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Cities in (White) Flight: Space, Difference and Complexity in Latcrit Theory

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CITIES IN (WHITE) FLIGHT: SPACE, DIFFERENCE AND COMPLEXITY IN LATCRIT THEORY

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I. INTRODUCTION

This essay is an introduction to a cluster of three pieces from LatCrit VIII, “City and Citizen” 2003 conference. Decentralization and decentering are themes of these three pieces. This essay first frames these pieces by describing a future invoked by the James Blish, in “Cities in Flight,” in which a multitude of literally decentralized and decentered cities, enabled by anti-aging drugs and anti-gravity technology, depart from the planet Earth and roam as migrant metropoli throughout the galaxy.

This essay then looks at some ideas about justifying decentralization from political philosophers that bear more than a passing resemblance to the vision of radically decentered migrant cities adrift in the cosmos: Robert Nozick, Frank Michelman and Iris Young. Nozick articulates a vision of decentralization that equates the autonomy of cities with the autonomy of individuals, imagining a multitude of life worlds, each composed of life-thinking individuals who have freely chosen to affiliate with each other – against this backdrop of cities as largely autonomous and private “bubble universes,” Nozick sees a minimalist role for the night-watchman state. By contrast, Frank Michelman argues that decentralization makes self-governance possible, creating a scaled space for reasoned disagreement,

¹Philip H. Knight Professor of Law, University of Oregon School of Law. Thanks to Tayyab Mahmud who hosted LatCrit VIII at Cleveland-Marshall School of Law in May 2003. Thanks are also due to Gerald E. Frug, David Barron and Richard Thompson Ford for their excellent work in the area of local government law from which I have learned and continue to learn much.

debate and dialogue, wherein an objective public interest may be hammered out. In Michelman's vision, private greed and individual self-interest (which is the driving force of Nozick's vision) are seen as hurdles to be surmounted in a community reached through public deliberation. Finally, Iris Young evokes a vision of urban life that is not grounded either in self-segregation of like-minded autonomous monads, nor in a social space of rational and enlightened deliberation and debate, but in the celebration and embrace of "city life as difference" – surrounded by hundreds, if not thousands of other interpenetrated "life-worlds" right in our very midst, embrace of such decentralized diversity is a pre-requisite to meaning making in urban life.

Having evoked the radical physical decentralization of Blish, and then the different justifications for decentralization of Nozick, Michelman and Young, this essay then suggests that radical physical decentralizations has been occurring in the U.S. for the last half-century – the phenomenon of white flight from the central cities following World War II. Cities haven't used antigravity generators to blast themselves free from the earth, but many individuals have in Nozick-ian fashion chosen to affiliate with like-minded (and like-classed and like-raced) individuals in suburban enclaves that are experientially as distant from the urban core as were Blish's cities from the planet earth.

Finally, this essay introduces the essays by Reggie Oh, Aaron Monty and Julian Webb, all of whom address the question of meaning-making in a world that has become, in one way or another, radically decentralized. Oh looks skeptically at traditional legal doctrine's narrow view of the salience of space and argues that it is only by suppressing the spatial geographic elements may a dominant, if ultimately fantastical, legal narrative be imposed. By focusing on geography, Oh argues, dominant legal narratives may be exposed, creating the possibilities for other, multiple narratives to emerge. Monty examines the force field that the national border exerts in a city like El Paso on the racial and national identities of persons on both sides of the border. Far from being unitary and hegemonic, Monty argues that the border creates something akin to racial microclimates, where both iterations of race and citizenship undergo sharp, but revealing distortions. Furthermore, Monty also looks at inner fractures within Latino identity, particular the role that machismo plays in shaping Latino consciousness, and urges that exploring such fractures may lead to an ultimate strengthening of a pan-ethnic category like "Latino," even if at first blush it may seem to be a decentralizing move leading to dissipation.

Finally, Julian Webb describes the law a "complex adaptive system" – a system so complex, and paradoxically, so decentralized that it is beyond the ability of any particular institution or agent to effect change in a predictable fashion. For better or worse, Webb argues there are no longer any plausible meta-theories to understand the possible effects of one's interactions with the complex adaptive system called the law. Webb, however, is not a irresolute pessimist, and argues that understanding the law as a complex adaptive system brings the realization that hegemonic power cannot "fix" results of the system with any greater certainty than an individual, and more importantly, that the possibility of taking existential responsibility in the moment creates the stage for decentralized, but potentially effective, legal and social change.

This essay now moves on to evoke the world of "Cities in Flight."

II. CITIES IN FLIGHT

Picture a city. Picture that city surrounded by a force-field bubble that keeps a breathable atmosphere in place over the city and encases the ground beneath that city that harbors the city's infrastructure. Now picture that city like a marble in outer space, sealed off from the interstellar void. New York City. Budapest. Tokyo. Beijing. Even Scranton, Pennsylvania. Global cities, freed from the globe on which they originated.

Inspired in part by Oswald Spengler's "The Decline of the West,"² in the 1950s and 1960s, science fiction writer James Blish wrote a four novel cycle that comprises the epic work known as "Cities in Flight."³ In "They Shall Have Stars," the opening book of the quartet, Blish tells the story of how the discovery in the early 21st century of anti-gravity generators (known as "spindizzies") and longevity drugs together make space travel beyond the solar system possible.⁴ Used first to propel spaceships on missions of exploration and colonization, it is only a small step to use a "spindizzy" generator to lift an entire city and its inhabitants into space. Within a few centuries of the discovery of these technologies, in "A Life for the Stars," spindizzy generators are being used by dissident cities to leave the earth, which by then had fallen under the thrall of a repressive world government.⁵ Citizens of these space-borne migrant cities called themselves "Okies" and "Hoboes," evoking the dislocation and homeless of those uprooted from the land in the Great Depression of the 1930s. However, dissidence to the prevailing Terran paradigm does not include opposition to hierarchy, in these cities in flight, longevity drugs (called "anti-agathics") are given only to citizens, non-citizens are classified as "passengers," who have no political voice in city governance and who are relegated to low-level grunt work.

However, in the third book in the cycle, "Earthman, Come Home,"⁶ the migrant cities run afoul of the Terran galactic police bent on maintaining galaxy-wide order and a semblance of an intergalactic system of commerce. Blish writes of how the resource depleted cities in flight exist in the interstices of this galactic order, touching down on planets to replenish food, fuel and other resources. The cities are pursued and harried by forces from the Earth. Eventually, the cities band together to form an Okie Trade Union and decide to "march" on Earth, demanding relief. However, one of the mayors of the massed migrant cities suspects that such a "march" on Earth will attract the attention of the still-powerful remnants of the non-human Vegan Empire, which Earth had defeated in a murderous war during its initial period of galactic expansion. As John Amalfi, Mayor of New York had predicted, the "march" on earth by the hobo cities inevitably does attract the Vegan "death star" – which is destroyed by the migrant city of New York. However, Earth forces

²See generally OSWALD SPENGLER, THE DECLINE OF THE WEST (trans., Charles Francis Atkinson, A. A. Knopf Pub., 1926, 1928).

³See generally JAMES BLISH, CITIES IN FLIGHT (Overlook Press ed. 2000) [hereinafter CITIES IN FLIGHT].

⁴CITIES IN FLIGHT, *supra* note 3, at 1.

⁵*Id.* at 125.

⁶*Id.* at 229.

destroy the rest of the rebellious Okie cities and New York leaves this galaxy on a journey to the Greater Magellanic Cloud.

In the fourth book of the series, “The Triumph of Time,” New York has grounded itself permanently on a planet in a star system in the Greater Magellanic Cloud and confronts the End of Time itself and the possible creation of a new universe. Obviously, Blish paints on a very large canvas, to say the least.

Among other things, Blish’s vision of earth cities in flight is a radically decentralized vision of power, each city a force-field marble caroming about in space. However, the migrant cities of Blish’s world must band together, must admit to and embrace their interdependence, in order to withstand Terran persecution – even though they ultimately perish.

Before proceeding to introduce the three articles in this cluster, it may be useful to consider three differing justifications of decentralization, which are thematically present in each piece discussed in the final section of this essay.

III. DECENTRALIZATION AND ITS DISCONTENTS

While at first, it may seem ludicrous to connect Blish’s tale of migrant cities in space and our contemporary world, it is worth noting that in the 20th and 21st century U.S., cities and urban life may be understood as encompassing a type of “cities in flight” phenomenon that implicates the politics and poetics of decentralization.

The spaces of cities and towns may be understood as bounded “bubble universes” or “life worlds” that create and preclude multiple possibilities for their inhabitants. One might use the lens of political theory to try and focus on the nature of these “life worlds.” At the outset are traditional justifications for decentralization, arising in part from liberalism’s centering of the problem of protecting individual autonomy and liberty (as manifested in the “private” market) from being smothered by collectivity embodied by the “public” state that might be usefully juxtaposed against communitarian arguments that attempt to center the role of the “public” sphere of debate and dialogue producing the possibility of objective and shared values.

A. *Anarchy, State and Utopia*

Philosopher Robert Nozick writes that because individuals vary greatly in their abilities, interests, aspirations, etc. “[t]here is no reason to think that there is *one* community which will serve as ideal for all people and much reason to think that there is not.”⁷

Nozick argues that the main reason why decentralization is desirable is because people’s individuality is enhanced. Human are social creatures and live in groups, therefore Nozick reasons that society should be composed of a diversity of different groups, each of which would be designed so as to maximize the ability of group members to live the way they choose to live. Nozick’s vision of community rests on the idea of autonomy – communities are analogous to individuals, free to choose for itself how it wants to be. If you don’t like the way of life in a particular community, vote with your feet – no one but yourself is keeping you from living in the kind of community you want to live in.

⁷See generally ROBERT NOZICK, ANARCHY, STATE AND UTOPIA 297 (Basic Books 1974) [hereinafter ANARCHY].

Nozick writes that “there will not be one kind of community existing and one kind of life lived in utopia. Utopia will consist of utopias, of many different and divergent communities in which people lead different kinds of lives under different institutions. . . .Utopia is a framework for utopias, a place where people are at liberty to join together voluntarily to pursue and attempt to realize their own vision of the good life in the ideal community but where no one else can impose his own utopian vision upon others.”⁸

The downside of this particular vision of a city is the “selfishness” of the particular community. Under Nozick’s vision, communities are imagined as purely self-interested. Such a vision offers little protection for minorities/dissenters other than exit. Additionally, Nozick-ian communities may be seen as sites for the successful assertions of narrow parochialism, as well as sites that make it difficult to articulate individuality.

Nozick’s vision is also a profoundly “private” articulation of decentralization — cities are created by private intent and the “community” acts like an individual private property owner. One “chooses” to join the community, accepting via the social contract the particular rules of that community — if one is a dissident, one should vote with one’s feet and find a community that offers acceptable “terms.” By voluntarily “choosing” to join a particular community, one is subject to whatever sanctions and rules the community may impose, precisely because one has “chosen” to opt in.

Public choice theory has had great influence on U.S. urban planning, arguing that cities and suburbs should be analyzed as competing suppliers of a package of “goods and services” (roads, education, taxes, etc.) to “consumers.” Cities should court potential consumers/residents of a particular sort — older cities should court wealthier residents being “enticed” by the package of goods and services offered by the suburbs — presumably at the expense of poorer residents. Indeed, there may be incentives to offer wealthier residents a better package of goods and services than that offered to poorer residents.

This type of decision-making producing a myriad of “life worlds” for potential residents is mirrored in the striking rise over the past forty years of homeowner associations, or common interest developments (CIDs). Evan McKenzie writes that during the early 1960s, “[d]ozens of large, heavily planned and relatively self-contained communities were built, . . . [and] [b]eginning in the mid-1970s, financially strapped local governments also found CID housing appealing because it had features of private infrastructure, allowing communities to grow and add property-tax payers at reduced cost.”⁹ McKenzie goes on to note that “[t]here were fewer than five hundred such homeowner associations in 1964. By 1970, there were 10,000 homeowner associations; by 1975 there were 20,000; by 1980, 55,000; by 1990, 130,000; and by 1992, there were 150,000 associations privately governing an estimated 32 million Americans. . . . By 2000 there is expected to be a total of 225,000 homeowner associations in the country.”¹⁰

⁸ANARCHY, *supra* note 7, at 320-323.

⁹EVAN MCKENZIE, *PRIVATOPIA HOMEOWNER ASSOCIATIONS AND THE RISE OF RESIDENTIAL PRIVATE GOVERNMENT* (Yale University Press 1974) [hereinafter *PRIVATOPIA*].

¹⁰*PRIVATOPIA*, *supra* note 9.

What competing visions of decentralization might there be besides the Nozick-inspired deeply privatist vision of cities and suburbs competing for rich residents and CIDs?

B. Community Self-Determination

Frank Michelman has articulated a community self-determination model that does not accept Nozick's premise that individual (and group) self-interest should be the dominant consideration shaping city policy. Michelman questions the central assertion that advocates of economic public choice models make that decentralization and privatization promote individual freedom and choice. Instead, Michelman contests the definition of "freedom," – he suggests provocatively that the supposed "freedom" to act purely in one's own self interest may instead be "a reflection of perfect enslavement to wants and appetites that are not chosen but just impinge on one inexplicably and uncontrollably."¹¹ Michelman suggests that under a model of Community Self-Determination, "freedom" could be defined and understood as the result of collective community contestation of goals and that individual freedom may be "conceive[d] . . . in such a way that its attainment depends on the possibility of values that are communal and objective – jointly recognized by members of a group and determinable through reasoned interchange." Thus, Michelman argues for communitarian deliberation as a justification for decentralization of power to public institutions capable of acting collectively based on shared values arrived at through deliberative dialogue.

C. City Life and Difference

If the liberal vision sees a central threat to individual autonomy stemming from unbridled domination by the "public" sphere (and decentralization as an important check on that domination) and the communitarian vision sees the unbridled pursuit of individual self-interest as a central threat to a meaningful articulation of shared values (and decentralization as providing and encouraging a level where deliberate self-governance might be best realized), is there a model that addresses the weaknesses of the liberal and communitarian visions?

Iris Young critiques the communitarian vision for the way that it "validates and reinforces the fear and aversion some social groups exhibit towards others," and argues that "[i]f community is a positive norm, that is, if existing together with others in relations of mutual understanding and reciprocity is a goal, then it is understandable that we exclude and avoid those with whom we do not or cannot identify."¹² Young is careful to note that her "arguments against community are not arguments against the political project of constructing and affirming a positive group identity and relations of group solidarity, as a means of confronting cultural imperialism and discovering things about oneself and others with whom one feels affinity. . . . Those affirming the specificity of a group affinity should at the same time recognize and affirm the group and individual differences within the group."

¹¹Frank I. Michelman, *Political Markets and Community Self-Determination: Competing Judicial Models of Local Government Legitimacy*, 53 IND. L. J. 145, 148-156 (1978).

¹²See generally IRIS YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 234-241 (Princeton University Press 1990).

Young offers a normative ideal of city life, the “being together of strangers” – the valuing the disorientation and momentary discomfort that contact with “difference” evokes. She writes that

In the city persons and groups interact within spaces and institutions they all experience themselves as belonging to, but without those interactions dissolving into unity or commonness. City life is composed of clusters of people with affinities – families, social group networks, voluntary associations, neighborhood networks, a vast array of small “communities.” City dwellers frequently venture beyond such familiar enclaves, however, to the more open public of politics, commerce, and festival, where strangers meet and interact....

City life is a vast, even infinite, economic network of production, distribution, transportation, exchange, communication, service provision, and amusement. . . . City dwellers are thus together, bound to one another, in what should be and sometimes is a single polity....

Because city life is a being together of strangers, diverse and overlapping neighbors, social justice cannot issue from the institution of an Enlightenment universal public. On the contrary, social justice in the city requires the realization of a politics of difference . . . [that] lays down institutional and ideological means for recognizing and affirming diverse social groups by giving political representation to these groups, and celebrating their distinctive characteristics and cultures. . . .In public life the differences remain unassimilated, but each participating group acknowledges and is open to listening to the othersheterogeneous, plural, and playful . . . witness[ing] and appreciate[ing] diverse cultural expressions that they do not share and do not fully understand. . . .¹³

The city does not and should not exist merely to vindicate the individual preference of the people who live within its borders. Indeed, the interaction and participation in local politics shapes, challenges and transforms such preferences. Young suggests that “social justice in the city requires the realization of a politics of difference . . . [wherein] people are open to unassimilated otherness.”¹⁴

The city does not, and should not, exist merely to maximize the individual preferences of its residents. What is the role of local politics in Young’s vision? Local politics engages individuals to enter into a dialogue and debate in which values and preferences are contested, shaped and transformed – similar to Michelman’s deliberative communitarianism. But Young doesn’t view this process as one that provides a settled consensus, but as an ongoing dynamic contestation – “the differences remain unassimilated, but each group is open to listening to the others.” Young’s epitome of this difference is the public demonstration.

Aspects of Young’s evocation of city life and difference may be overly romanticized and can be viewed as a justification in the name of “difference” of the

¹³*Id.*

¹⁴*Id.*

creation of niche markets for “exoticism” for jaded ruling class yuppies seeking a jolt from urban frisson.

D. Cities in (White) Flight

While “Cities in Flight” depicted the physical dislocation of cities from the planet Earth and did not directly address the politics of such a radical move toward decentralization, consider that the U.S. has been undergoing a parallel dislocation of cities over the past half-century – the phenomenon of “White Flight” from the central cities to an outer (and racially and class homogenous) ring of suburbs.

As writers like Kenneth Jackson¹⁵ and Peter Hall¹⁶ have articulately written, cities in (white) flight benefited in the postwar era from federal government policies that encouraged the growth and prosperity of the postwar suburbs such as construction of the federal interstate highway system, federally-guaranteed home mortgages (and the federal home mortgage interest income tax deduction), and on the local government level, state policies endorsing the autonomy of suburbs to zone as they saw fit. In *Crabgrass Frontier*,¹⁷ Kenneth Jackson further detailed how annexation law and municipal incorporation contributed to suburban growth and white flight. The explosive growth of the postwar American suburbs was finally driven by the apparently “voluntary” choice of a generation of individuals to move from the city to the suburbs, even though the row had been governmentally well-cleared for such a move.

The radical decentralization that relatively autonomous suburban governments equipped with the power to zone out certain types of land uses (and people) and zone in desirable tax-wise or other properties promulgated created a spatial gap that was no less radical than that of Blish’s “cities in flight” that used the “spindizzy” to escape the Earth. The justification for facilitating and promoting the creation of such decentralized “life worlds” is similar to that for the creation of Nozick’s heterotopic communities: promoting the free choices of autonomous individuals.

Unfortunately, to date, most of the postwar suburbs, homeowner associations, and “gated communities” did not entail a decentralized Michelman-ian public “deliberative self-government” but rather, a vision of “privatopia,” with wealthy, insulated and sometimes gated, islands with private streets, private schools and services, and private police seeking to withdraw from tax obligation to any larger community. These island communities and their amenities are light years from the urban realities of declining tax base, deteriorating infrastructure and the social and human consequences of poverty and emiseration – cities in flight indeed.

Iris Young’s formulation of city life and difference may provide another way to understand and embrace the decentralization and the diversity that such decentralization paradoxically produces, even in the central core city – however,

¹⁵See generally KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* (Oxford University Press 1985).

¹⁶See generally PETER HALL, *CITIES OF TOMORROW: AN INTELLECTUAL HISTORY OF URBAN PLANNING AND DESIGN IN THE TWENTIETH SITUATION*, at 291-294 (1988); see ROBERT FISHMAN, *BOURGEOIS UTOPIAS: THE RISE AND FALL OF SUBURBIA* (Basic Books 1987); GARY MILLER, *CITIES BY CONTRACT: THE POLITICS OF MUNICIPAL INCORPORATION* (Basic Books 1981).

¹⁷JACKSON, *CRABGRASS FRONTIER* at 138-142.

while the embrace of the interpenetration of class, race, gender and sexual orientation found in the contemporary city, the implications for meaningful self-governance remain tantalizingly unclear.

IV. SPACE, DIFFERENCE AND COMPLEXITY

These three essays are on a deep level, about the desirability of the decentralization of the production of knowledge. Reggie Oh discusses indeed the implausibility (but pervasiveness) of the model of centralized emplotted legal narratives – hermetically sealed they only serve to prove the insulation from material reality in their tautological self-referentiality. Oh suggests subverting these emplotted legal narratives through the use of geographic critique – focusing on the local, the particular, the idiosyncratic. Aaron Monty likewise argues for the salience of decentralizing the construction of racial identities by looking at ways that the national border in an area like El Paso creates racially charged spaces and identities. Monty furthermore looks at the internal construction of Latino identity and urges that the “unity” of such a formation may be usefully contested and expanded along the axis of sexual orientation, with the paradoxical result that the category of Latino is strengthened, rather than weakened by such contestation.

A. Reggie Oh, *Mapping a Materialist LatCrit Discourse on Racism*

In his piece, Reggie Oh adverts to the LatCrit turn toward the material, that is, a move towards incorporating a pointed critique of the material conditions of subordination that underwrite the continued existence of racism. This point has appeared before in a slightly different form the dialogue between liberal legalism and black nationalism. Under the traditional liberal legalist account of racism, racism is seen as (1) located in people’s heads, in their consciousness; (2) is viewed as the epitome of irrationality, arising from “bad” thinking/reasoning; and (3) the solution to racism involves correcting this “bad,” irrational thinking, so that formerly “bad” actors will become enlightened and see that race is irrelevant (becoming “colorblind”). By contrast the black separatist account of racism, racism is seen as (1) located in the structure of the material world, i.e., who is in control of society’s resources and wealth; (2) preeminently rationality, if rationality is defined as securing privileges and access to valuable resources for a particular group in society at the expense of another racially identified group; and (3) the solution to racism involves redistributing society’s material resources and power, not in changing people’s consciousness. The traditional liberal account would advocate integration-based solutions such as weak affirmative action as a means of changing the structures of racism in people’s consciousness. By contrast, black separatism might advocate some type of separatism and reallocation of resources from the in-group to the out-group.¹⁸

In part because of LatCrit’s commitment to the twin ideas of anti-essentialism and anti-subordination, both traditional legal liberalism and black separatism have proven unpalatable. However, LatCrit theorists have striven to address the material conditions of subordination in their scholarship.¹⁹

¹⁸Keith Aoki, *Space Invaders [Critical Geography: the ‘Third World’ in International Law and Critical Race Theory]*, 45 VILL. L. REV. 913 (2001).

¹⁹See, e.g., Steven W. Bender & Keith Aoki, *Seekin’ the Cause: Social Justice Movements and LatCrit Community*, 81 OR. L. REV. 595 (2002); *Symposium Cluster, Forging Our*

Rejecting a clear dichotomy between the discursive and the material, Professor Oh usefully points out that “it is impossible to separate the material reality of racism from the discursive reality of racism,” and he argues that “any transformative discourse must explicitly recognize the multidimensional, multifaceted, multi-causal reality of racism and racial subordination.”²⁰

Professor Oh distinguishes narratives that merely describe a sequence of events as opposed to those that emplot a sequence of events. Emplotment “assembles a sequence of events into a meaningful, ‘intelligible whole,’ . . . by creating logical, causal connections between events.”²¹ Oh posits that our emplotted legal narratives “possess strong elements of fantasy . . . [and that emplotted legal narratives] organize[] and [govern] the intelligible whole of a story to make other causal or structural possibilities seem entirely implausible, unlikely, untrue, and hence irrelevant.”²² Furthermore, Oh notes that there is an “inverse relationship between narrative coherence and accurate representation of reality.”²³

Citing the important work of geographer Edward Soja, Oh suggests that deciphering the “hidden spatial assumptions and premises that structure . . . [emplotted legal] narratives . . . is one effective way of exposing the imaginary, invented elements of a legal narrative, of showing that any legal narrative that purports to explain and reveal the true cause of any event or phenomenon is dealing within the realm of imagination, and within the realm of material reality.”²⁴

Oh advocates the deconstruction of the spaces and places contained within an emplotted legal narrative by

- (1) first, a critical analysis could examine the geographic scale or setting of a narrative. This inquiry as *where* does the story take place? It also asks *where else could* it have taken place? (2) Second, a critical analysis could examine the movement of people within the spaces and places in which the narrative unfolds. This line of geographic inquiry assumes that *where* people are located has great significance, and that by questioning, in a particular story, where people are located at any given time and place can help to disrupt and deconstruct the plot of a legal narrative.²⁵

Oh proceeds to apply his spatial critique to Justice O’Connor’s plurality decision in *City of Richmond v. J.A. Croson*,²⁶ showing how “[l]iberal legal theory cuts up and compartmentalizes . . . racial segregation, and divides it into distinct legal issues that

Identity: Transformative Resistance in the Areas of Work, Class and the Law, 33 U.C. DAVIS L. REV. 1057 (2000); *Symposium, Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U. L. REV. 467 (2001).

²⁰See generally Reginald C. Oh, *Mapping a Materialist LatCrit Discourse on Racism*, 52 CLEV. ST. L. REV. 243 (2005).

²¹*Id.*

²²*Id.*

²³*Id.*

²⁴*Id.*

²⁵*Id.*

²⁶448 US. 477 (1989).

are then no longer considered ‘legally’ relevant to each other. . . . housing discrimination, electoral discrimination, and school segregation [become] . . . legally distinct racial harms . . . [removing them from their historical-spatial context . . .] and obscures the fact that these separate discriminations occurred at the same time, committed by the same defendants against the same plaintiffs in the same city.” Oh argues that “these separate legal harms are not distinct, but rather are the manifestations of a singular phenomenon: the systematic racial inequality experienced by black Richmond residents.

Because emplotted legal narratives achieve consistency by foregrounding certain factors by the eclipse of others, they consistently fail to capture the material reality of the pervasiveness of racism in day-to-day American life. Oh concludes that “we cannot totally escape from knowing the world through narratives . . . [but we should] 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.”

Other cases like *Milliken v. Bradley*²⁷ and *Holt Civic Club v. City of Tuscaloosa*²⁸ present fact patterns that Oh’s critical geography might usefully parse, as well as forcing the question of how legal doctrine of how legal subjectivity is intimately affected by the degree to which “space” is or is not held to be salient by a court.

B. Aaron Monty, *Retranslating Differences*

As Professor Oh addressed the salience of racialized space in emplotted legal narratives, Aaron Monty addresses spatialized race in the context of the border. Monty writes about how, “[i]n El Paso, to be a United States citizen is to be ‘white’ and to *not* be ‘black,’ . . . [as] [n]ativistic racism fueled by ingrained ‘white supremacy’ creates a frustrating social dichotomy between the *legal* citizens of El Paso and the Mexican nationals that also live, work, and buy goods in El Paso.”²⁹ Monty describes how the Rio Grande provides a geographic marker of race, as well as nation. Grounding his analysis in the idea of decentralized racial microclimates – he writes that “races exist only as local facts measured in terms of community attitudes and the material inequalities such attitudes have built up.

Similar to Oh, Monty dismisses a sharp dichotomy between the discursive and material experiences of race, but critiques the way in which “whiteness” works as an organizing principle in U.S. society – providing a whole package of social, economic and political privileges. Monty goes on to show how at the border, “whiteness” becomes equated with “American” and is defined in opposition to Mexican identity, i.e., both “nonwhite” and “non-American.” Thus, some Mexican Americans in El Paso identify themselves as “white,” in large part because to identify otherwise would be to cast oneself into the vilified “non-American” category.

²⁷418 U.S. 717 (1974) (striking down an interdistrict school busing remedy that extended beyond municipal borders).

²⁸439 U.S. 60 (1978) (upholding an extraterritorial assertion of the City of Tuscaloosa’s police power over a rural, unincorporated community outside the city’s boundaries in the absence of extension of the electoral franchise).

²⁹See generally Aaron Monty, *Retranslating Differences*, 52 CLEV. ST. L. REV. 255 (2005).

Having mapped out the “American/white-Non-American/non-white” distinction in place in the racial microclimate of El Paso, Monty proceeds to complicate his analysis by introducing other non-visible vectors along which “difference” may be constructed, such as sexual orientation.

Monty discusses the internal fault line within Latino culture that uses the idea of machismo to “outline the roles, status, responsibilities, influences, moral positions, and rights of men and women in Latino culture. . . . [parallel to] a concept of hyper masculinity according to which men are powerful, aggressive, and dominant and women are weak, submissive, and self-sacrificing.”³⁰ Monty writes of the importance of refuting the negative image of machismo in order to advance “the cognitive recognition of a diverse Latino people as it will protect Latinos from this image that inevitably puts them in physical danger,” but recovering and retranslating the positive conceptualization of machismo that “cherishes honesty, modesty, loyalty, and standing up for one’s rights.”³¹

Such vectors of difference need to be recognized and acknowledged in order to articulate a chastened, inclusive Latino perspective. Monty writes that, “[a]fter the Latino perspective has been recognized and understood in society, it can coalesce with the Black perspective, the White perspective, the Asian perspective, the Gay perspective, the Male perspective, and the Female perspective in order to deconstruct borders and prove that we as people will always be just as much *different* as we are the same.”³² Embracing the paradoxical ideas of unity and diversity is crucial to the LatCrit project, according to Monty. Indeed the anti-essentialist and antisubordination goals of LatCrit require the simultaneous and sometimes paradoxical embrace of both unity and diversity.

C. Julian Webb, Law, Ethics, and Complexity Theory & the Normative Reconstruction of Law

Julian Webb considers the “law” to be a “complex adaptive system” that develops according to three principles

First, “order” is an emergent property of the interactions within a system rather than predetermined by design. Secondly, the system’s history is an important and and irreversible determinant of its structure and a history that can never be recreated because it is constantly being reconstituted by self-organising processes in the system. Thirdly, the future development of the system is often unpredictable.³³

Webb discusses the roots of complexity theory in phenomenology, structuralism and postmodernism. Complexity theory to Webb has ties to structuralism in that it is “concerned less with a search for the causes of social phenomena than in seeing cultures systematically as functionally interrelated parts.”³⁴ To Webb,

³⁰*Id.*

³¹*Id.*

³²*Id.*

³³See generally Julian Webb, *Law, Ethics, and Complexity: Complexity Theory & the Normative Reconstruction of Law*, 52 CLEV. ST. L. REV. 227 (2005).

³⁴*Id.*

phenomenology requires “us to step behind . . . the ‘natural attitude’ which leads people to treat the world around them as a given.”³⁵ Complexity theory shares with postmodernism the premise that “individual agents cannot contain, perhaps cannot even comprehend, the complexity of the system of which they are a part . . . [and] [t]he self is so imbricated in the system it helps to create that no complete or, indeed, objective knowledge of its present state is available to any one individual. . . . [there is no way] that we can attain a privileged viewpoint that gives us access to ‘the truth’ about the world.”³⁶

As articulated by Webb, complexity theory involved a profoundly decentralized approach to the production of knowledge – there is no grand unifying umbrella. He does however, identify some characteristics of complexity theory: (1) a focus on structure and environment – focusing on the structure of systems rather than their elements, with the structure being seen as a product of the interaction between the system and its environment; (2) self-organization, reflexivity and adaptivity – self-organization explains how a system emerges, develops and evolves and is “neither a product of external agency, nor of internal design and control. . . but is a result of the interaction between the present state of the system, its history and environment.”³⁷ Self-organization is reflexive meaning that by responding to the environment, the system also transforms itself. The idea of “emergence” is important to complexity theory – while there is no “telos” guiding the process, there are feedback loops that recursively transform the system and (3) openness – complex systems must be open to stimuli crossing their borders from other systems, giving rise to the idea that “meaning” has a basic instability and that “meaning-making” within a complex system “involves . . . the representation, selection and reduction of complexity in a moment of actuality.”³⁸

The central question Webb raises is that if the law is a complex adaptive system, how may emancipatory goals be advanced – how may “diverse peoples, subjectivities, cultures, values, ways of life . . . be recognized without abandoning the recognition of our common humanity, our interdependence, our need to live together within a variety of co-ordinating institutions such as the legal[?]”³⁹

Webb has a number of responses to this question. First, he argues, law “delivers justice as much by accident as by design.”⁴⁰ The profound decentralization of the system makes assertions of hegemony unpredictable and creates the possibility that small interventions may have large repercussions down the road. Second, Webb argues complexity has deconstructive potential so that while “each of these systems may be self-referentially closed, . . . they also depend on each other to produce a version of disturbing events which displays normative consistency . . . [but] a failure to achieve normative consistency between systems will generate system-conflicts . . . [and may] provide sites at which the inherent stresses and strains caused by

³⁵*Id.*

³⁶*Id.*

³⁷*Id.*

³⁸*Id.*

³⁹*Id.*

⁴⁰*Id.*

system closure, boundary failure, or by the incompatibility of communicative systems become visible.”⁴¹

Webb also argues that rather than promoting an over-determined view of society, complexity theory may promote certain values that support the development of complex systems such as “altruism; decentralization/structural pluralism; [and] interdependence”⁴²

Finally, Webb suggests that complexity theory has the scope to accommodate the acknowledgement and development of the ethical itself – creating the possibility of finding the meaning of “responsibility” in a complex system. Webb writes that

Complexity . . . emphasizes the distributed nature of power; the inability of any person (or institution) to claim that it exerts control over society. All individuals, all social institutions are alike confronted by conditions of contingency, uncertainty and risk. Any stability that emerges, emerges from within society and that means from the interactions of social agents. . . [creating] the opening for action and demands from us a significantly different form of responsibility . . . [that is] pre-ontological, grounded otherwise than in being. . . . In a system dominated by localized knowledge and unpredictable consequences, we are confronted . . . by an *aporia*: we have to take responsibility for the effects of all our decisions, now and for the future, even though we do not (complexity suggests cannot) 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.”⁴³

Thus, Webb sees in the potentially paralyzing and demobilizing vision of the law as a complex adaptive system beyond rationality and beyond the control of any agent or institution, a chastened hope that the multiplication of loci to challenge standard interpretations of the law, leads not to hegemony, but to the possibility of an extremely decentralized and localized set of contestations, whose effects will be as unpredictable as the hegemonic iterations of power.

V. CONCLUSION

This essay introduces three articles by Reggie Oh, Aaron Monty and Julian Webb that share themes related to the idea of decentralization and decentering. This essay obliquely approached the three LatCrit pieces by first evoking James Blish’s science fictional vision of “Cities in Flight” – cities enabled by anti-aging and antigravitation technology to depart from the face of the Earth and roam interstellar space, a picture of radical physical decentralization. The essay then moved on to consider three justifications and visions of decentralization from Robert Nozick, Frank Michelman and Iris Young articulating libertarian, deliberative communitarian and arguably, postmodern approaches to understanding cities and decentralization. The essay then argues that Blish’s science fictional “cities in flight” may not be as far from the U.S. of the past 50 years as one may think at first – in fact, much of the suburban white

⁴¹*Id.*

⁴²*Id.*

⁴³*Id.*

flight over the past decades can be explained employing Nozick's libertarian model with its focus on implementing the free choice of autonomous individuals against the background of the night watchman state.

Finally, this essay evoked and placed the works of Reggie Oh, Aaron Monty and Julian Webb and their shared theme of the decentralized and decentered state of knowledge and identity in our current time, with the goal of finding a chastened, perhaps existential, progressive empowerment, rather than a bleak and depressed state of demobilization. While the case is close, very close indeed, one may still look with hope for signs that the glass is half full.