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Foreword: Under Construction- LatCrit Consciousness, Community, and Theory

Francisco Valdes

University of Miami School of Law, fvaldes@law.miami.edu

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Francisco Valdes†

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† Visiting Professor of Law, University of Miami, 1995-96 and 1996-97; Professor, California Western School of Law. Thanks go to Bob Salinas and to the 1996-97 editorial boards of the *California Law Review* and *La Raza Law Journal*, who proposed and approved this first-ever symposium. Thanks also go to the 1997-98 boards of these two journals for their caring work on this project, and especially to Joseph Hahn for his tireless and crucial efforts. Special thanks go to David Oakland and Sherri Sokeland for crucial attention both to detail and to vision. Thanks additionally go to the symposium contributors, and to all LatCrit scholars, whose endeavors are helping to bring Latina/o concerns to the fore of legal and social discourse. Finally, personal thanks go to Tony Alfieri, Keith Aoki, Margalynne Armstrong, Elvia Arriola, Paul Brest, Robert Chang, Sumi Cho, Barbara Cox, Jerome Culp, Richard Delgado, Leslie Espinoza, Clark Freshman, Lawrence Friedman, Phoebe Haddon, Angela Harris, Berta Hernández-Truyol, Lisa Iglesias, Kevin Johnson, Gerry Lopez, Miguel Mendez, Margaret Montoya, Rachel Moran, Laura Padilla, Michael Olivas, Cruz Reynoso, Celina Romany, Jennifer Russell, Gloria Sandrino, Jonathan Simon, Jean Stefancic, Sam Thompson, Gerald Torres, Robert Weisberg, Robert Westley, Stephanie Wildman, and Eric Yamamoto, for their support of LatCrit theory and, in particular, of my participation in it. All errors below are mine.

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Under Construction: LatCrit Consciousness, Community, and Theory

Francisco Valdes

INTRODUCTION

This Symposium marks the first time that a “major” or “mainstream” law review¹ devotes an issue to “LatCrit theory”² as a genre of critical legal scholarship and, more particularly, as a new voice in outsider scholarship.³ Its co-sponsorship by one of the nation’s

1. This Symposium brings together the *California Law Review* and the *La Raza Law Journal*, which jointly produced and published the works that follow. See Symposium, *LatCrit Theory: Latinas/os and the Law*, 85 CALIF. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1997). This joint publication follows several symposia in various other journals, which have helped to pioneer the emergence of LatCrit theory. See Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 LA RAZA L.J. 1 (1996); Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. (forthcoming 1997); Colloquium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 UCLA CHICANO-LATINO L. REV. (forthcoming 1998). The proceedings of the Third Annual LatCrit Conference will be published in 4 U. TEXAS HISPANIC L.J. (forthcoming 1998).

2. It would be impossible to impart a single definition of LatCrit theory, as is the case with Critical Race or other genres of critical legal scholarship. See Francisco Valdes, *Foreword—Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 LA RAZA L.J. 1, at n.1 (1996) (describing Critical Race Theory as focusing “on the relationship between law and racial subordination in American society” (citations omitted)). In my view, LatCrit theory is the emerging field of legal scholarship that examines critically the social and legal positioning of Latinas/os, especially Latinas/os within the United States, to help rectify the shortcomings of existing social and legal conditions. For a summary of one view regarding LatCrit theory’s key characteristics and ambitions, see *infra* notes 12-22 and accompanying text. Participation in this field of legal studies is not limited to “Latinas/os” nor any other category of identity; on the contrary, LatCrit discourse is open to all scholars interested in issues especially germane to Latinas/os and willing to focus on Latina/o concerns and communities. See *infra* note 210 and accompanying text. This point is illustrated by this symposium’s annotated bibliography of LatCrit scholarship, which includes the work of various non-Latina/o authors. See, e.g., *infra* note 7. The internal diversities of Latina/o populations also invite an open and lively LatCrit discourse. See *infra* note 7.

3. The term “outsider jurisprudence” was coined by Professor Mari Matsuda and refers to the body of literature generated during the past decade or so by scholars who identify with traditionally subordinated communities. See Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 MICH. L. REV. 2320, 2323 (1989).

oldest Latina/o law review makes this Symposium a shining moment in the formation of a LatCrit discourse. Yet it was barely a year ago that the LatCrit subject position⁴ was conceived and articulated.⁵ The works presented below both reflect and constitute a nascent field—Latina/o⁶ legal studies, or LatCrit theory.

This Symposium therefore is part of a larger beginning: the beginning of a LatCrit consciousness, community and literature within the contemporary legal culture of the United States. As the diversity and richness of this symposium indicate, LatCrit theory, and what it means, remains a question open to scholarly investigation and exchange. Outsider scholars must continue to investigate the indefinite contours of Latino communities and LatCrit theory in the years to come.

The early timing of this project also means that the pieces published here are both an artifact of the conditions they critique and indicators of the present and future of LatCrit theory. Each piece reflects the general silence on Latina/o legal issues and portends the future character of LatCrit discourse. Their authorship, scope, focus and tone at the threshold of this undertaking may indicate as much about Latinas/os and the law as the substantive analyses or conclusions advanced collectively or individually by their contents. Simply, the pieces published here may tell us as much by what they are as by what they say.

The papers of this Symposium are presented below in two thematic clusters that reflect areas of law and life especially germane to Latina/o populations. Each cluster consists of several essays and an introduction. The first cluster concentrates on race, ethnicity and nationhood, while

4. The term "subject position" describes the stance or perspective of the author vis-à-vis the topic. See Robert S. Chang, *The End of Innocence or Politics After the Fall of the Essential Subject*, 45 AM. U. L. REV. 687, 690-91 (1996).

5. The "LatCrit" denomination arose from a meeting of several Latina/o law professors during a Colloquium held in Puerto Rico on Latinas/os and Critical Race Theory as part of the Hispanic National Bar Association's annual meeting. For more details of that event, see Valdes, *supra* note 2, at 7 & n.28; see also Berta Esperanza Hernández-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs, and Reality Checks*, 2 HARV. LATINO. L. REV. (forthcoming 1997).

6. The term "Latina/o" encapsulates an amalgam of persons and groups, who in turn embody multiple diversities. See, e.g., Valdes, *supra* note 2, at 8 n.31 (discussing the range of Latina/o scholars present at a symposium). This term therefore necessarily oversimplifies but does not automatically essentialize. See *infra* notes 67-68 and accompanying text (discussing essentialism and Latina/o diversities). Cf. Valdes, *supra* at 6 n.25 (noting the diversity of persons who self-identify as Latina/os); see also Gloria Sandrino-Glasser, *Los Confudidos: De-Conflating Latinos/as' Race and Identity*, 19 CHICANO-LATINO L. REV. (forthcoming 1998) (discussing multiple Latina/o diversities). While fully cognizant of these limitations, I use "Latina/o" generally to signify persons with nationalities or ancestries derived from countries with "Hispanic" cultures; currently in the United States, these persons or groups are primarily (but not exclusively) Mexican Americans, Puerto Ricans, and Cubans or Cuban Americans. For population data, see *infra* note 105.

the second shifts attention to policy, politics and praxis. These works are followed by an annotated bibliography⁷ to promote the development of LatCrit scholarship and a book review essay to facilitate further reflection on the relationship of LatCrit to Critical Race Theory.⁸ An afterword⁹ completes the Symposium with some reflections on the LatCrit project.

To discuss both the reflective and prospective aspects of the works presented in the two substantive clusters, this foreword addresses four underlying questions:¹⁰

1. What do the works presented in this Symposium tell us about the state of Latina/o voices, interests and communities in the United States today?
2. What do these works tell us about the current or historical relationship of Latinas/os to Anglo-American law?
3. What do the symposium articles tell us about Latinas/os and the American legal professorate?
4. Finally, what do these articles tell us about the potential benefits and limits of the embryonic enterprise denominated as LatCrit theory?

These questions flow from the symposium's contents and thus may be viewed as pending inquiries. By underpinning the foreword with these four queries, I aim to synthesize and highlight some key points about the first generation of issues that face the emergent community of LatCrit legal scholars.

To engage these four queries, Part I opens the foreword with a discussion of present LatCrit methodologies and issues, as evidenced by this Symposium and in light of the larger outsider discourse on identity, law and legal theory. Part II then turns to policy, politics, and praxis as

7. Jean Stefancic, *Latino and Latina Critical Theory: An Annotated Bibliography*, 85 CALIF. L. REV. 1509 (1997), 10 LA RAZA L.J. 423 (1997) (collecting and organizing the existing literature).

8. Anthony Alfieri, *Black and White*, 85 CALIF. L. REV. 1647 (1997), 10 LA RAZA L.J. 561 (1997) (reviewing the first two readers on Critical Race Theory).

9. Leslie Espinoza & Angela Harris, *Afterword—Embracing the Tar Baby: LatCrit Theory and the Sticky Mess of Race*, 85 CALIF. L. REV. 1585 (1997), 10 LA RAZA L.J. 499 (1997) (urging creative LatCrit approaches to race and to narrative).

10. In this way, the foreword leaves to the introduction of each cluster the task of framing the papers substantively in relation to each other. See Ian F. Haney López, *Race and Erasure: The Salience of Race to LatCrit Theory*, 85 CALIF. L. REV. 1143 (1997), 10 LA RAZA L.J. 57 (1997) (introducing the articles that discuss questions of racial identity); Rachel F. Moran, *What if Latinos Really Mattered in the Public Policy Debate?*, 85 CALIF. L. REV. 1315 (1997), 10 LA RAZA L.J. 229 (1997) (introducing the articles exploring the role of Latinas/os in shaping public policy).

LatCrit imperatives under Anglo-American rule, imperatives made especially urgent by these times of majoritarian backlash.¹¹ Part III next considers the Latina/o position within the legal professorate of the United States, again as evidenced by this Symposium and in light of larger events and circumstances. Part IV concludes the foreword with a few closing thoughts about the LatCrit enterprise raised or suggested by the works presented below.

But first a prefatory note on LatCrit theory and its underpinnings. Despite its embryonic state, LatCrit theory has come a long way since the moniker was coined.¹² The LatCrit experience thus far has impressed upon me a feature that I think is key and foundational to this enterprise: almost from the outset we have sought to develop a theory about legal theory.¹³ At our gatherings and through our early writings,¹⁴ we continually and critically theorize about the purpose of our theorizing.¹⁵ Our approach to our work, our articulation and development of LatCrit theory, is informed and guided by this evolving meta-theorizing. To varying degrees and in different ways, this preliminary impression is borne by the works presented below.

By way of preface to this foreword, and at risk of oversimplifying or mischaracterizing, I therefore venture to distill LatCrit theory's theory about legal theory, a distillation that incorporates observations drawn from the works presented here as well as elsewhere.¹⁶ Of course, this distillation is only one view—my view—and no doubt it will vary over time. However, LatCrit theory's bedrock conviction presently

11. See *infra* notes 103-115 and accompanying text (discussing the rise of backlash and its ramifications for Latinas/os).

12. For historical background, see *supra* note 5 and sources cited therein (describing how the "LatCrit" denomination came into existence).

13. This theorizing about legal theory is prompted and informed by the histories and experiences of Critical Legal Studies, Feminist Legal Theory, Critical Race Theory, and, to some extent, Queer Legal Theory. For further discussion of this point, see Francisco Valdes, *Theorizing About Theory: Comparative Notes and Post-Subordination Vision as Jurisprudential Method*, in *CRITICAL RACE THEORY: HISTORIES, CROSSROADS, DIRECTIONS* (Jerome McCristal Culp, Jr. et al. eds.) (forthcoming 1998) (comparing the RaceCrit, LatCrit and QueerCrit experiences); see also Valdes, *supra* note 2, at 4-7 (reviewing the relevance to LatCrit theory of the experiences and ruptures between Critical Legal Studies, Critical Race Theory and Feminist Legal Theory).

14. See *supra* note 1 and symposia cited therein (collecting works presented at, or inspired by, prior conferences and programs).

15. See generally Elizabeth M. Iglesias, *Global Markets, Racial Spaces and Embedded Agency: Critical Race Theory and the Legal Struggle for Community Control of Investment*, in *CRITICAL RACE THEORY*, *supra* note 13 (urging Critical Race Theory to develop a theory about the way to "do" theory and offering an approach to that task).

16. See *supra* note 1 and symposia cited therein (presenting other LatCrit projects, both recent and forthcoming).

seems to be that legal theorizing must operate (at least) on four levels simultaneously. And, if not at all times, then on balance. At this juncture, LatCrit theory exudes a strong sense that for legal theory to work—to be “worth it”—it must embrace and perform four inter-related or overlapping functions.

From my participation in this venture, I describe these four levels or functions as:

1. *The Production of Knowledge.* In my view, LatCrit theory’s first function is the enhancement of socio-legal understanding through critiques of historical and modern experience. LatCrit theory is first and foremost an intellectual and discursive movement striving to create a culture of understanding about Latinas/os and the law. LatCrit theory therefore represents an interdisciplinary and critical approach to the study of social and legal conditions that beset Latina/o communities. The production of LatCrit ideas to better understand the world in which we live thereby devotes LatCrit theory to the ongoing improvement of both society and law. But this initial function—the production of knowledge—is never the end goal; it is the point of departure for the larger work and functions of theory.
2. *The Advancement of Transformation.* Consequently, LatCrit theory’s second function is to be practical as well as insightful. The importance of practicality commits LatCrit theory to the advancement of transformation—the creation of material social change that improves the lives of Latinas/os and other subordinated groups. This emphasis on applicability, on relevance to social conditions and their material transformation, in turn dedicates LatCrit theory to praxis. In my estimation, LatCrit theory self-consciously recognizes that theory without praxis severely constrains the purpose and utility of theory; praxis is constitutional to LatCrit theory because social transformation is a key function of legal theory.
3. *The Expansion and Connection of Struggle(s).* From my perspective, LatCrit theory is committed to elevating the Latina/o condition, chiefly but not exclusively in the United States. I understand this commitment as broadly conceived in several respects. In addition to resisting domestic/foreign dichotomies, LatCrit theory rejects single-axis or unidimensional conceptions of “Latina/o”

issues, which are likely to ignore intra-Latina/o diversities. Similarly, LatCrit theory recognizes the need to attend to more than immediate self-needs. LatCrit theory therefore is committed to the notion that our theorizing, as a form of practical and transformative social struggle, must be referenced to other anti-subordination theories and struggles. In my experience, LatCrit theory seeks both to contextualize and interconnect Latina/o struggles for substantive transformation vis à vis other oppressive conditions, and to employ our theory and practice toward fighting all forms of oppression. LatCrit theory therefore constitutes itself as a struggle on behalf of diverse Latinas/os, but also toward a material transformation that fosters social justice for all.

4. *The Cultivation of Community and Coalition.* Finally, my understanding of LatCrit theory is that it self-consciously is about more than knowledge, discourse, politics and transformation. LatCrit theory's functions include actively nurturing a community of scholars who share a similar approach to legal theory, and who share a similar commitment to collaboration. Because it seeks to expand and connect anti-subordination struggles, the LatCrit enterprise thus far has been a collective design, rather than the sum of atomized or individuated exertions—a sometimes unruly group project always rooted in the ideal of community and the aspiration of coalition. Our envisioned community necessarily is intellectual, discursive and political, but it also is human, social; moreover it is diverse, inclusive, egalitarian, democratic and self-critical. From my perspective, the LatCrit community under construction is a self-selected formation of “different” scholars who have come to similar conclusions about the state of affairs in American law and society, who are willing to analyze explicitly the Latina/o situation within that larger state of affairs, and who share a similar outlook about our limited yet influential role(s) as legal theorists in relation to that state of affairs.

These four functions in turn require LatCrit resistance of essentialist assumptions or projections, and they also entail active application of intersectionality, multiplicity, multidimensionality, and other concepts

minted in outsider jurisprudence.¹⁷ These functions likewise require insistent LatCrit practice of interconnectivity.¹⁸ These functions thus evidence, both directly and indirectly, the substantive and methodological post-liberal lineage of LatCrit theory¹⁹—a lineage that links LatCrit theory closely to Critical Race Theory and outsider jurisprudence.²⁰

These functions and their fulfillment also present daunting tasks; identifying the chief functions of our work is not the same as realizing them. Without doubt, abstract commitment is neither the point nor measure of LatCrit theory and praxis. But LatCrit projects thus far have striven mightily, if imperfectly, to practice our theory about theory, and to honor our four main functions: LatCrit conferences and projects consistently have brought together a rich array of scholars and activists from various communities, disciplines and viewpoints to learn ways and means of walking the talk.²¹ At each gathering we do what we can in light of our theory about theory—we learn and build both from the gains and shortcomings of our previous encounters.

In part because of this commitment to diversity and difficulty, LatCrit projects repeatedly have sparked vigorous and sometimes tense exchanges, both in person and in print. We have stumbled upon and through hard moments, and no doubt we will continue to do so; LatCrit theory is not just some shiny or gleaming gem. But our theorizing about theory has kept us committed to facing and processing the hard moments. Indeed, our commitments have inclined us proactively to center the awkward or difficult issues in our gatherings and conversations; each year we prominently feature in the upcoming program the prior years' most controversial topics.²² While staying anchored to

17. See *infra* note 67 and sources cited therein (employing intersectionality, multiplicity, and multidimensionality to go beyond the limits of essentialism).

18. See Valdes, *infra* note 67, at 54-57 (proposing interconnectivity as a complement to intersectionality, multiplicity, and multidimensionality).

19. Critical Race Theory conceived itself in similar ways. Thus, Critical Race Theory has been described as an intellectual and discursive movement that seeks to center a marginalized subject or viewpoint through interdisciplinary critiques, to project a resolutely political anti-subordination stance, and to foster a sense of progressive, scholarly community. See, e.g., *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* xix-xxvii (Kimberlé Crenshaw et al. eds. 1995) (describing the origins and features of Critical Race Theory).

20. See Valdes, *infra* note 83 (discussing LatCrit theory's debts to Critical Race Theory specifically, and to outsider jurisprudence generally).

21. See, e.g., *supra* note 1 and symposia cited therein (presenting works by women and men who identify as Latinas/os, African Americans and/or Asian Americans, and who also identify as lesbian, gay or straight. These diversities do not capture the entire panoply of human identity positions, but they surpass the usual configurations).

22. For further elaboration, see Valdes, *Theorizing About Theory*, *supra* note 13.

Latina/o issues, the LatCrit agenda also has affirmatively sought out broader problems; while highlighting Latinas/os, LatCrit theory has set out to confront the fears, grievances and tensions that permeate and surround our labors.

At the outset it thus is important to understand that LatCrit theory's ambition extends beyond critical knowledge, substantive transformation, coalitional struggle and scholarly community. In my view, LatCrit theory strives both to center Latinas/os and to perform and balance these four functions precisely because it represents a self-conscious effort to recast legal theory as such. LatCrit theory signifies a particular consciousness about, and approach to, the work of a legal theorist. Though it cannot be claimed by any one viewpoint or reduced to any one conception, in my opinion, LatCrit theory thus far has been infused with a desire to transform theory itself.

Of course, no one can predict with confidence where these commitments and their pursuit will lead LatCrit theory. LatCrit theory is a human venture, fraught with the frailties and limitations of humans. Ours is a fragile yet determined collective experiment in post-postmodern critical legal theory. LatCrit theory, let me stress at the outset, is a project perpetually under construction, but one whose construction, at least in these formative moments, seems consciously guided by a progressive, inclusive and self-critical theory about the purpose and experience of theory. The works that follow below jointly represent an important step in that continual, multifaceted, and volatile process of construction.

I

RACE, ETHNICITY & NATIONHOOD: LATINA/O POSITION AND IDENTITY IN LAW AND SOCIETY

The following papers convey an unsurprising assessment of Latina/o communities and concerns. Each paper, though differently focused, makes a similar and foundational point: The state of Latina/o communities in the United States today is worrisome. Latinas/os have been subjected to injustice and prejudice, thereby pushed into positions of marginality and disempowerment in this Anglocentric²³ society. This positioning, as the papers make clear, is the result of both normative and legal engineering.

23. I use the term "Anglocentric" to denote practices and preferences rooted in norms derived primarily from English culture.

A. *The Utility of LatCrit Narratives*

The normative side of this interplay is depicted in this Symposium through the disturbing and eloquent testimony of Professor Kevin Johnson.²⁴ He uses his personal and family history as a platform for a discussion of the Chicana/o experience in Anglo-American society. His account points to the complexities, dangers, and opportunities of this experience, and to the (de)formation of Latina/o persons through them.

Born of a Latina mother and Anglo father, Professor Johnson examines and explains in his paper how he and his brother continually faced the markers and tensions of their racialized, ethnicized hybridity.²⁵ This dislocation, he makes clear, resulted both from normative pressures external to his family and the internalization of those norms among family members. These pressures pervaded family relationships and personal identities through the manipulation of knowledge and affinity regarding language, culture, and ancestry. The ambivalent goal of this interplay was assimilation, which in turn was viewed as the gateway to acceptance and success on Anglocentric terms.

In his account, Professor Johnson clearly recognizes the rewards of Latina/o assimilation, even as he sets about rejecting this aspiration. This rejection, he testifies, stems in part from the high costs of assimilation. The portrait he presents of his mother's assimilationist needs illustrates these costs; the "persistence of her assimilationism . . . had a profound impact on her and our family," including self and familial abnegation.²⁶

In particular, Professor Johnson's account allows us to distill twin norms—the seduction of assimilationism and the supremacy of Whiteness—that are both structuralized and interrelated, and that jointly subordinate Latinas/os in the United States.²⁷ These twin norms are well-known and deeply entrenched features of this society.²⁸ But, as we

24. See Kevin R. Johnson, "Melting Pot" or "Ring of Fire"?: *Assimilation and the Mexican-American Experience*, 85 CALIF. L. REV. 1259 (1997), 10 LA RAZA L.J. 173 (1997).

25. See 85 CALIF. L. REV. at 1289-90, 10 LA RAZA L.J. at 203-04.

26. 85 CALIF. L. REV. at 1276, 10 LA RAZA L.J. at 190.

27. 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 (1996) (drawing upon Latina/o cultural images to analyze how the internalization of Anglocentric constructions of femininity and masculinity reify misogynistic versions of heterosexuality to the detriment of both men and women).

28. Assimilation with dominant social norms, and the consequences for vulnerable members of society of legal rules based on them, are issues of importance to scholars writing from various positions. See, e.g., LURE AND LOATHING (Gerald Early ed., 1993) (addressing race, identity, and assimilation from three perspectives: Blackness as meaningless, irrelevant, and/or limiting, as a clearly defined identity, and as a social/political construct); Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an*

see below, Latinas/os can internalize and embrace these dominant norms in self-destructive ways, fueling the subordination of Latinas/os and other people of color.

Professor Johnson begins his account with childhood recollections of family and identity. Opening with his great uncle's funeral, Professor Johnson shares his self-searching inquiry on "how it must have been when [his uncle] became the first Anglo in his family to marry a Mexican-American woman."²⁹ But this reflective moment is marred by the intrusion of racism and ethnocentrism: While sitting quietly in a bar after the funeral with his relatives, Professor Johnson recounts how the "tall Anglo fellow" seated next to them began rambling racist jokes to him and his companions, specifically degrading to Latinas/os.³⁰ Hence, the Johnsons became privy, unexpectedly and coercively, to expressions of White racism, as if they were White and subscribed to its supremacy.

The Latina/o Johnsons gathered together that day, it appears from this tale, could "pass" for White, even while they sat casually in conversation.³¹ Clearly, then, they could aspire both to effective assimilation and to White identification. And at least some members of the larger family sought refuge in these norms, as Professor Johnson further recounts.³² However, the Johnson family paid a high price for obtaining this refuge, for the family was wracked by the ethnicized and racialized configuration of these very norms.

For instance, promoting assimilation as a means of social advancement, Johnson's mother refused to teach Spanish to her sons: "Spanish was considered an educational impediment."³³ Yet Professor Johnson and his brother were treated to Mexican culture and lore, thereby

Immigration-Driven Multiracial Society, 81 CALIF. L. REV. 863 (1993) (arguing for recognizing diversity, including racial separation, as part of a pro-immigration analysis); Martha R. Mahoney, *Segregation, Whiteness, and Transformation*, 143 U. PA. L. REV. 1659 (1995) (accepting race as a social construct, Professor Mahoney discusses the relationship between residential segregation, access to or exclusion from employment, and White privilege).

29. Johnson, 85 CALIF. L. REV. at 1262, 10 LA RAZA L.J. at 176.

30. See 85 CALIF. L. REV. at 1262, 10 LA RAZA L.J. at 176.

31. "Passing" is a phenomenon that has received increasing attention in recent years among legal scholars. See *PASSING AND THE FICTIONS OF IDENTITY* (Elaine K. Ginsberg ed., 1996); Judy Scales-Trent, *Commonalities: On Being Black and White, Different, and the Same*, 2 YALE J.L. & FEMINISM 305 (1990); cf. IAN F. HANEY LÓPEZ, *WHITE BY LAW* (1996) (discussing the legal construction of race); Judy Scales-Trent, *NOTES OF A WHITE BLACK WOMAN* (1995) (containing a series of essays inspired by the author's experience as a "White" Black woman).

32. See Johnson, 85 CALIF. L. REV. at 1266-67 nn.18-21 and accompanying text, 10 LA RAZA L.J. at 180-81 nn.18-21 and accompanying text.

33. 85 CALIF. L. REV. at 1273, 10 LA RAZA L.J. at 187.

becoming aware and proud of their ethnic heritage.³⁴ At the same time, the Johnsons were compelled by circumstances like the one recounted above to negotiate daily collisions with Anglo-American racism. As Professor Johnson notes, these schizophrenic shocks took their toll on the entire family structure, destabilizing identities and relations in crude but inexorable ways.

Even though they phenotypically may have been able to claim White privileges, the costs of White identification included continual self-denial, self-devaluation, and, ultimately, self-hate. The lesson here, Professor Johnson declares at the outset, is the “limits of assimilation for Latinos”—significantly, limits that attach even, and perhaps in some ways most, to those who “look” White.³⁵ But these limits, as the narrative effectively illustrates, are blurry at best.

The opportunity—and refusal—to claim Whiteness and to exploit its normative privileges, which are central aspects of the Johnson narrative, raises another dimension of Latina/o ethnicities vis-à-vis assimilation and Whiteness: Normative biases create pockets of “acceptable” ethnicities in this Anglo-American society, which generally are associated with European countries.³⁶ These varieties of ethnic positions are deemed acceptable precisely because they are culturally White-identified, Professor Johnson argues.³⁷ This bias, in turn, invites opportunistic claims of Whiteness, which inevitably entails not only Latina/o complicity in the perpetuation of Anglocentric hierarchy, but also Latina/o complicity in the reproduction of race/ethnicity stratification on a wider social scale.

In the Latina/o context, opportunistic claims of Whiteness typically are expressed through insistent assertions of Spanish familial roots. This positioning seems to have permeated the Johnson household during the boys’ childhood.³⁸ Pointing to the overwhelmingly Mexican character of his family, Professor Johnson notes that “this elusive Spanish heritage was very much an exaggeration”³⁹ but certainly “not an uncommon myth” among Latinas/os even today.⁴⁰ Thus, the preferred Latina/o lineage is constructed as European rather than indigenous or of color in order to claim Whiteness and facilitate assimilation.

34. See 85 CALIF. L. REV. at 1274, 10 LA RAZA L.J. at 188.

35. See 85 CALIF. L. REV. at 1263, 10 LA RAZA L.J. at 177.

36. See 85 CALIF. L. REV. at 1272-73, 10 LA RAZA L.J. at 186-87.

37. See 85 CALIF. L. REV. at 1272, 10 LA RAZA L.J. at 186.

38. See 85 CALIF. L. REV. at 1272-74, 10 LA RAZA L.J. at 186-88.

39. 85 CALIF. L. REV. at 1272, 10 LA RAZA L.J. at 186.

40. See 85 CALIF. L. REV. at 1272, 10 LA RAZA L.J. at 186.

The claim of Spanish ancestry among Latinas/os effectively and destructively replicates the oppressive supremacy of Whiteness within intra-group identity positions.

As Professor Johnson's account illustrates, the currency and value of Whiteness consequently must be understood as both a Latina/o and Anglo norm. The difference in the two norms lies in the use of Spanish ancestry (rather than British) in the Latina/o ethnicity hierarchy to represent Whiteness and to secure its privileges. The affirmative claim of Spanish ancestry, coupled with proactive efforts to sanitize one's indigenous roots, thereby becomes a recipe for Latina/o assimilation into Anglo-American society. But Professor Johnson also reminds us insistently of the limits of this strategy. "Color" norms stubbornly constrain Latina/o assimilation;⁴¹ the "foreignness" of Latina/o identity in the United States persists because Latinas/os, collectively, are not constructed as "White ethnics" under conventional Anglo norms.⁴²

Professor Johnson's narrative effectively brings to the fore the virulence of plain racism among and within Latina/o cultures, as well as its effects both within and beyond Latina/o communities. Rather than resisting this race/color hierarchy either within or beyond intra-Latina/o contexts, internalized norms ingrained by Eurocentric biases cause Latinas/os to replicate the very norms that subordinate us and others. Without doubt, Latinas/os' opportunistic claims of Whiteness accept and reproduce the dominant culture's normative devaluation of non-White identity positions. Latina/o assimilationism thus helps the acceptance and reproduction of White supremacy on a larger social and ideological scale.⁴³

In light of this testimony, the core point advanced here for LatCrit discourse is that a vigorous skepticism toward assimilationist pressure should inform LatCrit sensibilities. Resistance to the oppressive supremacy of Whiteness in both intra-Latina/o and Anglo contexts therefore presents itself as a constant point of guard for LatCrit scholars. The underlying question—and one open to exploration—is whether

41. See 85 CALIF. L. REV. at 1291-93, 10 LA RAZA L.J. at 205-07.

42. See 85 CALIF. L. REV. at 1280-82, 10 LA RAZA L.J. at 194-96. Ironically, the same identity position—Mexican American—simultaneously has been legally, or doctrinally, constructed as "White" in complex and dangerous ways. See Ian F. Haney López, *Retaining Race: LatCrit Theory and Mexican American Identity in Hernandez v. Texas*, 2 HARV. LATINO L. REV. (forthcoming 1997); George A. Martinez, *Mexican Americans and Whiteness*, 2 HARV. LATINO L. REV. (forthcoming 1997).

43. Professor Johnson later notes the anti-African aspect of Latina/o racism, recalling that his "grandmother warned [him] never to bring home an African-American girlfriend." 85 CALIF. L. REV. at 1274, 10 LA RAZA L.J. at 188.

assimilationism ever can be regarded by LatCrit theorists as a viable strategy for achieving Latina/o empowerment and equality; can strategic assimilationism ever be a “smart” LatCrit tactic? Is “strategic assimilationism” even a coherent or viable possibility? These and related threshold questions thus inform the incipient construction of LatCrit consciousness, community and theory.

But, with this account, Professor Johnson does more than caution LatCrit theory about the costs and limits of assimilationism. Part of his conscious aim is to confront through action the ongoing debate over the utility of autobiographical narratives in contemporary legal scholarship.⁴⁴ Recent critiques of “legal storytelling” thus form a portion of the backdrop for this account, and Professor Johnson’s persistence demonstrates the value of narrative despite the objections recently interposed.⁴⁵

The objection to the use of narrative as scholarly method questions whether “stories” by outsider legal scholars can or do usefully elucidate pressing social conditions that underlie current legal issues.⁴⁶ Of course, as with any method, the answer to this question always will depend on particular usages in particular contexts. Professor Johnson’s account makes no claim of universality, although his narrative undoubtedly illuminates the social conditions that Anglocentric laws and norms create for Latinas/os in this country.

In this particular instance, the narrative also demonstrates the importance of storytelling by persons who possess not only relevant social experience, but training in the law; Professor Johnson’s compelling account is informed both by the experience he conveys as well as by his

44. See 85 CALIF. L. REV. at 1264 nn.9-10, 10 LA RAZA L.J. at 178 nn.9-10.

45. The use of narrative in critical legal scholarship has engendered a lively debate in recent years. See Valdes, *supra* note 2, at 2 n.3. The storytelling debate ensued chiefly from the narrativity of Critical Race Theory, but similar questions have arisen in the context of another emergent genre of critical legal scholarship—Queer legal theory. See, e.g., William N. Eskridge, Jr., *Gaylegal Narratives*, 46 STAN. L. REV. 607 (1994) (affirming the value of narrative as legal scholarship in sexual minority contexts); Marc A. Fajer, *Authority, Credibility and Pre-Understanding: A Defense of Outsider Narratives in Legal Scholarship*, 82 GEO. L.J. 1845 (1994) (defending the use of stories in lesbian and gay legal scholarship); Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of “Sex,” “Gender,” and “Sexual Orientation” in Euro-American Law and Society*, 83 CALIF. L. REV. 1, 366 (1995) [hereinafter Valdes, *Queers*] (calling for storytelling in the articulation and development of Queer Legal Theory).

46. See, e.g., Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 808 (1993) (acknowledging the potential usefulness and validity of narratives in legal scholarship, but faulting outsider storytellers for being “less concerned than conventional scholars about whether stories are either typical or descriptively accurate”); cf. Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989) (generally accepting traditional conceptions of scholarship).

ability to decode the experience through forms and with vocabularies obtained as part of legal training. It is precisely because he is a legal scholar that this autobiographical narrative can be tailored to elucidate the social and legal connections that constitute Latina/o subordination in this Anglocentric culture.⁴⁷

By helping to answer the opening query of this Foreword with first-hand testimony of Latinas/os in the United States today, Professor Johnson's essay shows how narrative can help make legal sense of normative experience. Because it shows that the use of narrative in LatCrit scholarship can help to bridge existing gaps between normative experience and legal rules, Professor Johnson's essay argues by example for affirmative LatCrit engagement of the legal storytelling movement. In doing so, the essay also helps to demonstrate the utility of legal storytelling in the broader anti-subordination project of outsider scholars.⁴⁸ Professor Johnson's use of narrative shows how LatCrit theory can contribute to the continuing development of non-traditional methodologies in contemporary legal scholarship, thereby urging by example more of the same from the LatCrit community.

Though Professor Johnson's narrative is the most sustained depiction of Latina/o social life in this symposium, the other authors project a similar sense of Latina/o marginality and vulnerability traceable to dominant race/ethnicity norms of Anglo-American society.⁴⁹ As a set, the papers of this Symposium thus depict a people both repressed and resilient. Consequently, LatCrit theory may be viewed as springing from both oppression and determination. As the other papers of this Symposium further illustrate, the legal issues raised by this historical

47. For a more extensive articulation of this linkage, compare Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539 (1991).

48. See *supra* notes 45-47 (containing authorities that discuss the benefits and limits of legal narratives as legal method).

49. Professor Cameron, perhaps more so than Professor Johnson, trains attention on culture and ethnicity, and their expression through language, as crucial aspects of Latina/o marginality. See *infra* notes 156-185 and accompanying text. Professor Perea identifies the use of race in exclusively Black/White terms as a main cause of Latina/o invisibility, see *infra* notes 50-63 and accompanying text, while Professor Haney López, see *infra* notes 72-84 and accompanying text, hones in on race as the key to Latina/o subordination. Professor Roithmayr's analysis, see *infra* notes 88-99 and accompanying text, like Professors Chang and Aoki's, see *infra* notes 128-147 and accompanying text, focuses on nativistic racism broadly identifying the blending of racial and ethnic biases as central to the subordination of various non-White, non-Anglo groups. Professor Moran reflects on the unique configuration of Latina/o racial and ethnic heterogeneities to help explain widespread and continuing neglect of Latina/o needs and interests. See *infra* notes 187-192 and accompanying text.

and contemporary normative subordination are many, and they await LatCrit engagement.

B. Beyond the Black/White Paradigm

As this Foreword's second query recognizes, the Latina/o condition in Anglo-American society is shaped not only by culture but also by law. The next task therefore is to consider the role of law with respect to the present and historical positioning of Latinas/os in this society. The authors presented in this Symposium cite several causes of Latina/o invisibility and subordination in the United States society, which as a bundle may be referred to as the Black/White paradigm of Anglo-American law and culture. This paradigm is "the conception that race in America consists, either exclusively or primarily, of only two constituent racial groups, the Black and the White,"⁵⁰ explains Professor Juan Perea, who devotes his paper to a sustained examination of this phenomenon and its legal history.

This paradigm "defines, but also limits, the set of racial problems that may be recognized in racial discourse,"⁵¹ Professor Perea continues. Consequently, this paradigm "operates to exclude Latinos/as from full membership and participation in racial discourse, [an] exclusion [that] serves to perpetuate not only the paradigm itself but also negative stereotypes of Latinos/as."⁵² Because "full membership in society for Latinos/as will require a paradigm shift away from the binary paradigm and towards a new and evolving understanding of race and race relations,"⁵³ this paradigm and its effects appear at various points in this Symposium.⁵⁴

In documenting and decrying the pervasive power of this paradigm, Professor Perea highlights its pernicious effects both historically and currently. Without doubt, this emphasis is overdue and salutary.

50. Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CALIF. L. REV. 1219 (1997), 10 LA RAZA L.J. 133 (1997).

51. 85 CALIF. L. REV. at 1219, 10 LA RAZA L.J. at 133.

52. 85 CALIF. L. REV. at 1215, 10 LA RAZA L.J. at 129.

53. 85 CALIF. L. REV. at 1215, 10 LA RAZA L.J. at 129.

54. For instance, Professor Cameron critiques "racial dualism," a term synonymous with Professor Perea's use of "Black/White binarism." See *infra* note 159 and accompanying text (referring to "racial dualism"). Likewise, Professor Johnson's narrative effectively depicts a Black/White dominant social environment as the context for the misidentifications that he recounts. See *supra* notes 35-43 and accompanying text (discussing "Black" and "White" positionalities in both Anglo and Latino normative settings). Similarly, Professor Alfieri notes that "the early tenor of [Critical Race Theory] literature echoes this essentialist dichotomy." 85 CALIF. L. REV. at 1649-50, 10 LA RAZA L.J. at 563-64 (describing the effects of Black/White binarism in Critical Race Theory).

However, this critique is complete and effective only when accompanied by a corresponding appreciation of the historical and ideological reasons for this paradigm's permeation of American law and life.

As Professor Perea argues, the transformative power of this critique lies in its capacity to broaden and deepen existing deconstructions of White privilege. Still, a potential danger lies in its possible elision of singular facts and histories that shape(d) the Black experience of slavery and subordination in this country. Therefore, LatCrit critiques of the Black/White paradigm must at once denounce its truncation of race relations discourse and avert the possibility that our critiques might undermine experiences and claims unique to African Americans or, for that matter, other outsider groups.

LatCrit scholars must recognize that this potential danger can be averted only through a nuanced and balanced analysis of group histories and particularities; LatCrit denunciation of the paradigmatic status quo should be informed by our explicit acknowledgment of the varied factors that have constructed today's hierarchies around the relentless valorization of Whiteness and the equally relentless demonization of Blackness. Capturing the positive insights of this critique while skirting its dangers is the challenge that Professor Perea accepts in this Symposium, a challenge that awaits further engagement in future LatCrit projects.

The predominance of this paradigm in legal and social thought thus must be well understood and fully voiced; the savage institutionalization of the enslavement of Blacks by Whites, and the continuing resonance of that unique institution and its racial ideology, pull critical attention toward Black/White frames and foci.⁵⁵ The complaint pressed here, however, is that an "exclusive focus" or framing of race issues on Black/White terms marginalizes "other people of color" and prevents understanding of other racisms: "An exclusive focus on the Black/White relationship, and the concomitant marginalization of 'other people of color,' can operate to *prevent* understanding of other racisms and to *obscure* their particular operation,"⁵⁶ Professor Perea writes. This critique consequently is not meant to cause a displacement or contraction of Black/White discourse, but an expansion of it that is both quantitative and qualitative.

55. See, e.g., Perea, 85 CALIF. L. REV. at 1252-53, 10 LA RAZA L.J. at 166-67 (discussing the legal history of slavery and after, and the centrality of this experience in the formation of the United States).

56. 85 CALIF. L. REV. at 1237, 10 LA RAZA L.J. at 151.

This call for expansion is triggered by the view that unexplored pockets of racialized and ethnicized power relations constrict the outsider critique of subordinating social and legal structures. Thus, LatCrit critiques leveled at this paradigm, both here and elsewhere,⁵⁷ espouse dismantlement of social and legal structures inimical not only to Latinas/os but also to all people of color, including Blacks. These critiques always must acknowledge that the Black/White paradigm not only erases Native Americans,⁵⁸ Asian Americans,⁵⁹ and Latinas/os, but that it also relegates Blacks to the “bottom” half of the paradigmatic status quo.⁶⁰

57. See, e.g., Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 STAN. L. REV. 957 (1995) (discussing the importance of moving beyond the Black/White paradigm for multicultural empowerment); see also Valdes, *supra* note 2, at 5-6 & n.19 and accompanying text (discussing the limitations of the Black/White paradigm).

58. A critical legal discourse on the position of Native Americans in relationship to the United States and its legal system also has developed, especially in recent years. See, e.g., ROBERT A. WILLIAMS, JR., *THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST* (1990); see also Rennard Strickland, *Implementing the National Policy of Understanding, Preserving, and Safeguarding the Heritage of Indian Peoples and Native Hawaiians: Human Rights, Sacred Objects, and Cultural Patrimony*, 24 ARIZ. ST. L.J. 175 (1992) (explaining Native American approaches to sacred objects and cultural patrimony and suggesting a tribal context for reaching decisions consistent with the purpose of the Native American Graves Protection and Repatriation Act of 1990); Robert A. Williams, Jr., *Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory For Peoples of Color*, 5 LAW & INEQ. J. 103 (1987) (discussing the dangers and benefits of critical legal theory for peoples of color from a Native American subject position).

59. The development of Asian-American legal scholarship also has quickened in recent years. See, e.g., Keith Aoki, *The Scholarship of Reconstruction and the Politics of Backlash*, 81 IOWA L. REV. 1467 (1996) (introducing a symposium on Asian-American legal scholarship); Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241 (1993) (discussing the failure of Critical Race scholarship to address Asian-American issues); Pat K. Chew, *Asian Americans: The "Reticent" Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1 (1994) (calling for a new model for including or excluding Asian Americans from affirmative action programs); Kenzo S. Kawanabe, *American Anti-Immigrant Rhetoric Against Asian Pacific Immigrants: The Present Repeats the Past*, 10 GEO. IMMIGR. L.J. 681 (1996) (arguing that the current anti-immigrant rhetoric aimed at Asian immigrants echoes the anti-immigrant charges levied against persons of Asian descent in the 19th century); David Quan, *Asian Americans and Law: Fighting the Myth of Success*, 38 J. LEGAL EDUC. 619 (1988) (arguing for affirmative action based on the unique position of Asian Americans arising from past discrimination and cultural values); Frank H. Wu, *Changing America: Three Arguments About Asian Americans and the Law*, 45 AM. U. L. REV. 811 (1996). *But see* Jim Chen, *Unloving*, 80 IOWA L. REV. 145 (1994) (rejecting Chang's article as “racial fundamentalism” that opposes the formation of multiracial families and that conflicts with the principle of equality and multiracial parity).

60. The “bottom” has become a metaphor of Critical Race Theory, although its use is not limited to a description of the Black or African-American position within the United States. See, e.g., DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL* (1992) (discussing the permanence of racism in the U.S.); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987) (arguing that Critical Legal Studies scholars must “look to the bottom,” that is, toward those who have experienced discrimination, as a normative source of law); see also

Ignoring intermediate groups in Black/White analyses also tends to obscure the causes or effects of Latina/o or Asian-American racism against Blacks, or vice versa.⁶¹ An "exclusive focus" on Black/White relations obscures color-on-color issues, reinforcing the marginalization of non-White identification. In short, this paradigm structures race, law, and society around White supremacy⁶² and White privilege.⁶³ LatCrit and other outsider scholars therefore should not permit this paradigm to likewise structure our critiques of race, law, and society.

Consequently, it bears emphasis that the oppressive effects of this paradigm are not limited to Latina/o invisibility as non-White and non-Black members of Anglo-American society; the exclusionary nature of this paradigm further impoverishes the capacity to understand and appreciate the interual diversities within and among Latina/o communities.⁶⁴ Latina/o communities feature a high degree of *mestizaje*, or racial intermixture.⁶⁵ Black/White reductionism is wrong for and by Latinas/os because biracial and multiracial, as well as bicultural and

Roy L. Brooks, *The Ecology of Inequality: The Rise of the African-American Underclass*, 8 HARV. BLACKLETTER J. 1 (1991) (analyzing the disproportionate size of the African-American poor).

61. See, e.g., *infra* note 151 and accompanying text (discussing this very situation in Montcrey Park, California).

62. The term "White supremacy" refers to the systematic elevation of Whiteness to accord it social, economic, and legal superiority. For readings on White supremacy, see EYES RIGHT! (Chip Berlet ed., 1995) (describing the role of White supremacy in the rise of the political right movement in the 1990s); GEORGE M. FREDRICKSON, *WHITE SUPREMACY* (1981) (comparing and contrasting the historical development of "White supremacy" in the United States and South Africa); RACIAL DETERMINISM AND THE FEAR OF MISCEGENATION, POST-1900 (John David Smith ed., 1993) (discussing the history of race relations in the United States); see also Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993) (finding the concept of Whiteness as a form of property rooted in and perpetuating White supremacy).

63. The term "White privilege" refers to the everyday as well as the structural advantages enjoyed by White persons and groups under White supremacy. See, e.g., STEPHANIE WILDMAN, *PRIVILEGE REVEALED* (1996) (describing how White privilege reinforces the existing racial status quo and interacts with other systems of privilege); Stephanie Wildman, *Reflections on Whiteness and LatCrit Theory*, 2 HARV. LATINO L. REV. (forthcoming 1997) (discussing the privileging of Whiteness specifically vis-à-vis Latina/o identity); see also Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account Of Coming to See Correspondences Through Work In Women's Studies*, in *POWER, PRIVILEGE AND LAW* 22 (Leslie Bender & Daan Braveman eds., 1995) (giving a personalized account of White privilege and male privilege in the United States).

64. Professor Johnson's autobiographical narrative provides a case in point. See *supra* notes 24-35 and accompanying text (recounting the interplay of diversity and assimilationism and their impact on his rearing). For further discussion of Latina/o diversities, see Berta Esperanza Hernández-Truyol, *Building Bridges—Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1994).

65. See Margaret E. Montoya, *Academic Mestizaje: Re/Producing Teaching, Scholarship and Community Service Latina Style*, 2 HARV. LATINO L. REV. (forthcoming 1997) (discussing *mestizaje* as a key feature of Latina/o communities).

multicultural, persons are commonplace throughout Latina/o populations.⁶⁶ The reductionist tendencies of Black/White binarisms impede sophisticated scholarship because they compress the racial richness of Latinas/os into a false and dichotomous homogeneity tracking Black/White poles.

This false sense of intra-Latina/o homogeneity is especially dangerous because it also may prompt essentialist carelessness in LatCrit discourse as we embark on the construction of a Latina/o subject position within legal theory. The dangers of essentialist assumptions, articulated forcefully in recent years by various outsider scholars, include the failure to particularize analyses of legal or social conditions, thereby blunting the incisiveness of the scholarship; concepts like multiplicity, intersectionality, and multidimensionality are the analytical tools that vitiate assumed essentialisms in postmodern and outsider discourses.⁶⁷ Thus, to essentialize Latinas/os into White and Black groupings in light of existing literature and its lessons would not only replicate the paradigm and its hierarchy but also represent a false social reality: "Latinas/os" are an amalgam comprised not only of diverse races but also of diverse ethnicities, genders, religions, cultures, nationalities, classes, abilities and sexualities.⁶⁸ LatCrit essentialism, if we indulge it,

66. Racial and ethnic intermixture has long been recognized and accepted as a key characteristic of Latinas/os generally, and of the nations from which we originate. See, e.g., David E. Hayes-Bautista & Gregory Rodriguez, *L.A. County's Answer For Racial Tensions: Intermarriage*, L.A. TIMES, May 5, 1996, at 6 (discussing Latina/o intermarriage in the Los Angeles area); Jon Nordheimer, *Miami Cultures Find Rapport After a Generation of Clashes*, N.Y. TIMES, Dec. 16, 1985, at A1 (detailing the effects intermarriage has had on cultural tensions within the Cuban community in Miami).

67. See, e.g., Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (arguing that viewing subordination as a disadvantage occurring along a single categorical axis theoretically erases Black women and undermines efforts to broaden feminist and antiracist analyses); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991) (elucidating intersectionality to explore the race and gender dimensions of violence against women of color); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) (emphasizing multiplicity to critique gender essentialism in feminist legal scholarship as silencing the voices of Black women); Hernández-Truyol, *supra* note 64 (discussing Latina/o diversity to argue for multidimensionality); see also Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities and Interconnectivities*, 5 S. CAL. REV. L. & WOMEN'S STUD. 25, 49 (1995) (positing, in a sexual minority context, the concept of interconnectivity as a jurisprudential complement to multiplicity and intersectionality).

68. See *infra* Section II.B. (discussing the diversities of the "Latina/o" category); cf. Elizabeth M. Iglesias, *Structures of Subordination: Women of Color at the Intersection of Title VII and the NLRA. Not!*, 28 HARV. C.R.-C.L. L. REV. 395 (1993) (advancing a similar analysis in the broader "women of color" context).

would perpetuate the fallacies of the dominant status quo. In sum, if LatCrit theory is to be a relevant and positive force in the lives of Latinas/os in this society, our interrogation of Latina/o identities and positions in Anglo-American contexts, as well as our framing of social and legal issues generally, must resist the pull of essentializing customs and frameworks, including the Black/White paradigm.

Because the primary axis of this binary paradigm is “race,”⁶⁹ some of the authors in this Symposium address specifically the efficacy of this construct for LatCrit analysis and Latina/o self-empowerment; a recurring theme here and in other LatCrit venues is whether “race” or “ethnicity” ought to serve as the lens of choice among LatCrit scholars.⁷⁰ Most notably, Professor Perea documents the omnipresence of the Black/White paradigm—and questions how the “racial” constructs implicit in this dualism make Latina/o ethnicities and identities invisible.⁷¹ As Professor Ian Haney López’s position illustrates, this questioning signals the beginning of a new discourse regarding race and ethnicity. Thus, LatCrit exchanges already suggest that a threshold task of LatCrit theorizing is ascertaining the ways and means by which “ethnicity” and “race” can be turned into a useful analytical tool for unpacking and alleviating the Latina/o social and legal position, as well as the subordination of other racial and/or ethnic groups.

Accordingly, Professor Haney López employs his introduction of the first cluster to “provide a basis as well as an argument” for discussing Latinas/os in racial terms.⁷² In doing so, he specifically argues for the firm embrace of “racial nomenclature as a core part” of LatCrit investigations into Latina/o subordination and its causes.⁷³ The retention of “race” and its vocabulary as a central feature of LatCrit discourse is incumbent for the sake of “accuracy and insight,” Professor Haney López urges from the outset.⁷⁴

69. For a recent and compelling analysis of race as a social construction, see Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication and Choice*, 29 HARV. C.R.-C.L. L. REV. 1 (1994).

70. For an earlier iteration of this argument, see Juan F. Perea, *Five Axioms in Search of Equality*, 2 HARV. LATINO L. REV. (forthcoming 1997). For the argument in favor of “race,” see Haney López, *supra* note 42.

71. See Perea, 85 CALIF. L. REV. at 1232-39, 10 LA RAZA L.J. at 146-53 (presenting a detailed critique of this paradigm).

72. Ian Haney López, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 85 CALIF. L. REV. 1158 (1997), 10 LA RAZA L.J. 72 (1997).

73. 85 CALIF. L. REV. at 1153, 10 LA RAZA L.J. at 67.

74. 85 CALIF. L. REV. at 1152, 10 LA RAZA L.J. at 66.

The essay thus opens with a brief survey of recent works that engage the tensions or options that attend the “race” versus “ethnicity” choice of focus.⁷⁵ Then, using chiefly the Supreme Court’s ruling in the landmark case of *Hernandez v. Texas*, Professor Haney López in the first part of his introductory essay connects the ongoing, anti-essentialism discourse of race as a social construction to the emergence and cultivation of LatCrit theory.⁷⁶ By showing how race-as-a-social-construction applies to Latinas/os, Professor Haney López also shows how critical understanding of race as a social construction is enriched when Latina/o experience is taken into account. In this way, Professor Haney López convincingly demonstrates two points: the importance of a LatCrit discourse that is informed by ongoing anti-subordination discourses and, equally, the importance of the potential contribution that LatCrit projects can provide toward the continuing advancement of outsider scholarship. Each can, should and must inform the others. The importance of existing and emerging developments is mutual and ought to be recognized as such to fully capture all possible benefits on all sides of the discourse.

In the second part of the essay, Professor Haney López transforms the *Hernandez* opinion’s non-racial conception of Latinas/os to further highlight the salience of race in the construction and operation of Latina/o social and legal identities.⁷⁷ This portion of the essay therefore sets out to show “that to exclusively employ the idiom of ethnicity too easily leads to a failure to grasp important aspects of Latino/a life in this country.”⁷⁸ This oversight concerns the social and legal meaning of the facts, processes and consequences that accompany racialization within, among and across diverse Latina/o communities, contexts and histories. Professor Haney López thus argues incisively for the salience of both the rhetoric and the substance of “race” in LatCrit theory.⁷⁹

But this argument comes with its limits. Professor Haney López specifies at the threshold that his aim is qualified: His purpose is to counsel strongly against the elimination of race for an “exclusive” reliance on ethnicity.⁸⁰ As in the case of Professor Perea’s call for expansion beyond the “exclusive” Black/White frames of existing

75. See 85 CALIF. L. REV. at 1148-50, 10 LA RAZA L.J. at 62-64.

76. See 85 CALIF. L. REV. at 1158-74, 10 LA RAZA L.J. at 72-93.

77. See 85 CALIF. L. REV. at 1179-80, 10 LA RAZA L.J. at 93-94.

78. 85 CALIF. L. REV. at 1185, 10 LA RAZA L.J. at 99.

79. See 85 CALIF. L. REV. at 1155-57, 10 LA RAZA L.J. at 69-71.

80. See 85 CALIF. L. REV. at 1184-85, 10 LA RAZA L.J. at 99-100.

anti-subordination discourses,⁸¹ Professor Haney López's framing of LatCrit discourse calls for a similar rejection of exclusionary exclusivity in LatCrit theory. For both Professor Perea and Professor Haney López, this urging amounts to an expansive call for particularity, thoroughness, nuance and sophistication as hallmarks of LatCrit theory.

In this joint call, Professors Perea and Haney López nonetheless posit distinctly different approaches. Professor Perea argues for an emphasis on ethnicity as the crucial analytical tool of LatCrit theory, while Professor Haney López contends that ethnicity simply cannot do the work of race in a comprehensive interrogation of Latina/o subordination. Significantly, both temper their respective approaches in recognition of the compelling points raised by the other, and both still urge a particular valence for LatCrit scholarship. Each thereby recognizes the force of the other viewpoint, yet both adhere steadily to their contrasting visions of the analytical and discursive features that should characterize LatCrit theory as an embryonic genre of outsider jurisprudence. This early LatCrit exchange, so nuanced and sophisticated, thus displays precisely the sort of critical legal theory that this Symposium expressly contemplates—and which ideally will become increasingly emblematic of LatCrit theory in general.⁸²

Indeed, the "race" versus "ethnicity" discussion is precisely the sort of substantive expansion that LatCrit theory can contribute to existing critical legal discourses on behalf of Latina/o and other communities of color. The underlying observation raised by this discussion is that both race and ethnicity are necessary components of LatCrit anti-subordination analyses.⁸³ LatCrit scholars can dispense with neither because both implicate Latina/o identities and our social and legal positions.

Once committed to a continuing LatCrit interrogation and application of both race and ethnicity to pending legal issues, the question is: Where will the knowledge adduced lead us? Necessarily, the discussion will consist of different voices and views. Different authors within this emergent LatCrit community already advance contrasting visions of

81. See *supra* notes 50-60 and accompanying text (calling for expanded analyses of "race").

82. See generally Sandrino-Glasser, *supra* note 7 (addressing both race and ethnicity, as well as their conflation in the construction of Latina/o socio-legal identities).

83. See Francisco Valdes, *Foreword—Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. (forthcoming 1997) (urging the same point while reviewing the works in another symposium).

Latina/o self-empowerment through legal theory.⁸⁴ Will a variety of voices and views produce discourse or cacophony? Will LatCrit theorists truly build an intellectual community that not only accommodates but marshals diversity? The ultimate answer to these questions is under construction and will depend on our efforts here and in the future.

In my view, the key to a productive LatCrit race/ethnicity discourse will be whether we engage issues of subordination with a sensibility of interconnectivity, cooperation and coalition.⁸⁵ LatCrit scholars must endeavor always to situate our work in light of other analyses, communities, and interests; LatCrit scholarship must recognize, accommodate, and incorporate the work that precedes and surrounds our own. In this way, we can leverage the reach of our work through the mutual cultivation of progressive, critical coalitions, especially with outsider scholars who also are engaged in the anti-subordination struggle.⁸⁶

II

POLICY, POLITICS & PRAXIS:

LATINAS/OS UNDER THE RULE OF ANGLO-AMERICAN LAW

A. *Equality in Law and Life*

Despite our invisibilization in the annals of Anglo-American legal and social culture, Latinas/os have been very much present within, and implicated by, the civil rights struggles of this nation. This much is made clear by Professor Perea's critical review of legal history.⁸⁷ In this sense, Latinas/os are, and always were, involved in the juridical and normative construction of equality in this society. And because this society constructs equality through its juxtaposition with White privilege,

84. See *supra* notes 70-71 and accompanying text (comparing positions advanced by Professors Perea and Haney López).

85. The term "interconnectivity" refers to a capacity for present or future connection based on social and legal experience. See Valdes, *supra* note 67, at 46-57. In the context of critical legal scholarship, the term represents a "personal awakening to the tight interweaving of systems and structures of subordination . . . in the task of forging a capacious, if not universal, theory of subordination." *Id.* at 49.

86. Cf. *id.* at 65-70 (discussing similar points regarding Queer legal theory); see also 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. (forthcoming 1997) (urging coalitional cross-pollination of ideas and efforts across race, ethnicity and sexual orientation axes).

87. See 85 CALIF. L. REV. at 1219-25 nn.27-51 and accompanying text, 10 LA RAZA L.J. at 133-39 nn.27-51 and accompanying text (providing a critical account of Latina/o issues and involvement in civil rights cases).

Latinas/os always are affected by the construction of broader race/ethnicity hierarchies.

This point is corroborated by Daria Roithmayr's paper, which documents how formal legal education and law practice in the United States were structured consciously to be biased in favor of White Anglos and against all peoples colorized as non-White or non-Anglo.⁸⁸ This bias, Roithmayr writes, was intentionally tailored by socially dominant forces to exclude specifically Black men and immigrants from Southern and Eastern Europe whose arrival in large numbers at the turn of this century coincided with the formalization of American legal education. Whereas legal education and practice prior to that time were relatively decentralized and deregulated, racial and ethnic politics, not meritocratic impulses, consciously and consistently guided the drive to centralize and regulate. In other words, explains Professor Roithmayr, "choices about the way law is practiced, and more specifically about the way law is taught, were made in the context of the profession's effort to stem the tide of immigrants and Black men who sought to become lawyers in the early 1900s."⁸⁹ With this devastating history, Professor Roithmayr documents how the profession developed measures of "merit" calculated to effectuate and justify the exclusion of Blacks and immigrants from professional opportunities.⁹⁰

The banality of purpose is breathtaking and warrants repetition: White Anglo men in control of law at the turn of the century deliberately formalized legal education into today's professional graduate schooling with the express aim of shutting out all Black men and new immigrants from access to the law, thereby preserving Anglo (and male) domination over the legal profession and, ultimately, over the legal system. The exclusionary motivation behind this design was candidly conceded by a member of the influential commission responsible for the creation of bar admission requirements, who described the new gatekeeping mechanism as "an instrument of Americanization."⁹¹ Access to and success within the formal institutions of American legal education and law practice, this account makes clear, always have been

88. Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 85 CALIF. L. REV. 1449 (1997), 10 LA RAZA L.J. 363 (1997).

89. 85 CALIF. L. REV. at 1445, 10 LA RAZA L.J. at 369.

90. See 85 CALIF. L. REV. at 1456, 10 LA RAZA L.J. at 370.

91. 85 CALIF. L. REV. at 1482, 10 LA RAZA L.J. at 396 (quoting GEROLD AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 24-28 (1976)).

intentionally racialized and ethnicized in favor of White Anglos regardless of "merit" or any other consideration.⁹²

Of course the disfavored or "darker" European immigrants targeted by the exclusionary policies discussed in this paper possessed ethnic identities that at that time were normatively constructed as non-White, thus drawing the reprobation of the Anglo-American legal establishment.⁹³ Although Italian and a few other European ethnicities gradually have been whitened over time,⁹⁴ Professor Roithmayr's deconstruction of the supposed distinction between "merit" and "bias" reminds us of the disfavored lineage that Latina/o immigrants share with other non-Anglo immigrants, even those hailing from some portions of Europe; as Professor Johnson notes, Latina/o ethnicities today are normatively constructed as non-White,⁹⁵ producing now the same (though updated) sorts of exclusion and injustice that were inflicted on turn-of-the-century immigrants from non-Anglo Europe.⁹⁶

But this account furthermore points to the manipulable, putty-like constructedness of Whiteness. This account, focusing on the previously non-White construction of non-Anglo European ethnicities from Southern and Eastern Europe, demands critical linkage of those ethnicities' gradual whitening to the current colorization and racialization of all peoples presently constructed as non-White. This shifting attribution of color or Whiteness to various ethnicities thereby underscores the constructed and instrumental nature of racialization, in turn confirming the bankruptcy of biologized "race" and its exploitation as a tool of supremacist ideology. This shiftiness thus confirms the need for LatCrit

92. As Professor Roithmayr's deconstructive analysis indicates, the very notion of "merit" unavoidably teeters on incoherence, but her historical analysis additionally demonstrates a calculated disregard for "merit" in the specific context of legal education and law practice in this country. See 85 CALIF. L. REV. at 1475-94, 10 LA RAZA L.J. at 389-408.

93. The mistreatment of turn-of-the-century immigrants and the racialized aspects of this mistreatment are well documented. See, e.g., DALE E. CASPER, *THE COMMUNITY EXPERIENCES OF IMMIGRANT MINORITIES* (1985); JOHN HIGHAM, *SEND THESE TO ME: JEWS AND OTHER IMMIGRANTS IN URBAN AMERICA* (1984); see also THOMAS KESSNER, *THE GOLDEN DOOR* (1977) (comparing the upward mobility of Jewish and Italian immigrants who came to New York City between 1880 to 1915).

94. See, e.g., *infra* note 130 and accompanying text (contrasting current images of Mexican, Chinese and Italian immigrants).

95. See Johnson, 85 CALIF. L. REV. at 1300-01, 10 LA RAZA L.J. at 214-15 (critiquing the social and legal construction of Latina/o identity).

96. Notably, exclusionary biases also were driven by anti-Semitism. See, e.g., AVRAHAM BARKAI, *BRANCHING OUT* (1994) (describing German-Jewish immigration to the U.S. from 1820 to 1914); HIGHAM, *supra* note 93, at 116-95 (describing ideology and culture behind anti-Semitism in the United States from 1830 to 1930); see also ROBERT STEVENS, *LAW SCHOOL* 100-101 (1983) (describing early twentieth century efforts to prevent Jewish lawyers from entering the Bar).

attention both to the construction of Whiteness and race and to their interplay with ethnicity.

Significantly, the openly biased design and objective of this educational and professional structuring remains substantially in place today, including the use of the same standardized tests for admission, the same curriculum for coverage, the same pedagogy for instruction, and the same organizations for licensing and practice.⁹⁷ Consequentially, today's status quo, both in law school and in law practice, is in fact a product and tool of invidious discrimination, and not the product of a magical quality benignly or objectively denominated "merit."⁹⁸ In American legal education and law practice, racial and ethnic biases always were consistently calculated to masquerade as, and to substitute for, a detached conception of substantive "merit." Professor Roithmayr thus injects a healthy reminder of history and reality into the contemporary reassertion of "merit" in today's backlash context—a healthy reminder precisely because backlash assertions of "merit" occlude this history and its continuing effects. In this way, Professor Roithmayr's analysis highlights the dangers that inhere in ahistorical or abstracted analyses of current social and legal conditions; this analysis

97. Most notable, perhaps, is the continuing importance of the Law School Aptitude Test (LSAT), which is "standardized" in a way that predictably and presently reproduces racial stratification in legal education and culture. See, e.g., Leslie Espinoza, *The LSAT: Narratives and Bias*, 1 AM. U.J. GENDER & L. 121 (1993) (examining bias through narrative analysis of actual test questions and calling for continued access to questions appearing on actual tests so that they may be examined for bias); Portia Y. T. Hamlar, *Minority Tokenism in American Law Schools*, 26 HOW. L. J. 444, 493-506 (1983) (discussing the usefulness of LSAT scores in admission processes when the goal is to increase minority representation); Danny Holley & Thomas Kleven, *Minorities and the Legal Profession: Current Platitudes, Current Barriers*, 12 T. MARSHALL L. REV. 299, 305-19 (1987) (determining statistically that LSAT scores have a greater negative impact on minority admission rates than undergraduate grade point averages); R. Sandoval, *Why the LSAT Does Not Test Chicanos*, 6 TEX. S.U. L. REV. 31 (1979) (arguing that although the LSAT tests the entire "Anglo-American Dimension" it fails to test the full spectrum of the "Chicano Dimension"); Rita J. Simon & Mona J. E. Danner, *Gender, Race, and the Predictive Value of the LSAT*, 40 J. LEGAL EDUC. 525 (1990) (comparing statistically male and female LSAT scores and White and Black/Latina/o scores).

98. Despite this damning history, die-hard defenses of "merit" continue to appear in the contemporary literature. See, e.g., Daniel A. Farber, *The Outmoded Debate Over Affirmative Action*, 82 CALIF. L. REV. 893 (1994) (arguing that the failures of educational systems, rather than existing measures of merit, cause minorities to do less well); Richard A. Posner, *Duncan Kennedy on Affirmative Action*, 1990 DUKE L.J. 1157 (1990) (arguing in favor of retaining traditional measures of merit as opposed to modifying or bending those standards to achieve greater diversity); cf. William Van Alstyne, *Rites of Passage: Race, the Supreme Court, and the Constitution*, 46 U. CHI. L. REV. 775 (1979) (expressing a belief that race-based laws, even those with a corrective purpose, make race matter and destroy solidarity and cohesion); Kingsley R. Browne, *Affirmative Action: Policy-Making By Deception*, 22 OHIO N.U. L. REV. 1291 (1996) (arguing that, at bottom, the goal of most proponents of affirmative action is to achieve representation proportionate to each minority's representation in the population).

by example displays the benefits to be reaped from interdisciplinary and contextualized analyses of legal issues and social realities for LatCrit and other outsider scholars.⁹⁹

Unfortunately—and oddly, given this Symposium’s purview—Professor Roithmayr does not extend or apply her analysis specifically and explicitly to Latina/o experiences with “bias” and “merit” in legal education and law practice. Her provocative interweaving of social history and contemporary critical theory leaves the LatCrit reader yearning for more on the particularities that define(d) and deform(ed) the opportunity and performance of Latinas/os in Anglo-American legal culture, both historically and presently. Her general account of the ways and means through which dominant forces consciously designed and constructed the bias/merit dyad of legal culture around White and Anglo-identified features simply whets the appetite for a focused yet contextualized account of Latinas/os.

Ironically, the lack of a Latina/o-specific discussion as part of this analysis can be viewed as perpetuating the invisibilization of Latinas/os in a Black/White world; Professor Roithmayr’s analysis, in other words, can be viewed as reinforcing the paradigmatic status quo of Anglo-American race relations. Yet Professor Roithmayr demonstrates that generalized LatCrit analyses of status quo race/power relations can illuminate the larger landscape of privilege and subordination in Anglo-American social and legal life. Therefore, LatCrit interventions in existing race/power discourse ideally should endeavor both to air specific Latina/o experiences and claims as well as to situate these specific analyses in the larger context of power allocations in the United States.

Doctrinally, this account points LatCrit attention to the Latina/o interest in the continuing evolution of equality jurisprudence. As Professor Perea’s examination of equality case law confirms, Latinas/os have helped to shape the direction and contours of equality doctrine, though this participation is obscured by accounts filtered uncritically through the Black/White paradigm;¹⁰⁰ though critical histories remind us that domestic civil rights traditionally have pivoted on narrow Black/White polarities, thereby marginalizing Latinas/os and others, LatCrit scholars also must recognize that Latinas/os nevertheless have

99. See Valdes, *Queers*, *supra* note 45, at 365-66 (urging similar approaches to sexual orientation issues).

100. See Perea, 85 CALIF. L. REV. at 1242, 10 LA RAZA L.J. at 156 (criticizing the marginalization of Latina/o participation in the making of civil rights law).

benefited from the struggles against White supremacy pioneered chiefly by Black activists and leaders.¹⁰¹ Thus, Latinas/os undoubtedly have benefited to some degree from the advances posted by the Civil Rights Movement, including the imperfect experiment known as affirmative action.¹⁰²

Though Professor Roithmayr does not explicate the relevance of her historical and contextual critique to the overall legal positioning of Latinas/os today, her analysis thereby does point to affirmative action in legal education as a key site of ongoing contestation directly relevant to Latina/o social and legal interests. In this way, Professor Roithmayr's essay serves indirectly to remind the LatCrit community that Latina/o interests are squarely at stake in the preservation and promotion of a larger civil rights legacy, which increasingly has come under attack through the politics of backlash currently in vogue. In fact, this paper highlights an obvious point that bears textured emphasis: The future of equality law is a prime doctrinal locus of LatCrit work and of LatCrit collaboration with other "outsider" scholars.

Indeed, the law reviews¹⁰³ and newspapers¹⁰⁴ of the nation make clear that equality gains, principles, and goals are imperiled by the

101. The Civil Rights Movement, for instance, represents a key example of Black anti-subordination leadership. See generally HERBERT H. HAINES, *BLACK RADICALS AND THE CIVIL RIGHTS MAINSTREAM* (1988) (discussing the impact of militant groups in social movements on the ability of moderate organizations to achieve their goals); JAMES C. HARVEY, *BLACK CIVIL RIGHTS DURING THE JOHNSON ADMINISTRATION* (1973) (documenting the political atmosphere surrounding the Johnson administration's policies on civil rights); MARK V. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION 1925-1950* (1987) (interpreting and narrating the NAACP's campaign against segregated schools); BLACK PROTEST IN THE SIXTIES (August Meier et al. eds., 1991) (discussing the roles of nonviolent direct action, the Black Power movement, and political action in the civil rights context).

102. The affirmative action experiment always has been controversial, including its proper parameters, but it generally has included Latinas/os. For a recent discussion of affirmative action rationales and their application to various identity categories, see Paul Brest & Miranda Oshige, *Affirmative Action For Whom?*, 47 *STAN. L. REV.* 855 (1995) (reviewing different affirmative action rationales and their applicability to various race and ethnicity categories). For additional reading on affirmative action, see also Karen Bell, *Affirmative Action and Justice: A Philosophical and Constitutional Inquiry*, 14 *CARDOZO L. REV.* 1545 (1993) (reviewing MICHEL ROSENFELD, *AFFIRMATIVE ACTION AND JUSTICE* (1991) (attempting to offer a new approach to understanding and resolving the debate over affirmative action)); Luke Charles Harris & Uma Narayan, *Affirmative Action and the Myth of Preferential Treatment: A Transformative Critique of the Terms of the Affirmative Action Debate*, 11 *HARV. BLACKLETTER J.* 1 (1994) (defending affirmative action as a matter of affording its beneficiaries "greater equality of opportunity in a social context marked by pervasive inequalities").

103. See, e.g., Aoki, *supra* note 59 (discussing legal scholarship in the current climate of backlash).

104. See, e.g., Marcus Stern, *Sweeping Immigration Bill is Passed by House*, *SAN DIEGO UNION-TRIB.*, Sept. 26, 1996 at A1 (describing the content of the federal Immigration Reform Act and

retrenchments unleashed in recent years at precisely the same time that Latina/o populations are poised to become demographically and economically unavoidable in the body politic.¹⁰⁵ This convergence is no coincidence. On the contrary, this convergence represents a multi-pronged attack against the limited advances achieved in recent years by all communities of color, an attack that crudely but efficiently deploys Latina/o-identified populations as its foci for Anglo power anxieties.

Beginning with the decisive passages of California's Proposition 187¹⁰⁶ and Proposition 209,¹⁰⁷ and resounding most recently through the halls of Congress as demands for immigration "reform,"¹⁰⁸ the anti-color, anti-immigrant, and anti-Latina/o edge of backlash politics has

Immigrant Responsibility Act of 1996); *English-Only Campaign an Effort to Divide and Conquer in Worst Way*, SUN-SENTINEL, Sept. 6, 1995, at 1A (discussing various state initiatives to institute English-only laws).

105. Demographic projections identify Latinas/os as a fast-growing component of the total population, both in key regions and nationally. For instance, by 2010, Latinas/os are projected to increase to 32.2 percent in the nation's largest state, California. See *Whites Seen Becoming a Minority in California*, WASH. POST, Nov. 17, 1985, at A12. Of course, Latinas/os already are numerous in other states, such as New York, Texas, Florida, New Mexico and Arizona. See Bureau of the Census, U.S. Dep't of Com., No. 32, *Resident Population, by Race and Hispanic Origin—States: 1990*, in STAT. ABSTRACT U.S. 30-33 (1993) [hereinafter *Resident Population*]. Nationally, Latinas/os are projected to become the most populous "minority" group in the United States by 2020. See Bureau of the Census, U.S. Dep't of Com., No. 20, *Resident Population Projections, by Race and Hispanic Origin: 1992 to 2050*, in STAT. ABSTRACT U.S. 19 (1993) [hereinafter *Resident Population Projections*].

106. Proposition 187 effectively segregates "illegal aliens"—mainly Latinas/os—from California society. For selected readings on Proposition 187, see Linda S. Bosniak, *Opposing Prop. 187: Undocumented Immigrants and the National Imagination*, 28 CONN. L. REV. 555 (1996); Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 WASH. L. REV. 629 (1995); Ruben J. Garcia, Comment, *Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law*, 17 CHICANO-LATINO L. REV. 118 (1995).

107. Proposition 209 seeks effectively to ban affirmative action for women and people of color—including Latinas/os—in California. See *The Affirmative Action War In California*, BLACK ENTERPRISE, Nov., 1995, at 6 (examining those who have benefited from affirmative action, California's poor record on affirmative action, and both sides of the debate over its continued existence); *University Minority Rolls Could Be Halved*, THE PRESS-ENTERPRISE, Oct. 3, 1996, at A13 (predicting that enrollment of Hispanic students will drop by over 60% at UC-Berkeley and 79% at UCLA after the implementation of Proposition 209); see also Thomas Glenn Martin, Jr., *UCLA School of Law Admissions in the Aftermath of the U.C. Regents' Resolution to Eliminate Affirmative Action: An Admissions Policy Survey and Proposal*, 18 CHICANO-LATINO L. REV. 150 (1996) (examining the effects of backlash and offering policy proposals). For a discussion of the potential legal interpretations and new causes of action that could arise from Proposition 209, see *Legal Implications of Proposition 209-The California Civil Rights Initiative*, 24 W. ST. U. L. REV. 1 (1996).

108. The federal Immigration Reform Act and Immigrant Responsibility Act of 1996 targets non-citizen Latina/os who are in the United States legally. See Stern, *supra* note 104, at A1.

proven irresistible for demagogues, voters, and jurists.¹⁰⁹ And in the course of these policy harangues and turning points, the fiscal and cultural woes of the country oftentimes have been imputed to the growing presence in the United States of Latinas/os (and other traditionally subordinated groups).¹¹⁰ All of sudden, it seems, Latinas/os have been thrown into the maelstrom of local and national politics as both state and federal lawmakers accuse mainly Latina/o communities for the failures of Anglo-American society and its rulers.

Thus, the unabashed purpose of this backlash movement is to force Latinas/os (and others) to stay out—or to stay put. In this sense, today's use of anti-immigrant sentiment to fuel backlash politics and nativistic policies echoes the malevolent motives that produced the racist and ethnocentric architecture of Anglo-American legal education and law practice earlier this century.¹¹¹ After years of marginal visibility and relative docility, Latinas/os now have been made the scapegoats of Anglo choice.

This point is crucial: Recent assaults on Latinas/os, mounted as part of the larger civil rights rollback, serve to suppress Latina/o growth as well as to consolidate Anglo power and White privilege more generally. The net effect of anti-immigrant and anti-Latina/o public policy is the revitalization and consolidation of racial and ethnic stratification, with Anglo and White identities placed at the apex of social and legal privilege. It thus cannot be mistaken as happenstance that both "affirmative action" and "immigrants" have become twinned targets of the larger wave of backlash politics reverberating from coast to coast.¹¹² The

109. Most recently, a panel of the Ninth Circuit upheld Proposition 209 with an opinion notable for its venomous majoritarian rhetoric. *See Coalition for Economic Equity v. Wilson*, 110 F.3d 1431 (9th Cir. 1997), *cert. denied* 66 U.S.L.W. 3316 (U.S. Nov. 3, 1997) (No. 97-369).

110. The purposes of "cultural war" include retaining "orthodoxy" in the face of changing power relations and progressivist movements. *See Paul Galloway, Today's "Cultural War" Goes Deeper than Political Slogans*, CHI. TRIB., Oct. 28, 1992, at C1 (describing the "cultural war" phenomenon). Cultural war was declared from the podium of the 1992 Republican Party Convention by Presidential contender Patrick J. Buchanan. *See Chris Black, Buchanan Beckons Conservatives to Come "Home"*, BOSTON GLOBE, Aug. 18, 1992, at A12 (reporting Buchanan's remarks); *see also* JAMES DAVISON HUNTER, *BEFORE THE SHOOTING BEGINS* (1994) (expounding the concept of "culture war" more generally); JAMES DAVISON HUNTER, *CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA* (1991) (conceptualizing the political climate in the 1980s as war over culture and national identity).

111. *See Roithmayr*, 85 CALIF. L. REV. at 1475-82, 10 LA RAZA L.J. at 389-96 (analyzing the ramifications for today of historical racism and nativism in the formalization of legal education and practice in the United States).

112. In recent years, both politicians and scholars have paid increasing attention to immigration policy. *See, e.g., Swati Agrawal, Trusts Betrayed: The Absent Federal Partner in Immigration Policy*, 33 SAN DIEGO L. REV. 755 (1996) (examining the claims brought by the immigration states against

coordinated backlash against both affirmative action and immigration is designed to disempower African American *and* Latina/o insurgency. This correlation therefore should remind both LatCrit and RaceCrit scholars of the pending need to cross-interrogate the overlapping issues that operate through the interlocking of race and ethnicity in the United States.

This landscape makes plain that LatCrit theory must exhibit a political consciousness. LatCrit scholars simply cannot shy from engagement with the political onslaught underway against Latina/o persons and communities in the name of a dubious or illusory ideal of scholarly detachment.¹¹³ The communities that we purport to assist simply cannot afford the luxury of scholarship for art's sake. Neither can we. Though taxing and elusive, LatCrit theory must embrace the evolving method of praxis to advance the deployment of law as a practical, potent force toward social justice.¹¹⁴

Moreover, the political emergency that envelops all communities of color in this time of backlash demands a collaborative and expansive body of scholarship with the substance and will to replace hysteria with analysis and prejudice with justice. Professor Roithmayr's sweeping deconstruction of merit and bias in the legal profession effectively serves as a springboard for sustained LatCrit consideration of the means through which our emergent discourse is related to the ongoing anti-subordination struggle of Critical Race Theory. But how we construct this relationship, and whether we imbue it with a broad

the federal government and concluding that the federal relationship to the states should be understood as that of a trusteeship); Kevin R. Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement*, 1993 B.Y.U. L. REV. 1139 (reviewing and critiquing the political disempowerment and consequential abuse of noncitizen immigrants); Johnson, *supra* note 106; Carlos Ortiz Miranda, *Immigration Reform*, 35 CATH. LAW. 259 (1994) (addressing specifically the situation of "religious workers" under recent immigration law changes); Joyce Antila Phipps, *Immigration and the Latin Community*, 17 WOMEN'S RTS. L. REP. 279 (1996) (discussing issues of race, class, and gender in immigration policy); Peter H. Schuck, *Alien Ruminations*, 105 YALE L.J. 1963 (1996) (reviewing PETER BRIMLOW, *ALIEN NATION* (1995), which Schuck finds to be a "bad" book yet valuable for the important points it makes "[o]n the way to its erroneous conclusions").

113. See *infra* notes 101-110 and accompanying text (addressing the recent rise of backlash politics); see also Valdes, *supra* note 83 (positing that activist consciousness is a defining feature of LatCrit theory).

114. The importance of praxis is foundational to LatCrit theory. See, e.g., George A. Martinez, *Mexican-Americans and Whiteness*, 2 HARV. LATINO L. REV. (forthcoming 1997); Montoya, *supra* note 65; Laura Padilla, *LatCrit Praxis to Heal Fractured Communities*, 2 HARV. LATINO L. REV. (forthcoming 1997); see also Valdes, *supra* note 83; see generally Alfieri, *supra* note 8.

post-subordination vision and purpose, is another question.¹¹⁵ Finding a starting point for a constructive and empowering (but still prospective) meeting of LatCrit, RaceCrit and other outsider theorizing—an engagement ideally marked by mutuality toward joint realization of a post-subordination era—therefore takes us to several fundamental observations.¹¹⁶

The observations prompted by Professor Roithmayr's analysis are fundamental because they contextualize and occasion the very need for a mutual engagement among and across LatCrit and RaceCrit discourses. The first observation therefore is that a relationship between the two necessarily exists, and that its recognition is unavoidable, as preliminary LatCrit exchanges over the relative analytical utility of "race" and "ethnicity" powerfully indicate.¹¹⁷ The next, and related, observation is that LatCrit interventions in extant outsider discourses not only respond to overlooked Latina/o needs¹¹⁸ but also enrich RaceCrit understandings of subordination.¹¹⁹ The third observation is that the intellectual genealogy of LatCrit theory, which employs insights, concepts and methods forged by Critical Race Theory, makes LatCrit scholarship bound and indebted to RaceCrit pioneering.¹²⁰ These observations suggest that Critical Race and LatCrit Theory ought to make each the other's "favorite cousin . . . —both always mutually present at least in spirit, and both always mutually welcome to be present in the flesh."¹²¹

The final observation is that careful, sophisticated coalition-building, which includes rejecting all forms of junior partnership within a coalitional agenda, can provide substantive and political benefits that atomized anti-subordination projects are more likely to forego.¹²² These

115. See *supra* notes 85-86 and accompanying text (discussing the need for constructive intergroup anti-subordination collaboration).

116. For further elaboration of these points, see Valdes, *Theorizing About Theory*, *supra* note 13 (suggesting the coalitional value of "working back" from the vision of a post-subordination time in addition to the current practice of "working forward" from the past or present experience of anti-subordination struggle).

117. See *supra* notes 77-83 and accompanying text (discussing Professors Perea's and Haney López's positions on this question).

118. See Valdes, *supra* note 3, at 4-7 (reviewing the relative marginality of Latinas/os in Critical Race Theory specifically and outsider jurisprudence generally).

119. See *supra* notes 70-71 and accompanying text (noting how both Professors Perea and Haney López posit this benefit as one salutary effect of LatCrit theory).

120. See Valdes, *supra* note 83 (describing the LatCrit debt to Critical Race Theory); see generally Alfieri, *supra* note 8 (critically canvassing the roots and writings of Critical Race Theory as represented in its first two book anthologies).

121. Valdes, *supra* note 2, at 27.

122. See Valdes, *supra* note 67, at 38-70 (discussing the bases, imperatives, dangers and limitations of coalitional efforts as affected by race and sex in sexual minority contexts). For a

observations, if embraced in an aware, caring manner, can produce sharpened critiques of Anglocentric Whiteness in the law, politics and culture of the United States—critiques whose sharpness enables the work of LatCrit and other outsider scholars to better capture the mutually-reinforcing racial and ethnic dimensions of all prevalent socio-legal power hierarchies.¹²³ These observations, in their insight and sensibility, depict and promote the potential capacity for collaborative critical projects between and among anti-subordination scholars writing from varied race/ethnicity subject positions.

In this way, Professor Roithmayr introduces to this Symposium a deductive lesson in the potential power of LatCrit theory. Her paper begins with a wide-focus frame of history and context, which then can be employed to uncover more specific issues or connections that inhere in the notion and construction of LatCrit subjectivity. Other Symposium authors, such as Professors Johnson¹²⁴ and Perea,¹²⁵ provide inductive lessons that begin with a more particularized focus on Latina/o issues, which then serve to situate LatCrit theory within the larger landscape of critical legal scholarship. These varied inductive and deductive approaches to LatCrit theory are complementary; they help to display both the many points of LatCrit entry into outsider jurisprudence, as well as the many forms of substantive contribution open to LatCrit scholarship in its early, formative moments.

B. Immigration, Borders, and Nations

While marking the importance and urgency of race and ethnicity to civil rights and equality law, this Symposium also underscores that Latina/o interests cannot be confined to domestic issues. On the contrary, the rich diversities of Latina/o communities and identities, as reported and reflected in this Symposium, stem in part from the fact that we hail from different locales; our roots are planted in, and transplanted from, varied soils. In this country, “Latinas/os” are constituted

similar analysis focused on race, ethnicity, and sexual orientation contexts, see Valdes, *supra* note 86 (forthcoming 1997) (calling for greater attention, and responsiveness, to emergent racial critiques of lesbian and gay legal scholarship).

123. See generally Valdes, *supra* note 116; see also Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561 (1997) (critiquing the absence of race from gay and lesbian antidiscrimination analyses and the weaknesses that flow from such absences).

124. See *supra* notes 24-40 and accompanying text (providing one account of Latina/o life in the United States).

125. See *supra* notes 50-56 and accompanying text (focusing on Latina/o invisibility in race discourses and legal histories).

by Mexicans, Puerto Ricans, Cubans, Dominicans, Salvadorans, Nicaraguans, Filipinos and others representing various nations and sectors of the globe. Our communities and identities within the United States are constructed on pillars that straddle nations and borders.

This pervasive characteristic of Latina/o communities in the United States thus poses another prime arena awaiting LatCrit engagement: Because our families and affinities straddle national frontiers, the right of persons to cross borders without impediments amounting to harassment is a key Latina/o issue.¹²⁶ The eradication of nativistic racism generally,¹²⁷ and of anti-Latina/o discrimination specifically, within immigration policy is vital to the well-being of all Latina/o communities. Yet this Symposium makes clear that legal issues revolving around immigration, borders, and nations are neither an exclusively nor a primarily Latina/o concern. Rather, as the essay by Robert Chang and Keith Aoki demonstrates,¹²⁸ these fields of law and life define(d) the Asian-American position in the United States as well. Professors Chang and Aoki thereby remind us that LatCrit theory and Asian-American legal scholarship share common—and contested—ground.¹²⁹

This common ground includes the paradox of native-born Latinas/os and Asian Americans “who are discursively produced as foreign” and, hence, immigrant.¹³⁰ This commonality generates a shared interest in citizenship theory—that is, in the construction of citizenship

126. See *supra* note 106 (citing sources on immigration policy); see also Johnson, 85 CALIF. L. REV. at 1292, 10 LA RAZA L.J. at 206.

127. I derive the term “nativistic racism” from Robert Chang. See Robert S. Chang, *The Nativist's Dream of Return*, 9 LA RAZA L.J. 55 (1996) (critiquing the commingling of nativism and racism in the subordination of Asian-American and Latina/o groups within the United States); see also ROBERT S. CHANG, *DIS-ORIENTED* (forthcoming 1997).

128. Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CALIF. L. REV. 1395 (1997), 10 LA RAZA L.J. 309 (1997).

129. This common ground is shared more broadly. For instance, Critical Race Feminism has begun to draw connections between the South African and North American experience, as well as connections that link domestic and global issues more generally. See, e.g., Adrien Katherine Wing & Eunice P. de Carvalho, *Black South African Women: Toward Equal Rights*, 8 HARV. HUM. RTS. J. 57 (1995) (reviewing the position of Black women in South Africa from a Critical Race Feminist position); Adrien Katherine Wing & Sylke Merchan, *Rape, Ethnicity and Culture: Spirit Injury from Bosnia to Black America*, 25 COLUM. HUM. RTS. L. REV. 1 (1993) (advancing a transnational, comparative analysis of violence against women of color). Similarly, Queer legal theory has begun to connect the anti-subordination analysis of domestic homophobia with international human rights norms and discourses. See, e.g., James D. Wilts, *Conceptualizing Private Violence Against Sexual Minorities as Gendered Violence: An International and Comparative Law Perspective*, 60 ALB. L. REV. 989 (1997) (positing an internationalist analysis that compares campaigns of violence based on gender and sexual orientation across borders and cultures). For more on the potential overlap of LatCrit and Queer legal theory, see *infra* notes 167-170 and accompanying text.

130. 85 CALIF. L. REV. at 1414, 10 LA RAZA L.J. at 328.

and in its deployment to (dis)enfranchise persons and groups along racialized and ethnicized fault lines. "In the midst of cries to limit illegal immigration, the figure of the Mexican border-crosser or of the Chinese boat person makes the evening news, whereas the fact that Italians constitute the largest group of undocumented immigrants in New York is obscured."¹³¹ This instance illustrates how power over the physical border is exercised ideologically to control the makeup of the national community and to incline the national imagination toward existing supremacies; this ideological exercise portrays in yet another complex socio-legal context how race and ethnicity interlock in the subordination of groups presently constructed as non-White and/or non-Anglo.

But a shared position of foreignness should not induce Asian-American and Latina/o scholars to Whiten and Anglicize Asian-American or Latina/o race/ethnicity positions in the pursuit of equality and empowerment; rather, the common theoretical and political aim is to protect the integrity of all non-White identities by dismantling the arbitrary supremacy of Anglocentric Whiteness in law and society. This point is advanced generally in this Symposium by Professor Haney López, who urges LatCrit theorists to tackle the processes and structures of racialization that generate and sustain White and Anglo supremacy,¹³² and by Professor Johnson, who emphasizes the limits of assimilationism and its costs.¹³³ Rather than devise claims that support our clinging to Anglicized White identifications, the Latina/o and Asian-American project is to redistribute the social and legal properties of Anglocentric Whiteness to create a more just and egalitarian order; as Professors Chang and Aoki describe it, our joint project is to build a post-subordination world that goes beyond "respecting the presence of minority cultures against the backdrop of a dominant, White Euro-American culture."¹³⁴

An examination of borders, both literal and figurative, thus becomes an integral part of this collaboration. "Because of the construction of the national community as White and Black . . . [f]oreignness is inscribed upon our bodies in such a way that Asian Americans and Latinas/os carry a figurative border with us."¹³⁵ The "border is everywhere" for Asian American and Latina/o citizens who are

131. 85 CALIF. L. REV. at 1400, 10 LA RAZA L.J. at 314.

132. See 85 CALIF. L. REV. at 1143-1211, 10 LA RAZA L.J. at 57-125.

133. See 85 CALIF. L. REV. at 1281-86, 10 LA RAZA L.J. at 195-200.

134. 85 CALIF. L. REV. at 1404, 10 LA RAZA L.J. at 318.

135. 85 CALIF. L. REV. at 1414, 10 LA RAZA L.J. at 328.

constructed as “perpetual internal foreigners” because we are socially racialized and normatively foreignized.¹³⁶ Even Asian Americans and Latinas/os who are born in the United States (or become “naturalized” after arriving here) continually embody the border, forever carrying its dangers with every movement made or attempted.¹³⁷ These dangers, Professors Chang and Aoki make clear, include everyday abuse and discrimination as well as physical violence and terror.¹³⁸

This figurative border in turn reveals how “[i]deas of race and nation exist in a feedback loop, each reinforcing the other.”¹³⁹ Basically, Anglocentric culture uses Asian Americans and Latinas/os as a foil for “real Americans,” but as Chang and Aoki emphasize, the need to believe in “the fiction of a homogenous American identity” is a shabby foundation upon which to build any nation.¹⁴⁰ Asian-American and LatCrit scholars therefore share another common objective: by analyzing the very conception of “nationhood” and by cultivating a “multiculturalism” that transcends Black/White binarism, Asian-American and LatCrit scholars can foster a regime of equality that rests on “respect [for] the heterogeneity within minority *and* majority communities.”¹⁴¹

Professors Chang and Aoki also identify a growing concern over the exploitative design of economic globalization.¹⁴² This exploitation often tracks the racial and ethnic supremacy of Anglocentric Whiteness: the extraction of natural resources from “Third World” countries, the implementation by North American corporations of cheap labor strategies both here and abroad, the manipulation of power over trade and investment to exercise political and cultural domination, and the (mis)use of technology and education to further stratify the world. These issues present fertile and urgent areas of Asian-American and LatCrit interrogation because they encapsulate the complex structural transnationality of our communities and interests.¹⁴³

136. 85 CALIF. L. REV. at 1416, 10 LA RAZA L.J. at 330.

137. Asian Americans and Latinas/os not only “carry” the border with our bodily movements, the law also permits the “border” literally to be moved from the nation’s physical frontiers to its interior. *See* *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (holding that routine stops of persons at a “border” station placed at the interstate highway between Los Angeles and San Diego, and located 66 miles north of the frontier with Mexico, did not violate the Fourth Amendment).

138. *See* 85 CALIF. L. REV. at 1409-17, 10 LA RAZA L.J. at 323-31.

139. 85 CALIF. L. REV. at 1419, 10 LA RAZA L.J. at 333.

140. 85 CALIF. L. REV. at 1416, 10 LA RAZA L.J. at 330.

141. 85 CALIF. L. REV. at 1404, 10 LA RAZA L.J. at 318.

142. *See* 85 CALIF. L. REV. at 1419-20, 10 LA RAZA L.J. at 333-34.

143. Thus, Latina/o scholars already have begun to examine the relationship between globalization and subordination. *See, e.g.*, Kevin R. Johnson, *Free Trade and Closed Borders: NAFTA*

The specter of globalized economic exploitation thereby points to another shared interest: transnational analyses of all legal and social conditions.¹⁴⁴ Addressing the international dimensions of personhood,¹⁴⁵ Professors Chang and Aoki evoke the legacies of colonialism and imperialism, both in their traditional and neo-forms, to question the usefulness of analyzing present conditions within “the confines of the nation-state.”¹⁴⁶ Transnational approaches to all legal issues can help to “deepen the chain of democratic equivalents, linking the struggles of those who have been in the United States for generations with the struggles of those who have arrived more recently.”¹⁴⁷ Thus, both Asian-American and LatCrit scholars face the common task of introducing internationalist sensibilities to outsider jurisprudence, and particularly to ongoing critiques of “domestic” equality issues.¹⁴⁸

But this sense of commonality, Professors Chang and Aoki warn, is neither simple nor unqualified. Using the demographic and political tale of Monterey Park in Southern California, as well as larger shifts in national population trends, their essay posits the imminence of “tantalizing questions about the limits of interracial and interethnic cooperation.”¹⁴⁹ In Monterey Park and around the nation, shifting attributes of “minority” groups are creating areas of both convergence and divergence regarding Asian-American, Latina/o, Black, and White/Anglo interests. This complex interplay can create political realities that pit minority communities against each other in mutually

and Mexican Immigration to the United States, 27 U.C. DAVIS L. REV. 937 (1994) (contrasting the policy of “free” movement for capital, goods, and services with the policy of increasingly restricted movement for persons); Angel R. Oquendo, *NAFTA's Procedural Narrow-Mindedness: The Panel Review of Antidumping and Countervailing Duty Determinations Under Chapter Nineteen*, 11 CONN. J. INT'L L. 61 (1995) (critiquing the imposition of Anglocentric legal traditions and norms in certain NAFTA dispute-resolution procedures); Gloria L. Sandrino, *The NAFTA Investment Chapter and Foreign Direct Investment in Mexico: A Third World Perspective*, 27 VAND. J. TRANSNAT'L L. 259 (1994) (analyzing the subordinating impact of certain provisions of the North American Free Trade Agreement on Mexico).

144. See Elizabeth M. Iglesias, *Foreword—International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997) (analyzing the relationship of LatCrit theory to international law and particularly to human rights issues); see also *infra* note 166 (presenting works on LatCrit theory and transnational legal analyses).

145. See generally Chang & Aoki, *supra* note 128.

146. 85 CALIF. L. REV. at 1405, 10 LA RAZA L.J. at 319.

147. 85 CALIF. L. REV. at 1405, 10 LA RAZA L.J. at 319.

148. This task requires a careful practice of international and transnational analysis, mindful of its anti-subordination purpose. See generally Sharon K. Hom, *Commentary, Re-Positioning Human Rights Discourses on “Asian” Perspectives*, 3 BUFF. J. INT'L L. 209 (1996) (calling for nuance in transnational anti-subordination analyses).

149. 85 CALIF. L. REV. at 1427, 10 LA RAZA L.J. at 341.

self-defeating scenarios.¹⁵⁰ In this case, the Monterey Park tale shows the capacity and willingness of Asian Americans and Latinas/os to practice opportunistic racism against Blacks, thus engaging in the same behavior that originates and perpetuates White supremacy in this society.¹⁵¹

With these precautionary notes, Professors Chang and Aoki also invoke the dilemmas of "sameness" and "difference" specifically in the Asian-American and Latina/o context. Explored in recent years by Critical Race and Feminist Legal Theorists, the sameness/difference dialogue¹⁵² emphasizes the complexities of subject positioning in a multicultural society and highlights the perils of unthinking "essentialism" in legal or social analysis.¹⁵³ Though powerful and useful, sameness/difference analysis may impede the formation of transformative group relations. This invocation thus reminds Asian-American, LatCrit, and allied scholars that our work necessarily includes the mapping of sameness/difference constructs from an anti-subordination perspective; our work should strive to bring about emancipatory conceptions and applications of "sameness" and "difference."¹⁵⁴

The limits of interracial and interethnic cooperation in the anti-subordination project during these changing and turbulent times remain unknown and uncharted; it is our joint work to find, test, and surpass them in the name of legal progress and social justice.¹⁵⁵ Ultimately, Professors Chang and Aoki remind all outsider scholars that our capacity for mutuality will be the measure of our commitment to the

150. See 85 CALIF. L. REV. at 1426-27, 10 LA RAZA L.J. at 340-41.

151. See 85 CALIF. L. REV. at 1431-38, 10 LA RAZA L.J. at 345-52.

152. The "sameness/difference dilemma" has attracted much scholarly commentary in recent years as various groups, identities, and positions have asserted claims to inclusion and involvement in legal theory and culture. This dialogue implicates essentialism because it represents the efforts of various scholars to delineate "communities" and interests based on perceived (dis)similarities between and among various "identities," thereby prompting much debate over sources, claims and interpretations of sameness and difference. See, e.g., Joan C. Williams, *Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist and Critical Race Theory*, 1991 DUKE L.J. 296 (attempting to reformulate the sameness/difference debate as two sides of the same concern highlighting structural factors that systematically disadvantage women and minorities); see also MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW* (1990) (investigating the legal treatment of difference and categorization).

153. See *supra* note 67 and accompanying text (discussing essentialism and its dangers in critical legal scholarship).

154. See generally Valdes, *supra* note 67, at 58-65 (considering the interplay of race, sex and sexual orientation in the construction of "sameness" and "difference" in sexual minority contexts). See also *infra* notes 167-178 and accompanying text (discussing further sameness and difference issues).

155. For an incisive analysis of color-on-color issues related to coalitional social justice quests, see Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 UCLA ASIAN PACIFIC AM. L.J. 33 (1995).

inter-group values and cross-communities that we profess to uphold and serve. LatCrit scholars cannot afford to slight this reminder as we embark on our collective enterprise.

C. Language, Culture, and Expression

The works presented in this Symposium point to a topical intra-Latina/o commonality that should provoke further critical investigation: Language and expression shift our attention back to intra-group issues of sameness and difference. Language helps to constitute Latina/o identity, culture, and community,¹⁵⁶ which is why stilling the native tongue is a method of assimilation, as Professor Johnson's narrative illustrates.¹⁵⁷ Thus, the increasing regimentation of language use through the force of law—and specifically the legal suppression of Spanish expression through language regulation—appears prominently among pending LatCrit issues.

The paper by Professor Cameron focuses particularly on language and its significance to the position of Latinas/os in American law and society.¹⁵⁸ Concentrating on language and identity in the workplace, Professor Cameron considers three interrelated phenomena often deployed to rebuff Latina/o equality claims: the Black/White paradigm, or, in his phraseology, racial dualism; Latina/o invisibility through law; and systemic manipulation of legal indeterminacy.¹⁵⁹ He argues that the towering emphasis on race and color within and through Black/White frameworks ignores the relevance of language in anti-discrimination law.¹⁶⁰ This omission derives, in part, from the larger invisibilization of

156. Scholars have long pointed to language regulation—or repression—as a key concern of Latinas/os, because it is a crucial means of (dis)empowering Latinas/os and others through law and throughout society. See Antonio J. Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 HARV. C.R.-C.L. L. REV. 293 (1989); José Roberto Juárez, Jr., *The American Tradition of Language Rights: The Forgotten Right to Government in a "Known Tongue,"* 13 LAW & INEQ. J. 443 (1995); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269 (1992); Juan F. Perea, *English-Only Rules and the Right to Speak One's Primary Language in the Workplace*, 23 J.L. REFORM 265 (1990); see generally Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329 (1991) (illustrating the significance of language issues to a broader range of traditionally subordinated identity categories).

157. See *supra* text accompanying note 33 (recounting why he never was taught Spanish as a child).

158. 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 CALIF. L. REV. 1347 (1997), 10 LA RAZA L.J. 261 (1997).

159. See 85 CALIF. L. REV. at 1354-55, 10 LA RAZA L.J. at 268-69.

160. See 85 CALIF. L. REV. at 1363, 10 LA RAZA L.J. at 277.

Latinas/os throughout the United States.¹⁶¹ And this invisibility, in turn, helps to perpetuate the omission of language from anti-subordination projects. In effect, then, Professor Cameron employs language to center Latinas/os in the analysis of historical and contemporary equality issues.

His critique identifies two doctrinal errors in Title VII case law that express legal culture's Anglocentric ideology: the trivialization of national origin discrimination, often times practiced in the form of oppressive and absolutist language regimentation, in the overall equality scheme; and the interposition of "immutability" requirements to constrict the statute's reach and effectively license practices that amount to national origin discrimination.¹⁶² This trivialization, Professor Cameron explains, is enacted by categorizing language regimentation as "merely inconvenience" rather than as national origin discrimination.¹⁶³ And the immutability objection misjudges the centrality of language to national origin and Latina/o issues.¹⁶⁴ Professor Cameron thus presents resistance of language regimentation as a key objective of LatCrit scholarship in the service of Latina/o empowerment.

This essay plainly shows why language rights defense must be part of LatCrit theory's contribution to the continuing development of domestic equality law. But it also illustrates how language regimentation in the workplace—presumably a "domestic" equality issue—stems precisely from the transnational character of Latina/o communities and identities; again, therefore, LatCrit discourse must at all times be "inter/national"¹⁶⁵ and remain skeptical of conventional analytical or doctrinal dichotomies, such as "domestic" and "foreign."¹⁶⁶ Inequality and subordination know no borders.

Professor Cameron's language analysis also suggests the existence of insights to be cross-pollinated through comparative and mutual interrogations of ethnicity and sexuality in law and culture. For instance, in canvassing the case law and its facts, Professor Cameron brings into sharp relief how language and identity are regimented through the regulation of individual or group expression; because courts have

161. See 85 CALIF. L. REV. at 1372-74, 10 LA RAZA L.J. at 286-88.

162. See 85 CALIF. L. REV. at 1353-54, 10 LA RAZA L.J. at 267-68.

163. See 85 CALIF. L. REV. at 1361, 10 LA RAZA L.J. at 275.

164. See 85 CALIF. L. REV. at 1363-65, 10 LA RAZA L.J. at 277-79.

165. See Chang & Aoki, 85 CALIF. L. REV. at 1413-16, 10 LA RAZA L.J. at 327-30 (arguing for more expansive treatment of "domestic" equality issues).

166. This merger of "domestic" and "foreign" spheres has been urged by various LatCrit scholars in recent years. See Hernández-Truyol, *supra* note 52; Berta Esperanza Hernández-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs, and Reality Checks*, 2 HARV. LATINO L. REV. (forthcoming 1997); see also Colloquium, *International Law*, *supra* note 2.

labeled language to be “merely” a product of behavioral choice, they have shrugged off language regimentation as a substantive anti-discrimination issue.¹⁶⁷ In this way, Latina/o equality claims are propelled into “immutability” thickets familiar to Queer legal theorists.¹⁶⁸ Professor Cameron’s discussion of immutability thus brings up sprawling issues of status and conduct, of identity and performativity, and of essentialism and constructionism, that similarly are familiar, if not central, to sexual orientation legal discourse.¹⁶⁹ Professor Cameron’s analysis of language regimentation thereby raises the potential of LatCrit and Queer collaboration in the anti-subordination project,¹⁷⁰ a potential collaboration that is exciting because it unites the two newest schools of critical legal scholarship in the pursuit of progressive causes and reforms.

Taking a somewhat controversial stance, Professor Cameron also asserts an essential link between language and identity: “To suppress the speaking of Spanish is to suppress an essential, if not the essential, component of Latino identity.”¹⁷¹ This claim invites controversy because it effectively questions postmodern tenets, including aversion to all essentialisms. Beyond the controversy it might arouse, this claim illustrates at least one point: the relevance and applicability to Latinas/os and to LatCrit theorizing of the anti-essentialism discourse produced in recent years within race, gender, and sexual orientation scholarship.¹⁷² Like the sameness/difference discourse,¹⁷³ the related anti-essentialism literature teaches particularity, contextualization, contingency, and constructedness as elemental to sound legal and social analysis.¹⁷⁴ As Professor Roithmayr’s essay illustrates, LatCrit scholars would be wise to employ these and similar insights of outsider jurisprudence as the point of departure for our articulation of LatCrit theory.¹⁷⁵ Yet Professor

167. See 85 CALIF. L. REV. at 1361, 10 LA RAZA L.J. at 275.

168. For a discussion of Queer legal theory, see Valdes, *Queers*, *supra* note 45, at 344-75 (articulating one vision of Queer legal theory).

169. See, e.g., Janet E. Halley, *Sexual Orientation and the Politics of Biology: A Critique of the Argument from Immutability*, 46 STAN. L. REV. 503 (1994) (discussing these issues and concepts as applied to equal protection law).

170. For more on this subject, see Elizabeth M. Iglesias & Francisco Valdes, *Afterword—“Latinas/os” at the Center: Exploring the Points and Limits of LatCrit Social Justice Agendas*, 19 CHICANO-LATINO L. REV. (forthcoming 1998).

171. 85 CALIF. L. REV. at 1366, 10 LA RAZA L.J. at 280.

172. See *supra* note 67 (citing sources on essentialism in legal theory).

173. See *supra* note 152 (citing sources on sameness/difference scholarship).

174. See *supra* note 67 (citing sources on essentialism in legal theory).

175. See 85 CALIF. L. REV. at 1506-07, 10 LA RAZA L.J. at 420-21 (applying postmodern concepts to deconstruct “merit” in the legal profession).

Cameron's claim implicitly calls for a LatCrit reconsideration of the postmodernist canon.

It is true, of course, that many and perhaps most Latinas/os in the United States share a common native language, which oftentimes may also operate as the main household tongue.¹⁷⁶ At the same time, it may be too much to expect that language will be as salient in the future as it is today; perhaps the current salience of language is overstated due to the recency of much Latina/o immigration.¹⁷⁷ The growth of Latina/o populations, communities, business, and communication as a result of recent immigration may be significant not only because it brings more Spanish-speaking persons into the locality but because it more broadly gives Spanish a higher profile within the existing linguistic mix of the region.¹⁷⁸ But will this salience be perpetual?

The larger question, therefore, is: Will language resonate as "essential" for most third generation, or fifth generation, Latinas/os? Though the Chicana/o experience testifies to the resilience of language and the resonance of bilingualism,¹⁷⁹ this larger question chiefly invites speculation because it calls for predictions of an uncertain future.¹⁸⁰ Nevertheless, the importance of undertaking the defense of language

176. For most Latinas/os in the United States, Spanish remains the language of choice. See Rachel F. Moran, *Foreword—Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond*, 8 LA RAZA L.J. 1 (1995) (discussing the resilience of bilingualism and biculturalism among some Latina/o communities); Christy Fisher, *Hispanics Indicate Enduring Preference for Native Language*, ADVERTISING AGE, Feb. 14, 1994, at 26 (stating that Latinas/os often prefer to communicate in Spanish even after residing in the United States for many years).

177. Latina/o immigration has seen tremendous growth in recent years. See Bureau of the Census, U.S. Dep't of Com., No. 8, *Immigrants, by Country of Birth: 1961-1991*, in STAT. ABSTRACT U.S. 11 (1993) (reporting the arrival of nearly 191,000 legal immigrants from South and Central America in 1991 alone).

178. The growth in numbers of Latinas/os or Spanish-speaking persons can spark increased need and demand for bilingual services of all sorts. See Joel Kotkin, *Urban Renewers*, NEW ECONOMY, Mar. 1996, at 23 (noting that Latina/o owned businesses have increased by 700% in Los Angeles County over the past 20 years); Diana Kunde, *Bilingual Temp Firm Speaks to a Niche in Crowded Market*, DALLAS MORNING NEWS, Mar. 13, 1996, at 1D (discussing the increased demand for bilingual staffing); Beverly Vasquez, *Hispanics Leading in Business Growth*, 48 BUS. DATELINE, Sept. 13, 1996, at 1A (according to U.S. Census Bureau data, Latina/o businesses are growing at three times the rate of all other businesses in the United States).

179. Generally, Mexican-American communities retain widespread fluency in the native tongue despite their multigenerational presence in the United States. See, e.g., JOAN MOORE & HARRY PACHON, *HISPANICS IN THE UNITED STATES* (1985). Yet Professor Johnson's narrative in this Symposium illustrates how family assimilation strategies may undercut the potential resiliency of Spanish use. See *supra* note 34 and accompanying text.

180. For instance, recent reports indicate a marked decline in Spanish fluency among Miami Cubans. See Nordheimer, *supra* note 66, at A16 (discussing second generation Cuban Americans' decrease in Spanish fluency and increase in English fluency).

pluralism is magnified when we realize that the answer to the question may turn, at least in part, on what we do on this front in the years to come. LatCrit scholarship must concern itself with legal and social antipathy to plural language rights precisely because Latina/o bilingualism and biculturalism are a source of empowerment and, therefore, inevitably a site of contestation.¹⁸¹

Professor Cameron's final point raises the specter of LatCrit limits and limitations. The ability to manipulate the law's indeterminacy permits Anglocentric judges to exonerate acts of anti-Latina/o discrimination and, in the process, to craft legal doctrine that renders Latinas/os ever more vulnerable to bigotry.¹⁸² Spotlighting the legal manipulations that deflected a key case and ratified the imposition of Anglocentric ideology, Professor Cameron denounces this practice of politics through adjudication, claiming that judges not only manipulate legal indeterminacy to produce outcomes that adversely affect Latino litigants, but also manipulate the fact of indeterminacy itself when they so desire.¹⁸³ In other words, judges not only exploit, but manufacture, uncertainty to buttress Anglo power and privilege; Anglocentric judges abuse their power over law to favor themselves and their group interests through law.

With this argument, Professor Cameron effectively displays why LatCrit theory, and outsider jurisprudence more generally, must accept the politicized and political nature of law and legal culture.¹⁸⁴ His critique illustrates how and why the ideological nature of subordination through law mandates equally political anti-subordination theorizing.¹⁸⁵

181. This observation raises another point of convergence with Asian-American legal scholarship: the preservation of bilingual and bicultural capacity. See generally *supra* notes 126-154 and accompanying text (reviewing similar connections suggested by Professors Chang and Aoki).

182. See 85 CALIF. L. REV. at 1356-57, 10 LA RAZA L.J. at 270-71.

183. 85 CALIF. L. REV. at 1391-92, 10 LA RAZA L.J. at 305-06.

184. See *supra* notes 113-114 and accompanying text (addressing the necessary and inevitable intersection of politics and legal scholarship).

185. The dichotomy between "politics" and "scholarship" tracks the dichotomy between "objectivity" or "neutrality" and "subjectivity" or "advocacy." These dichotomies impute to "conventional" scholarship the virtue of detachment while ascribing to "outsider" scholarship the vice of partisanship. However, the distinction between objectivity and subjectivity has been compellingly debunked because it can be reduced to the self-serving notion that dominant norms, or those who write from the position of dominant normativities, are "objective" while outsider reformists are merely "subjective." See Valdes, *Queers, supra* note 45, at 126-27 nn.332-34 (citing sources on legal notions of objectivity and subjectivity). Consequently, the delineation and interpretation of these supposed virtues and vices are themselves substantively and seriously contested by scholars that write from various subject positions.

This same tension is seen in other aspects of legal culture, including the institutions and processes through which law and legal knowledge and training are transmitted—legal education. See, e.g., Paul

This essay reminds LatCrit scholars that we cannot flinch at the prospect of “politics” as integral to “scholarship” and “law.”¹⁸⁶

In sum, legal antipathy towards language rights reveals the stubborn dominion of Anglocentric bias and prejudice over public policy in the form of law. As the Symposium papers show, Latinas/os, like other outsiders, have not fared well under the rule of Anglo-American law. For Latinas/os in the United States, law means danger or, at best, neglect and indifference. To change this status quo will require multifaceted changes, including changes to policy and law via politics and discourse.

This interconnection of law, policy and power effectively is underscored by Professor Rachel Moran’s introduction of the second cluster. In asking, “What if Latinos Really Mattered in Public Policy Debate?”¹⁸⁷ Professor Moran signals that Latina/o invisibility in social and legal discourse has produced legal and policy regimes that ignore Latina/o needs and interests: Latina/o disempowerment (re)produces Latina/o marginality, which (re)produces disempowerment. To break this vicious cycle, the Latina/o position must be centered in social and legal analysis, a centering that requires a form of scholarship that recognizes both the need for and the objective of such centering in light of past, present and future demographic realities. This is a recognition of the relationship between scholarship, discourse and power—a recognition of the capacity that critical legal scholarship has for helping to formulate power relations and public policies.

In reflecting on this query—and on the dynamics of presence, visibility and knowledge in relation to power, politics, and policy that underlie the query—Professor Moran stresses the importance of both

Carrington, *Of Law and the River*, 34 J. LEGAL EDUC. 222, 226-27 (1984) (acknowledging that “law will reflect the tastes of that class of persons from whom the officials are drawn” but cautioning against the dangers of the “legal nihilism” that may be generated in reaction to this recognition of the law’s majoritarian biases); Robert W. Gordon, Response to Paul Carrington, “*Of Law and the River*,” and of *Nihilism and Academic Freedom*, 35 J. LEGAL EDUC. 1, 13 (1985) (responding to the invocation of nihilism with the reminder that a “true professional should work to bring the practice of law into closer harmony with utopian ideals”); see also Robert M. Cover, Essay, *Violence and the Word*, 95 YALE L.J. 1601 (1986) (describing law and its processes as the infliction of violence through official words and choices); Angela P. Harris & Marjorie M. Shultz, “*A(nother) Critique of Pure Reason*”: *Toward Civic Virtue in Legal Education*, 45 STAN. L. REV. 1773 (1993) (challenging the notion of pure reason and scholarly detachment). Thus, even though dominant norms continue to preach “scholarly” detachment from “politics”—or from the construction of social reality through the force of law—it has long been noted that politics necessarily permeate legal doctrine, theory, and culture, even (or especially) the doctrine, theory, and culture that represent and reproduce the status quo.

186. See also Valdes, *supra* note 60 (advancing a similar argument in light of policy retrenchments produced by backlash politics).

187. Moran, *supra* note 10.

commonalities and differences within Latina/o populations. With this emphasis, Professor Moran rightly calls for caution in the nascent effort to articulate a LatCrit subject position, based in part on the delineation of a pan-ethnic Latina/o subjectivity.¹⁸⁸ Though the exploration and, if possible, the construction of a progressive and liberational sense of Latina/o pan-ethnicity is a legitimate part of the LatCrit agenda, this effort cannot be advanced through the glossing of particularity and its ramifications. As this essay reminds us, LatCrit theory must address both sameness *and* difference to discover and map the soundness of various possibilities for Latina/o solidarity and self-empowerment.¹⁸⁹

But in this introductory essay Professor Moran also raises sameness/difference issues that affect analyses of Latina/o positionalities in comparison to Asian American and Black American positionalities. While Latinas/os and Asian Americans are similarly situated as racialized and ethnicized foreigners, the Latina/o experience varies from the Asian experience in several ways: sheer numbers, recency of arrival, status upon arrival, arrival through immigration versus annexation, proximity to homelands, and, finally, reasoned expectations of permanence in the United States due to the combined effects of the above circumstances.¹⁹⁰ Given the manifold complexities of these varied group experiences and their present consequences, the lesson is balance—commonality makes it plain that potential coalitions between LatCrit and Asian American anti-subordination projects cannot be ignored, but distinction makes it inevitable that coalitional ventures be guided by a joint, critical understanding of the complexities presented through the histories, conditions and aspirations of Latina/o and Asian American groups.

And while Latinas/os and Black Americans also share a common subordination to Anglocentric White supremacy, these sets of experiences also vary in several significant respects: Discrimination against Latinas/os is more often seen as a function of immigration status rather than race; Latinas/os may be more concerned over issues of bilingualism and biculturalism; and, perhaps most starkly, only Black Americans are subject to the institutional legacy of slavery.¹⁹¹ This analysis confirms that experiences framed by “race” and “ethnicity” are not “the same.” But it also does more than apply sameness/difference concerns to prospective Latina/o and African American anti-subordination

188. For more on this effort, see Valdes, *supra* note 83 (considering the possibility of Latina/o pan-ethnicity and its relationship to LatCrit theory).

189. See *id.*

190. See Moran, 85 CALIF. L. REV. at 1319-23, 10 LA RAZA L.J. at 233-37.

191. See 85 CALIF. L. REV. at 1331-44, 10 LA RAZA L.J. at 245-58.

coalitions; by spotlighting points of convergence and divergence in Latina/o and African American histories and positions, this analysis also compellingly complexifies LatCrit understanding and critique of subordination under the Black/White paradigm. This analysis depicts the intricate and volatile effects of “race,” “ethnicity,” and their interplay. This analysis helps to explain why the Latina/o experience “confounds the links”¹⁹² between race and immigration, as well as between ethnicity and civil rights, in contemporary political discourse and critical legal scholarship.

This intra- and inter-group analysis additionally shows that these (and other) points of divergence and convergence remain virtually unexplored, even though their exploration is indispensable to an informed deconstruction of multi-dimensional power hierarchies that subordinate across multiple axes. This analysis, therefore, outlines key sites of pending interrogation for LatCrit and other outsider legal scholars; this analysis outlines key reasons and tasks for LatCrit theory. The many points and questions raised by Professor Moran thereby supply a catalog of issues that will help to define LatCrit theory, as well as its budding relationship with other strands of outsider jurisprudence, in the coming years.

At bottom, however, these points and questions also illustrate the abysmal social and legal neglect, specifically of Latina/o populations, both historically and presently. It is this widespread and continuing neglect that most necessitates and animates the LatCrit enterprise in its formative moments. Unfortunately but unsurprisingly, this neglect, and the need to counteract it, also is reflected in the status quo of the nation’s legal academy.

III

THE LATINA/O LEGAL PROFESSORATE: GAINS, GAPS, CHALLENGES

As this Foreword’s third question notes, the works comprising this Symposium suggest various aspects of the Latina/o position within the legal professorate of the United States at the turn of this century. This Foreword therefore ventures a few preliminary observations on this point, using this Symposium to extrapolate a snapshot of the Latina/o legal professorate in the early stages of LatCrit legal studies. It is a mixed but not pretty picture.

The opening observation is the relative youth, measured as seniority within the academy, of the Latina/o-identified Symposium

192. See 85 CALIF. L. REV. at 1331-44, 10 LA RAZA L.J. at 245-58.

contributors.¹⁹³ On the whole, the authors represented here joined the academy only within the past few years, and at the most, within the past decade.¹⁹⁴ This fact points to a larger picture: the belated and begrudging entry of Latinas/os (or women, people of color, and openly lesbian, gay, or bisexual academics) into the nation's legal professorate.¹⁹⁵ In 1987, Latinas/os accounted for 33 of 5064 law professors in the United States. In 1994, Latinas/os accounted for 94 of the nation's 5700 law professors.¹⁹⁶ The underrepresentation of Latina/os is manifest: We still account for less than 2% of the legal professorate.

This paucity of representation has manifold negative consequences. These numbers necessarily mean that the few Latinas/os in the academy oftentimes find ourselves as the sole Latina/o on the faculty, creating conditions of isolation that impede professional development and empowerment.¹⁹⁷ These numbers also mean that the few Latinas/os in the academy must carry multiple burdens as "role models" and agents of conscience.¹⁹⁸ In short, Latina/o law professors, like many "minority" academics, are burdened with obligations that are integral to our professional personas, but that nevertheless can undermine the

193. Professor Cameron became a law professor in 1991, Professor Espinoza in 1987, Professor Haney López in 1992, Professor Johnson in 1989, Professor Moran in 1983, Professor Perea in 1990, Professor Roithmayr in 1996 and Professor Valdes in 1991. The non-Latina/o contributors also are relative newcomers: Professors Aoki and Chang began full-time law teaching in 1993, while Professor Harris began in 1988 and Professor Alfieri in 1987. See THE AALS DIRECTORY OF LAW TEACHERS 303, 405, 500, 554, 705, 756, 938, 216, 316, 504, 206 (Association of American Law Schools ed., 1996-97); Telephone Interview by David Oakland with Professor Daria Roithmayr, University of Illinois School of Law (Dec. 17, 1997).

194. See *id.*

195. The underrepresentation of various groups within the legal academy has drawn scholarly critique in recent years from various quarters. See, e.g., Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537 (1988); Cheryl I. Harris, *Legal Education II: Law Professors of Color and the Academy: Of Poets and Kings*, 68 CHI.-KENT. L. REV. 331 (1992); Charles R. Lawrence III, *Minority Hiring in AALS Law Schools: The Need For Voluntary Quotas*, 20 U.S.F. L. REV. 429 (1986).

196. See Michael A. Olivas, *The Education of Latino Lawyers: An Essay on Crop Cultivation*, 14 CHICANO-LATINO L. REV. 117, 129 (1994) (documenting and critiquing specifically Latina/o underrepresentation).

197. See Rachel F. Moran, *Commentary: The Implications of Being a Society of One*, 20 U.S.F. L. REV. 503 (1986) (reflecting on the condition of being the "only" of a type on a law faculty).

198. See Richard Delgado, *Essay, Affirmative Action as a Majoritarian Device: Or, Do You Really Want to Be a Role Model?*, 89 MICH. L. REV. 1222 (1991) (cautioning against acceptance of a simplistic "role model" rationale for faculty diversity); see also 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) (discussing the pros and cons of "role model" arguments).

time and energy that we can devote to "success" as defined by conventional and dominant criteria.¹⁹⁹

At the same time, Latinas/os account for approximately 10% of the nation's population²⁰⁰ and 5% of the nation's law students.²⁰¹ Though the Supreme Court refuses to regard such disparities as proof of discriminatory practices,²⁰² these numbers do call for explanation. Why do so many Latinas/os in the general population fail to find our way into the nation's law schools? More pointedly, why are the Latinas/os in the law student population not represented in the ranks of the nation's law professors? This Symposium teaches that biased notions of merit do not suffice;²⁰³ these numbers therefore ought to incite LatCrit interrogation of these disparities and their causes.²⁰⁴

Despite these dismal numbers, the authors of this Symposium depict an able, active, and diverse group of Latina/o law professors. Reflecting the larger Latina/o population of the United States, Symposium contributors include Latinas/os hailing from Mexico,

199. Generally, academic success and "merit" are measured by scholarly output and placement, which require relative disengagement from all else except teaching and minimal professional affiliations. Yet law professors of color are oftentimes called upon to counsel all minority students, to represent the school at all "diversity" events or functions, to affiliate with professional organizations to help diversify them, and to serve on school committees to attain intra-institutional diversity. At the entry level, success is gauged by proxies deemed to foretell the likely scholarly profile of the candidate. See generally Richard Delgado, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349 (1989) (surveying various aspects of the professional activities and environments that affect legal academics of color). Academics of color frequently take up these activist or representational activities in earnest, which inevitably cut into scholarly output—a cut that then is routinely used by the institution to jeopardize or deny retention, promotion, and/or tenure. See *id.* at 355-56. The bottom line is that a premium is placed on a task—the production of scholarship—that conflicts with the demands placed on "role models," which institutions typically expect or demand of outsider scholars.

200. There will be 28,693,000 residents of Latina/o population in the United States by the year 2000. See *Resident Population Projections*, *supra* note 105; see also *Resident Population*, *supra* note 105 (citing current population figures).

201. See A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES 67-70 (Rick L. Morgan ed., 1994).

202. See *Washington v. Davis*, 426 U.S. 229 (1976) (discounting the relevance of statistical disparity in documenting discrimination); Barbara J. Flagg, "Was Blind, but Now I See": *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953 (1993) (critiquing formalistic conceptions of neutrality and White claims of colorblindness).

203. See *supra* notes 88-96 and accompanying text (reviewing Professor Roithmayr's critique of "merit" and "bias").

204. For an excellent detailed breakdown of Latinas/os in legal education, see Olivas, *supra* note 196 (showing that Latina/o entry-level professors on the whole possess higher paper credentials than White male counterparts).

Central America, and the Caribbean.²⁰⁵ However, the Symposium lacks a Puerto Rican author²⁰⁶ and underrepresents female and Queer authors, thus underscoring both the gains and the gaps in Latina/o representation within the legal academy.

This representation thus points to the challenges posed by the status quo: Latinas/os both within and without the academy must redouble our commitment to securing full Latina/o participation within the nation's legal processes and institutions. LatCrit theorizing and activism, as this Symposium indicates, is an important tool toward the fulfillment of this long-standing aim. LatCrit theory can and must become a practical means of finally securing the opportunity and dignity unjustly withheld from Latinas/os in all walks of American life. It is this rich human potential that most gives our work meaning.

IV

ON THE LATCRIT ENTERPRISE: SOME CLOSING THOUGHTS

This Symposium helps to create and establish a new field of critical legal scholarship—LatCrit theory. It endeavors to counteract the relative lack of attention given to Latina/o social and legal issues in the United States. The initiation of Latina/o legal studies is an effort to place Latina/o voices, concerns, and communities at the center of social and legal analysis as part of the larger anti-subordination project. This Foreword's fourth query therefore turns to LatCrit theory itself, and what these works tell us about it.

As a whole, this Symposium points to several elements that may be viewed as foundational to LatCrit theory.²⁰⁷ The first is that LatCrit

205. The Latina/o-identified contributors to this Symposium either were born, or have ancestral roots in, various Hispanic nations and/or cultures: Professor Cameron was born in the United States, raised in the home of his Mexican-American grandmother, and combines a Mexican and Anglo heritage; Professor Espinoza is of a Mexican-American, Irish and Jewish ancestry and was raised by the Mexican-American side of her family; Professor Haney López was born in the United States, and combines a Salvadoran and Anglo heritage; Professor Johnson similarly was born in the United States, and combines a Mexican and Anglo heritage; Professor Moran is an American-born Latina of Mexican and Irish ancestry; Professor Perea was born in Washington, D.C., and is of Colombian and Costa Rican ancestry; Professor Roithmayr is a Latina of Mexican-American descent; and Professor Valdes is Caribbean, having been born in Cuba before emigrating to the United States as a young child.

206. Excluding Puerto Rico itself, there recently were seventeen tenure-track law professors of Puerto Rican ancestry at law schools accredited by the American Bar Association. See Olivas, *supra* note 196, at 130.

207. For a similar summary of original or early LatCrit issues and characteristics, see Valdes, *supra* 83; see also *supra* notes 12-22 and accompanying text (distilling key LatCrit functions and commitments).

theory actually has a theory about the nature and purpose of legal theory generally. LatCrit theory represents an embryonic but particular approach to, and conception of, the outside scholar's work and role. This approach endeavors to advance and balance four functions.²⁰⁸ The LatCrit effort to practice these functions in turn springs from the jurisprudential record of the recent past.

At the threshold, this Symposium thereby reminds us that the lessons of the past do and must inform LatCrit sensibilities and projects. The base line is to learn, and proceed from, the lessons and experiences specifically of outsider jurisprudence to date. These include substantive insights and methodological tools to guide the early formation of LatCrit scholarship; while advancing its insights, LatCrit theory cannot afford repeating the vexing omissions or oversights of outsider discourse.²⁰⁹ The LatCrit stance must be to recognize both the kinship and the shortcomings that stem from the recent history of outsider theorizing.

An overarching and related lesson to be drawn from this history is the need for careful and caring LatCrit approaches to intra- or intergroup issues of sameness and difference. The negotiation of sameness/difference issues is inevitable in diversified multiracial, multicultural settings. This Symposium, for one, demonstrates positively that LatCrit scholarship cannot be limited to "Latinas/os" in any essentialized sense. LatCrit identification need not hinge on ancestry or nationality.²¹⁰ Rather, this identification flows from a willingness to center the "Latina/o" in social and legal discourse. The LatCrit subject position signifies a concern with Latina/o conditions and issues rather than with Latina/o roots or birth. This lesson therefore calls for more than LatCrit vigilance against essentialist assumptions; it underscores the importance of conceiving and projecting "political identities"²¹¹ in part through the practice of "strategic essentialism."²¹² This lesson, in sum,

208. See *supra* notes 12-22 and accompanying text (discussing LatCrit theory's four functions).

209. See Valdes, *supra* note 2, at 4-11.

210. Cf. Valdes, *Queers*, *supra* note 45, at 354-56 (addressing analogous points in Queer legal theory as well as in race and gender scholarship).

211. The term "political identities" signifies identities and communities derived from commitment to specified political principles. See Iglesias, *supra* note 144, at 400-03 (discussing the way "women of color" constitute a strategic, political identity from which existing legal regimes may be critically examined); Robert S. Chang, *Racial Cross-Dressing*, 2 HARV. LATINO L. REV. (forthcoming 1997) (discussing political identities in race/ethnicity contexts, specifically Latina/o and Asian-American contexts).

212. The term "strategic essentialism" denotes recognition of the power that constructs like race, color, ethnicity, gender, and sexuality exert over human efforts to conceive and create progressive identities and communities and urges a strategic harnessing of this power to build anti-subordination

urges LatCrit scholars to position our work at the cusp of post-postmodernism.²¹³

Outsider concepts like multiplicity, intersectionality, and multidimensionality consequently must inform LatCrit contributions to extant anti-subordination discourses.²¹⁴ Likewise, LatCrit analyses of legal and social conditions must be historical, contextual, and interdisciplinary. In this vein, LatCrit scholars should employ both fictional and non-fictional narratives to best voice our respective critiques. These and other tools are indispensable because they are predicates to Latina/o self-empowerment through a dynamic and pragmatic LatCrit discourse.

The use of scholarship in the service of self-empowerment in turn emphasizes the need for LatCrit commitment and accountability to Latina/o communities. This point therefore also raises the politicized setting of LatCrit scholarship in its initial moments—a setting of backlash and retrenchment. Without doubt, backlash politics create and exacerbate pressures against vulnerable and subordinated communities; the backlash campaign already has succeeded in its most basic aim—to instill fear, even terror, among some of the most vulnerable members of this society. This context gives urgency to the need for a sophisticated and expansive anti-subordination scholarship that can help organize empowered communities and mobilize effective coalitions.²¹⁵

This socio-legal environment creates opportunities—and obligations—for collaboration among Latinas/os and other traditionally subordinated groups. Pending legal issues of shared outsider interest begin with the dismantlement of White Anglo supremacy and privilege. Doctrinally, this task is presently focused on equality law and, most specifically, on the rollback of diversity and affirmative action policies in the name of “merit.” With judicial approval and complicity, today’s backlash politics threaten to deregulate the practice of White Anglo discrimination against non-White or non-Anglo communities, thereby

solidarity within and among various essentialist categories. See Wildman, *supra* note 63 (elaborating on “strategic” essentialism).

213. See Robert S. Chang, *The End of Innocence or Politics After the Fall of the Essential Subject*, 45 AM. U. L. REV. 687 (1996) (urging a shift from essential to political identities); Angela P. Harris, Foreword: *The Jurisprudence of Reconstruction*, 82 CALIF. L. REV. 741 (1994) (discussing modern and postmodern elements of Critical Race Theory to devise a form of scholarship that marshals and transcends both); see also Valdes, *supra* note 2, at 27-28 (arguing for a post-postmodern move from color to consciousness).

214. See *supra* note 67 (citing sources on multiplicity, intersectionality and multidimensionality); Valdes, *supra* note 67, at 54-57 (proffering interconnectivity as a complement to these concepts).

215. See Hernández-Truyol, *supra* note 166 (urging the pursuit of coalitions as key to LatCrit theory); Valdes, *supra* note 83 (also urging coalitional projects and sensibilities).

further besieging disadvantaged groups and persons. LatCrit theory thus shares with all outsider scholarship the fundamental goal of reinvigorating equality law through a critical dismantlement of all legal and social structures that subordinate our communities.

More particularly, LatCrit scholars share with Asian-American scholars a common interest in legal issues that involve immigration, family, citizenship, nationhood, language, expression, culture, and global economic restructuring. These issues spring from the transnational character of Latina/o and Asian-American communities. This Symposium thereby evinces the initial stirrings of a larger consciousness and community to connect Latina/o and Asian-American anti-subordination projects in careful and nuanced but caring and committed ways.

The importance of LatCrit scholarship to help achieve social progress through legal reform brings to the fore another outsider lesson from the recent past: the need to foster praxis.²¹⁶ Not only must LatCrit scholarship demonstrate political consciousness, commitment, and savvy, LatCrit scholars must proactively implement theory in all aspects of our professional lives. Our anti-subordination agenda necessarily includes the application of LatCrit insights in classroom, institutional, and community activities; our work at all times requires both outward and inward analyses and exertions toward a post-subordination future.

Finally, these writings remind us of the limits that inhere in legal theory, including LatCrit theory. Experience shows that critical legal theory is no panacea for socio-legal ills. However, the acknowledgment or discovery of limits cannot deter progressive, activist LatCrit scholarship. LatCrit scholars must remain sensitive to and respectful of the reality that limits, however ambiguous or contested, do exist. Yet we must try to transcend and overcome them. To strike and maintain this balance, LatCrit scholars must never neglect the need for continual self-reflection, self-examination, and self-critique.²¹⁷ The integrity of LatCrit theory depends on the pursuit of ambition, and also on the acceptance of, and struggle against, limitation. Thus, in addition to all else, this Symposium serves as a reminder that our work is at once limited yet never done.

216. See generally Alfieri, 85 CALIF. L. REV. at 1682-85, 10 LA RAZA L.J. at 596-99 (cautioning that a failure to do so "condemns jurisprudential movements not to death, but to irrelevance and triviality").

217. See Montoya, *supra* note 65 (identifying and calling for self-critique as a constitutive feature of LatCrit theory).

CONCLUSION

As this unprecedented Symposium illustrates, this emergent field of “LatCrit” discourse and scholarship stems from a troubled past and a troubling present. The works presented here not only reflect, they project, the forces and factors that shape(d) Latina/o lives in the United States; this Symposium articulates both Latina/o histories as well as the aspirations born of those legacies. LatCrit consciousness, community, and theory are manifestations of Latina/o oppression and resilience. This Symposium thereby charts an agenda of sorts for the early years of LatCrit theorizing—an agenda that presents a complex but rich terrain.

The inauguration of LatCrit scholarship at this point in time necessarily situates our work against the existing discursive and ideological landscape of this Anglo-American society and its legal culture. Given this bedrock circumstance, our work can only benefit from the substantive, historical, and methodological lessons pioneered through other schools of outsider jurisprudence. Our work therefore should proceed consciously, carefully, and resolutely from the experiences, insights and techniques offered by Critical Race, Feminist, and Queer legal scholars.

Accordingly, and happily, this Symposium includes a varied mix of persons and positions. Yet the authors below evince a fair amount of consensus on which issues are key at the threshold, including: the transcendence of Black/White binarisms, the deconstruction of race and ethnicity, the reinvigoration of equality law, the exploration of transnationalities, the defense of immigration rights, the reinvention of nationhood, the diversification of language and culture, and the protection of all identities. Consequently, as this Symposium further illustrates, LatCrit projects and gatherings must be consistently and proactively inclusive of all scholarship and scholars committed to resistance against all forms of social and legal injustice.

Ultimately, the LatCrit task is to build on the gains of, and to work with, scholars committed to social progress through legal reform. Our bottom-line aim must be to create progress on the ground through activist legal theory. To become an effective force for practical reforms, LatCrit scholarship not only must elucidate and illuminate the Latina/o position in the United States, it must promote praxis and cultivate coalitional sensibilities. LatCrit theory thus implicates, and is accountable to, varied interests.

As this Symposium makes clear, LatCrit theory must concern itself both with intra-Latina/o and inter-people of color anti-subordination interests, but the LatCrit agenda also includes the very institution of

legal education. In other words, LatCrit interests include the composition and operation of the nation's legal professorate and culture. LatCrit scholars therefore must look simultaneously inward and outward to aid progress through, within and beyond legal education.

Without doubt, our discursive, political, doctrinal, and institutional environments are daunting in their interrelated intricacies. Only the years to come will determine the yield of LatCrit theory and praxis. Yet the turn of this century points to opportunities for the social and legal empowerment of Latinas/os and other oppressed groups throughout the United States and beyond. The inspiration and aspiration of this newest scholarly movement within the legal academy of the United States thus calls for an ambitious and egalitarian reconception and reapplication of critical scholarship on behalf of legal reform and social justice for Latinas/os and other outsider groups.