

CONSTRUCTING LATINA/O IDENTITIES

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This section draws together seven selections that focus on issues of identity and group membership as related to the LatCrit enterprise. Because LatCrit is a fledging intellectual project, they are important in helping demarcate the boundaries of this field, which seeks to center Latinos in studies of the law's impact and to draw linkages to earlier scholarly projects like Critical Race Theory, Feminist Legal Theory, and Critical Legal Studies. I will use this brief introduction to say a few words about each piece and then to make some more general comments about the future of LatCrit scholarship.

The provocative essays by Leslie Espinoza¹ and Robert Chang² raise important questions for the LatCrit enterprise. Espinoza urges Latina/o legal academics to ask a self-critical question: will we have a positive impact, or merely be “a larger urban renewal project?” Chang invokes the icon of Tiger Woods to foreground the changing nature of racial identity. In so doing, he invites us to consider the generative role that asking new questions serves—even when we cannot provide easy “answers.”

Both writing squarely as law professors, Kevin Johnson³ and George Martínez⁴ re-view the negative impact of legal classifications that bear heavily on Mexican Americans. Martínez reminds us that the law often formally reinscribes Mexican Americans as “white,” even as American social practices and racial ideology “other” us as non-white.⁵ Martínez then applies his critique to a contemporary

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

2. Robert S. Chang, *Who's Afraid of Tiger Woods?*, 19 CHICANO-LATINO L. REV. 223 (1998).

3. Kevin R. Johnson, *Immigration and Latino Identity*, 19 CHICANO-LATINO L. REV. 197 (1998).

4. George Martínez, *African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*, 19 CHICANO-LATINO L. REV. 213 (1998).

5. In my view, Martínez might have elaborated both on concrete examples of the law's “whitening” effect as well as on the long history of Mexican and Mexican American advocacy for white classification (which can be traced to the nineteenth century and includes twentieth century projects like the founding of the League of United Latin American Citizens in the 1920s). See Martha Menchaca, *Chicano Indianism: A Historical Account of Racial Repression in the United States*, 20 AMERICAN ETHNOLOGIST 583-

example of Black-Chicano conflict over the direction of the Dallas School District. He argues that a Black-Chicano coalition must be built, in part, on recognition of points of commonality in terms of historical segregation and discrimination against both African Americans and Mexican Americans.

Johnson's argument is similar in having as its focus the destructive power of *legal* definitions on a coalition. His focus is immigration law and, specifically, legal definitions of "citizen" and "alien." His inquiry turns to a different coalition, that between Chicanos and Mexicans in Los Angeles. His article is important for breaking the silence about the division between U.S.-born Mexican Americans and Mexican immigrants to this country, who often experience discrimination at the hands of individuals from the former group as well as the majority society. Johnson lays some important groundwork in describing the bases for Chicano hostility to Mexicans, including drawing powerfully from familial experiences. He closes the article by linking his analysis to the current debate over who should benefit from affirmative action in the educational context.

The final three articles in this section—written by Antonia Castañeda,⁶ Maureen Ebben and Norma Guerra Gaier,⁷ and Ana Novoa⁸—illustrate the transformative potential of inter-disciplinary approaches to legal scholarship. Such research may lead us to see the law in new ways and, therefore, substantially alter the intellectual terrain. Novoa unearths the history of American family law as a way of pointing to its limits in capturing family forms that may be more prevalent among Latinos and that effectively discriminate against Latinas.

Ebben and Guerra Gaier use oral history interviews with three well-established Tejana lawyers (a judge, a law school administrator, and a public interest lawyer) to amplify themes about the intersection of racial and gender subordination.⁹ This work takes on

603 (1993); Laura E. Gómez, *What's In a Name? The Politics of "Hispanic" Identity* (1986) (unpublished A.B. thesis, Harvard College) (on file with author); and, generally, IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996).

6. 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).

7. 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).

8. Ana Novoa, *American Family Law: HiStory—WhoStory*, 19 CHICANO-LATINO L. REV. 265 (1998).

9. Although they do not frame their work in this way, Ebben and Guerra Gaier's work relates to a body of legal scholarship that explores the intersection between race, gender, and inequality. See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139; Dorothy Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality and The Right of Privacy*, 104

broader significance in the context of Latinas' stark underrepresentation in the bar, as they make up only one percent of Texas lawyers. While I might have taken a more critical approach to these women's often self-blaming and traditional accounts of their educational and career experiences (especially in the case of the judge), had I been the author, there is much to be gained from hearing their voices loud and clear.

Historian Antonia Castañeda's translation stories—that is, narratives by Mexicanas about their childhood experiences translating for their parents—are powerful instances of the tension between agency and structure in identity formation. On the agency side, the defiant voices of these girls and women penetrate the walls of class, racial, and linguistic exclusion that govern their lives as migrant farmworkers. On the other hand, those walls remain standing, seemingly impervious to social movements and other changes in late twentieth century American society. Castaneda's article provides many insights for those working or writing in the language rights and anti-discrimination areas.

These selections, like the entire volume, represent the promise of the fledgling field of LatCrit scholarship. At the same time, however, thinking about what ties them together provides an opportunity for exploring the more general contours of the LatCrit enterprise.¹⁰ I would propose that we, as scholars seeking to define the LatCrit agenda, debate whether the three broad themes below capture the collective project in which we are engaged.¹¹

- (1) LatCrit scholarship seeks to place Latino/as at the center of legal scholarship. In so doing, it challenges the traditional silence about the Latino experience with the American legal system. It also seeks to center, specifically, *de jure* and *de facto* legal *discrimination* against Latino/as.

HARV. L. REV. 1419 (1991); Cheryl Harris, *Finding Sojourner's Truth: Race, Gender and the Institution of Property*, 18 CARDOZO L. REV. 309 (1997). This literature has focused almost exclusively on comparisons between Black and white women, so perhaps this article will lead others to see value in exploring intersectionality in the lives of Latinas.

10. I am not alone in attempting to describe the parameters of this field. For other views, see Francisco Valdes, *Foreword: Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997); Francisco Valdes, *Under Construction: LatCrit Consciousness, Community and Theory*, 85 CAL. L. REV. 1 (1997), 10 LA RAZA L.J. 1 (1998).

11. I have benefited greatly and borrowed liberally from Daniel Solórzano's statement of the themes of Critical Race Theory scholarship. See Daniel G. Solórzano, *Critical Race Theory, Race and Gender Microaggressions, and the Experience of Chicana and Chicano Scholars*, 11 QUALITATIVE STUD. EDUC. 121 (1998).

- (2) At the same time, LatCrit scholars are wary of homogenizing varied experiences under a single "Latino" or "Hispanic" rubric. Even as we embrace an expansive Latino political coalition and recognize points of shared history and contemporary experience, LatCrit scholars should seek to problematize pan-Latino identity. Specifically, we must continue to engage in unpacking differences among those we label "Latinos" in the United States. This involves sensitivity to differences related to such crucial factors as time of immigration/migration, country of origin, and different levels of bilingualism. We also must do more to document the differential access to legal services as well as experience of discrimination of Latinos of diverse social class locations.

Finally, LatCrit scholarship should be a forum where we explore racism and discrimination by Latinos toward other Latinos and members of other American racial groups. In other words, LatCrit can be a space where we confront racism that has, historically as well as currently, privileged Latinos who identify (or are identified by others) more as Spanish or European, to the disadvantage of those Latinos with more noticeable Indian or African ancestry.¹²

- (3) At a related level, we must ask ourselves what is "critical" about the LatCrit project? I believe the answer has three components. First, LatCrit is a critical scholarship in refusing to see the law as internally consistent and fundamentally just. We realize the law can be used to further just ends, but we are far from accepting this as inevitable. The second component of the "critical" in LatCrit may be openness to non-traditional legal scholarship. We intend to draw frequently on work from disciplines other than law, to transgress disciplinary boundaries, and to take up potentially empowering methods such as the narrative form and oral history. A related critical element is that LatCrit scholars see their agenda as both beyond law and beyond Latino interests. We support legal change as part of a

12. Two recent publications have confirmed prior studies' findings that lighter-skinned, less-Indian looking Latinos are more accepted by whites' and generally experience less discrimination. See Leonard M. Baynes, *If It's Not Just Black and White Anymore, Why Does Darkness Cast a Longer Discriminatory Shadow than Lightness?: An Investigation and Analysis of the Color Hierarchy*, 75 DENV. U. L. REV. 131 (1997); RICHARD L. ZWEIGENHAFT AND G. WILLIAM DOMHOFF, *DIVERSITY IN THE POWER ELITE: HAVE WOMEN AND MINORITIES REACHED THE TOP?* (1998).

broader agenda of social and political transformation. We seek the betterment of society for many who are disenfranchised and self-consciously seek coalitions with other racial minorities, white progressives, poor and working people of all races, and subordinated peoples world-wide.

The articles in this volume are sure to spark greater interest in this embryonic field. I hope they fuel informal conversations among law students, professors, and practitioners, as well as help shape the agenda for our next official gathering in May 1999.

