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Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience-RaceCrits, QueerCrits and LatCrits

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AFTERWORD

Theorizing “OutCrit” Theories: Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits and LatCrits

FRANCISCO VALDES*

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INTRODUCTION

Maybe there's something magical about the number three. Or maybe we're just acculturated to think and act so. Whatever the reason, the Third Annual LatCrit Conference, as this symposium illustrates, occasioned rich and varied thoughts about the origins, structures and trajectories of LatCrit theory. In this symposium, several authors writing from various perspectives have located LatCrit theory in — or vis a vis — several different precursors, ranging from legal realism and pragmatism to Chicana/o studies to critical race theory ("CRT").¹ Others have posed questions of future form and direction.² Though LatCrit remains an embryonic formation — and maybe most of all because of it — this tendency toward self-reflection suggests that multiply diverse LatCrit scholars take this collective project of antisubordination discourse and community as a serious, personal, self-critical and long-term commitment.³ These levels of commitment, as discussed below, are cru-

1. See, e.g., Kevin R. Johnson & George A. Martinez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship*, 53 U. MIAMI L. REV. 1143 (1999). Cf. Margaret E. Montoya, *LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions*, 53 U. MIAMI L. REV. 1119 (1999).

2. See, e.g., Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177 (1999); Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 U. MIAMI L. REV. 1247 (1999); Dorothy E. Roberts, *BlackCrit Theory and the Problem of Essentialism*, 53 U. MIAMI L. REV. 855 (1999).

3. For an early assessment of LatCrit "guideposts," see Francisco Valdes, *Foreword - Poised*

cial to LatCrit theory, and make this self-reflective stance a welcome sign of growing critical vibrancy as LatCrit theory turns three.

This diverse effort to locate LatCrit in the broader landscape of critical theory can help elucidate and advance LatCrit theorists' original sense of collective and self-aware situatedness within the larger world of legal and outsider discourses.⁴ In fact, the self-reflection evidenced in this symposium may be viewed as an extension of the ongoing LatCrit effort to learn from the lessons embedded in past jurisprudential experience with antistatutory discourse and struggle.⁵ This self-reflection confirms the belief that LatCrit theory can and must learn from the insights and shortcomings of the intellectual and political antistatutory experiments that precede or continue alongside this one.

This year, as in the past, LatCrits (like other outsider scholars before and around us) have encountered and aired difference and dissonance, discovering in this process unspoken - and perhaps conflicting - premises and purposes. As recounted below, each LatCrit event or gathering incrementally has uncovered in ever-greater variety or detail the social justice agendas of multiply diverse outsider scholars.⁶ The LatCrit balancing act, both substantively and structurally, clearly has not always been a pretty sight - though it always has been worthwhile. As with other outsider efforts in critical legal theory, this movement's brief experience already displays in many ways both the fragility and the utility of voluntary antistatutory collectivity.

Given this society's troubled record of race and ethnic relations, much of our collective learning process and tendency to self reflection has been concerned with intergroup issues or, more concretely, with improving intergroup collaboration among outgroup scholars and communities as a form of antistatutory praxis.⁷ It must of course be so, for the issues that LatCrit and allied scholars seek to negotiate internally are reflective of those that divide larger outgroup communities,⁸ and which can impede our antistatutory struggles more generally.⁹ We

at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self Empowerment, in 2 HARV. LATINO L. REV. 1, 52-59 (1997) [hereinafter Valdes, *Poised*].

4. See generally *id.* at 55.

5. *Id.*

6. See *infra* notes 133-140 and accompanying text.

7. In this symposium, for instance, see *supra* note 2 and sources cited therein on intergroup identities and relations in LatCrit theory.

8. See, e.g., Pat K. Chew, *Toward a Community of Critical Race Scholars: Racing to the Bottom . . . Or What?*, in CRITICAL RACE THEORY: HISTORIES, CROSSROADS, DIRECTIONS (Francisco Valdes, Angela P. Harris, Jerome McCristal Culp, Jr. eds. forthcoming 2000).

9. See generally Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post Civil Rights America*, 95 MICH. L. REV. 821 (describing color-on-color tensions and urging the importance of attending to them); see also Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, UCLA ASIAN PAC. AM. L.J.

must understand that, in effect, our work represents the current stage of struggle by our communities, through and with outsider jurisprudence, inside the legal culture and discourse of this country.¹⁰ The importance of the legal academy and public discourse as sites of antisubordination contestation in this legalistic and cyberbolic society is unquestionable, and our work in both arenas has been a form of contestation seeking to enjoin subordination both within and beyond the academy.¹¹

The importance of outsider efforts to transform, or at least reform, the academy and its work product similarly is unquestionable — though questioned nonetheless.¹² And because our own immediate efforts and struggles are crucibles of antisubordination insight and potential, LatCrit and allied scholars must employ not only “rotating centers” and “shifting bottoms” for normative insight and theoretical grounding;¹³ we also must look expansively and critically to our own jurisprudential experiments and experiences as outsider scholars in legal culture.¹⁴ It is both important and right for LatCrits, and for all likeminded scholars, to conceptualize and deploy the critical insights to be drawn from the overall experiential record of outsider jurisprudence as part of this larger, and ongoing, social justice contestation that we have inherited and seek to

33 (1995) (examining why minority racial groups practice or exploit white supremacy, and offering some solutions to this self-destructive phenomenon).

10. In this sense, this process of self-reflection is akin to looking at “the bottom” of particular categories — our jurisprudential experiments, our larger outsider communities, and the legal academy. The message is that we must apply the work and lessons of outsider pioneers *internally* to the legal academy and to the projects or communities that we form both within and beyond it. See generally Elizabeth M. Iglesias & Francisco Valdes, *Afterword - Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 UCLA CHICANO-LATINO L. REV. 503 (1998).

11. Indeed, the entire record of outsider jurisprudence, including, most recently, LatCrit, is a prime example of this contestation. See generally Francisco Valdes, *Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality and Responsibility in Social Justice Scholarship*, 75 DENV. U. L. REV. 1409, 1412, 1459-63 (1998) (emphasizing the importance of critical legal theory and praxis in a legalistic society, such as the one we inhabit) [hereinafter Valdes, *Beyond Sexual Orientation*].

12. See generally Jerome McCristal Culp, Jr., *To the Bone: Race and White Privilege*, 83 MINN. L. REV. 1637 (1999) (responding to recent attacks on outsider scholarship, in particular critical race theory, that question the efficacy and integrity of our collective work); see also *infra* note 61 and sources cited there for similar attacks.

13. See Mutua, *supra* note 2.

14. For two such examples, see CRITICAL RACE THEORY: THE CUTTING EDGE xiii-xvi (Richard Delgado ed., 1990); CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT xiii-xxvii (Kimberle Crenshaw et al. eds., 1995) (hereinafter cited as KEY WRITINGS). For another, more recent, account of CRT origins, see Sumi Cho & Robert Westley, *Historicizing Critical Race Theory's Cutting Edge: Key Movements That Performed The Theory*, in CRITICAL RACE THEORY: HISTORIES, CROSSROADS, DIRECTIONS, *supra* note 8. For another recent historical overview, see also Richard Delgado & Jean Stefancic, *Critical Race Theory: Past, Present and Future*, in CURRENT LEGAL PROBLEMS: LEGAL THEORY AT THE END OF THE MILLENNIUM 51 (Michael D.A. Freeman, ed., 1998).

advance.¹⁵

Thus, our antisubordination analyses and interventions must be trained not only on society, the academy, its institutions and our various communities, but also on our selves and our work. To succeed in antisubordination solidarity, outsider scholars must practice internally the lessons and insights that we apply to others structures, and we must learn continually from this internal focus to help us unpack and tranquilize cycles or patterns of subordinating behaviors that recur both within and beyond our immediate vicinity. This inward moment of self-reflection, is part and parcel of our antisubordination work.¹⁶

This multi-tiered concern for intergroup relations as antisubordination praxis is not surprising, especially from a LatCrit perspective, because the ongoing effort to link current practices and prospective projects to social and jurisprudential experience is part of a foundational LatCrit commitment to coalitional method and critical coalitions.¹⁷

15. LatCrits should be proactive about nurturing a self-critical evolution of our collective endeavors precisely because the lessons of comparative jurisprudential experience are *not* limited to our immediate condition. On the contrary, comparative experience can provide lessons applicable to the larger set or intra- and intergroup issues that afflict these times. From the lessons of our comparative experiences LatCrit and allied scholars can and must extrapolate both inward and outward advances: inwardly, we must develop critical antisubordination coalitions through our collective jurisprudential experiments with knowledge and community and, outwardly, we must link the lessons of comparative experience to the current positions and strategies of the larger communities from which we hale. It would be foolish, after all, to imagine that the professorate of color in the legal academy is unique in our relationship to the intra- and intergroup experiences, issues and aspirations that pervade our communities and this society. Thus, among the longer-term tasks that this Afterword pursues is the linkage of comparative jurisprudential experience to outsider antisubordination struggles more generally; this Afterword ideally represents one step toward critical use of the lessons embedded in our experience to help our selves and communities to build a better politics of critical coalitions as part of our collective antisubordination strategies. But, necessarily, the first step toward this process of linkage is to begin with ourselves – to elucidate and learn from the experiments and lessons explored below – which is where this Afterword begins. See generally Iglesias & Valdes, *supra* note 10 (urging critical as well as *self-critical* analysis in the articulation of LatCrit theory).

16. For critical reflections of “inward” turns in outsider jurisprudence, see Richard Delgado, *The Inward Turn in Outsider Jurisprudence*, 34 WM. & MARY L. REV. 741 (1993).

17. By “critical coalitions” I mean alliances based on a thoughtful and reciprocal interest in the goal(s) or purpose(s) of the coalition. A critical coalition is the sort of collaborative project that results from a careful and caring commitment to the substantive reason(s) for it, and produces on all sides a reformatory agenda and cooperative dynamic that reflects this mutual commitment. A critical coalition is based not simply on a fortuitous or temporary convergence of interests but, rather, on a critical and self-critical commitment to antisubordination principles and practices – which must be applied and respected both inwardly (in the operation of the coalition) as well as outwardly (toward the dismantlement of external structures of oppression). Thus, critical coalitions are grounded first and foremost in a conscious and consistent effort to establish a postsubordination order based on a substantive and progressive vision of such a society. See Francisco Valdes, *Outsider Scholars, Legal Theory and OutCrit Perspective: Postsubordination Vision as Jurisprudential Method*, 49 DE PAUL LAW REV. 3 (forthcoming 2000) [hereinafter Valdes, *Outsider Scholars*].

Indeed, and in retrospect, the threshold decision, taken during the early planning of the First Annual LatCrit conference in 1996,¹⁸ to configure LatCrit as a critical coalition of multiply diverse Latinas/os and nonLatinas/os has turned out to be a defining choice.¹⁹ Ideally, LatCrit brings us together to construct and promote via multilateral exchanges an ethical vision of a postsubordination society.²⁰ At their best, LatCrit theory and its conferences represent coalitional method toward critical coalitions dedicated to antsubordination principles and formed by scholars (and activists) from various backgrounds and disciplines.

It follows that the involvement in LatCrit of multiply diverse and overlapping outsider scholars from various genres of critical theory has been and is integral to this effort at coalitional method. Multiply diverse "OutCrits,"²¹ including LatCrits, have arisen from within the legal acad-

18. See *infra* note 167. The proceedings of the "LatCrit I" conference appear in Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997). Prior to that conference, a colloquium was held in Puerto Rico, in 1995, devoted to a discussion of Latinas/os in and within CRT. The proceedings of that colloquium appear in Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 LA RAZA L.J. 1 (1996). Since then, the proceedings of another colloquium, on LatCrit theory and human rights, held in Miami in 1996, and of LatCrit II, held in San Antonio in 1997, have been have appeared, respectively, in Colloquium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997) and in Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 UCLA CHICANO-LATINO L. REV. 1 (1998). In addition to these conference-based publications, one LatCrit symposium was published jointly by the *California Law Review* and *La Raza Law Journal*. See Symposium, *LatCrit Theory: Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1998). Upcoming LatCrit symposia also include the proceedings of LatCrit IV, slated to appear as Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, U.C. DAVIS L. REV. (forthcoming 1999) and the proceedings of LatCrit V, slated for publication in the *Denver University Law Review*. Most recently, *The Michigan Journal of Race and Law* and the *Michigan Journal of Law Reform* similarly have decided to publish jointly an independent symposium, tentatively titled *Class, Culture and Color in LatCrit Theory: Activating Multidimensionality in Outsider Jurisprudence*.

19. Thus, from the outset, and as discussed below, LatCrit theorists have devoted themselves to mindsets and methods calculated to cultivate critical coalitions along both intragroup and intergroup axes. LatCrit theory has dedicated itself not only to centering "Latinas/os" in legal and public discourse, but also to cultivating intragroup coalitional projects among multiply diverse Latinas/os. At the same time, LatCrit has endeavored to situate analyses of the "Latina/o" within intergroup histories and frameworks as a conscious effort to build critical coalitions with other outsider groups and scholars. See generally *infra* notes 107-115 and accompanying text.

20. See Valdes, *Outsider Scholars*, *supra* note 17.

21. The "OutCrit" denomination is an effort to conceptualize and operationalize the social justice analyses and struggles of varied and overlapping yet "different" subordinated groups in an interconnective way. By "OutCrit" I thus mean (at least initially) those scholars who identify and align themselves with outgroups in this country, as well as globally. Therefore, among them are the legal scholars who in recent times have formed the experiments that this Afterword considers – CRT, Queer, and LatCrit legal discourses – as well as scholars who have launched other lines of critical inquiry within legal culture, including critical race feminism and feminist legal theorists. But by "OutCrit" I mean additionally an embrace of multidimensional approaches to all antsubordination theory and praxis, including specific projects that might be focused principally

emy in recent years to articulate the social justice claims of traditionally marginalized groups, and we have proceeded from that point of entry to bring into existence the jurisprudential formations, communities and experiments that today constitute "outsider jurisprudence"²² in the United States. It therefore is important to stress at the outset that LatCrit theory, as presently conceived, can succeed only to the extent that both Latina/o and nonLatina/o outsider scholars, such as those whose self-reflective essays prompt this Afterword, continue to invest their time, energy and creativity in this project.

This foundational commitment to critical coalitions also is grounded in the conviction that coalitional exchange and analysis are better suited to a multicultural and postmodern condition, as is the contemporary case of "Latinas/os" and other outgroups in the United States and beyond.²³ This belief is rooted in the pathbreaking work of early CRT scholars, including insights like intersectionality, multiplicity and antiessentialism.²⁴ Thus, at least from my perspective, it also bears emphasis at the outset that LatCrit theory owes a great and direct debt not only to CRT and other jurisprudential precursors,²⁵ but also specifi-

on antiracist, antisexist and antihomophobic objectives. I mean a personal and proactive, as well as intellectual and collective, embrace of the historic and unfinished struggles against the interlocking legacies of white, Anglo, male and straight supremacies. In the converse, I mean a principled, concurrent and actual rejection of narrow and regressive nationalisms, or essentialisms, based unidimensionally on race, ethnicity, gender, sexual orientation or other single-axis categories of affinity or identification. Fundamentally, "OutCrit" signifies a position of multidimensional struggle against the specific kinds of racist, nativist, sexist and homophobic ideologies and elites that combine to produce and perpetuate Euroheteropatriarchy. See generally Francisco Valdes, *Unpacking Hetero-Patriarchy: Tracing the Conflation on Sex, Gender and Sexual Orientation to Its Origins*, 8 YALE J.L. & HUM. 161 (1996) (describing some of the sex/gender and sexual orientation norms that underlie and animate androsexism and heterosexism to produce the patriarchal form of homophobia – heteropatriarchy – that still prevails in Euroamerican societies, including the United States, today). OutCrit positionality, in short, is framed around the need to confront in personal, collective and coordinated ways the mutually-reinforcing tenets and effects of the sociolegal forces that currently operate both domestically and internationally under Euroheteropatriarchy. See generally Valdes, *supra* note 17.

22. The term "outsider jurisprudence" is Professor Mari Matsuda's. See Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2323 (1989).

23. For demographic portraits of Latina/o heterogeneity, see, e.g., Berta Hernandez-Truyol, *Building Bridges – Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1991); Gloria Sandrino-Glasser, *Los Confundidos: De-Conflating Latinas/as' Race and Ethnicity*, 19 UCLA CHICANO-LATINO L. REV. 69, 75-77 (1998).

24. See, e.g., Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989).

25. See, e.g., Valdes, *Poised*, *supra* note 3, at 58 ("[I]t is plain that LatCrit theory emerges not only from the need to center Latinas/os' identities, interests and communities in critical legal discourse, but from the analytical and conceptual paths imprinted by critical race theory . . .

cally to the individual RaceCrit, FemCrit, RaceFemCrit and other allied scholars whom now nurture LatCrit with their time, energy and creativity.²⁶ Today, this emphasis on antiessentialist communities, antisubordination principles and critical coalitions is counseled by more recent conceptions from CRT and LatCrit-identified scholars — including the likes of cosynthesis, wholism, interconnectivity and multidimensionality²⁷ — which evince the same ethic or aspiration: egalitarian embrace of multiple diversities as a touchstone of social justice struggle to establish a postsubordination era for all.²⁸

Because the LatCrit themes of intergroup relations, jurisprudential advancement and critical coalitions recur and converge in the writings presented above, this Afterword concludes the LatCrit III symposium

LatCrit theory is closely related to, and affirmatively should ally itself with" CRT.); *see also* Francisco Valdes, *Foreword - Latina/o Ethnicities, Critical Race Theory, And Post-Identity Politics In Postmodern Legal Culture: From Practices To Possibilities*, in 9 *LA RAZA L.J.* 1, 26-27 (1996) ("LatCrit theory is supplementary, complementary, to critical race theory. LatCrit theory, at its best, should operate as a close cousin — related to [CRT] in real and lasting ways . . . ideally, each would be a favorite cousin of the other — both always mutually present at least in spirit and both always mutually welcome to be present in the flesh.").

26. Even though the relationships of LatCrit to feminist legal theory and critical white studies are not the focus of this Afterword, it bears emphasis that, among the scholars I think of in making this statement, are the scholars who identify principally with those categories, and who from the beginning have attended and participated in LatCrit conferences, including FemCrits (and, of course, also RaceFemCrits). *See, e.g.*, Mary Coombs, *LatCrit Theory and the Post-Identity Era: Transcending the Legacies of Color and Coalescing a Politics of Consciousness*, 2 *HARV. LATINO L. REV.* 473 (1997); Barbara J. Cox, *Coalescing Communities, Discourses and Practices: Synergies in the Antisubordination Project*, 2 *HARV. LATINO L. REV.* 473 (1997); Stephanie M. Wildman, *Reflections on Whiteness and Latina/o Critical Theory*, 2 *HARV. LATINO L. REV.* 307 (1997). In this symposium, the contributions of scholars like William Bratton, Drucilla Cornell and Catherine Wells continue this practice. Thus, this Afterword's triangular focus on RaceCrit, QueerCrit and LatCrit experiences is not intended to slight the importance of feminist (or other) issues and scholars in the conception and development of LatCrit theory. Rather, as noted in the text immediately below, this focus simply reflects the limitations of my knowledge and experience in outsider jurisprudence. *See infra* notes 30-40 and accompanying text.

27. *See, e.g.*, e. christi cunningham, *The Rise of Identity Politics I: The Myth of the Protected Class in Title VII Disparate Treatment Cases*, 30 *U. CONN. L. REV.* 441 (1998) (on wholism); Hernandez-Truyol, *supra* note 23 (on multidimensionality); Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 *CONN. L. REV.* 561 (1997) (on multidimensionality); Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 *HASTINGS L.J.* 1257 (1997) (on cosynthesis); Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities and Inter-Connectivities*, 5 *SO. CAL. REV. L. & WOMEN'S STUD.* 25 (1995) (on interconnectivity).

28. At the same time, this substantive belief in the analytical and discursive value of coalitional method is underscored by the political exigencies of cultural war: born in 1995, LatCrit theory, in its brief lifespan to date, has never known a time not marked by backlash lawmaking. *See generally* Valdes, *Beyond Sexual Orientation*, *supra* note 11, at 1426-54 (analyzing cultural war and backlash lawmaking). This formative circumstance no doubt has influenced the LatCrit preference for critical coalitions: given that minoritized outgroups are not only marginalized structurally but also outnumbered in this country, our sources of intellectual and political strength must include ourselves as well as our situational kin.

with some notes on comparative jurisprudential experience as coalitional method and antisubordination praxis. More particularly, the Afterword considers the relationship of this ongoing LatCrit experiment to two other contemporary genres of outsider jurisprudence — principally critical race theory²⁹ and Queer legal theory.³⁰ In so doing, and as with other authors in this symposium, the Afterword reflects the vagaries and limitations of authorial positioning within legal culture and outsider jurisprudence: as will become clear below, my contribution to this reflection on LatCrit theory's precursors, origins and trajectories is informed principally by the lessons I have gleaned from my participation in CRT and Queer jurisprudential experiments. Ideally, however, this Afterword's triangular framing and focus can help synthesize comparative experience across various contemporary genres of critical legal scholarship to help promote a culture of antisubordination community and coalition among OutCrit legal theorists.³¹

To help contextualize the analysis that follows, a prologue that situates my position and perspective vis a vis outsider jurisprudence opens the Afterword. Part I of the Afterword then turns to CRT as the prime exemplar of outsider jurisprudence. After a brief historical critique of the causes and costs of CRT's earlier coalitional ambivalence, Part II of the Afterword compares the more recent experiences of Queer legal theory and LatCrit theory to assess the relevance of these movements to our collective development of a progressive jurisprudence of color. In Part

29. Though it is not susceptible of any one definition, critical race theory has been described as the genre of critical legal scholarship that "focuses on the relationship between law and racial subordination in American society." Kimberle Crenshaw, *A Black Feminist Critique of Antidiscrimination Law and Politics*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 195, 213 n.7 (David Kairys ed., rev. ed. 1990); see generally Angela P. Harris, *Foreword – The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741 (1994) (introducing the first symposium devoted specifically to CRT in an American law review). Two recently-released book anthologies provide good compilations of the literature. See Delgado, *supra* note 14; KEY WRITINGS, *supra* note 14. Even though CRT is a "movement" that comprises many voices and viewpoints, I discuss it as a collectivity in this Afterword for the sake of simplicity. In doing so I recognize that my description may gloss over some particularities that may be deemed relevant to this discussion. My effort will be to provide a general account that avoids, or keeps to a minimum, that possibility.

30. For discussion of the term "Queer" as used in this Afterword, see *infra* notes 78-81 and accompanying text.

31. The lessons to be drawn from a comparative and self-critical contemplation of RaceCrit, QueerCrit and LatCrit experiences can help *all* OutCrit scholars not only to better understand the context of this moment, but also may lead to a richer sense of connection, collaboration and community among and across all OutCrits and outgroups. See *supra* note 21. As indicated above, my hope and purpose in proffering OutCrit perspectivity as a common position from which to articulate particularity within a progressive outsider jurisprudence thus are both substantive and strategic. Ideally, a broader identification as "OutCrits" among RaceCrits, QueerCrits, LatCrits, FemCrits and other outsider legal scholars will enhance our mutual understanding of the needs and goals that must underpin critical antisubordination coalitions among and between us. See *supra* note 21.

III, the Afterword summarizes from a LatCrit perspective some basic lessons suggested by this sketch of our collective experience with outsider jurisprudence. With this backdrop and summary in place, the Afterword takes up in Part IV the theoretical, coalitional and institutional concerns raised by some of the symposium essays. Concluding with a call to OutCrit perspectivity in our collective re/commitment to a progressive outsider jurisprudence, the Afterword seeks and endorses LatCrit affirmation of coalitional method and critical coalitions as a form of outsider praxis, and in light of the lessons to be learned from comparative experience.

PROLOGUE

BEFORE LATCRIT: ACCOUNTING FOR POSITIONALITY

My involvement with outsider jurisprudence began with feminist legal theory, sexual orientation scholarship and critical race theory. When these discourses were first stirring, I had not yet even begun thinking about entering the legal academy. Once in, however, I located myself initially within sex/gender and sexual orientation studies, arguing for a feminist-Queer interconnection that made race-conscious analysis integral to antisubordination projects; this project grounded me in feminist perspectivity and Queer identification but inclined me toward race and ethnicity discourses.³²

Since then, I have become increasingly involved in the race and ethnicity branches of outsider jurisprudence while continuing my original project in the development of Queer/feminist legal theory. This growing involvement in race/ethnicity outsider jurisprudence began with CRT and participation in its annual workshops,³³ for CRT was and is the original race/ethnicity branch of outsider legal scholarship.³⁴ During

32. This multi-year project began with Francisco Valdes, *Queers, Sissies, Dykes and Tomboys: Deconstructing the Conflation of 'Sex,' 'Gender' and 'Sexual Orientation' in Euro-American Law and Society*, 83 CAL. L. REV. 1 (1995) [hereinafter Valdes, *Queers, Sissies*].

33. After accepting the invitation to participate in the Sixth Annual CRT Workshop, in 1994, I served on the planning committee for the seventh workshop, co-chaired the eighth, and helped produce the programming for the ninth – perhaps destined to be the last workshop of the series based on the original model. As this Afterword indicates, my involvement in Queer and LatCrit legal scholarship is informed by the lessons I've drawn from CRT, both its texts and its workshops. In great measure, my involvement in Queer and LatCrit projects can be understood as a critical application of basic lessons I drew from my readings of, participation in, and experience with, CRT during the second half of its first decade. Though my jurisprudential outlook always has been critically comparative, I have tried to apply the lessons I learned from CRT both to it and to my Queer and LatCrit projects.

34. CRT's earliest proponents initiated a series of small summer workshops held every year in a different location. See generally Phillips, *supra* note 2, at 1248-50. This series was an approach to antisubordination theorizing and community-building that still inspire OutCrits today, as the regional people of color conferences, the Asian law professor conferences and the LatCrit

those mid-to-latter years of its first decade, CRT collectively was confronting the repercussions of its earliest successes, which were prompting shifts in career, location and family for some key founders.³⁵ This process of professional and personal change altered the original patterns of CRT's organization and community, both in individual and collective terms, creating voids and dislocations especially in the smooth and progressive continuation of the workshop series originated to provide a locus for CRT both as discourse and community.

I thus "joined" CRT at a phase in its history wherein it was reckoning with the consequences of its initial triumphs, crafted chiefly by the hard and brave work of a diverse "first generation" CRT core.³⁶ For a new movement set against a skeptical (if not hostile) background, the internal shifts of those times caused great uncertainty about our collective capacity to carry forward the sharp criticality and social ambition that conceived CRT. This period in CRT's development — roughly equivalent to LatCrit's immediate future — thereby witnessed both the attenuation of some key founders as well as the gradual and fitful emergence of an increasingly diverse "second generation" in the workshops.³⁷ This second generation, like the first, was a loose assemblage of nonwhite but otherwise richly diverse scholars.

For better or worse, we found ourselves adjusting continually to the gaps and opportunities of those years while searching for effective means of coalescing around, and advancing, the original insights, methods and structures that encapsulated the expansive antisubordination promise of the first generation's work. At that time, we were also, in effect, wrestling with the larger set of historical, experiential, circumstantial and other issues discussed further below. These issues, as elaborated below, spanned the entire nine-workshop series and ranged from structural to substantive questions of theory, discourse, community and coalition. Given the historical, experiential, circumstantial and other factors noted below, it now seems plain that consensus was bound to elude us on the difficult questions of structure, scope and direction with

conferences show. As elaborated below, the workshop series also was the site for much of CRT's first-decade growing and learning pains. See *infra* notes 68-73 and accompanying text. That series continues to contain many of the experiences and lessons explored here in relationship to LatCrit and its forms of convocation.

35. See generally Cho & Westley, *supra* note 14.

36. That first generation invented CRT and infused it with a focus of social transformation that from inception gave CRT its sharp political edge. See *supra* note 14 and sources cited therein on CRT's origins and early consciousness.

37. This generational unfolding was the topic of the first plenary session of the Eighth Annual CRT Workshop, held in Washington, D.C. in 1996, which was devoted to a critical discussion of CRT's history. The panel included presentations by Stephanie Phillips and Elizabeth Patterson, who were present at the first and other early summer workshops. For further discussion of the workshops, see *infra* notes 68-73 and accompanying text.

which we grappled annually at the workshops in order to advance both the insights of theory and the sense of community.

It now seems plain to me that those discussions constituted not only the first generational transition within CRT but also a difficult, inevitable and ongoing collective learning process that presently should counsel all OutCrit formations, including LatCrit theory. In retrospect, those transitional years represented a key test of CRT's growth and of outsider capacity to sustain a nonwhite critical jurisprudence: the question then was whether RaceCrits would continue to develop as a diverse and egalitarian antisubordination movement of activist legal scholars, lively and sturdy enough to traverse beyond first-generation breakthroughs and, if so, how?³⁸ Embedded in the events and experience of those years are the lessons that I learned, and that I seek to share here, because LatCrit does and will face similar issues of consolidation, progression and sustainability — as do and will all other forms of outsider interventions in the construction of critical legal theory.

Indeed, that question is the challenge that the self-reflective essays in this symposium effectively assert vis a vis LatCrit. Framed more broadly, it is the question and challenge that we all face, today and every day: How do we, as legal scholars, collectively sustain and carry forward in a progressive way the outsider experiment in critical jurisprudence as a form of antisubordination struggle? It is a question and challenge that a collective and critical assessment of comparative jurisprudential experience can — and should — help to illuminate.

Thus, the account of outsider jurisprudential experience that I am positioned to convey necessarily begins with the period of time spanning roughly from the second half of CRT's first decade until now — a period of transition and evolution evidenced then and still mainly in the organization, composition and programs of the CRT workshops and the LatCrit conferences. This period of transition from CRT's growing pains to LatCrit theory's emergence and consolidation is neither linear nor neat — despite the efforts to the contrary that follow. But, it is crucial to LatCrit theory's wellbeing and sustainability that this period be mined for its lessons: because the CRT workshops gave tangibility to, and anchored, the nonwhite critical legal theory movement both as community and as theory, and because that experience now can and must serve as a rich well of OutCrit insight, the lessons of those times are invaluable. And as LatCrit enters the same period in its development, these lessons become increasingly timely.

38. As the tenth anniversary conference held at Yale Law School in 1997 illustrates, CRT did that, and more. For the collection of essays based on that conference, see *CRITICAL RACE THEORY: HISTORIES, CROSSROADS, DIRECTIONS*, *supra* note 8.

Yet, as the symposium essays indicate, the tense internal dynamics of those transitional years — and most importantly, their lessons — are barely evident in the texts that our collective labors have yielded. Unlike CRT's earliest origins,³⁹ these freighted mid-to-late first-decade moments, and their relevance to outsiders' longer-term development and jurisprudential trajectory, until now had not been engaged — except, of course, in the immediate context of the actual CRT workshops. By unfolding their respective accounts of LatCrit's precursors, roots, origins and agendas, the self-reflective essays of this symposium have begun both to fill that void and to invite other OutCrits to help contextualize our present and future, but always as part of our continuing, collective work toward a postsubordination time. What these essays tell us in no uncertain terms is that critical understanding of the tension and growth of those key transitional moments, and of their continuing ripple effects for outsider jurisprudence as a form of antisubordination praxis, no longer should remain obscure.⁴⁰

By recounting from my particular position and experience how those moments may have affected and helped to advance the RaceCrit movement during the formative years of its first generational transition — and how the effects of that learning process perhaps continue to reverberate within LatCrit today — I hope to amplify and transmit to successive “generations” of scholars a critical history of this particular period. Through this recounting I aim to convey the tremendous progress achieved during and since those times, as well as to acknowledge and learn from the difficulties that we have overcome — but which nonetheless continue to endanger our collective ability to articulate a progressive vision of a postsubordination society. By theorizing those key moments, I hope in particular to aid LatCrit theory's continuing growth and vitality as part of a rich and diverse OutCrit community, and with the will and means to cultivate critical social justice coalitions among and across key axes of identity and community as antisubordination praxis.

39. See, e.g., *supra* note 14 and sources cited therein on early accounts of CRT.

40. This continuing omission is unhealthy for all OutCrits, for it deprives the growing ranks of outsider scholars a crucial resource: a rich well of experiential or “institutional” memory that is ongoing and that can aid outsider scholars, including LatCrits, progressively to refine and reiterate our work, both internally and externally, as antisubordination praxis. This omission foregoes the opportunity to revisit and refine the lessons of those times to help create conditions that may better conduce egalitarian solidarity through critical coalitions both within and beyond any particular subject position. Engaging these lessons critically and constructively ideally may help LatCrit and other OutCrit scholars contextualize pending jurisprudential issues and pursue elusive shared hopes.

I. THE EMERGENCE OF A NONWHITE OUTSIDER JURISPRUDENCE:
CRITICAL RACE THEORY, UN/CRITICAL COALITIONS, AND
INTERSECTIONAL AMBIVALENCES

Original reports indicate that CRT was founded to struggle for racial justice.⁴¹ During the past decade, CRT has gone about doing so in large part by advocating postmodern criticism and centering voices and positions that previously had been marginalized in social policy and legal discourse by prevailing essentializing tendencies.⁴² This advocacy and centering have produced their own conceptual and political tensions — indeed the substantive and structural issues discussed below properly can be viewed as one aspect of CRT's larger modern/postmodern admixture.⁴³

CRT's critiques of contemporary race relations undeniably have been powerful: they have unmasked a primary element of white supremacy's continuing sociolegal legacies — principally, the systematic subordination of African Americans within the United States despite the formal equality mandates of the Civil Rights reformation. In the course of such critiques, CRT's first decade also produced a pathbreaking body of work by critical race feminists that still resonates throughout outsider jurisprudence and critical legal theory. This work introduced methods and concepts now regarded as foundational to CRT, LatCrit and other OutCrit theorizing.⁴⁴ Indeed, the pioneering work of critical race feminists within CRT remains among the most important theoretical advances in legal discourse attributed generally to CRT: this work has changed the way both minority and majority scholars conceptualize

41. See, e.g., KEY WRITINGS, *supra* note 14, at xiii (describing CRT's social justice goals to "understand" and "change" racial hierarchy and law's complicity in it); *see also id.* at xxv (describing CRT's mission as discerning "how law constructed race" as a device and form of group hierarchy).

42. For instance, prior to CRT's emergence, the legal scholarship of race and equality was dominated by, if not limited to, a handful of liberal, white, male, (and apparently heterosexual) modernists. See Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984); Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later*, 140 U. PA. L. REV. 1349 (1992).

43. See generally Harris, *supra* note 29, at 745-66 (describing the tensions within CRT caused by its pursuit of modernist ideals like "equality" in light of its postmodern skepticism).

44. Critical race feminists, and especially African American feminist theorists, account for much of CRT's early power and insight, including the development of advances like intersectionality, multiplicity and antiessentialism. For a representative sampling of foundational works by African American and other critical race feminists on these and similar concepts, see *supra* note 24 and sources cited therein on intersectionality and multiplicity; *see also* Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139; Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987); *see generally* CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 1997).

and conduct racial discourse. Unfortunately, the spectacularly productive engagement of race and gender begun during the first half of the first decade did not become the exemplar for similar exchanges and gains at other times.

CRT's intersectional shortcomings — as a manifestation of coalitional ambivalences — perhaps may be explained by the interaction of at least five general sources or factors. The first is the pervasive heteronormativity of this country and its legal institutions, from which CRT arose. The second is the habit of racial binarism that characterizes American law and society, and which initially induced a similar approach in CRT's antiracist framework. As outlined below, both of these societal conditions were formative circumstances in contouring CRT as a fluid yet recognizable discourse and "community" through the series of annual workshops.

A third formative factor is, perhaps, more specific to legal culture: the suppressive climate of skepticism, even suspicion, that surrounded CRT's initial emergence as a critical form of race-conscious legal scholarship. This formative circumstance also generated serious and unsettling concerns about CRT's legitimacy and capacity for survival at a time when the legal establishment increasingly hankered for conformance to colorblind imperatives.⁴⁵ These concerns, as described below in further detail, in turn fueled coalitional caution and (at times) community frictions that, at bottom, were incompatible with a programmatic prioritization of coalitional or intersectional projects.

A fourth source of coalitional ambivalence is more historical and experiential. The memory of Civil Rights and Critical Legal Studies, which created histories and experiences of unfulfillment through coalitional enterprise, affected both the texts and workshops of the first decade. The limited and limiting results of those two recent experiences planted in CRT's early consciousness a sense of greatly lowered expectation about antiracist reform through intergroup collaborations.

The fifth, and in this abbreviated account, final factor is the intense discursive and political demands that a postmodern, antisubordination jurisprudential movement elects to impose on itself not only intellectually but also socially. These self-imposed demands effectively called for

45. CRT arose during an era of retrenchment in civil rights policies and equality jurisprudence. See generally Kimberle W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988) (critiquing juridical and political retrenchment during the 1980s). That era of retrenchment in more recent years has escalated to full-blown cultural war. See Valdes, *Beyond Sexual Orientation*, *supra* note 11, at 1426-43; see generally Sylvia R. Lazos Vargas, *Judicial Review of Initiatives and Referendums in Which Majorities Vote on Minorities' Democratic Citizenship*, 60 OHIO ST. L.J. 402 (1999).

CRT's embrace and pursuit of multiplicitous and intersectional projects. Thus, these five distinct sources overlapped interactively, each contributing to ambivalence in its own ways: basically, the first four served to make CRT wary of coalitional risk-taking, while the fifth demanded it.

These five general sources, as elaborated below, have combined and interacted in myriad ways to produce over the course of CRT's first decade the complex record that, in my view, most proximately helped to set the stage for the emergence of LatCrit theory; in particular, and from my perspective, the fitful but hopeful CRT experience of grappling with these issues provides the most direct backdrop for LatCrit theory's original and current self-conception. Though not susceptible to simple or linear recounting, this mix of historical, experiential, circumstantial and other factors has generated substantive and structural consequences that sometimes have confounded CRT's struggle to establish itself as an antisubordination discourse *and* antiessentialist community. As the self-reflective essays of this symposium suggest, LatCrit now must learn from the CRT experience precisely because of its immediate proximity to CRT in time and in consciousness. With this aim in mind, and recognizing this complexity, I disaggregate these sources in somewhat linear fashion simply to facilitate summary presentation and comparative analysis in the context of this Afterword.

A. *Formative Circumstances: Societal Heteronormativity, Racial Binarism and Color-Blind Culture*

As the Phillips essay indicates, perhaps the most troubled instance of coalitional ambivalence and intersectional avoidance recorded during CRT's first-decade learning process has been the persistent reluctance to consider and interrogate the relationship of race to sexual orientation - or, more specifically, the reluctance to investigate critically how and why social or legal homophobia influence antiracist communities, strategies and discourses.⁴⁶ In consequence, CRT has at times appeared to assume that "people of color" are congenitally heterosexual: Queers of color have been virtually invisible in the written record of CRT during its first decade, and issues we embody have been mostly marginal in, though not entirely absent from, the annual summer workshops.⁴⁷ The

46. According to Phillips, this reluctance began at the very first workshop, and it continued to plague the workshop annually thereafter. See Phillips, *supra* note 2, at 1249-50.

47. The reluctance to enter sexual orientation intersections is evinced by the published discourse, which fails generally to express any explicit recognition of sexual orientation diversity within communities of color. It also is evinced by the query that has been posed at the annual CRT summer workshops from their very inception: "What has sexual orientation got to do with race?" See Valdes, *Foreword - Latina/o Ethnicities*, *supra* note 25, at 6. This query of course overlooks the intersection of minority race and minority sexuality, an odd oversight for a discourse otherwise

construction and articulation of CRT as outsider jurisprudence in the form of workshop programs and published texts thereby has been sanitized virtually of all traces of the Queer, including the Queer of color.

The marginalization of sexual orientation issues within CRT gatherings or texts for the better part of a decade etches important lessons onto our collective record: these acts of omission provide a startling example within a progressive antisubordination movement of a failure by the relevant "majority" to see and repudiate a mechanism of oppression operating both within and beyond the relevant or salient "community." This collective failure no doubt is due, at least in part, to the culture of constant homophobia that envelops us all, inducing uncritical (even if unintentional) replication of straight privilege within CRT and other outgroup venues at different times and places.⁴⁸ This formative circumstance prompted failures of nuance, will and engagement suggesting that CRT and other race/ethnicity-conscious projects at key junctures disabled their full potential, becoming forces striving to make the world safe for "our" race (or ethnicity) instead of unsafe for oppression.⁴⁹

As a result, critical coalitions that cross and combine minority colors and desires have been neglected or unrealized. To be sure, individual

more sensitive to intersectionality. For original analyses of race and gender intersectionality, see Crenshaw, *supra* note 24 (developing intersectional analysis and applying it to race and gender).

In addition to Phillip's account in this symposium, oral histories report that openly gay or lesbian scholars of color have been present at every summer workshop, and that they endeavored since then to introduce "race and sexual orientation" as an intersectional issue for workshop attention. Yet my personal experience, and the accounts that others have shared with me over the years, indicate that open acknowledgment and programmatic discussion of sexual orientation issues typically has triggered opposition and controversy within the workshop. Some gay or lesbian scholars of color consequently discontinued attendance. In recognition of this oppressive and exclusionary pattern, the Sixth Annual CRT Workshop, held in Miami in 1994, included for the first time a plenary session on sexual orientation and race. Peter Kwan and I selected, distributed and presented the reading materials for that programmatically unprecedented and wrenching discussion. Afterward, the summer workshops included sexual orientation in the program every year, with a general consensus of incremental but touchy headway. For further discussion of the CRT summer workshops, see *infra* notes 68-73 and accompanying text.

48. See Darren Lenard Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Antiracist Politics*, 47 BUFF. L. REV. 1 (1999). More generally, developmental circumstance clearly affected CRT's formation. See, e.g., KEY WRITINGS, *supra* note 14, at xxiv-xxv (describing early responses to CRT and the racist "reductionism" attributed to some of its "foundational essays," which may be a reflection of the "context and conditions of their production" during CRT's nascency); see generally Francisco Valdes, *Queer Margins, Queer Ethics: A Call to Account for Race and Ethnicity in the Law, Theory and Politics of 'Sexual Orientation'*, 48 HASTINGS L.J. 1293, 1315-18 (1997) [hereinafter Valdes, *Queer Margins*] (reviewing some strengths and weaknesses of sexual minority legal discourse and considering similar developmental circumstances as they relate to the corresponding failure of lesbian and gay legal scholarship to take up the role of race and ethnicity in the law, theory and politics of "sexual orientation" discrimination).

49. I thank Jerome Culp for this insight and vocabulary.

scholars of all sexual orientations have served as occasional bridges across these divided identities and communities. However, we have not collectively nurtured internal as well as intergroup coalitions capable of uniting lesbians, bisexuals and gays of color programmatically and structurally to CRT and other race/ethnicity projects in antiessentialist, antisubordination purpose. In outsider jurisprudence, critical coalitions within and beyond CRT that pivot on sexual orientation and race/ethnicity have remained ad hoc or dormant until, perhaps, very recently, because whatever postsubordination vision we projected failed explicitly to redress the harms that homophobia visits on nonwhite (as well as white) peoples.⁵⁰

Another instance of CRT's coalitional ambivalence is reflected in its general sense of comfort with the framing of antiracist struggles around the Black/white paradigm of American political thought.⁵¹ Producing a mindset and discourse where "of color" becomes the functional equivalent of "Black" without much self-critical awareness, this paradigm reflects the broader and standard practices of this society in its regulation of race relations, which historically have emphasized Black/white binarism. Because CRT's first lens was "race" and its racist deployment, this paradigm initially may have lent itself to the needs of CRT's antiracist counter-discourse. Yet, as recent works have noted, this paradigm's binarism ultimately truncates antiracist analysis because the paradigm does much more than valorize whiteness and demonize Blackness: it also occludes all other nonwhite/nonAnglo positions in the construction and operation of racial hierarchy within and across groups or cultures.⁵² As an artifact of white supremacy, this paradigm repro-

50. And, it bears emphasis that these harms affect both members of the sexual majority as well as members of sexual minorities, both as groups and as individuals. See generally *HOMOPHOBIA: HOW WE ALL PAY THE PRICE* (Warren J. Blumenfeld ed., 1992); SUZANNE PHARR, *HOMOPHOBIA: A WEAPON OF SEXISM* (1988).

51. The relevance of this paradigm both within and beyond CRT has been addressed by various scholars. See, e.g., Celina Romany, *Gender, Race/Ethnicity and Language*, 9 *LA RAZA* L.J. 49 (1996) (discussing how CRT has "concentrated on white-Black racism" in domestic race relations, giving CRT a flavor of North American "localism"); see also Harris, *supra* note 29, at 775 (discussing how "African American experiences have been taken as a paradigm for the experiences of all people of color").

52. For a critical analysis of the "Black/White paradigm" and its role in the legal history of civil rights in this country, see Juan F. Perea, *The Black/White Binary Paradigm of Race: The 'Normal Science' of American Racial Thought*, 85 *CAL. L. REV.* 1213, 1239-52 (1997). For recent calls to multicultural analyses, see Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 *STAN. L. REV.* 957 (1995); William R. Tamayo, *When the 'Coloreds' Are Neither Black nor Citizens: The United States Civil Rights Movement and Global Migration*, 2 *ASIAN L.J.* 1 (1995); see also Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 *CAL. L. REV.* 1241 (1993) (calling for an expanded race discourse that cognizes Asian American particularities); Elizabeth M. Iglesias, *Structures of Subordination: Women of Color at the Intersection of Title VII*

duces white domination, Black subordination *and* nonwhite/nonBlack erasure in intra- and intergroup levels.

As Mutua's essay emphasizes, critiques of the binary paradigm cannot suggest that "Black" and "white" represent equal positions within this paradigm⁵³ nor, as Roberts' essay shows, can they overlook the utility of a Black-specific analysis of white supremacy and intergroup issues.⁵⁴ Without doubt, white domination is organic to this traditional paradigm and its application, and analyses issued explicitly from Black perspectives are indispensable to antiracist discourse — especially when accompanied by a critical appreciation of this traditional paradigm and its sociolegal effects. Introducing criticality to *all* antisubordination uses or analyses of this paradigm may raise new issues,⁵⁵ yet continued uncritical acceptance of this paradigm to deconstruct "race relations" from *any* perspective may end up essentializing "race" around the paradigm's bipolar hierarchy. This essentialism can help perpetuate atomized binarisms between whiteness and Blackness in a social order controlled firmly by whites. This atomization generates consequences at odds with antiracist ideals and objectives.

Uncritical applications of this paradigm in a racially plural but supremacist society pose the danger of distancing from each other Blacks and "other" communities of color that also are disadvantaged by the social and legal preferences accorded to whiteness under this paradigm and its racist ideology. Uncritical acquiescence to this paradigm lends little inspiration for antiracist coalitions of color *precisely* because it obfuscates how white racism affects and connects all nonwhite groups. Ultimately, uncritical outlooks on this binary framing affirmatively can impede antiracist projects capable of bringing "different" nonwhite groups together in *critical* antisubordination communities and coalitions. Working within this binary framework in a majoritarian system controlled politically and economically by an ensconced white-identified elite and majority therefore has the potential to achieve less than is necessary for Black ambitions to dismantle white supremacy's continuing legacies, and even less for similar Asian, Native or Latina/o ambitions.

and the NLRA, Not!, 28 HARV. C.R.-C.L. REV. 395 (1993) (focusing on the category "women of color" to articulate this sort of expanded, intersectional analysis); Charles R. Lawrence, III, *Foreword – Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819 (1995) (urging a reconceptualization of race and racism as a substantial societal condition that affects entire and various groups of people).

53. See Mutua, *supra* note 2, at 1188.

54. See Roberts, *supra* note 2, at 861.

55. These issues, as the Mutua and Roberts essays illustrate, range from the role of Blackness and the value of Black-specific critiques in a postbinary discourse, as well as the prospects of such a discourse helping to ameliorate intergroup tensions and racial justice. See Mutua, *supra* note 2; Roberts, *supra* note 2.

As in the case of sexual orientation, this paradigm's societal entrenchment and general internalization is one aspect of the formative circumstances that have helped to shape outsider jurisprudence: given the immediate conditions and larger background of race discourse during its emergence, CRT's ambivalent — or ephemeral — embrace of diversities based on ethnicity and trans/nationality as integral to antiracist struggle probably is best understood both as a reflection and projection of that paradigm's pull.⁵⁶ But incrementally, as this symposium displays, our collective learning process has prompted greater critical awareness of these issues — specifically of the shortcomings that lurk in paradigmatic binarisms. As a result — and as this and prior LatCrit symposia aptly illustrate — CRT, LatCrit and other OutCrit scholars recently have begun to shift from uncritical recyclings of the traditional Black/white paradigm to multilateral interrogations of "white-over-Black" norms that support white privilege within communities of color as well as beyond them.⁵⁷

This quick tally is not to suggest that our collective failures of intersectional analyses regarding sexual orientation, and to a lesser extent ethnicity or trans/nationality, are the only or most important results of coalitional ambivalence based on the factors sketched above. Though ambivalence is implicated in both instances, this tally also does not imply that these failures are identical phenomena — the Phillips essay shows how the content and nature of those two moments in our collective articulation of nonwhite outsider jurisprudence were very different indeed.⁵⁸ Nor does this tally suggest that the explanations explored here are the only way to account for the variations that distinguish them. While reflecting a basically well-founded and complex, yet selective, ambivalence over coalitional projects, single-axis analyses that omit(ted) the position within antiracist politics and discourse of nonAfri-

56. The account provided in the Phillips essay suggests that ethnicity's engagement was more ephemeral than it was ambivalent, though my own experience suggests to me that it was both. See Phillips, *supra* note 2, at 585-90. This engagement also did not lead to a sustained effort to transcend the dichotomy of the "domestic" and the "international" in antisubordination analysis. See, e.g., Elizabeth M. Iglesias, *Out of the Shadow: Marking Intersections in and Between Asian Pacific American Critical Legal Scholarship and Latino Critical Theory*, 40 B.C.L. REV. 349; 19 B.C. THIRD WORLD L.J. 349 (1998) [hereinafter Iglesias, *Out of the Shadow*] (centering international relations and transnational identities in developing a collaborative critical theoretical agenda beyond the Black/White paradigm).

57. See *infra* notes 142-156 and accompanying text. This move to multilateral, rather than bilateral, critiques of race relations additionally is counseled by the existence of outgroup tensions, which can impede all social justice struggles. See *supra* note 9 and sources cited therein describing the importance of intergroup justice in antisubordination struggles.

58. The ethnicity lapse was promptly disclaimed, with a programmatic follow-up the next year, while the sexual orientation avoidance was prolonged for years. It took "an excruciatingly long time for the Critical Race Theory Workshop to reflect a strong stance against heterosexism." Phillips, *supra* note 2, at 1251.

can American people of color, or of gay/Queer people of color, or of Black and other nonwhite immigrant communities, or of multiply diverse peoples of color around the globe, nonetheless entail(ed) both a critical lapse of intersectional analysis and a denial of sociolegally significant diversities among the racialized constituencies of outsider jurisprudence.⁵⁹

Finally, and additionally, CRT arose as a "minority" insurrection emanating from within the established legal culture but cast in opposition to it. From the outset, then, nonwhite outsider jurisprudence found itself subject to a disconcerting range of initial establishment reactions, extending from indifference and skepticism to curiosity and, at times, even understanding and respect. Still, the palpable and strident hostility to CRT's explicit and critical race consciousness in the institutional and intellectual environment prevailing at CRT's inception must be recognized as another specific formative factor in early circumstances and ambivalence. Though CRT scholars gradually have been appointed and tenured at even the most exclusive institutions, CRT workshops annually forced us to confront in both formal and informal conversation the enervating hostility directed by "home" institutions at CRT scholars year-round in routine, structural, maybe even "unconscious" ways.⁶⁰ And, as CRT gained prominence, attack did not abate; emboldened in part by a larger onset of reactionary attitudes licensing majoritarian backlash, initial academic unease devolved into unabashed bashing during the second half of CRT's first decade.⁶¹

59. It bears mention that this failure is reciprocal; gay and lesbian legal scholarship similarly seems to assume that sexual minorities are constitutionally white (and middle class). This assumption has drawn a racial critique of this assumption and its analytical shortcomings. I describe this critique as "internal" in the sense that it emanates from within lesbian and gay legal scholarship and is articulated by scholars writing from a sexual minority subject position. See, e.g., Hutchinson, *supra* note 27, at 585-90 (analyzing the relevance and class to lesbian and gay politics and legal discourse); Darren Rosenblum, *Queer Intersectionality and the Failure of Recent Lesbian and Gay 'Victories'*, 4 LAW & SEXUALITY 83 (1994) (questioning the transformative value of progress on selected current issues for sexual minority subgroups, including the trans/bi-gendered); Eric Heinze, *Gay and Poor*, 38 HOW. L.J. 433 (1995) (focusing on the intersection of poverty and same-sex orientation); see also Valdes, *Queer Margins*, *supra* note 48, at 1297 n.12 and additional sources cited therein (discussing similar shortcomings in sexual orientation legal scholarship).

60. For the foundational critique of "unconscious" racism and its present effects, see Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

61. For an overview of attacks on outsider employment of narrative in legal scholarship and related aspects of CRT's interventions in legal discourse, see Valdes, *Foreword - Latina/o Ethnicities*, *supra*, note 25, at 2 n.3. These attacks have gone so far (afield) as to connect antistatutory legal theory, including CRT, with antisemitism. See Daniel A. Farber & Suzanna Sherry, *Is the Radical Critique of Merit Anti-Semitic*, 83 CAL. L. REV. 853 (1995). More recently, these attacks have extended into the popular media, outlandishly imputing to CRT the spectacle (and verdict) of the Simpson murder trial. See, e.g., Jeffrey Rosen, *The Bloods and the*

Ironically, and importantly, the suspect gaze of the early years came not only from dominant quarters of the legal academy. Reflecting the complexities of racialized politics in this society and profession, CRT has found itself especially vulnerable to the balking reception it received from some legal scholars of color. Questioning CRT claims about “voice” in legal scholarship, the nonwhite critique of CRT was asserted by “colorblind” scholars of color whose standing derived in part from nonwhite racial identity — even as they authored texts that dismissed or devalued the relevance of racialized identity to scholarly perspective and discourse.⁶² The specific circumstances of CRT’s formation thus raised grave additional doubts: whether the thick racial politics and set political preferences of a white and wishfully “color-blind” legal culture would suffocate a nonwhite articulation of critical legal theory about race, race consciousness and racism.

The impact of these three formative circumstances — societal heteronormativity, entrenched Black/white binarisms and legal culture’s suspicion of nonwhite race consciousness — in tandem go a long way toward explaining some of our early and collective failures in intersectional analysis and community-building. Yet the formative influence of social circumstance was not all that stood behind this coalitional ambivalence. In addition, historical and experiential factors helped set the stage not only for CRT’s emergence but also for our collective conflicted relationship to antiessentialist communities and critical coalitions as vehicles of antistatutory praxis.

B. *History and Experience: Equality and Ambivalence*

Among the good historical or experiential reasons for CRT’s early sense of ambivalence toward coalitional projects and intersectional politics is the national experience known as the Civil Rights Movement. The Civil Rights experience aligned modern, liberal segments of American political society with the antiracist struggle primarily of African American communities to overthrow this nation’s de jure apartheid regime. This “coalition” succeeded at the basic level of formal desegregation.

Crits: O.J. Simpson, Critical Race Theory, the Law and the Triumph of Color in America, NEW REPUBLIC, Dec. 9, 1996, at 27. For a very recent analysis of this campaign to delegitimize CRT specifically and nonwhite outsider jurisprudence more generally, see Culp, *supra* note 12.

62. See, e.g., Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989). For rejoinders, see Colloquy, *Responses to Randall Kennedy’s Racial Critiques of Legal Academia*, 103 HARV. L. REV. 1844 (1990); see also Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539 (1991); Alex M. Johnson, Jr., *Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship*, 79 IOWA L. REV. 803 (1994).

As a result of that movement, an avalanche of curative statutes was enacted, amended, interpreted and sometimes enforced earnestly. But the predominant liberal conception of formal legal equality as a way station to social colorblindness did not include the vision or will to dismantle racial supremacy and subordination in systematic, material or fundamental terms. In retrospect, nonwhite scholars have learned that colorblindness, rather than social justice, was the objective of the Civil Rights push for formal racial equality.

The Civil Rights experience also taught people of color, and especially African Americans, that cooperation — coalition — with mainstream liberalism was possible only at the margin, or at the surface, for a related reason: because dominant versions of liberal policy view “discrimination” as isolated, temporary or atypical instances of individual wrongdoing rather than as manifestations of the enduring structures and patterns of power that permeate American society and are leveraged systematically through the institutions, processes and doctrines of the law.⁶³ This conception of sociolegal reality cramps law’s ability to counteract racism, as many outsider scholars amply have shown. For these reasons, the Civil Rights experience has not inspired (specifically within CRT) much confidence in racial, much less intersectional, coalitions.

Also among the good historical reasons for early collective ambivalence toward coalitional possibilities may be the experience with Critical Legal Studies (“CLS”). Generally, CLS has expressed a postliberal and antiformalist political sensibility that signals solidarity with CRT, but CLS ineptitude on racial particularity and its lack of dedication to praxis or transformation made that movement ultimately ill-suited to the antistatist needs of nonwhite scholars and communities. Over time, these and related CLS characteristics helped to distance it from CRT despite the postmodern and progressive disposition they share(d). Though significant affinity always has existed between CLS and CRT, these two jurisprudential movements represent(ed) a combustible mix of racialized interests, intellectual stances and normative imperatives that produced years ago the rupture that helped spawn CRT and nonwhite outsider jurisprudence. Emanating from a direct confrontation over questions about nonwhite scholars’ place within CLS, that rupture recalls in stark and subtle ways how white-controlled ventures — including coalitions — can delimit antiracist objectives.⁶⁴ The CLS/

63. See, e.g., KEY WRITINGS, *supra* note 14, at xiv-xvii (describing CRT’s relationship to the Civil Rights era). For a general legal account of the Civil Rights Movement, see Mark V. Tushnet, *THE NAACP’S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950* (1987).

64. See KEY WRITINGS, *supra* note 14, at xvii-xxvii (discussing the CLS/CRT relationship). See generally Symposium, *Critical Legal Studies*, 36 STAN. L. REV. 1 (1984)(collecting various CLS works). CLS was the most proximate jurisprudential precursor to CRT; CRT was formed in

CRT experience consequently combines a basic sense of jurisprudential camaraderie with coalitional caution, which could have reinforced the early sense of ambivalence that Civil Rights history also has induced.

These promising and complicated but ultimately unfulfilling historical experiences suggested to early CRT adherents that white-identified forces espousing liberal and even postliberal viewpoints are likely to support antiracist reform vigorously only upon the perceived convergence of majority and "minority" interests.⁶⁵ More generally, these experiences suggested to CRT's founders and expositors that majoritarian forces are likely to constrict or compromise antiracist theory and action precisely when "equality" seems about to threaten in fact the existing (mal)distributions of economic and social goods. These experiences therefore may be described as recent examples of "uncritical" collaborations that have continued to influence the early outlook of outsider jurisprudence on race, law and justice. In addition to the impact of formative social circumstance and a suspicious legal culture, the disappointments of these recent historical experiences may help to explain further the early general wariness of dilution or deflection through uncritical or dysfunctional "coalitions."

C. *CRT as Nonwhite Outsider Jurisprudence: A Vehicle of Theory, Community, Both?*

Because CRT's original vision dedicated outsider scholars firmly to scholarship as well as to community,⁶⁶ this combination of developmen-

part as a result of events during a CLS conference, which included a confrontation between scholars of color and white scholars regarding race within CLS. See KEY WRITINGS, *supra* note 14, at xxiii-xxvii (describing the moment of rupture but noting a basic sense of continuing political affinity); see also Symposium, *Minority Critiques of the Critical Legal Studies Movement*, 22 HARV. C.R.-C.L. L. REV. 297 (1987) (presenting the works that explain why minority scholars broke with CLS).

65. See generally Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980). This divergence, and its consequences, are alarming from a CRT perspective because CRT is not satisfied with the atomized liberal conceptions of privilege and prejudice, nor with the liberal antidiscrimination solution of formal equality. CRT views power and subordination to be structural, rather than atomized, and it seeks material transformation, rather than formal or marginal reform. See generally KEY WRITINGS, *supra* note 14, at xvi-xxx (describing CRT's critical stance toward racialization in American law and society); see also Harris, *supra* note 29, at 759-84 (describing similar points relating to modernism and postmodernism); 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) (urging scholars of color to resist ahistoricism to avoid irrelevancy). For further description of the early CRT mindset, see John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129 (1992). For similar or allied analyses, see Alan D. Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, in 62 MINN. L. REV. 1049 (1978); Gary Peller, *Race Consciousness*, 1990 DUKE L.J. 758 (1990).

66. See KEY WRITINGS, *supra* note 14, at xxvii (explaining that, "A thorough mapping of

tal environment and historical experience was bound to influence outsider jurisprudence in both substantive and structural terms. Substantively, as just noted above, CRT workshops and texts during the first decade rarely have focused on critiques of sexual orientation and ethnicities or trans/nationality, and of their interaction with race, to produce hierarchies of power and networks of privilege both within the United States and abroad. Only in more recent years, as Phillips argues, has CRT begun to produce a body of literature reflecting this widened scope of critical inquiry and interconnection.⁶⁷ As a result, only now is the published record beginning to provide inspiration for critical coalitions across these (and other) identity categories within and through CRT specifically.

Structurally, this combination of factors or influences helped to inspire the original workshop design, which sought to carve out within the legal academy of this country a “safe space” for the incubation of antiracist critical theory by creating an intimate and controlled venue. The workshops were designed to bring together scholars of color each summer to share and exchange insights based on our reading of pre-distributed texts, and without the draining omnipresence, or immediate interference, of white privilege. This structure was designed to provide opportunities for intellectual support to fertilize CRT as scholarship, as well as opportunities for personal interaction to foster a sense of community among the participants. The workshops, in short, would be CRT’s means of re/production in both discursive and human terms.

During the nine-workshop series spanning from 1988 to 1997 based on this original model, the limited attendance of about 25-35 persons (including presenters) was determined each year by the workshop planning committees, which typically relied on attendance lists from prior years to mail invitations.⁶⁸ Consequently, access to the workshop has been “closed” as well as limited, requiring both an initial invitation and then a prompt acceptance of subsequent invitations. This design inevitably affected the scope and structure of CRT’s purpose, discourse and community, especially because the workshop planning committees themselves were not structured to promote and balance continuity with expansion from year to year.

Critical Race Theory must . . . include a discussion of the role of community-building among the intellectuals who are associated with it.”).

67. See, e.g., *CRITICAL RACE THEORY: HISTORIES, CROSSROADS, DIRECTIONS*, *supra* note 8. The related works of critical race feminists are featured in *CRITICAL RACE FEMINISM: A READER*, *supra* note 44.

68. In addition to relying on the Phillips essay, this account is based both on personal experience and on oral histories, including the 1996 presentations on early CRT workshops. See *supra* note 37; see also *KEY WRITINGS*, *supra* note 14, at xxvii (describing workshop origins).

Yet, balancing continuity and expansion in the workshops, and in their planning committees, always was important precisely because outsider scholarship dedicated itself from the outset to the cultivation of community, and also because the annual workshops were key instruments in making possible any such cultivation. In addition, the changing demographics of the legal academy, including the growing diversity of the professorate of color,⁶⁹ made the need for this balancing more acute, as well as crucial to the mission of creating community. Unfortunately, however, planning committees emerged annually largely from happenstance, leaving each year's committee with accumulated folklore and the prior year's invitation list as its main organizational tool and resource.

With the composition and the consciousness of each year's planning committee left to the vagaries of individual agency or institutional exigency, no mechanism ever was created to ensure the balances and expansions necessary to CRT's continual and collective well-being as a vanguard discourse and community. This point, and its consequences, are captured by Phillips' account of the workshops' initial encounter with "ethnicity": though the initial lapse promptly was disclaimed and followed up with a programmatic intervention the next year,⁷⁰ this history and programming did not carry forward into the future years — causing successive workshops to relive, and have to recover from, the same experience with Black/white binarism inside nonwhite outsider jurisprudence.⁷¹ In this and other instances, workshop programming, like workshop participation, lacked longterm charting and guidance to keep the workshop grounded to the original sense of community and transformation through critical legal theory and praxis. The need for multiple balances in the structure and staffing of CRT convocations, specifically to foster a multilateral sense of connection and growth among geographically dispersed and multiply diverse scholars, never was adequately theorized or institutionalized as part of the antistatutory jurisprudent project that we commissioned for ourselves.⁷²

69. During the 1980s, the academy was diversified along several identity axes, which made more evident the "rainbow" of colors that constituted the nonwhite population and professorate. For a critical discussion of these changing demographics, and their relationship to CRT and race-conscious student activism during the 1980s, see Cho & Westley *supra*, note 14.

70. Phillips, *supra* note 2, at 1251-53.

71. See *supra* notes 51-57 and accompanying text.

72. Of course, this annual experience was not constant, and Phillips' account also makes that clear in her recounting of the ethnicity story. See Phillips, *supra* note 2, at 1252. Instead, over the years, the planning and configuration of the workshops brought together different mixes of varied viewpoints on various intersectional issues, which in turn produced different workshop experiences from year to year. Some years, therefore, were "better" than others — that is, in some years more than others the workshop planners and participants strove consciously to recognize and

Because the collective learning process taking place during those years was uneven and inevitably complex, each year pressure arose anew, and accumulated, over recurring gaps or skews in the programmatic and physical aspects of the workshop. As intersections became more like fault lines, opportunities for critical insight and antistubordination allegiance among and across various overlapping outgroups became instead sources of semi-essentialized, and probably self-defeating, discord. Given these stresses, it might be a wonder that the workshops on the whole were as successful as they clearly have been, and that CRT has matured and prospered so much during this past decade as the exemplar of outsider jurisprudence: despite the above weaknesses, the nine-workshop series of the first decade did in fact provide a relatively "safe" space for CRT to unleash a discourse and congeal the beginnings of an OutCrit community.

LatCrit theory, and the "convergence chronicle" of CRT and LatCrit that the Phillips essay elaborates, provide testament to that progress, for in many ways LatCrit theory springs from the gains that CRT posted.⁷³ But to learn from this progress requires us to learn from our mistakes and to remain vigilant against their recurrence. To build on our early progress, and to account for other significant factors of ambivalence, requires us to practice antistubordination principles and antiessentialist community-building as central to the project of constructing a nonwhite outsider jurisprudence.

D. *Principle Matters: Antiessentialist Essentialism and Social Transformation in Nonwhite Outsider Jurisprudence*

Though CRT's "race" literature in particular continued to thrive during those years of uncertain transition, the original dedication to community and cause became increasingly vexed during the second half of the first decade over an ironic "antiessentialist essentialism" associated with CRT's ambivalent (non)management of increasingly diversified identities, demographics and intersections.⁷⁴ This internal(ized) form of essentialism includes the failures of intersectional bent or inquiry noted above.⁷⁵ But the early sense of ambivalence about coalitional theory and praxis juxtaposes another important factor against those historical, experiential and circumstantial stressors. This factor is a feature of CRT that no doubt is definitive of nonwhite outsider jurisprudence in both substantive and structural terms: CRT's postmodern

use as a source of strength the legal academy's changing demographics and CRT's correspondingly expanded intersectional frontiers.

73. See Phillips, *supra* note 2, at 1251.

74. I thank Jerome Culp for this wording.

75. See *supra* notes 46-57 and accompanying text.

foundation in antiessentialist analysis and antisubordination struggle.⁷⁶ This factor, unlike the ones sketched above, insisted on principle that outsider scholars resolve our intersectional fears and form critical coalitions fueled by a respect for difference in the struggle toward a post-subordination era.

In contraposition to the developmental, historical and experiential factors discussed above, the antiessentialist commitment has inclined CRT (and outsider jurisprudence) most definitely toward coalitional projects because “intersectionality” and “multiplicity” require skepticism of categorical generalization, single-axis group formations and unidimensional units of critical analysis.⁷⁷ Multiplicity and intersectionality effectively demand approaches to “race” and racism that entail coalitional moments and intersectional mindsets. Thus, while history, experience and circumstance may have tilted us collectively away from coalitional opportunities, the inclination of our antiessentialist sensibilities toward intersectional (and multidimensional) endeavors demanded them.

Additionally, outsider scholars’ foundational commitment to antisubordination praxis reinforced antiessentialism’s call for serious,

76. The antiessentialist commitment describes a refusal to homogenize units of analysis into a false monolithic experience devoid of factors such as history, context, particularity and power. CRT’s antiessentialist foundation has been secured primarily by women of color writing from a CRT perspective. For instance, both Kimberle Crenshaw and Angela Harris have questioned the reluctance of both antisexist and antiracist discourse to interrogate the intersection of race and gender. See Crenshaw, *supra* note 24; Harris, *supra* note 24. This critique has been questioned vigorously by some feminist legal scholars. See, e.g., Catherine Mackinnon, *From Practice To Theory, or What Is a White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13 (1991)(responding to Harris).

Similar antiessentialist points have been raised about sexual orientation by lesbian feminists. See, e.g., Elvia R. Arriola, *Gendered Inequality: Lesbians, Gay Men, and Feminist Legal Theory*, 9 BERKELEY WOMEN’S L.J. 103 (1994) (questioning feminist categories around sex, gender and sexuality); Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN’S L.J. 191 (1989-90) (critiquing the invisibility of minority sexual orientations in feminist analyses of law). More recently, a similar questioning has been trained on the race essentialism of gay and lesbian legal scholarship. See, e.g., Hutchinson, *supra*, note 27. Cf. Patricia A. Cain, *Lesbian Perspective, Lesbian Experience, and the Risk of Essentialism*, 2 VA. J.L. & POL’Y 43 (1994) (arguing for an unmodified, if temporary, critique of the “lesbian” condition).

The antisubordination commitment describes a postliberal insistence on substantive and structural “equality” that is meaningful to those who live oppression daily, rather than simply formal equality. See, e.g., KEY WRITINGS, *supra* note 14, at xiv-xx (juxtaposing liberal and CRT views of racial justice); Lawrence, *supra* note 52, at 824-39 (focusing on racism as a “substantive societal condition” and urging that analysis be aimed on the actual transformation of such conditions); Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987) (urging that scholars “look to the bottom” – focus on the subordinated – to ground theory, making outsider jurisprudence socially meaningful and practically relevant).

77. See Crenshaw, *supra*, note 24 (on intersectionality); Harris, *supra*, note 24 (on multiplicity).

substantive consideration of the linkages between racial and other forms of injustice. Because material reform requires savvy decisions about the politics of change, the original ambition of substantive social transformation in pursuit of justice similarly inclines outsider jurisprudence toward cross-group alliances capable of producing concrete and lasting sociolegal progress.⁷⁸ CRT's very principles and intellectual architecture thus impel us toward intersectional analyses and coalitional practices despite the historical, experiential and circumstantial record that otherwise might counsel suspicion of jurisprudential (and other) forms of coalition.

In sum, the combined impact of historical experience and formative circumstance implanted within today's community of OutCrit scholars a rationale for circumspection about the value of (at least some) coalitional projects. Yet outsider nonwhite jurisprudence from inception has been conceived and staffed by a richly and multiply diverse group of critical legal scholars with an expansive sense of social justice — a richness of ambition enhanced by the changing demographics and expanding frontiers of the past decade. In turn, this confluence of history, experience, circumstance and diversity sets the stage for a comparative look at Queer and LatCrit experiments in critical legal theory. These experiments, as explained below, present significantly different approaches to, and experiences with, antistatutory discourse and community. These differences can translate into substantive alterations of postsubordination vision, and can have a profound impact, for better or worse, on the collective capacity to realize jurisprudential community and collaboration in antistatutory struggle.

II. QUEER LEGAL THEORY, LATCRIT THEORY AND CRT: DIVERSIFYING OUTSIDER JURISPRUDENCE

Events since CRT's founding have witnessed the nascency of allied jurisprudential movements, particularly (from my perspective) QueerCrit⁷⁹

78. CRT scholars repeatedly have noted the importance of recognizing the interlocking nature of power hierarchies and social conditions. See, e.g., Charles R. Lawrence, III, *The Word and the River: Pedagogy as Scholarship as Struggle*, 65 S. CAL. REV. 2231 (1992) (emphasizing the interconnectedness of teaching, theory and politics in the creation of substantive, enduring change); Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183, 1189 (1991) (urging antistatutory analyses to "ask the other question" as a means of theorizing across single-axis group boundaries).

79. Queer legal theory describes a subject position that seeks to dismantle straight supremacy in law and society, and to oppose its mutually reinforcing interactions with other forms of oppression, including white supremacy and male supremacy. For one account of "Queer legal theory," see Valdes, *Queers, Sissies*, *supra* note 32, at 344-77. Various recent publications attest to the proliferation of this identification. See, e.g., Symposium, *More Gender Trouble: Feminism Meets Queer Theory*, 6 DIFFERENCES 1 (1994); Symposium, *Queer Subjects*, 25 SOCIALIST REV. 1 (1995); Symposium, *Queer Theory/Sociology: A Dialogue*, 12 SOCIOLOGICAL THEORY 166

and LatCrit⁸⁰ discourses. In fact, Queer legal theory and LatCrit theory come onto the jurisprudential scene at roughly the same time — during the second half of CRT's first decade — but in markedly different ways. Of these two, as recounted below, only LatCrit theory positions itself collectively and consciously as aligned with CRT under the rubric of nonwhite outsider jurisprudence. Due in part to their differences, these two developments have helped to further diversify and enrich outsider legal discourse — and to refine and elucidate the lessons that LatCrits and OutCrits might draw from comparative jurisprudential experience now and in the next several years.

A. *The Queer Position and Nonwhite Outsider Jurisprudence:
Contrasting Experiences, Mutual Lessons,
Pending Connections*

During the past few years the “Queer” denomination has been crafted to signify a self-consciously political and progressive subject position in scholarly and public discourse. The “Queer” position professes to describe a broadly-conceived antistatist posture; the “Queer” position, as initially articulated in New York, San Francisco and other early venues, explicitly stakes out antiracist, antisexist and anticlassist as well as antihomophobic commitments. Queer Nation flyers posted in New York, for instance, declared that “Being queer . . . means everyday fighting oppression; homophobia, racism, misogyny, the bigotry of religious hypocrites and our own self-hatred.”⁸¹ Thus, the distinction between “Queer” and “lesbian” or “gay” is that the former signifies — and constantly searches for — a postmodern political identification while the latter at times amount to essentialized, single-axis

(1994); see also Valdes, *supra*, at 348 n.1231 (providing additional sources on Queer discourse). As with CRT and other jurisprudential communities, this movement is multiply diverse. I therefore discuss it here as a collectivity while understanding that generality of discussion necessarily tends to oversimplify. My aim is to minimize this effect as relevant to the purpose and scope of this Afterword. See *supra* note 29.

80. LatCrit theory is the subject position that centers multiply diverse “Latinas/os” in social and legal discourse. Seeking solidarity with CRT, LatCrit theory strives to connect critiques of the Latina/o condition to other experiences and forms of subordination. See Valdes, *Poised*, *supra* note 3, at 56-59. LatCrit theory remains an embryonic enterprise, and it thus bears emphasis at the outset that its summary description in this Afterword is limited by the brevity of its record. As with CRT and Queer legal theory, I discuss LatCrit theory as a collectivity for simplicity's sake, even though I recognize that doing so can elide variety within the collective. See *supra* notes 29 and 79.

81. *Anonymous Queers, Queers Read This* (1990), reprinted in *LESBIANS, GAY MEN AND THE LAW* 45-47 (William B. Rubenstein, ed., 1993). The “Queer” subject position therefore is not limited to persons or groups who identify or are identified as sexual minority members, though at the present a substantial overlap does exist between “Queer” and persons with minority sexual orientations. See generally Valdes, *Queers, Sissies*, *supra* note 32, at 354-56 (describing the relationship of minority and majority sexual orientations to Queer positionality).

identities.⁸²

However, with the relative (and limited) exception chiefly of lesbian and bisexual exchanges,⁸³ it remains sometimes difficult to ascertain whether "Queer" legal theory actually has come into full existence specifically in legal culture. As the emergent internal critique of gay and lesbian legal scholarship argues, sexual orientation legal scholarship has elided race, ethnicity, class, and gender. Consequently, "gay and lesbian" (as opposed to "Queer") legal scholarship certainly does exist, and it has proliferated with impressive (and exciting) momentum, aided in part by the social consciousness and cultural activism of progressive Queer nationalists.

In the legal academy, this proliferation began in 1979, with the first-ever symposium on sexual orientation and the law.⁸⁴ It has grown since then, posting significant insights in fields ranging from constitutional to family law, and engaging issues of power and identity familiar to CRT, LatCrit and other lines of OutCrit inquiry.⁸⁵ This discourse undoubtedly is a useful and positive development because it attacks sexual orientation injustice and expands the body of work produced as outsider jurisprudence. But, as the emergent internal critique points out,⁸⁶ this mostly unmodified scholarship is limited by its simultaneous failure to tackle with vigor various issues opened by CRT and outsider inroads into intersectionality, multiplicity and multidimensionality.

82. Although the "Queer" reclamation stands for expansive and egalitarian antisubordination consciousness, it sometimes has been operationalized as a white and male force, which has caused some hesitation about the capacity of a "Queer" movement to practice "Queer" ideals. With this caveat, and a few others, in mind, it nonetheless seems that Queerness is a valuable construct: it provides an apt set principles to guide discourse and politics toward the practice of the posited ideals. See Valdes, *Queers, Sissies, supra*, note 32, at 360-75 (discussing reservations about Queerness, urging the net value of the construct, and offering some thoughts on Queer methods and objectives).

83. Lesbian legal theorists have pushed sexual minority legal discourse to be intersectional with regard to gender, class and race. See, e.g., Mary Eaton, *Homosexual Unmodified: Speculation on Law's Discourse, Race and the Construction of Sexual Identity*, in *LEGAL INVERSIONS: LESBIANS, GAY MEN AND THE POLITICS OF LAW* 47 (Didi Herman & Carl Stychin, eds., 1995); Isabelle R. Gunning, *Stories from Home: Tales From the Intersection of Race, Gender and Sexual Orientation*, 5 S. CAL. REV. L. & WOMEN'S STUD. 143 (1995); Cynthia Peterson, *Envisioning a Lesbian Equality Jurisprudence*, in *LEGAL INVERSIONS, supra* at 118; Ruthann Robson, *To Market, To Market: Considering Class in the Context of Lesbian Legal Theories and Reforms*, 5 S. CAL. REV. L. & WOMEN'S STUD. 173 (1995).

84. *Sexual Preference and Gender Identity: A Symposium*, 30 HASTINGS L.J. 799 (1979).

85. See Valdes, *Queer Margins, supra* note 48, at 1301-11 (summarizing the development of sexual orientation legal scholarship since the 1979 symposium).

86. In the past two years an internal critique of gay and lesbian legal scholarship has emerged, urging a more wide-ranging embrace of intersectional antisubordination analyses in this discourse. See *supra* note 59 and sources cited therein critiquing the overall failure of lesbian and gay legal scholarship to engage intersectional issues, especially those regarding color and class. Helping to rectify this neglect two law reviews recently held "intersexional" symposia on sexual orientation and law. See *infra* note 90 and symposium sources cited therein.

As with CRT, this limitation no doubt is a function of multiple factors, including, again, historical experience and developmental circumstance.⁸⁷ In particular, this limitation reflects the impact of societal white supremacy on gay (and even Queer) consciousness or discourse, and on the agendas or projects thereby generated. Thus, gay and lesbian legal scholarship, like early inquiries of nonwhite outsider jurisprudence, on the whole has failed to enter, or linger at, the intersections of race, ethnicity and sexual orientation.⁸⁸ Though both discourses espouse resolute and egalitarian antidiscrimination ideals, both have generated a body of largely unmodified work for reasons that sometimes are shared and sometimes not.

Perhaps "gay and lesbian legal scholarship" has not yet matured into "Queer legal theory" in part because it lacks certain structural supports for the exchange and dissemination of ideas, as well as for the cultivation of communities and coalitions. For instance, sexual minority scholars have not created venues like annual summer workshops or regular conferences of the sort that have helped to fuel the prior and current development of CRT and feminist legal theory and, most recently, Lat-Crit.⁸⁹ Of course, various law reviews have at times organized symposia devoted to sexual orientation and the law.⁹⁰ And the American Association of Law Schools ("AALS") in 1996 sponsored the first-ever national workshop on sexual orientation and the law.⁹¹ However, apart from the programs and gatherings of the Section on Lesbian and Gay Legal Issues during the AALS annual meeting,⁹² sexual minority legal scholars have

87. See Valdes, *Queer Margins*, *supra* note 48, at 1301-19 (discussing recent or current agendas of sexual orientation scholars and activists, and some developmental circumstances that may help explain the contents and priorities of those agendas).

88. See Hutchinson, *supra* note 27.

89. For a brief description of the workshops, see *supra* notes 68-72 and accompanying text; see also KEY WRITINGS, *supra* note 14, at xxvii (describing the community-building aspects of these annual CRT gatherings). Since its formative years, feminist legal discourse similarly has included regular gatherings designed to foster the formation of scholarly exchanges, texts and communities. See generally AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY (Martha A. Fineman & Nancy S. Thomadsen eds., 1991).

90. As noted above, the first of these was in 1979 by the *Hastings Law Journal*. See *supra* note 84 and accompanying text. Interestingly, the *Hastings Law Journal* in 1997 also became the first law review to hold a second symposium devoted to sexual orientation, a symposium that also is the first-ever devoted to sexual orientation and "intersexualities." See Symposium, *Intersexions: The Legal and Social Construction of Sexual Orientation*, 48 HASTINGS L.J. 1101 (1997); see also Symposium, *InterSEXuality: Interdisciplinary Perspectives on Queering Legal Theory*, 75 DENV. U. L. REV. 1129 (1998) (held in the same year, this symposium also takes sexual minority legal discourse into intersectional analyses).

91. This program was held in Washington, D.C during October 4-5, 1996.

92. The AALS Section on Gay and Lesbian Legal Issues was established during the 1983 AALS Annual Meeting and held its first formal meeting during the following year's Annual Meeting. Today the Section holds a program on selected sexual orientation legal issues every year during the Annual Meeting. In addition, sexual minority academics participate in the Lavender

instituted no regular form of convocation to introduce and advance critical, collective and multidimensional discussion of "sexual orientation" issues. On the whole, we have not established autonomous structures or programmatic initiatives to affect positively the conditions of our work's production, nor, more specifically, to bring into existence a Queer consciousness and community within legal culture.⁹³

This collective structural failure inevitably shapes the literature both in substance and sensibility — both as discourse and community. Gay and lesbian legal scholarship has produced a record of mostly single-axis analyses that reflect and replicate the atomized environments in which Queer scholars work due, in part, to the fact that sexual minority "communities" or networks are incipient, if not still inchoate, formations; though many factors undoubtedly contribute to this status quo, it seems that those of us writing from a sexual minority subject position have failed to articulate an advanced conception of *Queer* legal theory at least in part because we have not substantially overcome the physical and cultural conditions of psychosocial isolation that structure sexual minorityhood in the legal academy, the United States and elsewhere.⁹⁴ As with nonwhite outsider jurisprudence, Queer positionality cannot help but to reflect the conditions preceding and surrounding its emergence.

Thus, like other discursive formations, both sexual orientation legal scholarship and current articulations toward Queerness in scholarship undoubtedly have exhibited racialized, ethnicized, gendered and classed tendencies that reflect larger cultural hierarchies of privilege and posi-

Law Conference, the now-annual meeting of the National Lesbian and Gay Law Association ("NLGLA").

93. Thus, it seems clear that CRT's substantive and structural record already extends beyond the current reach of Queer — or sexual orientation — legal scholarship. Even while noting the shortcomings and costs elaborated earlier, CRT successfully has instituted and maintained regular convocations in the form of summer workshops to foster both a solid scholarly movement as well as the beginnings of a community of antistatist scholars. See *supra* notes 41-78 and accompanying text. CRT likewise has forged and advanced concepts like multiplicity, intersectionality and multidimensionality that evince a sophistication still elusive in single-axis sexual minority legal discourse. See *supra* notes 24 and 27 and sources cited therein on these and similar concepts. Yet the overall record of intersectional selectivity noted above also shows that nonwhite outsider jurisprudence, as we have crafted it to date, does not quite extend as far as the egalitarian Queer credo might take us regarding antistatist structure, scope, theory and community. See *supra* notes 46-57 and accompanying text.

94. For a solid and succinct account of sexual minorityhood's emergence in this country during the mid-Twentieth Century, see John D'Emilio, *SEXUAL POLITICS, SEXUAL COMMUNITIES: THE MAKING OF A HOMOSEXUAL COMMUNITY IN THE UNITED STATES, 1940-1970* (1983); see also Francisco Valdes, *Acts of Power, Crimes of Knowledge: Some Observations on Desire, Law and Ideology in the Politics of Expression at the End of the Twentieth Century*, 1 IOWA J. GENDER, RACE & JUSTICE 213 (1997) (discussing the use of law to suppress, and thus isolate and invisibilize, the social and cultural expression of minority sexual orientation identities).

tion.⁹⁵ Yet, in my view, Queer ideals and insights — despite their flaws and even if not yet widely practiced in legal scholarship — can aid outsider scholars' continuing learning process and jurisprudential advancement.⁹⁶ Queer values, if practiced consistently and honestly, counsel all OutCrit scholars — CRT and LatCrit included — promptly and earnestly to take up neglected or postponed intersectional issues of law, identity and opportunity.

Among these pending intersections, of course, is the interplay of white and straight supremacies in producing the specific subordination of lesbian, gay, bisexual and trans/bi-gendered persons *of color* within communities of color, including Latina/o communities, *and* throughout society generally.⁹⁷ But Queering nonwhite outsider jurisprudence demands more than the addition of sexual orientation and sexual minorities to the current jurisprudential mix; the process of Queering retains yet builds on multiplicity and intersectionality because Queer positionality requires a *multidimensional* approach to *all* deployments of oppressive power and privilege.⁹⁸ Thus, even though Queerness remains a white, male and middle-class formation in many respects, the important, distinctive and (still) under-used contribution to critical theory of Queer positionality is its programmatic emphasis on expansive antisubordination stridency. Despite the limitations of current practices, Queer positionality provides a springboard from which to envision an egalitarian postsubordination society that CRT, LatCrit and other OutCrit scholars avidly should embrace and help to establish in accordance with our antiessentialist tenets and antisubordination imperatives.

95. See Hutchinson, *supra* note 27.

96. See *supra* note 82.

97. To be incisive, this overdue interrogation must produce critical mappings of the ways in which homophobia helps to constitute communities of color, and of the ways in which those communities in turn enforce and reward compulsory heterosexuality. This assessment similarly must include critical interrogation of the ways in which homophobia within communities or cultures of color may reinforce white supremacy more broadly. The pending OutCrit project therefore calls for theorizing by and through CRT, LatCrit and other subject positions how straight and white supremacy may be multiply cross-linked, and how antisubordination scholars may help to disrupt those linkages and dismantle *both* supremacies as symbiotic features of Euroheteropatriarchy. See generally Valdes, *supra* note 17.

98. See *supra* notes 79-81 and accompanying text. Indeed, the move to multidimensionality is counseled as well by CRT's original vision of antiessentialist community and antisubordination commitment, which on its terms must include how racism and homophobia combine to oppress the lesbian, bisexual or gay members of African American, Asian American, Latina/o, native and other communities of color. This pending interrogation therefore represents a joinder and vindication of CRT gains *and* of Queer ideals in the formation of social justice discourses and communities through critical legal theory. This joinder, in nonwhite outsider jurisprudence, ideally will facilitate appreciation among all OutCrits for the relevance of sexual minorities of color to antiracist communities and agendas, thereby helping to pave new paths toward critical coalitions across lines of minority colors and minority desires.

In sum, the substantive advances in critical perspective attached to Queer positionality have been undermined by the lack of structures to foster interconnective discourse and community among sexual minority and allied scholars. Reflecting the afflictions of our larger social and legal environments, Queer theory — or, more accurately, sexual orientation legal scholarship — has been limited by collective failures of intersectional inquiry and convocation. The overall record of sexual orientation legal scholarship thereby underscores challenges and experiences paralleled, though not necessarily duplicated, in race/ethnicity-conscious outsider jurisprudence.

B. *Building LatCrit Theory: Lessons and Practices, Knowledge and Community, Aspirations and Limitations*

LatCrit theory, in some ways the most recent of these jurisprudential phenomena, offers a notably different record and model from both the RaceCrit and QueerCrit experiences. LatCrit theory is an infant discourse that responds primarily to the long historical presence and general sociolegal invisibility of Latinas/os in the lands now known as the United States. As with other traditionally subordinated communities in this country, the combination of longstanding occupancy and persistent marginality fueled an increasing sense of frustration among contemporary Latina/o legal scholars, some of whom already identified with CRT and participated in its gatherings. Like CRT, Queer and other genres of critical legal scholarship, LatCrit literature thus tends to reflect the conditions of its production as well as the conditioning of its early and vocal adherents.

Born most immediately from and during a 1995 colloquium on Latinas/os and CRT, LatCrit theory is an intervention designed to highlight Latina/o concerns and voices in legal discourse and social policy.⁹⁹ As its origins indicate, this Latina/o-identified genre of outsider jurisprudence was conceived as a movement closely related to CRT. And because it was born of the CRT experience, LatCrit theory views itself as a “close cousin” to CRT, a cousin that always welcomes CRT, both in spirit and in the flesh, to its gatherings.¹⁰⁰

But these roots include a critical assessment of CRT — this birthing reflects both the strengths and shortcomings of CRT as revealed by a Latina/o-identified critique of antiracist public discourse and legal scholarship. Molded (in part) by a critical assessment of outsiders’ substantive and structural record, LatCrit theory from its very inception has

99. The proceedings of this gathering appear in Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 LA RAZA L.J. 1 (1996).

100. See Valdes, *Foreword - Latina/o Ethnicities*, *supra* note 25, at 26-27.

been self-consciously devoted to practicing CRT's original commitments and pioneering techniques in self-critical ways. LatCrit theorists, in other words, have been determined to embrace CRT's original antisubordination insights and employ its first-decade learning curve as this project's point of departure.¹⁰¹ Not surprisingly, then, LatCrit theory has devised a conscious and critical self-conception very similar though not identical to CRT's.

Not all the "differences" (or similarities) between CRT and LatCrit can be attributed to the lessons drawn from comparative jurisprudential experience, however. Other factors inevitably influence or enable LatCrit's make-up. For example, LatCrit emerges at a time in which the demographics of the legal professorate are much more diverse than a decade ago, during CRT's initial emergence.¹⁰² Moreover, the effects of majoritarian racist/nativist backlash, and of the policy preference for formal color blindness, also have been legitimated and consolidated, both judicially and legislatively, mostly in the decade since CRT's inception.¹⁰³ And, as yet "another" nonwhite subject position, LatCrit also has been required to anticipate and navigate carefully the perennial charge of interjecting or aggravating a destructive "balkanization" within legal discourse.¹⁰⁴ These factors, in addition to the CRT experience and the various historical and other factors that affected it,¹⁰⁵ have helped to shape and give meaning to LatCrit theory today, both in substantive and in structural terms. Like CRT and Queer legal theory, LatCrit theory not only reflects but also must respond to the conflicts, circumstances and conditions that preceded and surrounded its emergence.

Also like CRT, LatCrit theory self-consciously endeavors both the creation of scholarship through community and the creation of community through scholarship. The idea of, and need for, regularized meet-

101. *See id.* at 3-7 (describing the circumstances leading up to the origination of LatCrit theory); *see also supra* note 25 and accompanying text (discussing the relationship of LatCrit to CRT).

102. In particular, the nonwhite demographics have changed dramatically. *See supra* note 69 and accompanying text.

103. While CRT conceived itself in a moment of "retrenchment" LatCrit came about in the midst of all-out cultural war. *See supra* note 45 and sources cited therein on retrenchment and backlash.

104. This charge is excitable by LatCrit's assertion of Latina/o identification and, ironically but predictably, it exploits the preexistence of CRT as the relatively established exemplar of nonwhite outsider jurisprudence. Implying that one "outsider" or nonwhite subject position tests the mainstream capacity for diversity of perspectives in legal discourse, this charge is likely to confront any other effort to activate dormant or potential forms of positionality in critical legal theory. *Compare* Phillips, *supra* note 2, at 1255 (expressing similar concerns over BlackCrit positionality).

105. *See supra* notes 41-78 and accompanying text.

ings accordingly have been integral to the constitution of LatCrit theory, and to the production of a LatCrit body of legal literature generated in connected, rather than atomized, conditions. Like CRT but unlike gay and lesbian scholarship, LatCrit theory has undertaken the construction of structural conditions conducive to these twin objectives. And also like CRT, LatCrit theory expresses this commitment to the production of both knowledge and community specifically as a means toward an end — the attainment social justice.¹⁰⁶ LatCrit theory thus seeks to combine elements of CRT's early and formal self-conception with lessons drawn from CRT's actual experience and practice to employ and develop its insights.

As crafted by its earliest proponents, LatCrit theory attempts to balance multiple factors that conjoin the production of knowledge and cultivation of community, and this balancing serves as the theoretical frame for legal reform through LatCrit discourse and praxis. From the beginning, therefore, LatCrit theorists have theorized about the purpose(s) of legal theory, and about the role of structure and substance in light of such purpose(s). In my view, these preliminary LatCrit efforts have pointed to four basic aims or functions of critical legal theory: the production of critical and interdisciplinary knowledge; the promotion of substantive social transformation; the expansion and interconnection of antistatist struggles; and the cultivation of community and coalition among outsider scholars.¹⁰⁷ As these four aims or functions indicate, a dual and coequal commitment to expansive substantive programs and to community-building structures and events underpins LatCrit theory.

This dual and coequal commitment is applied (or not) mainly in the context of the annual LatCrit conferences. Instead of CRT's series of small workshops, the annual LatCrit conferences have been open and mid-sized gatherings of about 75-135 attendees. As with CRT's workshops, these conferences meet in a different location each year, and have been the chief instrument that annually brings together multiply diverse legal scholars and friends for a critical and continuing engagement of social justice issues important, in this instance, to Latinas/os as well as to "other" outgroups.¹⁰⁸ Because these conferences are cosponsored by

106. LatCrit theory thus far has displayed a keen appreciation of the relationship between legal scholarship, politics, and power. See, e.g., Valdes, *Poised*, *supra* note 3, at 44, 49, 53 (acknowledging the political relevance of legal scholarship and, therefore, of LatCrit theory).

107. For further discussion of these four functions and their relationship to LatCrit theory, see Francisco Valdes, *Foreword - Under Construction: LatCrit Consciousness, Community and Theory*, 85 CAL. L. REV. 1087, 1093-94 (1997) [hereinafter Valdes, *Foreword - Under Construction*].

108. To date, the LatCrit gatherings include two colloquia and four conferences. The first colloquium was held in Puerto Rico in 1995 and the second in Miami in 1996. The first

law reviews, they also annually help to generate published texts that reflect this framing — this symposium being the latest case in point.¹⁰⁹ LatCrit theory therefore has been characterized by a self-instilled and self-critical sense of collectivity, situatedness and purpose, which is evidenced not only by the structuring of the annual LatCrit conferences but also by their substantive scope and focus.

The configuration of LatCrit interventions, both written and physical, thus far has been guided by a solid conviction that the social or legal position of multiply diversified Latina/o populations may be understood best — maybe only — when approached from multiple perspectives in collaborative but critical and self-critical fashion. LatCrit theory's substantive scope and focus therefore have been shaped by a firm resolve to center "Latinas/os" in social and legal discourse, but to do so in a way that foregrounds the multiple diversities of Latina/o communities and that contextualizes these issues within a broad critique of intergroup relations and outgroup positions. The structural design — featuring a wide range of attendance and participation in LatCrit programs and projects — is related to and reinforces this interconnective substantive purview. In both structural design and substantive scope, the LatCrit approach to outsider jurisprudence is calculated to nurture cross-group communities and intergroup coalitions spurred by intersectional discussions and projects that broaden, deepen and contextualize self-empowerment quests both within and beyond "Latina/o" contexts.

Perhaps most notably, the annual LatCrit conferences have been employed consciously to elucidate intra- and intergroup diversities across multiple identity axes, including those based on perspective and discipline. This expansive approach to the articulation of LatCrit theory is designed to ensure that African American, Asian American, Native American, feminist, Queer and other OutCrit subjectivities are brought to bear on Latinas/os' places and prospects under the Anglocentric and heteropatriarchal rule of the United States.¹¹⁰ Though we obviously

conference, "LatCrit I," was held in San Diego in 1996, LatCrit II in San Antonio in 1997, LatCrit III in Miami in 1998 and LatCrit IV near Lake Tahoe in 1999. The next two LatCrit conferences, LatCrit V and VI, are scheduled for Denver and for a site in the Northeast in 2000 and 2001, respectively. See *supra* note 18. For more information on these and other events, visit the (temporary) LatCrit website, located at <http://nersp.nerdc.ufl.edu/@malavet>.

109. For the LatCrit symposia, see *supra* note 18 and sources cited therein.

110. This commitment to expansiveness is reflected in LatCrit theory's written record — the symposia based on the various LatCrit gatherings published by the journals that have co-sponsored LatCrit conferences or that otherwise have held independent symposia on LatCrit theory. For instance, the symposium based on the First Annual LatCrit Conference includes 28 authors, of which (by my count) approximately 11 are non-Latina/o in self-identification. See Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997); see also *supra* note 18 and the LatCrit symposia and colloquia cited therein.

cannot train our collective attention on all diversities, issues or contexts at once, LatCrit theorists have guided the creation of holistic programs and projects to search out and progressively map Latina/o diversities and their interrelationships, aiming via this process to unpack comprehensively and critically the complexities of Latina/o subordination.

This approach consciously is designed to center not only Latinas/os and our many diversities in a manner that minimizes privileging any one Latina/o interest over another, but also to ensure critical discussion of Latinas/os as part of the larger social schematics formed in part through law. This LatCrit drive for diversity and particularity ideally will help to create an intellectual and social culture enabling the LatCrit community collectively to overcome Latina/o and other essentialisms, which sometimes stand in the way of critical outgroup and OutCrit coalitions.¹¹¹ This incremental critical effort is intended to promote and ground intra- and intergroup antisubordination coalitions by ensuring the representation and investigation within the LatCrit community of various power hierarchies and their interplay.

As coalitional method, this constant and perpetual balancing of diversities and specificities produces a “rotation of centers”.¹¹² At each gathering thus far, LatCrit programs have allocated time and prominence to intersectional issues in a manner that in effect rotates “the center” of LatCrit discourse among various, and sometimes overlapping, intra- and intergroup interests. This rotational practice effectively requires all participants to “decenter” from time to time salient identities or preferred issues to juggle our collective limited resources. The joint objective every year, and also from year to year, remains constant, even while sites and centers rotate: to incorporate as fully as possible in all LatCrit programs, as well as in the overall LatCrit record, the manifold intraLatina/o diversities and intergroup issues that affect outgroup social justice quests, including those of Latinas/os. If assessed critically and pragmatically, and if managed responsibly, this process of continual and rotational analysis is the best — if not the only — route to balancing *and* expanding from year to year the programmatic attention given to these intricate issues and to their complex interrelationships in light of the discursive demands established by postmodern, intersectional

However, the LatCrit commitment to expansiveness is not always fully evident in the published symposia based on our programs. This disjunction stems from the fact that each year some program participants do not submit a contribution for publication in the symposium. Partially because programmatic initiatives are not always reflected in the written record, LatCrit theorists have established a website, at which all LatCrit programs to date are posted. To visit the LatCrit website, see *supra* note 108.

111. See, e.g., *supra* notes 46-78 and accompanying text.

112. I especially thank my friend and colleague, Lisa Iglesias, for discussions that developed these thoughts.

insights.¹¹³

This system of rotation, however, obviously depends on a collective yet individual commitment to continuity and progression; because rotation in part means that each year's events build on those of the prior year(s), LatCrit programs and projects place a premium on repeat attendance and participation in annual or special events. To engineer the continual advancement of this discourse, knowledge and community, rotation calls for a personal and annual re/commitment to the LatCrit enterprise among an ever-fluid yet identifiable and self-selected group of scholars. The forms of commitment among the many individuals in the LatCrit community vary over time, of course. Generally, however, this commitment encompasses not only attendance and participation but also planning. Because the passage of time likely will make it progressively more difficult to sustain individual commitments across the board, the goal is to ensure a critical mass of continuity in attendance, participation and planning every year - and then to balance these levels of continuity and consolidation with incremental innovation, expansion and inclusion.¹¹⁴

Additionally, this balancing of continuity and development must anticipate and accommodate the varying levels of knowledge and experience that individual scholars bring with them to LatCrit events: inevitably, different individuals bring with them not only varied backgrounds but also varied levels of exposure to, or involvement in, outsider jurisprudence. This accommodation therefore contains both substantive and structural components, and both are reflected in LatCrit programs, which seek to blend the familiar with the novel and to represent newcomers as well as veterans. The perpetual task of the group is to create an environment where all present can access, participate and contribute to our collective act of learning and advancement through critical discourse and community. This task, of course, is never-ending, and necessarily becomes increasingly challenging with the passage of time and the expansion of the group.¹¹⁵

113. See, e.g., *supra* notes 24 and 27 and sources cited therein on postmodern analysis in outsider jurisprudence.

114. See Elizabeth M. Iglesias, *Foreword: Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community*, 53 U. MIAMI L. REV. at 575 (1999) [hereinafter, Iglesias, *Foreword: LatCrit III*] (explaining objectives of rotating centers and need for collective commitment to continuity over time to make it work).

115. Therefore, immediately after the LatCrit III conference that this symposium commemorates, the planning committee for the following year's conference began to discuss the advisability of compiling an informal "LatCrit Primer" to be distributed to conference goers each year. This Primer in fact was produced, and prepared for distribution to those who attended the Fourth Annual LatCrit Conference in Lake Tahoe, to help orient newcomers by providing an easy way to overview some explanatory LatCrit writings. See LATCRIT PRIMER (copy on file with author).

Given the diffused and nuanced nature of the decisions and considerations that underlie these group and personal commitments, only time - and effort - will determine how far LatCrit theory will (or won't) reach. In both substance and structure, LatCrit theory is an experiment-in-progress, and only time and effort will determine how far LatCrit theory actually reaches. The ultimate challenge, of course, is to persist for as long as the material conditions of subordination also persist. For the moment, it seems to be working because enough OutCrit scholars deem it worth it. The immediate and ongoing challenge, then, is to locate, excavate and rotate sites of theoretical contestation and political action to keep the LatCrit antisubordination project continuously on balance, and on the move.¹¹⁶

Finally, as this symposium shows, LatCrit theory from inception has sought collaboration with Latina/o and other law reviews. Each event to date has been co-sponsored by one or more law journal(s), which publish edited versions of conference proceedings.¹¹⁷ This feature of the LatCrit enterprise seeks to support, and build coalition with, law reviews (especially those of color) while also creating collective projects and opportunities for all participants in LatCrit programs. This particular aspect of the LatCrit venture has been tailored to provide support and community both to scholars and to journals while igniting the creation of a new field in legal literature. By producing a similarly diversified printed record of our gatherings and exchanges, this final feature of LatCrit projects advances the antiessentialist principles and antisubordination aims of this movement with respect both to community and to theory.

In some ways, then, LatCrit theory may be understood as an effort to practice Queer ideals while employing CRT insights and tools; while focusing on "Latinas/os," LatCrit theory also has embraced the Queer credo of interconnected struggle¹¹⁸ as well as the CRT methods of antiessentialist community, antisubordination analysis and regular annual convocation.¹¹⁹ Though somewhat simplified, LatCrit projects

116. LatCrit engagement of this challenge already has produced vigorous exchanges, for instance, over the relative utility of "race" and "ethnicity" as categories of LatCrit analysis. See generally Juan F. Perea, *The Black/White Binary Paradigm of Race: The 'Normal Science' of American Racial Thought*, 85 CAL. L. REV. 1213 (1997); Juan Perea, *Five Axioms in Search of Equality*, 2 HARV. LATINO L. REV. 231 (1997); Ian F. Haney Lopez, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 85 CAL. L. REV. 1143 (1997); Ian F. Haney Lopez, *Retaining Race: LatCrit Theory and Mexican American Identity in Hernandez v. Texas*, 2 HARV. LATINO L. REV. 279 (1997); see also generally *supra* note 18 and symposia and colloquia cited therein.

117. For more information about the publications corresponding to the LatCrit colloquia and conferences held in various locales since LatCrit theory's inception in 1995, see *supra* note 18.

118. See *supra* notes 99-107 and accompanying text.

119. See *supra* notes 108-115 and accompanying text.

and texts fairly may be viewed as a Latina/o-oriented fusion of Queer and CRT ideals and innovations, a fusion always being tested through time, experimentation and practice. This experiment at fusion already suggests a few tentative lessons.

III. LATCRIT NOTES ON COMPARATIVE JURISPRUDENTIAL EXPERIENCE: CRITICAL COALITIONS, ANTIESSENTIALIST COMMUNITY AND ANTISUBORDINATION CONVOCATION

As this sketch indicates, LatCrit theorists both have embraced and critiqued the structures, experiences, methodologies and ambitions set out for outsider jurisprudence by CRT's earliest exponents. During its original moments, like LatCrit now, CRT conceived itself as a community of legal scholars mounting a discursive and political intervention on several fronts at once.¹²⁰ And like LatCrit now, this early sense of CRT's collectivity — its notion of scholarly engagement and community — also was grounded in annual group experiences. In CRT's case, this grounding has been the summer workshops that annually convened a small group of scholars of color,¹²¹ and in LatCrit's case it has been the various colloquia and larger annual conferences of the past several years.¹²² The point is that both CRT and LatCrit theory, unlike gay and lesbian scholarship,¹²³ have invested in the creation of structures to promote both knowledge and community, and to enable the sustainability of both. From my perspective, LatCrit theory is most like CRT, which conceived itself in ways now claimed by the LatCrit project.

But the LatCrit experiment also has embraced and pursued the same kind of expansive antisubordination sensibility that defines Queer ideals.¹²⁴ This sensibility of course is fully consistent with CRT's breakthroughs in intersectionality, multiplicity and antiessentialism as antisubordination insights.¹²⁵ It also is consistent with LatCrit's efforts to learn from CRT's record of intersectional selectivity and coalitional ambivalence.¹²⁶ LatCrit positionality thus reflects both CRT and Queer influences in substantive and in structural terms — as well as critical and self-critical reflections on those influences and their lessons.

Consequently, LatCrit theory's original determination to benefit from a critical understanding of comparative jurisprudential has produced significant substantive and structural variations specifically

120. See generally *supra* note 65 and accompanying text.

121. See *supra* notes 68-72 and accompanying text.

122. See *supra* notes 108-115 and accompanying text.

123. See *supra* notes 89-96 and accompanying text.

124. See *supra* notes 78-81 and accompanying text.

125. See *supra* notes 24-27 and accompanying text.

126. See *supra* notes 46-57 and accompanying text.

between LatCrit theory and CRT. These variations help to map some of LatCrit's contributions to the development of nonwhite outsider jurisprudence. The above account points to four distinct yet overlapping areas of substantive or structural variance.

First, LatCrit gatherings have been aggressively "open" to promote wide-ranging, self-selected and diverse participation, whereas CRT's workshops have been "closed" to foster an intimate, intense and trained discursive climate.¹²⁷ Second, LatCrit discussions from the outset have included sexual orientation proactively both in the form of bodies and ideas, whereas CRT ambivalence has overlooked or resisted the implications raised for it by this particular intersection.¹²⁸ Third, LatCrit conferences have placed a high priority on programmatic diversity specifically along race, color, ethnicity and trans/nationality, whereas CRT has looked chiefly to "domestic" domains of subordination and has practiced diversity along these lines in relatively haphazard or ephemeral ways.¹²⁹ Fourth, LatCrit programs and their advance planning consciously incorporate, and depend on, a group ethic of individual and collective continuity to ensure both memory and progress in the articulation of LatCrit theory as antisubordination praxis, whereas the annual workshop planning process was relatively ad hoc.¹³⁰

However, at this early juncture, perhaps the fundamental difference between the CRT and LatCrit experiences is that LatCrit theory has placed a greater emphasis on, or has displayed less ambivalence toward, the role of coalitional endeavors as a core aspect of nonwhite outsider jurisprudence.¹³¹ This LatCrit enthusiasm for coalition and inclusion in both substantive and structural terms may be due to LatCrit naivete about the Civil Rights and CLS experiences,¹³² or to savvy recognition of political pragmatics,¹³³ or to a combination of these and other factors.

127. See *supra* notes 68-69 and accompanying text.

128. See *supra* notes 46-50 and accompanying text.

129. See *supra* notes 51-57 and accompanying text.

130. See *supra* notes 69-72 and accompanying text.

131. Indeed, as described above, intra- and intergroup, coalitional sensibilities have been foundational to the design of LatCrit programs and projects. See *supra* notes 107-113 and accompanying text. At the core of LatCrit theory has been the earnest *practice* both formally and functionally of intersectionality, multiplicity and multidimensionality across ethnicity, sexual orientation, trans/nationality, and other lines of identity and inquiry. Thus far, LatCrit enthusiasm for both the substantive and structural practice of multidimensionality has put in motion a promising, though imperfect, experiment in the articulation of a critical legal theory and the cultivation of a diverse scholarly community that self-consciously inclines nonwhite outsider jurisprudence toward an OutCrit movement. For elaboration of "OutCrit" positionality, see Valdes, *Outsider Scholars*, *supra* note 17; see also *supra* note 21.

132. See *supra* notes 63-66 and accompanying text.

133. LatCrit commitments to critical coalitions stem in part from a recognition that racial and ethnic (as well as sexual) minorities are outnumbered and outpositioned in the United States, specifically, and that social and legal transformation will depend in part on our collective capacity

Whichever it may be, the LatCrit experiment invites OutCrit scholars concerned with our collective progress to consider whether, and how, the success of outsider jurisprudence and community can be influenced, perhaps profoundly, by the design and operation of antisubordination interventions. In my view, a key lesson of the LatCrit experience thus far is that the balancing of diversity *and* continuity, expressed through individual and collective choices over structure and substance made and remade annually, may be a fundamental requisite to the long-term viability of nonwhite outsider jurisprudence as both discourse and as community.

To be sure, no one approach to the continuing development of outsider jurisprudence is necessarily or absolutely the most productive in all circumstances. But the substantive and structural variances noted throughout this Afterword in the RaceCrit, QueerCrit and LatCrit contexts cumulatively can generate significantly different experiences of discourse, community and coalition. For instance, having taken critical stock of the dangers signaled by CRT's avoidance of sexual orientation,¹³⁴ LatCrit theory's commitment to intersectional discourse and antiessentialist community has led it proactively and programmatically to showcase issues stemming from known or discovered sources of difference.¹³⁵

Each time thus far, LatCrit programs have featured with intentional prominence active sources of group tensions and/or the prior gathering's most contentious controversies: at the first colloquium in 1995 the point of contentious engagement was intraLatina/o ethnic and racial difference; at LatCrit I it was gender and patriarchy within Latina/o culture; at LatCrit II it was the significance of religious and sexual traditions in Latina/o lives; and, this year, at LatCrit III, it was Blackness in LatCrit theorizing and events. These critical incursions into intra- and inter-group sources of difference, whether spontaneous or programmatic, pose no automatic danger to knowledge and community — if guided by an overarching ethic of mutual care and responsibility.¹³⁶

to influence majoritarian processes. See generally Valdes, *Beyond Sexual Orientation*, *supra* note 11, at 1426-43 (describing the tactics and strategies of majoritarian power in the context of today's cultural war).

134. See *supra* notes 46-50 and accompanying text.

135. For instance, a prolonged discussion of "religion" erupted spontaneously at the Second Annual LatCrit Conference in San Antonio, Texas. Even though those exchanges were not part of the official program, they became the basis for a series of essays in the symposium based on that conference. See Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 UCLA CHICANO-LATINO L. REV. 1 (1998). The role of religion and spirituality in Latina/o lives and in LatCrit theory then was formally included in the program for the Third Annual LatCrit Conference in Miami, Florida. To review the LatCrit III program, see *supra* note 108 and the address to the LatCrit website provided therein.

136. See Iglesias, *Foreword: LatCrit III*, *supra* note 114, at 575-85 (observing how and why

On the contrary, such engagements are the means through which multiply diverse OutCrit theorists join in the direction and evolution of LatCrit discourse and other genres of outsider scholarship.¹³⁷ At its best, this multilateral process of reciprocal and self-critical re/engagement re/invigorates the LatCrit community to craft antisubordination theory that reflects the synergies of our diverse positions, respective ideas and joint labors. However, these examples also illustrate how the issues that have afflicted outsider jurisprudence generally, and have caused coalitional ambivalence at key moments in our collective past, also can tend to surface now in LatCrit venues or contexts — despite the years of convocation and exchange that should yield an ever-improving, collective capacity to negotiate effectively and efficiently these increasingly familiar issues.

The race/ethnicity discussions at LatCrit conferences, for example, illustrate the power of white supremacy's dangerous legacies of division, as well as the danger of entrenched categorical racial/ethnic hierarchies, within and beyond Latina/o communities.¹³⁸ The gender discussions similarly illustrate the potential for LatCrit redeployment of oppressive structures unless confronted consciously and programmatically from year to year so that progress sticks.¹³⁹ The religion exchanges illustrate the potential or tendency within LatCrit gatherings and projects to essentialize identity along one axis or another in accordance with culturally

LatCrit III demonstrated the possibility and necessity of collectively addressing controversial topics in a caring, respectful and community-building manner).

137. As CRT's experience with sexual orientation suggests, prolonged avoidance of intersectional analyses that defy the demographic and social realities of the communities for which we purport to speak simply cannot withstand critical self-scrutiny under antisubordination principles. *See supra* notes 46-50 and accompanying text; *see also* Phillips, *supra* note 2, at 1248-51.

138. The polyethnic and polyracial makeup of "Latinas/os" prompted the initial discussion of panethnic practices and possibilities at the original colloquium (and at LatCrit I). This discussion began an ongoing exploration of color and culture among and beyond Latinas/os via LatCrit conferences. Most recently, as this symposium illustrates, this ongoing exploration has ventured programmatically into the complexities of Indian identities, *mestiza/o* roots and Blackness in Latina/o, African-American and indigenous communities. While imperfect and incomplete, this ongoing exploration has taken original issues of intraLatina/o difference as an opportunity both to produce knowledge and cultivate community; by articulating racial/ethnic difference as a site of antiessentialist, antisubordination praxis, LatCrit theorists have sought to disrupt patterns of racial/ethnic hierarchies within Latina/o as well as other communities, *and* to form color-conscious critical coalitions within and between those communities.

139. The gender discussion at LatCrit I and since then has revolved around the place and position specifically of Latinas in the LatCrit project, and queried whether that place and position would reflect the androsexism of Latino (and Anglo) culture(s) generally. This early engagement has produced both plenary discussion and small-group Latina conversations, as well as a collective commitment to sex/gender intersectionality at LatCrit's inception. As a result, gender has been structurally and substantively integral to all LatCrit programs. This engagement has not triumphed over androsexist internalizations, but it incrementally has helped to bring them into sharp relief as one step toward combating even their unconscious traces.

prevalent hierarchies or personally familiar arrangements.¹⁴⁰ Clearly, these moments of contestation challenge the collective LatCrit enterprise in complex ways that affect antisubordination vision and purpose.¹⁴¹ LatCrit theory, like CRT and other genres of outsider jurisprudence is not — and cannot be — immune to the forces and influences of our times. This lack of immunity is, again, precisely why *all* OutCrits must be alert to the lessons that we might be able to glean from CRT's groundbreaking work on antisubordination substance, structure and community. Ultimately, the recurrence of these issues in various outsider settings is why LatCrit and other OutCrit theorists must cognize, and confront collectively, the lessons embedded in comparative jurisprudential experience.

As this brief accounting suggests, LatCrit theory's embryonic process of re/creation and re/development strains our collective capacity to operate at our best. And, as LatCrit III confirms yet again, every time we meet our exchanges progressively challenge our sense of commonality as well as our mutual commitment to critical knowledge *and* scholarly community in antisubordination struggle. Faced with the eruption of these structural and cultural issues during these formative and tentative times, the LatCrit community has elected to grapple both reactively and proactively, *but always programmatically and always for the long term*, with these and other compelling or competing claims on our time and energy.¹⁴²

140. The religion discussion, which erupted at LatCrit II and has been pursued programmatically since then, has revolved around the historic predominance of a particular church — Roman Catholicism — in Latina/o communities. This ongoing discussion has helped LatCrit theorists to underscore the differential impact of that predominance on “different” elements of the LatCrit and Latina/o population. Most notably, this discussion has allowed LatCrit theorists to begin examining the differential impact of Christianity on white, male, straight, affluent European elements of Latina/o communities on the one hand and, on the other, indigenous, mestiza/o, poor, nonWestern, nonCatholic, female and sexual minority elements of the same communities. This engagement similarly produced much spontaneous discussion, and revealed not only additional complex diversities among Latina/o and LatCrit populations, but also the variety of agendas that demand theoretical and practical LatCrit attention. This variety spells both difficulty and opportunity for LatCrit scholars, and compels our continuing interrogation of religion and its social effects.

141. See generally Iglesias & Valdes, *supra* note 10 (discussing in a critical and self-critical way how LatCrit antisubordination agendas may be composed in light of Latina/o diversities and the complexities of social and legal analysis).

142. A key LatCrit practice when confronted with these issues has been to center them in forthcoming programs *and in multi-year time frames*. This long-term programmatic response is key because it aids us collectively to excavate more thoroughly neglected sources of antisubordination knowledge, as well as to engage in a process of discourse that can help to rectify sources of community disorganization. Because of its long-term nature, this programmatic response helps to produce knowledge and cultivate critical coalitions at once. But this programmatic response also makes for some bumpy rides. See *supra* notes 135-139 and accompanying text.

Time and experience increasingly will test LatCrit theory's collective ability and determination to make necessary adjustments and continual advances. For the moment, it seems to be working precisely because of the commitment to community — precisely because most LatCrit theorists individually are committed as a matter of group ethics to confronting and processing in a constructive and programmatic manner the substantively “hard” moments that intersectional attention to diversity oftentimes tends to produce. Given the nascency of LatCrit theory, even a tentative prognosis about this movement's ability to travel increasingly intricate diversity terrains is difficult. But, as with CRT, the LatCrit commitment — and promise — is to sustain this experiment for as long as our human, intellectual and other resources permit, and as part of our collective and continuing journey toward a postsubordination order.

IV. TOWARD A POSTSUBORDINATION ORDER: LATCRIT THOUGHTS ON RACE, ETHNICITY AND EXPERIENCE

These comparative notes on antistubordination experience depict jurisprudential developments that have taken place both before and since the origination of LatCrit theory as a self-conscious subject position in the legal academy of the United States. As a set, these comparative experiences have much to teach us about the possibilities of an OutCrit¹⁴³ formation and agenda through critical coalitions and coalitional method. Our collective record to date can and should help to inform future OutCrit choices over substance, structure, community and coalition in the service of antistubordination struggle. But the LatCrit experience, in particular, does not beckon CRT (or any other formation) simply to mirror its substantive or structural designs. Nor does the LatCrit experience beckon LatCrit satisfaction or complacency. Instead, the variations between LatCrit, CRT and Queer experiments in outsider jurisprudence raise new possibilities — and perhaps tensions — for all OutCrit theorizing as a form of antistubordination praxis.

A. *From Comparative Experience to OutCrit Praxis: RaceCrits, LatCrits and Reconstruction from Within*

As the Mutua essay in particular shows, one set of OutCrit possibilities and tensions suggested by LatCrit's brief record revolves around the value of shifting away from uncritical replication of conventional Black/white binarisms and toward a “white-over-Black” paradigm, which may be better suited to critical excavation of the interactive similarities and differences that situate varied nonwhite groups against, and

143. For a brief description of “OutCrit” perspectivity as used in this Afterword, see *supra* note 21.

under, white privilege.¹⁴⁴ From a LatCrit perspective, the difference between the two approaches is great: whereas the former ultimately represents a bipolar caricature of racial heterogeneity and subordination, the latter highlights how all racial hierarchies systematically valorize whiteness and demonize Blackness, both in intra- and intergroup settings. Nonetheless, the self-reflective essays of this symposium illustrate how this shift can backfire as antisubordination method if not conducted critically and self-critically, and in coalition with African American and other scholars.¹⁴⁵

But, as those essays also indicate, these difficulties relate more to manner and tone than to substance, for the shift (or expansion) and its substantive value to nonwhite outsider jurisprudence ultimately are not contested;¹⁴⁶ rather, those essays rightly remind LatCrits that, as OuCrits, we proactively must ensure that historic hierarchies are not replicated, validated or reinforced by the manner of its execution.¹⁴⁷ This insistence, of course, itself cannot be contested in the context of critical coalitions as vehicles toward a postsubordination order — not under an approach to this shift that is congruent with and disciplined by the antiessentialist and antisubordination principles that help to ground LatCrit theory.¹⁴⁸ Thus, the LatCrit deconstruction of the paradigm and its effects on our understanding of “race relations” has undergone several stages of development and refinement during the past three years, a process of investigation and adjustment intended to ensure that this shift takes place in a principled and coalitional manner.¹⁴⁹

144. See Mutua, *supra* note 2, at 1190-201.

145. For instance, the Phillips and the Mutua essays both raise a concern that LatCrit deconstruction of the traditional paradigm is, or appears to be, antagonistic or indifferent to African American positionality in the United States, both historically and presently. See Phillips, *supra* note 2, at 1253-54; Mutua, *supra* note 2, at Part II.

146. See, e.g., Mutua, *supra* note 2, at 1179-80. (“The aspects of American racial reality that are accurately captured in the “White Over Black” paradigm must not be ignored even though the [traditional] paradigm is inadequate to describe all dimensions of the experiences of various American peoples of color.”)

147. For similar cautionary warnings, see Leslie Espinoza & Angela P. Harris, *Afterword – Embracing the Tar-Baby: LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1510 (1997), 10 LA RAZA L.J. 499 (1998); John O. Calmore, *Our Private Obsession, Our Public Sin: Exploring Micheal Omi’s ‘Messy Real’ World of Race: An Essay for ‘Naked People Longing to Swim Free’*, 15 L. & INEQUALITY J. 25 (1997).

148. See generally Iglesias & Valdes, *supra* note 10, at 513 (applying those basic precepts to LatCrit theory).

149. The first step in this deconstructive process, of course, was centering the traditional paradigm and its misuses. But since then our collective learning process has led to the recognition of the paradigm specifically as an apparatus of white supremacy and of its cultural roots in the exceptional history of Black subordination in this country. More recently, our collective learning process has led to a growing acknowledgement that this traditional, domestic-centric paradigm may tend to occlude the transnational characteristics that mark Latina/o communities. Even more recently our collective learning process led us to confront the erasure of indigenous and mestiza/o

These recent exchanges and developments have not, nor could they have, extracted definitive answers to the questions of identity, law and society that have occupied LatCrits for the past three years, for the questions raised specifically by the interaction of “race” and “ethnicity” are heavily freighted — whether or not approached from a paradigmatic perspective. But these exchanges and developments have helped to begin clarify, and guide, LatCrit theory’s approach to white supremacy and its effects on racialized as well as ethnicized categories: “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.”¹⁵⁰ The result of these exchanges, at least for the moment, has been a programmatic, critical and long-term approach to the study of white supremacy and privilege that regards “both race and ethnicity [as] necessary components of LatCrit antisubordination analyses.”¹⁵¹

Moreover, LatCrit theory’s re-centering of this particular intersectional topic may be helping raise awareness of Blacks as an “ethnic” as well as a racial group. By way of example, the Roberts essay narrates an experience during the LatCrit II conference, in which she and other conference participants “discovered that most of the Black people [at LatCrit II] there were of West Jamaican descent.”¹⁵² Having made that discovery, they “gathered together to share stories of [their] common background.”¹⁵³

Substantively, Roberts’ observation of this discovery implies more than can be unpacked in this Afterword, and thereby leaves pending provocative questions for a continuing LatCrit (and RaceCrit) interrogation of race and ethnicity as overlapping but not necessarily coterminous categories. What, for instance, does the “discovery” of West Indian commonality among the Blacks at a LatCrit venue suggest about nonwhite outsider jurisprudence as a whole? May it indicate that LatCrit can help to provide a new opportunity for Blacks who live in the United States to explore and reclaim nonAnglo “ethnicity” as elemental to Black identity,

communities both by the paradigm and our earlier stages of critique. See Iglesias & Valdes, *supra* note 10, at 562-66 (describing this evolution). Now, as this symposium shows, our collective learning process has reached the point of yielding a renamed paradigm as well as a refined sense of its applicability and explanatory power. See *supra* notes 51-57 and accompanying text. These successive stages of deconstruction represent remarkable critical progress in the context of nonwhite outsider jurisprudence. However, these essays and their specific concerns make plain that this work is far from done.

150. Valdes, *Foreword - Under Construction*, *supra* note 107, at 1108, 22.

151. *Id.* at 1110, 24.

152. Roberts, *supra* note 2, at 861-62.

153. *Id.*

including African American ethnic identities? Does it suggest that both African American and nonAfrican American Blacks in this country, like Latinas/os, are a racialized *and* polyethnic grouping?¹⁵⁴ Does it suggest that both groups remain dominated by the ethnicized legacies of their colonial conquerors — for Latinas/os the Spaniard, for African American Blacks the Anglo and, in any event, for all Blacks and Latinas/os the “white” European? If so, can these lines of inquiry open up new understandings of “Blacks” and “Latinas/os” as postcolonial groups similarly yet differently racialized *and* ethnicized? Can these new understandings allow us to reconceive the possibilities and pivot points of Black-Brown critical coalitions that today may seem more like pipe dreams due to issues of “difference” and identity?

Whatever one imagines the ultimate answers to these questions should be, “the ‘race’ versus ‘ethnicity’ discussion is precisely the sort of substantive expansion that LatCrit theory can produce to existing critical legal discourses” about white supremacy and its ill effects on non-white and/or nonAnglo communities.¹⁵⁵ In effect, then, the ongoing effort to transcend critically and collaboratively the traditional paradigm in both word and deed has been a process of reconstructing our collective experience with, and understanding of, race and ethnicity. It is a process that can help RaceCrits and LatCrits reconstruct the meaning of race and ethnicity personally as well as intellectually, and from within — by and through the practices and principles that we choose to adopt and disseminate in critical coalitions to dismantle white supremacy and privilege. Our collective development of knowledge and community through nonwhite outsider jurisprudence can transform our experience of race and ethnicity, as well as our vision of these constructs in a post-subordination society, and this reconstructive process is a form of Out-Crit praxis that can help enlighten and empower all communities disfavored by the paradigm’s predilection for whiteness.

Because the value of this shift, if properly handled, does in fact resonate *within* African American as well as other racialized communities — including Queer and Latina/o communities — this reformulation of the traditional paradigm underscores a basic but crucial point: antiracist transformation in a white-majority, white-controlled yet multicultural society depends in part on antisubordination collaboration built through critical recognition and mutual resistance of white power’s *mul-*

154. See, e.g., Iglesias, *Out of the Shadow*, *supra* note 56 at n.63-64 and accompanying text (noting need for critical analysis to center the particularities of transnational and intersectional Black identities in both LatCrit and CRT); Iglesias, *Foreword: LatCrit III*, *supra* note 114 at n.104-17 and accompanying text (asserting necessity and exploring implications of critical discourse engaging particularities of Black subordination from an anti-essentialist perspective).

155. Valdes, *Foreword - Under Construction*, *supra* note 107, at 1110, 24.

tipte manifestations. The engagement of ethnicity and the shift to the “white over Black” formulation of the traditional paradigm thereby may help substantively and discursively to bring us all closer to OutCrit perspectivity. These moves can help bring into focus the common yet variegated antisubordination interests that spread *across* conventional lines of identity, theory and community.

Related to these moves are other possibilities and tensions that arise from LatCrit interventions in, and contributions to, the continuing evolution of nonwhite outsider jurisprudence. In just three years, for instance, LatCrit theory has helped to highlight in the context of nonwhite outsider jurisprudence the relevance of trans/nationality, language, culture and religion to “race”¹⁵⁶ and to the sociolegal processes of racialization.¹⁵⁷ These early and continuing contributions also call for critical appreciation of the antisubordination issues that spring from the cultural and economic relationships that historically and presently link domestic communities of color to their overseas kin.¹⁵⁸ These lessons therefore help to center in nonwhite outsider jurisprudence the global and international dimensions of domestic social justice agendas.¹⁵⁹

Perhaps most centrally, the emergence of LatCrit theory has prompted possibilities and tensions that implicate questions of structure, theory and community in the continuing development of nonwhite outsider jurisprudence. In fact, a key structural question that these essays raise is how the pending work of sharpening and advancing nonwhite outsider jurisprudence should be approached and conducted in the coming years. Or, more specifically, how LatCrit, RaceCrit and allied scholars should design and create spaces and institutional structures to maximize our collective resources and antisubordination punch. In the context of nonwhite outsider jurisprudence, the question is how LatCrit theorists might work with RaceCrit and all other antisubordination theorists to craft critical coalitions that are both principled and potent.

156. See generally *supra* note 18 and sources cited therein on LatCrit symposia.

157. See generally Ian Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication and Choice*, 29 HARV. C.R.-C.L. L. REV. 1 (1994); IAN HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996).

158. See generally Romany *supra* note 51, at 49 (discussing the “local character” and “North American face” of nonwhite outsider jurisprudence); see also Berta Esperanza Hernandez-Truyol, *Building Bridges: Bringing International Human Rights Home*, 9 La Raza 69 (1996) (urging the interconnection of the “domestic” and the “international” in antisubordination analyses of law and society); Iglesias, *Out of the Shadow*, *supra* note 56 (reflecting on significance of Latina/o transnational identities in the articulation of LatCrit legal theory).

159. See Elizabeth M. Iglesias, *Foreword – International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997).

B. *Particularity, Solidarity and Outsider Jurisprudence:
Re/imagining the Structures of Antisubordination*

Of course, the future form, scope and direction of coalitionality through nonwhite outsider jurisprudence is a topic of fundamental importance, especially in light of our collective recent past.¹⁶⁰ As the comparative record sketched above strongly indicates, the varied experiments mounted by CRT, Queer and LatCrit in recent years jointly point to a common lesson: decisions and actions regarding the means and models of convocation can affect profoundly the project of cultivating *both* a diversified discourse and a community grounded in outsider normativities and dedicated to antisubordination transformation. Whether we meet as critical legal scholars or not, or how and how often, will affect — for better or worse — the knowledge *and* community that we produce, as well as the conditions for the production of future knowledge and community. A baseline lesson that comparative experience should teach us all is that regularized meetings are a must — convocation is a predicate of collectivity and sustainability.

The question, therefore, really is not “if” but how, when, where and with whom we should or will meet — given our antisubordination purposes and antiessentialist principles.¹⁶¹ The symposium essays discuss helpfully concrete suggestions of possible options. One, explored programmatically at LatCrit III, is reflected in the Roberts essay and its postulation of a BlackCrit subject position.¹⁶² “We should think more about a BlackCrit Theory that develops a notion of a Black identity that is not rooted in biology,” writes Roberts.¹⁶³ In this view, “BlackCrit” signifies a position from which to explore the ethnic and other diversities of Black communities in the United States, and of the ethnic and racial dis/continuities that dis/connect African Americans from the global diaspora of Black communities.¹⁶⁴ Ideally, then, BlackCrit theorizing progressively articulates Black particularities in intra- and inter-group frameworks.

But the effort to articulate a BlackCrit position, Phillips warns, might veer into a form of “regressive Black nationalism” that would reject multidimensional approaches to antiracist projects, and that thereby would undermine our collective progress toward “resisting all

160. See *supra* notes 41-116 and accompanying text.

161. From a LatCrit perspective, these twin precepts, and associated concepts or techniques, always should anchor critical analyses of social and legal power relations, and of their effects on human lives and hopes. See Iglesias & Valdes, *supra* note 10, at 513-15.

162. See Roberts, *supra* note 2, at 855.

163. *Id.* at 862.

164. See, e.g., *supra* notes 150-156 and accompanying text.

forms of oppression.”¹⁶⁵ In effect, such a regression might seek to assert, this time intentionally and ideologically, lapses akin to those recorded in our collective experience with outsider jurisprudence.¹⁶⁶ “[W]ithout the discipline that would be provided by working with people who come from other subject positions, there would be a substantial danger that a black nationalist formation would degenerate into the regressive type,” explains Phillips.¹⁶⁷

First, we should note that this concern over “regressive nationalism” is applicable, if at all, not only to African Americans, but also to Latinas/os and, probably, to other race/ethnicity groups as well. This point is aptly illustrated by the Johnson and Martinez essay, which describes nationalist moments in the evolution of Chicana/o studies that denied the relevance or salience of diversities and issues based on gender and sexual orientation.¹⁶⁸ This point is powerfully confirmed by Montoya’s contribution to this symposium, which recounts the fitful history of Chicana/o studies in much the same spirit that this Afterword sketches a similar history among RaceCrits, QueerCrits and LatCrits.¹⁶⁹ Thus, the “discipline” provided by diversity is one of the safeguards that LatCrit has adopted, in part, for this reason.¹⁷⁰

But Phillips’ concern underscores a basic point that merits our emphatic remembrance: the concrete interventions of nonLat LatCrits show that LatCrit today would be a very different phenomenon had we at the threshold conceived this project otherwise. Last year, at LatCrit

165. See Phillips, *supra* note 2, at 1255.

166. See *supra* notes 46-57 and accompanying text.

167. See Phillips, *supra* note 2, at 1255.

168. See Johnson & Martinez, *supra* note 1.

169. See Montoya, *supra* note 1, at Part II.

170. It is this diversity, and the tensions that go with its salutary discipline, that raise questions like those reported in Mutua’s essay from the LatCrit III conference: whether, for example, LatCrit III lacked “Lat” – or, for that matter – “Crit.” See Mutua, *supra* note 2, at 1185; see also Iglesias, *Foreword: LatCrit III*, *supra* note 114 at n.112-114 and accompanying text (noting and responding to these criticisms). We should expect (but not fear) more of the same – at least for so long as LatCrit continues to profess and practice its antiessentialist and antistatist grounding: because LatCrit theory pushes for rotating centers programmatically and for implementing diversity structurally across multiple levels, questions about our collective focus or anchor are bound to come up and recur. In fact, their appearance at LatCrit III was itself a recurrence, as substantively similar questions came up at the very commencement of this enterprise – in the early stages of planning for LatCrit I. At that time, a threshold question was consciously confronted: whether LatCrit would be “open” and, if so, to what extent. A “closed” or nondiverse environment was consciously rejected in favor of the current model directly as a result of the earlier CRT experiences recounted above. See *supra* notes 68-72 and accompanying text. Since then, the kind of self-aware questioning reported in Mutua’s essay has committed LatCrit collectively to an ethic of balance demonstrated by practices such as rotating centers and, now, shifting bottoms. See *supra* notes 111-115 and accompanying text. Moreover, since then, nonLat participation in LatCrit has been consistently crucial to our collective advances, as the Mutua, Phillips and Roberts essays, among others, exemplify in this symposium.

II, for instance, the self-critical eruption over religion and Latina/o religious essentialism arose initially from a nonLat participant, and then attracted a tremendous amount of attention from the Lats.¹⁷¹ At LatCrit I and since then, as the essays of this symposium again illustrate, race/ethnicity exchanges have been immeasurably enriched by nonLat contributions. Thus, in addition to fostering more incisive exchanges and promoting a sense of community grounded in antisubordination commitment, LatCrit's diversification has provided a self-imposed, self-activating disciplinary mechanism that helps keep us grounded, critical and self-critical in the moments that count most — that is, in the moments when our idiosyncratic or situational limitations tend to lead us astray. When those lapses of self-awareness descend upon us, diversity's discipline is activated by the prompt interventions of others in the room that keep us collectively honest. These moments provide the epiphanies of coalitional method, and help to develop patterns of LatCrit praxis for possible application to other sociolegal arenas that, like outsider jurisprudence, require ongoing negotiation of intergroup relations.

Moreover, this record of diverse involvement in the conception and advancement of LatCrit theory suggests that coalitional method, guided by a purposeful sense of OutCrit perspectivity, can serve as devices for critical coalitions based on antisubordination purpose and antiessentialist analysis. Indeed, these diversified interventions and exchanges, and their impact on the collective LatCrit consciousness and written record, effectively have helped to set the stage for further outsider advances, and to foster the relationships and exchanges that might lead next or soon to OutCrit perspectivity among LatCrit and allied scholars. Perhaps the jurisprudential and experiential continuum that links RaceCrit to LatCrit can lead both genres of scholarship toward an "OutCrit" subject position¹⁷² as the next step in our collective development of a progressive nonwhite outsider jurisprudence.

To Phillips, however, the primary question at this juncture is not theoretical but institutional; her concerns over regressive nationalism are raised more by the prospect of institutionalizing a "separate BlackCrit organization" than by theorizing or articulating a BlackCrit position in nonwhite outsider jurisprudence.¹⁷³ This emphasis on organization of course is absolutely warranted by comparative jurisprudential experi-

171. See Nancy K. Ota, *Falling from Grace: A Meditation on LatCrit II*, 19 UCLA CHICANO-LATINO L. REV. 437 (1998). That intervention produced a cluster of essays devoted to religion in LatCrit II in that year's symposium. See *Religion and Spirituality in Outsider Theory: Toward a LatCrit Conversation*, *id.* at 417; see also Iglesias & Valdes, *supra* note 10, at 511-55 (discussing critical antisubordination analyses of religion in LatCrit theory).

172. For further description of the OutCrit position as envisioned here, see *supra* note 21.

173. See Phillips, *supra* note 2, at 1255.

ence among RaceCrits, QueerCrits and LatCrits: our collective experience demonstrates that choices about structure are integral to the content of knowledge, discourse, and community, and confirms that questions of organization and institutionalization are integral to the project's long-term sustainability. More specifically, our collective experience suggests that the prospects of critical coalitions and OutCrit perspectivity similarly depend upon the choices we make now and in the future about structure, organization and institutionalization.¹⁷⁴

In effect, the self-reflective essays presented above call upon all RaceCrits and LatCrits to consider and decide collectively how we next should re/structure and re/articulate the advancement of nonwhite outsider jurisprudence in the United States with OutCrit perspectivity, through critical coalitions, and in light of our experiential record and its lessons. If past experience is any measure, that collective consideration will present both dangers and opportunities. It also will present tough issues of resources, human and otherwise, as well as ground rules and terms of engagement. To expand the possibilities, and to affirm Phillips' focus on convergence and advancement in outsider jurisprudence, this Afterward closes with a few tentative thoughts on the relationship of comparative jurisprudential experience to OutCrit perspectivity and critical coalitions.

C. *Beyond Comparative Experience: A Progressive Jurisprudence of Color, Queer Positionality and OutCrit Perspectivity*

The concerns over regressive nationalism that Phillips has raised, and their general relevance to other groups, call for critical skepticism of convocations delineated only or mostly by biologized notions of identity, including identities based on race and/or ethnicity.¹⁷⁵ Yet, the object of our critical and self-critical study remains the unjust uses and effects of culturally biologized notions of identity, including race and ethnicity. And because we value as a matter of method and substance personal familiarity with the sociolegal constructs or issues under scrutiny, we tend to look for guidance toward those in the room who embody, and know, those biologized yet socially constructed exper-

174. Phillips, then, is concerned more with a critical and self-critical exploration of the means or venues for continuing the discourse that CRT founded and that LatCrit expanded. Providing concrete examples, Phillips invites LatCrits and allied scholars to alternate annually between the formats provided by the original CRT workshop model and the current LatCrit conferences. *Id.* at 1254. Other possibilities, such as holding the workshop and the conference at the same time and place with some flexible points of interphase, also have been posed and discussed – inconclusively, due to timing and other logistics – during the planning phase of this year's conference. Whatever option one currently prefers, Phillips' focus is a timely reminder of the importance nonwhite outsider jurisprudence must accord to institution-building.

175. See generally *supra* note 154 and sources cited therein on race as a social construction.

iences. Substantively, then, biologized constructs are the focus of our collective critical study while, structurally, the participants in the project are multiply diverse — and therefore do not embody uniformly the biologized construct(s) under inspection. Thus rises a whole host of tensions, which can help to explain the surge in recent years of sameness/difference dilemmas within and across various categories of identification in outsider jurisprudence.¹⁷⁶ These tensions are unresolvable, yet manageable.

To begin with, we must consciously recognize and accept the tension and its sources. Structurally, this acceptance means that LatCrits and RaceCrits, as OutCrits, must persist in experimenting with rotating centers and structural diversity.¹⁷⁷ Substantively, this acceptance means that we increasingly must situate our scholarship in intra- and intergroup frameworks.¹⁷⁸ Given the world in which we live, subjecting particular biologized identities to critical scrutiny from diverse sociolegal perspectives, at once, is the collective *and* individual technique that our meetings and writings *should* perform. It is a technique that history, culture and experience counsel, and that usefully may be conceived as the basic approach to antisubordination analysis of OutCrit perspectivity.

OutCrit perspectivity thus conjures and embraces the “convergence chronicle” of the moment: the intersection of a progressive jurisprudence of color forged by RaceCrit and LatCrit labors, a jurisprudence that embraces the expansive and strident antisubordination stance of Queer positionality¹⁷⁹ as well as the Queer of color. OutCrit perspectivity therefore encapsulates the embrace of outsider sociolegal identification, the adoption of a critical intellectual posture toward all forms of subordination, and, *recalling specifically our collective jurisprudential experience, a forthright rejection of straight privilege*, all as integral to social justice. This subject position effectively can serve as a positive expression of principled resistance to regressive nationalisms, or apolitical essentialisms.¹⁸⁰ The OutCrit position, in short, is a subject position that encapsulates and reasserts the gains of the comparative record sketched above, and seeks to denote and connote the sense of mutual

176. See Valdes, *Outsider Scholars*, *supra* note 17.

177. See *supra* notes 108-114 and accompanying text.

178. See *supra* notes 106-107 and accompanying text.

179. OutCrit identification thus signifies a “coming out” as a biologized outsider, as well as a crit scholar, while also affirming the collective commitment of outsider jurisprudence to antisubordination criticality regarding sexual orientation diversities and issues. Tellingly, it grounds us in outsider and critical traditions, while reminding us that sexual orientation is an outsider and antiracist issue after all — after all the efforts that precede and are reflected in this symposium. See *supra* notes 41-116 and accompanying text.

180. See *supra* notes 46-62 and accompanying text.

convergence and collective advancement expressed in Phillips' account of our joint histories.

Adopting OutCrit perspectivity, of course, does not per se address the questions of institution-building that the Phillips and other self-reflective essays rightly raise. But adopting OutCrit perspectivity toward the project of institution-building can make a difference to the outcome we collectively produce. In considering Phillips' as well as others' institutional proposals¹⁸¹ in the months and years to come, OutCrit perspectivity can foreground coalitional method in our collective approach to threshold questions of focus, diversity, community, resources and sustainability.¹⁸² The "OutCrit" subject position ought to be our point of departure for collective and critical engagement of the inevitable questions over process, scope, structure and substance that a RaceCrit and LatCrit institutional convergence would raise, because it evokes and invokes lessons learned from prior encounters with the same or similar issues. Whatever the institutional forms of the future might be, they ought to be crafted from a critical and self-critical assessment of comparative jurisprudential experience, and infused with the critical sensibility that here I denominate as OutCrit perspectivity, to help ensure that the future of a progressive nonwhite outsider jurisprudence is made ever sturdier by the lessons of our joint past.

CONCLUSION

The comparative survey outlined above illustrates how the CRT, Queer and LatCrit experiences in outsider legal scholarship converge and diverge in numerous significant ways, both substantively and structurally. In different ways and to different degrees, these outsider jurisprudential efforts strive similarly to: represent sociolegally marginalized viewpoints; espouse critical, egalitarian, progressive, antisubordination

181. See *supra* note 171.

182. For my part, the next structural move toward the cultivation of OutCrit perceptivity and community might be the organization of an annual workshop that builds on both the CRT model and the LatCrit model of outsider convocation. More specifically, I would recommend an OutCrit "workshop" (rather than a conference), which would be relatively small in size and organized around the reading and discussion of pre-assigned texts, but that would remain committed proactively and programmatically to long-term continuity, multidimensional analysis and critical coalitions in the production of knowledge and cultivation of community. This combined model, grounded in antiessentialist and antisubordination principles and dedicated to critical and self-critical discourse, seems counseled by our collective jurisprudential experience to date: it has the virtue of recreating the kind of intimate and intense intellectual exchange of the original CRT model while ensuring that we retain and build on the benefits of LatCrit innovations both in substantive and structural terms. At the same time, I would encourage the continuation of LatCrit events, Asian Law professor conferences, the regional people of color scholarship conferences and, perhaps, the initiation of "BlackCrit" gatherings. See generally *supra* notes 150-156 and accompanying text; see also Roberts, *supra* note 2, at 861.

projects; accept analytical and discursive subjectivity; recognize postmodernism; favor praxis; yearn for community. As this symposium demonstrates, the RaceCrit and LatCrit experiments, along with other outsider initiatives, have helped to yield the initial texts and basic commitments of a progressive jurisprudence of color, imagined and articulated by outsider scholars.

This comparative look at the jurisprudential experiences of RaceCrits, QueerCrits and LatCrits is motivated by the need to interconnect these (and other) lines of sociolegal inquiry and action through critical coalitions and antistatist community in a legalistic and white-controlled society. And, conversely, this discussion of critical coalitions as antistatist praxis takes place against the backdrop of social history, formative circumstances, and record of collective jurisprudential experience. Some day, this work may aid the efforts of a future generation to solve the problems that we have inherited, combated and sometimes exacerbated.

In the shorter term, the lessons we learn from past and present jurisprudential experience can help us to imagine and implement critical coalitions not only among OutCrit scholars specifically, but also among outgroups more generally. Even more broadly, this comparative look at the jurisprudential experiences of RaceCrits, QueerCrits and LatCrits can help interconnect not only outsider scholars with the current and future struggles of our larger communities but also help to interconnect the social justice quests of overlapping outgroups internationally. In short, a critical and self-critical assessment of comparative jurisprudential experience can help inform and refine antistatist strategy in numerous ways and contexts. These experiences, and their lessons, can help set the stage for OutCrit perspectivity as a next step in the development of a progressive outsider jurisprudence. It is from this perspective that progressive legal scholars will be best positioned to engage the issues of structure, theory and community that face us today, to imagine in substantive terms the egalitarian postsubordination society for which we shall struggle together, and to fight collaboratively for its establishment based on antiessentialist principles of social justice for all.