures and institutional practices forged in the context of Europe's colonial encounter remain visible in post-colonial terrains, [*1220] where many a public policy and legal regime are animated by racialized categories and classifications.

I. The Modern Grammar of Racial Difference

Modern Europe n3 sees itself as the product of the Enlightenment, with the attending ideals of reason, freedom, liberty, equality, progress and the rule of law. Modernity of Europe is, however, coterminous with its colonial expansion and imperial rule, marked by conquest, subjugation and genocide. How were these two contradictory strands reconciled? In the answer to this question lie the roots of modern constructions of race that animate many an inter-national regime of legality and illegality. I take issue with the argument that "the genesis of the modern discourse of race [is] part of the attempt to articulate differences within European society." n4 I argue instead that Europe's colonial encounter is fundamental to the modern constructions of race, which facilitated the establishment and consolidation of this relationship of domination and subordination. This is not to suggest some unidirectional determinism; it is rather that "Europe was made by its imperial projects, as much as
colonial encounters were shaped by conflicts within Europe itself." n5 But while mutually constitutive of the colonizer and the colonized, colonialism is a relationship of domination and difference, with race constituted as a primary marker of difference.

Crucial to the modern constructions of race is the fundamental disjunction between Enlightenment ideals and the situated and embodied practice of those ideals. Nothing demonstrates the yawning gulf between the two more than, for example, the European reception of the Saint Dominque Rebellion, when, contemporaneous with the French Revolution, Creoles and black slaves in Haiti claimed the Rights of Man and challenged French sovereignty. This attempt to inject questions of race, slavery and colonialism into the agenda of liberalism and modernity only won Haitians the wrath of Europe. They became symbols of backwardness and danger - a threat to the "natural" orders of private property, racial hierarchy and civilization. Faced with such contradictions [*1221] between ideals of the Enlightenment and liberalism on the one hand, and slavery and colonialism on the other, hegemonic forces in Europe fashioned strategies of exclusion, grounded in a racial dichotomy between human and sub-human, or civilized and savage. n6 This triggered the mutually constitutive role of colonialism and modern Europe; many foundational constructs of modernity - reason, man, progress, and the nation - were developed in contrast with a racialized "non-Europe," with the latter posited as pre-modern, not fully human, irrational, outside his tory. The process culminated in a modern grammar of racial difference, whose primary building blocks were the constructs of History and the development of liberalism against the backdrop of colonialism.

The age of colonial expansion of Europe also saw the consolidation of History - the unilinear, progressive, Eurocentric, teleological history - as the dominant mode of experiencing time and of being. n7 In History, time overcomes space - a process whereby the geographically distant Other is supposed to, in time, become like oneself; Europe's present becomes all Others' future. Embodying the agenda of modernity, His tory constitutes a closure that destroys or domesticates alterity of the Other. History, as a mode of being, becomes the condition that makes modernity possible, with the nation-state posited as the agency (the subject of History) that will realize modernity. In Hegel's construction, for example, nations attain maturity only when a people are fully conscious of themselves as subjects of History, and it is only such nations which realize freedom. Those outside History, "non-nations," have no claims or rights; nations have the right to destroy non-nations and bring Enlightenment to them. History becomes a master code, the imaginary, that informs the "civilizing mission" of Europe, posited as a world-his torical task. As a progeny of the modern ideas of reason, progress and science, Social Darwinism, which fixes upon race as the repository of those attributes that enable or prevent evolution towards civilization, combined with History to write a legitimating script for colonialism. In the name of enlightened civilization, a hierarchy of "advanced" and "backward" races was posited. Cast in terms of "natural selection" and "survival of the fittest," evolutionary racism "offered strong ideological support for the whole colonial enterprise <elip> savages were not simply [*1222] morally delinquent or spiritually deluded, but racially incapable." n8 Euro pean "race-science" n9 consolidated the double binary of fair/dark and civil ized/savage, by positing the anatomical investigations of Europeans and Africans as establishing the top and bottom of a progressive series of human races with comparable mental endowments and civilizational achievements. With the diagnosis accomplished, prescription quickly followed: "nations in which the elements of organization and the capacity for government have been lost <elip> are restored and educated anew under the discipline of a stronger and less corrupted race." n10 His tory, then, became a record of progress of superior races and, by that standard, the stagnant, backward races had no History; colonialism, as a project of bringing the backward races into the universal History, bridged Enlightenment with modern constructions of race.

While History furnished the basic contours of modern constructions of race, the notion of the rights-bearing individual posited by liberalism added content to these constructs by reconciling liberty with colonial ism. Liberalism and colonialism developed alongside each other. With rare exceptions, liberals approved of colonialism and provided it with a legitimizing ideology. If eligibility for universal rights was conditioned upon recognized subjectivity, claims to these rights could be denied if the subjectivity of some was erased. By rest ing such an erasure on pre-social, biological grounds, one could say with confidence that " higher races are inherently more qualified for both political and individual lib erty than the lower." n11 Liberal discourses of rights, inclusion, and equal ity could be reconciled with colonial policies of exclusion and discrimination by positing essential differences between different types of individuals and subjectivities.

The universalist claim of liberalism rests on the capacities it identi fies with human nature - to be born free, equal and rational. It is this anthropological premise that anchors the concept of consent, which in turn, grounds liberal institutions of contract, rule of
II. The Rule of Colonial Difference & the Construction of Race

For modern knowledge/power in its colonial career in general, and for the consolidation of the grammar of racial difference in particular, India furnished a "laboratory of mankind." n17 For the classical ethnological discourse, India was "not merely a source but the very center of its debates." n18 The colonial engagement with the question of race in India brings into sharp relief three interrelated processes: (1) that Europe's colonies furnished a privileged terrain where disciplinary orders and techniques informed by the modern grammar of racial difference were forged; (2) that colonial constructions of race were always unstable, malleable, and contingent; and (3) that plasticity of colonial racial stereotypes issued from the changing exigencies of colonial rule with the only constant being the imperative to maintain colonialism as a rule of difference and domination.

A. Colonial Regime and Racial Difference

Taking its lead from the European grammar of racial difference, colonial rule was premised upon the exclusion of the colonized from humanity as essential to their exclusion from institutions of political sovereignty. Colonialism is absolute government, founded, not on consent, but on conquest. Consequently, the modern regime of power in its colonial career was "destined never to fulfill its normalizing mission, because the premise of its power was the preservation of the alienness of the ruling group." n19 The universalist claims of modernity floundered in the colony; the rule of law yielded to "the rule of difference," n20 a rule whereby, across differently inflected positions within colonial discursive and institutional practices, the colonized are represented as inferior, as radically Other. Race, constituted as the defining signifier of the difference between the colonizer and the native, reconciled Europe's "civilizing mission" with violence of colonialism. Construction of racial difference ensured that in the colony, the promise of modernizing transition from the "rule of force" to the "rule of law" was most pronounced in its breach, and the Enlightenment's developmental march to reason and freedom did not materialize.

I reject the claim that modern power in its colonial career simply [1225] replicates its evolution in the metropole. n21 Modernity flounders in the colony due to the racial divide. For example, in India, "the more the logic of a modern regime of power pushed the processes of government in the direction of a rationalization of administration and the normalization
of the objects of its rule, the more insistently did the issue of race come up to emphasize the specifically colonial character of British dominance." n22 The rule of difference, marked by race, rendered the colonial state fundamentally different from the parent metropolitan state. While "the metropolitan state was hegemonic in character with its claim of dominance based on a power relation in which the moment of persuasion outweighed that of coercion, "<clip> the colonial state was non-hegemonic with persuasion outweighed by coercion in its structure of dominance." n23 This directly effected the relationship of law with both the state and society. In the colony "law was a department of the executive," n24 never achieving the autonomy envisaged by liberal designs of governance, even when formally incorporated in projects of macro social engineering. n25 For the colonizer, while "our law is in fact the sum and substance of what we have to teach them" <clip> it is a compulsory gospel which admits of no dissent and no disobedience." n26 To accentuate the rule of racial difference, legally sanctioned sites of segregation between the colonizers and the colonized proliferate. For example, vagrancy laws called for the deportation of whites whose deviant behavior undermined the mystique of their race; Cantonments Acts designed urban spaces to ensure segregation; Contagious Diseases Acts contained inter-racial sexual relations; and judicial procedures prohibited natives to sit in judgment over the colonizers. n27 The rule of racial difference as a structural imperative and coercion as the primary instrumentality of governance, furnished the context within which colonial constructions of race unfolded. These constructions simultaneously legitimated colonialism and dissipated opposition to it by justifying Indian subjugation in terms of white superiority. They bore traces of the Enlightenment's libido scienti, its lust for knowledge, n28 that rests on the premise that everything about nature and humans could be discovered by application of reason. Contrary to the fiction of pure uninterested reason, however, this knowledge production was conditioned by prevailing views of race in Europe, imperatives of colonial rule, and a distrust of native knowledge.

B. Colonial Power/Knowledge and the Legible Colonized Body

The high noon of British rule in India coincided with the zenith of racial theories in Europe. In vogue were assertions like "race is every thing: literature, science, art - in a word, civilization, depends upon it," n29 and that "all is race; there is no other truth." n30 It was in the context of Europe's colonial expansion that modern disciplines of geography, anthropology, history, and literature developed to make the expanding world intelligible and manageable. "Scientific racism," which dominated European thought, saw itself as based on "science,' the body of knowledge rationally derived from empirical observation, then supported the proposition that race was one of the principal determinants of attitudes, endowments, capabilities and inherent tendencies among human beings. Race, thus, seemed to determine the course of human history." n31 The premise was that each person literally embodied his racial and cultural identity, and that bodies were legible. n32 The goal of colonial sciences was to discover the origins and patterns of the behavior of natives. The key to this knowledge was seen in the study of actual physical characteristics. This mapping of culture within physiology perfectly suited the colonizers' drive to erect a framework of categories which allowed them to understand India in terms of a hierarchy of races/castes/tribes/nations which had discernible features and definable limits, and to catalogue material evidence of behavior patterns and political loyalties. The result was the establishment of a framework for the inspection of natives' bodies, thereby bringing to bear the force of knowledge/power upon them. [*1227] The colonizer was the subject of this knowledge production; the native only the object who furnished the body on which colonial power was to be inscribed. The natives were held not to be "safe guides ... to their own past history," and colonial ethnologists bemoaned the ahistorical Indian's lack of "acquaintance with his history." n33 Distrust of the native was compensated by trust in science; plaster casts, photography, finger printing, and anthropometry found in data transcribed from the outer physical forms of Indians an effacement of all subjectivity and unreliability.

A large colonial apparatus occupied itself with classifying people and their attributes, with censuses, surveys, ethnographies, recording of transactions, marking spaces, establishing routines, and standardizing practices. Colonial disciplines like anthropology, ethnology, physical anthropology, anthropometry, comparative philology, and techniques like finger printing, cranial measurements, facial angles, nasal and caphalic indexes, brain volume and brain weight became the means whereby the heterogeneity created by the variety of social groups in India gave way to a reassuring certainty which could be ordered legislatively and clearly in the "living museum of mankind." n34 Measurements of skulls of "hereditary criminal," plaster casts of "aboriginal tribes," photographic records of "the people of India," and live specimens of "Indian subjects," added up to "the dominant museological mode of looking at India." n35 Claims of inscription of social status in the
permanent physical exteriors of Indians' bodies proliferated. The search was for a sociological form of fingerprinting - which itself was discovered in colonial India as a technology of discipline and control to counter "slippery facts," and "distrust of all evidence tendered in Court." n36

C. Racializing the Colonized: Malleable Classifications & Slippage

The sociology of ethnicity and race is rightly considered "a theoretical minefield." n37 The problem is compounded by "chronocentrism" or "presentism," namely, the tendency to interpret other historical periods [*1228] in terms of concepts, values and understandings of the present. n38 Competing and conflicting modern theories of race make for differing ways in which the concept is used in specific contexts. This elasticity lent by the very vagueness of the concept may well have made for its tenacity. Nowhere was this inchoate nature of the modern concept of race more evident than in colonial India, where it was used to describe a variety of religious, caste, tribal, national and ethnic identities. The end product of racial knowledge-production was racial stereotypes that were always unstable, contingent and malleable, always available to be turned on their head, depending upon who was using them and for what purpose. n39

Inhabitants of India display a kaleidoscopic diversity of physical attributes, combined with an almost endless variety of languages, religious beliefs, cultural practices, historical memories, and social orders spread over a continental geographical expanse. For the double binary of fair/dark and civilized/savage, India presented an enigma because of its intermediate location, both in the scale of civilization as defined, for example, by Hegel and Mill, n40 and for the variety of complexions lying between the extremes of the scale of physical types defined by race science. This heterogeneity precluded normalization of the colonized through any single analytical model, or any simple binary application of the grammar of racial difference. The master discourse of racial difference, then, could be maintained only by introducing other analytical categories and classification schemes, while reading race into these. The colonial response was to construct categories of caste, tribe, nation and communal/religious groups, to read race into them, and to locate them within the hierarchical order of History. Often categories of race, caste, tribe, nation, language, and religion were conflated and even used interchangeably. The result was a contextual construction of race, remarkable for its contingency, plasticity, and malleability. The structure of this construction involved: (i) slippage of classificatory categories, whereby "race," "caste," "tribe," "stock," and "nation," were used interchangeably; (ii) racialization of the constructs, whereby all these categories were posited as being essentially biological and hereditary, questions of blood and descent; (iii) a two-tier scheme of racial hierarchy, under which while all natives were deemed racially inferior to the colonizers' race, [*1229] racialized hierarchies were posited among the colonized; and (iv) legitimization of colonialism, whereby colonial rule was seen as diffusing progressive attributes of the colonizers' race in order to save the native from the degradation induced by his own race.

The contingent and malleable nature of colonial construction of race was betrayed by the theoretical knots the colonizers tied themselves into, in the face of suggestions of racial affinity with the colonized. In the late eighteenth century, anxieties and desires of modern Europe's incessant search for national origins led to the discovery of an ancestral "Indo-European" language. This led to theses about common ancestry of tribes of the "Aryan race," which supposedly had conquered and colonized India, Persia and Europe around 2000 B.C. Estimates of the continuity of Indo-European languages implied that modern speakers of these languages, which included inhabitants of northern India, were descendants of the ancient ones, hence members of the common Aryan race. n41 Soon a derivative Aryan invasion theory of Indian civilization held the field that India's civilization was produced by the clash and subsequent mixture of light-skinned civilizing Aryan invaders and dark-skinned barbarian aborigines. The "chameleon-like character of <clip> this European theory [which] was 'retrofitted' to the Indian landscape," n42 was apparent in the shifts of its purported evidentiary support from linguistic criteria to anatomical measurements to civilization logic. While archeological research, particularly the discovery of the Indus Civilization "should have put paid to the racial theory of Indian civilization," n43 it proved remarkably durable and resistant to new information.

The Aryan race theory raised some difficult questions regarding British colonial rule over India because the racial affinity of some Indians with the British posited by the theory could render British rule over a "brother race" unjustifiable. The colonial response was to modify the theory with theses of India's historical inferiority to justify colonialism and to convince the natives not to reject it. The Indian "inferior though [*1230] Aryan" explanations fell into two classes - those which attributed Indian inferiority to the influence of hereditary racial factors and those which attributed it to the influence of physical or cultural
The Aryan race theory, having developed in the context of proliferation of evolutionary theories in Europe, contained an evolutionary core. The theory posited in effect that only Aryan nations could evolve, for evolution implied a measure of stability as well as an impetus for gradual change that other races did not have. Aryan evolution, of course, resulted in progress; since India obviously had not progressed, it could not have evolved to fully develop its latent Aryan qualities due to con taminations induced by the indigenous non-Aryan races. Henry Maine, for example, emphasized that the condition of contemporary, non-progressive, Aryan India was basically one of arrested growth; India was still at the stage at which progressive Western Aryan societies had been when they originated. Natives were advised to "accept with all its con sequences, the marvelous destiny, which has brought one of the young est branches of the greatest family of mankind from the uttermost ends of the earth to renovate and educate the older." N45 Through colonialism then, "the younger Aryan returns ... not solely to rule over the elder ... but to teach him, ... the lessons of a superior wisdom, a purer justice, and a loftier morality." N46 In this context, the native had only to be grateful for the condition of subjection to the colonizer.

In the colonial construction of race within the framework of the modern grammar of racial difference, one discerns "the general episte Miic violence of imperialism, the construction of a self-immolating colonial subject for the glorification of the social mission of the colonizer." N47 This violence was then deployed in specific sites of colonial governance and thereby lent itself to the violence of law, both "the founding vio lence, the one that institutes and positions law <elip> and the violence that conserves, the one that maintains, confirms, insures the permanence and enforceability of law." N48 One form that this process took was the deployment of racialized stereotypes of natives as scaffolding for legally sanctioned regimes for discipline and control of myriad facets of native life. What follows is a brief account of four such specific deployments.

III. Deployments of Colonial Racial Stereotypes.

A. The Martial Races

The theory of "martial races" grew out of two colonial contingencies in India, the experience of the 1857 Indian Revolt, and the developing imperial contest with Czarist Russia. The theory was predicated on the idea that martiality was an inherited trait, an aspect of "race" and "blood," N49 and that while the "military instinct" was inherent in Euro pean races, especially the British, the same was not true of all the different races in India.

Before 1857, the colonial army in India was drawn predominantly from Bengal and the adjoining areas. "The native black troops" of Bengal were seen as "fine men" who "would not disgrace even the Prussian ranks." N50 The Indian Revolt of 1857 was to change all that. The Revolt, initiated by regiments of the Bengal Army, triggered a wide-spread agrarian revolt in north-eastern and north-central India, the main recruiting grounds of the Bengal Army. Indeed the Revolt was most intense in the very areas that had thus far supplied the best recruits to the Bengal Army. N51 Following the suppression of the Revolt, deliberations to reorganize the Indian Army centered around loyalty and disloyalty displayed by different sections of the native population. In 1857, while most regiments of the Bengal army had revolted, the British had successfully raised fresh battalions mainly from the Punjab and Nepal that served their new masters loyally. The post-1857 reorganization of the army entailed a dramatic fall in recruitment from the traditional recruitment areas in the east and south, and a corresponding rise in the numbers recruited from the north and the west. It was in this context that the so-called "martial races" theory became "not merely a colonial strategy, but a colonial obsession." N52

Recruitment of Bengalis was prohibited. Almost overnight, the hitherto backbone of the colonial army, the Bengalis, became "feeble even to effeminacy" for whom "courage, independence, veracity are qualities to which his constitution and his situation are equally unfavorable." N53 Those from southern India were declared to "fall short, as a race, in possessing the courage and military instincts," and Punjab was anointed "the home of the most martial races of India."
n54 The Commander in Chief took the view that "no comparison can be made between <clip> a regiment recruited amongst <clip> the warlike races of north ern India and of one recruited amongst the effeminate races of the South." n55 The martial race theory was codified in a series of official Recruiting Handbooks for the Indian Army. In these manuals, Indians appeared not as individuals but as specimens; photographs of suitable recruit types were included, whose ideal measurements and physique were described in great detail. n56 The British saw some of their favorite martial races, particularly Rajputs and Punjabis, as descendants of the Aryan invaders. Caste and tribe were often equated with race, for example, in the case of Rajputs, who, it was held, had maintained their Aryan racial "purity" through the caste system. n57 Skull- and nose-measuring techniques of entropometry also found their way into the handbooks. n58 The Aryan element of the martial race theory was closely associated with notions of racial purity. If fighting ability was hereditary, then racial mixing would produce only degeneracy and weakness. Colonial recruiting strategies, therefore, favored those groups who followed restrictive marriage practices and who thus promised to be racially pure. n59

[*1233] The martial race theory and the attendant recruitment policies did not so much recognize groups with propensity to martial skills as they created such groups. The Sikhs of Punjab are a case in point. Until the martial race theory propelled the racialized constructs of caste, tribe or religion as the organizing principle for the colonial army, the Hindu- Sikh distinction was not clearly marked, and Sikh identities, practices and beliefs of various sorts intermixed. It was the colonial Army that consolidated Sikhism as a separate religion and the Sikh as a separate identity. n60 Separate Sikh army units were formed, where strict observance of Sikh customs and ceremonies was required. As a result of the army's efforts to insure the conformity of recruits in the Sikh units to colonial cultural meanings of Sikhism as a separate religion and Sikhs as a martial species, "induction into the Indian army and into Sikh identity often [were] one and the same." n61 A colonial official noted that "Sikhs in the Indian army have been studiously 'nationalized' or encouraged to regard themselves as a totally distinct and separate nation. Their national pride has been fostered by every available means." n62 Sikh as a martial race was not discovered; it was created.

Two other changes in army recruitment policy, however, had to be reconciled with the martial race theory: the exclusion of emerging urban middle classes and the recruitment of Gurkhas of Nepal. In view of the emerging nationalist movement particularly in urban Bengal, it was decided to exclude the educated urban middle class from the army. Here "class" was added to race and caste in determining martial ability. The favored recruits were peasants, as they were considered politically conservative and less likely than city-dwellers to question authority. Colonial commentators now claimed that the martial races were intellectually backward. They talked of "the stupider martial races," and noted that these were "proverbially thick in the uptake." n63 These stereotypes were then matched against the urban and educated Bengalis, now posited as effeminate, sly, and scheming. Gurkhas of Nepal, on physical and linguistic grounds did not fit the Aryan explanation of the martial races theory either. To accommodate this anomaly a climate/environment variant of the martial races theory was enunciated. The argument was that as a general rule, and particularly in India, one finds warlike people in hilly, cooler climates, while in hot and flat regions races are timid, see [*1234] vile and not fit for soldiering. n64 The fact that this contradicted designation of Rajputs and Punjabis as martial races was not considered fatal to the theory.

Besides the 1857 Revolt, the other main determinant of the new recruiting policy was the emerging contest with Czarist Russia along the western reaches of colonial India. This triggered the position that "we should be culpable if we did not endeavor to replace the worst of our Native troops by men recruited from the warlike races." n65 Having recruiting areas close to the new forward lines made simple logistic sense. It was in this context that Punjab was recreated to fit the martial race theory, as a suitable source of soldiers through "the most extensive form of socio-economic and demographic engineering attempted by the British in South Asia." n66 The process involved four interrelated maneuvers. First, hydraulic "canal colonies" were created in western Punjab, turning the desert wastes and pastoral savanna into a major base of commercialized agriculture. Second, through immigration from other parts of Punjab of selected families and clans that had remained loyal to the British during the Great Revolt of 1857, a new landed aristocracy having political allegiance to the British was created. These new landowners and their peasants were designated "agricultural castes," on whom the British relied for political support, revenue returns, military recruitment, and raising of cattle and horses for the military. Third, legislation for bade the passing of land from "agricultural castes" to non-agricultural castes, n67 to protect the loyal agriculturists from inroad by incipient urban commercial elements who were increasingly becoming sympathetic to the nationalist cause. Last, recruitment efforts systematically targeted towards rural areas and land-
grants made to ex-soldiers ensured the creation of a culture of soldiering in the canal colonies. By the time of decolonization, nearly half of the colonial Indian army was recruited from the Punjab. n68 Having imagined a martial Punjab to suit colonial contingency, colonialism had now created a Punjab to fit the martial race theory.

Both India and Pakistan, successor states to colonial India, continue to bear traces of the policy of recruitment primarily from the martial [*1235] races. n69 In the case of Pakistan, its constitutional saga is one of increasing praetorianism and "constitution-building" and "nation-building" efforts primarily aimed at denying political power to the Bengali major ity and erasing their cultural identity by assimilating them into one Pakistani "state-nation." One stratagem to accomplish this goal was to resurrect the colonial discourse of martial and non-martial races in India. The ruling elite claimed that their belonging to the martial race made them natural leaders, while the Bengalis could be legitimately denied equal status because they "have all the inhibitions of down-trodden races." n70 While the Bengali race was disparaged for its "complexes, exclusiveness, suspicion and a sort of defensive aggressiveness," those from the Western wing were posited as "probably the greatest mixture of races found anywhere in the world." n71 It was this racialized construction of a "state-nation" that culminated in the genocide of Bengalis by the Pakistani military in 1971. Given that many post-colonial societies are multi-ethnic and many post-colonial states have praetorian tendencies, the martial race theory born of colonial imperatives continues to haunt public policies regarding induction into public employment and even constitutional norms of governance.

B. The Criminal Tribes

Racist notions that a person literally embodied his character combined with colonial propensity to reduce the natives to their racial essences to suit the exigencies of colonial rule, produced a remarkable set of legal regimes in colonial India under which whole communities were designated criminals by birth. Normal legal processes then gave way to extraordinary administrative, legal, and penal regimes deployed by the Criminal Tribes Act, along with the notion of hereditary and biological propensity to crime, had their lineage in the earlier campaigns against the Thugs, "the most celebrated case of orientalist myth-making." n74 Penalties for "belonging to any gang of Thugs," for example, included branding on [*1237] the forehead. By making a legible sign on the body, the colonizers created a material referent for assertions of legibility of bodies; the branding reconstituted the body to make its criminality legible.

In 1897, the Criminal Tribes Act was amended to grant local governments the right to establish a separate reformatory settlement for chil dren under eighteen of "criminal tribes." A register was prepared detailing the names of all individual members of the tribe designated criminal under the Act, their personal appearance, place of residence, offenses committed and sentences. The register was supervised by the District Magistrate, and notices of registration were posted in the villages where the tribe resided. Once officially notified, these groups had no recourse to the judicial system for removal of this designation. Local officials were empowered to resettle criminal tribes to ensure their gainful employment, or to remove them to "a reformatory settlement."

The movement of criminal tribes was also restricted by a system of passes which specified the places where the holder of the pass might go or reside, and the police station where the holder would have to report his movements during the life of the pass. To enforce restrictions on movement, a roll-call was taken at irregular intervals by the Magistrate or his nominee. Additional provisions provided for inspection of places of residence of all those registered, the removal of any materials that could help conceal stolen property or obstruct surveillance, and for the designing of measures to maintain discipline in the reformatory settlements. If a member of a criminal tribe was apprehended outside the limits of his prescribed place of residence, he could be arrested without a warrant. Penalty for violating the pass system included rigorous imprisonment, fines and whipping. Children were separated from parents and kept in custody. To guard against passing of "criminal genes," inter-marriage within a criminal tribe was prohibited. Many extraordinary administrative, legal, and penal regimes deployed by the Criminal Tribes Act, along with the notion of hereditary and biological propensity to crime, had their lineage in the earlier campaigns against the Thugs, "the most celebrated case of orientalist myth-making."

The Criminal Tribes' Act (Act XXVII of 1871) n72 was promulgated "to provide for the registration, surveillance and control of certain tribes [*1236] [designated] criminal." By the early twentieth century, 13 million people were classified as such. n73 The Act empowered local governments to designate "any tribe, gang or class of persons" a "criminal tribe" if they were "addicted to the systematic commission of non-bailable offenses."
finally repealed in 1952, five years after decolonization.

The colonial campaign against the "criminal tribes" formed part of the post-1857 Revolt "aggressive legislation of the eighteen sixties and early seventies," under which coercive sanctions of the law were accented to maintain order and enhance control of the native society in order to preempt another revolt.  

It was also a means to remodel recalcitrant tracts and, in the colonial view, unproductive communities into "useful" and law-abiding participant in the colonial economy. Many were put to work on tea and coffee estates and textile mills. The Act was used against other smaller communities - wandering gangs, nomadic petty traders and pastoralists, gypsies and forest-dwelling tribes; in short, it was used against a wide variety of marginals who did not conform to the colonial pattern of settled agriculture and wage labor. Paradoxically, the criminality of these people often stemmed from changes associated with colonial economic policies. For example, the introduction of a state-monopoly of salt trade hit hard many migrant petty traders, and new forest regulations prohibited traditional harvesting practices of forest-dwelling communities.

Reformatory settlements for penal work were established for the "hereditary criminals," and a threefold classification was introduced: the "worst characters" were removed to reformatory jails; the "less desirable" ones were transferred to emerging industrial sites; and the "best-behaved members" were placed on agricultural settlements. Initially, the settlements were run by missionary and philanthropist organizations, and efforts were made to bring the inmates squarely within colonial constructs of major religious traditions of India. Finding the missionaries more interested in spiritual salvation than economic production, the government assumed control of the settlements, which were thereafter run by the Probation and Criminal Tribes Officers. The Punjab government even sent more than 2,000 men from the ranks of the criminal tribes to the First World War, portraying service in the army "as the most honorable road to rehabilitation... [for criminals who were] so averse from honest labor and impatient of discipline."  

Notions of "dangerous classes" and "habitual criminals" developed in nineteenth century Europe as products of bourgeois anxieties to protect private property and the political order and the desire to recruit marginal sections of the society into the burgeoning industrial labor market. The most important connection between the European idea of criminal classes and the colonial category of criminal tribes seems to be the insistent axiom that criminality was the preserve of one section of the subject population. The racialized vocabulary to describe colonial natives was remarkably like that used in the metropole to describe the lowest elements of the class order, the degraded class of criminals and casual laborers of European cities.  

In India, however, this vocabulary was inserted into the colonial typology of overlapping categories of caste, race, and tribe, and each category was deemed concrete and measurable, possessing biologically determined immutable characteristics.

Plasticity of the concept of race and ever-changing exigencies of colonial rule led to anomalous results such as the same group being designated both a "martial race" and a "criminal tribe." The Mappilas of Malabar in southwestern India are an example. Descendants of Arab traders or Hindu converts to Islam, they were known for their poverty, low literacy rates, and tenacious and incessant agrarian unrest during the nineteenth century. Within Malabar, they were considered "irredeemably 'lawless,' 'turbulent' and criminal," and put under police surveillance, but elsewhere in India they were designated a "martial race."  

In the colonial construct of criminal tribes, one again sees the administrative exigencies within the rule of racial difference defining the contours of public policy. The scaffolding for the construct was further nished by the notion of hereditary and biological determination of conduct, and the intermingling of categories by the interchangeable use of "race," "caste," "tribe," and "nation."

C. The Meek Hindu: Cheaper Than a Slave

Colonialism started integrating India into the modern global system of production and accumulation. As part of this process, starting in the eighteenth century, Indian labor was deployed in Europe's other colonies. The varied institutional forms of this deployment included slavery, penal transportation, and indentured labor. Between 1834 and 1937, 30 million Indians left India as part of the global division of labor, and just under 24 million returned. Most of this migration formed part of the "cooie system" that came into existence in the early nineteenth century, under which Asian labor, primarily from India and China, was deployed in Africa, the Caribbean, Southeast Asia and the South Pacific. Part of this migration was indentured labor: 1.5 million Indians went overseas as indentured labor between 1834 and 1920. The abolition of slavery in the European colonies in early 19th century created a labor crisis in plantation colonies by disturbing the critical ratio between abundant land and cheap labor. The perceived need for "a new system of slavery," was met by importing laborers from India whose "cost [was] not one-half that of a slave."
The early consensus was that the planters had found in the meek Hindu a ready substitution for the Negro slave he had lost.\textsuperscript{86} Besides providing cheap labor, the Indian workers were to be the medium through which planters expected to reassert control and discipline over the emancipated slaves. The unfolding of this stratagem was accompanied by enabling constructions of racialized identities of African and Indian labor.

Racialized disparaging portrayals of African labor became orthodoxy: Africans were portrayed as lazy, unreliable, untruthful, and unable or unwilling to understand or honor a contract.\textsuperscript{87} Set off against these portrayals, a racialized identity of Indian labor was posited, using overlapping categories of race, caste, tribe, stock and nation. Indians were extolled for their docility, industriousness, familiarity with agriculture, strong family ties, respect for authority, and respect for the sanctity of contract.\textsuperscript{88} These constructions, however, did not last very long. Once Indians were on the plantations and had adopted strategies of self-preservation and resistance, planters' praises were leavened with distaste and dissatisfaction. Indians, they now observed, were avaricious, jealous and less robust, not to mention dishonest, idolatrous, and filthy. As dissatisfaction with Indians spread among the planters, and as they began looking for opportunities to recruit workers from China, the Indians came to be increasingly and unfavorably compared with the Chinese. Now the Chinese were held out as "fully alive to the necessity of authority for their regulation and control ..., generally tractable and manageable, ... strongly, tough, 'not averse to foreigners' ..., highly intelligent and discerning, steady laborers, and well versed in tillage of the soil.'\textsuperscript{89} Both of the contradictory identities of Indian labor were produced in the con text of a hierarchical racial division of labor, under which the European planters, African ex-slaves, Indian indentured and Chinese coolies were constituted in relation to each other. Furthermore, the assigned identity attributes were posited as essential, immutable, and fixed products of biological determinism.

The racialized identity formation of Indian indentured labor had a number of implications. As an essential building block of the racialized nature of specific deployment of Indian indentured labor, Indians were typically sandwiched between the European colonizers and the natives, as "colonial middle-men." Informed by the global hierarchy of races, Indians were often assigned work in the tertiary sectors of the economy that was not considered worthy of the colonizers and from which the natives were barred. As part of the legally mandated systems of racial segregation, outside the context of work Indians maintained a distinct social existence. Natives saw the Indians as "house niggers," tools of European colonial control, and many Indians remained hostile or ambivalent towards decolonization movements in these colonies. A legacy of these divisions is the continuing political conflicts between Indian settlers and indigenous populations in Africa, the Caribbean, Southeast Asia and the South Pacific. The colonial legal regimes established to regulate indentured labor were both elaborate and ever-changing. Extensive laws and administrative offices were created to regulate recruitment, contracting, transportation, employment, and post-indenture repatriation. The British government, the colonial authorities of India and the plantation colonies, and the colonial employers all had fluctuating and often conflicting interests. This injected contingency and instability into the legal regimes and the system finally succumbed to changing demands of the international labor markets and the Indian nationalist movement. The indenture system played a crucial role in forging an Indian identity and the development of Indian nationalism. Labor transported from India became "Indian" in the context of its being sandwiched between European colonizers and the natives. In pre-colonial India, identities coalesced around religious, caste, ethnic, linguistic and regional differences. In the indenture system, heterogeneous labor drawn from India found itself similarly positioned by this regime of colonial economy. Institutional and discursive practices accompanying indenture constituted this heterogeneity as a singularity. Differences were downplayed by the indentured as they forged a collective identity in resistance to a shared experience. Indian identity, thus, became a field of possibility through suppression of internal difference, occasioned by similarities of conditions created by the colonial regime of indentured labor. Not surprisingly, the indenture system furnished the first sustained target for the nationalist movement during its embryonic phase.

This story of Indian indentured labor raises many questions of contemporary relevance. To what extent does the global labor market in the phase of much heralded globalization remain racialized? Can we locate race in legal regimes and normative conventions that juxtapose unbridled mobility of capital with relative immobility of labor? How are inter-racial and inter-ethnic conflicts in the post-colonial societies rooted in colonial strategies of divide and rule? How does the racialized diasporic existence effect identity formation of different racial and ethnic groups?

\textbf{D. Race-Nation & Its Discontents}

There is a general consensus that modern nationalism is "a doctrine invented in Europe at the beginning of
the nineteenth century." n90 and in its global reach, "an importation from Europe clearly branded with the mark of its origin." n91 This consensus, however, yields to a disagreement between those for whom nationalism is inconceivable except as a product of modernity, n92 and those who posit nationalism as a vehicle for the [*1242] resurgence of atavistic or pre-modern identities, a protest against modernity. n93 I believe that the tension between modernity and pre-modernity is a permanent structural feature of nationalism, this "modern Janus." n94 While locating itself in the story of liberty and reason as the agency of universal History, it often teams up with irrational chauvinism and xenophobia. Some see in this two types of nationalism: one, the product of the Enlightenment, "by and large rational rather than emotional", and the other, developed by the romantics, that saw the nation as a natural community, as "something sacred, eternal, organic, carrying a deeper justification than works of men." n95 The romantic variant of nationalism was often racialized, and discourse of race played a central role in myths of national origin. n96 Because nations were identified as naturally occurring groups identifiable by cultural difference, it was logically possible to assert that these symbols of nation were themselves grounded in race, that "blood or race is the basis of nationality, and that it exists externally and carries with it an unchangeable inheritance." n97 While for Lord Acton, nation was "an ideal unit founded on race," n98 for Otto Bauer, the nation is "a community of descent: it is maintained by common blood <elip> by a commonality of germ plasm<elip>". n99 In nineteenth century Europe, a virtual blurring of distinctions between race and nation was the result. n100

In the colonies, the European idea of race-nation often combined with Social Darwinism to deny nationhood and self-determination to the colonized. In colonial India, colonial constructions of the colonized, where categories of race, caste, tribe, nation, and religion were used interchangeably, were deployed to thwart nationalist aspirations. The racial undertones of these constructions were highlighted to show up multi-racial divisions that were held to deny Indians the status of one people/"volk"/nation, founded upon common "stock," and hence to deny them the political rights that accrue to nations. The colonized may have "had a right to law" but not "a right to self-determination <elip> because [*1243] [they] had not yet found a self to determine." n101 The colonizers emphasized that multiple races of India resulted in multiple nations, each irreconcilably distinct from the others. n102 Europe was held to contain "national types," a result of genetic muddying of the population was such that the constituent sub-types could no longer be discerned; India, by contrast, presented:

a remarkable contrast to most other parts of the world, where anthropology has to confess itself hindered, if not baffled, by the constant intermixtures of types, obscuring the data ascertained by measure ments ... In India the process of fusion was long ago arrested ... There is consequently no national type, and no nation in the ordinary sense of the word. n103

Where the colonizer had used the circular discourse of evolutionary Social Darwinism - race, nation, History - to deny Indian nationhood, the nationalist project in its formative phase recuperated the three terms into systematic nationalist doctrines. Where the racialized notions of "India," "Hindu," and "Aryan," were homogenizing and essentializing devices useful for colonial definition of what they ruled, for the nationalists, these became useful to claim a broad domain that their cultural knowledge qualified them to govern. n104 In particular the Aryan race theory, a colonial construction itself, was appropriated by two early claims to national identity in colonial India, one, the claim of succession to Aryan masculinity to contest colonial constructions of native femininity, and two, a claim that all Hindus belonged to a common race and were thus, a nation.

One strand of racialized Indian nationalism issued from emerging nationalist self-definitions that appropriated the Aryan race theory in order to contest the colonial racial stereotype of the non-martial Bengali. During the nineteenth century, as part of the "British response to the political challenge from the Bengali middle class" n105 and the Revolt of 1857, the colonial stereotype of the effeminate non-martial Bengali was produced. Responses by Bengali nationalists, pioneers of Indian nationalism, to the martial race theory varied. Some strove to overcome this "weakness" through the pursuit of physical culture. n106 Others sought to [*1244] reform cultural norms and inculcate a desire for liberty and collective solidarity. n107 Paradoxically, the project to refute colonial constructs involved partial adoptions of the colonial discourse of the Aryan race, and made Aryan racial identity an overarching theme of national renaissance and renewal. n108 The colonial notion of the effeminate Bengali was challenged by constructing alternative heroic figures; stories of Rajput valor were propagated as examples of physique and spirit of their Aryan ancestry, substantiating that nationalism has "typically sprung from masculinized memory, masculinized humiliation and masculinized hope." n109 Images of Aryan womanhood, with its heroic
capacity to sacrifice, and of the Aryan mother, capable of mothering fearless sons, became wide spread. n110 The Aryan heroines represented the response of an affronted Bengali masculinity. Invocations of Aryan glories were attempts to reclaim a glorious past - a past where the Bengali could claim virility and manhood, qualities he allegedly lacked.

The racialized discourse of nationhood was also appropriated by the Hindu religious variant of Indian nationalism in the early twentieth century. The pioneers of Hindu nationalism kept abreast of, and were clearly influenced by, European discourse of race-nation and the con structions of India's past, implied by the Aryan race theory. n111 Appropriating Orientalist research, these nationalist posited the conquering Aryans, embodying a superior civilization and culture, as the ancestors of the Hindus. They propagated the idea of "vedic Aryas" as a primor dial elect people, whose language, Sanskrit, was the "mother of all languages," n112 and who had spread out and colonized most of the world. n113 An influential Hindu nationalist text defined a Hindu as one "who inherits the blood of the great race whose first and discernible source could be traced from the Himalayan altitudes <elip> and claims as his own <elip> the Hindu civilization, as represented in a common history, [*1245] common heroes, a common literature, common art, a common law and a common jurisprudence<elip>." n114 It was asserted that Hindus "are not only a Nation but also a race-jati <elip>. All Hindus claim to have in their veins the blood of the mighty race incorporated with and decended from the vedic fathers<elip>." n115 Here was an attempt to demonstrate that an original unity underlies the diversity of Hindus, that beyond all visible differ ences there exists an invisible bond - blood and race. History, race, and nation were conjoined to legitimate nationhood: "Living in this country since pre-historic times <elip> the Hindu Race [is] united together by com mon traditions, by memories of Common glory and disaster, by similar historical, political, social, religious, and other experiences." n116 Hindutva (Hinduness) was posited as the conceptual expression of

While this Hindu-race-nation thesis was overshadowed by the mod ernist territorial nationalism championed by Gandhi and Nehru, it never completely withered away. Indeed there has been a resurrection of the position by the present-day Hindu right, an ascendant political force, that aims to redefine Indian nationhood as the exclusive province of a so-called Hindu race, bonded by ties of blood, soil and history. n118 This political project that the past, present and future of the Indian nation be constituted around the notion of Hindutva (Hinduness), becomes possi ble only within the modern forms of historiography, a historiography necessarily constructed around the identity of a people-nation-state. The idea that Indian nationalism is synonymous with Hindu race-nation is not the vestige of some pre-modern religious conception. Its genealogy implicates colonial racialized constructions of India, and native imaginings in the late nineteenth and early twentieth century of India as a [*1246] nation; imaginings that remained imprisoned in colonial constructs, even as they sought to overturn them.

IV. Conclusion

In the modern world, the universalist promise of freedom and equality has often floundered when confronted with difference - gender, class, sexuality, and race being the salient sites of this confrontation. By uncovering how difference is constituted to reconcile the professed promise with practiced denial of freedom and equality, we may be better positioned to participate in struggles to secure these cherished goals. To the extent that colonialism furnished particular sites for modern con structions of difference, those struggling to achieve freedom and equal ity will ignore lessons of colonialism at their own peril.

The project of broadening the scope of Critical Race Theory must keep Europe's colonial encounter as a high priority on its research agenda. In this context, specific questions that need deeper analysis abound. What grammar of racial difference reconciled colonial domina tion with Enlightenment agendas of freedom, equality, and reason? How did the colonies, as particular sites of knowledge production, facilitate modern constructions of race? What particular disciplines and technolo gies were fashioned to enable such constructions? How was race inserted into discursive and institutional structures of colonial rule? How were colonizers' discourses and practices of race adopted and internal ized by the colonized? How is the terrain of post-coloniality marked by traces of the racialized colonial encounter?

FOOTNOTE-1:

n2. See, e.g., Frantz Fanon, The Wretched Of The Earth (Constance Farrington trans., 1967) and Edward Said, Culture and Imperialism (1993).

n3. I use the term Europe not so much to designate a particular geographical space or a particular people, but as to identify the self-proclaimed universal subject of History. In this sense, Europe includes European settler societies around the world. While the term is evocative of singularity, any productive understanding of Europe has to be nuanced and discerning of diversities within it, especially attuned to "its peculiar historicity, the mobile powers that have constructed its structures, projects, and desires." Talal Asad, Genealogies of Religion: Disciplines and Reasons of Power In Christianity and Islam 23-24 (1993).


n5. Ann Laura Stoler & Frederick Cooper, Between Metropole and Colony: Rethinking a Research Agenda, in Tensions of Empire: Colonial Cultures in a Bourgeois World 1 (Frederick Cooper and Ann Laura Stoler eds., 1997).


n7. See generally Robert Young, White Mythologies: Writing History and the West (1990); Post-Structuralism and the Question of History (Derek Attridge et al. eds., 1987); and Michel De Certeau, The Writing of History (Tom Conley trans., 1988).


n12. See, e.g., John Locke, Thoughts Concerning Education (1880).


n14. Id. at 199. See also Bhikhu Parekh, The West and Its Other, in Cultural Readings of Imperialism: Edward Said and the Gravity of History 173 (Keith Ansell-Pearson et al. eds., 1997).

n15. Lord Acton, supra note 10, at 31.

n16. See J. S. Mill, 1 Dissertations and Discussions, Political, Philosophical, and Historical 160-205 (1859).


n20. Id. at 16-26.


n22. Chatterjee, supra note 19, at 19.


n30. Benjamin Disraeli, Tancred, or the New Crusade 153 (1847).


n33. W. W. Hunter, Annals of Rural Bengal 3 (1897).

n34. The idea that India was a large museum or exhibition recurs continually in nineteenth and early twentieth century texts. See Pinney, supra note 17, at 262 n.6.

n35. Id. at 255. This mode "stressed the discrete and describable nature of India as an aggregate of things which could be understood through strategies of 'typicality,' 'miniaturization' and, above all, 'display' with its continual assuption of knowledge to be gained through visibility." Id.


n39. The racist stereotype is after all always "curiously mixed and split, polymorphous and perverse, an articulation of multiple beliefs...what is being dramatized is a separation - between races, cultures, histories, within histories - a separation between before and after that repeats obsessively the mythical moment of disjunction." Homi Bhabha, The Location of Culture 82 (1993); see also Stanley Lieberson, Stereotypes: Their Consequences for Race and Ethnic Interaction, 4 Research in Race and Ethnic Relations 113 (1985).


n41. See Thomas R. Trautmann, Aryans and British India (1977); Joan Leopold, British Applications of the Aryan Theory of Race to India, 1850-1870, at 89 English Historical Rev. 578 (1974); and, Joan Leopold, The Aryan Theory of Race, 7 Indian Eco. & Social History Rev. 271 (1970). India contains three major language families. First, the Indo-Aryan family, consisting of the descendants of Sanskrit, occupy most of the north and the western coast. Second, the Dravisian family, dominating South India, has some representation in Central India. Third, the Austroasiatic family is represented in parts of Central India and the northeastern regions.


n43. Trautmann, supra note 18, at 215. See also Shirikant G. Talageri, The Aryan Invasion Theory: A Reappraisal (1993); N. R. Wadapande, Aryan Invasion - A Myth (1989); K.D. The Problem of Aryan


n45. Henry S. Maine, Village-Communities in the East and West 294 (1889).

n46. William Farrar, Families of Speech 144 (1870).


n49. A.M. Bingley, The Caste Handbooks for the Indian Army: Brahmans (1918). The Handbooks claimed unequivocally that "fighting capacity is entirely dependent on race..." Id. at 47.


n57. A.E. Barstow, Handbooks for the Indian Army: Sikhs appendix 5 (1928).

n58. Bingley, supra note 49, at 50.

n59. Mason, supra note 55, at 356-58. For example, those Sikhs were preferred who came from areas where they were a majority and hence less likely to be "weakened" by marrying Hindus. Id. at 352-54.

n60. See Richard G. Fox, Lions of the Punjab: Culture in the Making 140-59 (1985).

n61. Id. at 142.

n62. Id. at 142.

n63. See, e.g., Macmunn, Armies of India 136 (1980).


n70. Mohammad Ayub Khan, Friends not Masters 187 (1967). General Ayub Khan was the military dictator of Pakistan from 1958 to 1969.

n71. Id.

n72. See generally M. Kennedy, The Criminal Classes in India (2d ed. 1985); E.J. Gunthorpe, Notes on Criminal Tribes Residing in or Frequenting the Bombay Presidency, Berar and the Central Provinces (1882); H.K. Kaul & L.L. Tomkins, Report on Questions Relating to the Administration of Criminals and

n74. C.A. Bayly, Empire and Information: Intelligence Gathering and Social Communication in India 1780-1870, at 173 (1996). In the colonial parlance, 'thugs' were believed to be a hereditary criminal fraternity, resting on beliefs and rites centered around inveigling and strangling travelers. See G. Bruce, The Stranglers: The Cult of Thuggee and its Overthrow in British India (1968); Radhika Singha, 'Providential' Circumstances: The Thuggee Campaign of the 1830s and Legal Innovation, 27 Modern Asian Studies 83 (1993); and H. Gupta, A Critical Study of the Thugs and their Activities, 37:2 J. of Indian History 167 (1959).


n76. Ali, supra note 66, at 102. See also David Arnold, White Colonization and Labour in Nineteenth-Century India, II:2 J. of Imperial and Commonwealth History 133 (1983).

n77. Nigam, Disciplining and Policing, supra note 72, at 163 (quoting Report on the Administration of the Criminal Tribes in Punjab, 1918 (1919)).


n88. See Madhavi Kale, Projecting Identities: Empire and Indentured Labor Migration from India to Trinidad and British Guyana, 1836-1885, in Nation and Migration: The Politics of Space in South Asian Diaspora 73, 77-78 (Peter van der Veer ed., 1995).

n89. Id.
n98. Lord Acton, supra note 10, at 30.
n100. Hobsbawm, supra note 93, at 108; Richard Hofstadter, Social Darwinism in American Thought 172 (1955); Stocking, Victorian Anthropology supra note 8, at 32, 66, and 235.
n102. See, e.g., Reginald Craddock, The Dilemma in India 1-9 (1929).
n103. H.H. Risley, Ethnology and Caste, in The Imperial Gazetteer of India 288 (1909).
n107. See Chatterjee, supra note 19, 54-84.
n115. Id. at 84-85.
n116. M.S. Golwalkar, We, or Our Nationhood Defined 48 (1947).
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MAPPING INTELLECTUAL/POLITICAL FOUNDATIONS AND FUTURE SELF CRITICAL DIRECTIONS: The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History

by Stephanie L. Phillips *

BIO:

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SUMMARY: ... From my point of view, this title, as well as the presentations by panelists Anthony Farley and Dorothy Roberts, posed following questions: 1) Do blacks in America have particularized experiences that should be articulated as such, and not simply subsumed under the rubric of the experiences of "people of color"?; 2) Is there such a thing as progressive black nationalism?; 3) If so, is "BlackCrit" an appropriate name for its articulation in legal academic scholarship?; and, 4) Should those working in a newly formulated "BlackCrit" tradition create a new institutional forum for our work, or should we do that work as part of the Critical Race Theory Workshop?

As to the first three questions, I find the answers very straightforward, and easily inferred from the presentations made by Anthony and Dorothy. Yes, the particularities of black experience must be articulated as such. Yes, there is such a thing as a progressive black nationalism, which as Anthony alluded to features: a transgressive spirit, an internationalist perspective, and a stance against homophobia and all such ideologies that treat people as things. If anyone wants to use "BlackCrit" to designate those legal scholars who write about and from a progressive black nationalist perspective, I have no serious objection. I do, however, think that the proliferation of names and labels is on the verge of getting out of hand.

My essay primarily will explore the fourth question posed: assuming that the new label, "BlackCrit," might be used to describe legal scholarship in the tradition of progressive black nationalism, should we create a new institutional forum for such work? My tentative answer to this question is no. I think it preferable for BlackCrit to develop within the ambit of the Workshop on Critical Race Theory. My conclusion is largely derived from my experience as a participant in the Workshop, and my perspective on how its politics have evolved over the past nine years. In this essay, I give my version of part of that history, as well as my interpretation of it.

The history I recount concerns the Critical Race Theory Workshop, which held its first meeting in 1989 and continued to meet annually through 1997, when the Ninth Workshop was held at Tulane. I do not mean to suggest an equivalence between the Workshop and the entire corps of people and corpus of work that constitute "Critical Race Theory." There are many people who think of themselves as Critical Race Theorists, who have never attended a Workshop. There are people who once participated in the Workshops who no longer do. Moreover, there are different
conceptions among the people who regularly attend the Workshop about what Critical Race Theory is. The following account, therefore, should be read as my version of the evolution of the politics of the Workshop, not as pronouncements on the nebulous Critical Race Theory.

A. Founding the Critical Race Theory Workshop: Opposition to "All Forms of Oppression"?

I think "jagged" is the best characterization of the political evolution of the Critical Race Theory Workshop. The person principally responsible for the idea of the Workshop, and the person who coined the label "Critical Race Theory," is Kimberle Crenshaw. Almost all of us who constituted the Organizing Committees for the first two workshops had a leftist political orientation. Our agreed-upon description of the Workshop, and of the scholarship we hoped it would spawn, was that Critical Race Theory would apply the tools of critical theory to the task of dismantling racial hierarchy in the United States. In addition, the organizers adhered to a stance against all forms of oppression, including oppression on the basis of race, class, gender, and sexual orientation. Despite our controversial "invitation only" policy, it had become glaringly obvious by the end of the Second Workshop that not everyone in attendance shared the organizers' political orientation. The depth of disagreement was painfully obvious during the last session of the Second Workshop, which focused on political tenets we hopefully had in common.

The discussion was organized around a seven-point description of proposed "Tenets of Critical Race Theory":

Critical Race Theory:
1. holds that racism is endemic to, rather than a deviation from, American norms;
2. bears skepticism towards the dominant claims of meritocracy, neutrality, objectivity, and color-blindness;
3. challenges ahistoricism, and insists on a contextual and, historical analysis of the law;
4. challenges the presumptive legitimacy of social institutions;
5. insists on recognition of both the experiential knowledge and critical consciousness of people of color in understanding law and society;
6. is interdisciplinary and eclectic (drawing upon, inter alia, liberalism, post-structuralism, feminism, Marxism, critical legal theory, post-modernism, and pragmatism), with the claim that the intersection of race and the law overruns disciplinary boundaries; and
7. works toward the liberation of people of color as it embraces the larger project of liberating all oppressed people.

Discussion of the first six points went fairly smoothly; those present could easily give formal assent to these propositions. It was when we got to point number seven that all hell broke loose.

The principal bone of contention surrounding proposition seven was whether gay men and lesbians are "oppressed people," and if so, whether their liberation had anything to do with the fight against racial oppression. These questions were not, to say the least, propounded in a spirit meant to lead to further discussion. Rather, the questions exploded, as did the responses. All possibility of further engagement having been destroyed, the Second Critical Race Theory Workshop adjourned, with some people barely speaking to each other.

As for the aftermath of this debacle, I regret to report that eight years passed before the Critical Race Theory Workshop fully embraced the principles that the fight against oppression of gay men and lesbians is important, and that it is, or should be, an integral part of the antiracist struggle. Gay and lesbian folks regarded the 1997 Workshop as the first one where their identities and issues were not contested. What had changed? Some of those who had opposed the view that gay and lesbian issues should be addressed as part of Critical Race Theory were converted to a new understanding; while others stopped attending the Workshop. Furthermore, by 1997, the number of (out) gays and lesbians attending the Workshop increased from the original one or two to between eight and ten.

In sum, while it took an excruciatingly long time for the Critical Race Theory Workshop to reflect a strong stance against heterosexism, it finally did. I have told this story here because LatCrit has taken a solid stance against heterosexism from its beginning, in 1996. At that time, LatCrit and the Critical Race Theory Workshop were not equally hospitable to gays, lesbians, and inquiries into sexuality-based oppression. That, in my opinion, has now changed, constituting my first example of how the Critical Race Theory Workshop has converged with the politics embraced by LatCrit.

B. The First Critique of the "Black/White Paradigm" and the Workshop's Response
My second convergence chronicle is more closely related to the topic proposed for discussion at LatCrit III: "Exploring Critical Race Theory Beyond and Within the Black/White Paradigm." n10 This is an account of the undeniable fact that the Critical Race Theory Workshop, in its early years, focused almost exclusively on the experiences of African Americans, and of how the Workshop later developed a more inclusive perspective. This account is necessary to put to rest the suspicion [*1252] expressed in some LatCrit writings that the early Workshop deliberately denigrated the importance of the experiences and histories of American people of color who are not black. n11 One small piece of evidence that I hope will tend to counteract the suspicion is that, in the proposed "Tenets of Critical Race Theory," propounded at the Second Workshop and discussed above, we continually referred to "people of color," rather than "blacks," in our formulations. Indeed, it would have been very odd had we done otherwise, considering the significant presence of non-blacks, including Mari Matsuda, Gerald Torres, and Neil Gotanda. Just two years later, in fact, Neil was part of the group that launched a critique of the Workshop's overemphasis on the Black/White paradigm. Beyond that episode, which seems to have dropped from our collective memory, I wish to highlight the Workshop's response to the critique, which demonstrated that our original parochialism was a function of ignorance, not of deliberately thought-out principles. n12

The earliest critique of what has been called the "Black/White paradigm," which now is, more appropriately known as the "White Over Black paradigm," occurred at the Fourth Critical Race Theory Workshop in 1992. n13 The non-blacks who were present formed a caucus and emerged with the following challenge to the Workshop's "Afrocentrism:" the Workshop had been, perhaps, overly-dominated by African Americans, and had, certainly, overemphasized the history and present circumstances of blacks, with an unprincipled neglect of the conditions of non-black peoples of color. n14 Personally, I was both embarrassed and [*1253] stunned. As for the collective black response to the critique: we apologized, confessed our ignorance, and said that since we knew nothing about ethnicity and little about various groups' histories, we would have to be taught. And that is exactly what happened.

The next year's Workshop n15 prominently featured plenary discussion of ethnicity, as overlapping but distinct from race, and of the histories of Asian Americans and Latinos/as. A committee chaired by Lisa Ikemoto, and including Celina Romany, Hein Kim, Gerald Torres, and John Hayakawa Torok, compiled and led discussions on extensive readings concerning race and ethnicity. n16 This institutional response to the critique of the Black/White paradigm was a significant step in the evolution of the Workshop. More generally, the Workshop's attempt to rect its "Afrocentrism" reflected an ability to grow and change that is essential to the long-term health of any organization. n17

C. The Workshop's Present Politics

I did not attend the Sixth and Seventh Workshops, held in Miami and Philadelphia, respectively. From accounts I have heard, there was little to be a great deal of resistance to the idea that combating heterosexism was an integral part of Critical Race Theory. This resistance was finally overcome, or rooted out, at the Eighth and Ninth Workshops. It is possible that in response to the 1993 Workshop's emphasis on Asian and Latina/o ethnicity, there were subsequent incidents of "blacklash," whereby African Americans attempted to refocus most attention on black issues. On the other hand, I have been neither party to nor witness of any resurgent "Afrocentrism." Moreover, black history and politics were further decentered at the Eighth and Ninth Workshops. n18 Another important feature of the Ninth Workshop, accom [*1254] plished largely through the efforts of Estevan Rael y Galvez, was a significant Indian presence. n19

Where are we now? What are the current politics of the Workshop on Critical Race Theory? By 1997, the Workshop reflected an understanding that racism is not only historical slavery, Jim Crow laws and gerrymandered voting districts in the South; it is also immigration laws and internment camps; it is stolen land grants and silenced languages; it is standardized tests based on standardized culture; it is invisibility and lost identity. We also understand that racism is inextricably linked to oppression on the bases of gender and sexuality. These understandings in no way contradict the original goals of the founders of the Workshop. Rather, they actualize our original vision, vastly enriched by the struggles of the intervening years. Furthermore, what I have presented as a summary of the current politics of the Critical Race Theory Workshop is a paraphrase of Leslie Espinoza's description of LatCrit theory! n20

At the conclusion of its first decade, the Critical Race Theory Workshop, having struggled to understand that our work must encompass a fight against heterosexism and having critiqued the Black/White paradigm, has converged with the politics that have informed LatCrit from its beginning. This brings me to the second question I found implicit in the title of the panel at LatCrit III: What institutional arrangements are suited...
to our articulation of the particular culture and needs of African Americans, which may or may not come to be called "BlackCrit," but which should definitely take into account the convergence between the politics of the Critical Race Theory Workshop and LatCrit theory?

D. An Institutional Proposal

Because the Critical Race Theory Workshop and the LatCrit conferences reflect such similar polities, but together constitute such a small part of legal academia, it seems fairly clear that these two institutions should coordinate their work. There are many ways to do this, but the agreement I prefer is for the Critical Race Theory Workshop to move to an every-other-year schedule, to which everyone that shares the politics of the Workshop and LatCrit would be invited. In the alternate years, other groups would meet, including LatCrit, which has a distinctive role to play in the working out of Latina/o pan-ethnicity. n21 Other one-time or long-term formations that might be organized to deal with specific issues or to focus on particular communities include: a conference devoted to immigration theory and policy; a workshop that brings together queers of color; and a BlackCrit organization. My preference as to BlackCrit is, however, that the working out of progressive black nationalist ideology be done under the auspices of the Critical Race Theory Workshop, rather than in a separate organization.

The principal reason why I would hesitate to endorse a separate BlackCrit organization is one that has been mentioned by Taunya Banks at LatCrit III and elsewhere. Historically and presently, there are many examples of regressive black nationalism that, for instance, deny that there is sexism in the black community, attempt to legitimate homophobia, and deny that blacks can be "racist" in relation to other people of color or whites. I think Taunya is probably right that, 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. Sadly, there also may be too few blacks in legal academia who endorse a distinctively progressive black nationalism for a new organizational form to be warranted. A conference and a few meetings might make sense, but not a whole new organization.

I wish to anticipate one objection that might be raised to my proposal that the Critical Race Theory Workshop, (1) be the institutional home for working out a progressive black nationalism among legal scholars, whether or not called "BlackCrit." Some participants may be concerned that the "Afrocentrism" that characterized the Critical Race Theory Workshop in the past would be resurrected if specifically black theoretical work were presented at the Workshop. My rebuttal is three-fold. First, an implication that blacks always occupy a privileged position vis-a-vis Asians and Latinos/as with respect to race issues would be insupportable. In relation to each other, Latinos/as, Asians, blacks, and Indians sometimes occupy positions of privilege and sometimes experience subordination. n22 Second, I hope that the history of the Workshop I have recounted helps to allay fears of black dominance; a little trust is called for and should be tried. Third, and most importantly, I endorse the view that the Critical Race Theory Workshop is a place where, among other things, the experiences of all groups of color are articulated and where narrow conceptions of group interest are critiqued.

Eric Yamamoto has provided a trenchant reminder of the central paradox of "interracial" tensions among American communities of color:

When we look hard at the practical struggles of our racial communities, we see continued white dominance. But we also see the reality of sometimes intense distrust and conflict among communities of color - coupled with efforts to forge multiracial alliances. When we listen hard, we hear stories of continued resistance by racial communities against mainstream subordination. But we also hear stereotypes and accusations of wrongdoing asserted by communities of color against one another - coupled with cautious optimism about future relations. n23

What forum could be better than the Critical Race Theory Workshop to address such conflicts, especially their manifestations in legal disputes? n24 What better way could we approach these problems than by sharing our communities' particular experiences and goals? As to this crucially important aspect of the tasks facing the Critical Race Theory Workshop, I suggest that we consider the Black/White paradigm, its critique, and its reformulation as the White Over Black paradigm, as merely the first episode in tackling the myriad manifestations of conflict among our various communities.

FOOTNOTE-1:

n2. There was no workshop during the summer of 1998, primarily because, given pressing publication deadlines and other commitments, no one was available to host it. It does not seem to me, however, that we have actually "skipped" a year. Rather, we convened and did our work in alternative fora. After the Ninth Workshop at Tulane, in June 1997, hosted by Robert Westley, we all participated in the Conference on Critical Race Theory in November 1997, situated at Yale and superbly organized under the leadership of Angela Harris and Harlon Dalton. We met again at the AALS law teachers' conference in January 1998, where we participated in various panels and caucuses, and in the large, and successful demonstration against California's anti-affirmative action measure, Proposition 209. Sumi Cho, who has played a prominent role in the Critical Race Theory Workshop in recent years, was a principal organizer of the demonstration. Then, of course, a substantial number of us attended the LatCrit III conference, in May 1998.

n3. In addition to Kim, the leftist members of the first two Organizing Committees included Kendall Thomas, Neil Gotanda, Mari Matsuda, Richard Delgado, and myself. Linda Greene, who was a member of the Organizing Committee for the Second Workshop, probably would not describe herself as a leftist.

n4. We required those who wished to attend the Workshop to submit applications, in which they described their work and their interest in the Workshop. Only those whose applications were accepted were invited to attend. This procedure was adopted for two reasons. First, we felt that it was important to keep the Workshop meetings small, so that we could all engage each other in a sit-in-a-circle format for the entire five days of the Workshop. Secondly, and much more importantly, the "invitation only" policy was thought necessary for the Workshop to reflect radical, transformative politics. We did not want to be seen as issuing a general invitation to all legal scholars of color, no matter how conservative or parochial, to simply come hang out. This was our attempt to institutionalize what Frank Valdes has recently phrased a "move from color to consciousness." Francisco Valdes, Foreword: Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities, 9 La Raza L.J. 1, 27 (1996). Frank embraces the possibility of making the shift from the current practice of identity politics to a potential construction of politicized identities. This shift, pioneered by Professor Chang, Professor Harris, and like-minded scholars, entails recognition of the fact that alliances are best built on shared substantive commitments, perhaps stemming from similar experiences and struggles with subordination, rather than on traditional fault lines like race or ethnicity. This possibility thus entails rejection of automatic or essentialist commonalities in the construction of coalitions and entails the post-postmodernist combination of sophistication and disenchantment, which can create a platform for the politics of difference and identification. Id. (footnote omitted).

While the organizers of the early Workshops attempted to promote such a principled basis for the collaboration of scholars of color, white scholars were excluded. The debate continues about whether the exclusion of whites from the Workshop is unprincipled, or whether it is simply a pragmatic step necessary to assure that racial hierarchy is not replicated in the Workshop. However, as this essay, Frank's article, and many other recent writings demonstrate, exclusion of whites did not insulate us from replicating troubling hierarchies within the Critical Race Theory Workshop, in particular, the privileging of African American experience and of heterosexuality.

n5. From the notes of Professor Elizabeth H. Patterson, taken June 13, 1990, at the Second Critical Race Theory Workshop, held in Buffalo, New York. I am immensely grateful to Ginger Patterson for taking such excellent notes, and for taking time to dig them out of her archives to send to me.

n6. As I recall, the only rough spot in discussion of the first six propositions was a definite lack of unanimity on the
question whether Critical Race Theory encompassed an anti-capitalist stance.

n7. It should be noted that there never was any doubt that Critical Race Theory encompassed a feminist stance against oppression on the basis of gender. Frank Valdes has misread articles written by Kim Crenshaw as asserting that the Workshop tended to privilege male experience, and to marginalize women of color. See Valdes, supra note 4, at 3 n.9, 5 n.15, 5 n.17 (discussing Kimberle Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, 43 Stan. L. Rev. 1241, 1242-44 (1991) and 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 (1989). Actually, when Kim wrote about how male experience had often been privileged in antiracist struggles, she was referring to such phenomena as the blatant sexism of some black nationalist organizations, including the latter-day S.N.C.C. and the Nation of Islam, as well as the refusal of the Southern Christian Leadership Conference to acknowledge the key leadership role being played, behind-the-scenes, by such women as Ella Baker.

As to gender issues within the early Critical Race Theory Workshop, if anyone tended to be silenced on gender issues, it was the men. Further, the dominant position of the early years of the Workshop, enforced by the women, clearly implied that there was no such thing as "gendered" oppression of males.

n8. In fact, some people, including Kim Crenshaw, were so disaffected by the regressive beliefs that had been paraded that they never again treated the Critical Race Theory Workshop as an important intellectual community.

n9. Frank Valdes describes the inextricability of struggles against racism and struggles against heterosexism in the following way:

"Race" is in fundamental ways contingent on "sexual orientation" and vice versa; that is, people of color oftentimes are required to manifest heterosexuality to be accepted as authentically raced, while lesbians and gays oftentimes must be white to be authenticated and accepted by those communities. * * * "Race" and "sexual orientation" combine, or intersect, in the formation of individual and group identities, and ... these combinations and intersections inform the way in which particular persons or groups are constructed and (mis)treated culturally and legally.

Valdes, supra note 4, at 6 n.21.

n10. As noted above, the full title of the moderated focus group discussion was "From RaceCrit to LatCrit to BlackCrit?: Exploring Critical Race Theory Beyond and Within the Black/White Paradigm."

n11. Actually, the published work of LatCrit scholars is relatively mild in chastisement of African Americans for the scant attention paid to Latina/o and Asian issues during the early years of the Critical Race Theory Workshop, calling us "insensitive," Valdes, supra note 4, at 5, and "indifferent." Juan F. Perea, The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought, 85 Cal. L. Rev. 1213, 1254 (1997). However, during face-to-face discussion of the Black/White paradigm at the Eighth Workshop, it seemed that Latinos and Latinas took the Workshop's early neglect of their issues very personally. At least, that was how the African Americans in the "hot seat" heard the critique. We may have been mistaken, of course, our perceptions warped by the heat of our embarrassment that we had apparently done to Asians and Latinas/os what Critical Legal Studies had once done to us!

n12. It is important that this gap in the Workshop's understanding not be confused with what Angela Harris denominates a theory of "black exceptionalism", that is, a thought-out, articulated, and defended position that the black experience, virtually to the exclusion of all others, is equivalent to the meaning of "race" in America. See Leslie Espinoza and Angela P. Harris, Afterword: Embracing the Tar-Baby - LatCrit Theory and the Sticky Mess of
n13. Harlon Dalton was the host, Yale was the sponsoring school, and the Workshop was held at a retreat center in the New Haven suburbs, of Madison, Connecticut.

n14. This critique used the word "Afrocentrism" in the same way Frank Valdes later did:

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

Valdes, supra note 4, at 5 n.16.

n15. The Fifth Critical Race Theory Workshop, held in 1993 at Mills College in Oakland, California, was sponsored by Santa Clara University Law School. Margaret Russell, Margalyne Armstrong, and Monica Evans were the hosts.

n16. The seventeen articles we read included: Edna Acosta Belen, Beyond Island Boundaries: Ethnicity, Gender and Cultural Revitalization in Nuyorican Literature; Juan Flores and George Yudice, Living Borders/Buscando America: Languages of Latino Self-Formation; and Sau-ling Cynthia Wong, Ethnicizing Gender: An Exploration of Sexuality as Sign in Chinese Immigrant Literature, in Reading the Literatures of Asian American III (Lindling ed., 1992).

n17. By contrast, the demise of Critical Legal Studies might be attributed, at least in part, to its inability or unwillingness to respond to critiques by women and people of color.

n18. In fact, as I recall, the only specific attention given to blacks during sessions at the Eighth Workshop were critiques of black homophobia and chastisement of blacks for our role in enforcing repressive aspects of the Black/White paradigm.

n19. Sometimes also known as "indigenous peoples" or "Native Americans." Until then, Estevan Rael y Galvez and Eric Yamamoto had been the only "indigenous" folk who regularly attended the Workshop, although others, including Rob Williams, had been invited every year. For the 1997 Workshop, however, Estevan succeeded in organizing a panel on indigenous people's issues. Patricia Monture, in particular, seemed to find the Workshop to be a congenial political and intellectual community.

n20. See Espinoza and Harris, supra note 12, at 506-07, 85 Cal. L. Rev. at 1593.

n21. For a discussion of this aspect of LatCrit's mission, see Valdes, supra note 4, at 24-25. Please excuse my suggestion that LatCrit conferences occur every other year, rather than annually. I am motivated by time and resource concerns. In 1997, for example, I had to choose between attending LatCrit and attending the Critical Race Theory Workshop; I would much prefer to be able to attend all meetings of both.


n23. Id. at 495.

n24. Eric supplies several troubling examples of such disputes, including a case in which Chinese Americans object to a set-aside of spaces for Latinos/as and blacks at a prestigious school, Yamamoto, supra note 22, at 496 nn.1 & 2, and a suit brought by Latina/o and Asian groups to object to alleged favoritism by the city of Oakland, California, in its award of contracts to blacks. See Yamamoto, supra note 22, at 496-97 & n.3. Eric's article is addressed to a LatCrit audience and, of course, I agree that inter-group tensions should be examined at LatCrit conferences. This does not detract from the importance of the Critical Race Theory venue, however, since the focus of LatCrit is on Latinas and Latinos, while the Critical
Race Theory Workshop no longer privileges a particular group. I endorse Frank Valdes' suggestion that LatCrit and the Critical Race Theory Workshop should proceed on separate, but closely related, tracks. See Valdes, supra note 4, at 26-27. The two institutions endorse the same political values, but have somewhat different emphases.
We arrived in Miami on May 7, 1998, feeling emotionally exhausted from the events of the past several months that had reinforced for the two of us the centrality and primacy of family, kinship, and belonging. We were curious about what awaited us at our first LatCrit Conference (LatCrit III). We were excited at the prospect of seeing old friends and making new ones. Yet we wondered, as we so often do before attending academic and political conferences, whether we, as women, Lesbians, mothers, an interracial couple, and an interracial family, would find ourselves in the mix of panel discussions and plenary sessions.

We were concerned about finding a welcoming place because our lives had been on an emotional roller coaster for several months. The integrity and security of our family had been seriously threatened beginning December 22, 1997. We were finishing dinner and chatting excitedly about our son Camilo’s arrival on the “red-eye” from San Francisco the next morning. We hadn’t seen him in more than two months and we were anxious to embrace him, to hear about his life (living on his own), and to share the holiday season with him. And we looked forward to showing Camilo the piece we were writing: a story about the two of us, and him - the three of us - our Queer family. n1

The phone rang. It was Camilo’s downstairs neighbor, Renee. Camilo had been beaten about the head and torso by two assailants, the extent of his injuries was unknown but he was - miraculously - still conscious. She had called the police, Camilo had been placed on a stretcher by the emergency medical technicians. Somehow, Camilo escaped from the apartment, stumbling and tumbling down the exterior staircase while his attackers chased him and continued to strike him with their lead weapons. Luckily, the commotion of Camilo’s struggle and his shouts for help alerted Renee and her son, Demian. Their appearance at their front door scared off the two...
assailants. After calling the police and alerting us, Renee and Demian followed Camilo's ambulance to the hospital.

There were many anxious hours for the two of us as we waited to hear from the hospital about the extent of Camilo's injuries. The first reports were frightening: a possible concussion, serious head lacerations, and unknown internal injuries to his chest. We waited anxiously. Time seemed to move at a snail's pace. Then the phone rang. Other members of Camilo's extended family in the Bay Area - Renee, Demian, Christina, Jimmy, Deedee, Jim, and Johnny Wray - had reached the hospital and were conferring with the emergency room doctors and staff. Camilo was awake but was experiencing intense pain and discomfort. He had been examined, x-rayed, sutured, and bandaged. We received other phone calls from friends in the Bay Area who had heard the horrifying news and wanted to know what they could do for Camilo and for us.

We arrived in San Francisco within fifteen hours of learning of the attempt on Camilo's life. Incredibly, he had survived the attack with only internal bruising, external contusions, and several serious lacerations to his head. His hands and arms were bruised and swollen from defending his face and body. His fingers were so battered that he was unable to bend them. We were so relieved that Camilo was alive, that his physical injuries would heal over time. However, the psychic trauma - for the three of us and our family - would take longer to heal.

Although Camilo identified one of his two assailants in a police photo array within ten days of the attempted murder, the police have made no arrest to date. The detective in charge of the case told Camilo that the assailant he had recognized was a known member of a gang operating in the East Bay area.

When we returned home from California, we began again to edit and revise our story about our Queer family, which is a product of our three lives and of our presentation at the Critical Race Theory Conference at Yale in the Fall of 1997. Completing this project became an important part of our healing process because it reinforced for us the importance of family as a unit of resistance, a kinship group that can stand together and weather adversity - both physically and psychically. Additionally, our story was a doorway through which we entered LatCrit.

Francisco ("Frank") Valdes has been an integral part of our entry into LatCrit. Through Frank's own writings and his work with us on our essay, we found an ally, in both intellectual and emotional terms. From the earliest stages of our drafting, Frank provided thoughtful and rigorous suggestions on how we might improve and clarify our analysis. We also discussed the LatCrit III conference with Frank. He described to us the work that he and Elizabeth ("Lisa") Igelsias had done to organize and facilitate the conference and its themes. Although we had already read a number of the articles from the two previous conferences, we now reread them. The more we read and the more we talked with Frank, the more committed we became to attending LatCrit III.

When we arrived in Miami, we were seeking an intellectual and political home - a kinship with others who shared our viewpoints. What we discovered over the course of our three days there was much more than an intellectual niche: we found an emotional haven and we developed an extended kinship by reacquainting ourselves with old friends and meeting new ones.

Our experience in many of our previous academic and political activities had taught us that we were welcome as individuals (but not usually as a Lesbian couple), that we were welcome as women (but usually gender was not a key or relevant factor), that we were welcome as mothers (but usually not as Lesbian Mothers), that families were sometimes discussed (but usually not as Queer families), that as a woman of color and as a woman of white we might be welcome as two individual women (but usually not as an interracial couple), and that we might be welcome as a woman of color raising a son of color (but usually not as a woman of color and woman of white raising a son of color together). As a result, we frequently experienced the fragmentation and compartmentalization of our multiple identities.

We were delighted that LatCrit III was so welcoming to us in all the ways which we find important and valuable - as women, as Lesbians, as mothers, as a couple, as activists, as scholars, and as lawyers. From the moment we entered the conference, we had the sense that we were a part of a large, inviting group composed of many different races, religions, ethnicities, ages, political views, and backgrounds - a group committed to creating a safe space in which to explore a multitude of important and sensitive issues - a safe haven in which to disagree, to learn, to grow and to stretch, intellectually, politically, and socially.

For us, LatCrit III was filled with significant moments. There were instances infused with humor, pathos, tension, recollections, reflections, intellectual curiosity, information, and resolution. Participants raised issues that resonated in our individual and our shared professional experiences and personal lives. For example, in the opening session entitled Critical Recollections: Reclaiming Latina/o Experiences with the Legal Academy of the United States, participants...
recounted their experiences of isolation as Latinas/os in the law school setting as teachers, administrators, and students. They spoke of the difficulty of being isolated, of feeling disempowered, of not fitting in, of having fragmented identities, and of being the outsider, the other. At the same time, other participants shared the view that we must reach beyond the walls of the law school, to build coalitions and networks which change the status quo, and revise the agenda so that it fulfills our needs rather than those of the dominant group.

Another significant component of LatCrit III was the children. A number of parents brought their children to the conference. The children, their laughter, their voices, their chattering, their games, were always present in the room or in the background. As they often do, the kids quickly bonded with one another, forming - perhaps - a future generation of LatCrits. Without regard to age, color, ethnicity, or gender, the children formed a series of groups, small and large. There were pre-teen and teen-aged children playing with one another. There were small babies in the arms of their parents, who cooed and nestled them while participating in various formal and informal discussions. There were grandparents, friends, and acquaintances who took on the temporary tasks of coddling, feeding, and changing these small babies. There were husbands, wives, lovers, life partners, and close friends.

[*1261] All of the multiple kinship groups and familial bonds that were so visible and so much a part of the discussion sessions, the meals, and the informal gatherings, were important signifiers that LatCrit was about more than just challenging intellectual conversations and discussions. For us, LatCrit was also about the kinship between and among its participants and attendees. And with kinship comes the deepening of friendships, the richer possibilities of cross-cultural, cross-identity, cross-ethnicity, cross-religious, and cross-political collaboration, and the greater the likelihood of clearer understandings between and among peoples. Uniting diverse peoples and forging a community of intellectuals, teachers, organizers, and activists who can resist, challenge, and subvert the dominant group and/or its institutions, is both the purpose and goal of LatCrit.

There were many moments at LatCrit that reinforced once more for us that the personal and the professional are so interlocked that it is difficult to distinguish the borders between the two. What so often happens to us and to others is that the personal and professional are bifurcated. We often split ourselves into two or more personas: the vocation becomes distinct and distant from the personal. Our lives as family members, members of an extended family, a kinship group, or a community are disconnected from whatever we have chosen as our job. LatCrit III discussions frequently reminded us of the intertwined nature of our lives and work. We listened to Cecilia Espinosa speak of our friend Elvia Arriola and her absence from the conference because of the recent death of her mother. For many, Elvia's spirit was a strong, almost palpable presence throughout the conference. The theme of the intersections of woman, Latina, mother, daughter became evident as many participants and attendees referred to Latinas in the academy as mother less daughters. Without a mother or a mentor, Latinas often do not advance within the academic setting. The same may be said of Latinos, Asians, Queers, Indigenous and Native peoples, African Americans, and the Disabled. We also are aware that all Outsiders are often isolated and insulated, often feel powerless or disempowered.

Berta Hernandez-Truyol urged us to consider that "La Familia" best describes the identity of Latinas. The convergences of gender, sexual identity, sexual orientation, language, and culture are transmitted through a patriarchal system where heterosexuality is the "norm," where Latina lesbians are viewed as the agents of Anglo culture and as cultural outlaws, where gay Latino men are feminized, and where Catholicism is the last stronghold of "church-inspired" norms.

Another prominent theme of LatCrit III involved language issues and the renewed conservative push to "cleanse" public schools and govern agencies of languages other than English. Propositions 187 and 209 in California were the focus of at least one panel discussion and many other spontaneous, informal conversations. Laura Padilla's description of the negative impact of such "popular" efforts to rid the dominant culture of the possibilities of other cultures reminded the two of us of the intertwined nature of oppression. The negative results of such language and cultural denial can be seen in the internalized oppression that causes one to turn upon one's self and upon one's racial and ethnic group. Such behavior encourages one to find fault, to criticize, to be divisive, to exclude, to generalize, and to attack members of one's own group. We see the effects of such negativity in the diminishing or erasing of culture and ethnicity, the emphasis of light over dark skin color, and the stereotyping of Latinos as lazy and/or docile.

As many speakers urged, such problems are not without solutions. Individuals and groups must make a concerted effort to deconstruct and dismantle narrow and negative stereotyping of Latinos, both on an individual and collective basis, by examining and naming all of the "isms" that infect and inform all societal
institutions. Destructive views of self and others must be replaced by constructive, positive images and view points. In order to create permanent change, such reconstructive efforts must be sustained over time - not for a three-day conference, not for a week, but for all time.

Conference participants also discussed solutions to the problems one experiences in academic settings such as a law school - feeling isolated from academia by virtue of being an Outsider, an Other. Celina Romany believes we can change the status quo and broaden our power base by seeking support from outside the law school and other academic environments. By using strategic knowledge, creating linkages, and building community, we can shift, revise, or change the dominant structure.

We look back on those three extraordinary days at LatCrit III and know that we returned home enriched by the strong bonds of friendship we renewed and/or created. We were tremendously encouraged and energized by the three days we spent in Miami. In part, it was the extraordinary people with whom we talked, ate, and laughed, while engaging in both serious intellectual discussions and social banter. In part, it was the powerful sense of kinship and community which we experienced because the planners and participants of LatCrit III created a safe space in which to talk about significant issues. In part, it was the very comforting feeling that here at LatCrit III, we had found a kinship group, an extended family filled with people who were willing to act as academic, intellectual parents; people who were brothers and sisters in [*1263] the struggle against the dominant hierarchy; people who were committed to building networks and bridges to the community of LatCrits.

FOOTNOTE-1:


n4. We use the term "of white" to inscribe racial characteristics to persons with white skin-color privilege in order to disrupt the dominant view that "white" is a normative category against which all other skin colors are measured.

n5. Michael Olivas spoke about the gains and losses in terms of Latinas/os who teach and/or lead law schools. Jose Bahamonde-Gonzalez shared the perspective of a Latino administrator in a law school. Yvonne Cherena-Pacheco spoke of her dual roles as a teacher and administrator in a law school which had lost its progressive white, female Dean. Other participants also shared their experiences and views.
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. 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. 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. 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. 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. This self-reflection confirms the belief that LatCrit theory can and must learn from the insights and shortcomings of the intellectual and 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. ...
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 Lat Crit 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 [*1268] 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 experiences 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 [*1269] 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 [*1270] 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 nonLatina/o outsider scholars, such as those whose nonLatina/o 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 within the legal academy [*1271] 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, 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 con temporary 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 specifi [*1272] cally to the individual RaceCrit, FemCrit, RaceFemCrit and other allied scholars whom now nurture LatCrit with their time, energy and creativ ity. 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 multidimen sionality n27 - 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 theory n29 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 institu tional 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 prompt ing 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 pro gressive 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 work shops. 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 RaceCritis 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 sustenance - 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-à-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 OutCritis 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 systemic 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 conformity 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 multiplicious 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 antinessentialist 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, strateies 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 antinessentialist, 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 repro [*1283] ducts 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 neccessary 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 entrenchedness 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 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 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 dis missed 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 binaries 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 collective 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 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 inexperience 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/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 the ory 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 disappointment 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, n66 this combination of development tal 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. n67 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. n68 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.

[1290] Yet, balancing continuity and expansion in the workshops, and in their planning committees, always was important precisely because out sider 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, n69 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, n70 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. n71 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. n72

[*1291] 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 misteps and to remain vigilant against their recurrence. To build on our early progress, and to account for other significant factors 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 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.

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 rich ness of ambition enhanced by the changing demographics and expanding frontiers of the past...
decade. In turn, this confluence of his tory, 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

EventssinceCRT'sfoundinghavewitnessedthenascencyof...
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 conscious 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 singular-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 [*1298] tion. 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 sociolegal 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 high light 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 commit ments 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 LatCrit'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 legitimacy and consolidated, both judicially and legislatively, mostly in the decade since CRT's inception. 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 experience and the various historical and other factors that affected it, n105 have helped to shape and give meaning to LatCrit theory today, both in substantive 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 community through scholarship. The idea of, and need for, regularized meet 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 balance multiple factors that conjoin the production of knowledge and cultivation of community, and this balancing serves as the theoretical frame for legal reform through LatCrit discourse and praxis. From the beginning, 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 production of critical and interdisciplinary knowledge; the promotion of substantive social transformation; the expansion and interconnection of antisubordination struggles; and the cultivation of community and coalition 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 evidenced 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 physical, 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 substantive 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 discussions and projects that broaden, deepen and contextualize self-empowerment 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 antisu bordination coalitions by ensuring the representation and investigation within the LatCrit community of various power hierarchies and their interplay.

As coalesential 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 intra-Latina/o diversities and intergroup issues that affect outgroup social justice quests, including those of Latinas/os. If assessed critically and prag matically, 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 commitments 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 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 orienta tion, 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/engage ment 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 increas ingly 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
disputations similarly illustrate the potential for LatCrit redeploymet 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 essen tialize 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 out sider 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 pro cess 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 comm onality as well as our mutual commitment to critical knowledge and schol arly 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 programmatic ally 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 cont inual 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 antisubordination 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 [*1310] 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 antisubordination 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 Out Crit theorizing as a form of antisubordination praxis.

A. From Comparative Experience to OutCrit Praxis: RaceCritis, LatCrits and Reconstruction fromWithin

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 binarims and toward a "white-over-Black" paradigm, which may be better suited to critical excavation of the interactive simi larities 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 antisubordination 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 rep licated, 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 antiesentialist and antisubordination 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 pro cess 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 antisubordination analyses." n151

Moreover, LatCrit theory's re-centering of this particular intersec tional 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 con ference 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 pro vocative questions for a continuing LatCrit (and RaceCrit) interrogation of race and ethnicity as overlapping but not necessarily coterminous cat egories. 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 Ameri can 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 communi ties - 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 mul ticultural society depends in part on antisubordination collaboration built through critical recognition and mutual resistance of white power's mul [*1315] tiple manifestations. The engagement of ethnicity and the shift to the "white over Black" formulation of the traditional paradigm
of course, the future form, scope and direction of 
Re/imagining the Structures of Antisubordination

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. As the comparative record sketched above strongly indicates, the varied experiences 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. 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. "We should think more about a BlackCrit Theory that develops a notion of a Black identity that is not rooted in biology," writes Roberts. 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 discontinuities that distinguish African Americans from the global diaspora of Black communities. Ideally, then, BlackCrit theorizing progressively articulates Black particularities in intra- and intergroup 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 forms of oppression." 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. "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.

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. This point is powerfully confirmed by Montoya's contribution to this symposium, which
recounts the fitful his tory 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 pro moting a sense of community grounded in antisu bordination 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, diver sity'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 out sider 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 posi tion 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 [*1319] once 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 Phil lips' focus on convergence and advancement in outsider jurisprudence, this Afterword 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 iden tity, 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 scruti tiny, 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 ten sions, which can help to explain the surge in recent years of sameness/difference dilemmas within and across various categories of identifiable 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 positio nality n179 as well as the Queer of color. OutCrit perspectiv ity therefore encapsulates the embrace of outsider sociolegal identificati on, 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 collective produce. In considering Phillips' as well as others' institutional proposals n181 in the months and years to come, Out Crit 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, 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 juridprudential 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.

FOOTNOTE-1:


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.


n10. 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 Denver 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.


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).


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

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 antimhomophobic 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.


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"

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 FemCrists (and, of course, also RaceFemCrists). 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. ch risti 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,

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 professing 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 antisubordination 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 antisubordination 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


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").


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 delegitimate CRT specifically and nonwhite outsider jurisprudence more generally, see Culp, supra note 12.


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).

n66. See Key Writings, supra note 14, at xxvii (explaining that, "A thorough mapping of Critical Race Theory must 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


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 supra note 90 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 supra note 90 and symposium sources cited therein.


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 antisubordination 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 antisubordination 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 antisubordination 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 antinessentialist 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.


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 positonality 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/valavet.

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.


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).


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.")


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 implicating of critical discourse engaging particularities of Black subordination from an anti-essentialist perspective).


n156. See generally supra note 18 and sources cited therein on LatCrit symposia.


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).


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.


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 antisubordination 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 antisubordination 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.