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CLUSTER IV

COMPARATIVE AND CO-CONSTITUENT CONSTRUCTION OF IDENTITIES

University of Florida at Gainesville

Sixth Annual LatCrit Conference Latinas/os and the Americas:
Centering North-South Frameworks in LatCrit Theory
April 26-29, 2001

Introductory Remarks of Elvia R. Arriola, Associate Professor of Law,
Northern Illinois University.

[The following remarks address both the moderator's comments on the actual panel of LatCrit VI hosted by the University of Florida and on essays that were produced by another group of scholars on the issue of identity construction.]

Welcome to the panel for this afternoon, Comparative and Co-Constituent Constructions of Identity. Today to share their comments are Angela Harris, Ratna Kapur, Jane Larson, and Nancy Ota. Angela Harris, a professor of law at the University of California at Berkeley, is going to talk about class as a co-constituent with gender and race. Jane Larson is a professor of law at the University of Wisconsin whose areas of scholarly interest are the regulation of sexuality, land tenure, and land reform, with a special interest in the U.S.-Mexico border. Jane's essay, "Informality, Illegality and Inequality," offers a critical examination of the problem of regulating the informal economy from within the reference point of U.S. legal tradition, as illustrated by the settlement housing known as "colonias" along the Texas border. Ratna Kapur is the Director of the Centre for Feminist Legal Research at New Delhi, India, who will be visiting New York University's School of Law this coming Fall (2001). She will talk about how recent anti-trafficking measures in the international and domestic arenas have excluded the sex worker and the migrant worker from legal protections, constructing them as sexual contaminants. Nancy Ota, a recently tenured professor at Albany Law School, which just tenured its first two women of color, will comment on the positioning of queer women of color within the contemporary conservative "pro-family" rhetoric.

I was immensely pleased to see the focus on identity comparison and globalization in this year's invitation from the LatCrit planning committee. We are living in times of increasing and massive corporate globalization. Daily we hear of active efforts to continue the negotiations between

governments and the representatives of the World Trade Organization (WTO) or advocates of free trade to embrace globalism. Media advertising bombards us with the positive images of a global village where citizens of distant nations feel more closely connected through the Internet and other forms of satellite communication, or through instantaneous purchasing and information power of multinationalized goods and resources. Yet globalization also shortens the path between our doors and the doors to homes and communities where the economic privileges that are attached to globalism are never seen. The impact of corporate global expansion has in fact done little to reduce the violence of poverty, disease, and environmental destruction among those whose worker identity is the lifeblood of a corporation's spread throughout the globe, whether on domestic soil or abroad.

I have always assumed that an important LatCrit agenda is the development of an interdisciplinary perspective on the question of subordination and injustice in Latina/o communities everywhere. The previous LatCrit perspective (of five years ago) of looking within for some idea of what it means to be "Latina/o"¹ and to write with a focus on Latinas/os in the subject position, has evolved in part from a curiosity about the construction of our own personal identities, to explorations about life and the law in Latina/o culture, identity and communities throughout the world. This panel's theme, viewed in a global context, presented the speakers and writers with the opportunity either to focus locally or to range far and wide. We were invited to develop theory and praxis that is cognizant of the borders, real and metaphoric, that are fabricated by the powerful, as we examined the construction and reconstruction of the identities of the marginalized, the absent voices from the discourses of the powerful at places like a world economic forum. The theme of this panel also produced writings that continue to grapple with the ongoing questions of identity construction, which in a global context I would define as the "global subject."

The title of this panel evoked some fond memories for me of our first gathering in 1996 at the first Latina/o Critical Legal Theory Conference. At LatCrit I, I enjoyed being on a panel that was called *Multiplicities and Intersectionalities: Exploring LatCrit Diversities*. Today's panel not only continues the discussion on the "thickness" or "lived experience of identity,"² but also on what Professor Keith Aioiki has referred to as identity "fabrication." This evokes the idea of individuals who, lacking choice or agency "have identities imposed, inscribed, or impressed upon

1. On this critical note, see Luz Guerra, *LatCrit y La Des-Colonización Nuestra: Taking Colón Out*, 19 CHICANO-LATINO L. REV. 351 (1998).

2. See generally Keith Aioiki, *Introduction to Panel Four: Multiplicities and Intersectionalities: Exploring LatCrit Diversities*, 2 HARV. LATINO L. REV. 395 (1997).

them, which cannot be disclaimed, altered, or abandoned.”³ Those themes will seem especially apparent in some of this afternoon’s presentations; for example, the presentations on the social construction of the migrant and sex trafficker, and on the illegal squatter in “no-man’s land” in the Southwest. But today’s panel also introduced the idea of making comparisons between, among, and beyond the identity constructions of a so-called LatCrit community and strictly among Latinas/os. The focus on globalization in this year’s theme encourages us to extend our vision outward, from that of Latina/o identities within U.S. life and law, to areas where there are no Latinas/os, but where there exists the experience of being a member of a vulnerable minority who experiences oppression because of someone else’s power to construct a powerless identity. Also, our praxis at LatCrit I, the engagement in a critically based discourse, has presumed the relevance of narratives as an important tool for educating each other and audiences beyond the legal academy.

Jerome Culp’s essay, *The Seventh Aspect of Self-Hatred: Race, LatCrit and Fighting the Status Quo*,⁴ illustrates the continuing importance of confronting the “universalisms” of race, class, gender, and sexuality that can easily collapse into an essentialist and false discourse about identity, culture, and representation. Writing as a non-Latino, Culp answers the question “Are you a LatCrit?” with a firm “yes,” while also recognizing the importance for him, and for our critical community, to identify with a community whose central focus is on Latinas/os rather than on African-Americans or “Blackcrits.” Culp’s story about the meaningfulness of identity and identity fabrication, which is the vehicle he uses to explain why he happily identifies as a LatCrit, is not about race or class. Rather, the analysis takes place in a narrative about the process that Culp went through in acknowledging his membership in the community of diabetics. Culp provides an immensely enjoyable essay, refreshing in its honesty and in its exploration of the challenges of living in a world where one’s identity is boxed and labeled, whether we like it or not, and of living up to the challenge of choosing to put ourselves in the (despised) box because it is the moral and the just thing to do.

In earlier LatCrit conferences, we have explored the important role that cultural production, particularly seen in the forms of music, poetry, street theatre, and performance art, can play in the development of critical theory and grass roots politics. This claiming of a relationship between LatCrit theory and cultural production recognizes the important role of non-literary forms of communication used by members of the oppressed, to

3. Keith Aioki, *(Re)presenting Representation*, 2 HARV. LATINO L. REV. 247, 251-52 (1997).

4. Jerome Culp, *The Seventh Aspect of Self-Hatred: Race, LatCrit and Fighting the Status Quo*, 55 FLA. L. REV. 425 (2003).

convey to each other how and why it is that they are “at the bottom” of the social ladder, even while their messages to each other may become the joy in the struggle that encourages them to hang together in the fight for social change. At first blush, Juan Perea’s essay, *Killing Me Softly With His Song: Anglo Centrism and Celebrating Nouveaus Latinas/os*,⁵ appears to venture into an examination of the role of cultural production, in this case music lyrics, in creating identity and community. Instead, it is an ironic criticism of how wrong the popular media is in thinking that the American mainstream public has “embraced” Latina/o culture by welcoming the voices of Latina/o music artists who mouth Latin music “a la Anglo-Americana” in English. So, at best, the introduction to this essay is a taste of that aspect of language and assimilationism that forms the core of identity and community fabrication, a critique well deserved by the advertisements of multinational corporations spreading throughout the world.

In the remainder of his essay, Perea focuses on a familiar theme, exploring the ironies of history in the official forms of discrimination against Latinos effected by the anglo centric obsession with “English-only” laws and legislation as well as by court decisions that uphold Anglicized white cultural values. Perea also could have noted that if mainstream American audiences really want to hear the voices of its Latino communities, they should tune in to the music of the Brown and poor Mexicano-indios who experience discrimination in this country as farm workers, maids, janitors, carwashes, gardeners, and factory workers of multinational corporations. They are the people who in Texas, for example, play “musica Tejana,” a hybrid of Tex-Mex and Mexican country music. They are the people we see throughout the Southwest, often standing at the entrances to freeways selling cast off fruit from orchards they helped harvest for agribusiness. These are the same people who may stay in the U.S. long enough to become the parents of would-be clerks and secretaries, college students, and maybe even professors of law at colleges and universities; the very individuals who may have little connection to their parents’ cultures, but who preserve their identity through conversational Spanish. Indeed, the desired image of the “embraced” Latina/o is not like these individuals; these are not people who, like “J-Lo” (the actress Jennifer Lopez), can dye their hair blonde and play an Anglo-White or Italian “wedding planner” (but never a real Latina/o in a mainstream movie!). No, ethnically and racially they would undeniably not be Anglo, and their ways, language, mannerisms, and cultural interests are unlikely to pass as white.

5. Juan Perea, *Killing Me Softly With His Song: Anglo Centrism and Celebrating Nouveaus Latinas/os*, 55 FLA. L. REV. 441 (2003).

Thus, while Perea writes about language and about official forms of discrimination, he could sharpen his critical lens in the language and images used by the corporate oppressor, who fashions myths about who and what we are as an immigrant (illicit) culture in an Anglo centric world. It is all about representation after all. Language is the vehicle by which all social groups preserve their own history or that of other cultures. In the end, I agree with the sentiment that a few popularized and assimilated Latino artists (and their music or acting talent) have not captured our Latino diversity or identity. Similarly, messages from global corporations that we are a welcoming, diverse America, because we have ads in multiple languages for multiple markets, say nothing about how equitable the social realities are that flow from this marketing of our reconstructed identities.

Members of the LatCrit community often engage seriously in the exploration of the multi-dimensional aspects of oppression. As noted above in Culp's essay, "oppression" does not exist or derive only from forces outside one's persona; it also comes from within—thus exists the concept of "the internalized oppressor" or "self-hatred." The final essay in this cluster, *Agencies of Transformational Resistance*,⁶ by Alejandro Covarrubias and Anita Tijerina Revilla, also engages the usefulness of the consciousness raising that is available from engaging in LatCrit or Critical Race Theories. This essay further confirms our success as a scholarship community in providing space for the interdisciplinarian. Covarrubias and Tijerina Revilla write as graduate students in the Department of Education at UCLA. They centralize Chicanas/os as a population that has suffered from negligent and intentional "mis-education," which is the byproduct of years of inadequate and segregated education due to the intersection of race, ethnicity, class, and gender.

LatCritters⁷ often claim that the purpose of engaging in this critical theory is to create community. The creation of community rests on the affirmation of an identity that resists stereotyped and unfair images of our community, as noted above in Juan Perea's essay. Covarrubias and Tijerina Revilla, however, take this point to a deeper analysis by examining the impact of two advocacy organizations that operate within marginalized communities. They employ the critical theory models to examine how such organizations succeed or fail as "agents of transformational resistance" to nurture and educate young activists so they will commit to the project of social justice in their communities. The

6. Alejandro Covarrubias & Anita Tijerina Revilla, *Agencies of Transformational Resistance*, 55 FLA. L. REV. 461 (2003).

7. Member of the Latina/o Critical Legal Theory Movement (LatCrit), a shortened term introduced by Celina Romany at the fourth annual meeting in a keynote address in Lake Tahoe, California, May 1999.

bottom line of their analysis is that our critical theories must become useful to the members of the marginalized communities we purport to represent. It is a message I have often voiced myself in prior writings—that in our efforts to transcend the supposed “neutrality” of mainstream scholarship by engaging in critical, consciousness-raising education and awareness about identity, history, and culture—we must also embrace a responsibility to share with the members of those communities the method, usefulness, and possibilities for social change by engaging in this critical analysis. I would agree with these young scholars that, only then, can we have a role in producing “praxis,” critical engagement with scholarship that produces greater equality of opportunity for all.

My own current research interest on Mexicanas in the global economy may respond to this concern for the production of scholarship that is useful to our communities, whether we see the global subject right outside the doors of our offices or homes or in the poverty-stricken streets of a Latin American country. My explorations into a LatCrit view and methodology have led me to examine the conditions for women who work in the factories owned by multinationals in the Southwest.⁸ I have been concerned with women, and their families, who live and work in factories that thrived throughout the nineties in a wildly successful example of corporate global expansion under the privileges for investors created by the North American Free Trade Agreement (NAFTA).⁹ Proliferation of these “maquiladoras,” some of them nothing more than sweatshops,¹⁰ has symbolized the exploitation of Mexican child labor, tough battles between management and labor for recognition of union rights, non-living wages, and workers’ exposure to toxic chemicals in the workplace or in their own neighborhoods.

A marriage of interests between U.S.-based corporations seeking to reorganize their labor forces and increase profits with the aid of government-signed trade agreements has produced a constant flow of

8. Elvia R. Arriola, *Voices from the Barbed Wires of Despair, Women in the Maquiladoras, Latina Critical Legal Theory and Gender at the U.S.-Mexico Border*, 49 DEPAUL L. REV. 729-815 (2000).

9. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 289.

10. By the time this Essay went to press, I had returned from another trip (May 2002) to Nuevo Laredo, Mexico, which borders Laredo, Texas. In that gathering with labor and human rights activists from both sides of the U.S.-Mexico border, I learned of the horrific treatment of workers employed by the factories that are part of the coupon industry. These are the cutout coupons that U.S. consumers are familiar with as thick inserts in their Sunday newspapers offering them incredible shopping deals. The workers who produce those coupons are typically forced to work 10-12 hour workdays, standing, and, in Laredo, are frequently exploited by factory owners who sometimes walk away without paying them, confident that the young women are too naïve and ignorant of the law to press charges or to seek recourse from the government.

migrants fleeing poverty and desperation from trying to live and provide for their families as farmers. In Mexico, as throughout many parts of the world, the economic turbulence wrought by free trade pushes migrants towards the cities, northwards in search of work at the border. Once there, they meet the marriage of interests between public and private forces as well as critical elements of preserving these interests in the enforcement of immigration laws with a corollary lack of enforcement of regulatory health and safety laws that pose barriers to free trade practices at the Mexican border.¹¹ The peasant is now reconstructed into either a migrant or a laborer. If he is a laborer, he may find an abundance of jobs, but because his self-constructed identity as a father or mother or family member is irrelevant to free trade, there will not be jobs that provide a living wage—there will not be a healthy living or working environment. As a migrant laborer, he cannot influence the development of stable economic communities. As a laborer he cannot even be guaranteed non-exposure to unsafe chemicals or materials, and his dependents, if female, cannot be guaranteed a work environment that will not threaten her reproductive capacity, her sexuality and body, or even her life.¹² The migrant's identity has other issues—a pressure from bad pay and working conditions that periodically lures him to cross the border into the U.S. for better opportunities, but only at the constant risk of death or serious bodily injury due to the movement through terrain that has escaped the watchful eye of the Border Patrol.¹³ If successful in crossing, he is now viewed as “criminal” “alien,” or maybe even terrorist. In the end, whether migrant, laborer, or maquiladora work, as the subaltern he must accept a way of life that is riddled with fear and worry over being able to feed, clothe, and adequately house one's children and family,¹⁴ or even to keep a job should a worker dare to question the unfair labor practices that characterize so

11. See generally Arriola, *supra* note 8.

12. The City of Ciudad Juárez, which borders El Paso, Texas, a booming center for maquiladoras, has had over 250 mysterious killings of young women between the ages of 15-30; many of the victims were maquiladora workers since 1993, the year NAFTA was signed. A 2002 documentary, *Señorita Extraviada* (Young Missing Woman) by filmmaker Lourdes Portillo, theorizes the serial murders against the backdrop of the maquiladora industries. Another researcher explores the murders in the context of the phenomenon of “femicide” a social expression of misogyny. See Julia Monarrez Fragoso, *Female Serial Sexual Murders in Ciudad Juarez*, DEBATE FEMINISTA (2002), available at <http://www.womenontheborder.org/articles>. Finally, a critical reviewer of Portillo's documentary explores the phenomenon in the context of the explosive growth of the maquiladoras and the social turbulence it posed to gender relations, as manifested in the increasing rates of domestic violence. See generally Debbie Nathan, *The Missing Elements*, TEXAS OBSERVER (2002).

13. Arriola, *supra* note 8, at 806-09.

14. Elvia R. Arriola, *Looking Out from a Cardboard Box, Workers and Their Families in the Maquiladoras of Ciudad Acuña*, 57 GUILD PRAC. 241, 248 (2000).

many of the maquiladoras.¹⁵ Clearly, in the rhetoric of an expanding global economy, the only relevant and privileged identity is the corporate identity or the foreign investor, not that of the workers whose labor is crucial to the production of the goods and services being spread throughout the world.¹⁶ LatCrit scholars need to pay more attention to the issue of the increasingly globalized economy. I see its unjust impact on Mexican Latinas/os just minutes or hours from any one of dozens of outlet shopping malls that provide North American consumers with “bargain shopping” and with other “benefits” of the global economy. Historically, American citizens could travel to the Mexican border town for an occasional shopping spree. Now, at the expense of the health, safety, and livable conditions of Mexicans, they just have to drive to the nearest outlet mall.

As I conclude, I think of the lessons that I have absorbed in my own LatCrit tinkering beyond the notion of understanding my own personal identity construction. One lesson has emerged in the course of my work with women in the maquiladoras. That project, in which I literally cross the physical borders, also forces me to think of the metaphoric borders of gender, race, class and sexuality, the haunting divisions that bring me close to the global subject and that also keep me far from being able to understand their existence and plight. Since last year’s LatCrit Conference at Breckenridge, I have crossed the border into Mexico five or six times for the purpose of interviewing women workers and their families. Both feminist and LatCrit Theory have encouraged a mode of research and analysis that allows the fullest exploration of how an identity is constructed and how a person’s identity is experienced, whether as a family member, a laborer, a community resident, or a citizen of an economically dependent nation. From its inception, LatCrit Theory has helped me to think about the linkages that bind Latina/o communities in a way that is relentlessly multidimensional. I have a different view today of Latina/o communities in the U.S. than I did a few years ago, especially since my recent crossings of the Mexican border to do this documentary

15. Elvia R. Arriola, *Becoming Leaders: The Women in the Maquiladoras of Piedras Negras, Coahuila*, FRONTERA NORTE-SUR, Oct. 2000, available at <http://www.womenontheborder.org/articles.htm>.

16. This global movement for corporate expansion and privatization of essential government services, addressed by the FTAA, intended to extend the investor protections in the North American Free Trade Agreement (NAFTA) to thirty-four countries in the Western Hemisphere. See Maude Barlow, *The Free Trade Area of the Americas and the Threat to Social Programs, Environmental Sustainability and Social Justice in Canada and the Americas*, in *The Council of Canadians*, in THE COUNCIL OF CANADIANS, available at http://www.canadians.inline.net/display_document.htm (last visited Sept. 21, 2002). The FTAA would limit governmental abilities to directly regulate foreign investment and would attack efforts by governments to enact standards for protection of domestic food production, public health and safety, workers’ rights, and protection of the environment. See *id.*

work. Through the workers' eyes, I now see the borders of class, race, age, sexuality, and gender constructed over and over to turn these individuals into subservient workers, illegal aliens, drug smugglers, or vagrant (i.e., migrant) criminals whose only violation was migrating towards a better job so that they could feed their families.

Secondly, as a feminist, the LatCrit perspective has encouraged me even more than ever to trust the methodology of personal narratives, gathered with the disciplinary perspective of a historian, so as to employ them responsibly as a way of grounding an individual's story to a particular issue or aspect of the critique of globalism, be it from the standpoint of her role as a worker, a union organizer, a popular educator, or a human rights activist, and to use her voice or narrative to explore how, in this globalizing economy, race, class, age, sexuality, citizenship, religion, indigenous status or culture, and education directly affect the lives of women, men, and children. But the gathering of these stories has forced me, time and again, to see the privileges and limitations of being a Latina feminist who is interested in getting another woman's story to make a point, without violating the integrity of that other person's experience, message, or struggle. It is an experience fraught with the danger of an unwitting violation of personal boundaries and privacy, especially if one is not conscious of her privileged stance as she holds the microphone and jots down notes in a scholar's pad.

For example, every time I have made contact with the women, I have found that our similar experiences as women was often a boost to the quality of the material I could gather in the interview. In other words, I could nurture a kind of intimacy that derived from my ability to relate to their experiences as sisters, daughters, women, wives, partners in relationships, or mothers. My ability to empathize created a safe emotional space for sharing the details of experiences that sometimes evoked strong feelings because they had been relegated to the painful past that someone wanted to forget. For example, I interviewed a woman named "Paty" who recalled a painful memory of a miscarriage on the worksite because of the excessively long work hours and because of exposure to toxic materials in the workplace. I also met "Vero," a woman who got her first job at the age of fifteen and was able to buy a small plot of land on which she personally, and literally, with the help of her grandfather, built a small house for her mother. I found Vero to be a resilient woman who, in the course of our interview, cried for the first time in years. My interview technique, which had her looking into the path of her "career" as a maquila worker, took her to memories of such excessively long work hours at a particular place and point in time that she had not even been allowed to take a break to attend her own brother's funeral without risking her job. Those moments, for an interviewer, are an opportunity, a privilege, and a delicate exchange of words and feelings that could too easily be exploited and manipulated.

Thus, the differences that can come between an interviewee and an interviewer are the new borders that I have an opportunity to encounter. These borders are sometimes created by our differences in class, education, and opportunity. They induce personal discomforts which, I am forced to admit, are the byproducts of my own privileged existence—being the educated, financially comfortable, Latina traveler with a rented car and money to pay for all expenses incurred on a weekend visit with organizers. An example of this arose on my last trip to Reynosa, Tamaulipas, when I stayed in a hotel rather than with a family for the weekend. Culturally, I know the importance of Mexican hospitality, and I imagine that if I had asked I could have stayed with a family. On this trip, a white woman activist from Austin, Texas, traveled with me. She was someone that I knew would also have been happy to stay in a family's home if the invitation had been extended. When it was not, I was relieved that we would stay in the hotel. I felt guilty because, as uncomfortable as the shabby hotel would be, I would still have more privacy than I would have had in a typical worker's home at the Mexican border. The workers often live with five to six people in two rooms and survive on an average of \$25-\$35 dollars a week in wages in a border economy that is falsely believed by many Americans to be inexpensive, when in reality it is a much higher cost of living than within Mexico's interior.

My work with the women in the maquiladoras has definitely been about confronting the global powers that want to open borders to free trade and commodities, while keeping them shut to the migrant poor. It has been about removing the borders of fear and ignorance that have separated me from women who may not become close friends, but who will become colleagues in the struggle for social justice. As my older sister Carmen put it after she read one of my articles, with a slightly different set of circumstances for my own immigrant family, these very women that I have interviewed might have become my co-workers or my neighbors in a city dominated by the economic power and wealth of the U.S.-Mexican maquiladoras. That is a dizzying concept of identity construction to apply to oneself.

Against this kind of research project and gathering of information, knowing that multinational corporations are extending further into Mexico, Latin America, China, India, and Indonesia, the effort to record the lives of the maquiladora workers seems like a fairly radical venture. The planning committee thus took an important step in recognizing the importance of the global perspective on our research and on this topic of identity construction. While we hear so much these days about the benefits of a global economy, we do not hear enough about the global subjects, those whose diverse communities, whether in the streets of L.A. or the streets of Bangkok and New Delhi, represent the burdens of an unregulated globalizing trend. To have a global perspective on our work will allow us

to give voice to those for whom the global economy means not thriving but barely surviving. It is radical work because we know that silencing the oppressed is crucial to maintaining the power to oppress, while voicing one's oppression is the path to liberation.¹⁷

17. See generally PAULO FRÉIRE, *THE PEDAGOGY OF THE OPPRESSED* (1973); JEAN-PAUL SARTRE, PREFACE TO FRANTZ FANÓN, *THE WRETCHED OF THE EARTH* 10 (1963) ("[T]he Third World finds itself and speaks to itself through his voice."); Margaret Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 5 MICH. J. RACE & L. 847, 856 (2000).

