

FOREWORD

MARCH!

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I. INTRODUCTION.....	2
II. <i>QUIÉNES SOMOS: WHO ARE WE?</i>	6
A. A LatCrit I Retrospective: Or, I Wasn't In Puerto Rico but I Went to La Jolla	6
B. On to LatCrit II and the Material Experiences of Diversity: <i>Un Movimiento Tumultuoso</i>	11
1. Multiplicity of Identities: Multiplicity of Agendas	13
2. Practicing Diversity for the Sake of Community: It Soon "Becomes a Part of You"	17
3. <i>Mujeres Encolerizadas</i> : Latina Law Professors Celebrating Our Gender-Based Differences	18
C. "Latina/Latino": The Pleasure and Danger of a New Identity Category	24
III. AT THE SCHOLAR'S KITCHEN TABLE: FEEDING OUR HUNGRY HEARTS FOR INTELLECTUAL GROWTH AND COMMUNITY	26
A. Cluster I—Race, Ethnicity and Gender as Anti- subordination Identities: LatCrit Perspectives	26
B. Cluster II—Composing LatCrit Theory: Self-Critical Reflections on "Latina/os"	35
C. Cluster III—Religion and Spirituality in Outsider Theory: Towards a LatCrit Conversation.....	43
IV. FOREWARD MARCH IN REVOLUTIONARY TIMES	53

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A.	Theorizing about The Politics of Pedagogy: Transgressing the Boundaries Between The Clinic and the Classroom.....	56
B.	A LatCrit Scholar's Transformative Teaching Experiment: The Austin Schools Project.....	58
1.	<i>The Method: Team Projects</i>	59
2.	The Instructor's Hopes for Accomplishing the Task and the Learning Experience.....	61
3.	The Findings: The Aliveness of Racism in Public Education.....	63
C.	Conclusion: Resistance, Community and Hope in Activist Scholarship and Teaching.....	66

I. INTRODUCTION

For me, "LatCrit theory" started with our exciting and sometimes conflicting discourse at the LatCrit I conference in La Jolla, California in May 1996—in particular after the outburst of female energy spontaneously created by the "Latinas talking circle."¹ LatCrit I brought together about seventy-five teachers and scholars, predominately Latina and Latino, desirous of exploring the concepts and premises for engaging in a new brand of "outsider scholarship."² Having had the privilege of being at that first gathering—which had as a goal simply to start a discussion about what it would mean to engage in Latina/o Critical Legal Theory—I now feel even more privileged to be writing this foreword at a moment that feels important in the history of liberation movements. As I write, I am enjoying looking at a copy of a recent news photograph of a march against the resegregation of our public universities³ that took place on January 8, 1998, in San Francisco, and was led by an activist group of law professors.⁴ Most of the people pictured in the photo

1. See Part II, B *infra* for discussion on events at LatCrit II and the Latinas talking circle.

2. The term "outsider" has been adopted to refer to critical scholarship deemed outside of the white, male mainstream of academia. See, e.g., Jerome McCristal Culp, Jr., *Telling a Black Legal Story: Privilege, Authenticity, "Blunders," and Transformation in Outsider Narratives*, 82 VA. L. REV. 69 (1996); see also Mary I. Coombs, *Outsider Scholarship: The Law Review Stories*, 63 U. COLO. L. REV. 683 (1992).

3. The potential resegregation of public universities is decried as a consequence of legislative and judicial activities opposing affirmative action such as Proposition 209, a referendum in the State of California, which abolished the use of affirmative action in public services, education and benefits; and *Hopwood v. State of Texas*, 78 F.3d 932 (5th Cir. 1996) *cert. denied*, 518 U.S. 1033 (1996) which held as unconstitutional a dual-tracked admissions policy used by the law school based on its commitment to affirmative action. California's Proposition 209 was upheld against a constitutional challenge in *Coalition for Economic Equity v. Wilson*, 122 F.3d. 718 (9th Cir. 1997).

4. Communities Affirming Real Equality (CARE) was organized by the Society of American Law Teachers (SALT). Sumi Cho and Margaret Montoya, key members of the LatCrit movement, served as co-chairs of the Task Force responsible for the strategic

of this march are now friends and colleagues I met for the first time at LatCrit I. Most importantly, as I look at the photo and think back on the first gathering of scholars who began that conversation about the special meaning the term "diversity" might have to Latina and Latino scholars, I am aware of the different racial, ethnic, sexual and gendered identities represented by each person in the photograph. Heading the march and shouting slogans in support of diversity and affirmative action at the side of African-American Mayor of San Francisco Willie Brown are five law professors—two women, a white and a Latina, and three men, one a gay Latino, an African-American and an Asian-American.

These different faces and identities in the photo took me back not only to the excitement of planning for and being in a historic civil rights march, but also to the hotel conference room where I sat in May 1996 with some of these very people, LatCrit colleagues, and to the range of feelings I had then as I witnessed a multiracial/multiethnic spectrum of identities forging a new scholarship movement. Back then I knew at best a handful of people, yet unlike so many other conferences in my professional life, I didn't feel alone. For once, I didn't stand out in my isolation as a brown woman at a professional conference. Rather, it was the Anglo whites who got to be the minority among women and men whose names and faces were stirring in me ancient memories of comfort, and the feelings associated with *familia*. As brilliant speakers presented works in progress, I felt proud to be "Latina," a woman of color. Occasionally my attention wandered to mental connections between Spanish surnames, bits of history of European conquest and diaspora in the "Americas" and the Caribbean, and faces that sometimes matched and often didn't fit this nation's stereotyped images of "Hispanics."⁵ I knew I was witnessing something very important as

planning and implementation of the march as part of a multi-year Action Campaign targeting the retrenchment in the legislatures, courts, universities/colleges and in society-at-large, on the use of gender and race conscious criteria. See CARE March Flyer (1998) (on file with author).

5. The choice of the terms "Hispanic" versus "Latino" can be the source of debate and controversy given their institutionalized character by reporting agencies like the Census Bureau. The term Hispanic is criticized because it deprives the population it purportedly represents of its heterogeneity and it attributes a racelike character in socio-scientific and colloquial language that facilitates racial stereotyping. See Gloria Sandrino-Glasser, *Los Confundidos: Latino/as Race and Ethnicity*, 19 CHICANO-LATINO L. REV. 69 (1998). The term "Latino" or "Latina" has been criticized as an inadequate substitute for Hispanic due to its colonialist origins. See Luz Guerra, *LatCrit y La Descolonización Nuestra: Taking Colón Out*, 19 CHICANO-LATINO L. REV. 351 (1998) (discussed *infra* at Part III B). Meanwhile, LatCrit II was held in Central Texas, in the city of San Antonio, where Latina/os have harnessed political clout around the term "Hispanic" to represent the extensive Mexican-American population in this Southwestern U.S. region. Local organizers of LatCrit II advised non-Texas members of the planning committee to contextualize its use by speakers and other local dignitaries to diffuse mis-

I visually appreciated the racial, ethnic, and linguistic diversity I had always known existed among Latina/o Americans we know as Mexicans, "Chicanos,"⁶ "Tejanos,"⁷ Cubanos, Puerto Ricans, "Newyoricans,"⁸ Guatemaltecos, Nicaragüenses, Salvadorans, Venezolanos, Colombians, Paraguayans, Uruguayans, Hondurans, Bolivians, and so on. Of course, the room and the speakers were not only Latina/os. Asian and African-American scholars noted for their work in Critical Race Theory had been invited to explore the concept of "Latina/o Critical Legal Theory." Yet the overwhelming Latina/o presence made me feel warm and connected, especially when I heard the occasional Spanish term or phrase, or reference to a bit of humorous cultural insiderness.⁹ I was like the happy soul who has just discovered a long lost relative.

At this gathering in La Jolla we called LatCrit I, the attendees struggled with the theoretical task associated with confronting a Latina/o politics of identity as scholars engaged in critical analysis of the law's impact on Latina/os in the U.S. and elsewhere. Gazing around the room I saw an awesome gathering of mostly law professors, sharing an interest in critical theory, and personally differing from each other in their identities based on race, ethnicity, color, language, ancestry, class, religion, age, gender, sexual orientation, professional status, and so on. Many in the room had already participated in critical legal theory, which centered on issues of race, ethnicity, sex, and sexual orientation. Most of the individuals in the room were Latina/os, while others were decidedly not. In time even the term "Latina/o" would become the source of a powerful and challenging substantive and political critique.¹⁰ From this web of

understanding from seeing the term used in conference literature.

6. The term "Chicano" emerged from the politics of identity by Mexican-Americans in the 1970s. It is often associated with the historic labor struggles to unionize Mexican immigrant farmworkers in the Southwestern U.S. See FOREIGNERS IN THEIR OWN LAND: HISTORICAL ROOTS OF THE MEXICAN-AMERICANS 262-63 (David J. Weber ed., 1973).

7. Not unlike the term Chicano, "Tejano" is a term for the Texan of Mexican descent with a politicized consciousness of his/her subordinated status in American law and culture.

8. The term "Newyoricans" colloquially refers to U.S. citizens and their descendants from the colonized island of Puerto Rico who migrate to New York City (NYC). The historic racial tensions between NYC Puerto Ricans and Anglo whites are the theme of the popular Broadway play and film *West Side Story*.

9. A memorable moment was when Margaret Montoya began her talk and explained her nervousness before the audience with a story of the cultural magic many of us learned in our Catholic education which taught us to invoke the spiritual power by uttering or writing down the names of the Holy Family ("J.M.J." = Jesus/Mary/Joseph) and/or the Holy Spirit. The practice is noted in her essay, Margaret Montoya, *Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis*, 2 HARV. LATINO L. REV. 349 (1997). See also Part III C, *infra*, for a discussion on the role of religious ritual in the lives of Mexican Latina/os.

10. See Guerra, *supra* note 5.

difference a discourse was initiated on what it might mean to theorize about the shared multiplicity of difference in that room; more specifically, the commonalities of the experience of our marginalization as Latina/os in relation to the following: the white male legal academy, the established race, feminist, and Queer crit movements, and global community. The vast diversity before us generated excitement for a bold agenda—to explore the relationship of Latina/os to other minorities in the legal profession, and to forge a scholarship movement relentlessly committed to the theory and practice of diversity; one that would empower and support all of us in the deconstruction of the sources of our marginalized existence.

In Part II of this Foreword, which I have subtitled March! in the spirit of resistance my LatCrit colleagues and I recently demonstrated in San Francisco, I explore one of the primary questions we struggled with at LatCrit I and continued to explore in LatCrit II for its significance to our work as critical legal scholars—the question of our identities, or “who are we?” Examining LatCrit’s commitment to be multiracial and multisexual or gendered, this part explores how LatCrit has engendered great possibilities for connection and interconnections, as well as tension, self-education and healing. I address the hope, promise and challenge for community among scholars whose identities intersect, minimally, across race, color, ethnicity, national origin, gender, class, religion and sexuality by offering some observations of lessons I have gained from the experiences of LatCrit I and II, both as an attendee and as the member of one Planning Committee. Part II also examines some of the strong departures between LatCrit and Critical Race Theory (CRT) by illustrating the interplay of gender, culture and identity politics at each LatCrit conference to date and by advocating a few reasons why Latina law professors need to strengthen their ties to each other.

In Part III, I comment on the three clusters of scholarship that were produced for the LatCrit II Symposium and briefly preface the discussion of Cluster Three with a personal commentary on religion as an essential ingredient of cultural analyses in Latina/o Critical Legal Theory.

Finally, Part IV briefly comments on the importance of connecting our scholarship movement to the pressing contemporary struggle to preserve the concepts of diversity and affirmative action in legal education, and encourages LatCrit scholars to explore critical pedagogy as an extension of their work in critical theory. LatCrit scholars were critical to the organizing of the Society of American Law Teachers (SALT) C.A.R.E. march by law professors against the re-segregation of our law schools. Their strength and commitment to promote activism in scholarship and deed is but one

of the many inspirations generated by our "LatCrit movement" which is marching forward in the midst of revolutionary times for the nation as a whole. I conclude with an example of a critically based teaching project bringing theory and practice together that was inspired by my involvement with LatCrit theory.

II. QUIÉNES SOMOS: WHO ARE WE?

A. *A LatCrit I Retrospective: Or, I Wasn't In Puerto Rico but I Went to La Jolla*

Although the 1996 conference at La Jolla, California had formalized the inquiry of what it means to engage in a politics of identity centered on the Latina/o experience, in reality, some of that conversation had been initiated by the Latina/o law professors who gathered at the 1995 annual Hispanic National Bar Association Conference in Puerto Rico. In fact, "who are we?" served as the question for plenary discussion on the first day of LatCrit II. As others and I learned, a late night gathering of professors in Puerto Rico shared stories filled with feelings of hurt, confusion and abandonment felt at CRT gatherings—gatherings that made no room for the experience and insights of Latina/os in the law. By the evening's end a venting of feelings had inspired a conference, and a vow among the organizers to assure that the panels and audience that would become LatCrit would be relentlessly characterized in substance and identity as inclusive and diverse. In my opening keynote at LatCrit II, I expressed the opinion to any newcomers in the audience that LatCrit should not be viewed as a gathering of "experts" on the established meaning of "LatCrit theory." I felt it important that newcomers know that many of us are still learning what it means to engage in LatCrit theory by simply putting forth the hard questions about identity. I also felt it important that newcomers to this emergent movement feel welcomed. I could imagine what it might feel like for one who had not only been absent from the formative events in Puerto Rico, but possibly had been absent from many more of the "critical race" gatherings leading up to LatCrit I or II. I relate these thoughts about where we've been to offer future LatCrit scholars and the readers of this symposium a small opportunity for connection—the support from one who was very alienated from her own "Latina-ness," as I have explained in a recent writing.¹¹ My experiences as an unwelcome Latina lesbian in a university with a bad history on the hiring and retention of minorities had

11. Elvia R. Arriola, *Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self*, 2 HARV. LATINO L. REV. 397 (1997).

sapped me of the strength it would take to reach out to others whom, like me, were struggling for acceptance in their predominately white and male institutions. Yet, the spirit of inclusion I felt at LatCrit I encouraged me to reveal to my new colleagues the multiple reasons that underlied my feelings of alienation when I found myself with other Latina/o professors. I felt defeated by a lone battle I'd had trying to fill the "objective" criteria expected of untenured professors. I was tired of attending conferences where I was too often the token double or triple minority, and therefore I had a tendency not to see conferences as important to my professional development. In addition to all of this, I projected on to my colleagues the homophobic Latino values I had been exposed to since my youth and assumed I would be unwelcome as an out lesbian writing mostly about Queer topics as opposed to "Latina/o issues."¹²

There is another reason why an individual might feel disconnected from other Latina/os in the legal academy and wonder whether the question "who are we?" even applies to them. This reason is embedded in the various external forces, the systemic discrimination, which brings home the marginalization of Latina/os and other racial, ethnic or sexual minority law teachers. Let us face it. Those who choose to "come out" as critical scholars, including LatCrits, take huge risks, especially during these exceptionally revolutionary times when the infamy of individuals like Lino Graglia signal the loss of widespread cultural support for concepts like diversity and affirmative action.¹³ Many of these courageous souls

12. *Id.*; see also, Elvia R. Arriola, *Faeries, Marimachas, Queens and Lezzies: The Construction of Homosexuality Before the 1969 Stonewall Riots*, 5 COLUM. J. GENDER & L. 33 (1995) [hereinafter *Faeries*]; Elvia R. Arriola, *Gendered Inequality: Lesbians, Gays and Feminist Legal Theory*, 9 BERKELEY WOMEN'S L.J. 103 (1994) [hereinafter *Gendered Inequality*]; Elvia R. Arriola, *Coming Out and Coming to Terms with Sexual Identity*, 68 TUL. L. REV. 283 (1994).

13. At the beginning of the 1997-98 fall term at the University of Texas, a group calling itself Law Students for Diversity held a rally calling on the administration to assure diversity in the law student population in the face of declining enrollment of Black and Hispanic students resulting from the decision in *Hopwood*, 78 F.3d 932, which abolished the use of affirmative action in admissions to the University. On September 10, 1997, a conservative student group calling itself Law Students for Equal Opportunity held a counter-rally in support of *Hopwood* and asked Professor Lino Graglia, a long-time opponent of affirmative action, to serve as the group's spokesperson. At the press conference, Lino Graglia opposed any preferential admissions criteria and defended the use of meritocratic criteria like high LSAT scores. In his comments Graglia stated that the lower test scores of Blacks and Hispanics were explained by their membership in cultures which didn't demand of their children hard work in academics and that didn't look down upon their failures in academic ventures. In the next two days a flurry of local media activity carried Graglia's controversial views across the state and nation. A week later the University of Texas witnessed a 5,000 student march calling for Professor Graglia's resignation and demanding from the Administration a commitment to the concept of diversity in student enrollment. See Mary-Ann Roser, *Jackson urges UT to Fight Racism; About 5,000 Attend Rally Against Remarks*, AUSTIN AMERICAN-STATESMAN, Sept. 16, 1997 at A1. See Part IV *infra* for a discussion of *The Austin Schools Project*, a

have centered "race,"¹⁴ "gender and sexuality,"¹⁵ and "language and ethnicity,"¹⁶ in critical analyses of the law and have challenged

pedagogically based research study which produced data that undermines the assumptions of individuals like Lino Graglia and others who rely on scientific race ideologies to proclaim the inferiority of Blacks and Latina/os. The data disturbs any notion of a fair, objective and "meritocratic" system of admissions in Texas and summarizes evidence produced by teams of law students who found glaring examples of unequal educational resources in the public schools of the City of Austin. The findings strongly undercut the view that cultural traits, and not racist educational policies account for the inadequate performance by racial minorities. For examples of the new scientific racism see RICHARD HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* (1994).

14. See RICHARD DELGADO, *CRITICAL RACE THEORY: THE CUTTING EDGE* (1995); PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991). See also Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 *FORDHAM URB. L.J.* 699 (1993); Margalynne Armstrong, *Protecting Privilege: Race, Residence and Rodney King*, 12 *LAW & INEQUALITY* 351 (1994); Derrick Bell, *Racial Realism*, 24 *CONN. L. REV.* 363 (1992); Kevin Brown, *Do African-Americans Need Immersion Schools?: The Paradoxes Created by Legal Conceptualization of Race and Public Education*, 78 *IOWA L. REV.* 813 (1993); Robert Chang, *Reverse Racism!: Affirmative Action, the Family, and the Dream that is America*, 23 *HASTINGS CONST. L.Q.* 1115 (1996); Sumi K. Cho, *Multiple Consciousness and the Diversity Dilemma*, 68 *U. COLO. L. REV.* 1035 (1997); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241 (1991); Neil Gotanda, *Failure of the Color-Blind Vision: Race, Ethnicity, and the California Civil Rights Initiative*, 23 *HASTINGS CONST. L.Q.* 1135 (1996); Anthony Paul Farley, *The Black Body as Fetish Object*, 76 *OR. L. REV.* 457 (1997); Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other-Isms)*, 1991 *DUKE L.J.* 397; Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581 (1990); Elizabeth M. Iglesias, *Structures of Subordination: Women of Color at the Intersection of Title VII and the NLRA. Not!*, 28 *HARV. C.R.-C.L. L. REV.* 395 (1993); Lisa C. Ikemoto, *The Fuzzy Logic of Race and Gender in the Mismeasure of Asian American Women's Health Needs*, 65 *U. CIN. L. REV.* 799 (1997); Margaret E. Montoya, *Máscaras, Trenzas y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 *HARV. WOMEN'S L.J.* 185 (1994); Laura M. Padilla, *Intersectionality and Positionality: Situating Women of Color in the Affirmative Action Dialogue*, 66 *FORDHAM L. REV.* 843 (1997); Juan F. Perea, *Ethnicity and Prejudice: Reevaluating "National Origin" Discrimination Under Title VII*, 35 *WM. & MARY L. REV.* 805 (1994); Dorothy E. Roberts, *Race and the New Reproduction*, 47 *HASTINGS L.J.* 935 (1996); Reginald Leamon Robinson, *Race, Myth and Narrative in the Social Construction of the Black Self*, 40 *HOW. L.J.* 1 (1996); Enid Trucios-Haynes, *Latina/os in the Mix: Applying Gotanda's Models of Racial Classification and Racial Stratification*, 4 *ASIAN L.J.* 39 (1997); Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 *MICH. L. REV.* 821 (1997).

15. See, e.g., Arriola, *Gendered Inequality*, *supra* note 12; Berta Hernández-Truyol, *Building Bridges, Latinas and Latinos at the Crossroads: Realities Rhetoric and Replacment*, 25 *COLUM. HUM. RTS. L. REV.* 369 (1994); Francisco Valdes, *Queers, Sissies, Dykes and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 *CAL. L. REV.* 1 (1995).

16. See Keith Aoki, *"Foreign-ness" & Asian American Identities: Yellowface, Propaganda and Bifurcated Racial Stereotypes*, 4 *UCLA ASIAN PAC. AM. L. J.* (forthcoming, 1998); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 *MINN. L. REV.* 269 (1992); Juan F. Perea, *Hernandez v. New York: Courts, Prosecutors, and the Fear of Spanish*, 21 *HOFSTRA L. REV.* 1 (1992); Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 *N.Y.U. L. REV.* 965 (1995).

established forms of scholarship viewed as the singular “normative” and “legitimate” model by the mainstream academy.¹⁷ The even bolder do so while still on the tenure track. As indebted as we are to our *Abuelito*,¹⁸ Richard Delgado, for his infamous essay *The Imperial Scholar*, which exposed the hypocrisy of a so-called progressive civil rights scholarship dominated by white men who ignored the writings of racial minority intellectuals, we know that even Delgado wrote only after he was comfortably situated with tenure.¹⁹ Critical Race Theory (CRT), with its loose and fragile connections to Critical Legal Studies (CLS),²⁰ permanently upset those paradigms of thought and analysis, including the conventional advice that one should wait until after tenure to expose one’s radical views.²¹ It was a tiny moment in history when CRT was popular and supported by progressive and tenured white professors in the academy who recognized the emerging “stars” in critical race scholarship movement,²² and even actively recruited minority teaching candidates for their potential as critical race scholars. In that wave, the number of Latina/os in law teaching gradually rose,²³ and the scholarship invoking theories like intersectionality²⁴ and Queer²⁵ or lesbian²⁶ legal

17. I remember well being told when I started out as a scholar in the early eighties that authors of good law review articles only wrote evenhanded analyses with the purpose of changing the direction of courts’ decisionmaking. As “neutral” instrumental writings, articles were not supposed to be infused with evidence of the author’s personal feelings and values. In time, I quickly understood the near impossibility of writing this way on subjects I had very strong feelings about like, racism, sexism and homophobia and obviously I came to appreciate the critical movement’s passionate deconstruction of the established paradigms in legal scholarship. The last dozen years have thus produced forms of writing which freely incorporate the personal narrative, whether that of the author’s or of outside subjects as writings that reach beyond the courts to broader audiences engaging in the production of cultural knowledge aimed at ensuring an open society through the free exchange of ideas. I chose to take that bold risk and discuss the consequences in an essay. See Arriola, *supra* note 12.

18. In Spanish, one’s grandfather is affectionately referred to as *abuelito*. Although Delgado certainly deserves this reference for his prolific scholarly inspirations, some of us owe our presence in the legal academy to the unceasing efforts of another *abuelito*, Professor Michael Olivas. See Michael A. Olivas, *Before Legal Education and Professional Opportunities The Education of Latino Lawyers: An Essay on Crop Cultivation*, 14 CHICANO-LATINO L. REV. 117 (1994). In fact, LatCrit emerged from the annual gathering of Latino Law Professors who joined Michael for dinner at the meeting of the Hispanic National Bar Association, and for a discussion on the progress of increasing the representation of Latinas and Latinos in the legal academy.

19. Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984).

20. Critical Race Theory (CRT) as a movement, originated from the critique of the Critical Legal Studies (CLS) movement’s inadequate attention to race as a category of analysis. See, e.g., Gerald Torres, *Local Knowledge, Local Color: Critical Legal Studies and the Law of Race Relations*, 25 SAN DIEGO L. REV. 1043 (1988).

21. See Delgado, *supra* note 19, at 561.

22. See DELGADO, *supra* note 14.

23. See Olivas, *supra*, note 18, at 131.

24. See Kimberlé Crenshaw, *A Black Feminist Critique of Antidiscrimination Law and Politics*, in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 195 (David Kairys

theory or paradigms in writing like the personal narrative²⁷ proliferated—but only for a moment.

LatCrit I came at a moment when the popularity of CRT teachers and scholars was diminishing and the support for concepts like affirmative action was being actively cut back. Writing models viewed as standard in critical scholarship, whether racial²⁸ or feminist—like the personal narrative—were now being questioned and attacked.²⁹ But another phenomenon, one not connected to external attacks on minorities, also urged the creation of this new critical theory movement which vowed to have a membership as diverse as one could imagine the non-white minorities in the academy to be. That was the glaring absence of a strong community, a critical mass of scholars centered around CRT.³⁰ The people who had talked late into the night in Puerto Rico were in search of collegiality and feedback, intellectual energy and support, things they obviously missed in their home institutions since they were often the only racial minority on the faculty, but which they also lacked in the places where they had expected to receive greater support—at CRT workshops.³¹ A typical complaint was that CRT scholarship had managed to produce a growing body of literature focused only on the African-American experience, while the absence of discourse on Latina/o issues, or issues of the intersections between race and gender, sexuality or class, and the differences and commonalties shared by each group was obvious. Thus the question of “who are we?” has been

ed., 1990) (arguing that conventional antidiscrimination legal theory casts the women as white and the blacks as men and therefore fails to capture the intersectional social identity and special problems of the “black woman”):

25. See Valdes, *supra* note 15; Arriola, *Faeries*, *supra* note 12.

26. See, e.g., Mary Eaton, *Homosexual Unmodified: Speculations on Law's Discourse, Race, and the Construction of Sexual Identity*, in LEGAL INVERSIONS: LESBIANS, GAY MEN, AND THE POLITICS OF LAW 46 (Didi Herman & Carl Stychin eds., 1995); RUTHANN ROBSON, *LESBIAN (OUT)LAW: SURVIVAL UNDER THE RULE OF LAW* (1992).

27. See *supra* note 17.

28. See, e.g., *supra* note 2, and sources cited therein.

29. At the forefront of the attack on the use of storytelling have been two scholars. See Daniel Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993).

30. CRT has of course served as the catalyst for various regional groupings of law professors of color (e.g., the Northeast Corridor, annual Mid-Atlantic Law Professors of Color, Western Law Professors of Color Conference, etc.) which have been very successful in producing smaller communities of scholars who support and inspire each other's works. See, e.g., *Proceedings of the Third Annual Mid-Atlantic People of Color Legal Scholarship Conference Feb. 13-15, 1997 Part I*, 35 J. FAM. L. 1 (1997).

31. Thus, for example, I was invited to put together reading materials for the 8th annual CRT workshop for a panel focusing on the intersections between race and sexual orientation. This planned discussion was the fourth effort to have a discussion on the marginalized experiences of gay and lesbian people of color. Other efforts had been described—by gay and lesbian people of color who had been attending CRT workshops—as dismal failures because of the resistance by CRT folk to confront their internalized homophobia as a factor in the failed discussions.

critical to the forging of this community we call today "LatCrit." For who we are is a diverse group of people, many of whom have long been involved in CRT, others who helped forge the Asian-American scholarship movement,³² some who like myself, have struggled to find a role as Latina/os among feminist and Queer theorists. Many, many Latina/os have wanted and needed a community of colleagues among whom they can develop new ideas and insights about how the law, legal institutions and white male supremacy marginalize the multiplicity of Latina/o identity and experience everywhere. The "Latina/o" experience, as a critical legal theory movement then, provides an opportunity to center at least one of the cultural values that is essential to many Latina/os—that of *comunidad y familia*.³³ Not, however, without the risk of being misunderstood as an identity category in legal thought and scholarship.³⁴

B. On to LatCrit II and the Material Experiences of Diversity: *Un Movimiento Tumultuoso*³⁵

One of the strengths so far, of this growing movement of "LatCrit Scholars" is our coming together as diverse people with diverse agendas trying to define a role for ourselves in the conservative academic profession of the law. We have gathered as tenured professors, tenure-track professors, clinical professors, interdisciplinary scholars and even students. Diversity, of course, is more than theory, it is a practice; a practice of our differences in identities, in ideas about LatCrit theory, in our experiences as lawyers and law teachers and scholars—and our reasons for becoming involved, or not, in this scholarship movement. The commonality we share is in our identities as law professionals who want a community that will support our scholarship interests and our struggles within our home institutions. At the most basic level, our conferences bring together into an intense three-day period a multiplicity of personal, intellectual and political agendas—agendas that could equally complement each other or conflict and collide. Mutual engagement therefore, in the name of *comunidad*, entails the personal risk of being questioned on our motives for a myriad of thoughts, attitudes, behaviors and agendas we may consciously or unconsciously manifest in the short period of intellectual discourse at a conference.

A commitment to the practice of diversity should have us recognize the right of every LatCrit conference attendee to feel safe knowing that their identity, views and agendas may differ from each

32. See Chang, *supra* note 14.

33. Spanish for "community and family."

34. See Guerra, *supra* note 5 (discussed *infra* Part III B).

35. Spanish for "a tumultuous or turbulent movement."

other, in some cases very strongly. Sometimes that awareness may cost us the experience of moving momentarily out of our emotional comfort zones. This message—that the multiplicity of identities and agendas we have as LatCrit scholars could potentially collide at future conferences—was understood well when the women at LatCrit I vocalized their concern that the men and a “male” approach to doing things was setting the wrong tone for starting out as a community. For whatever reason, the setup of the panels, the prominent role of mostly male speakers or the choices of topics left some of the Latinas in attendance feeling unsafe and disconnected to the emergent LatCrit scholarship movement. The lessons from LatCrit I, that there needed to be a greater sensitivity to gender was honored by an opening plenary for LatCrit II which focused on Latinas and the Law as its theme. At a methodological level, the contributions of a gendered consciousness in the planning of the second gathering also produced a conference discussion format aimed at the enhancement of community—*el círculo*, or the “talking circle.”³⁶ Of course, it is axiomatic to the consciousness raising experience for an individual to be forced out of their comfort zone.³⁷ Diversity then, may produce conflict, and conflict may generate discomfort, but it also produces energy and life for the community.

It is not coincidental that the spontaneous moment at LatCrit I which gave birth to the Latinas’ talking circle—that had grown out of the rising swell of female discomfort with the proceedings—produced a critical gender consciousness-raising energy. That energy in turn fed a critical analysis by some decidedly feminist members of the LatCrit II Planning Committee concerning the nature, order and even method of topic presentation for the second annual gathering. My opening keynote described the “talking circle” as a probably unfamiliar method to most people, but one that some of us had used and trusted as a way to minimize the masculinized and cold environment produced by standard conference set-ups—where a panel of

36. See PAULA GUNN ALLEN, *THE SACRED HOOP: RECOVERING THE FEMININE IN AMERICAN INDIAN TRADITIONS I* (1992).

37. See Catherine A. MacKinnon, *Consciousness Raising*, in *FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY* 52-57 (Mary Becker et al. eds., 1994). Feminist political organizing by women in the seventies used the technique of consciousness raising which involved women sharing stories about seemingly intimate aspects of their lives that illustrated the depth of male oppression in their homes, communities and society at large. The discussion in Part III C, which centers on our cultural differences based on religion, resonates to the message of the feminist movement—that an examination of one’s personal life experiences may produce politicized consciousness about the value or the damage of social and cultural attitudes which have influenced one’s life experiences (e.g., growing up Catholic, hearing the constant damnation of homosexuals, and having these experiences influence one’s emerging political consciousness about the difficulties of being accepted as gay or lesbian and one’s decision to devote energies towards social justice causes against homophobia, and other examples of institutionalized oppression).

a few “on high” speak to the lowly “audience below.” Or, even produced by standardized teaching styles, such as the classic Socratic method inherited from the white male academy. Having speakers and listeners at LatCrit II sit on the same physical level in the form of a circle was a very anti-patriarchal and anti-hierarchical method.³⁸ But, it was also a method that signaled the importance of the metaphor of the circle as drawing us in, of being included and encouraging us to be *en comunidad*. Drawn from the example of talking circles common among Native-American tribes, the image of the circle evokes support, community, warmth and coming together. Or, as Native-American feminist Paula Gunn Allen has described it, it is like life—we all have “[our] place in it.”³⁹

1. *Multiplicity of Identities: Multiplicity of Agendas*

At an organizational level, LatCrit’s future challenges will be in maintaining a community where identities and agendas, both personal and political, can be communicated, understood and accepted. We have had experiences so far that promise community but that also encourage a strong commitment to conflict resolution. At LatCrit I, for example, I recall a break on the first day of panels when a female attendee tried to get the hotel staff to stop serving grapes as part of the refreshments. A seemingly innocuous gesture was greatly imbued with significance, but only to those who understood the irony of starting a discourse on the marginalization of Latina/o interests in American culture and law, at a hotel in California—the historic setting where this nation witnessed the Seventies’ boycott against the purchase and consumption of grapes led by labor hero Cesar Chávez.⁴⁰ At least to the Latina/os of Mexican descent, the serving of grapes, symbolic of the oppression of Mexican migrant farmworkers in the Southwest, at a conference addressing discrimination against Latina/os, seemed very ironic and offensive. To other attendees, however, the grapes would have meant little or nothing at all, for they had no basis from which to relate to the historic boycott. Their sense of a Latina/o identity rested on far different regions of the U.S. and patterns of marginalization and discrimination that differed greatly from that of Mexicans in the Southwest and/or immigrant agricultural laborers. The grapes were never removed. This story illustrates one of the initial problems faced by a

38. As Stephanie Wildman noted at LatCrit I, the creation of this community urges us to consider how desperately we need more inclusive protocols for conferences, and that we literally “need to rearrange the furniture.” See Stephanie M. Wildman, *Reflections on Whiteness and Latina/o Critical Legal Theory*, 2 HARV. LATINO L. REV. 307 (1997).

39. GUNN ALLEN, *supra* note 36.

40. See, e.g., FOREIGNERS IN THEIR OWN LAND, *supra* note 6, at 262-263.

community of scholars presented with the question of "who we are" as Latina/os. It illustrates the problem with assuming any homogeneity in the interests or experiences of those we call or who self-identify as "Latina/o." It signals the potential for our diverse interests, experiences and identities to become the source of miscommunication, misunderstanding and conflict.

In fact, LatCrit II had some conflicts which centered on everything from the personal to the political, and from the personal which became political.⁴¹ The answer to "who is Latina/o" is ultimately a deeply personalized set of experiences, some we share in common with other Latina/os based on race, color, ethnicity, language, class, regional, educational and moral experiences, and some of which can be sharply different and potentially conflicting. In these formative years of creating community, the diversity of who we are, and the conflicts we have shown ourselves to be capable of should encourage us to commit not only to the theory and practice of conflict resolution but also to the values of honesty and compassion in our dealings with each other. One may legitimately ask: why is this important at all? Because as trainers of human rights organizers in conflict-ridden parts of the world have learned, it takes systematic work on ourselves and on the oppressor that lives inside of us to learn how to confront the elements of racist, homophobic, classist, and sexist societies.⁴² I am alluding to the need for taking our theorizing about systemic discrimination to the *praxis* level. This means collectively demanding of ourselves that we find appropriate tools for enhancing our coalitional effectiveness—methods and practices designed to help us root out those unconscious oppressive beliefs and attitudes which endanger our communal goals by dividing us against each other. That risk is enhanced when we share physical space with our colleagues, who are also oppressed, but whose sense of what it means to be victimized may be different from our own experience. To speak of the need for such methods and tools is to assume that the societal and individualized impact of racism, or sexism, or homophobia, or classism, and other "isms" is great and deep.⁴³ So great that no one escapes its impact. This means that as

41. See, e.g., Reynaldo Anaya Valencia, *On Being an "Out" Catholic: Contextualizing the Role of Religion at LatCrit II*, 19 CHICANO-LATINO L. REV. 449 (1998), Nancy Ota, *Falling From Grace: A Meditation On LatCrit II*, 19 CHICANO-LATINO L. REV. 437 (1998), Emily Fowler Hartigan, *Disturbing the Peace*, 19 CHICANO-LATINO L. REV. 479 (1998) (each essay is discussed *infra* at Part III C).

42. See Guerra, *supra* note 5 (discussed *infra* at Part III B.).

43. See Troy Duster, *Individual Fairness, Group Preferences, and the California Strategy*, 55 REPRESENTATIONS 41 (1996) (providing an incisive description of the ideological terrain of the contemporary anti-affirmative action rhetoric). See also Elvia R. Arriola, *Law and the Healing Warrior: The "Isms" in Our Bodies, Our Selves, Our Communities* (Aug. 1998) (unpublished manuscript, on file with author) (arguing that to thrive in their work, social justice activists and/or scholars must heal the wounds of re-

survivors of cultural oppressions we often learn to bury the pain of our victimization in our unconscious minds.⁴⁴ But when we are in safe emotional spaces for feeling that victimization, like the setting of a LatCrit conference, supposedly among like-minded souls, we are more likely to act upon the feeling "I have been victimized." We may even find ourselves doing this among others who may or may not have the same sense of what it means to be a victim of discrimination.⁴⁵

I cannot help but see LatCrit as exciting for the critical awareness of discrimination and marginalization we share with each other in our writings and conferences; but I also see it as risky for the sharp feelings like anger, hurt, joy, and the reflections on one's buried pain and opportunities for healing it may trigger. So far, LatCrit has managed to create the space to engage in left brain (analytical) work that can trigger right brain (emotional) responses. But, so far, we have not implemented methods for consistently addressing the possibility for tangible emotional and uncontrollable experiences generated by the intellectual engagement.

For example, on the opening day of LatCrit II, one of our plenary Latina speakers whose life experiences as a migrant farmworker's daughter has influenced her work as an expert on agricultural law, unexpectedly accessed memories filled with hurt and pain when Antonia Castañeda—who has interviewed *Tejana* farmworkers⁴⁶—offered to help make the point about the oppression of migrant farmworkers by pulling out of a bag a short-handled hoe she

jection based on core features of their personal identities).

44. See Charles R. Lawrence, III, *The Id, The Ego and Equal Protectionism: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

45. Both LatCrit I and II had volatile incidents that illustrated this problem. At LatCrit I, for example, the emotional safety of a conference about "Latinos" brought about a certain amount of "like-mindedness" for both men and women. Yet by the second day a vocal group of Latinas expressed their anger and feelings of separation induced by the masculinized environment they perceived in the tone and setup of the conference. At LatCrit II, an angry Professor Leslie Espinoza stood up with her hands akimbo in the middle of a conference room where everyone sat in a circle. She confronted an already standing Professor Beto Juarez to make a point about the unconscious sexism in his "lecturing" style of sharing, amidst a very heated discussion centering on religion, sexuality, progressive legal education and community. Obviously, such moments of personal dissonance with what it means to be "victimized" engage the greatest moments of communal risk, when a hurt and angry conferee confronts another on his/her "sexist" or "racist" (or other) behavior and maybe raises a conscience, but also may engender feelings of defensiveness and hurt that endanger that person's wanting to stay in community. I see these incidents as both liberating and dangerous in that without appropriate tools for processing how and why our emotional boundaries were loosened we risk being misunderstood as merely having lashed out in personal attack against our supposed friends and allies in community. I speculate we do this because it is less risky to call an ally at a crit conference a racist or sexist than to express similar feelings in our home institutions.

46. See Antonia Castañeda, *Language and Other Lethal Weapons: Cultural Politics and the Rites of Children as Translators of Culture*, 19 CHICANO-LATINO L. REV. 229 (1998) (discussed *infra* Part III A).

had brought for display.⁴⁷ The speaker was momentarily moved to tears and speechlessness at the sight of an implement that had evoked painful memories of harshness in work and the quality of life endured by her parents, siblings and herself. For several minutes there was hardly a dry eye in the room. Another incident occurred on the third day of LatCrit II, when a volatile discussion and similarly unexpected hurtful memories of how Catholicism had contributed to a period of suicidal depression for a gay *hermano* (brother), were triggered by a non-Latina Buddhist attendee's criticism of the Catholic religious icons that filled the room where we met. These scenarios certainly encourage us to think that as largely "left brain"⁴⁸ people engaging in critical scholarship which evokes "right brain"⁴⁹ responses we don't always have the answers, the tools and experience for knowing how to create safe space for critical discourse. Thus, many of us hope that LatCrit will differ from CRT by attending early on to the risks of trying to create community without paying attention to the problems in relationships that can destroy community. Many share the collective hope that ten years from now we will be large and expansive in numbers and not nearly defunct because our identity politics collapsed under the weight of personal anger, hurts, and feelings of disconnection and disillusionment. The fact is, our personal and political agendas will be entwined in LatCrit as a community *and* as an intellectual engagement. This is both risky and exciting. Our developing community embraces scholars who strongly advocate coalitional politics⁵⁰ in these revolutionary political times of backlash and retrenchment on values

47. Members of the LatCrit II Planning Committee invited conferees to help create a sense of community in our first meeting room by bringing any object, photo or item that helped them celebrate their identity and cultural roots.

48. These are popularized notions of the scientific studies of conscious awareness and its relationship to the human brain which established that our brain governs the central nervous system in a crossed over fashion; the left/major hemisphere regulates functions like speech and language which are associated with thinking and reasoning; meanwhile the right/minor hemisphere, the non-speaking half, processes experiences through feelings. For a summary of the studies, see BETTY EDWARDS, *DRAWING ON THE RIGHT SIDE OF THE BRAIN* 26 (1979).

49. *Id.*

50. See Valdes, *supra* note 15; see also Elvia R. Arriola, *Law and the Gendered Politics of Identity*, 8 HASTINGS WOMEN'S L.J. 1 (1997); Sumi Cho, *Essential Politics*, 2 HARV. LATINO L. REV. 433 (1997); Mary Coombs, *LatCrit Theory and the Post-Identity Era: Transcending the Legacies of Color and Coalescing a Politics of Consciousness*, 2 HARV. LATINO L. REV. 457 (1997); Barbara J. Cox, *Coalescing Communities, Discourses and Practices: Synergies in the Anti-Subordination Project*, 2 HARV. LATINO L. REV. 473 (1997); Michael Luis Principe, *A Reason for LatCrit Unification: Reflections on Comparative Efforts to Curtail Political Opposition and Terrorism*, 2 HARV. LATINO L. REV. 297 (1997) (urging the linkage between inter-racial coalition and the ability fend of growing examples of racial terrorism); Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 HARV. LATINO L. REV. 495 (1997).

like diversity in legal education. Yet we all know that the term "coalition" implies diverse communities made up of diverse individuals, not splintered groups with fractious individuals and identities that can't mount a fight against the real oppressors because they've forgotten that "we are all part of one another."⁵¹

2. *Practicing Diversity for the Sake of Community: It Soon
"Becomes a Part of You"*⁵²

Of course, conflict resolution is more than a theory. Like the diversity that occasions conflict, conflict resolution is a practice that *takes* practice. As we meet each other and hear our voices at our conferences, we may encounter unexpected sources for expanding our ability to identify, tolerate and/or accept differences. In this sense, harmony may come only from knowing that we support the expression of our dissonance, in voice, attitudes, experience, commitment, and ideas about how to sustain ourselves as a viable scholarship movement.

A commitment to conflict resolution may force us to consider a discourse on principles for staying in community even as we experience the *praxis*⁵³ side of our theories in the very company of our colleagues. If indeed our end goal is to have community, then we must commit to not walking away when conflict arises, to not personalizing too much our individual and communal mistakes in judgment, to being honest and compassionate with each other in our confrontations, and to trusting in the community's support for continued hope and healing. As a powerful spokesperson for coalitional politics once said,

*[I]t stand together is going to be hard. Our movement is composed of all kinds of groups and all kinds of individuals. It is certain that many of us will make all kinds of mistakes. It will become very tempting to wish that this group or that group, this individual or that individual were simply not among us.*⁵⁴

51. WE ARE ALL PART OF ONE ANOTHER, A BARBARA DEMING READER (Jane Meyerding ed. 1984) [hereafter DEMING READER] (assembling a collection of essays and talks by a white feminist civil rights activist and advocate of coalition politics, whose work was described by black lesbian feminist activist and writer Barbara Smith as a demonstration of how "activism and the act of writing undeniably connect and can result, not in rhetoric or impenetrable theory, but in the clear and accessible telling of a life," and that the statement "we are all part of one another" challenges us to consider "that our oppressions and chances for freedom are inextricably connected."). *Id.* at xii.

52. *Id.* at 85.

53. The term "praxis" as been defined in Critical Race Scholarship as practice grounded in critical theory. See generally Laura Padilla, *LatCrit Praxis to Heal Fractured Communities*, 2 HARV. LATINO L. REV. 375 (1997); see also Yamamoto, *supra* note 50.

54. DEMING READER, *supra* note 51 at 167.

Such models of communal, honest, patient, trusting confrontation with difference have been identified by feminist cultural theorist Riane Eisler as essential to saving our world from the unbridled cruelty of social values which unconsciously perpetuate masculinized values of patriarchy, like aggression and competition rather than partnership and support.⁵⁵ But as I noted in my keynote for LatCrit II, I believe the concept of LatCrit is infused with feminist method by appealing to a scholarship movement which encourages community, activism and dreams of social justice for ourselves and for the marginalized person everywhere.

3. *Mujeres Encolerizadas*: Latina Law Professors Celebrating Our Gender-Based Differences

At LatCrit I, a spontaneously created Latinas talking circle forced upon the conferees a painful reality—of how progressive scholars can be the unwitting victims of their own internalized sexism. On day two, an impassioned Margaret Montoya invited the Latinas to caucus in a gender consciousness raising session.⁵⁶ That evening we gathered on a patio of the hotel in La Jolla, California. Some of us were *adoloridas y encolerizadas*—hurt and angry women. I remember looking out on a dozen or so women's faces, with shades of skin and hair color both lighter and darker than my own olive complexion and dark brown hair, and heard about the many paths we had taken from law school, to law practice, to teaching and to balancing personal lives with tenure battles. I understood then the meaning of having a consciousness over such intersecting factors as race, ethnicity, skin color, language, sexuality, class and so on. In this empowering session, some of us voiced for the first time in the company of scholars—with whom we could identify—some of the painful experiences we had had or were still enduring in our institutions. We understood in each other's stories how vulnerable and isolated we often felt among our mostly Anglo white colleagues, whether male or female. In our shared pain and tears, we saw our differences as women, teachers, clinicians and professors, tenured and untenured. The energy shift that grew out of the Latinas' talking circle, and that produced an important experience in consciousness-raising, also helped some of us access that significant question for LatCrit discourse centering on "Who Are We, and Where Are We as Latinas?" Shortly after LatCrit I, the progressive legal community lost a sister colleague, Trina Grillo,⁵⁷

55. See generally RIANE EISLER, *THE CHALICE AND THE BLADE: OUR HISTORY, OUR FUTURE* (1987).

56. See *supra* notes 36-37 and accompanying text.

57. See, e.g., Trina Grillo, *AntiEssentialism and Intersectionality: Tools to Disman-*

to the ravages of cancer, and a few people, heartened by the energy of LatCrit I talked of planning a Latinas and the Law Conference, maybe to honor Trina Grillo as a Latina critical scholar. The discussions focused on the need for creating a sense of community among Latina law professors despite our "forty-plus" in number throughout the legal academy.⁵⁸ Somehow Trina's death and the spirit of LatCrit I and the talking circle had opened our eyes to the need for connection and community with each other as progressive, *feminista* and Latina law professors.

Sadly, the Latinas and the Law Conference never materialized. I, for one, have not given up the dream that we will one day have a Latinas and the Law Conference inspired by the vision of strengthening our ties to women of color everywhere. I imagine workshops, panels and the production of a massive bibliography which examines the linkages between law, policy, the socio-economic status of Latinas and the gender role expectations impressed upon women by Latinismo—the specific gendered values for women in Latin culture, values which in some contexts render us politically useless. As one who teaches and writes about women's and minority issues with a historical perspective, I am frequently obsessed with a gnawing wonder as to why my own identity, as a woman of an ethnic group which has been critical to the labor and economic history of this country is so absent in American scholarly literature? What else, beyond the obvious history of race relations in this country, explains our drastically low representation in academia, law, business and politics? Where do we begin to unravel the reasons for the total void in women's history about the Latinas of our past who were noted for their sharp intellect, wit and quest for knowledge? Why don't more of us know that Latina women's history has people in it like the seventeenth century's Mexican nun Sor Juana Inéz de la Cruz—whose brilliance might have never been recognized had it not been, ironically, for her defiance of the Church's position against a woman's right to education and intellectual pursuit?⁵⁹ Why is it that the model image for Latinas is most closely aligned with the motherly, subservient role of the Virgen Maria and not that of a passionate thinker and writer like Sor Juana Inéz?⁶⁰ There is obviously a historical puzzle here to piece together, about when the history of

the Master's House, 10 BERKELEY WOMEN'S L.J. 16 (1995).

58. See Hernández-Truyol, *supra* note 15, at 397-99.

59. Feminist studies of Sor Juana are emerging. See FEMINIST PERSPECTIVES ON SOR JUANA INÉS DE LA CRUZ (Stephanie Merrim ed., 1991). Apparently only one Mexican-American woman has presented an English translation of one of Sor Juana's letters to her father confessor re-affirming and defending her right to study. See ALICIA GALVÁN, AUTODEFENSA ESPIRITUAL (*forthcoming* 1998).

60. An English compilation of some of the works of Sor Juana Inéz de la Cruz is available in A SOR JUANA ANTHOLOGY (Alan S. Trueblood trans., 1988).

men and that of women in our Latino cultures conspired to produce the systematic means for assuring women's enduring second-class status in relation to men. Yet, strong women, of all classes and occupations are a part of our unexamined past. But we don't know more about them, about the ways they fought institutionalized oppression, and we haven't generated the collective urge to reconstruct the evidence of our female intellectual *and* activist heritage.⁶¹

Of course, before we are inspired to create this collective urge we have to confront some painful realities about the value systems that deeply influence our lives, more or less, depending upon our class, education and moral upbringing—and obviously depending on the nuanced variations of the different cultures we represent, such as Puerto Rican, Cuban, Mexican, etc. We are confronted with the daunting task of deconstructing the term "Latinas," which itself comprises a very diverse social group. This diversity arises, minimally, from such factors as culture and family dynamics, color, class, and racial diversity, language differences, citizenship and/or resident status, education, sexuality and life occupation.⁶² To speak of the Latina is to know that we are undocumented immigrants,⁶³ peasants,⁶⁴ borderland women,⁶⁵ housewives and housemaids,⁶⁶ wage-earners in pink-collar ghettos,⁶⁷ in garment industries, in the

61. The example of revolutionary conditions as a generator of female gender consciousness is seen in the activism of indigenous peasant and working-class women in Central America. See, e.g., DON'T BE AFRAID GRINGO: A HONDURAN WOMAN SPEAKS FROM THE HEART, THE STORY OF ELVIA ALVARADO (Medea Benjamin trans. & ed., 1987); HEAR MY TESTIMONY: MARIA TERESA TULA, HUMAN RIGHTS ACTIVISTS OF EL SALVADOR (Lynn Stephen trans. & ed., 1994); I, RIGOBERTA MENCHÚ: AN INDIAN WOMAN IN GUATEMALA (Elisabeth Burgos-Debray ed., Ann Wright trans., 1983).

62. See, e.g., THE SEXUALITY OF LATINAS (Norma Alarcón et al. eds., 1993).

63. See HELENA MARÍA VIRAMONTES, UNDER THE FEET OF JESUS (1995) as a creative literary fictional source for understanding the plight of undocumented immigrant farmworkers; see also Maria L. Ontiveros, *To Help Those Most in Need: Undocumented Workers' Rights and Remedies Under Title VII*, 20 N.Y.U. REV. L. & SOC. CHANGE 607 (1993).

64. See THE SEXUALITY OF LATINAS, *supra* note 62.

65. Women who work along the U.S.-Mexico border are known to experience work on the Mexico side in U.S. owned factories and on the U.S. side in domestic service. See NORMA IGLESIAS PRIETO, BEAUTIFUL FLOWERS OF THE MAQUILADORA: LIFE HISTORIES OF WOMEN WORKERS IN TIJUANA (Michael Stone & Gabrielle Winkler trans., 1997).

66. See Vicki L. Ruiz, *By the Day or Week: Mexicana Domestic Services in El Paso, in "TO TOIL THE LIVELONG DAY" AMERICA'S WOMEN AT WORK 1780-1980* 269-83 (Carol Groneman & Mary Beth Norton eds., 1987); Vicki L. Ruiz, *A Promise Fulfilled: Mexican Cannery Workers in Southern California*, in UNEQUAL SISTERS: A MULTICULTURAL READER IN U.S. WOMEN'S HISTORY 264 (Ellen Carol DuBois & Vicki L. Ruiz eds., 1990).

67. See, e.g., DENISE CHÁVEZ, THE LAST OF THE MENU GIRLS (1986) for a down-to-earth narrative of working-class Latinas in the Southwest; see also SANDRA CISNEROS, THE HOUSE ON MANGO STREET (1984) (a Latina's working-class childhood in Chicago); HELENA MARÍA VIRAMONTES, THE MOTHS, AND OTHER STORIES (1995).

blue-collar trades,⁶⁸ on the streets as sex workers, cops⁶⁹ and gang members,⁷⁰ middle-class careerists, and professionals; we include heterosexuals⁷¹ and lesbians,⁷² the university student who has never known poverty⁷³ to one who has always known it. She may be a government worker,⁷⁴ a nun,⁷⁵ a judge, or a lawyer,⁷⁶ the owner of a small business and the highly paid consultant to a corporation. Latinas include assimilated and non-assimilated Mexicanas⁷⁷ or Puerto Riqueñas⁷⁸ or Dominicanas,⁷⁹ or Cubanas;⁸⁰ from those who don't know Spanish, to those who use it and other dialects or cultural habits to preserve their identity and their racial/ethnic pride.⁸¹ While we are different,⁸² however, many of us do share a common value

68. See Elvia R. Arriola, "What's the Big Deal?" *Women in the New York City Construction Industry and Sexual Harassment Law, 1970-1985*, 22 COLUM. HUM. RTS. L. REV. 21 (1990).

69. See MONA RUIZ, TWO BADGES: THE LIVES OF MONA RUIZ (1997) (a Latina street cop's portrayal of life experience in and around barrios and their gangs, before and after joining the police force).

70. *Id.*

71. See DAUGHTERS OF THE FIFTH SUN: A COLLECTION OF LATINA FICTION AND POETRY (Bryce Milligan et al. eds., 1995) (noting the intent of the collection to differ from the lesbian orientation of predecessor collections by Latina writers like Gloria Anzaldúa and Cherríe Moraga).

72. See CHICANA LESBIANS: THE GIRLS OUR MOTHERS WARNED US ABOUT (Carla Trujillo ed., 1991); CUENTOS: STORIES BY LATINAS (Alma Gómez et al. eds., 1983).

73. See JULIA ÁLVAREZ, HOW THE GARCÍA GIRLS LOST THEIR ACCENTS (1991) (on the childhood memories of an upper-class Dominican immigrant to the U.S.).

74. See, e.g., *Yñiguez v. Arizona*, 117 S.Ct.1055 (1997) (claim by Spanish-speaking employee that English Only amendment to state constitution effected national origin discrimination), *vacated sub nom. Arizonans for Official English v. Arizona*, 65 U.S. L. W. 3647 (plaintiff's having resigned her state job rendered case moot).

75. See, e.g., ADA MARÍA ISASI-DÍAZ & YOLANDA TARANGO, HISPANIC WOMEN, PROPHETIC VOICE IN THE CHURCH (1988).

76. See Maureen Ebben & Norma Guerra-Gaier, *Telling Stories, Telling Self: Using Narrative to Uncover Latinas', Voices and Agency in the Legal Profession*, 19 CHICANO-LATINO L. REV. 243 (1998).

77. See OFELIA DUMAS LACHTMAN, A SHELL FOR ANGELA (1995) (a fictional exploration of the emotional and spiritual consequences of a woman who rejects her Mexican heritage and family); DEMETRIA MARTINEZ, MOTHER TONGUE (1994) (exploring the role of a relationship between an assimilated Mexican-American and a political refugee of El Salvador in the development of the woman's personal identity).

78. See ESMERALDA SANTIAGO, CUANDO ERA PUERTORIQUEÑA (1994) (translated in English the title means, "When I was Puerto Rican") (personal history of pre-migration childhood years of a young Puerto Rican woman).

79. See JULIA ÁLVAREZ, IN THE TIME OF THE BUTTERFLIES (1994) (story of four sisters growing up under the dictatorship of General Trujillo in the Dominican Republic).

80. See CRISTINA GARCÍA, DREAMING IN CUBAN (1992) (providing a fictional lens into the identity of Cubana-Americans).

81. Berta Hernández-Truyol provides personal narratives of reactions by Anglo colleagues to her intentional switching from acceptable "normative" English to accented English to heighten people's awareness of the dominant culture's unconscious desire to discriminate by seeking to repress the sounds of dissonance. See, e.g., Hernández-Truyol, *supra* note 15.

82. Our identity as "women of color" provides a powerful vantage point from which to examine the law's role in perpetuating structures of violence within institutional set-

system, one which can be the source of a proud identity as well as the source of our perceived and self-constructed limitations.

For example, the Latinas who know the influence of Catholicism and Christianity know that we are often raised with conflicting messages of who we are and what we should be. The bodies of our *mestiza-india*⁸³ sisters are treated like beasts of burden—we are the object of men's sexual needs, we are whores if we know too much about sex, our menstruation is a curse rather than a blessing and symbol of our creatrix role in life, while our men are taught to possess and abuse our bodies. Some of our female elders, and we ourselves were taught by religious dictate that our bodies are vessels that do not belong to us but rather to the natural laws of reproduction. Our stereotyped role is that of a submissive, naive, rather childlike "sainted mother" whose purity must be protected by her husband or her male relatives.⁸⁴ If in fact some of these generalizations apply to us regardless of our Latina identity and if some of us agree that such attitudes deeply affect our ability to empower ourselves in our homes, our communities and in the halls of government and justice, then seriously, we need to create the space for a consciousness-raising agenda aimed at understanding the interplay of such values, their benefits and burdens in our lives and those of the women of our communities.

To my intellectual *compañeras*—we cannot achieve self-determination and/or self-direction in the public or private spheres of our lives without self-knowledge of who and where we are. As a small and dwindling number of Latina law professors, we can begin to empower ourselves by committing to a collective multi-year project aimed at validating the existence of Latinas everywhere. Minimally, we should start with placing ourselves in the history of women in the legal academy. This task is not about minimizing the important contributions to date of important critical race feminists;⁸⁵

tings like the American workplace, when certain labor laws are interpreted to deny the importance of "minority identity" or agency over presumably more important liberal democratic notions like "collective rights." An incisive analysis of the role that the perspective of women of color can play in critiquing those interpretations of American labor laws which result in more "structural violence" and/or institutional subordination, than true equity or internal democracy, is in Elizabeth M. Iglesias' *Structures of Subordination*, *supra*, note 14.

83. *Mestiza* or *meztizaje* refers to the crossbreeding between European Spanish Conquistadores and Native indigenous women whose relationship gave birth to a new racial breed of Mexicans and other Latino-Americanos. For a radical deconstruction and reconstruction of the concept "mestiza" see GLORIA ANZALDÚA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* 76-101 (1987).

84. See JEANETTE RODRIGUEZ, *OUR LADY OF GUADALUPE: FAITH AND EMPOWERMENT AMONG MEXICAN-AMERICAN WOMEN* 70-73 (1994).

85. See, e.g., Adrien Katherine Wing, *Critical Race Feminism and the International Human Rights of Women in Bosnia, Palestine and South Africa: Issues for LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 337 (1996-1997) (and works cited therein).

it is about filling the void in existing feminist, Queer or race/crit scholarship of writings by or about Latinas. It was, sadly, no surprise when I recently scanned multiple sources of one of the largest Latina/o research libraries in the country⁸⁶ and could not find a single source in print which identified the accomplishments and identities of Latina law professors. My own library liaison was stunned by his search—one would think, he said, that there would be some directory identifying Hispanic or Latina/ educators in general? But there was nothing. It is not so amazing then that one reason why we need a Latinas and the Law Conference is that we don't even know who we are, where we are and what we are doing with our intellectual gifts and talents.

The first goal of a long term literary project should give credit to some of the forerunner Latina law professors who have already contributed to the growing body of literature in the law that weaves in the Latina experience.⁸⁷ Latina legal scholarship needs to be our starting point because, by validating our own professional identities we help destroy the damaging stereotypes that burden Latinas in all sectors of U.S. life. Sadly, in the minds of the average American, whether female or male—we are most often typecast as housewives, single parents, welfare recipients, maids or cleaning ladies; we are workers in pink collar ghettos and “illegal aliens.”⁸⁸ We are hardly first thought of as trial lawyers or as the educators of students who will be among the elite lawyers or politicians of this nation. Undoubtedly, many of our Latina sisters do find themselves in such non-lawyer jobs enduring experiences like losing family members to raids by *la migra*,⁸⁹ sexual harassment by supervisors, and psychological abuse by employers who justify low wages for domestic service by threatening to report undocumented workers to the Immigration and Naturalization Service.⁹⁰ But unfortunately, this is too often the *only* image members of the Anglo/white dominant culture

86. The Center for Mexican-American Studies at the University of Texas.

87. See, e.g., Leslie G. Espinoza, *Multi-Identity: Community and Culture*, 2 VA. J. OF SOC. POL'Y. & L. 23 (1994); Grillo & Wildman, *supra* note 14; Hernández-Truyol, *supra* note 15; Montoya, *supra* note 14; Yvonne M. Cherená Pacheco, *Latino Surnames: Formal and Informal Forces in the United States Affecting the Retention and Use of the Maternal Surname*, 18 T. MARSHALL L. REV. 1 (1992); Padilla, *supra* note 53; Celina Romany, *Ain't I a Feminist?*, 4 YALE J. L. & FEM. 23 (1991).

88. See Kevin R. Johnson, “Aliens” and the U.S. Immigration Laws: *The Social and Legal Construction of Nonpersons*, 28 U. MIAMI INTER-AM. L. REV. 263 (1996-97).

89. This is the colloquial shortened phrase for the Immigration and Naturalization Service (INS) among undocumented Mexicans and other Latina/os who have managed to cross the now heavily militarized U.S.-Mexico border in search of a better life. See TIMOTHY J. DUNN, *THE MILITARIZATION OF THE U.S.-MEXICO BORDER 1978-1992* (1996); Elvia R. Arriola, *LatCrit Theory, International Human Rights, Popular Culture and The Faces of Despair in INS Raids*, 28 U. MIAMI INTER-AMER. L. REV. 245 (1996-97).

90. See Ruíz, *A Promise Fulfilled*, *supra*, note 66.

have of Latinas. Many professional Latinas know well the experience I have repeatedly had of being mistaken in their office suites for the secretary, rather than the boss. The invisibility of our identities engenders broader patterns of disparate treatment which elude the law because of unconscious patterns of sexist racism.⁹¹ These are the same attitudes that render us "unequal and unfit" in the eyes of our colleagues in the elite profession of the law.⁹² We therefore owe it to ourselves at least, to confront the construction of the identity Berta Hernández-Truyol so aptly described as *las olvidadas*.⁹³

C. "Latina/Latino": The Pleasure and Danger of a New Identity Category

A few months ago, shortly before LatCrit II in San Antonio, I chatted with a white male colleague—who writes in one of my fields of interest and who was visiting UT Law School for the year—about my involvement in a new scholarship movement called Latina/o critical legal theory. My colleague literally scratched his head, widened his eyes and said with a big grin, "Latinos and a critical theory? That strikes me as somewhat absurd; where do you begin to draw the parameters for such an identity category?" I realized then the challenge we were about to face as a scholarship movement.

Of course, quickly on the defensive and yet fully understanding some of his confusion, I responded that the Latina/o category was quite defensible if it was thought of as an identity label produced by personal and social construction. I pointed out that significant portions of the American population were quite comfortable with the label Latina/o understanding that it did not deprive them of their national heritage as Puerto Rican, Cuban, Mexican, Salvadoran, and so on. I suggested that factors shaping the "Latina/o" experience varied, but at a minimum, race and ethnicity issues reflected a close association to CRT. Of course, I suggested that one reason for the emergence of LatCrit also stemmed from perceived differences from CRT, differences that called for theories of legal analysis that could appreciate the intersectionality of one's identity as Latina/o with factors that give rise to unique forms of racism against us—different not only from that against African-Americans, but even sometimes between different Latino ethnicities. I offered the example of the unique patterns of racism against Tejanos in the Southwest versus

91. See Elizabeth M. Iglesias, *Rape, Race and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality*, 49 VAND. L. REV. 869 (1996).

92. See Arriola, *supra* note 11.

93. Spanish for "the forgotten women." See Berta Esperanza Hernández-Truyol, *Las Olvidadas I: Gendered In Justice/Gendered Injustice—Latinas from Invisibility to Empowerment*, 2 U. IOWA J. GENDER, RACE & JUSTICE (forthcoming 1997).

that against Puerto Ricans in the Northeast. While one group, whether citizen or not, knows what it means to be targeted because of skin color by INS Border Patrol agents, the other does not—because of Puerto Rico’s colonial status—yet both groups experience language discrimination that arises from U.S. Anglo cultural dominance. Meanwhile, as racial minorities, the skin color discrimination against Latina/os may overlap in housing, employment and education no different from that against African-Americans. But again, even here, for Latina/os it is not always about skin color—it is frequently a Spanish surname that will trigger the disparate treatment. I urged him to consider at least the critical role of language and race as significant intersectional factors in Latina/o discrimination, a statement that puzzled him even more as he argued, “why should speaking a foreign language be the basis for an identity category?”⁹⁴

What I ultimately realized was that my colleague had not quite accepted the basic premise to my answer—that an essential element to the inquiry being called Latina/o critical legal theory is a relentless attention to a theory of multiple consciousness. And, that some acceptance of the notion that Latina/o critical legal studies *could* exist, as long as there is a collective stance or perspective taken by a group of scholars vis-a-vis the topic Latina/os.⁹⁵ Which there is—*ergo* LatCrit I, II and LatCrit III, being held at the University of Miami.

In this vein, the questions we have asked beyond “Who Are We?” are explored in greater detail below—how are we constructed as Latina/os, or non-Latina/os and why, or how do we experience both external and internal social, political and legal constructions of our identities? These were some of the questions that continued the conversation we initiated, tentatively, at LatCrit I.

94. Of course, one frustrating point of his comment was that he of all people, as a scholar on gay rights issues, should understand that writing from the subject position has been critical to the evolution of a viable “gay/lesbian/Queer” civil rights scholarship and jurisprudence, a topic that at one time judges and scholars viewed as virtually impossible to analyze from the standpoint of discrimination, because, at stake was a question of conduct, rather than status. This problem was the focus of early “gay rights scholarship.” See, e.g., Elvia R. Arriola, *Sexual Identity and the Constitution: Homosexual Persons as a Discrete and Insular Minority*, 14 WOMEN’S RTS. L. REP. 263 (1988).

95. The project is ambitious. It focuses not only on the placement of Latina/os in American law, policy and society, but it also attempts on a practical level to integrate in a communal discourse a very diverse group of scholars and identities with diverse perspectives, both theoretical and experiential on the topic of Latina/os. See discussion at Part II B *supra*; see also Francisco Valdes, *Foreword: Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997).

III. AT THE SCHOLAR'S KITCHEN TABLE: FEEDING OUR HUNGRY HEARTS FOR INTELLECTUAL GROWTH AND COMMUNITY

Twenty six pieces were produced for this LatCrit II Symposium issue—although many more people attended the conference, which was held in San Antonio, Texas with the support of St. Mary's Law School. Their themes have been clustered around the issues which have dominated the discourse of LatCrit from the beginning, such as the social construction of race and gender, and the significance of our subjective experiences and positions within the academy to LatCrit theory in the first and second clusters. The third cluster of essays advances a volatile conversation that was initiated on the themes of religion and spirituality on Day 3 of LatCrit II—a conversation which, in my opinion, is critically linked to a conversation we have not sufficiently explored yet—on class and unconscious elitism. I have titled this section "At the Scholars' Kitchen Table," in remembrance of the cozy atmosphere the local members of the Planning Committee managed to create for Day 1 of LatCrit II, which carried the theme of "Latinas and the Law: Who are We?" For a few hours, a wooden table, some Mexican paper maché flowers, Indian artifacts and family photos set upon a colorfully blanketed table transformed a large hotel conference room into a reminder for our female panelists of the important role *la cocina* (the kitchen) played in our homes, for it is the place where our families, and especially our women, gathered for cooking, meals, comfort, guidance and *charla* or *chisme* (chatting or gossip).

A. Cluster I—Race, Ethnicity and Gender as Anti-subordination Identities: LatCrit Perspectives

The discussions at LatCrit I focusing on the relationship between CRT and LatCrit were initially fraught with feelings of tension and liberation for the Latina/o law professors. One point of liberation resulted from the public realization that CRT had evolved into a discourse which too narrowly focused on the African-American experience, an uncomfortable truth⁹⁶ that rationalized the existence of a gap in scholarly production and engagement capable of addressing the commonalities and differences in the experiences of discrimination by Latina/os vis-a-vis those of African-Americans and other racial and ethnic identities. As a result, some Latina/os had begun to feel disenchanting with the possibilities for having that need met in the established CRT discourse. Of course, many schol-

96. More than one attendee at LatCrit I who was not Latina/o expressed both the need for Latina/os to develop a "Latina/o centered" discourse, and at the same time expressed a kind of defensiveness as Latina/o scholars openly critiqued the direction CRT discourse had taken.

ars, including Latina/o scholars, benefited from the mere fact of CRT's existence as a catalyst for their own engagement in broadened critical analyses of race, gender and sexuality, not only for the engagement in the interplay of modernism and postmodernism, but also for the personally transformative experiences gained from engaging in critical theorizing.⁹⁷ The aim of LatCrit I was not to bunk the organic process that had centralized the African-American experience of racism in legal discourse and decentered everyone else's. But, the truth revealed did open up the possibilities for a prolific and expansive critical discourse among Latina/o scholars about our potential roles for redefining the focus of our theories of discrimination, with an eye on the multiplicity of experience and identities capable of being described as "Latina/o." Because LatCrit scholars themselves would be diverse in their identities and interests (e.g., feminist, gay, lesbian, African, Asian, and Native American, etc.) and already committed to the values of the CRT insights, many have seen LatCrit as an outgrowth, overlap, and maybe even a reinvigoration of CRT.⁹⁸ LatCrit owes its energy for the felt desire and privilege to engage in critical legal scholarship to those forerunners in that discourse known today as CRT, one of whom, Richard Delgado, is a Latino himself, while another, Derrick Bell, contributed essential writings⁹⁹ to the Black/White paradigm. Thus from a purely historical perspective, it is quite obvious that there is a close relationship between what emerged as CRT, and the explosion of a body of scholarship produced by a generation of new scholars whose own diverse ethnic, racial, sexual and gendered identities has forced upon CRT the need to expand.

The essays in Cluster One then, are further examples of the continuing expansions of a discourse aimed at discovering the "Latina/o critical legal experience," with its commonalities and differences from the established critical race discourse, and a focus on

97. These are at least two of the benefits and opportunities Angela P. Harris identified as perspectives on the status of Critical Race Theory in her essay, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741, 744 (1994). A third benefit and/or opportunity Harris identified from the engagement in critical race theory is the rise of a politics of difference capable of producing a reconstructed jurisprudence, one aimed at the alleviation of human suffering. *Id.* at 744.

98. This was especially the felt mood of the attendees of the national Critical Race Theory Conference held on November 12-14, 1997 at Yale Law School. A majority of those who planned this conference were involved in or very supportive of the LatCrit movement and its spillover energy that helped produce a highly successful conference that was open to everyone regardless of identity or interest. This was a significant contrast to the early years of CRT when the workshops had been small and attendees came by invitation only. See Francisco Valdes, *Under Construction: LatCrit Consciousness, Community and Theory*, 85 CAL. L. REV. 1087 (1998).

99. See, e.g., DERRICK BELL, AND WE ARE NOT SAVED (1987); DERRICK BELL, FACES AT THE BOTTOM OF THE WELL (1996); DERRICK BELL, RACE, RACISM AND AMERICAN LAW (3d ed. 1992).

speaking to the broader political goals of recognizing the marginalized existence of multiple oppressed identities in American law and culture. It is more with optimistic hope for an enhanced Critical Race Theory than with aspersion that LatCrit theorists are interrogating, for example, the relationship to the Black/White paradigm and CRT's limited critiques of inaccurate constructions of race that have affected regional racial politics and created obvious barriers to coalition building between U.S. Blacks, Latinos and Asians.

In this vein, Professor George Martínez, in his essay, *African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*,¹⁰⁰ examines how the relationship between Blacks and Latina/os is implicated by a construction of race which has classified Mexican-Americans as whites,¹⁰¹ in situations where such a classification significantly affects the distribution of public resources, like education.¹⁰² Citing to the example of Dallas, Texas, Professor Martínez identifies the impact of the construction of race that has been played out in Southwestern U.S. politics as a public resentment and barrier to coalition: that Blacks fight for civil rights; Mexican-Americans ride their coat tails and share in the benefits.¹⁰³ Yet the historical evidence defies the notion that Mexican-Americans have ever truly benefited from manipulative constructions of their identity by the dominant WASP¹⁰⁴ culture. If anything, it is abundantly clear, argues Martínez, that Mexican-Americans have been identified as the "other," as non-white, and that they share an equally enduring historic battle for racial equality and civil rights—fighting the impact of beliefs that have cast them as genetically inferior in the eyes of dominant Anglo whites.¹⁰⁵ Martínez urges CRT scholars to reconsider the racialization of Latina/os so that they can get closer to the ugly truths of minority existence in America—that we are more alike than different when it comes to the historic examples of racist oppression that urge us to join forces in the struggle for social justice. But we cannot get there, says Martínez, if we don't create "epistemic coalitions," bases of knowledge about ourselves that will help us learn the truth about any other racialized group.

100. 19 CHICANO-LATINO L. REV. 213 (1998).

101. See IAN HANEY-LÓPEZ, *WHITE BY LAW* (1996).

102. See Part IV *infra* for evidence of the manipulation of the Black/White paradigm and the classification of Mexican-Americans as whites during efforts to prevent the full desegregation of the Austin public schools.

103. See Martínez, *supra* note 100, at 215.

104. White, Anglo-Saxon, Protestant (WASP).

105. A particularly vivid and often ignored example of this oppression is the lynching of Mexicans in Texas which was critical to the obliteration of Mexican privilege, presence and power. See ANZALDÚA, *supra* note 83, at 8-9; see also, DAVID MONTEJANO, *ANGLOS AND MEXICANS IN THE MAKING OF TEXAS, 1836-1986* (1987).

Of course, external constructions of race have their greatest impact when they are widely communicated, and to the critical race scholar, that is what can make them so dangerous to the narrative of so-called "racial progress" in America. Robert Chang's essay *Who's Afraid of Tiger Woods*,¹⁰⁶ reminds us of the powerful modes of discourse that can be facilitated by the wealthy enterprises of sports and the media when they glorify the exceptional minority athletes as anti-race heroes and heroines (e.g., Jackie Robinson as role model non-victim, non-recipient of affirmative action). Chang asks us to consider further, however, what message we get about race when we celebrate the ambiguous racial identity and accomplishments of an individual like Tiger Woods whose hard work and talent are held up as the criterion for breaking the color barrier. Chang is most troubled by the politics of identity over Tiger Woods' very body by multiple communities who seek to claim him as either Black, Thai, Chinese, or the deracialized "American." So, Chang asks, is this just an extension of the construction of Asian Americans as model minorities and non-Black/Marielitos Cubans¹⁰⁷ as white? Or is the fascination with Tiger Woods the question lurking within his problematized ambiguous racial identity, a question equally critical to LatCrit discourse—how to confront the external/internal construction of race, and how to confront the possibility of being challenged with why Latina/os are concerned with race to begin with? That, Chang says, may be the most threatening aspect of LatCrit theory—the fact that it may ineluctably force the point that race is nothing but the product of social construction, because in fact Latina/os can be and are of any race. He concludes that the fear of that question is immense to a society that doesn't want to think about the implications of living in a multiracial world to begin with.¹⁰⁸

Kevin Johnson's essay *Immigration and Latino Identity*¹⁰⁹ parallels Chang's concern over the impact of external constructions of racial identity as he urges Latina/o scholars to engage the complexity

106. 19 CHICANO-LATINO L. REV. 223 (1998).

107. In recent waves of Cuban migration the "marielitos," a label derived from the "Mariel boatlift," possess the popular image of poor, uneducated, mostly Black or mixed Cubans who were also members of the criminal and mentally ill classes. See Sandrino-Glasser, *supra* note 5, at 85-90. Earlier waves of migration constituted members of the upper class who were fleeing Cuba after Fidel Castro's takeover in 1959. For accounts of the history of exile see MARIA CRISTINA GARCÍA, *HAVANA USA: CUBAN EXILES AND CUBAN AMERICANS IN SOUTH FLORIDA, 1959-1994* (1996). For an excellent analysis of Cubans as a socio-historical and political identity and their relationship to the LatCrit project, see Max J. Castro, *Making Pan Latino: Latino Pan-Ethnicity and the Controversial Case of the Cubans*, 2 HARV. LATINO L. REV. 179 (1997).

108. See, e.g., *Adarand Constructors v. Peña*, 515 U. S. 200, 239 (1995) (Justice Scalia, J., concurring) (asserting the new infamous notion that in the U.S. the only race is the American race).

109. 19 CHICANO-LATINO L. REV. 197 (1998).

of how our identity is constructed because of patterns of in-and-out migration, intergenerational status, national origin, class, education and so on. The law treats the immigrant and the Mexican-American citizen differently, and the constant flow of immigrants attests to the tremendous diversity of Latina/o identity and their interests. Yet, whether immigrant or not, we are all treated as having a racialized identity. Thus, if we ignore the way in which the immigration status issue is manipulated in public discourse, such as pitting Blacks against Mexican immigrants competing for jobs, we also don't realize that status competition between citizen and immigrant—which is supported by the law¹¹⁰—becomes the source of self-constructions of our identity that aid in Latina/os being constructed as “the enemy within.” The pressure to assimilate and to see our own racialized brothers and sisters as the enemy is facilitated by the absence of a discourse that deconstructs the historical context of the status of Mexican-Americans in the United States. Johnson illustrates the impact of self-construction by assimilated Latina/os that see themselves as different from the immigrant in the context of the politics that surrounded California's Proposition 187—as about 25% of Latino voters, more or less assimilated, supported the enactment of a law intended to bar undocumented persons from receiving any kind of public benefit.

Johnson urges us to examine this and other examples of intra-group hostility surrounding issues of voice, identity, language, education, class, resident status, alliance to the old country, and the assimilation that every immigrant experiences on some level. It is incumbent upon us as Latina/o scholars to take back the discourse of our identity, to deconstruct the relationship between racism and social rank caused by both internal and external views of who we are. The danger of not looking at one of the key factors in our communities' *intragroup* conflicts—immigration—Johnson argues, is that a different story will be told, one that doesn't serve our interests.

Ana Novoa's essay *American Family Law: HiStory-WhoStory*,¹¹¹ is an example of how using gender as a category of analysis in law and history together with a Latina/o critical perspective can enhance one's understanding of the master narrative¹¹² on a subject of legal

110. See, e.g., *Espinoza v. Farah Manufacturing Co.*, 414 U.S. 86 (1973) (dismissing Title VII claim by a lawful permanent resident from Mexico who was married to a U.S. citizen).

111. 19 CHICANO-LATINO L. REV. 265 (1998).

112. In critical scholarship, the phrase “master narrative” has been appropriated from Audre Lourde's famous essay, *The Master's Tools Will Never Dismantle the Master's House*, in *THIS BRIDGE CALLED MY BACK* (Cherríe Moraga & Gloria Anzaldúa eds., 1983), which addresses the problems of internalized oppression by pointing to the failure of a woman's rights conference to appreciate the need for race consciousness in any effort to speak on behalf of “all women.” See also, Lisa C. Ikemoto, *Traces of the Mas-*

analysis that is classically identified with Latina/os—*familia*. Writing as a teacher of family law who works in a clinical program at St. Mary's Law School—a program designed to serve the homeless—Professor Novoa deconstructs the myth of the “family” as studied in family law courses as traditionally “nuclear.” This perspective, she argues, perpetuates domestic systems designed to serve “the economic empire” of white men. In opposition to this myth, the historical evidence reveals that even the earliest forms of family in America were extended households, and that a multitude of cultural traditions in the U.S. continues to extend kinship family networks both horizontally and vertically. Yet, the accepted notion of the “American” family, when documented, is a family that looked first to male property rights, rather than intimacy, nurturing and sustenance as the social and legal ideal. Novoa argues throughout her essay that values like patriarchy, male individualism, gender-specific labor, consumerism, and the subordination of minority groups have contributed to a family law that is all askew—achieving this by using individualistic and atomized notions, instead of communal and humanitarian ideals to deal with our most intimate and personal relationships.

Novoa's evidence urges the reconstruction of the notion in American family law and policy that we all are in—or want to be in—nuclear domestic arrangements. If anything, we are living in a society that has families of choice and need,¹¹³ whether they are so because of their cultural values—such as is the case with Latina/os—or because they are examples of oppressed groups who rarely benefit from any traditional notion of American “family law.”

* * *

Many of us have been emboldened to interrogate our own identities by the personal narratives of two insightful Latina scholars, Margaret Montoya and Leslie Espinoza. Each of these women has written risky, liberating and now classic essays which theorized about identity from the subject position.¹¹⁴ Risky in that mainstream legal academics criticize the personal voice as self-indulgent and non-scholarly,¹¹⁵ and liberating in that, as Angela Harris has de-

ter Narrative in the Story of African American/Korean American Conflict: How We Constructed Los Angeles, 66 S. CAL. L. REV. 1581 (1993).

113. See Elvia R. Arriola, *Law and the Family of Choice and Need*, 35 U. LOUISVILLE J. FAM. L. 691 (1997).

114. See, e.g., Montoya, *supra* note 14; Espinoza, *supra* note 87.

115. See, e.g., Farber & Sherry, *supra* note 29.

scribed CRT scholarship in general,¹¹⁶ they are examples of the personal empowerment and transformation that comes from using one's voice to speak to truth. Of course, the use of personal narrative has long and solidly been situated in non-legal arenas. Historians for example, often use oral history when a thorough story of critical events or subjects is inaccessible from the vantage point of the kinds of documents (e.g., letters, diaries) that are or were available only to the literate, middling and upper classes.¹¹⁷ Feminism inspired scholars of all disciplines to employ the personal narrative, whether one's own or that of others, to explore concepts like "women's agency"¹¹⁸ and gender consciousness to illustrate how women have lived, to how they have understood what it means to be oppressed, or to revolt and struggle against external structures of power (e.g., religion, law) which used their sex and gender to subordinate the masses. Thus, narrative, whether one's own or that of others, is highly relevant to the questions of identity that are becoming critical to Latina/o critical legal theory from a gendered perspective.

The internal or self-construction of Latina identity is examined in the essay *Telling Stories, Telling Self: Using Narrative to Uncover Latinas' Voices and Agency in the Legal Profession*,¹¹⁹ by Maureen Ebben and Norma Guerra Gaier. In this tradition, Ebben and Gaier interviewed three Latinas working within the legal profession—an administrator, a judge and a lawyer—to explore issues of equity and identity that are triggered by the hyperbolic fears of the dominant culture when the media reports official projections that Latina/os are becoming the largest U.S. minority.¹²⁰ Their stories gathered tidbits of recollection, self-history and experience, in the interviewees' professional capacities, as law students, and members of their families and communities. The analyses interlock race/ethnicity, gender, class, language, history and culture to produce a narrative that confirms the existence of unique patterns of racist sexism for Latinas in the legal profession and society-at-large. Stories of hating law

116. See Harris, *supra* note 97.

117. See, e.g., Ruiz articles, *supra* note 66; MARILYN DAVIS, *MEXICAN VOICES/AMERICAN DREAMS: AN ORAL HISTORY OF MEXICAN IMMIGRATION TO THE UNITED STATES* (1990).

118. In historical scholarship the notion of "women's agency" has been critical to the argument that gender is a meaningful and useful category of historical analysis, in which women are revealed in roles that transcend the view of them as passive objects, to a view of them as agents of their own location in particular events, times and places. Such a paradigm produces a feminist history which is more complete and nuanced, one in which women will appear as not just victims or heroines, but rather as individuals with the capacity for a full range of human character, from good to mediocre, to bad to evil, to brilliant, average and even stupid. See JOAN WALLACH SCOTT, *GENDER AND THE POLITICS OF HISTORY* 15-27 (1988).

119. 19 CHICANO-LATINO L. REV. 243 (1998).

120. See Jim Coronado, *The Hispanic Bar*, 55 TEX. B.J. 1136-37 (1992) (cited in Ebben and Gaier, *supra* note 119, at 243 n.2).

school for the pedagogical styles of the Socratic method, and of self-torment in identity or conflict with family roles, illustrate the systemic exclusion of women of color from the legal profession. Yet each eventually found herself in the legal profession, despite the systemic discrimination, out of a desire to advance social change for both personal and communal empowerment. Of course, while each is a tale of discrimination equally familiar to Latina law professors, it is also a story of endurance and strength, a sense of agency from the self-history, and an example of how "voice"¹²¹ is a part of the quest for identity and liberation and an essential ingredient of Lat-Crit theory—especially from a gendered perspective.

Gender and age are at the heart of a brilliant analysis by Antonia Castañeda on the role that language has played as an instrument of oppression in the lives of Tejanos/Tejanas. Castañeda's essay, *Language and Other Lethal Weapons: Cultural Politics and the Rites of Children as Translators of Culture*¹²² brought tears to my eyes. Bold in its confrontation of the myths and lies which have crucially affected the construction of Latina/os in the Southwest as "the enemy within," Castañeda asks us to consider the role that children have been forced to play in the interpretation of "cultural universes" for adults. These universes are comprised of everything from the nations' mythology and ideology (e.g., the Old West, individualism, the frontier) to the first hand experience of oppression as children translate for their immigrant parents who cannot speak English—finding few words in one language to capture the essence of a parent's plea in another, and even fewer to explain to their elders the social prejudices their identity engenders in the Anglo person or institution they dealt with. Caught between two worlds, Castañeda argues, children of immigrants have historically contended with the limits of systems of knowledge, both cultural and political, as they interpret, for example, at the store which has denied the family credit, at the clinic which is misdiagnosing a medical problem, at the school which has stereotyped and expelled a child as a lice-ridden discipline problem, and so on. The experience serves as one possible lens from which to understand self-constructions of identity by Latina/os who either become assimilated "non-Latina/os" or who see translating as a source of empowerment and understanding of

121. The concept of "voice" simply means the incorporation of personal narratives as part of the analysis, whether one's own personal stories and experiences or that of others. It differs from more traditional views of scholarship which suggest that a researcher and writer should be detached, formalistic and unbiased in the presentation of data, opinions, conclusions, etc. It has been at the heart of critical race, feminist, and now LatCrit scholarship to freely incorporate voice, or stories, to help illustrate a point or to inject one example of the voice of experience. As noted, among legal scholars the concept of voice remains controversial. See *supra* notes 17 and 29.

122. 19 CHICANO-LATINO L. REV. 229 (1998).

one's relationship to family, community, class and the world at large. Castañeda's analysis is derived from a series of interviews conducted among Tejanas who lived and worked as migrant farm-workers from 1945-1965, a period when Mexican immigrants and Tejanos were being recruited for agricultural labor under the Bracero program¹²³ and would later be deported by Operation Wetback¹²⁴ as "illegal aliens" in 1954 when they were no longer needed. The boldness of this essay is its subversion of the accepted literary tenet that translation studies are about the written text. It is an especially important addition to Latina/o critical legal theory to see the value of understanding the experience of child translators, from a contemporary as well as an historical basis, by hearing the stories of the women she interviewed and their memories of the times when they were the translators of culture.

Leslie Espinoza's written remarks¹²⁵ on the Panel that produced this first cluster of essays on the construction of Latina/o identities reminds us that while we may identify as the "oppressed," we are also liberated in our quest to come together as a group voicing different examples of racist oppression. Her essay encourages critical self-awareness of the limits we confront in our task to found a community of scholars, one limit being that the tools we use come in the packaging of what Audre Lourde referred to as "The Master's tools."¹²⁶ Those tools are the language we use to describe ourselves and each other, the role of hegemonic power of the master narrator of who we are, the role of our own cooperation in the construction of our identities, the incorporation of the racist language and ideas we use to divide ourselves in our communities. We are asked to be wary of the shifting and changing markers of our identity, the issues that can both join us and divide us, such as immigration; the issues

123. The term *braceros* derives from the word *brazos* which means "arms" in Spanish. Recruitment of Mexican labor south of the border is a part of the hidden history that underlies the contemporary anti-immigrant fervor. Since early in the twentieth century the U.S. instituted immigrant quota laws and the U.S. Border Patrol with explicit exemptions for Mexicans. As a form of cheap labor, Mexicans were periodically recruited to work primarily the agricultural fields which were producing the food to feed U.S. citizens. In times of economic decline, like the Depression era, the Immigration and Naturalization Service (INS) would actively deport these same workers. In the World War II era, the cycle began again and an active "Bracero Program" brought in over 4 million Mexicans to work American farms and ranches. The bracero program officially ended in 1964 although the tradition of coming across the border for better wages and living conditions remained. See DAVIS, *supra* note 117.

124. "Operation Wetback," named after the derogatory label for Mexicans who cross the U.S.-Mexico border by swimming across the Texas Rio Grande, was a 1954 military operation aimed at getting rid of illegal Mexicans in the U.S. and securing the southern border against the Mexican "invasion." *Id.* at 24.

125. Leslie Espinoza, *A Vision Toward Liberation*, 19 CHICANO-LATINO L. REV. 193 (1998).

126. See Lourde, *supra* note 112.

that elude us in their description and their impact, like race—which for Latina/os, is about color and then not always about color. Ever mindful of the “critical” in LatCrit theory, Espinoza urges us also to remember, that as law professors—the theorists—we live comfortably in the Master’s House, and that we must know our ability to see the world as a person who can see, hear and write like the master, even as we shift personas and wear different masks in our multiple roles as teachers, scholars, lawyers, activists and members of our families and communities. Ever optimistic about our liberatory quest despite the ugliness we must confront when we deconstruct the sources of our oppression, Espinoza ends her essay with the three thoughts that identify her refreshing style as a narrator and writer: that we bring faith into our work to work against oppression, hope to maintain vision, and unabashed love and caring to motivate us in our work for liberation.¹²⁷

B. *Cluster II—Composing LatCrit Theory: Self-Critical Reflections on “Latina/os”*

It is by far one of the most radical agendas of LatCrit theory to contemplate the task of producing a critical legal discourse that hopes to balance the various tensions created by scholars who come to the subject of Latina/os by taking positions that do not necessarily imprison “ourselves within any given position.”¹²⁸ Frank Valdes spoke of this radical agenda in the foreword to the first symposium initiating a scholarship movement that could take the topics of Latina/o ethnicities, CRT, and post-identity politics in a postmodern legal culture from theory to practice. At the heart of confronting the relationship of LatCrit theory to CRT, he urged, was the need to become self-aware of our own experience with the sameness/difference debate: could Latina/os in the U.S. find enough similarities in their experiences based on language, culture, history or circumstance to generate a sense of pan-ethnicity?¹²⁹ Would LatCrit theory be a hostile sister/brother to CRT or more like a close cousin to it?¹³⁰ And, how would a move from the modernist identity politics which only focused on race, to a postmodernist concern with consciousness of multiple sites of oppression, identified by scholars who spoke from their own subject position based on race, ethnicity, gender or sexual orientation, become the basis of strength in community rather than weakness from the category lines we have used to divide our-

127. Espinoza, *supra* note 125 at 196.

128. Francisco Valdes, *Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 LA RAZA L.J. 1, 28 (1996).

129. *Id.*

130. *Id.*

selves?¹³¹ The essays in Cluster Two advance the concept in LatCrit theory of a scholar's contributing to the mapping of Latina/os sameness and differences by writing from the perspective of their unique interpretation of the interlinked networks of oppression.

Guadalupe Luna's essay "*Zoo Island*": *LatCrit Theory, "Don Pepe" and Señora Peralta*¹³² reminded me of why I urged this woman I met in my first year of teaching at the University of Texas to join us in conversation about Lat/Crit theory and scholarship. As a MALDEF¹³³ lawyer she had given a luncheon keynote talk to students in the Minority Orientation Program which has now been abolished by UT as a consequence of the *Hopwood* decision. I remember how she told students that she had become a civil rights lawyer because she had not forgotten the discrimination she and members of her family suffered in Texas. She encouraged them to confront the task ahead of them, in learning the master's confusing language and paradigms, with courage and commitment to their communities. There is a fiery spirit in the essay not so different from the energy she conveyed then and at LatCrit II, as Luna embraces her Chicana identity as a teacher and scholar who seeks to empower legislators, judges and political actors who want to deconstruct the ideology of the conqueror.

Luna's thesis is that hegemonic law misrepresents the reality and social condition of subordinated groups, like Chicana/os in this country. Her task then, as a scholar and teacher of property and agricultural law, is to identify the areas of the law where history, hegemony and the politics of "race-baiting" in this country—centered on issues like affirmative action—play themselves out. Using two case studies to illustrate the untold stories about the relationship of Chicana/os as a subordinated group to Anglo-American property jurisprudence, Luna illustrates the hypocrisy of an American vision of law which promotes "universal ideals for all" while ignoring the specific and complex impact of racism on Chicana/os. The case studies thus reveal an ignored history of Chicana/o land ownership, colonization efforts, and collusion between the government and land speculators to systematically disenfranchise Chicana/os through "public takings." The cases reveal the hegemonic ideology of the law as judges interpreted the rights of "jumpers" and "settlers" claiming universal rights to "public" land grants against the claims of Mexican landowners—effectively stripping them of their rights,

131. *Id.*

132. 19 CHICANO-LATINO L. REV. 339 (1998).

133. The Mexican-American Legal Defense and Education Fund (MALDEF) has litigated for social justice on behalf of Mexican-Americans and other U.S. Latinos for over two decades.

their land and in time, even of their history, with the help of derogatory racial stereotypes of them and their descendants.

I also felt proud to know the person behind the brilliant mind that produced the talk and essay *LatCrit y La Des-colonización Nuestra: Taking Colón Out*.¹³⁴ As an activist and scholar whom I met in the context of her work as an educator for the human rights organization American Friends Service Committee, Luz Guerra has consistently asked the hard questions of those who proclaim their commitment to the liberation of all peoples. In her gentle yet critical style, Guerra posed one of the most challenging questions to the attendees of LatCrit II—the issue of our having placed on the Lat-Crit agenda a discussion on the histories of the indigenous peoples of this hemisphere within a Latino context “without having critically examined the term ‘Latino’ and its relationship to Native history.”¹³⁵ That, she argues, is impossible, if the purpose of our critical race histories is to supposedly engender critical race practices that will help alleviate the suffering of indigenous peoples here and in this hemisphere. Are we for example, argues Guerra, to attribute an unquestioned label “Latina/o,” in the context of LatCrit theory, to indigenous human rights activists like Mayan/Guatemalteca activist Rigoberta Menchú—who learned the master’s language of Spanish in order to tour the world to decry the genocide of Mayans in Guatemala? What in fact does it mean to call ourselves Latina/os when we must confront a history that reveals the truth of the labels we choose for our identity politics—a five hundred year history of internalized oppressors’ ideologies, which told us that these Western hemispheric lands were empty when in fact we were many, that made us American when we are not, that hyphenates us with the words chosen by the colonizer, like “Hispanic” and “Latino.” If we truly seek empowerment and connection with all, then we must share the common ground of “des-colonización,” taking Colón (Christopher Columbus) out of the thought systems of the colonizer we use to empower ourselves. In order to accomplish that we must define the conceptual grid that narrates our history, a distorted history that we have internalized and that separates us from others and from all of the parts of ourselves. This means asking, do we have a conceptual grip of Latino/ism, Latino studies, Chicano Studies, etc., that is subservient to the conceptualized grids of imperialism and post or neo-colonialism? When is it useful to use the term Latina/o and when not? What, for example, does it mean for me to “decenter whiteness” as the singular referent from which to study race re-

134. 19 CHICANO-LATINO L. REV. 351 (1998).

135. *Id.* at 351-52.

lations so as to center interracial relations¹³⁶ when my Mestiza identity is comprised of both white (Spaniard) and Native (indigenous) blood? And, more important, to what good use are we putting our discussions on LatCrit theory? Our task, Guerra argues, is to de-internalize the mythologies handed down to us by our oppressors, to reclaim our histories, to see in each other's faces the other outsiders with whom we share the global "outsider table"—we, she argues, who are the children of colonialism, full-blood, half-breeds, Mestizos and Mayas, speaking Quéchua, Creole, English, Spanglish,¹³⁷ with straight and kinky hair, blond, brown, past our faces to the history and the mythogized past with names like Uncle Tom, Malinche, La Virgen de Guadalupe, "el macho" and "*fulana de tal*."¹³⁸ She argues that if what we seek to do is dismantle old systems, then some of our identity labels may have to go in the folder labeled "archetypes for future study." We must agree, says Guerra, to work in solidarity with each other, not to reproduce the structures of the old system, to de-colonize the structures we carry individually and collectively, sharing our common and different interests as the basis for a new order.

Enrique Carrasco's essay *Who Are We?*¹³⁹ ponders the relationship between our quest to discover who we are as Latina/os *en comunidad* and what we do, or can do in our work as employees, activists, teachers, scholars and lawyers. Not unlike the two previous essays, we are challenged, urged to consider the possibilities for examining who and what the Latina/o community is that we are in and

136. See Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 UCLA ASIAN PAC. AM. L.J. 33 (1995).

137. It is an example of the internalizing of the dominant Anglo oppressor's values for assimilated Latina/os and non-Latina/os alike in the U.S. to negatively view the speaking of "Spanglish," the use of English interjected with Spanish, and vice-versa, and/or the reconstruction of English words with Spanish inflections, endings, conjunctions and verb references. (e.g., "to mop the floor" is translated as *mapear el piso* in Spanish). Both politics and economics as minorities in a dominant culture explain why so many Latina/os are ashamed of speaking broken English, Spanglish, or Español *mocho* (broken). Growing Latina/o presence in certain regions of the U.S. help change those attitudes from shame to awareness of the "imperfect" diction in either language as a sign of accommodation to the dominant cultural needs while also trying to preserve one's cultural identity. In Texas, for example, San Antonio Tejano music stations freely broadcast in Spanglish and play both Mexican folk, country and English rock and pop to an audience that represents the heavily Mexican-American demographics of Central and South Texas. Similarly, a popular TV comedy, called *Qué Pasa USA?*, which broadcasts weekly from Miami, realistically depicts everyday family life among Cubans of different generations using Spanglish and/or accented English. LatCrit scholars are forcefully exposing the language terrorism and vigilantism accomplished by the various forms of an English-only movement. 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).

138. "*Fulana de tal*" is the Spanish equivalent of a married Jane Doe, as *de tal* is used to identify a woman who is married (and belongs to) a certain *tal*.

139. Enrique R. Carrasco, *Who Are We?* 19 CHICANO-LATINO L. REV. 331 (1998).

are attempting to describe, preserve, defend? Carrasco problematizes the potential views—the global, top-down, statistically oriented, objective and detached viewpoint, one which may produce simplistic, non-critical information about identity; against the street, office, classroom, courthouse view, maybe that of the Latina activist whose identity is grounded in both activism and scholarship; this perspective requires multiple consciousness to be appreciated but it also offers a more clear view of our collective process when we gather as LatCrit scholars. Since we are not at the top and can't be, our grounded position, says Carrasco, actually offers a more spectacular view of the self-construction of our identities. We do this, Carrasco unabashedly hopes, to continue the struggle for human liberation, the “good fight” that isn't dependent on a modernist or postmodernist label, given that one reason to reject modernism is the freedom we get to define ourselves.¹⁴⁰ But, not without some commitment to constant self-critique of why we want a LatCrit theory to begin with, argues Carrasco, of the standards we come up with to sustain us in the politics of difference and to enhance “workable and just conceptions of the good life for our communities.”¹⁴¹

If we understand Latina/os' own construction of their identity as based on multiracial, multilingual, multiphysical and multisexual and gendered experiences—phenomena which have been the focus of sharp critiques of established paradigms of discrimination theory and analysis¹⁴²—then how does one begin to tackle and connect these complex identity questions to the broader goals of achieving coalitional alliances for social justice and political action with any and every minority group who in these revolutionary times is feeling attacked by the right and abandoned by the left? Professor Hernández-Truyol addresses these hard questions in her essay *Building Bridges III—Personal Narratives, Incoherent Paradigms and Plural Citizens*,¹⁴³ as she passionately urges LatCrit scholars to join her in wrestling with the theme of building coalitions and maintaining alliances as an essential practice towards empowerment in the face of a divisive public discourse that aims to disempower the members of racial minorities in this country by appealing to stereo-

140. *Id.* at 335 n.14 (citing RICHARD RORTY, *CONTINGENCY, IRONY AND SOLIDARITY* 3-69 (1989)).

141. *Id.* at 336.

142. *E.g.*, Arriola, *Gendered Inequality*, *supra* note 12 (holistic/irrelevancy); Crenshaw, *supra* note 24 (intersectionality); Harris, *supra* note 14 (multiple consciousness); Hernández-Truyol, *supra* note 15 (multidimensionality); Mari S. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 *WOMEN'S RTS. L. REP.* 7 (1989). My partner has humorously applied these models of analysis to her own experience of discrimination as an older, female, non-skinny lesbian trying to get a job as a lawyer as the experience of being “multi-fucked.”

143. 19 *CHICANO-LATINO L. REV.* 303 (1998).

typed notions of our inherent cultural inferiority.¹⁴⁴ Hernández-Truyol explicitly promotes an intellectual framework of analysis which is “grounded in all of our worlds not only part of them.”¹⁴⁵ The intent of the framework is to pierce the concept of identity into its potential multiple-facetedness based on racial, gender, sexual, ethnic, religious, class, educational, residential and linguistic differences. For after all, as she personally narrates herein and in other essays,¹⁴⁶ to be Latina is to be a multiple worlds-traveler through the fluid borders of our lives and our experiences, where identity traits like our ability to speak Spanish, or not, become the gates to our insider/outsider experiences.¹⁴⁷ Knowing what it means to be at once insider and outsider is the measure of our fluid multidimensional identities. The “complicated mappings of our differences” says Hernández-Truyol, are invisible in the “master narrative discourse,” with its emphasis on race relations analysis premised only on the Black/White experience, a point increasingly stressed by LatCrit scholars.¹⁴⁸ For Hernández-Truyol, however, the greatest problem is not necessarily the acceptable yet “incoherent paradigms” used to define race, ethnicity and national origin. It is our *own*¹⁴⁹ self-construction of who we are. So she asks the hard question—have we in fact seen ourselves not as who we think we are, but rather as who the dominant paradigm makes us out to be?¹⁵⁰ Professor Hernández-Truyol optimistically urges us to engage in the re/construction and re/vision of a text that sees the multiplicity of differences not as limitations, but rather as sources for a critical theorizing about race/ethnicity/color/language at a minimum, which respects the differences and identifies the “fascinating points of convergence” in and among our LatCrit communities. In that analysis we will find common bases of discrimination produced by the master narrative,¹⁵¹ based on experiences of language oppression,¹⁵² racism,

144. See *supra* note 13 for a discussion of controversial views uttered by Professor Lino Graglia, my colleague at the University of Texas.

145. Hernández-Truyol, *supra* note 143, at 311.

146. See, e.g., Berta Hernández-Truyol, *Borders (En)gendered: Normativities, Latinas, and a LatCrit Paradigm*, 72 N.Y.U. L. REV. 882 (1997).

147. See *supra* note 137.

148. See Rachel F. Moran, *Neither Black Nor White*, 2 HARV. LATINO L. REV. 61 (1997); Juan F. Perea, *Five Axioms in Search of Equality*, 2 HARV. LATINO L. REV. 231 (1997).

149. See, e.g., *St. Francis College v. Al-Khazraji*, 483 U.S. 1011 (1984) and its expansive interpretation of race discrimination to cover national origin but based on an odd use of 19th century social history which used race to categorize people on everything from skin color, to language, religion, national origin and ethnicity.

150. See Hernández-Truyol, *supra* note 143, at 320.

151. See *supra* note 112 (explaining “master narrative”).

152. E.g., *Yniguez v. Arizonans for Official English*, 69 F. 3d 920 (9th Cir. 1995), *vacated as moot* 117 S.Ct. 1055 (1997) (invalidating English only amendment to state constitution on grounds of overbreadth under the First Amendment).

xenophobia, and racist sexism. It is in identifying the shared concerns and similarities that we find the richness of difference as the foundation upon which to re/formulate who we are and reject/resist the construction imposed on us by a master narrative. In that struggle for a truly inclusive discourse, Professor Hernández-Truyol sees a path to empowerment and coalitional politics.

Pat K. Chew's essay, *Constructing OurSelves/Our Families: Comments on LatCrit Theory*¹⁵³ is both about identity and the coalitional possibilities engendered by the LatCrit movement. Professor Chew offers the multicultural identity perspective of a Chinese-American who grew up on the South side of El Paso, Texas, surrounded by Mexican immigrants and Tejanos. She asks, if LatCrit discourse is about oppression, identity and discrimination, then as teachers or scholars, for example, how do we actually see ourselves? What does it mean to be an activist, an agent of social change, or a victim of discrimination? Chew argues that it is essential to the notion of self-constructed identities that we know we have roles, that we interpret those social roles, and that we are always exercising the choice to play or not to play those roles. She offers for example, the problem of the label "Asian-American" from the perspective of her mother who rejected such a label because she never forgot the protesting of the Japanese invasion of China, or who never saw herself as a "victim" because denying the label, she believed, protected her from the reality of discrimination. Our identities and our roles may carry the meaning we give them, but they also can be the basis for external claims to our identity. Thus in her role as law professor, Chew knows that claims to her ethnic minority identity surround the institutional requests for speeches, committee work, etc. In those moments, she knows and accepts the way her identity is seen and interpreted. But when she shops for groceries and is suddenly taken by another customer as someone who can't speak English, it surprises her to see that others make claims on our racial and ethnic identities when we least see their relevance and that we have little control over how they do that. Chew brings to life the multi-culturally identified vantage point with stories of her upbringing in El Paso, in a family that to this day uses English, Spanish and Chinese all at once to communicate, and that celebrates holidays with both Chinese and Mexican foods. Remembering however, that in her youth she didn't really know Mexicans other than customers and workers in her family's store, Professor Chew admits, as do other LatCrit scholars,¹⁵⁴ that exploring our self-constructed identities both liberates us and evokes ambivalent emotions of wonder, joy and

153. 19 CHICANO-LATINO L. REV. 297 (1998).

154. See, e.g., Arriola, *supra* note 11.

pain, as we see how dominant cultural values have shaped our identities, externally and internally and forced us to see other ethnicities as strangers rather than as allies.

The final essay in this Cluster by Professor Gerald López, *Learning About Latinos*,¹⁵⁵ urges LatCrit scholars to pay close attention to how Latinos and Latinas are being characterized in public discourse given our undeniable growing presence in the American social, economic and political scene. Because we have usually been cast, at best, as “afterthoughts” and “throw-ins” or at worst as “wannabes” and “impostors,” Professor López argues that our support for those who push and develop information on the Latino condition must carry with it careful scrutiny of the assumptions, sources, connections, motivations, and methods used to produce information intended to make Latinos matter. The harsh truth is that we *are* more visible but we are still misunderstood. The diversity of who we are and what we do or what we think, portrayed in fancy studies like the Latino National Political Survey (LNPS), which only focused on Mexicans, Puerto Ricans and Cubans, irritates those of us who recognize the bias inherent in the doing *or* the reading of political surveys. Certainly we should point to the media’s facile misuse of the LNPS data which was used to cast Latinos as anti-immigrant, pro-assimilationist, anti-affirmative action, anti-bilingual education individuals lacking a strong political community and identity. But it’s not enough to point the finger of distortion at the LNPS producers or the media coverage, López argues. For we, as LatCrit scholars and among those who also produce knowledge about Latina/os must be wary of becoming trapped by the very stereotypes we aim to question. López advances some chilling self-critical questions for our own research agendas as we march forward in the struggle to make Latino/as matter—that we recognize we too may have exaggerated facts, concealed what we didn’t know, ignored a truth we found uncomfortable, or denied some fact that disturbed the image we wanted to portray about Latinas/os.

Our search for “counter-caricatures” López argues, needs our commitment to building on the dimensions of life the LNPS rightly captured, as well as to the messiness of coalitional work. Our careful scrutiny of existing and new research should rest on cohesive theory and articulated motives as we advance knowledge on some of those factors that make Latinos/as matter—political community, citizenship, self-identification, race, assimilation, history and language. López would thank the producers of the LNPS for their ambitious goal in claiming space for the term “Latinos” in American discourse. But he also wants us to join in the efforts to build upon its

155. 19 CHICANO-LATINO L. REV. 363 (1998).

data, to connect the good and the bad of it to preexisting research and especially to understand that we should curiously ask more, adding the LNPS to the toolbox of social change for Latino/a empowerment. We need more because LNPS didn't get it all and neither did its readers. We also need more because the question *Who Are We?* is much more complicated and its nuances escaped the LNPS, at least from the angle of Latina/o political life. We deserve more because when we put the studies down or turn off the news we know that Latinos/as may no longer be seen as inferior beings but they're also still not seen as complete citizens. López acknowledges that our activism for better and more subtle understandings of what the Latino/a is, forces us to confront the balance between the need for detailed studies and for more accessible information. This means learning how to master those moments when knowledge, scholarship and the media intersect, a task that may be daunting yet exciting, one undoubtedly worth taking on because on the American scene Latinas/os are here to stay.

C. *Cluster III—Religion and Spirituality in Outsider Theory:
Towards a LatCrit Conversation*

Gloria Anzaldúa has written a chilling account in a poem titled *Holy Relics*¹⁵⁶ of the repeated exhumation of the body of Teresa de Ávila, a legendary saint from Spain, whose piety and devotion to God have been the source of teachings about moral behavior passed down through generations of devout Catholic families. In my own Mexican Catholic family, for example, one sister wore a gown modeled on the habit of Abbess St. Teresa de Ávila for her First Holy Communion—instead of the traditional white lace dress—to enhance the symbolic homage to a young girl's role model of sacrifice, honesty and obedience. In Mexico, or among very traditional Mexican-Americans, the saintly dress-ritual is part of a parent's *promesa*¹⁵⁷ to publicize a holy intervention in a time of crisis. Historic tales of saints whose dead bodies were cut to pieces to create relics for protection or miracles, or rituals devised to implore a saintly presence in one's body¹⁵⁸ were a significant part of the lore of my cultural upbringing. As a Mexicana/Chicana/ Latina, I can say that critical aspects of my personal identity were shaped as much by religious attitudes and education as were my gender, class and educational opportunities. I have grown up both loving and hating the role of

156. See ANZALDÚA, *supra* note 71, at 90.

157. A promise to a saint or other sacred identity to fulfill an act, offering, sacrifice, pilgrimage, etc. in exchange for help in a time of crisis (e.g., medical illness, financial distress).

158. See Valencia, *supra* note 41, at 454-56.

Catholicism in my life. As an out *marimacha*,¹⁵⁹ I have struggled, literally, in combative talks with my mother, with the Vatican's official position that separates the sin from the sinner by condemning at once homosexuality and discrimination against lesbians and gays. But, anything I have ever done or believed in connected to social justice—from union activism, to antiwar protesting, to civil rights lawyering or now to critical race and feminist theory, originated in my earliest training in some of the basic principles of Christianity I acquired in Catholic school or in my home. I have always found it ironic that in my family the *most* open-minded and accepting members of my lesbian identity, those who have welcomed me and my partner as a couple into their homes, are also very traditional, heterosexual Catholics whose deep faith encourages them to be loving, accepting and non-discriminatory. My feminism, in contrast, is based on a sincere rejection of the Mexican gender roles for women, which are inseparable from Catholic sexist views of the ideal woman as a submissive, pious, domestic and subservient wife to her husband.

Of course, my own conflicted relationship with Catholicism doesn't allow me to generalize about the role of Catholicism for all Chicanos and Mexicanos, and even less so for other Latino groups such as Cubans and Puerto Ricans. Even in Mexico, other Christian faiths now exist next to the historically omnipresent Roman Catholic Church,¹⁶⁰ while among the Caribbean Latina/os, Catholicism has co-existed with Santería¹⁶¹—evidence of the diversity in the religious and spiritual experiences that are ascribed to Latina/o culture. For one significant segment of the Latina/ community however, Mexicana/os, religion is undeniably important, and as a source of significant cultural values it is essential to LatCrit theory.¹⁶² Yet, while there may be commonalities among certain segments of the Latina/o

159. The term *marimacha* is Mexican slang for lesbian.

160. The omnipresent influence of Catholicism has been brought to my attention in my recent exploration of Mexican family law with Professor Patricia Begñé of the University of Guanajuato, with whom I taught a Comparative Family Law course at St. Mary's Law School. Despite a rigid formal separation between Church and State in Mexican law directly traceable to the 1914 Mexican Revolution, Mexico's family law scholars incorporate significant commentaries on the role of the Catholic Church in the definition of basic institutions (e.g., marriage) and practices regulated by the State.

161. See Verna Sánchez, *Looking Upward and Inward: Religion and Critical Theory*, 19 CHICANO-LATINO L. REV. 431 (1998).

162. Activist poet, writer and scholar Ana Castillo argues that while the Catholic Church isn't the best guide for the future of Mexican and Amerindian women, rejecting its intolerant structures does "not automatically obliterate its entrenchment in our culture." Chicanismo urged people to reclaim their "mexicanidad," to return to one's roots by not only rejecting total assimilation, but also by resurrecting every pre-Conquest and Catholic icon or symbol possible (e.g., Aztec names and calendars, la Virgen de Guadalupe). See ANA CASTILLO, MASSACRE OF THE DREAMERS: ESSAYS ON XICANISMA 94-96 (1994).

population when we speak of the influence of religion in our lives, especially Catholicism, one cannot speak of a homogeneous Latina/o religious experience. That doesn't mean it cannot be examined for the impact it has had, and continues to have, among certain Latina/o ethnic groups for whom Christianity has equally been historical oppression and subjugation, legends, myths and superstition, community, faith, and spirituality, gender role identity and conflict, or succor, support and refuge, and so on. Like any aspect of culture, religion will be a convoluted, subjective, sensitive and even political topic in the examination of Latina/o identity. Its examination can evoke intersectional views based on race, ethnicity, class, gender, education, etc. To outsiders, some of the rituals of religion and spirituality may appear as the legacies of class oppression, while to insiders they may be sources of pride in one's Latina/o identity and a symbol of resistance to the cultural obliteration that is risked with assimilationism.¹⁶³

The essays in Cluster Three open up a discussion that will need to be carried forward in future LatCrit conferences. Verna Sánchez, in *Looking Upward and Inward: Religion and Critical Theory*¹⁶⁴ sets the tone well in asking—why has there been a virtual absence of any focused, critical examination of the role of religion in the “treacherous terrain of American racial politics[?]”¹⁶⁵ What is its importance? We know and indeed accept that religion shapes our identities and our lives but, Sánchez notes, it has not been fully examined for its historical relationship to the issues of interest to critical race theory—such as racism, sexism and homophobia. In effect, *not* to explore the non-neutrality of the law's impact on those people whose place in American history marks the cultural genocide of Africans, indigenous peoples, women, bisexuals and transgenders, is to leave out an important topic in any critical legal theory. It must be a nuanced critical analysis, Sánchez notes, for religions “have often been used to both help and hurt people of color.”¹⁶⁶ It is an important call for a needed discussion on the hard questions about who we are and where we come from if we seek a thorough deconstruction of the sources of our liberation, oppression and identity, whether we find them in liberation theology in Latina/o America, or apartheid's

163. For example, in Chicano politics, the image of La Virgen de Guadalupe has played this role of encouraging pride and resistance. *Id.* See also Valencia, *supra* note 41.

164. See Sánchez, *supra* note 161.

165. *Id.* at 432.

166. Sánchez notes the critical role of religious-based community organizing in bringing about the civil rights movement. *Id.* at 434. For an example of the role of the spiritually-based activism of Southern Black Christian women as critical to the civil rights movement, see JO ANN GIBSON ROBINSON, *THE MONTGOMERY BUS BOYCOTT AND THE WOMEN WHO STARTED IT* (1987).

support by South African churches, or the free religious exercise rights of *Santeros*, or the Vatican's position on women's reproductive rights and homosexuality.

In fact, LatCrit II provided the opportunity to explore the role of religion in defining the cultural traits one might collapse under "Latinismo"¹⁶⁷ although it wasn't exactly a planned discussion. Between Verna Sánchez' call for the discussion in her essay, and the recalled events of an explosive session on the third day of LatCrit II—provided by Professors Nancy Ota, Emily Hartigan and Rey Valencia in their essays—I suspect religion will be on the agenda of future LatCrit conferences. A searing and unexpected opening discussion subsumed the scheduled talk on the construction of race, gender and class, and birthed a conflict of perspectives on the role religion should play in evolving notions of a critical theory centered on Latina/os, the law and culture. The conflict was generated by reactions to a comment on space and critical theory by Professor Nancy Ota, and multifaceted reactions and views on the special role that Catholicism plays in the culture of Southwest Tejanos. It was exacerbated by a largely misunderstood and undercommunicated role that the meaning of "Catholicism" has played in the development of the conference's host institution, St. Mary's Law School, which has broadly interpreted the meaning of "the Catholic mission" to advance progressive legal education, and as a result, had suffered virulent attacks from right wing opponents of such programs in 1997.

The strong feelings generated on the third day of LatCrit II are distant now. Their memory can barely evoke the passion that left some attendees wondering whether the LatCrit community could in fact discuss the politics of religion at a law school in a Catholic university and still remain in community. For me, with distance, I have concluded two things about the critical talk of that day: (1) that I'm grateful for the unexpected discourse generated by the honestly expressed discomfort with the religious icons that filled the room where the morning's panel met at St. Mary's Center for Legal and Social Justice (The Center); and (2) that I hope the LatCrit community will more carefully examine the potential sources for misunderstanding the role of Catholicism and politicized religious icons like La Virgen de Guadalupe¹⁶⁸ in the shaping of—and pride in—one's identity as a Chicana/o or Tejana/o, whether in Texas or other parts of the Southwestern U.S.

167. I define *Latinismo* or Latinism as the study and interest in Latina/o cultural ideas, values, beliefs and practices.

168. See RODRIGUEZ, *supra* note 84.

It was ironic to learn later from a St. Mary's faculty member that Brother Cletus' artistic icons had pushed some emotional buttons given that his art is an expression of the faith and the political, an extension of his service in the AIDS community, as an AIDS victim himself, among those who suffer discrimination because they may be poor, gay and Latino. The progressive St. Mary's faculty had appropriated Brother Cletus' art imagery, focused on the feminine values of love and nurturing, as symbolic of the Center's commitment to social justice in a community which punishes the poor, sick and Latina/o people of color. Of course, only in retrospect some conferees understood the strong political connections between various "religious" personnel in the San Antonio community, the St. Mary's faculty, and its Center, which houses five legal clinics to teach students the practice of law for social justice. The opposition, however, to an alleged uncritical alliance with symbols of Catholicism,¹⁶⁹ symbols that only feed internalized homophobia for some Latina/o sexual minorities, did open up an important discussion about religious practices and beliefs as sources of cultural identity.

With the excited discourse of that morning as a backdrop, Reynaldo Valencia's essay *On Being an "Out" Catholic: Contextualizing the Role of Religion at LatCrit II*,¹⁷⁰ emerges as a critical examination of the role of Catholicism in the shaping of working-class Tejano identity. Reacting partially to the challenge put by Professor Nancy Ota in her essay that a critical conference had "uncritically [invoked] religion through blessings and prayer and images,"¹⁷¹ Valencia at once agrees that the experience of religious culture among Latina/os is not homogeneous and that Catholicism may not even be much of an identity issue for other Hispanic subgroups. However, Valencia argues that for a vast majority of working-class Mexican Americans living in the Southwestern part of the U.S., Catholicism is an intensely significant force in the shaping of identity and community, "largely because it has been accepted, rejected or otherwise confronted and dealt with by these individuals."¹⁷² This is a moving essay which explores many facets of the working-class experience of Mexicans in Texas. Noting the extreme rarity of success among Latino men like himself who barely make it out of high school or young adulthood because of segregated education and violence, Valencia offers an important insight into the life experience of a people for whom religious culture has produced essential aspects of what it means to define oneself as a working-class Mexican-American, whose identity is tied to notions of family and com-

169. See Ota, *supra* note 41.

170. See Valencia, *supra* note 41.

171. See Ota, *supra* note 41, at 439.

172. See Valencia, *supra* note 41, at 453.

munity that are inseparable from cultural/religious notions of identity, role and responsibility. Weaving throughout his essay various stories that illustrate the importance of religion in the development of Mexican-American men who both fail and succeed in this racist society, we come to appreciate Valencia's analogy to the feminist slogan that the personal of religion is essential to the secular political for the working-class Latinos of Southwestern Texas. This is an essay that excises out of the term "culture" one of the most important aspects of grasping the various attitudes, beliefs, practices, behaviors and values that are acquired, passed on and preserved in an ethnic group and one's identity—that of religious culture and moral ideology.¹⁷³ This essay encourages us to see that religious culture among Latina/os or any other racial or ethnic group bids myriad avenues of interpretation and perception.

Of course, we cannot tease out the elements of the role religion has played in the politics of identity among certain Latina/os, such as Chicana/os of the Southwest, without a relentless attention to the various factors that intersect with religion, that for some individuals make it a source of deep pain, like Latina/o lesbians and gays, and for others, a source of comfort and cultural pride.¹⁷⁴ Professor Ota uses her essay *Falling From Grace: A Meditation on LatCrit II*¹⁷⁵ to embellish on the importance of intersecting any discussion of "religion" as "culture" for Latina/os with factors like gender, race, class, and sexual orientation. Ota thus urges us to consider that

173. A good example is provided in the use of the terms "madrina" and "padrino" which are rooted in the baptismal event and identify the persons who are sponsoring the child into their membership in the Church. Among Mexicans, however, the madrina and the padrino are akin to members of one's extended families; they are persons who would be the logical equivalent of a guardian ad litem in American law if one were to look for the next best person to care for a child that has been abandoned or lost her parents. *Id.* at 459 n.23.

174. Even this description is complicated by the fact that there are gays and lesbians who do come to terms with the oppressive moral dictates of their childhood and who reinterpret aspects of the faith into their personal value system, but not without difficulty. Latina lesbians, for example, are unlikely to be very "out" in their sexual preference because of the heavy influence of our Christian heritage in our relationships to our mothers, our family and our community. See Ana Castillo, *La Macha: Toward a Beautiful Whole Self*, in CHICANA LESBIANS, *supra*, note 72, at 24. Some feminists, recognizing both the critical role Christianity plays in the identity of the Latina, whether she attends Church or not, and in Chicana/o politics, advocate a liberation theology which is informed by one's personal reality made up of standard Christian beliefs and the popular religiosity of Native American and African religious practices. It is a theology that transforms La Virgen de Guadalupe from a subservient image into a strong and powerful role model whose identity is traceable to the Goddess Tonantzi, revered by indigenous peoples for her sexual power to create and her strength to destroy—literally from Mother of God, to God herself. See CASTILLO, *supra* note 162, at 101 (discussing ISASI-DIAZ & TARANGO'S HISPANIC WOMEN, PROPHETIC VOICE IN THE CHURCH); see also, GODDESS OF THE AMERICAS: WRITINGS ON THE VIRGEN DE GUADALUPE (Ana Castillo ed., 1996).

175. Ota, *supra* note 41.

critical scholars who intend to reconstruct jurisprudence must come to terms with historical domination and subordination so as not to duplicate hierarchical power relationships. Here is the rub of this agenda—knowing that our agenda of deconstruction must come to terms with the internal and external structures of oppression, that to be critical for legal theory may cause feelings of discomfort and guilt. But Ota asks, if we don't do this how can we challenge structures of subordination? In this vein, Ota uses the historical perspective on Catholicism, Latina/o religious heterogeneity and the diversity of religious tradition among Asian-Americans to find differences and similarities in religion as a source of identity, community and potential "wedging" between communities. Ota's essay offers a lens into the sources of oppression and/or tolerance for homosexuality among different racial and ethnic groups that rest on unique interpretations of the heterosexist mandate. While some may have explicit prohibitions against the practice (e.g., Christianity), others' religious traditions are neutral (e.g., Buddhism), yet both Asian-American and Latino communities largely manifest a cultural sexual repression and commitment to heterosexism that encourages homophobia, denial, silence, gender-phobia and lesbian invisibility.

In the final essay in this Cluster, *Disturbing the Peace*,¹⁷⁶ Professor Emily Hartigan reconstructs the events that produced the volatile discussion centering on religion and sexuality on the third day of LatCrit II with an eye towards deconstructing the complexity of the intersections that surfaced between spirituality and politics as people reacted to Professor Nancy Ota's challenge—had the conference organizers demonstrated an uncritical alliance by having the day's panels scheduled in a room filled with Catholic symbols? Writing from the stance of a St. Mary's faculty member who was defensively pained by the multiple levels of misunderstanding, of false *and* clear consciousness resonating in speakers' remarks, Hartigan explores her view of the question that underwrote the morning's emotional conversation—"What is the relation between an excess of signifiers, to use the LatCrit vocabulary, and a Catholic university?"¹⁷⁷ Hartigan notes the themes that kept surfacing in people's comments—memories of religion, Latino cultural values, struggles for sexual identity, acceptance and nonacceptance by family members, the meaningfulness of the icon of La Virgen de Guadalupe in the Southwest among Mexicanos and in labor struggles, contrasted against the absence of that meaningfulness of the Madonna among Cubans or Puerto Ricans, the paradoxes of loving and hating the Christian values passed down through family and

176. 19 CHICANO-LATINO L. REV. 479 (1998).

177. *Id.* at 483.

culture, and the curious mix of spirit and law being woven in and out of a discussion that for some ripped open our hearts and minds to our personal intersections based on gender, sexuality, class and race. In the discussion Hartigan sees the gift of consciousness, the place where we grow through our emotional discomfort. She also fills in the gap of information that might have tempered the remark of uncritical alliance with "offensive" religious imagery, explaining the subtleties surrounding the rise to power of a charismatic female dean who invited progressive, social justice law professors, some Catholic and others not, to provide the intellectual foundation for supporting a very radical meaning of "the Catholic mission." In the end Hartigan's essay exposes the paradoxical role of the Catholic Church in identity politics and social justice activism. For even if we understand how St. Mary's clinics bring justice for those fleeing the power of the INS, or death threats in Central America, or simply a battering spouse, we are still left with the stories of individual pain rooted in the powerful influence of the Church. And even as we understand that people like Hartigan, who once left the Church and then returned to it, would rather criticize it than focus on its authority, we also cannot deny the historical and continuing influence of the Catholic Church and some of its leaders in shaping people's lives, sometimes for the good and sometimes not. Hartigan invites us to explore those paradoxes with her hope and concern for the multiple hurts of that morning, painful truths which, together with this essay, tell us that an inquiry into the "reality of Catholicism" is an inherently biased question premised on one's personal experience of joy or suffering with the undeniably powerful role that religion plays in shaping our personal identities.

In closing this discussion I will offer one more awareness this discussion triggered for me about the relationship between religion, race and class which is about sensitivity to the multiple internalized forms of oppression we are capable of. In a different article I wrote that progressive scholars can become the unwitting perpetrators of the very forms of discrimination they so loudly cry against.¹⁷⁸ I wondered whether the facile judgment of St. Mary's Law School's use of Catholicism to undergird radical and progressive work at the legal clinics, didn't rest on a kind of unconscious elitism—an inability to see the needs of the poor out of a subconscious fear and disdain of the poor. I couldn't help but think that the conferees' inability to hear what the St. Mary's faculty was saying about the role of the social justice clinics in the San Antonio community was the product of a subtle class issue that awaits some deeper thought and

178. Arriola, *supra* note 50, at 10.

analysis.¹⁷⁹ In the context of the clinics, to address the needs of the poor, at least in San Antonio, means accepting the clients that walk through the doors for all they are, people who differ from us in terms of class, ability, education, and the kind of sophistication that it takes to think about things like the historical oppression by the Church. To embrace fully the meaning of the Center, is to understand that the most important people coming through its doors are not lofty scholars, judges and legal thinkers, but instead are among the poorest of the San Antonio community—refugees of violence, poverty, racism, sexism and homophobia. For people like them, Churches and their ministers are very often the only bridges to freedom and safety from political terrorism, hunger, illness and war, and yes, the same people who are associated with institutionalized doctrines that are subject to wide-ranging interpretation relevant to critical social and legal discourse, e.g., reproductive rights, sexism, homophobia, etc.¹⁸⁰ Whether we call it “religion,” or “spirituality” or “the moral” or “the ethical,” we enter a terrain that is fraught with multiple interpretations because of the diversity of our internally and externally constructed identities.

Although, in retrospect, some conferees may have wondered how it was the conversation steered so far from the planned agenda of talking about the race/class differences and commonalities between Latina/os and Asian-Americans, there is a bit of the determi-

179. Another incident on the Planning Committee has been coming back to me as also connected to a range of un verbalized class issues that are essential to a LatCrit theory that can “walk its talk” of diversity. When plans for the Latinas and the Law Conference were subsumed by the plans for LatCrit II, the emphasis shifted to having the first day of LatCrit II devoted to Latinas and Community. In that discussion there was some talk of having Gloria Anzaldúa as a keynote speaker, whom we learned would charge a \$6,000 speaker’s fee to attend our event because she is now permanently disabled and has to depend on these fees for her livelihood. Of course, from the organizing perspective the fee seemed too high, but we never seriously worked on the fundraising idea that might have been explored to get this writer, scholar, poet and producer of classic works (see, e.g., *supra* note 83), to one of our conferences. We got stuck at the resistance to the cost, and too quickly dismissed her potential role, making comparisons to the fact that our own “stars” in this movement don’t charge such high fees. It is as if some part of us, sitting in our comfortable 5 to 6 figure income posts couldn’t take a moment to contextualize Anzaldúa’s \$6,000 fee as part of the meager source of income to someone who is poor, disabled, not working and dependent on occasional royalties and speaking engagements to create a decent and comfortable living. It made me wonder how many of us who have middle-class origins or who have survived working-poor and working-class existences unconsciously resist true connection with the plight of the poor, and literally avoid putting ourselves “in their shoes,” because to do that might engender feelings we care not to experience. Query further whether our comfortable status in the academy induces us to more easily embrace the “fringe culture” of the white middle-class (e.g., prime-time TV’s *Ellen*’s portrayal of lesbian/gay lifestyle), rather than the “strange” ways of our own non-white poor (e.g., Tejano Catholic ritualism)?

180. Professor Valencia notes that one Biblical passage has been used by the oppressors of any kind of advocacy on behalf of homosexuals and by the defenders of anti-subordination efforts on behalf of gays and lesbians. See Valencia, *supra* note 41, at 468.

nist in me who believes the religion discussion needed to happen. It broadened the scope of analysis for examining race and class within the context of a specific cultural identity. I believe the religious discussion, however it was triggered, and even the pain that was shared by at least one gay Latino colleague, was a gift to our evolving efforts to create a diverse community of scholars forging ideas for healing and empowerment. The fact that there will be unexpected issues for discussion, an "organic" and uncontrollable process so to speak, is about the only predictable factor about the LatCrit conferences so far. In that volatility, as many will probably recall, there was openness, excitement, honesty, healing and critique, room for analysis, and personal growth. There were many experiences that some individuals will see as the hope for preserving Latina/o critical legal theory as a scholarship movement and community. The conflicted discourse at LatCrit II could be seen for critical race scholars as "the blessing in disguise."

This brings me to a final commentary on where we are going as a community. It seems that so far we have not figured out entirely how to accommodate at least two distinct paths LatCrit can take. It begins with the obvious reality that we are a collective of both tenured and untenured, clinical, activists and non-activist professors and scholars. Arguably, the conflict centered on religion and its practical/physical manifestations at the Center for Legal and Social Justice can be seen as a catalyst for further inquiry about the need for a more cohesive philosophy that explains whether or not we intend to accommodate all paths, and that critically examines what that means. For example, are we to be a gathering of only legal scholars? That was not the case at LatCrit I. Are we to be consciously interdisciplinary at every panel? Are we to integrate on every panel scholars and activists? How are we going to define activism? Is it sensible to segment scholarship and activism? I, for one, have been defining both my teaching and my scholarship as intellectual activism because the contemporary issues of the day, which are using race-baiting tactics to destabilize the few gains of the civil rights and feminist movements urge me to do so.¹⁸¹ What then is the purpose of our scholarship? Whom will it serve? How broad do we want our audiences to be? Are we to be generators of just more scholarship that is unconnected to our surrounding communities? Is our purpose just to make inroads in the overall discipline of the law as writers and not to produce writings and teachings for those in the streets, in *pro bono* practice, in clinics or in legal aid? I imagine that some of us see the possibilities for both kinds of philosophies to

181. See discussion *supra* note 13; see also the discussion of Hernández-Truyol's article *Building Bridges III*, *supra* notes 143-52 and accompanying text.

be embraced by LatCrit as a whole, but that future conferences will produce more exacting organizational theory and practice for accommodating the interplay of the "reconstructive"¹⁸² part of our intellectual agendas. In this spirit of reconstruction the final section of this Foreword offers one LatCrit scholar's perspective on the possibilities for expanding the reach of critical theory into the classroom as an example of the material side of intellectual activism.

IV. FOREWARD MARCH IN REVOLUTIONARY TIMES

On the day after the Fifth Circuit held in *Hopwood v. State of Texas*¹⁸³ that the plaintiff's constitutional rights under the Fourteenth Amendment equal protection clause had been violated by the law school's use of a dual-tracked affirmative action program to admit law students, I found myself awkwardly discussing the implications of the decision in a civil rights course. One of the difficulties I experienced standing before the class talking about the role that affirmative action programs had played in fulfilling the promise of equality in *Brown*,¹⁸⁴ centered on the court's reasoning that everything from "blood type" to alumni status to musical and/or athletic talents were more relevant to serving as legitimate admissions criteria than one's race or gender.¹⁸⁵ The reasoning of the opinion angered me not only for the distorted interpretation of the role that race and gender consciousness had played in alleviating this nation's blatant, historic patterns of discriminatory intent and impact.¹⁸⁶ I was disturbed by the unarticulated political message to anyone who had ever supported or benefited from an affirmative action program.¹⁸⁷ But the greatest difficulty I had that day, was confronting my limitations in emotional detachment from a look of pain and deep sadness I saw on the faces of several minority students who sat in

182. See Harris, *supra* note 97; see also Elizabeth M. Iglesias, *The Inter-Subjectivity of Objective Justice: A Theory and Praxis for Constructing LatCrit Coalitions*, 2 HARV. LATINO L. REV. 467 (1997); Ediberto Román, *Common Ground: Perspectives on Latino-Latina Diversity*, 2 HARV. LATINO L. REV. 483, 493 (1997).

183. 78 F.3d 932 (5th Cir. 1996).

184. *Brown v. Board of Education*, 347 U.S.483 (1954) (invalidating legalized race segregation in public schools under U.S. Const. amend. XIV (the 14th Amendment Equal Protection Clause)).

185. *Hopwood*, 78 F.3d at 946.

186. See CHARLES R. LAWRENCE III & MARI J. MATSUDA, *WE WON'T GO BACK: MAKING THE CASE FOR AFFIRMATIVE ACTION* (1997).

187. Judge Smith stated that "[t]o foster such diversity, state universities and law schools and other governmental entities must scrutinize applicants individually, rather than resorting to the dangerous proxy of race." *Hopwood*, 78 F.3d at 947. In the footnote that followed Judge Smith acknowledged, without much embarrassment, the white privilege embedded in non-racial, longstanding preferences like alumni status. *Id.* at n.31. He stated that the court, "recognize[s] that the use of some factors such as economic or educational background of one's parents may be somewhat correlated to race." *Id.*

my class that day. For days after the ruling, tension permeated the halls of the U.T. Law School, as students gathered in small racially identifiable groups expressing their feelings about the decision, some with joy and others with hurt and seething anger.

As a law professor, I have often found myself in the privileged role of counseling students who become my research assistants or who seek me out when they discover I was a civil rights lawyer. I say it is a privilege because I believe that sharing on a one-to-one basis broadens not only the education of the person being mentored, but also that of the mentor. In the weeks following *Hopwood*, I remember having more students than usual stopping by for support and direction. Some felt targeted by the politics of the decision, others felt Anglo white students' fear and hostility towards them, and others just sought hope in a future career and profession they felt betrayed by.

One of the greatest gifts to my professional development has been the energy derived from my recent involvement in two professional activities—one as a member of the Society of American Law Teachers (SALT), the organization responsible for the recent march by law professors in San Francisco opposing the re-segregation of our public universities,¹⁸⁸ and the other my involvement in Latina/o Critical Legal Theory. These professional engagements have encouraged me not to give up hope in the face of a politics that has managed to manipulate this nation's history of race relations and concepts like "colorblindness" in an effort to preserve white male privilege and supremacy. Thus, I have redirected my anger into the energy and activism it takes to forge community with like-minded-colleagues across the nation who are as upset as I am with *Hopwood* and/or Proposition 209 in California.¹⁸⁹ My professional activism has also encouraged me to begin theorizing about the importance of a reenvisioned legal pedagogy—one which addresses the relationship between law, power and knowledge and that sees the law as both an instrument of oppression and a tool for social justice.

A few judges and scholars have noted that contemporary law professors need to recognize that a gap between "the world out there" and the classroom has been widened in recent decades. Students are graduating from law school without a real sense of what they are supposed to do with their acquired education.¹⁹⁰ Law professors, including critical legal theorists of all persuasions, have not sufficiently theorized about pedagogical intent at any of our institu-

188. See *supra* note 4.

189. See *Coalition for Economic Equality v. Wilson*, 122 F.3d 718 (9th Cir. 1997) (upholding constitutionality of Prop 209).

190. Judge Harry T. Edwards, *A New Vision for The Legal Profession* 72 N.Y.U. L. REV. 567 (1997).

tions. The legal academy has in fact forged an arbitrary division between "clinical" and "traditional" education, a separation that I think is grounded on elitist principles. Thus, the "worst" schools only provide practical experience and don't ground a student in enough theory. The "best" or "better" schools only do, or mostly do theory and thus produce students who supposedly know more about how to "truly think about the law." The supposed "best" schools have abandoned the responsibility for assuring that a student knows anything about the practice of the law in its multi-faceted potentialities, from nuts and bolts practice to ethical considerations. Instead, professors casually remark that students needn't worry, they'll "pick it up with experience." Yet, the bureaucratization of law practice in the form of large professional corporations¹⁹¹ and the intimate relationship between the greatest investment scandals of the century and irresponsible lawyering¹⁹² should have sent the signal to law schools some time ago. We cannot shirk the responsibility to produce a pedagogy that tightens the relationship between theory and ethical practice, and that, at a minimum, serves the interests of those who enter our schools with specific social justice goals in mind. Very few schools seem committed to a teaching agenda that demands that a student be grounded in concepts of both theory and ethical practice.¹⁹³ Fewer examples of legal education exist that have seriously confronted the problem of the gap between theory and practice by at least beginning to reenvision the possibilities for "clinicalizing" the traditional classroom.¹⁹⁴

LatCrit scholars and teachers, who are social justice minded law professors, have an opportunity to use the contemporary struggles over the politics of affirmative action, diversity and racism to begin to reimagine the boundaries between their scholarship and their teaching, and how they engage with their students who come to them

191. See Robert A. Kagan & Robert Eli Rosen, *On the Social Significance of Large Law Firm Practice*, 37 STAN. L. REV. 399 (1985); Teresa Stanton Collett, *Teaching Professional Responsibility in the Future: Continuing the Discussion*, 39 WM. & MARY L. REV. 439 (1998).

192. See, e.g., SEC v. Drexel Burnham Lambert, Inc., 861 F.2d 1307 (2nd Cir. 1988); SEC v. Levine, 881 F.2d 1165 (2nd Cir. 1989); NANCY LISAGOR & FRANK LIPSIUS, A LAW UNTO ITSELF: THE UNTOLD STORY OF THE LAW FIRM SULLIVAN & CROMWELL (1988); William R. McLucas, et al., *SEC Enforcement: A Look at the Current Program and Some Thoughts About the 1990s*, 46 BUS. LAW. 797 (1991).

193. St. Mary's University promotes its clinical programs as an example of the "hands-on approach to the work for justice." Other schools with the reputation of being committed to clinical pedagogy are Northeastern University Law School in Boston and The City University of New York Law School at Queens College (CUNY).

194. See Vincene Verdun & Vernillia R. Randall, *The Hollow Piercing Scream: An Ode for Black Faculty in the Tenure Canal*, 7 HASTINGS WOMEN'S L.J. 133 (1996); see also Vernillia R. Randall, *A Reply to Professor Ward*, 26 CUMB. L. REV. 121 (1995-96); Vernillia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63 (1995).

for professional guidance and inspiration. As both traditional and clinical professors, LatCrit scholars have much to offer in response to the growing institutional pressure to create a linkage between the pedagogy of the clinic and that of the classroom.¹⁹⁵ It is not coincidental that with the rise of the politics of retrenchment on every policy or program that has made it possible for there to be a critical mass of Latina/os in the legal academy, that I have felt a greater need to more than dabble with nontraditional teaching techniques designed to break down the boundaries between theory and practice. Students are coming to law school asking for more and better training on how to become social justice lawyers because they are witnessing a changing world becoming hostile to the dreams of people like Martin Luther King. The day I witnessed the dying of hope in the souls of a few students who interpreted *Hopwood* not from the vantage point of "colorblindness,"¹⁹⁶ but from that of personal experiences of discrimination, I understood that my role as a teacher was getting harder and that I needed to think of ways of addressing that sense of my professional responsibility.

A. *Theorizing about The Politics of Pedagogy: Transgressing the Boundaries Between The Clinic and the Classroom*

In the fall of 1997, as I opened up a new semester in teaching a civil rights litigation course I again felt the need to do something in my teaching that would harness the feelings generated by my students confronting the political and social realities for public education in Texas generated by the *Hopwood* case. I felt it ironic that I was starting out a course which would focus on the historic school desegregation cases, including *Brown*, while right outside my office students both inside and outside of the law building were organizing

195. Not coincidentally, progressive law professors gathering under the umbrella of organizations like SALT have been at the forefront of this effort to bridge the gap between theory and practice. The Fall 1997 SALT teaching conference was explicitly designed to introduce "traditional" professors to the benefits of "clinical" experiments in the classroom. See *SALT Teaching Conference A Huge Success*, SALT EQUALIZER, (SALT, Fort Lauderdale, Fla.), Dec. 1997, at 4 (on file with author).

196. The concept of "colorblindness" is derived from Justice Harlan's opinion in *Plessy v. Ferguson*: "[o]ur Constitution is color-blind, and neither knows nor tolerates classes among citizens," 163 U.S. 537, 559 (Harlan, J., dissenting). Professor Charles Lawrence has forcefully argued that contemporary legal doctrine and political discourse have transformed Justice Harlan's prescriptive ideal of color-blindness into an assertion that would deny that we continue to live in a racist society. See Charles R. Lawrence III, *The Epidemiology of Color Blindness: Learning to Think and Talk about Race, Again*, 15 B.C. THIRD WORLD L.J. 1 (1995); see also, Berta Hernández-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 HARV. LATINO L. REV. 199 (1997) (observing the hypocrisy of the colorblindness concept in a historical perspective).

a 5,000 person march for diversity on the UT campus. The march had been triggered by widespread negative reaction to the controversial words of a colleague, Lino Graglia, who was accused of using cultural racist theories to support *Hopwood* and his opposition to affirmative action.¹⁹⁷ In my own classroom, I understood quickly from the class discussions on the day of the march that I had more than a handful of students who were hungry for training in the skills that would help them become lawyers dedicated to using the law as an instrument of social justice. In the midst of this heated political environment, I realized that I had a golden opportunity to use the energy of the pro-diversity movement to advance a pedagogical experiment aimed at tightening the relationship between theory and practice in a setting, the non-clinical and traditional classroom, which usually prevents closer contact between professor and graduate student. I was also motivated by my worry that a new daunting textbook would overwhelm my students in a late afternoon class and that I might experience after the exciting discussion in the days of the campus activism, the classroom experience of "catatonia."¹⁹⁸

I urge LatCrit scholars to begin to re-think how they have been teaching their courses as an extension of how and why they engage in non-mainstream scholarship. If in fact, our scholarship is about forging community and advancing progressive insights into the role of law in society, then we owe it to our students to demonstrate those possibilities for them while they are still in law school. We may not reach every student but we will at least reach more than we usually do if we consider the possibilities for a restructured pedagogy. A restructured pedagogy should engage our activist thinking about critical legal theory on issues like identity politics and discrimination into new and simple teaching methods capable of transferring the excitement we feel in our work to our students. As scholars, we all know the positive experience generated for us when we write to advance legal theory that addresses issues of oppression. As teachers, I believe we can generate for ourselves and for our students similar experiences with the use of experiential learning models that take teachers and students to a place somewhere in between the clinic and catatonia.

The project I describe below is an example of the pedagogical experiment I introduced in my civil rights course in the Fall of 1997.

197. See *supra* notes 4 & 13 and accompanying text (explaining the SALT sponsored C.A.R.E. march against the resegregation of public universities).

198. These are days when the learning environment is sluggish for a variety of reasons, including too few students having read the material, the complexity of a topic, a pattern of the same students dominating the discussion, boredom and resentment by other students, and so on. Professor Vernellia Randall, architect of many experiential learning techniques, argues that in that environment the work of the traditional professor is much too hard, too tiring and not nearly as effective. See Randall, *supra* at 194 (solo articles).

I wanted my students to come away from a term fraught publicly with tension, hope, anxiety, frustration and anger, feeling that both their emotional intelligence and their intellectual abilities had been stretched despite the pressures created by the campus politics. My hope was to create a learning task that would help them deconstruct the legal, social, historical and economic realities underlying the political debate about race and affirmative action in public education. The "Austin Schools Project"¹⁹⁹ taught more than a dozen of my students, without the benefits of the typical clinic, that there is value in learning when theory and practice come together. They learned that their own future theorizing must be informed by careful attention to good practice. But, practice took on a different meaning as they also learned how to gather evidence, how to negotiate relationships with hostile yet valuable sources of information, how to gather anecdotal evidence, how to organize an investigation so that they focused on the most important issues, how to anticipate funding problems for litigation, and so on. The meaning of "civil rights and public interest litigation" changed with every step towards the preparation of their investigative/advocacy reports. The tasks had a spillover effect in the classroom. Thereafter, class discussions were more lively, intelligent and sophisticated. The students also generated valuable original data that could serve as resources for the Austin public education community.

B. *A LatCrit Scholar's Transformative Teaching Experiment : The Austin Schools Project.*

The Austin Schools Project had two material end goals—for the students to receive alternative credit for their course work in a three-credit civil rights litigation course and for them to do so by working as members of a team producing an investigative report that would answer the question, "Is Austin in Compliance with *Brown*?" Students in my class were intensely aware that the principles and social policy issues in cases we were reading in this course, especially those on the famous school desegregation cases starting in the 1930s and through the 1970s, bore significant relevance to the surrounding political events on the campus at the University of Texas. A march of 5,000 students opposing the publicized controversial views of a member of the law faculty and in favor of diversity in education had re-opened an exciting discourse among students and faculty, a discourse which was at times emotionally tense, confrontational, challenging, educational, and frustrating. On the day of my second class for example, we had a major student sit-in in the lobby of the law

199. See Part IV B, *infra*.

school which followed the march against the re-segregation of the University of Texas system. In that environment it was difficult to ignore the need for as open and honest a discussion as could be had on the relevance of principles like "equality and the 14th Amendment," to the surrounding political environment. At stake, was the potential for a more thoroughly analyzed discussion on the meaning of equality and its relationship to an unexamined theory of "merit." Most public rhetoric narrowly focused on standardized testing, "colorblindness," the presumed inferiority of racial and ethnic minorities, or the falsified image of Asians as model minorities,²⁰⁰ and so on. I designed the Austin Schools Project to help students connect the activism on campus to an examination of the history of segregation in Texas, in its public schools, and to the contemporary political discourse, as well as to legislative and judicial developments in the 5th Circuit, and the nation.²⁰¹

1. *The Method: Team Projects*

Experiential models of teaching are premised on the theory that all human beings have different learning styles²⁰² and that a comprehensive theory of education attempts to incorporate elements of pedagogical technique which honors that reality. While some students, usually a small minority in the typical law classroom do quite well with the confrontational and elusive Socratic method, many students, usually in the majority, need much more to engage their minds in thinking about and applying the legal principles we gain from reading or hearing them discussed. In my own experience, every time I use problems and partner or group discussion in class,

200. See Neil Gotanda, *Asian American Rights and the "Miss Saigon Syndrome,"* in *POWER PRIVILEGE AND LAW: A CIVIL RIGHTS READER* 106-110 (Leslie Bender & Daan Braveman eds., 1995) (critiquing the model minority concept); Frank Wu, *Neither Black Nor White: Asian Americans and Affirmative Action*, 15 B.C. THIRD WORLD L.J. 225 (1995).

201. It is not coincidental that members of the LatCrit community who are clinical professors make the most forceful calls for activist teaching and scholarship. For example, Margaret Montoya openly advocates activist teaching and activist scholarship and asks us to scrutinize our relationship to the dominant discourses and analytical practices in either teaching or scholarship which lull us into thinking that we should only produce conforming models of writing and pedagogy. Laura Padilla reminds us not to get so caught up in the ivory tower that we forget about our communities and about the possibilities for work that not only helps empower our communities but ourselves. These inspiring statements should encourage us all to risk the raised eyebrows we may invite when we design classroom linkages between, for example, outside political discourse (e.g., student anti-racism protests) and in-class theorizing about concepts like "equality," "discrimination," "oppression," "subordination," etc. See Montoya, *supra* note 9, at 357; Padilla, *supra* note 53, at 378. A similar forceful call to think more carefully about our classrooms, and what we are including or not, was made at LatCrit I by Stephanie Wildman, *supra* note 38, at 316.

202. See Randall, *supra*, note 194 (solo articles); see also Vernillia R. Randall, *Law Teaching* (visited July 13, 1998) <<http://www.udayton.edu/~aep/legaled/>>.

we have more extended and diverse exploration of issues in a case, and the energy flows along multiple planes of analysis incorporating storytelling, debate, criticism and lecture. I agree with Professor Randall, that the burden is heaviest on the professor in the typical classroom which only relies on the Socratic method, and that the aliveness of a classroom from open discussion generated when students work together on a problem, or when they role play, is beyond comparison for its value.

Having had the benefits of experience in school desegregation litigation in my early years as a civil rights lawyer, I advised my students that if they chose the alternative assignment they had to work with at least one partner. They were to be in role-play as a fictional law firm or public interest advocacy group for six weeks as they conducted their investigative work and wrote their report. Each fictional law firm represented the same fictional client, a Mexican-American/Anglo family who had just moved to the City of Austin and was looking at the quality of the public schools before buying a home. The fictional family had learned that the quaint racially mixed neighborhood they had an interest in did not have the best schools. I guided their research assignment with an explicit set of criteria for how to produce a pre-trial investigative report that would help them decide (a) whether there was any evidence to support the belief that the Austin Independent School District (AISD) was illegally segregated and potentially ripe for a mandamus action to reopen any existing desegregation decree, and/or (b) whether, even if there were insufficient evidence to support the filing of any legal claim, there was evidence to support the need for further investigation into the quality of education provided by the AISD to racial minority students based on the suspicion that the school system was still racially segregated. My guidelines for their research encouraged the production of detailed facts they could think of generating only if they carefully read and re-read the facts of some of the leading school desegregation cases,²⁰³ as well as any local efforts which had been made in Austin either to desegregate, integrate and/or declare as "unitary"²⁰⁴ the public school system. The investigative re-

203. *E.g.*, *Brown*, 347 U.S. 483 (1954); *Keyes v. School District No. 1, Denver, Colorado*, 413 U.S. 189 (1973); *Green v. County of School Board of New Kent County, Virginia*, 391 U.S. 430 (1968); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976); *Milliken v. Bradley (Milliken I)*, 418 U.S. 717 (1974); *Milliken v. Bradley (Milliken II)*, 433 U.S. 267 (1977).

204. In school desegregation litigation "unitariness" means that segregation is removed from the public school system and there are no longer any significant tangible signs of inequality and racial inequity. In a unitary system, racial discrimination has been eliminated. Once there is a finding of unitariness, intentional discrimination is the standard for revoking a previous finding of unitariness. *See U. S. v. Texas Education Agency*, 467 F.2d 848, 870 (5th Cir. 1972).

port was to have a historical context component; a social, political and economic analysis; a statistical data and budget analysis; a section on relevant legal analysis; and a recommendation for remedies. The latter recommendations would be based on their data and what they learned in class about the difference between a discriminatory treatment versus impact models when trying to prove a violation of the Equal Protection Clause.²⁰⁵ They could recommend action in the form of a draft motion for summary judgment or mandamus to reopen or they could produce an advocacy report directed at public officials in the education field in Texas urging them to re-examine their current management and control of educational resources based on their findings. Because the announcement for signing up for the project had followed three weeks of discussion of school desegregation and Title VI litigation as well as the events surrounding post-*Hopwood* activism on campus, I felt the project would be sufficiently enticing and the credit incentive attractive enough to generate student interest. I was right. Out of seventeen students who were in my class, fourteen signed up and eleven eventually produced four reports.

2. The Instructor's Hopes for Accomplishing the Task and the Learning Experience

I knew when I designed the Austin Schools Project that I was taking a risk. My hope was that students would gain some experience in defining the concept of "remedies" in both traditional and non-traditional ways. I also hoped that by emphasizing the importance of developing the historical context in public interest litigation that they would run into enough interesting data that would get them curious about the contemporary realities in public education in one of Texas' supposedly most "progressive" cities. Students were therefore encouraged to look at old newspapers, writings on Austin's experience as a Southern city with busing and integration, to any litigation that had developed in the city, to actually going to the school districts and looking at their records of meetings, and most importantly to learning to read through the volumes of statistics that document the flow of state and federal monies to create, staff and support every imaginable aspect of education and school programs. Because they had a limited time span of six weeks, and I knew my students would discover too much information and too little time to analyze it all, I served as a managing consultant who encouraged them to narrow the focus of their inquiry and analysis. I encouraged

205. See, e.g., *Washington v. Davis*, 426 U.S. 229 (1976); *Massachusetts v. Feeney*, 442 U.S. 256 (1979); *Guardians Association v. Civil Service Commission of the City of New York*, 463 U.S. 582 (1983).

them to be selective in the data that could credibly take a public stance on the question, "Is Austin in Compliance with Brown?," at least from the vantage point of its audience being public policymakers in non-litigation fora.

No one in the class, including myself, had any sense if Austin AISD was in fact considered "integrated" by law and whether or not there was enough evidence to support a *prima facie* claim of discriminatory impact on any aspect of the quality of public education. We all had a hunch, based on the location of the University of Texas, that Austin is at least residentially segregated and that a number of the schools around certain parts of town would qualify as racially identifiable, that is, as having a population at least 15% above their demographic representation in the city's population.²⁰⁶ But, because AISD also publicizes the existence of magnet school programs, and many students, both racial minority and not, had experienced these in Texas and elsewhere as failures in bringing about just racial integration, the teams focused on examining more closely how these programs helped the AISD fulfill its legal duty to comply with the first desegregation orders which had been entered in the seventies. All four student teams quickly determined that they were in no position for legal action. They faced a formidable discriminatory intent standard²⁰⁷ in the Fifth Circuit, which had followed a

206. In supervising my students I relied on the experiences I acquired right after law school as co-counsel in the reopening of *Brown v. Board of Education of Topeka, Kansas (Brown III)*. By the late seventies and early eighties the litigation of *Brown III* was influenced by the sophisticated school desegregation law and practice which had been developed as federal judges began to oversee the dismantling of school systems allegedly operating as racially divided or "dual systems." The facts gathered in these cases were often very complex yet federal judges had developed fairly practical ways of identifying whether or not a school system could be viewed as presumptively illegal unless proven otherwise. Based on the city or town's racial demographics, courts typically determined whether a school's racial demographics fell either 15% above their representation in the city's population data, or 15% below. If for example, blacks in the community were 25% of the population and a school had a 60% black population in the school then one might see it as a racially identifiable minority school. If on the other hand their representation was 5% in a school then the school would probably be presumptively considered a "white" school, absent other data explaining the low representation of blacks. The convention was strictly viewed as a starting point of analysis in determining whether or not school systems were subject to challenges of racial discrimination and potential desegregation orders. Examples of the analysis are found in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). Cases like *Keyes*, illustrated that "duality" could be found even where the division was between whites and a racially mixed population (e.g., Blacks, Latinos and Asians). See *Keyes v. School District No. 1, Denver, Colorado*, 413 U.S. 189 (1973).

207. The Supreme Court has adhered to a heavy intent standard of proof for establishing a claim of discrimination under the Equal Protection Clause. See, e.g., *Davis*, 426 U.S. 229; *Feeney*, 442 U.S. 256. A compelling finding of discriminatory impact may provide a strong inference of discriminatory intent. See *Metropolitan Housing Authority v. Arlington Heights*, 429 U.S. 252 (1977) (setting forth various criteria which could be combined with evidence of discriminatory exclusion which would prove a violation of the 14th Amendment equal protection clause).

declaration of the AISD's status as a "unitary system" in 1983. That standard required heavy proof that the defendant's actions were intentionally designed not to meet educational necessity but instead to further purposeful discrimination.²⁰⁸ However, because students knew that the pre-litigation investigative report is often a tool for educational and lobbying purposes, they were encouraged to gather evidence of discriminatory impact at least to support the charges made in an advocacy report they might present to the School Board. They understood the difficulty of gathering evidence of intent to discriminate, but they were also encouraged to narrow the inquiry on the illegality of specific programs in the face of the intent standard which presumes the legitimacy of the AISD's policies as a product of educational necessity. By being encouraged to narrow their inquiry to the actual functioning of a program in light of its presumed educational necessity, all teams eventually concluded that some of the policies and practices of the AISD were racially discriminatory in their impact. Others could be proved as being not educationally necessary and therefore potentially presumptive evidence of an intent to engage in purposeful discrimination.²⁰⁹

3. *The Findings: The Aliveness of Racism in Public Education*

All four teams produced similar conclusions about the quality of education in the AISD public schools. The list below is only partial:

208. See *Price v. Austin Independent School Dist.*, 945 F.2d 1307, 1320 (5th Cir. 1991).

209. John Weikart & Stephen Shires, *Elementary Schools in Austin, Texas, An Initial Finding of Facts and History of Integration in A.I.S.D.* (Nov. 18, 1997) [hereinafter Weikart Report] (unpublished manuscript, on file with author). In AISD, the least experienced teachers have been assigned to predominately-minority schools, while most qualified and/or experienced teachers have been assigned to predominately white schools. These assignments were made by AISD under AISD's teacher assignment policies. *Id.* at 21. Mary Maldonado & Jennifer Cavner, *Is Austin in Compliance with Brown?: A Study of One School District's Desegregation History* (1997) [hereinafter Maldonado Report] (unpublished manuscript, on file with author). In 1986, the AISD Board adopted a new attendance plan following the decree of unitariness in 1983; this plan has resulted in a return of several racially identifiable schools. *Id.* at Section 6. Yolanda Cornejo, John Donisi, Margo Garaña & Cullen McMorrow, *Unlawful Segregation: Has Austin Complied with Brown II's Integration Mandate? A Comprehensive Study of Austin Independent School District* (Nov. 19 1997) [hereinafter Cornejo Report] (unpublished manuscript, on file with author). The opening of new schools and further attendance zone changes have found Austin's middle schools becoming more and more segregated. *Id.* at 8. The policies the AISD currently utilized in selecting students for magnet, Advanced Placement, Honors, and Gifted and Talented programs creates a dual education system within schools. *Id.* at 28. Courtney A. Bowie, Tanya M. Clay and Ernest W. Cromartie, III, *Austin Schools Project* (Nov. 18, 1997) [hereinafter Bowie Report] (unpublished manuscript, on file with author). Predominantly minority schools are given the same amount of funding and resources even though the original compromise in 1987 required that these schools be given additional resources to offset the detriment of being racially isolated. *Id.* at 42.

- i) that a majority of the Austin public schools at all levels are racially identifiable schools which give the AISD the overall character of a dual system based on race, with the schools on the Northwest and west side of town regarded as the "white and Asian schools" and the schools on the east side of Austin being the Black and Hispanic schools;²¹⁰
- ii) that a brief experimentation with busing in the 1970s, integrated just a few schools; as soon as the system was declared "unitary" in 1983, the new policies on attendance zones, openings and closings, construction of new schools, and so on, have followed and continue to follow historical patterns of *intentional* residential segregation policy set in the 1920s by the Austin City Planning Office;²¹¹
- iii) that there has been substantial movement of African-Americans throughout the city but that the school attendance zones continue to be drawn and re-drawn to facilitate past and existing patterns of residential segregation; meanwhile the permanence of attitudes by local government officials perpetuate historic patterns of intentional race segregation reflected in projections by the City Planning Office of Austin's racial demographics in the 21st century;²¹²
- iv) that the building of new schools has been only coincidentally accomplished just when a school has become racially integrated so that, for example, a new high school was built in South Austin purportedly to alleviate the growth in two other high schools, but the way the attendance zones were re-drawn the new high school became all white and the older schools suddenly became predominantly Hispanic and Black;²¹³
- v) that the schools with the magnet programs are created to benefit primarily white students in the AISD;²¹⁴
- vi) that the creation of a middle school program with a magnet school to facilitate greater integration by attracting transfers by white students to predominately minority schools in actuality sustains two schools within

210. See Maldonado Report, *supra* note 209, at Section 6

211. *Id.*

212. *Id.*

213. See Comejo Report, *supra* note 209, at 8.

214. See Maldonado Report, *supra* note 209, at Section 6.

- one school building—a white student program (the magnet programs) and the minority program;²¹⁵
- vii) that the racially identifiable minority schools are spending qualitatively less money per pupil than non-minority schools;²¹⁶
- viii) that one of the clearest indicators of separateness by race producing inequality in education *per se* is in the fact that the higher paid teachers are the teachers with more experience and are assigned most frequently to the whiter elementary schools;²¹⁷
- ix) that there is a discriminatory assignment of teachers such that most minority teachers will end up at minority schools, depriving white students of the opportunity to ever see a Black or Hispanic teacher role model;²¹⁸
- x) that although neighborhood attendance zones could easily be drawn to facilitate integration the transfer policies and optional attendance zones created in recent years actually facilitate racial segregation;²¹⁹ and
- xi) that overall there is a significant disparity in test scores between minority and white students in the school district but that this disparity is clearly dependent on the demographics of the school. Whether white or Black or Hispanic, the student in a school that has become a minority school as a result of school attendance zones created by the AISD will *not* do as well as a student, white or Black or Hispanic, at a school which is racially identified as a white school. Therefore, the disparity in the tests is indicative of the disparity between the schools and that disparity bears some relation to the District's consistent policy of placing the least experienced and worst paid teachers at minority schools.²²⁰

* * *

I know that the energy it took for me to produce last fall's pedagogical experiment grew out of the energy that I have gained from my engagement in Latina/o critical legal theory. The production of a report that is also useful to the public²²¹ empowered the

215. *Id.*

216. *Id.*

217. See Weikart Report, *supra* note 209, at 21.

218. *Id.* at 23; Cornejo Report, *supra* note 209, at 17, 19

219. See Cornejo Report, *supra* note 209 at 14.

220. See Bowie Report, *supra* note 209 at 41.

221. The evidence produced was so impressive that I supervised a second team of students who worked with me as independent researchers who expanded upon and drafted a summary report of the past work. This material will be donated to plaintiffs' lawyers in

students in their developing skills as researchers, analysts and advocates. Their work in turn will empower with valuable data those who know that untold stories of injustice and prejudice underlie the divisive rhetoric²²² opposing affirmative action in America. They also understood that a simple concept like "remedies" is more than the tail end of a lawsuit; it is a concept fraught with social, economic, historical, political and legal meaning.

For the LatCrit scholar and teacher, activities like the one I supervised with my students do take some extra time to design and implement. However, the contemporary social and political reality demand that we develop more creative teaching methods aimed at confronting the external structures of power that have dominated the legal academy and that threaten, indeed promise if unchallenged, the resegregation of all public education. When my students saw that AISD's schools produced "inferior" students as judged by their scores on standardized tests, not because of the inherent inferiority of their race or ethnicity, but because of *consistent unequal distribution of resources to racially identifiable schools*, they learned that public policy does not escape the impact of unconscious racism.²²³ But, they were given hope in the struggle by doing their small part to deconstruct the impact of racist ideologies towards the goal of true racial healing for this nation.

C. Conclusion: Resistance, Community and Hope in Activist Scholarship and Teaching

As a LatCrit scholar, I am encouraged to go beyond the platitudes of "equality" set forth in a jurisprudence that wants to deny the reality of our racial, sexual, ethnic, gendered diversity as citizens of this nation. I am encouraged to take risks and to do so with the hope that in resistance I empower myself as I empower others to join in the march forward for social justice and liberty for all. When my LatCrit colleagues and I recently marched in San Fran-

an action challenging the discriminatory impact of Texas' Education Agency's standardized tests as well as to interested members of the public and legislators.

222. Arguably, this divisive rhetoric is fed by the opinions of judges who refuse to acknowledge the existence of a multiracial society (e.g., Justice Scalia in *Adarand*, 515 U.S. 200, 222 (1995)) and by a jurisprudence of racial discrimination committed to analyzing the law from a perpetrator rather than a victim's perspective. The former see racial discrimination not as conditions that must be remedied but as actions, or series of actions inflicted by the perpetrator on the victim. The victim perspective in contrast sees the problem will not be solved until the conditions associated with racial discrimination have been eliminated. See David Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1052-53 (1978).

223. See Lawrence, *supra* note 196.

cisco, we were demanding attention to a growing problem generated by the impact of legislative and judicial decisions that will deprive worthy students of the education they deserve. We have been coming together in conferences to know each other, share our ideas and produce the writings and sense of community that can carry us through these revolutionary times of retrenchment and backlash against our civil rights. We could come together in our diverse identities because we understood that our forms of discrimination may differ from each other, but in coalition with others to fight racism we march for ourselves. I urge LatCrit scholars to continue producing the theories that feed our practice, whether as lawyers, scholars or teachers. I urge us also to engage in more of the practices, new, old and yet to be tried, in our clinics and classrooms, which will sustain our theories, keeping us strong in hope, resistance and community.

