

2005

## **Afterword - Outsider Citizenships and Multidimensional Borders: The Power and Danger of Not Belonging**

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### **Recommended Citation**

Pedro A. Malavet, *Outsider Citizenships and Multidimensional Borders: The Power and Danger of Not Belonging*, 52 Clev. St. L. Rev. 321 (2005).

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AFTERWORD  
OUTSIDER CITIZENSHIPS AND MULTIDIMENSIONAL  
BORDERS: THE POWER AND DANGER OF NOT BELONGING

PEDRO A. MALAVET<sup>1</sup>

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I. INTRODUCTION

In this closing for the LatCrit VIII symposium, I adopt a collective view of the articles, and attempt to develop how the themes discussed in them fit within LatCrit scholarship. I will then interrogate the future of our enterprise by discussing the danger of succumbing to the seduction of the real or perceived need “to reinvent the wheel,” or at least to clothe ideas in overly-developed language. Last, the Conclusion discusses how LatCrit scholarship is both promoted and challenged by the articles published here. I further include some suggested institutional responses to the opportunities for mentoring and nurturing that I identify.

II. THE POWER OF NOT BELONGING: OUTSIDER CITIZENSHIPS AND  
MULTIDIMENSIONAL BORDERS

The initial challenge in writing this afterword—beyond having to read all the articles—was to articulate a thread of unity in the themes covered by the authors. Initially, the articles, both individually and collectively, capture the overall theme of LatCrit VIII: *City & the Citizen: Operations of Power, Strategies of Resistance*.<sup>2</sup> Although the idea of the city remains largely an unarticulated and only occasional context, at least in the articles,<sup>3</sup> every one of the submissions in this volume focuses

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<sup>2</sup>Program Schedule with Substantive Outline for the Eighth Annual LatCrit Conference, in Program Schedule and Registration Forms (2003), available at <http://personal.law.miami.edu/~fvaldes/latcrit/latcrit/latcrit008/application.pdf> (last visited November 15, 2003).

<sup>3</sup>The only exception among the symposium articles is Mary Romero and Marwah Serag’s article which focuses on the effect of immigration enforcement in a particular city. See *infra* note 23. But the city was often discussed during the oral presentations at the conference.

on variations of outsider citizenships or identities, and how we, as scholars and activists, should unmask and subvert the existing normativities<sup>4</sup> that affect them.

The articles often describe how “othering”<sup>5</sup> has multiple sources—which I label multidimensional borders.<sup>6</sup> They also show us the power of deconstructing entrenched power normativities from an outsider perspective, hence, the power of *not* belonging.<sup>7</sup>

The articles also point out the multi-dimensional legal and social borders—the barriers and essentialized<sup>8</sup> contexts that impose subordination—which outsiders must

<sup>4</sup>Normativity means the enforcement of the dominant group’s power. See Richard Delgado, *Legal Storytelling for Oppositionists and Others: A plea for Narrative*, in CRITICAL RACE THEORY: THE CUTTING EDGE, ed. Richard Delgado (Philadelphia: Temple University Press, 1995), 305 (finding that if discussion comes from dominant group, it will suffer from “form of shared reality in which its own superior position is seen as natural”); Richard Delgado, “Norms and Normal Science: Toward a Critique of Normativity in Legal Thought,” 139 U. PA. L. REV. 139 (1991) (constructing critical review of normative jurisprudence); Linda S. Greene, *Multiculturalism as Metaphor*, 41 DEPAUL L. REV. 1173 (1992) (noting that “normative vacuum” produces a lack of Supreme Court enforcement of true equality); Berta Esperanza Hernández-Truyol, *Borders (En)gendered: Normativities, Latinas and a LatCrit Paradigm*, N.Y.U. L. REV. 882 72 (1997): 882 (noting that “knowledge is socially constructed,” and therefore, normative paradigm’s dominance defines normal).

<sup>5</sup>In general, as used herein, “Other” and “othering,” i.e., to be “othered,” mean to be socially constructed as “not normative.” See, e.g., Cathy J. Cohen, *Straight Gay Politics: The Limits of an Ethnic Model of Inclusion*, in ETHNICITY AND GROUP RIGHTS 580 (Will Kymlicka & Ian Shapiro eds., 1997) (“Much of the material exclusion experienced by marginal groups is based on, or justified by, ideological processes that define these groups as ‘other.’ Thus, marginalization occurs, in part, when some observable characteristic or distinguishing behavior shared by a group of individuals is systematically used within the larger society to signal the inferior and subordinate status of the group.”) citing ERVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* (1963). However, I will also use the term “Other” as a relative term. See *infra* note 31 and accompanying text.

<sup>6</sup>Here I am of course accepting LatCrit’s long-standing invitation to incorporate “critical concepts like multiplicity, multi-dimensionality and intersectionality, which come from outsider [and CRT] legal scholars.” Francisco Valdés, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1, (1997); see also *id.*, fn. 119 at page 38.

<sup>7</sup>I have discussed the sometimes beneficial perspective of cultural exile, in which I am an outsider within U.S. normative culture, and within my own culture in the island of Puerto Rico. See Pedro A. Malavet, *The Accidental Crit II: Culture and the Looking Glass of Exile*, 78 D.U. L. REV. 753 (2001).

<sup>8</sup>“Essentialism adopts the view that all members of a group are alike and share a common ‘essence.’” Sumi K. Cho, *Essential Politics*, 2 HARV. LATINO L. REV. 433 n. 1 and accompanying text (1997). As it is used herein:

The concept of essentialism suggests that there is one legitimate, genuine universal voice that speaks for all members of a group, thus assuming a monolithic experience for all within the particular group – be it women, blacks, latin/os, Asians, etc. Feminists of color have been at the forefront of rejecting essentialist approaches because they effect erasures of the multidimensional nature of identities and, instead, collapse multiple differences into a singular homogenized experience.

Berta Esperanza Hernández Truyol, *Latindia II—Latinas/os, Natives, And Mestizajes— Latcrit Navigation Of Nuevos Mundos, Nuevas Fronteras And Nuevas Teorías*, 33 U.C. DAVIS L.

negotiate. These borders are multidimensional,<sup>9</sup> as the articles show, because they come from multiple sources and can act and interact in multiple and complex ways.<sup>10</sup> For example, borders can be essentialized legal or social impositions or internalized oppressions<sup>11</sup> that force us to carry the border within. Externally borders can be localized in various sites as well. They can be local, within say a city, or “national” as defined by the nation state, or international (even extra-national, as one article suggests).<sup>12</sup>

These articles fit within LatCrit, which is outsider jurisprudence,<sup>13</sup> often postmodern in style, and mostly, though not exclusively, pursued by academics of color, who seek to center the Latina/o experience in the legal mainstream of the United States. The principal products of the LatCrit enterprise, both oral and written,

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REV. 851, 862 n. 27 (2000) (citations omitted). See also FEMINIST LEGAL THEORY: FOUNDATIONS 335 (D. Kelly Weisberg ed., 1993) (discussing gender essentialism); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) (discussing gender and racial essentialism).

<sup>9</sup>In Part III, I discuss the ongoing debate about how to (re)label, (de)construct and (counter)deploy, the complicated sources of subordination and different engagements between identity theory and anti-essentialist theory, represented by the critiques and defenses of labels such as “intersectionality,” “complexity,” or “multidimensionality” theories. For an interesting debate on the subject, between many scholars involved in the LatCrit enterprise, See generally *Symposium, Theorizing the Connections Among Systems of Subordination*, 71 U.M.K.C. L. REV. 227 (2002).

<sup>10</sup>See, e.g., Berta Esperanza Hernández-Truyol, *Latina Multidimensionality and LatCrit Possibilities: Culture, Gender, and Sex*, 53 MIAMI L. REV. 811 (1999) (discussing multiple cultural tropes that affect Latinas, especially Latina lesbians).

<sup>11</sup>The internalization of oppression occurs when a group that is oppressed by the normative society replicates some forms of oppression to marginalize members of its own community along lines of discrimination that parallel those of the normative group. For example, women might be subordinated by the men within the group, and among African Americans, lighter skin hues are considered more desirable. Oliva Espín explains the paradox of a group that is the object of discrimination marginalizing members of its own community:

The prejudices and racism of the dominant society make the retrenchment into tradition appear justifiable. Conversely, the rigidities of tradition appear to justify the racist or prejudicial treatment of the dominant society. These “two mountains” reinforce and encourage each other. Moreover, the effects of racism and sexism are not only felt as pressure from the outside; like all forms of oppression, they become internalized....

OLIVA W. ESPÍN, WOMEN CROSSING BOUNDARIES: A PSYCHOLOGY OF IMMIGRATION AND TRANSFORMATION OF SEXUALITY 8 (1999).

<sup>12</sup>See Berta Esperanza Hernández-Truyol & Matthew Hawk, *Traveling the Boundaries of Statelessness: Global Passports and Citizenship*, 52 CLEV. ST. L. REV. 97 (2005).

<sup>13</sup>See Mari Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2323 (1989) (“outsider jurisprudence” is scholarship produced by and focused on outsider perspectives, communities and interests, i.e., going beyond the dominant group). Other forms of outsider jurisprudence include Asian-American Legal Theory, Critical Race Feminism, Feminist Legal Theory, and Queer Legal Theory.

are mostly associated with the annual LatCrit conferences.<sup>14</sup> Of course, this symposium issue is the latest example of that process.

In framing its objectives and beneficiaries, LatCrit theory is conscious of the difference between legal and political citizenship, on the one hand, and cultural and social citizenship on the other.<sup>15</sup> By focusing on marginalized groups, outsiders, LatCrit theory continues the communitarian challenge to traditional liberalism seen in the citizenship debates.<sup>16</sup>

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<sup>14</sup>Naturally, this Symposium volume is the most recent installment in LatCrit scholarly discourse, *LatCrit VI Symposium, Latinas/os and the Americas: Centering North-South Frameworks in LatCrit Theory*, 55 FLORIDA L. REV. 1 (2003); but there has been a symposium issue for each of the annual LatCrit conferences. See generally *Symposium Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENVER U. L. REV. 467 (2002); Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 LA RAZA L.J. 1 (1996); Colloquium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997); Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 UCLA CHICANO LATINO L. REV. (1998); Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, 53 U. MIAMI L. REV. 575 (1999); Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. DAVIS L. REV. (2000). See also, Symposium, *LatCrit Theory: Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997); 10 LA RAZA L.J. 1 (1998) (this was a "stand-alone" symposium, not directly connected to one of the LatCrit conferences).

<sup>15</sup>The distinction and disjunction between cultural and political citizenship has been a strong theme in critical theory generally and LatCrit theory in particular. See, e.g., Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 MICH. J. RACE & L. 1 (2000) (describing how the Puerto Ricans are an identifiable culture that lacks a legal citizenship, and how they are deprived of real political power because of their legally second-class U.S. citizenship); Robert Westley, *Many Billions Gone: Is it Time to Reconsider the Case for Black Reparations?*, 40 BOSTON COLLEGE L. REV. 429, 19 B.C. THIRD WORLD L.J. 429 (1998) (advocating reparations to bring African-Americans to full political citizenship in the U.S.); Eric Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 BOSTON COLLEGE L. REV. 487, 19 B.C. THIRD WORLD L.J. 487 (1998) (a critical review of reparations for the internment of U.S. citizens of Japanese descent during the Second World War); Guadalupe T. Luna, *Chicana/Chicano Land Tenure In The Agrarian Domain: On The Edge Of A "Naked Knife"*, 4 MICH. J. RACE & L. 39 (1998) (detailing how Mexican-Americans in the Southwest had their land taken away in spite of their legal citizenship —and their property rights) [hereinafter "Luna, *Naked Knife*"]; Kevin R. Johnson, *The Social and Legal Construction of Nonpersons*, 28 U. MIAMI INTER-AM. L. REV. 263, 268 (1997) ("The alien represents a body of rules passed by Congress and reinforced by popular culture. It is society, often through the law, which defines who is an alien, an institutionalized "other," and who is not. It is society through Congress and the courts that determines which rights to afford aliens."). See generally Symposium: *Citizenship and its Discontents: Centering the Immigrant in the Inter/National Imagination*, 76 OREGON L. REV. 207-774 (1997); Ibrahim J. Gassama, Robert S. Chang, Keith Aoki, *Foreword*, 76 OREGON L. REV. 207, 209 (1997) ("The papers in this Symposium investigate the aporetic relations among the nation-state, liberal understandings of citizenship, and problematic constructions of race and ethnicity as they are applied to immigrants.").

<sup>16</sup>The theme of citizenship and the kinds of questions raised herewith have reemerged into the center of public debate in the past few years (together with the concept of civil society) as the focus of policies and studies regarding a number of major contemporary

Critical Race and LatCrit theorists have recognized that group or identity rights are often opposed by traditional liberals and modern reactionaries.<sup>17</sup> Robert Westley notes that “[t]he irony posed by the very question of Black national group status is that in ordinary social and political discourse, Blacks are treated as a group for every purpose other than rights-recognition.”<sup>18</sup> Latinas/os generally and even some Latina/o sub-groups in particular have similar problems. For example, the Puerto Ricans are treated as a group for the purpose of constitutional deprivation of constitutional rights guaranteed to every U.S. citizen who resides in the U.S. proper, but not for purposes of an equal allocation of the public resources spent on “regular” U.S. citizens.<sup>19</sup>

In its study of citizenship and belonging, and as many of the authors in this symposium illustrate, LatCrit has identified the paradox of the colonized: the society left behind after the end of the colonial period is both for better and for worse, the product of the mixture of people, cultures and laws<sup>20</sup> brought together by the colonization process.<sup>21</sup> Accordingly, postcolonial societies often fall victim both to external cultural imperialism<sup>22</sup> and to internalized oppression. The former colonized peoples culturally colonize themselves and prey upon each other by adopting and perpetuating the essentialized hierarchies of the former colonial power. As a result of this process, the peoples *themselves* are the colonizers and the colonized.

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purposes....” Gershon Shafir, *Introduction: The Evolving Tradition of Citizenship, in THE CITIZENSHIP DEBATES: A READER 1* (Gershon Shafir ed. 1998). “[The] essays [included in the reader] are a fitting summary of the debates in which the character of our future society is contested.” *Id.* at 27. The book includes a discussion of the “Liberal Position,” followed by critiques thereof labeled as: “Communitarian,” “Social Democratic,” “Nationalist,” “Immigrant and Multiculturalist,” and “Feminist.” *Id.* at v-vi.

<sup>17</sup>Yamamoto, for example, explains how traditionalists resist reparations claims arguing for strict requirements of individual liability and individual entitlement. Yamamoto, *Racial Reparations*, *supra* note 15, at 489.

<sup>18</sup>Westley, *supra* note 15, at 469.

<sup>19</sup>See Malavet, *supra* note 15, at 37-40 (discussing two Supreme Court cases) *Harris v. Rosario*, 446 U.S. 651 (1980) and *Califano v. Torres*, 435 U.S. 1 (1978)) that allowed the U.S. Congress to discriminate against Puerto Ricans on the island by allocating to them dramatically lower levels of federal funding, or no funding at all.

<sup>20</sup>In particular, see Charles R. Venator Santiago, *Race, Nation-Building and Legal Transculturation During the Haitian Univication Period (1822-1844): Towards A Dominican Perspective*, 52 CLEV. ST. L. REV. 63 (2005) for analyses of post-colonial legal development.

<sup>21</sup>See, Malavet, *supra* note 7.

<sup>22</sup>Carla Freccero explains that:

Imperialism can occur on different levels and usually involves territorial annexation, economic and political annexation, juridical (legal) annexation, and ultimately ideological and cultural annexation; these latter are often referred to as cultural imperialism .... cultural or mental decolonization [is] a ‘literature/criticism that is participatory in the historical processes of hegemony and resistance to domination rather than (only) formal and analytic.’ Collective and concerted resistance to programmatic cultural imperialism thus comes to be called ‘cultural’ or ‘mental’ decolonization.

CARLA FRECCERO, *POPULAR CULTURE: AN INTRODUCTION* 14 (1999) [hereinafter *POPULAR CULTURE*] (citations omitted).

For example, Mary Romero and Marwah Serag's<sup>23</sup> article exposes a modern form of colonialism: the racial profiling for Latinas/os. So-called racial profiling is a deployment of police power to detain and interrogate people because of a law enforcement officers' subjective interpretation of the detainee's outward appearance and conduct; the officers' decision is based on their views of race, culture and class.<sup>24</sup> For Mexican Americans, racialized immigration enforcement is "a stunning reminder of their second class citizenship."<sup>25</sup> One important cost internalizes oppression because some Mexican Americans will refrain from engaging with other Latinas/os and even family members across the border in Mexico, and avoid Latina/o cultural tropes, such as speaking Spanish, in order to avoid being the victims of officialized racism.<sup>26</sup>

Carrying out its anti-subordination mission, LatCrit exposes the dominant culture's abuses of those it marginalizes and the strengths and internal faultlines of non-normative cultures. LatCrit takes a broad communitarian,<sup>27</sup> Cultural Studies<sup>28</sup> view of the term "Culture," meaning that

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<sup>23</sup>See generally Mary Romero & Marwah Serag, *Violation of Latino Civil Rights Resulting from INS and Local Police's Use of Race, Culture and Class Profiling: The Case Study of the Chandler Roundup in Arizona*, 52 CLEV. ST. L. REV. 75 (2005).

<sup>24</sup>A group of articles in the LatCrit VI symposium issue discuss the intersection between race, class and criminal procedure. See Angel P. Harris, *Introduction*, 55 FLA. L. REV. 319 (2003); Kevin R. Johnson, *The Case for African American and Latina/o Cooperation in Challenging Racial Profiling in Law Enforcement*, 55 FLA. L. REV. 341 (2003); Alfredo Mirandé, *Is there "Mexican Exception" to the Fourth Amendment?*, 55 FLA. L. REV. 365 (2003); Christopher Solobogin, *The Poverty Exception to the Fourth Amendment*, 55 FLA. L. REV. 391 (2003).

<sup>25</sup>Romero & Serag, *supra* note 23. They explain that:

Long term residents felt betrayed and recognized they lacked the privilege granted to non-Mexican residents and drivers occupying or entering the same urban space. Operation Restoration becomes part of the Latino collective memory that includes a history of immigration programs implemented without consideration for the safety and well being of Mexican Americans. Another episode in the racial affronts serves to heighten distrust in public officials and law enforcement, deter political participation, and increase their sense of 'otherness.'

*Id.*

<sup>26</sup>*Id.*

<sup>27</sup>The communitarian concept of citizenship views the "citizen as a member of a community." Herman Van Gunsteren, *Four Conceptions of Citizenship*, in *THE CONDITION OF CITIZENSHIP* 41 (Bart van Steenberg, ed., 1994). "This conception strongly emphasizes that being a citizen means belonging to a historically developed community. Individuality is derived from it and determined in terms of it." *Id.* Moreover, "identity and stability of character cannot be realized without the support of a community of friends and like-minded kindred." *Id.*

<sup>28</sup>Carla Freccero explains that the:

term "cultural studies" covers a range of theoretical and political positions that use a variety of methodologies, drawing on ethnography, anthropology, sociology, literature, feminism, Marxism, history, film criticism, psychoanalysis, and semiotics. Cultural studies is anthropological, but unlike anthropology, it begins with the study of postindustrial rather than preindustrial societies. It is like humanism, but unlike traditional humanism it rejects the distinction between so-called low culture and high

culture is a whole way of life (ideas, attitudes, languages, practices, institutions, structures of power) and a whole range of cultural practices: artistic forms, texts, canons, architecture, mass-produced commodities, and so on. Culture means the actual grounded terrain of practices, representations, languages, and customs of any specific historical society. Culture, in other words, means not only 'high culture,' what we usually call art and literature, but also the everyday practices, representations, and cultural productions of people and of postindustrial societies.<sup>29</sup>

LatCrit encourages the development of the concept of cultural nationhood or citizenship to differentiate the colonized peoples from their colonial oppressors<sup>30</sup> because it can be used as a source of empowerment, consciousness and pride.<sup>31</sup> This cultural exploration might produce legitimate concerns over the dangers of nationalism<sup>32</sup> and cultural imperialism. It can also produce claims of "comparative victimology." LatCrit identifies cultural faultlines that require reform, but it tries to avoid cultural imperialism that perpetuates the supremacies promoted by the colonial power. Nevertheless, as much as we might try to avoid it, we may not always be able to resolve our differences, or wholly avoid some type of inter-group competition.<sup>33</sup>

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culture and argues that all forms of culture need to be studied in relation to a given social formation. It is thus interdisciplinary in its approaches. Cultural studies "has grown out of efforts to understand what has shaped post World War II societies and cultures: industrialization, modernization, urbanization, mass communication, commodification, imperialism, a global economy."

POPULAR CULTURE, *supra* note 22.

<sup>29</sup>FRECCERO, *supra* note 282, at 13.

<sup>30</sup>See, e.g., Malavet, *supra* note 15 (explaining that the Puerto Ricans are culturally distinct from the normative U.S. society).

<sup>31</sup>Hence, "Othering" can be used as a subversive force that empowers marginalized colonial peoples. See Adeno Addis, *On Human Diversity And The Limits Of Toleration*, in *ETHNICITY AND GROUP RIGHTS* 127 (Will Kymlicka and Ian Shapiro, eds., 1997) ("By 'shared identity' I mean to refer to an identity that bonds together, partially and contingently, minorities and majorities, such that different cultural and ethnic groups are seen, and see themselves, as networks of communication where each group comes to understand its distinctiveness as well as the fact that distinctiveness is to a large degree defined in terms of its relationship with the *Other*.").

<sup>32</sup>In speaking of the dangers of nationalism, Ronald Beiner ponders: "Either fascism is a uniquely evil expression of an otherwise benign human need for belonging; or there is a kind of latent fascism implicit in any impulse towards group belonging." Ronald Beiner, *Introduction*, in *THEORIZING CITIZENSHIP* 19 (Ronald Beiner ed., 1995).

<sup>33</sup>In this regard, Imany Perry discusses "racial exceptionalism" and raises the interesting question of whether black Latinas/os should be counted as Latinas/os or as Blacks for census purposes. See generally Imani Perry, *Of Desi, J.Lo and Color Matters: Law, Critical Race Theory and the Architecture of Race*, 52 CLEV. ST. L. REV. 139 (2005). LatCrit has already engaged those issues extensively, and they are part of our jurisprudence. See, e.g., Leslie Espinoza & Angela Harris, *Embracing the Tar-Baby: LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1585, 1597 (1997), 10 La Raza L.J. 499, 510 (1998) [hereinafter "Espinoza & Harris, Embracing the Tar-Baby"] (Angela Harris discusses "Black Exceptionalism," which she defines as: "The Claim ... that African-Americans play a unique



### III. THE DANGER OF NOT BELONGING: THE SEDUCTION OF INVENTING ORIGINALITY

Outsider scholarship has given me power. It has allowed me to write on issues about which I care, and to work to subvert existing forms of subordination. That is, to me, the real promise of LatCrit's anti-subordination mission. We can use power, we can benefit or suffer from someone else's use of power, or we can be seduced by power. This section focuses on the dangers of giving in to the seduction of inventing originality. Specifically, I address the irresistible urge to "reinvent the wheel" with each article we academics publish. To continue with the wheel analogy, are we "reinventing" or just "grinding" our wheels?

Critical scholars have often been accused of being seduced by or giving in to language abuse.<sup>34</sup> While the attacks on CRT all too often are essentialist attempts to silence different voices,<sup>35</sup> the intentional misuse of language simply for the sake of showing off or of being exclusionary can be hegemonic<sup>36</sup> and, more simply, ineffective.<sup>37</sup> In the LatCrit context, deconstructionist postmodern analysis, clearly demands a careful approach to language that allows scholars to explore the hidden

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and central role in American social, political, cultural, and economic life, and have done so since the nation's founding. From this perspective, the 'black- white paradigm' that Perea condemns is no accident or mistake; rather it reflects an important truth."). See generally Malavet, *Reparations Theory*, at 393-399 (discussing the place for blackness in LatCrit). On the challenges of multiculturalism, race, politics and the census, see generally Tanya Katerí Hernández, "Multiracial" Discourse: Racial Classification in an Era of Color-Blind Jurisprudence, 57 MARYLAND L. REV. 97 (1997).

<sup>34</sup>Compare Dennis W. Arrow, *Pomobabble: Postmodern Newspeak and Constitutional "Meaning" for the Uninitiated*, 96 MICH. L. REV. 461 (1997); with Ronald J. Krotoszynski, *Legal Scholarship at the Crossroads: On Farce, Tragedy, and Redemption*, 77 TEX. L. REV. 321 (1998).

<sup>35</sup>See Pedro A. Malavet, *Literature and Arts as Antisubordination Praxis: LatCrit Theory and Cultural Production: The Confessions of an Accidental Crit*, 33 U.C. DAVIS L. REV. 1293, 1297-1306 (2000) (discussing the debate over the use of narrative in legal scholarship).

<sup>36</sup>For example, abuse of language can be nothing more than a self-indulgent attempt to develop a secret speech that sets your little clique apart, both in private and in public. In her critique of the excesses of Literary Criticism, Barbara Christian explains the real dangers of such language abuse: "For I feel that the new emphasis on literary critical theory is as hegemonic as the world which it attacks. I see the language it creates as one which mystifies rather than clarifies our condition, making it possible for a few people who know that particular language to control the critical scene —that language surfaced, interestingly enough, just when the literature of peoples of color, of black women, of Latin Americans, of Africans began to move to "the center." ..." Barbara Christian, *The Race for the Theory*, in MAKING FACE, MAKING SOUL, HACIENDO CARAS: CREATIVE AND CRITICAL PERSPECTIVES BY FEMINISTS OF COLOR 335, 338 (Gloria Anzaldúa ed. 1990).

<sup>37</sup>Here I refer to the forced use of overly complicated language simply for the sake of making an exaggerated pseudo-intellectual display, rather than to write effective scholarship. Barbara Christian again articulates the problem well: "And as a student of literature, I am appalled by the sheer ugliness of the language, its lack of clarity, its unnecessarily complicated sentence constructions, its lack of pleasureableness, its alienating quality. It is the kind of writing for which composition teachers would give a freshman a resounding F." Christian, *The Race for the Theory*, *supra* note 36, at 339.

complexities of their subjects.<sup>38</sup> The LatCrit use of language in legal scholarship is thus exciting, intellectually stimulating, and effective.<sup>39</sup>

That said, I am concerned about abuse of theory and theoretical hubris. I will define this latter phenomenon as the impulse to claim a totally new theoretical paradigm, which too often is putting a new label on an old concept. I am not unmindful of the enormous pressures on young scholars generally, and on women and persons of color in particular, to "reinvent the wheel." Nevertheless, as a scholarly community, we should resist these pressures and trust the quality products in our existing publications.

Recently, I came upon a symposium discussion<sup>40</sup> on Peter Kwan's "post-intersectionality theory."<sup>41</sup> The symposium, in which many LatCritters participated,

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<sup>38</sup>For example, LatCrit scholarship challenges the traditional civil rights discourse in law by thoroughly exploring the weaknesses of the black/white binary paradigm of race. See Ian F. Haney López, *Race and Erasure: The Salience of Race to LatCrit Theory*, 85 CAL. L. REV. 1153 (1997); 10 LA RAZA L. J. 57 (1998); Juan F. Perea, *The Black/White Binary Paradigm Of Race: The "Normal Science" Of American Racial Thought*, 85 CAL. L. REV. 1213 (1997); 10 LA RAZA L.J. 127 (1998); Juan F. Perea *Ethnicity and the Constitution: Beyond The Black And White Binary Constitution*, 36 WILLIAM & MARY L. REV. 571 (1995). This challenge to the binary can be traced back to the very first LatCrit colloquium in Puerto Rico. See generally *Colloquium, Representing Latina/o Communities: Critical Race Theory and Practice*, 9 LA RAZA L.J. 1 (1996); see also, Francisco Valdés, *Latina/o Ethnicities, Critical Race Theory and Post-Identity Politics in Postmodern Legal Culture From Practices to Possibilities*, 9 LA RAZA L.J. 1, 20-24 (1996) (discussing various authors' challenge to the black/white binary); Robert S. Chang, *The Nativist's Dream of Return*, 9 LA RAZA L.J. 55 (1996) (Asian-Americans do not fit within the "comfortable binary" of the Black/White paradigm of race) [hereinafter "Chang, *Nativist's Dream of Return*"]; Deborah Ramirez, *Foregoing A Latino Identity*, 9 LA RAZA L.J. 61, 63 (1996) (explaining a personal experience that required her to challenge the paradigm in order properly to assist a local Latina/o community). See also Rachel F. Moran, *Neither Black nor White*, 2 HARV. LATINO L. REV. 61 (1997) (finding that Latinas/os are not adequately represented in American civil rights debate because they do not fit within the paradigm); Neil Gotanda, *"Other Non-Whites" in American Legal History: A Review of Justice at War*, 85 COLUM. L. REV. 1186, 1188 (1985) ("foreignness" and the construction/imposition thereof, establishes many U.S. citizens, especially Asian-Americans and Latinas/os as a permanent underclass).

<sup>39</sup>Of course, a demanding use of language is essential to critical scholarship. More generally, mastering language is an essential skill for a lawyer or academic, and challenging the language skills of any audience can have strong pedagogical effects. But teachers and scholars should be offended by the notion that simple language is a sign of simple-mindedness. For example popular cultural narratives, may sometimes be spoken in plain and simple language, and are still perfectly able to transmit complex ideas that constitute antisubordination praxis. (I do not mean to imply that popular culture is always "plain and simple" in language. In fact, popular culture is incredibly complex and textured. However, *on occasion*, the Popular Artist uses plain and simple language to make very complex messages accessible to everyone in their community.) Additionally, the capacity to present complex concepts in language that make them accessible to students and to persons outside our field takes a great deal of talent. Moreover, making our work accessible to uninitiated audiences is part of our educational mission and is essential to LatCrit praxis.

<sup>40</sup>Symposium, *supra* note 9.

<sup>41</sup>Peter Kwan, *Intersections of Race, Ethnicity, Class, Gender and Sexual Orientation: Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257, 1264 (1997).

addressed how the limitations of intersectionality have been identified.<sup>42</sup> Those articles led me to ask, paraphrasing Robert Chang and Jerome Culp's "so what" question:<sup>43</sup> do we really need to spend quite so much time discussing "cosynthesis,"<sup>44</sup> "symbiosis,"<sup>45</sup> "the architecture of race,"<sup>46</sup> "human geography,"<sup>47</sup> "complexity theory,"<sup>48</sup> "multidimensionality" (my admittedly personal choice), "interconnectivity,"<sup>49</sup> "archeology of law,"<sup>50</sup> "legal transculturation,"<sup>51</sup> "re-constructing revolution,"<sup>52</sup> or "materiality theory"?<sup>53</sup>

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<sup>42</sup>See, Robert S. Chang & Jerome McCristal Culp, Jr., *After Intersectionality*, 71 UMKC L. REV. 485, nn. 2, 3 & 4 and accompanying text (2002).

<sup>43</sup>This is my version of the "so what" question articulated by Chang and Culp. Chang & Culp, *supra* note 42, at 490, nn. 25-29, and accompanying text.

<sup>44</sup>Kwan, *Intersections*, *supra* note 41.

<sup>45</sup>Ehrenreich, *Subordination and Symbiosis: Mechanisms of Mutual Support Between Subordinating Systems*, 71 UMKC L. REV. 271 (2002).

<sup>46</sup>Perry, *supra* note 33.

<sup>47</sup>Therefore, using human geography to "question[], in a particular story, where people are spatially located at any given time and place can help to disrupt the plot of the legal narrative." Reginald C. Oh, *Mapping a Materialist LatCrit Discourse on Racism*, 52 CLEV. ST. L. REV. 243 (2005). Oh then uses this methodology to deconstruct the dominant narrative in the Supreme Court opinion in *Richmond v. J.A. Crosson Co.*, 469 U.S. 477 (1989). Justice Sandra Day O'Connor, writing for the majority, "categorize[d] racism and racial segregation in schools, voting, housing, and contracting as discrete, unconnected, and distinctly separate acts of racial discrimination." Oh, *supra*. But Oh concludes that: "Ultimately, all [these] separate harms were about one thing: the continuing spatial subordination of blacks." *Id.*

<sup>48</sup>Julian Webb, *Law Ethics, and Complexity: Complexity Theory and the Normative Reconstruction of Law*, 52 CLEV. ST. L. REV. 227 (2005).

<sup>49</sup>Francisco Valdes, *Identity Maneuvers in Law and Society: Vignettes of a Euro-American Heteropatriarchy*, 71 UMKC L. REV. 377 (2002).

<sup>50</sup>Kim David Chanbonpin, *How the Border Crossed Us: Filling the Gap Between Plume v. Seward and the Dispossession of Mexican Landowners in California after 1848*, 52 CLEV. ST. L. REV. 297 (2005). She defines it:

Cases need to be treated as what they are, fragments of antiquity, and we need, like archeologists, gently to free these fragments from the overburden of legal dogmatics, and try, by relating them to other evidence, which has to be sought outside the library, to make sense of them as events in history and incidents in the evolution of law.

*Id.* (citing Deborah L. Threedy, *A Fish Story: Alaska Packer's Association v. Domenico*, 2000 UTAH L. REV. 185, 188 (2001) (internal citation omitted)).

<sup>51</sup>Venator-Santiago, *Race, Nation Building and Legal Transculturation During the Haitian Unification Period (1822-1844): Towards a Dominican Perspective*, *supra* note 20 ("use[s] the [concept] of legal transculturation ... to reflect on the relationship between race, multiple legal traditions, and the process of nation building.").

<sup>52</sup>Revilla explains that while "many and women of color perceive themselves to be people who are engaged in creating social change—calling this process 'revolution'—but oftentimes they reinforce sexist and homophobic beliefs. Hence, 're-constructing revolution' would entail working toward the elimination of all forms of oppression and not just racial, ethnic, and class oppression." Anita Tijerina Revilla, *Raza Womyn Engaged in Love and Revolution:*

Which leads me further to interrogate: should LatCrit develop an orthodoxy about how to approach our scholarship? Should we have a “LatCrit scholarship police” that enforces the “rules” of LatCrit theory?<sup>54</sup> While I think that most of us would find such a possibility perverse, we should still ask ourselves if we are wasting unnecessary time and effort reinventing the scholarship wheel.

Originality in a field as complex as academic scholarship cannot be invented. It must be researched and then constructed. At the very least, ignoring existing scholarship exposes the author to charges of poor research, and of general lack of familiarity with “the literature.” At worst, the author might also unwittingly subject him/herself to charges of plagiarism. As scholars we must always strive to reach a proper balance between the hyperbole of arrogant, and ultimately ignorant claims to newness, and the ambitious development of our scholarship.

Ronald Mize’s article uses existing reparations discourse within Critical Race Theory and LatCrit Theory to develop a theoretical and historical context for the conclusions of his field research about the cheated *braceros*.<sup>55</sup> Mize correctly points out that Eric Yamamoto has worked on and written extensively about the reparations claims of Japanese American internees. He appears, however, unfamiliar with Yamamoto’s work when he writes: “But it seems to me that Yamamoto misses an equally important form of pressure in the application of grassroots mobilization of the part of aggrieved communities.”<sup>56</sup> This may be a rational interpretation of what Yamamoto may have discussed during the presentation that Mize observed, but I do not believe that it is fair in light of Yamamoto’s published work.<sup>57</sup>

Imany Perry is an example of a young scholar bravely entering the debate over post-intersectionality theory, by offering the concept of the “architecture of race.” Architecture rather than intersectionality is intended by the author to suggest an

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*Chicana/Latina Student Activists Creating Safe Spaces Within the University*, 52 CLEV. ST. L. REV. 155 (2005).

<sup>53</sup>Reginald Oh is an Assistant Professor at Appalachian School of Law. He presented his paper *Mapping a Materialist LatCrit Discourse on Racism*, as a work in progress at the LatCrit VIII conference.

<sup>54</sup>Just as some readers might wonder, I have been asking myself “when did I become the scholarship police?,” as I wrote this essay.

<sup>55</sup>Mize explains that

From the successful reparations campaign for those who endured the Japanese internment camps, we can develop a proxy for other redress attempts to follow. From the repeatedly unsuccessful attempts at African American reparations, we also can begin to recognize the long-standing roots of racial oppression and the interpersonal and institutionalized racisms that reparations claims are implicitly challenging.

<sup>56</sup>*Id.*

<sup>57</sup>See, e.g., Eric Yamamoto, *Racial Reparations: Japanese-American Redress and African-American Claims*, 40 B.C. L. REV. 487, 19 B.C. THIRD WORLD L.J. 487, n. 1 (1998) (noting that “contributors to Japanese American redress included the Japanese American Citizens League (JACL), the National Coalition for Japanese American Redress, numerous elected officials and grassroots organizers.” Citing Takeshi Nakayma, *Historic Chapter Closes*, RAUFU SHIMPO, Aug. 10, 1998, 1, 3.). See also Eric K. Yamamoto, *American Racial Justice On Trial—Again: African American Reparations, Human Rights, And The War On Terror*, 101 MICH. L. REV. 1269 (2003).

approach that “refers to larger social arrangements and groupings” rather than to “individual and personal experience.”<sup>58</sup> Perry’s critique of the limits of intersectionality to describe the real complexity of subordination(s) certainly fits well in LatCrit. The suggestion that “intersectionalities”<sup>59</sup> fails to refer to groups rather than individuals, however, is contrary to the use of the term in existing LatCrit and CRT scholarship.<sup>60</sup>

On the other hand, Perry raises some very interesting questions and displays a critical, inquisitive mind for scholarship. Mize, a social scientist, shows his strength with original field research that is highly relevant to LatCrit. Aaron Monty’s<sup>61</sup> reference to the “Black/white *hierarchical* binary” reflects a sophisticated understanding of the meaning of this term in LatCrit scholarship.<sup>62</sup> Mary Romero and Marwah Serag introduce compelling original research with a strong LatCrit grounding. Julian Webb uses a sophisticated natural science theory to suggest a new socio-legal approach.

These highly selective examples are meant merely to interrogate: where do we draw the line between the interesting development of ideas that are presented as new,

<sup>58</sup>Perry, *supra* note 33.

<sup>59</sup>The term “intersectionality” is used in critical race scholarship to mean: “Points of convergence of political needs and views on the one hand, and of victimization/targeting by oppression(s) on the other.” Kimberlè Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 42 STAN. L. REV. 1241 (1991). Also in THE KEY WRITINGS at page 357. See also Robert S. Chang & Jerome McCristal Culp, Jr., *After Intersectionality*, 71 U.M.K.C. L. REV. 485, n. 1 and accompanying text (2002) (crediting Crenshaw with introducing the term).

<sup>60</sup>See, e.g., Laura M. Padilla, *Intersectionality and Positionality: Situating Women of Color in the Affirmative Action Dialogue*, 66 FORDHAM L. REV. 843 (1997) (discussing the intersectionality of subordinating affecting women of color); K. L. Broad, *Critical Borderlands & Interdisciplinary, Intersectional Coalitions*, 78 DENVER U. L. REV. 1141 (2001) (discussing intersection of subordination against transgender people, as well as women). To include a complete survey of LatCrit scholarship regarding intersectionality here would take up too much space, I will therefore simply refer the reader to one of our symposium volumes: *LatCrit IV Symposium: Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. DAVIS L. REV. 751-1625 (2000).

I am hopeful that this is a minor oversight that will be corrected in a future edition of her essay, or in future work.

<sup>61</sup>Aaron Monty, an undergraduate at the University of Southern California, was one of the Honorable Mentions in the LatCrit Student Scholars program for 2003. He was a presenter in the concurrent panel: *A LatCrit Cultural Studies?: Critical and Self-Critical Explorations of Law, Culture and Theory*. Aaron Monty, *Retranslating Difference*, 52 CLEV. ST. L. REV. 255 (2005).

<sup>62</sup>Monty, *supra* note 61 (emphasis added). In the United States there is a legal and social mythology of *two* racial groups, Blacks and whites, which LatCrit has labeled the “Black/White binary paradigm of race.” Within the binary, whiteness, and the privilege associated with it, implies full assimilation into the U.S. body politic, blackness implies exclusion from the normative society. For a discussion of the Black/White Binary Paradigm of Race critique developed by LatCrit scholars, and criticisms of it, see Pedro A. Malavet, *Reparations Theory and Postcolonial Puerto Rico: Some Preliminary Thoughts*, 13 LA RAZA L. J. 387, 393-399 (2002).

if only to the author, but which are not entirely new to our enterprise? Also, are we spending way too much time talking about how to talk and what to talk about, rather than engaging in praxis?<sup>63</sup> After giving it a lot of thought, I believe that the answer depends on identifying the real motivation behind the exercise in claims of newness: the ignorance or dismissal of existing work or the attempt to over-complicate things, on the one hand, or to introduce something that is actually new, on the other.<sup>64</sup>

#### IV. CONCLUSION: THE GROWING, IF PERHAPS NEGLECTED, CONTRIBUTION OF LATCRIT SCHOLARSHIP

Any one of us who joins the LatCrit enterprise should be mindful that we are becoming just another part on a long stream of scholarly production.<sup>65</sup>

Many of the articles in this symposium volume are articulations of interrogations, rather than answers, and presentations of basic research. Much of this work can, and hopefully will, find a wonderful theoretical, historical and even doctrinal context in the growing body of work of LatCrit scholars. In this regard, they are quality contributions to our growing scholarly record, and exciting proof of the future viability and potential of the LatCrit enterprise.

Which leads me to renew the inquiry: Who are we, and where are we going as a scholarly community? These are questions that we have been asking since our very earliest conferences and Symposia.<sup>66</sup> Francisco Valdés, an early LatCrit conceptualist, explains:

LatCrit theory is . . . 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 within 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 Critical Race Theory (CRT) and participated in its gatherings. Like other genres of critical legal

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<sup>63</sup>LatCritical describes the LatCrit approach to legal theory. Francisco Valdés has written about Praxis in the LatCrit enterprise:

Following from the recognition that all legal scholarship is political is that LatCrit scholars must conceive of ourselves as activists both within and outside our institutions and professions. Time and again, the authors urge that praxis must be integral to LatCrit projects because it ensures both the grounding and potency of the theory. Praxis provides a framework for organizing our professional time, energy and activities in holistic ways. Praxis, in short, can help cohere our roles as teachers, scholars and activists. The proactive embrace of praxis as organic in all areas of our professional lives thus emerges as elemental to the initial conception of LatCrit theory.

Praxis therefore serves as the second LatCrit guidepost.

Francisco Valdés, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997).

<sup>64</sup>Having raised the question, I will now leave it up to reader to determine their own answers.

<sup>65</sup>My colleague Lyrrisa Barnett Lidsky suggested the stream analogy to me.

<sup>66</sup>See, e.g., *Symposium, LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997).

scholarship, LatCrit literature tends to reflect the conditions of its production as well as the conditioning of its early and vocal adherents.<sup>67</sup>

Speaking very personally, LatCrit scholarship has allowed me to maintain and to develop my presence in the legal academy.<sup>68</sup> I have been informed, educated and motivated by our body of work and by our conferences. But I write this essay while struggling with curmudgeonly, cranky, impatience with a new crop of LatCritters, and fears and hopes for the future of our movement. In particular, I am aware that some of the old-timers (not me)<sup>69</sup> have been openly asking important questions like “where is the “Lat” in LatCrit?” Also, are we helping our movement with the contents of our symposium volumes, and are we publishing scholarship of the highest quality? Most importantly, *are we visible to each other as scholars?* In my view, the articles in this symposium issue present a mixed picture of LatCrit at eight.

First, the good news. Of the thirteen original submissions that I reviewed, four were by authors who have multiple publications in LatCrit symposia.<sup>70</sup> Nine of the essays focus specifically on Latina/o identity or a particular Latina/o group.<sup>71</sup> The other four essays discuss theoretical paradigms that have been central to developing our critical discourse.<sup>72</sup> The five authors of cluster introductions and this afterword,

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<sup>67</sup>Francisco Valdés, “LatCrit: A Conceptual Overview,” at <http://personal.law.miami.edu/~fvaldes/latcrit/overview.html> (last visited August 8, 2003 copy on file with author). See also Francisco Valdés, “Under Construction: LatCrit Consciousness, Community, and Theory,” *California Law Review* 85 (1997): 1089, note 2; *LA RAZA L. J.* 10 (1998): 3, note 2 (noting that defining LatCrit is difficult).

<sup>68</sup>See generally Pedro A. Malavet, *Literature and Arts as Antisubordination Praxis: LatCrit Theory and Cultural Production: The Confessions of an Accidental Crit*, 33 U.C. DAVIS L. REV. 1293 (describing my “accidental” entry into LatCrit). See also Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 MICH. J. RACE & LAW 1 (2000); Pedro A. Malavet, *The Accidental Crit II: Culture and the Looking Glass of Exile*, 78 DENVER U. L. REV. 753 (2001); Pedro A. Malavet, *Reparations Theory and Postcolonial Puerto Rico: Some Preliminary Thoughts*, 13 LA RAZA L. J. 387 (2002); *Introduction: LatCritical Encounters with Culture*, In *North-South Frameworks*, 51 FLA. L. REV. 1 (2003); Pedro A. Malavet, *AMERICA’S COLONY: THE POLITICAL AND CULTURAL CONFLICT BETWEEN THE UNITED STATES AND PUERTO RICO* (NYU Press, Critical America Series, forthcoming 2004).

<sup>69</sup>I do not count myself among the “viejas/viejos” yet because I have not been around long-enough, nor is my scholarship yet that mature.

<sup>70</sup>They are: Nancy Ehrenreich, Berta Esperanza Hernández-Truyol, Mary Romero and Charles Venator-Santiago.

<sup>71</sup>Venator-Santiago (Dominicans and Haitians in La Hispaniola), Romero and Serag (Mexican-Americans and Mexican Immigrants), Perry (Latinas/os and the intersectionalities of race), Revilla (Latina gay college women), Núñez-Sarmiento (professional women in Cuba today), Espiritu (Latino youth racialized as gang-members), Monty (Latino identity and consciousness), Mize (reparations for Mexican Bracero migrant workers), Chanbonpin (dispossession of Mexican-Americans in the U.S. Southwest).

<sup>72</sup>Hernández-Truyol and Hawk develop citizenship theories. Ehrenreich studies the heteropatriarchal nature of United States imperialism. Julian Webb discusses how complexity theory can provide a post-modern tool for critical praxis. Reginald Oh discusses how to use materiality to deconstruct and counter dominant narratives.

are also LatCritters who have participated in many of our conferences and published in several of our prior symposium volumes.<sup>73</sup>

Overall, this symposium volume is good. The personal narratives presented by Revilla, Espiritu and Monty are powerful. Many of the pieces also display strong basic research. Mary Romero and Marwah Serag presented a particularly compelling case-study of the abuses of Mexicans and Mexican Americans through racialized immigration enforcement. Marta Núñez gave a rarely complex look inside Cuba today. Venator-Santiago and Chanbonpin describe interesting legal-historical research. Hernandez-Truyol and Hawk, Ehrenreich, Perry, Webb and Oh present us with very varied and quite individually focused theoretical pieces.

Now the bad news. If judged by the standards of legal scholarship, many of the essays reflect a certain scholarly naiveté, or perhaps more kindly, a lack of sophistication. This is understandable, and is probably quite forgivable, given that the authors are students, or relatively young legal scholars or even academics unfamiliar with legal writing and methodology. In that regard, this is simply a fact necessitated by our consistent commitment to developing interdisciplinary approaches to law, and to encouraging younger scholars or scholars-in-development. It further promotes an invaluable opportunity to mentor. Specifically mentoring is an opportunity for critical praxis: nurturing younger scholars more actively should be part of our work.

As I discussed in the previous section, there appears to be some (hopefully accidental) ignorance of our existing body of work. Too many of the authors discuss ideas presented as original thinking, though the issues and theories to which they refer have surfaced in LatCrit scholarship. It is perhaps because our body of work has become so large, that some patience might be in order. The sheer volume of our published works might simply intimidate a young contributor. The symposium volumes alone include hundreds of articles over many thousands of pages. A young scholar might simply not know where to start digesting such a large body of work. These oversights need to be minimized, both for the good of the authors<sup>74</sup> and for LatCrit's. Many of the works included in this symposium could have been markedly better pieces of scholarship if their authors had studied our existing body of work. LatCrit scholarship would have provided them with theoretical, structural and doctrinal guidance. Moreover, it would maintain an intellectual linkage to the interdisciplinary early work of Latina/o scholars that inspired our prior work, while at the same time moving us into the future.

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<sup>73</sup>Francisco Valdes, *City and Citizen: Community Making As Social Struggle*, 52 CLEV. ST. L. REV. 1 (2005); Tayyab Mahmud, *Citizen And Citizenship Within And Beyond The Nation*, 52 CLEV. ST. L. REV. 51 (2005); Guadalupe T. Luna, *Land, Labor and Reparations*, 52 CLEV. ST. L. REV. 265 (2005); Keith Aoki, *Cities In (White) Flight: Space, Difference And Complexity in Latcrit Theory*, 52 CLEV. ST. L. REV. 211 (2005); Angela P. Harris, *Love And Architecture: Race, Nation, And Gender Performances Inside And Outside The State*, 52 CLEV. ST. L. REV. 121 (2005).

<sup>74</sup>For the reasons discussed in the previous section. At the very least, ignoring existing scholarship exposes the author to charges of poor research, and of general lack of familiarity with "the literature." The author might also unwittingly subject him/herself to charges of plagiarism.



The production of knowledge has been a LatCrit guidepost since our earliest publications,<sup>75</sup> as has the need to develop community, which ought to include intellectual cross-pollination. We have always been aware of the need to maintain a proper balance between “the simultaneous pursuit of sophistication and embrace of disenchantment to achieve a creative discursive balance that generates progressive and transformative theorizing.”<sup>76</sup> These values should lead us to strive to inform each other and to be informed about what others in our group have already published. The logical starting point are the growing volumes of our Symposia. I know that this is not easy, and I certainly do not claim to have read everything that we have published, but it is inexcusable to offer an essay to any symposium without having read at least a representative sample of LatCrit scholarship. I dedicated a substantial part of a sabbatical leave in the Fall of 2002 to taking notes for a bibliography of LatCrit articles published in the two Colloquia, in the California Law Review Symposium, and in the symposium issues for LatCrit I, II, III and VI. During this review, I found some forgettable essays, but I mostly read truly good, cutting-edge, well-written and well-informed scholarship that helps me to develop my own work.<sup>77</sup>

I am hereby issuing a call for mentoring. We as a group need to do a better job of educating other scholars about our existing work, and to help them to develop their scholarship. This can help good articles become even better.

Let me use our wonderful crop of LatCrit student scholars to provide examples of this process. These authors display real promise and their work will certainly benefit from further study of LatCrit. For example I might have suggested that rather than simply stating that under *Johnson v. M'Intosh*, Mexican and Spanish land titles should have been valid—a point on which Kim David Chanbonpin is clearly correct—perhaps she should have taken the time, at least in a footnote, to acknowledge the irony of using the law of conquest to support the claims of Mexican Americans dispossessed by an “American” conquest. Espiritu's article might have benefited from more research and development of the constitutional caselaw. Finally, I might challenge Aaron Monty's assumption that his physical characteristics have *fully* insulated him from general anti-Latino discrimination.<sup>78</sup> My concern is that these

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<sup>75</sup>Francisco Valdés, *Under Construction: LatCrit Consciousness, Community and Theory*, 85 CAL. L. REV. 1087 & 10 LA RAZA L. J. 1 (1997) (discussing importance of LatCrit production of knowledge as a guidepost).

<sup>76</sup>Francisco Valdes, *Latina/o Ethnicities, Critical Race Theory and Post-Identity Politics in Postmodern Legal Culture From Practices to Possibilities*, 9 LA RAZA L.J. 1, 9 (1996).

<sup>77</sup>For persons looking for way to tackle the broad field of LatCrit scholarship, Jean Stefancic has offered us excellent studies of the themes that are covered in LatCrit scholarship, which can serve as shortcuts in this process of digesting the existing body of work. See, e.g., Jean Stefancic, *Latino and Latina Critical Theory: An Annotated Bibliography*, 85 CAL. L. REV. 1509 & 10 LA RAZA L. J. 423 (1997) (Developing the history of published LatCrit scholarship from Rudy Acuña's ground-breaking “Occupied America” (Rodolfo F. Acuña, OCCUPIED AMERICA: A HISTORY OF CHICANOS (3rd Ed. 1988), first published in 1972)) to the articles in that symposium).

<sup>78</sup>Monty, *supra* note 61. He also explains how, to him, the differences between Monty—a six-foot-tall, light-skinned, green-eyed, gay Mexican American—and his friend Gabriel Tarango, a five-foot-two, darker-skinned, Mexican American, “do not separate [them], they merely distinguish us.” But he has witnessed how their differences led border patrol agents to

comments might reflect a lack of awareness, rather than complete freedom from discrimination. Also, those of us who self-map as persons of color, and who, with sufficient research, are so mapped by the dominant culture, must be wary of bearing witness to a "lack of discrimination." As stated earlier, we may be missing something, or we might be playing into an individualized type of the "model minority" mythology.<sup>79</sup> These suggestions and questions are quibbles, considering that these are student-essays and not tenure track professors' articles. Their articles are certainly worthy contributions to the conference and the symposium by students, who hopefully represents the next generation of critical scholars.

I know that I have benefited greatly from scholarly mentoring within the LatCrit enterprise. Perhaps our developing peer-reviewed journal is one institutional response to the challenges of nurturing scholars and generating high-quality writing. Another might be to ask that articles be submitted for comment before the conference, so that they may be critiqued during the annual conference and the writer may have the opportunity to re-draft the piece and resubmit it. One possible solution to the "volume-of-scholarship" problem might be to publish an edited anthology of our works, an updated "LatCrit Primer," perhaps as the inaugural volume of the LatCrit Journal project.

LatCrit VIII, and this Symposium, have once again brought to the forefront new voices in legal scholarship. This is part of the continuing process of resisting the suppression of scholars of color within the United States legal academy, by expanding the LatCritical exploration of law, theory and praxis within a newly-enriched United States legal scholarship. Part of that development must necessarily include the scholarly trails already blazed by LatCrit scholars. Please, let us not remain invisible to each other.<sup>80</sup>

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accept Monty's declaration that he was an "American," while they demanded proof of Gabriel's. *Id.* Another possible trigger for discrimination which was not relevant in this scene, but which Monty might consider, is your very name. "Gabriel Tarango," "Pedro," might be treated differently than "Aaron Monty."

<sup>79</sup>Pedro A. Malavet, *Literature and Arts as Antisubordination Praxis: LatCrit Theory and Cultural Production: The Confessions of an Accidental Crit*, 33 U.C. DAVIS L. REV. 1293, 1325 (2000) ("The beauty of the liberal myth of meritocracy is that it feeds the healthy egos of those of us who have achieved some level of success."). More generally, "model minority" groups are used to divide outsider communities. However, some critical authors have written persuasively about the need for *role* models. Enrique R. Carrasco, *Collective Recognition As A Communitarian Device Or, Of Course We Want To Be Role Models*, 9 LA RAZA L. J. 81 (1996) responding to a contrary view by Richard Delgado, see Richard Delgado, *Affirmative Action as a Majoritarian Device: Or, Do you Really Want be a Role Model?*, 89 MICH. L. REV. 1222 (1991). See also Adeno Addis, *Role Models And The Politics Of Recognition*, 144 U. PA. L. REV. 1377 (1996) (a thorough, critical review of the rhetorical use of "role model" in U.S. legal discourse).

<sup>80</sup>Ediberto Román explains why learning from each other must be central to what we do: Related to efforts at scholarly advancement, are LatCrits sufficiently supporting each other in their scholarship and other professional endeavors outside the conferences? While these simple and perhaps paternalistic and disturbing questions are applicable to all law professors, LatCrit, as a movement, aspires to a higher goal of coalition-building. In that vein, do LatCrits sufficiently read each other's work and provide non-conference scholarly support? This goal is essential to building the body and quality of literature in the movement, as well as promoting broader interdisciplinary involvement and exposure. Do LatCrit scholars cite each other when working on

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similar projects? In addition, LatCrit scholars should embrace related interdisciplinary works. Likewise, interdisciplinary scholars engaging in the LatCrit effort should familiarize themselves with prior LatCrit and Critical Race Theory efforts. A review of the interdisciplinary works submitted for this symposium issue often illustrated a lack of familiarity with Critical Race Theory, in general, or LatCrit works, specifically. Perhaps, the LatCrit board or conference organizers could create an initial reviewing body to review submissions and provide suggestions to interested authors. This in turn would ensure the quality and development of LatCrit and interdisciplinary scholarship affecting LatCrit. Working in this vein will likely assist the LatCrit effort in deconstructing false norms in the traditional jurisprudential paradigm.

Ediberto Román, *Afterword: LatCrit VI, Outsider Jurisprudence and Looking Beyond Imagined Borders*, 55 FLA. L. REV. 583, 600 (2003).