

LatCrit X Afterword

**BEYOND THE FIRST DECADE:
A FORWARD-LOOKING HISTORY OF
LATCRIT THEORY, COMMUNITY AND PRAXIS**

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Introduction

During the past ten years, the LatCrit community of scholars, students and social activists have produced twenty law review symposia,¹ including this one.² During this

¹ See Colloquium, *Representing Latina/o Communities: Critical Race Theory and Praxis*, 9 BERK. LA RAZA L.J. 1 (1996) (publishing the papers of the pre-LatCrit colloquium, held during 1995 in San Juan, at which the “LatCrit” name was conceived as such); Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997) (LatCrit I); Colloquium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997) (publishing the proceedings of the first LatCrit colloquium focused on international law); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 CHICANO-LATINO L. REV. 1 (1998) (LatCrit II); Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, 53 U. MIAMI L. REV. 575 (1999) (LatCrit III); Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. DAVIS L. REV. 751 (2000) (LatCrit IV); Colloquium, *Spain, The Americas and Latino/as: International and Comparative Law in Triangular Perspective*, 9 U. MIAMI INT’L. & COMP. L. REV. 1 (2000-01) (publishing the proceedings of the second and third ICCs, held during 1998 and 1999 in Malaga, Spain); Symposium, *Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U. L. REV. 467 (2001) (LatCrit V); Symposium, *Latinas/os and the Americas: Centering North-South Frameworks in LatCrit Theory*, 55 FLA. L. REV. 1 (2003), 54 RUTGERS L. REV. 803 (2002) (LatCrit VI); Symposium, *Coalitional Theory and Praxis: Social Justice Movements and LatCrit Community*, 13 LA RAZA L.J. 113 (2002), 81 U. OR. L. REV. 595 (2003) (LatCrit VII); Symposium, *International and Comparative Law in LatCrit Theory: Perspectives from the South*, 38 REV. JURIDICA INTER-AM. P.R. 7 (2003) (publishing the Spanish-language papers from the 2003 ICC in Buenos Aires); Symposium, *City and Citizen: Operations of Power, Strategies of Resistance*, 52 CLEV. ST. L. REV. 1 (2004) (LatCrit VIII); Symposium, *Law, Culture and Society: LatCrit Theory and Transdisciplinary Approaches*, 16 FLA. J. IN’TL L. 539 (2004) (publishing the papers of the first SNX, held during 2003 in San Juan, and the fifth ICC, held that same year in Buenos Aires); Symposium, *Countering Kulturkampf Politics Through Critique and Justice Pedagogy*, 50 VILL. L. REV. 749 (2005), 55 SETON HALL L. REV. (forthcoming 2005) (LatCrit IX); Symposium, *Law, Culture and Indigenous People: Comparative and Critical Perspectives*, 17 FLA. J. IN’TL L. (forthcoming 2005) (publishing the papers of the second and third SNXs, held during 2004 and 2005, in San Juan); Symposium, *Constitutionalism and the Global South: Mapping the Politics of Law*, ___ GRIFFITH L. REV. (forthcoming 2005) (publishing the papers of the sixth ICC, held during 2004 in Capetown, South Africa and the third SNX, held in San Juan); Symposium, *Free-Market Fundamentalisms and LatCrit Theory*, ___ SEATTLE J. SOC. J. ___ (forthcoming 2006) (publishing the papers of the fourth SNX, held during 2006 in Bogota, Colombia). In addition to these event-based publications, two joint LatCrit symposia also have been published during this time. See Joint Symposium, *LatCrit Theory: Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1998); Joint Symposium, *Culture, Language, Sexuality and Law: LatCrit Theory and the Construction of the Nation*, 5 MICH. J. RACE & L. 787 (2000), and 33 U. MICH. J.L. REFORM 203 (2000). Information on LatCrit theory, including the full text of most of the LatCrit symposia based on our Annual Conferences, International and Comparative Law Colloquia (ICC), and South-North Exchanges (SNXs) can be obtained at the LatCrit website, www.latcrit.org.

² This symposium, like most LatCrit symposia, is presented in the form of “clusters” of essays organized around substantive themes, with a Foreword and Afterword serving as bookends for the volume. These clusters consist of essays that conform to the Symposium Submission Guidelines, which request that authors limit their texts and footnoting. The Symposium Submission Guidelines are posted to the LatCrit website, www.latcrit.org, for easy reference. Symposium, *LatCrit Theory: Economic In/Justice*, _____ (enter symposium cite). For a complete listing of the LatCrit symposia, see infra note

time, we also have launched a variety of academic and educational community projects designed to promote anticolonial consciousness and action within, and from, the legal academy of the United States. From the Student Scholar Program (SSP) and Critical Global Classroom (CGC) to the South-North Exchange on Theory, Culture, and Law (SNX) and the International and Comparative Law Colloquium (ICC), the LatCrit “portfolio of projects” constitutes the concrete forms of “collective personal praxis” that have become a LatCrit hallmark during this past decade.³ During this time, we have grappled with “productive tensions”, as well as with our collective limitations and personal shortcomings, as we have continued the struggle to advance critical outsider jurisprudence as a viable alternative both to mainstream complacency and to reactionary backlash in the ongoing quest for social justice in and beyond the United States. In striking the closing note of the first decade, this Afterword therefore offers a forward-looking account of this moment in the history of a project, a jurisprudential experiment, that remains always under construction.⁴

As this brief account indicates, we view LatCrit theory, community and praxis as an effort both to interject “Latinas/os” into the ongoing development of critical approaches to law and policy,⁵ as well as to expand and advance the growing field of

___ or visit the LatCrit website www.latcrit.org; for additional discussion of the LatCrit symposia, see also infra notes ___ - ___ and accompanying text.

³ The LatCrit Portfolio of Projects is the collection of community projects undertaken collectively by LatCrit scholars and partner groups or institutions. Projects are included or removed from the Portfolio from time to time based on community resources and circumstances. More information on the projects currently and previously in the Portfolio are presented at the LatCrit website, www.latcrit.org; for additional discussion of the LatCrit Portfolio of Projects, see also infra notes ___ - ___ and accompanying text.

⁴ As we have previously written, the LatCrit enterprise is a fluid, ongoing convergence of efforts by diversely situated scholars and activists. For a sample of readings on “LatCrit” as a jurisprudential experiment, see infra note ___ and sources cited therein.

⁵ See infra notes ___ - ___ and accompanying text on LatCrit and its precursors.

critical outsider jurisprudence initiated in previous years by our predecessors.⁶ In doing so, we have sought to interrogate the multiple internal diversities that characterize Latinas/os in this country and across national borders, as well as the interplay of those and similar diversities within and across other social/national/regional groups subordinated by law and policy. With this experiment, we have sought not only to create a “safe space” for critical outsider jurisprudence and its incubation, but we also have endeavored to conceive and promote critical approaches to formal legal education that might help reform the structure of the status quo. This ongoing effort at “collective personal praxis” of course is intended both as a collective act of subversion against, and of resistance to, the dominant norms and practices of formal legal education in the United States today. Thus, a key point to understanding the LatCrit experiment and its aspirations is that the annual conferences and other projects in our portfolio are conceptualized and conducted not only as welcome respites, appendages or punctuation

⁶ Marti Matsuda The term “outsider jurisprudence” was first used by Professor Mari J. Matsuda. See Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 MICH. L. REV. 2320, 2323 (1989). Here, the term is preceded with “critical” to emphasize this key feature of the body of work to which LatCrit theory belongs. LatCrit theory is one strand in critical outsider jurisprudence, along with critical race theory, critical race feminism, Asian American scholarship, and Queer legal theory. The birth and growth of outsider jurisprudence have been punctuated by various ruptures, perhaps most notably the rupture with critical legal studies that gave way to the emergence of critical race theory. For a collection of works that recount those events, see Symposium, *Minority Critiques of the Critical Legal Studies Movement*, 22 HARV. C.R.-C.L. REV. 297 (1987); see also Symposium, *Critical Legal Studies*, 36 STAN. L. REV. 1 (1984) (describing, and presenting critical legal studies). In turn, similarly conflicted experiences marked the critical race theory workshops that followed that early rupture. See, e.g., Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 U. MIAMI L. REV. 1247 (1998) (describing the early workshops); Valdes, *Theorizing “OutCrit” Theories*, *supra* note 48, at 1288-91 (describing the later workshops). Of course, similar dynamics also have surfaced with feminist legal theory. See, e.g., Catharine A. MacKinnon, *Keeping it Real: On Anti-“Essentialism” in CROSSROADS, DIRECTIONS AND A NEW CRITICAL RACE THEORY*, *supra* note 23 (forthcoming 2002); Catharine A. MacKinnon, *From Practice To Theory, or What Is a White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13 (1991) (responding to controversies about race and gender within feminist legal theory); Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181 (2001). As this account confirms, LatCrit conferences and discourses have not been immune to this phenomenon. See also Valdes, *Theorizing “OutCrit” Theories*, *supra* note ____, at 1308-11 (recounting “contentious engagements” at various LatCrit conferences, including the first one).

points in an otherwise atomized process of producing and disseminating knowledge, but as an entirely different and coherent framework for this production and dissemination.

Despite our best efforts, we have encountered dashed hopes and failed expectations, sometimes based on real and sometimes based on imagined misunderstandings or disagreements. To meet the challenges that enable a critical transcending of difference and a mutual cultivation of critical communities and coalitions, we have consciously employed the annual conferences and the entire LatCrit Portfolio of Projects as a vehicle to make community-building, coalition-building and institution-building, integral to critical outsider jurisprudence. Standing now at the bridge between the first and second decade of this fragile enterprise, it seems plain that we have much to celebrate, as a well as much to do.

Part I of this Afterword sketches an overview of the jurisprudential and intellectual precursors that have influenced the emergence and development of LatCrit theory during this past decade. Part II turns squarely to the origins and the efforts of this enterprise, as we have endeavored to articulate the LatCrit subject position in socially relevant ways. Part III explains the special emphasis on internationalism manifest both in our symposia and more broadly in our portfolio of projects. Part IV then concludes with an outline of some key points that might help to inform our second-decade agenda. In presenting our account of this collective endeavor, we hope both to explain the vision that has guided our work thus far, as well as to welcome critical and self-critical rejoinders that might help present a more complete picture of this complex undertaking.

I

A Brief History of LatCrit Precursors

A. Intellectual and Political Sources of LatCrit/CRT

Although programmatically LatCrit is very different from critical race theory (as Part B will explain in more detail), LatCrit and critical race theory share an intellectual history. In this section, we offer one genealogy of critical race theory/LatCrit. Other histories, of course, can and should be told.⁷

1. Intellectual Sources of LatCrit/CRT

Three intellectual movements have been central sources for LatCrit/CRT: American Legal Realism, Critical Legal Studies, and US Third World feminism.

American Legal Realism

Laura Kalman observes, “When law professors write history, they mark legal realism as the jurisprudential divide between the old order and modernity.”⁸ At least two features of American Legal Realism are important foundations for LatCrit/CRT: its radical skepticism about traditional legal discourse, and its desire to replace internal with external critique of that discourse.

American Legal Realism had its heyday in the 1920s and 1930s, although there were precursors, such as Oliver Wendell Holmes and Roscoe Pound, who wrote much earlier.⁹ Legal Realism was a rebellion mounted against the conventional legal discourse

⁷ For example, see Kimberle Williams Crenshaw, *The First Decade: Critical Reflections, or “A Foot in the Closing Door,”* 49 UCLA L. REV. 1343 (2002).

⁸ LAURA KALMAN, *THE STRANGE CAREER OF LEGAL LIBERALISM* 13 (1996).

⁹ Holmes, Pound, and Benjamin Cardozo are generally associated with a school known as “Sociological Jurisprudence.” Thomas Grey describes these jurists as “Progressives,” and notes that they all distanced themselves from Langdell’s emphasis on formal logic. Grey observes that Pound and Cardozo “were the most important of the many jurists who followed Holmes in seeing law as an instrument for the conscious pursuit of social welfare, an instrument whose master term was policy rather than principle, whose master

of the time, which Jay Feinman and others have described as “formalism” or “the classic style”¹⁰ and which owed much to Christopher Columbus Langdell of Harvard Law School. Langdell’s view, which came to dominate legal education, was that law should be analyzed from within. Careful attention to and critique of the reasoning of appellate judges, based on knowledge of doctrine and principles of logic and coherence, constituted the proper method for analysis.¹¹

Legal Realists violently rejected this idea. Realism took the position, first, that the best way to understand the law and the legal system was not to take an internal perspective, but an external perspective. They were interested in bringing the tools of the social sciences to bear on the law, and they were interested in the law as policymakers, not as craftsmen. Second, the Legal Realists argued that the standard terms and concepts legal insiders, especially appellate judges, used to think about the law were not only not helpful, but actually harmful to the project of trying to understand how law actually operated. For the Realists, classical legal thought “ignored the indeterminacy of law and the role of idiosyncrasy in explaining judicial decisions.”¹² One famous Realist phrase describing the jurisprudence of the time was “transcendental nonsense.”¹³ “A judicial decision is a social event,” argued Felix Cohen. “Law is a social process, a complex of human activities, and an adequate legal science must deal with human activity, with

institution was the legislature rather than the courts, and whose servants should devote themselves to social engineering rather than doctrinal geometry.”). Thomas C. Grey, *Modern American Thought*, 106 YALE L.J. 493, 498 (1996) (book review). For other resources on American Legal Realism, see generally NEIL DUXBURY, *PATTERNS OF AMERICAN JURISPRUDENCE* (1995); BRIAN LEITER, *American Legal Realism*, in *THE BLACKWELL GUIDE TO PHILOSOPHY OF LAW AND LEGAL THEORY*, (W. Edmundson & M. Golding, eds., 2003).

¹⁰ See Jay M. Feinman, *Un-Making Law: The Classical Revival in the Common Law*, 28 SEATTLE L.REV. 1, 3-6 (describing the classical style in contract and tort); see also Morton White, *The Revolt Against Formalism in American Social Thought of the Twentieth Century*, 8 J. OF THE HIST. OF IDEAS 131 (1947).

¹¹ See generally Thomas C. Grey, [Langdell's Orthodoxy](#), 45 U. PITT. L. REV. 1 (1983).

¹² Kalman, *supra* note 8, at 15.

¹³ Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L.REV. 809 (1935).

cause and effect, with the past and the future.”¹⁴ An understanding of the inner logic of the Rule Against Perpetuities, or the ability to criticize an appellate decision’s use of precedent, was not sufficient.

The Realists were scornful of the way that the myth of law as driven by its own internal requirements of logic and precedent led to misunderstandings about the true relationship between law and social policy. For example, Robert Hale and others criticized the public/private split that continues to haunt liberal legal theory. Hale argued that although “markets” are conceptualized as governed by “private” law and therefore as the site of free and uncoerced interchanges between bargaining entities (as opposed to the “public” world of state intervention) this private/public split is not only unhelpful to policy analysis, but actually obscures what is really going on. The fact is that markets are not “free” in the sense of being prior to state action; markets are a product of the state and the law to begin with. It is pure ideology to treat “private” law, then, as somehow inherently less coercive and less public than “public” law.¹⁵

What followed from this critique of formalist legal discourse? Though the Realists were deeply skeptical about the value of case analysis, they had a great faith in the social sciences. They aimed to recast law as the object of scientific study by economists, psychologists, and sociologists. In this way, Legal Realism was the source of the modern-day law and society movement, as well as modern law and economics. Legal Realism’s corrosive skepticism about doctrinal analysis and its insistence that law is a product of society, and therefore politics, would be taken up generations later by the Critical Legal Studies movement.¹⁶

¹⁴ FELIX COHEN, *TRANSCENDENTAL NONSENSE AND THE FUNCTIONAL APPROACH* 843, 844 (1935).

¹⁵ See, e.g., Robert Hale, *Bargaining, Duress, and Economic Liberty*, 43 *COLUM. L.REV.* 5 (1943); Robert Hale, *Coercion and Distribution in a Supposedly Non-Coercive State*, 38 *POL. SC. Q.* 470 (1923).

¹⁶ For an analysis of the relationship between American Legal Realism and Critical Legal Studies, see Note, *‘Round and ‘Round the Bramble Bush: From Legal Realism to Critical Legal Scholarship*, 96 *HARV. L.REV.* 1669 (1982).

What happened to Legal Realism itself? As a political movement, legal realism in the 1930s and 1940s dissolved under political attack. As World War II approached, Legal Realists were accused of being un-American and un-patriotic, even nihilistic and therefore complicit with Fascism.¹⁷ As an intellectual movement, however, Realism really did mark the transition to modernity within jurisprudence. As it has been said, “We are all Realists now.”

Critical Legal Studies

By the end of World War II and the beginning of the Cold War, a new consensus had formed on law faculties about the role of law and the relationship between law and politics. According to the “Legal Process School,” the reason why the United States political and legal system was a beacon of freedom for the rest of the world was because of its procedural solution to the dilemmas of liberalism. Unlike Communism or fascism, liberalism assumes that there is no one path to the good life; individuals may disagree about their most deeply held values. What enables liberals to live together despite these substantive disagreements is a shared commitment to process values. If we can identify and agree on decisionmaking procedures, and if we have a shared commitment to neutrality and objectivity in decisionmaking, the democratic process can survive even the absence of consensus about the good life, and can foster each individual’s pursuit of happiness.¹⁸

Process theory cashed out, among other ways, as a preoccupation with constitutional law and its relationship to a democratic society. Alexander Bickel’s much-repeated phrase “the counter-majoritarian difficulty” expressed the sense that the judicial

¹⁷ See, e.g., Francis E. Lucey, S.J., *Natural Law and American Legal Realism: Their Respective Contributions to a Theory of Law in a Democratic Society*, 30 GEO. L.J. 493, 512 (1942) (suggesting that the consequence of Legal Realism is that “physical force or might makes right,” and that this is “causing a Second World War”).

¹⁸ See generally EDWARD A. PURCELL, JR. *THE CRISIS OF DEMOCRATIC THEORY: SCIENTIFIC NATURALISM AND THE PROBLEM OF VALUE* (1973).

branch, though contemplated by the Constitution, nevertheless risked illegitimacy to the extent that it thwarted the will of the people.¹⁹ For Bickel, the solution was for courts to exercise the “passive virtues” of deciding cases on the narrowest grounds possible. Herbert Wechsler insisted that judicial review of majoritarian decisions was illegitimate unless based purely on objectively derived “neutral principles.”²⁰ More liberal process scholars, such as John Ely, argued that courts could use their counter-majoritarian power for good rather than evil; for Ely, judges interpreting the Constitution had a duty to keep the channels of political decisionmaking free of prejudice.²¹ For all the process scholars, recent Supreme Court decisions such as *Brown v. Board of Education*²² were deeply problematic, and highlighted the need for courts to walk a fine line between aggression and deference in their dance with the other two branches of government.

Just as American Legal Realism burst on the scene with a loud raspberry directed at Langdellian formalism, Critical Legal Studies (CLS) burst on the scene with a loud and rude critique of the Legal Process School.²³ Sociologically, CLS was a product of the 1960s. Many of the main leaders of CLS were people who went to law school during that decade, and absorbed both skepticism about the Establishment and a belief in a better, more authentic way of relating to other human beings.²⁴ Substantively, CLS was very much a product of American Legal Realism. Crits (as they called themselves) argued that legal doctrine is “indeterminate”: although it looks as though legal principles decide cases, they really can be used to rationalize any outcome.²⁵ Law is not distinct from

¹⁹ See ALEXANDER BICKEL, *THE LEAST DANGEROUS BRANCH* 16 (1962) (“The root difficulty is that judicial review is a countermajoritarian force in our system.”).

²⁰ HERBERT WECHSLER, *Toward Neutral Principles of Constitutional Law*, in *PRINCIPLES, POLITICS, AND FUNDAMENTAL LAW* 3 (1961).

²¹ JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* (1980).

²² 347 U.S. 483 (1954).

²³ For a comprehensive bibliography of CLS's works, see Duncan Kennedy and Karl E. Klare, *A Bibliography of Critical Legal Studies*, 94 *YALE L.J.* 461 (1984).

²⁴ See generally Pierre Schlag, *U.S. CLS*, 10 *LAW & CRITIQUE* 199 (1999). Schlag argues that for the Crits, critique was also psychologically and culturally motivated: “remember, this is a time when you cannot trust anyone over thirty.” *Id.* at 201.

²⁵ See Mark Tushnet, *Where The Action Is: Critical Legal Studies and Empiricism*, 36 *STAN. L.REV.* 575, 578 (1984) (“doctrine neither provides a determinant answer to questions nor covers all conceivable

politics, and that the two are separate is the big lie of legal reasoning.²⁶ Like the Realists before them, the Crits argued that legal doctrine was not only not helpful in figuring out why cases were decided the way they were; it was actually harmful. The Crits saw legal doctrine as a form of ideology, serving purposes of *reification*, *mystification*, and *legitimation*. Legal concepts such as “crime” or “property” were reified to the extent that they were treated as things existing in the real, natural world instead of socio-legal artifacts. Legal concepts such as “crime” or “property” also served the purpose of mystification, insofar as these seemingly neat concepts obscured the messy social world of relations of power. Finally, legal doctrine as a whole served the legitimation process by making existing distributions of wealth and power seem natural, normal, and necessary. Mantras like “objectivity” and “neutrality” masked the fact that power relations lay at the heart of law.²⁷

With respect to method, Crits brought something new to the table: the new methods of reading texts that were sweeping in from other disciplines in the form of structuralist and post-structuralist “theory.” Crits borrowed from structuralism, for example, to argue that a given legal doctrine was animated by “fundamental contradictions” that generated arguments for opposing outcomes.²⁸ Their purpose was to expose law as politics by other means.

In addition, many Crits brought their ‘60s faith in real, authentic human relations to the table. Scholars like Peter Gabel talked about total critique, or “trashing” as it came

situations.”). For a more formal statement of this thesis, see MARK KELMAN, A GUIDE TO CRITICAL LEGAL STUDIES 15-16 (1987).

²⁶ See Peter Gabel, *Founding Father Knows Best: A Response to Tushnet*, 1 TIKKUN 41 (“The radical aim of this work [CLS] is not simply to show that all legal decisions are actually political decisions, but to undermine the legitimacy of ‘legal reasoning’ itself as a powerful symbol of cultural authority”).

²⁷ See ROBERT W. GORDON, *New Developments in Legal Theory*, in .), THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 413, 418-420 (David Kairys ed., rev. ed. 1990.) (explaining legal rights and legal reasoning in terms of Gramsci’s concept of “hegemony”); James Boyle, *A Symposium of Critical Legal Studies: Introduction*, 34 AM. U. L.REV. 927, 930 (1985) (discussing “false necessity”); Peter Gabel, *Reification in Legal Reasoning*, 3 RES. L. & SOC. 25, 26-27 (S. Spitzer ed. 1980) (discussing “reification”).

²⁸ See MARK KELMAN, A GUIDE TO CRITICAL LEGAL STUDIES 16-17 (describing Duncan Kennedy’s notion of “fundamental contradictions”); Tushnet, *supra* note 25, at 578.

to be called, as a path toward an existential moment of “intersubjective zap” when the reader would realize in a flash that everything is contingent – that human social relations don’t have to be the way they are. For Gabel, this moment of zap carried within it the possibility of true, authentic human relations crystallizing, rather than mystified ones.²⁹ Other critics questioned the utility of “rights talk” altogether, and some called for a new language of “needs” that would speak from an ethic of connection and compassion rather than coercion and isolation.³⁰

What happened to Critical Legal Studies? Like Legal Realism before it, CLS was viciously attacked by people inside and outside legal academia. Critics were accused of being nihilists, seeking to destroy the law without putting anything in its place.³¹ Paul Carrington of Duke Law School publicly demanded that Critics leave academia.³² Lots of Critics did so involuntarily, by being denied tenure. Many of those who survived the threats

²⁹ See Peter Gabel, *The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves*, 62 TEX. L. REV. 1563 (arguing that law promotes “alienation”); DUNCAN KENNEDY, A CRITIQUE OF ADJUDICATION (FIN DE SIECLE) iv (1997) (“Grappling with the ‘real issues’ can produce frustration or despair but also wild moments of breakthrough insight and intense moments of emotional involvement with others who are also grappling, perhaps with you--in short, it can produce ‘intersubjective zap.’”); Peter Gabel & Duncan Kennedy, *Roll over Beethoven*, 36 STAN. L. REV. 1, 21-22 (1984) (discussing love, connection, trust, and relatedness as goals of critical legal thought).

³⁰ See, e.g., See Peter Gabel, *The Phenomenology of Rights Consciousness and the Pact of the Withdrawn Selves*, 62 TEX. L. REV. 1563 (1984); Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1689-91 (1976); Duncan Kennedy, *Freedom and Constraint in Private Law Adjudication: A Critical Phenomenology*, 36 J. LEGAL EDUC. 518 (1986) [hereinafter *Kennedy, Freedom and Constraint*]; Duncan Kennedy, *The Structure of Blackstone's Commentaries*, 28 BUFF. L. REV. 205 (1979). For the suggestion that “needs talk” would be more appropriate than “rights talk,” see Mark Tushnet, *An Essay on Rights*, 62 TEX. L. REV. 1363, 1394 (1984) (“People need food and shelter right now, and demanding that those needs be satisfied--whether or not satisfying them can today persuasively be characterized as enforcing a right-- strikes me as more likely to succeed than claiming that existing rights to food and shelter must be enforced.”).

³¹ See, e.g., Phillip E. Johnson, *Do You Sincerely Want To Be [Radical?](#)*, 36 STAN. L. REV. 247, 259-69, 281-89 (1984) (arguing that the Critics refuse to address practical issues and have no positive political programs); Louis B. Schwartz, *With Gun and Camera Through Darkest CLS-Land*, 36 STAN. L. REV. 413, 448-52 (1984) (arguing that CLS writings offer grotesque and irresponsible proposals, not viable alternatives). For an evaluation of the “nihilist” claim, see Joseph Singer, *The Player and the Cards: Nihilism and Legal Theory*, 94 YALE L.J. 1 (1984).

³² Carrington argued that CLS, like other “nihilistic” schools of thought, was irrelevant to the proper mission of law schools. See Paul D. Carrington, *Of Law and the River*, 34 J. LEGAL EDUC. 222, 227 (1984) (stating that “professionalism and intellectual courage of lawyers ... cannot abide ... the embrace of nihilism and its lesson that who decides is everything, and principle nothing but cosmetic”).

and imprecations seemed to run out of steam on their own. Some, like Mark Kelman at Stanford, reinvented themselves as law and economics scholars. Others, like Steven Winter of Wayne State, went more deeply into continental philosophy and cognitive studies. Like Legal Realism before it, however, CLS left an intellectual legacy that was picked up by the younger “crit” movements emerging in the 1980s, especially feminist legal theory and critical race theory.

US Third World Feminism

As Robert Westley and Sumi Cho have written, a third important source of political and intellectual energy for LatCrit/CRT is the wave of student radicalism, beginning in the 1960s on college campuses like Berkeley and Columbia, that focused its energies on feminist and anti-racist movement.³³ Intellectually, the Third World movement drew on a long tradition of black nationalist thought,³⁴ as well on the internationalism that marked the thought of young college radicals who rejected consumer capitalism and saw Che and Mao as heroes. More particularly, the Third World movement sought to place questions of colonialism, imperialism, patriarchy, and heteropatriarchy at the center of intellectual analysis rather than at the periphery.³⁵ The movement also saw itself, in the Marxist tradition as committed to change, not just understanding. Students engaged in these movements saw knowledge as always accompanied by power, and sought to make simultaneous change in what was being taught and who was doing the teaching. The Third World movement’s direct actions on

³³ See SUMI CHO & ROBERT WESTLEY, *Historicizing Critical Race Theory’s Cutting Edge: Key Movements That Performed the Theory*, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 32 (Francisco Valdes, Jerome McCristal Culp, & Angela P. Harris eds., 2002). Cho and Westley identify the Third World Strike at UC Berkeley in 1969 as a key event that both achieved institutional reform and provided a model for student of color organizing.

³⁴ Athena Mutua made this observation at the session titled “On Jurisprudence: Latcrit Principles/Latcrit Values,” at the LatCrit X Conference in San Juan, Puerto Rico in October, 2005

³⁵ See generally Chela Sandoval, *U.S. Third World Feminism: The Theory and Method of Oppositional Consciousness in the Postmodern World*, 10 GENDERS 1 (1991).

campuses around the country forced universities to begin women's studies programs and ethnic studies programs to contain radical student energy. These movements, along with the riots in the streets of large cities in the late 1960s, also placed pressure on universities to institute race-conscious affirmative action programs, which in turn, by the 1980s, were producing more law students of color and beginning law teachers of color than ever before.

What happened to US Third World feminism? In part, its rebellious energies were successfully disciplined by being absorbed into academia. Women's studies and ethnic studies programs led students and faculty to put their energies into getting degrees and getting tenure instead of engaging in protests and sit-ins. Like the other two movements, however, US Third World feminism also succeeded in leaving a legacy. The movement transformed the curricula of colleges and universities, leading to a bitter backlash in the 1980s by right-wing politicians and commentators who inaugurated the "culture wars."³⁶ US Third World feminism also succeeded in opening doors for professors of color and white feminists, who in turn sparked the birth of critical race theory.

2. Political Sources of LatCrit

In the mid- to late-1980s, the Reagan Revolution was well underway, and social programs coded "black," such as "welfare" and "affirmative action" were under attack by a well-organized right-wing committed to rolling back the social welfare state and freeing the fetters of corporate capital.³⁷ The deindustrialization of the American economy was also well underway at this moment: good working-class jobs were rapidly disappearing overseas or vanishing under the pressure of new technologies. In the courts, the Warren

³⁶ See Francisco Valdes, "We Are Now of the View": *Backlash Activism, Cultural Cleansing, and the Kulturkampf To Restore the Old Deal*, 35 SETON HALL L. REV. 1407(2005).

³⁷ *Id.*

Court days were long over, and the Federalist Society had come to power and was reshaping the face of the federal judiciary.

At the same moment, affirmative action programs already in place in colleges and universities were permitting people of color in unprecedented numbers to graduate from prestigious law schools. At some schools, enough students had been admitted to form a critical mass, and some of these students began to gather around a handful of law professors of color who were talking about race in ways that went beyond the usual liberal discourse: Derrick Bell at Harvard Law School, then at the University of Oregon and then at Harvard Law School again; Michael Olivas at the University of Houston; Richard Delgado at several institutions.³⁸ [Berta and Frank: Where was Richard before Colorado? The AALS entry only begins in 1990. A.H.]. These scholars were beginning to mount a critique of civil rights discourse and civil rights scholarship itself in an effort to understand the limits of the 1960s civil rights revolution. Thus, for example, Richard Delgado published a polemic called *The Imperial Scholar* that accused the white liberal civil-rights scholarly establishment of forming a mutual admiration society that locked out the voices of people of color.³⁹ Derrick Bell published the pioneering casebook *Race, Racism, and American Law*, which focused critically on the relationship between law and racial subordination.⁴⁰

Some of these faculty and students found shelter and alliances with CLS. Several CLS scholars, for example, regularly sponsored a “summer camp” for people interested in learning about critical theory, and at some of those summer camps women and people of color started to form caucuses specifically devoted to feminist and race issues. One result of these energies and interchanges was a 1987 symposium issue published in the

³⁸ For a first-person account of the Third World Coalition’s organizing at Harvard, which produced Derrick Bell’s “Alternative Course” and inspired a host of people of color to go into legal academia, see Crenshaw, *supra* note 7, at 1344-1359.

³⁹ Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984).

⁴⁰ Derrick A. Bell, Jr., *Race, Racism and American Law* (2nd ed. 1980)

Harvard Civil Rights-Civil Liberties Law Review called *Minority Critiques of CLS*.⁴¹ Some of the authors published in that symposium would be the founding generation of critical race theory: Patricia Williams, Mari Matsuda, Harlon Dalton. These authors were generally sympathetic to the CLS critique of legal reasoning, but broke with CLS on at least two key points: for them, racism was a central category for understanding American law, and an understanding of racism made a reliance on state coercion through law indispensable (if possibly also insufficient) to racial justice.

In 1989, the first annual summer workshop on Critical Race Theory was held at a retreat center outside Madison, Wisconsin. The participants were a multiracial group, including Matsuda, Delgado, Kendall Thomas, Kimberle Crenshaw, Harlon Dalton, Neil Gotanda, Phil Nash, Angela Harris, and Ginger Patterson.⁴² It was also a group with a lot of strong feminist voices, and a group determined to create a new kind of discourse.

CRT took from CLS its skepticism about legal doctrine and legal theory, and its conviction that law and politics are not separate, as well as a friendliness toward post-structural theory. CRT added, however, a sense of political urgency and a desire for collective action and self-determination that had been weak or lacking within CLS. Where the critics had attacked “hierarchy” in general and looked forward to a transformation of human relations from mystified and isolated to authentic and communitarian, race-crits identified with the Third World people of color struggle and sought political and legal transformation in the here and now.⁴³ The desire for meaningful and immediate action, of course, was in direct tension both with the reactionary national political environment and with lawyers’ professional training,

⁴¹ See Jose A. Bracamonte, *Foreword: Minority Critiques of the Critical Legal Studies Movement*, 22 HARV. C.R.-C.L. L. REV. 297, 297 (1987)

⁴² See Crenshaw, *supra* note 7, at xx.

⁴³ For a good discussion of the basic principles and tenets of CRT, see Devon Carbado and Mitu Gulati, *The Law and Economics of Critical Race Theory*, 112 Yale L.J. 1757 (2003); see also Darren Hutchinson, *Critical Race Histories: In and Out*, 53 Am. U. L.R. 1187 (2004).

creating a tension between “reform” and “revolution” described by Kimberle Crenshaw in a pathbreaking article that became a central text of critical race theory.⁴⁴

Critical race theory also added a new method of analysis to the CLS playbook: storytelling. One of the first debates stirred up by CRT was the claim that there is an epistemological gap between white people and people of color, such that in many ways whites and nonwhites do not live in the same social or political world. As a matter of theory, this philosophical claim connected to a more abstract discussion within post-structuralist theory about the status of objective truth. As a matter of practice, many race-crits turned to telling stories in the first person, or including first-person narratives by others in their work.⁴⁵

As an intellectual movement, CRT galvanized many scholars of color right away, and took immediate root in legal academia. Like Legal Realism and CLS before it, CRT was also immediately attacked. Some of these attacks came from within legal academia, and even from other people of color. African American professor Randall Kennedy of Harvard Law School was an early critic of CRT, arguing that the race-crits had failed to meet the rigorous standards of traditional legal scholarship and thus were not entitled to criticize that scholarship.⁴⁶ More predictably, white commentators were offended by CRT’s criticism of white liberalism and its claim to a distinct “voice of color.” In a 1987 article in the *New Republic*, United States Circuit Judge Richard A. Posner argued that Critical Race Theorists appeared to be “whiners and wolf-criers,” “labile and intellectually limited,” “divisive,” and “weak.”⁴⁷ Posner asserts that Critical Race

⁴⁴ Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1378 (1988).

⁴⁵ See, e.g., Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539 (1991); Alex M. Johnson, Jr., *The New Voice of Color*, 100 YALE L.J. 2007, 2008 (1991); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2412 (1989).

⁴⁶ Randall Kennedy, *Racial Critiques of Legal Academia*, 102 Harv. L. Rev. 1745 (1989).

⁴⁷ Richard A. Posner, *The Skin Trade*, *New Republic*, Oct. 13, 1997, at 40.

theorists' scholarship is "inaccurate" and marred by "extremism . . . paranoia . . . hysteria . . . and irrationalism." Posner also made the famous declaration that "Richard Delgado is as white as I am," apparently meaning that Delgado lacked standing to offer any racial critique.⁴⁸ United States Circuit Judge Alex Kozinski concluded that critical race theorists were members of a group he called "radical multiculturalists," who are "loud and militant" and "brand those who oppose them as sexist, racist or worse."⁴⁹ Jeffrey Rosen of the New Republic similarly portrayed race-crits as privileged whiners and "tenured radicals."⁵⁰ Paul Carrington, who had also demanded that Crits leave the academy, went toe-to-toe with his Duke colleague Jerome Culp about the history of racial exclusion in American law schools.⁵¹ Daniel Farber and Suzanna Sherry of the University of Minnesota Law School wrote several articles and then a book claiming that critical race theory was both anti-Semitic and anti-Asian (because race-crits criticized traditional standards of merit) and against the Enlightenment (because race-crits used personal narratives in their work and adopted post-structuralist critiques of objectivity and neutrality).⁵²

As a political movement and a community, in addition, critical race theory was soon subject to several internal tensions. For example, the race-crits argued about whether to conceptualize themselves as an inclusive community that would welcome anyone interested in racial justice, or whether CRT should view itself as a vanguard of sophisticated thinkers committed to a set of basic principles who would work closely

⁴⁸ Richard A. Posner, *The Skin Trade: Beyond All Reason: The Radical Assault on Truth in American Law*, NEW REPUBLIC, Oct. 13, 1997, at 40 (book review).

⁴⁹ Alex Kozinski, *Bending the Law: Are Radical Multiculturalists Poisoning Young Legal Minds?*, N.Y. TIMES, Nov. 2, 1997, § 7, at 46.

⁵⁰ Jeffrey Rosen, *The Bloods and the Crits: O.J. Simpson, Critical Race Theory, the Law, and the Triumph of Color in America*, NEW REPUBLIC, December 9, 1996, at 27.

⁵¹ Jerome McCristal Culp, *Water Buffalo and Diversity: Naming Names and Reclaiming the Racial Discourse*, 26 CONN. L. REV. 209 (1993); Paul D. [Carrington](#), *Buffaloes and a Straw Man*, 26 CONN. L. REV. 295 (1994)

⁵² DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997); Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 817 (1993); Daniel A. Farber & Suzanna Sherry, *Is the Radical Critique of Merit Anti-Semitic?*, 83 CAL. L. REV. 853 (1995).

together as a cadre over time. Race-crits also argued about the priority of racial subordination with respect to other forms of subordination. Although the presence of many strong feminists made a commitment to thinking through race and gender together central to CRT, there was tension over whether sexual orientation issues ought to be considered central or peripheral to the project. This tension led to personal tensions among the participants.

As we have detailed elsewhere, these internal tensions and others played themselves out within the framework of the annual summer workshops.⁵³ The workshops were initially designed to implement the vanguard theory: the same small group of people would meet regularly to push each other's thinking forward, so participation would be limited to 20 or so people by invitation only. However, the CRT project attracted a great deal of interest and excitement in the legal academic community, and slots in the workshop were eagerly sought after. This led to a series of semi-public arguments and controversies over the criteria for inclusion, what the substantive "tenets" of CRT should be, and the processes for decision making. In the end, most of the influential forefathers and foremothers of the movement drifted away from the summer workshops entirely, controversies about the workshop process generated ongoing tensions, and eventually CRT simply ceased to exist as a community, even while it continued to thrive as an intellectual movement.

II. **"LatCrit": From Concept to Practice**

As the preceding summary of precursors indicates, LatCrit theory and praxis have been informed by a rich variety of modern and postmodern influences. Of these, perhaps the most consequential or proximate the CRT/F; the two genres of critical outsider

⁵³ See Angela P. Harris, *Building Theory, Building Community*, 8(3) SOCIAL & LEGAL STUDIES 313 (1999). See also Valdes *supra* note ____ (comparing CRT, Queer and Latcrit jurisprudential experiments.)

jurisprudence⁵⁴ that we may call LatCrit’s “cousin.”⁵⁵ This proximity results in part from the historical fact that the CRT workshops occasioned many of the events and experiences that helped to catalyze “LatCrit” theorizing as a concrete and contemporary subject position within the legal academy of the United States.⁵⁶ Thus, while the body of literature accumulating at that time under the rubric of “critical race theory”⁵⁷ and/or “critical race feminism”⁵⁸ represented the most direct intellectual inheritance that LatCrit theorists used as a point of departure, the small annual gatherings taking place under the rubric of the “critical race theory workshop” provided the venues at which personalized conceptions about “doing theory” were formed by the generations of critical outsider scholars that happened to converge at those events between 1989 and 1996.⁵⁹

A. Origins: Background Experience and Social Context

⁵⁴ See supra note ___ and sources cited therein on outsider jurisprudence.

⁵⁵ Francisco Valdes, Foreword—*Latina/o Ethnicities, Critical Race Theory, And Post-Identity Politics In Postmodern Legal Culture: From Practices To Possibilities*, 9 LA RAZA L.J. 1 (1996).

⁵⁶ See Francisco Valdes, Afterword—*Theorizing “OutCrit” Theories: Coalitional Method and Comparative Jurisprudential Experience – RaceCrits, QueerCrits and LatCrits*, 53 U. MIAMI L. REV. 1265 (1999) [hereinafter *Theorizing OutCrit Theories*] (drawing lessons for LatCrits from the experiences of other outsider efforts, principally those of RaceCrits and QueerCrits); see also infra note ___ and sources cited therein on LatCrit theory.

⁵⁷ CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw, Neal Gotanda, Gary Peller & Kendall Thomas eds., 1995); CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado ed., 1995); CRITICAL RACE THEORY: HISTORIES, CROSSROADS, DIRECTIONS (Francisco Valdes, Jerome McCristal Culp, Jr., & Angela P. Harris eds. 2002).

⁵⁸ For background readings, see CRITICAL RACE FEMINISM (Adrien K. Wing ed., 2d ed. 2003) and GLOBAL CRITICAL RACE FEMINISM (Adrien K. Wing ed., 2000)

⁵⁹ The first CRT Workshop took place in Wisconsin, in 1989, while the last one in that original series took place in New Orleans, in 1996. The following year, a tenth-anniversary CRT conference took place at Yale Law School, and the papers from that conference are published in CRITICAL RACE THEORY: HISTORIES, CROSSROADS, DIRECTIONS (Francisco Valdes, Jerome McCristal Culp, Jr. & Angela P. Harris, eds., 2002). For one early account of CRT’s origins and self-conception, see CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT xvii-xxviii (Kimberlé Crenshaw, Neal Gotanda, Gary Peller & Kendall Thomas eds., 1995). For another account, see Sumi Cho & Robert Westley, *Historicizing Critical Race Theory’s Cutting Edge: Key Movements that Performed the Theory*, in CRITICAL RACE THEORY: HISTORIES, CROSSROADS, DIRECTIONS, *supra*, at 32.

Those conceptions of “doing theory” became crystallized in many of our minds into a trio of dilemmas resulting from the discourse and experience of critical race workshops and theory. The first dilemma revolved around the question of openness regarding the academic gatherings that we hoped would help to nourish the development of critical outsider jurisprudence in enduring ways – and along counter-disciplinary, inter-national, and trans-cultural lines.⁶⁰ The second dilemma, related to the first, focused on whether elements of social identity, such as race, could, should or would be employed in order to demarcate inclusion or participation in these venues, regardless of how “open” they otherwise might be. And the third, embedded in the prior two, was whether or how the praxis of “community building” interfaced with the project of knowledge production in the context of critical outsider jurisprudence. These three dilemmas were salient in the conception and design of what later came to be known as the Annual LatCrit Conferences (ALCs).⁶¹

In addition, the experiment that we now denominate as “LatCrit theory” was shaped in part by the larger zeitgeist of culture warfare and anti-critical backlash.⁶² Nationally, the “culture wars”⁶³ of the past several decades in the United States both

⁶⁰ For more on the original and continuing centrality of internationalism in LatCrit theory, praxis and community-building, see *infra* Part III; *see also infra* notes ___ - ___ and accompanying text (on counter-disciplinary efforts in and from LatCrit scholars).

⁶¹ See *infra* notes ___ - ___ and accompanying text on the design of the Annual LatCrit Conferences (ALCs).

⁶² For a contemporary overview of the times and their implications for the production of critical outsider jurisprudence, see Keith Aoki, *The Scholarship of Reconstruction and the Politics of Backlash*, 81 IOWA L. REV. 1467 (1996)

⁶³ The roll-back agenda of the “culture wars” taking place during the past quarter century helps to explain much of the reactionary turmoil surrounding the civil rights gains of the past half century. The declaration of cultural warfare issued formally, and perhaps most conspicuously, from Republican Presidential contender Patrick Buchanan during his address to the 1992 Republican National Convention. *See* Chris Black, *Buchanan Beckons Conservatives to Come “Home,”* BOSTON GLOBE, Aug. 18, 1992, at A12; Paul Galloway, *Divided We Stand: Today’s “Cultural War” Goes Deeper than Political Slogans*, CHI. TRIB.,

reflected and promoted a sweeping “retrenchment”⁶⁴ or “counter-revolution”⁶⁵ to roll back the legal and social reforms associated with the civil rights era, as well as the New Deal.⁶⁶ Coinciding with this broad reactionary upheaval was a backlash against “critical legal studies” within the academy of the United States.⁶⁷ Both of these phenomena reflected the anxieties instigated by the relatively modest structural reforms of legal liberalism during the 20th century,⁶⁸ which also necessarily induced a rejection of critical outsider jurisprudence as simply a people-of-color fad, or charade.⁶⁹

Oct. 28, 1992, at C1; see also JAMES DAVISON HUNTER, *CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA* (1991); JAMES DAVISON HUNTER, *BEFORE THE SHOOTING BEGINS: SEARCHING FOR DEMOCRACY IN AMERICA’S CULTURE WAR* (1994). Since then, this social conflict has been waged with a vengeance to “take back” the civil rights gains of the past century in the name of the “angry white male.” See Grant Reeher & Joseph Cammarano, *In Search of the Angry White Male: Gender, Race and Issues in the 1994 Elections*, in *MIDTERM: THE ELECTIONS OF 1994 IN CONTEXT* 125 (Philip A. Klinkner ed., 1996).

⁶⁴ See Kimberlé W. Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

⁶⁵ See Kenneth L. Karst, *Religion, Sex, and Politics: Cultural Counterrevolution in Constitutional Perspective*, 24 U.C. DAVIS L. REV. 677 (1991).

⁶⁶ For a selection of LatCritical writings on this phenomenon, see the LatCrit IX symposium, *Countering Kultrkampf Politics through Critique and Justice Pedagogy*, 50 VILL. L. REV. 749 (2005).

⁶⁷ See generally Richard Michael Fischl, *The Question that Killed Critical Legal Studies*, 17 L. & SOC. INQ. 779 (1992).

⁶⁸ For background reading, see Francisco Valdes, *Culture, “Kulturkampf” and Beyond: The Antidiscrimination Principle Under the Jurisprudence of Backlash*, in *THE BLACKWELL COMPANION TO LAW AND SOCIETY* (Austin Sarat ed., 2004).

⁶⁹ This reaction, for example, led to skeptical if not hostile questions over the legitimacy or authenticity of the critical outsider scholarship, which in turn prompted sharp rejoinders. These attacks oftentimes have focused chiefly on the use of narrative in CRT-identified scholarship, which is decried as a lesser method of scholarship in part because it is viewed as less “objective” or “neutral” in its recounting of social or legal experience than traditional preferences would permit. See generally Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993); Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989). These attacks have inspired spirited responses from scholars identified with Critical Race Theory, Feminist Legal Theory, Critical Race Feminism, and Queer Legal Theory. See, e.g., Jane B. Baron, *Resistance to Stories*, 67 S. CAL. L. REV. 255 (1994); Colloquy, *Responses to Randall Kennedy’s Racial Critiques of Legal Academia*, 103 HARV. L. REV. 1844 (1990); Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539 (1991); Richard Delgado, *When a Story Is Just a Story: Does Voice Really Matter?*, 76 VA. L. REV. 95 (1990); Marc A. Fajer, *Authority, Credibility, and Pre-Understanding: A Defense of Outsider Narratives in Legal Scholarship*, 82 GEO. L.J. 1845 (1994); Alex M. Johnson, Jr., *Defending the Use of Narratives and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship*, 79 IOWA L. REV. 803 (1994). These responses likewise have elicited further replies from the skeptics. See, e.g., Daniel A. Farber & Suzanna Sherry, *The 200,000 Cards of Dimitri Yurasov: Further Reflections on Scholarship and Truth*, 46 STAN. L. REV. 647 (1994).

These micro and macro circumstances yielded the early postulates that informed our original collective efforts, as reflected in the “functions” and “guideposts” that emerged from the earliest conferences and texts under the “LatCrit” label.⁷⁰ While not constituting any sort of a canon, these four functions and seven guideposts reflect/ed the ways in which some of the earliest adherents of this enterprise viewed the larger jurisprudential, societal and political moment during which the LatCrit subject position was conceived as such. Since then, and as amplified or modified in practice by the accumulation of a decade’s experience, these early functions and guideposts have served as substantive and structural anchors to the design and operation of our collective initiatives in community-building, coalition-building and institution-building through LatCritical praxis.⁷¹

⁷⁰ The four functions of LatCrit theory (and similar efforts) posited early on are: (1) the production of knowledge; (2) the advancement of social transformation; (3) the expansion and connection of antiracism struggles; and (4) the cultivation of community and coalition, both within and beyond the confines of legal academia in the United States. For further discussion of these four functions and their relationship to LatCrit theory, see Francisco Valdes, Foreword—*Under Construction: LatCrit Consciousness, Community and Theory*, 85 CAL. L. REV. 1087, 1093-94 (1997).

The seven guideposts accompanying these four functions are: (1) Recognize and Accept the Political Nature of Legal “Scholarship” Despite Contrary Pressures; (2) Conceive Ourselves as Activist Scholars Committed to Praxis to Maximize Social Relevance; (3) Build Intra-Latina/o Communities and Inter-Group Coalitions to Promote Justice Struggles; (4) Find Commonalities While Respecting Differences to Chart Social Transformation; (5) Learn from Outsider Jurisprudence to Orient and Develop LatCrit Theory and Praxis; (6) Ensure a Continual Engagement of Self-Critique to Stay Principled and Grounded; and (7) Balance Specificity and Generality in LatCritical Analysis to Ensure Multidimensionality. For an early assessment of LatCrit “guideposts” as reflected in the proceedings of the First Annual LatCrit Conference, see Valdes, *Poised at the Cusp*, *supra* note ___ at 52-59.

These guideposts (and the functions described earlier) of course are inter-related and, in their operation, interactive. Ideally, they yield synergistic effects. They represent, *as a set*, the general sense of this project as reflected in the collective writings of the symposium based on the First Annual LatCrit Conference. In addition to the seven guideposts noted above, an eighth was originally presented as a “final observation” based on the preceding seven: “acknowledging the relationship of LatCrit to Critical Race theory” and, in particular, the “intellectual and political debt that LatCrit theorizing owes to Critical Race theorists.” *Id.* at 57-60. As this symposium illustrates again, during the past decade these four functions and seven guideposts have helped LatCrit theorists to mine substantive insights and benefits that deepen, broaden and texture existing understandings of law and policy.

⁷¹ See *infra* notes ___-___ and accompanying text on the central roles of community, coalition and institution-building in LatCrit theory and praxis.

Guided by tentative versions of the ideas and impulses that later were incorporated into these functions and guideposts, various participants in the critical race theory workshops of the early 1990s decided to call for a colloquium to take place in San Juan, Puerto Rico to test alternative approaches to the design of academic venues for outsider scholarship.⁷² This event took place during October 1995, in conjunction with the Hispanic National Bar Association annual meeting of that year and, more specifically, under the auspices of the Latino Law Professor section of that organization.⁷³ The theme of that pre-LatCrit colloquium, “Representing Latina/o Communities: Critical Race Theory and Praxis”, reflected some of the lessons suggested by the CRT workshops, and served as a model for the sort of event that later became standard for LatCrit theorists. Projecting the thoughts and premonitions that later evolved into the functions and guideposts, this colloquium program and its diverse participants reflected a sense both of what we thought was lacking previously in the sensibilities of critical outsider jurisprudence, as well as what we thought we had learned during that experience would be necessary to elaborate “OutCtit” jurisprudence with the profundity and breath required by the sweeping and complex scale of subordination in the United States and globally.⁷⁴

It was there, in San Juan in 1995, during an informal late-night conversation assessing the day’s events, that the moniker “LatCrit” was first uttered, and embraced.⁷⁵

⁷² This loosely knit group consisted of Bob Chang, Sumi Cho, Peter Kwan, Robert Westley and Frank Valdes.

⁷³ See event program at www.latcrit.org

⁷⁴ Establishing another practice that since then has become a standard LatCrit practice, the proceedings of this event were published in Colloquium, *Representing Latina/o Communities: Critical Race Theory and Praxis*, 9 BERK. LA RAZA L.J. 1 (1996). For additional discussion of the LatCrit symposia, see *infra* notes _____ and accompanying text.

⁷⁵ This particular conversation took place in Old San Juan, in Celina’s Romany apartment there, among her and Berta Hernandez-Truyol, Jose Bahamonde Gonzalez, Angel Oquendo, and Frank Valdes.

It was there, that same night, that the idea for a “First Annual LatCrit Conference” was initially floated. This idea became reality when “LatCrit I” took place the following May in San Diego, California.⁷⁶

Much transpired between those two events, of course. First, various informal but substantive conversations regarding the LatCrit moniker took place, in order to determine whether or not in fact it was a label that we could embrace for the longer term, even if an imperfect one.⁷⁷ Then, we began to elaborate the basic or general ideas that later became incorporated into the functions and guideposts, as a collective reflection of our sense of jurisprudential history and need at that particular time and place.⁷⁸ Third, we moved to form a Planning Committee for the contemplated First Annual LatCrit Conference (LCI) on the basis of the ideas or “principles” that later led to the functions and guideposts.⁷⁹ Next, we set out to secure the necessary sponsorship funds from one or more of our home institutions,⁸⁰ and began developing a detailed program based on the ideas or principles embodied in the functions and guideposts.⁸¹ Finally, we made mutual commitments to stick with the project for a full ten years. In this way, the program of the First Annual LatCrit Conference came into being between October 1995 and May 1996. Since then,

⁷⁶ See program event at www.latcrit.org.

⁷⁷ For a summary recap of these discussions and their substantive gist, see Elizabeth M. Iglesias & Francisco Valdes, Afterword—*Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 CHICANO-LATINO L. REV. 503, 568-71 (1998) (discussing the choice of “LatCrit” as partly a political decision to identify as much as possible with people of color, indigenous people, and other traditionally subordinated groups in the construction of this new discourse and praxis).

⁷⁸ See supra notes ___ - ___ and accompanying text on the LatCrit functions and guideposts.

⁷⁹ The planning committee was informally structured, and consisted of Laura Padilla, Gloria Sandrino and Frank Valdes. All three were faculty members at California Western School of Law, although Frank Valdes was visiting at Miami at the time.

⁸⁰ Reflecting the composition of the Planning Committee, the sponsors for LCI were California Western School of Law and the University of Miami School of Law.

⁸¹ See program event at www.latcrit.org.

we have continued in this same vein; since then, under the rubric of LatCrit theory, we have continued endeavoring to practice and implement the functions and guideposts, each year modifying or refining our understanding and application of them, in order always to ensure maximum social relevance for our intellectual work and activism.

B. The First Decade: Learning From Experience

As this account indicates, intellectually the LatCrit experiment proceeded from the baseline established by critical race theorists and critical race feminists. We proceeded from the understanding that “identity” is always a constitutive element of law and policy, and that multiple identities are always implicated in the adoption of any particular legal or policy regime.⁸² We acknowledged the centrality and relevance of “difference” in the understanding of the multiple identities embodied by all individuals, and present in every social group.⁸³ We embraced the antistatutory principle, as a

⁸²See, e.g., Angela P. Harris, *Foreword: The Unbearable Lightness of Identity*, 2 AFR. AM. L. & POL’Y REP. 207 (1995). On the emergence of a “LatCrit” subject position, see Francisco Valdes, *Foreword—Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997) (hereinafter *Poised at the Cusp*) (introducing the papers and proceedings of the first LatCrit conference). For other early or contemporary accounts, see Berta Esperanza Hernandez-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 HARV. LATINO L. REV. 199, 200-05 (1997); Kevin R. Johnson & George A. Martinez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies, Activism and Scholarship*, 53 U. MIAMI L. REV. 1143 (1999). Cf. Margaret E. Montoya, *LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions*, 53 U. MIAMI L. REV. 1119 (1999); see also Elizabeth M. Iglesias & Francisco Valdes, *Afterword—Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 CHICANO-LATINO L. REV. 503 (1998).

⁸³See, e.g., Keith Aoki, *Language is a Virus*, 53 U. MIAMI L. REV. 968 (1999) (noting extent of Asian American participation in LatCrit conferences and community); 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); Jerome McCristal Culp, Jr., *Latinos, Blacks, Others and the New Legal Narrative*, 2 HARV. LATINO L. REV. 479 (1997) (reflecting on relevance of LatCrit project to African Americans); Stephanie M. Wildman, *Reflections on Whiteness & Latina/o Critical Theory*, 2 HARV. LATINO L. REV. 307 (1997) (reflecting on the significance of the LatCrit project from a white critical feminist perspective).

The “sameness” and “difference” discourse of course has attracted the attention of many scholars. See, e.g., MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION AND AMERICAN LAW* (1990); see also Regina Austin, *Black Women, Sisterhood, and the Difference/Deviance Divide*, 26 NEW

normative anchor and substantive successor to the anti-discrimination principle, as elaborated by outsider scholars in previous years.⁸⁴ We took up the ongoing interrogation of existing sociolegal identities, as constructed over time, to pursue the insights of intersectionality, anti-essentialism and multidimensionality.⁸⁵ We accepted

ENG. L. REV. 877 (1992); Martha Albertson Fineman, *Feminist Theory in Law: The Difference It Makes*, 2 COLUM. J. OF GENDER & L. 1 (1992); Joan C. Williams, *Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist and Critical Race Theory*, 1991 DUKE L. J. 296. The collective effort to mint concepts like antiessentialism, multiplicity, intersectionality, cosynthesis, wholism, interconnectivity, multidimensionality and the like thus also reflects a similar grappling with issues of sameness and difference in various genres of contemporary critical legal theory. See *infra* note ___ and sources cited therein on these issues, and similar themes or concepts, in critical outsider jurisprudence, including LatCrit theory.

⁸⁴ The antisubordination principle is generally associated with critical outsider jurisprudence, although its initial articulation originates with Owen Fiss. See Owen M. Fiss, *Groups and the Equal Protection Clause*, 5 J. PHIL. & PUB. AFFAIRS 107 (1976). In both its original articulation and its OutCrit elaboration, the antisubordination principle is conceived as a jurisprudential honing of the antidiscrimination principle in order to “get at” the social problems associated with domination and subjugation. See Paul Brest, Foreword—*In Defense of the Antidiscrimination Principle*, 90 HARV. L. REV. 1 (1976) (articulating the principle and reviewing the Supreme Court’s elaboration and application of it). The antidiscrimination principle, as interpreted in the form of formal equality, was made “blind” to the social and conceptual asymmetries between domination and subjugation, and was likewise made to regard all kinds of “discrimination” as equal, and equally suspect. This construction of antidiscrimination as remedial law and policy thus failed to distinguish between remedial and invidious forms of “discrimination,” which in turn enabled notions of “reverse discrimination” that were used effectively to halt race-conscious remedial state actions tailored to similarly race-conscious acts of invidious discrimination. See *infra* Part II. Under the antidiscrimination principle as thus applied, remedies to discrimination were transmuted into discrimination; the remedy became the problem because the problem was defined as “discrimination” and the cure “antidiscrimination” whereas the actual problem was and is subordination, and the cure thus must be tailored to antisubordination. For a discussion of antisubordination as a successor to antidiscrimination in the context of critical outsider jurisprudence, see Jerome M. Culp, Jr., Angela P. Harris & Francisco Valdes, *Subject Unrest*, 55 STAN. L. REV. 2435, 2449 (2003).

⁸⁵ Many scholars have contributed to the construction of current standards and techniques in the continuing elaboration of critical outsider jurisprudence. For key early contributions, see Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN’S RTS. L. REP. 7 (1989); see also Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139. Since then, various RaceCrit and LatCrit scholars have continued to develop concepts and tools of critical legal theory to build on these foundational concepts, striving progressively to better capture the dynamics of “identity politics” in law and society. See, e.g., e. christi cunningham, *The Rise of Identity Politics I: The Myth of the Protected Class in Title VII Disparate Treatment Cases*, 30 U. CONN. L. REV. 441 (1998) (on wholism); Berta Hernandez-Truyol, *Building Bridges – Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1991) (on multidimensionality); Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 U. CONN. L. REV. 561 (1997) (on multidimensionality); Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257 (1997) (on cosynthesis); Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities and Inter-Connectivities*, 5 S. CAL. REV. L. & WOMEN’S STUD. 25 (1995) (on interconnectivity); see generally Charles R. Lawrence III, Foreword—*Race, Multiculturalism and the Jurisprudence of*

that social justice, in the form of social transformation, was the ultimate marker of relevance in the articulation of theory and the production of knowledge.⁸⁶ In short, we took the substantive insights and gains of “OutCrit” theorizing as they stood at that time,⁸⁷ and endeavored both to develop and apply them in light of the limitations or shortcomings suggested by our jurisprudential experiences to date.⁸⁸

Transformation, 47 STAN. L. REV. 819, 834-35 (1995) (urging greater efforts along these lines to promote multifaceted projects of social transformation).

⁸⁶ For compelling calls to social relevance in critical outsider jurisprudence, see Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741 (1994); Charles R. Lawrence III, *Foreword: Race, Multiculturalism and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819 (1995).

⁸⁷ Because the “OutCrit” denomination is an effort to conceptualize and operationalize the social justice analyses and struggles of varied and overlapping yet “different” subordinated groups in an interconnective way, “OutCrit” refers (at least initially) to those scholars who identify and align themselves with outgroups in this country, as well as globally, including most notably those who in recent times have launched lines of critical inquiry within legal culture, including critical legal studies. *See generally supra* note 4 and sources cited therein on outsider jurisprudence. Thus, while “outsider jurisprudence” may be, but is not always nor necessarily, “critical” in perspective, the OutCrit stance is, by definition, critical in nature. OutCrit positionality, then, is framed around the need to critique and combat, in collective and coordinated ways, the mutually-reinforcing systems of subordination and domination that construct both outgroups and ingroups. For further discussion of this designation, see Francisco Valdes, *Outsider Scholars, Legal Theory and OutCrit Perspectivity: Postsubordination Vision as Jurisprudential Method*, 49 DEPAUL L. REV. 831 (2000).

⁸⁸ From the inception of this jurisprudential experiment, LatCrit theorists have endeavored to learn from prior or concurrent jurisprudential efforts, and thus have developed practices designed to ensure that our work is grounded in the cumulative insights of critical outsider jurisprudence. This effort to “perform the theory” includes practices such as “rotating the center” of our programmatic lines of inquiry and creating multi-year “streams of programming” to ensure that critical attention is focused on the varied specific aspects of subordination – as well as on the interlocking nature of systems of subordination – based on race, ethnicity, gender, class, sexuality, religion, geography, physical ability and similar axis of identity employed in law and policy to engineer social hierarchies. *See, e.g.*, Kevin R. Johnson, *Foreword—Celebrating LatCrit Theory: What Do We Do When the Music Stops?*, 33 DAVIS L. REV. 753 (2000) (reviewing the essays of the LatCrit IV symposium and evaluating LatCrit methodologies to identify some of the challenges facing LatCrit scholars); Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177 (1998) (discussing and assessing LatCritical techniques and methods of analysis and praxis in the context of the LatCrit III conference); Valdes, *Theorizing OutCrit Theories*, *supra* note ___, at 1299-1306 (discussing these and similar practices); *see also* Johnson & Martinez, *supra* note ___, at 1150-61 (reviewing LatCrit methodologies and premises in relationship to other civil rights movements, in particular Chicana/o scholarship and activism); Montoya, *supra* note ___, at 121-27 (reviewing the techniques, and the precursors and origins, of LatCrit theory and method); Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 U. MIAMI L. REV. 1247 (1998) (analyzing and comparing the methods and experiences of the Critical Race Theory Workshops that preceded the emergence of LatCrit events to those of the Annual LatCrit Conferences to adduce the continuities between the two); *see also generally* Dorothy E. Roberts, *BlackCrit Theory and the Problem of Essentialism*, 53 U. MIAMI L. REV. 855 (1998) (describing critical approaches to the study of “blackness” within LatCrit theory).

C. LatCrit Contributions: Five Highlights

Thus, from the substantive baseline formed by these and similar insights of critical outsider jurisprudence up to the mid 1990's, the LatCrit community proceeded to make its own intellectual contributions in the ongoing elaboration of outsider scholarship from within the legal academy of the United States. These intellectual contributions, of course, may be framed in a number of different ways and levels of description. However, we identify five general contributions as perhaps the most significant thus far.

Latina/o Identities and Diversities:

The first of these is the elaboration of “Latina/o” identity as a multiply variegated category.⁸⁹ To do so, we embarked on collective and programmatic investigations of ethnicity, religion, language, immigration and similar constructs to better understand, and to underscore, the intra-group diversities of “Latina/o” populations, specifically but not

⁸⁹ LatCrits, like “Latinas/os” and other social groups, are a collection of “different” individuals. See Sylvia A. Marotta & Jorge G. Garcia, *Latinos in the United States in 2000*, 25 HISP. J. BEHAVIORAL SCI. 13 (2003); Luis Angel Toro, “A People Distinct from Others”: Race and Identity in Federal Indian Law and the Hispanic Classification in OMB Directive No. 15, 26 TEXAS TECH. L. REV. 1219 (1995) (critiquing the ramifications of the current labeling system in the United States, which “lumps together all people who can connect themselves to some “Spanish origin or culture” together as “Hispanics”); see also, Jorge Klor de Alva, *Telling Hispanics Apart: Latino Sociocultural Diveristy*, in THE HISPANIC EXPERIENCE IN THE UNITED STATES: CONTEMPORARY ISSUES AND PERSPECTIVES 107-36 (Edna Acosta-Belen & Barbara R. Sjoström eds., 1988); SUZANNE OBOLER, ETHNIC LABELS, LATIN LIVES (1995); EARL SHORRIS, LATINOS: A BIOGRAPHY OF THE PEOPLE (1992); LATINOS IN THE UNITED STATES: HISTORY, LAW AND PERSPECTIVE (Antoinette Sedillo Lopez ed., 1995); see generally THE LATINO/A CONDITION: A CRITICAL READER (Richard Delgado & Jean Stephancic eds., 1998).

Conventional labels used socially in the United States are captured formally in the most recent national census, which amalgamates “Spanish/Hispanic/Latino” into a single category, and then subdivides it into subgroup varieties like “Mexican, Mexican Am., Chicano” and “Puerto Rican” and “Cuban.” See United States Department of Commerce, Bureau of the Census, Form D-1, Question Seven (2000) (copy on file with author); see generally Alex M. Saragoza, Concepcion R. Juarez, Abel Valenzuela, Jr. and Oscar Gonzalez, *History and Public Policy: Title VII and the Use of the Hispanic Classification* 5 LA RAZA L. J. 1 (1992) (discussing federal adoption of the “Hispanic” label and critiquing the conglomeration of the Spanish-Hispanic-Latina/o labels into a single identity category). Thus, from the very beginning, LatCrit scholars have grappled with racial, ethnic and other forms of “diversity” both within and beyond “Latina/o” communities. See *supra* note ___ and sources cited therein on sameness/difference issues.

only in the United States.⁹⁰ These collective investigations sparked not only vigorous debate and searching inquiry, but also exposed the fallacy of the “essentialized” Latina/o employed in mainstream venues to make law and policy regarding “Latinas/os.”⁹¹ These investigations demonstrated and documented key demographic facts, including that not all Latinas and Latinos are Hispanic; that not all Latinas and Latinos are Roman Catholic; that not all Latinas/os speak Spanish, or want to; and that not all Latinas/o live in the United States due to immigration. Conversely, these investigations showcased the complexities and diversities of Latina/o communities in terms of race and ethnicity,⁹²

⁹⁰For some of the essays flowing from that encounter, see Emily Fowler Hartigan, *Disturbing the Peace*, 19 CHICANO-LATINO L. REV. 479 (1998); Nancy K. Ota, *Falling From Grace: A Meditation on LatCrit II*, 19 CHICANO-LATINO L. REV. 437 (1998); Reynaldo Anaya Valencia, *On Being an “Out” Catholic: Contextualizing The Role of Religion at LatCrit II*, 19 CHICANO-LATINO L. REV. 449 (1998). For a discussion of these essays, and of religion in LatCrit theory, see Margaret E. Montoya, Introduction—*Religious Rituals and LatCrit Theorizing*, 19 CHICANO-LATINO L. REV. 417 (1998).

For readings on religion and LatCrit theory flowing from follow-up programs, see Guadalupe Luna, *Gold, Souls and Wandering Clerics: California Missions, Native Californians and LatCrit Theory*, 33 U.C. DAVIS L. REV. 921 (2000); Laura M. Padilla, *Latinas and Religion: Subordination or State of Grace?*, 33 U.C. DAVIS L. REV. 973 (2000); Terry Rey, *“The Virgin’s Slip is Full of Fireflies”: The Multiform Struggle Over the Virgin Mary’s Legitimierende Macht in Latin America and Its U.S. Diasporic Communities*, 33 U.C. DAVIS L. REV. 955 (2000). For a discussion of these essays, and more generally of religion in LatCrit theory, see Francisco Valdes, Introduction—*Piercing Webs of Power: Identity, Resistance and Hope in LatCrit Theory and Praxis*, 33 U.C. DAVIS L. REV. 897 (2000).

As these readings indicate, today’s religious traditions in the Americas – like Euroheteropatriarchy as a whole – were transplanted from Europe, and forcibly imposed on indigenous communities and religions, as part of colonial conquest and domestication. See Francisco Valdes *Unpacking Heteropatriarchy: Tracing the Conflation of Sex, Gender and Sexual Orientation to Its Origins*, 8 YALE J.L. & HUM. 161 (1996) (describing some basic tenets of Euro-heteropatriarchal social ideologies); Francisco Valdes, *Identity Maneuvers in Law and Society: Vignettes of a Euro-American Heteropatriarchy*, 71 UMKC L. REV. 377 (2002) (elaborating Euro-heteropatriarchy); see also Valdes, *Beyond Sexual Orientation*, Francisco Valdes, Afterword—*Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality and Responsibility in Social Justice Scholarship—Or, Legal Scholars as Cultural Warriors*, 75 DENVER U. L. REV. 1409 (1998) at 1427-28 and sources cited therein.

⁹¹For a critical discussion of “hispanismo” as a form of identity ideology that helps to explain this essentialization, see Francisco Valdes, *Race, Ethnicity and Hispanismo in a Triangular Perspective: The “Essential Latina/o” and LatCrit Theory*, 48 UCLA L. REV. 305 (2000).

⁹²For a sampling of readings on race, ethnicity and identity in LatCrit theory, see Robert S. Chang, *Racial Cross-Dressing*, 2 HARV. LATINO L. REV. 423 (1997); Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395 (1997); Leslie Espinoza & Angela P. Harris, Afterword—*Embracing the Tar-Baby: LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1510 (1997); Ian F. Haney Lopez, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 85 CAL. L. REV. 1143 (1997); Ian F. Haney Lopez, *Retaining Race: LatCrit Theory and Mexican American Identity in Hernandez v. Texas*, 2 HARV. LATINO L. REV. 279 (1997); Kevin R. Johnson, *“Melting Pot” or “Ring of Fire”?: Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1262 (1997); Cheryl Little, *Intergroup Coalitions and Immigration Politics: The Haitian Experience in Florida*, 53 U. MIAMI L. REV. 717 (1999); Guadalupe Luna, *On the Complexities of Race: The Treaty of Guadalupe*

religion,⁹³ culture,⁹⁴ imperialism and colonialism,⁹⁵ language and its suppression,⁹⁶ class⁹⁷ and immigration status.⁹⁸ These investigations, in short, de-centered uncritical

Hidalgo and Dred Scott v. Sandford, 53 U. MIAMI L. REV. 691 (1999); George A. Martinez, *African-Americans, Latinos and the Construction of Race: Toward an Epistemic Coalition*, 19 UCLA CHICANO-LATINO L. REV. 213 (1998); Rachel Moran, *Neither Black Nor White*, 2 HARV. LATINO L. REV. 61 (1997); Juan F. Perea, *The Black/White Binary Paradigm of Race: The 'Normal Science' of American Racial Thought*, 85 CAL. L. REV. 1213 (1997); Imani Perry, *Of Desi, J.Lo and Color Matters: Critical Race Theory and the Architecture of Race*, 52 CLEV. ST. L. REV. 139 (2005).

In addition, a cluster of essays in the LatCrit V symposium was focused on comparative racialization. For a discussion of those essays, see Kevin R. Johnson, *Introduction – Comparative Racialization: Culture and National Origin in Latina/o Communities*, 78 DENVER U. L. REV. 633 (2001). For other recent readings on comparative racialization in the United States and Latin America, see Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 UCLA L. REV. 1705 (2000); Neil Gotanda, *Comparative Racialization: Racial Profiling and the Case of Wen Ho Lee*, 47 UCLA L. REV. 1689 (2000); Tanya Kateri Hernandez, *Multiracial Matrix: The Role of Ideology in Enforcement of Antidiscrimination Laws, A United States-Latin America Comparison*, 87 CORNELL L. REV. 1093, 1133-44 (2002).

⁹³ See supra note ___ and sources cited therein on religion and LatCrit theory.

⁹⁴ Most recently, for example, LatCrits devoted the Ninth Annual LatCrit Conference to cultural warfare. See supra note ___ for the LatCrit IX symposium.

⁹⁵ By way of recent example, the LatCrit VI symposium included a cluster of essays on Cultural and PostColonial Critiques in LatCrit Theory. For a discussion of these essays, see Keith Aoki, *Cluster Introduction: One Hundred Years of Solitude: The Alternate Futures of LatCrit Theory*, 54 RUTGERS L. REV. 1031 (2002). These lines of LatCritical inquiry overlap because they flow from the same set of historical and structural facts: the Latina/o “presence” in the lands now known as the United States is due principally to American expansionism and imperialism; the Mexican, Puerto Rican and other Latina/o communities now in the United States originally did not cross any borders to arrive or migrate here – the border crossed them, thereby initiating the dynamics of today. See, e.g., RODOLFO ACUÑA, OCCUPIED AMERICA (3d ed., 1988) (assessing Chicana/o communities as internal colonies); Gilbert Paul Carrasco, *Latinos in the United States: Invitation and Exile*, in IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE 190 (Jean F. Perea ed., 1997) (reviewing history of United States labor policies designed to attract Latina/o migrant workers, who then are not only exploited and maltreated but also disdained as “illegal immigrants”); Gerald P. Lopez, *Undocumented Mexican Migration: In Search of a Just Immigration Law and Policy*, 28 UCLA L. REV. 615 (1981) (evaluating the structural dis/incentives to immigration from Mexico to the United States); MARIFELI PEREZ-STABLE, THE CUBAN REVOLUTION: ORIGINS, COURSE, LEGACY 14-60 (2d ed. 1999) (outlining the “mediated sovereignty” of Cuba under the tutelage of the United States following its “independence” from Spain after the conclusion of the Spanish-American War in 1898); MARIA DE LOS ANGELES TORRES, IN THE LAND OF MIRRORS: CUBAN EXILE POLITICS IN THE UNITED STATES 74-83 (1999); Ediberto Roman, *Empire Forgotten: The United States' Colonization of Puerto Rico*, 42 VILL. L. REV. 1119 (1997) (critiquing the colonial position of Puerto Rico as a “commonwealth of the United States, also resulting from the conclusion of the Spanish-American War in 1898); see also Symposium, *Understanding the Treaty of Guadalupe Hidalgo on Its 150th Anniversary*, 5 S.W.J.L. & TRADE AM. 1 (1998).

American adventurism and interventionism throughout the Americas under policy imperatives such as the Monroe Doctrine and the Cold War similarly has catalyzed Latinas/os' presence in the United States – it is no coincidence that Latina/o groups in the United States hail mostly from the places in which the United States has most interfered, such as Mexico, Puerto Rico, Cuba, Nicaragua, Guatemala, the Dominican Republic and El Salvador. See generally ARLENE M. DAVILA, SPONSORED IDENTITIES: CULTURAL POLITICS IN PUERTO RICO (1997); WALTER LAFEVER, INEVITABLE REVOLUTIONS: THE UNITED STATES IN CENTRAL AMERICA (2d ed. 1993); THE PUERTO RICAN MOVEMENT: VOICES FROM THE DIASPORA (Andres Torres & Jose E. Velazques eds., 1998); THE DOMINICAN AMERICANS (Silvio Torres-Saillant & Ramona Hernandez (1998): see also generally RUBIN FRANCIS WESTON, RACISM IN U.S. IMPERIALISM (1972) (providing a comprehensive account of U.S. imperialism and white supremacy, and illustrating how

the areas targeted by those imperialist ventures now are the sources of today's immigrant communities, including Cuba, Puerto Rico, Hispaniola, the Phillipines and other areas in and beyond the Americas).

More generally, the footprints of colonial conquest throughout the Americas are well documented. See generally RICHARD DRINNON, *FACING WEST: THE METAPHYSICS OF INDIAN-HATING AND EMPIRE-BUILDING* (1990); CHARLES GIBSON, *SPAIN IN AMERICA* (1966); RAMON GUTIERREZ, *WHEN JESUS CAME, THE CORN MOTHERS WENT AWAY: MARRIAGE, SEXUALITY AND POWER IN NEW MEXICO, 1500-1846* (1991); FRANCIS JENNINGS, *THE INVASION OF AMERICA: INDIANS, COLONIALISM, AND THE CANT OF CONQUEST* (1975); LYLE H. MCALISTER, *SPAIN AND PORTUGAL IN THE NEW WORLD, 1492-1700* (1984); NATIVE AMERICAN TESTIMONY: A CHRONICLE OF INDIAN-WHITE RELATIONS FROM PROPHECY TO PRESENT, 1492-1992 (Peter Nabokov ed., 1991); DAVID J. WEBER, *THE SPANISH FRONTIER IN NORTH AMERICA* (1992); see also RICHARD C. TREXLER, *SEX AND CONQUEST: GENDERED VIOLENCE, POLITICAL ORDER, AND THE EUROPEAN CONQUEST OF THE AMERICAS* (1995) (documenting and discussing the patriarchal and homophobic aspects of the conquest).

⁹⁶ Reflecting the salience of “language” to the racialization and subordination of “Latina/o” identities, LatCrit scholars have analyzed the power dynamics of language from various angles. See, e.g., Steven W. Bender, *Direct Democracy and Distrust: The Relationship Between Language Law Rhetoric and the Language Vigilantism Experience*, 2 HARV. LATINO L. REV. 145 (1997); William Bratton, *Law and Economics of English Only*, 53 U. MIAMI L. REV. 973 (1999); Christopher David Ruiz Cameron, *How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, 85 CAL. L. REV. 1347 (1997), 10 LA RAZA L.J. 261 (1998); Drucilla Cornell, *The Imaginary of English Only*, 53 U. MIAMI L. REV. 977 (1999); Sharon K. Hom, *Lexicon Dreams and Chinese Rock and Roll: Thoughts on Culture, Language, and Translation as Strategies of Resistance and Reconstruction*, 53 U. MIAMI L. REV. 1003 (1999); Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 5 MICH. J. RACE & L. 847, 33 U. MICH. J.L. REFORM 263 (2000). For a discussion of some of these works, see Keith Aoki, Introduction—*Language is a Virus*, 53 U. MIAMI L. REV. 961 (1999). For additional readings, see Mari J. Matsuda, *Voices of America: Antidiscrimination Law and a Jurisprudence for a Last Reconstruction*, 100 YALE L.J. 1329 (1991); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism and Official English*, 77 MINN. L. REV. 269 (1992).

⁹⁷ For instance, in addition to this year's conference, the LatCrit V program was focused on “Class in LatCrit: Theory and Praxis in a World of Economic Inequality.” See Symposium, 78 DENV. U. L. REV. 467 (2001). The same is true for the prior year, when the LatCrit IV symposium included a cluster of essays on Forging Identities: Transformative Resistance in the Areas of Work, Class and the Law. For a discussion of these essays, see Maria L. Ontiveros, *Introduction*, 33 U.C. DAVIS L. REV. 1057 (2000). In addition, the LatCrit VI symposium featured a cluster of essays on Class, Economics and Social Rights. For a discussion of those essays, see Jane E Larson, *Cluster Introduction: Class, Economics and Social Rights*, 54 RUTGERS L. REV. 853 (2002). Most recently, the 2007 South North Exchange, held in Bogota, focused on “Free Market Fundamentalisms” to frame class construction in global terms. The papers of that SNX program will be published as Symposium, *Free-Market Fundamentalisms and LatCrit Theory*, ___ SEATTLE J. SOC. J. ___ (forthcoming 2006) (publishing the papers of the fourth SNX, held during 2006 in Bogota, Colombia). For more information on this and other SNX programs, visit the LatCrit website at www.latcrit.org.

For individual essays published in the LatCrit symposia, see Christopher David Ruiz Cameron, *The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers*, 53 U. MIAMI L. REV. 1089 (1999); Roberto L. Corrada, *A Personal Re/View of Latino/a Identity, Gender and Class Issues in the Context of the Labor Dispute Between Sprint and La Connexion Familiar*, 53 U. MIAMI L. REV. 1065 (1999) (centering class issues and identities in searching exploration of the ethical conundrums confronting Latina/os professionals); Tanya K. Hernandez, *An Exploration of Class-Based Approaches to Racial Justice: The Cuban Context*, 33 U.C. DAVIS L. REV. 1135 (2000); Mary Romero, *Immigration and the Servant Problem and the Legacy of the Domestic Labor Debate: Where Can You Find Good Help These Days!*, 53 U. MIAMI L. REV. 1045 (1999).

⁹⁸ This ongoing inquiry is reflected in next year's conference theme, which is focused on immigration-related issues. Reflecting the Las Vegas location for next year's conference, the LatCrit XI theme is

assumptions that all Latinas/os fit predominant stereotypes, assumptions that skew law and policy to the detriment of multiply diverse Latina/o communities.

Intra/Inter-Group Frameworks:

Secondly, LatCrit theorists have sought to advance critical outsider jurisprudence by developing and calling for analyses and projects that encompass both intra-group and inter-group issues; in other words, analyses and projects that promote both intra- and inter-group understanding. This approach to scope has facilitated a more detailed and accurate mapping of the patterns formed across groups by the particularities reflected in each, and invited comparative, inter-group study of common categories like “race” or “culture” that are relevant to the subordination of “different” social groups.⁹⁹ Over time, this effort has helped produce a better comprehension and critique of the interlocking nature of the “different” systems of subordination that jointly and severally keep existing hierarchies of injustice and inequality in place both within and across cultures.

Internationalism and Critical Comparativism:

In addition, LatCrit theorists have contributed a new-found emphasis on internationalism and transnationality in the on-going evolution of critical outsider jurisprudence. Transcending “domestic” constructions of race, ethnicity and other categories relevant to law and policy, this expansion has helped not only to deepen and broaden critical understanding of those categories as exercises of power, but also have

“Working and Living in the Global Playground: Frontstage and Backstage.” The LatCrit XI Call for Papers and related information are available on the LatCrit website, www.latcrit.org.

⁹⁹ See supra note ___ and sources cited therein on same/difference issues and the formation of LatCrit theory.

helped expose how those “different” exercises of power, using the “same” categories, are tailored in myriad ways to local circumstances and varied regions or locales.¹⁰⁰ This third contribution, akin to the effort to examine law and power in cross-group contexts, has helped bridge what used to be a gulf between the “local” or “domestic” and the “global” or “foreign” in critical outsider jurisprudence.

Counter-Disciplinarity:

The fourth contribution we have endeavored to make during the past ten years to the broader project of critical outsider jurisprudence is to push for greater interdisciplinary¹⁰¹, or counter-disciplinary, texts, programs, projects and programs. This

¹⁰⁰For a sampling of readings on transnationalism and internationalism in LatCrit theory, see Symposium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 1 (1996-97) (publishing the proceedings of the first LatCrit International and Comparative Law Colloquium, or ICC, which took place in Miami following the LatCrit I conference in San Diego and the pre-LatCrit colloquium in Puerto Rico); see also Max J. Castro, *Democracy in Anti-Subordination Perspective: Local/Global Intersections: An Introduction*, 53 U. MIAMI L. REV. 863 (1999); Gil Gott, *Critical Race Globalism?: Global Political Economy, And The Intersections Of Race, Nation, and Class* 33 U.C. DAVIS L. REV. 1503 (2000); Ivelaw L. Griffith, *Drugs and Democracy in the Caribbean*, 53 U. MIAMI L. REV. 869 (1999); Sharon K. Hom, *Lexicon Dreams and Chinese Rock and Roll: Thoughts on Culture, Language, Translation as Strategies of Resistance and Reconstruction*, 53 U. MIAMI L. REV. 1003 (1999); Irwin P. Stotzky, *Suppressing the Beast*, 53 U. MIAMI L. REV. 883 (1999); Ratna Kapur & Tayyab Mahmud, *Hegemony, Coercion and Their Teeth-Gritting Harmony: A Commentary on Power, Culture, and Sexuality in Franco's Spain*, 5 MICH. J. RACE & L. 995 (2000), 33 U. MICH. J.L. REFORM 411 (2000); Tayyab Mahmud, *Colonialism and Modern Constructions of Race: A Preliminary Inquiry*, 53 U. MIAMI L. REV. 1219 (1999); Mario Martinez, *Property as an Instrument of Power in Nicaragua*, 53 U. MIAMI L. REV. 907 (1999); Julie Mertus, *Mapping Civil Society Transplants: A Preliminary Comparison of Eastern Europe and Latin America*, 53 U. MIAMI L. REV. 921 (1999); Ediberto Roman, *Reconstructing Self-Determination: The Role of Critical Theory in Positivist International Law Paradigm*, 53 U. MIAMI L. REV. 943 (1999); Ediberto Roman, *A Race Approach To International Law (Rail): Is There A Need For Yet Another Critique Of International Law?* 33 U.C. DAVIS L. REV. 1519 (2000); Berta Esperanza Hernandez-Truyol, *Building Bridges: Bringing International Human Rights Home*, 9 LA RAZA L. J. 69 (1996); Ediberto Roman, *A Race Approach To International Law (Rail): Is There A Need For Yet Another Critique Of International Law?* 33 U.C. DAVIS L. REV. 1519 (2000).

¹⁰¹ For a sampling of some early contributions to the LatCrit record from authors who are not U.S. law professors, see Ratna Kapur, *Post-Colonial Economies of Desire: Legal Representations of the Sexual Subaltern*, 78 DENV. U. L. REV. 855 (2001); Lisa Sun-Hee Park, *Perpetuation of Poverty Through “Public Charge.”* 78 DENV. U. L. REV. 1205 (2001); K.L. Broad, *Critical Borderlands & Interdisciplinary, Intersectional Coalitions*, 78 DENV. U. L. REV. 1151 (2001); Virginia P. Coto, *LUCHA, The Struggle for Life: Legal Services for Battered Immigrant Women*, 53 U. MIAMI L. REV. 749 (1999); Lyra Logan, *Florida's Minority Participation in Legal Education Program*, 53 U. MIAMI L. REV. 743 (1999); Gema Perez-Sanchez, *Franco's Spain, Queer Nation?*, 5 MICH. J. RACE & L. 943; 33 U. MICH. J. L. REFORM 359

emphasis on inter- or counter-disciplinarity, like the cross-group and internationalist initiatives of the past decade, aims to refine and develop the core categories or concepts of critical outsider jurisprudence as previously mapped out. The proactive effort to make other disciplines integral to the elaboration of LatCrit theory, while not always successful, has helped both to bolster and to texture our approaches to and understandings

(2000); Luz Guerra, *LatCrit y La Des-Colonizacion Nuestra: Taking Colon Out*, 19 UCLA CHICANO-LATINO L. REV. 339 (1998); Max J. Castro, *Democracy in Anti-Subordination Perspective: Local/Global Intersections: An Introduction*, 53 U. MIAMI L. REV. 863 (1999); Ivelaw L. Griffith, *Drugs and Democracy in the Caribbean*, 53 U. MIAMI L. REV. 869 (1999).

For a similar but more recent sampling, see Aniella Gonzalez, *Being Individuals: A Comparative Look at Relationships, Gender & the Public/Private Dichotomy*, 9 U. MIAMI INT'L & COMP. L. REV. 115 (2001); Angie L. Padin, *Hispanismo as Leverage: LatCrit Questions Spain's Motives*, 9 U. MIAMI INT'L & COMP. L. REV. 165 (2001); Nicholas A. Gunia, *Half The Story Has Never Been Told: Popular Jamaican Music As Antisubordination Praxis*, 33 U.C. DAVIS L. REV. 1333 (2000); Ellen J. Pader, *Space of Hate: Ethnicity, Architecture and Housing Discrimination*, 54 RUTGERS L. REV. 881 (2002); Manuel J. Caro, *Typing Racism in El Ejido To Spanish and European Politics*, 54 RUTGERS L. REV. 893 (2002); Beverly A. Greene, *Heterosexism and Internalized Racism Among African Americans: The Connections and Considerations for African American Lesbians and Bisexual Women: A Clinical Psychological Perspective*, 54 RUTGERS L. REV. 931 (2002); Ward Churchill, *The Law Stood Squarely on Its Head: U.S. Legal Doctrine, Indigenous Self-Determination and the Question of World Order*, 81 OREGON L. REV. 663 (2002); Joe R. Feagin, *White Supremacy and Mexican Americans: Rethinking the Black-White Paradigm*, 54 RUTGERS L. REV. 959 (2002); Boaventura de Sousa Santos, *Nuestra America; Reinventing a Subaltern Paradigm of Recognition and Redistribution*, 54 RUTGERS L. REV. 1049 (2002); Deon Erasmus, "Will She Speak, or Won't She? That is The Question": *Comments on the Communal Land Rights Bill*, 16 FLA. J. INT'L L. 539 (2004); Dominique Legros, *Indigenous Peoples' Self-Determination and the Broken Tin Kettle Music of Human Rights and Liberal Democracy*, 16 FLA. J. INT'L L. 579 (2004); Jose Maria Monzon, *Let There Be Justice: The Double Standard of Application of Legal Norms*, 16 FLA. J. INT'L L. 639 (2004); Karin van Marle, "Meeting the World Halfway"- *The Limits of Legal Transformation*, 16 FLA. J. INT'L L. 651 (2004); Charles R. Venator Santiago, *Race, Nation-Building and Legal Transculturation During the Haitian Unification Period (1822-1844): Towards a Haitian Perspective*, 16 FLA. J. INT'L L. 667 (2004); Fred Evans, *Multi-voiced Society: Philosophical Nuances on Rushdie's Midnight's Children*, 16 FLA. J. INT'L L. 727 (2004); Joshua Price & Maria Lugones, *Encuentros and Desencuentros: Reflections on a LatCrit Colloquium in Latin America*, 16 FLA. J. INT'L L. 743 (2004); Charles R. Venator Santiago, *Race, Nation-Building and Legal Transculturation During the Haitian Unification Period (1822-1844): Towards a Dominican Perspective*, 52 CLEVE. ST. L. REV. 63 (2005); Mary Romero & Marwah Serag, *Violation of Latino Civil Rights Resulting From INS and Local Police's Use of Race, Culture and Class Profiling: The Case of the Chandler Roundup in Arizona*, 52 CLEVE. ST. L. REV. 75 (2005); Marta Nunez Sarmiento, *Changes in Gender Ideology Among Professional Women and Men in Cuba Today*, 52 CLEVE. ST. L. REV. 173 (2005); Nicholas Espiritu, *(E)Racing Youth: The Racialized Construction of California's Proposition 21 and the Development of Alternate Contestations*, 52 CLEVE. ST. L. REV. 189 (2005); Aaron Monty, *Retranslating Differences*, 52 CLEVE. ST. L. REV. 255 (2005); Ronald L. Mize, Jr., *Reparations for Mexican Braceros? Lessons Learned from Japanese and African American Attempts at Redress*, 52 CLEVE. ST. L. REV. 273 (2005); Kim David Chanbonpin, *How the Border Crossed Us: Filling the Gap Between Plume v. Seward and the Dispossession of Mexican Landowners in California After 1848*, 52 CLEVE. ST. L. REV. 297 (2005); Antonia Darder, *Schooling and the Empire of Capital: Unleashing the Contradictions*, 50 VILL. L. REV. 847 (2005); Mary Romero, *Revisiting Outcasts with a Sociological Imagination*, 50 VILL. L. REV. 925 (2005); Maria Clara Dias, *Moral Dimensions of Nationalism*, 50 VILL. L. REV. 1063 (2005); Gil Gott, *The Devil We Know: Racial Subordination and National Security Law*, 50 VILL. L. REV. 1073 (2005).

of “identity” as a legal tool deployed for particular purposes in particular places at particular times.

Class and, not or, Identity:

Finally, the fifth basic contribution that we would put forth in this brief sketch would be the collective or programmatic insistence that “class” and “identity” are not oppositional categories of analysis and action and, instead, must be understood as “different” dimensions of the interlocking systems of oppression always under interrogation.¹⁰² This approach, in other words, emphasizes that “class” is, itself, an axis of sociolegal identity and that, as such, it must be incorporated into multidimensional analyses of power in law and society. This approach, has tempered the influence of dichotomies between “discursive” and “material” aspects of power based on identity politics in LatCrit scholarship,¹⁰³ and has positioned us to better understand how class and other forms of identity are mutually constitutive and mutually reinforcing, both in law and in society.

These five sets of contributions, we recognize, delve into areas that also have occupied the attention of antiracism scholars of many stripes.^{104*} We recognize, also, that these contributions accumulate in the form both of individual texts as well as of

¹⁰² For one articulation of this point, see Elizabeth M. Iglesias & Francisco Valdes, Afterword—*LatCrit at Five: Institutionalizing a Postsubordination Future*, 78 DENVER U. L. REV. 1249, 1251-55 (2001).

¹⁰³ For one good example, see Reginald C. Oh, *Mapping a Materialist LatCrit Discourse on Racism*, 52 CLEVE. ST. L. REV. 243 (2005). For background reading on “class” in critical outsider jurisprudence, see Kevin Johnson, *Roll Over Beethoven: “A Critical Examination of Recent Writing About Race,”* 82 TEX. L. REV. 715 (2004).

¹⁰⁴ *See, e.g., (enter representative sources from “other” folks?????)

collective or programmatic actions.¹⁰⁵ The following brief account of conference themes attempts to recognize how LatCritters have pursued these five lines of inquiry during the past ten years in collective, *programmatic* terms as expressions of collective commitment. With this conceptual and theoretical template as background, we can step back and better discern how each annual conference, and each annual conference theme, represented a building block in our collective efforts to construct a sturdy anticolonial jurisprudence in the form of LatCrit theory, praxis and community.

D. The Annual Conferences: From LCI to LCX

The first half of this first decade, as reflected in the conference themes of the first five LatCrit conferences, shows how we have proceeded programmatically in the pursuit of the functions and guideposts.¹⁰⁶ The first conference, in San Diego, focused on Latina/o pan-ethnicity, questioned intra-Latina/o sameness and difference to help dislodge essentialized notions of this social group, as well as to explore the similarities and differences that might affect intra-group coalitions and communities. The next year, in San Antonio we followed up with a direct focus on difference, coalition and community in the LatCrit II conference, which expanded the focus of our inquiry from intra to both intra- and inter-group contexts. Having “rotated the center” from intra- to inter-group issues in the first two years, we “streamed” this basic focus during the following two years. At LatCrit III in Miami, we thematized the notion of “comparative Latinas/os” to build on the first two years of inquiry regarding intra- and inter-group issues, while the following year, at LatCrit IV in Tahoe, we built on this effort by

¹⁰⁵ See, e.g., supra notes ___ - ___ and sources therein citing both individual essays as well as conference programs.

¹⁰⁶ All conference materials are posted to the LatCrit website. See www.latcrit.org.

focusing specifically on “marginal intersections.” Both of these themes aimed to center categories, whether based on race, ethnicity, nationality, religion, sexuality, sexual orientation, gender or other typically marginalized aspects of identity, that oftentimes are erased in “Latina/o” studies. Finally, we concluded the first half of the first decade, in Denver, by turning our collective programmatic attention at LatCrit V to the relationship of “class” identity to other forms of identity. Year by year, then, collectively we endeavored to produce a more co-synthetic, inter-connective and multidimensional understanding of injustice.¹⁰⁷

More recently, the conference themes during the past five years illustrate how we have endeavored since then to build on the identity-focused explorations of those first five years. In Gainesville, the LatCrit VI conference theme, for example, turned our attention squarely to South-North issues and interconnections, while the next year, at LatCrit VII in Oregon, we focused on social movements as a category of study to better understand our own enterprise. The following year, the LatCrit VIII conference in Cleveland centered “the city” to underscore the material settings that house and frame so many within the populations we seek to help. Reflecting the zeitgeist of these times, we thematized *kulturkampf*, or culture warfare, in Philadelphia the subsequent year, thus investigating the larger societal dynamic prevailing during our own formative years. Finally, this year in San Juan, we returned to the relationship between material hierarchies, identity politics and legal injustice. Whether viewed as a progression of ten steps, or as two sets of five steps each, the conference themes of the first decade illustrated how this community has endeavored programmatically to apply the lessons

¹⁰⁷ See supra note ___ and sources cited therein on these and similar concepts as tools of OutCrit theorizing.

learned from prior jurisprudential experiments, as well as to advance antistatutory knowledge and action with and through LatCrit theory and praxis.¹⁰⁸

E. Collective Personal Praxis

As we noted above, some early adherents of the movement now known as LatCrit theory concluded from their prior involvement with critical race theory and critical race feminism that inclusivity and continuity had become necessary to the enduring sustenance of critical outsider jurisprudence within the United States. These two beliefs are reflected in the original ten-year commitment that we made to each other in 1995, as well as in the decisions to structure LatCrit venues in an “open-to-all” fashion anchored to antiessentialist and multidimensional theory and praxis.¹⁰⁹ These two conclusions, as we elaborate below, also can be seen in the original emphasis on community-building as integral to cultivating a “discourse” that, in fact, would constitute a coherent discourse rather than a series of more-or-less interconnected works or texts. These two beliefs also can be seen in the mechanisms we devised to ensure “in practice” that we would fulfill the need for both.

Of those early mechanisms, perhaps two stand out as most significant, in the early years at least. These two practices or mechanisms -- “rotating centers” and “streams of programming” – operate in tandem. The commitment to rotate the center of collective and programmatic study from year to year was designed to ensure that our collective critical understanding of various sociolegal categories would be carried out progressively

¹⁰⁸ And, next year in Las Vegas, we continue this ongoing effort with a focus on labor and immigration issues related to corporate forms of “globalization” that oftentimes dominate regional integration arrangements. See LatCrit XI conference materials at the LatCrit website, www.latcrit.org.

¹⁰⁹ See *supra* notes ___ - ___ and accompanying text on early discussions and decisions regarding LatCrit projects.

from event to event or year to year, and nourish inclusivity in substantive as well as structural terms.¹¹⁰ This decision to “rotate the center” of programmatic inquiry, however, had to be tempered to avoid the possibility of superficial, one-shot investigations of complex issues or categories. Thus, while rotating the center annually, we also made a dual commitment to “streams of programming” that would ensure multi-year follow-up programs, panels or projects to help us deepen and detail the programmatic investigations that we elected to center in any given program, and thereby also help to reinforce continuity in substantive and structural ways.¹¹¹ These two practices, together, entailed a mutual commitment to “de-center” issues or priorities that various individual members of or inchoate community might prefer or prioritize over others, while assuring at the same time that all priorities would in turn receive serious and sustained attention from the whole group.

As the foregoing sketch indicates, the design, structure and content of the annual conferences and their programs effectively became the first context in which LatCrits sought to apply or “perform” the theoretical insights about “doing” critical theory drawn most directly from the experiences of prior experiments in critical outsider jurisprudence. Indeed, the planning process for the early conferences oftentimes focused on issues of “difference” that had preoccupied critical outsider scholars for sometime, and which had contributed to the dispersal of the critical race theory workshop and its original participants.¹¹² During that time, the conference planning committees labored not only to gain insights from prior jurisprudential experience, but also from our own experiences as

¹¹⁰ See supra notes ___ - ___ and accompanying text on “rotating centers” and related LatCrit practices designed to manage sameness/difference issues in collective projects.

¹¹¹ See supra notes ___ - ___ and accompanying text on the first decade of conference themes.

¹¹² See Phillips and Valdes both at supra note ___ on the CRT workshops.

they accumulated from year to year.¹¹³ This gradual evolutionary process of experience, self-critical reflection and expansion by consensus eventually led to the two key marks of maturation that have occupied more and more of our time during the second half of this first decade.

The first of these two major developmental steps was the decision to incorporate ourselves formally as a non-profit entity.¹¹⁴ The move to incorporate was designed to facilitate two key needs: the need for formal, institutionalized continuity to help ensure programmatic progression, and the need for fiscal independence to ensure our collective freedom to act in a manner we deemed principled, rather than in a manner designed to appease the political considerations that oftentimes attach to our dependence on our “home” institutions. The corporate form allowed us to pursue the creation of enduring structures that would facilitate substantive, intellectual and collective continuity while also enabling us to establish a community treasury, which however modest, would retain any surpluses produced by our various projects or programs as seed money for collective projects.¹¹⁵ Thus, formal incorporation helped us to secure the conditions both for the ongoing evolution of this critical enterprise as well as a fall-back resource to help us sustain the various initiatives that we undertook *even* when mainstream institutions declined or failed to support us in the ways that they otherwise might or should.

¹¹³ This effort is reflected in the commitment to continuity, see *supra* note ___ and accompanying text, as well as in the “LatCrit Conference Transition Memos” designed to convey institutional experience and memory, which are posted to the LatCrit website, www.latcrit.org.

¹¹⁴ As a result, today a Steering Committee and Board of Directors are responsible for the coordination of the Project Teams and their management of community projects and resources. To review the LatCrit By-Laws, see www.latcrit.org; see also *infra* notes ___-___ and accompanying text on the LatCrit self-governance structure.

¹¹⁵ This move in turn has greatly facilitated the development of the LatCrit Portfolio of Projects. See *infra* note ___ and accompanying text.

The second significant step in this first-decade maturation process was the streamlining of the various projects or initiatives that we had undertaken during the first several years into a coherent “Portfolio of Projects” administered by self-selected and semi-autonomous “Project Teams,” each headed or coordinated by a “Project Team Coordinator.”¹¹⁶ This “Portfolio” thus grew from the original focus on the annual conferences to include first, an Annual Planning Retreat (APR) that took place immediately after the annual conferences beginning with the LatCrit VI conference in Oregon and, then, a series of other projects or initiatives that were incubated in large part during the Annual Planning Retreat. Today, this Portfolio comprises over a dozen ongoing active community projects organized into three general subheadings: Academic Events and Community Projects; Scholarly Publications and Informational Resources; and, Student Scholarships and Educational Programs. Each project in this Portfolio continues to be administered by a team spearheaded by a coordinator, and the Portfolio as a whole is supervised by a diverse Board of Directors and Steering Committee that also operate the corporate affairs of our community.¹¹⁷

Most recently, this ongoing process of self-institutionalization for the principled production and practice of theory has been focused increasingly on ensuring the cultivation and integration of scholars from other disciplines, from the South, and from younger generations into the ranks of this still-fragile effort.¹¹⁸ This ongoing praxis, at

¹¹⁶ For more information on the LatCrit Portfolio of Projects and the Project Teams that administer them, see www.latcrit.org.

¹¹⁷ The Steering Committee and Board include members from various countries, regions and disciplines, who bring varied identity perspectives to common questions. The members of both the LatCrit Steering Committee and Board of Directors are listed on the LatCrit website. See www.latcrit.org.

¹¹⁸ This emphasis can be seen in recent projects focused on each of these areas, such as *Clave*, the South-North Exchange on Theory, Culture and Law (SNX) and the LatCrit-SALT Faculty Development Workshop (FDW). The first of these, *Clave*, is the LatCrit academic journal, which is published on-line with content in Portuguese, Spanish and English. The SNX is explicitly focused on cultivating south-north

its most basic level, thus constitutes our ongoing efforts to make LatCrit theory and critical outsider jurisprudence a socially relevant exercise. It is these kinds of actions – formal incorporation, the Portfolio of Projects, and related steps -- that cumulatively constitute “collective personal praxis”, which in recent years has become a LatCrit hallmark.

F. Community Building: Individuals, Coalitions and Institutions

This focus on praxis, or the performance of theory in and through our Portfolio of Projects, reflects another early priority: the commitment to building a critical community, a priority that also reflects the influence of LatCrit’s precursors on our earliest efforts.¹¹⁹

This emphasis, moreover, recognizes our humanity as integral to our work, and aims to

interdisciplinary discourses and networks. The FDW is explicitly focused on supporting junior law faculty in the United States, especially those interested in critical outsider jurisprudence. For more information on these and other LatCrit projects, visit the LatCrit website, www.latcrit.org.

¹¹⁹ For a thoughtful discussion of this topic in LatCrit and other genres of critical outsider jurisprudence, see Angela P. Harris, *Building Theory, Building Community*, 8 SOC. & LEGAL STUD. 313 (1999). This topic also has drawn the attention of LatCrit scholars over the years, who have grappled with sources of “difference” and diversity in our community-building efforts. See, e.g., Alicia G. Abreu, *Lessons From LatCrit: Insiders and Outsiders, All at the Same Time*, 53 U. MIAMI L. REV. 787 (1999) (discussing author’s dual sense of “insider” and “outsider” positionality within LatCrit conferences); Elvia Arriola, *Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self*, 2 HARV. LATINO L. REV. 397 (1997) (viewing LatCrit from an outsider/Latina lesbian perspective); Enrique Carrasco, *Who Are We?*, 19 UCLA CHICANO-LATINO L. REV. 331 (1998) (considering the multiple roles or identities of LatCrit scholars); Max J. Castro, *Making Pan Latino: Latino Pan-Ethnicity and the Controversial Case of Cubans*, 2 HARV. LATINO L. REV. 179 (1997) (discussing the peculiar position of Cubans and Cuban Americans in Latina/o intergroup relations within the United States); Elizabeth M. Iglesias, *Human Rights in International Economic Law: Locating Latinas/os in the Linkage Debates*, 28 U. MIAMI INTER-AM. L. REV. 361 (1997) (reflecting on intra-Latina/o divisions based on differing degrees of cultural assimilation, nationalist ideologies, as well as race, class and gender hierarchies and the implications of such “difference” for progressive law reform initiatives); Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997) (reflecting on Chicana/o, Puerto Rican, and Cuban differences); Victoria Ortiz & Jennifer Elrod, *Reflections on LatCrit III: Finding “Family”*, 53 U. MIAMI L. REV. 1257 (1999) (discussing the role of “safe spaces” from community building within the legal academy in the face of “differences” that affect both the academy as well as society at large); Guadalupe T. Luna, *“La Causa Chicana” and Communicative Praxis*, 78 DENV. U. L. REV. 553 (2001) (theorizing relationship between Chicana/o studies and LatCrit theory and our community-building praxis); Ediberto Roman, *Common Ground: Perspectives on Latina-Latino Diversities*, 2 HARV. LATINO L. REV. 483, (1997) (elaborating commonalities upon which Latinas/os may build a sense of constructive collectivity); see also *infra* notes ___ and ___ and sources cited therein on sameness/difference issues in outsider jurisprudence and on Latina/o demographic heterogeneity.

situate our efforts in the context of human conditions as we know them; this priority attends to the need of outsider academics not only for formal success but also for “safe spaces” that nourish us as critical scholars and as human beings. But this aspect of the LatCrit enterprise did not track essentialized notions of sameness or similarity as the template for the community we imagined. Instead, community building as LatCrit praxis called for a principled application of the functions and guideposts to ourselves, to help us ensure operational fidelity to theoretical commitments. Thus, from onset, community building as LatCrit praxis was anchored to substantive commitments *and* to their self-critical application in the context of the community projects we have undertaken.

The importance of community-building to the production of critical outsider jurisprudence cannot be over emphasized, given the ambient dangers that confronted (and still confront) any progressive or critical undertaking in the United States. As already mentioned, two ambient dangers were most salient. The first was the anti-critical bent of the legal academy, which had engineered the “death” of critical legal studies and the banishment of “crits” from law faculties throughout the country.¹²⁰ The second was the anti-identitarian backlash of the culture wars, which insisted on formal blindness to traditionally vexed identity categories such as race, gender, ethnicity and class.¹²¹ Under these circumstances, the safest and surest way to “succeed” as a legal scholar in the United States during the 1990’s was to avoid guilt by association with “crits” and, more specifically, critical projects of color. The existence of a self-identified “community” of LatCritical scholars, therefore, is a collective act of defiance against the political

¹²⁰ See, e.g., Fischl, *supra* note ____, at ____ (discussing the cause/s of “death” of Critical Legal Studies).

¹²¹ See *supra* notes ____-____ and sources cited therein on backlash and critical outsider jurisprudence.

juggernaut that demands blindness to identity in law and policy, as well abandonment of critical inquiry into the corrupt reasons underlying the unjust status quo.¹²²

Given the background and pressures outlined above, four key features of LatCrit community building in the first decade stand out. The first is our decision to root community-building in mutual critical commitments, which form the normative baseline for this community and, ultimately for all critical coalitions.¹²³ The second is our decision to incorporate, and institutionalize our collective efforts, in order to foster *both* community-building based on this shared normative baseline and facilitate multiple opportunities for collective personal practice in the form of the LatCrit portfolio of projects. The third key feature is our insistence on securing the conditions of independence, both in substantive and in material terms, to clear the way for the ethical practice of our theoretical commitments. Finally, this emphasis on community-building

¹²² See generally, Culp et al, *Subject Unrest*, *supra* note ____.

¹²³ By “critical coalitions” we mean alliances based on a thoughtful and reciprocal interest in the goal(s) or purpose(s) of the coalition. A “critical” coalition – unlike strategic forms collaboration – is the sort of collaborative project that results from a careful and caring commitment to the substantive reason(s) for it, and that produces on all sides a reformatory agenda and cooperative dynamic that reflects this mutual commitment. See Valdes, *Postsubordination Vision*, *supra* note 22, at 835-38 (elaborating critical coalitions). For further discussion of this concept, see Julie A. Su & Eric K. Yamamoto, *Critical Coalitions: Theory and Praxis*, in *CROSSROADS, DIRECTIONS AND A NEW CRITICAL RACE THEORY* 379 (Francisco Valdes, Jerome McCristal Culp & Angela P. Harris eds., 2002); see also Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 *STAN. L. REV.* 1183, 1189 (1991) (urging antistatutory analyses to “ask the other question” as a means of theorizing across single-axis group boundaries). Related to community-building, this concern over inter-group relations and collaborations has been a consistently important theme in outsider jurisprudence, including LatCrit theory. See, e.g., Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 *HARV. LATINO L. REV.* 101 (1997) (discussing the challenges facing LatCrit theory); George A. Martinez, *African-Americans, Latinos and the Construction of Race: Toward an Epistemic Coalition*, 19 *CHICANO-LATINO L. REV.* 213 (1998) (urging Latinas/os, Blacks and other groups of color to coalesce around “race” and our collective, cumulative knowledge of white supremacy); Roman, *supra* note ____, at 483-84 (urging Latinas/os to focus on our similarities rather than our differences as a way of promoting intra-group justice and solidarity); Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 *HARV. LATINO L. REV.* 495 (1997) (analyzing inter-group grievances and relations among groups of color); see also *supra* notes ____ - ____ and sources cited therein on various lines of identity-related inquiry within LatCrit theory, including community-building and coalition-building, in the face of “difference” and diversity; see generally *supra* note ____ and sources cited therein on sameness and difference as a “dilemma” to community and coalition in and through critical legal theories devoted to antistatutory goals.

also has prompted us to ensure venues in all our conferences and gatherings for the varied sorts of personal interaction that help to produce the human solidarity necessary to withstand the pressures of the day and ameliorate the limitations of our individual and collective capacities.¹²⁴

Today, this emphasis on community building continues to guide our efforts and practices -- our approach to the Portfolio, and to all that we (might) do.¹²⁵ In recent years, reflecting our substantive concerns, the global South has become more and more salient in our community-building, coalition-building and institution-building efforts.¹²⁶ At the same time, we have continued and intensified our efforts to operate varied collective initiatives that help to create and sustain “safe spaces” within the legal

¹²⁴ This emphasis also reflects CRT’s influence on LatCrit’s designs. During the CRT workshops, many participants, including the junior scholars that later became LatCrit pioneers, noticed that the informal, post-program conversations oftentimes took insights discussed during the day to deeper, exciting levels. We noticed that those conversations, often times lasting until the wee hours of the next morning, forged not only theoretical refinements but also human relationships of understanding and solidarity. In a world that oscillates from hostility to indifference when it comes to critical theory and antistatist praxis, this sense of scholarly solidarity was important glue. Today, the LatCrit Community Suite, held both at our various academic events throughout each year, and during the Annual meeting of the American Association of Law Schools (AALS), serves this purpose. For more information on the LatCrit Community South and Suite Events, visit the LatCrit website at www.latcrit.org.

¹²⁵ As expressed in the form and structure of the Annual LatCrit Conferences, still our flagship project, this emphasis on community-building is manifest in the “twin pillars” of our approach to personal collective praxis. The commitment to continuity reflects this emphasis in the practice of rotating centers -- the act of rotation each year represented in a substantive and programmatic way the variegated diversities of the communities from which we hailed, as well the Latin critical community under construction. The commitment to inclusivity equally reflects this emphasis, as reflected in the participation and themes of the LatCrit conferences over the years. Moreover, the “streams of program” approach to substantive collective agendas promoted amongst us an ever-better understanding of the “differences” among us, and how we might build communities built on substantive commitments to each other without occluding or distorting those differences. See *supra* notes ___ - ___ and accompanying text on these and related LatCrit practices. Thus, beginning with our original project ten years ago, the various group efforts that now constitute the LatCrit Portfolio of Projects also represent acts of community-building based on the functions and guideposts of the early days, as modified over time by experience. See *supra* notes ___ - ___ and accompanying text on the original LatCrit functions and guideposts.

¹²⁶ This salience is manifest in four key projects in the LatCrit Portfolio: the Critical Global Classroom study-abroad program (CGC), the SNX, the ICC, and the LatCrit NGO, recently accredited to work with the United Nations. See *supra* notes ___, ___ and ___ for more on these and other projects; see also the LatCrit website for full information on the LatCrit Portfolio of Projects.

academy of the United States.¹²⁷ As with the substantive or intellectual evolution of our programs and projects, the varied levels of community-building in our personal collective praxis continue to expand and take new forms based on the ongoing, self-critical evaluation of experience from year to year.

G. The Commitment to Outsider Discourse and Critical Education

In addition to the practices, commitments, contributions, initiatives and projects described above, two other aspects of the first decade have been integral to the coalescence of LatCrit theory, community and praxis. The first of these has been the commitment to publish the proceedings of the annual conferences, and later our other academic events like the SNX and ICC. The second has been our commitment to the creation of opportunities for the cultivation of critical legal education. These two undertakings, while pursued in the context of various projects in the LatCrit portfolio, represent distinct community commitments.

The commitment to publish the proceedings of LatCrit academic events dates back to 1995 and the very first pre-LatCrit colloquium in San Juan.¹²⁸ There, we began a practice that we followed until LatCrit III in Miami: the practice of videotaping the conference proceedings, which we then transcribed and circulated to the presenters/authors for refinement and light footnoting, in accordance with the LatCrit Symposium Submission Guidelines.¹²⁹ We discontinued this practice with the

¹²⁷ In addition to the ALCs, this effort is evident both in the FDW, the LatCrit Community Suite during the AALS Annual Meeting. See supra notes ___ and ___ for more on these two projects; see also the LatCrit website for full information on the LatCrit Portfolio of Projects.

¹²⁸ For more information on this pre-LatCrit colloquium, see supra notes ___-___ and accompanying text.

¹²⁹ The Symposium Submission Guidelines request that authors keep their texts brief, and lightly footnoted, akin to an “oral essay” that reflects the basic substance of the conference proceedings. For this reason, the critique that some symposium essays are not tantamount to full-fledged articles misconstrues the nature and

exponential growth of the conference programs and participants, but have continued with the commitment to publish essays based on our academic programs in order to secure the three main goals that prompted the original practices. These three goals were and are: (1) providing an opportunity for scholars unable to participate in person to access the substance of our academic events; (2) providing opportunities for the publication of works devoted to critical outsider jurisprudence annually, and especially to junior faculty in the tenure process; and (3) providing ongoing support to law reviews associated with outsider communities, which oftentimes struggle to continue regular operations. Each year, with varying degrees of success, we manage to achieve these three goals with the publication of at least one – and oftentimes more – LatCrit symposium based on one (or more) academic programs,¹³⁰ whether from the ALCs, SNXs, or ICCs.¹³¹

The commitment to the cultivation of critical legal education is a response to student calls for opportunities to study areas of law and policy sometimes overlooked or slighted in the formal legal curriculum.¹³² This commitment, whether in the form of the CGC, the SSP or other student-oriented efforts,¹³³ aims to nourish the next generation/s of critical legal scholars, activists, and educators as well as to reshape the formal contours

purpose of the essays published in the LatCrit symposia. To review the LatCrit Symposium Submission Guidelines, visit the LatCrit website at www.latercrit.org.

¹³⁰ See supra note ___ and the LatCrit symposia cited therein.

¹³¹ For more information on the Annual LatCrit Conferences (ALCs), the South-North Exchanges on Theory, Culture and Law (SNXs) and the LatCrit International and Comparative Law Colloquia (ICCs), visit the LatCrit website at www.latercrit.org.

¹³² See generally Francisco Valdes, *Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism: Marking the Stirrings of Critical Legal Education*, 10 ASIAN L.J. 65 (2003) (reviewing recent efforts); see also Sanford Levinson, *Why the Canon Should be Expanded to Include the Insular Cases and the Saga of American Expansionism*, 17 CONST. COMMENT. 241 (2000). (questioning the exclusion of the Insular Cases from all basic Constitutional Law casebooks, and thus from the standard formal curriculum in schools from coast to coast).

¹³³ For more information on the Critical Global Classroom (CGC), the Student Scholar Program (SSP) and other LatCrit student-oriented initiatives, visit the LatCrit website at www.latercrit.org.

of legal education in the United States today.¹³⁴ Each year, through our various Projects and related activities, we provide today's students with the support and opportunities that we can muster to help them develop their own visions and capacities as agents of social transformation.¹³⁵

¹³⁴The LatCrit V symposium, for example, featured a cluster of essays with several focused on critical theory and pedagogy. For a discussion of these essays, see Elvia Rosales Arriola, *Introduction: Talking About Power and Pedagogy*, 78 DENVER U. L. REV. 507 (2001). In addition, the LatCrit IX symposium included a follow-up cluster as well. For a discussion of these essays, see Roberto L. Corrada, *Toward and Ethic of Teaching: Class, Race and the Promise of Community Engagement*, 50 VILL. L. REV. 837 (2005). These writings, in effect, aim to incorporate practices and theory of critical education into formal legal education. For background readings, see ANTONIA DARDER, *CULTURE AND POWER IN THE CLASSROOM: A CRITICAL FOUNDATION FOR A BICULTURAL EDUCATION* xvii (1991) (citations omitted). For the classic articulation, see PAOLO FREIRE, *PEDAGOGY OF THE OPPRESSED* (rev. ed. 2000). For one law student's insightful view of his educational experience in social and structural terms, see David Aaron DeSoto, *Ending the Conquest Won Through Institutionalized Racism in Our Schools: Multicultural Curricula and the Right to an Equal Education*, 1 HISP. L.J. 77 (1998); see also Andrea Guerrero, *Silence at Boalt Hall: The Dismantling of Affirmative Action* (2002) (documenting the restoration of institutionalized preferences for whiteness in elite law schools, and the ensuing process of resegregation at one prominent institution).

¹³⁵ See generally Anita Tijerina Revilla, *Raza Womyn Engaged in Love and Revolution: Chicana Student Activists Creating Safe Spaces Within the University*, 52 CLEV. ST. L. REV. 155 (2005). As Revilla reminds us, identity remains a hidden determinant not only in law and policy but also in formal education as well. *Id.* Indeed, as LatCrits and others have noted in prior works, the formalization of legal education was shaped in explicit ways by the social, cultural and political dominance of white, Anglo-American nativist-racism as well as societal sexism. See, e.g., Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 85 CAL. L. REV. 1449, 1475-92 (1997) (recounting how the American Bar Association, the bar examination, the Law School Aptitude Test, and other "gatekeeping" mechanisms were originated and calculated to be racist, anti-immigrant, sexist, and anti-Semitic); see also William C. Kidder, *The Rise of the Testocracy: An Essay on the LSAT, Conventional Wisdom, and the Dismantling of Diversity*, 9 TEX. J. WOMEN & L. 167 (2000) (discussing how the LSAT continues to project that history into the present); ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983) (providing a comprehensive account of the politics – including the identity politics – that dominated the institutionalization of formal legal education). See generally NICHOLAS LEMANN, *THE BIG TEST: THE SECRET HISTORY OF THE AMERICAN MERITOCRACY* (1999) (providing a similar history focused, more generally, on the standardized tests used in various educational settings in the United States).

The historically dominant racist-nativist-sexist supremacist motives behind the formalization and organization of education in the United States generally continue to be embedded in the structure specifically of legal education today. See, e.g., Charles R. Lawrence, III, *Two Views of the River: A Critique of the Liberal Defense of Affirmative Action*, 101 COLUM. L. REV. 928 (2001); Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953 (1996); see also Marina Angel, *The Glass Ceiling of Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1 (2000); Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537 (1988); Richard Delgado, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349 (1989); Richard Delgado, *Affirmative Action as Majoritarian Device: Or, Do You Really Want to be a Role Model?*, 89 MICH. L. REV. 1222 (1991); Sumi Cho & Robert Westley, *Historicizing Critical Race Theory's Cutting Edge: Key Movements that Performed the Theory*, in *CROSSROADS, DIRECTIONS AND A NEW CRITICAL RACE THEORY* 32 (Francisco Valdes, Jerome McCristal Culp, Jr. & Angela P. Harris eds., 2002); Cheryl I. Harris, *Law Professors of Color and the Academy: Of Poets and Kings*, 68 CHI.-KENT L. REV. 331 (1992); William C. Kidder, *Situating Asian Pacific Americans in the Law School Affirmative Action Debate: Empirical Facts About Thernstrom's Rhetorical Acts*, 7 ASIAN L.J. 29 (2000); Charles R. Lawrence III, *Minority Hiring in AALS Law Schools: The Need for Voluntary Quotas*, 20 U.S.F. L. REV.

These two commitments thus work in tandem with the basic objectives, practices, functions and guideposts that have helped us to imagine and pursue LatCrit theory, community and praxis during this past decade. As a set, the lessons we used as a point of departure for this jurisprudential experiment, coupled with the self-critical consideration of our accumulating experience, have helped us to construct an outsider formation to sustain criticality in the legal academy of the United States, a feat undertaken during years of increasing hostility both to outsiders and to criticality. Along the way, we have encountered productive tensions as well as shortcoming and setbacks, all of which also help to form the first-decade record registered thus far by this LatCrit community.

H. Productive Tensions, Shortcomings and Setbacks

While this community of LatCrit scholars has posted significant gains and contributions during the past decade, our efforts have been punctuated by “productive tensions” inherent to this experiment, as well as occasional setbacks and substantive shortcomings that we have encountered along the way. Thus, as we noted at the outset, we both have much to celebrate as well as to do. Here, we outline some of the tensions inherent in the conception and construction of LatCrit theory during the past ten years, as well as identify some of the specific shortcomings or setbacks that we have experienced during that time.

From the beginning, LatCrit theorists embraced “productive tensions” based, first, on identity-related sources of “difference” (both within and beyond “Latina/o” population) and, second, on the collective decision to construct an “open” space in

429 (1986); Rachel F. Moran, *Commentary: The Implications of Being a Society of One*, 20 U.S.F. L. REV. 503 (1986); Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313 (2000).

LatCrit programs and venues despite the multiple vectors of difference within and among the “outsider” jurisprudential community. The most common expression of these productive tensions focused on the relevance of “race” to Latina/o populations, to which we turned our attention in the first couple of years.¹³⁶ More particularly, the question that oftentimes has arisen focuses on the role and relevance of groups or communities racialized and/or ethnicized as something other than “Latina/o” – and whether scholars who identify with such communities are within the bailiwick or scope of LatCrit inquiry. In other words, this question or tension asks whether scholars or projects not conceived as “Latina/o” are, or can be, part of the LatCrit whole. Our collective and programmatic engagement of this particular productive tension thus has focused on the racial diversities within and across Latina/o communities, especially in the United States, to underscore commonalities that otherwise might be overlooked; this approach has sought to de-center the essential Latina/o and to showcase intra-Latina/o diversities to illustrate concretely how constructs like “race” are as relevant to “Latina/o” interests as to other racialized social groups. As such, this approach has sought to provide a substantive and theoretical response to the oft-expressed query: “Do Black people belong in LatCrit?” or “Do Asian people belong in LatCrit?” or, even, “Do Indigenous people belong in LatCrit?”. Responding affirmatively in each instance, this approach has sought to emphasize that Latina/o populations embody all racial (and other identity) categories.

Because racial regulation therefore affects all Latina/o communities, the first productive tension of these past ten years has produced an enhanced understanding of “race” as a cross-group, trans-cultural and multidimensional phenomenon. In this way, we have endeavored to demonstrate why and how the study of all racial categories by

¹³⁶ See supra note ___ and sources cited therein on race and ethnicity in LatCrit theory.

scholars with “different” racial subject positions is necessarily integral to a holistic and incisive LatCrit analysis of race and power. Through this approach we have sought both to keep the “Lat” in LatCrit theory while simultaneously making the case for the necessary inclusion of diverse viewpoints in the elaboration of *all* genres of critical outsider jurisprudence.

These ongoing efforts to embrace and grapple with multiple sources of difference at times have produced unexpected or spontaneous eruptions in our midst.¹³⁷ An early example, during the LatCrit II conference in San Antonio, focused on the role of religion and spirituality within a jurisprudential movement devoted to multidimensional analysis and antisubordination politics, such as LatCrit theory. That eruption, taking place in real-time spontaneously on-site during the actual conference, is captured in the symposium of those proceedings.¹³⁸ Both the live exchange and published texts illustrated another key axis of diversity within Latina/o communities, and helped us launch a “stream” of programming over the next several years focused on the intersection between religion and critical outsider jurisprudence.¹³⁹ Similarly, eruptions during subsequent conferences

¹³⁷ See, e.g., Valdes, *Theorizing OutCrit Theories*, *supra* note ___, at 1308-11 (recounting “contentious engagements” at various LatCrit conferences, including the first one).

¹³⁸ See *supra* note ___ and sources cited therein and religion and LatCrit theory.

¹³⁹ Thus, for example, Plenary Panel One at LatCrit III in Miami was titled “*Between/Beyond Colors: Outsiders Within Latina/o Communities*” and included presentations focused on Latina/o religious diversities, while Patricia Fernandez-Kelly delivered a keynote address on “*Santeria in Hialeah: Religion as Cultural Resistance*” that explored the sociology of non-Western religious beliefs and practices in the working-class and predominantly Cuban city of Hialeah, Florida. See LatCrit III Final Program at 2, at CONFERENCE MATERIALS AND ARTICLES <<http://www.latcrit.org>> (copy also on file with authors); see also Berta Esperanza Hernandez-Truyol, *Latina Multidimensionality and LatCrit Possibilities: Culture, Gender and Sex*, 53 U. MIAMI L. REV. 811, 818-24 (1999) (exploring similar particularities in that same conference program and symposium). The following year in Tahoe, LatCrit IV program opened with a religious ceremony based on pre-Columbian rites of the Aztec people, and featured a concurrent panel on “*Religion, Gender and Sexuality: Conscience in LatCritTheory*” that produced various essays on religion and LatCrit theory. See LatCrit IV Program Schedule at 5, <www.latcrit.org> and Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. DAVIS L. REV. 751 (2000). Specifically, that Symposium includes a “cluster” of essays devoted to this topic. See Guadalupe Luna, *Gold, Souls and Wandering Clerics: California Missions, Native Californians and LatCrit Theory*, 33 U.C. DAVIS L. REV. 921 (2000); Laura Padilla, *Latinas and Religion: Subordination or State of Grace?*, 33 U.C.

have helped us to pursue a more nuanced understanding, both of difference and of commonality, as we have endeavored to make LatCrit theory and praxis a vehicle for critical coalitions and coalitional communities anchored to anticolonial aspirations.¹⁴⁰

In addition to the productive tensions and the spontaneous eruptions of the past ten years, we also have experienced shortfall and setbacks in our efforts to expand the ranks and scope of critical outsider jurisprudence, as well as in our efforts to “practice the theory” through our Portfolio of Projects. For example, despite our early and continuing emphasis on interdisciplinarity, our efforts to produce a truly integrated, transdisciplinary discourse has been hampered by structural limitations inherent in the very design of academia.¹⁴¹ Similarly, our early and ongoing efforts to create South-North connections on equal and dialectical terms have been hampered by the difficulties and expenses associated with language differences inherited from colonial empires.¹⁴² Finally, despite our proactive inclusivity, we have not been as successful as we had hoped in our efforts to include Pilipina/o and Indigenous perspectives or interests in the articulation of LatCritical analyses and projects.¹⁴³ In each of these instances, the shortfalls or setbacks

DAVIS L. REV. 973 (2000); Terry Rey, “*The Virgin’s Slip is Full of Fireflies*”: *The Multiform Struggle Over the Virgin Mary’s Legitimierende Macht in Latin America and Its U.S. Diasporic Communities*, 33 U.C. DAVIS L. REV. 959 (2000). For a discussion of these essays, see Francisco Valdes, *Piercing Webs of Power: Identity, Resistance and Hope in LatCrit Theory and Praxis*, 33 U.C. DAVIS L. REV. 897 (2000).

¹⁴⁰ See supra note ___ and sources cited therein on critical coalitions and LatCrit theory.

¹⁴¹ Though almost all LatCrit symposia include works from various disciplines, see supra note ___ and sources cited therein, in our view law still over-predominates.

¹⁴² See generally supra note ___ and sources cited therein on language and LatCrit theory.

¹⁴³ While efforts to engage native and indigenous communities date back to the very first conference, it was not until LatCrit III in Miami that a “stream” of programming began with a concurrent panel on “*Race, Nation and Identity: Indigenous Peoples and LatCrit Theory*.” At LatCrit IV in Tahoe, a combination of a plenary panel and a workshop were presented on Latina/o mestizaje and indigenous populations, as well as a concurrent panel on “*Native Cultures, Comparative Values, and Critical Intersections*.” This stream continued the next year, at LatCrit V in Denver, with Plenary Panel Five, titled “*Post/NeoColonialisms in LatCrit Theory: Continuing the Dialogue*.” To review the programs of the LatCrit conferences, see <www.latercrit.org>. For further readings on LatCrit efforts to grapple with indigenous concerns, see Guerra,

have been due not to lack of commitment or effort; nonetheless, these experiences have forced us to face, and grapple with, the structural and personal limitations that characterize our collective position in the legal academy in the United States today.¹⁴⁴ In each of these instances, fortunately, the collective response to the shortfalls and setbacks of the past decade has been to search for creative solutions that may help us to transcend our limitations, rather than an abandonment of the particular effort or of the broader commitment to inclusivity as praxis.

III **International & LatCrit Theory**

This portion of the Afterword¹ explores the complementary relationship between LatCrit Theory and international law, more specifically human rights law. Its goal is to elucidate the way that human rights norms can inform the LatCritical project of non-essentialism and anti-subordination with its aim, common to the human rights system, to

supra note 85; Siegfried Weissner, *Esa India! LatCrit Theory and the Place of Indigenous Peoples Within Latina/o Communities*, 53 U. MIAMI L. REV. 831 (1999).

While Asian-Latina/o relationships have received extended attention as part of the race/ethnicity LatCrit discourse, *see supra* note ___ and sources cited therein, programmatic events focused on Pilipina/o populations and issues have been difficult to sustain: though presentations at times have centered Pilipina/o concerns or scholars, conference planners have been unable to sustain a “stream” of program events to cultivate in stages our collective awareness of the Filipina/o condition. For a selection of relevant readings, *see generally* ON BECOMING FILIPINO: SELECTED WRITINGS OF CARLOS BULOSAN (E. San Juna, Jr. ed. 1995) (presenting a series of writings that link current realities to neo/colonial histories). Perhaps the most notable LatCrit program events focused on Pilipina/o issues took place in Tahoe, when LatCrit IV featured several Pilipina/o-oriented events, including the keynote address by Filipino scholar Oscar V. Campomanes. For a description of the themes of the plenaries at LatCrit IV, *see* LATCRIT IV: SUBSTANTIVE PROGRAM OUTLINE <<http://www.latcrit.org>>; *see also* Victor C. Romero, “Aren’t You Latino?”: *Building Bridges Upon Common Misperceptions*, 33 U.C. DAVIS L. REV. 837 (2000) (situating Pilipinas/os in LatCrit theory).

¹⁴⁴ As outsiders, LatCrits are situated at the margins of power over public policy and popular discourses. Thus, as with other outsider scholars, we continue to labor to construct an alternative both to reactionary backlash and to mainstream liberalism. For one articulation of this point, *see* Valdes, *Antidiscrimination*, *supra* note ____.

¹ Parts of this section were taken from Berta E. Hernández-Truyol, *Building Bridges IV: Of Culture, Colors and Clashes – Capturing the International in Delgado’s Chronicles*, 4 Harv. Latino L. Rev. 115 (2000); Berta E. Hernández-Truyol & Sharon E. Rush, *Culture Nationhood and the Human Rights Ideal*, 5 Mich. J. Race & L. 817(2000).

liberate the human spirit. LatCrit theory, like human rights law, explores the boundaries of law and related disciplines with the aim that all people from North and South, East and West alike can enjoy full personhood.

To be sure, it is important at the outset not to idealize the human rights system. A critical substantive deconstruction of the context, in which international human rights law emerged, reveals that the norms that are deemed universal were in fact developed in a narrow social, economic, historical, and cultural space. Such deconstruction also reveals the hegemonic Western/Northern underpinning influences of the human rights documents. Thus, before deploying human rights ideas to enrich the LatCritical project – an opportunity for enrichment that exists because human rights and critical theory share common aspirations for liberation and justice – it is important to question the validity of the normative standards.

Like local laws that have been challenged by critical theorists, the human rights framework has been critiqued by internationalists because the narrative is rooted in a Northern/Western dominant liberal paradigm. In fact, as human rights standards were formulated prior to the entrance of the former colonies into the modern community of nations it does not include their particular perspectives. Thus, it would be appropriate to reconstruct the framework to incorporate the interests of such previously excluded States. Reconstructed human rights standards would include post-colonial perspectives and reject any version that is crafted in the interest of the colonizers. Once properly reconstructed, however, the just, inclusive norms that result can be instructive to the LatCritical project.

The adoption of the Universal Declaration of Human Rights² reflects a commitment by states to a collection of indivisible, interdependent, and inalienable rights that include not only civil and political rights but also social, economic, and cultural rights as well as solidarity rights. These concepts of indivisibility and interdependence dovetail the LatCrit focus of multidimensionality and nonessentialism. Both sets of ideas reject the atomization of the complex that constitutes human life and identity.

Unfortunately, the anticipated move that the human rights ideal expressed in the Declaration would be reduced to a single, legally-binding covenant did not become a reality. Instead, the amalgam of rights included in the Universal Declaration was eventually bifurcated into two separate sets of rights and adopted into two separate treaties: the International Covenant on Civil and Political Rights³ and the International Covenant on Economic, Social, and Cultural Rights.⁴ The bifurcation occurred because the first world, on the one hand, and the then second and third worlds, on the other, disagreed as to which sets of rights were more important. The developed states wanted to emphasize civil and political rights while the communist states and the developing nations wanted to emphasize economic, social, and cultural rights, contending that

² Universal Declaration of Human Rights, December 10, 1948, U.N.G.A. Res. 217 (III 1948). For indivisibility of rights, *see* the International Covenant on Civil and Political Rights, December 16, 1966, 999 U.N.T.S. 171 at Preamble [hereinafter ICCPR] (“[r]ecognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights”); International Covenant on Economic, Social and Cultural Rights, December 16, 1966, 993 U.N.T.S. 3 at Preamble (“recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights”).

³ ICCPR, *supra* note 2.

⁴ ICESCR, *supra* note 2. Today, the United States remains steadfast, albeit virtually alone, in its refusal to ratify the ICESCR.

emphasis on civil and political rights alone would effectively entrench the dynamics of colonialism and only by acquiring economic rights would the masses be liberated.

This bifurcation between civil and political rights, on the one hand, and social, economic, and cultural rights on the other, is significant in the LatCrit enterprise as the anti-subordination project requires both the attainment of political voice as well as economic emancipation. This reflects the importance of the indivisibility paradigm as the right to vote is all but insignificant to one who is hungry, lacks health care, education, or a job. In this regard, democracy for the subordinated translates in meaningful participation in all aspects of existence, not only the ballot box.

A critical analysis of the blueprints of the Universal Declaration elucidates the viewpoints of the North and South and of the East and West with respect to human rights. The Declaration's roots lie in the American Declaration of Independence⁵ and the French Declaration of the Rights of Man⁶ – documents that resulted from the late 18th century political and social uprisings that sought to identify impermissible governmental intrusions into individual lives – the idea of the “negative” rights of individual to be free from governmental interference with respect to civil and political rights. However, an inherent tension of these ideologies is that such 18th century social and political liberation movements coexisted with slavery, the decimation of indigenous peoples, and with

⁵The Unanimous Declaration of Independence of the Thirteen United States of America, July 4, 1776. *See also* ICCPR, *supra* note 2, Art. 2(1) (“[e]ach State Party ... undertakes to respect and to ensure all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”); ICESCR, *supra* note 2, Art. 2(2) (“[t]he State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”).

⁶ French Declaration of the Rights of Man, Aug. 26, 1789.

women's status as chattel – positions hardly compatible with the foundational notion of equality.

Thus, in order to utilize a human rights intervention into LatCritical perspectives, it is first imperative to engage in critical interventions into the human rights model to expose its hegemonic foundations and engage in a counter-hegemonic, multidimensional, multicultural reconstruction. Once reconstructed, however, the human rights paradigm can be of immense utility to the LatCritical project both structurally and substantively. First, structurally, the indivisibility and interdependence framework of the human rights system provides support for the complexity as presented by the LatCritical project and its embrace of multidimensionality, of individual's identities and interests. Contrary to the U.S. atomization of identity approach, structurally the human rights paradigm offers an alternative framework in which persons' true multidimensional being can be addressed. Thus, the human rights framework transforms the structure of the critical analysis from one of domination and equality in law – women can be equal to men in so far as they are like men⁷ – to one premised on humanity and equality in fact because all people are equally valued and their rights are viewed as indivisible and interdependent. International human rights norms, in embracing the multiplicity of identities, constitute a more realistic, expansive, and useful indicator of an individual's attainment of dignity, integrity, and full citizenship.

Substantively, the international human rights framework can develop, expand, and transform the LatCritical project in three ways. One, it expands the range of civil and political rights that are protectable in ways that is significant to Latinas/os and other pan-

⁷ CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 32-45 (1987).

ethnic groups. Specifically, the human rights standards for nondiscrimination reaches beyond the U.S. protection of race, sex, religion, and alienage. It also includes categories such as language, culture, and social origin.⁸ Two, the human rights framework also provides protections of social, economic, and political rights dramatically significant to the obtainment of full personhood rights for the “other.” Such protections include the right to work, the right to health, the right to education, and the right to cultural preservation. Three, the human rights framework is of utility to the LatCritical project because it provides an expanded reach of existing protected categories. Specifically, both the U.N. Human Rights Committee⁹ and the European Court on Human Rights¹⁰ have interpreted the category “sex” to include sexuality – a move rejected by the U.S. legal system.

Critical challenges to the liberal binary paradigm can find support in this multidimensionality human rights’ interdependence and indivisibility paradigm. This is of particular utility to multiple others, whose identities cross racial and economic lines, including to Latinas/os who daily cross borderlines of culture, race, and sex and in addition remain among the poorest of the poor. For instance, women of color, including Latinas, remain marginalized by a race-based system that obscured sex and a sex-related issues.¹⁴⁵ Thus, women’s multidimensional identities – defined by sex, race, color,

⁸ See ICCPR, *supra* note 5; ICESCR, *supra* note 5.

⁹ See, e.g., Toonen v. Australia, 1 Int. Hum. Rts. Reports 97 (No. 1994).

¹⁰ See, e.g., Dudgeon v. United Kingdom, 45 Eur. Ct. H. R. (Ser. A)(1981), (1982) 4 E.H.R.R. 149; Norris v. Ireland, 142 Eur. Ct. H. R. (Ser. A)(1988), (1991) 13 E.H.R.R. 186.

¹⁴⁵ Interestingly, an unreconstructed human rights system also could be viewed as falling in this trap. For example the Convention on the Elimination of All Forms of Racial Discrimination (CERD) is silent on sex; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is silent on race. International Convention on the Elimination of All Forms of Racial Discrimination, 5 I.L.M. 352

ethnicity, religion, sexuality, national origin, language, citizenship, and culture – exclude them from the norm. The complexity of their identities need not be reduced to a single trait analysis when the human rights indivisibility and interdependence paradigm can be deployed.

Culture becomes a double-edged sword for Latinas who navigate cultural differences between majority culture and the *cultura Latina* from multiple subordinated positions. Within majority culture, Latinas/os are racial, ethnic, and often religious and linguistic “others.” In addition, within the *cultura Latina*, Latinas confront a subordinate status because of our sex and sometimes our sexual orientation. The human rights indivisibility and interdependence standards provide tools to work on the issues pertaining to our groups’ and individuals’ multidimensionalities operating within majority paradigms including issues that Latinas/os confront such as their location within the U.S. black-white paradigm. The protections of color and culture would protect Latinas/os from oppression by the majority culture while at the same time protecting Latinas from Latino oppression.

The interdependence/indivisibility paradigm permits an analytical framework that considers a person’s myriad locations – including culture, race, ethnicity, religion, class – and provides appropriate reparations for damages suffered. It enables the asking of the sex, race, gender, sexuality, color, religion, language, nationality, ethnicity, culture, and

(1966), *entered into force* Jan. 4, 1969; Convention on the Elimination of All Forms of Discrimination Against Women, 19 I.L.M. 33 (1980), *entered into force* on Sep. 3, 1981. Also noteworthy is CERD’s definition of racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” CERD, *supra*, at art. I(1). However, while one can read this definition as taking the *estado unidense* approach of conflicting race with color, ethnicity, nationality, etc., a LatCritical, anti-subordination interpretation would point to this litany of identity traits, in the framework of an indivisibility and interdependence paradigm, as proof certain of multidimensionality.

poverty questions, i.e., whether there are such implications to the structure, process, circumstances, or institution at issue. These are precisely the questions that the LatCritical project poses and the interdependence and indivisibility paradigm allows them to be asked contextually without atomizing complex identities.

The LatCritical project recognizes that every first-world state has an internal third world replete with disposable persons – inner cities; the new underclasses; racial, ethnic and sexual minorities; the disenfranchised; economically marginalized persons; individuals whose race, sex, sexuality, class, religion, linguistic, ability, or nationality others them into a second-class citizenship category. The international human rights prototype provides a blueprint for a multidimensional critical paradigm that can be utilized to effect a participatory society in which all persons can fully exercise their rights and obligations as full citizens. After all, a truly legitimate civil and pluralistic society is one that seeks the opinions and entertains the desires of all its governed peoples, not just of the elite. The multilingualism of the international human rights tradition provides a liberatory framework for people muted by the monolingualism of the dominant paradigm which silences those within its realm who speak different tongues as easily as it silences unpopular groups who share the language. Importing the human rights discourse's acceptance of multilingualism serves to promote local acceptance of the voices of other groups. The interdependence and indivisibility envisioned in the human rights format unveils the inherent racialized, gendered, classed nature of imposing one linguistic model and the hegemonic cultural silencing and hierarchies thereby effected.

IV **Identity and Economics in LatCrit Theory: Toward a Second Decade**

I. Law and Economics and Critical Theory: Toward a Convergence

At first glance, it might seem that LatCrit and economic analysis have little to say to one another. LatCrit's hallmark is an interest in identity, meaning, and the "problem of the subject," all issues usually accessed through methodologies associated with the humanities: narrative, close reading, "theory."¹⁴⁶ Traditional economic analysis, in contrast, employs a subject – the "rational maximizer" – for whom neither identity nor meaning is important, except insofar that these concepts imply preferences on which the actor will attempt to act.¹⁴⁷ Traditional economic analyses attempt to model and sometimes predict behavior using methods adapted from mathematics and the "hard" sciences.

In fact, however, LatCrit/CRT theory and the economic analysis of law are beginning to converge in new and exciting ways. There are at least three reasons for this convergence. First, global racial injustice is closely tied to economic disadvantage. The beginning of capitalism as we know it coincided with a period of European colonialism and imperialism, and an international trade in African slave labor, that profoundly shaped international political and economic relations for centuries to come. Thus, black liberation movements in the United States have struggled since Reconstruction to untie the knot of race and class; immigration politics in the United States has always been inextricably intertwined with economic relations, with "culture," and with race-ethnicity; and post-colonialist movements in other nations struggle with problems of economic "underdevelopment" and marginalization that owe their genesis to European accounts of the gap between the "civilized" and the "savage."

¹⁴⁶ See Jerome M. Culp, Jr., Angela P. Harris and Francisco Valdes, *Subject Unrest*, 55 STAN. L. REV. 2435 (2003).

¹⁴⁷ See Richard A. Posner, *The Law and Economics Movement*, 77 AM. ECON. ASS'N PAPERS AND PROC. 1, 5 (1987) (describing a basic premise of the economic analysis of law as "People act as rational maximizers of their satisfactions").

Second, we are living in a historical moment in which international capitalism seems newly invigorated. The developments that are collectively referred to as “globalization” -- advances in technology that have permitted capital to be ever more mobile, ever more abstract and unrelated to the “real” economy, and ever more deeply inserted into political institutions and practices -- are rapidly altering the global political economy and national domestic political economies in unforeseen and perhaps unforeseeable ways. Moreover, today there seems no alternative to capitalism. As Erik Olin Wright observes, talking about capitalism today is something like talking about the weather; everybody has a complaint about it, but nobody seriously thinks that any other form of life is possible.¹⁴⁸ Chantal Thomas quotes former US President Bill Clinton: “[T]echnology revolution and globalization are not policy choices, they are facts.”¹⁴⁹

The final reason why LatCrit/CRT and economic analysis are beginning to converge is that both disciplines are moving beyond their original concerns. LatCrit/CRT scholars are increasingly interested in thinking about class relations and political economy, and they are increasingly incorporating economic analysis in their work, or offering important critiques of traditional economic analysis. At the same time, the kind of work that comprises “economic analysis of law” is rapidly changing. “Law and economics” began as a fairly narrow body of work focused on proving that common law rules are “wealth maximizing.” Today, law and economics comprises a broad and eclectic group of approaches that collectively are challenging the basic assumptions of neoclassical economics, and beginning to grope toward an understanding of the subject as more than just the sum of certain preferences.

¹⁴⁸ Erik Olin Wright, “Socialism as Social Empowerment,” *Berkeley Journal of Sociology* (forthcoming 2006), manuscript at 1 (on file with author).

¹⁴⁹ Chantal Thomas, *Globalization and the Reproduction of Hierarchy*, 33 U.C. DAVIS L. REV. 1451, 1453 (2000).

From the LatCrit/CRT side of this convergence, interest in economics and class has manifested itself in two lines of scholarship, and perhaps an incipient third. First, many LatCrit/CRT scholars are beginning to utilize economic analysis in thinking about racial subordination. For years, the Supreme Court has directed the attention of civil rights scholars toward problems of intent. Thus, for example, cases like *Feeney* have required that plaintiffs prove intent to discriminate, or explicitly race-conscious action, in order to obtain strict scrutiny under the federal equal protection clause for government actions that create racialized effects.¹⁵⁰ The conscious intent test of the Equal Protection Clause has exerted a gravitational pull on judicial interpretations of Title VII of the Civil Rights Act, even though Title VII as originally enacted contemplated claims based on racial impact alone.¹⁵¹

In explaining why a single-minded focus on conscious intent is inadequate to root out racial injustice, some LatCrit/CRT scholars have turned to economic analysis as a theoretical framework. Economic analysis can show how even in the absence of conscious intent to discriminate, institutions can be racialized, particularly when the starting point is unequal distribution of economic and political resources on the basis of race.¹⁵² Thus, economic analysis helps construct a useful theory of institutional racism. In addition, as LatCrit/CRT spreads to new fields, such as commercial law, tax, corporations and business law, and bankruptcy, scholars are beginning to piece together an

¹⁵⁰ [Personnel Adm'r of Mass. v. Feeney, 442 U.S. 256 \(1979\)](#) (upholding state preference for veterans in employment settings despite the foreseeable, gross disparate effect of the policy upon women).

¹⁵¹ See Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161 (1995).

¹⁵² Thus, Mitu Gulati and Devon Carbado have combined insights from critical race theory and methodologies of economic analysis to illustrate how racial discrimination operates in various workplaces. See, e.g., Devon Carbado & Mitu Gulati, *Race to the Top of the Corporate Ladder: What Minorities Do When They Get There*, 61 WASH. & LEE L. REV. 1645 (2004); Devon Carbado & Mitu Gulati, *The Law and Economics of Critical Race Theory*, 112 YALE L.J. 1757 (2003) Daria Roithmayr uses the economic theory of “lock-in” to offer insights into how racism manifests itself in institutions. See Daria Roithmayr, *Locked In Segregation*, 12 Va. J. Soc. Pol’y & L. 197 (2004); Daria Roithmayr, *Locked In Inequality: The Persistence of Discrimination*, 9 MICH. J. RACE & L. 31 (2003).

understanding of how market institutions, state institutions, and civil society institutions work together through law in ways that perpetuate racial hierarchy.¹⁵³

A second line of LatCrit/CRT analysis emphasizes the critical tradition. Although economic analysis has long tried to portray itself as a neutral policy science, even some economists have recognized that economics is a rhetoric like any other.¹⁵⁴ New avenues of economic analysis opened up by “the economics of identity,”¹⁵⁵ socio-economics,¹⁵⁶ the new institutional economics,¹⁵⁷ and behavioral economics¹⁵⁸ have also begun to mount an internal critique against classical microeconomics. This critique suggests that market actors are not always entirely rational and self-interested: they may demonstrate systematic cognitive bias, they may act within institutions that have their own norms of behavior, and they sometimes act with self-understandings inconsistent with the singleminded goal of wealth maximization. LatCrit/CRT scholars have begun to join the project of reshaping economic analysis itself in order to take better account of the questions of meaning, identity, and subordination that pervade markets and class relations.¹⁵⁹

¹⁵³ See, e.g., Emily M.S. Houh, *Critical Race Realism: Re-Claiming the Antidiscrimination Principle Through the Doctrine of Good Faith in Contract Law*, 66 U. PITT. L. REV. 455(2005); Emily M.S. Houh, *Race, Sex, and Working Identities*, 39 U.C. DAVIS L. REV. 905 (2006) ; Beverly I. Moran & William Whitford, *A Black Critique of the Internal Revenue Code*, 1996 Wis. L. Rev. 751.; Mechele Dickerson, *Race Matters in Bankruptcy*, 61 WASH. & LEE L. REV. 1725, 1752-71 (2004); Larry Cata Backer, *Director Independence and the Duty of Loyalty: Race, Gender, Class, and the Disney-Ovitz Litigation*, 79 St. John's L. Rev. 1011 (2005); Dorothy A. Brown, *Pensions, Risk, and Race*, 61 WASH. & LEE L. REV. 1501 (2004); Dorothy A. Brown, *Social Security and Marriage in Black and White*, 65 OHIO ST. L.J. 111 (2004); Steven Ramirez, *Rethinking the Corporation (and Race) in America: Can Law (and Professionalization) Fix “Minor” Problems of Externalization, Internalization, and Governance?* 79 ST. JOHN'S L. REV. 977 (2005).

¹⁵⁴ See DEIRDRE N. MCCLUSKEY, *THE RHETORIC OF ECONOMICS* (1998); DEIRDRE N. MCCLUSKEY, *KNOWLEDGE AND PERSUASION IN ECONOMICS* (1994).

¹⁵⁵ See, e.g., George A. Akerlof & Rachel E. Kranton, *Economics and Identity*, 115 Q.J. ECON. 715 (2000).

¹⁵⁶ See, e.g., Lynne L. Dallas, *LAW AND PUBLIC POLICY: A SOCIOECONOMIC APPROACH* (2005)

¹⁵⁷ See, e.g., Oliver E. Williamson, *The New Institutional Economics*, 38 J. OF ECONOMIC LITERATURE (September 2000) 595-613; Edward L. Rubin, Commentary, *The New Legal Process, the Synthesis of Discourse, and the Microanalysis of Institutions*, 109 HARV. L. REV. 1393, 1425- 34 (1996)

¹⁵⁸ See, e.g., Russell B. Korobkin & Thomas S. Ulen, *Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics*, 88 CAL. L. REV. 1051 (2000).

¹⁵⁹ See, e.g., Steven A. Ramirez, *What We Teach About When We Teach About Race: The Problem of Law and Pseudo-Economics*, 54 J. LEGAL EDUC. 365 (2004); Steven A. Ramirez, *Bearing the Costs of Racial Inequality: Brown and the Myth of the Equality-Efficiency Tradeoff*, 44 WASHBURN L.J. 87 (2004). For

A third line of LatCrit/CRT analysis, less developed than the others, attempts to return to the roots of the discipline of economics in “political economy.”¹⁶⁰ In the remainder of this section, I will suggest an area in need of further research along these lines: anti-capitalist critique.

II. “Another World Is Possible”

In a forthcoming book, sociologist Erik Olin Wright sketches a new definition of “socialism.”¹⁶¹ As he observes, socialism is usually portrayed as the opposite of capitalism: if capitalism is defined as a system involving profit maximization through exchange on the market, private ownership of the means of production, and the necessity of workers to sell their labor power in the market in order to obtain their livelihoods, then socialism involves the negation of one or more of these conditions.¹⁶² Wright, however, observes that all of the countries that have adopted a self-consciously “socialist” national economy have done so through a state apparatus that takes on the job of centrally planning and regulating economic activity. In the two best-known examples of this kind of socialist economy -- the Soviet Union and China -- this national state apparatus also attempted to dominate and/or absorb much of civil society, centrally planning and regulating cultural, political, and social activity through the dominant party and punishing independent, dissent thought, behavior, and even art.

teaching materials that stage an encounter between traditional economic analysis, the new economic movements, and the theories and practices of racial inequality, see EMMA COLEMAN JORDAN AND ANGELA P. HARRIS, *ECONOMIC JUSTICE: RACE, GENDER, IDENTITY AND ECONOMICS* (2005); EMMA COLEMAN JORDAN AND ANGELA P. HARRIS, *CULTURAL ECONOMICS: MARKETS AND CULTURE* (2005); Emma Coleman Jordan and Angela P. Harris, *When Markets Fail: Race and Economics*.

¹⁶⁰ Latcritter Lisa Iglesias was perhaps the first to stake out this intellectual project. See ELIZABETH M. IGLESIAS, *Global Markets, Racial Spaces, and the Role of Critical Race Theory in the Struggle for Community Control of Investments: An Institutional Class Analysis*, in *CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY* 310 (Francisco Valdes, Jerome McCristal Culp, & Angela P. Harris eds., 2002). (., A parallel effort outside LatCrit/CRT to rethink the relationships among law, culture, and markets is Robin Paul Malloy’s work on law and market economy. See, e.g. Robin Paul Malloy, *Law in a Market Context: An Introduction to Market Concepts in Legal Reasoning* (2004); Robin Paul Malloy, *Law and Market Economy: Reinterpreting the Values of Law and Economics* (2000).

¹⁶¹ See Erik Olin Wright, *Socialism as Social Empowerment*, BERKELEY J. OF SOC. (forthcoming 2006).

¹⁶² Erik Olin Wright, “Socialism as Social Empowerment,” manuscript at 10.

Independent scholar Marc Sapir points out that although Karl Marx would have been appalled at this result, it does follow from his theory of revolution.¹⁶³ Since for Marx the existing state was a tool of capitalist interests, Marx argued that the majority class -- the workers – would have to take over the institutions of the state and exercise state power to forcefully block the possibility of a resurgence of capitalist political and economic domination.¹⁶⁴ What would happen next? Engels famously suggested that after the new worker-dominated State transformed social relations of dominance and selfishness and replaced them with cooperation and people adapted to an egalitarian culture, the state itself would eventually cease to exist.¹⁶⁵ But Marx did not think through the inertia principle of organized power: institutions in power tend to stay in power..

Wright suggests that the forms of socialist economy that thus emerged in the Soviet Union and China should really be renamed *statism*. In contrast, a truly “socialist” economy would put the power to control the economy not in the hands of a central state, but directly in the hands of “society”: in institutions and practices dominated neither by market institutions nor by government institutions, but by voluntary associations. This, in Wright’s view, would be true “socialism”: “an economy organized in such a way as to serve the needs and aspirations of ordinary people, not elites.” Such an economy would, he notes, be truly democratic, meaning ruled by the people subject to the principle of egalitarianism. Wright concludes: “If ‘Democracy’ is the label for the subordination of

¹⁶³ Marc Sapir, *The Logic of Torture – impunity, democracy, and the State Power*, at www.retropoll.org .

¹⁶⁴ KARL MARX & FRIEDRICH ENGELS, *Manifesto of the Communist Party*, in THE MARX-ENGELS READER 469,490 (Robert C. Tucker ed., 1978 2d ed).

¹⁶⁵ See FRIEDRICH ENGELS, *The Origin of Family, Private Property, and State*, in THE MARX-ENGELS READER , *supra* note 164, at 734, 755. (“The society that will organize production on the basis of a free and equal association of the producers will put the whole machinery of the state where it will then belong: into the Museum of Antiquities, by the side of the spinning wheel and the bronze axe.”); MARX & ENGELS, *Manifesto of the Communist Party*, in The Marx-Engels Reader, *supra* note 164, at 469,490. (“When, in the course of development, class distinctions have disappeared, and all production has been concentrated in the hands of a vast association of the whole nation, the public power will lose its political character.”)..

state power to social power, ‘socialism’ is the term for the subordination of economic power to social power.”¹⁶⁶

This vision of socialism responds to some of the deep liberal values of contemporary Western political philosophy. Liberal political philosophers like “civil society” because it is not based on coercion but on freedom. No one is forced by the need to survive or the fear of death or prison to participate in the “voluntary” associations and institutions (we will come back to the scare quotes later). Instead, the whole idea of civil society is the idea that there, people voluntarily join with one another to engage in collective action that furthers their desires and dreams. Moreover, civil society, in some formulations, is not only an expression of liberty but a school for liberty. The process of coming together and working cooperatively with others inculcates “civic virtues.” From this perspective, civil society is where adults go to relearn the basic rules of human life first introduced in preschool: you must share, and share nicely; no hitting, kicking, or biting other people; you must respect other people who want things that are different from what you want; take turns; you can learn from people who are different from you; and what you make together can even be better than what you would have made on your own. Civil society, lacking mechanisms of coercion other than those inherent in human relations themselves (e.g., if you are mean, nobody will play with you anymore) is therefore a school for egalitarian political relations.

So what might a truly “socialist,” in this sense, economy look like? How would it operate? Wright concludes that a pure socialist economy is probably unachievable in a large complex society. Even attempts to create pure “free-market” or pure “statist” economies always involve some mix of regulation and control by state, market, and civil society institutions. Nevertheless, Wright’s taxonomy is useful. By identifying socialism with power rooted in “the social” and with democracy, Wright’s taxonomy helps us think

¹⁶⁶ Wright, *supra* note 161, at 11.

about the ideal society and about ways of getting there, as well as helping us analyze the many mixed forms of governance currently in existence.

Wright tells us that “‘Social power’ is power rooted in the capacity to mobilize people for cooperative, voluntary collective actions of various sorts in civil society.”¹⁶⁷ But his work does not have a lot to say about what social power looks like, or what the obstacles to an egalitarian civil society might be. Indeed, he does not even talk very much about what “civil society” means or what institutions it consists of. In contrast, critical race theory/LatCrit’s approach to thinking about economic practices and institutions is rooted in problems and issues that provide a much more detailed look at the problem of inequality within “the social.” From its inception, CRT/LC has been focused on the problem of subordination: that is, unjust power relations in liberal societies that are both more subtle and more pervasive than outright slavery or political repression. These unjust forms of power – for example, racism, heteropatriarchy, and imperialism -- regularly pervade state and economic practices and institutions, but in contemporary times they are centrally reproduced in civil society as well. Any society that wants to move toward a more socialist economy must challenge these forms of subordination if it wants to foster democracy. CRT/LatCrit, like other intellectual movements drawing on the past generation of “theory” in the academy, has been focused on the problem of identifying and criticizing these unjust forms of power, including those that lie in wait in seemingly unproblematic concepts like “voluntariness.”

Critical race theory/LatCrit’s other contribution to a new socialist theory is its focus on law. Although law is popularly identified with state power, it has been a commonplace at least since American Legal Realism that law shapes the “private” as well as the “public.” In contemporary liberal societies, law provides a framework for distinguishing “state” from “market” from “civil society,” and sets the ground rules for

¹⁶⁷ *Id.* at 10.

the major practices and institutions in each of these realms. CRT/LatCrit has taken off from these basic observations to detail how law works sometimes in conjunction with and sometimes in conflict with other forms of power. Finally, law in the modern era has provided the major institutional and philosophical framework for thinking about and striving for “justice.” People who seek (public) justice seek it through law. And people thinking about what justice means start with law (though they may not end there).

Thinking about socialism has been widely viewed as a utopian activity ever since the fall of the Soviet Union and the rise of neoliberalism in the United States. Yet recently it has become clear that capitalism’s current ascendancy does not mean that American-style, free-trade neoliberalism represents the world’s only possible future.. Despite the force of the Washington Consensus -- expressed in US-dominated institutions like the international financial institutions (IFIs), the World Bank, and the World Trade Organization -- some nations have already rejected the message of US neoliberalism that economic success lies in dropping trade barriers, inviting foreign investment, slashing government-driven “social nets,” privatizing key economic organizations, and adopting US-friendly private and intellectual property law. In the 1980s, the “Asian Tigers” ignored Washington’s advice, with great success. Today economic development is booming in China, despite the fact that it is breaking all the neoliberal rules, while Russia, having obeyed those rules, is an economic and political mess. The rich countries of Europe continue to resist Washington neoliberal domination and hold out for a “third way” to engage in capitalist production while retaining the best features of state regulation.¹⁶⁸

Perhaps even more interesting are recent events in the so-called “developing” countries (formerly the Third World), or nations in the global South. As Sapir notes, on January 1, 1994 history was made when a formerly unknown movement of Mayan

¹⁶⁸ Sapir, *supra* note 163.

peasants calling itself the Zapatista Army of National Liberation (EZLN, named for the Mexican peasant and revolutionary hero Emiliano Zapata) seized several major cities and towns throughout the State of Chiapas, Mexico, issuing demands for indigenous rights and declaring their autonomy from the Mexican federal government. Led by Subcomandante Marcos, an enigmatic figure given to literary references, jokes and wordplay, the EZLN began a conversation about what to do about the government and market sectors from the perspective of social life that soon became practical as well as theoretical. Sapir argues that the EZLN “opened a new era of theoretical debate on how to oppose (and potentially democratize) the modern State. As a result, today there are now several important Latin American movements engaging in this discussion as a practical necessity. Among them are the Zapatistas, the Bolivarian movement of Venezuela, the revolutionary peasant movement of Bolivia, and the factory seizure movement of Argentina. Others are or have already joined the discussion. Unique to these movements is the realization that they can not advance without tackling and solving the thorny question of ‘what to do (both in the present and in the future) with the State’.”¹⁶⁹

These movements are considering not only “what to do with the state,” but what to do about capitalism as well. Sapir observes that in Argentina, the civil society coalition that has resisted the state’s attempt to impose free-market policies on the country quickly became aware that although in national elections there are better and worse candidates from the workers’ standpoint, “it was impossible that any candidate assuming power would wield the Presidency in opposition to the interests of transnational finance capital. Money would always trump the popular will to assure that the State guaranteed its (money’s) vast replication unhindered by concerns for the public’s or the nation’s

169 *Id.*

well-being.”¹⁷⁰ A similar recognition has occurred in the American Left in the last few presidential elections: despite their being clearly better and worse choices for President, both the Democratic and the Republican parties are ultimately hostage to their corporate underwriters. In South Africa, the ruling party faces a similar dilemma: is it possible to make good on its promises to the poorest of the poor without being brutally destroyed by the Washington-led forces of capitalism?

In each of these countries, the answer, at least temporarily, has been to deepen and widen a network of organizations within civil society, and to when possible use these civil society institutions and practices to infiltrate the traditional practices and institutions of both the state and the market. As an example of the social infiltrating the state, Wright and his colleague Archon Fung tell the story of participatory budgeting in Porto Alegre, Brazil. Under participatory budgeting, ordinary citizens participate in deciding budget priorities for the city as a whole and for individual neighborhoods. Although it came into being almost as a fluke – a left party won power in a city election more or less by accident when the two leading candidates destroyed one another in the course of a hard-fought election campaign – participatory budgeting has remained in place as a practice even after the party that instituted it lost power again, because it simply works, avoiding the corruption that was formerly part of the budgeting process.¹⁷¹ As an example of the social infiltrating the market, Yochai Benkler tells the story of the Wikipedia, an online encyclopedia organized neither by a firm nor by a government but by people choosing to cooperate to produce a product.¹⁷²

¹⁷⁰ *Id.*

¹⁷¹ See ARCHON FUNG & ERIK OLIN WRIGHT, *DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE* (2003).

¹⁷² See, e.g., Yochai Benkler, *Sharing Nicely: On Shareable Goods and the Emergence of Sharing as a Modality of Economic Production*, 114 *YALE L.J.* 273 (2004).

But what is the social process that underlies participatory budgeting? Do women participate equally with men? What are the social means of production underlying the Wikipedia – is it dominated by certain kinds of users following familiar patterns of social hierarchy and exclusion? In what ways will law be predictably used to defend state and market power against the social? Are there innovative ways in which law can help buttress the power of the social to challenge organized state and market power? Are there ways in which law can further egalitarianism in the social itself?

These are pressing questions that CRT/LatCrit is well positioned to begin answering. It is tempting to believe that a handful of scholars can do nothing to alter a world dominated by military action, fundamentalism, and free-market capitalism. But, as Wright notes, we do not know the future. No one imagined that the Soviet Union would suddenly collapse the way it did. In the US, it feels as if the right wing has obtained permanent power over the institutions of the state. Yet change can occur – in interstices, as in the Porto Alegre example, or suddenly and dramatically, as in the fall of the Soviet Union. Intellectuals as well as activists need to be ready with ideas for those unexpected moments when another way is suddenly possible.

Conclusion

As the collective record we have sketch above shows, LatCrit at X is a conscious and collaborative effort to build on past gains of critical outsider jurisprudence, including the experience that we accumulate from year to year. To that end, we have embraced and practiced antistatist and antiessentialist principles, adopting multidimensional analysis and praxis as basic methods to help ground this jurisprudential experiment in liberational politics and diverse communities. In this same vein, we have endeavored to focus both intra- and inter- group diversities or issues, and to do so in interdisciplinary and comparative ways to ensure a multifaceted exchange and development of tools,

techniques and insights. Additionally, we have sought to transcend the dichotomy of the “domestic” and the “foreign” to map global patterns out of local particularities that help us to understand the interconnection of the structures of power across the globe, and to show how these structures work in tandem as systems. To accomplish these and similar aims, we have developed and adopted specific practices including “rotating centers” by which we shift the focus of critical collective inquiry to “different” group, communities, identities, fields or topics. These rotations are further built up as “streams of programming” by which we ensure a multi-year engagement of topics through various formats -- whether through plenary panels, keynotes, workshops, roundtables, concurrent panels, video fora, or any other suitable format for collective exchange and knowledge production. Of course, underpinning these various aims and practices is the commitment to continuity and long-term planning, which permit us to build each year on the experiences and lessons of the prior ones.

As a whole, then, the LatCrit first-decade record shows a fluid and diverse collection of scholars and activists creating and using a community portfolio of projects to help restructure the modes of producing legal knowledge, scholarship and education. Most recently, this effort has culminated in the practices associated with institution-building, including the act of formal incorporation to secure substantive independence in our antistatist endeavors. As always, these ongoing efforts are simply the sum of our individual and collective capacities, as well as limitations. As always, these efforts are fragile and necessarily imperfect. Nonetheless, we hope that as has been the case during the past decade, this community of scholars and activists will continue for the coming decade with more of the same.

In addition, as we have outlined in this Afterword, we hope that our ongoing effort to bridge class and economic status with other axes of identity will continue to deepen and broaden. This second-decade agenda is made especially acute by local, national, and global developments that affect both traditional and human rights concerns as well as those flowing from dominant neo-liberal versions of corporate globalization. In the coming decade, as in the past one, the challenge is to elucidate the interconnection of various forms of identity rooted in material as well as cultural systems of dominant and subordination to promote social justice in multi-dimensional terms.

Finally, we emphasize in closing that in this Afterword we present one account – ours – of a collective and fragile enterprise. No doubt, this account is (and must be) partial and incomplete. But, with this account, we hope to share our sense of the accomplishments and shortcomings that mark the first ten years. With this account, we hope to help inform a robust agenda for a second decade of LatCrit theory, community and praxis.