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Introduction: Being Individuals: A Comparative Look at Relationships, Gender and the Public/Private Dichotomy

Aniella Gonzalez

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Being Individuals: A Comparative Look at Relationships, Gender and the Public/Private Dichotomy

Aniella Gonzalez*

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I. Introduction

*People have the right to be equal whenever difference makes them inferior, but they also have a right to be different whenever equality jeopardizes their identity.*¹

This Symposium marks a watershed moment in the development of LatCrit theory.² America's foremost Critical Legal scholars had the opportunity to "hop over the pond" or *brincar el oceano* to dialogue with our *colegas* in Malaga, Spain about the principles that unite, as well as define our diverse cultures through the framework of critical legal discourse.³ As many of the articles included in this Symposium demonstrate, whether the language we speak be Spanish or English, the concepts of Critical Legal Theory forge an analysis among the common goals of subordinated groups within our two cultures and societies.⁴

* University of Miami School of Law; J.D., 2001; *University of Miami International and Comparative Law Review*, Editor-in Chief; Columbia University, School of International and Public Affairs (SIPA), M.I.A., 1995; Wellesley College, B.A., 1993. I wish to thank Angie Padin for being my "right" hand this year. Special thanks to Prof. Elizabeth Iglesias, Prof. Caroline Bradley and Associate Dean Stephen Schnably for their support of the *University of Miami International and Comparative Law Review*. This article is dedicated to my parents and friends for their unwavering encouragement. All errors are mine.

¹ BOAVENTURA DE SOUSA SANTOS, TOWARD A NEW COMMON SENSE: LAW, SCIENCE, AND POLITICS IN THE PARADIGMATIC TRANSITION 13 (1995).

² See Elizabeth M. Iglesias, *Forward: LatCrit Theory: Some Preliminary Notes Toward a Transatlantic Dialogue*, 9 U.MIAMI INT'L & COMP. L. REV. 1, 3 n.5 (2000-01) [hereinafter "Iglesias"] (discussing LatCrit theory and its evolution as a subset of critical legal theory); see also Francisco Valdes, *Afterword: Theorizing "OutCrit Theories: Coalition, Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits and LatCrits*, 53 U. MIAMI L. REV. 1265 (1999) (discussing a comparative view of legal scholarship needed to forge interconnection between outsider theories and better understanding of the common-objectives of the anti-subordination struggle).

³ See Elizabeth M. Iglesias, *Foreword: International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AMERICAN L. REV. 177 (1997) (arguing that legal struggles against subordination are dependent upon building coalitions across racial, class, gender and geographic boundaries).

⁴ See Berta Esperanza Hernandez-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 HARV. LATINO L. REV. 199 (1997) (articulating LatCrit theory).

At the heart of all critical legal thought lie the principles of anti-subordination and anti-essentialism.⁵ In order to move beyond the prevalent black and white paradigm,⁶ Latinos/as and others in the "Crit" community are forced to see themselves through a broader spectrum of sociological and legal theories that define our perspectives in multi-dimensional models; these new paradigms take diverse traits such as race, gender, language, sexual-orientation, religion and geography into account within the analysis of mainstream legal tenets, both through domestic and international laws.⁷

As distinguished from the traditional state-based, sovereign system, human rights laws speak to individuals as subjects of international law; states are accountable for the treatment of all human beings inside their borders.⁸ Therefore, laws seeking to implement human rights tenets and principles of gender equality are a compelling tool for challenging a sovereign state's action in derogating the dignity and integrity of individuals within civil society.⁹

The two articles in this section of the Symposium seek to find a common understanding and present searching questions regarding the prevalence of majority viewpoints within the state system; a system in which minority viewpoints are obscured by state dictates on morality and human interactions. The enforcement of state-sponsored programs often clash with anti-discrimination and anti-subordination principles that relegate human rights as secondary or ancillary issues in the legal community and foreign policy framework.

Both Prof. Lundy R. Langston in *Save the Marriage Before (Not After) the Ceremony: The Marriage Preparation Act – Can We Have a Public Response to a Private Problem?* and Prof. Ángel Rodríguez-Vergara Díaz in *Gender and Fundamental Rights in Europe: Recent Evolution of Positive Discrimination in the Labor and Electoral Contexts* analyze the state's management of the legal processes involved in individualized decision-making and the institutional shortcomings of

⁵ "Anti-essentialism" focuses on intragroup differences, precisely to highlight the contrasts of subordination and domination that exist within a particular group. See IGLESIAS, *supra* note 2 (discussing the development of "essentialism" and "anti-essentialism" as critical concepts in the evolution of LatCrit theory).

⁶ See RICHARD DELGADO, *WHEN EQUALITY ENDS* at ch. 8 (1999) (discussing that the Black-White model removes Latinas/os from the objectives of civil rights goals).

⁷ See Berta Esperanza Hernandez-Truyol, *Culture, Nationhood, and the Human Rights Ideal*, 5 MICH. J. RACE & L. 818 (2000) ("[LatCrit] precipitated an inquiry concerning what the politics of identity mean through a Latina/o lens, which, by necessity, is a panethnic prism . . . while LatCrit theory does not speak with one voice, it does have a unified purpose: to explore the boundaries of law, sociology, psychology, economics, history, anthropology, education, and other fields in a non-essentialist, anti-subordination posture that aims to liberate the human spirit so that all, from North and South, East and West alike, can share and enjoy full personhood around the global supper table."). While LatCrit scholars share in the significance of self-identity, there is also a unity of shared solidarity within the LatCrit movement. See also Francisco Valdes, *Foreword-Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practice to Possibilities*, 9 LA RAZA L.J. 1, 7 n.25 (1996).

⁸ See Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U. L. REV. 1, 9-10 (1982).

⁹ See Celina Romany, *Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, 6 HARV. HUM. RTS. J. 87 (1993).

both state-sponsored programs in the United States and the European Community that impact upon the role of gender and personal human relationships, thereby focusing our attention on the constructs within the public/private dichotomy.¹⁰

II. Human Relationships and the Public/Private Dichotomy

There is perhaps nothing more private than an intimate relationship between two human beings. When two individuals seek to enter into a legal and binding commitment to each other, the state provides official documentation of the union through a marriage license and an official ceremony. Therefore, usually, the state's interest in the marriage ceases when the license is issued; the state does not compel individuals to do anything other than take minor administrative actions to recognize their union.

Yet recently, the State of Florida, went a step further, by strongly encouraging couples to undergo pre-marital counseling prior to the marriage itself. In her contribution to the Symposium, Prof. Lundy R. Langston articulates a vision of the public-private dichotomy; specifically, she is critical of the state's perception of morality in the passage of the Florida's Marriage Preparation and Preservation Act (the "Act").¹¹ The Act mandates a three-day waiting period before a heterosexual couple can be married in the state. A couple may choose to undergo pre-marriage counseling from state-sanctioned providers. The program is administered by the Florida's family court system that maintains a list of pre-approved course providers in specific counties throughout the state.¹²

Thus, the state has now become an active participant one of the most basic private matters. Prof. Langston tells us that by maintaining a list of state-approved pre-marital counseling providers that couples may consult before their marriage, the state may have moved beyond the public domain and into the private sphere in a unique way.¹³ The public/private dichotomy is at work; the state seeks to reduce the

¹⁰ See Barbara Stark, *Deconstructing the Framers' Right to Property: Liberty's Daughters and Economic Rights*, 28 HOFSTRA L. REV. 964, 1002 n. 199-201, 278-79 (2000) (discussing 18th C. theorist John Locke's separation of the public sphere of politics and civil society from the domestic sphere of the family). The public/private dichotomy can also be traced to the thinking of Aristotle. See GERDA LERNER, *THE CREATION OF PATRIARCHY* 208-11 (1986) [citing ARISTOTLE, *POLITICA* (Benjamin Jowett trans.) in *The Works of Aristotle* (W.D. Ross ed., 1921)]; see also CAROLE PATEMAN, *FEMINIST CRITIQUES OF THE PUBLIC/PRIVATE DICHOTOMY IN PUBLIC AND PRIVATE IN SOCIAL LIFE* 281 (S.I. Benn & G.F. Gaus eds, 1983); and Hilary Charlesworth et. al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613, 635 (1991) ("The major forms of oppression of women operate within the economic, social and cultural realms.")

¹¹ See Florida Statutes §§ 741.0305 through 741.0306 for the statutory text of the Marriage Preparation and Preservation Act, available at http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0741/titl0741.htm&StatuteYear=2000&Title=%2D%3E2000%2D%3EChapter%20741, (last visited January 17, 2001); see also Lundy R. Langston, *Save The Marriage Before (Not After) The Ceremony: The Marriage Preparation Act B Can We Have A Public Response To A Private Problem?*, 9U.MIAMI INT'L & COMP. L. REV. 141 (2000-01), [hereinafter "Langston"].

¹² See Stacey Singer, *Class Would Groom Couples For Marriage*, SUN-SENTINEL, May 9, 1998, at 1A.

¹³ LANGSTON, *supra* note 11.

social costs of divorce and broken families by asking couples to think carefully about the commitment they are about to enter into, but at the same time, the state is imposing its own viewpoints through programs designed to provide couples with advice that they might otherwise seek in a private manner, through the advice of family, friends or other faith-based providers.¹⁴

Although the statutory requisites are not mandatory, as Prof. Langston indicates, its effects likely evoke a sense of state-sponsored views of acceptable behavior and the state's encouragement of specific moral choices.¹⁵ The state indirectly imposes religious or state political views on people who plan to marry by determining who the instructors will be regarding the contract of marriage.¹⁶ "As written the statute permits the state to define the private sphere as public when it dictates who can instruct parties on marrying."¹⁷ The state has a legitimate interest in ensuring that the unique family connection remains the nucleus through which society is formed, however the state has made no provision for its responsibility to the marital relationship after the marriage dissolves, even when the couple sought pre-marriage counseling.¹⁸

As a Hispanic woman, or a Latina,¹⁹ religion is an integral part of our culture – an important facet of our family life and teaching.²⁰ However, religion has served as a powerful tool of subordination within our communities for centuries.²¹ Although many individuals seek solace and guidance in religion as a part of their marriage preparation, the State of Florida has made an explicit attempt to integrate religion into the marital decision by including religious, as well as secular providers on its official lists of premarital counselors. This aspect of the Act may be troublesome for many individuals who do not see themselves within a religious

¹⁴ See Langston, *supra* note 11.

¹⁵ *Id.*

¹⁶ *Id.* Florida recognizes individuals who are either licensed by the state, or religious leaders recognized by the state, as those members of the polity that are qualified to consult with a couple on marriage preparedness.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ I personally identify myself, as an American, a Hispanic woman, a Cuban-American and a Latina; somehow, all these labels seem to fit me and other individuals in our diverse community on any given day. As a matter of self-identification, many LatCrit Theorists use the terminology Latina/o to describe our common experience in a gender neutral manner. See Berta Esperanza Hernandez-Truyol, *Latindia II – Latinas/os, Natives, and Mestizajes – A LatCrit Navigation of Nuevos Mundos, Nuevas Fronteras, and Nuevas Teorias*, 3 U.C. DAVIS L. REV. 851, n. 20 (2000) (discussing the evolution of the "Latina/o" self-identification label in LatCrit theory).

²⁰ See Laura M. Padilla, *Latinas and Religion: Subordination or State of Grace?*, 33 U.C. DAVIS L. REV. 973-74 (Summer 2000) (addressing how religion, particularly Catholicism and Christianity, simultaneously serve as a source of strength while at the same time subordinating Latinas).

²¹ See Elizabeth M. Iglesias & Francisco Valdes, *Religion, Gender, Sexuality, Race, and Class in Coalition Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 CHICANO-LATINO L. REV. 503 (1998) ("LatCrit theorists must apply critical, anti-essentialist lessons to ensure that religion is in fact an anti-subordination force in everyday life— or, alternatively, to aid mobilization of resistance against any imposition of subordination in the name of any religion or other construct.") *Id.* at 515.

tenet, or may see this as a governmental imposition of morality upon their individual choice to marry.

III. Gender and the Public/Private Dichotomy

Women play a unique role in the international human rights agenda.²² Traditionally, women have been relegated as secondary participants in the domestic and international arena.²³ Although the Equal Rights Amendment had a short shelf-life in the United States, the movement toward equal rights for women is almost universally accepted on the human rights agenda of most First World nations and gaining its adherents among the developed world.²⁴ It is only within the last twenty years that international legal systems have responded to gender inequalities and have sought to protect women in the workplace and provide parity for women in the electoral system. As more women become empowered to participate in civil and political society, the voices of the silent majority become welcome vehicles for change and representation around the world.²⁵

The European Union has promulgated numerous laws specifically relating to the prohibition of discrimination based on gender. In his contribution to the Symposium, Prof. Rodríguez-Vergara, focuses his attention on the topic of positive discrimination, a movement within European legal theory that sees to establish the equality based systems, by recognizing the inequality of treatment that currently exists within normative legal structures.²⁶ Moreover, laws focused on gender issues seek to combat employment discrimination, and more recently, in the political context with laws that foster electoral parity for women and men.²⁷ Professor

²² See FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER (Katharine T. Bartlett & Rosanne Kennedy eds., 1991) (offering a collection of feminist legal writings); HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES (Rebecca J. Cook ed., 1993) (offering collected articles on the human rights of women).

²³ See Berta Esperanza Hernandez-Truyol, *Border (En) Gendered: Normativities, Latinas, and LatCrit Paradigms*, 72 N.Y.U. L. REV. 882, 912 (1997) (discussing the second-class role of women in society).

²⁴ See Stephanie Simon, *Activists Seek to Bring ERA Back to Life*, L.A. TIMES, March 9, 2000; see also Memo on the Equal Rights Amendment 2000, available at <http://www.eagleforum.org/era/ERA99.html> (discussing contrasting viewpoints on the death and attempted revival of the ERA in the United States); United Nation's Website on Women 2000: Gender, Equality, Development and Peace for the Twenty-First Century, available at <http://www.un.org/womenwatch/daw/followup/session/presskit/hist.htm> (discussing the historical evolution of the four global women's conferences from 1975-1995 in the developing world); Jill Smolow, *All for One?*, TIME, Sept. 11, 1995, at

<http://www.time.com/time/international/1995/950911/women.html> (discussing the Beijing Conference on Women as seeking cooperative approaches on women's rights issues).

²⁵ See Penelope E. Andrews, *Globalization, Human Rights & Critical Race Feminism: Voices from the Margins*, 3 J. GENDER RACE & JUST. 373 (2000) (demonstrating that critical race feminism, although entirely of American vintage, may provide the theoretical potential for an analysis of marginalized groups in the global human rights framework).

²⁶ Ángel Rodríguez-Vergara Díaz, *Género y Derechos Fundamentales en Europa: Evolución Reciente de la Discriminación Positiva en el Ámbito Laboral y Electoral*, 9U. MIAMI INT'L & COMP. L. REV. 125 (2000-01), [hereinafter "Rodríguez-Vergara"].

²⁷ *Id.*

Rodríguez-Vergara provides a case study of the Spanish legal system, in addition to examples drawn from workplace anti-discrimination regulations set forth by the European Community and electoral reforms instituted by other European Community nations like Italy and France.²⁸

For example, Article 14 of the Spanish Constitution prohibits discrimination based on gender.²⁹ The concept of equal treatment under the laws allowed Spain's Supreme Court, or Constitutional Tribunal to declare that a gender-specific law aimed at a widow's pension must be extended to widowers in order to remain within the bounds of equal treatment under the Spanish Constitution of 1978.³⁰ From this starting point, Spain has sought to implement equal rights legislation in all facets of society. However, the European Union itself has had a mixed record of achievement as proponents of equal rights opportunities, specifically in the area of protecting the rights of gays and lesbians in the legal framework of the European Community.³¹

In Spain, and the rest of the European Union, "positive discrimination" is the term used to signify a law enacted by the state to offset or neutralize the comparatively lesser chance of employment or social integration of certain population groups who are disadvantaged because of sex, race or some other personal or social condition.³² The term derives from American term, "affirmative action," and is interchangeable with the expression *discriminación favorable o positiva* (positive or reverse discrimination), which means the elimination or alleviation of situations of inequality suffered by various groups in society.³³ One of its main areas of implementation is vocational training and employment, where in Spain it takes the form of special employment programs, employment quotas and preferential employment directed particularly at young, old, female and disabled workers.³⁴ Thus, women are viewed as only one of the marginalized groups deserving of such specific measures. Sometimes, the term "positive action" is used

²⁸ *Id.* .

²⁹ *Id.*

³⁰ *Id.*

³¹ See Paul L. Spackman, *Grant v. South-West Trains: Equality for Same-Sex Partners in the European Community*, 12 AM. U. JOURNAL OF INT'L LAW & POLICY 1063 (1997) (commenting on British case in the European Court of Justice where lesbian sued employer for failing to extend travel benefits to her spouse/partner – while British and European Community law prohibit discrimination based on sex, these laws do not extend to provide protection on the basis of sexual orientation); see also Steve Terrret, *A Bridge Too Far? Non-Discrimination and Homosexuality in European Community Law* 4(4) EUROPEAN PUBLIC LAW 487-506 (1998) (commenting on European Court of Justice's holding that there is no sex discrimination violation for employers denial of spousal benefits to same-sex couple).

³² PAUL CRAIG & GRAINNE DE BURCA, EC LAW: TEXT, CASES & MATERIALS 839 (1995).

³³ See Positive Action, The European Foundation for the Improvement of Living and Working Conditions, available at <http://www.eurofound.ie/emire/SPAIN/POSITIVEACTION-ES.html>.

³⁴ See *id.*; see also James D. Willets, *The Human Rights of Sexual Minorities: A Comparative & International Law Perspective*, 22 HUM. RTS. 22, 25 (1995) (Spain has also passed legislation that prohibits discrimination against gays and lesbians.)

in contrast to the term *acción asistencial* (social welfare action) to differentiate it from the mere provision of aid or grants.³⁵

Similar to the affirmative action is in the United States, the concept of positive discrimination remains controversial in light of the European Court of Justice's decisions in the late 1990's involving positive discrimination and gender.³⁶ In *Kalanke v. Freie Hansestadt Bremen*, the issue was whether a state law implementing a gender quota that requiring women to receive at least one-half of the public sector jobs was consistent with a European Council Directive prohibiting discrimination based on gender.³⁷ The European Court of Justice held that the promotion of a female gardener over a male by Germany's Bremen Parks Department was a violation of the directive.³⁸

Two years later, positive discrimination got a boost with the Court's subsequent decision in *Marschall v. Nordrhein-Westfalen*,³⁹ significantly altering the situation created by *Kalanke*. In *Marschall*, the Court found that positive action measures provided a basis for promotion of gender equality. The Court upheld a flexible positive action measure as a way in which nations might promote the equal opportunity under Article 2(4) of the European Union's Equal Treatment Directive.⁴⁰ Through its decision in *Marschall*, the Court opened the door to quota measures as a way of eliminating existing workplace inequalities, in addition to fostering gender representation at all levels of society. *Marschall* concluded that results-oriented positive action procedures are appropriate to combat social prejudices and stereotypes, as long as the measures can be adapted on a case-by-case basis.⁴¹

The European Community's Member States are now allowed to implement directives, as appropriate, to their domestic situations; they are free to adopt positive discrimination programs in the form of quotas to eliminate forms of discrimination and subordination in the workplace and other public settings. Although many citizens of the Community believe that positive discrimination in the form of quotas is an effective way to eliminate the unequal status of women, many

³⁵ See Positive Action, *supra* note 33; see also Ruth Bader Ginsburg & Deborah Jones Merritt, *Affirmative Action: An International Human Rights Dialogue*, 21 CARDOZO L. REV. 253 (1999) (emphasizing the need for states to learn about the potential pitfalls of affirmative action by examining the concept of affirmative action in the Convention on the Elimination of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women as a means of redressing historical and continuing inequalities faced by women, racial minorities and other disadvantaged communities).

³⁶ See Laura Molinari, Note, *The Effect of the Kalanke Decision on the European Union: A Decision with Teeth, but Little Bite*, 71 ST. JOHN'S L. REV. 591 (1997).

³⁷ Case C-450/93, *Kalanke v. Freie Hansestadt Bremen*, 1996 E.C.R. I3051, [1996] 1 C.M.L.R. 175.

³⁸ *Id.* at 177.

³⁹ Case C-409/95, *Marschall v. Land Nordrhein-Westfalen*, 1997 E.C.R. I-6363, [1998] 1 C.M.L.R. 547.

⁴⁰ *Id.* at 547.

⁴¹ See Positive Action for Women: Statement by Commissioner Flynn on the Marschall Case, Nov. 11, 1997, available at <http://www.europa.eu.int>. (quoting Padraig Flynn, European Commissioner with responsibility for Employment and Social Affairs, as being "delighted . . . The Court has concluded from this that priority given to equally qualified women . . . is not contrary to Community law.")

women continue to be relegated to low-level, poorly paid positions. On the other hand, some citizens of the Community feel just as strongly that positive discrimination programs simply discriminate against groups not included within the programs, and often remain largely unimportant in practice to European women.⁴²

In his essay, Prof. Rodríguez-Vergara calls upon the Spanish government to learn from the experiences of other European Union nations and to work toward electoral parity within the structure of equality for women set forth in Spain's Constitution in local and national elections.⁴³ Moreover, Prof. Vergara suggests that Spain enact a limited quota system to insure that a proportionate number of women, relative to population, are elected to public office, including a package of incentives for women candidates, such as political campaign financing and access to the media.⁴⁴

Despite the progress made in the European Union and in the United States in the years since the beginnings of an organized civil rights and women's rights movements, there has yet to be a significant interest in taking individual cultural differences into account when dealing with problems of equality. Critical legal theory seeks to influence mainstream legal thought and LatCrit has a special responsibility to influence the domestic, as well as international agenda of human rights legislation.⁴⁵ This is a realm in which international women's movements and critical feminist legal theory may have an important opportunity to influence the dialogue, both domestically and through economic and social unions of nations.⁴⁶

⁴² Mark A. Pollack & Emilie Hafner-Burton, *Mainstreaming Gender in the European Union*, prepared for presentation at the 12th Biennial Conference of Europeanists, Chicago, March 30 - April 2, 2000. Revised version to appear in the *JOURNAL OF EUROPEAN PUBLIC POLICY*, Vol. 7, No. 1 (September 2000), also available at <http://www.jeanmonnetprogram.org/papers/00/000201.rtf>. (discussing the criticisms of European equality laws, especially from the feminist movement).

⁴³ RODRÍGUEZ-VERGARA, *supra* note 26.

⁴⁴ RODRÍGUEZ-VERGARA, *supra* note 26. Prof. Rodríguez-Vergara points out that some Spanish political parties have attempted the institution of quota systems for candidates with mixed results.

⁴⁵ See Gaby Oré-Aguilar, *Sexual Harassment and Human Rights in Latin America*, 66 *FORDHAM L. REV.* 631 (1997) (observing that sexual harassment is one of the most condoned human rights abuses facing women in Latin America because it is not generally acknowledged as a pervasive problem or as an act of sex discrimination, finding a notable absence of domestic legislation and remedies for these types of violations). The author believes the LatCrit movement has considerable responsibility in directing anti-subordination and anti-essentialist views among the diverse, Spanish-speaking world; scholars in the Iberian Peninsula and Latin America become essential contributors to this dialogue.

⁴⁶ See Antoinette Sedillo Lopez, *Comparative Analysis of Women's Issues, Toward a Contextualized Methodology*, 10 *HASTINGS WOMEN'S L. J.* 101 (1999) (arguing that in spite of a burgeoning international feminist movement, a methodology for taking cultural differences into account when comparing has not been developed); see also Celina Romany, *Black Women and Gender Equality in the New South Africa: Human Rights Law and the Intersection of Race and Gender*, 21 *BROOKLYN J. INT'L L.* 857-98 (1996) (recognizing the value of feminist theory to the international human rights legal regime and the tendency of tradition feminist theory to overlook critical details of how race and gender interact, possibly disregarding the experiences of women of color).

However, it is also critical to recognize that the same institutions that seek to equalize the role of women and other underrepresented individuals in society may be pose their own significant restrictions on the achievement of full equality of the laws.⁴⁷ Furthermore, as LatCrit tenets invoke, there also exists an important need to bring race, gender, religion, and sexual orientation into international human rights law in way that is not merely an afterthought.⁴⁸

IV. Conclusion

Ultimately, LatCrit theory seeks to dismantle the traditional subordination and essentialist viewpoints of the normative legal discourse. In doing so, it uncovers the layers of rights that govern individuals and the state's interaction with its underrepresented communities. Both authors in this section of the Symposium focus on the State's substantial ability to engage in a dialogue regarding fundamental rights for both genders – the right of individuals to marry relatively free of state intervention, and gender-based rights that effect individuals and their interaction with government in their everyday lives.

As the Europeans begin to wrestle with goals of positive discrimination in individual member nations, Americans seem to grow weary of the promises of affirmative action and seek a new method of achieving equality. Therefore, despite its often dominant position in the private sphere, the state will continue to play an essential role in the lives of its citizens, especially those citizens who remain unrepresented, underrepresented or invisible within the electoral system oftentimes as a direct result of their gender, race, sexual orientation or religion. Those in the LatCrit community will continue to seek a dialogue, beginning with this Symposium, by engaging representatives from the global community as we search for solutions to our common challenges of individual identity, gender and the public/private dichotomy.

⁴⁷ Iglesias, *supra* note 2 (discussing the role of international institutional constraints and equality).

⁴⁸ See GLOBAL CRITICAL RACE FEMINISM, AN INTERNATIONAL READER (Adrien K. Wing ed., 2000), Celina Romany, *Themes for a Conversion on Race and Gender in International Human Rights Law* at 53-66. (arguing that the international community must re-configure the feminist theoretical model of international human rights law to incorporate the dual oppressions of women of color).