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Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship

KEVIN R. JOHNSON*
GEORGE A. MARTÍNEZ**

INTRODUCTION

As the century comes to a close, critical Latina/o theory has branched off from Critical Race Theory.¹ This article considers how this burgeoning body of scholarship finds its roots in a long tradition of Chicana/o activism and scholarship, particularly the work of Chicana/o Studies professors. In the critical study of issues of particular significance to the greater Latina/o community, we owe an intellectual debt to the generations of scholarship focusing on Chicana/os in the United States.

This praise might strike some knowledgeable observers as odd. Chicana/o Studies developed with an exclusive focus on the subordination of persons of Mexican ancestry in the United States and still adheres to the view that investigation of the histories of other Latin American

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1. For themes common to LatCrit Theory, see Francisco Valdes, *Foreword — Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Employment*, 2 HARV. LATINO L. REV. 1, 52-59 (1997). See generally Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 UCLA CHICANO-LATINO L. REV. 1(Spring 1998); Symposium, *LatCrit: Latinas/os and the Law*, 85 CAL. L. REV. 1087, 10 LA RAZA L.J. 1 (1998); Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997); Colloquium, *International Law, Human Rights and LatCrit Theory*, 78 U. MIAMI INTER-AM. L. REV. 177 (1996-97); Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 LA RAZA L.J. 1 (1996).

national origin groups is beyond its scope. In contrast, LatCrit theory from its inception has attempted to focus on the commonalities of persons tracing their ancestry to Latin America. Despite Chicana/o Studies offers important lessons for LatCrit theorists scrutinizing the legal treatment of all Latina/os.

Part I of this article considers the link between Chicana/o Studies activism and Latina/o legal scholarship. Part II analyzes how LatCrit theory finds its intellectual roots in Chicana/o Studies scholarship. In this analysis, we hope to establish the relationship between Chicana/o Studies activism and scholarship, which blossomed as a result of the 1960s Chicano movement, and LatCrit theory. We also show how the Chicana/o Studies model helps us think about some vexing challenges posed to LatCrit theorists. Finally, we highlight a rich body of Chicana/o Studies scholarship on which future critical Latina/o scholarship may build in critically analyzing how law affects the Latina/o community.

I. GENERATIONS: LATINA/O SCHOLARS, SCHOLARSHIP AND ACTIVISM

This section considers the generations of activism by Chicana/o scholars. In so doing, we go beyond law teachers because of the need to view Chicana/o scholar activists as part of long tradition not limited to legal academics.

A. *World War II and Beyond*

World War II remains widely recognized as a watershed moment in the history of Mexican-Americans.² With changes – good and bad — wrought by war, Mexican-Americans came of age and achieved a new political understanding.³

After the war, a group of Mexican-Americans, some of whom had taken advantage of the G.I. Bill, formed a small cadre of scholar/activists. George Sanchez⁴ (University of Texas), Ernesto Galarza,⁵ Julian

2. See DAVID G. GUTIERREZ, WALLS AND MIRRORS: MEXICAN AMERICANS, MEXICAN IMMIGRANTS, AND THE POLITICS OF ETHNICITY IN THE AMERICAN SOUTHWEST 117 (1995). This is not to suggest that Mexican-Americans did not fight for civil rights before World War II; despite poll taxes, literacy tests, and violence designed to limit Mexican-American political power, they fought for equality. See generally JUAN GÓMEZ-QUIÑONES, ROOTS OF CHICANO POLITICS, 1600-1940 (analyzing this history). Nonetheless, World War II, and the surrounding social, political, and economic forces, commenced a resurgence in the insistence on demands for equal rights.

3. See, e.g., RODOLFO ACUÑA, OCCUPIED AMERICA: A HISTORY OF CHICANOS 251-306 (3d ed. 1988) (analyzing the transformative impact of World War II on Mexican-American community).

4. See, e.g., GEORGE I. SANCHEZ, FORGOTTEN PEOPLE: A STUDY OF NEW MEXICANS (1940).

5. See, e.g., ERNESTO GALARZA, FARM WORKERS AND AGRI-BUSINESS IN CALIFORNIA 1947-1960 (1977); ERNESTO GALARZA, MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY (1964); ERNESTO GALARZA, SPIDERS IN THE HOUSE AND WORKERS IN THE FIELD (1970).

Samora (University of Notre Dame),⁶ and Quino Martínez (Arizona State University).

In 1951, George Sanchez founded the American Council of Spanish-Speaking People, which filed civil rights lawsuits designed to halt discrimination against Mexican-Americans.⁷ Sanchez served as of arguably, the most prominent self-help group of his generation, the League of United Latin American Citizens (LULAC).⁸ LULAC was "middle class, accepted only U.S. citizens for membership, and tended towards assimilation."⁹ Through a variety of means, Sanchez sought to induce the U.S. government to ensure the full civil rights of Mexican-Americans.¹⁰ For example, he took the position that discrimination against Mexican-Americans would hurt U.S. foreign relations with Latin America.¹¹ On the controversial topic of immigration, he argued that Mexican immigrants hurt Mexican-Americans by taking away their jobs and undermining their prospects for assimilating into mainstream society.¹² Today, many would criticize his positions, but at the time, these views reflected conventional Mexican-American attitudes about assimilation and immigration.

Like George Sanchez, Ernesto Galarza also dealt with the issue of immigration, but in the specific context of its impact on farmworkers.¹³ He argued that dominant society created negative stereotypes about undocumented workers that reinforced racism against Mexican-Americans.¹⁴ As part of his activism, Galarza established the National Farm Workers Union in the mid-1940s, which served as a precursor to the

6. See, e.g., JULIAN SAMORA, *LOS MOJADOS: THE WETBACK STORY* (1971); JULIAN SAMORA, JOE BERNA, & ALBERT PENA, *GUNPOWDER JUSTICE: A REASSESSMENT OF THE TEXAS RANGERS* (1979).

7. See Ricardo Romo, *George I. Sanchez and the Civil Rights Movement: 1940-1960*, 1 *LA RAZA* L.J. 342, 342 (1986).

8. See GUTIERREZ, *supra* note 2, at 131.

9. F. ARTURO ROSALES, *CHICANO! THE HISTORY OF THE MEXICAN-AMERICAN CIVIL RIGHTS MOVEMENT* 93 (1997).

10. See *id.* at 125.

11. See GUTIERREZ, *supra* note 2, at 132. Similar arguments later eventually facilitated successful desegregation efforts by African Americans. See Mary L. Dudziak, *Desegregation as a Cold War Imperative*, 41 *STAN. L. REV.* 61 (1988); see also Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 *HARV. L. REV.* 518, 524 (1980) ("[T]he [Brown] decision helped to provide immediate credibility to America's struggle with Communist countries to win the hearts and minds of emerging third world people. At least the argument was made by lawyers for both the NAACP and the federal government. And the point was not lost on the news media.") (footnotes omitted); Mary L. Dudziak, *The Little Rock Crisis and Foreign Affairs: Race, Resistance, and the Image of American Democracy*, 70 *SO. CAL. L. REV.* 1641 (1997) (analyzing the relationship between U.S. foreign affairs and civil rights during the Eisenhower administration).

12. See GUTIERREZ, *supra* note 2, at 144-45.

13. See *supra* note 5 (citing Galarza's work in the area).

14. See GUTIERREZ, *supra* note 2, at 158 (reviewing Galarza's writings and personal papers).

United Farm Workers Union of César Chávez, and which opposed the immigration of Mexican workers that undercut the wage scale.¹⁵ In addition, Galarza helped establish the Mexican-American Legal Defense and Education Fund (MALDEF), which ultimately became perhaps the most potent weapon for protecting the legal rights of Mexican-Americans (and, ironically enough, in light of Galarza's views on Mexican immigrants, for Mexican immigrants).¹⁶

Julian Samora pioneered the field of Mexican-American studies by constructing a sociological perspective on Mexican-Americans.¹⁷ Through his scholarship, he sought to influence policy toward Mexican-Americans and improve their condition. As a scholar-activist, Samora helped found the Southwest Council of La Raza, an advocacy group supporting full civil rights for Mexican-Americans.¹⁸

A specialist in historical linguistics, Quino Martínez actively supported a number of major Mexican-American community projects in Arizona. For example, he supported the Guadalupe Organization, an important activist group that advanced the interests of the Mexican-American community of Guadalupe, Arizona.¹⁹ In addition, Martínez served as a mentor to the Chicana/o student activists at Arizona State University in the 1960s and 1970s.

Scholars of this generation generally believed that Mexican-Americans should assimilate into the mainstream. Viewing undocumented labor as thwarting full integration of Mexican-Americans, they advocated restrictive immigration laws.²⁰ Though these views are antithetical to today's Chicana/o Studies and LatCrit scholar activists, these pioneers understood that dominant society demanded assimilation as a prerequisite to Mexican-American membership. They also saw, more generally, the relationship between Mexican immigration and the domestic civil rights of the Mexican-American community.

This generation of scholar activists eventually learned that restric-

15. See ROSALES, *supra* note 9, at 119-20.

16. See Luis R. Fraga, *Preface*, in "Seventh Annual Ernesto Galarza Commemorative Lecture 1992" (Stanford Center for Chicano Research, Stanford University).

17. See Cordelia Chavez Candelaria, *Introduction of Guest Lecturer*, in "Seventh Annual Ernesto Galarza Commemorative Lecture 1992" (Stanford Center for Chicano Research, Stanford University).

18. See *id.*

19. See ERNESTO GALARZA, HERMAN GALLEGOS & JULIAN SAMORA, *MEXICAN-AMERICANS IN THE SOUTHWEST* at x, 9 (1970).

20. See *supra* text accompanying notes 12, 13, 15, and 16. Chicana/o Studies scholars later criticized the assimilationist model. For analysis of the limits of Mexican-American assimilation, Kevin R. Johnson, "Melting Pot" or "Ring of Fire"? *Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1259 (1997) and George A. Martínez, *Latinos Assimilation and the Law: A Philosophical Perspective*, 19 UCLA CHICANO-LATINO LAW REV. (Spring, 1998).

tive immigration laws and policies failed to help, and indeed adversely affected, the Mexican-American community.²¹ For example, the U.S. government in 1954 embarked on "Operation Wetback" and deported many long-time U.S. residents, breaking up Mexican-American families, and resulting in U.S. citizens of Mexican ancestry leaving the country.²² "The Mexican American community was affected because the campaign was aimed at only one racial group, which meant that the burden of proving one's citizenship fell totally upon people of Mexican descent. Those unable to present such proof were arrested and returned to Mexico."²³ This experience caused Mexican-American scholar activists to reconsider their positions on immigration and assimilation.²⁴

B. *The Chicano Movement of the 1960s*

Providing powerful leadership, the post-World War II generation of scholar activists made important contributions to the advancement of Mexican-American civil rights. They set the stage for Chicano activists of the 1960s and 1970s. Building on previous generations of Mexican-American activism and inspired by the civil rights and anti-war movements, the farm worker movement in the west, and the efforts by Mexican-Americans to recover land in New Mexico, activism grew in the 1960s among politicized Mexican-American communities throughout the United States.²⁵ Chicana/o youths voiced concerns with racial discrimination, poor education, and the lack of equal opportunity. The Chicana/o student movement saw Mexican-Americans dramatically walk out of schools throughout the southwest. Activists constructed a new "Chicano" self-identity, which represented an effort to redefine themselves by their own standards. As LatCrit theorists would later put it, they sought to "name [their] own reality."²⁶ Political leader Corky Gonzales's epic poem "I Am Joaquín" became the anthem for the Chicana/o

21. See GUTIERREZ, *supra* note 2, at 163. LatCrit scholars have analyzed how immigration law and policy disparately impacts the Mexican-American community. See, e.g., Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA L. Rev. 1509 (1995); Elvia R. Arriola, *LatCrit Theory, International Human Rights, Popular Culture, and the Faces of Despair in INS Raids*, 28 U. MIAMI INTER-AM. L. REV. 245 (1996-97).

22. See generally JUAN RAMON GARCÍA, OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN UNDOCUMENTED WORKERS IN 1954 (1980) (documenting deportation campaign).

23. *Id.* at 230-31.

24. See GUTIERREZ, *supra* note 2, at 164-68. For a general historical analysis of the Chicana/o movement see CARLOS MUÑOZ, JR., YOUTH, IDENTITY, POWER: THE CHICANO MOVEMENT (1989).

25. See generally ROSALES, *supra* note 9.

26. See RICHARD DELGADO & JEAN STEFANCIC, THE LATINO/A CONDITION: A CRITICAL READER 251 (1998).

movement and the effort to create a new identity.²⁷ The expression "Chicano," the core to the new self-identity, symbolized pride in Mexican ancestry and traditions. "Long used as a slang or pejorative in-group reference to lower-class persons of Mexican descent, in the 1960s the term *Chicano* was adopted by young Mexican-Americans as an act of defiance and self-assertion and as an attempt to redefine themselves by criteria of their own choosing."²⁸

Chicana/o Studies also promoted the idea of "Chicanismo," which was then used by activists in establishing Mexican-American solidarity.²⁹ The Chicano movement gave dignity to a positive self-identity, and helped redefine Mexican-American heritage as something to be proud, not ashamed of, as past generations had been.³⁰

With the goal of Chicana/o pride, activists drew up a "Spiritual Plan of Aztlan": a separatist vision of a Chicana/o homeland.³¹ In setting out this plan, they rejected assimilation into the mainstream on the ground that it reinforced subordination.³²

Activism was closely linked to Chicana/o Studies scholarship. Indeed, "[t]he most visible vestige of the [Chicano movement] is to be found in academia in the many university Chicano studies programs and departments that exist throughout the Southwest."³³ Through Chicana/o Studies courses, many Mexican-Americans became aware of the significance of the Treaty of Guadalupe Hidalgo to the subordinate status of Mexican-Americans.³⁴ Fernando Gomez explored how the Treaty of Guadalupe Hidalgo could be used to advance the civil rights of present-day Mexican-Americans.³⁵ Showing the link between scholarship and

27. See MUÑOZ, *supra* note 24, at 61-62; ROSALES, *supra* note 9, at 180.

28. See GUTIERREZ, *supra* note 2, at 184.

29. *Id.* See generally ARMANDO B. RENDON, CHICANO MANIFESTO (1971) (articulating demands of Chicana/o movement). For a historical analysis of the development of the ideology of Chicanismo, see IGNACIO M. GARCÍA, CHICANISMO: THE FORGING OF A MILITANT ETHOS AMONG MEXICAN AMERICANS (1997).

30. See ROSALES, *supra* note 9, at 252-53.

31. See ROSALES, *supra* note 9, at 183-84; see also MUÑOZ, *supra* note 24, at 75-78 (1989) (discussing 1969 conference in Denver at which the plan was developed).

32. See GUTIERREZ, *supra* note 2, at 185.

33. ROSALES, *supra* note 9, at 253; see MUÑOZ, *supra* note 24, at 127-69 (analyzing demands by activists for Chicana/o Studies departments on campuses and the evolution of the field over time).

34. See RICHARD GRISWOLD DEL CASTILLO, THE TREATY OF GUADALUPE HIDALGO: A LEGACY OF CONFLICT 145 (1990). One leading legal expert on the Treaty was introduced to it through Chicana/o Studies and teaches Chicana/o Studies courses in addition to law. See, e.g., Guadalupe T. Luna, "Agricultural Underdogs" and International Agreements: The Legal Context of Agricultural Workers Within the Rural Economy, 26 N.M. L. REV. 9 (1996); Guadalupe T. Luna, *Chicana/o Land Tenure in the Agrarian Domain: On the Edges of a Naked Knife*, 3 MICH. J. RACE & L. 39 (1999).

35. See GRISWOLD DEL CASTILLO, *supra* note 34, at 145.

activism, Reies López Tijerina relied heavily on the Treaty in his fight to reclaim land for persons of Mexican ancestry in New Mexico.³⁶

The important work of other Chicana/o Studies scholars had activist ends. A renowned activist, Rodolfo Acuña developed new theoretical approaches for understanding the situation of Chicana/os and specifically argued that Chicana/os had been colonized by the United States in a way that parallels the colonization of third world countries.³⁷ In analyzing the intersection of race and class in Chicana/o subordination in the Southwest, Mario Barrera allowed Chicana/os to better understand the complexity of immigration law and the Mexican-American community.³⁸ He also offered a new political theory of Chicana/os in the United States.³⁹

Chicanas also have been instrumental in creating a body of Chicana Studies scholarship. For example, Roxanne Dunbar Ortiz studied the history of Chicana/o resistance to loss of land in New Mexico.⁴⁰ In revisiting Chicana/o history, Vicki Ruiz documented the important activist role that Chicanas played and how they defied the stereotype that women of Mexican ancestry are passive.⁴¹ Mary Romero studied the lives of Mexican-American women in the domestic service industry in the Southwest.⁴² Most recently, Carla Trujillo has edited a book of scholarship on Chicana theory.⁴³

Besides political activism, the Chicana/o movement resulted in efforts to bring change through traditional means. The creation of the Mexican-American Legal Defense and Educational Fund (MALDEF) and the Southwest Voter Registration and Educational Project (SWVREP), are important examples.⁴⁴ SWVREP helped register new Mexican-American voters and facilitate political action. MALDEF has vindicated the rights of persons of Mexican ancestry in the legal process

36. See ROSALES, *supra* note 9, at 154.

37. See generally ACUÑA, *supra* note 3. Until Acuña's pathbreaking first edition of his book in 1972, the standard in the field was CAREY McWILLIAMS, *NORTH FROM MEXICO: THE SPANISH-SPEAKING PEOPLE IN THE UNITED STATES* (1948). An activist in his own rite, McWilliams was involved in the successful overturning of the conviction in the infamous Sleepy Lagoon case in which Chicano youths were wrongly accused of murder. See GUTIÉRREZ, *supra* note 2, at 128.

38. See MARIO BARRERA, *RACE AND CLASS IN THE SOUTHWEST* (1979).

39. See Mario Barrera, *The Study of Politics and the Chicano*, 5 *AZTLÁN* 9 (1974).

40. See ROXANNE DUNBAR ORTIZ, *ROOTS OF RESISTANCE: LAND TENURE IN NEW MEXICO, 1680-1980* (1980).

41. See VICKI L. RUIZ, *FROM OUT OF THE SHADOWS: MEXICAN WOMEN IN TWENTIETH CENTURY AMERICA* (1998); VICKI L. RUIZ, *CANNERY WOMEN, CANNERY LIVES: MEXICAN WOMEN, UNIONIZATION, AND THE CALIFORNIA FOOD PROCESSING INDUSTRY, 1930-1950* (1987).

42. See MARY ROMERO, *MAID IN THE U.S.A.* (1992).

43. See *LIVING CHICANA THEORY* (Carla Trujillo ed., 1998).

44. See ROSALES, *supra* note 9, at 264.

in cases such as *White v. Regester*,⁴⁵ a voting rights action, and *Plyler v. Doe*,⁴⁶ which protected the right of undocumented Mexican children to a public education. MALDEF also helped strike down California's Proposition 187, which stripped public benefits from undocumented immigrants.⁴⁷

In sum, Chicano movement leaders combined activism with scholarship in fighting for land rights, educational reform, language rights, and equality. As Chicana/o Studies began to define itself, it produced new scholar activists. Chicana/o Studies began to serve as the place where people could learn their history and become "active" within the community.

C. *Latina/o Legal Scholars, Scholarship and Activism*

Against this background of the Chicano movement, we encounter the Chicana/o law professors of the 1970s and early 1980s. As with the formation of Chicana/o Studies, student activists demanded for law schools to hire Latina/o law professors.⁴⁸ Among these first Chicana/o law professors are scholar activists, including but not limited to Leo Romero,⁴⁹ Cruz Reynoso,⁵⁰ and Richard Delgado.⁵¹ For example, an early article by Delgado and Vicky Palacios argued that Mexican-Americans should be recognized as a "class" for purposes of bringing civil rights actions.⁵² (Such "class" actions are most effective in bringing about structural reform.) An article by Romero, Delgado and Reynoso identified problems that Chicana/o students face in studying law, especially the cultural conflict faced by them in law school.⁵³ As scholar activists, they made concrete suggestions to make legal education more

45. 412 U.S. 755 (1973).

46. 457 U.S. 202(1982).

47. See *League of United Latin Americans v. Wilson*, 1998 U.S. Dist. LEXIS 3368 (C.D. Cal. Mar. 17, 1998); *League of United Latin Americans v. Wilson*, 908 F. Supp. 755 (C.D. Cal. 1995).

48. Cf. Derrick A. Bell, *Diversity and Academic Freedom*, 43 J. LEG. EDUC. 371, 377 (1993) ("[W]hen under pressure from students or alumni law schools look beyond law school credentials and hire the best minority they can find . . .").

49. Leo Romero began his law teaching career in 1970. He has taught for many years at the University of New Mexico School of Law, including six years as its dean.

50. Cruz Reynoso entered the legal academy in 1972 and later served for five years as a Justice on the Supreme Court of California. He now teaches at the UCLA School of Law and is a member of the U.S. Commission on Civil Rights.

51. Richard Delgado began teaching law in 1974. A founder of the Critical Race Theory movement, Delgado is currently teaching at the University of Colorado School of Law. Among his many books and articles, he is co-editor with Jean Stefancic of *THE LATINO/A CONDITION*, *supra* note 26, an anthology of readings on LatCrit Theory.

52. See Richard Delgado & Vicky Palacios, *Mexican-Americans as a Legally Cognizable Class Under Rule 23 and the Equal Protection Clause*, 50 NOTRE DAME L. REV. 393 (1975).

53. See Leo Romero, Richard Delgado & Cruz Reynoso, *The Legal Education of Chicano Students: A Study in Mutual Accommodation and Cultural Conflict*, 5 N.M. L. REV. 177 (1975).

hospitable for Chicana/s, including recommendations that law professors should analyze the racial interests at stake in legal rules to make law relevant to Chicana/s.

Another person who fits within this long history of Mexican-American scholar activists is Michael Olivas (roughly of this generation), considered to be the "Dean" of Latina/o law professors, who began teaching law in 1982. He pushed law schools to hire Latina/s and helped them gain tenure and promotion. When Olivas began teaching there were only 22 Latina/o law professors,⁵⁴ and, due in no small part to his efforts, there were 125 in the spring of 1998.⁵⁵ The first Latinas, including Rachel Moran and Berta Hernández, two prominent LatCrit scholars, joined the academy in the 1980s. To pressure law schools to increase the number of Latina/o law professors, Olivas, with the backing of the Hispanic National Bar Association, established the so-called "Dirty Dozen" list, i.e., a select list of law schools in areas with a significant Latina/o population but with no Latina/o faculty. The well-publicized list placed pressure on law faculties to hire Latinos/as; some schools did.⁵⁶ Olivas also conducted workshops for lawyers interested in law teaching at the annual Hispanic National Bar Association convention. Besides his activism in academia, Olivas helped establish a law student clinic to help Central American immigrant children detained by the Immigration and Naturalization Service in South Texas.⁵⁷

54. See Michael A. Olivas, *The Education of Latino Lawyers: An Essay on Crop Cultivation*, 14 UCLA CHICANO-LATINO L. REV. 117, 128 (1994) [hereinafter Olivas, *Latino Lawyers*]. Though active in his efforts to increase the numbers of Latina/os into legal academia, Olivas is a well-established scholar whose important works include THE LAW AND HIGHER EDUCATION (2d ed. 1997), *Storytelling Out of School: Undocumented College Residency, Race, and Reaction*, 22 HASTINGS CONST. L.Q. 1019 (1995), *Reflections on Professorial Academic Freedom: Second Thoughts on the Third "Essential Freedom"*, 45 STAN. L. REV. 1835 (1993), *Legal Norms in Law School Admissions: An Essay on Parallel Universes*, 42 J. LEG. EDUC. 103 (1992), "Breaking the Law" on Principle: An Essay on Lawyers' Dilemmas, Unpopular Causes, and Legal Regimes, 52 U. PITT. L. REV. 815 (1991) [hereinafter Olivas, "Breaking the Law"], *Unaccompanied Refugee Children: Detention, Due Process, and Disgrace*, 2 STAN. L. & POL'Y REV. 159 (1990), and *The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders as Racial History*, 34 ST. LOUIS U. L.J. 425 (1990) [hereinafter Olivas, *Slave Traders Chronicle*].

55. See Michael A. Olivas, Latino/a Law Professor Newsletter, spring 1998; see also Francisco Valdes, *Under Construction: LatCrit Consciousness, Community and Theory*, 85 CAL. L. REV. 1087, 1134-37 (1997), 10 LA RAZA L.J. 1, 48-51 (1998) (analyzing impact of underrepresentation of Latina/os in legal education). Of the 117 of the Latina/o law professors whose backgrounds are known, 71 are of Mexican ancestry. See Olivas, *Latino Lawyers*, *supra* note 54.

56. See *Yale Law's Lack of Latinos*, CONN. L. TRIB., Nov. 3, 1997 (reporting release of annual Dirty Dozen list); Ken Myers, *Hispanic Bar Raps 'Dirty Dozen' — Institutions Without Latinos*, NAT'L L.J. Nov. 9, 1992, at 4 (same).

57. See Olivas, "Breaking the Law", *supra* note 54, at 833-35 (describing efforts).

D. *The Latina/o As Scholar Activist Continues with LatCrit Theory.*

Activism generated Chicana/o studies. Activism created LatCrit Theory. Due to the hard work of activists, a critical mass of Latina/o legal scholars has been established. Critical Latina/o theory is the result. LatCrit has emphasized the need for connection between theory and practice.⁵⁸ This focus fits comfortably within a well-established tradition of Chicana/o scholar activists. For example, contending that “all legal scholarship is necessarily and fundamentally political,” Frank Valdes has argued that LatCrit theorists must view themselves as activists.⁵⁹

More importantly, LatCrit theory has generated powerful perspectives and analysis important for activists. For example, LatCrit theorists recognize that perhaps the key area for activists to focus on is cultural preservation and retention of language rights.⁶⁰ There is a long history in this country of attempted forced assimilation, such as the infamous “Americanization” programs in the 1920s designed to teach Mexican-Americans the values of Anglo Saxon society.⁶¹ Interestingly, these efforts do not stop at our border. Thus, the North American Free Trade Agreement (“NAFTA”) may be viewed as a way to “Americanize Mexico.”⁶² The philosophical ideal of authenticity requires Latina/os to be true to that history.⁶³ For this reason, Chicanas/os suffer severely in attempting to assimilate.⁶⁴ Traumatic attempts to lose Spanish language skills and accents, for example, have injured Mexican-Americans.⁶⁵

58. See Valdes, *supra* note 1, at 31. Critical Race Theory also has begun to focus on linking theory to practice. See, e.g., Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Praxis in Post-Civil Rights America*, 95 MICH. L. REV. 821 (1997).

59. See Valdes, *supra* note 1, at 53.

60. See, e.g., Max J. Castro, *Making Pan Latino: Latino Pan-Ethnicity and the Controversial Case of the Cubans*, 2 HARV. LATINO L. REV. 179, 185-87 (1997); Berta Esperanza Hernández-Truyol, *Borders (En)gendered: Normativities, Latinas, and a LatCrit Paradigm*, 72 N.Y.U. L. REV. 882 (1997) (analyzing the role of culture to Latina/o identity).

61. See Martínez, *supra* note 20.

62. Stephen Zamora, *The Americanization of Mexican Law: Non-Trade Issues in the North American Free Trade Agreement*, 24 LAW & POL'Y INT'L BUS. 391, 395 (1993); see George A. Martínez, *Dispute Resolution and the Treaty of Guadalupe Hidalgo: Parallels and Possible Lessons for Dispute Resolution Under NAFTA*, 5 SW. J.L. & TRADE IN THE AMERICAS 147(Spring 1998).

63. See Martínez, *supra* note 20.

64. See Johnson, *supra* note 20, at 1281-86 (analyzing limits imposed by society on Mexican Americans seeking to assimilate).

65. See, e.g., Steven W. Bender, *Direct Democracy and Distrust: The Relationship Between Language Law Rhetoric and the Language Vigilantism Experience*, 2 HARV. LATINO L. REV. 145 (1997); Christopher David Ruiz Cameron, *How The Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, 85 CAL. L. REV. 1347 (1997), 10 LA RAZA L.J. 261 (1998).

Activists must resist the English-only movement that represents an effort to use the law to force abandonment of the Spanish language. Similarly, activists must resist those who contend that the immigration should be restricted because Latina/os fail to assimilate.⁶⁶

Similarly, society often treats Latina/os as foreigners,⁶⁷ which contributes to the perception that they are racially and culturally different. Activists must combat this perception. Beyond this, LatCrit theorists have called us to recognize the importance of coalitions with other subordinated groups.⁶⁸ For example, Rachel Moran and Bill Piatt have urged African Americans and Latina/os to work together in order to preserve remedial programs like affirmative action.⁶⁹

Careful study of school desegregation efforts by LatCrit scholars also have benefited activists.⁷⁰ Activists should promote a multicultural approach in areas like education and immigration. If, as Nathan Glazer has proclaimed, "we are all multiculturalists now,"⁷¹ it is time to work to realize that ideal.

LatCrit theorists also have noted that legal self-definition is important. For example, the Mexican-American's legal definition as "white," while superficially appealing, may actually serve to allow for continued oppression of Mexican-Americans and create barriers to coalitions with other non-Whites.⁷² As Chicanismo recognized, activists understand the importance of group self-definition and challenge how white definitions of Chicanismo may reinforce subordination.

In pursuing social change, we must not forget that, as LatCrit theorists have emphasized, there are limits to the utility of litigation. Courts often exercise their discretion against Mexican-Americans.⁷³ Legal success often does not translate into meaningful change. This suggests that

66. See, e.g., PETER BRIMELOW, *ALIEN NATION* 272-74 (1995).

67. See Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101, 117-29 (1997).

68. See Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA RAZA L.J. 42, 66-67 (1995); Valdes, *supra* note 1, at 53-54.

69. See Rachel F. Moran, *Neither Black Nor White*, 2 HARV. LATINO L. REV. 61, 87 (1997); BILL PIATT, *BLACK AND BROWN IN AMERICA: THE CASE FOR COOPERATION* 156 (1997).

70. See Jorge C. Rangel & Carlos M. Alcalá, *Project Report: De Jure Segregation of Chicanos in Texas Schools*, 7 HARV. C.R.-C.L. L. REV. 307 (1972) (documenting history of segregation of Mexican-Americans in public schools and Texas society generally).

71. See NATHAN GLAZER, *WE ARE ALL MULTICULTURALISTS NOW* (1997).

72. See George A. Martínez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, 2 HARV. LATINO L. REV. 321 (1997).

73. See generally George A. Martínez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. DAVIS. L. REV. 555 (1994) (reviewing key judicial decisions involving civil rights of Mexican-Americans and concluding that courts frequently exercise discretion to detriment of minorities).

activists need to supplement litigation efforts with political movements.⁷⁴ A well-known success story in Chicana/o Studies circles illustrates this point. In successfully resisting an effort to segregate the public schools in Lemon Grove, California in the 1930s, Mexican-Americans combined political action with litigation.⁷⁵ More recently, the “Mothers of East Los Angeles,” a group composed of Mexican American women, successfully organized to fight the placement of toxic waste sites through grassroots activism combined with litigation.⁷⁶ Chicana/o Studies and LatCrit activism is inextricably linked to scholarship. The next section analyzes this relationship.

II. CHICANA/O STUDIES AND THE EMERGENCE OF CRITICAL LATINA/O LEGAL SCHOLARSHIP

Critical Latina/o theory, the subject of five symposia in the last couple of years,⁷⁷ represents the first sustained critical consideration of legal issues of particular significance to the Latina/o community. The development of LatCrit scholarship is attributable in no small part to the new generation of Latina/o legal scholars. This new generation has focused on issues of particular concern to the Latina/o community, and has contributed a growing body of scholarship on Latina/o legal issues. The group added to the relatively small body of scholarship that previously existed on issues such as the impact of the immigration laws on the Latina/o community, national origin discrimination against persons of Latin American ancestry, and language discrimination. This new scholarship has been long in coming. For example, not until the 1970s did Latina/o scholars analyze the fundamental question whether Mexican-Americans might be able to bring class action, an important tool in civil rights litigation.⁷⁸

Much of this new Latina/o scholarship is “critical.” How could you be Latina/o in the United States and look at the status quo on certain legal issues important to the Latina/o community and not be critical?

74. See Johnson, *supra* note 68, at 55-56.

75. See *id.* at 48-49 (summarizing events); Robert R. Alvarez, Jr., *The Lemon Grove Incident: The Nation's First Successful Desegregation Case*, 32 J. SAN DIEGO HIST. 116 (1986); see also *Westminister School Dist. v. Mendez*, 161 F.2d 774 (9th Cir. 1947) (holding that public school system had unlawfully segregated Mexican American students).

76. See Mary Pardo, *Mexican American Women Grassroots Community Activists: “Mothers of East Los Angeles”*, FRONTIERS, Vol. 11, at 1 (1990).

77. See *supra* note 1 (citing symposia).

78. See Delgado & Palacios, *supra* note 52. Indeed, not until the 1950s was it clear that the Equal Protection Clause applied to persons of Mexican ancestry, see *Hernandez v. Texas*, 347 U.S. 475 (1954); see also Ian F. Haney López, *Race and Erasure: The Salience of Race to LatCrit Theory*, 85 CAL. L. REV. 1153 (1997), 10 LA RAZA L. J. 57 (1998) (analyzing significance of *Hernandez*).

Even some deeply conservative Mexican-Americans, for the most part disowned by Chicana/o activists, are critical of how this society treats Mexican-Americans. Linda Chavez has expressed concern with the anti-Mexican undercurrent to the immigration debate in the 1990s.⁷⁹ Richard Rodriguez and Ruben Navarrete are critical of how Mexican-Americans have been treated in the United States.⁸⁰

Latina/o legal scholarship has responded to the perceived need to study specific issues of particular relevance to Latina/os that have not been squarely addressed in the civil rights scholarship, including Critical Race Theory. To address these issues, LatCrit theorists must grapple with some difficult questions. In doing so, we should look to the teachings of our Chicana/o Studies predecessors.

A. *The Need for a Distinctive Chicana/o Legal Scholarship*

LatCrit scholars have begun to address internal issues, namely the deep diversity within the pan-Latino community.⁸¹ Far from homogeneous, Latina/os are a "community of different communities."⁸² There are differences among many Latina/os in terms of national origin, ancestry, language, skills, immigration status, class, skin color and physical appearance, "race" (as that term is traditionally used), and other characteristics. At the same time, there are many commonalities to the Latina/o experience in this country, including discrimination, perpetual treatment as foreigners, and devaluation of culture and language. Latina/os thus face the difficult task of focusing on commonality while recognizing difference.⁸³

Though important to emphasize commonality to build community, each national origin sub-group of the Latina/o community must be afforded the space to critically study its specific history in the United States. For example, Mexican-Americans in the Southwest have a distinctly different experience in this country than other Latina/o groups, such as Cubans and Puerto Ricans.⁸⁴ This history has been explored in

79. See Linda Chavez, *Immigration Not About Race*, USA TODAY, May 31, 1995, at 13A (objecting to restrictionist claims that immigrants of color are somehow transforming United States).

80. See RUBEN NAVARRETTE, JR., *A DARKER SHADE OF CRIMSON* (1993); RICHARD RODRIGUEZ, *HUNGER OF MEMORY* (1982).

81. See Johnson, *supra* note 67, at 129-38.

82. See *id.* at 129.

83. See Valdes, *supra* note 1, at 54.

84. Indeed, the Mexican-American communities in Texas, New Mexico, Arizona, and California developed differently based on historical, economic, and political circumstances peculiar to each state. See Iris H.W. Engstrand, *The Impact of the U.S.-Mexican War on the Spanish Southwest*, in *CULTURE Y CULTURA: CONSEQUENCES OF THE U.S.-MEXICAN WAR, 1846-1848* at 18-24 (1998). The different experiences between Cuban American and other Latina/os are

the Chicana/o Studies scholarship, which has focused on the Chicana/o experience in the United States as opposed to the experiences of other sub-groups of the greater Latina/o community. Nor are the experiences of all persons of Mexican ancestry in the United States identical. Mexican-Americans and Mexican immigrants live different lives. Tension, as suggested by some early Chicana/o scholars' views on immigration,⁸⁵ exists between these groups.⁸⁶

The different experiences necessarily affect scholarly inquiry. Mexican-Americans must be permitted to explore their own histories and analyze how the law has operated to reinforce their subordination. Some LatCrit theorists have embarked on the study of the Mexican-American experience.⁸⁷ Mexican-Americans indeed may have a distinctive "voice" in analyzing issues concerning the Mexican-American experience in the United States.⁸⁸

Some of the differences of perspective were brought out at a conference in 1998 marking the 150th anniversary of the Treaty of Guadalupe Hidalgo, which ended the United States-Mexican War in 1848.⁸⁹ Divisions of opinion between leading Chicana/o Scholars in the United States and scholars from Mexico, including the prominent Mexican intellectual Jorge Castañeda, became evident. Chicana/o scholars, including Rudy Acuña, pointedly accused the Mexican intellectuals of not being even remotely concerned with the status of Chicano/os in the United States. The Chicana/o Studies experience suggests that LatCrit Theory should encourage — or, at a minimum, should not discourage — distinctive scholarly inquiry into the histories and realities of subordination of Chicana/os. This study should not be considered as a threat to Latina/o unity but should be viewed as essential to a full understanding of racial subordination in the United States. One interesting aspect of

implicit in Castro, *supra* note 60, which analyzes the potential for integrating Cubans into a larger Latina/o community in light of the specific historical experience of Cuban Americans.

85. See *supra* text accompanying notes 12, 13, 15, and 16.

86. See GUTIERREZ, *supra* note 2 (analyzing tensions among Mexican-Americans on issue of immigration). Some of the differences and tensions are explored in Kevin R. Johnson, *Immigration and Latino Identity*, 19 UCLA CHICANO-LATINO L. REV. 197 (Spring 1998).

87. See, e.g., Arriola, *supra* note 21 (studying impact of immigration enforcement on Mexican-American community); Martínez, *supra* note 73 (analyzing Mexican-American litigation experience); Haney López, *supra* note 78 (analyzing racialization of Mexican-Americans in Texas); Margaret E. Montoya, *Mascaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and legal Discourse*, 17 HARV. WOMEN'S L.J. 185, 15 UCLA CHICANO-LATINO L. REV. 1 (1994) (analyzing how Chicanas adopt "masks" that are acceptable to dominant culture).

88. Cf. Alex M. Johnson, Jr., *The New Voice of Color*, 100 YALE L.J. 2007 (1991) (contending that minority professors have distinctive "voice" to add to legal scholarship).

89. For a collection of the papers presented at the conference, see Symposium, *Understanding the Treaty of Guadalupe Hidalgo on its 150th Anniversary*, 5 SW. J.L. & TRADE IN THE AMERICAS 1(Spring 1998).

this development is that Chicana/o Studies has been consciously nationalistic in outlook. It has focused exclusively on the Chicana/o experience, not that of other Latina/o groups. Premised on inclusiveness, LatCrit theory, however, generally has considered issues common to the greater Latina/o community. The focus of Chicana/o Studies has produced fruitful scholarship, but may be limited in its ability to assist in the building of political coalitions among all Latina/os. LatCrit theory strives to build pan-Latina/o community. Ultimately, Chicana/o Studies and LatCrit theory may move in opposite directions — with Chicana/o Studies becoming more inclusive⁹⁰ and LatCrit theory allowing for focused inquiry when appropriate.

B. *LatCrit Theory and Other Civil Rights Scholarship*

One controversial question is how does Latina/o legal scholarship fit into other civil rights scholarship. Some have viewed LatCrit theory as a challenge to the traditional black-white binary view of civil rights in the United States.⁹¹ This does not mean that various minority groups must engage in a race for the bottom to show that they suffered the most discrimination or that coalition-building is not possible. As Professor Angela Harris has outlined the argument, the African American experience in the United States, marked by the brutality of forced migration and chattel slavery, may well be exceptional to that of other groups.⁹² Assuming this to be true, there remains room to analyze the Latina/o experience with discrimination in the United States. Indeed, the oppression of all racial groups — Asian Americans, Native Americans, and Latina/os, as well as African Americans — deserve study. The various groups have been oppressed in different, though often similar ways. These historical experiences all deserve serious scholarly attention.⁹³

90. There are some nascent suggestions that this might occur with the advent of Latina/o Studies. For example, a recent book, *THE LATINO STUDIES READER: CULTURE, ECONOMY, AND SOCIETY* (Antonia Darder & Rodolfo D. Torres eds., 1998), includes readings on various Latin American national origin sub-groups).

91. See, e.g., Richard Delgado, *Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181 (1997). This challenge is not limited to LatCrit scholars but has been asserted by academics in disciplines other than law. See, e.g., Mary Romero, *Introduction*, in *CHALLENGING FRONTERAS: STRUCTURING LATINA AND LATINO LIVES IN THE U.S.* at xiv (Mary Romero, Pierette Hondagneu-Sotelo, & Vilma Ortiz eds., 1997) ("Clearly, we cannot rely on the dominant culture's notions of 'whiteness' or 'blackness' to assess racial identity among Latinos in the U.S. The binary thinking of race relations in this country is so ingrained in the dominant culture that it continues to shape what we see.").

92. See Leslie Espinoza & Angela P. Harris, *Afterword: Embracing the Tar-Baby — LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1585, 1594-1605 (1997), (articulating this argument).

93. Showing the need for a multiracial approach to race scholarship, Michael Olivas analyzed one of Derrick Bell's famous fictional parables, "The Chronicle of the Space Traders," which

This approach to the study of racial subordination is not a novel idea on university campuses (though they have been subject to attack at various times).⁹⁴ It was an implicit if not explicit understanding in the 1960s and 1970s as African American Studies, Asian American Studies, Chicana/o Studies, Native American Studies, and Ethnic Studies scholarship blossomed and flourished. Each of these fields studied issues of special concern to particular minority communities. Each has made, and continues to make, valuable contributions to the understanding of racial subordination in the United States. We have outlined some of the important contributions of Chicana/o Studies scholars. Scholars like Michael Omi and Ron Takaki have offered important insights from an Asian American perspective.⁹⁵ Kwami Anthony Appiah, Henry Louis Gates, and Cornel West have explored the place of African Americans in the modern United States.⁹⁶ Native American Studies scholars also have added to the race discourse.⁹⁷ Moreover, scholars in these disciplines generally have engaged in respectful dialogue about the intricacies of racial subordination. Realizing the need for separate investigation of the experiences of different racial groups, these scholars recognized commonality while respecting difference.

A multifaceted approach is warranted by the need to look at the whole of racial discrimination and subordination.⁹⁸ The various forms of racial subordination in the United States are related. As philosophers put it, the "web of belief" requires a study of all these groups.⁹⁹ Consequently, LatCrit theory should not be seen as a challenge to Critical Race Theory ("CRT") but viewed as building on its achievements while

suggested that whites might surrender all African Americans to "space traders" for world peace, and concluded that comparable actions had been taken in this nation's history by the U.S. government against Asians, Mexican-Americans, and Native Americans. See Olivas, *Slave Traders Chronicle*, *supra* note 54.

94. See Frank Bruni, *California Regent's New Focus: Ethnic Studies*, N.Y. TIMES, June 18, 1998, at A20 (reporting that Ward Connerly, the Regent of the University of California who led the effort to end affirmative action in the UC system, questioned the soundness of ethnic studies programs).

95. See, e.g., MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES (1994); RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS (1988).

96. See, e.g., KWAME ANTHONY APPIAH, IN MY FATHER'S HOUSE: AFRICA IN THE PHILOSOPHY OF CULTURE (1992); HENRY LOUIS GATES ET AL., SPEAKING OF RACE, SPEAKING OF SEX: HATE SPEECH, CIVIL RIGHTS, AND CIVIL LIBERTIES (1994); CORNEL WEST, RACE MATTERS (1994).

97. See, e.g., JACK D. FORBES, AFRICANS AND NATIVE AMERICANS: THE LANGUAGE OF RACE AND THE EVOLUTION OF RED-BLACK PEOPLES (2d ed. 1993).

98. See Kevin R. Johnson, *Racial Hierarchy, Asian Americans and Latinos as "Foreigners," and Social Change: Is Law the Way to Go?*, 76 OR. L. REV. 347, 358-69 (1997).

99. See George A. Martínez, *African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*, 19 UCLA CHICANO-LATINO L. REV. 213(Spring 1998).

moving in an independent direction to shed additional light on the racial subordination of Latina/os.

The study of language rights, immigration, and citizenship issues — all central to the Latina/o experience in the United States — had not been focused upon by CRT. Consequently, the unexplored questions deserved the scrutiny offered by LatCrit theorists. Indeed, Latina/o subordination, and racial oppression generally, cannot be fully understood without consideration of these important issues.

Such an analysis becomes apparent when one considers how interethnic conflict allows for minority groups to be pitted against one another, which can be seen in the African American, Korean American, and Latina/o conflict in South Central Los Angeles.¹⁰⁰ Similar episodes occurred last century when African Americans interests were pitted against those of Chinese immigrants.¹⁰¹ Similarly, race relations in Texas cannot be fully understood unless we consider the history of subordination of African Americans, Mexican-Americans, and poor whites in the state.¹⁰² Today, we see various minority groups at odds on the issue of affirmative action.¹⁰³ Only through analyzing the historical experiences of each minority can we fully understand the whole of racial subordination.

C. *The Need to Look to Chicana/o Studies Scholarship*

In analyzing issues of particular importance to the Latina/o community, we should learn from the rich body of Chicana/o Studies scholarship. It is presumptuous of legal scholars to believe that we are the first to consider the issues of particular importance to Latina/os. The well-developed body of Chicana/o scholarship is the first generation of scholarship in the area. Critical Race Theorists emphasize the need for inter-

100. See Bill Ong Hing, *Beyond The Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Drive Multiracial Society*, 81 CAL. L. REV. 863, 889 (1993); Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African/Korean American Conflict: How We Constructed "Los Angeles,"* 66 S. CAL. L. REV. 1581 (1993); Reginald Leamon Robinson, "The Other Against Itself": *The Violent Discourse Between Korean and African Americans*, 67 S. CAL. L. REV. 15 (1993).

101. See Kevin R. Johnson, *Race, The Immigration Laws, and Domestic Race Relations: A "Magic Mirror" Into the Heart of Darkness*, 73 IND. L.J. 1111 (Fall 1998) (analyzing this episode of interethnic conflict).

102. See generally NEIL FOLEY, *THE WHITE SCOURGE: MEXICANS, BLACKS AND POOR WHITES IN THE COTTON CULTURE OF CENTRAL TEXAS* (1997).

103. See, e.g., Yamamoto, *supra* note 58 (analyzing conflict between various minority groups in public school educations that implicated affirmative action); see also GABRIEL CHIN, SUMI CHO, JERRY KANG, & FRANK WU, *BEYOND SELF-INTEREST: ASIAN PACIFIC AMERICANS TOWARD A COMMUNITY OF JUSTICE* (1997) (offering arguments by four Asian American law professors in support of affirmative action).

disciplinary discourse.¹⁰⁴ Accordingly, it behooves us to consider the foundational scholarship analyzing issues of importance to the Chicana/o community. While the first generation of scholars included people like Julian Samora, Ernesto Galarza, and George Sanchez,¹⁰⁵ the next generation included scholar activists like Rodolfo Acuña,¹⁰⁶ author of the classic *Occupied America*, and Mario Barrera.¹⁰⁷ The latest generation includes too many prominent Chicana/o scholars to name. None of this is meant to suggest that we should limit our scrutiny to Chicana/o studies scholarship. A body of Chicana/o history, sociology, and other social science warrants our consideration.

To offer a concrete example of the wealth of literature for exploration by Chicana/o legal scholars, we include as an appendix to this article a bibliography of Chicana/o history compiled by Dennis Valdéz, a Chicano Studies Professor at the University of Minnesota.¹⁰⁸ This bibliography offers a sample of the rich body of literature available to those interested in serious study of Chicana/os in the United States. Put simply, Latina/o legal scholars should learn from and build upon this rich body of scholarship. In analyzing these difficult issues of race and class in the United States, we should build on the generations of thought, rather than ignore them. Moreover, with legal training, law professors have what economists might call a “comparative advantage” in analyzing legal history. Legal skills prove invaluable in analyzing the history and development of law and how it has been used to subordinate Latina/os. Historian Richard Griswold Del Castillo wrote a fine book analyzing the court decisions dealing with the enforcement (or lack thereof) of the Treaty of Guadalupe Hidalgo.¹⁰⁹ Law professors have much to add to his study. The dispossession of Chicanos from the land was done through a variety of legal (and illegal) mechanisms. Though some of this work has been done,¹¹⁰ much remains. Similarly, important work has been done in recent years analyzing desegregation efforts in the public schools involving Mexican-Americans.¹¹¹ The intricacies of school

104. See Margaret M. Russell, *Entering Great America: Reflections on Race and the Convergence of Progressive Legal Theory and Practice*, 43 HASTINGS L.J. 749, 756 (1992).

105. See *supra* text accompanying notes 4, 5, and 6.

106. See ACUÑA, *supra* note 3.

107. See BARRERA, *supra* notes 38, 39.

108. For an annotated bibliography of critical Latina/o scholarship, including work by academics in disciplines other than law, see Jean Stefancic, *Latino and Latina Critical Theory: An Annotated Bibliography*, 85 CAL. L. REV. 1509, 10 LA RAZA L. J. 423 (1998).

109. See GRISWOLD DEL CASTILLO, *supra* note 34.

110. See *supra* note 34 (citing articles).

111. See Martínez, *supra* note 73, at 574-604 (analyzing school desegregation litigation brought by Mexican-Americans); Rachel F. Moran, *Getting a Foot in Door: The Hispanic Push for Equal Educational Opportunity in Denver*, 2 KAN. J.L. & PUB. POL'Y 35 (1992) (analyzing interests of Mexican-Americans in school desegregation litigation in Denver).

desegregation litigation gain much from a lawyer's eye.

Immigration is another area in which legal skills allow for critical analysis. The U.S. immigration laws are incredibly complex, with many discriminatory impacts obscured by technical detail. In addition, enforcement of the laws often is discriminatory, even if the letter of the law is not. This suggests that work with others trained in other academic fields might help, as they have, in analyzing how the law on the books differs from the law in practice.¹¹²

While Latina/o law professors may apply legal training to the analysis of Chicana/o history, we must take care not to overlook broader political and social meanings of the events that Chicana/o Studies activists have identified. For example, while adding to the insights of Chicana/o historians about the Treaty of Guadalupe Hidalgo ("the Treaty"),¹¹³ law professors should not be oblivious to the larger politically important aspects of the Treaty.¹¹⁴ The hope symbolized by the Treaty mobilized a generation of Chicana/os to move for social change. It allowed activists like Reies López Tijerina to rally New Mexicans to organize a potent political force. The Treaty has been a centerpiece of Chicana/o Studies on university campuses across the nation, one of the semi-permanent sites of focus on issues of importance to Chicana/os. It would be short-sighted for formalistic lawyers to focus on technicalities of the law and miss the broader political-social impacts of the Treaty of Guadalupe Hidalgo.¹¹⁵

CONCLUSION

This article has outlined the relationship between the tradition of Chicana/o Studies activism and scholarship and the LatCrit movement. The roots of LatCrit theory can be found in Chicana/o Studies activism and scholarship. This article hopefully will encourage Latina/o legal scholars to consider this rich body of literature. The existence of Chicana/o scholarship provides valuable lessons for LatCrit theorists. Space exists for analysis of the experiences of various national origin groups

112. See, e.g., KITTY CALAVITA, *INSIDE THE STATE* (1992) (analyzing how U.S. immigration bureaucracy transformed law to suit its own agenda in Bracero Program).

113. See Christopher David Ruiz Cameron, *One Hundred Fifty Years of Solitude: A Law Professor Critiques the Dominance of Historical Scholarship on the Treaty of Guadalupe Hidalgo*, 5 SW. J.L. & TRADE IN THE AMERICAS (forthcoming 1998) (contending that historical studies of Treaty often oversimplified complex role of law in stripping away rights of persons of Mexican ancestry).

114. See generally Richard Griswold del Castillo, *The U.S.-Mexican War: Contemporary Implications for Mexican Civil and International Rights*, in CULTURE Y CULTURA, *supra* note 85, at 76 (analyzing efforts to protect Mexican American civil rights through Treaty).

115. See generally RICHARD DELGADO & JEAN STEFANCIC, *FAILED REVOLUTIONS* (1994) (analyzing limits of legal imagination in achieving social change).

that comprise the umbrella Latina/o community. In addition, the ability of Chicana/o Studies to co-exist with other allied disciplines analyzing issues of race, including African American Studies, Asian American Studies, Ethnic Studies and Native American Studies, suggests that it is not inconsistent for different groups with similar goals to explore the specific intricacies of their histories. Only through the study of the history of each minority group will we be able to understand the whole of racial subordination in the United States.

A similar analysis applies to LatCrit theory. Critical Race Theory and LatCrit theory can work together to study the intricacies of racial oppression. Moreover, in analyzing the place of Latina/os in the United States, we must understand that not all Latina/os are created equal. Different Latina/o national origin groups have had different experiences. To fully understand the whole, we must look at the various parts. Consequently, the Mexican, Cuban, Puerto Rican, and other experiences must be dissected and analyzed individually. Only then will we have a fuller understanding of Latina/o subordination in this country.

APPENDIX

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