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Latcrit Theory: Some Preliminary Notes Towards A Transatlantic Dialogue

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LatCrit Theory: Some Preliminary Notes Towards a Transatlantic Dialogue

Elizabeth M. Iglesias*

I.	Contextualizing LatCrit Theory in American Critical Legal Discourse	1
A.	Critical Legal Studies (CLS) and Critical Race Theory (CRT).....	9
B.	Feminist Critical Legal Theory and Critical Race Feminism	18
C.	Asian Pacific American Critical Legal Scholarship and Chicana/o Studies	25
D.	Queer Legal Theory	29
II.	Conclusion.....	32

I. Contextualizing LatCrit Theory in American Critical Legal Discourse

In June of 1999, American LatCrit scholars from law schools throughout the United States and Spanish legal scholars from the Universidad de Málaga gathered together for the first international colloquium ever convened to explore points of intersection between LatCrit legal theory and Spanish legal history, culture and institutions.¹ The impetus for this initial exchange was a two-fold objective. The first was to introduce Spanish legal scholars to the evolving theoretical perspectives, political aspirations, normative commitments and critical methodologies of LatCrit legal theory as thus far articulated in the American legal academy.² The second was to expand the scope and depth of LatCrit discourse

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¹ This Colloquium was hosted by the Universidad de Málaga Facultad de Derecho and co-sponsored by the University of Miami Center for Hispanic and Caribbean Legal Studies as a collaborative project to produce a first ever simultaneous publication of LatCrit scholarship in Spain and the United States. Accordingly, the colloquium papers published by the Universidad de Málaga Press also appear in this volume of the *University of Miami International and Comparative Law Review*.

² Although LatCrit Legal Theory is a relatively recent intervention in the evolution of American critical legal scholarship, in the last five years, LatCrit scholarship has developed at an unprecedented pace. See, e.g., Symposium, *LatCrit Theory, Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1998); Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 LA RAZA L.J. 1 (1996); Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997) [LatCrit I]; Symposium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 1 (1997); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities*

through a substantive exchange with Spanish legal scholars, who are particularly well positioned to explain the role of law in Spanish society and to provide Spanish perspectives on the way LatCrit theory takes up the many questions raised by the impact of Spanish history and current-day projects on the complex configuration of Latina/o identities and realities, both within the United States and throughout Latin America.

That Spain, its history and current-day realities should emerge as topics of profound interest to many LatCrit scholars is hardly surprising. The term "LatCrit" is an abbreviation for "Latina and Latino Critical Legal Theory" and references a collective project initially launched in 1995 for the express purpose of combating the relative invisibility of Latinas and Latinos in American critical legal theory and discourse.³ In the "LatCrit" designation, the term "Lat" reflects a commitment to examine law and legal institutions in a way that seriously engages the particular histories and realities of Latinas/os, both within and beyond the territorial boundaries of the United States. The term "Crit" reflects an equally central commitment to perform this identity-based critique in solidarity with the various pre-existing networks of scholars and activists, who seek to promote progressive social change through the critical analysis of law and legal discourse.⁴

Drawing on theoretical frameworks and conceptual resources developed across many different disciplines, the LatCrit project seeks to marshal critical analysis to expose and transform the ways in which law institutionalizes relations of domination and subordination around essentialist categories such as race, class, gender, sexual orientation, language, national origin and immigration status. Increasingly, this project has called for a new kind of coalitional theory – one that transcends the limitations of inherited categories of essentialist identity and grounds the achievement of substantive justice in an anti-essentialist vision of human

Through LatCrit Theory, 19 CHICANO-LATINO L. REV. 1 (1998) [LatCrit II]; Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, 53 U. MIAMI L. REV. 575 (1999) [LatCrit III]; Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. DAVIS L. REV. (forthcoming Spring 2000) [LatCrit IV]; Symposium, *Class in LatCrit: Theory and Praxis in a World of Economic Inequality* (forthcoming U. Denver L. Rev.; HARV. LATINO L. REV. 2001) [LatCrit V].

³ Francisco Valdes, *Foreword: LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1, 3 n. 5 (1997) (tracing genealogy of "LatCrit" legal studies to initial colloquium organized in conjunction with the 1995 Hispanic National Bar Association's Annual Conference in Puerto Rico and designed specifically to explore the place of Latinas/os in Critical Race Theory).

⁴ LatCrit theory draws upon a rich and varied intellectual inheritance because it is the evolving work product of a widely diverse group of critical legal scholars. See Elizabeth M. Iglesias, *Foreword: Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community*, 53 U. MIAMI L. REV. 575, 584 (1999) (noting that "LatCrit Theory finds its intellectual roots in Critical Race Theory, Critical Race Feminism, Chicana/o Studies, Law and Society and Critical Legal Studies precisely because these various strains of critical discourse are the intellectual roots of the individuals whose energy drives the LatCrit project and secures its continued evolution.") [hereinafter, Iglesias, *Foreword: LatCrit III*].

interconnection, without borders or boundaries.⁵ This is, in part, because the LatCrit project has effectively revealed how the marginality of Latinas/os and other intersectional and transnational identities, both within and beyond the U.S. domestic legal system, is directly linked to the deployment of essentialist categories of identity, in the articulation both of public policies and of popular cultural understandings.⁶ Indeed, the impact of essentialism is also reflected in the fact that

⁵ "Essentialism" and "anti-essentialism" are key concepts in LatCrit theory, however, both terms mean different things in different contexts. Generally, "essentialism" is a label applied to claims that a particular perspective reflects the common experiences and interests of a broader group, as when working class men purport to define the class interests of "workers," or white women purport to define the interests of all "women," without acknowledging intragroup differences of position and perspective. Indeed, essentialist categories are routinely invoked precisely *in order* to suppress attention to intragroup differences, and thereby to consolidate a group's agenda around the preferences of the group's internal elites. By contrast, "anti-essentialist" theory seeks to reveal intragroup differences precisely in order to expose relations of subordination and domination that may exist within and among the members of any particular group. See, e.g., Elizabeth M. Iglesias, *Structures of Subordination: Women of Color at the Intersection of Title VII and the NLRA. Not!* 28 HARV. C.R.-C.L. L. REV. 395 (1993) (revealing how essentialist categories of race and class underpinning American labor and employment law regimes enable women of color to be both excluded from, and/or submerged within, majoritarian labor unions—thus making the struggle for collective empowerment and recognition a matter of reunifying collective political identities that have been fragmented and fragmenting identities that have been unified through the deployment of race and gender essentialist categories) [hereinafter Iglesias, *Structures of Subordination*]. Though anti-essentialist theory has routinely been attacked for fragmenting, that is "Balkanizing," group solidarity and undermining more universal struggles for progressive social transformation, anti-essentialist theory seeks rather to ground collective solidarity on substantive inter and intragroup justice. Iglesias, *Foreword: LatCrit III*, *supra* note 4, at 629. To be sure, the fact that these terms are embedded in, and arise from, the particular conflicts and controversies that have occupied the American left, both within and beyond the legal academy, provides a ready reminder of the challenges confronting any cross-cultural exchange. See, e.g., Sharon K. Hom, *Lexicon Dreams and Chinese Rock and Roll: Thoughts on Culture, Language, and Translation as Strategies of Resistance and Reconstruction*, 53 U. MIAMI L. REV. 1003 (1999) (on the cross-cultural difficulties of translating feminist legal terms from English into Chinese).

⁶ For example, the Black/White paradigm of race and race relations continues to reproduce a form of identity politics that is particularly problematic for Latinas/os, both because many Latinas/os are neither Black, nor White and because many Latinas/os are both. See, e.g., Robert S. Chang, *The Nativist's Dream of Return*, 9 LA RAZA L.J. 55 (1996); Rachel F. Moran, *Neither Black Nor White*, 2 HARV. LATINO L. REV. 61 (1997); Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CAL. L. REV. 1213 (1997); Deborah Ramirez, *Forging a Latino Identity*, 9 LA RAZA L.J. 61 (1996); Francisco Valdes, *Foreword: Latino/a Ethnicities, Critical Race Theory and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 LA RAZA L.J. 1, 5-6 (1996) [hereinafter, Valdes, *Foreword: Latino/a Ethnicities*]. See also Elizabeth M. Iglesias, *Out of the Shadow: Marking Intersections in and Between Asian Pacific American Critical Legal Scholarship and Latina/o Critical Legal Theory*, 40 B.C. L. REV. 349, 371-72, 19 B.C. THIRD WORLD L.J. 349, 371-72 (1998) (reflecting on marginalization Black immigrant identities within the Black/White paradigm of American race consciousness) [hereinafter, Iglesias, *Out of the Shadow*]; Iglesias, *Foreword: LatCrit III*, *supra* note 4, at 597-600, 627-28 (same *vis-à-vis* activation of nativist ideology among Black Americans and implications for intergroup solidarity in context of U.S. refugee policies).

international law, transnational identities and solidarity networks, as well as the international human rights movement have been relatively marginal to, and often completely absent from, the domestic political and legal agendas pursued by key social justice movements within the United States, including but not limited to the American civil rights movement, the labor movement and the women's rights movement.⁷

Against this backdrop, the LatCrit project emerged as a collective effort to expand the depth of American critical legal theories and the breadth of substantive topics marked for anti-subordination critique by focusing on the particular realities confronting Latina/o communities. Latina/o communities and identities constitute a useful point of departure for fostering an expansive anti-essentialist agenda in and through the articulation of coalitional theory because Latinas/os come from many different races, ethnicities, genders, classes and national origins.⁸ Indeed, the transnationality and intersectionality of Latina/o identities and communities makes the articulation of an inclusive anti-subordination agenda both extremely difficult and extremely important. This is precisely because both elements trigger immediate confrontations with the realities of intra-group differences.⁹ Transcending these differences within and between Latina/o communities requires the production of a new political vision of substantive justice because it requires a critical perspective

⁷ See, e.g., Christopher David Ruiz Cameron, *The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers*, 53 U. MIAMI L. REV. 1089 (1999) (urging new strategies for global labor solidarity); Elizabeth M. Iglesias, *Foreword: International Law, Human Rights, and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1996-97) (urging need for greater collaboration between domestic civil rights and international human rights activists) [hereinafter Iglesias, *Foreword: International Law*]; Enid Trucios-Haynes, *LatCrit Theory and International Civil and Political Rights: The Role of Transnational Identity and Migration*, 28 U. MIAMI INTER-AM. L. REV. 293 (1996-97) (urging LatCrit attention to regional advocacy groups and transborder women's issues).

⁸ Berta Esperanza Hernández Truyol, *Building Bridges: Latinas and Latinos at the Crossroads*, in THE LATINO/A CONDITION: A CRITICAL READER 30 (Richard Delgado & Jean Stefancic eds., 1998); Francisco Valdes, *Foreword: Under Construction – LatCrit Consciousness, Community and Theory*, 85 CAL. L. REV. 1087, 1106 (1997) (noting that Latina/o communities are characterized by high degree of *mestizaje* or racial intermixture and internal diversity) [hereinafter, Valdes, *Under Construction*]. Cf. Iglesias, *Foreword: LatCrit III*, *supra* note 4, at 621-22 (urging that LatCrit social justice agendas and anti-essentialist politics must also continue to progress beyond the discourse of *mestizaje* since “the struggles of indigenous peoples, like the struggles of Black and Asian peoples, are matters of LatCrit concern, not so much because Latinas/os are a hybrid people composed of all these elements, but because recognizing and transforming the particularities of injustice is the only viable strategy for achieving substantive justice.”).

⁹ See, e.g., Elizabeth M. Iglesias, *Human Rights in International Economic Law: Locating Latinas/os in the Linkage Debates*, 28 U. MIAMI INTER-AM. L. REV. 361 (1996-97) (noting that a LatCritical assessment of current debates over whether and how to link human rights enforcement to international economic law is exceedingly complex precisely because Latinas/os are divided by differing degrees of cultural assimilation, by nationalist ideologies as well as by race, class, and gendered hierarchies); Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997) (exploring intra-Latina/o diversities and their implications for LatCrit theory).

that can resist the tendency to fragment coalitional solidarities along the lines of class, race, ethnicity, gender, national origin and other essentialist identity constructions.¹⁰

In this vein, the unique role of Spanish history and culture in the configuration of Latina/o identities and communities makes Spain a subject of obvious and increasing interest among many LatCrit scholars. Though the everyday realities currently confronting Latinas/os in the United States and throughout Latin America may be most directly and immediately determined by the impact of American domestic and foreign policies, it should never be forgotten that today's Latina/o communities were spawned during Spain's colonial supremacy and through the physical and cultural impact of the Hispanic conquest on indigenous communities in Latin America and throughout much of the southwestern United States. It is no surprise, therefore, that the continuing legacy of the Hispanic conquest has already emerged as a central theme and concern among some LatCrit scholars, nor that it continues to mark an important field of inquiry worth further LatCrit attention.¹¹

At the same time, as LatCrit scholars continue to confront the consequences and to explore the implications of increasing globalization, Spain, its legal system, history, culture and current-day projects offer a relatively unexplored avenue through which to engage the critical insights of post-colonial theory and cultural studies, to grapple with the meaning and significance of Europe and Africa in the articulation of LatCrit theory and its social justice agendas, and to excavate these new insights in tandem with, and in relationship to, our critical analysis of international and comparative law, legal institutions and procedures. From this future oriented perspective, Spain offers a valuable point of reference for examining a host of pending issues that are especially germane to Latinas/os and to other political identity groups committed to the articulation of an expansive anti-subordination agenda without borders or boundaries. These issues include such matters as the continuing repercussions of Spanish colonialism and the future of democracy in Latin America, the configuration of interstate power relations within

¹⁰ See, e.g., George A. Martinez, *African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*, 19 CHICANO-LATINO L. REV. 213 (1998) (urging Latinas/os to seek commonalities with African Americans); Ediberto Roman, *Common Ground: Perspectives on Latino-Latina Diversity*, 2 HARV. LATINO L. REV. 483 (1997) (urging Latinas/os to focus on commonalities as way of promoting intra-group justice and solidarity); Iglesias, *Out of the Shadows*, supra note 6 (urging collaborative agenda at intersection of LatCrit theory and Asian Pacific American critical legal scholarship).

¹¹ See, e.g., Kevin R. Johnson, "Melting Pot" or "Ring of Fire?": *Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1259, 1269-77, 10 LA RAZA L.J. 173, 183-91 (1997) (recounting how the claim to a Spanish identity is oftentimes used to organize Mexican-American assimilation into a racist Anglo culture through denial of indigenous racial mixtures); Siegfried Wiessner, *¡Esa India! LatCrit Theory and the Place of Indigenous Peoples Within Latina/o Communities*, 53 U. MIAMI L. REV. 831, 840-52 (1999) (exploring the legacy of Hispanic conquest through critical analysis of the current day legal status of indigenous peoples in countries throughout Latin America).

the European Union, and Spain's role in current-day projects to promote sustainable economic development, social justice and democratic freedom in the countries of Africa and Latin America.¹²

Given the potential pay-offs of this transatlantic dialogue, the purpose of this essay is to provide some preliminary notes for facilitating a meaningful substantive dialogue between American LatCrit scholars and Spanish legal scholars interested in exploring the implications of LatCrit theory from a Spanish perspective. The intellectual and political value of this transatlantic collaboration is clearly evidenced by the essays in this Colloquium. Consistent with the exploratory purposes of this initial dialogue, the essays span a broad range of important topics, providing significant new insights into the comparative impact of regional integration on national identities and the rights of citizenship,¹³ the status of gender in a comparative analysis of public/private regimes,¹⁴ and the relationship between Spain and Latin America in redressing the impact and combating the impunity of military dictatorships and colonial expropriations.¹⁶

The success of this project does, however, face significant obstacles, not least of which is the matter of cross-cultural translation. Fostering a genuine understanding between American LatCrit and Spanish legal scholars means successfully negotiating the vast range of historical, cultural and structural differences that distinguish legal consciousness, practices and institutions in Spain and the United States, as well as an equally vast range of relatively unexplored differences in the way Spanish and American cultures configure Hispanic/Latina/o identities. At the same time, understanding the emergence and broader significance

¹² The future of democracy in Latin America and throughout the Caribbean, as well as the continuing impact of colonialism and its relevance to LatCrit theory, have already commanded, and continue to warrant, substantial LatCrit attention. See, e.g., Ivelaw Griffith, *Drugs and Democracy in the Caribbean*, 53 U. MIAMI L. REV. 869 (1999); Tayyab Mahmud, *Colonialism and Modern Constructions of Race: A Preliminary Inquiry*, 53 U. MIAMI L. REV. 1219 (1999) (introducing post-colonial theory and discourse); Mario Martínez, *Property as an Instrument of Power in Nicaragua*, 53 U. MIAMI L. REV. 907 (1999); Julie Mertus, *Mapping Civil Society Transplants: A Preliminary Comparison of Eastern Europe and Latin America*, 53 U. MIAMI L. REV. 921 (1999); Ediberto Román, *Reconstructing Self-Determination: The Role of Critical Theory in Positivist International Law Paradigm*, 53 U. MIAMI L. REV. 943 (1999); Irwin Stotzky, *Suppressing the Beast*, 53 U. MIAMI L. REV. 883 (1999); Iglesias, *Foreword: LatCrit III*, *supra* note 4, at 631-46; Wiessner, *supra* note 11.

¹³ Ana Salinas de Frias, *Legal Reforms, National Boundaries and the Free Movement of Persons in the E.U.*, 9 U. MIAMI INT'L & COMP. L. REV. 61 (2000-01); Juan Luis Millán Pereira, *Economic Restructuring, Increased Cross National Commerce and the EMU*, 9 U. MIAMI INT'L & COMP. L. REV. 45 (2000-01).

¹⁴ Ángel Rodríguez Vergara Díaz, *Género y Derechos Fundamentales en Europa: Evolución Reciente de la Discriminación Positiva en el Ámbito Laboral y Electoral*, 9 U. MIAMI INT'L AND COMP. L. REV. 125 (2000-01).

¹⁶ Magdalena Martín Martínez, *Jurisdicción Universal y Crímenes Internacionales*, 9 U. MIAMI INT'L & COMP. L. REV. 171 (2000-01); Francisco Valdes, *PostColonial Encounters in the PostPinochet Era: A LatCrit Perspective on Spain, Latinas/os and "Hispanismo" in the Development of International Human Rights*, 9 U. MIAMI INT'L & COMP. L. REV. 189 (2000-01).

of LatCrit theory in the American legal academy requires understanding both the genealogy of the series of conferences and events that today constitute the recorded history of the LatCrit project, as well as the broader historical backdrop of critical legal scholarship that preceded the emergence of LatCrit theory. It also requires a vision of the kinds of issues and substantive themes that can and should be explored through a transnational, cross-cultural exchange of this sort.

Accordingly, the purpose of this essay is to provide a brief sketch of (some of) the critical legal discourses and theoretical currents that preceded the emergence, and currently inform the articulation, of LatCrit theory. More specifically, my objective is to situate LatCrit theory in and against seven strains of critical legal discourse, whose theoretical perspectives, analytical methodologies and political aspirations are particularly relevant to, and evident in, the body of LatCrit scholarship and discourse thus far produced. These seven strains are Critical Legal Studies, Critical Race Theory, Feminist Legal Theory, Critical Race Feminism, Asian Pacific American Critical Legal Scholarship, Chicana/o Studies and Queer Legal Theory. With the exception of Chicana/o Studies, each of these discourses emerged in the American legal academy within the last twenty-five years; each constitutes a critical intervention aimed specifically at the production of legal scholarship; each subjects law and legal institutions to critical analysis for the express purpose of producing a more just and egalitarian society; and each articulates a different, though often — but not always — allied, perspective on what justice and equality *ought to mean*.

My purpose here is not to provide a comprehensive account of any of these discourses, but rather to provide a much more controversial, though I think, ultimately, more helpful account of the way each discourse emerged in response to and as a reaction against perceived limitations in the critical project mapped out by its predecessors. The purpose of this genealogy is to provide Spanish legal scholars with an intelligible narrative of the intellectual and political background that informs LatCrit theory. This genealogy will be controversial among American critical legal scholars precisely because it recounts the relationship between these various strains of critical legal discourses from a specifically *LatCrit* perspective, that is, from a perspective that foregrounds the ways in which LatCrit theory has sought to acknowledge and incorporate the advances achieved by its predecessors, even as it seeks to identify and transcend their limitations in order to produce a more inclusive, expansive and distinctively *LatCritical* agenda.

There is no question that this genealogical narrative is partial and incomplete; that it excludes important networks of scholars, whose efforts have informed the understandings and assisted the professional development of individual scholars now associated with the LatCrit movement; nor that the genealogical relationship among these various strains of critical legal scholarship would undoubtedly be told very differently by non-LatCrit scholars, and even by other

LatCritters.¹⁷ All these caveats are good reasons *not* to attempt a narrative project that is so thoroughly doomed from the get-go to trigger criticisms from so many different, though entirely predictable, directions; and yet, in this context, at this moment, a story must be told. It must be told for two reasons.

First, to introduce LatCrit theory in a cross-cultural, transnational context *without even trying* to explain the relationship between LatCrit theory and the substantial tradition of critical legal discourses that informs and enabled its emergence would be arrogant in the extreme.¹⁸ LatCrit theory is neither fully developed, nor self-contained. It is profoundly indebted to, enriched by, and invested in the continued evolution of the critical discourses that predate it. This is precisely because LatCrit theory is the collective work product of a diverse array of scholars and activists, who are contributing to the development of LatCrit discourse from a wide variety of positions and perspectives, even as they remain grounded in and committed to the further development of other critical discourses and transformative projects.¹⁹ Any effort to introduce LatCrit theory to scholars and

¹⁷ See, e.g., Elvia R. Arriola, *Foreword: March!*, 19 CHICANO-LATINO L. REV. 1, 9-11, 26-27 (1998); Francisco Valdes, *Afterword: Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience - RaceCrits, QueerCrits and LatCrits*, 53 U. MIAMI L. REV. 1265 (1999) (recounting LatCrit origins as response to Critical Race Theory Workshop) [hereinafter Valdes, *Afterword: "OutCrit" Theories*]; Adrien K. Wing, *Critical Race Feminism and International Human Rights, of Women in Bosnia, Palestine and South Africa: Issues for LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 337, 339-42 (1996-97); Valdes, *Foreword: Latina/o Ethnicities*, *supra* note 6.

¹⁸ Elizabeth M. Iglesias & Francisco Valdes, *Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 CHICANO-LATINO L. REV. 503, 584 (1998) (noting that "LatCrit theory must situate itself in a critical and self-critical fashion within the broader discursive background that already has been created, through substantial efforts and at great cost, by outsider scholarship."); Kevin Johnson & George Martinez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies, Activism and Scholarship*, 53 U. MIAMI L. REV. 1143 (1999) (urging LatCrit scholars to build on long tradition of Chicano studies).

¹⁹ In this respect, it bears noting that LatCrit discourse is, in many ways, a crossroads for many different critical discourses and perspectives precisely because the evolution of LatCrit theory has been substantially enriched by the active and continuous participation of a highly diverse and extraordinarily talented assortment of Asian and Pacific American critical legal scholars, RaceCrits, QueerCrits, FemCrits and other OutCrit scholars. See, e.g., Keith Aoki, *Language is a Virus*, 53 U. MIAMI L. REV. 968 (1999) (noting extent of Asian American participation in LatCrit conferences and community); Barbara J. Cox, *Coalescing Communities, Discourses and Practices: Synergies in the Anti-Subordination Project*, 2 HARV. LATINO L. REV. 473 (1997) (reflecting on relevance of LatCrit project to white lesbians); Jerome McCristal Culp, Jr., *Latinos, Blacks, Others and the New Legal Narrative*, 2 HARV. LATINO L. REV. 479 (1997) (reflecting on relevance of LatCrit project to African Americans); Stephanie M. Wildman, *Reflections on Whiteness & Latina/o Critical Theory*, 2 HARV. LATINO L. REV. 307 (1997) (reflecting on significance of LatCrit project from a white critical feminist perspective). These scholars have performed the unprecedented act of solidarity of investing their intellectual capital and professional resources in the creation and continued evolution of a discourse, whose initial and immediate purpose has been to combat the relative invisibility of Latinas/os in the production of critical legal discourse, even as they also remain deeply involved in developing other strains of critical theory.

activists in another country must acknowledge and, at least, attempt to explain these interconnections in an intelligible way because these interconnections are substantively significant to an accurate understanding of the critical project that is currently underway in LatCrit theory.

The second reason for doing this genealogy is more abstract, but nevertheless compelling. Undoubtedly, the relationship among these seven strains of critical legal discourse is susceptible to multiple interpretations. I would venture, however, that there is *no* American legal scholar working in any of these seven strains of critical discourse, who does not have *some* narrative understanding of the historical and theoretical relationship between these various discourses and projects — however partial and incomplete, informed or uninformed, developed or underdeveloped that narrative may be. As a result, any cross-jurisprudential engagement among American critical legal scholars is always potentially impacted by the degree to which these pre-given understandings are activated, as well as by the way their different perspectives are addressed and resolved in any particular encounter.

This essay is, however, specifically addressed to Spanish legal scholars, whose points of reference and theoretical frameworks are as unfamiliar to most LatCrit scholars as the historical development of critical legal theories in the American legal academy may be to them. Therein precisely lie the anticipated learning and new discoveries promised by this collaborative project of mutual engagement and cross-cultural exchange. Therein also lies the challenge of making LatCrit theory intelligible. Since LatCrit theory does not exist in a vacuum separate or apart from the advances already made, and the obstacles already encountered, in and through the efforts of scholars working in other critical discourses, it cannot be rendered intelligible except in relationship to these prior movements. It is thus, from this perspective — informed by a keen awareness of the inherent contingency and partiality of any attempted genealogical narrative — that I have nevertheless concluded that, in launching such a transnational and cross-cultural project, it is more important at the beginning to get it “wrong,” than to not get it at all.

A. Critical Legal Studies [CLS] and Critical Race Theory [CRT]

Critical Legal Studies emerged as a loosely aligned and radically progressive network of scholars working in the American legal academy in the latter half of the 1970s. Since then, CLS scholars have produced a rich and complex body of legal scholarship that reflects a broad range of theoretical perspectives and critical methodologies, including the influences of American legal realism, Marxian and neo-Marxian social theory, phenomenology, semiotics, structuralism, post-structuralism and the deconstructive techniques of post-modern literary criticism.²⁰

²⁰ See, e.g., MARK KELMAN, A GUIDE TO CRITICAL LEGAL STUDIES (1987); CRITICAL LEGAL STUDIES (James Boyle ed., 1992) (collecting key essays of the early Critical Legal Studies Movement); *Symposium, Critical Legal Studies*, 36 STAN. L. REV. 1 (1984). See also LEGAL STUDIES AS CULTURAL STUDIES: A READER IN (POST) MODERN CRITICAL THEORY (Jerry D. Leonard ed., 1995).

Early CLS scholars sought to inject these diverse theoretical perspectives into the production of legal scholarship as part of a broader political project to reveal the role of law in the social production of class hierarchies and human alienation. Their critical analysis targeted a wide range of legal fields and, in the process, launched a wholesale and highly controversial critique of American style liberalism. Indeed, their critiques profoundly challenged many received understandings in the American legal academy precisely because they triggered significant doubts about the transformative potential of liberal rights consciousness, the objectivity of judicial interpretation, as well as the internal coherence and normative legitimacy of the way public/private rights regimes have been structured by the articulation of liberal theory in American legal discourse and doctrine.²¹

For purposes of this genealogy, I want to focus specifically on two key elements of CLS scholarship that are particularly relevant to understanding LatCrit theory and its historical origins. The first is the CLS practice of applying deconstructive techniques to the critical analysis of legal reasoning and doctrine; the second is the CLS critique of liberal rights consciousness.²² These two elements are, for both substantive and historical reasons, of particular relevance in understanding the genealogy and future trajectories of LatCrit theory. At a substantive level, this is because many LatCrit scholars today articulate their critical interventions in terms that reflect the influence of CLS deconstructive methodologies. At a historical level, these two elements also played a central role in the ruptures and disjunctures that provided the immediate impetus for, and gave initial shape to, the emergence of Critical Race Theory. Since LatCrit theory, itself, emerged most immediately and proximately in response to perceived limitations of the Critical Race Theory Workshop,²³ a narrative account of the origins of Critical Race Theory in and against the CLS project is particularly salient to understanding LatCrit theory's genealogy, as well as to understanding the many challenges awaiting our collective attention as we move to launch this collaborative project of cross-cultural exchange between LatCrit and Spanish legal scholars.

Initially, Spanish legal scholars may find it difficult to understand what CLS deconstruction aims to accomplish because its political and epistemological objectives are very much embedded in and, more importantly, are reacting against a legal ideology that is *particularly American*. This ideology projects an image of law as an apolitical medium for the objective resolution of disputes. It casts law as the

²¹ See, e.g., Duncan Kennedy, *Freedom and Constraint in Adjudication: A Critical Phenomenology*, 36 J. LEGAL EDUC. 518 (1986) (using phenomenological narrative to challenge the ideology of interpretative objectivity).

²² See, e.g., Peter Gabel, *The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves*, 62 TEX. L. REV. 1563 (1984). See generally, Mark Tushnet, *Symposium, A Critique of Rights An Essay on Rights*, 62 TEX. L. REV. 1363 (1984).

²³ See Arriola, *supra* note 17; Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 U. MIAMI L. REV. 1247 (1999); Valdes, *Afterword: Theorizing "OutCrit" Theories*, *supra* note 17 (recounting LatCrit origins as response to Critical Race Theory Workshop); Valdes, *Foreword: Latina/o Ethnicities*, *supra* note 6.

application of reason to limit the exercise of arbitrary power and legal process as a vehicle through which fundamental social conflicts and intergroup antagonisms are incrementally resolved through the evolution of a well-reasoned and ever more comprehensive body of rules developed in and through the careful adjudication of specific cases.

Viewed against the civil law systems in countries such as Spain and in Latin American countries that have incorporated Spanish civil codes and legal traditions, this American legal ideology reflects the legacy of the British common law tradition, which was transplanted to the American colonies during the colonial period that preceded the American Revolution. In the common law tradition, the vast corpus of private law doctrines evolves, not through the enactment of comprehensive codes, but rather through a process of adjudication in which binding legal precedents are judicially articulated to resolve specific cases and controversies. In the United States, the legal doctrines articulated through this process of adjudication are also binding on all future cases within the relevant jurisdiction. As a result, in the U.S. legal system, judges wield enormous power to decide what the law is and thus to define and redefine the existing structure of rights and obligations in ways that have profound impact on the organization of social relations within (and beyond) American society. Judges in the U.S. legal system also enjoy an unprecedented degree of independence from the legislative and executive branches of government, and have the legal authority to declare the actions of these other branches unconstitutional.

Given the unprecedented scope of judicial power, the perceived legitimacy of the American judicial system and its ability to effectively settle disputes depends importantly on a belief in the objectivity of judicial interpretation and the process of adjudication. Indeed much of liberal legal theory is aimed at fortifying this belief. Judicial independence is cast as a fundamental prerequisite for institutionalizing “the rule of law,” which is itself sharply distinguished from the exercise of arbitrary power, otherwise known as “the rule of men,” and heralded as an indispensable element of democratic self-government.

Against this backdrop, CLS scholars consciously and deliberately imported deconstructive methodologies into the production of legal scholarship in order to reveal the incoherence, arbitrariness and deeply rooted biases of judicial interpretation — as reflected in the indeterminacy of American legal doctrines and the structure of rights and obligations these doctrines tend to institutionalize. In particular, CLS scholars targeted the judicial practice of precedential analysis through which the appropriate legal outcome of an adjudicated dispute is supposedly determined by analogical reasoning from previously decided cases raising similar issues under similar circumstances. Taking on a vast range of substantive legal fields, CLS scholars developed a series of profoundly compelling critiques that effectively revealed the indeterminacy of some of the most basic and foundational

doctrines of American property, contract and tort law;²⁴ they exposed the role of judicial reasoning in “de-radicalizing” American labor rights legislation and thereby suppressing the possibilities for progressive social transformation embedded in the early New Deal labor laws;²⁵ and they revealed how the indeterminacy of legal doctrine renders law an instrument through which the fundamental contradictions and social antagonisms repeatedly reflected in routine cases appearing before the courts, are *displaced* — rather than resolved — through the process of adjudication.²⁶

This broad scale attack on the internal coherence and purported objectivity of judicial interpretation challenged the liberal distinction between law and politics in profound and material ways. The reaction was immediate and intense.²⁷ Many CLS scholars were purged from elite law schools, attacked as anarchists and declared unfit to teach law in the American legal academy. Despite these assaults and the individual careers that were sacrificed to the forces of reaction, many CLS scholars today remain tenured, though marginalized, in law schools throughout the country. Though they have bequeathed no institutional or programmatic legacy, the critical insights and methodologies they pioneered continue to provide an important source of insight, inspiration and direction to new scholars interested in a deeper understanding of the many disjunctures between the aspiration for substantive social justice and human solidarity, on the one hand, and the limits of positive law and legal process, on the other. Indeed, CLS perspectives, methodologies and critical formulations are readily apparent today in the work of various LatCrit scholars.²⁸

²⁴ See JAMES BOYLE, *Introduction*, in CRITICAL LEGAL STUDIES xxvi-xxviii (James Boyle ed., 1992).

²⁵ Karl Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 MINN. L. REV. 265 (1978).

²⁶ See, e.g., Gerald E. Frug, *The City as A Legal Concept*, 93 HARV. L. REV. 1059 (1980); Gerald E. Frug, *The Ideology of Bureaucracy in American Law*, 97 HARV. L. REV. 1276 (1984).

²⁷ See Gerald E. Frug, *McCarthyism and Critical Legal Studies* 22 HARV. C.R.-C.L. L. REV. 665 (1987) (reviewing ELLEN W. SCHRECKER, NO IVORY TOWER: MCCARTHYISM AND THE UNIVERSITIES (1986)).

²⁸ LatCrit scholarship reflects the influence of CLS deconstructive methodologies and the CLS critique of legal indeterminacy and liberal rights consciousness and applies these insights to substantive legal controversies of particular relevance to the LatCrit project. See, e.g., Jose E. Alvarez, *North American Free Trade Agreement's Chapter Eleven*, 28 U. MIAMI INTER-AM. L. REV. 303 (1996-97) (criticizing formal rights equality of the NAFTA investment regime given material inequalities between U.S. and Mexican investors and the levels of economic development in the United States and Mexico); Christopher David Ruiz Cameron, *How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English Only Rules as the Product of Racial Dualism, Latino Invisibility and Legal Indeterminacy*, 85 CAL. L. REV. 1347, 10 LA RAZA 261 (1997) (prohibition against national origin discrimination indeterminately applied in English-only cases as a result of Title VII's ambiguous statutory language, which provides no real resolution to the normative and fundamentally political questions at stake in controversies over English-only); Ileana M. Porras, *Reflections on Environmental Rights as Third Generation Solidarity Rights*, 28 U. MIAMI INTER-AM L. REV. 413 (1996-97) (questioning the viability and effectiveness of a rights-based approach to promoting environmental justice); Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 85 CAL. L. REV. 1449, 10 LA RAZA L.J.

Although the theoretical and political disjunctures that produced the ruptures that, in turn, gave rise to the emergence of Critical Race Theory are profoundly complex, multidimensional, and informed, as all things human, by the strengths, weaknesses and personal idiosyncrasies of the particular individuals involved at that particular moment in history, there is no question that the CLS critique of liberal rights consciousness played a central role in the CLS-CRT rupture.²⁹ The reasons are easy to understand when the CLS rights critique is read against the history of the American civil rights movement and its historical struggles to combat the racial dictatorship of white supremacy in the United States.

To reduce the civil rights movement to a series of legal struggles over the constitutionality of racial segregation and the Congressional enactment of civil rights legislation would be a gross misrepresentation of the profound political, spiritual and moral awakening produced by the non-violent protests and individual courage through which Black people in this country rose up to challenge the gross injustices of American racial apartheid.³⁰ Nevertheless, this movement did have a profound impact on American rights consciousness precisely because this anti-racist movement also took the form of a struggle for civil and political rights. As Black citizens sought increasingly and proactively to assert their rights to freedom of speech and assembly, to vote, to due process and to the equal protection of law, the sheer lawlessness and impunity with which white citizens and State law enforcement officials throughout the South conspired to deprive them of these rights triggered a crisis in the perceived legitimacy of the state and the effective viability of the rule of law.³¹ Through the symbolic power of non-violent protest and effective legal and

363 (1997) (using deconstructive methodology to challenge exclusionary law school admissions standards).

²⁹ See, e.g., Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 HARV. C.R.-C.L. L. REV. 301 (1987); Joel F. Handler, *Postmodernism, Protest and the New Social Movements*, 26 LAW & SOC'Y REV. 697, 707-710 (1992); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 C.R.-C.L. L. REV. 323 (1987); Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987); Robert A. Williams, Jr., *Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color*, 5 LAW & INEQ. J. 103 (1987). See generally, Kimberle Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Harlon L. Dalton, *The Clouded Prism*, 22 HARV. C.R.-C.L. L. REV. 435 (1987); Symposium, *Minority Critiques of the Critical Legal Studies Movement*, 22 HARV. C.R.-C.L. L. REV. 297 (1987).

³⁰ See, e.g., Anthony E. Cook, *Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.*, 103 HARV. L. REV. 985 (1990).

³¹ See UNITED STATES COMMISSION ON CIVIL RIGHTS, LAW ENFORCEMENT: A REPORT OF EQUAL PROTECTION IN THE SOUTH (1965) (documenting evidence of law enforcement complicity in private racially motivated violence and the deprivation of basic civil and political rights); Elizabeth M. Iglesias, *Designing the Institutional and Legal Structure of Prosecutorial Power in the Transition to Democracy*, in TRANSITION TO DEMOCRACY IN LATIN AMERICA: THE ROLE OF THE JUDICIARY (Irwin P. Stotzky ed., 1993) (noting that "[t]he history of the American civil rights and other grass roots social movements is, in part, the history of this country's effort to wrest state

political advocacy, the civil rights movement exposed a nation to itself, by revealing the systemic and effective hypocrisy of its purported commitment to individual dignity, liberty and equality, and even to the rule of law. The Congressional enactment of civil rights legislation in the mid-1960s was thus viewed by many as a significant victory, not only for the civil rights movement, but also for liberal political aspirations to vindicate the American experiment in democratic self-governance and to reaffirm the primacy of the rule of law.

Against this backdrop, it is not surprising that the CLS critique of legal indeterminacy and liberal rights consciousness would prove profoundly disturbing to many legal scholars of color, particularly those whose own personal commitment to the study and practice of law drew its energy and inspiration from the history of the civil rights movement. Though many scholars of color could readily appreciate the power of deconstructive legal analysis and its usefulness in revealing the indeterminacy of legal reasoning and the ideological biases reflected in judicial interpretation, these same scholars were understandably hesitant to embrace the more radical implications of the CLS critique.

One particularly controversial implication drawn from the CLS critique of legal indeterminacy was the notion that rights consciousness was an *obstacle to, rather than an instrument for*, the progressive transformation of society.³² The CLS critique of legal indeterminacy and judicial subjectivity was so thoroughly devastating to the liberal vision of law as a neutral instrument of rational dispute resolution and objective justice precisely because it directly challenged the notion that fundamental social change could, in fact, be effected through law. On the contrary, rather than limiting the exercise of arbitrary power by dominant social interests, legal adjudication was exposed as a process that enabled judicial ideology to disguise its own complicity in the reproduction of social hierarchies through the interpretative manipulation of a fundamentally indeterminate and ultimately incoherent body of legal doctrines. Though "the law," understood specifically as judicial adjudication and enforcement of fundamental legal rights, was purportedly above or beyond politics, CLS scholarship repeatedly revealed that judicial adjudication was simply another forum and venue of political contestation, a venue that was particularly elitist, exclusionary and inaccessible to the kinds of claims truly democratic and transformative social movements might want and need to demand.

Although the ruptures that produced the CRT break from CLS span a much wider breadth of issues than those implicated in the debate over the role of law and rights consciousness in the process of social transformation, this perspective does provide a useful vehicle for articulating points of theoretical convergence and

power from the control of dominant social interests, based on class, race and gender privilege, and to submit that power to the rule of law.") [hereinafter Iglesias, *Transition to Democracy*].

³² See, e.g., Gabel, *supra* note 22 (providing a compelling account of the way rights consciousness and discourse can truncate the collective processes and aspirations of emancipatory social movements).

divergence. These points, in turn, may illuminate some of the aspirations invested in the current LatCrit project and may also help to guide its future evolution, particularly at the threshold of this new initiative to produce a collaborative cross-cultural, transnational dialogue between American LatCrit scholars and Spanish legal scholars.³³ In this vein and in the context of this very brief genealogical narrative, it may suffice simply to note that LatCrit scholars can neither abandon, nor fully embrace, the dominant civil rights paradigm, nor the rule of law ideologies through which its limitations are excused. Indeed, the emerging body of LatCrit scholarship reflects precisely this dynamic tension.

Like CLS scholars, many LatCrit scholars have expressed profound dissatisfaction with the U.S. domestic civil rights paradigm. This expressed dissatisfaction has thus far centered on three key elements: (1) the domestic myopia that truncates U.S. civil rights discourse and consciousness within a domestic framework;³⁴ (2) the failure of U.S. civil rights paradigm to incorporate social and economic rights and to deal adequately with the realities of class subordination and the centrality of poverty in the reproduction of racial subordination both within and beyond the United States;³⁵ and (3) the fact that the U.S. civil rights paradigm is

³³ For an alternative perspective on the CLS/CRT rupture see Sumi K. Cho, *Essential Politics*, 2 HARV. LATINO L. REV. 433, 449 (1996) (recounting CLS attacks on CRT for fomenting fracture of universalist agenda on the left during 1995 Critical Networks Conference and reflecting on implications of CLS attack for the then embryonic LatCrit project). See also Elizabeth M. Iglesias, *Confronting Racial Inequality: LatCrit Reflections on Law, Class and the Anti-Political Economy* (unpublished work-in-progress, on file with author) (recounting CLS/CRT debates over the relative priority of class and race in the struggle for social justice).

³⁴ Mari J. Matsuda, *Foreword: McCarthyism, the Internment and the Contradictions of Power*, 40 B.C. L. REV. 9; 19 B.C. THIRD WORLD L.J. 9 (1998) (providing historical perspective linking current-day domestic orientation of U.S. civil rights establishment to the virulent McCarthyite repression directed at Black internationalist patriots); Celina Romany, *Claiming a Global Identity: Latina/o Critical Scholarship and International Human Rights*, 28 U. MIAMI INTER-AM. L. REV. 215 (1996-97); Natsu Taylor Saito, *Beyond Civil Rights: Considering "Third Generation" International Human Rights Law in the United States*, 28 U. MIAMI INTER-AM. L. REV. 387 (1996-97) (domestic civil rights paradigm neglects second generation social, economic and cultural rights and third generation group rights recognized in international human rights discourse); Berta Esperanza Hernandez-Truyol, *Building Bridges: Bringing International Human Rights Home*, 9 LA RAZA L. J. 69 (1996) (illustrating how incorporation of human rights can expand parameters of domestic civil rights paradigm); Iglesias, *Foreword: International Law*, *supra* note 7, at 179-82 (noting how the fragmentation of domestic and international law in American legal consciousness and discourse undermines possibilities for collaboration between domestic civil rights and international human rights advocates and suppresses emergence of transnational solidarity networks so crucial in an era of increasing globalization); Iglesias, *Out of the Shadow*, *supra* note 6, at 362 (criticizing domestic myopia of U.S. civil rights paradigm in favor of a broader more inclusive framework focusing on the centrality of international law and relations, national security ideology and political economy in the production of racial subordination both within and beyond the United States).

³⁵ Iglesias, *Global Markets, Racial Spaces and the Role of Critical Race Theory in the Struggle for Community Control of Investments: An Institutional Class Analysis*, 45 VILL. L. REV. (forthcoming 2000) (arguing that institutionalization of more just and inclusive order of power and knowledge requires "a new vision of social justice that engages, rather than ignores the international

truncated by an ideology of color-blind individualism³⁶ and, more particularly, by the tendency to view issues of racial inequality and subordination through the limited framework of a Black/White binary of race and race relations, which fails to address the cultural, economic and political dimensions of white supremacy as it operates specifically in the subordination of identities and communities that are neither black, nor white.³⁷

Although the highly critical perspective with which LatCrit scholars have assessed the viability and legitimacy of the current civil rights paradigm marks important points of convergence with earlier CLS critiques of legal indeterminacy and liberal rights consciousness, there are significant divergences. As with CRT scholars, many of the issues and concerns that have occupied LatCrit attention counsel grave caution in the way we use, and the inferences we draw from, the CLS critique of the role of law and legal rights consciousness in the process of social transformation. To give just one example, LatCrit scholars have from the very beginning sought to articulate LatCrit theory and social justice agendas in ways that acknowledge and effectively respond to the transnational dimensions of Latina/o identities and communities.³⁸ As a result, LatCrit theory is interested in challenging both the ways in which transnational identities are particularly oppressed by the current structure of domestic U.S. legal regimes, as well as the

dimensions of racial subordination [and] the centrality of poverty in the subordination of peoples of color throughout the world.”); Saito, *Beyond Civil Rights*, *supra* note 34, at 402-05 (providing historical perspective linking the stagnation of U.S. civil rights law within a first generation civil and political rights framework to the timing and effect of the assassinations of Dr. Martin Luther King and Malcolm X). Indeed, class inequality has been a central and recurrent theme in LatCrit scholarship since its inception. See, e.g., Christopher David Ruiz Cameron, *The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers*, 53U. MIAMI L. REV. 1089 (1999) (arguing that the future of the American labor movement and Latinas/os are inextricably interconnected); Rachel F. Moran, *Foreword - Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond*, 8LA RAZA 1, 10 (1995) (noting that Latinas/os “often have been attuned to questions of class, rather than race or ethnicity, in formulating a reform agenda”). For the Substantive Program Outline of the LatCrit V Annual Conference, which is devoted specifically to addressing class inequality in LatCrit theory, see *Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, <http://nersp.nerdc.ufl.edu/~malavet/latcrit/lcvdocs/substantiveprogram.htm>.

³⁶ See, e.g., Saito, *Beyond Civil Rights*, *supra* note 34, at 420 (recounting how in the 1880’s U.S. government programs to divide and transfer Indian lands to individual Indians resulted in loss of land, resources, communities and access to culture and history because of failure of individual rights paradigm to protect group interests). For an extensive critical deconstruction of the way judicial ideologies of _color-blind equality produced systematic marginality and disempowerment of racial minorities within majoritarian unions through the biased and indeterminate manipulation of the relative priority of individual and collective group rights in interpreting the relationship between U.S. employment discrimination and labor laws see Iglesias, *Structures of Subordination*, *supra* note 5.

³⁷ See *supra* note 6 (providing relevant LatCrit cites on the Black/White paradigm and its implications for Latinas/os in the United States).

³⁸ See, e.g., Iglesias, *Foreword: International Law*, *supra* note 7, at 192-93; Iglesias, *Out of the Shadows*, *supra* note 6; Porras, *supra* note 28; Trucios-Haynes, *supra* note 7.

realities of subordination that are currently manifested in third world countries from which these transnational identities originate.

The first interest is reflected in LatCrit challenges to the failures of the domestic civil rights paradigm to incorporate social justice issues like the struggle for language rights or to challenge the ways in which U.S. immigration laws and policy legitimate the systematic violation of basic human rights through the deployment of essentialist legal constructs like the citizen/alien dichotomy.³⁹ The second interest is reflected in the attention LatCrit scholars have devoted to the problems confronting Latinas/os and other transnational, intersectional and marginal identities throughout Latin America and the third world.⁴⁰

At the same time, the anti-subordination commitments at the heart of the LatCrit movement counsel grave caution in addressing social justice issues in countries other than the United States, "lest we are too quickly seduced or reduced to thinking in terms of the readily available blame-the-victim discourses of Third World corruption, authoritarian traditions, and bureaucratic impotence."⁴¹ In this vein, a LatCrit sensibility also warrants caution regarding any proposal to transplant the more radical versions of the CLS rights critique to third world countries where

³⁹ See, e.g., Elvia R. Arriola, *LatCrit Theory, International Human Rights, Popular Culture, and the Faces of Despair in INS Raids*, 28 U. MIAMI INTER-AM. L. REV. 245 (1996-97) (using narrative methodology in ways that reveal significant similarities between state-sponsored disappearances and the realities of INS raids and deportation practices directed at illegal "aliens"); Kevin R. Johnson, *"Aliens" and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons*, 28 U. MIAMI INTER-AM. L. REV. 263 (1996-97) (revealing ways in which U.S. immigration law subordinates the enjoyment of fundamental civil and political rights to the enforcement of citizen/alien dichotomy such that the denial of the right to vote, to engage in otherwise protected political activities and to challenge indefinite terms of detention are viewed as legitimate and appropriate). See also Iglesias, *Foreword: LatCrit III*, *supra* note 4, at 592-94 (noting that citizen/non-citizen dichotomy constitutes a common context for struggle against the constitution and deployment of imperial state power both domestically and internationally).

⁴⁰ LatCrit scholars have, since the beginning, sought to address the compelling justice issues confronting Latina/o communities outside the United States. See, e.g., Enrique R. Carrasco, *Opposition, Justice, Structuralism, and Particularity: Intersections Between LatCrit Theory and Law and Development Studies*, 28 U. MIAMI INTER-AM. L. REV. 313 (1996-97) (urging LatCrit attention to impact of policies and practices of IMF and World Bank on vulnerable groups in Latin America); Raúl M. Sánchez, *Mexico's El Cuchillo Dam Project: A Case Study of Nonsustainable Development and Transboundary Environmental Harms*, 28 U. MIAMI INTER-AM. L. REV. 425 (1996-97) (exploring impact of development project on impoverished Mexican community); Alvarez, *supra* note 28 (examining impact of NAFTA investment chapter on Mexican poor); Porras, *supra* note 29 (critiquing environmental rights advocacy from Costa Rican perspective). See also Iglesias & Valdes, *supra* note 18, at 555-61 (focusing on the plight of Guatemalan women under Guatemalan Family Code and reflecting on significance of this particularity to the articulation of a universal LatCritical anti-essentialist social justice agenda). Indeed, the significance accorded to social justice agendas beyond the United States is directly evident in the way LatCrit scholars have sought to articulate a distinctively LatCritical perspective on the substantive meaning of democracy — a central theme of the LatCrit III conference. See, e.g., *supra* note 12.

⁴¹ Iglesias, *Foreword: LatCrit III*, *supra* note 4, at 638; Porras, *supra* note 28, at 419-20 (urging a LatCrit perspective sensitive to both sameness/difference that can mediate USLat/OtroLat perspectives).

the "rule of law" is hardly a dominant ideology. The history and continuing instances of gross human rights abuses, impunity, and corruption in countries such as Guatemala, Nicaragua, Colombia, Peru, and Haiti provide a frightening window into the possible consequences of the wholesale deconstruction and delegitimation of rule of law ideologies.

Although it is certainly true that the indeterminacy of law and the limitations of liberal rights regimes render law of limited instrumental value as a tool in the struggle for social and racial justice, nevertheless the brutality and impunity of elites the world over makes law a fundamental stake in any struggle that takes seriously the hopes and aspirations of third world peoples, both within and beyond the United States. Put differently, while law is ultimately insufficient to change existing structures of power and privilege, any emancipatory movement must seek to render power at least minimally accountable, and to do so, it will need law, and more specifically, it will need rights. As a result, the future of LatCrit theory and its prospects for producing a theoretical intervention that is truly relevant to the compelling problems facing third world peoples throughout Latin America and elsewhere depends importantly on its ability to invite collaborative dialogue with third world legal scholars and advocates, who currently are deeply and practically invested in projects designed to institutionalize the very same rule of law ideologies that CLS scholars have so effectively debunked.⁴² At the same time, there is no question that the substantive parameters of a *LatCritical* rights consciousness must continue to expand our collective understanding of the meaning and prerequisites of social justice beyond the current limitations of the domestic U.S. civil rights paradigm.

B. Feminist Critical Legal Theory and Critical Race Feminism: Intersectionality and Anti-Essentialism in the Configuration of a *LatCritical* Identity Politics

No genealogical narrative of the theoretical perspectives and political commitments that currently are converging in the LatCrit project would be complete without reference to the contributions of FemCrit legal theory and Critical Race Feminism.⁴³ Similar to CLS and CRT, these two theoretical discourses produced a

⁴² See Iglesias, *Global Markets, Racial Spaces*, *supra* note 35 (noting limited potential of collective action by emancipatory social movements in absence of fundamental legal change that effectively institutionalizes movement's emancipatory vision); Iglesias, *Transition to Democracy*, *supra* note 31, at 270-71 (reflecting on the role of prosecutorial power in consolidating "rule of law" in the Guatemalan transition to democracy and proposing institutional design to render prosecutorial power accountable to victims and witnesses of gross human rights violations).

⁴³ LatCrit theory has, since its very inception, reflected the perspectives and critical concerns of LatCrit feminist scholars and their determination to ensure that LatCrit theory engages and incorporates a political commitment to gender equality and to the transformation of male supremacist, machista ideologies, practices and institutional arrangements. For examples of LatCrit feminist interventions at LatCrit I see Elvia R. Arriola, *Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self*, 2 HARV. LATINO L. REV. 397, 403-12 (1997) (thematizing Latina identities at intersection of race, class and ethnicity); Berta Esperanza Hernández-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*,

rich and complex body of scholarship, whose contributions to the critical analysis of law, legal institutions and legal process cannot fairly, nor fully, be captured by a genealogical narrative as brief as this one aspires to remain. Accordingly, rather than provide an abstract overview, my purpose here is to offer a partial, and therefore unavoidably controversial, account of some of the ways in which these two currents of critical legal discourse have contributed to the theoretical perspectives and political commitments that today inform the articulation of LatCrit theory.

FemCrit legal theory emerged in the American legal academy shortly after the emergence of Critical Legal Studies and reflected a self-conscious determination to advance two distinct but interconnected projects: (1) to incorporate the critical perspectives and methodologies of CLS into the evolving body of feminist scholarship, so as to give liberal feminism a more critical edge in the academy, and (2) to incorporate a feminist perspective into the articulation of CLS scholarship, so as to center the issue of male supremacy and the impact of male supremacist ideologies on legal interpretation and on the reproduction of gender inequality across all legally mediated social relations. Thus, FemCrit scholarship was both a radical intervention in the development of mainstream feminist theory and a feminist intervention in the CLS movement — in both instances aimed at the deconstruction of male supremacy.⁴⁴

Early FemCrit scholarship reflects this dual objective in its application of CLS-style deconstructive methodologies to reveal the limitations of liberal rights consciousness, legal doctrines and legal process from a specifically feminist

2 HARV. LATINO L. REV. 199, 209 (1997) (recounting and reflecting on particularities of Latina subordination); Margaret E. Montoya, *Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis*, 2 HARV. LATINO L. REV. 349 (1997). For examples of LatCrit feminist interventions in the October 1996 Symposium see Iglesias, *Foreword: International Law*, *supra* note 7, at 201-03 (reflecting on significance of Critical Race Feminism for LatCrit project); Wing, *supra* note 17. For examples at LatCrit II see Ariolla, *Foreword*, *supra* note 17; Iglesias & Valdes, *supra* note 19, at 546-61 (incorporating feminist and queer perspectives to develop LatCritical analysis of religion and its impact on the cultural and legal reproduction of machismo as particularly virulent form of straight male supremacy). For examples at LatCrit III see Virginia P. Coto, *LUCHA, The Struggle for Life: Legal Services for Battered Immigrant Women*, 53 U. MIAMI L. REV. 749 (1999); Mary Romero, *Immigration, the Servant Problem, and the Legacy of the Domestic Labor Debate: "Where Can You Find Good Help These Days!"* 53 U. MIAMI L. REV. 1045 (1999) (challenging race and class essentialism of mainstream American-style feminism through Latcritical analysis of "the domestic labor debate"). See also Berta Esperanza Hernandez-Truyol, *Borders (En)Gendered: Normativities, Latinas, and a LatCrit Paradigm*, 72 N.Y.U. L.REV. 882 (1997).

⁴⁴ Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The FemCrits Go to Law School,"* 38 J. LEGAL EDUC. 61 (1988); Deborah L. Rhode, *Feminist Critical Theories*, 42 STAN. L. REV. 617 (1990) (noting that the difference between CLS and feminism is that "[f]eminism takes gender as a central category of analysis, while the core texts of critical legal studies do not."); Robin West, *Deconstructing the CLS-Fem Split*, 2 WIS. WOMEN'S L. J. 85 (1986).

perspective.⁴⁵ Mapping out a broad agenda of critical analysis and law reform initiatives, feminist legal scholars worked to reveal and combat the impact of male supremacist ideologies in virtually, and increasingly, almost every field of law, including criminal law and procedure,⁴⁶ family law,⁴⁷ employment law,⁴⁸ and public benefits.⁴⁹ They also worked to develop new legal theories to address incidents and practices of sex-based subordination and oppression that were not then cognizable under existing legal doctrines. Three notable examples are reflected in feminist legal struggles to expand the scope of federal anti-discrimination laws in order to allow new causes of action for comparable worth claims, which challenge the suppression of wage structures in jobs cast as "women's work,"⁵⁰ to create legal remedies for instances of sexual harassment directed at women in the workplace,⁵¹

⁴⁵ For examples of early FemCrit scholarship see Mary Joe Frug, *Re-Reading Contracts: A Feminist Analysis of the First Year Casebook*, 34 AM. U. L. REV. 1065 (1985); Catherine MacKinnon, *Feminism, Marxism, Method and the State: An Agenda for Theory*, 7 SIGNS 515 (1982); Frances Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1496 (1983); Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589 (1986); Stephanie M. Wildman, *The Legitimation of Sex Discrimination: A Critical Response to Supreme Court Jurisprudence*, 63 OR. L. REV. 265 (1984).

⁴⁶ See, e.g., Susan Estrich, *Rape*, 95 YALE L. J. 1087 (1986); Frances Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 TEX. L. REV. 387 (1984); Elizabeth M. Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623 (1980).

⁴⁷ See, e.g., Marjorie Maguire Shultz, *Contractual Ordering of Marriage: A New Model for State Policy*, 70 CAL. L. REV. 204 (1982).

⁴⁸ See, e.g., Lucinda M. Finley, *Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate*, 86 COLUM. L. REV. 1118 (1986).

⁴⁹ See, e.g., Sylvia A. Law, *Women, Work, Welfare and the Preservation of Patriarchy*, 131 U. PA. L. REV. 1249 (1983) (analyzing the ways in which welfare eligibility and work requirements encourage female dependence on a male wage earner, while simultaneously undermining and penalizing female independence).

⁵⁰ See, e.g., Ruth Gerber Blumrosen, *Remedies for Wage Discrimination*, 20 MICH. J. L. REFORM 99 (1986); Judith Olans Brown, Phyllis Tropper Baumann & Elaine Millar Melnick, *Equal Pay for Jobs of Comparable Worth: An Analysis of the Rhetoric*, 21 HARV. C.R.-C.L. L. REV. 127 (1986); Carin Ann Clauss, *Comparable Worth—The Theory, Its Legal Foundation, and the Feasibility of Implementation*, 20 MICH. J. L. REFORM 1 (1986).

⁵¹ CATARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN* (1979). Both comparable worth and sexual harassment claims were forwarded, with differing degrees of success, as logical extensions of existing causes of action then available under the federal Title VII statute, which prohibits employment discrimination on the basis of sex. Both reflected the creative and emancipatory possibilities of incorporating a feminist consciousness and perspective into the production of legal theory and the practice of legal advocacy, as well as the profound limitations and inevitable frustrations awaiting any effort to achieve fundamental social transformations through the adjudication of equality rights.

and to challenge the impact of the production and dissemination of pornography on women's equality rights.⁵²

Though LatCrit theory draws more directly from the theoretical perspectives articulated in and through the subsequent emergence of Critical Race Feminism, early FemCrit theory made significant contributions to the evolution of American critical legal discourse, and the conceptual power of these contributions still resonates today in the theoretical perspectives informing the LatCrit project. To understand this connection between early FemCrit theory and the more recent advances in LatCrit scholarship, it is important to remember the particular challenge feminist legal theory directed at the settled understandings underpinning American equal protection doctrine and anti-discrimination laws. Informed by a vision of formal rights equality, American legal discourse and consciousness predicated anti-discrimination laws on the liberal consensus that equals should be treated equally. However, in defining discrimination as the unequal treatment of similarly situated persons, liberal rights consciousness produced a truncated vision of equality that ignored the many ways in which sex and gender based subordination are organized around the discriminatory treatment of difference, particularly the differences between men and women.

Indeed, this truncated formulation of the equality norm has produced truly absurd moments in the history of American equal protection jurisprudence. In one particularly ridiculous string of cases, the U.S. Supreme Court held that the exclusion of pregnancy-related disabilities from an employer's disability benefits plan did not violate the Equal Protection Clause of the U.S. Constitution or Title VII's statutory prohibitions against sex-based employment discrimination, absent evidence that the exclusion of pregnancy disability benefits was a pretext for discriminating against women.⁵³ Despite the fact that only women can become pregnant, the Court refused to recognize pregnancy-related discrimination as sex-based discrimination, arguing that pregnancy discrimination does not discriminate between men and women, but rather discriminates only as between pregnant persons and non-pregnant persons.⁵⁴ Although Congress shortly thereafter overruled the Court's interpretation as applied to Title VII,⁵⁵ the Court's reasoning reveals the

⁵² CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 163-97 (1987) (recounting the feminist legal and social theory driving efforts to regulate pornography as a practice of sex discrimination).

⁵³ *Geduldig v. Aiello*, 417 U.S. 484 (1974) (upholding exclusion of pregnancy disabilities under Equal Protection Clause); *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976) (upholding exclusion of pregnancy disabilities under Title VII).

⁵⁴ In the Court's words: "The lack of identity between the excluded [pregnancy-related] disability and gender as such under this insurance program becomes clear upon the most cursory analysis. The program divides potential recipients into two groups pregnant women and nonpregnant persons. While the first group is exclusively female, the second includes members of both sexes." *Gilbert*, 429 U.S. at 135 (quoting *Geduldig*, 417 U.S. at 496-497, n. 20).

⁵⁵ Congress overruled this interpretation of Title VII in the Pregnancy Discrimination Act of 1978, 42 U.S.C. §2000(e)(k), however, Congress does not have the power to overrule the Court's interpretation of the Equal Protection Clause of the U.S. Constitution.

profound obstacles confronting any feminist project to promote sex equality through law, so long as the right to equal treatment and respect is thought to depend upon and derive from women's similarities to men.

Blind-sided by the superficial logic of this formalistic equality norm and by the fact that women's differences were often used to justify their subordination and exclusion from the opportunities available to men, many women initially responded by denying the "objective" reality and ultimate relevance of sex and gender based differences. These differences were said to be socially and culturally constructed differences that did not constitute fundamental or necessary limitations on women's ability to be equal to men. However, this approach — as evident from the Supreme Court's treatment of pregnancy discrimination — soon proved seriously inadequate to the challenge of promoting women's equality, particularly as women began affirmatively to embrace and re-value their differences from men and to articulate new demands for an equality of respect, rather than of treatment.

Early FemCrit theory was absolutely central to this gestalt shift in perspective.⁵⁶ Admitting women's differences from men, FemCrit scholars launched a reasoned attack on the role that "women's differences" were allowed to play in legitimating women's subordination and suppressing women's opportunities. After all, while women are certainly different from men, so too are men different from women. Why then should women have to prove they are like men? Perhaps men should have to prove instead that they are like women. Requiring women to be the same as men reduces the meaning of "equality" to nothing less than a blatantly discriminatory demand that women assimilate to a male norm. Thus was launched the so-called "sameness/difference debate" in the struggle over the meaning sex-discrimination and the requirements of equal protection.⁵⁷ Its significance cannot be overstated, nor should its profound relevance to the LatCrit project be overlooked.

Certainly, one reason why the sameness/difference debate pioneered by FemCrit scholars is so relevant to LatCrit theory is because LatCrit theory aspires to articulate a broad and inclusive vision of social justice, which necessarily must, and already has, incorporated the struggle for gender equality and the dismantlement of male supremacy as a key element of its emancipatory project. However, this debate has profound implications for a much wider array of LatCrit concerns precisely because LatCrit theory grounds its commitment to anti-essentialist intergroup justice on a respect for difference, rather than a requirement of sameness. It could not do otherwise, given the attention LatCrit scholars have devoted to matters like language

⁵⁶ MACKINNON, *supra* note 52, at 32-45.

⁵⁷ *Id.* See also DEBORAH L. RHODE, JUSTICE AND GENDER 117-25 (1989); Drucilla Cornell, *Sexual Difference, the Feminine and Equivalency: A Critique of MacKinnon's TOWARD A FEMINIST THEORY OF THE STATE*, 100 YALE L.J. 2247 (1991); Finley, *supra* note 48; Christine A. Littleton, *Reconstructing Sex Equality*, 75 CAL. L. REV. 1279 (1987); Wildman, *supra* note 45.

rights.⁵⁸ This is because the struggle against the suppression of languages other than English cannot effectively rebut the claim that different degrees of language proficiency do constitute meaningful grounds for discriminating among persons — absent a vision of equality and individual dignity that transcends the requirement of sameness.⁵⁹

Despite its significant contributions and its aspirations to define a common agenda for the universal liberation of women, FemCrit theory floundered on the racial, ethnic, class and cultural essentialisms of its pre-dominantly white, upper-middle class, First World perspectives.⁶⁰ Many Black and Third World feminists soon complained that matters of particular significance to women of color were marginalized, in and by the exclusive attention white feminist scholars directed at issues related to sex and gender based oppression. Though rape, sexual harassment, pregnancy discrimination, and pornography are certainly matters of compelling concern to women of color, a genuinely inclusive and universal feminism would have to join the struggle against the racism, cultural imperialism and economic exploitation through which women of color are particularly oppressed.

This type of criticism is well illustrated in accounts of the United Nations' Conference in Copenhagen in the mid-1980s.⁶¹ When First World feminists condemned the practice of female genital mutilation, Third World feminists objected that problems of nutrition, infant mortality, illiteracy, health care delivery, and skilled training were as important to them *as women* as the issue of female circumcision. Addressing these problems would, however, require feminists to take

⁵⁸ 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); Cameron, *supra* note 28.

⁵⁹ See, e.g., William Bratton, *The Law and Economics of English Only*, 53 U. MIAMI L. REV. 973 (1999) (recounting and criticizing economic arguments for English Only); Drucilla Cornell, *The Imaginary of English-Only*, 53 U. MIAMI L. REV. 977 (1999) (grounding language rights in the moral right of personality of non-English speaking and bilingual persons); Catherine Peirce Wells, *Speaking in Tongues: Some Comments on Multilingualism*, 53 U. MIAMI L. REV. 983 (1999) (grounding language rights in respect for difference); Iglesias, *Foreword: LatCrit III*, *supra* note 4, at 651-54 (reflecting on the significance of "difference" in the articulation of language rights).

⁶⁰ See, e.g., Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) (criticizing white feminist theory for its failure to address the particular forms of subordination experienced by Black women in the United States); Elizabeth M. Iglesias, *Rape, Race and Representation: The Power of Discourse, Discourses of Power and the Reconstruction of Heterosexuality*, 49 VAND. L. REV. 869 (1996) (critiquing white feminist theory for its failure to address significant class and cultural differences among women in designing feminist anti-rape agenda); Hernandez-Truyol, *Borders Engendered*, *supra* note 43 (noting that early FemCrits were race essentialists); Romero, *supra* note 43 (criticizing white feminist theory for its failure to address particular forms of subordination experienced by racially subordinated immigrant women in context of domestic labor policies).

⁶¹ Cheryl Johnson-Odin, *Common Themes, Different Contexts: Third World Women and Feminism*, in *THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM* (Chandra T. Mohanty, Ann Russo, & Lourdes Torres, eds. 1991).

an anti-imperialist position, and according to at least one commentator, many Third World women felt their self-defined needs were not addressed as priority items in the international feminist agenda, which was dominated by a white Western feminist perspective and inattentive to issues of imperialist domination.⁶²

Closer to home, attention to the particular forms and contexts of discrimination experienced by women of color provided significant new insights into the limitations of American equal rights consciousness and federal anti-discrimination laws. For example, the process of proving a discrimination claim was particularly and uniquely problematic for Black women alleging employment discrimination because the prohibitions against employment discrimination based on race and sex failed to take women of color into account as a distinct, legally cognizable category. As a result, an employer who discriminated by refusing to employ any Black women at all, nevertheless, might easily escape Title VII liability by showing that he employed white women (and therefore did not discriminate on the basis of sex) and that he employed black men (and therefore did not discriminate on the basis of race). The failure to recognize women of color, as such, in the classification of categories protected by federal anti-discrimination statutes, meant that the systematic exclusion of Black women from a place of employment could be done with virtual impunity.⁶³

Although some white feminist scholars acknowledged the need to expand the scope of the feminist legal agenda to enable new avenues and possibilities for anti-racist solidarity with women of color, anti-imperialist solidarity with Third World women and anti-classist solidarity with poor women of all colors, others continued to propound a universal feminist agenda based on abstract assertions about the common interest of all women in the elimination of sex and gender-based oppression, even as they continued to marginalize the particular forms of oppression experienced specifically by women of color.⁶⁴ Thus, Critical Race Feminism was

⁶² *Id.* See also Hope Lewis, *Between Irua and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. 1 (1995) (seeking to bridge intra-feminist impasse marked by polarization of feminist positions across the two ideological extremes of cultural relativism and universal feminism, through genuine respect for the value and integrity of cross-cultural differences, as well as for the critical agency and autonomy of Third World women).

⁶³ See, e.g., *Degraffenreid v. General Motors Assembly Div.*, 413 F.Supp. 142, 145 (E.D. Mo. 1976), *aff'd in part, rev'd in part on other grounds*, 558 F.2d 480 (8th Cir. 1977) (denying black women independent standing as Title VII plaintiffs on ground that "[t]he prospect of the creation of new classes of protected minorities, governed only by mathematical permutation and combination, clearly raises the prospect of opening the hackneyed Pandora's box"); Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989); Cathy Scarborough, *Conceptualizing Black Women's Employment Experiences*, 98 YALE L. J. 1457 (1989); Elaine W. Shoben, *Compound Discrimination: The Interaction of Race and Sex in Employment Discrimination*, 55 N.Y.U. L. REV. 793 (1980).

⁶⁴ Compare Catharine A. MacKinnon, *From Practice to Theory, Or What is a White Woman Anyway?*, 4 YALE J. L. & FEMINISM 13, 15-17 (1991) (arguing that feminism ought to be about sexual oppression because that is what is left in common among women once you bracket the

born from the felt need among women of color to articulate a feminist legal theory grounded specifically in the particular experiences of women of color at the intersection of multiple practices of oppression and the convergent impact of racism, sexism and class exploitation.⁶⁵

Like LatCrit theory, Critical Race Feminism challenges the Black/White paradigm of American racial consciousness.⁶⁶ It does so by interpolating issues of sex and gender into the analysis of racial discrimination even as it invites all women of color to develop a collective political identity and to forge an inclusive anti-subordination agenda across the divisions of race, class and ethnicity.

C. Asian Pacific American Critical Legal Scholarship and Chicana/o Studies

No genealogical account of the emergence of LatCrit theory could fully and effectively convey the substantive scope of LatCrit aspirations to articulate a broadly inclusive anti-essentialist, anti-subordination theory without noting the contributions of Asian Pacific American Critical Legal Scholarship [APACrit] and Chicana/o Studies. These two movements made significant contributions, both within and beyond the institutional and programmatic parameters of the LatCrit project. At the same time, each movement presents a distinct, but ultimately inter-related, challenge because each movements calls in different ways for LatCrit scholars to ensure that the future development of LatCrit theory retains its substantive commitment to intra- and inter-group justice. In this respect, the long

differences between women) with Martha A. Fineman, *Feminist Theory in Law: The Difference it Makes*, 2 COLUM. J. GENDER & L. 1, 15-23 (1992) (grounding solidarity among women on notion of a "gendered life"); Dorothy E. Roberts, *BlackCrit Theory and the Problem of Essentialism*, 53 U. MIAMI L. REV. 855, 857 (1999) (criticizing way some white feminists have responded to the anti-essentialist critique).

⁶⁵ Some FemCrits responded to the emergence of Critical Race Feminism in much the same way as some CLS scholars responded to the emergence of CRT (and ironically of FemCrit theory) and the way liberal scholars tend to respond to all variations of critical legal theory, that is, by decrying the Balkanization of their own more "universal" perspective; however, this so-called Balkanization is not produced by Critical Race Feminism, CRT, or LatCrit theory. It is produced by real and material inequalities and the ideologies of difference that legitimate these inequalities. These inequalities cannot simply be ignored out of existence. For this reason, the relentless repetition of this tired old refrain of Balkanization reflects the complete arrogance with which the relevant elites at any given moment continue to criticize whole bodies of scholarship they do not bother to read, much less to understand; for had they understood this scholarship, they might long ago have changed their tune — or at least changed their song to a new key. See, e.g., Iglesias, *Foreword: LatCrit III*, *supra* note 4, at 625-29 (positioning "the anti-essentialist critique beyond rather than, as often is charged, at the center of the political fragmentation and Balkanization that threatens to sunder every universal into a proliferation of increasingly atomized and ineffectual particularities"); Iglesias, *Structures of Subordination*, *supra* note 5, at 400-03 (affirming the potential universality of "women of color" as shared political identity and rejecting notion that collective solidarity can be built on the suppression of difference).

⁶⁶ Iglesias, *Foreword: International Law*, *supra* note 4, at 201 (reflecting on relationship between Critical Race Feminism and LatCrit theory).

tradition of Chicana/o studies and activism challenges LatCrit scholars to attend to the particularities of intra-Latina/o differences,⁶⁷ even as the more recent interventions of APACrit scholarship illustrate why LatCrit scholars cannot limit the parameters of our theoretical concerns or solidaristic commitments to an essentialist construction of Latina/o identity, nor even to the more inclusive politics of Latina/o pan-ethnicity.⁶⁸ Each movement, thus, presents LatCrit scholars with a ready opportunity to ground the production of LatCrit theory on a genuine respect for and engagement in the convergent liberation aspirations and struggles that have thus far been truncated by the essentialist manipulation of intra- and inter-group differences. A few brief observations may illustrate these points.

Asian and Pacific American scholars have for some time been examining the complex relationship between the U.S. legal system and the particularities of Asian Pacific American experiences in and beyond the United States.⁶⁹ Nevertheless, the proposal to launch "an Asian American Moment" and, thereby, to initiate a collective project aimed specifically and self-consciously at articulating common themes and points of critical legal intervention around the particular experiences of Asian and Pacific Americans was a profoundly significant moment in the development of American critical legal discourse and, more specifically, in the subsequent emergence of LatCrit theory.⁷⁰ Its significance to LatCrit theory derives both from the new theoretical insights and the important intergroup commonalities revealed by the emergence of APACrit scholarship and from the

⁶⁷ Margaret E. Montoya, *LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions*, 53 U. MIAMI L. REV. 1119 (1999)(cautioning LatCrit scholars against repeating errors of Chicano movement); Johnson & Martinez, *Crossover Dreams*, *supra* note 18 (urging LatCrit scholars to study and learn from the significant history of Chicana/o studies and activism).

⁶⁸ Iglesias, *Foreword: LatCrit III*, *supra* note 4, at 622 (urging that "the logical and political implications of the LatCrit commitment to anti-essentialist intergroup justice, both encompass and transcend the politics of Latina/o pan-ethnicity and hybridism"); *Id.* at 623-29, 674-79 (explaining why this is so).

⁶⁹ See, e.g., Keith Aoki, *The Scholarship of Reconstruction and the Politics of Backlash*, 81 IOWA L. REV. 1467, 1477-79 (1996) (citing broad range of Asian American scholarship on "such diverse legal fields as the dynamics of faculty hiring and affirmative action; the "cultural defense" and racialized constructions of dangerous "others" in criminal law, the current and historical immigration laws, legal history and the lessons to be learned from the Japanese American internment [during World War II]; as well as exploring problematic constructions of Asian and Asian American "Others" in U.S. law").

⁷⁰ Robert S. Chang, *Toward an Asian-American Legal Scholarship: Critical Race Theory, Post-Structuralism and Narrative Space*, 81 CAL. L. REV. 1241, 1 ASIAN L.J. 1 (1993) (announcing an "Asian American Moment" marked by the increasing presence of Asian Americans in the legal academy and calling for the development of a distinctively Asian American legal scholarship). See also Keith Aoki, *Critical Legal Studies, Asian Americans in U.S. Law & Culture*, Neil Gotanda and Me, 4 ASIAN L.J. 19 (1997); *Colloquy*, 81 IOWA L. REV. 1467 (1996) (collection of reflections on, and responses to attacks directed against, Professor Chang's call for an Asian American Legal Scholarship).

generous contributions Asian and Pacific American scholars have been making to the development of LatCrit theory since its inception.⁷¹

LatCrit theory and APACrit scholarship share ready points of convergence.⁷² Both movements seek to reveal historical and contemporary aspects of white supremacy that have thus far been suppressed and marginalized by the Black/White paradigm of American racial consciousness, even as each acknowledges and stands in opposition to the particular and pervasive forms of racial discrimination suffered by Black persons, both within and beyond the United States.⁷³ Both movements, by definition, center marginal, transnational and

⁷¹ For the contributions of Asian and Pacific American scholars to LatCrit I see Keith Aoki, *(Re)Presenting Representation*, 2 HARV. LATINO L. REV. 247 (1997); Robert S. Chang, *Racial Cross-Dressing*, 2 HARV. LATINO L. REV. 423 (1997); Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 HARV. LATINO L. REV. 495 (1997); Cho, *supra* note 32. For LatCrit II see Robert S. Chang, *Who's Afraid of Tiger Woods?* 19 CHICANO-LATINO L. REV. 223 (1998); Pat K. Chew, *Constructing Our Selves/Our Families: Comments on LatCrit Theory*, 19 CHICANO-LATINO L. REV. 297 (1998); Nancy K. Ota, *Falling From Grace: A Meditation on LatCrit II*, 19 CHICANO-LATINO L. REV. 437 (1998). For LatCrit III see John Hayakawa Torok, *Finding the Me in LatCrit Theory: Thoughts on Language Acquisition and Loss*, 53U. MIAMI L. REV. 1019 (1999); Eric K. Yamamoto, *Introduction: The Politics of Theory in Action and Policy*, 53U. MIAMI L. REV. 683 (1999); Aoki, *Language is a Virus*, *supra* note 19; Hom, *supra* note 5. Asian and Pacific American scholars have also participated in each of the three LatCrit symposia published apart from and in addition to the LatCrit Annual Conference Symposia. See *supra* note 2 (delineating LatCrit symposia).

Conversely, Latina/o scholars have also participated in the conferences and symposia organized as part of the emergent body of APACrit scholarship. See, e.g., Symposium, *Citizenship and its Discontents: Centering the Immigrant in the Inter/National Imagination (Part I)*, 76OR. L. REV. 207 (1997); Symposium, *Citizenship and its Discontents: Centering the Immigrant in the Inter/National Imagination (Part II)*, 76OR. L. REV. 457 (1997); Symposium, *The Long Shadow of Korematsu*, 40 B.C.L. REV. 1; 19 B.C. THIRD WORLD L. J. 1 (1999). For Latina/o contributions to these symposia see Tanya Kateri Hernández, *The Construction of Race and Class Buffers in the Structure of Immigration Control Laws*, 76OR. L. REV. 731 (1997); Kevin R. Johnson, *Racial Hierarchy, Asian Americans and Latinos as "Foreigners," and Social Change: Is Law the Way to Go?*, 76OR. L. REV. 347 (1997); Victor C. Romero, *The Congruence Principle Applied: Rethinking Equal Protection Review of Federal Alienage Classifications After Adarand Constructors, Inc. v. Pena*, 76OR. L. REV. 425 (1997); Enid Trucios-Haynes, *The Legacy of Racially Restrictive Immigration Laws and Policies and the Construction of the American National Identity*, 76OR. L. REV. 369 (1997); Iglesias, *Out of the Shadow*, *supra* note 6.

⁷² Aoki, *Language is a Virus*, *supra* note 19 (noting the "extremely permeable conceptual boundary between LatCrit and Asian Pacific American Legal Scholarship"); Iglesias, *Out of the Shadow*, *supra* note 6, at 358-72 (mapping out common context of struggle for Latinas/os and Asian Pacific Americans around three points of reference: (1) the centrality of international relations; (2) national security ideology; and (3) the structure of the inter/national political economy).

⁷³ See, e.g., Chris K. Iijima, *The Era of We-Construction: Reclaiming the Politics of Asian Pacific American Identity and Reflections on the Black/White Paradigm*, 29COLUM. HUM. RTS. L. REV. 47, 50 (1997) (warning that moves beyond the Black/White paradigm may be co-opted by racist status quo "unless racial identity continues to be a conscious and explicit rejection of white supremacist ideology manifesting through specific political positions."); Martinez, *supra*, note 10 (urging Latinas/os to seek commonalities with African Americans); Iglesias, *Foreword: LatCrit III*,

intersectional identities and attempt to articulate a common agenda for progressive social transformation out of an imagined act of solidarity among individuals and communities otherwise separated by profound differences of language, culture, class, ethnicity and national origins. Both link the identities they center to a profound critique of the limitations of the domestic U.S. civil rights paradigm and seek to import issues arising out of U.S. immigration laws and policies, the suppression of languages other than English, and the structural failures of international law and institutions into the critical analysis of white supremacy and its articulation in legal norms, process and institutions. As a result, both have made significant contributions to the development of an anti-essentialist moment in the production of Critical Race Theory and to the evolution of American critical legal theory, even as each promises to reveal an ever broader and more comprehensive understanding of the way relations of domination and subordination are mapped across the globe and institutionalized in American law and policy.

The long history of Chicana/o studies and activism, by contrast, dates back to the 1960s and 1970s and informs the substantive themes and concerns of LatCrit theory in profound and particular ways.⁷⁴ Unlike other Latina/o groups, most Chicanas/os never crossed the U.S. border; rather “the border” crossed over them. The history of Chicana/o subordination and dispossession is directly linked to the history of Anglo-American settlers, whose westward expansion was cast as Manifest Destiny and whose acquisition of the vast territories of the southwestern United States marks a history of war, theft and judicial lawlessness of unprecedented proportions.⁷⁵ Thus, a Chicana/o perspective brings to LatCrit theory a unique set of issues arising out of current legal struggles over this history of stolen lands and U.S. treaty violations, even as the struggle to combat Chicana/o poverty in cities along the U.S.-Mexico border calls for proposals and strategies that address the current distribution and regulation of land ownership, that promote enforcement of labor and environmental standards in the Maquilladora industry across the Mexican border, and that combat the militarization of the United States border patrol.⁷⁶

supra note 4, at 623-24 (noting that “the objective must be to move our understanding of white supremacy progressively beyond the Black/White binary of race, even as we acknowledge the particular and virulent forms of anti-Black racism that are institutionalized and expressed in virtually every society across the globe, including Latina/o communities.”); Iglesias, *Out of the Shadow*, *supra* note 6, at 354.

⁷⁴ See, e.g., Guadalupe T. Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a Naked Knife*, 4 MICH. J. RACE & L. 39 (1998); Guadalupe T. Luna, *Zoo Island: LatCrit Theory, Don Pepe and Señora Peralta*, 19 CHICANO-LATINO L. REV. 339 (1998); Laura M. Padilla, *Social and Legal Repercussions of Latinos' Colonized Mentality*, 53 U. MIAMI L. REV. 769 (1999).

⁷⁵ See, e.g., Guadalupe T. Luna, *On the Complexities of Race: The Treaty of Guadalupe Hidalgo and Dred Scott v. Sandford*, 53 U. MIAMI L. REV. 691 (1999).

⁷⁶ For further thoughts on the particularities of Chicana/o realities and their implications for LatCrit theory see Iglesias, *Foreword: LatCrit III*, *supra* note 4, at 673-76; Iglesias & Valdes, *supra* note 18, at 574-82 (comparing and contrasting different legal reforms needed to deal with “Latina/o” poverty and economic marginalization given the particularities of intra-Latina/o differences that

D. Queer Legal Theory

Once again, as with other strains of critical discourse that currently are contributing to and reflected in the evolving record of LatCrit theory, no genealogy as brief as this can convey the full scope of contributions made by QueerCrit scholars to the LatCrit project, both in ensuring the authenticity of its asserted commitment to a broad and inclusive emancipatory project, and in mapping out new sites of legal intervention in the struggle to produce a more just and humane society.⁷⁷ Although the richness and extensive potential of the two-directional project, through which Queer LatCrit scholars are seeking to articulate a QueerCrit intervention in LatCrit theory and a LatCrit intervention in QueerCrit theory, is still at an embryonic stage of development, it is important for Spanish legal scholars interested in understanding the full scope and significance of the anti-essentialist, anti-subordination commitments of the LatCrit project to understand the reasons why QueerCrit discourse constitutes a central component in and for the future development of LatCrit theory.

It is easiest to understand this jurisprudential interconnection if one understands that "Queer" identity constitutes an imagined political identity embraced primarily, *but not exclusively*, by gays and lesbians.⁷⁸ Indeed, like "LatCrit" identity, "Queer" identity seeks to articulate an anti-subordination position and perspective that is authentically and broadly inclusive precisely insofar as it opposes *all* of the many ways in which the suppression, repression and reglementation of the human capacity for sexual/spiritual interconnection is

distinguish the structures of economic relations among "Nuyoricans," Chicanas/os in the southwestern United States, and Miami Cubans in the ethnic enclave); Johnson & Martínez, *supra* note 18 (calling for particular attention to Chicana/o studies); Montoya, *supra* note 67.

⁷⁷ Many prominent LatCrit scholars embrace and articulate an avowedly Queer perspective and seek affirmatively to ensure that LatCrit theory attends to Queer reform agendas from a distinctively *LatCritical* perspective. See, e.g., Elvia R. Arriola, *Faeries, Marimachas, Queens and Lezzies: The Construction of Homosexuality Before the 1969 Stonewall Riots*, 5 COLUM. J. GENDER & L. 33 (1995); Berta Esperanza Hernández-Truyol, *Latina Multidimensionality and LatCrit Possibilities: Culture, Gender, and Sex*, 53 U. MIAMI L. REV. 811 (1999); Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities and Interconnectivities*, 55 SO. CAL. L. REV. & WOMEN'S STUD. 25 (1995); Francisco Valdes, *Below All Radars: An Ethnographic Portrait of Latinas/os Sexual Orientation and the Law in the Making of Miami's "New Enclave,"* (unpublished work-in-progress, on file with author) [hereinafter Valdes, *Below All Radars*]; Arriola, *supra* note 39; Valdes, *Afterword: Theorizing "OutCrit" Theories*, *supra* note 17.

⁷⁸ See, e.g., Valdes, *Afterword: Theorizing "OutCrit" Theories*, *supra* note 17, at 1294-95 (noting that "Queer Nation flyers posted in New York ... declared that 'Being queer ... means everyday fighting oppression: homophobia, racism, misogyny, the bigotry of religious hypocrites and our own self-hatred.' Thus, the distinction between "Queer" and "lesbian" or "gay" is that the former signifies — and constantly searches for — a postmodern political identification while the latter at times amounts to essentialized, single-axis identities" — as, for examples when gay white men or women passionately advocate the elimination of the sexual-orientation discrimination they endure, even as they ignore the discrimination suffered by other groups, both gay and straight).

culturally inscribed and legally enforced by straight, white, and male supremacist ideologies and practices.

In this respect, the Queer liberation project marks important points of solidarity and interconnection with LatCrit feminist perspectives and emancipatory aspirations. Women, in general, and Latinas, in particular, suffer significant oppression as a result of the ways in which sexuality is culturally represented, socially organized, and legally regulated.⁷⁹ Because the regulation of sexuality is so central to the particular ways in which women are subordinated in male supremacist regimes, the substantial and increasing body of Queer scholarship criticizing the essentialist and oppressive aspects of heterosexual institutions such as "marriage" and "the family" constitute important theoretical resources for LatCrit theory.⁸⁰ Though "marriage" is cast as a sacred institution, the bedrock of Christian civilization, marriage also and often constitutes the site of violence, abuse, and material exploitation of women (and their labor power) by the men to whom they are married.⁸¹ Sexist representations of women also infuse the adjudication of child custody disputes and the determination of welfare eligibility in ways directly calculated to compel women's conformity with male supremacist notions of female dependence on and attachment to a heterosexual male partner (preferably her

⁷⁹ See, e.g., Harris, *supra* note 60, at 590-605 (reviewing the relationship between dominant images of Black female sexuality and the history of rape laws); Iglesias, *Rape, Race and Representation*, *supra* note 60 (exploring how women's autonomy, both sexual and social, is coercively repressed and rendered highly vulnerable to male attack as a result of circulation of sexist, racist, machista representations of femininity and masculinity and the impact of these cultural representations on the processing of rape cases involving women of color generally and white women who defy dominant social norms that distinguish "good girls" (who should not be raped) and "bad girls" (who ask for it)). See also Peter Wade, *Man the Hunter: Violence in Music and Drinking in Colombia*, in *SEX AND VIOLENCE: ISSUES IN REPRESENTATION AND EXPERIENCE* 115, 126-34 (Penelope Harvey & Peter Gow eds., Routledge 1994) (analyzing domestic violence in Colombian culture as a product of male failure to negotiate successfully the different value systems of competing masculinities). The "imperatives" of being "a man" in a sexist, racist and homophobic society are equally at the root of the sexual subordination of women and the vicious oppression of gays, lesbians and other sexual minorities.

⁸⁰ Cox, *supra* note 19, at 476 (discussing marriage as "a basic human right and individual personal choice" in the context of ongoing struggle of the Lambda Legal Defense and Education Fund to achieve the recognition of same-sex marriages on a state-by-state basis); Iglesias & Valdes, *supra* note 18, at 549-61 (marking Feminist and Queer positions in LatCrit theory in and through a LatCritical critique of the intersecting structures of domination inscribed in and through the regulation of sexuality, the cultural deployment of hypocritical religiosity and essentialist constructions of "the family" that ignore the substantial human need for social recognition and respect for one's affective relationships).

⁸¹ See, e.g., MARTHA A. FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995); Iglesias, *Rape, Race and Representation*, *supra* note 60, at 968-90 (noting how the organization of "families" around the male-dominated nuclear family restricts women's autonomy both within marriage as well as women's freedom to make choices about whether to marry and when or how to leave a marriage, but critiquing from a cross-cultural perspective the conclusions drawn and policy positions promoted by mainstream feminist analysis in responding to these dynamics).

husband).⁸² As a result, both Queers and women share a common interest in deconstructing the sexist assumptions inscribed in current understandings of the meaning and social, spiritual and psychological significance of marriage and family.

At the same time, the pervasive and particularly virulent forms of homophobic oppression expressed in and across all of the various communities of color that are currently invested in the further evolution of LatCrit anti-essentialist anti-subordination theory and praxis makes it normatively and politically imperative that LatCrit scholars attend to the problem of homophobia in Latina/o cultures and communities, and particularly to the ways in which Queer Latinas/os are subordinated in and through the limitations of American rights consciousness. Although Queer activists achieved some successes in and through the increasing recognition of the human rights implicated by homophobic practices, institutions and ideologies,⁸³ the struggle for a full recognition of the human dignity and equal rights of Queer persons continues. LatCrit scholars have a particular responsibility to participate in this struggle precisely to the extent that LatCrit theory propounds a commitment to a broadly inclusive, anti-essentialist vision of Latina/o liberation, specifically, and human liberation in general.

LatCrit scholars also have a distinct perspective to offer in ensuring that this struggle recognizes the particular ways in which Latinas/os, and other transnational and intersectional identities, are doubly burdened for being Queer, and for failing to embody the American cultural and national identity that shields the white, Anglo-American citizen from such particular forms of homophobic repression as those embedded in the failure of domestic immigration laws and policies to recognize and accord equal treatment to gay families.⁸⁴ Although this brief narrative only sketches the contested terrain negotiated by the project to produce legal theory at the intersections of Queer/LatCrit positionalities and perspectives, it does provide important insights into the ways in which this particular project implicates, and is implicated in, other emancipatory projects within the LatCrit movement, that is specifically, the project to dismantle the oppression of male supremacy, as well as to achieve transborder justice for the marginal and

⁸² Iglesias, *Rape, Race and Representation*, *supra* note 60, at 968-90 (critically examining the impact of American child custody laws and welfare eligibility rules on women's sexual and social autonomy).

⁸³ See Laurence R. Helfer & Alice M. Miller, *Sexual Orientation and Human Rights: Toward a United States and Transnational Jurisprudence*, 9 HARV. HUM. RTS. J. 61 (1996) (homosexuals' fundamental rights increasingly recognized in international human rights law) and U.N. Hum. Rts. Comm., No. 488, U.N. Doc. CCPR/c/50/D/488 6/1992 (1994), *cited in* Donna E. Young, *Culture Confronts the International*, 60 ALB. L. REV. 907, 914-15 (1997) (noting that although "[i]n parts of Latin America crimes against lesbians and gays are committed and/or condoned by police and other governmental officials ... [c]ountries throughout the world are modifying their domestic laws to protect the rights of gays and lesbians. Furthermore, in a 1994 decision by the United Nations Human Rights Committee, the anti-sodomy law of the Australian State of Tasmania was struck down as violative of the privacy and non-discrimination provisions of the International Covenant on Civil and Political Rights.").

⁸⁴ See, e.g., Valdes, *Below All Radars*, *supra* note 77.

intersectional transnational identities at the center of *LatCritical* identity-based critiques of law, legal process and legal institutions.

II. Conclusion

These preliminary notes have sought to orient Spanish legal scholars interested in understanding the purposes, methodologies, aspirations and future trajectories of American LatCrit legal theory. Despite the many challenges confronting any effort for genuine dialogue and mutual understanding across cultural, national and historical divides, the First Annual LatCrit/Spain Colloquium hosted by the Universidad de Málaga Facultad de Derecho and co-sponsored by the University of Miami Center for Hispanic and Caribbean Legal Studies in June of 1999, marked the beginning of a rich and enriching exchange which inspired much excitement and enthusiasm among American LatCrit scholars. It is my deepest hope that this admittedly brief overview of the historical development of critical legal theory in the American legal academy and the position and perspectives of LatCrit theory within that evolving tradition will spark the interest and enthusiasm among Spanish legal scholars, as the prospects of this cross-cultural exchange have inspired in LatCrit scholars.