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### City and Citizen: Community-Making as Legal Theory and Social Struggle

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# CITY AND CITIZEN: COMMUNITY-MAKING AS LEGAL THEORY AND SOCIAL STRUGGLE

FRANCISCO VALDES<sup>1</sup>

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## I. INTRODUCTION

The Eighth Annual LatCrit Conference met in Cleveland in May, 2003 to engage a timely and topical theme – *City and Citizen: Operations of Power, Strategies of Resistance*. Importantly, the theme explicitly drew critical attention not only to *operations of power* but also to *strategies of resistance*, and thereby implicitly invited LatCritical analysis of how the two converge in the messy and multifaceted processes of building communities on any human scale. As articulated in the Call for Papers and Panel Proposals, this theme expressly beckoned LatCrit and other critical scholars and activists to examine the “meaning of full membership in

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<sup>1</sup>Professor of Law and Co-Director, Center for Hispanic and Caribbean Legal Studies, University of Miami; Co-Chair, LatCrit, Inc. I thank, first, the authors and contributors to this symposium, and the participants in the conference on which it is based. Secondly, I thank the editors of this volume, whose work and dedication immeasurably have improved the final product and ensures that persons unable to attend the conference in person may access its proceedings. I likewise thank the organizers of the conference, and in particular Tayyab Mahmud, for the dedication and perseverance that made both the conference and this symposium possible. Finally, I thank the Cleveland-Marshall College of Law, and the LatCrit community at large, for their support of this ongoing experiment in critical outsider jurisprudence. Any errors below are mine alone.

society” – in other words, the politics both of inclusion and of exclusion in the construction of the local, national and transnational “communities” that encase and govern human affairs.<sup>2</sup>

To open and introduce this symposium, this Foreword similarly proceeds in two parts: the first Part, reviewing the four “clusters” of essays comprising the symposium, focuses mostly on “operations of power” and the critiques proffered by the symposium authors that follow this Foreword; the second Part, focusing mostly on “strategies of resistance,” examines the human acts and legal regimes giving rise to a marginal Latina/o community within the existing minority “enclaves” of one major city of the United States. In both instances, however, this Foreword seeks to elucidate how this year’s theme and conference – and the following symposium based on them – embrace and advance the longstanding commitment to community-building that has become a key hallmark of LatCrit theory and praxis during the past eight years.<sup>3</sup> This Foreword, in short, aims to remind us all that community-making,

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<sup>2</sup>To review the LatCrit VIII Call for Papers, please visit the LatCrit website at [www.latcrit.org](http://www.latcrit.org).

<sup>3</sup>“LatCrit theory” is a jurisprudential subject position that encompasses richly diverse scholars and texts. “LatCrit theory” therefore comprises many scholars with varying views, making it somewhat misleading to speak of “LatCrit theory” in the singular. Nonetheless, the multiple diverse critical legal scholars who have coalesced around the collective effort to articulate LatCrit theory have “exhibited ... [a] sense of shared groupness.” See Francisco Valdes, Foreword—*Latina/o Ethnicities, Critical Race Theory, And Post-Identity Politics In Postmodern Legal Culture: From Practices To Possibilities*, in 9 LA RAZA L.J. 1, 7, n.25 (1996). LatCrits, like “Latinas/os” and other social groups, are a collection of “different” individuals. See Sylvia A. Marotta & Jorge G. Garcia, *Latinos in the United States in 2000*, 25 HISP. J. BEHAVIORAL SCI. 13 (2003); Luis Angel Toro, “A People Distinct from Others”: *Race and Identity in Federal Indian Law and the Hispanic Classification in OMB Directive No. 15*, 26 TEXAS TECH. L. REV. 1219 (1995) (critiquing the ramifications of the current labeling system in the United States, which “lumps together all people who can connect themselves to some “Spanish origin or culture” together as “Hispanics”); see also, Jorge Klor de Alva, *Telling Hispanics Apart: Latino Sociocultural Diveristy*, in THE HISPANIC EXPERIENCE IN THE UNITED STATES: CONTEMPORARY ISSUES AND PERSPECTIVES 107-36 (Edna Acosta-Belen & Barbara R. Sjostrom eds., 1988); SUZANNE OBOLER, *ETHNIC LABELS, LATIN LIVES* (1995); EARL SHORRIS, *LATINOS: A BIOGRAPHY OF THE PEOPLE* (1992); *LATINOS IN THE UNITED STATES: HISTORY, LAW AND PERSPECTIVE* (Antoinette Sedillo Lopez ed., 1995); see generally THE LATINO/A CONDITION: A CRITICAL READER (Richard Delgado & Jean Stephancic eds., 1998). Conventional labels used socially in the United States are captured formally in the current census, which amalgamates “Spanish/Hispanic/Latino” into a single category, and then subdivides it into subgroup varieties like “Mexican, Mexican Am., Chicano” and “Puerto Rican” and “Cuban.” See United States Department of Commerce, Bureau of the Census, Form D-1, Question Seven (2000) (copy on file with author); see generally Alex M. Saragoza, Concepcion R. Juarez, Abel Valenzuela, Jr. and Oscar Gonzalez, *History and Public Policy: Title VII and the Use of the Hispanic Classification* 5 LA RAZA L. J. 1 (1992) (discussing federal adoption of the “Hispanic” label and critiquing the conglomeration of the Spanish-Hispanic-Latina/o labels into a single identity category). From the very beginning, LatCrit scholars have grappled with racial, ethnic and other forms of “diversity” both within and beyond “Latina/o” communities.

The term “LatCrit” was coined at a 1995 colloquium, held in Puerto Rico, on the relationship of critical race theory to “Latina/o” communities. From that colloquium, the annual conferences then flowed. And from the beginning, with a conference theme for LatCrit I focused on the limits and possibilities of Latina/o “pan-ethnicity,” LatCrit scholars have

at its best, is a key – perhaps indispensable – form of collective praxis in the service of social struggle for social justice. This Foreword endeavors to help ensure that LatCrit theory, community and praxis remain as intertwined in the future as this symposium shows they are today.

## II. “OPERATIONS OF POWER”: EXPANDING THE CRITIQUES OF IDENTITY IN LAW AND CULTURE

Because each of the clusters below opens with an Introduction providing more detailed discussion of each essay, this Part of the Foreword aims chiefly to emphasize how the symposium essays (and clusters) reflect in particular or recurrent ways the conference theme as a whole, and how they thus contribute to the articulation and advancement of LatCrit theory as a genre of critical outsider jurisprudence.<sup>4</sup> Generally, and as detailed immediately below, the symposium essays not only focus on the “city and citizen” but also continue the development of various “streams of programming” begun in earlier LatCrit conferences, a practice that over time has aimed to “rotate the center” of our programmatic and collective inquiries in coalitional and multidimensional ways – ways that also are designed, consciously and self-critically, to build on the cumulative experiences and insights of outsider jurisprudential experiments that precede and accompany the emergence of

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highlighted the importance of community-building on terms that amount to antiessentialist, antisubordination praxis at a collective level. Information on LatCrit theory, including the full text of the inaugural LatCrit symposium based on the First Annual LatCrit Conference, can be obtained at the LatCrit website, at [www.latercrit.org](http://www.latercrit.org). On the emergence of a “LatCrit” subject position, see Francisco Valdes, Foreword—*Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997) (hereinafter *Poised at the Cusp*) (introducing the papers and proceedings of the first LatCrit conference). For other accounts, see Berta Esperanza Hernandez-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 HARV. LATINO L. REV. 199, 200-05 (1997); Kevin R. Johnson & George A. Martinez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies, Activism and Scholarship*, 53 U. MIAMI L. REV. 1143 (1999). Cf. Margaret E. Montoya, *LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions*, 53 U. MIAMI L. REV. 1119 (1999); see also Elizabeth M. Iglesias & Francisco Valdes, Afterword—*Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 CHICANO-LATINO L. REV. 503, 568-71 (1998) (discussing the choice of “LatCrit” as partly a political decision to identify as much as possible with people of color, indigenous people, and other traditionally subordinated groups in the construction of this new discourse and praxis).

<sup>4</sup>The term “outsider jurisprudence” was first used by Professor Mari J. Matsuda. See Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 MICH. L. REV. 2320, 2323 (1989). Here, the term is preceded with “critical” to emphasize this key feature of the body of work to which LatCrit theory belongs. LatCrit theory is one strand in critical outsider jurisprudence, along with critical race theory, critical race feminism, Asian American scholarship, and Queer legal theory. See *supra* note 1 and sources cited therein on LatCrit theory and its emergence in the mid-1990s; see generally Francisco Valdes, Afterword—*Theorizing “OutCrit” Theories: Coalitional Method and Comparative Jurisprudential Experience – RaceCrits, QueerCrits and LatCrits*, 53 U. MIAMI L. REV. 1265 (1999) [hereinafter *Theorizing OutCrit Theories*] (drawing lessons for LatCrits from the experiences of other outsider efforts, principally those of RaceCrits and QueerCrits).

LatCrit theory eight years ago.<sup>5</sup> In rich and nuanced ways, the LatCrit VIII essays add both to the substance and method of this ongoing experiment in critical outsider jurisprudence.

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<sup>5</sup>From the inception of this jurisprudential experiment, LatCrit theorists have endeavored to learn from prior or concurrent jurisprudential efforts, and thus have developed practices designed to ensure that our work is grounded in the cumulative insights of critical outsider jurisprudence. This effort to “perform the theory” includes practices such as “rotating the center” of our programmatic lines of inquiry and creating multi-year “streams of programming” to ensure that critical attention is focused on the varied specific aspects of subordination – as well as on the interlocking nature of systems of subordination – based on race, ethnicity, gender, class, sexuality, religion, geography, physical ability and similar axis of identity employed in law and policy to engineer social hierarchies. See, e.g., Kevin R. Johnson, Foreword—*Celebrating LatCrit Theory: What Do We Do When the Music Stops?*, 33 DAVIS L. REV. 753 (2000) (reviewing the essays of the LatCrit IV symposium and evaluating LatCrit methodologies to identify some of the challenges facing LatCrit scholars); Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177 (1998) (discussing and assessing LatCritical techniques and methods of analysis and praxis in the context of the LatCrit III conference); Valdes, *Theorizing OutCrit Theories*, *supra* note 4, at 1299-1306 (discussing these and similar practices); see also Johnson & Martinez, *supra* note 3, at 1150-61 (reviewing LatCrit methodologies and premises in relationship to other civil rights movements, in particular Chicana/o scholarship and activism); Montoya, *supra* note 3, at 121-27 (reviewing the techniques, and the precursors and origins, of LatCrit theory and method); Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 U. MIAMI L. REV. 1247 (1998) (analyzing and comparing the methods and experiences of the Critical Race Theory Workshops that preceded the emergence of LatCrit events to those of the annual LatCrit conferences to adduce the continuities between the two); see also generally Dorothy E. Roberts, *BlackCrit Theory and the Problem of Essentialism*, 53 U. MIAMI L. REV. 855 (1998) (describing critical approaches to the study of “blackness” within LatCrit theory).

Multidimensional and coalitional analysis, designed to unpack the many dimensions of interlocking systems of subordination and provide platforms for collective resistance to them, is part of this ongoing effort. This type of analysis, of course, is rooted in the early insights of critical outsider jurisprudence regarding law and identity, including the pathbreaking concepts of multiplicity, antiessentialism and intersectionality. See, e.g., Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN’S RTS. L. REP. 7 (1989); see also Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139. Various RaceCrit and LatCrit scholars have continued to develop concepts and tools of critical legal theory to build on these foundational concepts, striving progressively to better capture the dynamics of “identity politics” in law and society. See, e.g., e. christi cunningham, *The Rise of Identity Politics I: The Myth of the Protected Class in Title VII Disparate Treatment Cases*, 30 U. CONN. L. REV. 441 (1998) (on wholism); Berta Hernandez-Truyol, *Building Bridges – Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1991) (on multidimensionality); Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 U. CONN. L. REV. 561 (1997) (on multidimensionality); Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257 (1997) (on cosynthesis); Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities and Inter-Connectivities*, 5 S. CAL. REV. L. & WOMEN’S STUD. 25 (1995) (on

In substantive terms, the LatCrit VIII program and this symposium, as reflected in these four clusters of essays,<sup>6</sup> break new ground as well as add to previously tilled areas of programmatic inquiry. The new, and in some ways the more directly responsive to this year's Call and theme, is concentrated around issues of the city and urban studies,<sup>7</sup> while the gains based on prior years' themes or ongoing efforts are

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interconnectivity); *see generally* Charles R. Lawrence III, Foreword—*Race, Multiculturalism and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819, 834-35 (1995) (urging greater efforts along these lines to promote multifaceted projects of social transformation).

<sup>6</sup>This symposium, like most LatCrit symposia, is presented in the form of "clusters" of essays organized around substantive themes. These clusters consist of essays that conform to the Symposium Submission Guidelines, which request that authors limit their texts. The Symposium Submission Guidelines are posted to the LatCrit website, [www.latcrit.org](http://www.latcrit.org), for easy reference. Information on LatCrit theory, including the full text of the inaugural LatCrit symposium based on the First Annual LatCrit Conference, can be obtained at the LatCrit website. For other LatCrit symposia, including those based on subsequent conferences or colloquia, *see* Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997) (LATCRIT I); Colloquium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997) (publishing the proceedings of the first LatCrit colloquium focused on international law); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 CHICANO-LATINO L. REV. 1 (1998) (LATCRIT II); Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, 53 U. MIAMI L. REV. 575 (1999) (LATCRIT III); Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. DAVIS L. REV. 751 (2000) (LATCRIT IV); Colloquium, *Spain, The Americas and Latino/as: International and Comparative Law in Triangular Perspective*, 9 U. MIAMI INT'L. & COMP. L. REV. 1 (2000-01) (publishing the proceedings of the first and second colloquia held in Malaga, Spain on LatCrit theory and international and comparative law); Symposium, *Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U. L. REV. 467 (2001) (LATCRIT V); Symposium, *Latinas/os and the Americas: Centering North-South Frameworks in LatCrit Theory*, 55 FLA. L. REV. 1 (2003), 54 RUTGERS L. REV. (forthcoming 2002) (LATCRIT VI); Symposium, *Coalitional Theory and Praxis: Social Justice Movements and LatCrit Community*, 13 LA RAZA L.J. 113 (2002), 81 U. OR. L. REV. (forthcoming 2003) (LATCRIT VII). In addition, two joint symposia have been published during this time. *See* Joint Symposium, *LatCrit Theory: Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1998); Joint Symposium, *Culture, Language, Sexuality and Law: LatCrit Theory and the Construction of the Nation*, 5 MICH. J. RACE & L. 787, 33 U. MICH. J.L. REFORM 203 (2000).

<sup>7</sup>The opening cluster of this Symposium presents several of these essays. *See infra* notes 10-34 and accompanying text. But, another "new" line of inquiry advanced in this Symposium is the investigation of reparations as a remedy for previous North American abuses of Latinas/os, which is introduced in the closing cluster of this Symposium. *See infra* notes 103-116 and accompanying text. This cluster builds on a similar one presented in last year's LatCrit VII Conference and Symposium. For a discussion of the essays in last year's Symposium, *see* Ediberto Roman, Introduction—*Reparations and the Colonial Dilemma: The Insurmountable Hurdles Yet Transformative Benefits*, 13 BERKELEY LA RAZA L.J. 369 (2002). This new work, of course, also follows up on the considerable work in this area. *See, e.g.*, Robert Westley, *Many Billions Gone: Is it Time to Reconsider the Case for Black Reparations?*, 40 B.C.L. REV. 429 (1998) (discussing reparations as a remedial route for the historical exploitation of African Americans); for a foundational analysis of reparations, *see* Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987) (focusing on Japanese American reparations issues and claims).

concentrated around previous investigations of identity and power in law and society.<sup>8</sup> In methodological terms, these essays display and continue the group techniques of community-building through knowledge-production that now are associated with the LatCrit conferences as a distinct venue and discourse within the larger framework of critical outsider jurisprudence. As a set, these clusters and

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<sup>8</sup>Some of these other lines of inquiry include, for example, questions relating to “foreign” versus “domestic” spheres of law and policy, to questions relating to race, ethnicity and gender, and to questions relating to “sameness” and “difference” within or between communities of color. See generally *supra* note 6 and symposia cited therein.

For a sampling of readings on transnationalism and internationalism in LatCrit theory, see Symposium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 1 (1996-97); see also Max J. Castro, *Democracy in Anti-Subordination Perspective: Local/Global Intersections: An Introduction*, 53 U. MIAMI L. REV. 863 (1999); Gil Gott, *Critical Race Globalism?: Global Political Economy, And The Intersections Of Race, Nation, and Class* 33 U.C. DAVIS L. REV. 1503 (2000); Ivelaw L. Griffith, *Drugs and Democracy in the Caribbean*, 53 U. MIAMI L. REV. 869 (1999); Sharon K. Hom, *Lexicon Dreams and Chinese Rock and Roll: Thoughts on Culture, Language, Translation as Strategies of Resistance and Reconstruction*, 53 U. MIAMI L. REV. 1003 (1999); Irwin P. Stotzky, *Suppressing the Beast*, 53 U. MIAMI L. REV. 883 (1999); Ratna Kapur & Tayyab Mahmud, *Hegemony, Coercion and Their Teeth-Gritting Harmony: A Commentary on Power, Culture, and Sexuality in Franco's Spain*, 5 MICH. J. RACE & L. 995 (2000), 33 U. MICH. J.L. REFORM 411 (2000); Tayyab Mahmud, *Colonialism and Modern Constructions of Race: A Preliminary Inquiry*, 53 U. MIAMI L. REV. 1219 (1999); Mario Martinez, *Property as an Instrument of Power in Nicaragua*, 53 U. MIAMI L. REV. 907 (1999); Julie Mertus, *Mapping Civil Society Transplants: A Preliminary Comparison of Eastern Europe and Latin America*, 53 U. MIAMI L. REV. 921 (1999); Ediberto Roman, *Reconstructing Self-Determination: The Role of Critical Theory in Positivist International Law Paradigm*, 53 U. MIAMI L. REV. 943 (1999); Ediberto Roman, *A Race Approach To International Law (Rail): Is There A Need For Yet Another Critique Of International Law?* 33 U.C. DAVIS L. REV. 1519 (2000); Berta Esperanza Hernandez-Truyol, *Building Bridges: Bringing International Human Rights Home*, 9 LA RAZA L. J. 69 (1996); Ediberto Roman, *A Race Approach To International Law (Rail): Is There A Need For Yet Another Critique Of International Law?* 33 U.C. DAVIS L. REV. 1519 (2000).

For a sampling of readings on race and identity in LatCrit theory, see Robert S. Chang, *Racial Cross-Dressing*, 2 HARV. LATINO L. REV. 423 (1997); Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395 (1997); Leslie Espinoza & Angela P. Harris, *Afterword—Embracing the Tar-Baby: LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1510 (1997); Ian F. Haney Lopez, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 85 CAL. L. REV. 1143 (1997); Ian F. Haney Lopez, *Retaining Race: LatCrit Theory and Mexican American Identity in Hernandez v. Texas*, 2 HARV. LATINO L. REV. 279 (1997); Kevin R. Johnson, “Melting Pot” or “Ring of Fire”? *Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1262 (1997); Cheryl Little, *Intergroup Coalitions and Immigration Politics: The Haitian Experience in Florida*, 53 U. MIAMI L. REV. 717 (1999); Guadalupe Luna, *On the Complexities of Race: The Treaty of Guadalupe Hidalgo and Dred Scott v. Sandford*, 53 U. MIAMI L. REV. 691 (1999); George A. Martinez, *African-Americans, Latinos and the Construction of Race: Toward an Epistemic Coalition*, 19 UCLA CHICANO-LATINO L. REV. 213 (1998); Rachel Moran, *Neither Black Nor White*, 2 HARV. LATINO L. REV. 61 (1997); Juan F. Perea, *The Black/White Binary Paradigm of Race: The ‘Normal Science’ of American Racial Thought*, 85 CAL. L. REV. 1213 (1997).

For a sampling of readings on sameness/difference issues in LatCrit theory, see *infra* note 21 and sources cited therein; see also generally *infra* note 90 and sources cited therein.

essays reflect our continuing efforts to produce understanding *and* solidarity grounded in the practices, guideposts and functions that we set forth for ourselves at the very inception of this ongoing jurisprudential experiment to ensure its efficacy for the long term.<sup>9</sup>

This year's symposium essays thus "center" urban issues that are relatively new to our conferences as well as ensure continuity in our programmatic initiatives, or streams, of previous years and programs, while also demonstrating and refining the sharpness of LatCritical method and analysis. As usual, we begin with the "signature" cluster of symposium essays, featuring the essays most directly focused on the year's conference theme, and then proceed to the remaining clusters of essays, which pursue and advance prior conference themes, or ongoing areas of inquiry and praxis based on them. As in the past, and as we shall see next, this year's symposium essays and authors once again reflect the rich diversities of LatCrit community and discourse in terms of disciplines, demographics, perspectives and subject areas – multiple levels of diversity that contribute in manifold ways to the substance and reach of our antistatist insights, and that, in my view, constitute one of our foundational strengths as a community of scholars committed to the production of socially relevant scholarship that seeks to catalyze and nurture social justice activism.

#### A. City and Citizenship: Between and Beyond the Nation-State

The first cluster opens the symposium with three essays trained squarely on the conference theme, but in ways that connect this theme to ongoing areas of study and

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<sup>9</sup>The four functions of LatCrit theory (and similar efforts) posited early on are: (1) the production of knowledge; (2) the advancement of social transformation; (3) the expansion and connection of antistatist struggles; and (4) the cultivation of community and coalition, both within and beyond the confines of legal academia in the United States. For further discussion of these four functions and their relationship to LatCrit theory, see Francisco Valdes, Foreword—*Under Construction: LatCrit Consciousness, Community and Theory*, 85 CAL. L. REV. 1087, 1093-94 (1997).

The seven guideposts accompanying these four functions are: (1) Recognize and Accept the Political Nature of Legal "Scholarship" Despite Contrary Pressures; (2) Conceive Ourselves as Activist Scholars Committed to Praxis to Maximize Social Relevance; (3) Build Intra-Latina/o Communities and Inter-Group Coalitions to Promote Justice Struggles; (4) Find Commonalities While Respecting Differences to Chart Social Transformation; (5) Learn from Outsider Jurisprudence to Orient and Develop LatCrit Theory and Praxis; (6) Ensure a Continual Engagement of Self-Critique to Stay Principled and Grounded; and (7) Balance Specificity and Generality in LatCritical Analysis to Ensure Multidimensionality. For an early assessment of LatCrit "guideposts" as reflected in the proceedings of the First Annual LatCrit Conference, see Valdes, *Poised at the Cusp*, *supra* note 3 at 52-59.

These guideposts (and the functions described earlier) of course are inter-related and, in their operation, interactive. Ideally, they yield synergistic effects. They represent, *as a set*, the general sense of this project as reflected in the collective writings of the symposium based on the First Annual LatCrit Conference. In addition to the seven guideposts noted above, an eighth was originally presented as a "final observation" based on the preceding seven: "acknowledging the relationship of LatCrit to Critical Race theory" and, in particular, the "intellectual and political debt that LatCrit theorizing owes to Critical Race theorists." *Id.* at 57-60. As this symposium illustrates, these four functions and seven guideposts have helped LatCrit theorists to mine substantive insights and benefits that deepen, broaden and texture existing understandings of law and policy.



method within LatCrit theory. They exemplify the kinds of interdisciplinary, multidimensional and transnational frameworks of analysis to which LatCrits constantly aspire.<sup>10</sup> Moreover, they not only critique the status quo, but also offer substantive alternatives to it.

The essay by Mary Romero & Marwa Serag, builds on previous LatCritical interventions that highlight the relationship between the “foreign” and “domestic” as dominant categories of social theory, state action and legal doctrine.<sup>11</sup> Using the example of immigration law enforcement, and in particular the infamous Chandler Roundup in Arizona during the summer of 1997, this essay illustrates the deployment of criminal law to subordinate the foreignized “other” – in this case Chicanas/os. In that series of community raids, police arrested or detained individuals while they were engaging in everyday activities (like shopping, using public phones, walking, or riding a bike) on the basis of “Mexican appearance” and purportedly to help rehabilitate declining neighborhoods – another example of racial profiling that, as Romero & Serag note, encapsulates how public funds are misspent to finance subordinating state practices.<sup>12</sup>

These raids, Romero & Serag conclude after presenting the data and conclusions of the investigative reports that followed the police action, represented a “stunning reminder of second-class citizenship” for “Mexican looking” citizens whose lives were disrupted by the state on that precise basis.<sup>13</sup> Through the particular study of identity-forming state practices in “real” life circumstances, and focusing on a particularly egregious example of racial profiling, the authors connect established lines of inquiry within LatCrit literature to this year’s conference theme: “immigration law enforcement,” which, they conclude, “functions to racially identify urban areas, to reinforce racial and cultural stereotypes of U.S. citizenship (particularly racial and cultural “Mexicaness” as illegal in itself), and to maintain racial and class divisions between whites and Mexican Americans.”<sup>14</sup>

This subordination function, however, is not limited to, or enabled by, any one or two categories of identity and identification, as they make clear; on the contrary, this analysis tackles the combined effects of race, culture and class in motivating and shaping this display of state power. Moreover, this essay provides a snapshot of community-making by exclusion and subordination: it shows how dominant social groups pursue their political cohesion through state power, including the force of law,

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<sup>10</sup>In addition to multidimensional and coalitional work, our collective record to date – principally in the form of our published symposia – demonstrates that LatCrit theorists also have emphasized interdisciplinary and international frames of discourse and action. *See supra* note 8 and sources cited therein on internationalism in LatCrit theory; *see generally supra* note 6 and symposia sources cited therein. The LatCrit Portfolio of Projects, through which we perform collective praxis in interdisciplinary and internationalist frameworks, similarly demonstrates this emphasis. For more information on the LatCrit Portfolio of Projects, visit [www.latcrit.org](http://www.latcrit.org).

<sup>11</sup>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 of the Chandler Roundup in Arizona*, 52 CLEV. ST. L. REV. 75 (2005).

<sup>12</sup>*Id.*

<sup>13</sup>*Id.*

<sup>14</sup>*Id.*

based on identity politics to harass “others” and thereby inhibit their social mobility in order to maintain social dominance and structural power over material privileges. This essay not only affirms and advances the LatCrit commitment to interdisciplinarity and multidimensionality as method, but also conjoins to this year’s conference theme the ongoing study of criminal law enforcement, of immigration law and policy, of identity formation, and of the relationship between the “foreign” and the “domestic” in LatCrit theory.<sup>15</sup>

The essay by Berta Esperanza Hernandez-Truyol & Matthew Hawk, effectively builds on Romero’s & Serag’s analysis.<sup>16</sup> This essay questions the possibility of denationalizing citizenship – that is, decoupling the citizen from the nation so that the construction and administration of citizenship status is not left to the ideological preferences of any particular elite in control of any particular nation-state. Critiquing

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<sup>15</sup>These lines of LatCritical inquiry overlap because they flow from the same set of historical and structural facts: the Latina/o “presence” in the lands now known as the United States is due principally to American expansionism and imperialism; the Mexican, Puerto Rican and other Latina/o communities now in the United States originally did not cross any borders to arrive or migrate here – the border crossed them, thereby initiating the dynamics of today. See, e.g., RODOLFO ACUÑA, *OCCUPIED AMERICA* (3d ed., 1988) (assessing Chicana/o communities as internal colonies); Gilbert Paul Carrasco, *Latinos in the United States: Invitation and Exile*, in *IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE* 190 (Jean F. Perea ed., 1997) (reviewing history of United States labor policies designed to attract Latina/o migrant workers, who then are not only exploited and maltreated but also disdained as “illegal immigrants”); Gerald P. Lopez, *Undocumented Mexican Migration: In Search of a Just Immigration Law and Policy*, 28 UCLA L. REV. 615 (1981) (evaluating the structural dis/incentives to immigration from Mexico to the United States); MARIFELI PEREZ-STABLE, *THE CUBAN REVOLUTION: ORIGINS, COURSE, LEGACY 14-60* (2d ed. 1999) (outlining the “mediated sovereignty” of Cuba under the tutelage of the United States following its “independence” from Spain after the conclusion of the Spanish-American War in 1898); MARIA DE LOS ANGELES TORRES, *IN THE LAND OF MIRRORS: CUBAN EXILE POLITICS IN THE UNITED STATES* 74-83 (1999); Ediberto Roman, *Empire Forgotten: The United States’ Colonization of Puerto Rico*, 42 VILL. L. REV. 1119 (1997) (critiquing the colonial position of Puerto Rico as a “commonwealth of the United States, also resulting from the conclusion of the Spanish-American War in 1898); see also Symposium, *Understanding the Treaty of Guadalupe Hidalgo on Its 150th Anniversary*, 5 S.W.J.L. & TRADE AM. 1 (1998). American adventurism and interventionism throughout the Americas under policy imperatives such as the Monroe Doctrine and the Cold War similarly has catalyzed Latinas/os’ presence in the United States – it is no coincidence that Latina/o groups in the United States hail mostly from the places in which the United States has most interfered, such as Mexico, Puerto Rico, Cuba, Nicaragua, Guatemala, the Dominican Republic and El Salvador. See generally ARLENE M. DAVILA, *SPONSORED IDENTITIES: CULTURAL POLITICS IN PUERTO RICO* (1997); WALTER LAFEVER, *INEVITABLE REVOLUTIONS: THE UNITED STATES IN CENTRAL AMERICA* (2d ed. 1993); *THE PUERTO RICAN MOVEMENT: VOICES FROM THE DIASPORA* (Andres Torres & Jose E. Velazques eds., 1998); *THE DOMINICAN AMERICANS* (Silvio Torres-Saillant & Ramona Hernandez (1998); see also generally RUBIN FRANCIS WESTON, *RACISM IN U.S. IMPERIALISM* (1972) (providing a comprehensive account of U.S. imperialism and white supremacy, and illustrating how the areas targeted by those imperialist ventures now are the sources of today’s immigrant communities, including Cuba, Puerto Rico, Hispaniola, the Philippines and other areas in and beyond the Americas).

<sup>16</sup>Berta Esperanza Hernandez-Truyol & Matthew Hawk, *Traveling the Boundaries of Statelessness: Global Passports and Citizenship*, 52 CLEV. ST. L. REV. 97 (2005).

both of the prevailing conceptions of citizenship under current citizenship theory – “citizenship-as-legal-status” and “citizenship-as-desirable-activity” – Hernandez-Truyol & Hawk explore the utility and limitations of dual nationality, a construct that in some ways helps to set the conceptual stage for a kind of global citizenship – a kind of citizenship that, unlike current versions, would be explicitly and normatively grounded in human rights and designed to protect the “trappings of personhood” robustly.<sup>17</sup>

In purpose and effect this concept of a “global citizenship” would transform the relationship of citizenship to sovereignty, and could help to ameliorate longstanding concerns over the well-known tendencies toward tyranny oftentimes displayed by neocolonial elites in control of national governments – ideological tyrannies exemplified by the Chandler Roundup explored in the Romero & Serag essay and similarly illustrated by other authors in the following clusters.<sup>18</sup> Indeed, as posited here, this idea of global citizenship emerges from human rights traditions precisely so that it can serve as a “foundation for the attainment of full personhood by those marginalized or disempowered within their own national borders, including the poor, racial and ethnic minorities, indigenous populations, and women.”<sup>19</sup> By design, global citizenship is an alternative means of constructing relatively egalitarian forms of status and formal kinds of communities for and among those who at present lack equal status in any local, national or global community.<sup>20</sup> The proposal intends a formal mechanism rooted in existing concepts and structures for the formation and recognition of a new “cosmopolitan” community to transcend national hegemonies and promote a culture of human rights globally.

This essay connects ongoing areas of LatCritical study – including, most notably, the bridging of “international” and “domestic” law and policy in practical and conceptual terms. Equally important, this critique of existing national and international “communities” – and of the formal indicia invented to demonstrate inclusion in or exclusion from them – also highlights the salience of “community” and community-making in this year’s conference theme: this critique of the national passport system highlights the policing functions of borders and “citizenship” – and how that policing enforces and reinforces social, cultural, political and economic group hierarchies based on particular conceptions of “community” (and inclusion or exclusion therefrom). This essay also superbly illustrates how notions of “community” remain a site of social struggle charged with the potential either to subordinate or liberate, and why community-building as collective antisubordination

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<sup>17</sup>*Id.*

<sup>18</sup>See, e.g., Nicholas Espiritu, *(E)racing Youth: The Racialized Construction of California’s Proposition 21 and the Development of Alternate Contestations*, 52 CLEV. ST. L. REV. 189 (2005); Ronald L. Mize, Jr., *Reparations for Mexican Braceros? Lessons Learned from Japanese and African American Attempts at Redress*, 52 CLEV. ST. L. REV. 273 (2005); 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).

<sup>19</sup>Hernandez-Truyol & Hawk, *supra* note 16. Among these outgroups could be included sexual minorities, who also would benefit from this analysis and proposal for substantially the same reasons. See *infra* notes 116-146 and accompanying text discussing one such group.

<sup>20</sup>*Id.*

praxis has been a key theme in LatCrit theory from inception.<sup>21</sup> Perhaps, this essay even provides hopes and answers for the members of the diasporas that help to define the constituencies and communities that LatCrit and other OutCrit<sup>22</sup> scholars

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<sup>21</sup>It is no coincidence that community-building through theory and praxis is the third LatCrit guidepost. See *supra* note 9 and accompanying text. For a thoughtful discussion of this topic in LatCrit and other genres of critical outsider jurisprudence, see Angela P. Harris, *Building Theory, Building Community*, 8 SOC. & LEGAL STUD. 313 (1999). This topic therefore has drawn the attention of LatCrit scholars over the years, who have grappled with sources of “difference” and diversity in our community-building efforts. See, e.g., Alicia G. Abreu, *Lessons From LatCrit: Insiders and Outsiders, All at the Same Time*, 53 U. MIAMI L. REV. 787 (1999) (discussing author’s dual sense of “insider” and “outsider” positionality within LatCrit conferences); Elvia Arriola, *Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self*, 2 HARV. LATINO L. REV. 397 (1997) (viewing LatCrit from an outsider/Latina lesbian perspective); Enrique Carrasco, *Who Are We?*, 19 UCLA CHICANO-LATINO L. REV. 331 (1998) (considering the multiple roles or identities of LatCrit scholars); Max J. Castro, *Making Pan Latino: Latino Pan-Ethnicity and the Controversial Case of Cubans*, 2 HARV. LATINO L. REV. 179 (1997) (discussing the peculiar position of Cubans and Cuban Americans in Latina/o intergroup relations within the United States); Elizabeth M. Iglesias, *Human Rights in International Economic Law: Locating Latinas/os in the Linkage Debates*, 28 U. MIAMI INTER-AM. L. REV. 361 (1997) (reflecting on intra-Latina/o divisions based on differing degrees of cultural assimilation, nationalist ideologies, as well as race, class and gender hierarchies and the implications of such “difference” for progressive law reform initiatives); Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997) (reflecting on Chicana/o, Puerto Rican, and Cuban differences); Victoria Ortiz & Jennifer Elrod, *Reflections on LatCrit III: Finding “Family”*, 53 U. MIAMI L. REV. 1257 (1999) (discussing the role of “safe spaces” from community building within the legal academy in the face of “differences” that affect both the academy as well as society at large); Guadalupe T. Luna, *“La Causa Chicana” and Communicative Praxis*, 78 DENV. U. L. REV. 553 (2001) (theorizing relationship between Chicana/o studies and LatCrit theory and our community-building praxis); Ediberto Roman, *Common Ground: Perspectives on Latina-Latino Diversities*, 2 HARV. LATINO L. REV. 483, (1997) (elaborating commonalities upon which Latinas/os may build a sense of constructive collectivity); see also *infra* note 86 and sources cited therein on Latina/o demographic heterogeneity. This original emphasis has evolved into institution-building. See, e.g., Elizabeth M. Iglesias & Francisco Valdes, *Afterword—LatCrit at Five: Institutionalizing a Postsubordination Future*, 78 DENVER U. L. REV. 1249 (2001) (describing ongoing institution-building efforts).

<sup>22</sup>Because the “OutCrit” denomination is an effort to conceptualize and operationalize the social justice analyses and struggles of varied and overlapping yet “different” subordinated groups in an interconnective way, “OutCrit” refers (at least initially) to those scholars who identify and align themselves with outgroups in this country, as well as globally, including most notably those who in recent times have launched lines of critical inquiry within legal culture, including critical legal studies. See generally *supra* note 4 and sources cited therein on outsider jurisprudence. Thus, while “outsider jurisprudence” may be, but is not always nor necessarily, “critical” in perspective, the OutCrit stance is, by definition, critical in nature. OutCrit positionality, then, is framed around the need to critique and combat, in collective and coordinated ways, the mutually-reinforcing systems of subordination and domination that construct both outgroups and ingroups. For further discussion of this designation, see Francisco Valdes, *Outsider Scholars, Legal Theory and OutCrit Perspective: Postsubordination Vision as Jurisprudential Method*, 49 DEPAUL L. REV. 831 (2000) [hereinafter *Postsubordination Vision*].

strive to aid – including many immigrants living in our midst today, who are left “undocumented” by the current formalities of existing nation-states.<sup>23</sup>

Finally, the essay by Charles Venator Santiago, turns the lens of critical inquiry toward the Caribbean – and in particular the island of Hispaniola, which includes Haiti and the Dominican Republic – to explore this year’s conference theme from a critical *and* comparative angle.<sup>24</sup> In particular, Venator Santiago taps “the notion of legal transculturation as a point of departure to reflect on the relationship between race, multiple legal traditions, and the process of nation building.”<sup>25</sup> The focus here is the “contact zone” created by the twenty-some years of Hispaniola’s formal unification under Haitian independence, which brought together the Spanish colony in Santo Domingo and its Spanish legal traditions with the French colony in Haiti and its French legal traditions under a new and independent state committed to the protection of “any person of African or Indoamerican heritage.”<sup>26</sup> The former, as LatCrits and other scholars have previously noted,<sup>27</sup> represented an empire premised on the exploitation of Africans and Indians while the Haitian nation-state was designed, at least formally, to protect those very persons. The tensions between the two during this brief unification period, and their enduring consequences, are the objects of interrogation here.

In this summary historical account we encounter a narrative in which race, nation, citizenship, law and power are as intertwined as in North America.<sup>28</sup> Yet, in this account, the familiar categories and dynamics are scrambled; indeed, in this account we encounter a legal regime in which property ownership is formally denied to white persons – precisely the converse of the North American experience – but for

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<sup>23</sup>For example, the immigrants in the closing vignette presented in Part II of this Foreword would benefit tremendously from the analysis and proposals set forth in this essay. *See infra* notes 117-147 and accompanying text presenting this vignette.

<sup>24</sup>Charles R. Venator Santiago, *Race, Nation-Building and Legal Transculturation During the Haitian Unification Period (1822-1844): Towards a Dominican Perspective*, 52 CLEV. ST. L. REV. 63 (2005).

<sup>25</sup>*Id.*

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

<sup>27</sup>The footprints of colonial conquest throughout the Americas are well documented. *See generally* RICHARD DRINNON, *FACING WEST: THE METAPHYSICS OF INDIAN-HATING AND EMPIRE-BUILDING* (1990); CHARLES GIBSON, *SPAIN IN AMERICA* (1966); RAMON GUTIERREZ, *WHEN JESUS CAME, THE CORN MOTHERS WENT AWAY: MARRIAGE, SEXUALITY AND POWER IN NEW MEXICO, 1500-1846* (1991); FRANCIS JENNINGS, *THE INVASION OF AMERICA: INDIANS, COLONIALISM, AND THE CANT OF CONQUEST* (1975); LYLE H. MCALISTER, *SPAIN AND PORTUGAL IN THE NEW WORLD, 1492-1700* (1984); NATIVE AMERICAN TESTIMONY: A CHRONICLE OF INDIAN-WHITE RELATIONS FROM PROPHECY TO PRESENT, 1492-1992 (Peter Nabokov ed., 1991); DAVID J. WEBER, *THE SPANISH FRONTIER IN NORTH AMERICA* (1992); *see also* RICHARD C. TREXLER, *SEX AND CONQUEST: GENDERED VIOLENCE, POLITICAL ORDER, AND THE EUROPEAN CONQUEST OF THE AMERICAS* (1995) (documenting and discussing the patriarchal and homophobic aspects of the conquest). For a discussion of colonialism’s enduring dynamics from one LatCritical perspective, see Francisco Valdes, *Race, Ethnicity and Hispanismo in a Triangular Perspective: The “Essential Latina/o” and LatCrit Theory*, 48 UCLA L. REV. 305 (2000) [hereinafter, *Hispanismo*].

<sup>28</sup>Venator Santiago, *supra* note 24.

the same purpose: to ensure the dominance of the dominant group. This resort to exclusionary policymaking, which rendered the otherwise privileged Spanish (or culturally “white”) Dominicans outcasts under the unification regime, Venator Santiago concludes, helps to explain the persistence of tensions – and the loss of coalitional opportunities – that contributed to the eventual collapse of that promising experiment. Venator Santiago explains: the unwillingness of the Haitian regime to “make an exception for white Dominicans” overlooked “an opening for integration of the Dominican perspective in the formation of a new Haitian national project.”<sup>29</sup>

No, this essay does not tell the whole story.<sup>30</sup> And Venator Santiago makes plain that this essay “represents a work in progress that seeks to clarify an important but obscure period in the histories of Haiti and the Dominican Republic.”<sup>31</sup> But while the analysis is “in progress” and the familiar categories are wildly inverted, the comparative experience and its tentative lessons should give pause – and inspire deeper investigation of this neglected area of study.

One observation is the equation of “Spanish” with “white” in American contexts south of the Rio Grande – a conflation that stops at the border marked by that river. This observation, while not pursued in this essay, illustrates a key point in “comparative racialization” that LatCrit and RaceCrit scholars have previously explored.<sup>32</sup> An important lesson to be drawn from this essay, even at this preliminary point, is that exclusion in the process of community-making is likely a short-sighted policy; forcible exclusions, as this summary account illustrates, forego opportunities for inter-group coalitions or collaborations based on mutually-agreeable principles and aspirations. In this way, Venator Santiago, like the other authors in this opening cluster, effectively underscores the importance of inclusionary and coalitional politics in the construction of viable communities locally and nationally (and globally) on egalitarian principles and aspirations. It is a salutary

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<sup>29</sup>*Id.*

<sup>30</sup>Nor, in all fairness, would the Symposium Submission Guidelines make a complete analysis possible here: the Symposium submission Guidelines specify that essays “should be between 20-30 pages in length” due to space limitations. To review the Guidelines in their entirety, please visit the LatCrit website at [www.latcrit.org](http://www.latcrit.org).

<sup>31</sup>Venator Santiago, *supra* note 24.

<sup>32</sup>For example, a cluster of essays in the LatCrit V symposium was focused on comparative racialization. For a discussion of those essays, see Kevin R. Johnson, *Introduction – Comparative Racialization: Culture and National Origin in Latina/o Communities*, 78 DENVER U. L. REV. 633 (discussing essays by Tayyab Mahmud, Berta Esperanza Henrandez-Truyol, Steven W. Bender, Pedro Malavet and Nancy Ehrenreich); see also Imani Perry, *Of Desi, J.Lo and Color Matters: Critical Race Theory and the Architecture of Race*, 52 CLEV. ST. L. REV. 139 (2005). For other recent readings on comparative racialization in the United States and Latin America, see Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 UCLA L. REV. 1705 (2000); Neil Gotanda, *Comparative Racialization: Racial Profiling and the Case of Wen Ho Lee*, 47 UCLA L. REV. 1689 (2000); Tanya Kateri Hernandez, *Multiracial Matrix: The Role of Ideology in Enforcement of Antidiscrimination Laws, A United States-Latin America Comparison*, 87 CORNELL L. REV. 1093, 1133-44 (2002).

reminder beckoned by this year's conference theme, as well as by the still-recent jurisprudential experience of outsiders in the legal academy of the United States.<sup>33</sup>

This trio of essays underscores the importance of this year's conference theme as well as articulates, or points toward, the multiple interconnections between the "city and citizen" and other areas of ongoing LatCritical inquiry. In their creative, interdisciplinary and multidimensional investigations of this year's conference theme, these five authors continue our fledgling efforts to map the connections between law and identity through the study of particularities that, in turn, form the larger "patterns of subordination" encasing us all.<sup>34</sup> This opening cluster, as a whole, sets the stage for the more detailed themes of the remaining three clusters in this symposium.

### *B. Race, Ethnicity and Gender: Identity Ideologies in Law and Culture*

Following up, the second cluster of this symposium shifts attention squarely to the continuing centrality of identities in the formulation of law and policy. Focused specifically on race, ethnicity and gender, and on their mutually-constitutive dynamics, this cluster is the most extensive of the four. Presenting five essays, this cluster's richness perhaps should come as no surprise: the exploration of race, ethnicity and gender has been a hallmark of critical outsider jurisprudence from its

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<sup>33</sup>The need for a "safe space" for "community building" – a venue that would enable communities of outsider scholars to arise and flourish – has been a perennial theme in outsider jurisprudence, in part because the birth and growth of outsider jurisprudence have been punctuated by various ruptures. Most notable, perhaps, has been the rupture with critical legal studies that gave way to the emergence of critical race theory. For a collection of works that recount those events, see Symposium, *Minority Critiques of the Critical Legal Studies Movement*, 22 HARV. C.R.-C.L. L. REV. 297 (1987); see also Symposium, *Critical Legal Studies*, 36 STAN. L. REV. 1 (1984) (describing and presenting critical legal studies). Similarly conflicted experiences, however, marked the Critical Race Theory Workshops in the years that followed that original rupture. See, e.g., Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 U. MIAMI L. REV. 1247 (1998) (describing the early workshops); Valdes, *Theorizing "OutCrit" Theories*, *supra* note 4, at 1288-91 (describing the later workshops); see also Harris, *supra* note 20 (describing community building both in Critical Race and in LatCrit contexts). Of course, similar dynamics also have surfaced with and within feminist legal theory. See, e.g., Catharine A. MacKinnon, *Keeping it Real: On Anti-"Essentialism"* in CROSSROADS, DIRECTIONS AND A NEW CRITICAL RACE THEORY 71 (Francisco Valdes, Jerome McCristal Culp & Angela P. Harris eds., 2002); Catharine A. MacKinnon, *From Practice To Theory, or What Is a White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13 (1991) (responding to controversies about race and gender within feminist legal theory); Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181 (2001) (critiquing the oppositional juxtaposition of "culture" against feminism). LatCrit conferences and discourses have not been immune to this phenomenon. See Valdes, *Theorizing OutCrit Theories*, *supra* note 4, at 1308-11 (recounting "contentious engagements" at various LatCrit conferences, including the first one).

<sup>34</sup>The linkage of the specific to the general – the mapping of particularities in larger patterns and schema – is the seventh guidepost for the development of LatCrit theory and praxis raised during the first annual conference and symposium. For a listing of the LatCrit guideposts, see *supra* note 9 and accompanying text.

inception.<sup>35</sup> As this cluster demonstrates, this line of critical inquiry is alive and well within LatCrit theory today.

The essay by Nicholas Espiritu in this cluster represents a real delight: authored by one of the four LatCrit Student Scholars in the inaugural year of that program,<sup>36</sup> this essay illustrates the intellectual cutting edge of the next generation.<sup>37</sup> In this contribution, Nicholas Espiritu explores how the construction of “youth” is shaped by racialized notions of “crime” embedded in the doctrines of the law. In his view, the law “has been moving toward a conceptualization of youth being a group that needs policing and control.”<sup>38</sup> An “analysis of the intersectionality of age, race and gender demonstrates ... how [law as a control mechanism] subordinates and criminalizes youth of color, and creates a racialized conception of youth.”<sup>39</sup>

To ground this analysis in concrete recent experience, Espiritu focuses on California's Proposition 21, enacted in 2000, and also known as the Gang Violence and Juvenile Crime Prevention Act. This example, as Espiritu notes, is especially chilling because it is “the product of California's direct democracy process through which voters are able to change the California constitution through a simple majority vote. The proposition system has been employed as the tool of majoritarian domination, subjugating communities of color ... through various discourses from xenophobia to colorblindness, formal equality, and reverse discrimination.”<sup>40</sup> Thus, this example effectively is part and parcel of the “culture wars” that have enveloped law and society during the past couple of decades.<sup>41</sup> Indeed, throughout his paper,

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<sup>35</sup>The early work on multiplicity, antiessentialism and intersectionality focused principally on race and gender as identity axes influencing the content of law and policy. See *supra* note 5 and sources cited therein on these early breakthroughs and follow-up efforts.

<sup>36</sup>The Student Scholar Program provides scholarships and mentoring to selected students from any discipline and region on the basis of applications due every January, which include an original manuscript in the area of law, race and ethnicity. For more information on the LatCrit Student Scholar Program, please visit [www.latcrit.org](http://www.latcrit.org).

<sup>37</sup>Espiritu, *supra* note 18.

<sup>38</sup>*Id.*

<sup>39</sup>*Id.*

<sup>40</sup>*Id.*

<sup>41</sup>These “culture wars” of the past quarter century help to explain much of the reactionary turmoil surrounding the civil rights gains of the past half century. The declaration of cultural warfare issued formally, and perhaps most conspicuously, from Republican Presidential contender Patrick Buchanan during his address to the 1992 Republican National Convention. See Chris Black, *Buchanan Beckons Conservatives to Come “Home,”* BOSTON GLOBE, Aug. 18, 1992, at A12; Paul Galloway, *Divided We Stand: Today's “Cultural War” Goes Deeper than Political Slogans,* CHI. TRIB., Oct. 28, 1992, at C1; see also JAMES DAVISON HUNTER, CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA (1991); JAMES DAVISON HUNTER, BEFORE THE SHOOTING BEGINS: SEARCHING FOR DEMOCRACY IN AMERICA'S CULTURE WAR (1994). Since then, this social conflict has been waged with a vengeance to “take back” the civil rights gains of the past century in the name of the “angry white male.” See Grant Reeher & Joseph Cammarano, *In Search of the Angry White Male: Gender, Race and Issues in the 1994 Elections,* in MIDTERM: THE ELECTIONS OF 1994 IN CONTEXT 125 (Philip A. Klinkner ed., 1996). In recent years, critical legal scholars have noted the effects of cultural warfare on law and policy, especially regarding issues or areas related to antistatutory theory and praxis.



Espiritu describes the process of this proposition – as well as others similar to it enacted in California during the past decade or so – as an exemplar of racialized inter-group contestation over the meaning of equality, justice and democracy in the United States today, a contestation in which the courts are deeply implicated.<sup>42</sup>

Like that of Romero & Serag, this essay recounts how the ensconced elites of California deploy law – and, in this instance, “democracy” – to reinforce a sense of “community” in exclusionary ways based on race, color, age, gender and similar identity axes. Espiritu’s analysis of the process and politics resulting in Proposition 21 explicitly notes the strategic uses of identity: “The interest groups behind such legislation are cognizant of what messages will appeal to voters, and draft legislation and media campaigns” accordingly.<sup>43</sup> This essay, like others in this symposium, effectively maps how supremacist community-making based on colonial and neocolonial imperatives continues to take place as the nation enters a new century, and despite the establishment of formal equality half a century ago.

This last observation also serves to underscore how Espiritu’s essay illustrates the foundational importance of community-building among LatCrit theorists: authored, as noted above, by one of the Student Scholars in that program’s inaugural year, this essay illustrates how collective projects, such as the Student Scholar Program, operate as mechanisms to create a community of antistatist scholars across multiple borders of location, discipline and identity – including those of age or generation. This essay is in this symposium because the Student Scholar Program made it possible for Espiritu to be at the LatCrit VIII conference; while focused on the substantive areas highlighted by the Student Scholar Program (race, ethnicity and law) this essay is an example of community-building through collective projects; this essay illustrates how community-making is a form of collective LatCrit praxis.<sup>44</sup> By way of example, this essay illustrates (yet again in this symposium) how, for LatCrits, *both* parts of this year’s conference theme are much more than just that; jointly, they serve as a guidepost for, and function of, our ongoing work.<sup>45</sup>

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*See generally* Keith Aoki, *The Scholarship of Reconstruction and the Politics of Backlash*, 81 IOWA L. REV. 1467 (1996); Kimberlé W. Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Kenneth L. Karst, *Religion, Sex, and Politics: Cultural Counterrevolution in Constitutional Perspective*, 24 U.C. DAVIS L. REV. 677 (1991); Francisco Valdes, *Afterword—Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality, and Responsibility in Social Justice Scholarship, or Legal Scholars as Cultural Warriors*, 75 DENV. U. L. REV. 1409, 1426-43 (1998); Francisco Valdes, *Culture, “Kulturkampf” and Beyond: The Antidiscrimination Principle Under the Jurisprudence of Backlash*, in *THE BLACKWELL COMPANION TO LAW AND SOCIETY* (Austin Sarat ed., forthcoming 2004).

<sup>42</sup>Espiritu, *supra* note 18.

<sup>43</sup>*Id.*

<sup>44</sup>For example, the Student Scholar Program Call for Papers and informational literature explain that this program “brings the Student Scholars into the LatCrit intellectual and social community” in four inter-related ways, including a scholarship to attend the annual conference and present there the paper submitted in response to the Call for Papers. For further information on the LatCrit Student Scholar Program, *see supra* note 36.

<sup>45</sup>For further readings on the functions and guideposts posited for LatCrit and OutCrit scholarship and praxis, *see supra* note 9.

The essay by Imani Perry, similarly focuses on race to explore its relationship to culture and power.<sup>46</sup> In this essay, Perry examines the “architecture” of race not only to critique its supremacist legacies and effects but also in a forward-looking effort to construct new means of transcending existing “categorical” constructions of sociolegal identities. Perry urges all LatCrits, RaceCrits and other OutCrit scholars, to struggle always against binary constructions of issues or positions, including those stemming from race and its uses. Instead, she argues for a critical forward-looking emphasis: we should employ critical scholarship and praxis as “the impetus for reconstructions of race discourse with national and international understandings of how groups have figured historically with respect to each other and [to] empire/white supremacy, and how we continue to deal with legacies, across national boundaries, of colonial racial constructs and contacts.”<sup>47</sup> Exactly.

To unfold this effort, Perry encourages the employment in legal theory and scholarship of analytical approaches developed in the field of cultural studies, coupled with a careful attention to power inequities resulting from “the matrices of domination” established by centuries of colonial and neocolonial experience.<sup>48</sup> Therefore, our work and praxis must account for the coloniality of the *present*. As posited by Perry, this current reality is exemplified in phenomena ranging from Desi Arnaz to the case law and jurisprudence of the United States today.<sup>49</sup> And within this dominant construction of reality, Perry continues, questions of race are commingled with those of color, ethnicity, nationality, gender and class. “The specific experiences of Latinos assist us in understanding how these issues are relevant for the racialization of all peoples of color.”<sup>50</sup> This interdisciplinary and contextualized approach, as Perry displays in her essay, enables a multidimensional critique of law and society that specifically makes conspicuous the “coloniality of power” – that is, the colonial or neocolonial architecture of power *today* – as integral to the antisubordination projects of LatCrit scholars and activists. Correctly, Perry warns that antisubordination knowledge and praxis must be mindful of colonial legacies; that we live not in a postcolonial age but under a neocolonial system.

Like Espiritu and other symposium authors, Perry explicitly takes up and advances the continuing critical study of race and its interaction with other axes of identity in contemporary law and society.<sup>51</sup> Her interdisciplinary approach and multidimensional framework illustrate the standards of LatCritical method. And her examination of culture, while not explicitly framed in community-building terms, effectively describes how the national community of the United States (and other contemporary nation-states) has(ve) been driven by the impulses and imperatives of colonialism – supremacist impulses and imperatives that today engender cultural icons like Desi Arnaz or J.Lo as well as fuel formal acts of exclusion like Proposition 21. Like Espiritu and other authors above and below, Perry both illustrates and

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<sup>46</sup>Perry, *supra* note 32.

<sup>47</sup>*Id.*

<sup>48</sup>*Id.*

<sup>49</sup>*Id.*

<sup>50</sup>*Id.*

<sup>51</sup>In this symposium, see Romero & Serag, Mize, Chanbonpin, Monty, Revilla.

corroborates the centrality of community-making, both to oppressive operations of power as well as to strategies of resistance against them.

The essays by Nancy Ehrenreich and Marta Nunez-Sarmiento, shift focus; their respective examinations of “operations of power” train principally on gender and its deployment in law and society today. The first of these, by Ehrenreich, focuses on the use of gender (and race) in the North American invasion of Iraq in 2003.<sup>52</sup> The second, by Nunez-Sarmiento, focuses on the fluctuations in gender ideology among professional women and men in Cuba today.<sup>53</sup> Both show that male supremacy continues to shape and influence social reality and legal regimes on both sides of the Florida Straits. These two essays teach that gender, as much as race, continues to function as a marker of inclusion and exclusion in the construction of particular “communities” ranging from the workplace to the nation – communities stratified in great measure by (sex and) gender in symbolic and material terms that constitute status and power over “others.”

Ehrenreich posits that the current occupant of the White House has “played upon the gender insecurities and racial biases of the population” in the United States to “sell U. S. military aggression to the American public.”<sup>54</sup> She continues: “To be more specific, [the current Administration] has reinforced a racialized national sense of masculinity by playing on the association of maleness with the domination of people of color.”<sup>55</sup> Ehrenreich identifies three tropes at work in this dynamic: first, “real men” are men who use violence against people of color; second, “real men” are men who civilize barbarians; and, third, “real men” are men who rescue women.<sup>56</sup> This drama, Ehrenreich concludes, requires LatCrits to “look at how masculinist norms harm the entire nation.”<sup>57</sup>

In similar vein, the essay by Nunez Sarmiento repeatedly shows how women in Cuba juggle the same ideologies, conflicts and constraints as their North American counterparts. For instance, Nunez Sarmiento’s study confirms that women “sacrifice themselves because they work at home and at their jobs” and that “macho attitudes prevail at the institutional and individual levels.”<sup>58</sup> Similarly, it seems that in both capitalist and socialist societies, the “managerial culture has been designed by men and for them.”<sup>59</sup> The bottom line is familiar: in “personal and intimate spaces, men freely conduct themselves as superior beings.”<sup>60</sup> As in the United States, the dismantlement of patriarchy remains a work-in-progress in Cuba.

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<sup>52</sup>Nancy Ehrenreich, *Disguising Empire: Racialized Masculinity and the “Civilizing” of Iraq*, 52 CLEV. ST. L. REV. 131 (2005).

<sup>53</sup>Marta Nunez Sarmiento, *Changes in Gender Ideology Among Professional Women and Men in Cuba Today*, 52 CLEV. ST. L. REV. 173 (2005).

<sup>54</sup>Ehrenreich, *supra* note 52.

<sup>55</sup>*Id.*

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

<sup>57</sup>*Id.*

<sup>58</sup>Nunez Sarmiento, *supra* note 53.

<sup>59</sup>*Id.*

<sup>60</sup>*Id.*

These two essays “center” gender’s deployment to perpetuate hierarchical identity-based relations in settings that range from the home to the nation. Indeed, the basic point of both essays resonates loudly: supremacist gender ideologies, and their unwholesome effects, continue to infect the cultural, personal, and social realities of women and men in the Americas and beyond. These gendered realities, now entrenched, were transplanted here from Europe through the multiple processes of colonization and acculturation that Perry urges us to integrate into our accounts of power in contemporary law and society;<sup>61</sup> they today help to perpetuate, specifically in sex/gender terms, the coloniality of power in the present that Perry emphasizes in her essay. They enable the kinds of oppressive policymaking to create status hierarchies that Espiritu and Romero & Serag critique.<sup>62</sup> They underscore the importance of the alternatives to this status quo, such as the option of global citizenship that Hernandez-Truyol & Hawk propose.<sup>63</sup> These two essays, like others in this symposium, continue multiple lines of LatCritical inquiry into the interactions of law, policy and identity that produce structures and systems of subordination, and for the purpose of neutralizing them as best we can through theory and praxis. Similarly, they also serve to illustrate how the process of community-making is a central device and site of social struggle: like the other essays in this cluster (and symposium), these two confirm that community-making *is* social struggle.

Written by a student, the essay by Anita Tijerina Revilla provides a powerful example of the potentially liberating relationship between theory and practice.<sup>64</sup> In this essay, Revilla explores the meaning of struggle in personal, collective and social terms. To do so, she underscores the connections between education and empowerment as elements of antisubordination struggle, as well as the importance of community-making as an expression of resistance and a form of personal as well as collective praxis.

This essay focuses on in-depth interviews and observations of Chicanas belonging to a group in Los Angeles, Raza Womyn. This methodology, presented as a kind of “portraiture,” seeks to convey a holistic picture of the subject of study. Her ten-week case study, Revilla concludes, “illustrates ways that women build community for themselves and how they use that community to struggle against the subordination they encounter in their schooling experience.”<sup>65</sup>

From this study, Revilla draws three themes that combine the familiar with the (perhaps) surprising: “the experience of marginalization, a belief in revolution, and the commitment to love.”<sup>66</sup> The first of these – the experience of marginalization – is of course a familiar reality: critical outsider jurisprudence, as a whole, is explicitly

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<sup>61</sup>See *supra* notes 46-51 and accompanying text.

<sup>62</sup>See *supra* notes 11-14, 37-43 and accompanying text.

<sup>63</sup>See *supra* notes 16-23 and accompanying text.

<sup>64</sup>Anita Tijerina Revilla, *Raza Womyn Engaged in Love and Revolution: Chicana Student Activists Creating Safe Spaces Within the University*, 52 CLEV. ST. L. REV. 155 (2005).

<sup>65</sup>*Id.*

<sup>66</sup>*Id.*

self-conscious of its and its constituencies' marginality and marginalization.<sup>67</sup> The second – a belief in revolution – signifies the self-transforming process of “becoming conscious” that leads toward a personal commitment to creating substantial social change. This process, Revilla writes, “entails learning about the oppression of your ancestors as well as other forms of oppression that take place within one’s own cultural group [as well as] the reconstruction of a future free of the destructive images, stereotypes and beliefs from the past.”<sup>68</sup> This process, in effect, entails embrace of the kinds of “critical education” espoused over the years by various scholars, including LatCrits.<sup>69</sup> The third, and perhaps the most surprising theme of Revilla’s study, is the employment of “love as a hermeneutic.”<sup>70</sup> This lens, Revilla explains, is expressed in the form of “hope, fun, safeness, and intimacy” among the women constituting the group.<sup>71</sup> This “love” enables the practice of antistatist theory and helps to inform the construction of egalitarian interpersonal relationships, which collectively give rise to communities based on mutual commitments to shared principles and practices. In this paper, personal praxis among and between likeminded individuals becomes a “pedagogical experience” in community-making.<sup>72</sup> This essay thus closes this impressive cluster on a powerful note that affirms the relationship between theory and action, and in particular the synergism of theory and action to inspire and sustain not only the production of liberating knowledge but also the coalescence of communities of liberation – both, again, key guideposts and functions of LatCrit theorists from inception.<sup>73</sup>

As a set, the five essays in this second cluster address the “big three” identity axes of critical outsider jurisprudence: race, ethnicity and gender. They do so in richly diversified settings, and in areas of critical focus that help to bare dominant manipulations of identity that perpetuate neocolonial (or “traditional”) power hierarchies in contemporary society. As a whole, they show how the “traditional” oftentimes is, simply, the neocolonial. Their multidimensional approaches to neocolonial identity ideologies embedded in law and culture illustrate the continuing salience of “identity” in everyday aspects of social life, and underscore the need for increasingly sharp LatCritical analyses of traditional identity politics in the

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<sup>67</sup>“If many of critical race theory’s foundational insights are being confirmed empirically, why are its descriptive accounts of contemporary life and its prescriptive solutions – its standing calls for structural change and social transformation – not even on the table for contemporary policy debate? Why does critical race theory remain “outsider jurisprudence” while another jurisprudence, one of backlash and retrenchment, continues to rule with impunity from the legislature and bench?” Jerome M. Culp, Jr., Angela P. Harris & Francisco Valdes, *Subject Unrest*, 55 STAN. L. REV. 2435, 2449 (2003).

<sup>68</sup>Revilla, *supra* note 64.

<sup>69</sup>The LatCrit V symposium, for example, featured a cluster of essays with several (including one co-authored by Revilla) focused on critical theory and pedagogy. For a discussion of these essays, see Elvia Rosales Arriola, *Introduction: Talking About Power and Pedagogy*, 78 DENVER U. L. REV. 507 (2001).

<sup>70</sup>Revilla, *supra* note 64 (citations omitted).

<sup>71</sup>*Id.*

<sup>72</sup>*Id.*

<sup>73</sup>See *supra* note 9 (on LatCrit guideposts and functions).

construction of public policy and in the operation of contemporary society. These essays confirm that our continuing excavations of identity as a hidden determinant of law and policy remain an urgent – and therefore decried – task in critical theory and legal scholarship.<sup>74</sup>

In highlighting the continuing operation and interaction of race, ethnicity and gender in law and society, these essays also document (to different degrees and in different ways) the power of community-making as social struggle, both among privileged insiders and marginalized Others. They show, time and again, how identities and identifications are deployed to construct exclusionary communities as well as to construct communities of resistance and liberation. In so doing, these authors effectively confirm the importance of community-making as personal and

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<sup>74</sup>And as Revilla reminds us, identity remains a hidden determinant not only in law and policy but also in formal education as well. Indeed, as LatCrits and others have noted in prior works, the formalization of legal education was shaped in explicit ways by the social, cultural and political dominance of white, Anglo-American nativist-racism as well as societal sexism. See, e.g., Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 85 CAL. L. REV. 1449, 1475-92 (1997) (recounting how the American Bar Association, the bar examination, the Law School Aptitude Test, and other “gatekeeping” mechanisms were originated and calculated to be racist, anti-immigrant, sexist, and anti-Semitic); William C. Kidder, *The Rise of the Testocracy: An Essay on the LSAT, Conventional Wisdom, and the Dismantling of Diversity*, 9 TEX. J. WOMEN & L. 167 (2000) (discussing how the LSAT continues to project that history into the present); see also ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983) (providing a comprehensive account of the politics – including the identity politics – that dominated the institutionalization of formal legal education). See generally NICHOLAS LEMANN, *THE BIG TEST: THE SECRET HISTORY OF THE AMERICAN MERITOCRACY* (1999) (providing a similar history focused, more generally, on the standardized tests used in various educational settings in the United States).

Moreover, the historically dominant racist-nativist-sexist supremacist motives behind the formalization and organization of education in the United States generally continue to be embedded in the structure specifically of legal education today. See, e.g., Charles R. Lawrence, III, *Two Views of the River: A Critique of the Liberal Defense of Affirmative Action*, 101 COLUM. L. REV. 928 (2001); Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953 (1996); see also Marina Angel, *The Glass Ceiling of Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1 (2000); Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537 (1988); Richard Delgado, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349 (1989); Richard Delgado, *Affirmative Action as Majoritarian Device: Or, Do You Really Want to be a Role Model?*, 89 MICH. L. REV. 1222 (1991); Sumi Cho & Robert Westley, *Historicizing Critical Race Theory's Cutting Edge: Key Movements that Performed the Theory*, in CROSSROADS, DIRECTIONS AND A NEW CRITICAL RACE THEORY 32 (Francisco Valdes, Jerome McCristal Culp, Jr. & Angela P. Harris eds., 2002); Cheryl I. Harris, *Law Professors of Color and the Academy: Of Poets and Kings*, 68 CHI.-KENT L. REV. 331 (1992); William C. Kidder, *Situating Asian Pacific Americans in the Law School Affirmative Action Debate: Empirical Facts About Thernstrom's Rhetorical Acts*, 7 ASIAN L.J. 29 (2000); Charles R. Lawrence III, *Minority Hiring in AALS Law Schools: The Need for Voluntary Quotas*, 20 U.S.F. L. REV. 429 (1986); Rachel F. Moran, *Commentary: The Implications of Being a Society of One*, 20 U.S.F. L. REV. 503 (1986); Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313 (2000).

collective LatCrit praxis in the pursuit of antistatutory legal reform and social change.<sup>75</sup>

*C. Identity, Discourse and Society: Mapping the Lines of Critical Inquiry*

The third cluster, consisting of three essays, turns our attention to issues of identity and law and as reflected in the discursive practices of critical theorists as well as of mainstream society. The article by Reginald Oh, approaches LatCrit theory and praxis as a “space” for the critique of relationships that are both social and spatial in multidimensional terms.<sup>76</sup> The essay authored by Monty Aaron, another Student Scholar in the first year of that program, turns to LatCrit theory and praxis as a collective effort to balance the “tensions” that inhere in the sameness/difference discourses of the past decade or two.<sup>77</sup> The essay by Julian Webb approaches LatCrit theory as a “complex theory” of discourse and struggle devoted to antistatutory praxis in both spatial and systemic terms.<sup>78</sup> In different ways, each author connects the operation of identity in particular or concrete social spaces to the discursive practices that define or dominate that space. As a set, and as discussed in more detail immediately below, this third cluster effectively bridges the relationship of power to discourse in the realms of law and theory, as well as throughout society more generally, from a variety of different, though always critical, perspectives.

Reggie Oh’s pithy essay analyzes the “call for a return to a discourse on the material reality of racism”<sup>79</sup> and offers two ways of constructing a “materialist” approach to race, ethnicity and identity in critical legal scholarship.<sup>80</sup> The first is “paying careful attention to the language and narrative structure of any critical discourse” and the second is “incorporating a critical geographical consciousness” into various strands of critical outsider jurisprudence, principally LatCrit and RaceCrit discourses.<sup>81</sup> However, Oh notes a crucial insight at the outset: “in actuality, it is impossible to separate the material reality of racism from the discursive reality of racism.”<sup>82</sup> Thus, the bottom line of this essay is an explicit renewal of the call to “multidimensional, multifaceted, multi-causal” critiques of the social and structural realities imposed through racism and racial subordination. To arrive at this bottom line, Oh positively encourages the critical investigation of discourse as a tool of power, and specifically of narrative as a “meta-code” in which

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<sup>75</sup>See *supra* notes 21 and 33 and sources cited therein on community building in LatCrit and other outsider jurisprudential experiments.

<sup>76</sup>Reginald C. Oh, *Mapping a Materialist LatCrit Discourse on Racism*, 52 CLEV. ST. L. REV. 243 (2005).

<sup>77</sup>Aaron Monty, *Retranslating Difference*, 52 CLEV. ST. L. REV. 255 (2005).

<sup>78</sup>Julian Webb, *Law, Ethics and Complexity: Complexity Theory and the Normative Reconstruction of the Law*, 52 CLEV. ST. L. REV. 227 (2005).

<sup>79</sup>For background reading, see Kevin Johnson, *Roll Over Beethoven: “A Critical Examination of Recent Writing About Race,”* 82 TEX. L. REV. 715 (2004).

<sup>80</sup>Oh, *supra* note 76.

<sup>81</sup>*Id.*

<sup>82</sup>*Id.*

trans-cultural messages about the nature of a shared reality can be transmitted.<sup>83</sup> Oh thus encourages scholarly emphasis on the ways in which narratives – in this instance, those regarding race and/or ethnicity – are “emplotted” in order to make the discursive construction of material reality an “intelligible whole” – a step that, Oh explains, is necessary to cause widespread social acceptance of, or acquiescence to, any particular material “reality”.<sup>84</sup> Oh’s bottom line thus emerges: discourse and reality are interconnected, mutually constitutive, and it is this process of mutuality that demands interrogation.

For Oh, the first question facing LatCrits, RaceCrits and other OutCrits while considering the “call” to materialist analysis therefore is: “To what extent do the stories we tell about society accurately represent material reality?”<sup>85</sup> Oftentimes, answers Oh, representations of “reality” possess strong elements of “fantasy” even though the narrative presented may be “coherent” and thus persuasive; while narrative and discourse can be fantastical, it nonetheless contributes to the construction of material realities. Under this view, the crucial question becomes: “What relationship exists between discourse and the organization and production of social space?”<sup>86</sup> To conclude, Professor Oh reminds LatCrit and other OutCrits that “we cannot totally escape from knowing the world through narratives. However, we nonetheless must be able to tell the difference between legal narratives that lead us to concrete, empirical knowledge about material reality and narratives that lead us to self-referential, abstract knowledge that is divorced from material reality.”<sup>87</sup>

With this conclusion, Professor Oh correctly tilts the focus of our collective efforts towards the delineation of the mutually-reinforcing connections between “discourse” and “reality” rather than invite assertion or indulgence of a supposed divide that separates the two in some elusive yet fixed way. With this thoughtful consideration of the interplay between theory or discourse and social realities, Oh validates the need to interrogate both – in ways that are explicitly interconnected and expressly account for both. And, he stresses, in ways that are anchored to the antistatist purposes that we impute to our work. Oh’s bottom line should remind us that projects of social engineering, as well as those that pursue social transformation, oftentimes have begun with a vision; a vision expressed initially through discourse, which in turn can – and often does, as experience shows – inspire both the operation of oppressive power as well as the resistance of it among individuals and groups.<sup>88</sup>

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<sup>83</sup>*Id.* (citations omitted).

<sup>84</sup>Oh writes that “emplotted narratives structure the way in which we comprehend the nature of reality.” *Id.*

<sup>85</sup>*Id.*

<sup>86</sup>*Id.*

<sup>87</sup>*Id.*

<sup>88</sup>This point also is made evident by other authors. A key example is provided in this symposium by Hernandez-Truyol & Hawk, who envision a kind of global citizenship that, if effectuated, could help dismantle the entrenched oppressions of national neocolonial elites. *See supra* notes 16-23 and accompanying text. Another is provided by Mize, who envisions the basis for securing reparations on behalf of Mexican workers exploited systemically during the Braceros Program of the mid-Twentieth Century, which if effectuated could help to



The essay by Aaron Monty invites us to take a new or fresh look at the issue of sameness-versus-difference that in past years has attracted so much attention among various scholars identified with critical outsider jurisprudence.<sup>89</sup> Focusing specifically on intra-Latina/o axes of difference based on class, color and sexual orientation, Monty effectively embraces and urges the kinds of multidimensional and self-critical engagements of law and legal theory that LatCrit long has espoused.<sup>90</sup> Indeed, Monty's essay addresses and advances many of the concerns over groupness that LatCrits have engaged during the past eight years – and others before us – in both personal and generational terms.<sup>91</sup>

To do so, he questions the operation of structural afflictions, such as colorism and homophobia, within and among “different” Latinas/os.<sup>92</sup> Throughout his entire text Monty questions the internal “borders” that Latinas/os effectively import from the neocolonial sources that brought these borders to the Americas, thereby helping mightily to construct today's internal divisions within and among Latina/o-identified groups or persons. Rather than dwell on “difference” in ways that divide, Monty argues: “our differences need to unite us instead of separate us.”<sup>93</sup> “It is necessary for us as Latinos to share our common experiences in order to build bridges among the divergent groups of people that constitute our community,” Monty concludes.<sup>94</sup>

Monty's message is well taken: our challenge is to recognize areas of difference, as well as similarities, in ways that are solidaristic rather than conflictive. And to accomplish this antistatist aim, Monty urges an embrace of stories and storytelling to help understand and constitute our individual and group identities – a call to narrativity that coincides in this symposium with the apparently contrary call toward “materialist” analysis.<sup>95</sup> This coincidence illustrates the diversity and vitality

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ameliorate the impoverishment and disempowerment of those and similar groups. *See infra* notes 103-111 and accompanying text; *see also* Valdes, *Postsubordination Vision*, *supra* note 22 (describing the role of vision in critical legal theory and antistatist praxis).

<sup>89</sup>The “sameness” and “difference” discourse has attracted the attention of many scholars. *See, e.g.*, MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION AND AMERICAN LAW* (1990); *see also* Regina Austin, *Black Women, Sisterhood, and the Difference/Deviance Divide*, 26 NEW ENG. L. REV. 877 (1992); Martha Albertson Fineman, *Feminist Theory in Law: The Difference It Makes*, 2 COLUM. J. OF GENDER & L. 1 (1992); Joan C. Williams, *Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist and Critical Race Theory*, 1991 DUKE L. J. 296. The collective effort to mint concepts like antiessentialism, multiplicity, intersectionality, cosynthesis, wholism, interconnectivity, multidimensionality and the like also reflects a similar grappling with issues of sameness and difference in various genres of contemporary critical legal theory. *See supra* notes 3 and 5 and sources cited therein on these issues and similar themes or concepts in critical outsider jurisprudence, including LatCrit theory.

<sup>90</sup>*See supra* notes 5 and 9 and sources cited therein on LatCrit method and analysis.

<sup>91</sup>*See supra* notes 21 and 32 and sources cited therein on community-and-coalition-building in LatCrit theory and as LatCrit praxis.

<sup>92</sup>*See* Monty, *supra* note 77.

<sup>93</sup>*Id.*

<sup>94</sup>*Id.*

<sup>95</sup>*See supra* notes 79 - 88 and accompanying text reviewing Professor Oh's discussion of this “call”.

of LatCrit theory as a discourse and praxis. It also shows the importance of community-building, both within LatCrits as a diverse community of activist scholars, as well as among Latina/o (and other communities of color) more broadly. Both “calls” aim to ameliorate the oppressive effects of supremacist community-building; both aim to help foster the spaces and bases for Latinas/os and other traditionally subordinated groups in the United States to imagine and emplace reconstructed communities based on egalitarian identity relations. In their antisubordination aims, both effectively embrace the social justice goal and vision that animates LatCrit theory and praxis: to transform society itself.

Against this backdrop, Monty’s conclusions emphasizing the role of difference in the constitution of social groups and communities provide a timely reminder in this symposium that, in building communities, LatCrits always must embrace sources of perceived or actual difference – as well as those of commonality – in *proactive* ways; rather than occlude, ignore or minimize sources of difference to forge solidarity we must marshal diversity positively to build communities and coalitions based on principles rather than on surface commonalities or perceived convergences interests; we must, in other words, practice and carry forward the lessons learned about antiessentialism and antisubordination to construct critical, rather than simply strategic, coalitions and communities.<sup>96</sup> This essay thus blends early areas of investigation and insight with current explorations of law and reality. Written by an undergraduate student, this essay should serve as a standing reminder – and challenge – to each of us: the lessons or insights mined earlier remain as important

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<sup>96</sup>By “critical coalitions” I mean alliances based on a thoughtful and reciprocal interest in the goal(s) or purpose(s) of the coalition. A “critical” coalition – unlike strategic forms collaboration – is the sort of collaborative project that results from a careful and caring commitment to the substantive reason(s) for it, and that produces on all sides a reformatory agenda and cooperative dynamic that reflects this mutual commitment. See Valdes, *Postsubordination Vision*, *supra* note 22, at 835-38 (elaborating critical coalitions). For further discussion of this concept, see Julie A. Su & Eric K. Yamamoto, *Critical Coalitions: Theory and Praxis*, in CROSSROADS, DIRECTIONS AND A NEW CRITICAL RACE THEORY 379 (Francisco Valdes, Jerome McCristal Culp & Angela P. Harris eds., 2002); see also Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183, 1189 (1991) (urging antisubordination analyses to “ask the other question” as a means of theorizing across single-axis group boundaries). Related to community-building, this concern over inter-group relations and collaborations has been a consistently important theme in outsider jurisprudence, including LatCrit theory. See, e.g., Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997) (discussing the challenges facing LatCrit theory); George A. Martinez, *African-Americans, Latinos and the Construction of Race: Toward an Epistemic Coalition*, 19 CHICANO-LATINO L. REV. 213 (1998) (urging Latinas/os, Blacks and other groups of color to coalesce around “race” and our collective, cumulative knowledge of white supremacy); Roman, *supra* note 21, at 483-84 (urging Latinas/os to focus on our similarities rather than our differences as a way of promoting intra-group justice and solidarity); Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 HARV. LATINO L. REV. 495 (1997) (analyzing inter-group grievances and relations among groups of color); see also *supra* notes 9 and 21 and sources cited therein on various lines of inquiry within LatCrit theory, including community-building and coalition-building, in the face of “difference” and diversity; see generally *supra* note 89 and sources cited therein on sameness and difference as a “dilemma” to community and coalition in and through critical legal theories devoted to antisubordination goals.

today as ever, if not more; our perpetual task is to incorporate them substantively and critically into all that we do, even as our work expands to include new terrains.

Finally, the essay by Julian Webb similarly encourages critical engagement of discourse and theory to understand – and resist – the realities of subordination. Focusing specifically on “complexity” and complexity theory, Webb’s goal – like Monty’s and Oh’s – is to ensure that LatCrit and other OutCrit scholars are able to navigate the shoals of complicated realities without losing sight of our emancipatory goals. How, he asks, may multiply diverse groups such as LatCrit and OutCrit scholars recognize the importance of diversity while at the same time recognizing our commonalities and coordinating our actions towards common ends?<sup>97</sup> The aim, Webb urges, must be a normative reconstruction of law – but an ethical one, as well.

Reviewing the various characteristics of complexity,<sup>98</sup> Webb proposes an ethical approach to its use in a normative reconstruction of legal doctrines, processes and institutions. Indeed, he elaborates an approach that may be deemed “ethical” from a LatCritical perspective: Webb calls for the personal and scholarly practice of theory’s insights to navigate the uncertainties adduced by complexity in the principled pursuit of antistubordination theory and praxis. The first two steps of his approach set the stage for action: the first step, writes Webb, is to embrace the inevitable uncertainties that inhere in complexity, while the second is to employ the sources of complexity to help deconstruct and understand both existing realities as well as to articulate alternatives to them.<sup>99</sup> Finally, Webb calls upon us to explore and articulate the scope of the “ethical” itself through the embrace and deconstruction of intellectual uncertainty and social complexity, and in the forward-looking process of reconstructing the law in normative terms.<sup>100</sup> By struggling with and through the complexities that generate uncertainty on principled terms, and by taking responsibility for the consequences of the choices and actions we undertake as a result, Webb argues that we will come to discern an antistubordination ethic to guide both theory and praxis.

Accountability to others – to the community? – thus comes to the fore in this blueprint for ethical antistubordination analysis and action. Webb explicitly counsels that we “have to take responsibility for the effects of all our decisions, now and for the future, even though we do not know what these effects are, and we cannot wait to see what the future will bring. It is in this commitment to action *now* that the possibility exists of emancipatory law in the face of complexity.”<sup>101</sup> The fear of accountability’s consequences, therefore, cannot justify inaction. This final point is important, if not imperative, for LatCrits. It echoes and makes salient in this symposium not only the urgent need for antistubordination action now but also the crucial role of self-criticality to instill ethics into action, to ground action in the substance of theory;<sup>102</sup> in effect, Webb insists, correctly, that LatCrits must apply

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<sup>97</sup>Webb, *supra* note 78.

<sup>98</sup>*Id.*

<sup>99</sup>*Id.*

<sup>100</sup>*Id.*

<sup>101</sup>*Id.* (emphasis in original).

<sup>102</sup>A commitment to self-critical theory and action is the sixth LatCrit guidepost. *See supra* note 9 and accompanying text.

critically to our internal or personal antisubordination efforts the same principles that we apply critically to external social realities. This essay, in a word, demands that we act, that we do so ethically, and that we discover the meaning of these imperatives through the critical and self-critical engagement of uncertainty and complexity in substantively principled terms. A better description of our ongoing fundamental challenge would be difficult to compose.

#### *D. Migration, Land and Labor: Outlooks on Latina/o Reparations*

The fourth and final cluster of the symposium turns our attention to the distressed kinds of material realities that continue to affect and suppress peoples of color all the world over. The two essays in this cluster critique and query some of the “legal” ways in which the formal actions of the United States government and the elites historically in control of it have inflicted injustice on Latina/o populations, including specifically Mexicans and Chicanas/os. Blending history, social theory and legal analysis, this closing cluster effectively issues a call to consider Latina/o reparations more seriously, and thereby beckons the deeper investigations and exchanges that these exemplary forays ideally will engender.

The first of these two essays, by Ronald Mize, examines the possibility of reparations for Mexican Braceros in light of the Japanese and African American experiences with, or attempts at, redress through reparations.<sup>103</sup> This essay focuses on a relatively recent historical experience that provides one basis for a reparations claim on behalf of a particular Latina/o group: the “Bracero program” conducted by the United States government between 1942 and 1964 to bring Mexican laborers to the United States to work in agricultural and railroad industries. Through this historically specific example Mize explores and articulates the various issues that have confronted other groups on this same quest, including the threshold importance of “providing the necessary link between past crimes and present social conditions.”<sup>104</sup>

This program, as Mize’s historical summary makes plain, “reduced the workers to a state of peonage” despite the formal guarantees embedded in the program itself.<sup>105</sup> This servitude, the account also makes plain, was imposed with the active complicity both of public authorities as well as corporate interests that benefited from the abusive arrangements. Moreover, as the essay acknowledges, these abusive arrangements were put and kept in place during those years through the complicity – active *and* passive – of governments and elites on both sides of the Rio Grande: the bi-national accords between the Mexican and United States government that created this program were “lived out much differently by the workers than how the program was designed to work on paper.”<sup>106</sup> And the effects of this bi-national wrongdoing,

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<sup>103</sup>Mize, *supra* note 18.

<sup>104</sup>*Id.*

<sup>105</sup>*Id.*

<sup>106</sup>*Id.* In this short essay, Mize does not focus on the Mexican government’s side of the complicity, perhaps because the benefits of the program seem to have inured principally to interests north of the Rio Grande. Whatever the reasons, this intriguing aspect of the reparations analysis is left for another day, both in the essay and, consequently, in this Foreword.

Mize also makes clear, continue into the present – perhaps most acutely among the survivors of that official and private abuse, who live today in studied silence of their experiences.<sup>107</sup>

But reparations, he makes plain from the outset, is not just another possible remedy for individuals that might be said to be “in privity” (or otherwise sufficiently linked to) identifiable wrongdoers for legal liability to be imposed. In addition to compensating victims, reparations claims can activate a salutary process for a national community as a whole: reparations claims require “the nation to seriously examine the historical origins of contemporary racialized predicaments and lingering inequalities.”<sup>108</sup> Moreover, “requiring the collective conscience of a nation to come to grips with its sordid history ... moves offending nations forward”<sup>109</sup> and sets the stage not only for national remorse, but also, ideally, for structural reform. No doubt – as the essays by Romero & Serag, Espiritu and others in this symposium suggest<sup>110</sup> – this hope of a national capacity for, or interest in, remorse and reform may seem attenuated during these times of backlash jurisprudence and cultural warfare – ongoing phenomena designed precisely and expressly to “roll back” the significant yet limited civil rights gains of the past century.<sup>111</sup> But this hope, in time, may provide the baseline from which we examine and support the development of Latina/o reparations claims in the coming years.

The second essay in this cluster – and the final essay of the symposium as a whole – similarly focuses critical attention on the exploitation and disempowerment of Mexicans and Mexican Americans under Anglo rule. Here, the specific historical experience is dispossession of Mexican landowners in California after 1848, and following the North American conquest of vast areas of land belonging to Mexico. This dispossession, as the essay makes clear, was enacted and enforced under the purported “rule of law” – yet in patent violation of the formal guarantees of property rights accorded to Mexican landowners under the treaty of Guadalupe Hidalgo. This final essay, the third appearing in this symposium by a Student Scholar, Kim David Chanbonpin, thus points to many of the issues already engaged in other essays of this symposium while at the same time engaging in a line of inquiry – reparations specifically for land dispossession – that remains relatively new within LatCrit theory and outsider jurisprudence more generally.<sup>112</sup>

To do so, Chanbonpin examines a standard property law case of the California Supreme Court, *Plume v. Seward*, which was willfully disregarded by Anglo elites in the formal processes they abused to engineer this “legal” dispossession and thereby unjustly enrich themselves. That case, as Chanbonpin explains, is taught in the first-year curriculum even today at law schools around the country to explain a basic legal doctrine, which recognizes property rights in claimants who can prove constructive possession of disputed land as against other claimants who cannot. A principled,

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<sup>107</sup>*Id.*

<sup>108</sup>*Id.*

<sup>109</sup>*Id.*

<sup>110</sup>See *supra* notes 11 and 37 and accompanying text for discussion of these essays.

<sup>111</sup>See *supra* note 41 and sources cited therein on cultural warfare.

<sup>112</sup>Chanbonpin, *supra* note 18.

even-handed, routine application of this then-inconvenient yet well-established doctrine would have prevented the Anglo land grab. But – or therefore – Mexican landowners were denied the benefit of this particular doctrine, paving the way for a formally legal satisfaction of Anglo greed. Invoking the tools and methodologies of “legal archaeology,”<sup>113</sup> Chanbonpin details the federal and state practices of U.S. authorities in disregard of formal law to forcibly and systematically dispossess Mexican landowners of their lands: as much as 14 million acres were redistributed to Anglo settlers, including those that now constitute the rich elites of Texas and other southwestern areas of the lands now known as the United States.<sup>114</sup> In some instances, and in stark violation of elementary notions of justice prevailing even at that time, the sitting Anglo judges sometimes presided over cases that would determine their own personal lands and fortunes – including, perhaps most shamelessly and scandalously, Stephen J. Field, the Chief Justice of the California Supreme Court.<sup>115</sup>

Because Chanbonpin so lucidly excavates the corrupted operation of a landmark case taught to many first-year law students across the country, this essay makes a wonderful companion to any first-year property law course – if the professor is interested in conveying to students the “reality” and problematics of law in action. And because the essay is equally concerned with contemporary issues regarding racial justice through reparations and other means, this essay facilitates engagement of identity politics and subordination in substantive areas of law that purportedly have “nothing” to do with identity. This essay, in short, delivers a powerful punch in the classroom and beyond it, especially but not only because it was written by a law student; this essay is an exemplary tool in the continuing development of critical approaches not only to law and theory but also to legal education itself.<sup>116</sup>

Like the Mize essay, this analysis underscores the fatal gaps between law on the books and law in action – gaps that coincidentally yet consistently disfavor people of color and favor white supremacy and that thereby belie the claims to law and justice oftentimes loudly espoused on behalf of the North American legal system. These particular gaps, as these authors show, may help to create a reparations claim. Coupled together in this short cluster, these two essays help set the stage for a thoroughgoing interrogation of the possibility – and justice – of reparations claims on behalf of Latinas/os whose labor, land or other material assets have been arrogated by North American rulers and elites.

Notably, both essays stress the connection between “now” and “then” to establish the relationship between “past” wrongdoing and “present” harm. In both analyses, the crucial role of history in antiradicalization theory and praxis is abundantly evident. In both, the role of history to reparations analysis is made plain. And in this way, both remind us that interdisciplinary analysis in general – and oftentimes those that center history specifically – are indispensable to understanding how both how

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<sup>113</sup>*Id.*

<sup>114</sup>*Id.*

<sup>115</sup>*Id.*

<sup>116</sup>See *supra* note 74 and sources cited therein on critical legal education; see also Francisco Valdes, *Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism: Marking the Stirrings of Critical Legal Education*, 10 ASIAN L.J. 65 (2003).

neocolonial structures of power operate today; how, in other words, “material reality” came to be.

### III. OUTLAWS BUILDING COMMUNITIES: A CASE STUDY IN “STRATEGIES OF RESISTANCE”

Midway through the second half of our first decade, this symposium illustrates and contributes to the ongoing efforts of LatCrit and other OutCrit scholars to create accurate understandings of, and potent strategies against, the multidimensional structures of subordination that interlock with law to engineer and lock into place neocolonial social realities. It thus is appropriate to close this year’s Foreword with a vignette that exemplifies both this year’s theme as well as the diverse populations, contemporary issues, unjust situations and abiding aspirations that gave rise – and give drive – to LatCrit theory, community and praxis. This summary account underscores many of the themes and issues engaged by the symposium authors and illustrates in the here-and-now how theory and action are intertwined in this year’s conference theme. Provided here simply as a sketch to close the Foreword, this vignette vividly and concretely depicts a contemporary case study in “strategies of resistance” against dominant “operations of power” in one major city of the United States, a case study focused on a Latina/o community-building project that pivots on oppressive yet contested constructions of citizen and “citizenship,” and that also helps bring into sharper relief the social and legal issues of subordination addressed by various symposium authors – perhaps most directly by Hernandez-Truyol & Hawk’s critique of the inter/national passport system – in ways that should inspire and inform LatCrit theory and praxis as socially-relevant undertakings in the months and years to come.

#### A. *Sketching the Group’s Portrait: Allegories of Class, Race and Sexual Orientation*

Sociologists Alejandro Portes and Alex Stepick captured the creation of a “Latinized” Miami in their 1993 book, *CITY ON THE EDGE: THE TRANSFORMATION OF MIAMI*. This celebrated book detailed how Cuban “exiles” had, as a strategy of collective and individual self-empowerment, formed a tightly-knit community within that city during the second half of the Twentieth Century. In the process, they forged networks of social connections and economic relations that cumulatively created a new and “safe” space within an existing and “strange” space. This new space became known as their “enclave.” For better or worse, their willful construction of that enclave and community disturbed existing allocations of urban space, and inter-group relations became re-defined with the interjection of “foreigners” in ways that scrambled the premises and practices of “domestic” identity politics. As the book’s title indicates, this community-building effort eventually “transformed” the larger metropolis that those self-styled exiles newly inhabited.

Their example also helped set the stage for “other” kinds of immigrants from the Latina/o south that, like the Cubans of the 1950s and 1960s, have chosen a kind of self-imposed estrangement or exile from their native lands to search for “freedom” in the Anglo north. That expanded and ongoing process, as this summary account illustrates, has now become increasingly variegated across multiple axes of identity – and not always on the basis of race, nationality or ethnicity. One key example, and the one featured here to exemplify the second part of this year’s conference theme: the closely-knit but widespread communities formed in the southern and western

neighborhoods of Miami by relatively privileged gay Latinos and lesbian Latinas, who leave their native lands in the Caribbean, Central America and South America to re-settle in Miami with one ambition uppermost in mind. As with the original exiles and their enclave, and as elaborated below, the acts and ambitions of these new immigrants are calling into question the pre-existing allocations of urban space (and, with time, also the pre-existing dynamics of intra- and inter-group relations) – both within the original enclave and the metropolis of Miami.

To be sure, the Queer Latina/o immigrants who make up this new urban enclave embody multiple diversities, as do all social groups. And, therefore, many points and lessons that are substantively important to any complete antisubordination analysis may be drawn from their ongoing efforts. But the multiply diverse individuals that have come together in Miami's new Queer Latina/o enclaves also share various key characteristics that extend beyond minority sexual orientations and/or other identity traits, and that are the focus of this brief portrait because they help to explain how this community-building project came into existence. As a group, and as discussed below, these immigrants tend to share key aspirations and characteristics that are related to their respective "identities" and that help to mold the individual choices culminating in the migration and re-settlement patterns that incrementally have added up to this new enclave. As elaborated below, the individuated notions and ambitions that drive these relatively recent immigrants to their choices and migrations have produced new enclaves (or sub-enclaves) in Miami that are motivated by quests for "freedom" and a sense of dignity that are strikingly similar yet vastly different from the hopes and aims of the sexual majority immigrants preceding them: living as "openly" lesbian or gay persons in a stable, loving and long-term same-sex relationship.<sup>117</sup>

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<sup>117</sup>This brief vignette is drawn from a larger work in progress. Through questionnaires and live interviews with nearly two dozen men and women from various countries of the Caribbean, Central America and South America, this work in progress looks at the sexual orientation diversification of "Latinized" Miami, and considers how and why Queer Latina/o patterns of immigration might (and should) be accommodated in U.S. law and policy, and in international covenants. Basically, then, this ongoing larger project is in the nature of ethnographic research for the purpose of elucidating knowledge regarding lawmaking and policymaking choices, both past and future. See generally James Clifford, *On Ethnographic Allegory*, in *WRITING CULTURE: THE POETICS AND POLITICS OF ETHNOGRAPHY* 98 (James Clifford & George E. Marcus eds., 1986) ("Embodied in written reports, these stories simultaneously describe real cultural events and make additional, moral, ideological, and even cosmological statements."); for selected essays on current issues in ethnographic research, see *REREADING CULTURAL ANTHROPOLOGY* (George E. Marcus ed., 1992). The particular portrait summarized here, however, mainly looks at the social and legal dynamics from which a new enclave has emerged in Miami, and presents this ongoing community-building experiment as an example of cultural and legal outlaws building communities under the shadow of hostile inter/national sociolegal regimes. Therefore, this group portrait is presented in broad strokes here to help elucidate in this Foreword the LatCrit VIII conference theme – City and Citizen: Operations of Power, Strategies of Resistance. Project notes are on file with the author, Francisco Valdes, at the University of Miami School of Law.

Despite efforts to maintain gender balance in this study, the portrait sketched below is based mostly on male experiences and stories. For an excellent study focusing on women, including Latinas, see generally OLIVA ESPIN, *WOMEN CROSSING BOUNDARIES: THE PSYCHOLOGY OF IMMIGRATION AND THE TRANSFORMATION OF SEXUALITY* (1999); see also LATINA REALITIES: ESSAYS ON HEALING, MIGRATION AND SEXUALITY (Oliva Espin ed., 1997).



Interestingly, however, it appears from the Census 2000 data that the three wealthiest same-sex couples among the Latina/o population in South Florida are lesbian. For more information, see <http://www.gaydemographics.org/USA/2000CensusGaySF2.htm> (last visited on Mar. 26, 2004) and <http://www.gaydemographics.org/USA/USA.htm#Getit> (reporting three female same-sex couples in the hyper wealthy neighborhoods of Fisher Island and Golden Beach, and describing the data-gathering process as it relates to the ethnicity of same-sex couples documented in the 2000 Census).

This sketch additionally draws from periodic news reports and scholarly publications that corroborate the migrations and relationships summarized in this Part of the Foreword. For instance, reflecting many of the themes broached here, the main local newspaper in Miami reported recently that “Hispanic gays who left their homelands to escape persecution have discovered an intoxicating freedom. They just cannot tell their families.” Andrea Elliott, *Living a Dual Life*, MIA. HERALD, Nov. 2, 2002, at E1. The 2000 census, which for the first time ever sought to document Queer lives and couples, revealed “6,191 Hispanics living with unmarried same-sex partners in Florida” thus “quantify[ing] a group that has long been invisible to both Hispanic and gay leaders.” *Id.* at 2-3; see also *supra*, Census web sources. At the same time, the Census 2000 reported the emergence of non-immigrant sexual minority enclaves in the greater Miami area in recent years. See Andrea Elliott & Tim Henderson, *More Gays Making Suburbs Their Home*, MIA. HERALD, July 25, 2001, at A16 (providing a map of Queer enclaves or hubs in South Florida).

It bears notation at the outset that this study focuses narrowly on a particular community within existing communities or larger enclaves in Miami, but that those larger communities or enclaves also are in the process of change and diversification as various stripes of Latinas/os, both Queer and not, seek to make Miami their home. See, e.g., Damarys Ocana, *A Kendall Love-In*, MIA. HERALD, Oct. 3, 1999, at M1 (describing the diversification of Miami’s Cuban community as a new generation born in the U.S. comes into adulthood); Juan Forero, *Prosperous Colombians Fleeing, Many to U.S.*, N.Y. TIMES, Apr. 10, 2001, at [www.nytimes.com](http://www.nytimes.com) (reporting an exodus from Colombia similar to the migration studied here); Evelyn McDonnell, *Baby Buenos Aires*, MIA. HERALD, Feb. 8, 2003, at E1 (depicting the creation of an Argentine enclave in Miami); *Miami Dominicans Create Political Party*, MIA. HERALD, June 12, 1999, at B3 (reporting political organizing within the Dominican enclave in Miami); Peter Wallsten, *Puerto Ricans in Fla. Carry Clout as New Swing Group in State, National Elections*, MIA. HERALD, Dec. 24, 2001, at A1 (describing the growth and political implications of the Puerto Rican community in Florida). As these recent news accounts attest, Miami has been home to influxes during the past several decades that have transformed the once-sleepy tourist outpost into a unique cultural, demographic and political phenomenon in the United States. For particularly incisive observations, see JOAN DIDION, *MIAMI* (1987) (providing a cultural and social analysis of Miami’s transformation and its larger implications).

These developments are reflected in other communities across the United States as Latina/o immigration, in general, continues to grow. See, e.g., Sylvia R. Lazos Vargas, “Latina/o-ization” of the Midwest: *Cambio de Colores (Change of Colors) as Agromaquilas Expand into the Heartland*, 13 BERKELEY LA RAZA L.J. 343 (2002) (describing developments in the Midwest of the U.S.); Scott Wilson & Philip Pan, *A Diverse and Growing Population*, WASH. POST, Jan. 23, 2000, at <http://search.washingtonpost.com/wp-srv/WPlate/2000-01/23/2551-012300-idx.html> (describing the rise of a diverse Latina/o enclave in the nation’s capital). This overall growth of Latina/o communities in the United States seems especially pronounced in the South. See, e.g., Audra D.S. Burch, *Hispanics Settling into the South*, MIA. HERALD, March 17, 2004, at A1 (reporting that agricultural and industrial employment opportunities increasingly attract Latinas/os to southern locales); Suzi Parker, *Hispanics Reshape Culture of the South*, CHRISTIAN SCIENCE MONITOR, June 10, 1999 (describing both the changes and the tensions that come with new Latina/o enclaves in the southern regions of the United States). For a good, succinct overview of Latina/o enclaves or communities, oftentimes based or fueled by immigration, see Alejandro Portes, *From South of the Border:*

*Hispanic Minorities in the United States*, in THE IMMIGRATION READER: AMERICA IN MULTIDISCIPLINARY PERSPECTIVE 113 (David Jacobson ed., 1998); see also generally *supra* notes 3, 90 and 96 and sources cited therein on Latina/o diversities and inter-group relations. Thus, “despite the formidable barriers posed by [U.S. immigration laws] and the INS, Latin[a/o] workers inevitably come to the U.S. and find work here. The very fact that Latin[a/o] immigrants come in spite of everything done through legal institutions to deter them from doing so suggests the strongest desire to improve their own lives, and the potential for doing so without official government assistance.” Christopher David Ruiz Cameron, *The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers*, 53 U. MIAMI L. REV. 1089, 1114 (1999). A similar desire, fueled by homophobia rather than employment, motivates the Queer Latina/o immigrants portrayed here. See *infra* notes 133-144 and accompanying text.

Overall, of course, these ongoing demographic and political developments have helped to catapult Latinas/os’ numbers nationally, poising Latinas/os to become the most numerous racial/ethnic group of color in the United States. See Andres Viglucci, *Hispanics Now Equal Blacks in Population*, MIA. HERALD, March 8, 2001, at A1 (“Fed by high levels of immigration to South Florida and the rest of the country, the U.S. Hispanic population has bloomed to the point that it is now equal in number to the nation’s blacks, according to the 2000 Census.”); see also Melissa Healy & Robert Rosenblatt, *Census: Study Finds that 25% of Californians are Foreign-Born, the Largest Figure in the Nation*, L.A. TIMES, Oct. 5, 2000, at A1 (reporting the Census findings for California, and noting that half of the nation’s foreign-born persons “are from Latin America”); *Nearly 1 in 10 U.S. Residents Come from Another Country*, MIA. HERALD, Sept. 17, 1999, at A28 (reporting a Census Bureau estimate that “the nation’s foreign-born population increased nearly four times faster than that of the native-born population.”). These national trends are palpable in Miami and surrounding localities. E.g., Andres Viglucci, Amy Driscoll & Tim Henderson, *How We’ve Changed: Hispanics Surpass Blacks as Florida’s Largest Minority with Leaps in All 67 Counties*, MIA. HERALD, Mar. 28, 2001, at A1 (reporting the local statistics from the 2000 Census).

Obviously, this increasing diversification of Latina/o communities across the United States, especially through diversified sources of immigration, compounds the multiple sources of “difference” among and between “Latina/o” persons or groups, as well as across varied groups of color. See generally Victor G. Romero, “Aren’t You Latino?”: *Building Bridges Upon Common Misperceptions*, 33 DAVIS L. REV. 837 (2000) (describing sources of difference and diversity among Latinas/os and other groups of color in the United States from a Filipina/o perspective); see also Rachel F. Moran, *Neither Black Nor White*, 2 HARV. LATINO L. REV. 61, 62-63 (1997) (summarizing recent demographic trends and discussing the social positionality of Latinas/os within the race-ethnicity paradigms of the United States).

These demographic changes and their political implications also create increasingly complex, and sometimes contentious, inter-group relations in the large urban centers that they inevitably help to change. See, e.g., GOVERNING AMERICAN CITIES: INTERETHNIC COALITIONS, COMPETITION AND CONFLICT (Michael Jones-Correa ed., 2001) (presenting a collection of essays that address both challenges and opportunities in inter-group relations associated with increased racial and ethnic diversities in urban centers). In particular, they threaten to exacerbate existing tensions among groups of color in the United States, thereby underscoring the importance of coalitional theory, praxis and politics. See, e.g., Genaro C. Armas, *Hispanic Growth Viewed as Opening for 2 Top U.S. Minority Groups*, MIA. HERALD, Apr. 8, 2001, at A26 (observing that the 2000 Census findings set the stage for a “potential alliance” between African American and Latina/o groups “on issues such as fair housing and racial profiling” that could advance the antistubordination quests of both groups.); see also Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395 (1997) (focusing on the role of immigrants in community-building and nation-building within the United States, and describing the politics of conflict and cooperation between Latinas/os and Asian Americans in one California locality); see generally *supra* note 96 and sources cited therein on inter-group relations and coalitions in critical outsider jurisprudence.

This migration has transpired mostly below all U.S. policy radars and beyond the edge of Miami's Latinized culture; unfortunately, it also has remained unexamined in outsider jurisprudence.<sup>118</sup> Queer Latina/o immigration patterns fall below policy radars because policymaking frameworks tend still to operate on the basis of a pre-intersectionality mentality: unless seeking asylum on the basis of sexual orientation or otherwise centering sexuality, Queer Latinas/os tend to register as "Lats" rather than as "fags" in the North American immigration equation, and thus fall through the cracks created by the intersection of sexual orientation and race/ethnicity in immigration contexts.<sup>119</sup> Queer Latinas/os also are beyond the transformed edge of

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This growth and diversification of minority communities or immigrant enclaves in Miami based on nationality or ethnicity is matched by a rise in sexual minority migration to the United States. See, e.g., Johnny Diaz, *More Gay Immigrants Seeking Refuge in U.S.*, MIA. HERALD, Feb. 4, 2001, at A1 (describing recent modifications in immigration law and policy that permits some members of sexual minorities to gain entry to the United States as refugees); Doris Sue Wong, *More Gays Seeking U.S. Asylum*, BOSTON GLOBE, Nov. 7, 1992, at A17 (describing similar asylum claims and their increasing frequency during the 1990s). These Queer refugees, like those in Miami's enclave, strive to flee homophobic antipathy and violence in their homelands, and arrive in the United States expecting protection, but in the process they also encounter homophobic bigotry. See, e.g., John Leland, *Gays Seeking Asylum Find Familiar Prejudices in U.S.*, N.Y. TIMES, Aug. 1, 2001, at A10 (describing refugees' experiences with discrimination and violence). For further readings on sexual orientation and immigration law, see *infra* note 118 and sources cited therein.

<sup>118</sup>In all three instances, the domination of heteronormativity helps to explain the marginality of sexual orientation issues. On the marginality of "sexual orientation" in outsider scholarship generally, see Elvia R. Arriola, *Gendered Inequality: Lesbians, Gay Men, and Feminist Legal Theory*, 9 BERKELEY WOMEN'S L.J. 103 (1994) (questioning feminist categories around sex, gender and sexuality that marginalize lesbian/queer issues); Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191 (1989-90) (critiquing the invisibility of minority sexual orientations in feminist analyses of law); Darren Lenard Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Antiracist Politics*, 47 BUFF. L. REV. 9-113 (1999) (critiquing the silence on sexual orientation within race/ethnicity discourses); Berta Hernandez-Truyol, *Latina Multidimensionality and LatCrit Possibilities: Culture, Gender and Sex*, 53 U. MIAMI L. REV. 811 (1999) (centering Latina lesbian identity in outsider jurisprudence, and specifically in LatCrit theory).

<sup>119</sup>Historically, "homosexuals" have been visible in U.S. immigration law and policy mainly as a species of socially defective individuals who by law are made excludable from entry, or ineligible for naturalization, on the basis of moral fitness (or unfitness). For a case that captures this history yet is relatively recent, see generally *Boutilier v. INS*, 387 U.S. 118 (1967) (holding that lesbians and gay men are excludable and deportable as a species of "psychopathic personality" because Congress' use of that term was intended to target "homosexuals and sex perverts"). For a more recent case making and illustrating the same point, see *In re Longstaff*, 716 F.2d 1439 (5th Cir. 1983), reh'g den, 719 F.2d 404, cert den, 467 U.S. 1219; see generally 8 U.S.C. §§1-1775 (2004); see also Annotation, *Rights of, and Validity of Provisions Concerning or Affecting, Homosexuals under the Federal Constitution*, 134 L.Ed. 1047 (2000) (providing compilation of Supreme Court constitutional case law on sexual orientation); Annotation, *What Constitutes Showing of "Good Moral Character" on the Part of An Applicant for Naturalization*, 22 ALR. 2d 244 (1952) (canvassing the immigration case law, which remains valid today).

In recent times, asylum claims based on homophobic violence in homeland societies have met with some limited success, thus becoming the principal way for a Queer person to migrate

Miami that Portes & Stepick document in their book not only because Latina/o culture is decidedly homophobic – both in Latinized Miami and throughout Latin America<sup>120</sup> – but also because their migration, as a form of escape from homophobia,

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to the United States as a Queer person; even though some claimants have been able to satisfy immigration authorities of their personal persecution based on sexual orientation, the state of immigration law and policy remains tenuous, if not hostile, to sexual minorities and our transnational migrations. See David Tuller, *Gay Brazilian Claims Persecution, Wins U.S. Asylum*, S.F. CHRON., July 29, 1993, at A13 (reporting the ruling of an administrative law judge, “a decision believed to be the first of its kind” despite the “reputation” of Brazil and other American societies for homophobic violence); see also SEXUAL CULTURES AND MIGRATION IN THE ERA OF AIDS (Gilbert Herdt ed., 1997) (describing homophobic social conditions in Brazil and other societies in the Americas).

That 1993 case has opened the way to similar efforts elsewhere, but reformatory prospects remain dim due to homophobic prejudice entrenched in immigration law and policy. See generally Symposium, *Refusing Refugees: Political & Legal Barriers to Asylum Persecution on the Basis of Gender and Sexual Orientation*, 26 CORNELL INT’L L.J. 605 (1993) (presenting various articles addressing contemporary means of exclusion); see also Victor C. Romero, *The Selective Deportation of Same-Gender Partners*, 56 U. MIAMI L. REV. 537 (2002) (reviewing the animus of immigration law and policy to sexual minority individuals, unions and families); Christopher S. Hargis, *Queer Reasoning: Immigration Policy, Baker v. State of Vermont, and the (Non)recognition of Same-Gender Relationships*, 10 LAW & SEXUALITY 211 (2001) (critiquing the non-recognition of same-sex unions in U.S. immigration law and policy); see also *infra* note 133 and sources cited therein on same-sex unions and marriage.

This continuing exclusion and systemic invisibility remains prevalent, in part, because the only statutory category available for Queer claims to residency is the generic “particular social group” category under refugee law, which the courts have interpreted variously. See, e.g., *Gomez v. INS*, 947 F.2d 660 (2d Cir. 1991) (denying asylum to a young woman from El Salvador who had been beaten and raped by Salvadoran guerillas because, according to that panel of judges, she had not “demonstrated that she is more likely to be persecuted than any other young woman.”); see generally Brian F. Henes, *The Origin and Consequences of Recognizing Homosexuals as a “Particular Social Group” for Refugee Purposes*, 8 TEMP. INT’L & COMP. L.J. 377 (1994) (discussing advances in the law during the early 1990s); T. David Parish, Note, *Membership in a Particular Social Group Under the Refugee Act of 1980: Social Identity and the Legal Concept of the Refugee*, 92 COLUM. L. REV. (1992) (discussing the history and application of the statute’s “particular social group” provision); see also *infra* note 133 and sources cited therein on the interplay of state marriage statutes and immigration law to prevent migration-through-marriage for same-sex couples.

Finally, of course, the exclusion of sexual minorities from immigration law reflects a larger tendency toward constricted borders and exclusionary policies designed to perpetuate existing Eurocentric, heterosexist and neocolonial power patterns based on colonial and neocolonial waves of immigration and settlement in the lands now known as the United States. For selected readings on current and recent debates over immigration law and policy in the United States, see IMMIGRATION: DEBATING THE ISSUES (Nicholas Capaldi ed., 1997); THE IMMIGRATION READER: AMERICA IN MULTIDISCIPLINARY PERSPECTIVE (David Jacobson ed., 1998).

<sup>120</sup>The homophobia of Latina/o communities in the United States, as well as in Latina/o societies throughout the Americas, is well documented. See, e.g., ALFREDO MIRANDE, *HOMBRES Y MACHOS: MASCULINITY AND LATINO CULTURE* (1997) (describing the homophobic and androsexist constructions of male identity and sexuality among Latinas/os, focusing on Mexican groups); COMPANERAS: LATINA LESBIANS, AN ANTHOLOGY (Juanita Ramos ed., 1987) (presenting texts authored by Latina lesbians, which repeatedly reflect the homophobia and androsexism of Latina/o groups); see also generally NOW THE VOLCANO: AN ANTHOLOGY OF LATIN AMERICAN GAY LITERATURE (Winston Leyland ed., 1979) (discussing

tends to entail enduring familial and similar ruptures.<sup>121</sup> As a result, these immigrants do not tend to become mainstreamed into – or become visible members of – the networks formed and communities sustained through pre-existing Latina/o diasporas or enclaves.

Nonetheless, Miami's Queer Latina/o enclave is a case study in successful resistance to multiple sources of power and pressure, and in outgroup community-building despite daunting odds. These immigrants have resisted the homophobic and/or androsexist imperatives of their families and homeland societies; they have resisted the horrific immigration gauntlets of this country and its mistreatment of nonwhite/non-Anglo immigrants generally; they are resisting the discrimination and oppression that permeates their new lives on economic, social and legal levels, and on an everyday basis. This vignette presents a portrait of a stressed sociolegal space that, though unrecognized as such, is a site of creativity, daring, tragedy and community based primarily on the imagination and determination – and on the criminalization and exploitation – of these social and legal outlaws.

Defying again essentialist tropes and essentializing stereotypes, this migration brings to the fore the convergence of multidimensional identities that reflect the diversities and complexities of Latina/o populations.<sup>122</sup> The first identity twist in this group sketch is class and the role of class privilege: as explained below, many

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the emergence of a gay consciousness in “Latin American” literature). In recent years, this longstanding culture of homophobia has been reflected in the responses of Latina/o individuals and communities to the HIV pandemic. See RAFAEL M. DIAZ, *LATINO GAY MEN AND HIV: CULTURE, SEXUALITY AND RISK BEHAVIOR* 63-89 (1998) (discussing the role of machismo and homophobia in the spread of HIV among gay Latinos).

<sup>121</sup>*Id.* at 91-112 (reporting the results of interviews with gay Latinos, including “abundant stories of family rejection” upon coming out.) Diaz recounts that “stories of family support were mostly stories of tolerance and non-abuse rather than of true acceptance. In most cases, tolerance was achieved only at the price of silence ... Family support, when reported, was mostly experienced as tolerance, parental resignation, or the absence of overt mocking and abuse ... For many, breaking the silence, even in families who already know, was the beginning of serious family conflict that led to disruption of family ties, including migration or expatriation.” *Id.* at 92-93. Of course, the central role played by families of origin in the lives of Latinas/os adults is a long-noted cultural tendency or “difference” as compared to Anglo norms in the United States. See, e.g., *HISPANIC FAMILIES: CRITICAL ISSUES FOR POLICY AND PROGRAMS IN HUMAN SERVICES* (Miguel Montiel ed., 1978) (presenting a series of papers on family dynamics in Latina/o communities within the United States). However, the family-related conflicts triggered by homophobic reactions to the act of coming out are not limited to Latinas/os. See, e.g., Elvia R. Arriola, *The Penalties for Puppy Love: Institutionalized Violence Against Lesbian, Gay, Bisexual and Transgendered Youth*, 1 J. GENDER, RACE & JUST. 429 (1998) (exploring how young adults are pressured and stressed by societal, familial and cultural forces in their efforts to “come out” to their families and communities). Nor, one must note for the record, should the existence or perception of such cultural characteristics or group “differences” be the source of essentialized inter-group tensions, especially when such tensions dissipate the strength of antiburdening struggles. See generally *supra* note 90 and 96 and sources cited therein on essentialism, difference and coalition among groups of color.

<sup>122</sup>As noted at the outset, Latinas/os are multiply diverse (like other social groups), see *supra* note 3 and sources cited therein on Latina/o heterogeneity, and LatCrit theorists therefore have tried to capture the law-and-policy significance of these diversities through multidimensional analysis. See *supra* note 5 and sources cited therein on multidimensionality and related concepts in critical outsider jurisprudence).

(though not all) of these immigrants are sons and daughters of relative wealth, status and opportunity in their homelands. The second twist, related to the first, is race and race privilege: many (though, again, not all) of these immigrants hail from families identified with Spanish settlers or immigrants, and in their native societies they oftentimes are deemed white (by themselves as well as by others). These two axes of identity – class and race – thus are sources of social and economic privileges, to which many of these immigrants are accustomed. These comforts, however, are offset for them by the constrictions and oppressions associated with minority sexual orientation. More specifically, these young adults (in this instance, yes, all of them) must negotiate their coming of age in their homelands as lesbian or gay individuals under the rule of Euro-heteropatriarchy.<sup>123</sup> In that context, they oftentimes find themselves living in fear – hiding in “the closet” – despite the structures and emoluments of class and race that otherwise would dictate a comfortable and secure life. As a group, these “Hispanic” migrants thus lead lives marked both by familiarity with privilege based on race and class, and by increasingly close encounters with oppression and exclusion based on sexual orientation. In group terms they are, at once, insiders and outsiders in their native lands, and within their families of origin. It is precisely this basic combination of identities that sets the stage for the complicated trade-offs leading up to the creation of this new community, this new enclave, in Miami. It is a combination marked additionally by three key cultural and attitudinal characteristics that jointly help to define the perceptions and realities behind the group of actors giving life to this new Queer Latina/o enclave.

The first of these is their familiarity with, and pragmatic yet pained submission to, the exercise and effects of power – social and familial power – upon their lives and hopes as Queer folk. More specifically, these Latina/o immigrants uniformly appear to accept the consequences that oftentimes attend “coming out” among their families and societies of origin – families and societies defined culturally by intense religious socialization under Roman Catholicism.<sup>124</sup> These consequences typically

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<sup>123</sup>See generally Francisco Valdes, *Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender and Sexual Orientation to Its Origins*, 8 YALE J.L. & HUMAN. 161 (1996) (describing some of the sex/gender and sexual orientation norms that underlie and animate androsexism and heterosexism to produce the patriarchal form of homophobia – heteropatriarchy – that still prevails in Euro-American societies, including the United States, today); see also Francisco Valdes, *Identity Maneuvers in Law and Society: Vignettes of a Euro-American Heteropatriarchy*, 71 UMKC L. REV. 377, 386-88 (2002) (elaborating the concept of Euro-American heteropatriarchy and its normative contents in more detail).

<sup>124</sup>From a historical perspective, “The Catholic Church remains one of [Latinas/os]’ major cultural institutions ... nearly four-fifths of the [Latinas/os] in the United States are Catholics.” L.H. GANN & PETER J. DUIGNAN, *THE HISPANICS IN THE UNITED STATES: A HISTORY* 267 (1986). From a popular culture perspective, “Popular religiosity is important to social science because many Latino cultural attitudes towards family, gender, tradition and political society derive from religious sources, even if not every Latin[a/o] believes or practices a religion. Anthony M. Stevens-Arroyo, *Introduction*, in *AN ENDURING FLAME: STUDIES ON LATINO POPULAR RELIGIOSITY* 9 (Anthony M. Stevens-Arroyo & Ana Maria Diaz-Stevens eds., 1994). For reasons like these, critical explorations of “religion” have been key to the articulation of LatCrit theory over the past eight years. See, e.g., Elvia R. Arriola, Foreword—*March!*, 19 CHICANO-LATINO L. REV. 1 (1998) and Elizabeth M. Iglesias & Francisco Valdes, Afterword—*Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical*

range from outright expulsion from the family home and dispossession of inheritance or other property rights to disdainful mockery or disregard of their coming out, and they attach in a cultural context marked by “familism” – the “enormous regard and ... very high value on family life and the interpersonal relationships among family members” that social scientists have identified as a “central value of Latino culture.”<sup>125</sup> Moreover, in their homeland cultures “the importance of family relations and the actual close involvement of families in the lives and affairs of the individual members is not considered a temporary situation by both, but rather a life-long commitment that connects individuals, even after marriage, to a relatively large and supportive social network of caring and concerned human beings.”<sup>126</sup> Yet, “the strong ties within Latino families, and the major role that families play in the care and support of Latino individuals, can become (and usually is) a major source of conflict and tension among” gay and lesbian family members.<sup>127</sup>

“Familism values, as strong in Latino homosexuals as in any other members of the Latino culture, prevent homosexuals from denouncing the family’s homophobia and demanding acceptance” as equal family members.<sup>128</sup> Consequently, their “acceptance by and social connectedness to the family are achieved and maintained only at the price of [their] silence [about sexual orientation issues]. The conflict is experienced [by these young adults] as a painful choice within a no-win situation, a choice between self-expression and family love.”<sup>129</sup> The end result is a “forced separation between individuals’ sexuality and their social, affective life”<sup>130</sup> – they

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and *Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 CHICANO-LATINO L. REV. 503 (1998); see also Emily Fowler Hartigan, *Disturbing the Peace*, 19 CHICANO-LATINO L. REV. 479 (1998); Nancy K. Ota, *Falling From Grace: A Meditation on LatCrit II*, 19 CHICANO-LATINO L. REV. 437 (1998); Reynaldo Anaya Valencia, *On Being an “Out” Catholic: Contextualizing The Role of Religion at LatCrit II*, 19 CHICANO-LATINO L. REV. 449 (1998). For a discussion of these essays, and of religion in LatCrit theory, see Margaret E. Montoya, Introduction—*Religious Rituals and LatCrit Theorizing*, 19 CHICANO-LATINO L. REV. 417 (1998). For additional readings, see Guadalupe Luna, *Gold, Souls and Wandering Clerics: California Missions, Native Californians and LatCrit Theory*, 33 U.C. DAVIS L. REV. 921 (2000); Laura M. Padilla, *Latinas and Religion: Subordination or State of Grace?*, 33 U.C. DAVIS L. REV. 973 (2000); Terry Rey, “*The Virgin’s Slip is Full of Fireflies*”: *The Multiform Struggle Over the Virgin Mary’s Legitimierende Macht in Latin America and Its U.S. Diasporic Communities*, 33 U.C. DAVIS L. REV. 955 (2000). For a discussion of these essays, and more generally of religion in LatCrit theory as one strain of critical outsider jurisprudence, see Francisco Valdes, Introduction—*Piercing Webs of Power: Identity, Resistance and Hope in LatCrit Theory and Praxis*, 33 U.C. DAVIS L. REV. 897 (2000). As these readings indicate, today’s religious traditions in the Americas – like Euroheteropatriarchy as a whole – were transplanted from Europe, and forcibly imposed on indigenous communities and religions, as part of colonial conquest and domestication. See generally *supra* notes 27 and 123 and sources cited therein on Spanish colonialism in the Americas and on Euroheteropatriarchy.

<sup>125</sup>DIAZ, *supra* note 120, at 92.

<sup>126</sup>*Id.*

<sup>127</sup>*Id.*

<sup>128</sup>*Id.*

<sup>129</sup>*Id.*

<sup>130</sup>*Id.* at 96.

must compartmentalize their identities in ways that not only are self-suppressive but also socially unsustainable over the long term. Oftentimes, this painful “no-win” conflict points to escape northward, where the choices are perceived to be less forced, less acute.

Thus, while they are culturally programmed to prefer, and indeed do tend to strive, to preserve relationships with family and friends, these Queer Latina/o immigrants also are willing to forego the socioeconomic benefits of familism if necessitated by hostile reactions to their “coming out” and/or their decision to migrate for sexual orientation motives. And because the primary motivation for their migration is, precisely, to live openly Queer lives, their decisions frequently entail, at the very least, emotional estrangements, principally from families, friends, neighbors, colleagues and others who have formed their homeland support network. Among this group, submission to this possibility is a recognized prerequisite to their decision to migrate. A tendency toward a realistic, perhaps fatalistic, acceptance of sometimes enduring ruptures with parents, relatives and friends as a probable cost of personal “freedom” therefore is the first cultural or attitudinal characteristic of these immigrants as a group. But, these estrangements in turn tend to entail economic or material consequences as well.

Because these particular immigrants journey north specifically to escape the suffocation of familial and normative homophobia, these ruptures tend to produce both immediate and continuing kinds of disconnection from families – social, economic and legal disconnection and disorientation during the migration *and* afterward; in this conflicted context, these youthful immigrants cannot and do not bring with them the social or economic capital that otherwise would be their bequest, and that otherwise would smooth the social, economic and legal issues of their migration and resettlement.<sup>131</sup> Similarly, they tend not to look up relatives in the diaspora, nor family friends, nor childhood chums. Rather, to make their escape under the sociolegal conditions that prevail both in their home countries and this one, the mostly young Queer Latinas/os who come to Miami for the most part have only themselves and each other to survive and prosper. Hence, the make-up and dynamics of this new enclave and community.

Thus, in addition to accepting their perhaps permanent exclusion from circles of family and friends, a second cultural or attitudinal characteristic key to these migrants is their acceptance of the likely permanent loss of material and economic privileges associated with (their loss of) insider status in their homelands. And

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<sup>131</sup>This networking phenomenon of course is not unique to Latina/o families and communities, but rather mark the construction of privilege networks in the United States as well. See, e.g., WILLIAM G. ROY, *SOCIALIZING CAPITAL: THE RISE OF THE LARGE INDUSTRIAL CORPORATION IN AMERICA* (1997) (elaborating a “new economic sociology” that explains the rise of corporatism in the United States based on similar dynamics); see also PETER W. COOKSON, JR. & CAROLINE HODGES PERSELL, *PREPARING FOR POWER: AMERICA’S ELITE BOARDING SCHOOLS* (1985) (analyzing the role of “prep schools” in the organization of social and economic capital in the United States); C. WRIGHT MILLS, *THE POWER ELITE* (1956) (providing an early account of social and economic construction of elites in the United States). More generally, social science makes it clear that the intergenerational transference of accumulated wealth takes the form of “social capital” as well as economic assets, and has a tremendous impact on the ability of persons to operate competitively in socioeconomic terms as adults. See, e.g., Russell W. Rumberger, *The Influence of Family Background on Education, Earnings, and Wealth*, 61 SOC. FORCES 755 (1983) (examining the United States).



precisely because these immigrants oftentimes (but not always) tend to hail from relatively affluent families, a disconnection from them usually translates into sharply downward mobility in basic material terms, including housing and employment or educational opportunities. The consequences of coming out that they need to be prepared to accept from the outset thus span the possible or probable loss of emotional relations, social privileges, and economic benefits. For the most part, these migrants are willing to bear those formidable losses – but not for nothing: rather, in their minds, they do so in exchange for an opportunity to live “freely” – meaning, in this case, to live “openly” (without employment or housing “discrimination”) in a loving same-sex relationship. The third cultural or attitudinal characteristic key to these migrants consequently is a vision of a “normal” life as lesbians or gay men, participants in a “normal” same-sex relationship, which in time trumps all else in their youthful quests for self-realization as Queer individuals in a hostile world.

Being the sons and daughters of privilege, many (though not all) of them have traveled to Miami and elsewhere more than once. Over time, they have acquired through such travel a familiarity with North American sexual minority communities, and with variations of “westernized” (or Anglicized) gay and lesbian identities.<sup>132</sup> They desire inclusion in those communities by living amongst them – or nearby them; they desire adopting those identities by performing them – or modified versions of them. In short, they seek to live openly with a same-sex partner in an emotionally committed and economically stable relationship, without fear of violence, and in a culturally familiar urban location. Miami tends to emerge as their destination of choice precisely because of the phenomenon unleashed by the forces that Portes & Stepick studied. This drive for an envisioned Queer normalcy is a third cultural or attitudinal characteristic that is key to defining this immigrant group.

These three characteristics converge in their decision to migrate, and thus help to constitute the familial dynamics of their homeland exits and the social nature of their new enclave. As a group, these immigrants use class (and race) privileges in their native lands to secure the means of migration to Miami and thus, they hope, to escape the socially and emotionally constricting effects of familial and societal homophobia. Oftentimes, as a final assertion of privilege, they exploit family connections and related kinds of “social capital” to obtain or expedite visas, and to assemble some funds and other resources necessary to make the journey to Miami more viable, and then to make that city a permanent home. In effect, they decide to forego the virtually guaranteed lifelong material benefits of class (and race) privileges in their homelands, and under their families’ gaze, in exchange for the

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<sup>132</sup>This familiarity with and desire for gay identity in openly social terms results not only from their travel to destinations in the United States but also from the exportation of gay identity from the United States to the Americas (and the rest of the world). See, e.g., *Living La Vida Loca*, THE ECONOMIST, Dec. 18-24, 1999 at 81-83 (reporting that “Latin America has imported the notion of “gay pride” from the United States, just as it has imported fashions and fast-food chains.” Nonetheless, the report continues, confirming the very social and cultural themes that help to produce Miami’s Queer Latina/o enclave, Latin America “is still a region where men are macho, women are long-suffering, Catholicism dominates, and the family reigns supreme.” *Id.* at 82. Of course, this process also reflects the internationalization of sexual orientation issues and communities more generally. See *infra* note 141 and sources cited therein on sexual orientation in international law.

intangible benefits of an imagined freedom from societal homophobia in a diaspora abroad. This imagined exchange may indicate naivete; it certainly showcases the force of the human urge toward choice, freedom and self-expression. This exchange, moreover, starkly displays their negotiation of the Faustian deals, whether witting or not, forced by prevailing configurations of law, culture and power on both sides of the border.

In the imagined exchange of benefits and detriments based on the interplay of class, race and sexual orientation “over there” and over here, this group of Latina/o Queer immigrants generally seems willing to accept permanent downward adjustments in material and social living conditions. In this exchange, as noted above, these immigrants imagine that they will live modestly but happily with same-sex partners in domestic tranquility and social respectability. They understand, in the abstract, that life will be difficult in many ways, ranging from the social to the economic, but they simultaneously expect to live securely and safely. In return, they actually receive a peculiar mix of burdens and benefits, some anticipated, some under-estimated, some unexpected.

Because current U.S. law does not provide for immigration and naturalization by same-sex couples,<sup>133</sup> and because these immigrants typically have no other basis for securing permanent residency or citizenship in the United States, the principal *anticipated* reality of their migration is their acceptance of varying levels of criminality based on uncertain immigration status; over time, they adjust to the economic degradation and exploitation due, initially, to the losses resulting from their family ruptures before departing and, eventually, to the vulnerabilities generated by their dubious immigration trajectory after arriving.<sup>134</sup> The principal

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<sup>133</sup>Historically, the still-prevalent statutory requirement of “good moral character” has been interposed to exclude sexual minorities from migrating or naturalizing by labeling such individuals as “sexual deviates” and the like. See 8 U.S.C. § 1427 (a) and (e) (1999) (establishing the standard and specifying that determinations may include examination and judgment of “the applicant’s conduct and acts at any time prior” to that moment.) Additionally, immigration-by-marriage entails a two-step analysis: first, the marriage must be deemed valid under the law of the state where the marriage ceremony took place and, second, it must be valid under federal immigration law. The absence of either factor is fatal. *E.g.*, *Adams v. Howerton*, 673 F.2d 1036 (9th Cir. 1982) (explaining the analysis based on the combination of the sources of law and denying the validity for immigration purposes, both under state and federal law, of a same-sex marriage ceremony performed in Colorado); see generally Annotation, *Validity, Construction and Application of 8 U.S.C. § 1325(c), Prohibiting Knowingly Entering Into Marriage to Avoid Immigration Laws*, 159 ALR Fed. 497 (2000) (compiling the case law). Because same-sex marriage, as of this writing, formally fails on both grounds, these two intersecting legal regimes combine to devalue and exclude from the national polity same-sex couples and families based on them. See *supra* note 118 and sources cited therein on hostility and non-recognition of same-sex unions and families under U.S. law, including immigration law and policy; see also John D. Ingram, *A Constitutional Critique of Restrictions on the Right to Marry - Why Can't Fred Marry George - Or Mary and Alice at the Same Time?*, 10 J. CONTEMP. L. 33 (1984); Craig A. Bowman & Blake M. Cornish, *A More Perfect Union: A Legal and Social Analysis of Domestic Partnership Ordinances*, 92 COLUM. L. REV. 1164 (1992); see generally Mary C. Dunlap, *The Lesbian and Gay Marriage Debate: A Microcosm of Our Hopes and Troubles in the Nineties*, 1 LAW & SEXUALITY 63 (1991).

<sup>134</sup>As with so many others in their situation, oftentimes these immigrants enter the United States with proper documents; they stay after the expiration of their visas, and only then join

*under-estimated* reality is the structural intensity of societal homophobia – both of the Latina/o and the Anglo varieties – in the United States, and its chilling effects upon their envisioned freedom to live “normally” and “openly” as lesbian or gay; over time, they revise their expectations of life in the north, though they continue to believe that their migratory choices have produced relatively less homophobic life situations.<sup>135</sup> Finally, the principal *unexpected* reality appears to be the social and cultural power of Anglo-white racist nativism, including in particular the effects of Anglo language vigilantism, “even” in multicultural and Latinized Miami;<sup>136</sup> over

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the “undocumented” in this country. In this vignette, every member of the group migrated in this way. See generally, William V. Flores, *Citizens v. Citizenry: Undocumented Immigrants and Latino Cultural Citizenship*, in *LATINO CULTURAL CITIZENSHIP: CLAIMING IDENTITY, SPACE AND RIGHTS* 255 (William V. Flores & Rina Benmayor eds., 1997) (surveying the issues associated with life as an undocumented immigrant in the United States).

<sup>135</sup>In their imagined new lives, these immigrants usually discount the power of homophobia among Latinas/os in the United States, as well as the power of homophobia more generally in the law, policy and society of the United States. However, once in Miami, they learn that Latina/o diasporas oftentimes are similar to their societies of origin in this respect, as well as in others. For example, a recent gay man from El Salvador who sought and received asylum based on sexual orientation exclaimed that, “It’s like being in Latin America. They (heterosexual, homophobic Latinas/os) are here, but they bring with them the culture and the church of prejudices.” Leland, *supra* note 117, at 10; see also *supra* note 118 and sources cited therein on social and legal heteronormativity.

<sup>136</sup>Whether born in the U.S. or abroad, the experience of Latinas/os with racial and ethnic discrimination in the United States is well recognized: “Latin[as]/os have found that the racial, cultural and linguistic differences that bind them as a group also mark them as different from the dominant society.” Flores, *supra* note 134, at 256. While as a relatively privileged group they knew personally of North American racism and nativism, and thus expected to experience “discrimination” as “Latinas/os” in the United States, the Queer Latina/o immigrants described here seem to have anticipated substantially less racialization than is the case in their lives precisely because, on the whole, they tend to identify as white in the racial maps of their homelands based on (real or imagined) family links with Spain. See *infra* note 137 and sources cited therein on “Hispanic” constructions of whiteness based on Spanish identifications.

Therefore, as the quotation above indicates, their “difference” in racial and ethnic terms usually is brought into sharp relief for this group via language: though privileged in many ways, these young Latina/o Queers are disadvantaged in English-preferred contexts because they are less fluent relative to others in the locality and oftentimes possess accents. Reflecting the salience of “language” to the racialization and subordination of “Latina/o” identities, LatCrit scholars have analyzed the power dynamics of language from various angles. See, e.g., Steven W. Bender, *Direct Democracy and Distrust: The Relationship Between Language Law Rhetoric and the Language Vigilantism Experience*, 2 HARV. LATINO L. REV. 145 (1997); William Bratton, *Law and Economics of English Only*, 53 U. MIAMI L. REV. 973 (1999); Christopher David Ruiz Cameron, *How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, 85 CAL. L. REV. 1347 (1997), 10 LA RAZA L.J. 261 (1998); Drucilla Cornell, *The Imaginary of English Only*, 53 U. MIAMI L. REV. 977 (1999); Sharon K. Hom, *Lexicon Dreams and Chinese Rock and Roll: Thoughts on Culture, Language, and Translation as Strategies of Resistance and Reconstruction*, 53 U. MIAMI L. REV. 1003 (1999); Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 5 MICH. J. RACE & L. 847, 33 U. MICH. J.L. REFORM 263 (2000). For a discussion of some of these works, see Keith Aoki, Introduction—*Language is a Virus*, 53 U. MIAMI L.

time, they come to understand that they are “not white” in the United States, including Miami – and regardless of the (real or imagined) ancestors from Spain.<sup>137</sup> This combination of realities pushes and pulls these young immigrants toward each other once they arrive in Miami.

Gradually, of necessity and in adversity, these Queer Latina/o immigrants, fleeing home-country homophobia, find each other in Miami’s nooks and crannies – sometimes for the first time, other times for the first time since leaving a common homeland. Through sometimes-serendipitous connections and in myriad circumstances, during the past decade or so they have bonded sufficiently enough in social terms through interlocking networks of friendships and relationships to form a discernible new enclave – their own “community” within Miami’s existing enclaves. And they have done so both to help ameliorate the effects of Anglo and Latina/o homophobia, of economic loss and exploitation, and of social denigration in Miami as well as to evade (as much and for as long as possible) the web of formal criminalization that threatens their well-being here and seeks to snare them.<sup>138</sup>

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REV. 961 (1999). For additional readings, see Mari J. Matsuda, *Voices of America: Antidiscrimination Law and a Jurisprudence for a Last Reconstruction*, 100 YALE L.J. 1329 (1991); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism and Official English*, 77 MINN. L. REV. 269 (1992).

<sup>137</sup>The claim of ancestral links to Spain is a common practice associated with assertions of white identity among “different” Latina/o communities. For one testimonial regarding this cultural tendency from within the LatCrit community, see Kevin R. Johnson, “*Melting Pot*” or “*Ring of Fire*”? : *Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1262, 1274 & 1293-97 (1997). This tendency, and its racialized associations, are part and parcel of the ideology long (and still) promoted by Spain known as “Hispanismo” – the claim of Spanish roots and affinities – that prevails culturally among Latina/o societies as a result of colonial and neocolonial activity. For further readings on Hispanismo, and its relationship to colonial and neocolonial power patterns, see Valdes, *Hispanismo*, *supra* note 27; *see also* THE IBERO-AMERICAN SPACE: DIMENSIONS AND PERCEPTIONS OF THE SPECIAL RELATIONSHIP BETWEEN SPAIN AND LATIN AMERICA (Joaquin Roy & Albert Galinsoga Jorda eds., 1997) (presenting a series of essays that explain and explore the “ties that bind” present-day Latina/os cultures and societies to the former colonial ruler, Spain). For further readings on Spain’s colonialism and its legacies in the Americas, *see supra* notes 15 and 27 and sources cited therein. For further readings on race and identity in LatCrit theory, *see supra* note 8 and sources cited therein.

<sup>138</sup>Ironically, Miami’s well-established Latina/o enclaves beckoned these immigrants to journey here in the first place. Miami’s iconic role as the symbolic “capital” of the Americas leads these Queer Latina/o immigrants to believe that it is *the* place for them. *See, e.g.*, Steve Rothaus, *Hispanic Gays in Hemisphere Rally in Dade*, MIA. HERALD, Oct. 10, 2002, at E1 (reporting that Miami, which is located in Dade County, is the site for hemispheric “encounters” among Queer Latina/os organizations and groups, a choice reflecting Miami’s centrality in inter-American terms). The city’s bilingual and multicultural neighborhoods and ethnicized economic networks create multiple nooks and crannies for relatively smooth fits. *See generally supra* note 117 and sources cited therein on Miami’s diverse enclaves. But, as this portrait helps to show, the picture is more complex: Miami’s Latina/o enclaves represent, for better and/or worse, a modified microcosm of their homeland cultures. *See supra* notes 120 and 121 and sources cited therein on homophobia among Latina/o immigrants and communities within the United States. The relationship between the larger enclaves and this one therefore is complex and conflicted. Yet, no matter how homophobic, Miami’s established Latina/o enclaves draw these young Latina/o Queers because they help to alleviate the pressures of cultural shock, Anglo nativism and language vigilantism, among other ills,

In this multifaceted scenario, one thing stands out clearly: to achieve their escape from homophobic oppression, these immigrants consciously use home-country class (and race) privileges as the currency with which to make a run through the immigration gauntlet of the United States. Before embarking on their journeys northward, they knew that, if successful, their “new” lives would include both certain criminalization and a certain degradation of their material quality of life – as well as a potentially permanent rupture with family and friends at their homes of origin – that would deprive them of both social and economic capital. They stood, and remain, ready to forego family, friends and all the comforts of homeland privilege. In exchange, they strive for a relative improvement in the opportunity to “be” Queer with dignity. Theirs is a choice that, when studied critically in relationship to this year’s conference theme, reveals much about the power of community-making in the construction of misery and the constriction of opportunity.

### *B. Making Community: At the Intersection of Multiple Borders*

These Faustian trade-offs, as noted above, are prompted by social conditions created in great part through mutually-reinforcing legal regimes, and by the multiple borders constructed at their intersection: the refusal of family law to recognize the substantive validity or formal existence of same-sex ceremonies and unions makes it impossible for these Queer Latinas/os and others like them to use a perfectly legal and legitimate path toward securing residency and citizenship under current immigration law in the U.S. – by falling in love with, and making long-term affectional and socioeconomic commitments to, a person with U.S. citizenship. Hence, the impediments to legal migration and resettlement created specifically for Queer Latina/o immigrants like these result mainly from the interplay of U.S. immigration formalities with domestic legal regimes like family law.<sup>139</sup> This interplay not only renders same-sex unions and families invisible and divisible, but also signals denigration; this interplay not only stigmatizes but also demeans Queer loves and commitments.<sup>140</sup> And it does so on both sides of the national borders: The

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that their migration imposes on them. See *supra* note 136 and sources cited therein on Latina/o experience with “dominant” or Anglo versions of white supremacy in the United States. For further discussion of “language” in critical outsider jurisprudence, specifically LatCrit theory, see *supra* note 136 and sources cited therein. Of course, and in addition to all of the above, the Latina/o experience with race and ethnicity in the United States is made even more complex and oppressive for black and other nonwhite Latinas/os, who experience both the Anglo racism of “dominant society” as well as the Hispanic racism of fellow immigrants. This reality is detailed in recent news reports tracking the lives of Black and “white” Latina/o immigrants in the United States, including Miami. See Mireya Navarro, *Black and Cuban-American: Bias in 2 Worlds*, N.Y. TIMES, Sept. 13, 1997, at A8 (describing race relations within the established Cuban enclave in Miami); Mirta Ojito, *Best of Friends, Worlds Apart*, N.Y. TIMES, June 5, 2000, at A1 (focusing on the different lives led by two “best friends” – both Cuban, one black, one not – as result of race relations in the United States); see also generally Christina Gomez, *The Continual Significance of Skin Color: An Exploratory Study of Latinos in the Northeast*, 22 HISPANIC J. BEHAVIORAL SCIENCES 94 (2000) (correlating intra-Latina/o socioeconomic success to skin color, and citing studies with similar findings).

<sup>139</sup>See *supra* note 133 and sources cited therein on hostility and non-recognition of same-sex unions and families under U.S. domestic relations law and immigration law.

<sup>140</sup>Legislating exclusion, like legislating criminalization, is a means of stigmatizing and demeaning disfavored groups or identities. Of course, race-based exclusions are the

denial of formal recognition for relationships based on same-sex love denies to sexual minority citizens of the United States a federal right conferred statutorily on similarly situated members of the sexual majority – the right to claim a non-citizen, in the name of romantic love, for formal inclusion and acceptance into the national community.<sup>141</sup> Societal and legal homophobias on both sides of the South-North

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quintessential example of stigma. *E.g.*, *Allen v. Wright*, 486 U.S. 737 (1984) (acknowledging that stigmatization based on race “is one of the most serious” harms inflicted by state-sponsored discrimination). However, the constitution does not grant the sexual majority the power to legislate for the purpose of excluding, stigmatizing or demeaning sexual minorities on the basis of sexual orientation. *See, e.g.*, *Romer v. Evans*, 517 U.S. 620 (1996) (holding that the Fourteenth Amendment’s Equal Protection Clause protects lesbians and gays against exclusions from local political processes on terms equal to other citizens or social groups); *Lawrence v. Texas*, 539 U.S. 558 (2003) (holding that a state sodomy statute prohibiting same-sex intimacies “demeans” sexual minorities and violates the Fourteenth Amendment’s Due Process Clause); *see also* Yvonne L. Tharpes, Comment, *Bowers v. Hardwick and The Legitimization of Homophobia in America*, 30 *HOW. L.J.* 537 (1987) (discussing the role of law, including case law, to normalize and license prejudice socially in the wake of the Supreme Court’s infamous 1986 decision embracing sodomy statutes). In Latina/o contexts, “the stigma is infused by a Catholic doctrine that rejects homosexuality, experts say, and runs so deep that homosexuals risk imprisonment in Latin American countries.” Elliott, *supra* note 117, at E2. Thus, the process of stigmatizing and demeaning same-sex couples and Queer persons, families or groups can and does combine the power of religion and culture, as well as the force of law and policy. *See* Arriola, *supra* note 121, at 437-68 (surveying the convergence of forces amassed against Queer youth, both Latina/o and not, in the process of coming out in the United States, ranging from the stigma imposed by families and relatives, to that imposed by peers, schools, governments, organized religions, medical sciences and “traditional” cultural skews); *see generally supra* notes 120-121 and 123-124 and sources cited therein on the effects of Roman Catholic religion and Euroheteropatriarchal culture on Queer Latina/o lives.

<sup>141</sup>This particular exclusion of course is part of the larger pattern of exclusion fabricated by law against sexual minorities. The vulnerability of members of sexual minorities to de jure discrimination roughly during the same time that this enclave has come into existence during the past decade or so is compiled in *Developments in the Law: Sexual Orientation and the Law*, 102 *HARV. L. REV.* 1508 (1990); *see also* Patricia A. Cain, *Same-Sex Couples and the Federal Tax Laws*, 1 *LAW & SEXUALITY* 97 (1991) (describing tax code disparities based on the formal exclusion from marriage) and Barbara J. Cox, *Alternative Families: Obtaining Traditional Family Benefits Through Litigation, Legislation and Collective Bargaining*, 2 *WIS. WOMEN’S L.J.* 1 (1986) (elaborating an early effort to dismantle the web of detriments flowing from the formal exclusion from marriage). During this time, therefore, Queer scholars, advocates and scholars – including LatCrits – have explored international law and venues as alternative or supplementary means of achieving inclusion, equality and dignity in formal as well as social terms. *See, e.g.*, Berta Esperanza Hernandez-Truyol, *Building Bridges: Bringing International Human Rights Home*, 9 *LA RAZA L.J.* 69 (1996); *see also* Laurence R. Helfer & Alice M. Miller, *Sexual Orientation and Human Rights: Toward a United States and Transnational Jurisprudence*, 9 *HARV. HUM. RTS. J.* 61 (1996); James D. Wilets, *Using International Law to Vindicate the Civil Rights of Gays and Lesbians in the United States Courts*, 27 *COLUM. HUM. RTS. L. REV.* 33 (1995); *see generally* *THE GLOBAL EMERGENCE OF GAY AND LESBIAN POLITICS: NATIONAL IMPRINTS OF A WORLDWIDE MOVEMENT* (Barry Adam, Jan Willem Duyvendak & Andre Krouwel eds., 1999).

It bears mention that this longstanding pattern of de jure discrimination against persons with same-sex desires or in same-sex unions in the United States is propped, and intensified, by the campaigns of “cultural war” that during the 1980s and 1990s increasingly have targeted

border thus combine to devalue and deform Queer lives, relationships, families and opportunities in structural and normative terms.

Yet many of these Queer Latinas/os are relatively young, and in fact do fall in love and commit to long-term intimate relationships with U.S. citizens – and they do so without the incentives offered by formal law only to similarly-situated heterosexuals.<sup>142</sup> These affectional and socioeconomic relations and commitments redouble these immigrants' initial determination to escape home-country homophobia almost at any cost. They look for any means of securing some recognition of their value to this society, which they vaguely but passionately hope eventually will produce the decision from a bureaucrat that permits them to stay in the United States without fear, deception, exploitation and danger. Their efforts include acts of civil conscience forced by undue and unjust laws, which also create formal and ethical dilemmas not only for these young immigrants but also for U.S. citizens and residents affected by or concerned with the same prejudices that produce these immigrants' sociolegal predicaments.<sup>143</sup>

Ironically, their persistent efforts in life-and-relationship building also fit squarely with the substance of "traditional values" that dominant views of marriage impute automatically and instantaneously to any cross-sex coupling, no matter how casual or strategic (and even when based on drunken vows taken in locales like Las Vegas): mutual support in tangible and intangible forms for the long term. The

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immigrants, as well as sexual minorities, for backlash lawmaking – ranging from drives to wipe out immigrant and nonwhite communities to campaigns that choke off the possibility of same-sex marriage. Thus, from Hawaii to Washington D.C., the mobilization of white and straight supremacies through cultural warfare to roll back the equality gains of the past several decades and re-center Euro-heteropatriarchy as the fountainhead of national values has generated transnational repercussions: it means that persons in other countries who otherwise may qualify as legal immigrants here are transmuted into criminals. The result is that domestic cultural politics and formal rules of laws have combined to rob Queer Latinas/os of legal equality, economic security and social worth. See, e.g., Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender and Class*, 42 UCLA L. REV. 1509 (1995) (analyzing the social consequences of legal "reforms" during the culture wars of the 1980s; see also *supra* note 41 and sources cited therein on the "culture wars" and their impact on vulnerable outgroup communities).

<sup>142</sup>Articulating the social functionality of same-sex couples and families was an early accomplishment of Queer legal scholarship. See, e.g., Barbara J. Cox, *Love Makes a Family - Nothing More, Nothing Less: How the Judicial System Has Refused to Protect Nonlegal Parents in Alternative Families*, 8 J.L. & POL. 5 (1991); Nancy D. Polikoff, *This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families*, 78 GEO. L.J. 459 (1990). This work continues, including among LatCrit theorists. E.g., Elvia A. Ariola, *Law and the Family of Choice and Need*, 35 U. LOUISVILLE J. FAM. L. 69 (1997). For fictional(ized) contemporary accounts of same-sex love among Latinos, see VIRGINS, GUERRILLAS & LOCAS: GAY LATINOS WRITING ABOUT LOVE (Jaime Cortez ed., 1999).

<sup>143</sup>It bears note that, among the latter, must be included these immigrants' long-term partners, as well as small employers and others who have helped over the years to form these neglected communities out of necessity, and who in myriad ways thereby become implicated in the dynamics of this continuing injustice. For more information on same-sex unions and families, their formation, and the issues that they have confronted as a result of homophobic laws and policies, see *supra* note 133 and *infra* note 144 and sources cited therein.

centrality of homophobia at this intersection of multiple borders – including those erected through the homophobic rules of immigration and family law – creates a class of benign “criminals” who otherwise are positive and “productive” members of society under the very terms imposed by dominant views of marriage. Despite the purported promotion of stable relationships and families through the law – including immigration law and policy – this exercise in state-imposed homophobia poisons the formation of untold numbers of families based on committed adult relationships that, but for the coincidence of sex, replicate, intentionally and in effect, the institution of marriage and the social utilities imputed to it by dominant traditions and forces.<sup>144</sup>

This synopsis, on its own terms, is not a call for sympathy over unearned privileges based on class and race, and their loss. It is, like many of the essays that follow below, a call for equity in policymaking, regardless of “traditional” identity hierarchies and the neocolonial ideologies that they reflect and project. In the context of this symposium, this brief sketch also illustrates how one group of individuals has put into action the latter part of this year’s conference theme – “strategies of resistance” – through multiple acts of individual and collective will, acts that demonstrate with considerable poignancy the multidimensional complexities of antistatist struggle and praxis: though oftentimes (but not always) hailing from privileged quarters, the young adults in this vignette have found their lives defined by resistance to the homophobic dictates that accompanied their class and race privileges, by resistance to the legal regimes at home and the U.S. that would surrender and confine their loves, lives, choices and identities to the dictates of “traditions” entrenched long ago through brutal colonial conquest, and by resistance to the neocolonial cultures of heterosexism that have attempted to trivialize their worth as immigrants, as humans and as loved ones. While born and accustomed to privilege – ironically, also based on neocolonial legacies and imperatives – their personal experiences and resolute choices over time have transcended those origins in ways that illuminate in multidimensional and transnational terms the human potential and capacity for antistatist struggle.

Perhaps most amazingly, these young immigrants have undertaken their perilous choices and journeys to vindicate their felt capacity for romantic love under the shadow of vicious threats and massed pressures rooted in culture, religion, family and society. Despite the possible naiveté underlying their expectations or notions of

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<sup>144</sup>In the mindless “defense” of marriage as a heterosexist institution, this homophobia effectively undermines the asserted importance to immigration law and policy of “family values” associated culturally with committed, long-term relationships. See generally Alexander Tsesis, *Toward a Just Immigration Policy: Putting Ethics into Immigration Law*, 45 WAYNE L. REV. 105, 154-56 (1999). “Preservation of the family has historically been a priority of U.S. culture ... [but immigration law and policy has] threatened the structure of alien [and Queer] families by putting hurdles before those citizens and lawful permanent residents who desired the freedom to marry and remain married to aliens.” *Id.* at 155-56. Ironically, at least one recent study of same-sex couples in the nation’s capital concluded that cross-sex unions “may have a lot to learn from gays.” Peter Freiberg, *Couples Study Shows Strengths*, WASH. BLADE, Mar. 16, 2001, at 1 (summarizing the findings of a 12-year research study comparing same-sex and cross-sex couples); see also *supra* note 142 and sources cited therein on the social functionality of same-sex unions and families based on them. Of course, it must be noted that this exclusion also is part of larger pattern of de jure exclusions based on sexual orientation. See *supra* note 140 and sources cited therein on de jure subordination based on sexual orientation.



“normalcy” (and apart from the many complexities of their social positions and personal histories not interrogated in this brief sketch), theirs is a group story of immigration and determination that evokes the power of human romance in contemporary terms. In some basic sense, this synopsis thus represents a call to take seriously the seriousness of Queer loves as human loves. And to accept finally and fully the value of Queer hopes, the worth of Queer lives, and the reality of Queer families – in this particular instance, those of Latina/os Queers, but more generally those of other Queers as well, both of color and not.

At bottom, then, a key lesson here is that human beings will search long and hard for the ways and means to contest acts of exclusion with acts of resistance. It is in this personal and historic search that all of us – all LatCrits – also are involved; it is in this ongoing search that the crucibles and contours of antisubordination struggle are formed and lived from day to day, year to year, generation to generation. At bottom, the choices, experiences and lessons in this brief vignette amount to a LatCritical call for equitable reforms in law and policy that substantively would take into consideration the diverse yet basic human needs and motives that underlie this new immigrant enclave, as well as those of others that may be like it around the country (and globe).<sup>145</sup> Like the authors of this symposium, the creators and inhabitants of this enclave struggle in personal and collective terms toward a postsubordination society.

Thus, especially notable in light of the points developed in Part I of this Foreword is that this outlaw community illustrates, in present, vivid and concrete terms, the power of community-making. Realizing that their survival as individuals cannot depend on any pre-existing collectivity, these Queer Latina/o immigrants have learned or intuited that community-building is elemental not only to their personal existence, but also to the creation of the conditions for social justice to emerge in an otherwise unjust world. Their everyday struggles underscore the salience of transnationalism in Latina/os communities and community-making projects; they concretely display the centrality of multidimensionality in the comprehension of Latinas/os and other multiply diverse social groups, and of their law-and-policy needs; they illustrate the interactivity of law and society in the construction of opportunity and exclusion; they invoke the necessity of coalitional theory and practice to the articulation and implementation social justice. Without doubt, these reminders and insights provide bedrock lessons in and for LatCrit theory, and always have.<sup>146</sup> Happily, these are lessons and insights that this year’s

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<sup>145</sup>This observation of course flows from the recognition that law should not be employed to demean or stigmatize disfavored social groups, segments or identities. *See supra* note 140 and sources cited therein on the abuse of law to demean and/or stigmatize traditionally subordinated groups. Similarly, the lessons to be drawn by LatCrit and other OutCrit theorists from this observation, and from the experience of the Queer Latina/o enclave in Miami, is that our work must include the validation not only of socially nonconforming “desire” but also of socially nonconforming “love” as a key condition for the attainment of a postsubordination society. For discussion of “desire” and its reclamation in critical legal theory, see Francisco Valdes, *Queers, Sissies, Dykes and Tomboys: Deconstructing the Conflation of “Sex,” “Gender” and “Sexual Orientation” in Euro-American Law and Society*, 83 CAL. L. REV. 3, 344-77 (1995) (outlining one view of Queer legal theory and its antisubordination agenda).

<sup>146</sup>*See supra* note 21 and sources cited therein on community-building in LatCrit theory and praxis.

theme and symposium timely underscore as the LatCrit community approaches the end of our first decade, and begins to look at the challenges ahead and the opportunities beyond.<sup>147</sup>

#### IV. CONCLUSION

The symposium that follows represents another act in the ongoing construction of LatCrit theory, praxis and community. While focusing our collective attention on the “city and citizen” this symposium continues lines of LatCritical inquiry begun previously, including varied interrogations of identity in law and society. The summary discussion presented in this Foreword could not possibly capture their richness. But the emphasis on community-building in this Foreword – both as a key to this year’s conference theme and as a recurrent aspect of the essays that follow – ideally will help us all to keep in focus the importance of collective praxis to the ongoing vitality of LatCrit theory, both in the short and the long term. In this vein, the contemporary example of community-making as social struggle etched immediately above poses to us all a standing call to courage, and to action. I hope, and trust, that LatCrits as a community, will heed this call to personal yet collective transformation of the world we have inherited.

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<sup>147</sup>It is no coincidence that many of today’s challenges and tomorrow’s opportunities stem, in large measure, from our past and present work on community-and-institution building, as reflected by the Portfolio of Projects that LatCrits collectively have organized, funded and administered. As this Portfolio has grown, so has the interest in our work. And this interest, in turn, brings new challenges and opportunities as newcomers join our ranks, and bring with them new visions of antiracism praxis. For more information on the LatCrit Portfolio of Projects, please visit the website at [www.latercrit.org](http://www.latercrit.org).