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# Keynote Address: Recalling Race, Gender and Sexuality: Outcrit Reflections on Legal Education, Social Identities and the "Rule of Law" - A Call Toward Collective Insurrections

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# KEYNOTE ADDRESS: RECALLING RACE, GENDER AND SEXUALITY: OUTCRIT REFLECTIONS ON LEGAL EDUCATION, SOCIAL IDENTITIES AND THE “RULE OF LAW” – A CALL TOWARD COLLECTIVE INSURRECTIONS

FRANCISCO VALDES

**Gretchen Rohr:** Welcome back. Next we are moving into the exciting event of our keynote address for the Sixth Annual Symposium on Gender and Sexuality in the Law. We welcome Francisco Valdes who has come all the way up here from Miami. But we also have joining us this afternoon Professor Darren Hutchinson, who has agreed to introduce Professor Valdes. Professor Hutchinson is a visiting associate professor at Washington College of Law at American University, and an associate professor at Southern Methodist University School of Law. Professor Hutchinson received a B.A. *cum laude* from the University of Pennsylvania and a J.D. from Yale Law School. Prior to joining the faculty at Southern Methodist University, he practiced commercial litigation at Cleary, Gottlieb, Steen and Hamilton in New York City. He also clerked for the late Honorable Mary Johnson Lowe, a former United States District judge in the Southern District in New York. Professor Hutchinson teaches constitutional law, equitable remedies, and seminars on critical race theory and equal protection. He’s written extensively on issues related to constitutional theory, critical race theory and sexuality and social identity theory. Professor Hutchinson is currently completing a book for New York University Press that examines the legal significance of the relationship between racial subordination and heterosexism. Please join me in welcoming Professor Darren Hutchinson.

**Darren Hutchinson:** Good afternoon. I’m happy to announce that I will be remaining in the Washington, D.C. area even though I’m a visiting professor at AU; I received a tenure there last semester so I have accepted a permanent job there so I will remain in the D.C. community. If you look at the program, I was scheduled to speak early this morning. Unfortunately, the panel was during my constitutional law class, so I was unable to attend because canceling classes at this time of year is a pretty difficult venture. But fortunately through working with Gretchen, I am very happy to introduce Francisco Valdes who will be our keynote speaker this afternoon. I will call him Frank as people who are close to him do. Frank is one of the persons I look to for scholarly inspiration and emotional inspiration in legal teaching. Let me tell you a little bit about his background. Professor Valdes teaches at the University of Miami School of Law. He earned a bachelor’s degree from the University of California-Berkeley and a J.D. with honors from the University of Florida College of Law. After that he received a J.S.M and J.S.D. from Stanford Law School. Between his law school J.D. experience and graduate work he practiced law with Miami and San

Francisco law firms, and also taught as an adjunct professor at Golden Gate Law School. After receiving the J.S.D. degree from Stanford, Professor Valdes taught at California Western School of Law in San Diego and in 1995 joined the University of Miami law faculty. Frank is a leading figure in the LatCrit movement and in gay rights scholarship. That sentence so understates the contribution that Frank has made to queer theory, to critical race theory, to Latina/o critical theory, to feminist theory, to critical legal theory generally. Currently, he is co-director of the Center for Hispanic and Caribbean Legal Studies at the University of Miami and Co-Chair of Lat-Crit, Inc. He teaches civil procedure, comparative law, critical race theory, law and sexuality, law and film, and U.S. constitutional law. Some of his recent publications include *Diaspora and Deadlock, Miami and Havana: Coming to Terms with Dreams and Dogmas*<sup>1</sup> published by the *Florida Law Review and Crossroads, Directions and a New Critical Race Theory*,<sup>2</sup> a reader published by Temple University Press. With no further delay, I would like to present our keynote speaker for this afternoon, Professor Francisco Valdes. Thank you.

**Francisco Valdes:** Thanks, Darren, for a very generous introduction, and thanks to Gretchen, the Journal, and the organizers of the event for bringing us together – and thanks to all of you for sticking it out throughout the day. I've sat here today trying to think how I would speak to us in a way that might provide a fitting closing note to this marvelous program. And in doing so I have found myself, throughout the day, drawn to speak in ways that might be viewed effectively as a kind of commentary on the prior presentations. More specifically, a commentary that ideally might help us all to better understand how each of today's wonderful presentations in fact substantively form part of a larger, interconnected socio-legal whole that aims to resist the unjust and regressive goings on around us, taking place in our national name, and under the banner of law and its rule.

To do so I'll focus on critical outsider jurisprudence and identity politics, and how these discourse and related general concepts can and should help to inform the structure and substance of legal analysis, legal education, legal theory and, ultimately, legal doctrine. Along the way I hope also to help connect critical legal theory, and in particular critical outsider jurisprudence, to the global social realities – and struggles – facing us today. My hope, with this commentary, is to support the critical substance and progressive aims of the previous presentations.

By critical outsider jurisprudence or, for shorthand, "OutCrit theory," I mean the insights and interventions of multiple diverse scholars and activists who have chosen to identify and align themselves and their work in all of its manifestations with outgroups within the United States and globally. OutCrit theory accepts the

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1. Francisco Valdes, *Diaspora and Deadlock, Miami and Havana: Coming to Terms with Dreams and Dogmas*, 55 FLA. L. REV. 283 (2003).

2. CROSSROADS, DIRECTIONS AND A NEW CRITICAL RACE THEORY (Francisco Valdes, Jerome McCristal Culp, Jr., & Angela P. Harris eds, 2002).

salience of identities in the making of law and policy and in the construction of social realities, and recognizes as well as resists the political uses of identity, historically and currently, to stratify society along identity-based fault lines in both material and symbolic terms. Yet OutCrit theory is not only antiessentialist but also post-intersectional. OutCrit theorists in the last several years, through the work of Darren and others like him, have established multidimensionality as the analytical standard for cutting edge legal scholarship. The OutCrit denomination therefore is an effort to conceptualize and operationalize the social justice analyses and struggles of varied and overlapping—yet different—subordinated groups in an inter-connected way. At bottom, OutCrit positionality is framed around the need to confront in collective and coordinated ways, the mutually-reinforcing identity politics of a Euro-heteropatriarchy.<sup>3</sup>

By identity politics I mean the practice of fashioning substantive policy on the basis of social identities and corresponding interests, which define groups within society grounded in the volatile interplay of axes like race, ethnicity, color, class, gender, sexual orientation, religion, culture, language and other vexed categories of human classification. Identity politics in the United States and beyond consequently have included, and still do, nationalistic and xenophobic expressions of law and policy in the form of exclusionary or suppressive legislation and doctrines. Similarly, the past and present practices and ideologies of identity politics within and beyond the United States include Eurocentric assertions of racial and ethnic superiority in the form of specifically Anglo and white supremacy.

Patriarchy and heterosexism, like other kinds of “traditional” identity politics that (still) predominate in the United States and other lands of this hemisphere, similarly reflect the practice of privileging some groups through law and policy on the basis of identity-based classifications, whether explicit or not. Thus, while the ideologies and practices associated with identity politics can and do run the gamut of possibilities, their predominant form throughout the Americas, both in the present and in the past, has been determined by the origins, processes and legacies of particular colonial conquests since the fateful year of 1492. Euro-heteropatriarchy names the neo-colonial character of the complex cultural ideologies asserted by and through the entrenchment of traditionalist identity politics in the substance of law and policy.<sup>4</sup>

The group categories implicated in this traditionally predominant form of identity politics in the United States are recognizable to us today as a result mainly of historically dominant practices, and of their resilient structural legacies, now configured in the forms of culture, tradition, and law. The

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3. See Francisco Valdes, *Afterword—Theorizing “OutCrit” Theories: Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits, LatCrits*, 53 U. MIAMI L. REV. 1265 (1999).

4. See generally Francisco Valdes, *Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender & Sexual Orientation to Its Origins*, 8 YALE J.L. & HUMAN. 161 (1996).

construction and regulation of race, gender and sexuality as social and legal categories invented by Europeans for their own political purposes have been especially salient in the empire and, later, nation-building projects that, in the process, exported millions of Europeans to these shores since 1492. Other and overlapping social group categories, like those built on class, religion, language, nationality and ethnicity, have served as mutually-reinforcing sources of traditionalist identity politics to exalt phenomena associated with Euro-heteropatriarchal interests, and to subordinate all dissenting or “different” identities and realities. These social categories, in short, are artifacts of particular prevalent belief systems and of their apparatuses of societal control. They are the contemporary indicia of neocolonial tradition and traditionalist ideologies imposed socially, economically and legally by dominant groups to organize law and society around themselves, and to sustain their dominance in perpetuity, in the wake of colonial rampage and conquest. Recorded history thus points to a particular set of colonizing structures and ideologies, and to their symbiotic operation in law and society, as the target of OutCrit antisubordination analysis and intervention.

In the lands now known as the United States, this particular set of structures and ideologies is aptly described as a EuroAmerican-heteropatriarchy: a functional, working heteropatriarchy in the Americas, but of European origins. By Euro-heteropatriarchy I thus mean a particular version of heteropatriarchy, a Eurocentric version, which in fact is the one in place throughout the Americas, as well as other sites of European colonization. As a descriptor, this term encapsulates not only the national chauvinisms of Europe and its colonial powers but also their particular brands of beliefs regarding race, ethnicity, gender, sexuality, economic relations and similar fault lines of societal organization. Euro-heteropatriarchy combines the European strains of these belief systems, and, therefore, this term captures the interlocking operation of particular forms of racisms, ethnocentrism, androsexisms, and heterocentrism.<sup>5</sup> What dominant elites today routinely exalt as the “rule of law” is in fact the sedimented layers of Euro-heteropatriarchy, a particular kind of normativity entrenched here during 500-plus years of transplantation and institutionalization under the boot of colonialism, imperialism and, now, corporate globalization.

We thus live in vexed times that pivot on troubled legacies. We share a time during which the traditional elites entrenched by the colonial conquests of the lands now known as the Americas seem increasingly bent on exercising their historically arrogated powers and privileges to reconsolidate their grip over human destinies and relations. Perhaps nowhere is this better seen today transnationally and transculturally than in the processes oftentimes described under the rubric of corporatist globalization. Through this kind of “globalization”

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5. See Francisco Valdes, *Identity Maneuvers in Law and Society: Vignettes of a Euro-American Heteropatriarchy*, 71 U. MO. KAN. CITY L. REV. 377 (2002).

the “private” wealth and power amassed via colonial conquest and neocolonial exploitation are flexed again and again to ensure that “public” exercises of state power comport with the private self-interests of the neocolonial elites, which also conceived and control the processes of this “globalization.”

We can observe the continuing unfolding of Euro-heteropatriarchal preferences through the actions of corporatist globalization everywhere, both in economic and material terms, as well as in cultural and social terms. The presently omnipresent exemplar is the so-called doctrine of perpetual world domination enunciated only recently by the current occupant of the White House. In that doctrine, the men and woman who currently wield the executive power of the federal government of the United States formally asserted not only the ambition but also the right to ensure that no group or nation with “values” other than “ours” would be permitted the opportunity of historical ascendancy. The avowed purpose of this new so-called doctrine is to deny the possibility of structural, ideological, cultural, material or social transformation, and instead to reassert a particular complex of supremacist identity politics yet again in the form of law and policy. But this declaration is truly remarkable because it asserts as a matter of policy an intentional ambition of perpetual global domination, a policy of military and structural domination that, on its face, seeks to freeze not only human history but also global culture in the Euro-heteropatriarchal image of neocolonial elites. It is an act of violent negation imposed unilaterally by naked might on the range of possibilities entailed in human social evolution. Even worse, this declaration is in some ways simply an extension of ongoing efforts focused on the internal or domestic reconsolidation of the same neocolonial values, traditions and elites. The so-called “clash of civilizations” is simply the most current extension to an international level of the national “culture wars” waged in the United States for at least the past quarter century or so. Both contestations pivot on the same ideologies and politics of identity.

Turning to the domestic culture wars, just a few weeks ago, the Los Angeles Times reported that current White House officials are “using political and ideological screening to [reject potential applicants who might] recommend . . . policies that are out of step with the political agenda of the White House.”<sup>6</sup> Appointees to what? To bureaucratic federal scientific advisory panels. The aim of this new effort is to ensure panel reports that comport with the politics of neocolonial backlash. The purpose is to bend the production of “official” knowledge to the politics of identity that feed the material needs and ideological preferences of a Euro-heteropatriarchy. Yet, as I alluded a moment ago, this packing of the federal advisory panels to construct formal knowledge in strictly ideological terms that strive to prop up Euro-heteropatriarchal hierarchies is, in turn, but an extension of the ongoing and substantially successful effort to pack the federal courts of the United States in similar ways—and with similar aims.

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6. Aaron Zitner, *The Nation's Advisors Put under a Microscope*, L.A. TIMES, Dec. 23, 2002, at A1.

And this ongoing push to pack the courts, like the new push to pack federal scientific panels, forms part and parcel of the larger patterns that often times are described as the culture wars or, as the Court's chief wit, Antonin Scalia, wrote in his *Romer v. Evans* dissent,<sup>7</sup> a national *kulturkampf*.

This well-orchestrated push to pack the courts began in earnest with the first administration of Richard Nixon in the early 1970s and had, until recent months, peaked during the second administration of Ronald Reagan in the late 1980s.<sup>8</sup> Multiple decisions since then purport to disallow the democratic branches of both the state and federal governments to act on behalf of traditionally-subordinated groups, and provide example after example of the culture war rulings that since the late 1980s have helped to reconsolidate neocolonialism under the guise of formal law and policy.<sup>9</sup> Two recent decisions—disallowing the application of RICO<sup>10</sup> to protect abortion clinics from organized domestic terrorism<sup>11</sup> and disallowing the use of interest on attorney escrow accounts on behalf of legal services for poor persons<sup>12</sup>—are only the freshest examples of these culture war rulings, which methodically have severed fragile social and legal lifelines to subordinated communities and vulnerable persons. Abetted by scholars, politicians and other ideologues installed into federal judgeships and other politicized positions precisely of public trust to wage this *kulturkampf*, traditional neocolonial elites have busily used every technique in the book to contain and retrench the tentative social advances made under mainstream liberalism during the second half of the 20th Century. Indeed, by the end of the past century, the federal bench had been cleansed by the politics of backlash to serve as a platform for Civil Rights and New Deal rollbacks, rather than as a bulwark of individual justice guarding against the tyranny of abusive majorities. Today, the example with the advisory scientific panels corroborates how the current occupant of the Oval Office and his closed circle of cronies and confidantes are taking this basic practice to new depths. Today, increasingly, all that stands between the juggernaut of backlash *kulturkampf* and the promise of a post-subordination time is the vision of law and society etched in recent years by OutCrit theorists.<sup>13</sup>

This backlash *kulturkampf* was declared formally and frontally by the representatives and foot soldiers of traditional and current neocolonial elites in the United States: in 1992, Republican presidential contender Patrick Buchanan

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7. 517 U.S. 620 (1996).

8. See Francisco Valdes, *Afterword—Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality and Responsibility in Social Justice Scholarship, Or Legal Scholars as Cultural Warriors*, 75 DENV. U. L. REV. 1409 (1998).

9. See Francisco Valdes, *Afterword—"We Have Held": Mapping the Jurisprudence of Backlash Kulturkampf*, \_\_\_ VILL. L. REV. \_\_\_ (forthcoming 2004).

10. Racketeer Influenced and Corrupt Organizations Act (RICO). 18 U.S.C. §§ 1961-68 (2004).

11. *Scheidler v. Nat'l Org. for Women*, 537 U.S. 393 (2003).

12. *Brown v. Legal Found. of Washington*, 538 U.S. 216 (2003).

13. See generally Francisco Valdes, *Culture, "Kulturkampf" and Beyond: The Antidiscrimination Principle Under the Jurisprudence of Backlash*, in THE BLACKWELL COMPANION TO LAW AND SOCIETY 271 (Austin Sarat ed. 2004).

declared from the podium of the Republican National Convention that he and his allies were out to “take back” the civil rights advances of the latter half of the past century. In retrospect, this formal declaration of cultural warfare and reassertion of national domination in 1992 presaged in substantive terms the more recent declaration of perpetual global domination issued earlier this year—just about a decade later. Both declarations serve as useful lenses to understand the regressive vicissitudes of law, policy and social in/justice during these pivotal times; both declarations should help us to keep critically clear that the micro and macro events swirling about us at a ferocious pace, and with ferocious fury, in fact form an interconnected sociological whole—a whole pursued with particular and articulated sociopolitical ends in mind.

This fierce cultural warfare, waged with law and policy and directed principally against women, immigrants, sexual minorities and people of color among other social outgroups, is framed around the same neocolonial identity markers that undergird Euro-heteropatriarchies: race, gender, sexuality and related categories. This warfare thus is nakedly about the politics of identity, and about their social and legal uses to legitimate and perpetuate the material and political stratification of society along the existing and “traditional” categories of identities. With no apparent sense of irony, this identity-driven *kulturkampf* simultaneously demands formal and actual blindness to the emancipatory potential of identity; while using traditional identity categories to excite Euro-heteropatriarchal passions and extend neocolonial dominance over law and society, this cultural warfare loudly preaches blindness to race, gender, sexuality and other forms of identity—at least when they are used to resist the demands of backlash and neocolonial “traditions” that continue to subordinate women, people of color, sexual minorities, recent immigrants and other well-recognized social outgroups. This Orwellian maneuver is central to the waves of backlash that reverberate from coast to coast daily, yet it remains an unspoken act of disingenuousness: this Orwellian maneuver demands what, instead, we must and do recall—the role of social identities based on race, gender, sexuality and other human markers in the social and legal construction of structural empowerment and material impoverishment.

And just to be clear, this multifaceted “take-back” campaign is not an illusory conspiracy. It is a campaign detailed in precise constitutional and ideological terms in formal public documents, like memoranda of law issued under the authority of the United States Department of Justice while that agency was under the control of Edwin Meese during the second administration of Ronald Reagan. It is a campaign, if not a conspiracy, organized around and financed through the think tanks and other networks organized during the past two decades or so just for this purpose—networks that, in legal culture specifically, include the perversely misnamed Federalist Society; a group perversely misnamed because it espouses a rank antifederalism, including the “states rights” party line of white supremacists, that was rejected as a template for the nation in Philadelphia at the

moment of the founding, and that has been rejected formally time and again since then in, for example, the state-by-state constitutional ratification process that established the federalist constitutional vision, and in the adoption of the post-Civil War amendments that empowered the federal government even more so than before vis a vis the states, and in the electoral choices of the nation since the 1930s, which incrementally have emplaced the social and legal system that today's backslashers aim to take down. Despite that long and relatively consistent historical arc, since the 1980s we have seen the judges installed into power by Meese and his heirs transmute their political propositions into judicial opinions through a process not much more complicated than the cut-and-paste function of a typical computer program today. In short, the ideological agenda of traditionalist legal scholars has become "constitutional law" as a result of the methodical stacking of the courts during the culture wars, and of the determined handiwork produced by newly-minted backlash judges since then in the form of opinions.<sup>14</sup>

These, then, are the deranged times under which feminism, critical race theory, critical race feminism, Asian legal scholarship, LatCrit theory, queer legal theory and other critical strains or strands of outsider jurisprudence have come into being. These are times and vexations that have shaped our consciousness, aspirations and struggles. Yet, as our collective and cumulative record attests, the aim of OutCrits in general, and of LatCrit theory and practice in particular, even in this era of backlash and retrenchment, is not self-inclusion within the confines of existing hierarchies to secure for ourselves the comforts of neocolonial privileges.<sup>15</sup> Our aim under the banner of antisubordination theory and praxis is not "success" through assimilation and domestication. Our aim is not acceptance as essential insiders in traditionalist neocolonial terms.<sup>16</sup> While recalling race, gender and sexuality in defiance of the demands from on high for formal blindness, our aim, as our collective record indicates, is in fact a frontal repudiation and structural disestablishment of neocolonial normativities and hierarchies in social, cultural, economic, political and legal terms.<sup>17</sup> Our aim is nothing short of establishing a post-subordination, and actually post-colonial, society on the ideological ruins of this Euro-heteropatriarchy.<sup>18</sup>

This aim is daunting and could—and some times does—lead to despair, a sentiment that could become a deadly self-indulgence. To both accomplish the

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14. See Francisco Valdes, *Culture by Law: At the Intersection of Human Rights, Globalization, and Critical Outsider Jurisprudence*, \_\_\_ FLA. J. INT'L L. \_\_\_ (forthcoming 2005).

15. See Francisco Valdes, *Foreword—Under Construction: LatCrit Consciousness, Community and Theory*, 85 CAL. L. REV. 1089 (1997).

16. See generally Francisco Valdes, *Race, Ethnicity and Hispanismo in Triangular Perspective: The "Essential Latina/o" and LatCrit Theory*, 48 UCLA L. REV. 305 (2000).

17. See Jerome M. Culp, Jr., Angela P. Harris & Francisco Valdes, *Subject Unrest*, 55 STAN. L. REV. 2435 (2003); see also Charles R. Lawrence III, *Foreword—Race, Multiculturalism and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819, 834–35 (1995) (focusing on social transformation).

18. See Francisco Valdes, *Outsider Scholars, Legal Theory and OutCrit Perspectivity: Postsubordination Vision as Jurisprudential Method*, 49 DEPAUL L. REV. 831 (2000).

aims of our work as well as to counteract the creeping effects of despair in the face of a job so large, we must learn from the past. We must articulate a vision of the future to which we can mutually and collectively aspire; and we must focus our collective and critical attention on the application of experience, knowledge and vision to the exigencies and opportunities of the present. Under times and circumstances such as these, and with aspirations and ambitions that transcend mere formal reformation, the struggle for social justice across multiple categories of identity necessarily begins with the posing of critical and self-critical questions.

First, what “values” are being imposed as “ours”? Whose values are these? And second, to what consequence? These are profound and profoundly consequential queries. Yet engaging them in a meaningful non-rote way is extraordinarily difficult because it requires access to, and a synthesis of, multiple domains of knowledge—domains that range from the historical to the theoretical, from the personal to the experiential. Because the structures of society and formal knowledge transmission are not designed to convey or deliver knowledge that may be subversive of Euro-heteropatriarchal arrangements, the prospects of individual self-decolonization are suppressed from generation to generation. While the processes of corporate globalization are calculated to further entrench and normalize the transplantation of Euro-heteropatriarchy to all corners of the world, persons born into and seeking to grasp the meaning of their historical inheritance must take the initiative in the creation and the sustenance of networks of critical knowledge and consciousness that can serve as platforms for the project of self-decolonization.

Thus, a crucial question for all critical theorists and activists is: “How can I, from where I stand today, help to construct a condition that will contribute to the project of self-decolonization among multiple diverse humans across the globe? How can I contribute not only to my self-decolonization but also to that of others?” In other words, how can we enable humans across the world to engage and answer the two queries posed above in the wake of colonization and under the grip of globalization? In approaching these crucial queries today, I am influenced most by two considerations: first, the audience and the venue. And second, the work on curricular reform currently underway among LatCrit and OutCrit scholars throughout the nation. When before an audience of law students such as yourselves—born into this reality and seeking to rise above it—I strive to center the work that focuses on the ways and means of making accessible to you *qua* law students what we might describe as a “critical legal education.”<sup>19</sup>

This ongoing work has spanned several categories of effort. The first might be described as *individual intervention*. That is, courses which faculty members all over the country create and introduce to the curriculum and sustain as part of the

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19. See Francisco Valdes, *Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism: Marking the Stirrings of Critical Legal Education*, 10 *ASIAN L.J.* 65 (2003).

curriculum through their personal commitment to the teaching of that course year after year. The second might be described as *institutional reforms*. The prime example of that to my knowledge today is the critical race concentration at the UCLA School of Law that provides a structured two-year curriculum for students interested in the study of race and law in multi-dimensional and critical terms, to do so, and to graduate with a certification that is noted in their diplomas.<sup>20</sup>

The third example we might describe as *collective insurrections* and by that I mean scholars and activists from different institutions, identities, disciplines, world regions and time zones transcending the limitations and the borders of time, space and culture to design and mount collective interventions in the business-as-usual routines that mainstream, conventional, or traditionalist legal education spoon feeds to us on a daily basis. In this last category are two examples that I will speak to you about in a few moments as current efforts to establish a critical legal education that is accessible to students across the country and indeed, beyond the country.

As critical education theorists have shown, all forms of education over time become institutions that tend to operate either as instruments of colonization and self-colonization, or the contrary—emancipation and self-emancipation. Under this view, education operates to justify the world constructed by the elites that dominate society and control its institutions of education. In the usual course of things then, mainstream education serves the status quo. In its usual form, education formalizes and systematizes the inculcation of cultural politics to ratify the world as is. As inherited by each generation of humans, legal education specifically then perpetuates conquest. In the context of the lands now known as the United States, this practice effectively means that education—legal and otherwise—operates to justify the world constructed by Eurocentric elites during the heyday of militarist colonialism and imperialism; and celebrates the reinforcement of those legacies through a new heyday of corporate globalization based on colonial bequests. This service is performed both by what is left out as well as what is put into the content or substance of legal education. By leaving out, for instance, the systematic imposition of the supremacist politics to motivate conquest and rationalize subordination, a key part of the story that explains so much of the injustice embedded in students' social inheritance and which every new generation struggles to understand.

One example of deceptively-sanitized knowledge offered via contemporary legal education is found in the omission of the so called "insular cases" from the case books and courses employed to teach constitutional law to new classes of entering students nationwide every year.<sup>21</sup> The Insular Cases, a series of

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20. For a recent review of both kinds of these efforts, see Francisco Valdes, *Barely at the Margins: Race and Ethnicity in Legal Education—A Curricular Study with LatCritical Commentary*, 13 LA RAZA L.J. 119 (2002).

21. See, e.g., Sanford Levinson, *Why the Canon Should be Expanded to Include the Insular Cases and the Saga of American Expansionism*, 17 CONST. COMMENT. 241 (2000).

controversies decided as the 19th Century turned into the 20th, lent a judicial patina to North American imperialism during the years of manifest destiny to justify the conquest and subjugation of people in territories that are not states of the United States on the basis of specifically Euro-heteropatriarchal identity politics. People, such as those in Puerto Rico, were deemed unfit on racial, ethnic and cultural grounds to become part of the American nation state. This act of institutionalized omission and others like it enables the sanitized history of the status quo spoon fed to students, day in and day out across the country and globe, to keep each succeeding generation socially tranquilized, economically exploited, culturally subjugated and politically subordinated. In its dominant uncritical form, mainstream education teaches every generation to genuflect and then how to help maintain, rather than challenge, the cultural, economic and social skews inflicted on these lands since 1492.

Awareness and wariness of this power and knowledge is precisely why critical theory is absent or marginal still in formal law school curricula from coast to coast, effectively withholding thereby for most law students any structured opportunity to acquire self-liberating knowledge in the general course of a typical legal education. Thus, historically as well as presently, the principal aim and effect of uncritical mainstream legal education is to assimilate and domesticate in the name of progress and prosperity, and these days increasingly in the name of equality and liberty. Thus, by critical legal education I mean at the most basic and provisional level, the application of critical theory and in particular, outsider jurisprudence, to the fields of formal knowledge that we teach in law school classrooms or elsewhere. Critical legal education is the pedagogy that teaches law through the lens of LatCrit theorizing, a critical pedagogy representing a fusion of conventional doctrine and LatCrit knowledge together with critical education theory.

This mission statement claims for critical legal education a grounding and vision similar to the kinds of “critical pedagogy” posited more generally among critical education theorists for educational ventures devoted, as are these and similar efforts, to social justice for the traditionally-subordinated of the world. Critical pedagogy refers to an educational approach rooted in the tradition of critical theory. Critical educators perceive their primary function as emancipatory and their primary purpose as commitment to creating the conditions for students to learn the skills, knowledge and modes of inquiry that will allow them to inquire critically about the role that society has played in their self formation. More specifically, critical pedagogy is designed to give students the tools to examine how society has functioned to shape and constrain their aspirations and goals and to prevent them from even dreaming about a life outside the one they presently know.

Critical legal education, at its best, thus provides lifelines of power based on knowledge and principle to marginalized students struggling to become aware of the ways and means through which felt and known oppressions are normalized,

materialized, even valorized. Critical legal education must help to create the conditions for students to learn the skills, knowledge and modes of inquiry that will allow them to develop the critical capacities to reflect, critique and act to transform the conditions under which they live. Like critical pedagogy, critical legal education is aimed at ending the remains of colonial conquest.

The work on curricular reform toward a critical legal education that I mentioned a few minutes ago suggests various—at least seven—features that help to define such an education, if it is to achieve its bedrock emancipatory aims. The first of these features is the centrality of specific history, so that we may understand the present and its origins—its social construction across the generations. The second is the importance of interdisciplinarity in all categories of study and approaches to knowledge, and in legal education specifically, to help contextualize the law and its social operations. The third feature is the necessity of dialectical method—that is, a give-and-take designed to ensure interactivity, through which knowledge and skill are transmitted and internalized more effectively and organically. Fourth is the indispensability of multidimensional critical analysis to avoid the blind spots of essentialisms and the pitfalls of stereotypes. The fifth feature is recognition of the key and symbiotic relationship the twines theory to action, a process through which social activism is sharpened by critical awareness and vice versa, an ongoing process to help ensure solidly grounded theory *and* practice. Sixth is heightened awareness and understanding of the processes and consequences of dominant forms of globalization to help put a spotlight, a critical spotlight, on the latest iteration of colonial identity politics. And the seventh feature of a critical legal education is a methodical mapping both of contextual particularities and the interlocking patterns that particularities form across multiple borders, so that we ensure both a comparative and a critical understanding of social realities, and of how they are co-constructed through law and its institutions. These seven features, perhaps coupled with others I may have overlooked here, provide a sturdy foundation for the implementation of critical legal education at multiple levels of intervention—whether in individuated, programmatic or combinations of forms. This kind of critical legal education in turn provides the substantive and technical platform from which students may “make waves” as agents of social and legal transformation.<sup>22</sup>

A few words about two ongoing collective experiments toward the development of critical legal education should help illustrate the point. The Critical Global Classroom (CGC), a study-abroad program in law, policy and social justice activism, is the first. The CGC focuses on human rights and comparative law from a critical perspective and is aimed to include the substantial study of critical theory in international contexts and comparative terms. In addition students will attend a three-day LatCrit Colloquium on International and

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22. See Francisco Valdes, *Insisting on Critical Theory in Legal Education: Making Do While Making Waves*, 12 LA RAZA L.J. 137 (2001).

Comparative Law, where they will be able to interact directly and substantively over the three-day period with diverse scholars from different disciplines and regions of the world.<sup>23</sup>

The CGC curriculum is designed to immerse students in local, legal and social cultures through varied academic events ranging from regular class sessions to field visits, guest lectures and an optional service component consisting of various activities that will permit students to work with local attorneys, policymakers or activists in social justice projects. CGC students will discuss contemporary issues with leaders and activists from varied sectors of the societies to learn about law, policy and politics not only through the books but also by experience. Through the program's curriculum menu, CGC students will be offered firsthand experience of law and policy in Chile, Argentina, South Africa, Brazil and other CGC host countries. At each site, the aim is to create opportunities to learn critical theory and international jurisprudence in the material context represented by these nations.

To provide comparative consistency, the menu of academic events is organized around the critical study of five substantive themes. The first CGC curricular theme is pre-colonial arrangements and colonial histories and legacies. The second is historic and contemporary, "minority" issues and inter-group power relations, including gender, which technically is not a minority issue at all. The third theme that frames the CGC curriculum is the economic control of society, and the configuration of current wealth-identity distributions. The fourth is the role of constitutional and legal systems in maintaining or reforming the social and economic status quo. And the fifth theme of CGC study is the current effects (and likely prospects) of globalization on local and regional arrangements whether political, economic or legal. The CGC host nations provide extraordinarily fertile grounds for the study of these themes from a critical and comparative perspective, and they will enable students to extend their critical comparison to their own country.

In addition to immersing students in local cultures and exposing them to critical studies, the CGC offers a unique opportunity for students interested in social justice to study international and comparative law in a safe space and with critically-minded faculty. The time together during the program's sojourn through the global South will provide the time and opportunity for students to establish relationships and networks based on social justice knowledge, experience, values and activism. And after the program concludes, the companion Cyber Classroom Project will encourage and enable CGC graduates (and other like-minded students, activists and faculty) to stay in touch and collaborate on matters of mutual interest via electronic and other means. The CGC thus creates opportunities to forge relationships and build networks of like-minded individu-

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23. For more information on the CGC and other LatCrit projects, please visit the LatCrit Web site at <http://www.latcrit.org> (last visited Feb. 1, 2005).

als in a formal educational setting, which ideally will continue beyond the six weeks of the program to carry out social justice projects of various sorts in local communities, as well as in global venues. In content, design and aim, the CGC represents a collective effort at institutionalizing critical approaches to legal education: its substantive content employs interdisciplinary materials to produce anticolonial knowledge in multidimensional and contextual frameworks. The means and methods of the program are designed to help empower students with the knowledge necessary to decolonize first the self and, over time, perhaps society as well. The CGC both teaches and *is* social justice practice at the personal *and* programmatic level.

Another recent initiative is the LatCrit Student Scholar Program (SSP). This program invites students from any discipline in good standing at any accredited institution any place in the world to submit each February an original, unpublished manuscript related to questions of race, ethnicity and law. These parameters are deliberately flexible to accommodate innovative cross-disciplinary work devoted to race, ethnicity and social justice: students who enroll in seminars or similar classes every fall, where they already are devoting time to the development of substantive papers to be completed by December, are well positioned to participate in this program every year. The Student Scholars are invited to participate and present their papers at the Annual LatCrit Conference, and are given a scholarship to attend the Critical Global Classroom study-abroad program for six weeks. In addition, each Student Scholar is then teamed up with mentors to help him or her develop a follow-up scholarly paper over the course of the following year for presentation and publication in appropriate venues. To ensure maximum benefit to the Student Scholars and their professional aspirations, the Student Scholar's second paper may be devoted to any topic that serves their academic and professional agenda. The Student Scholar mentoring relationships are focused specifically on the production of scholarship on race, ethnicity and social justice, again to help students develop their intellectual horizons as well as to foster critical legal scholarship and consciousness.<sup>24</sup>

As another ongoing collective experiment in critical legal education, the Student Scholar Program aims to help students produce the knowledge that helps to explain the present—explain it in historical, contextual and multidimensional terms. The Student Scholar Program is designed to cultivate anticolonial knowledge that spans disciplines, cultures and eras to promote critical awareness of human injustices and of their constructed origins and artificial nature. The Student Scholar Program, like other forms of critical approaches to legal education, seeks to build memory, to embrace identity and to foster agency among traditionally subordinated groups and students.

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24. For more information on the SSP and other LatCrit projects, please visit the LatCrit Web site at <http://www.latcrit.org> (last visited Feb. 1, 2005).

Finally, these two new experiments in collective social justice programs not only strive to institutionalize critical legal education, but they also are designed to work hand in hand: both the CGC and the SSP are designed to operate as lifelines to students at law school campuses nationwide and beyond. Both respond to student accounts, which we oftentimes hear, of intellectual and human isolation experienced by critically-minded students in their so-called home institutions. Both offer programmatic opportunities to study areas of law and approaches to policymaking that otherwise might not be available to today's socially conscious students in structured, formal settings. Moreover, both the CGC and the SSP are intended to help cultivate critically-minded students who might be interested in pursuing a teaching career in law or other disciplines. Both the CGC and the SSP are designed to work synergistically as lifelines to students, as well as pipelines for them into the legal—or other kinds of—academies. Both are examples of collective insurrections in the name of critical legal education. Along with the never-ending work of individual faculty from coast to coast, these collective experiments seek to establish the makings of critical legal education within the confines of traditional legal institutions. In closing, and as part of this practice, let me invite you to help us spread the word to similarly-interested students that might benefit from the opportunities provided by either of these programs. Thank you.