

WHO ARE WE?

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I am very pleased that the intellectual energy generated at the LatCrit I conference in La Jolla last year has led to another impressive gathering for LatCrit II. This year's attendance is very encouraging, considering that LatCrit Theory is still in a precarious stage of infancy. After a year of work and reflection, we've come to San Antonio to ask ourselves, among other things, whether we can progress to the next stage of our collective intellectual development—i.e., whether we can contribute to an understanding of law and society that stands apart from, or builds significantly upon, Critical Race Theory's insights.¹ Most of us think so;² that's why we're here. But only time will tell. And just as time can convert the relatively unproblematic infant to an anguished and conflict-ridden adolescent, so too can time threaten the viability of LatCrit Theory. For despite our collective efforts as LatCrits, we bring different, sometimes conflicting, viewpoints and agendas to these meetings. While we might agree that anti-essentialism is "essential" to critical analysis, the history of division among *la comunidad Latina* understandably raises doubts about the future of our collective efforts.

I. WHO ARE WE AS EMPLOYEES, ACTIVISTS, TEACHERS, SCHOLARS, LAWYERS?

With these concerns in mind, I would like to address this panel's theme, *La Comunidad Latina/Hispana & Our Work*. Specifically, I would like to comment upon the questions we have been asked to address, starting with the first: "Who are we as employees, activists, teachers, scholars, lawyers?"

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1. CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al. eds., 1995); CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado ed., 1995).

2. See, e.g., IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSES IN THE UNITED STATES (Juan Perea ed., 1997); Colloquium, *International Law, Human Rights, and LatCrit Theory*, 28 INTER-AM. L. REV. 177 (1996-97); Francisco Valdes, *Foreword: Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 LA RAZA L. J. 1 (1996)(introducing colloquium pieces relating to emerging LatCrit Theory).

The question can be interpreted in various ways. Figuratively speaking, one might think that we're being asked to leave the noise and confusion of the streets and to stand—or better yet live—atop a tall building in order to obtain a global view. Only then, when we detach ourselves from the world below, can we gather our thoughts, fix our gaze, and comforted by the apparent objectivity of our position, define the various roles in *la comunidad Latina*. To the extent we are being asked for a critical response to the posed question, the view from the commanding heights may provide us with the necessary frame of mind and space we need for criticism.³

That view may not be helpful, however. We may have great difficulty persuading anyone that the theory we use by virtue of our detachment warrants epistemological or ontological privilege over competing theories that inform criticism. How, for example, could we persuade *la comunidad Latina* or other communities with which we must interact that, because we've been stationed high above the messy fray of living, we are correct when concluding that activists and scholars are misguided by insisting upon, or not clarifying their position with respect to, the liberal view of a rights-carrying individual as opposed to an intersubjective conception of the self that promotes ethnocultural group rights?⁴

If the space between the streets and the top of the building is not used for meta-ethically grounded criticism, what utility is there in detachment? Surely an empirical analysis from above is alone of little value to the LatCrit scholar. For instance, to say that there are *x* number of Latina/o faculty members and students at the University of Iowa and that we teach certain types of courses and attend various kinds of meetings is a necessary but not sufficient step in the critical enterprise. Moreover, that kind of top-down assessment gives us only simplistic information about the identity of employees, activists, teachers, scholars and lawyers down below.

Perhaps, then, we are being asked to stand on the street or in an office, classroom or courthouse for purposes of the question. In this position, we may be better able grasp the social, cultural, moral, and economic significance of, say, a Latina activist who is organizing a day of the "Brown Flu," a work stoppage, to protest the rising tide of discrimination against La Raza. At the moment we witness the Latina's activism, participate in it, and attempt to explain it in re-

3. MICHAEL WALZER, *THE COMPANY OF CRITICS* 12-16 (1988) (describing one view of the critic as detached from his community and therefore objective).

4. See generally MICHAEL J. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* 80 (1982) (discussing intersubjective concept of the person); *ETHNICITY AND GROUP RIGHTS* (Ian Shapiro & Will Kymlicka eds., 1997); see also Lani Guinier, *Groups, Representation, and Race-Conscious Districting: A Case of the Emperor's Clothes*, 71 *TEXAS L. REV.* 1589 (1993).

sponse to the "who are we" question, we confirm and re-articulate our identities and thereby our *dignidad* (dignity) in numerous ways.⁵ This would certainly provide us with a richer response, one that avoids issues of ontological or epistemological privilege.

But because we are not on the rooftop, our observations are limited by the immediacy of our vision—by the constraints of our grounded context. When the Latina activist leaves our field of vision, we no longer have any sense of her identity apart from the activism. Our response to the "who are we" question is thus unacceptably narrow, for we don't know who she is apart from her role as activist. Is she a teacher? If she is, how does that role inform her identity as an activist and vice versa? What if she is also a scholar? How does her existence as a scholar affect her "activist" and "teacher" identities? These are the important questions for LatCrits.

So when we are asked, "Who are we as employees, activists, teachers, scholars, and lawyers?", our responses should attend to multiple consciousness within *la comunidad Latina*, which, as Mari Matsuda observes, "produces sometimes madness, sometimes genius, sometimes both."⁶ This approach requires us to focus on the dialogical nature of the question. It would be as if we could ask the Latina activist, "Who are you as an employee, teacher, scholar, and lawyer?"

Her response might be, "I am an employee of the University of Iowa. When I attend an alumni function where there are very few or no Latina/o lawyers, I may interact as an employee—a professor of law—of the university. But when I attend a minority recruitment function, I am a *Latina* employee of the university who can share my experiences and observations as a Latina with prospective law students.⁷ My activism is partly enabled through my identity as an employee of the university, whether manifested in my work with Latina/o students at the university or in my activities with the Midwest Consortium of Latino Research.⁸ When I teach contracts and international finance and development, the many perspectives and frameworks I bring to arguments and questions include those relating to my experiences and outlooks as a Latina employee/employee, Latina activist/activist, Latina scholar/scholar, and Latina lawyer/lawyer."

5. See Charles Taylor, *The Politics of Recognition*, in *MULTICULTURALISM* 25 (Amy Gutmann ed., 1994) (discussing multiculturalism and "politics of equal dignity").

6. Mari J. Matsuda, *When the First Quail*, 11 *WOMEN'S RTS. L. REP.* 7, 8 (1989).

7. See Enrique R. Carrasco, *Collective Recognition as a Communitarian Device: Or, of Course We Want to Be Role Models!*, 9 *LA RAZA L. J.* 81 (1996).

8. The MCLR is comprised of Midwestern universities committed to supporting Latina/o faculty and scholarship.

Now, her response no doubt nurtures her identity in some private, intimate sense. And the dialogical process is critical to her formation of identity, for as Charles Taylor has noted, "one cannot be a self on one's own."⁹ The Latina activist can only begin to construct her identity, her sense of self, by responding to her interlocutors' questions regarding who she is; she "negotiate[s] [her identity] through dialogue, partly overt, partly internal, with others."¹⁰ Yet it is the public and collective process of responding to the "who are we" question that provides us with the most useful mechanism for defining *la comunidad Latina*.¹¹ The ensuing public conversation creates a common space, via "webs of interlocution,"¹² that is critical to our self-understanding. Meaning and our interpretation of meaning are thus intimately tied to the language generated within the common spaces of community.¹³

It is through this process that we address the limited vision relating to our grounded positions. True, the view from the rooftop may be spectacular, given the breadth of the global view. But through the common space constructed from our responses to our interlocutors, we can create a Diego Rivera-like mural of *la comunidad Latina*, which projects multiple identities within an over-arching representation of justice. In this way we can construct a rich and equally spectacular vision from ground, a vision many of us need to go forward.

II. WHAT ARE OUR VISIONS, HOPES, AND PRACTICES?

My references to vision lead to another question the organizers have put to us: "What are our visions, hopes, and practices?" The references to visions and hopes may strike post-modernists among us as quaint at best and dangerous at worst. For in our post-Hegelian world the visions we hold are contingent and, if we look closely enough, fractured and incoherent. Hope may be hard to sustain under such circumstances.

I hope, though, that LatCrits will not abandon modernism's emphasis on principled struggle for human liberation. *La comunidad Latina* has sustained itself on the convictions that principles matter and that human liberation is worthy of a good fight. Having said

9. CHARLES TAYLOR, *SOURCES OF THE SELF* 36 (1989).

10. Taylor, *supra* note 5, at 34.

11. See Taylor, *supra* note 5, at 37 (describing two levels of recognition, an "intimate sphere, where we understand the formation of identity and the self as taking place in a continuing dialogue and struggle with significant others" and a "public sphere, where a politics of equal recognition has come to play a bigger and bigger role.").

12. TAYLOR, *supra* note 9, at 36.

13. Charles Taylor, *Interpretation and the Sciences of Man*, 25 REV. METAPHYSICS, Sept. 1971, at 16 (describing humans as self-interpreting animals).

this, I don't believe we should make much of the distinction between modernism and post-modernism in this context. As Richard Rorty has argued, by showing us the contingency of our language, beliefs, and institutions, post-modernism provides us with the freedom to re-define ourselves as our conversations evolve.¹⁴ We can do this and still agree on public principles, such as solidarity and the condemnation of cruelty.¹⁵ Put in the LatCrit context, we can continue to recognize the importance of a principled struggle for human liberation by encouraging what Frank Valdes has called post-postmodern Lat-Crit discourse which seeks to balance modernist and postmodernist theory.¹⁶

This discourse is manifested, of course, through practices, which define, and emanate from our communities. Our teleological quests through life—our search for a morally-informed vision of the good life—is, essentially, a narrative informed by communal experiences.¹⁷ Returning to our Latina activist, her narrative has taken her from the ethnic streets of Chicago, to the mestizo communities of the Ecuadorean highlands, to black culture in the Deep South, to various academic and legal cultures in the United States, to her current academic setting in Iowa City. Her narrative has thus shaped her visions, hopes, and practices and informed her moral (but contingent) framework relating to *justicia, dignidad, y comunidad*.

II. WHAT ARE OUR STRENGTHS AND WEAKNESSES? CAN OR SHOULD LATCRIT THEORY AFFECT OUR CURRENT WORK LIVES?

This brings me to the organizers' last questions: "What are our strengths, our weaknesses? Can or should LatCrit Theory affect and enrich our current work lives?" I will address the latter question first, for it poses a very interesting dilemma. I'm persuaded by what I have witnessed at these meetings that LatCrit Theory enriches us as employees, activists, teachers, scholars, and lawyers, for the process of producing the scholarship can be cathartic and liberating. Through that process, we can begin to provide ourselves with answers to the question, "Who am I?"

But what is beyond that cathartic point, beyond our personal moments of liberation? Does theory enrich us beyond that point?

14. RICHARD RORTY, CONTINGENCY, IRONY, AND SOLIDARITY 3-69 (1989).

15. *Id.* at 73-198.; *see id.* at 189 (arguing that "a belief can still regulate action, can still be thought worth dying for, among people who are quite aware that this belief is cause by nothing deeper than contingent historical circumstances.").

16. Valdes, *supra* note 2, at 24-31; *see* Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741, 760 (1994) (proposing "jurisprudence of reconstruction" and suggesting RaceCrits are compelled "to live in the tension between modernism and postmodernism, transforming political modernism in the process.").

17. ALASDAIR MACINTYRE, *AFTER VIRTUE* (2d ed. 1984).

I'm not so sure that it does. I'm afraid there's a huge risk that we will become trapped by our own answers—by the LatCrit Theory we've so enthusiastically created. In other words, because it evolves from the subject position as informed by the community, LatCrit Theory is ineluctably bounded. We inscribe ourselves into a Kuhnian paradigm where the pressure to conform is great.¹⁸ Progress is therefore stymied because of the lack of critical self-evaluation regarding our strengths and weakness. It would be as if our vision of *la comunidad Latina* were limited to the Diego Rivera-like mural; after a while the mural would lose its vitality and perhaps stifle us.

What to do? Deconstruction comes easily to mind. Although that technique of critical analysis helps clear away the cobwebs that have obscured the true nature of a particular theory or position,¹⁹ it does little to reconstruct a progressive, responsive alternative. We can draw some comfort from the Kuhnian observation that normal scholarly activity will itself bring about paradigm changes through the identification of anomalies that can't be reconciled with the paradigm.²⁰ The anti-essential nature of the LatCrit project may provide us plenty of anomalies to keep us intellectually sharp and critical. Put in Valdes' post-modern framework, an "intra-Latina/o politics of difference and identity"²¹ and a construction of "politicized identities"²² may help us keep the "critical" in LatCrit Theory.

Whichever way we look at it, the key to ensuring the vitality of LatCrit Theory lies in our ability to evaluate it, using standards that are independent of our private desires and preferences. We have to have some publicly justifiable mechanism by which we can effectively determine whether LatCrit Theory helps us form workable and just conceptions of the good life for our communities.

Ascending to the rooftop to find standards based on objective truth won't help us much. I suspect that none of us want to spend our precious time arguing over metaphysics. So we return to the streets. As Taylor has argued, the community provides an evaluative framework for providing an independent, ontological account of our moral responses.²³ When we respond to the "who am I" question, we are doing much more than describing private attachments or preferences. Rather, in Taylor's words, "[m]y identity is defined by the commitments and identifications which provide the frame or ho-

18. THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* 11, 151 (1962).

19. J.M. Balkin, *Deconstructive Practice and Legal Theory*, 96 *YALE L.J.* 743 (1987).

20. THOMAS S. KUHN, *THE ESSENTIAL TENSION: SELECTED STUDIES IN SCIENTIFIC TRADITION AND CHANGE* 234 (1977).

21. Valdes, *supra* note 2, at 25.

22. *Id.* at 27.

23. TAYLOR, *supra* note 9, at 16-23.

rizon within which I can try to determine from case to case what is good, or valuable, or what ought to be done, or what I endorse or oppose. In other words, it is the horizon within which I am capable of taking a stand."²⁴

In sum, LatCrit Theory can enrich *la comunidad Latina*. In Walzerian terms, we are "connected LatCrits"²⁵ in the sense that we are critics who live on the streets of a thick moral world. Consequently, our job, our obligation, is to ask ourselves vigilantly and critically, "Who are we?"

24. TAYLOR, *supra* note 9, at 27.

25. MICHAEL WALZER, INTERPRETATION AND SOCIAL CRITICISM 39 (1987).

