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# Breaking Glass: Identity, Community and Epistemology in Theory, Law and Education

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# Breaking Glass: Identity, Community and Epistemology in Theory, Law and Education

Francisco Valdes\*

Not until nearly the end of the twentieth century did the nation and world begin to witness the real and substantive losses sustained by generations of excluding women of color from the U.S. legal professoriate. Those were extraordinary times — heady, sometimes heavy — with a new zest in the U.S. legal academy and its knowledge-production infrastructure. All of a sudden, it might have seemed to some, women of color and their voices were the vogue.

Certainly, they were at the center. And not just because. Nor just suddenly. In the late 1980s and early 1990s pioneering women of color had published a handful of legal theory texts that had smashed every glass ceiling in sight.<sup>1</sup> Everyone was waiting and watching to see what would come next, what would come of all that broken and breaking glass.

Angela P. Harris was at the forefront of that generation. Having joined the Boalt Hall faculty in 1988, Professor Harris had already been active in the early stirrings of the phenomenon that would come to be known as critical race theory (“CRT”) and, more broadly, critical

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\* Copyright © 2014 Francisco Valdes. Many thanks to Angela, for everything, and to the organizers and editors of this special publication, for spearheading and supporting this recognition. All errors are mine.

<sup>1</sup> See, e.g., PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991) (reflecting on the intersection between class, race, and gender); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241 (1991) (exploring the dimensions of gender and race in the context of violence against women of color); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 *HARV. C.R.-C.L. L. REV.* 323 (1987) (describing the necessity of adopting the perspective of those who have experienced discrimination); Margaret E. Montoya, *Mascaras, Trenzas, y Grenas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 *HARV. WOMEN'S L.J.* 185 (1994) (examining traditional paradigms within the legal realm and breaking down the dominant discourse).

outsider jurisprudence.<sup>2</sup> As the last decade of the past century began, Professor Harris completed her journey from the heartlands of Ohio to the critical frontiers of legal theory and education.

Her 1990 Stanford Law Review article on anti-essentialism, *Race and Essentialism in Feminist Legal Theory*,<sup>3</sup> became the effective anthem of that decade. There, she wrote:

[I]n this article I destabilize and subvert the unity of . . . “woman” by introducing the voices of black women . . . . Just as law itself, in trying to speak for all persons, ends up silencing those without power, feminist legal theory is in danger of silencing those who have traditionally been kept from speaking, or who have been ignored when they spoke, including black women. The first step toward avoiding this danger is to give up the dream of gender essentialism . . . .

Even a jurisprudence based on multiple consciousness must categorize; without categorization each individual is . . . isolated . . . and there can be no moral responsibility or social change. My suggestion is only that we make our categories explicitly tentative, relational, and unstable, and that to do so is all the more important in a discipline like law, where abstraction and “frozen” categories are the norm. Avoiding gender essentialism need not mean that the Holocaust and a corncob are the same.<sup>4</sup>

Along with several other contemporaneous texts,<sup>5</sup> this article helped set afire CRT and critical race feminism. This work set in motion a series of events leading to the emergence of various other strands and

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<sup>2</sup> See generally CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberle Crenshaw et al. eds., 1996) (examining CRT through essays that share an ethical commitment to human liberation); CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes, Jerome McCristal Culp & Angela P. Harris eds., 2002) [hereinafter CROSSROADS] (critically examining how race permeates our national consciousness).

<sup>3</sup> See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585-86 (1990) [hereinafter *Race and Essentialism*].

<sup>4</sup> *Id.*

<sup>5</sup> See sources cited *supra* note 1. See generally CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 1997) (surveying the critical race feminist landscape in the United States); GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER (Adrien Katherine Wing ed., 2000) (focusing on the legal rights of women of color around the globe).

genres of critical outsider jurisprudence focused on varying vectors of social and legal identity.<sup>6</sup>

Since then, her work with students, aspiring and new law teachers, and cutting-edge ideas from multiple disciplines has continued to cultivate the breakthroughs of that historical moment.<sup>7</sup> Working with groups like the Society of American Law Teachers and individuals the world over, she has continued to cultivate scholars and scholarship dedicated to social justice legal action. Since then, Professor Harris has worked tirelessly and creatively at all aspects of the profession to ensure that critical and outsider analyses of law and society prosper as relevant tools of progressive social change.

It helps to recall the historical moment in order to appreciate the importance of Professor Harris's anti-essentialism intervention. During that time, questions of identity, and of sameness or difference, preoccupied critical outsider scholars ranging from those focused primarily on race to those focused primarily on gender or sexuality.<sup>8</sup> Engulfed by the reactionary, anti-critical backlash defining those times, questions of identity and politics, of epistemology and theory, of coalition and survival, were visceral.<sup>9</sup> At a historical juncture defined by willfully reactionary opinions from judges like those in *Bowers v. Hardwick*,<sup>10</sup> *Croson v. Richmond*,<sup>11</sup> and *Adarand v. Peña*,<sup>12</sup> the

<sup>6</sup> For an overview of these genres, see Margaret Montoya & Francisco Valdes, "Latinas/os" and Latina/o Legal Studies: A Critical and Self-Critical Review of LatCrit Theory and Legal Models of Knowledge-Production, 4 FIU L. REV. 187, 188 (2008).

<sup>7</sup> E.g., EMMA COLEMAN JORDAN & ANGELA P. HARRIS, ECONOMIC JUSTICE: RACE, GENDER, IDENTITY AND ECONOMICS: CASES AND MATERIALS (2005) (identifying the relationship between critical legal scholarship, law, and economics).

<sup>8</sup> See, e.g., Darren Lenard Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Anti-Racist Politics*, 47 BUFF. L. REV. 1 (1999) (examining anti-racist legal theory and political discourse); 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 (1991) (analyzing feminist and African American controversies in an attempt to move past "sameness and difference").

<sup>9</sup> For a sampling of analyses, see Keith Aoki, *The Scholarship of Reconstruction and the Politics of Backlash*, 81 IOWA L. REV. 1467, 1482 (1996); Kimberle Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1334-35 (1988); Kenneth L. Karst, *Religion, Sex, and Politics: Cultural Counterrevolution in Constitutional Perspective*, 24 UC DAVIS L. REV. 677, 678-79 (1991).

<sup>10</sup> See generally *Bowers v. Hardwick*, 478 U.S. 186 (1986) (refusing to recognize homosexuality as a constitutional right).

<sup>11</sup> See generally *Richmond v. Croson*, 488 U.S. 469 (1989) (holding a minority set-aside program unconstitutional under the Equal Protection Clause).

<sup>12</sup> See generally *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995)

ideal of “equal justice under law” was far from academic or pedagogic.<sup>13</sup>

At that time, Clarence Thomas was being installed into power at the U.S. Supreme Court, occupying the seat just vacated by Thurgood Marshall. Clarence Thomas was the second black man to serve on that tribunal, committed to reversing the work of the first, Thurgood Marshall. Both men; both black. However, graphically illustrating the insights of anti-essentialism, the substantive differences between the two could not be greater, no matter their identity of race and gender.

Under these massively regressive circumstances, anti-essentialism effectively demanded a critical, forward-looking reconsideration of “diversity” as policy, of its reliance on identity proxies, and of its substantive social goals: if Clarence Thomas could satisfy diversity, what was the point? What was the purpose of using identity, anyway?<sup>14</sup> What was the relationship between identity and epistemology in law, education, policy, and theory?

Existential queries like these led to intense and extended exchanges about the (non)existence of a “voice of color” as an authentic and substantive factor of academic discourse and knowledge production.<sup>15</sup> If nothing essentially distinctive characterized identities based on race, gender, or sexuality, then what was the substantive value of diversifying the knowledge professions? If no authentic and distinctive voice of color existed to help enrich the knowledge production process, then why bother going out of the way to be inclusive? But if an authentic, distinctive and valuable voice of color did exist, were we just essentializing its characteristics based on our own subjective stereotypes or skewed points of reference?

While critical outsider scholars grappled with dizzying lines of postmodern inquiry like these, right-wing politicians spun new networks devoted to backlash politics, like the Federalist Society, and pushed characters like Clarence Thomas into centers of power purportedly on behalf of outsider communities we call home.<sup>16</sup> While

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(imposing a strict scrutiny standard for racial classifications).

<sup>13</sup> For a sense of the times, see generally Charles R. Lawrence III, *The Word and the River: Pedagogy as Scholarship as Struggle*, 65 S. CALIF. L. REV. 2231 (1992).

<sup>14</sup> See generally Charles R. Lawrence III, *Two Views of the River: A Critique of the Liberal Defense of Affirmative Action*, 101 COLUM. L. REV. 928 (2001) (arguing that affirmative action should focus on changing conditions of inequality rather than the need for diverse student bodies).

<sup>15</sup> See, e.g., Alex M. Johnson, Jr., *The New Voice of Color*, 100 YALE L.J. 2007 (1991) (responding to arguments against the existence of a “voice of color”).

<sup>16</sup> See generally Francisco Valdes, *Culture, “Kulturkampf” and Beyond: The Antidiscrimination Principle Under the Jurisprudence of Backlash*, in THE BLACKWELL

the first generation of color with a critical mass in U.S. legal academia found its bearings, successors-in-interest to well-established and moneyed interests exploited their unjust enrichment and advantage to roll back the mid-century legal reforms making it possible for persons of color, including women like Angela, to become more than tokens in institutional seas of entrenched white privilege. While legal education began to diversify, the move toward ideological reaction and cultural conflict had begun in earnest both across the profession and the country, thereby enveloping the formative moments of critical outsider jurisprudence in the freighted politics of resentment and backlash against formal equality.

It was then that Angela and I first met, at Stanford Law School, in her new office, as she arrived from Boalt Hall and prepared to take up her duties as a visiting professor on “the Farm” a year after I had taken up mine as a Teaching Fellow there. A mutual friend had connected us, and we chatted openly about the place — its perks and peculiarities. We became fast and easy friends.

More importantly, we became academic allies in ways and venues that underscore the importance of the work then being pioneered by Angela and her generation. In the years since, our collaborations have taken place mostly within the framework of LatCrit theory, community, and praxis — another experiment in critical outsider jurisprudence carried on by diverse folks since 1995.<sup>17</sup> Angela was an early LatCritic.

Elected to the LatCrit Board in the initial rounds of those organizing efforts, she quickly took under her wing one of our earliest group projects: the Student Scholar Program (“SSP”).<sup>18</sup> This imaginative program originated with three components designed to support critical outsider theorizing by new generations of activist scholars. The first of these involved the composition and publication of an academic paper, followed by its presentation at the Annual LatCrit Conference. The second component involved a scholarship to another LatCrit project, the Critical Global Classroom, a fully-accredited study-abroad program focused on anti-subordination theory and practice.<sup>19</sup> The

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COMPANION TO LAW AND SOCIETY 271, 279-80 (Austin Sarat ed., 2004) (discussing the development of outsider and backlash jurisprudence).

<sup>17</sup> See Berta Hernandez-Truyol, Angela P. Harris & Francisco Valdes, *Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis*, 17 BERKELEY LA RAZA L.J. REV. 169, 184-85 (2006).

<sup>18</sup> For more information on the SSP and other projects, visit the LatCrit community website at <http://latcrit.org/content/ssp/>.

<sup>19</sup> For more information on the CGC and other projects, visit the LatCrit community website at <http://latcrit.org/content/about/portfolio-projects/>.

third part of the early SSP involved a mentoring relationship to help produce a second publishable paper. The cumulative aim of these efforts was to help shepherd potential law teachers with a critical outsider perspective through the initial steps toward the academy. Together with other outstanding leaders of her generation, including other SSP project team members like Margaret Montoya,<sup>20</sup> and relying on the special help of her fabulous assistant, Ayn, Angela took the SSP beyond all expectations.

Building on her work with students at Boalt Hall, Angela (and the project team) deployed the SSP to identify and begin to support critical outsider students interested in a legal teaching career. After a decade of tireless and creative toil, complemented by the energy and leadership of newer generations coming up during that time, including new pioneers like Sumi Cho<sup>21</sup> and SSP alumni from Boalt Hall like Marc-Tizoc Gonzalez,<sup>22</sup> this community pipeline project into the academy has supported the successful efforts of seven critical outsider candidates to enter our profession, and to thereby carry forward this inter-generational work.<sup>23</sup> For a network that functions on a string, this record is impressive indeed; mainstream institutions with much deeper pockets and privileges typically do not do much better.

Over the years, Angela came to serve as LatCrit Co-Chair, as well as to work on various other projects in the LatCrit portfolio. Another of our entrepreneurial LatCrit collaborations similarly reflects and projects Angela's abiding commitment to the development of both scholars and scholarship. Helping to found CLAVE as a counter-disciplinary journal focused on race, law and the state in partnership with the Inter-American University School of Law in Puerto Rico ("IAUPR"), the original concept called for experimenting with an electronic format.<sup>24</sup> Recalling still the long and winding group

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<sup>20</sup> For more on Professor Montoya, see *Still Un/Masking the Self: Legal Education and the Experience of Other*, HARV. J.L. & GENDER (Mar. 10, 2013), <http://harvardjlg.com/still-unmasking-the-self-legal-education-and-the-experience-of-the-other/>.

<sup>21</sup> Professor Cho teaches at the DePaul University College of Law, and served on the LatCrit Board from 1998 to 2013. For more information on Professor Cho, see *Sumi Cho*, DEPAUL U.L. SCH., [http://www.law.depaul.edu/faculty\\_staff/faculty\\_information.asp?id=25](http://www.law.depaul.edu/faculty_staff/faculty_information.asp?id=25) (last visited Feb. 15, 2014).

<sup>22</sup> Professor Gonzalez today is on the faculty of the St. Thomas University School of Law in Miami, and remains on the LatCrit Board. For more information on Professor Gonzalez, see *Marc-Tizoc Gonzalez*, ST. THOMAS U. L. SCH., <http://www.stu.edu/LinkClick.aspx?link=3378&tabid=946> (last visited Feb. 15, 2014).

<sup>23</sup> The seven SSP alum who have transitioned into law teaching include: Kim Chanbonpin, César Cuáhtemoc García Hernández, Marc-Tizoc Gonzalez, Vinay Harpalani, Stephen Lee, SpearIt, and Rose Cuisson Villazor.

<sup>24</sup> For background information on CLAVE, see generally the LatCrit website at

conversations to settle questions of name, purpose audience and so on, it is difficult now to believe that a full decade has passed since then. In the end, we established editorial boards of students and of ourselves, and launched with a dual-format (hard-copy and electronic) bilingual volume of interdisciplinary essays from authors around the world, including student notes from the IAUPR Editorial Board.

During the past decade, this work has continued steadily, with student editors participating in the LatCrit conferences while we all endeavor to produce knowledge, build community and create sustainable intellectual and professional pipelines. Illustrating the organic nature of this collective yet personal praxis, CLAVE has since taken root as a Spanish-language hard-copy journal operated chiefly by the IAUPR student Editorial Board and broadly devoted to nurturing critical outsider approaches to law, society, theory and policy across Spanish-speaking systems. Bit by bit, local student enthusiasm for the critical ideas and commitment to academic activism that CLAVE brought to the campus made it a magnet for previously atomized socially progressive students. Over time, it has become a hub of intellectual and social action on and around the campus. While not following our original script, local student initiative has made CLAVE another point of incubation for critical outsider jurisprudence in new venues and precincts. Although not exactly our intended intervention, CLAVE's organic blossoming during the past decade would not have been possible but for the hope, vision, and labor of Angela and the many other folks working together at that crucial time.

As these brief anecdotes illustrate, our early exercises in critical outsider praxis were opportunistic, but also purposeful and principled. As a rag-tag group trying to make a difference from the margins, we knew we had to move when and where we could. Yet we always had to act in line with the values and aspirations that made us an incipient micro-society, an intentional academic community of progressive activist scholars trying in earnest to construct a viable alternative to, yet within, the U.S. imperial academy. We understood that making a substantive difference required both the elaboration as well as the articulation of theory in mutual, dynamic, ethical, and lasting terms. We consciously and expressly committed early on to working together on this mutually loving, respectful, and disciplined basis, hoping somehow to establish an enduring critical outsider project anchored by the principled interplay of theory, community and praxis.



None of this account is to say that these or similar efforts were perfectly conceived, much less perfectly executed. On the contrary, the challenges and limitations of the past quarter-century are part of the historical record of color, our experiential arc, and our never-ending learning process, both as individuals and as formations. Nonetheless, despite the messiness of it all, generations since Angela's have persisted in this proactive engagement of the myriad and ever-shifting "productive tensions" inhering in anti-essentialist coalitional work that encompasses anti-subordination theory, community, and praxis.

During that time, these and similar diverse, innovative, and inter-generational programmatic collaborations have helped to fuse key early breakthroughs of Angela's generation with the morphing challenges of the passing moments, as a new decade, century, and millennium all began. Remarkably, the footprints of that work show a flexible continuity between now and then, despite the passage of these two decades. Surveying the landscape now, and noting the limitations and incompleteness of this record, three important points nevertheless stand out to help illustrate the pivotal impact of the continuing work begun by Angela and her generational cohort on critical and outsider approaches to legal culture, consciousness, and education.

The first point characterizing this ongoing work returns to the practice of anti-essentialism in the production of legal theory, knowledge, and action. This foundational point about identity and epistemology has proven enduring because it anchors critical analysis in substantive considerations rather than surface identitarian politics. Anti-essentialism serves as a constant reminder of the distinction between identity and politics; it reminds us that our coalitional anti-subordination work must be grounded in honestly-shared and mutually-honored principles, values, and goals, rather than (just) on shared races, genders, or sexualities.<sup>25</sup>

The second point responds to the critique of anti-essentialism that laments its political agnosticism, that it has no principled bounds, perhaps unable to distinguish between the "Holocaust and a corn cob" — as Angela herself put it in her 1990 article<sup>26</sup> — thus leaving anti-essentialism vulnerable to shifting, unpredictable, even oppressive rather than liberational uses. Therefore, this second point explicitly anchors the practice of anti-essentialism to the norms of the anti-

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<sup>25</sup> For a succinct and powerful exposition of basic points, see Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 HARV. LATINO L. REV. 495, 499-500 (1997).

<sup>26</sup> See Harris, *Race and Essentialism*, *supra* note 3, at 585-86.

subordination principle.<sup>27</sup> The point here is to ground anti-essentialist theory, knowledge, and action normatively in a solid substantive base.<sup>28</sup> Rather than imagining all uses of anti-essentialism as legitimate expressions of the concept, the point here is to distinguish between supremacist and anti-subordinationist uses, to transcend the worries of political agnosticism, and to establish the missing bounds or points of reference. The coupling of anti-essentialism and anti-subordination in critical outsider theory and praxis sets the stage for the third point characterizing this continuing work.

The third point takes the combination of anti-essentialism and anti-subordination from atomized to programmatic levels of action. This third point emphasizes the design and execution of collective, collaborative projects as knowledge-production initiatives, as well as community-building activities, for the longer term, and in inter-generational timeframes.<sup>29</sup> This third point emphasizes the dynamic dialectic of theory and action in community and coalitional frameworks as integral to the production of antisubordination consciousness and society.

These three points in turn highlight the broader and deeper significance of community-building and institution-building to outsider knowledge production in the legal academy of the United States. As indicated by the anecdotes above, this emphasis on community- and institution-building has been a theme and hallmark from the outset of our work together, especially in the context of LatCrit projects, as Angela noted eloquently in 1999:

In answer to the question: why does it matter whether critical race theory as a community lives or dies? Who cares? It matters, of course, for our own survival. Most of us are still in environments where we feel marginal, even under attack. In the U.S. at present there is an enormous state backlash against communities of color and against gays and lesbians of all colors. Feminism is constantly being undermined in public

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<sup>27</sup> For the original articulation of the concept, see generally Owen M. Fiss, *Groups and the Equal Protection Clause*, 5 PHIL. & PUB. AFF. 107 (1976) (presenting the anti-subordination approach to equal protection); Symposium, *Fiss's Way: The Scholarship of Owen Fiss*, 58 U. MIAMI L. REV. 1 (2003).

<sup>28</sup> For a more recent, and critical, discussion, see generally Jerome M. Culp, Angela P. Harris & Francisco Valdes, *Subject Unrest*, 55 STAN. L. REV. 2435 (2003).

<sup>29</sup> For a more complete elaboration of these points, see Francisco Valdes, *Rebellious Knowledge Production, Academic Activism, & Outsider Democracy: From Principles to Practices in LatCrit Theory, 1995 to 2008*, 8 SEATTLE J. SOC. JUST. 131, 139-50 (2009).

discourse when not openly attacked; and in the universities many are still the 'only ones', or part of groups that lack a critical mass, or part of groups that are now dwindling. In this kind of climate, coalition building is essential for our survival. . . .

Attention to community building also matters on a broader scale, however. . . . [A]lthough critical race theory, LatCrit, and the other outsider groups in academia believe that their great contribution to contemporary social life lies in the ideas they promulgate, an even greater contribution in fact would be the seed of a new kind of community and a new kind of identity politics that is able to embrace the paradox of postmodern identity.<sup>30</sup>

The point could not be better put, and helps put into context Angela's work with the SSP, CLAVE, and other collaborative programmatic experiments initiated during those times. Since then, and thanks to this early work, this progressive fusion of method and substance continues in many forms, including in the form of still-ongoing LatCrit projects like these.

While not perfect, this pioneering work synthesizing knowledge production and community building was unprecedented. Never before had people of color, much less women of color, been represented in U.S. legal academia in numbers sufficient to mount sustained programmatic and discursive projects. Never before was this programmatic and coalitional work structurally, culturally or politically possible in U.S. legal education. It takes no hyperbole to recognize as historic the vision, initiative and labor of Angela and her generation.

In the late 1990s, Angela leveraged her offer to visit at Yale Law School by securing the funding for an international, interdisciplinary conference marking the tenth anniversary of CRT's emergence from the U.S. legal academy. Following on the heels of the first LatCrit conference in 1996, Angela called asking me to collaborate with her and others on the planning committee. It was one of the most rewarding collaborations, leading up to a conference (and volume of essays) designed to help build on CRT's early breakthroughs with a new emphasis on multi-racial, trans-national, cross-disciplinary analyses, discourses, and interventions.<sup>31</sup> It was an impulse running

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<sup>30</sup> Angela P. Harris, *Building Theory, Building Community*, 8 SOC. & LEGAL STUD. 313, 321-322 (1999).

<sup>31</sup> See generally CROSSROADS, *supra* note 2 (sharing diverse perspectives on CRT).

through Angela's work from the start to the present, which in turn has helped influence the broader development of critical outsider jurisprudence during the past two decades in myriad salutary ways.

Most recently, and following a near quarter-century at Boalt Hall, Angela went to greener pastures at UC Davis School of Law to continue and deepen her steady work on cutting-edge issues in law, theory, policy, and society, including issues both in economic and environmental in/justice.<sup>32</sup> As these vibrant areas of socio-legal inquiry demand, Angela's counter-disciplinary work continues to blend the theoretical with the material, and to connect ideas to deeds. Finally unbounded since the late 1980s, women of color in the legal academy of the U.S. like Angela continue to staff the critical front lines of legal knowledge and justice praxis — they continue to break glass and shatter ceilings.

In this forward-looking spirit, and in many significant respects, LatCrit theory, praxis, and community likewise continue striving consciously and critically to advance and expand the insights and gains that Angela and her extraordinary generation put on the table a quarter of a century ago.<sup>33</sup> We do not view the contributions of those women and their successors as momentary, but as foundational. Our shared labors and experiences during the past two decades or so show them to be timeless critical insights toward a salutary way of being — ultimately and substantively, toward a post-subordination society.

Angela once said to me, quite a few moons ago, that, "White supremacy always snatches victory from the jaws of defeat." In some sobering ways, this pithy observation marks the times that have transpired since those heady and heavy days of the 1990s, now over two long and rocky decades ago. Some days, it now seems like all heaviness, and little or no headiness. Some, but not all.

In the time since the emergence of Angela's generation, the basic social compact underlying this nation-state has come under fierce pressure, and unravels more so each passing year.<sup>34</sup> Retrenchment and the backlash are all around, swirling furiously both throughout academy and society. Financed lavishly by big business, "dark money"

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<sup>32</sup> For more on Professor Harris, see *Angela P. Harris*, UC DAVIS SCH. L., <http://www.law.ucdavis.edu/faculty/harris/index.aspx> (last visited Feb. 9, 2014).

<sup>33</sup> See, e.g., Steven Bender & Francisco Valdes, *At and Beyond Fifteen: Mapping LatCrit Theory, Community, and Praxis*, 14 HARV. LATINO L. REV. 397 (2011) (detailing the history and modern day contributions to LatCrit).

<sup>34</sup> For further discussion, see Francisco Valdes & Sumi Cho, *Critical Race Materialism: Theorizing Justice in the Wake of Global Neoliberalism*, 43 CONN. L. REV. 1513, 1516-19 (2011) (criticizing the American Euro-heteropatriarchal nation-state and advocating for alternatives).

fuels a vicious nationwide assault on the rights and liberties of women, workers, minority voters, and underprivileged people.<sup>35</sup> The uncompromising intention is “resurrection” of old deals, raw neocolonial deals, as the sociolegal legacies of the New Deal, New Frontier, and Great Society increasingly are demonized and dismantled to “resurrect” lost or diminished identitarian privileges enjoyed by historically dominant social groups.<sup>36</sup> As the U.S. culture wars over the lessened rights and liberties of traditionally subordinated social groups continue, it sometimes seems that both political parties increasingly are morphing into just two big corporations chasing the big bucks that only self-interested billionaires can spare today.

Yet, a black family does inhabit the White House for the first time ever, despite vociferous racist denials of the reality. Moreover, women finally seem poised to become the U.S. Commander in Chief, again for the first time ever. And sexual minorities finally seem to be on the verge of (at least) formal equality, for better or worse, even as the judges continue to otherwise constrict formal equality’s social reach.<sup>37</sup> Closer to home, in the legal academy, crisis and paradigm-shift is said to be everywhere — and not for the better — as legal education is required to conform to the corporate-inflected politics seemingly enveloping every sector of U.S. society.<sup>38</sup> Yet women of color continue to grow in ranks<sup>39</sup> and stature: for instance, last year, for the first time

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<sup>35</sup> See generally ROBERT M. MCCHESENEY & JOHN NICHOLS, *DOLLAROCRACY* (2013) (describing the influence of money on politics and suggesting solutions for the future); Christia Freeland, *Plutocrats v. Populists*, N.Y. TIMES, Nov. 3, 2013, at SR1 (detailing how big business uses money to achieve its interests); Matthew Rothschild, *Taking on the Money Power*, PROGRESSIVE, May 2013, at 8 (describing legislative efforts to curb corporations’ political spending).

<sup>36</sup> See generally Symposium, *The Constitution in Exile*, 51 DUKE L.J. 1 (2001) (describing how New Deal policies and ideas were repealed and demonized).

<sup>37</sup> In just this year, compare the judicial treatments of sexual and racial minorities in *United States v. Windsor*, 133 S. Ct. 2675 (2013) (adopting protections for sexual minorities), with *Shelby Cnty. v. Holder*, 133 S.Ct. 2612 (2013) (abandoning protections for racial minorities).

<sup>38</sup> See, e.g., STEVEN J. HARPER, *THE LAWYER BUBBLE: A PROFESSION IN CRISIS* (2013) (surveying and critiquing the contemporary legal profession in the United States).

<sup>39</sup> When Angela was entering the profession and composing her pathbreaking 1990 article, the American Association of Law Schools reported that women of color accounted for 3.4% of the U.S. legal professoriate — three or four per hundred, from coast to coast and everywhere in between. ASSOCIATION OF AMERICAN LAW SCHOOLS (AALS) STATISTICAL REPORT ON LAW SCHOOL FACULTY AND CANDIDATES FOR LAW FACULTY POSITIONS (2002–03), available at <http://www.aals.org/documents/statistics/2002-03statistics.pdf>. The latest reported figures, from 2008 to 2009, show a five-fold increase among law faculties, to 18.8%. See 2008–09 AALS STATISTICAL REPORT ON LAW

ever, four Latinas served as a U.S. law school dean.<sup>40</sup> Although many women of color are still presumed incompetent<sup>41</sup> in the U.S. legal academy, no longer are they a society of one<sup>42</sup> combating injustice on solitary terms within their institution, profession, or culture.

Moreover, outsider experiments in critical legal theory and education begun at the turn of the past century continue today in richly varied ways. CRT continues, based chiefly at the UCLA law school and its critical race studies curriculum.<sup>43</sup> Legal feminisms also continue, based in numerous active centers, institutes, and publications around the country.<sup>44</sup> And LatCrit scholars just marked our 18th anniversary of conferences and other projects with the establishment of Campo Sano, a community campus that will serve as a hub of activities allowing us to take LatCrit praxis to the next level.<sup>45</sup> In addition, scholars associated with all of these and allied experiments continue to conduct the regional and national scholars of color conferences, as well as launch new lines of critical legal inquiry, like ClassCrits.<sup>46</sup> Outsider networks remain structurally fragile, yet also are more robust today than ever before.

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FACULTY, available at <http://aals.org/statistics/2009dlt/gender.html>.

<sup>40</sup> They include: Leticia Diaz (Barry), Maria Lopez Pabon (Loyola-New Orleans), Rachel F. Moran (UCLA), and Jennifer Rosato (Northern Illinois). These trailblazers were recognized for these accomplishments during the LatCrit XVI conference in 2013. For more information on that program and event, visit the LatCrit community website at <http://www.latcrit.org>.

<sup>41</sup> See generally PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutiérrez y Muhs et al. eds., 2012) (examining the ways that higher education reflects and reproduces — yet also sometimes subverts — the social hierarchies that pervade American society, including race, gender, class, and sexuality).

<sup>42</sup> See generally Rachel F. Moran, *Commentary: The Implications of Being a Society of One*, 20 U.S.F. L. REV. 503 (1986) (advocating for “Societies of One” to foster dream of equality and meaningful participation).

<sup>43</sup> For additional details, see *Overview of Critical Race Studies Program*, UCLA SCH. LAW, <http://www.law.ucla.edu/academic-programs-and-courses/specializations/critical-race-studies/Pages/default.aspx> (last visited Feb. 15, 2014).

<sup>44</sup> The list of university-based programs, institutes, publications, or centers devoted to feminist projects and law or legal theory is impressive, including: *Berkeley Journal of Gender, Law & Justice*, BERKELEY SCH. L., <http://genderlawjustice.berkeley.edu/>; *Center on Applied Feminism*, U. BALTIMORE SCH. L., <http://www.law.ubalt.edu/centers/caf/>; *Harvard Journal of Law & Gender*, HARV. L. SCH., <http://harvardjlg.com/>; *The Feminism and Legal Theory Project*, EMORY U. SCH. L., <http://www.law.emory.edu/academics/academic-programs/feminism-legal-theory.html>.

<sup>45</sup> See Francisco Valdes, *Coming Up: New Foundations in LatCrit Theory, Community, and Praxis*, 48 CAL. W. L. REV. 505, 543-44 (2012).

<sup>46</sup> See generally, Montoya & Valdes, *supra* note 6, at 231-47.

Because of the innovative work they helped to catalyze, today we know that identities are socially and legally constructed,<sup>47</sup> and in the specific case of whiteness, can be usefully viewed as property.<sup>48</sup> Because of their intellectual leadership, we know now that identities matter in law and society, that people of all kinds all across the land work their identities in discernible but myriad ways that evade essentializing uniformity of political perspective.<sup>49</sup> Because of their insights, experiences, and legacies we know well that solidarity, collaboration and community are valuable levers in the ongoing political work of legal scholarship committed to anti-subordination social change.<sup>50</sup> Because of the work that pioneering women of color engrafted onto the books of legal knowledge starting in the 1990s, no longer can anyone seriously challenge the existence of a vital relationship between identity, community, and epistemology in legal theory and education.

The forces of backlash and retrenchment may have taken center stage nationally during the past two decades or so, but despite all odds, the historically unprecedented outsider archipelago of critical legal studies created and maintained by pioneers like Angela since the 1990s has also taken solid root. The historical contestation over the arc of justice continues. The defiant gains and broken glass accumulated by critical pioneers of multiple stripes, genders, and sexualities during and since Angela's generation continue to bend the future toward the vindication of social justice, even if ever so slightly.

And now — as this very moment of recognition and celebration denotes — the time approaches for the next and rising generations of critical outsider scholars to begin taking up the baton of this ongoing work. Although Angela and her peers will be among us for many

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<sup>47</sup> See, e.g., Ian F. Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV C.R.-C.L. L. REV. 1 (1994) (presenting the social construction thesis on race in the law).

<sup>48</sup> See, e.g., Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993) (examining how whiteness, initially constructed as a form of racial identity, evolved into a form of property).

<sup>49</sup> See, e.g., Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259 (2000) (arguing that because minority members often perceive themselves as subject to negative stereotypes, they feel the need to do significant amounts of "extra" identity work to counter those stereotypes).

<sup>50</sup> See *supra* note 29 and accompanying text. Questions regarding the efficacy of individual and collaborative action in varied academic settings have been salient in critical and outsider efforts to perform the profession ethically. See generally DERRICK BELL, *ETHICAL AMBITION: LIVING A LIFE OF MEANING AND WORTH* (2003) (surveying the dynamics of legal academic activism in the United States); see also Francisco Valdes, *Life as Praxis, Praxis as Life*, 7 LEGAL ETHICS 117, 121 (2004) (book review essay).

moons to come, their example and effort stand as models for upcoming cohorts and generations to adapt and develop — to prepare to tackle the issues that will define coming moments. The collaborative and coalition work of the past two decades increasingly must also become cross-generational to ensure the continuing vitality and grounding of critical outsider jurisprudence as a relevant force in the incomplete history of equal justice under law. In some key respects, the points of departure for this forward-leaning process are well in place, thanks again, to the initiative, vision, and labor of persevering generations like Angela's. Thanks to the work of the past, critical outsider jurisprudence is positioned for the future like never before.

Having already been shown critical lessons, including the structural permanence of identity-based hierarchy,<sup>51</sup> a key bottom-line insight for Angela's generation and those since has been — and continues to be — the importance of critical outsider perseverance. None of us living today is likely to live justice. Angela knows that. We know that. We all accept that. We must. But we shall overcome that, too: if oppression is permanent, so is — and always must be — critical outsider resistance against it. For as long as it takes to dismantle the interlocking structures of material and identitarian subordination, this work must continue. For as long as oppression besets any of us, all of us must and will persist. Because of the critical beach-heads established by the path-breaking generation of women of color that Angela helped to activate, we do and shall persevere. Equipped with the critical and outsider legacies accrued by our jurisprudential and academic predecessors, the continuing aim and hope is that coming generations of diverse legal scholars will do the same until the day that the rule of law is in fact a reign of justice for *all*.

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<sup>51</sup> See, e.g., DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987) (questioning the possibility of equal justice in the United States for racial great); DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992) (developing the argument that white supremacy in the United States is permanent).