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FOREWORD

Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community

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INTRODUCTION

This symposium marks and celebrates the proceedings of the LATCRIT THIRD ANNUAL CONFERENCE, which took place on Miami Beach in May 1998. Preceded by LATCRIT I in La Joya and LATCRIT II in San Antonio, the LATCRIT III gathering marked a watershed event in the evolution of the LatCrit movement, both as the most recent intervention in outsider jurisprudence and as a community of scholars and activists.¹

* Professor of Law and Co-Director of the Center for Hispanic and Caribbean Legal Studies, University of Miami School of Law. Thanks to Sam Thompson for unfailing support, both financial and personal; to the *University of Miami Law Review* and the *Texas Hispanic Law Journal*; and particularly to the two *University of Miami Law Review* editors-in-chief, Tad Dee, for his good faith and, Sabrina Ferris, for seeing this project through at the end. Thanks also to Max Castro, Drucilla Cornell, Kevin Johnson, Guadalupe Luna, Athena Mutua, Dorothy Roberts, Celina Romany, Greg Stewart and Robert Westley, for discussions that have in one way or another enhanced the thoughts expressed in this Foreword. Special thanks to my friend and colleague, Frank Valdes, for friendship, inspiration and solidarity.

1. LatCrit scholarship has virtually exploded in the last three years. In addition to the published proceedings of LATCRIT I, see Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997) and LATCRIT II, see Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 CHICANO-LATINO L. REV. 1 (1998), LatCrit scholars have also produced a first-ever symposium exploring major issues in international law and international human rights from a critical race perspective. See Symposium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 1 (1997). LatCrit scholarship has also been published in a stand-alone volume, see Symposium, *LatCrit Theory, Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L. J. 1 (1998). For proceedings of the gathering of Latina/o Law Professors that gave birth to the LatCrit project, see Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 LA RAZA L. J. 1 (1996). For a particularly

If LATCRIT I reflected the enthusiasm of a new found commonality and unprecedented dialogue among a diverse group of scholars coming together for a first time, LATCRIT II demonstrated the profound challenges facing any movement seriously committed to exploring and transforming the realities of inter- and intra group injustices from an anti-essentialist and anti-subordination perspective. If LATCRIT I marked the excitement of a first encounter and the enthusiasm of a party, LATCRIT II demonstrated the speed with which any party can end. In a sudden crash or steady line of departures, a party based on suppositions of solidarity and feelings of community can quickly unravel when confronted with substantive difference. When things "get too heavy," parties tend to dwindle and disperse.²

From this perspective, LATCRIT III was a watershed moment because it marked a key act of continuity and perseverance despite ruptures and disruptions. Viewed in hindsight, this act of continuity was a definitive moment in the survival of the LatCrit movement as a community of scholars and collective political intellectual project.³ Viewed against the backdrop of prior LATCRIT conferences, LATCRIT III also offers a welcomed opportunity to reflect anew upon the objectives and methods of our community-building efforts. If LATCRIT II counsels the need to remain ever-vigilant lest we be confused, seduced and ultimately

insightful overview of the purposes and commitments of the LatCrit movement, see Francisco Valdes, *Under Construction: LatCrit Consciousness, Community and Theory*, 85 CAL. L. REV. 1087, 93-96 (1997), 10 LA RAZA 1, 7-10 (1998) [hereinafter Valdes, *Under Construction*]. For proceedings of the LatCrit IV conference, see Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. DAVIS L. REV. (forthcoming 2000).

2. For a sense of the substantive issues that triggered the eruptions at LatCrit II, see Elvia R. Arriola, *Foreword: March!*, 19 CHICANO-LATINO L. REV. 1, 26-7 (1998) [hereinafter Arriola, *Foreword: March!*]; Nancy K. Ota, *Falling From Grace: A Meditation of LatCrit II*, 19 CHICANO-LATINO L. REV. 437 (1998); Reynaldo Valencia, *On Being an Out Catholic: Contextualizing the Role of Religion at LatCrit II*, 19 CHICANO-LATINO L. REV. 449 (1998); Emily Fowler, *Disturbing the Peace*, 19 CHICANO-LATINO L. REV. 479 (1998); Margaret E. Montoya, *Religious Rituals and LatCrit Theorizing*, 19 CHICANO-LATINO L. REV. 417 (1998); Elizabeth M. Iglesias & Francisco Valdes, *Afterword: Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 U.C.L.A. CHICANO-LATINO L. REV. 503, 539 (1998) (declining to engage in retrospective accounts of events, in favor of reflecting instead on the substantive issues raised by the clash of perspectives).

3. The eruptions at LatCrit II raised substantial doubts about the continuity of the project. Communities may form spontaneously, but they do not evolve automatically, particularly not communities of choice and will that are little more than an imagined act of solidarity amongst people separated by so many differences. The organization of appropriate venues for performing community is critical to its evolution, but this also does not happen automatically. It falls to particular individuals at specific points in time to create the venues that enable community. Thus these communities are as fragile as the individuals upon whose energy, initiative and good will they depend. LatCrit II drained us.

betrayed by the human tendency to seek community in the sentimentality and pseudo-security of sameness, the intellectual and political advances made at LATCRIT III show us the substantial pay-offs to be gained by resisting the impulse to seek or settle for sentimentalist communities. By this I mean communities where solidarity is more an image conjured through superficial feelings of identity and hence of momentary closeness, rather than a lived commitment, in solidarity, to relentlessly reveal and steadfastly dismantle relations of dominance and subordination that subvert the potential for authentic human sharing and connection — not just *outside*, but also *within* the LatCrit community we aspire to construct.⁴

To recognize the limited life expectancy of sentimentalist communities is to take a first step down a long and difficult path that challenges us, at every instance, to seek affirmatively and self-consciously to produce something different in our midst. That difference is a community of scholars and activists that can intellectually engage, politically negotiate and collectively absorb the kinds of internal controversies and external assaults that have, in other contexts, shattered communities built on the fragile bonds of sentimental feeling, strategic alliance, individual careerism or simple self-interest, however mutual such interests may be said to be — in short, on any bond other than an inter-subjective commitment to seek and manifest objective justice in a caring and careful manner.⁵

The excellent work and important advances, the conceptual breakthroughs, the interpersonal relationships and political solidarities that were further strengthened or newly born at LATCRIT III are, indeed, substantively significant — as reflected in the proceedings of this symposium. The fact that none of these things might have ever seen the light of day, at least not in their current configurations and certainly not, as they are now, embedded in and enhanced by our memories of the shared community and collegiality that made LATCRIT III such an enlivening experience — this fact should give reason to pause. Indeed, the achievements of LATCRIT III offer ample evidence that LatCrit community-

4. See Elvia R. Arriola, *LatCrit Theory, International Human Rights, Popular Culture, and the Faces of Dispair in INS Raids*, 28 U. MIAMI INTER-AM. L. REV. 245 (1996-97) [hereinafter Arriola, *INS Raids*] (emphasizing the importance of LatCrit community building); Arriola, *Forward: March!*, *supra* note 2 (same).

5. See Elizabeth M. Iglesias, *The Inter-Subjectivity of Objective Justice: A Theory and Praxis for Constructing LatCrit Coalitions*, 2 HARV. LATINO L. REV. 467-71 (1997); 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, 476-78 (1993) [hereinafter Iglesias, *Structures of Subordination*] (the intersubjectivity of equals: moral imperative and institutional blueprint); *id.* at 493 n.324 (intra-feminist solidarity must be based on more than "touchy-feely" sentiments); *id.* at 475-78 (solidarity among women of color based on justice, not sentimentality).

building must walk a careful path between the tendencies to rely, on the one hand, on the feel-good emotions of superficial identifications and, on the other hand, the tendency toward a kind of packing behavior that is sometimes indulged because it appears to enable spontaneous, though fleeting and often problematic, alliances to converge around a slash-and-burn, hold-no-prisoners, hypercritical attack upon some unfortunate and often unsuspecting target. Neither tendency serves the purposes of a community determined to foster *for the long-haul* a collaborative project that continuously enables ever-more demanding engagements in the sort of substantive critical analysis that was the aspiration and, to an unprecedented degree, the achievement of LATCRIT III.

LATCRIT III definitively demonstrated that even highly controversial topics and proposals can advance our intellectual development and strengthen our political and solidaristic commitments if organized and actually conducted in a respectful and inclusive manner. Thus, while there was significant controversy generated by a programmed event proposing to launch a jurisprudential intervention styled "BlackCrit theory" as an experimental way of centering the particularities of Black Latina/o and Caribbean peoples in and against the Black/White paradigm,⁶ this pre-event controversy did not disrupt the conference, but was instead identified and negotiated through extensive substantive discussions, conducted late into the evening, in good-faith and mutual concern to resolve the misconceptions that might otherwise disrupt the next day's event. The payoff was that rather than an explosive emotional disruption followed by the scrambling (of some) to mediate the hurt feelings and unnecessary misunderstandings that routinely follow such explosions, we had a very fruitful discussion that has since spawned substantial advances by raising important questions about the relationship between LatCrit and other critical jurisprudential movements, most notably Critical Race Theory,⁷ and about the particularities of Black experiences and the significance of those particularities to the LatCrit project.⁸

6. See *infra* note 105 and accompanying text (discussing objectives and drawing lessons from the LATCRIT III focus group discussion entitled *From Critical Race Theory to LatCrit to BlackCrit? Exploring Critical Race Theory Beyond and Within the Black/White Paradigm*, see <<http://nersp.nerdc.ufl.edu/~malavet/latcrit/archives/lciiii.htm>>).

7. See, e.g., Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 U. MIAMI L. REV. 1247 (1999); Francisco Valdes, *Afterword: Theorizing "OutCrit" Theories: Coalitional Method and comparative Jurisprudential Experience—RaceCrits, QueerCrits and LatCrits*, 53 U. MIAMI L. REV. 1265 (1999) [hereinafter Valdes, "OutCrit" Theories].

8. See, e.g., Dorothy E. Roberts, *BlackCrit Theory and the Problem of Essentialism*, 53 U. MIAMI L. REV. 855 (1999) [hereinafter Roberts, *BlackCrit Theory*]; Athena Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177 (1999); see also *The Meanings and Particularities of Blackness in Latina/o Communities*, LATCRIT IV SUBSTANTIVE PROGRAM OUTLINE (reflecting the intellectual growth

There is no doubt that solidarity, understood as an anti-essentialist commitment to inter and intra-group justice, presents continual challenges and demands tremendous work. This work is not always fun. At the same time, there is no question that LATCRIT III *was* fun. The conference was graced with the sunny springtime beauty, the pastel colored sounds and Caribbean skies that make Miami beaches a tropical paradise for wealthy tourists and gave *us* an opportunity to enjoy each other's company and to share some sensual displacements amid much privilege and luxury, even as we confronted the daunting challenges of our work. In fact, the conference was *a lot* of fun, and the fun we had was a positive energy in our efforts to build community across our differences.⁹ Thus, in myriad ways, LatCrit III demonstrated that the LatCrit project can *and should* engage profoundly controversial positions and proposals without indulging community-destroying disruptions that undermine, rather than enable, our efforts to explore substantive disagreements and to learn from our differences of position and perspective in the spirit and expectation of lively and lasting friendship.

In retrospect, it also bears noting that our collective efforts to self-consciously build the LatCrit community, and by implication *any* community, upon a commitment to anti-essentialist anti-subordination politics, is an unprecedented project of millennial proportions. Questions pending today on the LatCrit agenda will emerge tomorrow as definitive questions of the 21st century. This is because the human community *must* find ways to construct identities that do not depend on the activation of essentialized differences or the reproduction of sociolegal hierarchies. There is no sustainable alternative. In the 21st century, controversies that today are triggered by LatCrit's theoretical determination to reveal essentialist assumptions and traverse, in solidarity, such inherited boundaries as mark the distinctions of race, ethnicity, class, gender, sexual orientation and nation will tomorrow erupt the discursive

and theoretical development generated by the BlackCrit focus group discussion), <<http://nersp.nerdc.ufl.edu/~malavet/latcrit/lcivdocs/lcivsubs.htm>>.

9. To be sure, lounging on the pool deck of the luxurious Eden Roc Hotel, I did experience a moment of cognitive dissonance, which I was quickly able to resolve because I've never bought the line that our commitment to anti-subordination might be rendered any less authentic by sharing some moments of privilege. To my mind, that view reflects a crabbed and myopic misunderstanding of the ethical substance, political objectives and emotional dimensions of the practice of liberation politics. See, e.g., JOSÉ MIRANDA, MARX AND THE BIBLE: A CRITIQUE OF THE PHILOSOPHY OF OPPRESSION (John Eagleson trans., 1974) (distinguishing the structural concept of "differentiating wealth" from the individual ownership of property). Like John Hayakawa Torok, I think LatCrit scholars need to find ways to provide ourselves and each other respite from the conflict and controversy to which our anti-subordination commitments routinely expose us — *precisely so that we never give up or burn out*. See John Hayakawa Torok, *Finding the Me in LatCrit Theory: Thoughts on Language Acquisition and Loss*, 53 U. MIAMI L. REV. 1019 (1999).

boundaries of sociolegal theory and confront the world community as the wo/man-in-the-local/global streets, trodding the electronic highways for news of how, when and where the human flows in motion will be set or let to rest. Borders busted by new configurations of freedom and compulsion are producing new social realities in need of new identities, beyond the essential-isms of the modern that currently, and not so tenuously, still organize so much the conscious and unconscious of so many.¹⁰

It is precisely because LatCrit theory has taken up the challenge of producing knowledge and performing community *for the purpose* of manifesting and advancing an anti-essentialist commitment to anti-subordination politics that the LatCrit community stands as microcosm of the many challenges that will face the global community in ever more pressing degrees. Our in/ability to negotiate the differences amongst us, to link identities to histories, histories to the articulation of an ethical and future-oriented vision, and our visions to the consolidation of effective and transformative political coalitions — on this — the stuff of dreams — depends the future of such weighty 21st century imperatives as world peace, social justice, and human liberation.¹¹

With this in mind, this Foreword seeks to contextualize the LAT-CRIT III symposium essays in relation to four basic points of reference: the first is LatCrit's evolving substantive agendas; the second is the impact of our discourse and interactions on our community-building objectives and on alternative trajectories for institutional development of the LatCrit project; the third is the broad array of issues and many fields of substantive inquiry that have not yet been addressed in LatCrit theory. These three points create a dialectical frame of reference linking past, present and future, thereby enabling us, more meaningfully, to assess where we have been and to project a vision of where we should go. The fourth point of reference refers back to the pre-conference objectives as delineated in the substantive program outline;¹² it injects a fourth

10. See, e.g., Charles R. Lawrence III, *The Id, The Ego and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987) (unconscious racism pervasive); Angela J. Davis, *Prosecution and Race: The Power and Privilege of Discretion*, 67 FORDHAM L. REV. 13 (1998) (unconscious racism in criminal justice system); Sylvia R. Lazos-Vargas, *Democracy and Inclusion: Reconceptualizing the Role of the Judge in a Pluralist Polity*, 58 MD. L. REV. 150, 263-64 (1999) (unconscious racism in interpretation of affirmative action); Susan Sturm, *Race, Gender, and the Law in the Twenty-first Century Workplace: Some Preliminary Observations*, 1 U. PA. J. LAB. & EMP. L. 639 (1998) (unconscious racism in labor and employment policies and practices).

11. See Francisco Valdes, *Outsider Scholars and "OutCrit" Perspectivity: Postsubordination Vision as Jurisprudential Method*, 49 DE PAUL L. REV. 3 (forthcoming 2000).

12. The LATCRIT III Substantive Program Outline can be found by visiting the LatCrit webpage at <<http://nersp.nerdc.ufl.edu/~malavet/latcrit/archives/lciiii.htm>>.

dimension of intentionality into our understanding of LatCrit dynamics because what we actually achieve at any LatCrit gathering means different things and offers different lessons depending on its coherence with, departure from and/or expansion of the objectives we intended to achieve. Using this four-part frame of reference to contextualize the essays in this symposium enables us to assess the evolution of LatCrit theory and praxis in ways that engage the multiple dimensions of a project that is always and everywhere both about producing knowledge and about performing community.

The rest of this Foreword divides in three parts. This three part structure reflects, but does not directly track the live-events of the conference, which are detailed both in the LatCrit III Substantive Program Outline and the LatCrit III Program Schedule.¹³ The live-events were programmed to effectuate the conference planners' self-conscious and concerted commitment to push LatCrit theory into new substantive areas, to encourage dialogue across jurisprudential and disciplinary boundaries, to bridge the gap between theory and practice, to experiment with new discussion formats, to include newcomers, to accommodate the many responses to our initial call for papers and to provide a forum for works-in-progress. To this end, the program featured four plenaries, two focus-group discussions, four keynote addresses, five concurrent panels and a concurrent works-in-progress session. However, as in previous LatCrit conferences, the energy, richness and synergies of our discourse exceeded the pre-established structure of our program — a phenomenon reflected, this time, in the many thematic interconnections evidenced across the keynotes, plenaries and concurrent panels, as well as by the fact that a number of essays submitted for this symposium volume were inspired by, but not delivered at, the LatCrit III conference. Organizing this abundance into a coherent final product has been a border-busting project in its own right precisely because the expedient of tracking the live-events was simply untenable. Instead, the objective in this symposium, and therefore in this Foreword, has been to cluster the various essays around the substantive themes most directly salient to our discussions at LatCrit III.

Part I, entitled *Beyond/Between Colors: De/Constructing Insider/ Outsider Positions in LatCrit Theory*, takes up the essays in the first two clusters. These essays demonstrate the continued centrality of identity politics in LatCrit discourse, making questions of intra-group hierarchy and inter-group justice of special salience in any LatCrit gathering and

13. See *id.* (for webpage address).

their exploration a critical dimension of the continuity we seek to maintain. They also demonstrate that each time the LatCrit community takes up these issues in our formal gatherings, we approach them with a heightened awareness of the broader context in which we articulate the political implications of Latina/o identity. Using a variety of critical methodologies, including doctrinal deconstruction, policy-based political analysis of current affairs, personal narratives and social psychology, these essays take up the challenge of articulating how the anti-essentialist anti-subordination aspirations of the LatCrit project are implicated in struggles over such relatively theoretical matters as judicial power, interpretative objectivity and personal identity, as well as in the more immediate political struggles over immigration policies, minority access to legal education, the delivery of legal services to the poor, the ongoing expropriation of indigenous peoples in Latin American countries and the particularities of intergroup relations in South Florida, the site of the LatCrit III conference.¹⁴

Both individually and cumulatively, these essays challenge LatCrit scholars to deconstruct essentialist representations of the Latina/o condition by attending to the particularities of subordination as experienced by different groups at different junctures of historical time and trans/national space. As critical methodology, attention to the particular helps unpack intra and intergroup hierarchies, enables critical analysis to resist the suppression of intra-group diversities and exposes instances in which representations of a common good or shared imperative are manipulated and monopolized to configure relations of intra and intergroup privilege. This attention to the particularities of subordination can, however, generate its own problems — most notably the problem of comparing subordinations both within and between groups. Such intergroup comparisons activate identifications that can dis/organize alliances and can therefore have profound and varied impact on the future viability of any coalition project — depending on the kinds of political positioning a particular mode of comparison tends to promote.¹⁵ At the same time,

14. This emphasis on the local politics in South Florida is consistent with prior practice of planning LatCrit conferences to use the location of our conferences to increase our collective knowledge of the particularities of Latina/o realities across geographical areas. See Iglesias & Valdes, *supra* note 2, at 574 n.185 (discussing the economic tour of San Antonio as another instance of engaging the particularities of the areas in which the conference is held).

15. Elizabeth M. Iglesias, *Human Rights in International Economic Law: Locating Latinas/os in the Linkage Debate*, 28 U. MIAMI INTER-AM. L. REV. 361 (1996-97) [hereinafter Iglesias, *International Economic Law*] (exploring the way different intra-Latina/o collective identities and political alliances — some more progressive than others — are triggered by the discourses of development, dependency and neo-liberalism and the very different impact these alliances would have on the project to link enforcement of human rights to trade and finance regimes regulated by international economic law). My point here is that the configuration of collective identities and

attention to the particularities of subordination makes intergroup comparisons practically inevitable.

LatCrit theory thus faces the formidable task of articulating an ethic and politics through which the practice of comparing the different realities of subordination that are increasingly revealed through our particularized analyses can be made to foster, rather than destroy, the possibilities for intergroup solidarity and genuine understanding across our many differences of experience and position. We need to learn how to articulate our intergroup comparisons in ways that energize new solidarities and promote more fluid and inclusive political identities by revealing new interconnections and commonalities among the oppressed *despite* and perhaps *because of* our differences. Indeed, understood specifically as a way of learning about and engaging our differences, intergroup comparisons can enable the affirmative valuation and embrace of the differences that make us both ourselves and *not* each other.¹⁶ The essays in these first two clusters provide a valuable point of departure for this important task because their attention to the particularities of subordination across different contexts also illustrates a variety of instances of intergroup comparison.

Part II, entitled *Substantive Self-Determination: Democracy, Communicative Power and Inter/National Labor Rights* reflects the rapidly expanding agenda marked for LatCrit attention. This Part takes up three clusters of essays. The first cluster seeks to articulate a LatCrit perspective on the disjunctures between reality and rhetoric in the transition and practice of democracy. The second cluster focuses on communicative power, and the third and final cluster focuses specifically on the way LatCrit antiracism theory and practice is implicated in and activated by the sociolegal structures of labor and employment in an increasingly globalized society. Cumulatively, the essays in these three clusters reflect a concerted and self-conscious effort to expand the substantive concerns of the LatCrit movement beyond the familiar fare of

political alliances is not "naturally" given. Nor do they flow directly from our position within any particular "group." Instead, these identities and alliances are constructed in and through the discourses we deploy. Historical comparisons are precisely the kinds of discourse that organize political alliances and construct collective identities, for better or worse. It is therefore critical to subject any inter-group comparisons to the kind of political alignment analysis I am again suggesting here. For a different, but allied, vision of the kind of political impact analysis that is needed, see Sumi Cho, *Essential Politics*, 2 HARV. LATINO L. REV. 433 (1997) [hereinafter Cho, *Essential Politics*].

16. See Catherine Peirce Wells, *Speaking in Tongues: Some Comments on Multilingualism*, 53 U. MIAMI L. REV. 983 (1999) (providing a clear and beautiful account of the way our ethic of inter-group relations needs to progress beyond a level where mutual recognition and regard depends on the identification of commonalities to a level where we learn to value difference itself).

“Latina/o issues.” This is an appropriate and timely development because the struggle to articulate an anti-essentialist theory and practice of coalitional politics and transformative legal intervention implicates LatCrit scholars in a project that must concern itself with issues not peculiarly or exclusively of interest to Latinas/os in this country.

Until relatively recently, the trials and tribulations, for example, of the international peace movement, the labor movement, the environmental movement and the international movement for human rights, like the deconstruction of U.S. national security ideology or the critical analysis of the legal regimes organized by antitrust, tax and corporate laws have, for the most part, been cast as matters of universal concern, not particularly relevant to Latina/o and other minority communities, whose primary focus of attention has been thought to center on issues of discrimination and the meaning of equal protection.¹⁷ LatCrit theory, by contrast, claims an interest in matters of universal concern, precisely because it rejects the metaphysical and epistemological assumptions that underpin the bifurcation of universal and particular.¹⁸ By taking up and subjecting to critical anti-essentialist analysis such matters as the rhetoric and realities of the democratic project, the legal structures of communicative power and the future of the labor movement in and beyond the United States, these essays demonstrate how attention to the particularities of Latina/o experiences and perspectives can produce a richer and more contextual understanding of the broader contexts and multiple dimensions of the human struggle for justice and peace.

Finally, Part III takes up the essays in the cluster entitled, *Mapping Intellectual/Political Foundations and Future Self-Critical Directions*. Though only three years old, LatCrit theory reflects a rich and varied intellectual inheritance because of the wide diversity of scholars who have chosen to self-identify as LatCrit scholars or participate in LatCrit conferences. Thus, LatCrit Theory finds its intellectual roots in Critical Race Theory, Critical Race Feminism, Chicano/a 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. On the other hand, formations of scholarly communities do not spontaneously generate; and, in this respect, LatCrit theory is a project with a particular institutional history that reflects the efforts and visions of par-

17. See, e.g., Alice Abreu, *Lessons from Latcrit: Insiders and Outsiders, All at the Same Time*, 53 U. MIAMI L. REV. 787 (1999) (critiquing tendency to channel Latinas/os into fields deemed particularly relevant to Latinas/os).

18. See *infra* notes 108-117 and accompanying text (reconstructing relationship between universal and particular in the articulation of anti-essentialist critical legal theory).

ticular individuals responding to and reacting against the perceived limitations of each of the various strains of critical discourse that precede it.

The essays in Part III reflect this rich and varied intellectual inheritance even as they raise important questions about the purpose, history and future trajectories of the LatCrit project. In this vein, the one definitive lesson to be gleaned from the three years of LatCrit conferences that culminated in LATCRIT III is that there are major differences between the kind of intellectual work that aims at articulating new critical insights in individually authored law review articles and the kind of work required to operationalize new possibilities of thought and action in ways that can effectively reorganize the dynamics of group interaction and generate a shared theoretical discourse with common points of reference and principles of engagement. Learning to understand and negotiate the vast spaces between the individual conceptualization of new possibilities and the collective processes that must be activated to translate these new insights into shared understandings, and to then manifest these shared understandings in new forms of interaction and institutional arrangements, is a crucial imperative in the further evolution of LatCrit theory and community.

This learning is crucial and central precisely because the practice of LatCrit conference organizing has been self-consciously and intentionally aimed, since its inception, at transforming the production of legal scholarship from an experience of intellectual isolation into a practice of collective engagement and empowerment.¹⁹ Once this collective project becomes the imagined purpose and desired objective of our gatherings, the value of our work can no longer be measured simply by the breadth of any individual's vision or the depth of any one analysis, but by the degree to which our gatherings are effective fora for communicating and operationalizing the abstract ideas we so ably articulate in our individual work. Because the energies, efforts, errors, strengths, limitations and evolving visions of embodied human beings are such central components of this collective learning process, this Foreword also takes up the important challenge of recounting the historical development and institutional trajectories of the LatCrit project.

19. Francisco Valdes, *Latina/o Ethnicities, Critical Race Theory, and Post Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 LA RAZA L.J. 1, 11-12 (1996) (noting that the publication of LatCrit conferences serves "to build relationships among and between Latina/o legal scholars and journals; [and] in this way . . . foster the work and success of both.").

I. BEYOND/BETWEEN COLORS: CONSTRUCTING INTER-GROUP
SOLIDARITY AND DECONSTRUCTING INSIDER/OUTSIDER POSITIONS IN
LATCRIT THEORY AND COALITIONAL POLITICS

A. *Centering Particularities and Comparing Subordinations:
Toward an Ethic of Inter-Group Comparisons*

The four essays in this first cluster provide different perspectives on the possibilities and obstacles confronting any project to promote inter-group solidarity.²⁰ Professor Luna's opening essay seeks to identify points of commonality between Blacks and Chicanos by forwarding a deconstructive analysis of the legal doctrines through which judicial interpretation facilitated both the institution of Black slavery and the dispossession Mexican landowners. The other three essays focus on the particularities of inter-group relations in South Florida. Attorney Cheryl Little's essay on intergroup coalitions, immigration politics and the Haitian experience uses the recently enacted Nicaraguan Adjustment and Central American Relief Act (NACARA) as the point of departure for a historical account of the discriminatory treatment Haitian refugees have been singly and systematically subjected to over the last 30 years, in contrast specifically to the treatment Cuban refugees have received during this same period. Attorney Lyra Logan provides a narrative account of the intergroup conflicts and convergence of interests among Black and Cuban-American political constituencies that enabled Florida to enact this country's first and only statewide state-funded affirmative action program aimed at increasing access to legal education for Black, Latina/o and other minority groups, whose members are grossly under-represented in the Florida State Bar. Finally, Attorney Virginia Coto recounts the objectives and assesses the initial achievements of an innovative project to provide legal services to battered immigrant women in the South Florida community.

Cumulatively, these four essays provide a rich and varied perspective on the role of law in mediating or exacerbating intergroup tensions and divisions, as well as facilitating or obstructing the possibilities for achieving intergroup justice. The narratives are of law and legal institutions. Though the deconstruction of white supremacist legal ideology may initially seem far and away from the more immediate political struggles for immigration relief, access to legal education and the prac-

20. 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) [hereinafter Luna, *Complexities of Race*]; Cheryl Little, *Intergroup Coalitions and Immigration Politics: The Haitian Experience in Florida*, 53 U. MIAMI L. REV. 717 (1999); Lyra Logan, *Florida's Minority Participation in Legal Education Program*, 53 U. MIAMI L. REV. 743 (1999); Virginia P. Coto, *LUCHA, The Struggle for Life: Legal Services for Battered Immigrant Women*, 53 U. MIAMI L. REV. 749 (1999).

tice and politics of designing and running an alternative legal services program, each essay provides a unique perspective on the challenge of promoting inter-group solidarity in theory and practice. Theory without practice is a hollow luxury only the privileged can indulge; however, practice without theory too readily collapses complexity into a unidimensional struggle that can be counterproductive in the struggle for inter-group justice. Indeed, the complex social, political, cultural, economic and legal dimensions of the different struggles recounted in each of these essays is precisely the reason why theory and practice must remain in dialectical engagement.

BEYOND DIFFERENCE: DECONSTRUCTING THE LEGAL STRUCTURES
OF SUBORDINATION

Professor Luna's essay on the complexities of race aptly opens the first cluster of essays on inter-group solidarity by exploring points of commonality and difference across two otherwise disconnected fields of legal doctrine.²¹ The first is constituted by the antebellum legal struggle of emancipated Blacks to obtain the status and privileges of U.S. citizenship, a struggle that culminated in the infamous *Dred Scott v. Sandford* decision of 1856, which propelled the United States into its bloody civil war. In *Dred Scott*, the Supreme Court declared that all Blacks, whether free or slave, were ineligible for U.S. citizenship because of the inherent inferiority of the African race. The court also accorded the property rights of southern slave owners a privileged constitutional status, denying both Congress and the free-states the legal authority to confine the institution of slavery to the territorial boundaries of the slave-states. The second field is marked by the legal struggles of Mexican-Americans to retain their lands in the territories ceded by Mexico after the Mexican War of 1846. These struggles generated a long line of cases in which Mexican landowners were systematically dispossessed of their lands for the benefit of white settlers, land speculators and gold-diggers.

By juxtaposing the historical tribulations of Blacks and Chicanas/os across these two very different sociolegal contexts, Professor Luna strikes three themes worth further comment and reflection. First, Professor Luna's essay makes historical reality a central concern in the articulation of anti-subordination legal theory. The history she recounts is of legal interpretation. It is a history of the arbitrary and inconsistent adjudication of rights asserted by different outsider groups across different

21. Luna, *Complexities of Race*, *supra* note 20; see also Guadalupe Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a Naked Knife*, 4 MICH. J. RACE & L. 39 (1998).

points in time and space.²² It is also a history, the telling of which is designed to reveal how the internal coherence of legal doctrine has been repeatedly subordinated to the external imperatives of white supremacy — a history that can only be told by deconstructing the judicial decisions that constitute this history. Through this deconstructive analysis, Professor Luna's essay is able to link the distinct histories of free Blacks and Mexican landowners *both to each other and* to a critical analysis of the legitimacy of legal interpretation and the role of law in the re/production of subordination. Second, her essay also opens new avenues of critical analysis into the way white supremacist ideology articulates the legal meaning of U.S. citizenship, a recurring theme in LatCrit scholarship and throughout this symposium.²³ Finally, her analysis offers a valuable point of departure for developing an ethic and assessing the political implications of intergroup comparisons.

Professor Luna locates her historical analysis in the field of legal discourse. Her objective is to reveal otherwise invisible similarities, demonstrating that free Blacks and Mexican land owners confronted a common context of struggle despite apparent differences in their particular experiences of subordination within white supremacy. Professor Luna reveals these similarities by deconstructing the interpretative strategies and legal arguments used to rationalize the judicial decisions that produced these different experiences. The differential treatment of property rights across these two contexts provides a particularly valuable point of comparison. By invoking the concept of due process, the *Dred Scott* decision afforded slaveowner's rights of property a constitutional status that simultaneously contracted Congressional power and projected the legal effect of slave-state laws beyond their territorial jurisdiction. The *Dred Scott* decision was so immediately explosive because it cast slaves as property subject to constitutional protection everywhere in the country. In then Chief Justice Taney's view, slave owners were entitled to travel through and reside within the free states and territories with their slaves and were further entitled to have their property rights in slaves protected by due process despite the fact that slavery was illegal

22. I follow Professor Luna's terminology, which itself follows Professor Matsuda's earlier rejection of the term "minority" in favor of the term "outsider" on the grounds that the former terminology contradicts "the numerical significance of the constituencies typically excluded from jurisprudential discourse." Luna, *Complexities of Race*, *supra* note 20, at 695 n.20 (citing Mari Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320 (1989)).

23. See Arriola, *INS Raids*, *supra* note 4; 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 (1997); Enid Trucios-Haynes, *The Role of Transnational Identity and Migration*, 28 U. MIAMI INTER-AM. L. REV. 293 (1997).

in the free states and territories.²⁴ Since Dred Scott's claim to U.S. citizenship was premised on his status as a freeman emancipated by the act of residing in free territory, the Court's constitutional analysis stripped him of his legal claim to freedom, and hence to the citizenship status upon which his right to invoke federal diversity jurisdiction ultimately depended.²⁵

Professor Luna contrasts the costly protection granted the property rights of slaveholders to the treatment of Mexican property owners, whose land title claims purportedly were protected by the Treaty of Guadalupe Hidalgo. Read through the lens of legal precedent, the history of land adjudication in the ceded territories is a history of arbitrary rulings and of blatant disregard for established precedent. It is a history of nothing less than judicial lawlessness. While the United States was treaty-bound to grant U.S. citizenship to Mexican nationals choosing to remain in the ceded territories and to respect their property rights as established under Spanish and Mexican law, neither the implementing legislation, nor the process of land adjudication complied with these obligations. Under the terms of the Treaty of Guadalupe Hidalgo, Spanish and Mexican land titles were to be given legal effect in northamerican courts, yet reference to Hispanic law was, at best, inconsistent. In some instances, courts applied Hispanic law, demonstrating their famili-

24. See Stuart A. Streichler, *Justice Curtis's Dissent in The Dred Scott Case: An Interpretive Study*, 24 HASTINGS CONST. L.Q. 509, 534 (1997) (noting Taney's position that "[a]n act of Congress which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offence against the laws could hardly be dignified with the name of due process of law.").

25. Dred Scott's substantive claim was that he was a free man by virtue of his years of residency in Illinois, a free state, and in the territories of the Louisiana Purchase that were designated free by the Missouri Compromise. Scott had traveled to these areas from his original place of residence in Missouri, a slave state, in the company and with the permission of his owner, John Emerson. Scott had married and resided in free territory for a number of years before returning to Missouri with his wife and children at Emerson's request. Back in Missouri, Emerson died and Scott sued for his freedom in state court. Settled precedents at the time held that slaves who traveled to and resided within the jurisdiction of a free state or territory, with permission of their owners, were automatically free. Residence within these jurisdictions effected this emancipation precisely because slavery was not legally recognized in these areas. It was further settled that once emancipated by residence in a free state or territory, the free individual was not re-enslaved by mere act of returning to or residing within a slave state, but was rather entitled to have her/his free status legally recognized within the slave state. When the Missouri Supreme Court reversed the jury verdict rendered in Scott's favor and, in the process, reversed these established precedents, Scott brought suit in federal court, invoking the court's diversity jurisdiction, which applies to cases "between Citizens of different States." Scott asserted Missouri citizenship in his suit against John Sanford, who was the brother of his owner's widow and was, at the time of the lawsuit, a citizen of New York. See Jane Larson, *A House Divided: Using Dred Scott to Teach Conflict of Laws*, 27 U. TOL. L. REV. 577 (1996); Mark A. Graber, *Desperately Ducking Slavery: Dred Scott and Contemporary Constitutional Theory*, 14 CONST. COMMENT. 271 (1997).

arity with its requirements and with their own duty to apply it; yet, in other cases, Hispanic law was inexplicably ignored or blatantly misrepresented.²⁶ In a similar vein, even a minimalist interpretation of due process would eschew arbitrary and inconsistent adjudication; yet Mexican land title cases are rife with such inconsistencies as border the irrational. Cases applied shifting burdens of proof, in some instances requiring documentary evidence of title, while, in others, mere parole evidence was allowed to suffice. In some cases, actual physical residence on the claimed property was required to confirm title despite the claimant's valid documentary evidence. In other cases, title was confirmed solely on the basis of documentation of doubtful authenticity. Indeed, through this morass of arbitrary adjudication, Professor Luna finds only one regular and predictable consistency: Anglo claimants tended to win title to land, while Mexican claimants tended to lose.

Certainly, *Dred Scott* and the long line of Mexican land title cases occupy very different sociolegal fields and might therefore be readily distinguished. The Mexican land title cases might be read as just another example of the United States repeated failure to respect customary international law and honor its treaty obligations. *Dred Scott*, by contrast, might be dismissed as aberration, an idiosyncratic moment of judicial lapse — like a handful of equally infamous Supreme Court decisions.²⁷ However, the value of Professor Luna's analysis is that it nevertheless reveals a common context of struggle shared by Blacks and Mexicans and otherwise obscured by the fact that these instances of dispossession are coded in the abstractions of legal discourse and articulated across very different sociolegal contexts. In particular, Professor Luna's search for commonalities challenges LatCrit scholars to think critically about the way the doctrinal evolution of Anglo American property rights regimes is directly implicated in the material dispossession and economic marginalization of communities of color both within and beyond the United States.²⁸ Her point, after all, is that the elevated con-

26. See Peter L. Reich, *Western Courts and the Privatization of Hispanic Mineral Rights Since 1850: An Alchemy of Title*, 23 COLUM. J. ENVTL. L. 57 (1998); Robert V. Urias, *The Tierra Amarilla Grant, Reises Tijerina, and the Courthouse Raid*, 16 CHICANO-LATINO L. REV. 141 (1995).

27. See Symposium, *The Long Shadow of Korematsu*, 40 B.C. L. REV. 1; 19 B.C. THIRD WORLD L. J. 1 (1999).

28. See, e.g., Adrienne D. Davis, *The Private Law of Race and Sex: An Antebellum Perspective*, 51 STAN. L. REV. 221 (1999) (examining the impact of slave/master sexual relations through lens of antebellum wills and estate cases); Margalynne Armstrong, *Race and Property Values in Entrenched Segregation*, 52 U. MIAMI L. REV. 1051 (1998) (exploring the impact of racism on value of Black-owned property and the interpretation of the anti-discrimination mandate in the struggle for fair housing); Keith Aoki, *No Right to Own?: The Early Twentieth-Century "Alien Land Laws" As a Prelude to Internment*, 40 B.C. L. REV. 37; 19 B.C. THIRD WORLD L. J. 37 (1998) (laws barring agricultural land ownership by Asians); Gloria L. Sandrino, *The NAFTA*

stitutional status and due process protections accorded the property rights of slaveowners in *Dred Scott* were nowhere seen when the property rights at issue were the rights of Mexican nationals to retain the lands to which they were entitled under customary international and federal treaty law, thus suggesting that the protection of property depends more on the racial identity of the property owner, rather than the abstract elements of property law.

LatCrit scholars can usefully follow Professor Luna's lead in many directions, for example, by comparing the way abstract legal principles requiring just compensation in instances of expropriation have been applied when the expropriated are foreign direct investors in third world countries as compared to indigenous peoples separated from their communal lands and livelihoods by forced relocation.²⁹ Indeed, once the search for commonalities leads us to center the interpretation of property rights regimes in our critical analysis of white supremacy, a whole range of familiar questions are rendered all the more compelling: we might ask not only how relations of subordination have been historically constructed through the differential legal protection afforded white property owners as compared to non-white property owners, but might also begin to develop a critical analysis of the way some economic interests are accorded the legal status of a property right, while others are not.³⁰

Investment Chapter And Foreign Direct Investment in Mexico: A Third World Perspective, 27 VAND. J. TRANSNAT'L L. 259 (1994) (providing critical analysis of First/Third World battles over scope of duty to compensate expropriation).

29. See, e.g., Jose E. Alvarez, *Critical Theory and the North American Free Trade Agreement's Investment Chapter Eleven*, 28 U. MIAMI INTER-AM L. REV. 303 (1996-97) (critical analysis of investor rights regime established by NAFTA reveals how economic and political interests of privileged are given priority of over economic and political rights of poor); Keith Aoki, *Neocolonialism, Anticommons Property, And Biopiracy in The (Not-So-Brave) New World Order of International Intellectual Property Protection*, 6 IND. J. GLOBAL LEGAL STUD. 11 (1998) (new wave expropriation of indigenous peoples through "biocolonialism"); Iglesias, *International Economic Law*, *supra* note 15, at 386 (noting that the rights of property so centrally featured in the Cuban Liberty and Democracy Act are not equally respected when the property rights at issue are the rights of indigenous peoples displaced from their communal lands without just compensation).

30. For an analysis calling for critical legal scholarship that centers the legal structures of political economy in the analysis of white supremacy, see Elizabeth M. Iglesias, *Out of the Shadow: Marking Intersections In and Between Asian Pacific American Critical Legal Scholarship and Latina/o Critical Theory*, 40 B.C. L. REV. 349; 19 B.C. THIRD WORLD L. J. 349 (1998) [hereinafter Iglesias, *Out of the Shadow*]. To this end, a critical comparative analysis of the way economic interests have/not been recognized as property rights across different sociolegal contexts might provide significant insights in developing an anti-essentialist anti-subordination analysis of the legal structure of American political economy. Compare, Reich, *supra* note 26 (recounting the doctrinal manipulations that integrated subsurface mineral rights into ownership of surface lands), with *Local 1330 United Steel Workers of America v. United States Steel Corp.*, 631 F.2d 1264 (6th Cir.1980) (refusing to recognize community property rights as basis for enjoining management to sell factory it had decided to close despite evidence of profitability, and devastating impact of closure on community that had assisted company with public subsidies and other "giveback").

THE SUPREMACY OF CITIZENSHIP: BEYOND A DISCOURSE OF
ABSOLUTE DIFFERENCE

Professor Luna's comparative analysis also provides important insights into the way the search for commonalities through inter-group comparisons can expand the opportunities for intergroup identification and solidarity. For example, Taney's reasoning denied Dred Scott U.S. citizenship on the grounds that he was Black and that Blacks were so inherently inferior that they could never constitute a part of "the people of the United States."³¹ It is not hard to see how the brutal racism of this decision might easily be configured around a discourse of fundamental and irreconcilable difference.³² Such a discourse would, however, offer very little room for comparative projects of the sort Professor Luna has forwarded here because, in a discourse of absolute difference, *the only thing that matters* is that there is a fundamental difference between losing one's property through theft, corruption and racial bias and being altogether denied the self-possession of one's own body and mind, one's labor and sexuality.³³ A discourse of absolute difference destabilizes the search for intergroup commonalities, or rather rejects the project out of hand. In this discourse, Black and Chicana/o histories are positioned within a hierarchy of dispossession, with one group cast as "more dispossessed" than the other. Indeed, the experience of African American slavery is cast as so profoundly unbridgeable — an abyss so separate and apart from the experiences of Chicanas/os in the ceded territories — that there is no meaningful point of reference or departure for constructing a common identity or forging a common agenda around these different histories of dispossession. The wrongs can never be compared; therefore the boundaries of difference can never be traversed, and intergroup solidarity is that much more ephemeral.³⁴

By contrast, in juxtaposing the *Dred Scott* decision to the Mexican land title cases, Professor Luna challenges LatCrit scholars to seek the commonalities of oppression without collapsing these two distinct histories into one false norm.³⁵ The payoff is a new perspective on the way

31. Luna, *Complexities of Race*, *supra* note 20, at 710.

32. See CLAUD ANDERSON, *BLACK LABOR, WHITE WEALTH: THE SEARCH FOR POWER AND ECONOMIC JUSTICE* (1994).

33. See, e.g., Dorothy Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GENDER & L. 1, 7-10 (1993) (recounting brutality of slave system); see also Sumi K. Cho, *Multiple Consciousness and the Diversity Dilemma*, 68 U. COLO. L. REV. 1035, n.103 (1997) (arguing for a unified racial critique of white supremacy based on commonalities in the racial trauma of slavery visited upon indigenous peoples and Blacks).

34. See Angela P. Harris & Leslie Espinoza, *Afterword: Embracing the Tar-Baby: LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1585; 10 LA RAZA 499 (1997) (exploring the tensions between the rhetoric of Black exceptionalism and multiracial coalitions).

35. Luna, *Complexities of Race*, *supra* note 20.

law is implicated in the present day configuration of white supremacy. Read through the discourse of Black exceptionalism, *Dred Scott* is about slavery — a form of oppression uniquely experienced by Blacks in this country. Being about slavery, the decision is dead precedent, thoroughly discredited and consigned to historical infamy. Read, by contrast, through a discourse of common oppression, *Dred Scott* is about the configuration of state power around a citizen/non-citizen dichotomy. Indeed, the language Professor Luna quotes from the *Dred Scott* opinion makes it abundantly clear that the decision not only denied free Blacks citizenship, but in doing so, transfigured a representative government of limited powers into an imperial state. This is because the constitutional framework of government underpinning the *Dred Scott* decision reveals a state that claims the power to govern, without any legal limitations, a class of persons whose interests it does not even pretend to represent.³⁶ These persons are the non-citizens, who do *not* constitute part of “the people of the United States,” do *not* “hold the power,” do *not* “conduct the government through their representatives,” and therefore do *not* “enjoy the rights and privileges” that the constitution secures only to its citizens.³⁷ Unlike slavery, the forms of oppression that have been organized around the citizen/non-citizen dichotomy and effectuated through the exercise of imperial power, both domestically and internationally, are common to many, including Blacks who have never been enslaved.³⁸

36. See Ediberto Román, *The Alien-Citizen Paradox and Other Consequences of U.S. Colonialism*, 26 FLA. ST. U. L. REV. 1 (1998); Efren Rivera Ramos, *The Legal Construction of American Colonialism: The Insular Cases (1901-1922)*, 65 REV. JUR. U.P.R. 225 (1996).

37. Luna, *Complexities of Race*, *supra* note 20, at 713, quoting *Dred Scott* opinion:

The words ‘people of the United States’ and ‘citizens’ are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the “sovereign people,” and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word ‘citizen’ in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.

Id.

38. For example, a discourse of common oppression might reveal otherwise invisible interconnections in the denial of political rights to non-citizens and the felony disenfranchisement laws that operate defacto to construct many Blacks as non-citizens. Compare Nora V. Demleitner, *The Fallacy of Social “Citizenship,” or The Threat of Exclusion*, 12 GEO. IMMIGR. L. J. 35 (1997) (arguing that permanent residents have a compelling claim to political representation and

Read through this discourse, the reasoning of *Dred Scott* is still alive and well in the present day configuration of white supremacy. Its present day target is no longer the Black American, as such, but the foreign,³⁹ the poor,⁴⁰ and those who are cast as "national security" threats.⁴¹

TOWARD AN ETHIC AND POLITICS OF INTERGROUP COMPARISONS

By juxtaposing the struggles of Blacks and Chicanas/os across these two very different sociolegal contexts, Professor Luna demonstrates the potential value of inter-group comparisons. These comparisons reveal the kinds of structural interconnections that can help LatCrit scholars articulate a common agenda despite the different histories of dispossession. At the same time, she also recognizes that inter-group comparisons can be dangerous. She is therefore, careful to disclaim any essentialistic intent "to collapse the histories of people of color into one false norm." Instead, her stated purpose is "to demonstrate how law from one historical period established the[] subordinate status [of these two different groups]."⁴² For this reason, Professor Luna's essay provides a valuable point of departure for reflecting on the ethics and politics of intergroup comparisons.

participation), with Virginia E. Hench, *The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters*, 48 CASE W. RES. L. REV. 727 (1998) (noting that "[o]f a total voting age population of 10.4 million Black men in the United States, approximately 1.46 million have been disqualified from voting because of a felony conviction. Of these, 950,000 are in prison, on probation, or parole, and more than 500,000 are permanently barred by convictions in the 13 states that disenfranchise prisoners for life.").

39. Thus, for example, in *United States v. Verdugo-Urquidez*, 494 U.S. 1092, 110 S. Ct. 1839 (1990), the present-day court reasoned that the 4th Amendment did not apply extraterritorially to U.S. enforcement activities taken abroad against non-U.S. citizens because the latter did not constitute part of "the people" protected by the Constitution. Though the majority at no time cited the *Dred Scott* decision, its reasoning reveals the legacy of *Dred Scott*: a discursive order that can be readily reactivated to consolidate an imperial state. Because noncitizens are not part of "the people," they can, at any moment, be made the objects of unlimited state power.

40. *Saenz v. Roe*, 119 S. Ct. 1518 (1999), illustrates another way the "dead hand" of the *Dred Scott* decision reaches into present day legal controversies. In *Saenz*, a majority of the Supreme Court struck down a California statute imposing durational residency requirement by limiting Temporary Assistance to Needy Families (TANF) benefits through the recipients' first year of residence on the grounds it violated 14th Amendment right to travel. In dissent, Clarence Thomas cites the *Dred Scott* decision to support his contention that the rights and privileges of U.S. citizenship do not include welfare rights. *Id.* Cf. Dorothy E. Roberts, *Welfare and the Problem of Black Citizenship*, 105 YALE L. REV. 1563 (1996) (exploring the implications of racism through analysis linking welfare rights to a substantive vision of social citizenship).

41. See Gil Gott, *A Tale of New Precedents: Japanese-American Internment As Foreign Affairs Law*, 40 B.C. L. REV. 179; 19 B.C. THIRD WORLD L. J. 179 (1998) (arguing national security ideology legitimates deployment of imperial power to enforce white supremacy both within and beyond the territorial jurisdiction of the United States); Natsu Taylor Saito, *Justice Held Hostage: U.S. Disregard for International Law in the World War II Internment of Japanese Peruvians - A Case Study*, 40 B.C. L. REV. 275; 19 B.C. THIRD WORLD L. J. 275 (1998) (same).

42. Luna, *Complexities of Race*, *supra* note 20, at 711.

The key objective, viewed through a LatCrit normativity, is to ensure that our inter-group comparisons are performed in ways that promote the commitments and alliances that strengthen a community of solidarity. Indeed, my point is even more dramatic. Not only can different group histories and lived realities be compared in many different ways, but it is precisely for this reason that the value of any comparison turns on the kind of collective identifications and inter-group alliances such comparisons engender. Comparisons that undermine the possibilities for anti-essentialist solidarity and derail the anti-subordination imperatives of our theory and praxis ought to be rejected outright precisely because they are not *true* in any way that matters. Conversely, comparisons that promote these objectives ought to be embraced for further exploration and centered in our collaborative projects.⁴³

If this position seems to play fast and loose with inherited notions of “historical truth,” that too is untrue — in any way that matters. On the contrary, this position simply attaches a political imperative to the interpretative choices we make in telling our histories and comparing our subordinations. One happy truth of our otherwise decidedly unhappy era is that the once-upon-a-time illusion of a unitary history has been oh-so utterly destabilized by a proliferation of *our* discourses and perspectives. Rather than bemoaning the fact that as finite social beings, we each access history, like any other reality, through the contingencies of discursive orders that are always in flux,⁴⁴ LatCrit scholars need to understand this discursive flux — and the multiplicity of perspectives it generates — as precisely the reason why the histories we *should* tell are the histories of the future we are determined to create together.⁴⁵

43. See Iglesias, *Out of the Shadow*, *supra* note 30 (calling for more collaborative projects organized self-consciously around the exploration and comparison of particular histories). These kinds of comparisons show us commonalities even as they challenge us to confront and overcome our internal racisms, sexism, etc. They do not constitute a war of positions because the point is not to establish which group is more oppressed, but to understand how they are/were oppressed in order to change the way we are in community.

44. See DAVID HARLAN, *THE DEGRADATION OF HISTORY* at xx-xxii (1997). Lamenting the impact of postmodern thought on historical practice, Harlan asks “What now becomes of the “historical fact,” once so firmly embedded in its proper historical context — firmly embedded rightly perceived, and correctly interpreted from a single immediately obvious and obviously appropriate perspective? The overwhelming abundance of possible contexts and perspectives, the ease with which we can skip from one to another, and the lack of any overarching metaperspective from which to evaluate the entire coagulated but wildly proliferating population of perspectives — all this means that the historical fact, once the historian’s basic atomic unit, has jumped its orbit and can now be interpreted in any number of contexts, from a virtually unlimited range of perspectives. And if the historical fact no longer comes embedded in the natural order of things . . . then what happens to the historian’s hope of acquiring stable, reliable, objective interpretations of the past? *Id.* at xx.

45. See Jerome McCristal Culp, Jr., *Latinos, Blacks, Others & The New Legal Narrative*, 2 HARV. LATINO L. REV. 479 (1997); Elizabeth M. Iglesias, *The Inter-Subjectivity of Objective*

Attorney Cheryl Little's essay provides a valuable counterpoint. Her essay is based on years of committed advocacy on behalf of Haitian refugees. Hers is a story of an uphill battle on behalf of a vulnerable and disdained minority. Her point of departure is a critical analysis of NACARA, otherwise known as the Victims of Communism Relief Act.⁴⁶ This immigration legislation provides substantial immigration relief for nationals of Nicaragua, Cuba, El Salvador, Guatemala, the former Soviet Union and Warsaw Pact countries. Haitians are noticeably missing. Attorney Cheryl Little links their absence to a historical pattern of discrimination and exclusion, dating back to the initial wave of Haitian refugees fleeing the right wing brutality of the Duvalier regime and continuing through a series of instances in which Haitians have been singled out for differential treatment. This differential treatment is all the starker when juxtaposed against the treatment accorded Cuban refugees. Though both groups came to the United States fleeing dictatorship in their countries of origin, Haitians fleeing the political repression of the Duvalier regime received a very different reception than Cubans fleeing Castro in the freedom flotillas of the 1960s. This differential treatment has also generated significant intergroup tension and unrest. Haitians, subject to indefinite detention at Krome, have engaged in hunger strikes to protest the double standard that keeps them imprisoned, even as Cuban hijackers have been promptly released upon arrival in Florida. Haitians, intercepted at sea, have been repatriated to Haiti despite their claims of well-founded fear of persecution, while Cubans, rescued by the Coast Guard, have been flown to Miami and paroled into the community. Attorney Little sums up the differential treatment like this:

In many ways, immigration practices toward Cubans and Haitians have represented the extremes of United States policy. While immigration policy toward Cubans tends to be generous and humanitarian, even with recent repatriation, immigration policy toward Haitians tends to be stringent and inhumane.⁴⁷

Because so much of Attorney Little's argument is organized around a juxtaposition of Haitian and Cuban refugee experiences, her essay provides an appropriate moment to reflect anew and with greater precision on the political implications of the way intergroup comparisons are

Justice: A Theory and Praxis for Constructing LatCrit Coalitions, 2 HARV. LATINO L. REV. 467 (1997); George Martinez, *African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*, 19 CHICANO-LATINO L. REV. 213 (1998).

46. Nicaraguan Adjustment and Central American Relief Act (NACARA), Pub. L. No. 105-100, 111 Stat. 2160 (1997). NACARA is part of the Fiscal Year 1998 appropriations bill for the District of Columbia (H.R. 2607).

47. Little, *supra* note 20, at 732. The interdiction, detention and parole policies aptly call attention to the disparities in our treatment of Cuban and Haitian refugees.

articulated in LatCrit theory. It enables us to move from abstract discussions of the normative aspirations and commitments that ought to inform the practice of intergroup comparisons to the more difficult task of articulating a methodology for assessing such comparisons from a LatCrit perspective. The first step is to recognize that intergroup comparisons impact the formation of collective solidarities and political alignments by structuring the perception of similarities and differences within and between the varied and various groups that might potentially coalesce around any particular political project — in this case the politics of refugee policy. Comparing comparisons means assessing the way different intergroup comparisons tend to structure different political alignments and subjecting these alternative political alignments to anti-essentialist critical analysis informed by LatCrit commitments to anti-subordination politics.⁴⁸

Applying this methodology, it is worth noting that unlike Professor Luna, whose effort is to reveal suppressed commonalities in the legal construction of Black and Chicano subordination, Attorney Little's narrative account is organized around a discourse of absolute difference that emphasizes the uniqueness of the Haitian refugee experience by contrasting it to the experience of Cuban refugees. In doing so, her narrative marks the lines of similarity and difference along a racial schemata that casts Cuban refugees as racially white and Haitian refugees as racially Black. This racial dichotomization, though profoundly essentialized, may nevertheless further some anti-essentialist political realignments at least insofar as it destabilizes discourses used to pit domestic minorities against recent immigrants. Black Americans, in particular, have often been cast as the group most directly and negatively affected by the influx of immigrants.⁴⁹ Reading the treatment of Haitian refugees through a discourse that links their differential treatment to the fact that a large majority of Haitians are Black can be an effective way of combating the articulation of anti-immigrant politics among Black Americans. By showing how Haitian refugees have been singled out for particularly restrictive immigration exclusion, the discourse of absolute

48. See *supra* notes 15-16 and accompanying text.

49. See, e.g., ANDERSON, *supra* note 32 (complaining that immigrants are assisted at the expense of Black Americans); Toni Morrison, *On the Backs of Blacks*, in ARGUING IMMIGRATION 98 (Nicolaus Mills ed., 1994) (arguing that hatred of Blacks is a central step in the "Americanization" of immigrants so that "the move into mainstream America always means buying into the notion of American Blacks as the real aliens"); Juan Perea, *The Black/White Binary Paradigm of Race*, in THE LATINO/A CONDITION: A CRITICAL READER 365 (Richard Delgado & Jean Stefancic eds., 1998) (quoting Morrison and acknowledging that Latinas/os participate in this paradigm of "Americanization" by engaging in racism against Blacks or darker-skinned members of the Latino/a community" but noting that "[c]urrent [anti-immigrant] events . . . belie Morrison's notion of American Blacks as 'the real aliens'").

difference makes a clear link between exclusionary immigration policies and domestic racism. The domestic anti-racist agenda is thereby challenged to become more inclusive precisely because a politics of racial justice cannot ignore the differential oppression and exclusion of Black immigrants without invoking and/or activating a particularly problematic form of intra-Black hierarchy that privileges Black Americans over Black immigrant refugees. Thus, reading the Haitian immigration experience through the discourse of absolute difference may help expand and consolidate a pro-immigrant political coalition by foregrounding a perspective from which achieving justice for immigrants can be seen as a part of a broader struggle for racial justice in this country.

Although Attorney Little's discourse of absolute difference may help redefine the treatment of Haitian refugees as a matter of racial justice, the pro-immigrant political realignments fostered by this discourse can become truncated in two important respects. First, Haitians are not the only racialized immigrant group that has been treated unfairly and restrictively by U.S. immigration policy, and Black Americans are not the only domestically subordinated group that have cast themselves as particularly victimized by immigrant entry.⁵⁰ The discourse of absolute difference can truncate the coalitional solidarity that might otherwise be organized around these intergroup commonalities precisely because its account of racial injustice is based on the claim that harsh treatment received by other immigrant groups pales in comparison to the treatment Haitian refugees have received because they are Black. Rather than fostering a comprehensive and inclusive political agenda in opposition to racist immigration policies based on the substantive merits of each group's particular claims of injustice, intergroup comparisons articulated through a discourse of absolute difference tend to provoke intergroup competition over which group has received the harshest treatment.

Equally important, articulating a discourse of absolute difference forces Attorney Little to overlook intergroup commonalities and emphasize intergroup differences in ways that suppress other significant dimensions of U.S. refugee policy. While refugees from Cuba, Haiti, Guatemala and El Salvador have come to this country seeking refuge from dictatorship and persecution in their countries of origin, in Attorney Little's account, the totalitarian repression experienced in Cuba is reduced to the "relatively mild mistreatment of Cubans in their homeland (which results in a grant of asylum), while gross mistreatment of

50. See Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997) [hereinafter Johnson, *Latino Legal Scholarship*] (discussing Chicano perceptions of Mexican immigrants).

Haitians does not.”⁵¹ This juxtaposition helps articulate a discourse of racial difference, but only by minimizing the degree of repression in communist Cuba and suppressing the fact that, Guatemalan and Salvadoran refugees, who like Haitians experienced gross mistreatment and death squad activities in their countries of origin, also have been routinely denied political asylum.⁵² These facts do not fit neatly into a discourse of absolute difference because the totalitarian repression in Cuba, like the systematic denial of political asylum to Guatemalan and Salvadoran refugees, both suggest factors other than race are operative in the differential treatment of Cuban and Haitian refugees. These other variables include the articulation of U.S. national security ideology,⁵³ the doctrinal structure of U.S. refugee law, particularly its economic/political dichotomy, which justifies the exclusion of “economic refugees” even as the indeterminacy of the dichotomy renders every racialized immigrant group vulnerable to exclusion regardless of the objective merits of their claim to political asylum, and the unsettled controversy over the conditions and principles that justify international intervention in the “internal affairs” of repressive regimes.⁵⁴

To be sure, Attorney Little’s narrative account notes these variables, but only in passing. Her objective is to center the reality of racial discrimination in the way we understand the politics of refugee policy, and in this respect, she is entirely successful. Her compelling narrative leaves no doubt that eliminating racial discrimination from U.S. refugee policy is a compelling objective; nevertheless, her narrative does trigger doubts as to whether the kinds of intergroup coalitions needed to advance this objective are likely to coalesce around a political agenda defined by a discourse of absolute difference, particularly if this discourse is articulated through intergroup comparisons that minimize the substantive claims of justice of one group in order to buttress claims of discrimination made by another group. The challenge is to move beyond these kinds of intergroup comparisons. The question is how.

51. Little, *supra* note 20, at 734.

52. See Ari Weitzhandler, *Temporary Protected Status: The Congressional Response to the Plight of Salvadoran Aliens*, 64 U. COLO. L. REV. 249, 252 (“Two factors contributed significantly to the denial rate: the characterization of Salvadoran nationals as economic immigrants, and the Reagan and Bush Administrations’ foreign policies toward El Salvador.”); Note, *Political Legitimacy in the Law of Political Asylum*, 99 HARV. L. REV. 450, 458-64 (1985) (the political dimensions of economic conditions).

53. Kevin R. Johnson, *The Antiterrorism Act, The Immigration Reform Act, and Ideological Regulation in the Immigration Laws: Important Lessons for Citizens and Noncitizens*, 28 ST. MARY’S L. J. 833 (1997).

54. Cuban-American leaders in Miami have long called for the kind of intervention in Cuba that was undertaken to dislodge the Haitian military dictatorship that overthrew President Aristide. For statistics on the percentage of Miami Cubans who support military interventions of different sorts in Cuba, see <<http://www.fiu.edu/orgs/ipor/cubapoll/index.html>>.

The answer is to articulate a broader perspective from which the particular experiences and various claims of different groups can be seen as part of a common struggle for justice.

A moment's reflection on the variables marginalized by Attorney Little's narrative account may provide some direction. These variables give reason to doubt whether a political agenda defined by the objective of eliminating racial discrimination from U.S. refugee policy would be enough to achieve justice for Haitian refugees — even as they suggest a variety of perspectives from which all refugees inhabit a common context of struggle. All refugees, including Haitians, inhabit a world in which U.S. policy responses to human rights violations, both at home and abroad, are filtered through an aggressive and self-serving national security ideology,⁵⁵ in which restrictions on mobility and exclusionary policies can be directed with legal impunity at the world's poorest peoples, and in which the international community has not yet developed the legal norms and enforcement mechanisms to empower and protect peoples against the repression and abuses of internal elites.⁵⁶ Reading the differential treatment of Cuban and Haitian refugees through these variables, rather than the discourse of absolute difference, would activate very different political agendas and foster very different intergroup coalitions precisely because these variables link the critical analysis of U.S. refugee policy to a critical analysis of the U.S. imperial state, the production of poverty in the international political economy, and the failures of the interstate system of sovereign nations to sustain a world order based on respect for international human rights. These dimensions of domestic and international law and politics bear directly on the project of achieving substantive justice for Haitian refugees; however, their transformation implicates a fundamental reconfiguration of power relations and requires a discourse of mutual recognition and intergroup respect, not of absolute difference articulated through intergroup comparisons that minimize the substantive claims of one group to enhance those of another.

SUBSTANTIVE JUSTICE: BEYOND INTEREST CONVERGENCE

At the same time, the essay by Attorney Little effectively fore-

55. Gott, *supra* note 41.

56. For a substantive vision of the way the international legal order might mediate the relation between the sovereignty of states and the self-determination of peoples, see Henry J. Richardson, III, "Failed States," *Self-Determination and Preventive Diplomacy: Colonialist Nostalgia and Democratic Expectations*, 10 TEMP. INT'L & COMP. L. J. 1, 75 (1996) (revealing irrationality and offering alternatives to international legal doctrines designed to uphold concept of sovereignty by ignoring claims of liberation movements within nation-states until they "earn" such recognition through successful military actions— thus constituting civil war as only recourse).

grounds the difficulties of translating abstract assertions of intergroup commonalities into a practical politics of coalitional justice. In Attorney Little's narrative, the noticeable exclusion of Haitian refugees from the amnesties enacted by NACARA is significant, not only because it is linked to and informed by a long history of differential and discriminatory treatment towards Haitians, but because it represents an intergroup political betrayal in the corridors of Congress. Though a bipartisan and intergroup coalition, including leaders of the Black and Hispanic Congressional Caucuses, has been coalescing in response to growing community opposition to the continued and blatantly discriminatory exclusion of Haitians, Haitians still lack the political representation and committed advocacy other immigrant groups enjoy. The fact that Republican members of Congress supporting NACARA were willing and able to perform a so-called "jihad" for the benefit of Nicaraguan, but not Haitian, refugees raises profound questions about the practice of coalitional politics,⁵⁷ particularly in light of another part of the story. Confronted with assertions that including Haitians in NACARA would kill the bill, Haitian advocates might, nevertheless, have decided to press the point. They might, in effect, have chosen to perform their own "jihad" on behalf of the excluded Haitians. According to Attorney Little, they did not.⁵⁸ As a result, thousands of refugees and immigrants from Nicaragua, Cuba, El Salvador, Guatemala, the former Soviet Union and Warsaw pact countries are enjoying the benefits of NACARA, leaving Haitians to wonder whether their self-restraint and self-sacrifice in this instance will be remembered and reciprocated in the next.

Told as a story of sell-outs and sacrifices, the story of NACARA tracks a familiar problematic in the practice of coalitional politics. Years ago, Professor Derek Bell gave us the theoretical framework for understanding this problematic in the context of Black/White civil rights coalitions. Professor Bell forwarded an "interest convergence" theory of the way white people practice coalitional politics.⁵⁹ In this practice, intergroup unity and solidarity are grounded, not in any commitment to objective justice nor in any substantive vision of inter-racial equality, but rather in the contingencies of converging group interests. Inter-racial

57. According to Attorney Little, "Nicaraguan activists have said that Republican members of Congress carried out a jihad in obtaining legal status for them. They didn't do that for Haitians and others excluded and punished by the new law." Let's hope they do that now. Little, *supra* note 20, at 741.

58. Attorney Little notes that when it became apparent that there was a powerful effort to exclude Haitians in the legislation, "NACARA's architects maintained that if the Haitians were included the bill would die, and supporters of the Haitians in Congress agreed to permit the Central American refugee relief legislation to move forward without including them." *Id.* at 740.

59. Derek Bell, *Brown v. Board of Education & the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

civil rights coalitions were viable only so long as white people saw their own particular self-defined group interests furthered by supporting Black civil rights struggles. The much discussed collapse of the civil rights coalition, and increasing reactionary retrenchment aimed at affirmative action policies, minority business set-asides, entitlements programs, read against the backdrop of economic problems, provide ample evidence in support of Professor Bell's initial thesis.⁶⁰

Attorney Little's narrative reveals the way Haitian refugees were cast as politically expendable in the coalitional politics that achieved the enactment of NACARA. It thus raises the significant question whether minority groups, their political representatives and legal advocates are destined to replay the interest convergence politics through which the white majority has strategically maintained its privileges. It challenges LatCrit theory, in particular, to struggle with the problem of articulating a more meaningful foundation for our coalitional theory and praxis.⁶¹ Can we move the practice of intergroup coalitional politics beyond the pseudo solidarity and fleeting alliances of contingent convergence of interests? Of course, this question, itself, presupposes a level of perceived commonality that may have yet to be imagined in the local politics of South Florida.

In this context, the question asked by Attorney Lyra Logan in her essay in this symposium is whether Black and Cuban-American legislators, and the communities they purport to represent, can set aside their differences to establish common cause.⁶² She believes they can, and this belief is based on her experiences directing Florida's Minority Participation in Legal Education Program. The MPLE is a statewide, state-funded affirmative action program designed to increase minority participation in legal education through annual funding of scholarships for 200 minority law school students and 134 undergraduate pre-law students. Attorney Logan's express purpose in recounting the history of the MPLE Program is to reflect critically on the conditions that enabled Black and Cuban-

60. See John A. Powell, *An Agenda for the Post-Civil Rights Era*, 29 U.S.F. L. REV. 889 (1995) (linking disorganization of civil rights movement among other things to rise of colorblind ideology); Michael J. Klarman, *Brown, Racial Change and The Civil Rights Movement*, 80 VA. L. REV. 7 (1994) (recounting history); Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering in Post-Civil Rights America*, 95 MICH. L. REV. 821 (1997) (suggesting strategies for meaningful revival of civil rights agenda).

61. Iglesias & Valdes, *supra* note 2; Berta Esperanza Hernández-Truyol, *Building Bridges: Latinas and Latinos at the Crossroads*, in THE LATINO/A CONDITION, *supra* note 49, at 24, 30-31 [hereinafter Hernández-Truyol, *Building Bridges*] (explaining the many ways Latinas/os can tap the experience of intersectionality and multidimensionality to build bridges across differences both within Latina/o communities and between Latina/o and other minority communities); Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 HARV. LATINO L. REV. 495 (1997).

62. Logan, *supra* note 20, at 743.

American state legislators to transcend a politically partisan and racially divisive competition over the creation and location of "a minority law school" in Florida to develop the intergroup, bi-partisan coalition that succeeded in enacting the MPLE Program.

Attorney Logan explains that the MPLE program was proposed by Florida's State University System as an alternative to competing proposals to establish a new law school at Florida International University (FIU), which is 50% Hispanic and 11% Black, or to reopen a law school at the historically Black Florida A&M University (FAMU). FAMU's all-Black law school was closed by Florida's all white legislature in 1965 in order to open another white law school at Florida State University. The decision was purportedly made to enable Florida to meet an expected increase in the demand for lawyers, since FAMU's law school was reportedly failing to graduate sufficient numbers of lawyers that would later be admitted to the Florida Bar. The recent controversy over whether a new law school should be located at FIU, a proposal favored by Florida's Cuban legislators, or reopened at FAMU, the alternative supported by Florida's Black legislators, was sparked by various reports indicating that minorities are seriously under-represented throughout the legal profession in Florida. Indeed, in 1990, the Florida Supreme Court Racial and Ethnic Bias Study Commission concluded that a critical shortage of minority law students, attorneys and judges was a major factor contributing to the denial of equal justice for minorities in the State.

According to Attorney Logan, the MPLE program aptly illustrates the value of intergroup coalitions. The proposal to establish the scholarship program was introduced in 1994 by a Black representative in the House and a Latino Senator, as a bi-partisan, biracial compromise bill. This bi-partisan, bi-racial support has enabled the program to survive the transfer of power between Democrats and Republicans in the various elections since 1994. Rather than continuing a partisan and racially divisive competition for a law school that the State had no intention of funding, the Black and Hispanic legislators were able to put aside their differences and find common cause in a program that would help both groups achieve the objective of increased minority participation in legal education and the legal profession.

The problem is that, as her account indicates, this successful coalitional initiative is a case study in interest-convergence politics. Indeed, the success of the coalition was grounded in the contingencies of the moment, most particularly on the fact that the State could not justify giving either group the law school it wanted. If the State had decided to give a school to one group, this bi-racial, bi-partisan coalition would never have coalesced. Because the State did not, the two groups had to

cooperate or walk away with nothing. This coalition is, however, fragile and unstable. Each group still wants "its own" law school, and both FIU and FAMU have indicated that a law school is among their top priorities for 1998-2003. The stakes are as daunting as the coalition is fragile. As Attorney Logan observes, "[i]f that battle reheats and intensifies, chances for future alliances on any issue will become more and more remote. Also, if one group gets a school, the other group may well find its under-representation left inadequately addressed."⁶³ The fragility of this coalition is directly attributable to the fact that it is based on a contingent convergence of interests, rather than a substantive vision of and commitment to intergroup social and racial justice. Thus, while Attorney Lyra Logan views the MPLE as evidence of progress in intergroup coalitional politics, a LatCrit sensitivity must demand more from both groups.

At a minimum, a substantive vision of intergroup justice would eschew any political move to cast the problem of equal justice as a simple matter of increasing the number of Blacks and Latinas/os enrolled in Florida law schools or admitted to the Florida Bar, particularly when number-counting can operate to pit Blacks and Latinas/os against each other in a zero-sum competition. From the perspective of the Black and Latina/o residents of Florida seeking equal justice and affordable legal services, the crucial question is not who is going to control any proposed minority law school, nor how many Blacks and Latinas/os are admitted to the Bar, but how that control will be exercised and whether those attorneys will be trained, committed and enabled to practice law for social, racial, and ethnic justice.

The current structure of the legal profession in Florida, as in many places, is hardwired for inequality and injustice.⁶⁴ Despite the supposed over-supply of lawyers in South Florida, low and middle income individuals and families, as well as many small businesses, are literally priced out of the market for private legal services to such a degree that their legal needs go unattended or they resort to *pro se* representation.⁶⁵ State supported legal services for the poor are grossly underfunded.⁶⁶

63. *Id.* at 747.

64. See *Where the Injured Fly for Justice*, REPORT AND RECOMMENDATIONS OF FLORIDA'S SUPREME COURT RACIAL AND ETHNIC BIAS STUDY COMMISSION, Part I (Dec. 11, 1990); see generally JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* (1976).

65. In 1998, the problems caused by the high number of pro-se litigants in family court prompted the Florida Supreme Court to approve a family law self-help program. See *Court Approves Family Law Self-help Centers*, FLA. BAR NEWS, Dec. 15, 1998, at 5. The problem, however, remains. See, e.g., Jan Pudlow, *Court Asks Family Law Section to Turn Attention to Pro Se Problem*, FLA. BAR NEWS, AUG. 15, 1999, at 17.

66. See, e.g., Talbot D'Alemberte, *Tributaries of Justice: The Search For Full Access*, 73-

Recent law school graduates inspired by a vision of social justice and a desire to practice law in the public interest are hard-pressed finding *any* public interest jobs, and certainly any that pay a living wage after accounting for law school loan repayment obligations.⁶⁷

Rather than empowering minority students to become effective advocates on behalf of the poor and the marginalized or even to achieve individual fulfillment through personally meaningful work, many minority students experience their legal education as a socialization process that numbs their sense of justice, subjects them to relentless microaggression, triggers profound identity crises, ignites their appetites for status and money, distances them from the communities they initially wanted to help and, if they are successful by mainstream standards, condemns them to slave away for years at any job that allows them to repay their student loans, while they take solace in the fact they are making more money than they have the free time to spend.⁶⁸ Integrating minorities into this pre-existing status quo without serious attention and proactive efforts to reform the way legal education, the legal profession and the delivery of legal services are currently structured may provide Black and Latina/o students with a well-deserved opportunity for individual advancement through professional education, but it will not in and of itself ensure that low and middle income Blacks and Latinas/os, not to mention the poor of any race, will enjoy equal justice, nor that these new attorneys will be ready and able to practice law for social justice.

Clearly, the MPLE program is a remarkable feat in an era of backlash and retrenchment. The question that Attorney Logan's essay effectively raises for LatCrit theory and praxis is this: how can we use the contingencies of interest convergence as a stepping stone toward, rather than a restriction upon, the achievement of social justice. Both the civil rights and the MPLE experiences show that coalitions based on interest-convergence can be put to good use, but those two experiences also counsel LatCrits to transcend the limitations and fragilities of these stra-

APR FLA. B.J. 12, 14 (1999) (noting that after Republican Party took control of Congress in 1995, Congressional funding of legal services for the poor dropped, in real dollars, to its lowest level ever – 12% below what it was when Reagan took office in 1981).

67. See, e.g., Bruce A. Green, *Foreword: Rationing Lawyers: Ethical And Professional Issues in The Delivery of Legal Services to Low-Income Clients*, 67 FORDHAM L. REV. 1713 (1999); cf. Lewis A. Kornhauser & Richard L. Revesz, *Legal Education And Entry Into The Legal Profession: The Role of Race, Gender, And Educational Debt*, 70 N.Y.U. L. REV. 829 (1995) (advocating scholarships rather than loan repayment assistance based on analysis linking public interest career choices to factors other than debt burden).

68. Margaret E. Montoya, *Masks and Resistance*, in THE LATINO/A CONDITION, *supra* note 49, at 276; Alex M. Johnson, Jr., *The Under-Representation of Minorities in the Legal Profession: A Critical Race Theorist's Perspective*, 95 MICH. L. REV. 1005 (1997); Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School And Law Practice*, 64 S. CAL. L. REV. 1231 (1991).

tegic alliances. With this critical account of the MPLE experience, Attorney Logan usefully reminds LatCrit scholars that our challenge is to imagine and implement coalitions based on a vision of and commitment to substantive justice.

In this context, Attorney Coto's essay is a particularly instructive counter-example.⁶⁹ Like many students of color, Attorney Coto experienced her Latina identity as a compelling source of empathy for and commitment to the marginalized communities with whose struggles and suffering she could in many ways identify. Unlike most law students, however, Attorney Coto was able, with the help of an Echoing Green Fellowship and the sponsorship of the Florida Immigrant Advocacy Center, to translate her empathy into an innovative legal services project, which she founded upon graduating from the University of Miami School of Law in 1997. This project is called LUCHA. Its mission is to serve battered immigrant women by providing critical legal assistance under "VAWA," the Violence Against Women Act, a federal law that makes the prevention of violence against women "a major law enforcement priority" and includes provisions enabling battered immigrant women to self-petition for permanent resident status without the cooperation or participation of their abusive spouse. VAWA also provides suspension of deportation relief; however, without access to effective legal services, the vast majority of battered immigrant women lack the information and resources necessary to obtain this relief. Like other immigrants, these women face barriers of language, culture and social economic marginalization, but they face additional barriers because they are trapped in relationships with men who abuse them and manipulate their fears of deportation in order to exert power and maintain control.

The LUCHA project is especially noteworthy because it reflects a self-conscious and self-critical effort to implement an alternative model of legal services that is less focused on traditional litigation and more focused on reducing the dependency and isolation that make battered immigrant women so desperately vulnerable. While the traditional legal services model constructs the client as passive beneficiary of the benefits secured and rights vindicated through the agency of the lawyer advocate, LUCHA seeks to relocate and inspire agency in and among the battered immigrant women themselves. Formed as a grassroots membership organization, its strategy is to enable and promote self-determination by involving battered immigrant women in a larger community where mutual engagement and assistance become the vehicles of individual empowerment. LUCHA members are eligible for free legal services on immigration matters; however, to become a LUCHA member,

69. Coto, *supra* note 20.

women must take a six-part educational program and commit a portion of their own time to assisting other women. The educational component raises women's consciousness and provides them with necessary information on relevant topics in immigration law, workers' rights, domestic violence, public benefits, victim's rights, community resources and lessons on how to be heard by government. The mutual assistance creates community and organizes social networks otherwise disrupted by the dislocations of the immigrant experience and the isolation of domestic battery.

Despite its many strengths, the LUCHA project faces two significant sets of obstacles. The first is that the structure and philosophy of LUCHA run counter to elitist attitudes that currently structure the delivery of legal services to the poor. The second is that the project is primarily supported by a terminal fellowship. These two obstacles illustrate the difficulties or conundrums facing even the most creative and entrepreneurial minority law students committed to doing public interest work. On the one hand, their identification with their client communities can make them highly critical of the way traditional legal services operate and eager to innovate new approaches; on the other hand, established legal services are resource strapped and hardly interested in, nor often able, to hire recent graduates to develop and implement untested innovations. As a result, even the most innovative projects and ideas are increasingly dependent on terminal fellowships and grants, making these projects fragile, unstable and vulnerable to sudden termination, even after tremendous efforts have been invested in their success. The unsurprising result, too often, is a disillusioned disengagement and retreat to well-trodden paths of career development. Thus, Attorney Coto's story reflects the range and structure of possibilities and obstacles confronting recent law graduates determined to translate anti-subordination theory into meaningful practice. The reforms needed to alter this picture are systemic and profound — and attest to the fact that a struggle to increase minority participation in legal education, unconnected to a project of systemic reform in the delivery of legal services to disadvantaged communities, may fall short of the mark.

This is not to suggest that increasing minority participation in legal education and the profession is not a compelling social justice objective.⁷⁰ It is to say that the struggle to achieve equal justice for Blacks,

70. Enrique R. Carrasco, *Collective Recognition as a Communitarian Device: Or, Of Course We Want to Be Role Models!*, 9 LA RAZA L. J. 81 (1996) (arguing that the project of radical reform requires connected critics acting as role models within institutional contexts of legal education and the profession where power is created and distributed); Phoebe A. Haddon, *Keynote Address: Redefining Our Roles in The Battle For Inclusion of People of Color in Legal Education*, 31 NEW ENG. L. REV. 709 (1997).

Latinas/os and other marginalized groups in Florida requires more comprehensive reforms, reaching deep into the heart of legal education and forward into the structure of the legal profession.⁷¹ These reforms can barely be imagined, let alone achieved, without the kinds of sustained, collaborative, bi-racial and bi-partisan alliances that the MPLE coalitional initiative conjures, but has not yet fully delivered. By this, I mean alliances that are grounded in a substantive vision of justice and of the role of law and legal education in effectuating that vision, rather than a contingent convergence of interests among two factions that *choose* to position themselves in a racially marked, politically partisan, zero-sum competition for control of a non-existent law school at the expense of the collaborative intergroup political alliances needed to achieve more comprehensive and systemic reforms in the structure of legal education and the organization of the legal profession — to the detriment of the minority interests they purport to represent and, more generally, to the cause of social, racial justice through law in this State.⁷²

B. *Inside Outside: Mapping the Internal/External Dynamics of Oppression*

The second cluster of essays maps the dynamics of internal and external oppression within Latina/o communities, even as it illustrates a rich multiplicity of perspectives from which the theory and practice of anti-subordination politics can be mapped around the inside/outside metaphor.⁷³ Professor Padilla first activates the inside/outside metaphor by focusing our attention on the phenomenon of internalized racism. Acknowledging that Latina/o subordination is not just a function of external oppression, but also of internal acquiescence in the negative stereotypes that undermine individual self-confidence and destroy collective solidarity, challenges LatCrit scholars to theorize the relationship

71. See Eric K. Yamamoto, *LatCrit III: Introduction to Plenary Session Four*, 53 U. MIAMI L. REV. 683 (1999) (discussing SALT Action Campaign); see also Phoebe A. Haddon, *Education for a Public Calling in the 21st Century*, 69 WASH. L. REV. 573 (1994); Joan Howarth, *Teaching in the Shadow of the Bar*, 31 U.S.F. L. REV. 927 (1997).

72. More recently, minority legislators have reportedly put aside their differences and agreed to sponsor a joint proposal to establish two new public law schools in Florida, one at FAMU and the other at FIU. See Mark D. Killian, *FAMU/FIU Join Forces for Law Schools*, Fla. Bar News, July 1, 1999, at 1. Only time will tell whether this marks the beginning of a more substantive alliance based on mutual commitment to intergroup justice or just another variation on, and instance of, the interest-convergence politics of the past.

73. Laura M. Padilla, *Social and Legal Repercussions of Latinos' Colonized Mentality*, 53 U. MIAMI L. REV. 769 (1999); Abreu, *supra* note 17; Berta Hernández-Truyol, *Latina Multidimensionality and LatCrit Possibilities: Culture, Gender, and Sex*, 53 U. MIAMI L. REV. 811 (1999) [hereinafter Hernández-Truyol, *Culture, Gender, and Sex*]; Siegfried Wiessner, *¡Esa India! LatCrit Theory and the Place of Indigenous Peoples Within Latina/o Communities*, 53 U. MIAMI L. REV. 831 (1999); Roberts, *BlackCrit Theory*, *supra* note 8.

between internal and external oppression, to familiarize ourselves with the psychologies of liberation⁷⁴ and to put into practice the affirmation of self that Professor Abreu's essay so effectively displays.

The four essays by Professors Abreu, Hernández-Truyol, Wiessner and Roberts in very different, though complementary and synergistic, ways introduce a second problematic that is also usefully analyzed through the heuristic lens of the inside/outside dichotomy. LatCrit theory has from the beginning sought to articulate an inclusive and multidimensional critical legal discourse, aimed at centering the previously marginalized experiences of Latinas/os, even as it continuously aims toward an ever more inclusive vision and practice of anti-subordination politics and intergroup justice. The initial birth and current trajectory of LatCrit theory has in some instances been celebrated as a natural outgrowth of the intersectionality and hybridity that characterizes Latina/o identities. Latinas/os are said to be uniquely positioned to bridge the hierarchical divisions of race, ethnicity, class, immigration status, linguistic marginality, gender and sexual orientation because Latina/o identity constitutes the intersection of all of these terms.⁷⁵

It is by now, for example, a LatCrit mantra that Latinas/os come in all races and colors: we are of African, Asian, European and Indian heritage. "We speak Spanish, English, Spanglish, regional dialects and indigenous tongues."⁷⁶ Latinas/os are, in this respect, a universal that contains all particulars, and whose liberation is therefore intricately intertwined and directly implicated in the liberation of all particulars.⁷⁷ Against this backdrop, Professor Abreu's reminder that LatCrits must avoid essentializing our intersectionality sounds a helpful note of caution, even as Professor Hernández-Truyol's account of the multiple forms of subordination experienced by Latina lesbians within their own communities, Professor Wiessner's emphasis on the oppression of indigenous peoples within *every* Latina/o community across the globe, and Professor Robert's discussion of the particularities of Black experiences and political identity, all challenge LatCrit scholars to examine how Latinas/os construct insiders and outsiders within the very midst of Latina/o communities. Our aim must be to avoid the practices and

74. See, e.g., IGNACIO MARTIN-BARO, *WRITINGS FOR A LIBERATION PSYCHOLOGY* (1996); NANCY CARO HOLLANDER, *LOVE IN A TIME OF HATE: LIBERATION PSYCHOLOGY IN LATIN AMERICA* (1997); GERALDINE MOANE & JO CAMPLING, *GENDER AND COLONIALISM: A PSYCHOLOGICAL ANALYSIS OF OPPRESSION AND LIBERATION* (1999); *A GUIDE TO DYNAMICS OF FEMINIST THERAPY* (Doris Howard ed., 1986).

75. Valdes, *Under Construction*, *supra* note 1, at 1106 (noting that Latina/o communities are characterized by high degree of *mestizaje* or racial intermixture and internal diversity).

76. Hernández-Truyol, *Building Bridges*, *supra* note 61, at 30.

77. Iglesias & Valdes, *supra* note 2, at 557; see also *infra* at pp. 622-29.

assumptions that would replicate these insider/outsider configurations in the articulation of LatCrit theory, the consolidation of the LatCrit community and the organization of LatCrit conferences.

INTERNALIZED OPPRESSION AND THE PROBLEMATICS
OF SELF-AFFIRMATION

By invoking the notion of internalized oppression, Professor Padilla's essay offers a valuable point of reference from which to explore the role of individual psychological and spiritual agency in the process of anti-subordination liberation praxis. Read in tandem with Professor Abreu's account of her experiences as a Cuban immigrant, these two essays center the psychological processes through which outsider groups both participate in and transcend their own marginalization, as well as the way individual experiences of inclusion and exclusion are mediated by culturally specific narratives of identity and community. As narratives of Latina/o group identity, these two essays project very different accounts of the way the constitution of Latina/o identities is experienced by members of different Latina/o groups.

Professor Padilla's essay calls Latinas/os to begin our anti-subordination theory and praxis by acknowledging the reality of internalized racism in Latina/o communities, a phenomenon in which, according to Professor Padilla, "'Mexicans internalize the Anything But Mexican' mind set." For Professor Padilla, exposing instances of internalized oppression is an important first step in any liberation struggle because internalized racism is the primary reason why Latinas/os collaborate in their own denigration, sabotage the opportunities and undermine the positive efforts of other Latinas/os. She cites numerous examples: the fact that significant numbers of Latinas/os in California voted to deny immigrants access to many benefits they had previously enjoyed (Prop. 187), to end affirmative action in government contracting and public colleges and universities (Prop. 209), and to end bilingual education (Prop. 227). Latinas/os who have internalized the negative stereotypes promulgated by the white majority are alienated both from themselves and from each other. Thus, they experience even their substantial achievements through the insecurity of an imposter and project their self-doubts and self-hatred onto other Latinas/os.

Overcoming subordination requires overcoming this internalized racism, and to this end, Professor Padilla offers numerous suggestions as to how Latinas/os can develop more positive self-identities and more empowered and empowering relations with other Latinas/os, both within

and beyond the legal academy.⁷⁸ These practices have the common elements of collective solidarity, mutual assistance and sustained engagement in each other's struggles and aspirations — over time and across the many different social, political and professional settings where Latinas/os can make common cause in promoting each other's achievements and development — including LatCrit conferences.

Professor Abreu's essay, by contrast, offers a narrative in which Cuban identity has been experienced as a source of pride, privilege and unique opportunities. She describes her own experience of being Cuban as an experience of being "where it was at."⁷⁹ Cuban identity most certainly marks a whole constellation of differences between her and the Anglo majority, but in Professor Abreu's narrative, these differences are experienced of a piece with the talent of a Luciano Pavarotti or the intellect of an Albert Einstein. "Difference," she notes, "is negative only when it is constructed as such."⁸⁰ Being Cuban never felt like a negative thing, nor did she ever feel inferior because she was Cuban. This is not to say that she never felt excluded, stereotyped or pressured to conform to the roles and positions the majority culture allots to immigrants in general and Latinas in particular. It does mean that these instances of exclusion produced no permanent damage in her sense of self because she, like many of the first and later waves of Cuban refugees, experienced their presence in this country as a temporary phenomenon triggered by the disruptions of the Cuban revolution. For many Cubans, the memory of a privileged pre-revolutionary status in Cuba and the dream of return, not to mention the human capital and economic resources some Cubans were able to take into exile, provide the social psychological resources through which many in the Cuban-American and "Ameri-Cuban" community combat their "minoritization."⁸¹

These two essays provide a unique opportunity to explore the wide range of discourses through which Latina/o identity is mapped across the multiplicity of differences and similarities that constitute us as individuals marked by, or invested in, a Latina/o identity. Their focus is internal, self-critical and self-reflective. Though they perform the project of constituting a Latina/o identity in very different ways, each does so undeniably *from the inside* of a discourse, consciousness and community that are as internal to the Latina/o construct, as they are external to each other. The differences are striking. Where Professor Padilla reflects now on the broader significance of the fact she never dated any of the Chicanos

78. Padilla, *supra* note 73, at 779-84.

79. Abreu, *supra* note 17, at 794.

80. *Id.* at 800.

81. *Id.* (attributing the term minoritized to Celina Romany).

with whom she went to college, Professor Abreu remembers dating only Cuban boys in high school; where Professor Padilla speaks of Chicanas/os distancing themselves from the Spanish language, Professor Abreu recounts the concerted and assuredly draconian efforts through which her parents ensured she would grow up bilingual; and where Professor Padilla speaks of Chicana/o feelings of inferiority at the margins of a dominant white society, Professor Abreu recounts the decidedly critical perspective her Cuban upbringing gave her on Anglo culture — a perspective that shielded her from ever feeling excluded by a society into which she never wanted to assimilate.

Read in counterpoint, these two essays give substantive content to the general observation that the way individuals and groups respond to experiences of oppression and exclusion is both central to the development of personal and social agency and informed by the different cultural narratives we internalize.⁸² They also demonstrate how the project of Latina/o liberation implicates existential questions of universal significance, in this instance provoking a critical analysis of the relationship between the internal experience of one's own agency and will to flourish and the external structural constraints that might otherwise determine our fate by consigning us to the margins.⁸³ Poised between the discourses of free will and determinism, between the constraints of structure and the possibilities of agency, is a subtextual conflict between those who construct Latina/o identity through a discourse of victimization and those who eschew any connection to a victim identity.⁸⁴ Read in counterpoint, the essays activate this tension because they challenge LatCrit scholars to reconcile Professor Padilla's "reconstructive para-

82. See, e.g., Elizabeth M. Iglesias, *Rape, Race and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality*, 49 VAND. L. REV. 869, 878 n.18 (1996) [hereinafter Iglesias, *Rape, Race and Representation*] (challenging the characterization of male power in feminist theory as an inescapable force in women's lives by arguing that the content and exercise of agency is guided more by the different cultural narratives we internalize than by "the reality" of the world we inhabit).

83. See Iglesias, *Structures of Subordination*, *supra* note 5 (arguing structures may not determine our fate but they do raise the costs of finding ourselves and each other).

84. Professor Abreu asks whether, as a Cuban, she would want to embrace a pan-ethnic Latina/o identity: "If the price of counting [as a Latina/o] is being cast in the role of victim, do I want to count?" Abreu, *supra* note 17, at 801-02. Cuban-American culture not only eschews any connection to a victim identity, but has also been exceedingly successful at affirming Cuban identity in Miami and everywhere and elsewhere — so much so that Cuban self-affirmation is the subject of internal jokes and external criticism. See, e.g., EARL SHORRIS, *LATINOS: A BIOGRAPHY OF THE PEOPLE* 62-76 (Avon Books, 1992). At the same time, Professor Abreu's narrative provides an additional and often suppressed perspective on the politics of Cuban inclusion in the "Hispanic category" when she recalls being told that, as a Cuban, she didn't really count. Abreu, *supra* note 17. Her experiences at Cornell University are not unique. Indeed, Cuban-Americans and Ameri-Cubans have long been excluded from the minority category for admissions purposes at the University of Miami School of Law.

dox" with Professor Abreu's celebration of self and assertions of indomitable agency.

The reconstructive paradox refers to the difficulties of enacting one's liberation from within a society that barely notices "the most insidious types of social evil because those evils tend to be so ingrained."⁸⁵ If Latina/o marginality and inferiority are so pervasive in our society, where or how, as Professor Westley asks, do Latinas/os find the resources to resist acquiescing in the very power that constructs us?⁸⁶ Professor Abreu responds that Latinas/os should seek these resources of self-affirmation and personal agency in the fact Latinas/os are always both insiders and outsiders all at once. Drawing energy and affirmation from those contexts in which we are insiders prepares us to combat the power that, in other contexts, would cast us as outsiders. The problem, as Professor Abreu acknowledges, is that, unlike herself, not all Latinas/os know the experience of being inside a group that is privileged by class, education, or social status. Not having access to an inside that is materially privileged or socially valued means having to create a self- and other-affirming identity from the bottom or the outside.

To be sure, Professor Abreu recognizes that "[r]efusing to acknowledge victimization does not transmute a victim into a non-victim."⁸⁷ Her point, as I see it, is that the impact of victimization is, in many though not all instances, fluid and indeterminate. There is always some avenue of agency. And even if there isn't really, the individual who always believes there is a way forward (or out) is more likely to flourish than an individual who internalizes the discourses and credits the practices that cast her as inferior or inadequate. Personal agency, like any great achievement or failure, is from this perspective a manifestation of the will to be and believe.⁸⁸ But even here, engaging Professor Padilla's reconstructive paradox means confronting the question: where does the outsider, one lacking access to the sorts of material, educational or social privilege Professor Abreu admits to enjoying, or one, who — like the Latina lesbian of whom Professor Hernández-Truyol writes — finds herself multiply rejected, despised and excluded from all the identity groups or communities with which she might otherwise identify and align herself, where does someone so positioned — at the bottom and on the outside — find the will and resources to manifest an alternative vision *from the bottom or the outside*?

85. Padilla, *supra* note 73, at 779.

86. Robert Westley, *Lat Crit Theory and the Problematics of Internal/External Oppression: A Comparison of Forms of Oppression and InterGroup/IntraGroup Solidarity*, 53 U. MIAMI L. REV. 761 (1999).

87. Abreu, *supra* note 17, at 801.

88. See U.S. ANDERSEN, *THREE MAGIC WORDS* (Melvin Powers Wilshire Book Co. 1954).

Read in this context, Professor Hernández-Truyol's essay contributes a particularly valuable critical perspective on the significance of internalized oppression as well as on the configuration of insider/outside positions within Latina/o communities. Tracking earlier accounts of the profoundly sexist constructs through which Latina/o culture structures heterosexuality and consolidates familial interdependence around the images of female sexual purity and maternal self-sacrifice, Professor Hernández-Truyol notes how Latina/o culture routinely invokes the strictures of Catholic religiosity to regiment a form of heterosexuality that empowers men and smothers women. Under the weight and burden of the virgin/whore dichotomy, *heterosexuality* is constituted as a practice of male dominance and female self-negation, while the expression of female sexual agency or autonomy is cast as a dangerous step toward a rapid and ineluctable free fall into a life of sin, perversion and vulnerability to male sexual dominance.⁸⁹ And yet, however oppressive these cultural constructs may be for straight Latinas, Professor Hernández-Truyol is right to insist that Latina/o culture is even more virulent in its oppression of lesbians *as lesbians*.

Though all Latinas must negotiate the rigidity of the virgin/whore dichotomy every time and everywhere it is invoked to confine Latina assertions of autonomy and self-determination within the parameters of permissibility dictated by heteropatriarchal normativity or to bully Latinas into doing and being only those things a Latina can do or be without being labeled "a whore," nevertheless, in this context, Latina lesbians must, in addition, negotiate a cultural reality that sums itself up like this: *Mejor puta que pata*. As Professor Hernández-Truyol indicates, this cultural adage says it all: "The social and religious factors and influences that render sex taboo for *mujeres* in the *cultura Latina* are intensified, magnified and sensationalized when imagining lesbian sexuality."⁹⁰ As bad as the whore is, the lesbian is worse. The fact that Latina lesbians have nonetheless found ways to develop and express a self- and other-affirming identity reflects the power and resilience of

89. See Iglesias, *Rape, Race and Representation*, *supra* note 82, at 929-43 (discussing impact of virgin-whore dichotomy on Latina/o sexuality and offering image of sacred prostitution as resource and example of psycho-cultural resistance), and at 918-29 (discussing gender ideology underlying maternal roles in Latina/o culture and arguing for a culturally nuanced psycho-analytical model of identity formation that recognizes the significance of maternal power and the centrality of familial interdependence in Latina/o culture); see also Jenny Rivera, *Domestic Violence against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, in ADRIEN K. WING, *CRITICAL RACE FEMINISM* 259, 260 (1997) [hereinafter WING, *CRITICAL RACE FEMINISM*] (critically analyzing Latina/o cultural constructs of "El Macho" and the sexy latina).

90. Hernández-Truyol, *Culture, Gender, and Sex*, *supra* note 73, at 823.

humanity asserting “I am and I count” against all odds,⁹¹ but it does not change the fact that the homophobia that marks her a lesbian also makes her an alien outsider — marginal and irrelevant, perverted and unnatural — everywhere and anywhere, but most painfully *within* her own Latina/o family and community.⁹²

By centering the experiences of Latina lesbians, Professor Hernández-Truyol projects a perspective from which the anti-subordination imperative now pending on the LatCrit agenda far exceeds the anti-subordination potential of any strategies that would reduce this imperative to a struggle against internalized oppression or would ground Latina/o liberation on the identification and reclamation of some insider position we have all purportedly experienced at sometime, somewhere or another. This is not to say that these strategies, as articulated by Professors Padilla and Abreu, have no anti-subordination potential. It is just to suggest that the anti-subordination potential of these seemingly different strategies is limited by a common element that, but for Professor Hernández-Truyol’s intervention, might be easily overlooked. This common element is that neither strategy really addresses the problem of *outsiders within* the Latina/o community.

Professor Abreu’s reflections on the insider/outsider dynamic conjure but do not really engage the problem because she intentionally conflates the difference between outsider status and difference itself. While she may be quite right to insist that “difference” is negative only when it is constructed as such, there is still a vast difference between being “different” in the way of a Luciano Pavarotti and being different in the way of a Latina lesbian. The difference between these ways of “being differ-

91. See Mutua, *supra* note 8 (analyzing white racism as function of obsession with refusal of Black people to accept their dehumanization).

92. See Iglesias, *Structures of Subordination*, *supra* note 5, at 488-97 (linking Latina lesbian experience of multiple exclusions/inclusions in different political communities to argument that anti-essentialist institutional arrangements must be designed in ways that effectively mediate and simultaneously enable both individual autonomy and collective action). See also Francisco Valdes, *Notes on the Conflation of Sex, Gender and Sexual Orientation: A QueerCrit and LatCrit Perspective*, in *THE LATINO/A CONDITION*, *supra* note 49, at 543 (discussing the strong heteronormativity of Latina/o cultures). For critical discussion of sexual orientation in Miami, the site of LatCrit III, see Francisco Valdes, *Below All Radars: An Ethnographic Portrait of Latinas/os Sexual Orientation and the Law in the Making of Miami’s “New Enclave,”* 33 MICH. J. L. REFORM; 5 MICH. J. RACE & L. (forthcoming 2000). See generally Francisco Valdes, *Acts of Power, Crimes of Knowledge: Some Observations on Desire, Law and Ideology in the Politics of Expression at the End of the Twentieth Century*, 1 IOWA J. GENDER, RACE & JUSTICE 213, 223-28 (1997) (discussing various strategies focused on increasing sexual minority visibility as central to Queer politics and self-empowerment); Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities and Interconnectivities*, 5 SO. CAL. L. REV. & WOMEN’S STUD. 25 (1995) (proffering “interconnectivity” as a strategic concept enabling intra- and inter-group coalitions that accept difference and make respect for it integral to antisubordination theory and praxis).

ent” is precisely the fact that some differences, like sexual orientation, race and gender *are in fact* constructed as negative. As a result, the proposal to ground Latina/o liberation on the self-valorization of one’s difference rings a little hollow precisely because the project of self-valorization smacks of other-world psycho-spiritual realization, rather than the material and institutional transformation of the real-world configurations of power and privilege that are currently invested in maintaining these negative constructions of difference — precisely because these constructions help reproduce and legitimate hierarchical relations, both *within* and against Latina/o communities, in profound and material terms.

Professor Padilla’s discussion of internalized oppression skirts the same problem in a different way. This is because the deconstruction of internalized oppression addresses a psycho-cultural dynamic in which the self is pitted against *itself*. In the case of Latina lesbians, overcoming internalized oppression may help the Latina lesbian, like other victims of relentless oppression, to resist the practices and discourses of subordination and exclusion and may thus enable her to revalue and respect both herself and other lesbians, but it does not eliminate the reality of homophobic oppression in *la cultura Latina* precisely because, and to the extent, this oppression is embedded in the very different dynamic of the self against its “other.”

In this context, what Professor Hernández-Truyol’s intervention suggests is that anti-subordination theory and praxis must make a clear distinction between *internalized* and *internal* oppression within Latina/o communities: the first dynamic targets sameness; the second targets difference. The first is activated by self-hatred and self-doubt, the second by hatred or fear of the Other. Overcoming the first, requires that we learn to value ourselves. Overcoming the second requires that we learn to value others. Learning to value ourselves does not automatically translate into the valuing of others, particularly “Others,” in whose difference Latina/o culture has inscribed its most virulent prejudices and whose acceptance and full inclusion within the Latina/o community would threaten and profoundly destabilize the routine practices and ingrained ideologies through which traditional relations of power and dominance are culturally performed and legitimated. It therefore follows that self-valorization can be only part, though — as Professors Abreu and Padilla powerfully demonstrate — an important part, of the anti-subordination agenda that drives LatCrit theory and practice. The other part requires that, in learning to value Others, who are *at the bottom or on the outside* of their particular contexts, we learn to value ourselves in *a different way* — in a way that does not reproduce the

prejudices and hierarchies of the various supremacies we seek to transform.

DECONSTRUCTING RACIAL HIERARCHIES AND DE-CENTERING HISPANIC IDENTITIES IN LATCRIT THEORY

Like Professor Hernández-Truyol, Professor Wiessner calls on Latina/o communities to practice anti-subordination principles *internally*.⁹³ His essay opens by recounting a vision of a world order based on human dignity, inclusion and respect for diversity. In this imagined order, the anti-subordination agenda articulated by Latina/o communities raises compelling claims of justice. Nevertheless, he finds fault in the fact that LatCrit scholarship has seemingly turned a blind eye to the plight of indigenous peoples.⁹⁴ This asserted failure to engage the struggles of indigenous peoples jeopardizes the legitimacy of Latina/o demands for equal treatment and respect. In Professor Wiessner's words, "If we do not respect the legitimate claims of others, we forfeit our own."⁹⁵ Indeed, the struggles of indigenous peoples are particularly appropriate matters for LatCrit attention precisely because they implicate a whole array of current and historical discrimination and exploitation by Hispanic Latinas/os, both in Latin American countries, where Hispanic Latinas/os constitute a dominant class, and elsewhere and everywhere Latinas/os display the conscious and unconscious racism that is endemic in Latina/o cultural sayings and practices toward indigenous peoples.⁹⁶ Just as Latinas/os resist our subordination within Anglo society, Professor Wiessner's objective is to challenge the subordination of indigenous peoples within Latina/o society.

Professor Weissner makes his case by examining the legacy of Hispanic conquest in Latin America. This legacy is a history of physical and cultural genocide. From the initial encounter with the Spanish Conquistadors through the more recent history of military dictatorships,

93. Wiessner, *supra* note 73.

94. Professor Wiessner bases this assertion on the fact that "a recent 'Annotated Bibliography of Latino and Latina Critical Theory' manages to painstakingly describe seventeen distinct 'themes' of 'critical Latino/a scholarship,' and fails to mention the indigenous condition in any one of them." *Id.* at 838. But see Luz Guerra, *LatCrit y la Des-colonización: Taking Colón Out*, 19 CHICANO-LATINO L. REV. 351 (1998); Iglesias & Valdes, *supra* note 2, at 568-73 (reflecting on themes inspired by plenary panel on indigenous peoples at LATCRIT II).

95. Wiessner, *supra* note 73, at 837.

96. Professor Wiessner recounts an incident in which a Chilean friend responded to an automobile incident in Miami by hurling an anti-Indian epithet at the other driver. Other LatCrit scholars have noted the anti-Indian prejudices expressed in Latina/o cultural practices. See, e.g., Elvia Arriola, *Voices from the Barbed Wires of Evil: Women in the Maquiladoras*, *Latina Critical Legal Theory and Gender at the U.S.-Mexico Border*, 49 DE PAUL L. REV. 3 (forthcoming 2000) (recounting anti-Indian references invoked to deter childhood conduct deemed inappropriate for a *muchachita*).

indigenous peoples in Latin America have been tortured, massacred, robbed, enslaved and displaced from their communal lands by the brutality of scorched earth military campaigns, international development projects, U.S. sponsored drug enforcement search and destroy missions, and multinational companies seeking free access to their natural resources. Theirs is a struggle for physical and cultural survival, for self-determination and for land. Their current legal status in countries like Brazil, Venezuela, Nicaragua and Mexico reveals the legal legacy of the Hispanic conquest as well as the increasing influence and impact of neo-liberal hegemony in Latin America. In Brazil, for example, Professor Wiessner notes that indigenous peoples are still subject to a special regime of tutelage, which casts them as "relatively incapacitated" and places them under the guardianship of the Brazilian state. Government decrees initially promulgated to protect indigenous rights to their ancestral lands have been rolled back by more recent decrees designed to afford private commercial interests the right to contest Indian land demarcations in an adversarial process. By outlining the present day legal struggles of indigenous peoples in the various countries of Latin America, Professor Wiessner reveals the continued complicity of Latin American elites in the expropriation of these subjugated, but resurgent Indian nations, even as he notes with approval the legal advances being made in some countries like Colombia and Chile.

This is not to say that Professor Wiessner's analysis is beyond criticism. Perhaps to underscore the compelling need for Hispanic Latinas/os to recognize their own complicity in the subordination of indigenous peoples, Professor Wiessner structures his argument around a comparison of the treatment indigenous peoples have received from Anglo and Hispanic conquerors. In this comparison, Hispanics fair poorly. According to Professor Wiessner, Anglo conquerors were more civilized and less brutal than Hispanic conquerors.⁹⁷ To support this brash generalization, Professor Wiessner quotes the work of Professor Steven McSloy.⁹⁸ The problem is that nothing in Professor McSloy's text sup-

97. Wiessner, *supra* note 73, at 840. "By contrast [to Hispanic colonization], the British colonization relied much less on brute force and the destruction of indigenous political structures and society; its subjugation strategies included to a much larger degree the mechanisms of negotiation and persuasion." *Id.*

98. *Id.* at 840 n.38 (citing Steven P. McSloy, "Because the Bible Tells Me So": *Manifest Destiny and American Indians*, 9 ST. THOMAS L. REV. 37, 38 (1996)). More specifically, he quotes McSloy's account of the way American Indian lands were taken:

How were American Indian lands taken? The answer is not, as it turns out, by military force. The wars, massacres, Geronimo and Sitting Bull - all that was really just cleanup. The real conquest was on paper, on maps and in laws. What those maps showed and those laws said was that Indians had been "conquered" merely by being "discovered."

ports Professor Wiessner's comparative assessment. The fact that the "the wars, massacres, Geronimo and Sitting Bull . . . [were] really just clean up," hardly suggests that the colonization of the Northern parts of the American continent was any more humane than the conquest of the South. If anything, the comparison Professor Wiessner activates suggests instead that the "British colonizers" were more unitary and less internally conflicted about their colonizer status. While Spanish colonizers struggled against internal opposition by Spanish religious elites, who deployed "the natural law theories of St. Thomas Aquinas" to compel recognition of indigenous peoples as subjects with inalienable rights under the law of nations, the "British" colonization was total — in the law, as much as in the flesh.⁹⁹

My point is not to defend the Spanish conquest of Latin America, or to suggest that the treatment of indigenous peoples was, or continues to be, anything but brutal. My point is rather to use Professor Wiessner's analysis as a reference point for further reflection on the commitments implicit in the LatCrit aspiration to promote an anti-subordination politics that is broadly inclusive and relentlessly anti-essentialist, as well as to reflect further on the politics and practice of intergroup comparisons. From this perspective, there is no question that Professor Wiessner's essay activates a problematic that often is organized around an inside/outside dichotomy and is most immediately apparent in debates over who has standing to criticize the practices of oppression and internal hierarchies within a subordinated community. This is because Professor Wiessner's pointed and comprehensive account of the way indigenous peoples have been exploited, marginalized and oppressed "within the Latino-Latina midst" is in no sense a *self*-critical intervention, as Professor Wiessner at no point claims a Latina/o identity. Thus, his contribution provides a valued opportunity to reflect not only on the substance of his criticisms, but also on the way LatCrit theory should position itself in debates over standing to criticize the reproduction of hierarchies within Latina/o communities. To this end, a LatCrit response to these sorts of criticisms needs to take note that the practice of coding criticism as external interventionism, like the discourses of cultural relativism, privacy, sovereignty and the individualization of guilt and innocence, are standard tropes, routinely invoked by elites the world-over to deflect criticism from their abusive and exploitative prac-

Id.

99. For an alternative perspective on the relative virulence of anti-Indian racism in Latin American and U.S. cultures, see, for example, Martha Menchaca, *Chicano Indianism*, in *THE LATINO/A CONDITION*, *supra* note 49, at 387 (recounting how racial caste system was dismantled in Mexico by the 1812 Spanish Constitution of Cadiz, only to be reinstated by U.S. racial laws in the territories ceded by Mexico after the Mexican War of 1846).

tices, as well as from their unearned privileges.¹⁰⁰ Thus, it is imperative that LatCrit scholars resist the tendency to dismiss external criticisms automatically, even as we reflect critically both on the difference between internal and external criticism and on the way we draw the internal/external line in responding to those particular criticisms we might want most to suppress.

At the same time, the analytical and empirical imprecision with which Professor Wiessner juxtaposes the colonization of North and South America, as well as his mere passing reference to the substantial efforts currently underway to incorporate indigenous peoples into LatCrit discourse should give self-constituted “outsiders” reason to pause before launching their well-intentioned criticisms. At a minimum, such criticisms need to avoid inflammatory over-generalizations that cast their comparisons in broad, ambiguous and unsubstantiated terms. Such comparisons do little to enlighten, though much to confuse the issues and inflame the politics of reaction and division. Nevertheless, the underlying truth of Professor Wiessner’s broader argument warrants serious LatCrit attention. Indeed, read through the heuristic of the insider/outsider dichotomy already thematized in the preceding essays by Professors Padilla, Abreu and Hernández-Truyol, his essay calls attention to, and prompts reflection on, the fact that none of these essays address the way their analysis might be relevant to the particular experiences of indigenous peoples, nor for that matter of Black Latinas/os and Asian Latinas/os — though these group experiences would certainly enrich our understandings of the social-psychological processes of internalized oppression as well as expanding our analysis of the way “difference” is used to configure insider/outsider positions within and between Latina/o communities.

To give just one brief example of the way attention to the particular realities of indigenous peoples might substantially enrich the analysis, even as it helps clarify the scope and meaning of LatCrit commitment to anti-essentialist anti-subordination theory consider the following: When Professor Padilla writes of internalized racism, she speaks specifically of the practices through which Chicanas/os undermine themselves and each other. The very concept of internalized oppression is activated around an imagined inside/outside. Internalized racism is not external oppression because it occurs *within* a delimited community, amongst its members, pitting insider against insider. Asking how this analysis might be rele-

100. See, e.g., Adrien K. Wing, *Critical Race Feminism and the International Human Rights of Women in Bosnia, Palestine and South Africa: Issues for LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV.337 (1996-97) (noting that male elites often resist compliance with basic human rights laws prohibiting discrimination against women by declaring their sexist customs and traditions essential elements of their culture).

vant to articulating a LatCrit perspective on the anti-subordination struggles of indigenous peoples means asking how the histories of enslavement, exclusion and extermination, as well as the current marginalization of indigenous peoples, both beyond and within the United States, would figure in a theory of Chicana/o internalized oppression? The discourse of Latina/o hybridity and *mestizaje* offers one ready response.¹⁰¹ In this response, the subordination of indigenous peoples figures centrally in the dynamics of internalized oppression because it is the indigenous aspect that makes Chicana/o identity a source of self-hatred and self-doubt.

The important point, however, is to see how this response falls short of the anti-essentialist commitments that ground the LatCrit project, even as it perhaps misses the mark of Professor Wiessner's criticism, for Professor Wiessner is not talking about the subordination of indigenous *identities*, but of *peoples*. Grounding LatCrit concern for their struggles in the discourse of Latina/o hybridity suggests that indigenous peoples are inside the Latina/o construct, and important to the LatCrit project, not *in and for themselves*, but rather because their experiences and realities have been important to the construction of Latina/o identities. To be sure, recognizing the indigenous and other racial mixtures that oftentimes are repressed in the constitution of Latina/o self-identifications has been one of the important advances achieved through the discourse of *mestizaje*; nevertheless, the anti-essentialist commitments underlying the LatCrit movement's aspiration to articulate a politics of intergroup justice will eventually require even further progress.

Indeed, fully recognizing and embracing the struggles for justice of indigenous peoples challenges the LatCrit movement to develop the critical discourses and implement the intergroup practices that will enable the LatCrit community to pursue three important objectives, simultaneously and in tandem: to continue articulating an anti-essentialist critique of the way the institutionalization and cultural performances of white supremacy marginalize different Latina/o communities in different ways, to de-center Hispanic identity in our conceptualization of Latina/o communities so that we can better understand the particular experiences and perspectives of minority groups *within* our communities, and ultimately to recognize and embrace the universal claims of right — to equality and dignity — that are everywhere constituted in the demand for justice and desire for inclusion expressed by every group oppressed by the articulation of white supremacy, both within and beyond the United States. Ultimately, the struggles of indigenous peo-

101. See Wiessner, *supra* note 73, at 832 n.5 (quoting Margaret Montoya, *Masks and Identity*, in *THE LATINO/A CONDITION*, *supra* note 49, at 40).

ples, like the struggles of Black and Asian peoples, are matters of Lat-Crit 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.¹⁰²

Read through the prism of these three objectives, the essays by Professors Padilla and Abreu make significant contributions to the Lat-Crit project, understood initially as a movement to articulate the particularities of Latina/o perspectives and experiences within the regime of white supremacy and to promote a pan-ethnic Latina/o political identity that can mediate and transcend the politics of division that is too often activated around the differences between Cuban-Americans, Puerto Ricans and Mexican-Americans.¹⁰³ They want to make Latinas/os "insiders" even as they make "the inside" a place worth inhabiting. But, as Professors Hernández-Truyol and Wiessner remind us, "the inside" we create must aspire always and everywhere to provide a home for those at the bottom of their particular contexts because 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 hybridity.

In this vein, Professor Roberts' contribution appropriately closes this cluster of essays.¹⁰⁴ Her essay is based on remarks she delivered at LATCRIT III in a colloquy programmed to open the focus group discussion entitled *From Critical Race Theory to LatCrit to BlackCrit? Exploring Critical Race Theory Beyond and Within the Black/White Paradigm*.¹⁰⁵ The purpose of this focus group was to expand the parameters of LatCrit discourse by triggering a critical analysis of the different ways in which the Black/White paradigm of race truncates and essentializes the liberation struggles of *Black* peoples, for example, by deflecting attention from the intra-group hierarchies and diversity that divide "the Black community," as well as by obstructing the *cross*-racial and multi-racial solidarities that might otherwise coalesce around issues of imperialism, colonialism, national origin discrimination, language rights, immigration policy, gender and sexual orientation. The hope was that

102. See Iglesias & Valdes, *supra* note 2, at 555-61 (noting attention to particularities critical to actualization of substantive justice); Enrique R. Carrasco, *Opposition, Justice, Structuralism and Particularity: Intersections Between LatCrit Theory and Law and Development Studies*, 28 U. MIAMI INTER-AMER. L. REV. 313 (1997) [hereinafter Carrasco, *LatCrit Theory and Law and Development*] (emphasizing the importance of particularity in LatCrit theory).

103. See Johnson, *Latino Legal Scholarship*, *supra* note 50; Ediberto Román, *Common Ground: Perspectives on Latino-Latina Diversity*, 2 HARV. LATINO L. REV. 483 (1997).

104. Roberts, *BlackCrit Theory*, *supra* note 8.

105. For a description of the substantive themes of the focus group, see <<http://nersp.nerdc.ufl.edu/~malavet/latcrit/archives/lciii.htm>>.

by creating a space and intentionally focusing attention on the sorts of intra-Black particularities constituted in and through the different histories, perspectives, political ideologies and transnational identities of Black Latinas/os and Caribbeans, we might begin the process of conceptualizing the critical methodologies, thematic priorities and substantive areas of law and policy that might form the center of a post-essentialist 'BlackCrit' discourse, which is just to say, a critical discourse that engages the particularities of Black subordination from an anti-essentialist perspective.

LatCrit stakes in such a project are high, for while LatCrit theory was itself born of the critical need to move beyond the essentialism of the Black/white paradigm toward a more inclusive theoretical framework that focuses, broadly and comprehensively, on the way the institutionalization and cultural performance of white supremacy affect *all* peoples of color, though in different ways, still the political impact of uncritically abandoning the Black/white paradigm would be indefensibly regressive.¹⁰⁶ To be sure, Asian and Latina/o communities have been marginalized by the Black/White paradigm and our increasing and mutual recognition of the commonalities that construct Asian and Latina/o subordination are among the most powerful new insights enabled by the anti-essentialist movement in Critical Race Theory.¹⁰⁷ Nevertheless, the inter-group solidarities this knowledge enables us to imagine and pursue cannot be promoted at the expense of our theoretical and political commitments to combating the particular forms of racism experienced by Black people, both in this country and abroad. If LatCrit theory were to abandon uncritically the Black/White paradigm, it would marginalize a substantial portion of the Latina/o community and betray our aspirations to substantive intergroup justice. Thus, the objective must be to move our understanding of white supremacy progressively beyond the Black/White binary of race, even as we acknowledge the

106. See Iglesias & Valdes, *supra* note 2, at 562-74 (urging LatCrit scholars to remain cognizant and vigilant lest in rejecting the Black/White paradigm, we uncritically equate Black and white positions within a paradigm that emerged from the very real oppression of whites over Blacks, as well as by non-Black minorities who have sought their own liberation in the delusions of a white identity); Chris Iijima, *The Era of We-construction: Reclaiming the Politics of Asian Pacific American Identity and Reflections on the Critique of the Black/White Paradigm*, 29 COLUM. HUM. RTS. L. REV. 47, 50 (1997) (warning that moves beyond the Black/White paradigm may be coopted by racist status quo); Taunya Lovell Banks, *Both Edges of the Margin: Blacks and Asians in Mississippi Masala, Barriers to Coalition Building*, 5 ASIAN L.J. 7 (1998) (articulating critique of "the middle position" as constituted by pervasiveness of Black/White paradigm in both dominant and minority consciousness and practices and advocating coalition-building among minority groups as alternative); see also Mutua, *supra* note 8.

107. See, e.g., Iglesias, *Out of the Shadow*, *supra* note 30, at 351-72 (exploring points of commonality between emerging Asian Pacific American Critical Legal Scholarship and LatCrit theory).

particular and virulent forms of anti-Black racism that are institutionalized and expressed in virtually every society across the globe, including Latina/o communities. Doing so requires that we center the particularities of Black subordination long enough to recognize the way anti-Black racism operates in Latina/o communities and the way the struggles of Black peoples, who are not Latina/o, are also implicated in the LatCrit project.

From this perspective, Professor Roberts essay makes two points worth further reflection. Her first point is to challenge a common misunderstanding of the meaning of “essentialism” in the anti-essentialist critique. White feminist legal discourse, for example, has construed this critique as an attack on any analysis that focuses exclusively on the experiences of one group of women without also addressing the experiences of other groups of women or, indeed, of all women in general. This misunderstanding may be genuine or opportunistic, but in either case, it makes it easier to deflect the impact of any analysis that focuses on the particular forms of oppression experienced by any particular group of women of color. Thus, when Professor Roberts writes or talks about the particular experiences of pregnant Black women in a racist criminal justice system, her analysis is at times discounted on the grounds that it does not discuss the experiences of other pregnant women in analogous situations. But, as Professor Roberts argues, the anti-essentialist critique, which launched Critical Race Feminism as a reaction against the exclusive attention feminist legal discourse was then giving the problems of white women, did not attack the practice of studying the problems of a particular group of (white) women, but rather the practice of assuming that this particular group represented all women.¹⁰⁸ As Professor Roberts puts it, “[w]riting about Black people is not essentialist in and of itself. It only becomes essentialist when the experiences discussed are taken to portray a uniform Black experience or a universal experience that applies to every other group.”¹⁰⁹

This important insight has profound implications for the way the LatCrit movement should understand and pursue the practice of producing anti-essentialist, anti-subordination critical legal scholarship and was, in fact, a driving force behind the initial decision to organize the “BlackCrit” focus group discussion at LatCrit III. The purpose of this focus group was to *operationalize*, within the LatCrit community and conference setting, a vision of intergroup solidarity and substantive justice that is *categorically different from* the vision that currently links the anti-essentialist critique to a particular, and ultimately unsatisfactory,

108. See WING, *CRITICAL RACE FEMINISM*, *supra* note 89.

109. Roberts, *BlackCrit Theory*, *supra* note 8, at 857.

representation of both the meaning and the practical and political implications of a commitment to “multiculturalism.” This alternative vision is referenced in, but not fully explained by, the call for “rotating centers” because the aspirations embedded in the practice of rotating centers are too easily confused with and overshadowed by an ingrained tendency to hear the call for critical attention to the particularities of subordination experienced by different groups as a call that can only be answered through the Balkanization of the universals that might otherwise bind us in solidarity.¹¹⁰

Against this backdrop, the decision to feature a focus group discussion exploring the necessity and possibilities of launching a new intervention in outsider scholarship provisionally styled “BlackCrit Theory,” was to perform a public event that, thereafter, would provide a meaningful point of reference for articulating a different vision of the way the anti-essentialist critique can (and should) mediate the relationship between universal and particular. The easiest way to explain this is to contrast the structure of the BlackCrit focus group at LatCrit III with the paradigm model through which the commitment to multiculturalism has been performed in other contexts.¹¹¹ Rather than organizing LatCrit III as a conference dedicated to *Hispanic* Latina/o issues and relegating discussion of the particularities of Black subordination to one of a number of concurrent sessions, in which different subgroups separate to discuss “their own” particular issues, the BlackCrit focus group was designed to center the problem of Black subordination in LatCrit theory and to invite all participants to focus on these particular problems, with the implicit understanding that these particular problems are of universal concern for all LatCrit scholars committed to an anti-subordination agenda based on substantive intergroup justice, and with the further understanding that future LatCrit conferences would, in similar fashion, seek to center the

110. See, e.g., Cho, *Essential Politics*, *supra* note 15 (expressing concern that the “anti-essentialist critique” may undermine collective solidarity and political engagement); see also A. Sivananda, *All that Melts into Air Is Solid: The Hokum of New Times*, RACE & CLASS, Jan.-Mar. 1990 (expressing concern that the post-modern politics of proliferating subject positions forsakes commitment to universality and solidarity); cf. Iglesias, *Structures of Subordination*, *supra* note 5, at 486-502 (challenging notion that proliferation of political identities undermines pursuit of “common good” and arguing, instead, that the genuine common good can only be discovered and achieved through the reconfiguration of anti-democratic institutional power structures that suppress the self-representation and expression of multidimensional and intersectional identities).

111. For example, in the labor context, the commitment to racial and/or gender equality has sometimes been expressed through the formation of separate racially marked or gender based caucuses within the broader collectivity, where members of the subgroup meet separately to discuss their particular problems and needs. For a critical analysis of the pros and cons associated with different institutional structures or arrangements that might be used to operationalize a commitment to anti-essentialist intergroup justice, see Iglesias, *Structures of Subordination*, *supra* note 5, at 478-86.

particularities of subordination confronting *other* marginalized and intersectional minority identities.

This latter point is crucial. By linking critical analysis of the particularities of subordination experienced by different groups to the practice of “rotating centers,” the BlackCrit focus group at LatCrit III clearly illustrates *why* the production of anti-subordination theory and praxis must be conceptualized and performed as a collective project, reflected in and strengthened by our mutual commitment, across our many differences, to remain engaged in each other’s issues *over time*. As Professor Roberts rightly notes, no *one* need, nor ever can, focus on everything at once, but the struggle against white supremacy requires that we — each individually and all collectively — increasingly learn to see and combat the multiple structures and relations through which the practices and ideologies of white supremacy have constructed the particular forms of subordination confronted, in different ways, by all peoples of color, both within and beyond the United States. Thus, the common project to transform the realities of white supremacy can only be realized through a collective and collaborative effort, in which *we teach each other* about the similarities and differences in the way white supremacy operates in our various communities. This by necessity requires a practice of “rotating centers,” even as this practice, in turn, requires a mutual commitment to remain engaged over time. Only members of a community committed to fostering an inclusive and collaborative anti-subordination project *for the long haul* can afford to decenter their own compelling problems to focus, instead, on the problems confronting people other than themselves.

It follows, therefore, that the practice of rotating centers can operate effectively only in the context of a genuine community, whose members’ commitment to remain engaged for the long haul can foster the kind of continuity needed to ensure that “the center” does, *in fact*, rotate from year to year and from venue to venue. It is this kind of community that the decision to feature a BlackCrit focus group at LatCrit III was designed to perform and promote. However, despite these seemingly unobjectionable intentions, the BlackCrit conference event generated significant controversy from two distinct perspectives, each of which sheds substantial light on the many challenges awaiting our collective attention. From one end, the critique was that, in centering Black subordination, LatCrit III was on the verge of taking “the Lat” out of LatCrit Theory.¹¹² From the other end, the critique was that, by centering Black subordination, LatCrit III was on the verge of assuming an umbrella position that was more appropriately left to the more universal and

112. See, e.g., Mutua, *supra* note 8 (reporting discussions at LatCrit III).

inclusive venue of Critical Race Theory.¹¹³ Both of these critiques, however, miss the point of featuring the BlackCrit focus group at LatCrit III — though they do so in different ways.

The first critique misses the point because it essentializes Latina/o identity in a way that threatens to reproduce, within LatCrit theory, the racial and ethnic hierarchies that pervade Latina/o communities and culture and that are fundamentally at odds with any anti-essentialist commitment to anti-subordination politics. Latinas/os, to repeat yet again, come in every variety of race and ethnicity. LatCrit theory cannot marginalize the particular experiences of Black subordination, without presupposing, among other things, that Black Latinas/os are somehow less fully Latina/o, than Hispanic Latinas/os, and that therefore their problems are somehow less central to the LatCrit project.

The second critique misses the point because it tends to reinscribe the project of generating anti-subordination theory and praxis within a model of multiculturalism that continues to cast Black subordination as primarily “a Black thing,” Hispanic subordination as “a Hispanic thing,” Asian subordination as “an Asian thing,” and so on and so forth. This structure has been tried, and the consciousness it simultaneously reflects and constructs has failed to enable the kinds of intergroup engagement and solidarity necessary for the task at hand: the deconstruction of white supremacy and reconstruction of a sociolegal reality grounded on a commitment to substantive intergroup justice. Indeed, it is all but obvious that this kind of structure and consciousness can promote little intergroup understanding and collaborative progress precisely because the “discussions” it generates are hardwired to flounder in arguments about *whose* particular subordination ought to be addressed first: in the initial instance, when the particularities separate into groups that inevitably will include multiple and intersectional identities, like the Black Latina/o or the Japanese Peruvian; and in the second instance, when these separate particularities regroup to articulate a universal agenda in a common setting.

This is where Professor Robert’s second major point makes her essay a welcomed and timely intervention. Professor Robert’s second point illustrates the otherwise suppressed realities that make *Black* identity an intersectional space, where group affiliation can be seen as a matter of political choice. She describes three different contexts in which her self-identification was fluid and in flux: in choosing to identify as African American, rather than as West-Indian; in choosing to identify as

113. See, e.g., Phillips, *supra* note 7, at 1256 (representing Critical Race Theory Workshop as “a place where, among other things, the experiences of all groups of color are articulated and where narrow conceptions of group interest are critiqued”).

Black, rather than as bi-racial or multi-racial; and in choosing to identify as the daughter of a Jamaican immigrant during a debate with Peter Brimelow.¹¹⁴ To Professor Robert's credit, each of these acts of self-identification reflects and performs, in different ways and from different perspectives, a commitment to anti-subordination solidarity. This is because the West-Indian identity has often been embraced by Caribbean Blacks as a mark of distinction that separates them from and seeks to raise them above the subordinated status of Black Americans in the United States;¹¹⁵ the bi-racial or multi-racial identity category has sometimes operated to privilege whiteness and other non-Black identities in the configuration of Black identity among people marked by non-Black racial mixtures; and finally, because claiming an immigrant identity can, in some contexts, position Black Americans in solidarity with the victims of the virulent nativism that seeks to consolidate a supposedly "multicultural" American identity by purchasing inclusion for Black Americans at the expense of precisely those immigrants most vulnerable to exclusion: the racialized and impoverished peoples of the Third World.

Professor Robert's discussion of the different political identity choices she has made in different contexts challenges the notion of a unitary Black identity and thereby strengthens the case for the practice of "rotating centers," not only at LatCrit conferences, but at *every* gathering committed to the production of anti-subordination theory and practice through identity-based critique — whether those gatherings are organized under the auspices of the Critical Race Theory workshop or in other venues such as those emerging from the recent development of Asian Pacific American Critical Legal Scholarship.¹¹⁶ Viewed from this perspective, the practice of rotating centers is, indeed, a move to claim a universal perspective for LatCrit theory, but only as an expression of the profoundly revolutionary possibilities embedded in the anti-essentialist critique. These new possibilities of thought and action will fully emerge only when enough us learn to see that *every* particular identity group constitutes a universal because *every* particular group includes members whose multiple and intersectional identities link each group to every other group. Just as Latina/o identity includes Blackness, certainly the converse is equally true that Black identity includes *Latinidad*; just as

114. See PETER BRIMELOW, *ALIEN NATION* (1995) (articulating a nativist agenda).

115. See, e.g., MARVIN DUNN, *BLACK MIAMI IN THE TWENTIETH CENTURY* 99 (1997) (noting that Black Bahamians, proud of their British roots, "thought themselves to be less servile than American-born Blacks in Miami").

116. See Symposium, *The Long Shadow of Korematsu*, *supra* note 27; see also Iglesias, *Out of the Shadow*, *supra* note 30 (offering one vision of the intellectual and political agenda that might be collaboratively pursued at the intersection of APACrit and LatCrit theory).

Latina/o identity includes Asian, Indigenous and European identities, so too it is true that each of these identities include all the others.

This realization has profound implications for the future development of identity politics and positions 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. This is because the anti-essentialist critique makes it possible to see that *all* the particular groups into which we might possibly separate are inhabited by multiple and intersectional identities. Any particular group that purports to practice anti-essentialist politics *internally* will, by necessity, have to treat the distinct problems of group members marked by intersectional identities as equally valid and central to the anti-subordination agenda defined by the group. This is simply to say, for example, that just as LatCrit theory must engage the problems of Black subordination because Latina/o identity includes Blackness, so too an anti-essentialist BlackCrit theory would have to confront the problems of Latina/o subordination because Black identity includes *Latinidad*. And yet, by doing so, each group would find that its pursuit of a *genuinely* anti-essentialist politics promises, always and everywhere, to reconstitute the group as a universal that contains all particulars. This would, however, be a very good thing. Indeed, the “only” thing still blinding us to the reality that every particularity constitutes the universal, albeit from a different perspective and in a different configuration, is the essentialist assumptions embedded in the imperatives of organizing hierarchical power relations through practices of inclusion and exclusion and the ingrained tendency, both within and between our various communities, to construct our collective identities and solidarities around an inside/outside dichotomy.¹¹⁷

117. See, e.g., Guadalupe T. Luna, *Zoo Island: LatCrit Theory, Don Pepe and Señora Peralta*, 19 CHICANO-LATINO L. REV. 339, 341 (1998) (locating Chicana/o subordination in the ideological and rhetorical struggles between universal and particular through which the white perspective is cast as universal in contrast to the particularity of the Chicana/o perspective); Iglesias, *Structures of Subordination*, *supra* note 5, at nn. 21 & 22 and accompanying text (implying need for gestalt-shift that would enable recognition of the way women of color constitute a universal perspective). See also generally Francisco Valdes, *Queer Margins, Queer Ethics: A Call to Account for Race and Ethnicity in the Law, Theory and Politics of “Sexual Orientation,”* 48 HASTINGS L.J. 1293 (1997) (urging similar points in the context of Queer legal theory). See also Valdes, “OutCrit” Theories, *supra* note 7.

II. SUBSTANTIVE SELF-DETERMINATION: DEMOCRACY, COMMUNICATIVE POWER AND INTER/NATIONAL LABOR RIGHTS

Part II takes up three clusters of essays that appear at first glance to have little in common: the first cluster focuses on the transition to and consolidation of democracy in regions as diverse as the Caribbean and Eastern Europe; the second cluster centers the struggle over language rights and communicative power, while the third cluster takes up a broad range of issues exploring the way Latina/o identities and lived realities should figure in the transformation of domestic and international labor rights regimes. Despite their differences, these essays reveal a common tension. In each instance, the struggle for self-determination confronts a seemingly irreconcilable and pervasively articulated antagonism between freedom and order, stability and plurality, uniformity and chaos. This antagonism has been most clearly articulated in democratic theory as the so-called "crisis of governability."¹¹⁸ But this underlying antagonism is revealed everywhere the claim to individual or group self-determination threatens inherited patterns and identities. It is evident, for example, in the political struggle over language rights and the paranoid nativism of the English-Only movement, in which the domestic proliferation of languages and cultures is cast as threat to the unity and integrity of the American national identity.¹¹⁹ It is evident also in the anti-political structure of the labor rights regime established in this country.¹²⁰ By taking up these various issues, the essays in these three clusters illustrate how the universal struggle for self-determination is reflected in and

118. The theory is that mass political mobilization triggers such undeliverable demands that it causes the democratic political system to internally implode. Thus, the discourse of democratic ungovernability has proven a valuable resource in legitimating political repression by casting mass mobilization as a threat to the democratic political form. Of course, the question this raises is whether a system that represses its people because it cannot meet their demands is really worth preserving. For an overview and critique of the way the problem of "democratic governability" has been addressed by both the left and the right, see Claus Offe, *The Separation of Form and Content in Liberal Democracy*, in *STUDIES IN POLITICAL ECONOMY* (1980); for an extensive analysis of the reasons why "the liberal democratic state" cannot effectively respond to the demands of a politically mobilized polity, see Claus Offe & Volker Ronge, *Theses on the Theory of the State*, in *CLASSES, POWER, AND CONFLICT: CLASSICAL AND CONTEMPORARY DEBATES* (Anthony Giddens & David Held eds., U.Cal.Press 1982) (linking the political limitations of the democratic state to the material bases of state power in liberal capitalism).

119. See Rachel F. Moran, *What if Latinos Really Mattered in the Public Policy Debate?*, 85 CAL. L. REV. 1315, 1328-9; 10 LA RAZA 229, 242-43 (1998) (noting limitations of traditional race-neutral model of inclusion and advocating alternative model of immigration which recognizes that bilingualism and biculturalism are assets rather than threats to national integrity).

120. See Iglesias, *Structures of Subordination*, *supra* note 5 (critiquing impact of labor law doctrine of "exclusive representation" on self-determination of women of color in American workplaces).

advanced by the anti-essentialist commitment to anti-subordination politics at the heart of the LatCrit movement.

A. *Democracy in Anti-Subordination Perspective:
Global Intersections*

The meaning of democracy and its role in the struggle for liberation present formidable conceptual and political challenges for LatCrit legal scholars and activists. As sociologist Max Castro aptly suggests, these challenges are born of the many profound and apparent disjunctures between democratic theory, or rather, the strategic manipulations of democratic rhetoric, on the one hand, and the reality of “democracy” as we live it, on the other. It is this disjuncture between rhetoric and reality that makes the struggle over the meaning of democracy a crucial political space for LatCrit theory to occupy, even as it makes the actualization of democracy, an aspiration and objective that, approached from an anti-subordination perspective, positions us against the injustices and beyond the hypocrisies of the “really existing democracies” we currently inhabit.¹²¹ By critically examining the disjuncture between democratic rhetoric and the trans/national power structures that coopt and subvert the self-determination struggles of so many peoples in so many different contexts, all five essays in this cluster make significant contributions to articulating an anti-essentialist perspective on the meaning and practice of a real and substantive democracy both within and beyond the United States.¹²²

THREE STORIES OF “THE CARIBBEAN”

The opening essay by Professor Griffith provides an excellent point of departure for a LatCrit analysis of democracy. His objective is to show how “the drug problem” impacts the democratic project in small countries throughout the Caribbean. By locating his intervention in “the Caribbean,” Professor Griffith situates our analysis of democracy in an imaginary region whose multiple dimensions exceed the boundaries of

121. See Max J. Castro, *Democracy in Anti-Subordination Perspective: Local/Global Intersections: An Introduction*, 53 U. MIAMI L. REV. 863 (1999) (using the phrase “really existing democracy” to measure the difference between democratic theory and the democracy in which we actually live).

122. Ivelaw Griffith, *Drugs and Democracy in the Caribbean*, 53 U. MIAMI L. REV. 869 (1999); Irwin P. Stotzky, *Suppressing the Beast*, 53 U. MIAMI L. REV. 883 (1999); Mario Martinez, *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) [hereinafter Román, *Reconstructing Self-Determination*].

any particular term.¹²³ Like “the drug problem” or “democracy,” “the Caribbean” is a signifier with no stable, uncontested referent. It is, at first glance, a sea, not a territory — its boundaries marked by water, not by land. It is at second glance a clustered string of geographically isolated islands governed by weak and often corrupt little states, politically fragmented, but strikingly similar in their economic vulnerability to and dependence on the foreign aid and so-called preferential trade arrangements of their former colonizers and current day masters.¹²⁴ On a triple take, the Caribbean might be found beating to the rhythms of mambo, reggae, salsa, merengue and the cha-cha-cha — somewhere in, and yet beyond, a complicated overlay of transplanted cultures that emerge from, and have flourished despite, the last 500 years of colonial penetration, intervention and relentless expropriation — a history we would have to tell in Spanish, English, French, Dutch and Portuguese.¹²⁵ Pull back a bit, redraw the map a moment, and the Caribbean rises yet again — this time from a sea of blood, a theater of war zoned for the low-intensity conflicts that submerged it in waves of broken, burnt and butchered bodies, bleeding to the pulse of state sponsored terror and super-power contestations.

Embedded in this controversy over where “the Caribbean” begins and ends is the dialectic of universal and particular — as well as of the many diverse and conflicting political projects emerging from and targeted at this region.¹²⁶ Whether any universal term can unify these

123. See, e.g., ANTONIO BENÍTEZ-ROJO, *THE REPEATING ISLAND: THE CARIBBEAN AND THE POSTMODERN PERSPECTIVE* 35-36 (Duke U. Press, 2d ed. 1996) (noting the indeterminacy of “the Caribbean” and observing further that organizing “the Caribbean” construct around the plantation economy would redraw its boundaries to include the Brazilian northeast as well as the southern United States); see also H. MICHAEL ERISMAN, *PURSUING POSTDEPENDENCY POLITICS: SOUTH-SOUTH RELATIONS IN THE CARIBBEAN* at 27, n. 1 (1992) (suggesting that “the Caribbean” be conceptualized in terms of three concentric circles: its inner circle comprised only of the English-speaking Caribbean islands, including the Bahamas; the second circle delimited by the Caribbean archipelago, meaning all the islands plus the mainland extensions of Guyana, Suriname, and French Guiana (Cayenne) in South America, along with Belize in Central America; and its outer circle constituted by the Caribbean Basin, which would include all the countries in the first two categories as well as the littoral states of South America (e.g. Colombia and Venezuela), all of Central America, and Mexico). These are, of course, only a few of many ways to imagine the meaning and parameters of “the Caribbean.”

124. See *MODERN CARIBBEAN POLITICS* 4-6 (Anthony Payne & Paul Sutton eds., 1993).

125. See generally BENÍTEZ-ROJO, *supra* note 123, at 35 (of course, Benítez-Rojo’s construction of “the Caribbean” as “a way of being in the world” incorporates, but is not exhausted by, the musical rhythms that express it).

126. The Caribbean Basin construct was initially forwarded by the United States as part of its project to combat the “leftist threat to the prevailing pro-western ideological order and U.S. influence in the Caribbean Basin.” See ERISMAN, *supra* note 123, at 132 n.12 (discussing the purpose and scope of the Reagan Administration’s Caribbean Basin Initiative (CBI) which defined the Caribbean Basin to encompass Central America, Panama, all the independent islands plus Guyana and Belize). But the struggle to delimit a broader map of the Caribbean has also been

politically fragmented, culturally distinct, and multi-lingual particularities is an open question, but whether we seek “the Caribbean” in the regional similarities that transcend the diversities of language and history or, alternatively, in the struggle to imagine a future beyond the political fragmentation and economic uniformity that keeps these small countries dependent and weak, we will certainly *not* find it in any substantive meaning of the term democracy. On the contrary, as the first three essays in this cluster demonstrate, the Caribbean offers a particularly compelling starting point for an anti-subordination analysis of “democracy,” precisely because democracy has been, for so long and for so many different reasons, as elusive in this region, as the dream of self-determination and the hope of peace. By focusing LatCrit attention on “the Caribbean,” Professor Griffith challenges us to configure a broad and multidimensional vision of the democratic project — one that genuinely engages the anti-subordination struggles of peoples beyond the United States, even as it requires LatCrit scholars to think more critically about the U.S. role, both in promoting and obstructing the democratic project in this hemisphere.

Professor Griffith’s story of the Caribbean is of democratic possibilities held hostage to an international drug war. Though U.S. popular rhetoric casts the problem primarily in terms of drug traffickers and pushers, “the drug problem,” as Professor Griffith argues, is a fully integrated multi-billion dollar transnational industry that — from production to consumption to the recycling of drug profits — cuts across all regions of the hemisphere, penetrates all sectors of society and implicates all levels of government.¹²⁷ Assessing the impact of “the drug problem” on democracy requires a clear understanding of the divergent problems triggered by the different stages of this industry. It also presupposes some working definition of what democracy is. Drawing on the classic work of Joseph Schumpeter, Professor Griffiths defines democracy as a political form in which the contestation over state power operates through free and regular elections, where a high degree of participation is admitted and where there exist effective institutions to guarantee respect for civil and political rights and enhance social justice. Thus, when we speak of democracy “we are talking about contestation for

central to the CARICOM project to promote the kind of regional integration that will enable the small countries of the Caribbean to coordinate the diversification of their otherwise competing economies and to leverage their political objectives by articulating a unified position. See ERISMAN, *supra*, at 111-12 (discussing the Pan-Caribbean perspective underlying Mexican and Venezuelan pledges to provide oil at preferential prices to various Central American and Caribbean states, as well as the vision underlying CARICOM itself).

127. United Nations estimates that the international trade in illegal drugs is worth \$400 billion — approximately 8% of world trade — more than the trading in iron, steel or motor vehicles. See INTERNATIONAL NARCOTICS CONTROL 2 DEP’T ST. DISPATCH 503 (1991).

power, participation, and institutions.”¹²⁸

Given this definition of democracy, Professor Griffith develops a multidimensional analysis of the way the international drug industry and the war it has spawned operate in different ways to undermine the democratic project in the Caribbean. It is a story of corruption engendered by the circulation of billions in illegal profits that skews the logic of political contestation and makes state power unaccountable to the democratic electoral process, as well as a story of private business and financial elites, seduced into money laundering schemes that disrupt ordinary market forces, undermine the viability of legitimate economic activities and facilitate the consolidation of power and wealth in the hands of drug lords and their cronies. It is also a story of law enforcement run amok in its increasingly futile efforts to stamp out the drug trade through repressive and anti-democratic assaults on precisely those fundamental civil and political rights without which no democracy can flourish.

Professor Stotzky's essay tells a second story of the Caribbean. Measured against the aspirational imperatives of what he calls “deliberative democracy,”¹²⁹ the transition to democracy in Haiti is a story of the democratic project held hostage to internal corporative political structures and external financial elites. These internal corporative structures suppress the emergence of a genuinely deliberative democracy by excluding “the people” from effective participation in the political process — in different ways, depending on whether the corporative structures are organized from the top down or the bottom up. When imposed from the top down, the state controls, coopts and to a large degree incorporates the organization of interest groups into state sanctioned monopolies, whose agendas are then confined to the politics of the possible as determined by the state; when organized from the bottom up, private power blocks so dominate the political process that the state is captured and subordinated to the articulation of their special interests. In either case, these corporatist variations leave little room for the expression of the popular will of the people.

In Haiti, as elsewhere throughout Latin America and the Caribbean, factions of the military, the Catholic Church, the business class, trade unions and even the press have all, at different times, cooperated in the institutionalization of corporatism by trading support for authoritarian regimes in exchange for special privileges. Because these privileges are threatened, as much by the rise of a genuine and popular sovereignty as by the extremism of a military dictatorship run amok, the legacy of cor-

128. Griffith, *supra* note 122, at 873.

129. Stotzky, *supra* note 122, at 890 (explaining the fundamental elements of a deliberative democracy).

poratism is a network of organized power blocks hostile to any project of social, political or economic change that might force them to relinquish their special privileges or hold them accountable to the people whose families they have murdered or whose patrimony they have expropriated and squandered. In such a context, the consolidation of a democracy requires dismantling these corporative power blocks precisely because a genuinely participatory democracy presupposes and would undoubtedly trigger vast changes in the socio-economic and political structures these corporatist groups are most invested in maintaining.

Indeed, one need only consider Professor Stotzky's description of the objectives of "the Aristide Plan" to see how constructing the conditions for participatory democracy might threaten vested interests.¹³⁰ Demilitarization, an independent judiciary, empowered labor unions, grass roots organizations, cooperatives and community groups, progressive taxation and human rights prosecutions are all political objectives certain to put any democratic project on a collision course with precisely those sectors that have most benefitted from the repression and demobilization of the impoverished majority. Add to these internal obstacles, the externally imposed austerity measures dictated by the structural adjustment policies through which international financial organizations like the World Bank and the IMF have projected their neo-liberal agenda onto the international political economy,¹³¹ and the obstacles confronting the democratic project in Haiti are nothing less than daunting.¹³²

130. *Id.* at 893-903 (describing and critiquing the Aristide Plan).

131. As Professor Stotzky notes, the economic aspects of the Aristide Plan reflect the influence of the World Bank, the IMF and the Agency for International Development in their boilerplate responses to the economic crisis in Haiti. *Id.* at 899. Trade "liberalization," privatization, reduced social spending and similar policies are a familiar fare served up for Third World consumption by these international agents of transnational capitalism. Unfortunately, these policies have, since the 1980s, only further impoverished and politically destabilized the countries that adopt them. It doesn't take a rocket scientist to see this — thus leading anyone with half an open mind to wonder at the relentless insistence with which these failed policies are repeatedly prescribed. See, e.g., Elizabeth M. 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) [hereinafter Iglesias, *Global Markets, Racial Spaces*] (assessing structural adjustment policies through a critical analysis of the institutional class structures of the international political economy).

132. See James H. Street, *The Reality of Power and the Poverty of Economic Doctrine*, in LATIN AMERICA'S ECONOMIC DEVELOPMENT: INSTITUTIONALIST AND STRUCTURALIST PERSPECTIVES 16-32 (James L. Dietz & James H. Street eds., 1987). Street's analysis is particularly interesting because it shows the symbiotic relationship linking authoritarian political regimes and international financial organizations. The call for structural adjustment by institutions like the IMF may well serve the political needs of authoritarian elites. When the people mobilize against the impact of austerity policies, their mobilization is cast as civil disorder (instigated by subversive communist influences) and used to justify the kinds of repression to

However, the Haitian story only brings into starker relief the extent to which the democratic project in poor countries throughout Latin America and the Caribbean is caught between the internal *rock* of corporative political monopolies and the external *hard place* constituted by international financial organizations. Based on past history and the short-term interest analysis these two sectors tend routinely to exhibit, it is reasonable to predict that the former will continue opposing the progressive tax policies, antitrust regimes and educational programs through which Professor Stotzky would reform the neoliberal agenda to help the poor majority live a dignified life, the latter will continue to oppose any state intervention in the economy that impinges on foreign exports and direct investments or restricts the expatriation of profits, and neither will be much interested in *actually implementing* Professor Stotzky's vision of deliberative democracy. Thus, this second story of the Caribbean is not heartening.¹³³

Mr. Martinez's essay on the rise and fall of the socialist project in Nicaragua provides yet a third perspective on the problem of democracy in the Caribbean. Though Nicaragua is geographically located in Central America, its position in "the Caribbean" is a function of the geopolitical rhetoric through which the Reagan Administration chose to respond to the "communist-in-our-own-backyard" problem.¹³⁴ The will to view the Nicaraguan revolution in terms of Cold War politics, rather than as a response to the legacy of terror and expropriation imposed on this small country by a U.S. sponsored dictatorship, is testament to the self-serving myopia that enabled former President Reagan to tell the *Wall Street Journal* in 1980 that "[t]he Soviet Union underlies all the unrest that is going on. If they weren't engaged in this game of dominos, there wouldn't be any hot spots in the world."¹³⁵

Contrary to Reagan's suggestion, the Nicaraguan revolution ousted the Somoza dictatorship in 1979 through "the organized, militant partici-

which these elites are already inclined. Only from this perspective can an authoritarian dictatorship be made to appear a solution rather than a problem for the nation.

133. For a more hopeful perspective on the potential role for Bretton Woods institutions to contribute to the evolution of a more just international political economy, see Carrasco, *LatCrit Theory and Law and Development*, *supra* note 102; Enrique R. Carrasco & M. Ayhan Kose, *Income Distribution and the Bretton Woods Institutions: Promoting an Enabling Environment for Social Development*, 6 TRANSN'L LAW & CONTEMP. PROBS. 1 (1996).

134. See, e.g., HOLLY SKLAR, WASHINGTON'S WAR ON NICARAGUA 57-8 (1988) (noting that "[i]n a March 1979 radio broadcast, Reagan seconded Idaho Rep. Steve Symms' concern that 'the Caribbean is rapidly becoming a Communist lake in what should be an American pond.'" Reagan added: "The troubles in Nicaragua bear a Cuban label also. While there are people in that troubled land who probably have justified grievances against the Somoza regime, there is no question but that most of the rebels are Cuban-trained, Cuban-armed, and dedicated to creating another Communist country in the hemisphere.").

135. *Id.*

pation of Nicaraguan citizens in a 'people's war' against a brutal and ruthless tyranny."¹³⁶ Mr. Martinez's objective is to explain why the Nicaraguan people initially supported this revolution and how the Sandinistas ultimately lost the people's support.¹³⁷ He tells this story through a critical analysis of the Somocista property regime that preceded the revolution, as well as the promises made and later betrayed by the Sandinista government's failure to legally institutionalize its agrarian reforms in a viable property rights regime.¹³⁸ This failure to establish a new legal order facilitated the rapid re-concentration of land ownership, through privatization, Sandinista self-dealing, and the rush of former landowners to reclaim their expropriated properties after the Sandinistas lost the 1990 election to Violeta Chamorro.

These three stories of "the Caribbean" provide different perspectives on the profound challenges confronting the articulation of democratic theory in LatCrit scholarship. They tell of the democratic project held hostage to drug traffickers, domestic corporative elites, international financial organizations and the self-interests of defeated revolutionaries. What they do not mention is the role played by U.S. government agents in facilitating the growth of international drug trafficking through their collaborations with, protection of and assistance to, known drug traffickers involved in this government's "anti-communist" crusades;¹³⁹ they do not tell of the millions of U.S. tax payer dollars spent supporting the Duvalier and Somoza dictatorships, as much as the corporatist elites in post-dictatorship Haiti and Nicaragua;¹⁴⁰ they do

136. GARY RUCHWARGER, *PEOPLE IN POWER: FORGING A GRASSROOTS DEMOCRACY IN NICARAGUA* (1987) (noting that the revolution would have been impossible without widespread support and recounting extent of popular participation in the struggle against Somoza).

137. See JEFFREY M. PAIGE, *COFFEE AND POWER: REVOLUTION AND THE RISE OF DEMOCRACY IN CENTRAL AMERICA* (1997) (explaining role of agro-export elite in consolidating national unity alliance that enabled overthrow of Somoza, even as it laid seeds for eventual failure of Sandinista reform project).

138. For a variety of perspectives on the Sandinista's land reforms and Nicaraguan property law, see generally Symposium: *The Nicaraguan Property Regime After Sandinista Land Reform*, 22 CAP. U. L. REV. 833-963 (1993). Compare Jaime Wheelock Román, *Changes in Agrarian Property in Nicaragua*, 22 CAP. U. L. REV. 853 (1993), with O. Herodocia Lacayo, *The Current State of Nicaraguan Property Law*, 22 CAP. U. L. REV. 839 (1993).

139. See, e.g., Peter Dale Scott & Jonathan Marshall, *COCAINE POLITICS: DRUGS, ARMIES AND THE CIA IN CENTRAL AMERICA* (1991); ALFRED W. MCCOY, *THE POLITICS OF HEROIN: CIA COMPLICITY IN THE GLOBAL DRUG TRADE* (1991).

140. See WILLIAM BLUM, *KILLING HOPE: U.S. MILITARY AND CIA INTERVENTIONS SINCE WORLD WAR II* (1995). As Blum recounts, the Duvalier family ruled Haiti from 1957-1986, when Jean Claude was forced to take flight for the French Riviera on U.S. Air Force jet. *Id.* at 370. In Nicaragua, Anastasio Somoza was installed as director of the Nicaraguan National Guard by departing U.S. military forces in 1933. The United States had invaded the country to quash the revolutionary uprising, supported by Augusto Cesar Sandino of the Liberal Party and purportedly financed by the Mexican government. In the years between 1933 and 1979, when Anastasio Somoza II was finally forced into exile by the Sandinista revolution, the Somoza family had

not tell of the CIA complicity in, and financial support for, the terror unleashed by the Haitian military and the Nicaraguan contras in their efforts to “restore order” and demobilize the masses for a more “governable democracy.” And yet, these missing elements are crucial to any anti-essentialist, anti-subordination analysis of the challenges facing the democratic project in the Caribbean precisely because, and to the increasing extent that, the democratic project *everywhere* is ultimately hostage to the policies of the only remaining superpower. The United States cannot continue “to promote democracy” with one hand, even as it undermines it with the other.

Thus, from an anti-subordination perspective, it makes sense for LatCrit scholars to begin our foray into democratic theory by focusing on the nature and impact of U.S. policies and politics. Beginning this way locates the problems of democracy at the center, rather than the peripheries, where LatCrit sensibilities should counsel us to tread rather carefully, 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.¹⁴¹ These factors are certainly obstacles to the consolidation of democracy in the Caribbean and elsewhere, but they are embedded in an ongoing, centuries-long process of interventions, transactions and exchanges between Third World states and peoples and a multitude of “foreign intervenors,” whose resources, objectives and ideologies are profoundly implicated in the scourge of corruption, dictatorship and underdevelopment that has visited these regions. Thus the problems of democracy in the Caribbean or elsewhere cannot be fairly assessed, nor effectively resolved without detailed and particularized attention to the anti-democratic impact of U.S. foreign and domestic policies. Indeed, revealing and combating these policies may be the best way for LatCrit scholars to get to “the bottom” of the problems of democracy, both beyond and *within* the United States.¹⁴²

RECONTEXTUALIZING THE DEMOCRATIC PROJECT: BEYOND NEOLIBERAL ASSUMPTIONS AND IMPERIALIST LEGAL STRUCTURES

The last two essays in this cluster by Professors Mertus and Román

amassed a fortune in land and businesses then worth \$900 million, even as they left behind a country where two-thirds of the people earned less than \$300 a year. *Id.* at 290.

141. See Ileana M. Porras, *A LatCrit Sensibility Approaches the International: Reflections on Environmental Rights and Third Generation Solidarity Rights*, 28 U. MIAMI INTER-AM. L. REV. 413, 419-20 (1996-97) (urging a LatCrit perspective sensitive to both sameness/difference that can mediate the USLat/OtroLat identities).

142. Iglesias, *Out of the Shadow*, *supra* note 30, at 379-83 (examining linkage between U.S. anti-terrorism interventions abroad and the devolution of domestic civil rights).

shift our focus and expand our analysis of the problem democracy.¹⁴³ Professor Mertus's essay launches a new trajectory of analysis by offering a preliminary comparison of the transition process in the countries of Eastern Europe and Latin America. In articulating these comparisons, she notes four particularly significant differences worth further reflection: (1) the different attitudes and relationships foreign intervenors have adopted towards the governing elites of the pre-transition regimes in these two regions; (2) the logically incoherent rhetorical structures generated by the biased and uninformed manner in which foreign observers tend to assess the meaning of, and allocate blame for, the internal conflicts and atrocities committed by competing groups in Eastern Europe and Latin America; (3) the different way foreign intervenors in these two regions have prioritized market and electoral reforms in the transition from dictatorship; and (4) the degree of internal conflict over the so-called "stateness problem" within these different regions. By identifying these four points of comparison, Professor Mertus provides a valuable analytical framework for a critical comparative analysis of the substantive content of "the democratic project" now circling the globe, as well as for assessing the degree to which this neoliberal project coheres with the right of self-determination, understood from an anti-essentialist, anti-subordination perspective.

In this vein, Professor Mertus notes that western intervenors have generally been more willing to work with the remnants of pre-transition regimes in Latin America than those in Central and Eastern Europe. This she finds unsurprising, given that the U.S. government actually established and substantially maintained the military dictatorships in some countries, like Haiti, Guatemala and Nicaragua, and remained a steadfast ally of, and apologist for, the military dictatorships in others, like Argentina and Chile — even as these regimes waged dirty wars of inconceivable brutality against their own people.¹⁴⁴ These regimes, though homicidal and corrupt, were friends and clients of the U.S. national security state. The need to legitimate U.S. complicity in their criminal practices and repressive policies gave birth to the totalitarian/authoritarian state dichotomy. In Reaganite doublespeak, the kind of human rights violations and political and economic repression perpetrated by the military dictatorships in Latin America were of a lesser evil than the

143. Mertus, *supra* note 122; Román, *Reconstructing Self-Determination*, *supra* note 122.

144. See, e.g., SKLAR, *supra* note 134, at 61 (quoting several of Ronald Reagan's radio broadcasts in support of the Argentine military dictators and Chile's Pinochet); see generally BLUM, *supra* note 140 (recounting U.S. role in installing and/or assisting the military dictatorships in Guatemala, Haiti, Ecuador, Brazil, Peru, Dominican Republic, Uruguay, Chile, Bolivia, Nicaragua, Panama and El Salvador as well as its various efforts to topple the democracy in Costa Rica).

kind committed by Eastern block regimes because the latter were "totalitarian states," while the former were only "authoritarian." Totalitarian states were always, everywhere and in every way, repressive and evil. Authoritarian dictatorships, by contrast, were not nearly so bad, and sometimes even necessary to ensure the governability of impoverished and uneducated masses too readily duped by international communists.¹⁴⁵ By organizing her comparison of the transition process in Latin America and Eastern Europe around a critical analysis of the relationships and attitudes foreign intervenors adopt toward pre-transition regime elites, Professor Mertus thus reveals how the neoliberal democratic project is still embedded in the doublespeak legacy of cold war politics.

Professor Mertus also contrasts the attitudes reflected in the way western intervenors have treated the process of political reform in Latin America and Eastern Europe. She notes, for example, that the 1988 Chilean plebiscite that ousted the Pinochet dictatorship was observed by thousands of western election observers, while fewer than thirty western observers were sent to oversee the 1992 Presidential elections in which Slobodan Milosevic defeated challenger Milan Panic.¹⁴⁶ This differential treatment raises profound questions about the "really existing agenda" driving the neoliberal project to promote "democratic" transitions across the globe. Certainly, Professor Mertus is right to suggest that western intervention projects of the 1990s in Eastern Europe have tended to prioritize the institutionalization of transnational capitalist economic relations over the consolidation of democratic accountability and the self-determination of peoples. However, the apparent emphasis on political reform in Latin America may not reflect different priorities, so much as the fact that Latin America has *already* been dancing to the tune of neoliberal market reform projects since the sovereign debt crisis of the early 1980s and its aftermath shifted the balance of power between Latin American debtor states and international financial organizations.¹⁴⁷ Indeed, if anything, the ready willingness with which the U.S. government embraced and supported the Pinochet dictatorship, which even today is lauded as a poster-child for the neoliberal model of economic development in the Third World,¹⁴⁸ suggests the degree to

145. See SKLAR, *supra* note 134, at 60-61 (attributing the totalitarian/authoritarian dichotomy to Jeanne Kirkpatrick, U.S. Ambassador to the United Nations under Reagan and deconstructing its incoherence and hypocrisy).

146. Mertus, *supra* note 122, at 939-40.

147. See, e.g., Philip J. Power, Note, *Sovereign Debt: the Rise of the Secondary Market and its Implications for Future Restructurings*, 64 *FORDHAM L. REV.* 2701 (1996) (providing excellent overview of Latin American debt crisis and legal mechanisms through which balance of power between debtor countries and international financial organizations has since been reconfigured).

148. Cf. Rafael X. Zahraiddin-Aravena, *Chile and Singapore: The Individual and The*

which U.S. foreign policy in the region has subordinated democratic reform to the imperatives of transnational capitalism.

By focusing LatCrit attention on the relative priority accorded democratic political and neo-liberal economic reforms in these different regions, Professor Mertus's comparative analysis maps out a rich field of inquiry for examining and assessing, *from an anti-subordination perspective*, the increasing convergence between current projects to promote "democratic transitions" through market reform in Eastern Europe and the structural adjustment policies and agendas that have ravaged much of Latin America.¹⁴⁹ At the same time, by situating her comparative analysis in the perennial debate over the relationship between capitalism and democracy, Professor Mertus challenges LatCrit scholars to reflect more deeply on the way LatCrit anti-essentialist, anti-subordination objectives are impacted by the economic and political outcomes of this debate.

In the dominant neoliberal narrative, capitalism and democracy are cast as complementary and mutually reinforcing processes: capitalism promotes democracy, and democracy promotes capitalism in a happy embrace of economic abundance and political freedom. In some variations of the narrative, this is because competitive markets prevent the concentration of economic power, thereby preserving the people's freedom by dispersing and decentralizing private power;¹⁵⁰ in others, ironically, it is because capitalism enables the consolidation of private power blocks large enough to counter-balance the power of the ever-embryonic totalitarian state.¹⁵¹ This narrative of the happy relationship between

Collective, A Comparison, 12 EMORY INT'L L. REV. 739 (1998) (noting and criticizing assumptions embedded in representations of Chile as the "model for necessary authoritarianism"); Enrique R. Carrasco, *Autocratic Transitions to Liberalism: A Comparison of Chilean And Russian Structural Adjustment*, 5 TRANSNAT'L L. & CONTEMP. PROBS. 99 (1995) (Chile cast as model for Russian transition).

149. Compare, e.g., Kent Klaudt, *Hungary After the Revolution: Privatization, Economic Ideology and the False Promise of the Free Market*, 13 LAW & INEQ. 303 (1995) (documenting the impact of neoliberal economic ideology on the production of poverty, unemployment, massive inequality and crime on a scale previously unknown in the centrally planned statist economies of the former Soviet Union), with STRUCTURAL ADJUSTMENT AND THE SPREADING CRISIS IN LATIN AMERICA, (1995) <<http://www.igc.apc.org/dgap/crisis.html>> (visited August 27, 1999) (providing overview of impact of neoliberal structural adjustment policies on the political instability and economic underdevelopment in Latin America).

150. See, e.g., Walter Adams & James W. Brock, *The Sherman Act and the Economic Power Problem*, THE ANTITRUST BULLETIN, Spring 1990. Conversely, neoliberals argue that democracy promotes capitalism because private companies must be free of state interventions and bureaucratization in order to innovate. See Bob Jessop, *Capitalism and Democracy: The Best Possible Political Shell? in POWER AND THE STATE* (Gary Littlejohn et al. eds., 1978); F.A. HAYEK, *THE ROAD TO SERFDOM* (1946).

151. See, e.g., MILTON FRIEDMAN, CAPITALISM AND FREEDOM 9 (1962):

Viewed as a means to the end of political freedom, economic arrangements are

capitalism and democracy exists in direct competition with accounts of their mutual incompatibility. In these alternative accounts, each domain threatens always and everywhere to overrun and subsume the other: Capitalism threatens democratic freedom, and democratic politics threaten capitalist freedom. The threat to democratic freedom arises from the growth of economically powerful private firms, whose significance to the national economy renders the state, and the political possibilities it can pursue, hostage to the policy preferences of these corporate giants.¹⁵² Conversely, since democracy creates the space through which demands for redistributive interventions are expressed and imposed upon private economic elites, the institutionalization of democratic accountability *to the people* always threatens to contract the realm of capitalist freedom.¹⁵³

Given the degree to which racial, ethnic and other forms of subordination are organized around *both* the political marginalization *and* the economic dispossession of peoples of color, Professor Mertus's essay suggests the profound challenges and wide range of questions awaiting LatCrit attention in the field of democratic theory. Though a LatCrit perspective might certainly shed valuable light on the rhetorical instability created by these abstract theoretical debates about the "real" relationship between capitalism and democracy, our legal training makes us particularly well situated to pursue a project more immediately relevant to the objectives of promoting anti-essentialist, anti-subordination social transformation through law. This project would focus critical analysis on the way the relationship between the state and the market is articulated in the interpretation of legal doctrine — particularly in litigated cases and legislative debates where the struggle for racial justice has confronted and sought to render the monopolization of *both* economic and political power democratically accountable.¹⁵⁴ The outcome of such

important because of their effect on the concentration or dispersion of power. The kind of economic organization that provides economic freedom directly, namely, competitive capitalism, also promotes political freedom because it separates economic power from political power and in this way enables the one to offset the other.

Indeed, in some versions of this second account, *even concentrated markets* promote freedom because only large economically powerful private corporations can counterbalance the power of a centralized, bureaucratic, interventionist state. See Jessop, *supra* note 150.

152. See Adams & Brock, *supra* note 150, at 44 (discussing the capacity of giant firms (and labor unions) to threaten economic catastrophe if their demands are not met); see also Robert Pitofsky, *The Political Content of Antitrust*, 127 U. PA. L. REV. 1051, 1057 (1979) (excessive concentration of economic power will breed anti-democratic political pressures).

153. See Offe & Ronge, *supra* note 118; Offe, *supra* note 118.

154. See, e.g., Elizabeth M. Iglesias, "Confronting Race" by Mapping the Construction of Institutional Power: LatCrit Reflections on Law and the Anti-Political Economy, 33 MICH. J. L. REF.; 5 MICH. J. RACE & L. (forthcoming 2000) [hereinafter Iglesias, *The Anti-Political Economy*]

cases and legislative debates raise fundamental questions about the relationship between racial inequality and the institutional structures and processes of the neoliberal political economy.

At stake, ultimately, is the question whether racial, ethnic and other forms of subordination can be eliminated within the institutional arrangements of a neoliberal political economy, structured around the *strategic* separation of economics and politics.¹⁵⁵ The answer LatCrit scholars give to this question may determine whether the imperatives of racial equality are to be satisfied by a project that achieves for minority communities the reproduction and transposition of the same class hierarchies pervasive in white society or whether the struggle for racial equality will eschew institutional arrangements that perpetuate the economic dispossession and political marginalization of the world's vast majorities and engage, instead, in the search for alternative arrangements that can actualize a more real and substantive democracy throughout both the political and economic institutions of the inter/national political economy.

Finally, by focusing her comparative analysis of the transition processes in Latin America and Eastern Europe on "the problem of stateness," Professor Mertus raises one of the most vexing problems confronting any project aimed at articulating a substantive vision of self-determination — that is, in Professor Román's formulation, the problem of defining "the self" whose right of self-determination is to be protected and enabled through the construction of democratic regimes.¹⁵⁶ While Latin American states have enjoyed substantial international support in resisting the legal recognition of self-determination movements operating in this hemisphere,¹⁵⁷ Professor Mertus notes that "the state" in Eastern Europe has been systematically weakened by recent developments both at the international and subnational levels. At the international level, the driving engine of the neoliberal project has been the perceived imperative of weakening the totalitarian state. Indeed, the weak state,

(tracing interpretative manipulation of the state/market dichotomy through cases adjudicating constitutionality of minority business set-asides and political boycotts seeking racial justice in the market); see also Iglesias, *Global Markets, Racial Spaces*, *supra* note 131 (illustrating how economic/political dichotomy is invoked to obstruct democratization of economic institutions).

155. See Iglesias, *The Anti-Political Economy*, *supra* note 154 (for deconstructive analyses revealing the strategically manipulated indeterminacy of the purported separation of economics and politics).

156. See Román, *Reconstructing Self-Determination*, *supra* note 122, at 947.

157. L.C. Green, *Low Intensity Conflict and the Law*, 3 ILSA J. INT'L & COMP. L. 493, 503-04 (1997) (noting that none of the guerrilla movements in Latin America have ever been recognized by the Organization of American States on the theory that they are not national liberation movements, but only "revolutionary groups seeking to replace the local government rather than to overthrow domination, alien occupation or a racist regime").

with limited authority to intervene in the economy and power fragmented across a system of checks and balances is at the heart of the liberal democratic vision of freedom.¹⁵⁸ However, in weakening the state to free the market, foreign intervenors have perhaps unwittingly contributed to the reactivation of ethnonationalist divisions at subnational levels throughout the region. These ethnonationalist group identities each claim the right of self-determination, undermining the power of the state and thereby triggering the so-called "stateness problem," precisely because the right of self-determination is legally effectuated through the international community's recognition that a particular group has the right to pursue self-government through the organization of their own state.

The final essay by Professor Román takes up the international right of self-determination as if by design. While the preceding essays reveal, in different ways, the disjuncture between democratic rhetoric and the anti-democratic realities produced by the history and ongoing fallout of cold war politics, Professor Román's essay links this disjuncture to the structure of international law and, more specifically, to the strategic manipulations through which the doctrine of the right of self-determination of peoples has been interpreted in international law. According to Professor Román, despite the supposed underpinning of the right to self-determination in the universal norms of human freedom and the equal right of all peoples to control their own destinies, the right of self-determination has been hostage to three stages in the organization of the current world order. These three stages are marked by the era of geopolitical militarism; the era of racial tutelage, in which the self-determination for non-self-governing and trust territories was to proceed, under the Trusteeship System, "at a pace dictated by the colonial administrators"; and the era of global disinterest marked by the tolerance of first world powers towards the alien domination of some third world peoples by other third world peoples.

In each era, the right to self-determination has been hostage to the political calculations of the most powerful states in the international community as well as to the indeterminacy surrounding the scope and limits of the right of self-determination. In its most restrictive formulation, the right is not recognized outside the decolonization context; in its most expansive formulation, the right of secession might be asserted by any distinct minority group. Thus, in Professor Román's view, articulating a substantive content for the right of self-determination of peoples requires the formulation of objective criteria by which to determine whether a group constitutes "a self" or "a people."

158. See Offe & Ronge, *supra* note 118; Offe, *supra* note 118.

Professor Román's search for the objective criteria that make a group a people, like Professor Mertus's comparison of the stateness problem in Latin America and Eastern Europe, raise manifold questions for LatCrit theory. The Eastern European experience under the ethnonationalist governance structures established by the Dayton Peace Accords counsels grave caution in conflating the right of self-determination with the project of having "a state of one's own."¹⁵⁹ As with any complex and multidimensional problem, the substantive and methodological commitments already articulated in prior LatCrit scholarship provide a useful point of departure. At a minimum, this record counsels that the problem of defining the meaning of, and designing the institutional structures to give substantive content to, the right of self-determination should be approached from an anti-essentialist, anti-subordination perspective. From this perspective, the problem of self-determination is the same vis-a-vis *any* collectivity that purports to represent the interests of individuals, who are always and everywhere constituted as multidimensional beings marked by distinctions of class, gender, race, ethnicity, language, sexual orientation, and national origin. That problem, as Professor Mertus notes, is the problem of developing institutional arrangements that can sustain the commitment to social justice, *both between and within* states, by recognizing the importance of group membership and identities, on the one hand, and the value of personal autonomy and individual rights, on the other.¹⁶⁰

From this perspective, the anti-subordination agenda implicated in the struggle for self-determination reaches far beyond the parameters delimited by the problems of constituting a state. Indeed, I have argued before, and still believe, that the demise of the interstate system of sovereign nations is a potentially progressive development for the struggle against subordination.¹⁶¹ Not only has the structure of the interstate system figured prominently in enabling both the processes of uneven development and the practice of war,¹⁶² but as the essays by Professor Mertus and Román illustrate, the very project of delimiting the parameters of a state must inevitably essentialize the identities and suppress the multi-

159. See Shelley Inglis, *Re/Constructing Right(s): The Dayton Peace Agreement, International Civil Society Development, and Gender in Postwar Bosnia-Herzegovina*, 30 COLUM. HUM. RTS. L. REV. 65, 79-80 (1998) (describing the ethnonationalistic structure of the constitutional regime established by the Dayton Peace Accords, which divide all components of the central government into thirds, ensuring both equal representation of Croats, Serbs, and Bosniaks and the paralysis of a central government mired in ethnic politics).

160. Mertus, *supra* note 122, at 942.

161. See, e.g., Elizabeth M. Iglesias, *Foreword: International Law, Human Rights and Lat Crit Theory*, 28 INTER-AM. L. REV. 206-07 (1996-97) [hereinafter Iglesias, *Foreword*].

162. See *id.* (citing references).

plicity of interests that simultaneously converge and diverge in the configuration of any group.

Rather than investing further in a bankrupt system of nation-states, LatCrit theory might chart a new agenda to imagine and articulate the kinds of institutional arrangements and rights regimes that can promote the right of self-determination, both at the international and sub-national levels where the neoliberal project is, even now, reconfiguring and consolidating new regimes of freedom and compulsion. At an international level, this agenda might take up the pending project of promoting the full recognition of individuals as subjects of international law, for example, through the incorporation of international human rights into the institutional structures, substantive norms, and decisional procedures currently regulated by international economic law.¹⁶³ At a subnational level, this agenda might begin by rejecting the neoliberal paradigm that confines democracy to the political realm, and pursue the institutionalization of democratic governance structures throughout the inter/national economy as well.¹⁶⁴ Both trajectories provide a meaningful way out of "the stateness problem," even as they expand the parameters and meaning of democracy in ways that more readily cohere with the anti-essentialist, anti-subordination commitments that are the heart of the LatCrit movement.

*B. Language, Technology and Communicative Power: From
Language Rights to the Struggle for Control of the Means
of Communication*

Language rights have been a central issue in LatCrit theory since its inception.¹⁶⁵ LatCrit III was, however, the first time that LatCrit conference organizers sought intentionally and self-consciously to link the

163. See, e.g., Iglesias, *International Economic Law*, *supra* note 15; G. Richard Shell, *Trade Legalism and International Relations Theory: An Analysis of the World Trade Organization*, 44 DUKE L.J. 829 (1995) (advocating trade stakeholder's model as vehicle to incorporate social welfare and human rights into WTO); Patricia Stirling, *The Use of Trade Sanctions as an Enforcement Mechanism for Basic Human Rights: A Proposal for Addition to the World Trade Organization*, 11 AM. U. J. INT'L. L. & POL'Y 1 (1996).

164. See, e.g., Iglesias, *Global Markets, Racial Spaces*, *supra* note 131 (critical analysis of legal reforms needed to promote community participation in decisionmaking processes through which investment capital is allocated in the inter/national political economy).

165. See, e.g., Steven W. Bender, *Direct Democracy and Distrust: The Relationship Between Language, Law, Rhetoric and the Language Vigilantism Experience*, 2. HARV. LATINO L. REV. 145 (1997); Christopher David Ruiz Cameron, *How the García 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 (1998) (critical analysis of Title VII's anti-discrimination framework given its failure to prohibit the imposition of arbitrary and intrusive restrictions on the use of languages other than English in the workplace).

struggle against English-Only to a broader struggle *for* communicative power. This imagined project was forwarded to expand LatCrit theory's substantive agenda by encouraging a collaborative effort to develop a critical analysis of the way differential access to the means of communication is legally constructed across different sociolegal contexts and the way the resulting structures of communicative power/lessness should be addressed in LatCrit theory.¹⁶⁶ In this expanded critical project, the struggle over language rights reflects only one instance in a more general struggle against relations of domination organized by and effectuated through the legal production of differential access to the means of communication. This is because the compelling personal and collective interests at stake in the struggle against the suppression of non-English languages are equally implicated in the such matters as the regulation of political speech¹⁶⁷ and the ownership and control of new technologies of communication.¹⁶⁸

Indeed, in each of these contexts, the matter at stake is the power to communicate — to express oneself — meaningfully and effectively. Increasingly, the power to communicate is determined by access to, control of, or authority over the means of communication.¹⁶⁹ Indeed, the “means of communication” have become as central to the structure of power/lessness in our postmodern, hyperlinked, globalized, mass media society as the “means of production” were central to the class struggles of modernizing industrialism. Individuals and communities shut out of the information age and out-spent in a political system that casts the expenditure of money as protected political speech — such that effective speech comes to depend increasingly on the ability to spend money — are just as certainly robbed of the instruments of self-determination and

166. To this end, LatCrit III featured a plenary panel entitled *Anti-Subordination and the Legal Struggle over Control of the “Means of Communication:” Technology, Language and Communicative Power*. A description of its substantive objectives can be found at <<http://nersp.nerdc.ufl.edu/~malavet/latcrit/archives/lciii.htm>>.

167. See, e.g., *Bank of Boston v. Bellotti*, 435 U.S. 765 (1977) (striking down restrictions on corporate political expenditures on theory that such expenditures constitute speech protected by 1st Amendment); *Buckley v. Valeo*, 424 U.S. 1 (1976) (expenditures of money constitute protected speech).

168. See, e.g., Madeleine Mercedes Plasencia, *The Politics of Race on the Electronic Highway: An Analysis of the Video Dialtone Redlining Cases, and the Nynex Consent Decree in Roxbury*, 15 *TOURO L. REV.* 513 (1999) [hereinafter Plasencia, *Video Dialtone Redlining*] (describing how discriminatory redlining practices of telecommunications companies threaten to shut minority neighborhoods out of communications revolution).

169. See Keith Aoki, *Introduction: Language is a Virus*, 53 *U. MIAMI L. REV.* 961 (1999) (Long Live Keith Aoki!); see also MARK D. ALLEYNE, *INTERNATIONAL POWER AND INTERNATIONAL COMMUNICATION* 2-5 (1995) (explaining difference between *communication*, understood as systems and infrastructures for dissemination of information, (e.g. telephones, satellites, news agencies, and languages) and *information*, understood as ‘raw matter’ or data, whose content is circulated through the means of communication).

the power of self-expression, as workers separated from and denied control over the means of production. By thematizing the linkages between language, meaning-making power and the struggle for self-determination, the essays in this cluster go a long way toward delimiting a broad field ripe for anti-subordination theory and practice.¹⁷⁰

LANGUAGE RIGHTS IN ECONOMIC ANALYSIS AND MORAL THEORY

The opening essay by Professors Bill Bratton and Drucilla Cornell is based on a collaborative project in which they join the anti-nativist struggle against initiatives to suppress the use of languages other than English.¹⁷¹ Their objective is to make an economic and moral case for treating language based discrimination as an equal rights violation. Interestingly, they develop their arguments using two very different forms of discourse. Professor Bratton uses law and economic analysis to challenge key assumptions about the way English-Only laws and employment regulations affect the incentive structures through which individual language acquisition and group assimilation are mediated in this country. Professor Cornell articulates a moral theory of rights that casts respect for language rights as fundamental to "the basic moral right of personality," thereby moving the articulation of equality rights beyond the truncated formalism of an anti-discrimination framework to ground it, instead, on the concept of self-determination.

More specifically, Professor Bratton's objective is to use economic analysis to destabilize the nativist political project by challenging the assumption that English-only laws and workplace regulations will promote assimilation to the English-speaking norm that, for the nativist, defines "the essence" of American identity. He acknowledges that English-only laws and policies are, at least superficially, supported by a plausible economic argument that language regulation maximizes social utilities by increasing communicative efficiency and reducing barriers to social interaction otherwise associated with the Tower of Babel

170. William Bratton, *The Law and Economics of English Only*, 53 U. MIAMI L. REV. 973 (1999); Drucilla Cornell, *The Imaginary of English Only*, 53 U. MIAMI L. REV. 977 (1999); Wells, *supra* note 16; Madeleine Plasencia, "Suppressing the Mother Tongue": *Anti-Subordination and the Legal Struggle Over Control of the Means of Communication*, 53 U. MIAMI L. REV. 989 (1999) [hereinafter Plasencia, *Suppressing the Mother Tongue*]; Yvonne Tamayo, *Literal Silencing/Silenciando la Lengua*, 53 U. MIAMI L. REV. 995 (1999); 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); Hayakawa Torok, *supra* note 9.

171. See Drucilla Cornell & William W. Bratton, *Deadweight Costs and Intrinsic Wrongs of Nativism: Economics, Freedom and Legal Suppression of Spanish*, 84 CORNELL L. REV. 595 (1999).

cacophony of multiple languages.¹⁷² To be sure, Professor Bratton also challenges the initial assumption that “sameness” lowers costs.¹⁷³ However, his major contribution is in showing why English-only laws are unlikely to achieve their purported “efficiency” objectives. He does this through a detailed analysis of the incentive structures Spanish speakers confront in acquiring English language proficiency.

In a nut shell, Professor Bratton’s economic analysis suggests that if nativists are really serious about promoting Latina/o assimilation into American society, they should focus on eliminating discrimination against Latinas/os, rather than suppressing Spanish. This is because the suppression of Spanish is neither necessary nor sufficient to achieve its purported objective of fostering Latina/o assimilation. Spanish suppression is unnecessary because Latinas/os have strong economic incentives to learn English.¹⁷⁴ Those incentives only increase when non-discriminatory practices enable English language acquisition to produce upward social mobility. Conversely, Spanish suppression is insufficient to promote assimilation precisely in those instances in which the reality Latinas/os confront in American society is discriminatory and exclusionary. From this perspective, enclave settlement, employment and commercial practices are simply a rational response to the discrimination experienced when Latinas/os venture outside the Spanish-speaking enclave.¹⁷⁵

Professor Bratton’s law and economics analysis of English-only is particularly interesting and valuable because it creates the point of departure for a more general and far-reaching attack on the oft-repeated assertions made by law and economics practitioners that civil rights and anti-discrimination laws constitute unwarranted “special interest” interventions in the otherwise efficient private ordering of American society.¹⁷⁶ It doesn’t take a rocket scientist to see the ready uses of this discourse for the nativist project. Bilingual education programs and other public policies aimed at mitigating the exclusionary impact of lan-

172. Bratton, *supra* note 170.

173. According to Bratton, “at some point, [this assumption] has to be qualified by the counter-assumption that diversity leads to creative interaction.” *Id.* at 974.

174. Professor Tamayo further buttresses this argument by noting the unmet high demand for English classes among immigrant populations. Tamayo, *supra* note 170, at 998-99 (5,000 immigrants turned away from ESL classes in Washington D.C.; 40,000 wait-listed in Los Angeles).

175. See, e.g., Alex Stepick et al., *Brothers in the Wood*, in *NEWCOMERS IN THE WORKPLACE* 145, 148 (Louise Lamphere et al. eds., 1994) (recounting how Cuban construction workers excluded from Anglo dominated unions in Miami responded by creating their own non-union firms and ultimately taking over the industry: “When the unions finally recognized that excluding Cubans was a mistake, it was too late.”).

176. Bratton, *supra* note 170, at 974.

guage difference on non-English speakers are either manifestations of the concrete steps needed to give meaning and effect to the vision of inclusion underlying the promise of equal protection and non-discrimination — or they are manifestations of the capture of public policy by special interests. Framed this way, it is clear that the initial debate is over the meaning of bilingual programs, on the one hand, and English-only, on the other.

In this debate, law and economics discourse gives the nativist substantial meaning-making power because the language of costs and efficiency is so readily wrapped in the mantle of purported objectivity and value-neutrality: English-only laws are not discriminatory because they are efficient, or so goes the argument. Against this backdrop, Professor Bratton's contribution maps the economic arguments that can effectively turn the tables to reveal English-only laws as special interest legislative interventions. Since— in the absence of discrimination — private ordering *already* ensures that non-English speakers will have strong incentives to acquire English language proficiency, there is no regulatory need to create such incentives through English-only laws. There being no regulatory need, English-only laws constitute the use of state power to reaffirm the exclusionary political project embedded in the presumption that Anglo culture defines what it means to be “an American,” and, more specifically, to promote higher levels of English language acquisition and usage than the market would produce — in the absence of discrimination.

By laying out these arguments, Professor Bratton arms the anti-nativist struggle with a valuable meaning-making resource: the language of law and economics, but his analysis also demonstrates the indeterminacy and normative vacuity of law and economics analysis. Ultimately, cost-benefit analysis cannot tell us how public policy should respond to the skewed incentive structures currently obstructing Latina/o assimilation. This is, at least initially, because discrimination is *not* “absent” from the incentive structures mediating language acquisition. Given the *presence* of discrimination, the public policy issue cost-benefit analysis cannot answer is precisely the question whether state interventions should attempt to counteract these skewed incentive structures by promoting language assimilation through anti-discrimination enforcement and bilingual initiatives or through the imposition of policies like English-only. Indeed, cost-benefit analysis not only cannot tell us *how* to promote language assimilation in a discriminatory social context, it also cannot justify *why* assimilation to an *English* language norm should be the objective, given that efficiency is only one of many compelling values at stake in the formulation of public policy.

Professor Bratton is not unaware of the normative problems inherent in any discourse that measures language rights through a cost-benefit analysis. Thus, a fair assessment of his efforts requires that we read it as it was intended to be read — as part of a larger collaborative project in which Professor Cornell's role is to articulate the normative framework which gives moral content to the task of articulating public policies that otherwise are rendered profoundly indeterminate by Professor Bratton's creative subversion of the nativist economic arguments. Professor Cornell proceeds in this way to ground the case against English-only in the basic moral right of personality of non-English speaking and bilingual Americans.

As I read Professor Cornell, this basic moral right of personality is not just a right to be treated as an end-in-onself rather than a disposable means in some project to maximize social utilities, nor does it simply refer to the right to be treated as a free and equal subject whose rights of self-determination and self-expression are non-negotiable imperatives. It is all this *and more*, for in Professor Cornell's formulation, the moral right of personality is a right to be recognized — in one's very difference — as an equal and legitimate *perspective*. This formulation, correctly understood, constitutes a profound and compelling call for a fundamental gestalt shift in our current interpretations of the *meaning* of equal protection because it clearly marks the difference between "equal treatment" and "treatment as an equal." Treatment as an equal does not always mean equal treatment, precisely because the expectations imposed and benefits conferred by equal treatment may have a substantially different impact on one's human dignity and self-determination depending on the circumstances of one's difference. Conversely, it would be a mistake, in my view, to confuse the call for an equality norm based on the treatment of *others* as equals with earlier calls for an equality of results rather than of treatment.¹⁷⁷ The objective in treating others as equals is not to make everybody equal by eliminating differences, but rather to recognize that everybody *is already equal* in their very differences and to design our social and legal institutions in ways that respect that reality.¹⁷⁸

177. See, e.g., Owen M. Fiss, *A Theory of Fair Employment Laws*, 38 U. CHI. L. REV. 235 (1971) (discussing difference between equal treatment and equal results in context of fair employment laws).

178. For further reflections on this important theme, see, for example, SOREN KIERKEGAARD, *WORKS OF LOVE* 72 (Howard & Edna Hong trans., Harper Torchbook 1964). Kierkegaard puts the thought like this:

One's neighbor is one's equal. One's neighbor is not the beloved, for whom you have passionate preference, nor your friend, for whom you have passionate preference . . . Your neighbor is every man, for on the basis of distinctions he is not your neighbor, *nor on the basis of likeness to you as being different from other men.*

The implications of Professor Cornell's way of understanding the *meaning* of equality are profound and far-reaching. It entirely changes the public policy issue, for the issue is not whether public policy effectuates equal treatment among the similarly situated, but whether it treats those who are differentially situated as equally worthy of the respect and deference to which equals are entitled. Applying this framework to the analysis of English-only laws, it is immediately evident that the impact of English-only on the self-determination and self-expression of non-English speakers and bilingual or multilingual Americans cannot be reconciled with the imperative to treat all others as equals — each having the right of self-determination as defined and effectuated from their particular and altogether different perspectives. Thus, in this context, it is clear that the legitimacy of English-only laws depends on the projection of an equality norm that presupposes sameness as the predicate for equal treatment. Professor Cornell's great contribution is to show the profound inadequacy of this approach and to offer a more meaningful normative framework through which to resolve the indeterminacies otherwise generated by the instrumental analysis of public policy.

Though Professor Wells' reading of Professor Cornell's analysis is different from my own,¹⁷⁹ her essay does offer a clear and compelling account of *the reasons why* Professor Cornell's call for an equality norm based on the treatment of others as equals would constitute a major evolution in the moral fabric of human society. In this vein, Professor Wells' argument begins by noting the advantages a Kantian perspective offers over the utilitarian perspective underlying law and economics discourse: "while the economist thinks of human beings as aggregations of preferences backed by dollars, the Kantian conceives of them as non-

He is your neighbor on the basis of equality with you before God; but this equality absolutely every man has, and he has it absolutely.

Id. (emphasis added). Like many male philosophers, Kierkegaard's otherwise expansive vision was truncated by the gender myopia of his times. That, however, would be another article.

179. Professor Wells' critique notes the limitations of grounding the equality norm in a Kantian framework. Wells, *supra* note 16, at 987. A close reading of Professor Cornell's argument reveals, however, that her analysis draws as much on Franz Fanon's insistence on the right to be recognized "as a legitimate point of view" as it does on Kant. See Cornell, *supra* note 170 (reflecting on meaning of Fanon's observations that evil of racism is in being "denied existence as a legitimate point of view."). The claim embedded in the demand the I be recognized as a "legitimate point of view" is precisely the claim that my difference be respected and my different perspective be recognized as an equally valid point of reference in defining the common good. See, e.g., Iglesias, *Structures of Subordination*, *supra* note 5, at 468, 473-78 (challenging "the complete and total absence of women of color as a legitimate agent or remedial reference point and the structure of power that is thereby established and maintained," and developing account of "the inter-subjectivity of equals" as "a moral imperative and institutional blue print"). Thus Professors Wells and Cornell are not as far apart as an initial reading of Professor Wells' critique might suggest.

negotiable subjects of respect and value.”¹⁸⁰ Indeed, as Professor Bratton’s essay illustrates, in a world ordered by law and economics, a person’s interest in speaking a particular language will, like any other interest, be measured against the efficiency costs of protecting that interest so that, if the cost is too high, the individual’s right will be sacrificed for the “greater good” of the whole. By contrast, in a Kantian moral universe, a fundamental right of personhood cannot be sacrificed at any cost.

The non-negotiable status given to rights of personhood makes Kantian moral discourse a more appropriate language than law and economics for articulating the meaning of equal protection. Nevertheless, in Professor Wells’ view, the Kantian framework is ultimately inadequate because it grounds respect for others on the notion that human beings share an essential sameness — that the imperative of doing unto others as you would have done unto you is based on the recognition of a common humanity and a reverence for the things that make all human beings the same — rather than a recognition of the value of the differences between us. In Professor Wells’ words, “[w]hat we can’t get from Kant is the notion that what is sacred in you is fundamentally different from what is sacred in me; that someone who differs is — *for that very reason* — especially worthy of respect.”¹⁸¹

This is a brilliant insight, clearly and simply articulated in a way that makes evident the profound challenge awaiting LatCrit theory and practice. By linking respect for difference to the experience of one’s own particularity, contingency and finitude, Professor Wells articulates a profoundly revolutionary perspective on the reasons *why* respect for difference is, always and in every respect, a moral, existential and epistemological imperative. The suppression of difference and enforced assimilation are not only attacks on the dignity of another, but acts of *self*-destruction that confine us even further in the limitations of our own contingency, for it is precisely through the other that our finite ways of being and knowing are expanded and enriched.¹⁸² The implications are profound. Otherness and difference are a gift, an avenue of insight beyond our own particularities, a window on the world we might behold if ever we could see beyond our own contingency and live beyond our finitude — a glimpse of God. An equality norm based on the imperative of treating *others* as equals operationalizes this understanding in ways

180. Wells, *supra* note 16, at 987.

181. *Id.* (emphasis added).

182. See, e.g., Iglesias, *Structures of Subordination*, *supra* note 5, at 478 (“Through the suppression of the other, we are all denied the opportunity to transcend the limitations of our contingent perspectives. We are denied, in short, the opportunity for authentic self-determination grounded on the objectivity of a collective truth.”).

that the norm of equal treatment neither does nor can, for it is only by treating *others* as equals that we activate an equality norm that enables us to focus, as Professor Wells suggests, on “the *gift* of otherness, the *opportunities* of multi-lingualism and the possibility that through difference we can find wholeness.”¹⁸³

Professor Wells makes another point worth further reflection. The power of self-expression is crucial to self-determination. Both presuppose access to language, not just any language, but a language in which the world, *as one sees it*, and one’s own self-understandings can be meaningfully formulated and expressed. The language of law and economics has not been popular among critical legal scholars. Part of the reason is, as Professor Wells indicates, its failure to incorporate precisely those values, interests and cultural processes that resist translation into a cost-benefit analysis. The not-so implicit suggestion is that LatCrit theory should avoid speaking the language of law and economics.¹⁸⁴ Some might dismiss this suggestion out of hand: not only are the costs and benefits of any proposal substantively relevant to its proper assessment, but law and economics is the language of choice among policy-making elites and, increasingly, evident in the interpretative practices of many judges.¹⁸⁵

Speaking the language of power is, from this perspective, imperative precisely because, and so long as, *power is power*. Indeed, there is no question that Professor Bratton’s efforts to recast the debate over English-only laws in terms that destabilize the economic justifications routinely invoked to support the nativist agenda constitute a major contribution to the anti-nativist struggle precisely because law and economics analysis is the language of power. More importantly, however, the indeterminacy revealed by Professor Bratton’s creative subversion of the law and economics analysis underlying English-only suggests that law and economics discourse may have become such a ready conduit for regressive and elitist political agendas precisely *because* critical legal scholars have rarely contested its articulation *on its own terms*.¹⁸⁶ Learning and using the language of power may thus be the best way to combat the legal production of subordination. Though not all LatCrit scholars need use law and economics analysis, certainly this suggests there is

183. Wells, *supra* note 16, at 988 (emphasis added).

184. *Id.* (suggesting that we avoid getting caught up in “the cost of multilingualism”).

185. See, e.g., Carrasco, *LatCrit Theory and Law and Development*, *supra* note 102, at 331 (challenging LatCrit scholars to become fluent in the language of law and economics analysis, in part because that is the language to which policymakers respond).

186. See also Frank J. Garcia, *NAFTA and the Creation of the FTAA: A Critique of Piecemeal Accession*, 35 VA. J. INT’L L. 539 (1995) (demonstrating that law and economics analysis can be made to further anti-subordination objectives).

room for, and value in, counting it among the repertoire of critical methodologies through which we expand the scope of our anti-subordination agenda and enhance the depth of our analysis.¹⁸⁷

Nevertheless, Professor Wells' cautionary words give me reason to pause— not because I doubt the possibility or apparent usefulness of strategically deploying a language whose basic assumptions one does not embrace. Instead, my concern stems from the way increased fluency in the language of law and economics tends to reaffirm and consolidate its dominant position within the legal academy and profession. In *Language & Symbolic Power*, Pierre Bourdieu writes incisively of the way linguistic hierarchies are created and the way these hierarchies operate in the organization of social power.¹⁸⁸ Two points are particularly pertinent here. First, he argues that linguistic hierarchies are produced through “the dialectical relation between the school system and the labour market — or more precisely between the unification of the educational (and linguistic) market, . . . and the unification of the labour market.”¹⁸⁹ He further argues that “recognition of the legitimacy of the official language . . . [is] impalpably inculcated, through a long and slow process of acquisition, by the sanctions of the linguistic market, and which are therefore adjusted, without any cynical calculation or consciously experienced constraint, to the chances of material and symbolic profit which the laws of price formation characteristic of a given market objectively offer to the holders of a given linguistic capital.”¹⁹⁰

There is no question that a cost/benefit analysis would suggest, at least at first glance, that acquiring fluency in the language of law and economics makes for a better career investment than acquiring fluency in the methodologies, references and critical frameworks of outsider jurisprudence. Those who master the dominant language reap the rewards of assimilation. In this case, those rewards are directly linked to the labor market. Law and economics aficionados get hired by elite law schools, appointed to the federal bench, recruited for high-level policy-making positions and published in prestigious law journals at higher rates than exponents of any of the major strains of critical legal discourse.¹⁹¹ By contrast, legal scholars working to articulate critical per-

187. See, e.g., Iglesias, *Foreword*, *supra* note 161, at 177, 182, 187, 191 (noting the critical methodologies embraced or advocated by LatCrit scholars).

188. PIERRE BOURDIEU, *LANGUAGE & SYMBOLIC POWER* (Raymond & Adamson trans., 1991).

189. *Id.* at 49.

190. *Id.* at 51.

191. Owen M. Fiss, *The Death of the Law*, 72 CORN. L. REV. 1, 2 (1986) (contrasting critical legal studies and law and economics in terms of their representation within faculties at elite schools and on federal bench); Ian Ayres, *Never Confuse Efficiency with a Liver Complaint*, 1997 WIS. L. REV. 503, 504-05 (noting that economic analysis has been dominant social science in

spectives and promote legal transformation in and through the discourses of Critical Legal Studies, Critical Race Theory, Critical Race Feminism, Queer Theory, LatCrit Theory and even of Law and Society are channeled into the “interesting visitor” circuit, cast as “too political” for judicial appointment and “too abstract and theoretical” for the nitty-gritty of policy-making. For young scholars, the choice of an academic discourse can make the difference between being cast as “an insider” or “an outsider,” and that difference can cost you tenure.

The stakes are high. Understanding their full scope requires understanding not only that legal education is training for hierarchy,¹⁹² but also the extent to which those hierarchies can, consciously and unconsciously, infuse everything we do and aspire to achieve. It can infuse our assessments as to who should be our audience — whether we write to impress the powerful and well-positioned or to engage, enlighten and empower *each other* and thus to consolidate our otherwise dispersed and diverse community. It can also infuse our assessments as to where and how to publish our works — whether we seek to *acquire* prestige through fancy placements in top-ten law journals or, rather, seek instead to *confer* prestige by submitting our *best* works to the “secondary” journals run by minority law students eager to work with, and learn from, us.

Certainly, these matters would not concern me so much if I believed that the language of law and economics was infinitely indeterminate such that it really could, with sufficient effort, be made to formulate, communicate and construct the world as I, and other *others*, see it and, perhaps more importantly, as we aspire to imagine and transform it. It cannot — for the reasons Professors Bratton, Cornell and Wells have each alluded to in different ways. At the same time, critical legal discourses, that *might*, won’t ever develop their full potential unless we collectively invest our human capital and professional careers in their further development and dissemination. The stakes are high indeed. The pay offs are higher, for rather than speaking the language of power — to tinker at the margins and to shift ever so slightly the points of pervasive disequilibrium — the articulation and effectuation of an anti-essentialist, anti-subordination vision and politics requires that we empower *other* languages by speaking them as much, as well and as often as we can. There is definitely a place for law and economics analysis in LatCrit theory, but, in my view, it is, and should remain, at the margins of our

analyzing legal issues and that economists and J.D.s with Ph.Ds in economics are more likely to be hired to teach in law schools than J.D.s with Ph.Ds in other social sciences).

192. See DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY* (1983).

efforts to understand and reconfigure the structures and ideologies of subordination.

Professor Plasencia's comment introduces yet another dimension of the anti-subordination agenda awaiting future LatCrit analysis at the intersection of language rights, meaning-making power and the struggle for self-determination. Focusing on the awesome technological breakthroughs that continue to revolutionize the structure and content of global communications, Professor Plasencia notes the frustrations non-English speakers often encounter in attempting to use the new means of communication that increasingly will mark the difference between "information haves" and "have nots" in the new world information order:

In composing e-mail in Spanish, for example, one cannot readily find the symbols necessary to communicate fully in Spanish. Of the various templates made available for computerized language production, Spanish accents and other symbols often do not match the font of the original text in which the document was composed. The e-mail I have drafted in Spanish often arrives to its addressee with circles where I had placed accents. Therefore, I look like some sort of chaotic writer.¹⁹³

While the personal embarrassment experienced when one's communicative efforts are distorted into gibberish may seem, to some, a minor frustration, the issues it raises are profound. The Internet and the World Wide Web have been heralded as engines of a new world information order and as the most recent advances that increasingly are making the dream of universal communications a reality. They may be all this, but they also constitute a major challenge for the critical task of giving substantive meaning and anti-subordination content to the international and historical commitment to cultural pluralism and universal service.¹⁹⁴ From fiber optics to cyberspace networks, new communications technologies are speeding the flows of information. Being plugged into these flows means having the power of virtually instantaneous communications: the power to send and receive messages, to and from multiple audiences, instantaneously, to transfer documents, to reallocate capital, to purchase goods, to download and print out the world of information, it previously took hours or days or weeks to compile. *Not* being

193. Plasencia, *Suppressing the Mother Tongue*, *supra* note 170, at 994.

194. See, e.g., Arturo Gandara, *Equity in an Era of Markets: The Case of Universal Service*, 33 WAKE FOREST L. REV. 107 (1998) (critiquing rupture of telecommunications social compact based on universal service by Federal Communications Commission's Universal Service Order); Margaret Chon, *Radical Plural Democracy and the Internet*, 33 CAL.W. L. REV. 143 (1997) (mediating cultural pluralism and liberal normativity in cyberspace).

"plugged-in" can mean knowing too little too late. For some this is a personal choice. Others have no choice.

These developments suggest the pressing need for LatCrit theory to examine the ongoing communications revolution and its impact on the reproduction of Latina/o subordination, both domestically and internationally. This is because taking self-determination seriously means taking seriously the information inequalities that link the issue of meaningful access — to the historical development and future evolution of the legal regimes that regulate international and domestic communications technologies, information infrastructures, services and networks. The compelling social and racial justice issues implicated by the recent privatization and increasing monopolization of the broadcast spectrum by large multinational corporations,¹⁹⁵ by the redlining practices of for-profit telecommunications companies,¹⁹⁶ by the struggle for minority access to media ownership,¹⁹⁷ as well as the struggles of Third World states for access to the geo-stationary orbit for satellite communications — all these suggest the broad field of critical analysis awaiting LatCrit attention in ensuring that Latinas/os and other peoples of color are not shut out of the information age.

In pursuing this line of inquiry, LatCrit scholars would, as always, do well to draw on the writings and analyses of other Third World peoples and peoples of color, for example, by excavating the economic and political claims underlying earlier proposals to create a New World Information and Communication Order (NWICO) and the various reforms NWICO articulated for the information and communications regimes governed by the World Intellectual Property Organization (WIPO), the International Telecommunications Union (ITU) and the Universal Postal Union (UPU)¹⁹⁸ as well as by subjecting to critical anti-

195. See HERBERT I. SCHILLER, *INFORMATION INEQUALITY: THE DEEPENING SOCIAL CRISIS IN AMERICA* (1996).

196. See Plasencia, *Video Dialtone Redlining*, *supra* note 168.

197. SCHILLER, *supra* note 195, at 84 (noting that FCC permitted large corporate investors to acquire 75% of the equity and 49.9% of voting stock of minority businesses receiving set-asides in sell-off of publicly owned broadcast spectrum to private interests). Cf. *Adarand Constructors v. Peña*, 515 U.S. 200 (1995) (overruling *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990) on grounds that enhancing broadcasting diversity through minority ownership set-asides is not compelling government interest); see generally Marcelino Ford-Livene, *The Digital Dilemma: Ten Challenges Facing Minority-Owned New Media Ventures*, 51 FED. COMM. L. J. 577 (1999).

198. See, e.g., ALLEYNE, *supra* note 169, at 118-53 (explaining how each of these regimes advantaged first world interests at expense of third world interests and the reform proposals propounded by third world representatives); see also Ingrid Volkmer, *Universalism and Particularism: The Problem of Cultural Sovereignty and Global Information Flows*, in *BORDERS IN CYBERSPACE* (Brian Kahin & Charles Nesson eds., 1997) (re-mapping the center/periphery of the global informatics world around the "spillover environments" marked by in/access to major satellite systems and telecommunications infrastructure and noting that "Africa has "12% of the world's people, but just 2% of the world's main telephone lines").

subordination analysis the more recent trend to shift decision-making authority formerly delegated to these international organizations to venues like the World Trade Organization (WTO).¹⁹⁹ From another perspective, this inquiry might entail mapping and deconstructing homologies in the way the discourse of “politicization” has been used to delegitimize Third World peoples as a legitimate perspective on the way international communications should be structured for the common good and the way the ideology of “free market competition” has been used to legitimate legal reforms and public policies that channel the achievement of universal service through the market imperatives of profit maximization, rather than the promotion of democratic governance and equal access norms. These brief observations demonstrate some of the wide range of issues and methods of analysis that will become increasingly relevant to the LatCrit project and our efforts to understand the relationship between the struggle for self-determination, for meaning-making power and for access to, and control over, the new means of communication.

TOWARD AN ETHIC AND POLITICS OF MUTUAL RECOGNITION:
COUNTERACTING EXCLUSIONARY PRACTICES, ELITIST PRETENSIONS
AND INTELLECTUAL APPROPRIATIONS

The last three essays in this cluster by Professors Tamayo, Hom and Hayakawa Torok focus LatCrit attention on the complex and varied problems confronted by any project aimed at communicating across cultural differences and translating the untranslatable. Professor Tamayo’s essay takes up these issues through a critical analysis of the arguments proffered by English-only advocates in *Yniguez v. Arizonans for Official English*.²⁰⁰ In that case, English-only advocates argued that laws mandating use of English as a common language were appropriate and necessary means of combating the social disunity, political instability and public distrust and suspicion purportedly triggered when the English-speaking majority hears public business conducted in a language they do not understand. In addition to recounting the reasoning that ultimately persuaded the Ninth Circuit Court of Appeals to strike the Arizona Lan-

199. See, e.g., Taunya L. McKarty, *Liberalized Telecommunications Trade in the WTO: Implications for Universal Service Policy*, 51 FED. COMM. L.J. 1 (1998); see also Keith Aoki, *(Intellectual) Property and Sovereignty: Notes Toward a Cultural Geography of Authorship*, 48 STAN. L. REV. 1293, 1338-52 (1996) (intellectual property rights under TRIPS/GATT regime).

200. 69 F.3d 920 (9th Cir. 1995) (declaring unconstitutional English-only provision in State constitution), *vacated as moot and remanded to district court for dismissal*, *Arizonans for Official English v. Arizona*, 117 S. Ct. 1055 (1997); see also Plasencia, *Suppressing the Mother Tongue*, *supra* note 170 (providing further critical analysis of arguments advanced in support of Arizona Language Initiative invalidated in this case).

guage Initiative as an invalid regulation violating the rights of Arizona public employees to speak and of non-English speaking Arizonans to hear public information spoken in Spanish, Professor Tamayo makes a point of linking her analysis to a narrative account of her own difficulties in attempting to translate meanings across Spanish and English. It is precisely these difficulties, and the "untranslatability" of certain meanings, that make the suppression of languages other than English a direct assault on the personal identity and self-expression of those persons, whose means of effective communication are thereby contracted *solely in order* to maintain English as the privileged and dominant means of communication in this country. Rather than fostering genuine integration based on mutual respect for, and accommodation of, these different means of self-expression, English-only laws seek to coerce a false sense of unity through the enforced silence of non-English speakers in, and their ensuing exclusion from, the public realm of American social life.

Professor Hom's essay also takes up the problem of "untranslatability." However, she substantially expands our analysis by providing concrete examples of the kinds of words and meanings that do not easily translate across language differences and the political implications of these barriers for cross-cultural understanding and exchange. Drawing on her experiences co-editing the first and only *English-Chinese Lexicon on Women and Law*,²⁰¹ Professor Hom describes the process of identifying and collecting a list of English terms that have been central to the development of feminist legal theory and political activism, but that Chinese women report to be particularly confusing, unclear or incoherent when presented in Chinese translation. Terms such as Affirmative Action, Empowerment, Gender and Sex defy ready translation into Chinese because these terms refer to particular social, political and historical contexts and/or because they are embedded in particular theoretical frameworks. Translating these terms is not impossible, but it does require an in-depth explanation of the broader context that gives each term its particular meanings within feminist legal discourse and politics.

Through her concrete examples and detailed explanations of the interpretative processes through which she and her collaborators sought to identify appropriate Chinese terms that could effectively *be made to signify* the new and foreign meanings embedded in English feminist terminology, Professor Hom provides an extremely valuable and fascinating avenue of insight into the way language is both the constructed repository and the unfinished instrument of the social and political transformations we have achieved in the past and might seek to imagine in

201. See SHARON K. HOM AND XIN CHUNYING, *ENGLISH-CHINESE LEXICON OF WOMEN AND LAW (Yinghan Funnu Yu Falu Cehuishi)* (1995).

the future. This is because the terms, whose meanings she struggled to convey through this English-Chinese Lexicon, are linguistic artifacts of particular historical struggles and conceptual breakthroughs. These struggles and breakthroughs generated a need for new ways of signifying *new meanings* which did not previously, and would not now, exist but for the intellectual and political efforts through which women's struggles for equality and dignity gave birth to the newly shared consciousness referenced in and by the new feminist terminology which developed to express it. Our present ability to convey these meanings quickly and easily by uttering a simple word like "gender" or "empowerment" is a tremendous political resource, whose historical contingency and inestimable value are often invisible — except in precisely those instances where the effort to produce a common political consciousness "goes international" or cross-cultural. Only then can we see the real and material costs of *not having the words* to reference the ideas we seek to express or the consciousness we seek to construct.²⁰²

Professor Hom's essay would have been a major contribution to the future evolution of LatCrit theory if it had simply stopped here. It goes even further. Like her brilliant performance at LATCRIT III, Professor Hom's essay is an imaginative and multiply nuanced interrogation of the normative and political implications embedded in the practice of cultural and intellectual appropriation.²⁰³ In particular, her essay links an engaging narrative of a playful mother-son exchange, in which her son asserted that her use of his life stories might be a copyright infringement, to her own thoughts about the way she should interpret and respond to the massive underground xeroxing and distribution inside China of her copyrighted Lexicon. Linking these two instances of "copyright infringement" enables her, on a more serious note, to reflect critically on the possessive individualism that underlies western copyright and intellectual property regimes. To this end the linkage is entirely successful. The conjured image of a son proposing to charge his mother "by the story" provides a compelling backdrop against which to critically question the appropriateness of seeking to enforce copyright restrictions against a continent of Chinese women. In both instances, the assertion of copyrights ruptures bonds of solidarity and interconnection

202. The implications for LatCrit theory are profound — not only because so much of LatCrit theory's anti-essentialist agenda is focused on exploring and activating Latina/o transnational identities and international solidarity, but also because, and precisely to the extent that, LatCrit theory seeks to articulate a politics of anti-essentialist, anti-subordination intergroup justice and interconnectivity that defies expression in readily processed sound-bites. See, e.g., *infra* notes 213-15 and accompanying text.

203. Professor Hom's presentation was, without question, one of the many highlights of the LATCRIT III program. As my own son would say, her multimedia presentation rocked.

because it operates, in effect, to commodify the interpersonal experiences and shared political objectives that produced, and are otherwise embedded in, the copyrighted "product." Only someone completely ensconced in the (lack of) values of possessive individualism would seek to commodify these artifacts of a shared reality and a common cause.

Not surprisingly, Professor Hom continues to use her son's life stories even as she expresses hope that her copyrights in the Lexicon will continue to be violated by women in China. However, her reflections beckon further inquiry because they raise the question whether there are *any* instances in which LatCrit scholars should resist the appropriation of our intellectual work and the erasure of our individual authorship. For example, many scholars of color, in private discussions and public fora, have criticized the network of self-referential cross-citations through which majority scholars exclude minority authors, even as they appropriate and seek to preserve their dominant positions, in producing "the normal science" of mainstream legal scholarship, by ignoring any critical analysis they cannot rebut.²⁰⁴ Beyond these instances of exclusion, scholars of color have also noted instances in which their intellectual work has been cannibalized in subsequent works by majority scholars, whose analysis uncannily tracks the same sources and articulates the same, or related, observations and conclusions with no citation, or a mere *see generally*, to the original work from which they have lifted the major theoretical insights or chain of analysis they present as their own.

From any objective standard of scholarship, the failure to reference and engage major critical works directly pertinent to the issues under discussion is at best poor scholarship and often reflects the intellectual dishonesty of either an ideologue or, more often, an imposter. However, when confronted with evidence that their work has been appropriated without appropriate citation or acknowledgment, many scholars of color flounder in the very sorts of internal conflict Professor Hom's essay conjures. To assert one's authorship and demand individual recognition for ideas whose purpose is to transform the world seems self-promoting and counter to the political aspirations underpinning the production and dissemination of critical scholarship. Put differently, too often minority scholars find themselves caught between the sense of being individually wronged by the unacknowledged appropriation of our intellectual labor

204. Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984). For an account describing the practice of "normal science" and the politics through which its practitioners seek to suppress paradigm shifts, see THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2nd ed. 1970). See also Juan F. Perea, *The Black/White Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CAL. L. REV. 1213 (1997), 10 LA RAZA L.J. 127 (1998) (applying Kuhn's analysis to legal doctrine and theory).

and a deeper sense that our individual authorship is simply not the issue that matters.

It is precisely because LatCrit theory seeks to transform the production of legal scholarship from an experience of individual isolation into a practice of collective engagement and empowerment that LatCrit scholars should theorize the difference between the kinds of intellectual appropriations we should permit or encourage and the kinds we should challenge and resist. We should also explore different strategies for identifying instances of, and collectively implementing appropriate responses to, the erasure of minority authorship. Certainly, one ready response is to self-consciously practice a politics of mutual recognition by reading and citing the works of other LatCrit scholars as often, and in as many venues, as possible. It is politically significant when we choose, for example, to cite the works of dead European philosophers rather than living LatCrit colleagues. This is because who we cite (or fail to cite) reflects and defines the participants we acknowledge and engage as our intellectual and political community.

Beyond this practice of mutual recognition, LatCrit scholars might explore other strategies through which collective action might effectively be marshaled to combat the erasure of minority authors. For example, LatCrit scholars might consider the possibility of “outing” works by majority legal scholars that inappropriately ignore or appropriate theoretical insights and analysis previously forwarded by minority scholars. Collectively compiling and publishing a list of such works, with appropriate commentary, might go a long way toward revealing the extent of erasure and appropriation individual minority scholars too often suffer in silence. On the other hand, this particular strategy might be more work than it’s worth. Perhaps a different strategy is in order. Rather than seeking recognition from the legal academy’s “normal scientists” and gatekeepers of the status quo, LatCrit scholars might work, collectively, proactively and self-consciously, to forswear the elitist pretensions too often evident in the politics of citation and commit ourselves, instead, to a politics of mutual recognition through which the persistent dissemination and consistent cross-referencing of LatCrit scholarship may, thereby, *actually* trigger the paradigm shifts already embedded in the critical insights of LatCrit theory and discourse.

The final essay by John Hayakawa Torok closes this cluster with reflections on language acquisition and loss drawn from his experiences as a participant observer at the LATCRIT III conference. Like the other essays in this cluster, his comments focus on the role of language in the construction and expression of personal and political identities. Reflecting on the many distinct and diverse perspectives articulated during the

conference, he raises fundamental questions about the possibility of inter-group translation and cross-cultural recognition. Through personal narrative, he highlights the processes of individual language acquisition and challenges the wisdom of enforcing language uniformity. Read in tandem with the other essays in this cluster, his reflections reassert the centrality of language in the de/construction of communities, the affirmation of identity, the organization of power and the demarcation of insider/outsider relations.

C. *Inter/National Labor Rights: Class Structures, Identity Politics and Latina/o Workers in the Global Economy*

The essays by Professors Romero, Corrada and Cameron constitute the third and final cluster in Part II.²⁰⁵ Like the essays in the first two clusters, these essays explore the relationship between regimes of il/legality, identity politics and the struggle for individual and collective self-determination. While the first two clusters examine these relationships through a critical analysis of the disjunctures between democratic theory and the realities of anti-democratic practices and institutions, on the one hand, and the ongoing struggle over language rights and communicative power, on the other, these last three essays focus LatCrit attention on the struggle for worker rights. In doing so, they explicitly center the issue of class in the articulation of LatCrit legal theory.

Attention to class issues has been acknowledged as a pending, but as yet underdeveloped, trajectory in the further evolution of LatCrit theory and the consolidation of LatCrit social justice agendas.²⁰⁶ Class-based analysis is a particularly pressing matter for LatCrit attention precisely because so much ink has been spilt and so much intergroup solidarity has been squandered in abstract theoretical debates about the relative priority of class and "identity," particularly racial, ethnic and gender identity, in the subordination of peoples of color, as well as by

205. Elvia R. Arriola, *Introduction: The Value of Our Work*, 53 U. MIAMI L. REV. 1037 (1999) (introducing the essays); 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); Roberto L. Corrada, *Familiar Connections: A Personal Re/Viewing of Latino/a Identity, Gender, and Class Issues in the Context of the Labor Dispute Between Sprint and La Conexion Familiar*, 53 U. MIAMI L. REV. 1065 (1999); 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).

206. See Iglesias & Valdes, *supra* note 2, at 574-82 (mapping historical and regional differences in configuration of class relations and production of poverty among different Latina/o communities and calling for particularized analysis as distinct from generalized and abstract debates); Iglesias, *Out of the Shadow*, *supra* note 30, at 368-72, 370 (calling for LatCrit theory to move beyond abstract race/class debates by centering political economy and production of class hierarchies in analysis of white supremacy).

the counter-positioning of race and class in more concrete debates over the future of public policies like affirmative action, minority business set-asides, public assistance eligibility rules, trade liberalization and immigration policies.

On the one hand, calls to ground the articulation of social justice reforms in a class-based analysis have too often ignored the very real impact of racism and sexism as strategic instruments in the material dispossession and anti-competitive exclusion of women and minorities. From this perspective, class-based legal reforms and empowerment strategies cannot eliminate the impact of racism or sexism precisely because they do not *really* engage the reality of racism and sexism.²⁰⁷ Conversely, however, calls to emphasize the centrality of racial subordination, rather than class or gender-based subordination, have too often ignored the material realities of *intra-racial* stratifications and hierarchies that are organized around relations of gender and class privilege *within minority communities*, while calls to focus on gender-based subordination have often ignored the problems of class and racial hierarchies *among women*.²⁰⁸

Against this backdrop, the three essays by Professors Romero, Corrada and Cameron illustrate the analytical power gained by articulating an anti-essentialist, anti-subordination analysis of the complexities of class subordination within and between Latina/o communities. This is because all three essays locate the economic dispossession of Latina/o workers at the intersection of national and international legal regimes and the ongoing transformation and restructuring of an increasingly internationalized global economy. They reveal, in different ways and from different perspectives, the failure of domestic and international labor law regimes to establish a fair and just framework for preventing the exploitation of Latina/o labor and the expropriation of the real value it creates. They also challenge us to further examine and more clearly articulate the relationship between the class biases reflected in these

207. See, e.g., Iglesias, *Structures of Subordination*, *supra* note 5, 488-92 (projection of universal class-based identity and solidarity ignores fact that racial and gender stratifications *within working class* make race and gender-based solidarity and collective action equally imperative); see also Iglesias, *The Anti-Political Economy*, *supra* note 154 (deconstructing suggestion that racial structure of "market" for government contracts can be transformed through color-blind reforms to assist small businesses in the *inter-capitalist* competition between small and large firms).

208. See, e.g., Iglesias, *Structures of Subordination*, *supra* note 5, 488-97, 493 (exploring how class-based, gender-based and race-based essentialism of different liberation movements has caused each to ignore the perspectives and claims of justice advocated by the others, analyzing negative consequences for intersectional identities of women of color and suggesting reforms needed to construct anti-essentialist institutional arrangements that enable self-determination through more democratic *self-representational* governance structures and decisional procedures).

legal regimes, their politics of (non)enforcement and the reproduction of racial and gender subordination both within and beyond the United States.

THE DYNAMICS OF DISPOSSESSION: LABOR WRONGS, THE FANTASIES
OF MARKET IDEOLOGY AND THE REALITIES OF
ECONOMIC POWER/LESSNESS

Professor Romero's essay opens the cluster with a narrative of her personal experiences at the home of a colleague who employed a Latina domestic servant. Professor Romero contextualizes this story of class privilege and gendered exploitation by linking it to a critical analysis of the unfair labor standards regulating domestic labor in the United States, as well as to a sophisticated critique of the theoretical assumptions that undermined, and ultimately betrayed, the anti-subordination potential otherwise embedded in early feminist efforts to recast the unpaid domestic labor performed by women in the home as a form of class exploitation. Professor Romero's analysis provides a particularly valuable point of departure for articulating an anti-essentialist class analysis in LatCrit theory because it shows how the material dispossession of Latina domestic servants is effected through a complex interaction of race, class, gender and immigrant status-based subordination — even as it reveals the methodological limitations of neoliberal micro-economic analysis.

In a nutshell, Professor Romero criticizes the fact that feminist efforts to cast women as an economic class and to theorize the economic value of women's unpaid labor structured the so-called "domestic labor debate" in ways that completely ignored the experiences of the women of color, who oftentimes must bear the burden of domestic work both within *their own homes* and in the homes of other (upper-class) women who hire them as domestic servants. Though early feminist theory sought to establish the value of women's unpaid domestic labor and to thereby reveal the full extent of unjust enrichment conferred on men through the cultural circulation and performance of patriarchal norms casting housework as "women's work," these early feminist efforts ignored the realities of "the market" for domestic service. In this reality, immigrant women of color often work long hours, at less than minimum wage, with no employment benefits, and under personally intrusive and otherwise exploitative working conditions. Instead of confronting *this reality*, feminists turned to the fantasy world of micro-economic analysis. They sought to establish the monetary value of the many services women render in their own homes by calculating the costs of securing these same services through the voluntary arms length transactions of a

market exchange. This analysis revealed that the vast majority of household units would be completely priced out of the market for domestic services because few could afford the accumulated costs of acquiring the services of a cook, a house cleaner, a teacher, a nurse, a chauffeur, a babysitter (and one might now add — of a surrogate mother) in the market. In this way, the economic viability of every patriarchal family was clearly linked to the exploitation and uncompensated expropriation of women's labor.

This domestic labor debate eventually erupted into public consciousness, as the "Nannygate" controversy, when President Clinton's woman nominee for Attorney General was discovered to have illegally employed undocumented workers as domestic servants in her home. The Nannygate affair, as recounted by Professor Romero, brings into sharp relief the contradictions in the way (some) white feminists have engaged the problem of domestic labor. On the one hand, the earlier feminist efforts to establish the "market value" of domestic labor cast women's services as ultimately priceless. On the other hand, the dominant feminist response — to the public controversy over Nannygate — was to minimize the criminal aspects of employing undocumented domestic workers by insisting that current immigration restrictions were out of step with "women's needs" for stable and affordable domestic help — meaning low wage workers owed no expensive benefits obligations.

But, as Professor Romero's analysis suggests, if the reproductive labor involved in maintaining a home is "priceless" when performed by white women in their own homes, certainly it should also be priceless (or at least remunerative) when performed by women of color in the homes of other women. The fact that it is *not* shows that wages for domestic service are determined *not* by "the market value," let alone the use value, of the services rendered, but rather by the asymmetrical power relations that are constructed through the compulsion of economic necessity, the vulnerability of being "illegal" or undocumented, and the cultural and racial prejudices that devalue the labor value produced by immigrant women of color. The fact that dominant feminist discourse has yet to acknowledge and address its internal contradictions reveals the essentialist assumptions through which feminist theory delimits the category of "women's interests" to privilege the particular interests of upper-class white women, while neglecting the "women's interests" of lower class immigrant women of color. By revealing this contradiction, Professor Romero's analysis enables us to see the full extent of unjust enrichment conferred on upper-class household units through the cultural circulation and performance of elitist classist and

racist norms that legitimate the uncompensated material expropriation of the labor value of immigrant women of color.

CLASS CRIMES AND THE POLITICS OF NON-ENFORCEMENT: LAW'S
COMPLICITY IN THE UNJUST (AND ILLEGAL) EXPROPRIATION OF
LATINA/O LABOR VALUE

Against the backdrop of Professor Romero's critical analysis of the asymmetrical power relations that "distort" the supposedly voluntary exchange transactions upon which micro-economic analysis builds its house of cards, the essays by Professors Corrada and Cameron further develop and expand the theoretical parameters and thematic concerns of an anti-essentialist class analysis in LatCrit theory. They also offer additional insights into the role of law in facilitating the material expropriation of Latina/o labor value as well as the poverty, marginality and economic dispossession this expropriation visits upon Latina/o families and communities.

Professor Corrada offers these insights by focusing LatCrit attention on the labor dispute between a Mexican labor union and Sprint Corporation after Sprint purchased La Connexion Familiar (LCF). This dispute is particularly noteworthy because it became the subject of the first complaint ever filed by a Mexican labor union against the United States under the NAFTA Labor Side Accord. LCF was a small Hispanic telephone company based in San Rafael, California. Its business involved marketing long distance telephone services to recent immigrants who speak mainly Spanish and who frequently make long distance calls to friends and family in Mexico. After the purchase, Sprint discovered that a large majority of LCF's employees were undocumented workers and sued to recind the purchase. Though Sprint eventually went through with the deal, they paid substantially less money for the company and canceled the employment contracts in which they had agreed to retain the former Hispanic owners of LCF.

According to Professor Corrada, there was no further information about the fate of the undocumented workers whose employment at the company triggered Sprint's efforts to recind the purchase. In particular, there was no information as to whether these workers were kept on or replaced by "legal" Spanish-speaking employees, though as Professor Corrada notes, this information would have been relevant to determining whether Sprint's efforts to recind were pretextual. Alas, the fact that Sprint's scruples about buying a company staffed by undocumented workers might have been pretextual and strategic was not directly relevant "within the four corners" of the labor dispute at issue in the NAFTA complaint. Nevertheless, what is evident is that Sprint initially

decided to purchase LCF based on projections that increasing immigration by Spanish speaking persons into the United States would make LCF's niche market a growing profit center. Thus, Sprint's apparent scruples about employing undocumented workers did not affect its readiness to make a calculated business decision based on the expected profits to be earned from the consumption practices of illegal immigrants.

This point is key. Read in tandem with Professor Romero's analysis of the under-enforcement that makes the (unfair) employment of undocumented workers a low-risk white collar crime, it shows that the politics of immigration enforcement is not so much about *stopping* illegal immigration, but rather about *who* will be allowed to profit from the increased migration flows that are all but inevitable given the push-pull factors of an increasingly interconnected and global economy.²⁰⁹ The fact that U.S. companies can with impunity profit from, and proactively plan their business projections around, the labor influxes and consumption patterns of illegal immigrants is a field of sociolegal analysis crying out for further exploration by LatCrit scholars interested in theorizing the political economy of Latina/o subordination.

But Professor Corrada's story goes on. After Sprint purchased LCF, the company started to perform below projected profit levels. At about the same time, the Communications Workers of America began an organizing campaign at the company in response to worker complaints of unfair treatment and failure to pay promised sales commissions. An administrative law judge issued a cease and desist order, finding that Sprint managers had violated Section 8(a)(1) of the NLRA by interfering with union organizing activity through threats of plant closure and employee interrogations. Just before the union election was to be held, Sprint closed LCF and terminated the employees. Part of LCF's customer base was transferred to Dallas, Texas, where Sprint hired additional Spanish speaking employees to deal with the influx of new business. There is no information as to whether these additional workers were documented or unionized. After an administrative law judge and a federal district court judge both ruled that Sprint's course of conduct in closing LCF did not violate federal labor laws, a Mexican labor union filed a submission under the NAFTA labor side accord alleging that United States was not enforcing its own labor laws as required by its commitments under the accord.

It was at this point that Professor Corrada was asked to testify as an

209. See, e.g., Alvarez, *supra* note 29, at 310-11 (noting that investment patterns promoted by NAFTA actually encourage Mexican immigration to the United States and arguing therefore that "the United States is morally obligated to do more than simply build a 'fortress America' in reaction" to push-pull factors it has itself created).

expert witness for Sprint at a U.S. NAO hearing on the Mexican submission. He agreed and ultimately testified that U.S. labor laws had been properly enforced. Much of his essay is a searching, honest, self-revealing and self-critical effort to explore the broader implications of his decision to testify on Sprint's behalf. His essay is structured as a dialogue between himself and an inquiring Latina law student, perplexed by the seeming contradictions between his classroom discourse, his Latino identity and his decision to testify in support of a major U.S. company charged with the flagrant violation of Latina/o workers rights. It is, in fact, a moving demonstration of the way the intersectionalities of Latina/o identity can trigger the sorts of existential crises that expand political identity and enable new ways of seeing and being.

The more immediate point stems, however, from the fact that Professor Corrada's legal conclusion, that the United States government had properly enforced its labor laws in the Sprint case, was, on its face, a *legally correct* and entirely defensible expert assessment. After all, the NLRB had vigorously prosecuted the case up to and including its efforts to secure a district court injunction. The district court and the ALJ, for their part, were enforcing labor laws that have systematically and increasingly expanded the realm of employer business prerogatives and of unreviewable discretion in making "core entrepreneurial decisions" such as whether to close or relocate a plant — regardless of the foreseeable and profoundly negative impact of such decisions on union organizing and collective bargaining.²¹⁰ The fundamental un/fairness of U.S. labor laws is, however, simply *not* an issue relevant to the resolution of a labor dispute under the NAFTA labor side accord. The only issue there is whether the U.S. government enforced them properly, and that, therefore, was the only issue Professor Corrada was called to address.

Read, however and once again, in tandem with Professor Romero's analysis of the lack of enforcement that makes the employment of undocumented workers a low-risk white collar crime, these two essays reveal the many and profound inadequacies of domestic and international labor law regimes. Not only are domestic labor law violations routinely unenforced — even when enforced, these laws fail to establish a fair and just framework for preventing the exploitation of labor and the expropriation of the real value it produces. This is precisely because the hyper-technicalities, of which Professor Corrada writes, are simply the

210. See, e.g., *Textile Workers Union of America v. Darlington Manufacturing Co.*, 390 U.S. 263 (1965) (plant closings are matters peculiarly within management prerogative requiring proof of discriminatory intent rather than balancing test); see generally Francis Lee Ansley, *Standing Rusty and Rolling Empty: Law, Poverty and America's Eroding Industrial Base*, 81 GEO. L.J. 1757 (1993) (analyzing doctrinal devolution expanding scope of employer unilateral control over "core entrepreneurial business decisions" — such as whether to sell, close or relocate a business).

masks that hide the asymmetrical power relations these *anti-labor* laws and interpretative rulings are designed to institutionalize, preserve and enforce. The resulting consequences are well documented in Professor Cameron's essay linking the decline in union organization to the increasing impoverishment of labor and the simultaneous increase in business profitability.

Focusing specifically on Los Angeles County, Professor Cameron notes that in communities experiencing 20% or higher poverty rates, "over 15,000 manufacturing firms were generating annual revenues of over \$54 billion, due largely to the low-wage labor of 357,000 Latino employees."²¹¹ Moreover, three enormous construction projects, totaling 12-14.5 billion dollars in investment, are currently in the works for the region. Professor Cameron asks whether anything could be done to help Latina/o workers share more equitably in this enormous wealth. Certainly, he is right to suggest that a larger share of the value their labor produces would go a long way toward ending, or at least substantially mitigating, the destitution that keeps so many Latinas/os at the margins of the social and political life of this country. This is just as surely certain as the fact that if poor immigrant Latina domestic servants were paid the fair "market value" of their labor in upper-income households, they would make enough money to lift themselves and their families out of "the culture of poverty" and criminality they purportedly are so wont to inhabit. Certainly, Professor Cameron is also right to suggest that securing a fair and equitable share of the value Latina/o workers produce depends ultimately on Latina/o self-determination through collective action and solidarity. No employer, union boss, labor board, ALJ, or district court is going to solve the problem. Only the concerted action and mutual assistance of Latina/o workers will do the job.²¹²

In this vein, Professor Cameron's essay reviews a number of recent examples of successful union activity by Latina/o workers. His thesis is that the future of Latina/o workers and the American labor movement are intricately interconnected. Just as the increasing "Latinization" of the U.S. workforce makes Latina/o organizing power an important resource for revitalizing the American labor movement, the significant wage gaps between union and nonunion jobs, particularly when analyzed by race and ethnicity, make it clear that Latinas/os have a lot to gain from unionization. Professor Cameron also offers a valuable analysis of the kinds of collective action and strategies most likely to work,

211. Cameron, *supra* note 205, at 1099.

212. See, e.g., Mary Garcia Castro, *What is Bought and Sold in Domestic Service? The Case of Bogotá: A Critical Review*, in MUCHACHAS NO MORE 105-26 (Elsa M. Chaney & Mary Garcia Castro eds., 1989) (recounting the struggle to gain legal recognition for SINTRASEDOM, a domestic workers union in Colombia).

for example, strategies involving non-strike alternatives — like corporate campaigns and community based boycotts — and, not surprisingly, strategies that do not depend or rely on the vindication of worker rights through legal process.

III. MAPPING THE INTELLECTUAL AND POLITICAL FOUNDATIONS AND FUTURE TRAJECTORIES OF LATCRIT THEORY AND COMMUNITY

The six essays in Part III appropriately close the LATCRIT III symposium by raising important questions about the purpose, history and future trajectories of the LatCrit project.²¹³ These essays reflect the rich and varied intellectual heritage of the many different scholars and activists who have committed their energies to finding, or planting, their roots in the LatCrit community. The unprecedented and rapid expansion of LatCrit discourse over the last three years reflect the synergies embedded in these diverse perspectives and constitute the substantial pay-offs of our concerted, self-conscious and collective efforts to release these synergies through respectful and inclusive intergroup discourse based on our shared commitment to an anti-essentialist vision of substantive justice. At the same time, the rapid expansion and many diversities of position and perspective coalescing in the LatCrit movement raise substantial questions about the future trajectories and sustained viability of this imagined, and still very young, community of scholars and activists.

To my mind, that future depends, both theoretically and politically, on the degree to which the LatCrit community is able to forge a common consciousness and generate a shared discourse for articulating and manifesting, in concrete ways, a new vision of the relationship between the universal and the particular. It depends, ultimately and in other words, on the degree to which each of us is able to see the many different ways in which the relationship between the LatCrit community and the many particularities of which it is composed and into which it might at any point fracture — is not a relationship between “the universal and the particular,” but rather is, at every moment and in every instance, a rela-

213. Margaret E. Montoya, *LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions*, 53 U. MIAMI L. REV. 1119 (1999) [hereinafter Montoya, *LatCrit Foundations*]; Kevin Johnson & George Martínez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship*, 53 U. MIAMI L. REV. 1143 (1999); Mutua, *supra* note 8; Tayyab Mahmud, *Colonialism and Modern Constructions of Race: A Preliminary Inquiry*, 53 U. MIAMI L. REV. 1219 (1999); Phillips, *supra* note 7; Victoria Ortiz & Jennifer Elrod, *Reflections of LatCrit III: Finding “Family,”* 53 U. MIAMI L. REV. 1257 (1999).

tionship of the universal to itself.²¹⁴ What this means, in effect, is that the challenge we confront, directly and immediately over the next few years, is a challenge that most of us cannot even *really* imagine. This is, in no small part, because there are simply no words, no readily accessible sound-bites, no immediately obvious and easily recognized formulations that convey the conceptual implications, political parameters, ethical substance and practical consequences, as yet to be manifested in and as — an anti-essentialist vision of human interconnection.²¹⁵ Not only are we challenged to imagine the ineffable and make manifest the unimaginable, but to do so concretely and effectively, — not at some unspecified time in some distant and abstract future, but rather — *in the here and now of this moment*, as it reflects itself in our collective efforts to further the objectives and foster the growth of a particular and historically contingent group of scholars and activists, who have chosen to coalesce around this imagined community and its aspirations for a new way of seeing and being in the world.

It is with these thoughts in mind that I take up the last six essays of the LATCRIT III symposium. The first section focuses on the theoretical dimensions and directions of the LatCrit project as reflected in these particular essays. The second section takes up the practical challenges involved in ensuring the continued institutional and programmatic evolution of the LatCrit project.

A. *Of Intellectual Debts, Theoretical Directions and the Challenge of Anti-Essentialism*

From its title, the opening essay by Professors Johnson and Martínez would seem to suggest that the LatCrit movement originates, and is rooted, in the history of Chicana/o activism and scholarship.²¹⁶ A fair and fully informed historical account of the initial beginnings and subsequent evolution of the series of conferences, publications and related events that now constitute the historical record of the LatCrit project would not support such a claim.²¹⁷ However, a close reading of their essay quickly reveals a very different and altogether appropriate message. Indeed, the opening paragraphs of their essay make it quite clear that Professors Johnson and Martínez are not claiming that the LatCrit movement is, *in fact*, historically rooted in Chicana/o studies. Not only do they acknowledge the central importance LatCrit theory has,

214. See, e.g., *supra* notes 104 & 109 and accompanying text.

215. See, e.g., *supra* notes 201-03 and accompanying text.

216. See Johnson & Martínez, *supra* note 213.

217. See, e.g., Valdes, "OutCrit" Theories, *supra* note 7 (recounting relationship between CRT workshop and emergence of the LatCrit movement); see also Philips, *supra* note 7 (same).

since its inception, accorded the project of promoting a discourse and politics of pan-ethnic solidarity among Latinas/os, but the recorded history, thus far developed, unequivocally illustrates the degree to which LatCrit theory has *also, from its inception*, aspired to articulate an inclusive anti-essentialist politics of intergroup justice and solidarity that goes far beyond the politics of Latina/o pan-ethnicity.²¹⁸

Rather, Professors Johnson and Martínez's claim, as I understand it, is that LatCrit theory *should be* rooted in Chicana/o studies or, more precisely, that LatCrit scholars should view the long history of Chicana/o activism and scholarship as a rich resource worth further study and serious engagement. It is to this end that they append the bibliography of Chicana/o history compiled by Professor Dennis Valdes, and it is in this respect that their claims are entirely appropriate and consistent with the historical development and the theoretical and political aspirations of the LatCrit project.

LatCrit scholars should indeed study and learn from the significant body of scholarship and history of activism reflected in and recorded by a long tradition of Chicana/o studies. The particular perspectives and experiences of Chicanas/os are as central to the LatCrit project as the perspectives and experiences of any other multidimensional and intersectional collective political identity group committed to the struggle against white supremacy and the articulation of a substantive vision and political practice of social justice and solidarity. Only an unfortunate regression to the failed politics and limited consciousness of an ethnic or racial essentialism would view Professor Johnson's and Martínez's call for attention to the particularities of Chicana/o histories and experience as a threat to the LatCrit project. As Professor Roberts noted in her own contribution to this symposium, an anti-essentialist commitment to anti-subordination politics does *not* mean a commitment to an abstract universalism stripped forever of any particular content.²¹⁹ It is, instead, a commitment to see and respect the universal claims of justice and dignity reflected in and asserted by every particularity, as well as by the multidimensional and intersectional identities that oftentimes are sup-

218. These theoretical and political aspirations have been substantially enriched by the active and continuous participation of a highly diverse and extraordinarily talented assortment of APACrit scholars, RaceCrits, QueerCrits and other OutCrit scholars. *See, e.g.*, Aoki, *supra* note 169, at 969 (noting extent of APACrit participation in LatCrit conferences and community); Culp, *supra* note 45 (reflecting on relevance of LatCrit project to African Americans); 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); 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).

219. *See, supra* note 109 and accompanying text.

pressed *within* each particularity.²²⁰

What this means, more concretely, is that Professors Johnson and Martínez are right on point when they assert the need for a distinctive emphasis on the particularities on Chicana/o perspectives and experiences, both within and beyond the institutional and programmatic parameters of the LatCrit project. They are also right to suggest that Chicana/o Studies and LatCrit theory may ultimately converge if, and as, Chicana/o Studies become more inclusive and LatCrit theory continues to encourage a theoretical and political attention to the particularities of subordination experienced by the many different Outgroups that have coalesced in the LatCrit movement.²²¹ LATCRIT III sought to operationalize precisely this theoretical and political commitment to addressing the particularities of subordination by self-consciously and intentionally organizing the BlackCrit focus group discussion as a *programmatic* event through which a tradition of “rotating centers” might be definitively launched and effectively institutionalized in the organization of LatCrit conferences.²²² Within this context, a Chicana/o Studies focus group discussion would not be difficult to imagine or to organize for a future LatCrit conference.

Conversely, of course, Chicana/o activists might likewise effectuate and expand upon Professors Johnson’s and Martínez’s call for attention to and respect for Chicana/o particularities, for example, by centering the experiences and perspectives and listening to the stories of Chicanas/os, who have experienced Chicana/o activism from positions located *outside* the parameters of identity and relations of solidarity defined and delimited by Chicana/o intellectual and political elites.²²³ Beyond that, Chicana/o Studies activists and scholars might, as Professors Johnson and Martínez suggest, invite the comments and perspectives of *non-Chicana/o* Latinas/os, who share their commitment to an anti-subordination social justice agenda. Making these and other similar moves might indeed produce the ultimate convergence of Chicana/o Studies and the

220. See Iglesias & Valdes, *supra* note 2, at 556-57 (urging LatCrit scholars to “avoid the essentialist tendency to seek universal truths in generalities and abstractions, rather than seeking universal liberation in and through the material, though limited, transformation of the particular and contingent”); see also, e.g., Iglesias, *Structures of Subordination*, *supra* note 5 (criticizing different ways in which intersectional particularity of women of color is oftentimes suppressed in the constitution of class, race and gender based collectivities).

221. Johnson & Martínez, *supra* note 213, at 1157 (noting that “[u]ltimately, Chicana/o Studies and LatCrit theory may move in opposite directions— with Chicana/o Studies becoming more inclusive and LatCrit theory allowing for focused inquiry when appropriate”).

222. See *supra* notes 105-17 and accompanying text (discussing original purpose and intent behind the BlackCrit focus group discussion and controversies it generated at LATCRIT III).

223. See, e.g., Montoya, *LatCrit Foundations*, *supra* note 213, at Part III (reporting interviews with two Chicana scholars about their experiences as women within the National Association for Chicana/Chicano Studies).

anti-essentialist, anti-subordination agenda that, thus far, has defined LatCrit theory as the collective and collaborative project of a diverse group of critical scholars and activists.

In this vein, the essays by Professors Mutua and Mahmud offer very different, but equally appropriate, reference points for the future development of LatCrit theory. Professor Mutua draws on her experiences at LATCRIT III, and particularly her reflections on the BlackCrit focus group featured at the conference, in order to develop a deeply moving analysis and theoretically sophisticated framework for comparing the racialization of Latinas/os and Blacks. Professor Mahmud's essay, by contrast, draws upon, and introduces for the first time ever in a LatCrit symposium, the rich discourse of post-colonial theory and scholarship. Both essays acknowledge and explore the broader political implications of the fact that white supremacy operates through the ideological articulation and legal machinery of multiple racial systems. Both essays thus call upon LatCrit scholars to focus attention and deepen our comparative analysis of the various and varied modalities through which these different racial systems produce the subordination of peoples of color, both within and beyond the United States.

Professor Mutua's immediate objective is to articulate a theoretical framework that can effectively ensure that the LatCrit practice of "rotating centers" will trigger meaningful substantive analysis of the different ways in which white supremacy configures relations of relative privilege and oppression among different non-white groups and the intergroup rivalries that are thereby activated — as much by an uncritical embrace of the privileges conferred on one's own group, at the expense of another — as by an uncritical emphasis on the oppression endured by one's own group, but not the other. Focusing specifically on the intergroup tensions between Blacks and Latinas/os, Professor Mutua shows how the notion of "shifting bottoms" provides the necessary theoretical framework for linking the practice of "rotating centers" to a careful and critical analysis of the different racial systems through which Blacks and Latinas/os are relegated to their respective "bottoms." Once these different racial systems are identified and deconstructed, LatCrit scholars will be better able to understand the many obstacles confronting our hopes of achieving genuine intergroup solidarity and justice. These hopes confront profound challenges because Latinas/os, Blacks and Asians are privileged and oppressed by *different* racial systems. Dismantling one racial system, will not necessarily dismantle the others. On the contrary, it may actually reinscribe the remaining systems and enable their more virulent entrenchment in American society. Thus non-white groups are *really* and always potentially in conflict — absent a genuine and self-

conscious commitment to anti-essentialist intergroup justice.²²⁴

To this end, Professor Mutua's analysis makes three distinct, yet interconnected, theoretical moves of particular salience to the future development of LatCrit theory. The first is to recognize that the practice of "rotating centers" is not about "celebrating diversity." LatCrit organizers want to institutionalize the practice of rotating centers because it offers a valuable lens through which to examine, among other things, the different ways in which white supremacy configures relations of privilege and subordination *within and between* non-white groups. By articulating the notion of "shifting bottoms" Professor Mutua offers a valuable guidepost for deciding *where* the center should rotate next. This is because, as her analysis suggests, the practice of rotating centers will maintain its critical edge and effectuate its anti-subordination objectives only so long as it remains relentlessly committed to seeking and asserting the perspectives of those at the bottom of any particular context in which white supremacy is present and operative.²²⁵

Professor Mutua's second move links the notion of "shifting bottoms" to a detailed and comparative analysis of the different racial systems operating in the United States. Through a detailed analysis of these different systems, Professor Mutua makes a compelling case for concluding that Blacks, Asians and Latinas/os are racialized in different ways — such that Blacks are raced as "colored," Asians are raced as "foreign," and "Latino/as when they are not raced as black or white are 'raced' as hybrid (being "raced" both as partially foreign and partially colored in a way that racializes their ethnicity and many of its components.)"²²⁶ These different racial systems structure intergroup relations in ways that produce "shifting bottoms" between Blacks, Asians and Latinas/os, so that "different faces appear at the bottom of the well depending on the issue analyzed."²²⁷ Thus, while (some) Latinas/os may be relatively privileged by the "racial mobility" of putative whiteness in the racial system that marks Blacks as colored, (some) Blacks may be relatively privileged by the presumption of an American national and cultural identity in the racial system that marks Latinas/os as hybrids and foreigners.

Her third and final move links the intergroup tensions between Blacks and Latinas/os, over such issues as language rights, immigration

224. See, e.g., *supra* notes 46-55 and accompany text (discussing intergroup tensions over racially restrictive immigration policies).

225. See, e.g., Iglesias, *Out of the Shadows*, *supra* note 30, at 374-75 (noting how exclusion of Japanese Latin-Americans from 1998 reparations paid by U.S. government to Japanese-American World War II internees reveals a "bottom" not otherwise evident).

226. Mutua, *supra* note 8, at 1207.

227. *Id.* at 1178.

policies and affirmative action, to the shifting configurations of privilege and oppression created by these different racial systems. The aspiration underlying the theory and practice of coalitional politics has repeatedly been cast as a collective struggle to move beyond the divide and conquer dynamics of inter-group competition *within* white supremacy to a collaborative project aimed, instead, at eliminating white supremacy through a politics of intergroup solidarity and a commitment to intergroup justice. Professor Mutua's detailed analysis of the different racial systems organizing Black and Latina/o subordination furthers this project by revealing how tensions between Blacks and Latinas/os reflect the different configurations of privilege and oppression visited upon these different groups by the particular dynamics of different racial systems. Even more importantly, it clearly and powerfully drives home the point that achieving intergroup justice is not simply a matter of eliminating oppression, but also of *giving up privilege*. This means that each group will have to confront and forswear the privileges conferred on them by the racial systems that oppress groups other than themselves — if there is ever to be genuine solidarity based on a shared commitment to objective justice.²²⁸

At the same time, however, it is important to recognize the limitations of Professor Mutua's theoretical framework — not so as to undermine or discount the substantial advances it makes in the articulation of LatCrit coalitional theory, but rather so as to mark future directions for LatCrit analysis. More specifically, I wonder how the experiences of Black Haitians, and other immigrant Black identities would be mapped within and across the various racial systems delimited by Professor Mutua's framework.²²⁹ More generally, I wonder what focusing specifically on marginalized and intersectional identities of Black Latinas/os, Black Asians, Asian Latinas/os and so on and so forth, would teach us about the interconnections and disjunctures between the various racial systems and *other* racial systems, we have yet to identify and deconstruct. Indeed, in this respect, Professor Mahmud's essay closes this section as if by design.

Focusing specifically on the various racial systems constructed in and through the British colonial project in India, Professor Mahmud illustrates the tremendous mileage to be gained from of a serious LatCrit encounter with post-colonial theory and discourse. Like Professor Mutua, his essay offers a detailed analysis of the discourses and practices through which different racial systems were constructed in the past

228. See, e.g., Iglesias, *Structures of Subordination*, *supra* note 5 (solidarity must be based on justice, not sentimental rhetoric).

229. See, e.g., *supra* notes 46-55 and accompanying text.

and are reflected in the present conflicts and tensions among different racialized groups. By locating this analysis in the particularities of European colonialism, Professor Mahmud provides a valuable framework for expanding the critical analysis of racialization beyond the territorial boundaries, cultural ideologies and domestic concerns of the United States. There is no question that his essay marks a future trajectory for LatCrit theory.

B. *Institutionalizing Solidarity and Practicing Mutual Recognition*

The cluster afterword submitted by Professor Montoya in conjunction with her cluster introduction, as well as the essays by Professor Phillips and by Professors Ortiz and Elrod provide an appropriate occasion to shift the focus of attention from the theoretical foundations and future trajectories of LatCrit theory to the more concrete and practical challenges of ensuring the continued institutional and programmatic evolution of the LatCrit project. Some of the challenges thus far confronted, as well as the various strategies LatCrit organizers have implemented to meet these challenges, are detailed in Professor Valdes' Afterword.²³⁰ Nevertheless, these last three essays each raise important issues concerning (1) the internal dynamics, historical development and future evolution of LatCrit conferences and the organizational practices and structures needed to sustain this movement;²³¹ (2) the relationship between LatCrit and other networks and organizations of critical scholars;²³² and (3) the overarching necessity of ensuring that these concerns are mediated in ways that preserve and enhance a common ethic of authentic human sharing, inclusivity and connection. This last point is key. The LatCrit community can and should continue to grow and expand, even as we continue also, rigorously and honestly, to explore our substantive differences of position and perspective in the spirit and expectation of lively and lasting friendship based on a shared commitment to an anti-essentialist anti-subordination vision and politics.²³³

To these ends, Professor Montoya's cluster afterword features interviews with two Chicana scholars involved in the National Association for Chicana/Chicano Studies. Through a candid and detailed narrative of the problems confronted in that particular context, these interviews offer valuable insights into the difficulties any collective project can eventually encounter as its participants confront the consequences of their own success. One such consequence, noted in these

230. Valdes, "OutCrit" Theories, *supra* note 7.

231. Montoya, *LatCrit Foundations*, *supra* note 213.

232. Phillips, *supra* note 7.

233. Ortiz & Elrod, *Finding "Family," supra* note 213.

interviews, is the activation of an all-too-human tendency to abandon the ethic of mutual recognition and the aspirations it embodies, and to jockey instead for positions of individual prominence, whether real or imagined. This cannot be allowed to happen again. Too much is at stake in the here and now of this moment of retrenchment and hostility to the cause of social justice and genuine human interconnection.²³⁴

Operationalizing an ethic of mutual recognition, in this context, means recognizing the efforts and contributions of particular individuals, rather than attributing current collective achievements to impersonal historical forces or to the heroes (or heroines) of a distant past. Though there can be no question that the LatCrit movement draws its energy and substantive value from the many scholars, who have chosen to find, or to plant, their roots in the LatCrit community, it is also true that the organization of appropriate venues, the construction of appropriate contexts for performing community and producing a collective learning process and the negotiation of publication commitments that enable these efforts to be recorded and broadly disseminated do not happen automatically without the efforts and energy of particular individuals, who at specific points in time, take up the burdens and challenges of creating the opportunities that enable community. The history of these efforts in the development of LatCrit theory has yet to be told. As Professor Montoya's afterword suggests, much could be learned from the telling. That history, in its full detail, has much to teach about the meaning and value of perseverance, solidarity and intellectual, professional and personal generosity. That history, in its full detail, will have to await another moment and venue, but the lessons embedded in Professor Montoya's cluster afterword underscore the necessity and value of recorded history.²³⁵ With that in mind, a few notes for the record are highly in order.

Though the future of the LatCrit movement has yet to unfold, its history began, without question or doubt, in the Critical Race Theory Workshop. It began there because, in its most proximate and concrete form, LatCrit began with the vision and efforts of my friend and colleague Francisco Valdes. That vision is reflected in Frank's

234. For a critical discussion of legal scholars and scholarships in this time of backlash lawmaking, see Francisco Valdes, *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) (urging progressive legal scholars to use our institutional and intellectual positions to blunt the drive to retrenchment).

235. See Montoya, *LatCrit Foundations*, *supra* note 213, at 1135 (quoting Cordelia Candelaria: "Many of the early pioneers in Chicana/o studies have been so used to rolling up our sleeves and just doing what needed to be done without chronicling the process. We just move on to other projects. History is lost is one unfortunate consequence. Another is that later on the history is sometimes re-written in terms of making certain actors look good in ways that are totally unsupported by the facts.").

Afterword,²³⁶ but his many efforts on behalf of the LatCrit community are not. From the initial gathering of law professors which produced the first ever Colloquium seeking to locate Latinas/os in the discourse of Critical Race Theory and, in doing so, gave birth to the "LatCrit" movement,²³⁷ and ultimately to this LATCRIT III conference, Frank's efforts to build an inclusive community of scholars and activists, to promote a theoretically sophisticated and analytically rigorous anti-essentialist critical legal discourse and, above all, to combat the marginalization of Latina/o communities in American legal culture have been a driving force behind, and an unselfish source of energy and practical assistance to, the organization of LatCrit conferences, the publication of LatCrit scholarship and the consolidation of the LatCrit community. To locate the roots of LatCrit theory in any other venue, history or project, without accounting for the efforts of this particular man and the immediate context that inspired these efforts, would be an unfortunate distortion of the unrecorded history of the LatCrit movement.

Just as Professor Montoya's cluster afterword counsels LatCrit organizers to negotiate the future growth and the institutionalization of structures and procedures for the LatCrit project with care and fidelity to the ethic of mutual recognition, the commitment to unequivocal inclusiveness and the aspirations of collective solidarity and transformative social justice praxis that initially gave it birth, Professor Phillips's contribution counsels LatCrit organizers and scholars to attend to the needs and concerns of other networks and organizations of critical legal scholars. Whether her institutional proposal to coordinate LatCrit conferences and Critical Race Theory Workshops through an every-other-year rotation, or some other appropriate variation, is ultimately adopted, the objectives, concerns and aspirations that inform her proposal warrant serious LatCrit attention and consideration. Working out the programmatic and institutional details of the relationship between LatCrit conferences and activities and the Critical Race Theory Workshops, as well as the details of LatCrit participation in venues like APACrit conferences, Law and Society, People of Color Conferences, the NAIL and TWAIL networks focusing on New and Third World Approaches to International Law, INTEL's International Network on Transformative Employment & Labor Law and the Critical Legal Studies Network, to name but a few, are pending matters of increasing importance. Ultimately, taking seriously the commitment to social transformation through law means tak-

236. See Valdes, "OutCrit Theories," *supra* note 7.

237. See Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, *supra* note 1.

ing seriously the coordinated synergies that only our collaborative efforts can produce.

Finally, the essay by Professors Ortiz and Elrod provides a vivid image of the community spirit, collegiality and cultural ethos the LatCrit movement must not ever lose. Though the LatCrit project aspires to the serious objective of producing transformative anti-essentialist legal theory and praxis, it aspires also to the realization of the human need for genuine community, solidarity and friendship. Whether LatCrit conferences and activities will continue to provide an intellectual and political home for scholars and activists committed to the project of social justice depends on the degree to which we continue to structure our gatherings as spaces where the personal and professional are equally valued and accommodated.

CONCLUSION

LATCRIT III undoubtedly marked a watershed event in the evolution of the LatCrit movement, both as the most recent intervention in outsider jurisprudence and as a community of scholars and activists. This Foreword has sought, in a caring, careful and analytically rigorous manner, to highlight the advances and engage the problems embedded in the essays that now constitute the only record of this wonderful event. Heeding prior calls and applying the methodologies advocated in earlier LatCrit scholarship, this Foreword has worked to situate the contributions of this symposium within the broader discursive background that has already been developed through substantial efforts, and at great cost, by other critical scholars.²³⁸ This positioning, as previously explained and once again repeated, “requires a broad learning and caring embrace of outsider jurisprudence and, in particular, of the lessons and limits to be drawn from its experience, its substance and its methods.”²³⁹ It also counsels LatCrit scholars to recognize the importance of critical engagement and mutual recognition. Through our critical and focused engagement in each other’s work and ideas, we will ourselves, grow intellectually and politically, even as we foster each other’s growth and development. Through our commitment to mutual recognition, we will promote the dissemination of LatCrit anti-essentialist, anti-subordination theory and, thereby — with a little luck and a lot of hard work — trigger the paradigm shifts that are imperative for the 21st century. The future is as bright as we make it *together*.

238. Iglesias & Valdes, *supra* note 2, at 584.

239. *Id.*