

AFTERWORD

RELIGION, GENDER, SEXUALITY, RACE AND CLASS IN COALITIONAL THEORY: A CRITICAL AND SELF-CRITICAL ANALYSIS OF LATCRIT SOCIAL JUSTICE AGENDAS

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INTRODUCTION

This symposium marks and celebrates the Second Annual LatCrit Conference, which took place in San Antonio during the 1997 Cinco de Mayo weekend. Being only the second time that this gathering had occurred, we arrived at the conference with the satisfaction that the diverse, self-selected scholars participating in this latest intervention in critical legal scholarship had managed a key act of continuity: we had managed to begin a tradition of annual gatherings.¹ The event was energized by the open-endedness and aspira-

1. Even though this event was the "Second" Annual LatCrit Conference, it was the fourth LatCrit gathering; previously, two colloquia were held in conjunction with the annual meeting of the Hispanic National Bar Association. The first colloquium, in 1995, took place in Puerto Rico and the second, in 1996, took place in Miami. The published proceedings of these colloquia appear in Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 LA RAZA L.J. 1 (1996) and Colloquium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 1 (1997), respectively. The published proceedings of the First Annual LatCrit Conference appear in Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997).

In addition, a free-standing symposium on LatCrit theory was published jointly by the *California Law Review* and *La Raza Law Journal* as *LatCrit Theory, Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1998).

tional dimensions of our community-building as much as by the evolving contours of the intellectual project that brought us together then and continues underway.

As with the first LatCrit conference the year before, this gathering took on a life of its own. Though the formal program provided a frame for our work in both instances, it could not contain the energy of these events. As with our first gathering a year earlier, this conference occasioned unexpected and difficult encounters with issues that undeniably are central to LatCrit theory's emerging agendas.² Our purpose in this Afterword is to explore the substantive, theoretical and political concerns underlying these encounters by focusing primarily on the essays published in this symposium: these essays were inspired by and reflect the live events that transpired at the LatCrit II conference, events that deeply affected and engaged everyone fortunate enough to have been there. These essays thereby provide an example of, and a valuable springboard for exploring the parameters of possibilities and problematics that confront LatCrit theory in its efforts to define and promote social justice agendas in and through the production of critical legal scholarship at this particular point in time.³

At the same time, this Afterword does not attempt to produce a comprehensive review of the symposium's essays or contents; this task is taken up in the Foreword that opens this symposium and in the introductions that open the three clusters of essays.⁴ Nor do we seek to revisit and recount our (or any other) view of the conference's live proceedings; this backward-looking task threatens to eclipse forward-looking dialogue and substantive critique with an inconclusive and unproductive competition of subjective recollections.

Finally, the proceedings of the fifth LatCrit gathering—the Third Annual LatCrit Conference—will be published jointly by the *University of Miami Law Review* and the *University of Texas Hispanic Law Journal*. See Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, 53 U. MIAMI L. REV. (forthcoming 1998), 4 U. TEX. HISPANIC L.J. (forthcoming 1998).

2. The prior year, at LatCrit I, the eruption concerned gender, leading to a spontaneous Latina caucus during the conference. That event occasioned the first-ever gathering of Latinas qua Latinas in the legal academy of the United States. For reflections on that experience from one Latina participant, see Elvia R. Arriola, *Foreword: March!*, 19 CHICANO-LATINO L. REV. 1 (1998).

3. In this essay we often invoke "LatCrit theory" and its "ideals" or "values" or "purposes" in order to convey our joint, subjective sense of the LatCrit enterprise. However, we also acknowledge now, and throughout this Afterword, that "LatCrit theory" and its characteristics are young and evolving. Moreover, we recognize that this evolution will be shaped incrementally by the diversities of the self-selected group of scholars that choose to self-identify with, and to participate actively in, this movement. We thus refer to the LatCrit theory, community and consciousness in this essay with these thoughts, and caveats, always in mind.

4. Arriola, *supra* note 2, at 26-52; Devon W. Carbado, *The Ties That Bind*, 19 CHICANO-LATINO L. REV. 283 (1998); Laura E. Gómez, *Constructing Latina/o Identities*, 19 CHICANO-LATINO L. REV. 187 (1998); Margaret E. Montoya, *Religious Rituals and LatCrit Theorizing*, 19 CHICANO-LATINO L. REV. 417 (1998).

Instead, we approach this Afterword as an opportunity to reflect on the advances, both theoretical and political, that were made at the LatCrit II conference, to suggest some lessons we think can and should be drawn from the conference proceedings and surrounding events as reflected in these essays, to map out new areas of substantive anti-subordination inquiry that have emerged from our collective efforts to create a LatCrit intervention in legal scholarship, and to nurture a diverse and lively LatCrit community of critical legal scholars committed to the theory and practice of transformative anti-subordination politics.

This is not to say that we—the Afterword authors—are of one mind on all the controversies raised by the conference proceedings as reflected in this symposium. Like all individuals, we approach these questions from our own distinct, individual, internally-conflicted, but often overlapping, positionalities. These differentiated positions mean that we often interpret and evaluate events, ideas, and projects from different perspectives—even as our common interest in and commitment to the social justice values around which we aspire to contribute to the LatCrit project of consolidating an intellectual movement and constructing a nurturing community of scholars has allowed us to experience repeatedly the power of dialogue and friendship in the struggle to understand these differences, to rethink our assumptions, to modify our priorities and, ultimately, to transcend our contingencies through the resolution of our perceived or actual differences. Thus, while our anti-subordination “bottom line” has often turned out to be similar, those similarities may tend to obscure marked differences in our interpretive processes. These differences are worth acknowledging at the outset for what they suggest about the ways that contrasting perspectives can converge at the same anti-subordination conclusions for varied reasons, even as they remind us how “difference” can be elided if we focus only on the bottom line. In acknowledging our differences of position and perspective we hope to highlight, in a performative manner, the importance of community and friendship to the success of LatCrit theory as an anti-subordination project.

Obviously, critical theorizing and coalitional politics can proceed without friendship, but the aspiration to build a scholarly community while recognizing the values of friendship and solidarity requires much more work, with much higher pay offs, than merely strategic alliances. Though both types of alignments may have anti-subordination value depending on circumstance, the important point for us here is that our analysis, both in this Afterword and at all times, is not focused exclusively or even primarily on the existence or experience of difference as such. We strive instead to configure our encounters with difference as occasions for the self-critical exer-

cise of LatCrit ideals, values and objectives by fostering constructive engagements with multiple and fluid diversities in the collective project of producing transformative anti-subordination theory and praxis.

We therefore address the works published in this LatCrit symposium with the same methods, concepts, techniques and politics espoused in LatCrit theory's previously published record.⁵ That record evinces a multifaceted concern for the production of critical knowledge, for the cultivation of multiply diverse communities, and for the creation of egalitarian coalitions in the service of material, anti-subordination transformation. We thus endeavor in this Afterword to articulate a critical and self-critical analysis of LatCrit theory as anti-subordination scholarship; we invoke, and practice internally, the sort of anti-subordination analysis that serves as the substantive aim and anchor of LatCrit theorizing.

To that end, we focus initially on two substantive topics that, as this symposium reflects, were joined at LatCrit II with particular vigor: religion and sexuality. More specifically, we focus on the social and legal operation of religion and sexuality within and among Latina/o communities, as well as its impact on Latina/o relations with other outgroups in the United States and globally.⁶ The exploration of this intersection can be particularly fruitful because religion and sexuality represent especially explosive fields of human experience and interaction. Yet the anti-subordination implications of this intersection are virtually unexplored in outsider jurisprudence. The joinder of religion and sexuality at LatCrit II thereby opens routes toward a fresh point of entry for critical analyses of law and allows an early—and hopefully constructive—outsider analysis of the way this convergence engenders both possibilities and problematics for LatCrit theory and the multiply diversified communities that we purport to aid through our social justice activism and legal scholarship.

Before turning to those issues and their relevance to LatCrit theory it bears emphasis that LatCrit II's discursive eruptions—as reflected in this symposium—properly are understood as a vital feature, and a strength, of the LatCrit conferences: this conference, like LatCrit I before it, produced lively and unanticipated forays precisely because LatCrit theory is committed to creating occasions for the engagement of difficult yet pending issues.⁷ The theory about

5. See sources cited *supra* note 1 (LatCrit colloquia and symposia).

6. The term "Latinas/os" includes an amalgam of multiply diverse persons and groups. The term therefore necessarily oversimplifies. While cognizant of its limitations, we use the term here generally to signify persons with nationalities or ancestries derived from countries with Hispanic cultures and who self-identify as such.

7. For a fairly detailed analysis of LatCrit theory and its conception, see Francisco Valdes, *Theorizing OutCrit Theories: Comparative AntiSubordination Experience and PostSubordination Vision as Jurisprudential Method*, in CRITICAL RACE THEORY:

critical legal theory that underpins LatCrit theory calls for personal facilitation and collective accommodation of such moments.⁸

On the other hand, the value of the eruptions indulged at scholarly anti-subordination conferences, and hence the in/appropriateness of their embrace at future LatCrit gatherings, should be measured by the degree to which they enlarge analytical perspectives, increase LatCrit solidarity, and enable us to understand more clearly the different interests, perspectives and normative imperatives that converge in our mutual, distinct but overlapping battles against various and intersecting forms of subordination. Thus, our objective is to suggest ways of cohering LatCrit theory's application of anti-subordination values by exploring, in a self-critical way, the broader significance of our discourse at LatCrit II and in this symposium. In this way, we hope to advance the development of LatCrit legal scholarship as an intervention designed specifically to produce knowledge that furthers the struggle for community and against subordination—even as we acknowledge and engage the complexities and controversies of the still-evolving LatCrit community.

This final point is the key to this Afterword. In our view, the development of LatCrit theory to date points to anti-subordination principles and practices as the basic measure of our work's integrity. To ensure the integrity of our discourse and community, as prior LatCrit scholarship has taught us, we must be self-aware, self-vigilant and self-critical. We therefore employ this Afterword to engage and highlight LatCrit scholarship as a form of, and a path toward, critical and self-critical anti-subordination theory and praxis. To do so, the Afterword divides into three parts.

Part I focuses specifically on developing a critical account of the role of religion in LatCrit practice and legal scholarship. In articulating what an anti-essentialist, anti-subordination stance toward religion is likely to entail in the context of LatCrit theory, we urge and proceed to illustrate the value of a two-tiered analytical approach, which grounds its reconstructive energies in and around insights developed in and through the practice of deconstruction. Deconstruction, we urge, is more than fad: as a critical methodology for revealing the disjunctures of justice and power, it is a fundamental

HISTORIES, CROSSROADS, DIRECTIONS (Jerome McCristal Culp, Jr., Angela P. Harris & Francisco Valdes eds., forthcoming 1999).

8. Early LatCrit works suggest four interrelated and overlapping functions of LatCrit theory specifically, and of critical legal theory in general: the production of critical knowledge, the advancement of social transformation, the expansion and connection of anti-subordination struggles, and the cultivation of intellectual community and progressive coalitions. See Francisco Valdes, *Under Construction: LatCrit Consciousness, Community and Theory*, 85 CAL. L. REV. 1087, 1093-94 (1997), 10 LA RAZA L.J. 1, 7-8 (1998).

prerequisite to a reconstructive engagement with religion precisely because the tendency toward essentialism is so routinely operative in the deployment of religious meanings and in mainstream accounts of the role of religion in Latina/o communities. This essentialism is reflected in discourses that center Roman Catholicism as definitive of the way religion is organized in Latina/o lives; it is reflected in discourses that center and sentimentalize the mystical and spiritual dimensions of personalized religious experience without engaging the institutionalized social power and political agendas through which organized religion has sought to promote and coercively impose its vision of morality; and it is reflected as well in discourses that invoke religion, but obscure contextual particularity and ignore the complex and enduring interpretative struggles reflected in the internal contestation over theological meanings. In this Part we conclude that religion, like any other social or political force or institutional arrangement, must be analyzed in terms of and engaged on behalf of the anti-subordination commitment that unifies the LatCrit movements' multiple diversities—with critical attention focused on whether and how religion's historical and contemporary agendas tend to promote and/or obstruct the liberation struggles and anti-subordination imperatives that have coalesced in and around the LatCrit movement.

In Part II, we take up the question of sexualities, otherness and community in LatCrit theory, focusing particularly on the operation of sexual orientation diversities in the construction of LatCrit anti-subordination theory—as well as mapping out the multiply contested legal sites where the regulation of sexualities is interconnected with the hegemonic privileging of the male-dominated nuclear family. The purposes of this analysis are to mark some feminist and Queer intersections within LatCrit theory, and thereby to display the importance to LatCrit scholarship of multidimensional and interdisciplinary, as well as transnational, critiques that can aid our collective and individual appreciation for, and assessment of, competing claims about dis/empowerment. Continuing to emphasize context, particularity and anti-subordination purpose, this part of the Afterword elucidates specifically why LatCrit theory and heteropatriarchy⁹ are fundamentally incompatible constructs—regardless of whether heteropatriarchy is embedded in and propagated by secular or sectarian forces and institutions.

In Part III, we map out multiple sites where LatCrit aspirations to move beyond all forms of essentialism have revealed new anti-subordination problematics and possibilities. While the preceding

9. By "heteropatriarchy" we mean the symbols and structures that exalt male-dominated, cross-sex social arrangements and that therefore are androsexist and heterosexist in ideology.

parts employed chiefly religion, gender and sexuality to articulate an anti-subordination critique in LatCrit theory, this part highlights the status and progression, within this symposium, of inter- and intra-group issues that emanate from race, ethnicity, colonialism and language. Like any other pressure point, these points of potential conflict represent opportunities for the kind of explosive and enlivened creativity that we hope will help constitute new fields of conceptual breakthroughs, as well as new forms of cooperative interaction and increasing interconnection between different groups and individuals. This part consequently highlights advances made at LatCrit II as well as some of the issues that those advances hold in store for the next wave of LatCrit discourse.

Furthermore, because we believe that the "economic tour" of San Antonio that was incorporated into the formal program at LatCrit II represents an appropriate instance and significant expression of LatCrit commitments to the inclusion and engagement of particularity as anti-subordination method,¹⁰ we devote the concluding portion of Part III to sketching issues of class and poverty in LatCrit theory. The economic tour of the local communities in San Antonio underscored, in many ways, the fact that Latina/o poverty and marginalization look and are different in different places throughout this country. By acknowledging and engaging the particularities of Latina/o poverty through these and other programmatic means, LatCrit conferences can manifest and strengthen LatCrit efforts to bridge theory and practice, even as we enlarge our collective understanding of the various ways in which economic marginalization has been organized in different parts of the country. This type of event, through its self-conscious engagement of the localities in which we hold our conferences, is a valuable step toward bringing into sharper focus the points at which local political and economic formations intersect with different historical processes of migration, conquest and/or assimilation endured by different Latina/o communities, as well as the material consequences of the differential treatment these communities have received from those in control of the United States government at the relevant moments in these histories.

The Afterword, in sum, surveys and critiques emergent LatCrit social justice claims and agendas to situate these developments within the short but growing record of the LatCrit movement. This careful but caring consideration has instilled within us a deepened appreciation for the possibilities enabled by the LatCrit commitment

10. This economic tour was designed to show how the city of San Antonio has been materially constructed around racial, ethnic and class lines through zoning choices and economic pressures that reflected corresponding relations of power and privilege. The tour, though only a brief incursion into the daily life of the host community, permitted the conference attendees to see for themselves the local manifestation of some issues directly relevant to LatCrit theory. See *infra* notes 185-200 and accompanying text.

to an anti-subordination, anti-essentialist engagement with the particularities of multiple liberation struggles—possibilities reflected in the rich and multi-layered encounters with difference at LatCrit II. The benefits of our collective commitment to searching out and centering experiences and identities that power renders otherwise invisible we hope will increasingly enable the LatCrit movement to enjoy the intellectual, political and spiritual benefits of participating in genuinely creative new encounters on behalf of social justice for all.

I.

MAPPING THE POWER OF FAITH: THE ROLE OF RELIGION IN LATCRIT THEORY AS ANTI-SUBORDINATION LEGAL SCHOLARSHIP

This symposium shows that Professor Keith Aoki was quite prescient when he observed after LatCrit I that “issues of religion and spirituality are submerged not far below the surface of emerging” LatCrit scholarship.¹¹ As the cluster of essays devoted to religion and LatCrit theory in this symposium attest, these issues promptly rose to the surface at LatCrit II. A truly remarkable feature of this cluster is that religion appeared nowhere on the planned program of the LatCrit II conference; these essays reflect the vitality and spontaneity of LatCrit convocations while advancing a collective LatCrit engagement of issues rooted in our divergent experiences with religion and perceptions of spirituality.

The essays in this cluster by Professors Valencia¹² and Hartigan¹³ promote a view that one religion in particular—Roman Catholicism—is an especially salient, if not central or constitutive, feature of Latina/o life in this country as well as abroad. This religion’s role in the creation and positioning of Latina/o communities in this culture and others is cast in both historical and contemporary terms as a complex, but ultimately affirming, force. Furthermore, this religion’s affirmative features are depicted in both personal or individual as well as institutional or professional terms. Roman Catholicism, though acknowledged to represent a multifaceted phenomenon, is cast ultimately as a proper object of LatCrit embrace as both an institution and a set of beliefs.

11. See Keith Aoki, *(Re)presenting Representation*, 2 HARV. LATINO L. REV. 247 (1997).

12. See Reynaldo Anaya Valencia, *On Being an “Out” Catholic: Contextualizing the Role of Religion at LatCrit II*, 19 CHICANO-LATINO L. REV. 449 (1998).

13. See Emily Fowler Hartigan, *Disturbing the Peace*, 19 CHICANO-LATINO L. REV. 479 (1998).

The essays by Professors Ota¹⁴ and Sánchez,¹⁵ on the other hand, approach the role of religion and spirituality within LatCrit theory in more expansive of catholic terms: rather than focus on any one religion, or on Roman Catholicism specifically, they project a critical approach to the operation of organized religion in and among traditionally subordinated communities. By invoking the coexistence of diverse religious traditions among Latinas/os, including not only Roman Catholicism but Santeria and other traditions, this critical approach effectively urges a comparative perspective in LatCrit analyses of religion and spirituality. This comparative approach is not limited to comparative religious traditions within Latina/o contexts; it also extends across national boundaries and cultural realities. Finally, these essays argue for a nuanced critique of all religious forces, including their consequences in a civil society purportedly devoted to social justice.

Combining key elements found in these two pairs of essays is social scientist Max Castro's consideration of the Roman Catholic Church specifically in Cuba, and in the context of the recent papal visit to that land. This essay critically examines Roman Catholicism's role in Cuban history and tradition.¹⁶ This essay addresses first the mixed record of Roman Catholicism's impact on Cuban life, which includes support for social hierarchies based on class, race and culture in the form of Church traditionalism as well as resistance against hierarchical oppression through the more recent insurgency of liberation theology. The essay additionally assesses Roman Catholicism's formal, historical influence in Cuban culture against the popular influence of other religious beliefs, in particular Santeria. On balance, this essay concludes, the Roman Catholic Church can be made to operate as a unique institutional resource for anti-subordination efforts.

This cluster of essays thus illustrates, but does not exhaust, the broad range of possible analyses and positions regarding religion and spirituality in LatCrit discourse; they commence an exploration of religion and spirituality hitherto lacking in outsider legal scholarship. The common themes embedded in, or suggested by, these various essays thereby mark potential sites for LatCrit analysis of the theoretical, social and political connections between religion and liberation. These themes, and how LatCrit theorists articulate their complexities and implications in the coming years, will help to de-

14. See Nancy K. Ota, *Falling From Grace: A Meditation on LatCrit II*, 19 CHICANO-LATINO L. REV. 437 (1998).

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

16. See Max J. Castro, *The Missing Center? Cuba's Catholic Church with a Preface and a Postscript/Reflections*, 19 CHICANO-LATINO L. REV. 493 (1998).

termine whether the intersection of law and religion becomes, in fact, a site of anti-subordination theory and action.

As we begin our exploration of these and other themes raised by this symposium relating to religion, LatCrit theorists must pause to appreciate the nature of the undertaking. Religion long has been claimed as an especially integral aspect of Latina/o family and national life, both within the United States and beyond.¹⁷ This claim is supported by considerable corroboration in this symposium.¹⁸ But the question for LatCrit theory goes beyond acceptance of master narratives about any existing social condition; the question is whether any existing social condition is a source of empowerment or disempowerment—of liberation or subordination—for Latina/o and other marginalized communities.

A. *Anti-Essentialism, Anti-Subordination (Again)*

The first theme presented by this cluster of essays is the operation of religion in the lives of subordinated communities on at least two levels simultaneously: institutional or formal and personal or idiosyncratic. For instance, the Castro essay discusses the impact of Roman Catholicism as a key, institutionalized source of social, economic and political power in Cuban society¹⁹ while the Valencia and Hartigan essays oftentimes focus on those authors' personal experience with their religion and on the dissident members of the Roman Catholic Church that in part sustain these authors' faith in that organization.²⁰ As a set, these essays depict religion both as an enduring structural aspect of social life as well as a strikingly individuated human experience. They thereby counsel careful and critical attention to particularity in order to help theorize the different possibilities and problematics of each.

Related to this first theme is a similar tension between religion as theory and as action. The theory of Roman Catholicism, both Hartigan and Valencia assert, champions the interests of the subor-

17. See, e.g., DAVID T. ABALOS, *LATINOS IN THE UNITED STATES: THE SACRED AND THE POLITICAL* 5, 66-67 (1986); RODNEY E. HERO, *LATINOS AND THE U.S. POLITICAL SYSTEM: TWO-TIERED PLURALISM* 48 (1992); EARL SHORRIS, *LATINOS: A BIOGRAPHY OF THE PEOPLE* 362-80 (1992). According to the current news reports, this history of Latina/o religiosity, and specifically Catholicism, continues today in this country. See, e.g., Maria Miro Johnson, *Haciendo Historia Making History; Hispanics in Rhode Island Latinos Reenergize Catholic Churches*, PROVIDENCE JOURNAL-BULL., Nov. 23, 1996, at 1A; Robert Sargent Jr., *Churches Cater to the Area's Growing Hispanic Population; Many Congregations on the Rise*, ORLANDO SENTINEL, June 27, 1997, at 26; Karl Spence, *More Salsa, Please; America is Getting a More Colorful Complexion—And Loving It*, CHATTANOOGA FREE PRESS, June 29, 1997, at A13.

18. For personal testimonials, see Valencia, *supra* note 12, at 451; Hartigan, *supra* note 13, at 480; see also Castro, *supra* note 16, at 494 (elaborating a more sociological analysis of religion and Catholicism in Cuba).

19. See Castro, *supra* note 16, at 499.

20. See Valencia, *supra* note 12, at 423; Hartigan, *supra* note 13, at 488.

dinated; yet their invocation of liberation theology and other dissident forces to illustrate the practice of such theory indicates a disjuncture between words and deeds at the organizational level.²¹ The implicit juxtaposition of liberation theology and other dissident voices against the official apparatus of the Roman Catholic Church suggests that the Church's official anti-subordination theory is practiced more faithfully by the pockets of liberation dissidents that exist at the margins of the Roman Catholic church's formal tenets, organs or programs both in the United States and abroad. This configuration of volatile variables under the rubric of religion or "Christianity" or "Roman Catholicism" illustrates, at the very least, that this church's institutional practices may diverge from its formal doctrines, even as both coexist with the dissident beliefs and practices of liberation theology.

As a set, the symposium essays presented in the religion cluster consequently remind the LatCrit community of basic and indispensable postmodern lessons: religion is not any one stable force across the vagaries of time and place. As the essays illustrate, religion encapsulates both the oppression practiced by Roman Catholicism's authoritative apparatus, as well as the resistance against such oppression mounted by dissident forces within that Church. Moreover, as the Ota essay displays most prominently in this symposium, religion encompasses manifold religious or spiritual heritages, both within and beyond Latina/o communities, including non-Judeo-Christian ones.²² Essentializing religion into a single faith, or essentializing a single faith into a monolithic phenomenon, are mistakes of contemporary legal analysis already noted in so many other critical legal works that, at this point, we must consider them elementary in the articulation of LatCrit theory.²³

21. See Valencia, *supra* note 12, at 465; Hartigan, *supra* note 13, at 486-87.

22. See Ota, *supra* note 14, at 440.

23. Postmodern anti-subordination analysis of law generally calls for attention to the operation of power relations with special attention given to the context, history and particularities of the issues under analysis. Postmodern legal analysis thus eschews "essentialism" as well as any delusion of objectivity or neutrality. For outsider exposition of postmodernism in critical legal theory, see Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741 (1994); see also Anthony E. Cook, *Reflections on Postmodernism*, 26 NEW ENG. L. REV. 751 (1992).

In outsider legal discourse, postmodernism has been advanced perhaps most by women of color involved with Critical Race Theory and Critical Race Feminism. See, e.g., 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 (developing the concept of "intersectionality" in critical legal analysis); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) (demonstrating the importance of "multiplicity" in critical legal theory); Berta Esperanza Hernández-Truyol, *Building Bridges—Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1994) (advancing the concept of "multidimensionality" in contemporary discourse about Latinas/os). Since these early gains, scholars of color have continued elu-

These observations about the anti-essentialist foundations of LatCrit theory, if taken seriously, demand that LatCrit theorists recall the ultimate aim and purpose of our work: the promotion of anti-subordination transformation as a material bottom line.²⁴ Anti-essentialist approaches in critical legal scholarship are closely related to anti-subordination principles because anti-essentialism has been a means of securing discursive space for voices and interests that mainstream preferences and projects tend to overlook or marginalize; this claim to space and visibility, in turn, allows outgroups to conceive, articulate, and organize anti-subordination projects. To benefit from preceding outsider advances, LatCrit theorists must apply critical, anti-essentialist lessons to ensure that religion is in fact an anti-subordination force in everyday life—or, alternatively, to aid mobilization of resistance against any imposition of subordination in the name of any religion or any other construct. The “religion controversy” of LatCrit II, as reflected in the essays published here, thereby serves as an indirect yet dramatic reminder of baseline lessons: LatCrit theory must take care to recognize and interrogate the nuances and the effects of all forces identifiable as “religion.” Anti-essentialism and anti-subordination principles require that LatCrit analyses of religion, as with all hierarchies of social power, be consciously critical and self-critical.²⁵

B. *Detecting the Bottom*

One method of ensuring critical vitality is to focus critical analysis on the most vulnerable segments of the communities that LatCrit theorists profess to serve, and to do so cognizant of the past construction and present conditions of those communities. This method teaches outsider legal scholars to examine carefully and

citating additional concepts or tools to enhance postmodern anti-subordination critiques of unjust legal doctrines, institutions and processes. See, e.g., *infra* notes 159–161 and sources cited therein on wholism, cosynthesis and interconnectivity.

The methodological and substantive breakthroughs of outsider legal scholarship represented by these works have been organic to the conception and early articulation of LatCrit theory. See, e.g., Francisco Valdes, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1, 56–59 (1997) (introducing the symposium based on the First Annual LatCrit Conference and discussing LatCrit theory’s grounding in outsider insights like intersectionality, multiplicity and multidimensionality).

24. See 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, 502 (1993) (concluding that “[t]he practice of liberation legal theory [must aim] at understanding the role of law in maintaining structures that perpetuate relations of domination and subordination in a given society for the purpose of materially promoting that society’s transformation.”).

25. See Margaret E. Montoya, *Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis*, 2 HARV. LATINO L. REV. 349, 356–71 (1997) (calling for a self-critical approach to LatCrit theory).

critically the sources, workings and effects of power by focusing on the sectors of society where power is wielded with most license and impunity. This technique of "looking to the bottom" to inform anti-subordination theory makes sense because "the bottom" is where subordination is most harshly inflicted and most acutely felt.²⁶ Thus, when LatCrit theorists examine any particular religious belief—in both its material and theoretical dimensions—we must take affirmative care to consider how the beliefs and practices of all "religions" actually affect existing patterns or distributions of power and privilege within, among and beyond Latina/o communities.

Looking to the bottom, however, is not the same venture as racing to the bottom; the former calls for a constructive focus on targets of concentrated subordination to inform the development of a reconstructive and transformative jurisprudence while the latter describes a destructive rush into competition over comparative victimhood. By "looking to the bottom" we strive only to ascertain how power structures relations of privilege and subordination within any given context so that the most vulnerable and marginal within that particular context are never left behind by our critical analysis and political interventions. This critical and self-critical stance is fundamentally different from the notion of racing to the bottom, which entails uncritical, abstract and often essentialistic assertions of quantitative or qualitative victimhood in competition with other claims of subordination. We reject such a race because it abdicates any responsibility for or commitment to the actualization of objective justice—defined here as the production of social justice for all. Indeed, by pausing consciously for contextualized inspection of the relative positions of privilege and subordination that are organized by and around the various issues raised during LatCrit II, we seek to illustrate in concrete terms the unique challenge LatCrit theory confronts: to organize its coalitional politics and theorize its anti-subordination agenda despite and beyond the complex intersections of privilege and subordination that may otherwise tear it asunder along the multiple fissures that too-often are produced by conclusory, abstract and uncritical assertions of comparative victimhood—whether real or apparent.²⁷

26. See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987) (illustrating critical analysis grounded in realities lived at the bottom).

27. See Elizabeth M. Iglesias, *Human Rights in International Economic Law: Locating Latinas/os in the Linkage Debates*, 28 U. MIAMI INTER-AM. L. REV. 361, 377-86 (1996-97) (mapping the complex ways in which LatCrit understandings of the reasons for and the nature of Latina/o subordination can be discursively manipulated to consolidate very different political alliances around solidarities of class, culture or nationalism—at the expense of more inclusive and comprehensive anti-subordination agendas that resist reinscribing relations of privilege and subordination along any category of identity).

At the same time, the detection of subordination or “the bottom” can become a contentious and contested matter. A devout Roman Catholic’s insistence on deploying church resources to promote patriarchy generally, and specifically to restrain legal recognition or individual availment of reproductive rights, is “faith” to some and oppression to others.²⁸ The Roman Catholic Church’s international campaign against formal, much less actual, equality for sexual minorities²⁹ similarly is perceived or described in varied, and mutually opposing, ways.³⁰ Given such conflicting perspectives,

28. The Roman Catholic Church long has been vehemently against modern forms of contraception, much less any form of abortion. For instance, the 1968 papal encyclical, *Humanae Vitae*, positioned the Roman Catholic Church in opposition to contraception. See Pope Paul VI, *Humanae Vitae*, reprinted in PHILOSOPHY AND SEX 167–84 (Robert Baker & Frederick Elliston eds., 1984). Christianity, and Roman Catholicism in particular, more generally also are closely allied with patriarchy’s hold over both the “public” and “private” spheres of human activity. For an overview of the public/private distinction, see Morton J. Horwitz, *The History of the Public/Private Distinction*, 130 U. PA. L. REV. 1423 (1982); see also Ruth Gavison, *Feminism and the Public/Private Distinction*, 45 STAN. L. REV. 1 (1992). This alliance is enabled by Christianity’s historic obsession with the sexual, which lends itself to the regulation of human personality through human sexuality in a calculated biased way: calculated to valorize heterosexuality as “the” “way of life” and to ensure substantial male control of it. See generally Francisco Valdes, *Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender and Sexual Orientation to Its Origins*, 8 YALE J.L. & HUMAN. 161, 172–211 (1996).

Of course, patriarchy is a complex phenomenon that transcends any one religion. For a critical history of patriarchy, see GERDA LERNER, *THE CREATION OF PATRIARCHY* (1986); Angela L. Padilla & Jennifer J. Winrich, *Christianity, Feminism, and the Law*, 1 COLUM. J. GENDER & L. 67 (1991). Though to varying degrees and in varied forms at different times or places, Christianity, sexual moralism and patriarchy repeatedly have been observed as historical correlates. See, e.g., PETER BROWN, *THE BODY AND SOCIETY: MEN, WOMEN AND SEXUAL RENUNCIATION IN EARLY CHRISTIANITY* (1988); JAMES A. BRUNDAGE, *LAW, SEX, AND CHRISTIAN SOCIETY IN MEDIEVAL EUROPE* (1987); ROBIN LANE FOX, *PAGANS AND CHRISTIANS* (1989); see also PIERRE CHUVIN, *A CHRONICLE OF THE LAST PAGANS* (B.A. Archer trans., 1990). More importantly, this ideological correlation continues vividly to be enacted even today by various Christian political groups, who mix the power of religion with “traditional values” to espouse cultural practices and state policies that obviously and intentionally favor men and straights over women and Queers. See generally *infra* notes 122–131 and accompanying text.

29. By “sexual minorities” we mean an inclusive category embracing multiply diverse lesbians, bisexuals, transsexuals, transvestites, transgendered persons and gay men; though each of these classifications represent different sex/gender/sexual orientation configurations, they all stand in opposition to heteropatriarchy. They all have a common interest in heteropatriarchy’s dismantlement, and, hopefully, in a broader norm of sex/gender liberty and diversity. Without occluding multidimensional difference or variance within or across these classifications, we emphasize strategic and substantive commonality, if not social affinity, in pursuit of anti-subordination ideals.

30. The Roman Catholic Church has a long tradition of formal homophobia. See, e.g., JOHN J. MCNEILL, S.J., *THE CHURCH AND THE HOMOSEXUAL* (1985); *HOMOPHOBIA AND THE JUDAEO-CHRISTIAN TRADITION* (Michael L. Stemmeler & J. Michael Clark eds., 1990); *HOMOSEXUALITY AND RELIGION* (Richard Hasbany ed., 1989). This tradition stretches back, in some respects, to Christianity’s earliest times. See generally JOHN BOSWELL, *CHRISTIANITY, SOCIAL TOLERANCE, AND HOMOSEXUALITY* 137–66 (1980). However, this tradition is mixed with pockets of in-apposite precepts and practices, which include the practice of same-sex unions within Christian heritage. See generally JOHN BOSWELL, *SAME-SEX UNIONS IN PREMODERN*

how should "the bottom" be identified—how should LatCrit theorists engage this apparent dilemma?³¹

The first step, in our view, is to recall and marshal the strong LatCrit norm favoring respect for difference and diversity within our incipient community of scholars.³² LatCrit theorists must take special care to balance competing or conflicting experiences, preconceptions or tenets against the bottom-line anti-subordination objectives of our movement. We must take care to distinguish aspects of personal experience, preference or agency against the needs and functions of our work in this particular place and time, and in light of the ways in which Latina/o and other outgroup communities presently are structured. We must exercise great caution not to invoke personal experience or sentiment in ways that devalue or marginalize group histories. We must, in short, decenter our personal predispositions and take a hard look at the effects that all "religious" practices visit on the most vulnerable members of the relevant categories, and even more so on the effects of our interventions in the extant status quo as organized around those categories.³³

The second and related step is to be always cognizant of ideology—even the forms that we tend to favor—and to inspect ideology's systematized re/production of predictable patterns of hierarchy within or among the relevant groups or categories of analysis.

EUROPE (1994). Ideologically, the institutions of Christianity have aligned themselves with heterosexism in the pursuit of procreation. See generally Valdes, *supra* note 28, at 199-211. The Roman Catholic Church, for instance, routinely opposes deregulation of abortion and other reproductive rights in contemporary public policy debates. See, e.g., Gerald Renner, *For State, A Movement of Contrasts; Anti-Abortion Effort Rests With Catholics Amid Liberal Laws*, THE HARTFORD COURANT, Jan. 19, 1998, at A1; DeWayne Wickman, *Mergers "Stealth War" On Reproductive Rights*, USA TODAY, Mar. 17, 1998, at 15A. Today, the Roman Catholic Church and other Christians routinely oppose "gay rights" in public policy debates. See generally, e.g., Mary Curtius, *Archbishop Challenges S.F. Domestic Partners Law*; L.A. TIMES, Feb. 4, 1997, at A3; Lois Sweet, *Pulpit power Conservative Christians have been lobbying hard against same-sex benefits since last year*; THE TORONTO STAR, June 4, 1994, at B1.

31. See Valencia, *supra* note 12, at 473; Hartigan, *supra* note 13, at 487; Ota, *supra* note 14, at 444.

32. See generally Max J. Castro, *Making Pan Latino: Latino Pan-Ethnicity and the Controversial Case of the Cubans*, 2 HARV. LATINO L. REV. 179 (1997) (discussing intra-Latina/o coalitions and the issues posed for this project by Cuban particularities); Berta Esperanza Hernández-Truyol, *Building Bridges: Bringing International Human Rights Home*, 9 LA RAZA L.J. 69 (1996) (exploring intra-Latina/o diversities, especially based on gender, sexuality and nationality, and urging the need for affinity based on local and global commonalities); Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101, 11-38 (1997) (discussing intra-Latina/o difference and calling for LatCrit theory's cultivation of group solidarity within and across varied axes of difference); Ediberto Roman, *Common Ground: Perspectives on Latino-Latina Diversity*, 2 HARV. LATINO L. REV. 483 (1997) (urging Latina/o and other legal scholars of color to collaborate on joint anti-subordination projects).

33. This concern over the "effects" of LatCrit and other outsider interventions in social policy debates and legal reform strategies has generated a call for outcrits to evaluate the "political impact" of our work. See, e.g., Sumi K. Cho, *Essential Politics*, 2 HARV. LATINO L. REV. 433, 434 (1997).

Thus, rather than approach social and legal phenomena as random or individuated dots in a landscape, LatCrit theorists must inquire critically how relevant forms of ideology instill and institutionalize stratification. We must furthermore inquire how such stratification structures opportunity and distributes social and economic wealth for the benefit of some and to the detriment of many.

At the very least, this line of inquiry eventually but certainly leads the critical analyst to the proximate vicinity of “the bottom” within or among the relevant categories because these questions can help us distinguish among the insiders and outsiders that inhabit the categories under inspection. This line of inquiry additionally induces analysis sensitive to context and history, and to the particularity of systemized power relations in all situations. In this Afterword we apply this line of inquiry to situate and advance LatCrit theory—within the context of this symposium—as a form of anti-subordination legal discourse.

For example, “Latino” culture is repeatedly reported to constitute an especially virulent “macho” environment, and it is against this particular cultural status quo that we locate our interpretative encounter with religion as cast in the Valencia and Hartigan essays. These two essays invoke the image of the Virgen de Guadalupe to articulate the significance of Roman Catholicism to Latinas/os, deploying narratives in which the inspiration to persevere and survive the violence of poverty is organized around the adulation of, and devotion to, this particular Virgin. To be sure, veneration of the Virgin Mary has been a powerful force in the construction of transcultural meanings and values, and in the more specific but highly complex conception and organization of the socio-political roles of Latinas/os around the globe.³⁴ But these narratives make no effort to examine critically how the cult of the Virgin Mary has operated across time and space—from Medieval Europe to the New World, and throughout Mexico, Cuba, Puerto Rico and everywhere that the veneration of the Virgin Mary is culturally dominant.³⁵ Nor, additionally, do these essays undertake a critical examination of this Virgin’s symbolic power, and how it is deployed by religiously or socially dominant forces simultaneously to rationalize and mystify the suppression, repression and persecution of female agency and sexuality. These two omissions represent serious lapses because they

34. 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) (analyzing the way images of women, organized in part around the discourses of marianismo, operate in complicated ways to both undermine and enable the expression of female autonomy in Latin culture(s), and the broader implications of these cultural elements in the feminist legal struggle against male supremacy).

35. For an overview, see MARINA WARNER, *ALONE OF ALL HER SEX: THE MYTH AND THE CULT OF THE VIRGIN MARY* (Vintage Books 1983) (1976).

overlook how religious doctrine operates as a form of ideology that can engender inequality and create "the bottom" of categories gendered in part by religion and its symbols.

LatCrit anti-subordination methodology counsels a more critical and contextualized analysis of this Virgin and the ideology that constructs and sustains her symbolic power and cultural effects. Through the doctrine of the Immaculate Conception—the doctrine that bestows upon Mary the title of Virgin due to the virgin birth of Christ—Mary was spared the stain of original sin. Under the calculus of this doctrine, only a woman without sin could be the mother of God and only a virgin could be without sin. Thus, even as the image of this Virgin is elevated and venerated, the embodied human woman is devalued, despised and degraded in her failures to measure up to this image of gendered perfection. The control of women's agency, sexuality and virginity by men, even God's men, therefore is not simply an ecclesiastical matter; control of female agency, sexuality and virginity has been claimed and exploited by men to control and exploit women physically, politically and economically in both Latina/o and other cultures.³⁶ The merger of secular and sectarian power in the hands of men thus has been used throughout history and is still used today to cast women, including Latinas, sharply either as virgins or whores, thereby constructing and sustaining an environment of androcentric control over both "public" and "private" spheres of human life, an environment that in design and effect curtails opportunities for women and aggrandizes them for men.³⁷ The failure to contextualize the image of the Virgin in its socio-cultural situation therefore causes these narratives to neglect considering how this image helps, among other effects, to perpetuate gender stratification within Latina/o communities precisely because they pay fealty to Roman Catholic beliefs. The uncritical nature of the narratives about the Virgin's role in Latina/o culture effectually transmutes these essays into accomplices of male supremacy in the name of religion.

To detect and intervene on behalf of those at the bottom, as these essays show by omission, LatCrit theorists must contextualize critical analysis by accounting for patterns of domination and subordination in the organization of social power among Latinas/os and other multiply diverse populations. To engage religion from an anti-

36. See Hope Lewis, *Between Irua and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. J. 1 (1995) (discussing norms underpinning practice of female genital surgeries in African cultures); 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-AMER. L. REV. 337, 348 (1996-97) (recounting cultural practices used to control sexuality of Palestinian women).

37. For readings on the "public/private distinction," see sources cited *supra* note 28.

subordination and anti-essentialist perspective, LatCrit theorists must examine critically how religion affects women's lives in relationship to men's lives, and how it affects white or middle-class or Anglo-American or heterosexual women's lives in relationship to black or Asian, indigenous or Latina or poor or lesbian women's lives. This sort of multidimensional interrogation is precisely what it means to account for gender, race, ethnicity, class and sexual orientation in the articulation of LatCrit theory; this sort of interrogation is precisely what it means to apply the lessons of postmodern analyses and outsider jurisprudence in LatCrit theory.

C. *Locating LatCrit Analysis in the Material Realities and Historical Antecedents of the Here and Now*

As illustrated by the forgoing examples, locating "the bottom" in a multiplicitous and intersectional world can become an exercise in ambiguity and contestation, a possibility exacerbated by uncritical and decontextualized approaches to LatCrit theory. The antidote is interdisciplinary, transnational, anti-essentialist analysis, requiring us to sift through the record of knowledge already adduced across boundaries of discipline, culture and perspective.³⁸ We must incorporate into our anti-subordination frameworks the personal experiences and the insights that inform them to sharpen, not dull, our capacity for critical understanding of the larger record of comparative knowledge also available to us.³⁹ We must focus on how "the bottom"—though variegated—is concretely constructed across different places and times given the actual particularities of the social, legal, political or ecclesiastical contexts under analysis. We must, in short, assemble and contextualize, as best as our conditions permit, the record of experience, and interrogate that record with all of our critical capacities, to imagine and devise compelling means of rectifying the material legacies of past or present social injustices.

To do so, we must start at the beginning; we must focus ourselves on the cultural, temporal and spatial context in which our

38. See, e.g., Colloquium, *International Law, Human Rights and LatCrit Theory*, *supra* note 1 (presenting various works which articulate this form of analysis within LatCrit theory).

39. We must, in other words, use narrative to help make sense of the gaps, ambiguities, contradictions or falsehoods to be found in the larger record of social and legal experience that we also can, and must, access through conventional means of scholarship. For effective displays of LatCrit narrative, see Elvia Arriola, *Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self*, 2 HARV. LATINO L. REV. 397 (1997); Berta Esperanza Hernández-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 HARV. LATINO L. REV. 199 (1997); Kevin R. Johnson, *"Melting Pot" or "Ring of Fire"? Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1259 (1997), 10 LA RAZA L.J. 173 (1998); Celina Romany, *Gender, Race/Ethnicity and Language*, 9 LA RAZA L.J. 49 (1996).

analysis takes place: the United States at the millenium.⁴⁰ Bringing to bear insights that might include, but must be based on, a record more expansive than uncritical anecdotes, we must examine the organization and allocation of opportunity and equality in this country at this particular time. Observing the relative positions of competing religious beliefs in, and their effects on, this context, it becomes quickly obvious that the United States today and historically represents an undeniably Christianized culture; though the Constitution forbids the formal establishment of any religion as the state's formal creed, the Constitution also commands the state to respect the exercise of religious beliefs.⁴¹ Today, the state accommodates religious exercise to a significant degree,⁴² and due to the legacies of a complex history, it accommodates Christian practices more so than indigenous or other non-Western religions.⁴³

To start at the beginning of Western Christianity's religious, material and ideological dominance over the land now claimed and governed by this country, we note a coincidental but telling irony: that the site of LatCrit II—San Antonio, Texas—was conquered and appropriated from indigenous peoples by the Spanish crown in the name of Roman Catholic beliefs and imperatives.⁴⁴ Indeed, its very name continues to project that history and its continuing legacies of power and oppression. This exemplar of Christianity's effects on this continent therefore helps set the stage for an anti-subordination analysis of the status quo that since then has been normalized and coalesced into virtual permanence.

40. We consider "the United States at the millennium" to be the appropriate level of generality to begin this analysis because this country and its laws serve as the political, cultural and legal unit of formal and informal power relations that we study in this Afterword, and because we stand at the cusp of the 21st century.

41. See U.S. CONST. amend. I; Justin Brookman, *The Constitutionality of the Good Friday Holiday*, 73 N.Y.U. L. REV. 193 (1998); Lisa Ness Seidman, *Religious Music in the Public Schools: Music to Establishment Clause Ears?*, 65 GEO. WASH. L. REV. 466 (1997).

42. See *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

43. This nation in general, and its tribunals specifically, have not always shown non-European religions a solicitude similar to the accommodations given to Christianity in particular. See *Employment Div., Dep't of Human Resources of Or. v. Smith*, 485 U.S. 660 (1988); Keith Jaasma, *The Religious Freedom Restoration Act: Responding To Smith; Reconsidering Reynolds*, 16 WHITTIER L. REV. 211 (1995); Michael W. McConnell, *Free Exercise Revisionism and the Smith Decision*, 57 U. CHI. L. REV. 1109 (1990); James J. Musial, *Free Exercise in the 90s: In the Wake of Employment Div., Dep't of Human Resources v. Smith*, 4 TEMPLE POL. & CIV. RTS. L. REV. 15 (1994). But cf. *Church of the Lukumi Babalu Aye, Inc.*, *supra* note 42 (vindicated Santeria rights under the free exercise clause of the First Amendment).

44. For a critical historical overview of Spanish conquest and plunder in the region now known as the southwestern United States, see generally RAMÓN A. GUTIÉRREZ, *WHEN JESUS CAME, THE CORN MOTHERS WENT AWAY: MARRIAGE, SEXUALITY, AND POWER IN NEW MEXICO 1500-1846*, 76 (1991).

As a result of this history, Christian churches, as a group, today operate fully as part of this society's establishment. And, like the rest of the national establishment, their possessions and activities permeate contemporary secular life: homage to their god is imprinted in the nation's coinage and expressed as the nation's motto,⁴⁵ their prayers are recited in multiple socio-cultural settings and intoned annually to convene the nation's representatives in Congress,⁴⁶ their (untaxed) properties stretch from coast to coast and occupy prime land valued at billions of dollars,⁴⁷ their messages and images fill the public's airwaves from dawn to dawn,⁴⁸ their sectarian holidays are promoted by businesses as economic events and celebrated by laborers as paid time off,⁴⁹ and their dogmas and doctrines are invoked by the tribunals and lawmakers of the land to justify juridical and legislative acts of law and policy.⁵⁰ Moreover, Christian groups are visible and vocal in, and they aggressively strive to influence the outcome of, current public policy debates that range from

45. For a discussion of the phrase "In God We Trust," see *Keeping God's Name in Mint Condition*, TIME, Dec. 9, 1991, at 66.

46. The use of sectarian prayers in social, educational, occupational or governmental settings has sparked considerable and vigorous commentary. See, e.g., M. Stanton Evans, *Reexamining the Religious Roots of Freedom*, USA TODAY MAGAZINE, Sept. 1, 1995, at 90.

47. The tax-exempt status of religious organizations, their wealth and activities, similarly has sparked considerable public controversy. See, e.g., Elliott Beard & Elizabeth Lesly, *Pennies from Heaven; It's Time for Uncle Sam to Pass the Collection Plate; Tax the Churches*, WASHINGTON MONTHLY, Apr. 1991, at 40.

48. Christian groups have used the mass media to proselytize "round the clock" since the early days of broadcasting. See, e.g., Carnegie Samuel Calian, *Redeeming the Wasteland? Christian TV Increasingly Uses Entertainment to Spread its Message*, CHRISTIANITY TODAY, Oct. 2, 1995, at 92.

49. Retailers count on Yuletide sales for up to fifty percent of their annual profits, pumping an estimated \$37 billion into the American economy. See Jeffery L. Sheler, *In Search of Christmas*, U.S. NEWS & WORLD REPORT, Dec. 23, 1996, at 56.

50. Invocation of the Judeo-Christian "creator" and the social imperatives mandated to his creations have appeared in the opinions of the land's highest tribunal at key moments in the nation's social history specifically to bless juridically state acts of subordination directed against women and sexual minorities. See, e.g., *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 141 (1873) (describing equal employment opportunity in the legal profession for women as "repugnant" to "the nature of things") (Bradley, J., concurring); *Bowers v. Hardwick*, 478 U.S. 186, 196-97 (invoking Judeo-Christian dogma as a proper justification for judicial allowance of the criminalization of consensual, adult same-sex male intimacy) (Burger, C.J., concurring). However, the judicial invocation of Christian beliefs to justify the use of law in the enforcement of social subjugation is not confined to gender and sexual orientation; until the Supreme Court's ruling in *Loving v. Virginia*, 388 U.S. 1 (1967), courts similarly relied on prevalent religious precepts to justify anti-miscegenation statutes and the racial hierarchy they helped to maintain. Indeed, the Virginia supreme court invoked divine mandates to uphold the statute that the Supreme Court later struck down. *Loving v. Commonwealth*, 206 Va. 924, 17 S.E.2d 78 (1966). Thus, racial minorities also have experienced the sting of religion's use as a social force to help retain or enact unjust laws. These examples show that religion lends itself to social and political exploitation, sometimes more so than other times. See also *infra* notes 87-89 and accompanying text (describing similar domestic and hemispheric scenarios).

presidential elections to state or local referenda.⁵¹ Thus, in myriad ways and due to numerous circumstances, Christian religious influence over this country and its laws is awesome, and it is exercised routinely and systematically to promote a particular view of the world. Given the totality of historical and present circumstances, the cumulative effects of Christianity on this land cannot credibly be said to represent egalitarian respect for difference, or sincere accommodation of diversity on any of the points implicated by the recorded dogma of the various churches spawned by Judeo-Christian imperatives.

As the essays in this symposium by community activist Luz Guerra and author Antonia Castañeda jointly remind us,⁵² a ready and enduring example of Christian intolerance is the Roman Catholic Church's leading role in the colonization specifically of this continent: the properties, families and cultures of the peoples indigenous to this land were plundered, divided and persecuted in the name of Christian dogma by imperialist powers that neither knew nor wanted any separation of church and state. In particular, Roman Catholic and/or Christian royalty and clergy collaborated mightily to seduce or subdue, and ultimately to erase all traces of, indigenous civilizations and their traditions, including religious ones.⁵³ While understanding that Christian missionaries sought to save indigenous souls around the world (regardless of the cost to those souls), and understanding that this global history is more complex than this Afterword

51. Indeed, Christian groups promoting "traditional values" steeped in religious doctrine today are among the best politically organized, financed and mobilized special interest factions in the country. See Jeffrey H. Birnbaum, *Which Pressure Groups Are Best at Manipulating the Laws We Live By?*, FORTUNE, Dec. 8, 1997, at 144; *Family Research Council*, <http://www.cc.org/publications/ccnews/ccnews98.html#vaban> (visited Apr. 19, 1998).

52. See Luz Guerra, *LatCrit y la Des-colonización Nuestra: Taking Colón Out*, 19 CHICANO-LATINO L. REV. 351 (1998); 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).

53. This reclaimed history and its ideological slant are well known by now. See generally HENRY WARNER BOWDEN, *AMERICAN INDIANS AND CHRISTIAN MISSIONS* (1981); *NATIVE AMERICAN TESTIMONY: A CHRONICLE OF INDIAN-WHITE RELATIONS FROM PROPHECY TO THE PRESENT, 1492-1992* (Peter Nabokov ed., 1991). This history thus has given rise in recent years to a strong Native American discourse, both within and beyond the law, that seeks to further excavate hidden histories and to ameliorate the continuing legacies of European and Christian imperialism on this continent. See, e.g., JO CARRILLO, *READINGS IN AMERICAN INDIAN LAW: RECALLING THE RHYTHM OF SURVIVAL* (1998); PATRICIA MONTURE-ANGUS, *THUNDER IN MY SOUL: A MOHAWK WOMAN SPEAKS* (1995); RENNARD STRICKLAND, *TONTO'S REVENGE: REFLECTIONS ON AMERICAN INDIAN CULTURE AND POLICY* (1997); ROBERT A. WILLIAMS, JR., *THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST* (1990); *THE INVENTED INDIAN: CULTURAL FICTIONS & GOVERNMENT POLICIES* (James A. Clifton ed., 1990); *THE STATE OF NATIVE AMERICA: GENOCIDE, COLONIZATION, AND RESISTANCE* (M. Annette Jaimes ed., 1992); see also Colloquium, *The Native American Struggle: Conquering the Rule of Law*, 20 N.Y.U. REV. L. & SOC. CHANGE 199 (1993).

possibly could reflect, critical candor nevertheless compels acknowledgment that the net effects of Christian presence in this and other non-European continents have been decidedly imperial: Christianity as an institution repeatedly has aided secular campaigns to claim, domesticate and “detritalize” sovereign indigenous cultures.⁵⁴ Time and again since then, Christian religions—and perhaps most egregiously Roman Catholicism—have expressed their power and purpose in manifold forms, using their accumulated social stature and influence to effectuate biases and pursue agendas that tend to increase the wealth and prestige of the European male (heterosexual) elites that invaded this continent half a millenium ago. Despite any self-serving verbiage to the contrary, Christian missionary zeal indeed has operated willingly as an arm of European invasion, conquest and hegemony as well as paving the way for brutal exploitation of indigenous peoples in the twentieth century.⁵⁵ In this instance, religion and its preferences in ideology therefore represent and reinforce more than androsexism; they additionally and synergistically advance eurocentrism.

Similarly, the history and legacy of organized religion in this context represents the introduction into this continent of compulsory heterosexuality—the edict that commands and extracts the surrender of individual agency in the formation of intimate bonds in the name of Christianity’s seemingly insatiable appetite for procreation. Thus, the Roman Catholic missionaries that arrived on this land centuries ago set out to harness and reduce sexual connection to a means over which they and their sectarian ideology would lord: a means toward literal reproduction rather than toward human connection and mutual fulfillment. To do so, those missionaries labored systematically to destroy native customs of sexual equanimity, including the pansexuality that flourished among numerous indigenous nations at that time and that accommodated with respect and dignity same-sex as well as cross-sex unions.⁵⁶ Moreover, this homophobic

54. See Castañeda, *supra* note 52, at 238.

55. See, e.g., *supra* note 44 and sources cited therein on the European and Christian invasion and domination of this continent; see also GERARD COLBY WITH CHARLOTTE DENNETT, *THY WILL BE DONE: THE CONQUEST OF THE AMAZON: NELSON ROCKEFELLER AND EVANGELISM IN THE AGE OF OIL* (1995) (providing an in-depth account of the way Rockefeller-financed evangelical missions into the Amazon facilitated the penetration of the Amazon and the genocidal liquidation of indigenous tribes).

56. Their tactics in this determined institutionalization of heterosexism, as reflected in the historical record available to LatCrit theorists today, included the savage and un-sentimental destruction of existing families and bonds: one recorded “technique occasionally used to render an obdurate and cocksure Indian submissive was to grab him by the testicles and to twist them until the man collapsed in pain.” See GUTIÉRREZ, *supra* note 44, at 76. The sexual diversity destroyed systematically by European campaigns against indigenous sexual egalitarianism has been well documented in various recent works. See, e.g., JUDY GRAHN, *ANOTHER MOTHER TONGUE: GAY WORDS, GAY WORLDS* 53 (1984); WILL ROSCOE, *THE ZUNI MAN-WOMAN* (1991); WALTER L.

hierarchy of values and icons forcibly imposed and continues to inform and permeate the dominant psyche and axioms of this society and its laws in the repressive regulation of same-sex intimacies and families.⁵⁷ Therefore, Christian institutions and ideologies rightly are held critically accountable both for the brutal imposition of heterosexism as well as for their continuing avid participation in the continuing prevalence of heterosexist supremacy in this place and time.

It bears emphasis that the status quo begun long ago continues to fuel today's enforcement of material and political stratification via the combined interests and forces of Eurocentric, heteropatriarchal sectarian and secular elites.⁵⁸ As with the continuing effects of this nation's early decision to institutionalize racial slavery, the lands arrogated and the labor exploited by Christian-identified invaders during formative times and since then have created and entrenched a resilient and unjust political economy that prevails even today. This economy employs race, ethnicity, class, gender and sexuality to help construct religion, and in addition employs religion to buttress social privilege that hinges on race, ethnicity, class, gender and sexuality.

Finally, LatCrit scholars need only trace the ebb and flow of religious referents in the constitutions and legal systems of different states in Latin America and throughout the Third World to discover and begin assessing how religious discourse operates even today to facilitate the mystification of socio-political hierarchies, the denial of fundamental civil and political human rights and the consolidation of repressive authoritarian regimes.⁵⁹ Thus, the domestic histories and

WILLIAMS, *THE SPIRIT AND THE FLESH: SEXUAL DIVERSITY IN AMERICAN INDIAN CULTURE* (2d ed. 1992); *see also, e.g.*, *LIVING THE SPIRIT: A GAY AMERICAN INDIAN ANTHOLOGY* (Will Roscoe ed. 1988).

57. *See infra* notes 124-142 and accompanying text.

58. *See, e.g.*, 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) (critiquing the conflation of sex, gender and sexual orientation in modern and legal culture, and its historical development, as artifacts of heteropatriarchy). For an extension of the historical analysis, *see Valdes, supra* note 28.

59. Religious discourse has been a rhetorical and political resource in the fundamental consolidation of the military dictatorships that sent Latin America into its multiple dirty wars. *See, e.g.*, FRANK GRAZIANO, *DIVINE VIOLENCE: SPECTACLE, PSYCHOSEXUALITY, & RADICAL CHRISTIANITY IN THE ARGENTINE "DIRTY WAR"* (1992) (describing Argentine junta regularly seen in public with Catholic hierarchy); *see also*, *THE POLITICS OF ANTIPOLITICS: THE MILITARY IN LATIN AMERICA* 238-49 (Brian Loveman & Thomas M. Davies, Jr. eds., 2d ed. 1989) (providing speeches of Augusto Pinochet, denying that political liberty, in a nationalistic and Christian Chile, includes the liberty to promote ideas that answer to a Marxist ideology). The Chilean Constitution of 1980, for example, declared the family to be the "fundamental nucleus of society" and, in institutionalizing Pinochet's ideological warfare against the left, criminalized doctrines considered to "attack the family, or propagate . . . a conception of the society, the State or the legal order of a totalitarian character or based on the class struggle." CHILE CONST. (1980) art. 8 (abrogated by 1989 constitutional amendments). For

legacies of subordination, coupled with the transnational and transcultural sweep of dominant religious organizations today, establish worldwide ambitions for sectarian ideologies that intentionally and simultaneously stratify men over women, Europeans over natives and straights over Queers. Organized Christian groups eagerly have rendered themselves adjuncts of the unjust hegemonies that still reign supreme in the United States and globally: androcentric, eurocentric, and heterocentric supremacies. The political mobilization of the Christian right in this country, which seeks to reimpose "traditional values" precisely to preserve such stratification,⁶⁰ furthermore makes attention to these historical and contemporary effects of religion, and to their domestic, cross-cultural and international comparisons, particularly pressing for anti-subordination theorists and activists at this time of backlash and regression. But to detect and aid "the bottom" of these intersectional and international categories of experience and opportunity, an analytically rigorous and intellectually honest LatCrit approach to religion must not only reckon with this record and its legacies, it must develop and deploy the strategic methodologies that will enable us to craft viable means of reclaiming religion as an affirmative force in the continuing quest for social justice across particularities of time and place.

D. *A Two-Tiered Framework for Engaging Religion in LatCrit Narratives and Theory*

This context and history advises that a critical anti-subordination engagement of religion in LatCrit theory necessarily would incorporate (at least) two steps of analytical development. This advice is highlighted by Professor Leslie Espinoza's essay,⁶¹ which points out that LatCrit theorists in all instances face a two-sided task: first, recognizing oppression and, second, overcoming it.⁶² To do so,

an early historical incident, see the story of the Ecuadorian military dictatorship established under Gabriel Garcia Moreno, creator of the "Republic of the Sacred Heart of Jesus," ALAIN ROUQUÉ, *THE MILITARY AND THE STATE IN LATIN AMERICA* 54-55 (Paul E. Sigmund trans., Univ. of Cal. Press 1989) (1982). See also Ann Elizabeth Mayer, *Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?*, 15 *MICH. J. INT'L L.* 307 (1994) (describing the strategic politics of Islamic fundamentalism and its implications for human rights). Cumulatively, the history of the incorporation of religion into Latin American and Third World legal systems suggests that such incorporations have operated more often to rationalize and legitimate, rather than to condemn and resist, state sanctioned brutality and massive human rights violations.

60. See generally SARA DIAMOND, *SPIRITUAL WARFARE: THE POLITICS OF THE CHRISTIAN RIGHT* (1989) (providing a comprehensive account of the domestic and international political agenda that drives the Christian right in the U.S.).

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

62. *Id.* at 193.

LatCrit theorists must employ a two-tiered framework for engaging religion, or any other force, in LatCrit scholarship.

The first step is deconstruction—unpacking the ways and means of religion's historical and contemporary deployment to import and maintain social injustice along racial, ethnic, class, gender and sexual orientation lines. The second step is the act of reconstruction—reconceiving religion in egalitarian ways that avoid or minimize social injustice based on perceptions or realities of difference and diversity. From the deconstructive process thus follows the ultimate task of outsiders' jurisprudential work—building theory in the search for justice.⁶³ This two-step framework is the minimum required to vouchsafe the integrity of LatCrit theory's approach toward religion because it is designed to check an uncritical redeployment of existing power hierarchies.⁶⁴ Efforts to circumvent or truncate either step, whether witting or not, endanger LatCrit theory's capacity for the careful blending of "sophistication and disenchantment"⁶⁵ that outsider legal scholars already have shown is indispensable in avoiding lopsided or undisciplined anti-subordination theorizing.

This two-tiered framework for engaging religion in LatCrit theory of course tracks the stages of development already identified among other strands of outsider scholarship, and it also brings into sharp relief the important epistemological and political role of "stories" in various strains of contemporary critical legal theory.⁶⁶ Accordingly, this general framework includes as an initial phase the practice of legal storytelling of varied types to document the untold experience with law and social subordination endured by people of color and other marginalized groups.⁶⁷ But the primary function of

63. *Id.*

64. See Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 HARV. LATINO. L. REV. 495 (1997).

65. Harris, *supra* note 23, at 748.

66. The significance of storytelling in critical anti-subordination legal scholarship has been well developed (and well displayed) in recent years. See generally Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1991); Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539 (1991); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989); William N. Eskridge, Jr., *Gaylegal Narratives*, 46 STAN. L. REV. 607 (1994); Marc A. Fajer, *Authority, Credibility and Pre-Understanding: A Defense of Outsider Narratives in Legal Scholarship*, 82 GEO. L.J. 1845 (1994); Catharine A. MacKinnon, *Feminist Jurisprudence: The Difference Method Makes*, 41 STAN. L. REV. 751 (1989); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989); Michael Olivas, *The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 ST. LOUIS L.J. 425 (1990); Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987).

67. See MARI J. MATSUDA, *WHERE IS YOUR BODY? AND OTHER ESSAYS ON RACE, GENDER AND THE LAW* 23-27 (1996).

narrative in outsider legal scholarship is to provide a point of departure for theoretical and doctrinal analysis and transformative intervention aimed directly at satisfying an indispensable prerequisite to our material goal: "understanding things not only about people of color but also about women, poor people, homosexuals, the physically disabled and other outsiders" that dominant institutions slight or ignore.⁶⁸ Through storytelling, interconnections in and between various particular experiences of subordination are rendered visible, enabling outsider scholars to see more clearly the conditions, practices and structures we must challenge and transform in delivering social justice for any group, as well as for all. Storytelling thus merits an expansive scope in LatCrit theory primarily because, and precisely to the extent, it advances critical analysis by revealing the interlocking dimensions of multiple forms of subordination. LatCrit theory, born of this and other outsider methods and insights,⁶⁹ has in its brief history manifested a solid commitment to the practice of anti-subordination theory through critical narrativity on behalf not only of multiply diverse Latinas/os but of other multiply diverse outgroups as well. We invoke and reassert that commitment now.

It thus is not entirely afiel to question, in the context of this symposium, whether this very danger of performing an un/witting apology for an unjust status quo by engaging in essentialist, uncritical storytelling is exactly the danger potentially posed by the personalized yet generalized accounts presented in the Hartigan and Valencia essays. Though both essays rightfully remind us that religion is a complex force, both proceed to stress in uncritical terms why their preferred actors—the concededly dissident and relatively disempowered factions within this complex force—ought to be selected as representing the true or "essential" nature of that institution. Instead of pausing to explore the current impact and consequences of acknowledged religious oppression and injustice, both essays jump to reconstructive arguments urging LatCrit theorists to accept uncritically the pockets of valiant dissidents mentioned in their stories as the "true" representatives of Roman Catholicism, and to view their intentions for Latinas/os and other peoples as the "true" meaning of religion.

By dismissively acknowledging, but in fact failing to engage, the critical issues triggered by their narrative performances, these essays threaten, whether intentionally or not, to reproduce insider/outsider dichotomies: namely, dichotomies that divide those who accept their representations of religion from those who don't. At the end of their stories, we know with confidence only that these

68. *Id.*

69. See Francisco Valdes, *Latina/o Ethnicities, Critical Race Theory, and Post-Identity in Postmodern Legal Culture: From Practices to Possibilities*, 9 LA RAZA L.J. 1, 24-30 (1996); Valdes, *supra* note 23, at 56-59.

two authors personally have experienced Roman Catholicism as a salutary force in their lives and that they lament that others have not, even though they acknowledge in passing the possibility that Christianity generally, and Roman Catholicism specifically, does not always operate as an affirming force. These two essays therefore suggest but fall short of showing us the power of narrative in legal scholarship. Though the descriptive features of the stories recounted may be moving to some, and perhaps self-indulgent superstitious sentimentalism to others, the more important point is that these essays fail to take the requisite next step: articulating in a critical fashion the theoretical value of the narratives told and the claims made. In fact, these essays fail completely to engage the many critical questions their narratives trigger.

For instance, these essays beg threshold questions about the kind of intellectual or cultural community their accounts are intended to nurture and sustain or to negate and suppress, as well as meta-critical questions about the performative impact their narratives are likely to have on the various overlapping communities that have engaged LatCrit attention and that are participating in the evolution and development of LatCrit theory. Their use of narrative also begs epistemological questions about the way that the meanings embedded in their stories should be interpreted, and their truth values measured, against competing stories, as well as against other types of discourses—such as legal doctrine, anthropology, political science, psychology, and historical analysis—that might be used to address the meanings referenced in the stories they tell. In this way, both essays effectively minimize deconstruction and rush to reconstruction.

However, this leap to reconstruction without deconstruction must be carefully and critically rethought. In our view, such leaps must be resisted; otherwise, reconstructive efforts will lack the insight and drive that only critical deconstruction, including critical narrativity, can instill in our efforts to re/build institutions and communities devoted to effectuating the egalitarian, anti-subordination ideals that LatCrit theorists purport to embrace and seek to promote. These essays thereby remind the LatCrit community (again) that the tendency to essentialism in legal scholarship remains a significant threat to the precision of our theorizing—a reminder that apparently is still needed even though essentialism's dangers already have been noted and urged within prior LatCrit publications. Thus, in tandem, these two essays should serve as a strong reminder of the care and caution LatCrit scholars should exercise when deploying narratives in critical legal scholarship. By way of contrast, essays that appear in the symposium's other clusters

help to illustrate the potential of critical narrativity as method in legal scholarship.

For instance, Professor Hernández-Truyol's essay employs autobiographical narrative to elucidate the gendered inequalities promulgated by Latina/o normativities.⁷⁰ The Hernández essay, like the Hartigan and Valencia essays, centers personal experience as a relevant element in legal theory. But Professor Hernández employs narrative to engage the connectivity and complexity of Latina/o and other outgroup social identifications, using the story as a springboard to theorize anti-subordination strategy, and to urge outgroup anti-subordination collaboration despite and through difference. The Hartigan and Valencia essays, on the other hand, employ narrative to intercede insistently on behalf of socio-religious forces that, as the foregoing account shows and the Guerra essay confirms, are a dominant and, on balance, oppressive feature of this continent's history and heritage.⁷¹ The Hernández essay, while focused on the secular rather than sectarian forces that engender Latina subordination to Latinos and other men, serves as a useful counterpoint to the uncritical use of narratives motivated by a zealous wish to "infuse" LatCrit theory with any particular brand of religiosity.⁷²

Similarly, the essay by Professor Chew employs autobiographical narrative to depict biological and environmental circumstances that interconnect Asian and Latina/o social experiences, identities, and positions.⁷³ This narrative enables Professor Chew to theorize how self-awareness combines with constrained agency to form networks of identification among individuals and groups. The Chew essay thereby points out how an Asian scholar's self-identification as

70. See Berta Esperanza Hernandez-Truyol, *Building Bridges III—Personal Narratives, Incoherent Paradigms, and Plural Citizens*, 19 CHICANO-LATINO L. REV. 303 (1998).

71. See *supra* notes 12–13, 52 and accompanying text.

72. See Valencia, *supra* note 12, at 469 (expressing a personal desire and unilateral decision to infuse the author's religion into the formal program of the LatCrit II conference).

73. See Pat K. Chew, *Constructing Our Selves/Our Families: Comments on LatCrit Theory*, 19 CHICANO-LATINO L. REV. 297 (1998). Indeed, Asian American legal scholars have been instrumental in the cultivation and development of LatCrit theory from the outset. See, e.g., *infra* note 149 and sources cited therein on LatCrit works by Asian American scholars. The same is true for Black and other non-"Latino"-identified scholars. See, e.g., Culp, *supra* note 66; Espinoza & Harris, *infra* note 145. This point is further made by various contributions to this symposium. See, e.g., Anthony Paul Farley, *All Flesh Shall See It Together*, 19 CHICANO-LATINO L. REV. 163 (1998); Jennifer Russell, *Constructing Latinoness: Ruminations on Reading Los Confundidos*, 19 CHICANO-LATINO L. REV. 177 (1998). These authors and works illustrate the rich diversities that inhabit LatCrit theory and demonstrate that scholars of multiple racial/ethnic identifications can adopt the position of a LatCrit scholar. These authors and works thus display how "LatCrit" signifies a political identity with critical anti-subordination commitments to Latinos/as and other outgroups locally and globally. See generally Valdes, *supra* note 23, at 52–59 (summarizing key features of LatCrit theory as reflected in the LatCrit I symposium).

a LatCrit theorist is an act of will, an election to struggle despite cultural, structural, and physical constraints toward self-determination on behalf of diverse groups and persons both domestically and internationally. This pithy essay effectively displays how the multiply diverse self-selected group of scholars that identify as LatCrit theorists have exerted our individual and collective will to oppose multifaceted forms of subordination in a multicultural world.

The essay by author Antonia Castañeda likewise blends autobiography, history and critical theory to conduct an anti-subordination analysis of Latinas/os in the United States, and to highlight especially the impact on Latina/o children of the conditions and needs produced by past and present subordination.⁷⁴ Covering and joining vast fields of time and space, this essay brings to the fore multiple issues—like language, culture, colonization, gender and class—that recur elsewhere in this symposium. This use of critical narrativity thus is sweeping, engaging and devastating.

The essay by Professors Ebben and Gaier similarly uses Latina narratives about identity formation and social positioning to track how the construction of legal education marginalizes specifically Latinas/os in Texas.⁷⁵ The focus on Latina experience culled from the interviews these authors conducted displays the importance of anchoring theory to actual living conditions. This essay's emphasis on the personal narratives of Latinas not only documents the particularity of lived experience, it also reminds us by example that LatCrit scholarship must focus self-critically on the way our work is likely to impact (or not) on the material transformation of unjust conditions if our discourse is to have social relevance and resonance.

Finally, the essay by Professor Gerald P. López also can be situated loosely within this method.⁷⁶ This essay describes and dissects the methods and data of the Latino National Political Survey, effectively telling a story about Latinas/os living in the United States right now; like the Ebben/Gaier essay, this account of Latinas/os' lives reports and analyzes data that narrates the condition of a people. Recounting an empirical portrait, this essay thus can be viewed as a form of storytelling. And because this social narrative is told critically, and with the aim of advancing social justice, this essay performs the ultimate function of narrative in critical legal scholarship: uncovering the sources and structures of subordination in law and society to help dismantle them.

74. See Castañeda, *supra* note 52.

75. 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).

76. See Gerald P. López, *Learning About Latinos*, 19 CHICANO-LATINO L. REV. 363 (1998).

These various and varied essays employ different kinds and styles of "narrative" and address varied aspects of law and life, all of which are significant for, and if effectively employed can help to enrich, LatCrit theory. While we believe—indeed, know—there is a valuable role and much at stake in defending and continuing the use of various narrative styles in legal scholarship, as well as in the project of clarifying and disseminating ethical convictions and theological meanings,⁷⁷ these essays as a set illustrate an important and always potential shortcoming in, and hence a crucial lesson for, the future employment of narrative in LatCrit theory and outsider jurisprudence: a failure to connect expressions of personal identity or social experience to any substantive analysis of—or critical reflection about—their relevance to the broad range of socio-political, epistemological, ethical, methodological and legal issues that concern LatCrit theory can provide easy targets of criticism from skeptical or hostile scholars.⁷⁸ Without acquiescing to misguided points asserted by recent attacks on narrativity in legal scholarship, these essays, in their different approaches to and employment of legal storytelling, counsel extreme care in our use of narrative to articulate LatCrit theory.

Additionally, these essays, and their points of contrast and commonality, jointly display the fragile and tentative nature of the LatCrit enterprise and its likely valences. In particular, the uncritical interposition of autobiographical narrative in the Hartigan and Valencia essays leaves us to wonder whether their objective is to impel a collective LatCrit embrace of an institution with a historically and demonstrably eurocentric, androcentric and heterosexist ideology and agenda simply because some relatively disempowered souls here and there within the institution valiantly seek to resist its pernicious pro-subordination practices. While we applaud and support all such resistance, this use of narrative ultimately leads us to wonder whether the uncritical acceptance of (or apologies for) eurocentric, androcentric and heterosexist institutional biases can ever be said to aid the reconstructive projects that await LatCrit theory, at least if we understand LatCrit discourse to be a form of anti-subordination scholarship.

77. See, e.g., WHY NARRATIVE? READINGS IN NARRATIVE THEOLOGY 5 (Stanley Hauerwas & L. Gregory Jones eds., 1989) (assembling a compelling and enlightening set of readings illustrating and explaining the multiple uses of narrative in "understanding issues of epistemology and methods of argument depicting personal identity, and displaying the content of Christian convictions.").

78. See, e.g., Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993); see also Valdes, *supra* note 69, at 2 n.3 (providing additional sources and information on legal storytelling and critiques of it).

This not to say that we are unaware or in any way deny the extent to which Roman Catholic or Christian identity has been and still is the basis of formal or functional persecution in various parts of the world.⁷⁹ Certainly, one fruitful trajectory for future LatCrit scholarship would focus on examining the configurations of power and privilege that drive the persecution of any Christian group in countries around the world, particularly if this analysis is linked to the articulation of a more inclusive and effective human rights agenda.⁸⁰ Given, however, the here and now in this country, and the history through which this here and now has been constructed, LatCrit scholars must continue our critical search for an anti-subordination comprehension of religion that does not ignore or dismiss the particular realities of this context—this here and now—as structured by historical and contemporary realities of politics and power through which organized Christianity has actively fomented and passively tolerated the imposition of hierarchy and subordination, both in this country and throughout Latin America.

Nor do we, by this anti-subordination critique of religion's operation in this symposium and society, mean to imply that LatCrit theory or legal culture ought to oppose or obstruct human spirituality and its expression. On the contrary, we think that anti-subordination principles require formal laws and social practices to honor the human capacity for spiritual experience and connection. In doing so, however, laws and norms should not be used to regiment spirituality or to repress spiritual diversity and agency. On this point, we agree with gay and feminist Roman Catholics, and other progressive Christians, who decry organized religion's policies precisely because they fracture the human potential to experience the spiritual by condemning non-procreational sexuality that nonetheless may be integral

79. See, e.g., Jane Macartney, *China stamps out Catholic underground church—group*, RUETERS (Jan. 10, 1997) <http://www.elibrary.com/getdoc.cgi?id=10...ydocid=1007626@library_d&dtype=0`0&dinst>; *Religious persecution*, 124 COMMONWEAL 5(2), ¶3 (Aug. 15, 1997) <http://www.elibrary.com/getdoc.cgi?id=10...ydocid=1224086@library_e&dtype=0`0&dinst> (noting widespread persecution of Christians around the world both by governments in countries like China and Sudan and by non-state actors in countries like Algeria and Egypt and commenting that international human rights activists often ignore the religious persecution of Christians: "Because Christianity has been the dominant faith of the West, more likely to be in league with power than its victim, the persecution of Christians around the world often goes unnoticed; when pointed out, it is not often forthrightly acknowledged; when acknowledged, it is rarely protested."); Mary Jo McConahay, *Church Drawn into Central America's New Battlefield—The Economy*, JINN ¶9 (Feb. 5, 1996) <<http://www.pacificnews.org/pacificnews/jinn/stories/2.03/960205-guatemala.html>> (reporting on the Archbishop of Guatemala's announcement of the publication of a martyrology listing hundreds of unarmed religious killed for having "opted for the poor" over the last 35 years).

80. See Mayer, *supra* note 59, at 63 (articulating a compelling critical analysis of the political agendas underpinning the articulation of religious fundamentalism in Islamic countries).

to human connection and expression. Because we believe that religion and spirituality can be affirming forces in life and society, as certain strains of Christianity already suggest, we believe that Lat-Crit theory, legal culture, and the state should promote and protect the opportunity of all humans to experience and express spiritual conviction in peaceable and egalitarian ways. To be constructive, LatCrit theory's engagement with the status quo of religion and spirituality must search for ways of reconstructing religion's application and operation as a social force and human phenomenon in this here and now, and in light of the historical antecedents that now have brought us here.

E. *Liberation Theology: Exploring the Reconstructive Potential of Anti-Subordination Interpretation in Religion for LatCrit Theory*

In developing a reconstructive project in and through an engagement with religion, it is imperative for LatCrit scholars to move beyond the sentimental dimensions of our particular experiences of religion to an analysis and exploration of theological concepts and their relevance to the anti-subordination project that drives LatCrit theory. This critical and self-critical stance toward theology is imperative because theological doctrines are repositories and instruments of social control: it is precisely because control over the dissemination of theological meanings creates political power that liberation theology—and indeed, the historic schisms that divided the Roman Catholic Church and produced, over the past several centuries, the proliferation of Christian churches—originated in contestation over theological dogmas. Moreover, the duration and intensity of these power struggles suggest the awesome stakes involved in control over theology and its meanings as a vehicle for the construction of social and political realities. While none of the essays provide any in-depth exploration of theological concepts, Professor Hartigan's reference to and treatment of the Catholic doctrine of Transubstantiation⁸¹ does provide a means within this symposium of illustrating how the contestation over theological dogma and meanings is relevant to LatCrit theory's anti-subordination project.

Responding to a suggestion made in another place and time that Aztec civilization is one of some unspecified number of civilizations that are "not equal" but rather "clearly inferior" (presumably because Aztec civilization practiced human sacrifice), Professor Hartigan reports asking in that situation "just how [the Aztecs] were inferior to those of us who in our orthodox version [of faith] believe we eat the genuine flesh and drink the genuine blood of an executed

81. Hartigan, *supra* note 13, at 489.

Palestinian Jew?"⁸² While the apparent intent here was to challenge the supposed inferiority of Aztec civilization by drawing a parallel between Aztec sacrificial rituals and the Roman Catholic dogma that Christ is fully present in the Eucharistic sacrifice,⁸³ this casually dismissive reference to orthodox doctrine conjures up, but does not explicitly explore, key issues thereby triggered.

It is relatively easy in this place and time, due in large part to the historical bloodbaths that produced the separation of church and state and the secularization of a liberal society, to dismiss those elements of a creed that one deems unreasoned or unreasonable. Embedded in that dismissal, however, is the assumed capacity and claimed authority to differentiate Truth from error, as well as to distinguish the "essence" of a faith from its historical and cultural contingencies or from its self-interested political and ideological manipulations. Yet one cannot unilaterally pick and choose among the dogmas of a church or the laws of a state without fundamentally challenging the claims to exclusive interpretative authority asserted and protected by the church whose dogmas—or by the state whose laws—one elects to reject. Nor can one claim interpretative authority for oneself and deny it to others without implicitly or explicitly invoking some justificatory distinction—some privileged access to Truth. This contest over the interpretative authority to evaluate and articulate—and even to enforce—dominant or definitive theological meanings is precisely the radically transformative phenomenon at the heart of liberation theology, much as the struggle over the interpretative authority to evaluate and articulate binding legal meanings is at the heart of LatCrit and other strains of critical legal theory.

Roman Catholic dogma, like the doctrines of Transubstantiation and the Trinitarian god, have been sites of such interpretative contestation before liberation theology's emergence. Indeed, the strug-

82. *Id.*

83. See JOHN A. HARDON, S.J., *THE CATHOLIC CATECHISM 458-65* (1975) (articulating official church doctrine on Christ's full presence in the Eucharistic sacrifice). For a general history of the Roman Catholic Church, see BARRIE RUTH STRAUS, *THE CATHOLIC CHURCH: A CONCISE HISTORY* (1992). Of course, much of the Roman Catholic Church's power stems from the secular and sectarian domination it achieved specifically in Europe during the middle ages. See generally R.W. SOUTHERN, *WESTERN SOCIETY AND THE CHURCH IN THE MIDDLE AGES* (1972). The march to this domination commenced with the conversion of the Roman emperor, Constantine, to Christianity, and to his determined use of state largesse and imperial leverage to establish this religion and its views. See, e.g., FOX, *supra* note 28, at 609-81. To this day, the Roman Catholic Church and its belief system continue to wield extraordinary sway in Spain and among other southern European countries. See, e.g., Daniel Basterra Montserrat, *The Constitutional Development of Religious Freedom in Spain: An Historical Analysis*, 4 J. TRANSNAT'L L. & POL'Y 27 (1995); Gloria M. Moran, *The Spanish System of Church and State*, 1995 B.Y.U. L. REV. 535. Spain's history of imperialism in this hemisphere of course makes it the "mother country" of the states that now occupy much of this hemisphere. See *supra* note 44 and sources cited therein on Spain's relationship to Latin America.

gle over interpretation and application stretches throughout the history of that church, in part because these doctrines call upon the faithful to affirm the Truth of a reality that may defy reasoned analysis. Of course, the fact that a mystery of faith escapes one's analytical capacities is hardly a reason to reject its Truth, but the interpretative contestation provoked in and through the theology of liberation is born of a different conflict. It flows from the experience of a complete disjuncture between the meanings inscribed in the doctrines of Christian faith and the lived reality of the subordinated faithful to whom these meanings are preached. This disjuncture between lived reality and formal doctrine demands an accounting, and can explode of its own internal contradictions into the search for alternative meanings and toward the transformation of unjust material realities. Liberation theology is that explosion—the critical response of Christian social conscience to the questions born of the conflict between the formal dictates of Christian faith and the material realities from which they are proclaimed. These questions are fundamentally disruptive of inherited truths, as well as potentially revolutionary, precisely because they expose tensions and provoke further questions that, once noted, can only be resolved by oneself, for oneself.⁸⁴

In defending its dominant and exclusive interpretative authority, the Roman Catholic magisterium has sought to suppress such questioning.⁸⁵ It has deployed its Inquisitors and, on pain of excommunication, has called the faithful to accept as an article of faith that the dogmas of this church can be reconciled with justice and rea-

84. It bears emphasizing that liberation theology was not born of the crisis of faith that challenges religious conviction in the modern and postmodern societies of the North. That crisis has been one of faith in the existence of God; liberation theology, by contrast, addresses a different crisis—one born of a lived imperative to understand (and transform) the brutalities of human injustice that presupposes already the existence of God. Indeed, liberation theology is precisely “a language for speaking about God [that] is arising among us today out of the unjust sufferings, but also the hopes, of the poor of Latin America.” GUSTAVO GUTIÉRREZ, *THE TRUTH SHALL MAKE YOU FREE: CONFRONTATIONS* 8 (Matthew J. O’Connell trans., 1990). Gutiérrez explains its origin like this:

[I]n recent decades the church’s life and thought in its Latin American setting have been marked by what we may call “the irruption of the poor.” This phrase means that those who until now were “absent” from history are gradually becoming “present” in it. *This new presence of the poor and oppressed is making itself felt . . . within the church, for there the poor are increasingly making their voices heard and claiming openly their right to live and think the faith in their own terms. The rise of the basic ecclesial communities is one expression of this phenomenon; the theology of liberation is another.* *Id.* at 8 (emphasis added).

85. HARDON, *supra* note 83, at 36, quoting FIRST VATICAN COUNCIL, *DOGMAIC CONSTITUTION ON THE CATHOLIC FAITH* 3 (1792) (“By divine and catholic faith everything must be believed that is contained within the written word of God or in tradition, and that is proposed by the Church as a divinely revealed object of belief, either in a solemn decree or in her ordinary, universal magisterium.”).

son.⁸⁶ Those who instead affirmed the dictates of their own conscience and clung to the justice and reason of their own experience were branded heretics, expelled from the community of saints, imprisoned, and tortured for the sake of their own everlasting souls and ultimate salvation. Against this long and complete backdrop, the historic conflicts over Roman Catholic or Christian doctrines, institutions and communities are worth exploring more extensively precisely because they can help LatCrit scholarship to develop a powerful psycho-social, historical and normative framework for combating the semiotic logic embedded in the systematic, institutional and symbolic assault on the ethical consciousness and moral agency of the human person in an unjust and deranged society—whether that society resides within or beyond the borders of this nation.

In Argentina, for example, the recent “dirty war” waged by military elites against the civilian population was, in the words of one of the junta leaders, General Videla, firmly grounded in “the Christian principles of Truth, Love, Justice and Liberty.”⁸⁷ For LatCrit and other critical scholars, the immediate question is: What logic can sustain such a claim? It is the same logic that converts the socialist into a communist, the communist into subversive, the subversive into a heretic, and the heretic into the damned, who then must be purged from the community of the faithful lest the moral order collapse in error. But, again, what kind of logic is this? From an anti-subordination perspective, it is the pseudo-logic of entrenched privilege and raw power in defense of an established order that imposes hierarchy, confers status and wealth, and condemns to oblivion the human capacities to imagine, desire, and seek to manifest a moral, political or economic alternative to existing social injustices.

The legal and extra-legal regimes of oppression that were organized in and through the Argentine military’s deployment of religious mysticism and its worship of a particular and peculiar version of “divine order” are by no means the only example ripe for LatCrit exploration of the social misery produced in and through the exploitation of ideologies that embrace, as sacred duty, the maintenance of a perpetual state of total war between the forces of Good and Evil. Early in this century the Ku Klux Klan chose some of Christianity’s most sacred symbols and hymns to create antiblack, antisemitic,

86. Thus, for example, it would be heresy to assert that Catholic doctrines produce a conflict between reason and faith. “If human reason, with faith as its guiding light, inquires earnestly, devoutly and circumspectly, it reaches, by God’s generosity some understanding of mysteries, and that a most profitable one. It achieves this by the comparison with truths which it knows naturally and also from the inter-relationship of mysteries with one another and with the final end of man.” *Id.* at 37-38.

87. See GRAZIANO, *supra* note 59, at 19.

xenophobic solidarity. Klan use of the Christian cross and its chants was more than base exploitation of social symbols whose power resided precisely in their association with dominant religious sects. Championing white supremacy both through violence and politics, the Klan over the years focused recruitment of its local leadership from the Christian clergy, which also served to proclaim the Klan's creed across the land with spectacular efficiency and success; counting on the prestige and respectability of churches and preachers, the Klan employed church ministers as a ready and willing social technology to inflict white supremacy from Sunday pulpits across the nation, in the process blurring for the better part of this century—and perhaps virtually beyond recognition—the distinction between hate and religion in this country.⁸⁸

Closer in time are the legal trials and tribulations of the Sanctuary Movement in the United States. Throughout the 1980s, this movement assembled a network of religious believers who sought to live their faith by providing refuge and sanctuary to Central American refugees fleeing political persecution and physical terror in their countries of origin: to them, it was painfully certain that the U.S. government was acting in violation of domestic and international law, both by supporting governmental terrorism in Central America and by denying its victims political asylum in the United States.⁸⁹ This history of civil resistance in the face of government criminality, illegality and impunity marks another site where LatCrit scholars could begin to explore critically what it means to claim or forsake the interpretative authority/duty to ascertain for oneself what moral truth demands in a society where the integrity of religious and social conscience is often more a facile platitude than a legal right. The record of the Sanctuary prosecutions launched by this nation's authorities to neutralize the rescue efforts of those individuals illustrates the power of master and counter narratives in political mobilization and legal adjudication, as well as the strategies through which the state, like organized religion, operates to maintain a monopoly

88. For contemporary critical accounts of the Ku Klux Klan, its ideology and tactics, see DAVID M. CHALMERS, *HOODED AMERICANISM: THE HISTORY OF THE KU KLUX KLAN* (1987); WYN CRAIG WADE, *THE FIERY CROSS: THE KU KLUX KLAN IN AMERICA* (Touchstone 1988) (1987).

89. The story of the Sanctuary movement is a story of the way a shared commitment to live the reality of their Christian faith led some brave people to challenge, at great personal risk, the master-narratives of national security and communist aggression through which the Reagan administration, at that time, legitimated its homicidal foreign policies. They not only confronted and acknowledged increasing evidence that the U.S. government was then engaged in financing and, in many instances, coordinating the indiscriminate slaughter of massive numbers of innocent people in Guatemala, El Salvador, and Nicaragua; they also put themselves materially on the line by defying the government's claim to exclusive authority to interpret domestic and international laws. For one account of the movement, see Barbara Bezdek, *Religious Outlaws: Narratives of Legality and the Politics of Citizen Interpretation*, 62 TENN. L. REV. 899 (1995).

on interpretative authority and coercive power.

The alignments of secular and sectarian ideology and power in these varied contexts give reason to pause for reflection and analysis: in Argentina traditionalist versions of Christian values were formally invoked to legitimize state-sponsored terror; in the United States regressive versions of Christianity were used to instigate and coordinate racial tyranny and, more recently, state power was deployed to suppress and persecute progressive versions of Christian values in support of an unjust order abroad. Clearly, these examples of religion's impact on culture and politics are not conclusive, but the complex alignments of secular and sectarian ideology and power in these varied contexts display remarkable consistency: in each instance organized religion and dominant social forces combined to reinforce, rather than to rectify, existing social injustice.

Because LatCrit theory professedly works to promote the vindication of basic civil and political human rights both domestically and internationally, the success of its development must be measured in terms of its practical and material contributions to this objective. Accordingly, LatCrit analyses must be dedicated to the creation of structural and legal conditions that will honor and promote, in fact, the freedoms of conscience and expression without which the most powerless among us are denied both the integrity of our ethical consciousness as well as the capacity to participate fully and freely in the evolution of a more just and egalitarian society. These notes consequently raise just a few examples of the legal sites where a more detailed and critical exploration, and a more nuanced and textured anti-subordination account, of the historic struggle over theological meanings, and the authority to interpret or enforce them, might enrich and inform the evolution of a compelling LatCrit scholarship.

F. *Theological Meaning(s) in LatCrit Theory: Toward More Substantive Encounters*

Equally important, but similarly neglected in any essentialist, uncritical encounter with religious power, is the very serious project of informing LatCrit scholarship with a genuine understanding of the theological meanings at the center of the interpretative and aspirational conflicts that currently underpin the articulation of liberation theologies. To invoke the mere existence of liberation theology is not the same, nor nearly as valuable, as exploring the substantive meanings and political implications of its substantive theological concepts. Nor does its mere invocation help us understand how the premises and concepts of liberation theology can guide the evolution of LatCrit scholarship in critical pursuit of its anti-subordination

mission. To delve into these questions, we usefully can return to the doctrine of Transubstantiation.

Lost in any casual dismissal of this Roman Catholic orthodoxy are the anti-subordination insights that LatCrit scholars might obtain from grappling with the interpretative conflicts over the theological meanings and ethical imperatives embedded in the doctrine that Christ is fully present in the Eucharistic sacrifice. In the exercise of its interpretative authority, the Roman Catholic Church historically has condemned and steadfastly has repudiated "anyone who denies the body and blood, together with the soul and divinity of our Lord Jesus Christ and, therefore the whole Christ is truly, really, substantially contained in the sacrament."⁹⁰ The Catholic Church has, through the centuries, maintained this dogma as an article of faith against the rebellions of secular reason. Accordingly, the Church proclaims that in the sacrament of the Eucharist all are called to be nourished, not merely by inspirational symbols or ritualistic references to events that occurred in another place and time, but by the real or literal presence of the God-Christ incarnate, whose ultimate self-sacrifice is eternally repeated via ecclesiastical ritual in order to make available the immortality promised through communion with God to any and all who choose to eat his body and drink his blood in the fellowship of Christ.

What liberation theology reveals is the ethical imperatives and the abundance of theological meanings that emerge when we ask what this doctrine could possibly mean "from the standpoint of a humiliated race—the Amerindians, the marginalized, women, the hopeless. . . ." ⁹¹ From the perspective of the poor and others at the bottom, a non-theological response to this question might be that it doesn't really mean much. In this vein, the anthropologist Marvin Harris writes as follows:

Protestant and Catholic thinkers have spilled much blood and ink over the question whether the wine and wafer are transubstantiated into the corporeal substance of Christ's blood and body. The real significance is that by spiritualizing the eating of the paschal lamb and by reducing it to a nutritiously worthless wafer, Christianity long ago unburdened itself of the responsibility of seeing to it that those who came to the feast did not go home on an empty stomach. The point . . . is that the nutritive value of the common feast is virtually zero, whether there is transubstantiation or not.⁹²

This disjuncture between religious and material realities is precisely the space that liberation theology occupies and attempts to

90. HARDON, *supra* note 83, at 458-71.

91. GUTIÉRREZ, *supra* note 84, at 20.

92. MARVIN HARRIS, CANNIBALS AND KINGS: THE ORIGINS OF CULTURE 158 (1977), *quoted in* MARK KLINE TAYLOR, REMEMBERING ESPERANZA: A CULTURAL-POLITICAL THEOLOGY FOR NORTH AMERICAN PRAXIS 238-39 (1990).

bridge by challenging Christians to attend to the social, as well as the spiritual, needs of others. For LatCrit theory, this space is critical: the question for LatCrit theorists in examining any theological dogma or interpretation is whether it creates accord or discord between religion and the struggle for liberation from all forms of subordination. Critical reflection on this question should produce an analysis that clearly and appropriately differentiates the two different "Christian" types of effects and relations; and it is to these issues that we now turn.

The emphasis liberation theology places on the material practices Christ is said by Christianity's own Bible to have demanded of those who would follow him helps to ground and guide such critical reflection. In word and deed Christ instructed his followers "to meet the material needs of the hungry, the thirsty, the stranger, the naked, the imprisoned"⁹³—that is, to live as and among the poor and despised. Reflecting further in this vein, theologian Mark Taylor suggests how the doctrine of Christ's real presence in the Eucharist challenges the tendency both of the formal church hierarchy and of the comfortable or unaware believer to spiritualize the act of communion in a way that displaces material exigency and breeds complacency among well-fed Christians. The temptation "during times of intense concentration, with bowed heads and bended knees" to look inward or upward in search of "an ascendant spirituality that lifts one above the fray of material struggle and practice" abstracts away the imperatives of a praxis reportedly dictated by the Christ they profess to worship.⁹⁴ In the Christian Gospels, after all, Christ did not offer his disciples symbols of food to eat; rather he gave his life's flesh and blood so that others might live, and he calls emphatically upon his followers on Earth to remember and participate personally—in the flesh, as much as in the spirit—in the hard and never-ending work of materially feeding the hungry among us.

Through its efforts to articulate and practice a grounded response to this recorded mandate, liberation theology creates a new possibility: an approach to Christ's teachings markedly different both from the anthropological posture of distanced curiosity and from the traditional stance of other-world mysticism and ritualistic formalism adopted by the institutional hierarchies of the Roman Catholic Church. This new response pointedly calls on Christians everyday to reconcile their sacramental rituals with the ethical imperative to engage in emancipatory material practices, a reconciliation without which the Eucharistic celebration becomes an empty symbol of nothing much but hypocritical mystifications.⁹⁵

93. *Id.*

94. *Id.*

95. GUSTAVO GUTIÉRREZ, A THEOLOGY OF LIBERATION: HISTORY, POLITICS AND

While these few paragraphs hardly capture the abundance of meanings embedded in interpretative struggles over the doctrine of Christ's real presence in the Eucharist, they do provide a way to illustrate how a genuine, substantive encounter with liberation theology might enrich the work of LatCrit scholarship as it struggles to transform the relations of domination and subordination that are institutionalized by legal doctrine, enforced through legal process and legitimated through legal discourse. These illustrative notes depict a ready connection between liberation theology and outsider jurisprudence: both embrace and espouse social justice causes and seek material transformation of unjust conditions. From this perspective, the biblical message posited by liberation theology mandates the same sort of anti-subordination praxis that also drives LatCrit theory. This message of liberation, however, is routinely suppressed in the actual practices of organized religions and the comfortable bureaucracies that activate religion in order to entrench human stratification, much as it is suppressed by the organs and agents of the state in secular contexts. The suppression and perversion of this liberation imperative therefore is the point of our critique of organized religion in this Afterword, and this point is the one we regard most relevant for legal scholars who profess to write about religion from an anti-subordination perspective.

In sum, we agree with the implicit message of the Hartigan essay: liberation theology does provide a powerful wealth of interpretative, analytical and imaginative resources that can help LatCrit theory challenge the flaccid, facile incantations of so-called Christian values expressed in contemporary public discourse. At the same time, failure to engage liberation theology's substantive contents, or to make any effort to illustrate with any degree of precision its relevance to the anti-subordination project of LatCrit theory, comes dangerously close to sentimentalizing the fundamental challenge that liberation theology directs at the structures of domination and privilege in which both the laws and the lawlessness of the powerful are so deeply implicated. Moreover, we urge that liberation theology's preferential option for the poor and oppressed—those at the bottom—as well as its critique of structural violence, are especially powerful tools for developing a critical analysis of the substantive

SALVATION 265 (Sister Caridad Inda & John Eagleson transs., 1984). As Gutiérrez puts it:

Without a real commitment against exploitation and alienation and for a society of solidarity and justice, the Eucharistic celebration is an empty action, lacking any genuine endorsement by those who participate in it. This is something that many Latin American Christians are feeling more and more deeply, and they are thus more demanding both with themselves and with the whole Church. 'To make a remembrance' of Christ is more than the performance of an act of worship; it is to accept living under the sign of the cross and in the hope of the resurrection. It is to accept the meaning of a life that was given over to death—at the hands of the powerful of this world—for love of others.

categories and interpretative methodologies that dominate Anglo-American legal consciousness.⁹⁶ Latina/o communities need more than mere invocation of liberation theology as positive Christian example: anti-subordination calls for LatCrit production of new legal meanings enriched and informed by the theological meanings and ethical imperatives increasingly made manifest in and through the irruption of the many at the bottom—the poor, the oppressed and the colonized—onto the pages of history.

This brief discussion of a few Christian doctrinal beliefs and actual practices referenced by the symposium essays helps to make more concrete the various discontinuities that anti-essentialist and anti-subordination LatCrit analyses of religion must engage with critical and particularized care. These discontinuities, as we explained earlier, include the divergence of the institutional and the individual, the theoretical and the practical, and the authoritative and the dissident, which may tend to be collapsed in uncritical evocations of religion as individuated human experience.⁹⁷ But as we just noted, this brief discussion only addresses a small portion of the much larger, and very important, architecture that designs and deploys organized religion as a powerful force in the construction of Latina/o and other communities around the globe.

This brief discussion thereby calls for critical and caring analyses calculated to align the power of organized religions with the anti-subordination struggles of oppressed peoples around the world. To do so, as this discussion illustrates, LatCrit scholars necessarily must take special care to avoid even unwitting redeployments of this power in ways that reinforce or reify its oppressive characteristics. Thus, rather than call for an outright rejection of organized religion as a site or vehicle of social justice work, this brief analysis of religion, Christianity and liberation theology aims to identify some points of entry for LatCrit efforts to help engineer an anti-subordination re/alignment of organized religions globally. We hope that this discussion will help spark the imagination of LatCrit scholars, thereby promoting a collective and critical LatCrit engagement with this powerful and important force that profoundly affects anti-subordination alignments in this country and others.⁹⁸

96. See Iglesias, *supra* note 24, at 395-403, 467-486 (elaborating an early but comprehensive and systematic analysis interpreting the preferential option for the poor as a call for legal scholarship that strives to liberate the transformative agency of the oppressed, and exploring its implications for a Critical Race Feminist analysis of the structural arrangements constructed by interpretative manipulation of the relationship between Title VII and the NLRA in legal doctrine).

97. See *supra* notes 35-37, 66-77 and accompanying text.

98. Some of the more immediately pressing questions that might usefully guide LatCrit scholars in our initial efforts to link liberation theology specifically to our analysis of legal process and doctrine include the following: what images of community, what conditions of membership, and what understandings of the obligations a community to its

Finally, while in this Afterword we have centered the form and style of liberation theology that emerged from and speaks most directly to the conditions of Christian Latinas/os, particularly in Latin American countries, we have done so only to engage critically the ideas or forces referenced in the preceding discussion of religion within this symposium. However, in addressing the general questions we posed immediately above, LatCrit scholarship should note as well the existence of, and explore the emancipatory meanings articulated in, or the potential implied by, other subordinated theologies among Latina/o communities, such as Santeria, as well as among various subordinated groups in this country and abroad.⁹⁹ As the Ota essay usefully reminds us, religion's tracks are imprinted across the globe;¹⁰⁰ critical and comparative charting of diverse religious forces or experiences can only enlighten LatCrit understanding of religion as a tool of oppression and/or liberation. Moreover, in taking an expansively transnational and transcultural view of the interpenetration of law and religion, LatCrit theory will be manifesting and fulfilling its commitment to intra- and inter-group experiences, relations, and aspirations.¹⁰¹ In doing so, LatCrit theorists additionally—and most importantly—will be producing a capacious and aggressive body of sharp anti-subordination scholarship.

members are reflected in legal doctrines that rationalize and *authorize* the denial of basic human rights, the contraction of legal remedies, the construction of institutional-class structures, the destruction of the environment, the militarization of national borders, the dispossession of the poor, the purchase of political influence, and the monopolization of economic resources? How do these images of community, the legal doctrines they rationalize, and the material realities they help to structure and organize appear when examined through the lens of liberation theology?

99. See, e.g., CHUNG HYUN KYUNG, *STRUGGLE TO BE THE SUN AGAIN: INTRODUCING ASIAN WOMEN'S THEOLOGY* (1993) (recounting the emergence of Asian women's liberation theology as an affirmation of God's revelation in and through the indigenous religions and cultures of Asia); JAMES H. CONE, *BLACK THEOLOGY AND BLACK POWER* (1969) (articulating a theology of liberation grounded in the experiences of racial oppression suffered by African American males); *AFTER PATRIARCHY: FEMINIST TRANSFORMATIONS OF THE WORLD RELIGIONS* (Paula M. Cooney et al. eds., 1991) (compiling essays that explore the way feminist theologians have been reinterpreting the tenets of their diverse religions: Hinduism, Islam, Buddhism, Judaism, Christianity and Apache through a feminist conscientization).

100. See Ota, *supra* note 14, at 446-47.

101. See Elizabeth M. Iglesias, *Foreword: International Law, Human Rights and Lat-Crit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177, 201-203 (1996-97).

II.

ON SEXUALITY, OTHERNESS AND KNOWLEDGE: DIFFERENCE AND SOLIDARITY IN LATCRIT THEORY THROUGH ANTI-SUBORDINATION PRACTICE

As the above discussion of religion and its intersections with law, culture and power shows, LatCrit theory's approach to the issues that define and confine the social and legal positions of Latinas/os and other outgroups in this country and beyond must be approached with critical attention to context, particularity and purpose—the purpose at all times being to transform the material conditions of social and/or legal subordination. In this Part of the Afterword, we turn to these interconnections in the construction and operation of heteropatriarchy within Latina/o communities. More specifically, we now turn to the construction and operation of andro-sexist and heterosexist imperatives through the forces that combine to de/legitimate individual or group agency in intimacy and family and, thereby, to delineate communities pervaded and governed by heteropatriarchal beliefs, norms and rules. These forces, as we explicate below, produce a political economy that occupies and controls vast domains of life and law. These domains persistently straddle “public” and “private” spheres in mutually-reinforcing ways and toward mutually-reinforcing ends—ways and ends that re/produce otherness, fragmentation and dis/empowerment through the validation or imposition of hierarchical values and dictates. These dynamics and effects, we argue below, are antithetical to anti-subordination principles and objectives, and therefore are properly targeted for critical scrutiny and political resistance through LatCrit theory and practice.

A. *The Operation of Sexual Orientation Diversities in the Construction of LatCrit Theory and Community*

As the preceding discussion urges, any anti-subordination analysis of religion must confront the implications for sexuality and its regulation when dogmatic power is exercised by churches or sects that wield considerable civic influence.¹⁰² It thus should come as no surprise that the vocal expression of minority sexual orientation identities were central to the so-called “religion controversy” at LatCrit II.¹⁰³ What is surprising is that this crucial detail, unlike others that transpired at the conference, are not significantly repre-

102. See *supra* notes 17–37 and accompanying text.

103. The exchanges at LatCrit II over religion, sexuality and other constructs are recounted partially in various of the symposium essays. See, e.g., Ota, *supra* note 14, at 438–38; Valencia, *supra* note 12, at 450 n.6 & 468; Hartigan, *supra* note 13, at 479–80.

sented in the essays inspired by that event and comprising this symposium: the Ota essay is the only one that unfolds a sustained critical discussion of sexuality, religion and LatCrit theory.¹⁰⁴ Responding to this gap, the Afterword next takes up the role of sexuality and sexual orientation issues in LatCrit anti-subordination analyses of religion and social in/justice.

The opening point is that the expression of lesbian, gay or bisexual identity in this context should not be mistaken for a more general or blanket oppositional juxtaposition of religion and "sexual orientation." The Roman Catholic Church, like other organized sects, includes within its ranks openly lesbian, gay and bisexual adherents.¹⁰⁵ The Roman Catholic Church, moreover, also includes within its ranks clergy and other personnel that are relatively disinclined to participate in anti-gay politics.¹⁰⁶ In this country and be-

104. See Ota, *supra* note 14, at 439.

105. This point is exemplified by Dignity USA, the nationwide gay Catholic group that used to work within the American Catholic Church until the Vatican ordered church functionaries in the mid-1980s to cease any interaction with the gay group, calling Dignity members "disordered" and morally "evil" because they are gay. See Richard N. Ostling, *Gays vs. the Vatican: San Francisco's Bishop Forbids Masses for Dignity*, TIME, Dec. 5, 1988, at 60. Dignity responded with its own letter challenging that characterization and asserting the wholesomeness of same-sex intimacies and families, but the group was expelled from Church-owned facilities across the country. See Bill Kenkelen, *Gays, the Church and a Fight for Dignity: A "Manifesto" Attacks Catholic Teaching on Sex*, SAN JOSE MERCURY NEWS, Sept. 2, 1989, at 10C. Since then, Dignity has dwindled from 100 chapters nationally to a handful, though it continues to operate independently. For instance, the chapter in Sacramento, California continued to operate, in Church-owned facilities, until the mid-1990's when it was expelled and later dissolved. See Bill Lindelof, *Gay Catholics Dissolve Dignity*, SACRAMENTO BEE, Apr. 10, 1995, at A1.

The longstanding antagonism of organized Christian religions generally to sexual minorities similarly has led some gay and lesbian people to accept our exclusion from Christian groups and institutions, instead forming altogether independent religious organizations. The Metropolitan Community Church, a network of local congregations that minister to sexual minority communities, is an outgrowth of this dynamic. See REVEREND TROY D. PERRY WITH THOMAS L.P. SWICEGOOD, DON'T BE AFRAID ANYMORE: THE STORY OF REVEREND TROY PERRY AND THE METROPOLITAN COMMUNITY CHURCHES (1990). Despite formal and prevalent discrimination by Christian institutions against sexual minorities, some Christian groups and persons continue to minister to this population, or some portions of it. See, e.g., Verla Lawlor, *Gay Teens Often Face Lives of Despair, Isolation; Some Religious Groups Offer a Helping Hand*, THE RECORD, Jan. 29, 1998, at H06.

Of course, the Roman Catholic Church in particular also has accumulated over the years a rather notorious history as a hotbed of homosexual activity, and even as a haven for gay men who join the priesthood to evade a frontal social reckoning with their sexual orientation. See *generally* HOMOSEXUALITY IN THE PRIESTHOOD AND THE RELIGIOUS LIFE (Jeannine Gramick ed., 1990); see also ROSEMARY CURB & NANCY MANAHAN, LESBIAN NUNS: BREAKING SILENCE (1985). This complex history and status quo display why Christianity and homosexuality are not entirely distinct phenomena, and why LatCrit theory cannot make the mistake of essentializing or confusing either.

106. Individuals and groups of Roman Catholics operate at different levels of visibility and informality to alleviate their church's institutionalized homophobia. See *generally* David Briggs, *Bishops Advise Support For Gays; Without Altering Church Doctrine*,

yond, it is plain that members of sexual minorities and of this particular church do not monolithically stand outside of, or in opposition to, each other.

But the operation of sexual orientation vis-a-vis religion in the setting of LatCrit II does provide an apt opportunity for the interrogation of the interplay between dissident sexuality and organized religion. From an anti-subordination perspective, it is heartening that in recent years some organized Judeo-Christian churches, other than the Roman Catholic Church, have begun rethinking and rescinding official doctrines that condemn same-sex unions, families and cultures.¹⁰⁷ But for the most part, the current official position of most organized religions in this country remains unabashedly heterosexist. And despite the pockets of exceptions cited in accounts like the Hartigan and Valencia essays,¹⁰⁸ the historical and current official beliefs, as well as the routine practices, of the Roman Catholic Church continue to be stridently homophobic and sexphobic.¹⁰⁹ On the whole, then, the ideology and power of organized religion in the contemporary civic life of this country remains an undeniable impediment to the equality quest of multiple diverse sexual minorities. This power and its systematized effects must be acknowledged, confronted and resisted in all of their forms if LatCrit theory's anti-subordination stance is to be more than a pose.

To do so, LatCrit analysis of religion must be relentlessly multidimensional, as the essay by Professor Ota illustrates: Professor Ota projects substantive concerns not only about the subordinating effects of current religious alignments regarding sexual orientation, she combines with that critique a similar concern over gender and race, and over ethnic and cultural biases, that are encapsulated in, and perpetuated by, certain sectarian customs.¹¹⁰ Institutionalized religion, she effectively reminds us, can be organized and practiced to dovetail with the promotion of patriarchy, homophobia, white supremacy and eurocentrism all at once. And this point is relevant to LatCrit theory's anti-subordination commitment to the extent that the

AUSTIN AMERICAN-STATESMAN, Oct. 1, 1997, at A1; Terry Wilson, *Church Message Reassures Catholic Parents of Gays*, CHI. TRIB., Oct. 12, 1997, at C1; *The Church's Outstretched Hand*, ST. PETERSBURG TIMES, Oct. 19, 1997, at 2D.

107. See, e.g., Valdes, *supra* note 58, at 112 n.308.

108. See *supra* notes 20-21 and accompanying text.

109. See, e.g., Damian Thompson, *Homosexual Restrictions are Justified, Says Vatican*, THE DAILY TELEGRAPH, July 24, 1992, at 2 (describing Vatican report stating that discrimination is justified against homosexuals in certain circumstances); *Pope, Gay Group Spar Over Adoption*, SUN-SENTINEL, Feb. 21, 1994, at 6A (describing how Pope John Paul II criticized the European Parliament for adopting a resolution stating that homosexual couples should be allowed to marry and adopt children); see also *Pope Reminds Catholics of Ban on Contraception*, THE BUFFALO NEWS, Mar. 3, 1998, at 2A (reporting papal affirmation of Roman Catholic opposition to contraceptive or reproductive choice for women).

110. See Ota, *supra* note 14, at 439-40.

richest and most powerful organized religions in this country and elsewhere indeed are patriarchal, homophobic, white and eurocentric institutions, or in fact aligning themselves with the forces that maintain those supremacies. We therefore turn now to a critical consideration of these questions by shifting our focus more specifically to the multidimensional dynamics that produce the formal families that religious ideology prefers, dynamics that simultaneously establish both exclusions from such families as well as hierarchies within them through the convergence of various biases.

B. *Sexuality, Religion, and Family: Marking Feminist and Queer Positions in LatCrit Theory*

In further examining the intersections of religion and sexuality, LatCrit scholars should take care to acknowledge and engage particularly fertile sources of critical insight: the understandings, methodologies and liberation aspirations expressed in Critical Race Feminism¹¹¹ and Queer legal theory.¹¹² Taking seriously the critical perspectives and substantive claims that women of color and sexual minorities have increasingly articulated in their demands for autonomy, dignity and self-determination is and must remain a central theme in the evolution of LatCrit theory—again, if LatCrit theory is to remain true to its expansive and egalitarian anti-subordination commitments. Taking these aspirations, demands and achievements seriously, in turn, counsels us to take a critical stance toward religion precisely because religion continues to play a fundamental role in structuring expectations and mystifying practices that restrict these groups' autonomy, repress these groups' agency and legitimate specifically the persecution and expropriation of women's sexualities—whether those sexualities are heterosexually, homosexually or bisexually oriented.¹¹³

Drawing on the substantial body of analysis already developed by feminists and critical race feminists, as well as by lesbian, gay and bisexual theorists, LatCrit scholars could further our collective understanding of the intersections between religion and sexuality by examining how religious norms and beliefs intervene in the legal and cultural processes by which intimate relations are regulated. The

111. See Iglesias, *supra* note 101, at 201-03 (critical race feminism should be a direct and compelling reminder to LatCrit theory to develop in ways that engage and respect women's claims of autonomy, dignity and self-determination); Iglesias, *supra* note 34, at 871-80 (mapping out a critical race feminist analysis of the way female subordination is effected through the social, legal and cultural regimentation of heterosexuality).

112. See, e.g., Valdes, *supra* note 58, at 344-77 (outlining one view of Queer legal theory).

113. See generally CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987) (critiquing the use of gendered sexuality by men and the state to subordinate women both sexually and socially).

threshold inquiries for LatCrit theory include: how and where—that is, through what legal institutions, substantive doctrines, procedures and apparatuses—do religious beliefs or norms operate within the regimes and discourses through which sexualities are regulated? Similarly, how does the regulation of human intimacy operate as a means of concentrating and skewing power, privilege and opportunity? Or, conversely, how does the religious character or influence of such regulation impede and/or buttress patterns or structures of social and legal subordination?

Certainly, religious beliefs about the nature of the family, gender, intimacy, the role of women, and/or the meaning of sexual morality have played an integral role in legitimating coercive legal interventions against, and imposing substantial social disabilities upon, women for the benefit of men and on sexual minorities for the benefit of the sexual majority. Indeed, religious ideology—served up as the universal imperatives of morality and social order¹¹⁴—is pervasive in legal rhetoric and makes regular appearances in rationalizing the control and suppression of women's and sexual minorities' sexual autonomy; for example, through the imposition of legal disabilities on illegitimate children, single mothers and welfare recipients,¹¹⁵ and through the selective validation of anti-sodomy statutes.¹¹⁶ This array of regulatory schemes operates at once to create insiders and outsiders, and to establish relations of privilege and subordination along multiple, distinct and overlapping axes.

As Professor Novoa's essay illustrates within this symposium,¹¹⁷ family law provides an especially relevant legal site for exploring how the regulation of (compulsory hetero) sexuality is embedded in and reflective of a broad range of social, cultural and religious

114. See, e.g., Valdes, *supra* note 58, at 110-18 (discussing the inter-relation of naturality, normality, morality in the regulation of same-sex sexuality in particular).

115. Nontraditional mothers oftentimes are culturally and/or structurally disdained. See generally M. Patricia Fernández Kelly, *Underclass and Immigrant Women as Economic Actors: Rethinking Citizenship in a Changing Global Economy*, 9 AM. U. J. INT'L L. & POL'Y 150 (1993); Beverly Horsburgh, *Schrodinger's Cat, Eugenics, and the Compulsory Sterilization of Welfare Mothers: Deconstructing An Old/New Rhetoric and Constructing the Reproductive Right to Natality for Low-Income Women of Color*, 17 CARDOZO L. REV. 531 (1996);

116. See, e.g., *Bowers v. Hardwick*, 478 U.S. 186 (1986). The very same Georgia statute upheld by the *Bowers* Supreme Court when applied to two male adults in consensual private same-sex activity subsequently was struck down by the state courts when applied to a married couple. Ironically, the state court's invalidation of the statute as unconstitutional relied on the Supreme Court's pre-*Bowers* privacy jurisprudence. See Francisco Valdes, *Diversity and Discrimination in Our Midst: Musings on Constitutional Schizophrenia, Cultural Conflict and "Interculturalism" at the Threshold of a New Century*, 5 ST. THOMAS L. REV. 293, 332 n.201 (1993). The result is constitutionally curious, as it makes the statute's validity turn on the non/coincidence of sex in a private, consensual coupling.

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

norms, assumptions and objectives. These norms, assumptions and objectives may be double-edged in some specific instances, as Professor Novoa shows. On the whole, however, these forces operate in inter-dependent and mutually-reinforcing ways to privilege overlapping and intersecting groups of men and heterosexuals at the expense of women and Queers through the construction and compulsion of the "companionate" family that today's conventions regard as traditional.

As Professor Novoa points out, family arrangements today are based on "domestic systems that created or expanded the economic empire of the 'Founding Fathers,' the white landed males of the colonial northeast."¹¹⁸ Moreover, Professor Novoa continues, legal recognition and cultural valorization of the "nuclear" form of "household" so common in recent times "ignores the multitude of cultural traditions in the United States which extend the family both by horizontal and vertical" kinship.¹¹⁹ Rejecting any aspiration to this "limited and unrepresentative" construction of the family,¹²⁰ Professor Novoa condemns the law's complicity in the maintenance of family units tailored by socio-economic hierarchies—hierarchies in turn tailored by race, ethnicity, gender, sexual orientation and other sites of dis/empowerment.

Using herself as example, Professor Novoa acknowledges the virulence of patriarchy in Latina/o and Anglo families, and its impact both on the private as well as the public activities to which she (or her mother, for instance) could aspire.¹²¹ She furthermore recognizes the interplay of family and market in the maintenance of gender hierarchy.¹²² Recognizing how patriarchy both produces families as well as the hierarchies that inhabit and delimit them, it thus is somehow odd to find totally omitted from this analysis any recognition of heteropatriarchy's total exclusion of same-sex partners from the domain of the family. We thus undertake a critical analysis of the family that begins where this essay ends, and that we hope will mark some Feminist and Queer sites within LatCrit theory for further critical investigation and exchange.

C. *Deconstructing Heteropatriarchal Family Structures: Joining LatCrit, Feminist and Queer Anti-Subordination Projects*

From an anti-subordination perspective, the relatively recent institution of the male-dominated nuclear family, as it is legally defined and culturally represented, has been a crucial location where

118. *Id.* at 266.

119. *Id.*

120. *Id.*

121. *Id.* at 270-71.

122. *Id.* at 274.

public and private power has converged to organize, legitimate and enforce relations of domination and subordination: not only are gays and lesbians denied access to the many state-sponsored benefits and privileges that are allocated, vested and subsidized by reference to a legal form that privileges the heterosexual marriage of a man and woman as the central unit of the family, this legal form also subjugates the woman to the man.¹²³ Additionally, and recalling the cultural heritage and context of this social order, dominant religious conceptions or imperatives regarding the control of marriage and sexuality have been used to construct and police racial fault lines on behalf of white supremacy, until relatively recently with the full force and complicity of the law and the Constitution.¹²⁴ Thus, even though the institution of companionate (heterosexual) marriage no doubt has provided solace to some, as Professor Novoa's testimonial illustrates, the heteropatriarchal structure of rights and obligations embedded in and established by legal marriage, and the cultural expectation that women (and men) can and should conform to its dictates or be penalized, have been central to the organization of in/formal racial, gender, class, sexual orientation and other hierarchies, and to the legitimation of social and legal systemic violence directed at various kinds of nonconformists.¹²⁵

In examining, from an anti-subordination perspective, the role of religion in structuring human families and sexualities, a key question must be whether religious images and beliefs tend to—or can be made to—promote human agency, emotional happiness and

123. For a recent incisive critique of this institution, see MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* 150-51 (1995).

124. See *Loving v. Virginia*, 388 U.S. 1 (1967).

125. See Iglesias, *supra* note 34, at 968-90 (showing the tremendous—legally sanctioned—sexual, economic and social vulnerability of women who cannot or do not conform to dominant norms that channel the expression of sexual desire and the conception of children into the framework of a heterosexual marriage—even as class and race can substantially restrict the feasibility of marriage and the viability of the nuclear family it is designed to promote). For additional recent critiques from a Critical Race Feminist perspective, see Twila L. Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. REV. L. & SOC. CHANGE 33 (1994) (analyzing racist images of family in transracial adoption); Dorothy Roberts, *The Unrealized Power of Mother*, 5 COLUM. J. GENDER & L. 141 (1995) (examining impact of family law on African American women). For recent critiques of dominant “family” arrangements from a sexual minority perspective, see generally Patricia A. Cain, *Same-Sex Couples and the Federal Tax Laws*, 1 LAW & SEXUALITY 97 (1991); Barbara J. Cox, *Alternative Families: Obtaining Traditional Family Benefits Through Litigation, Legislation and Collective Bargaining*, 2 WIS. WOMEN'S L.J. 1 (1986); Nancy D. Polikoff, *This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families*, 78 GEO. L.J. 459 (1990); Evan Wolfson, *Crossing the Threshold: Equal Marriage Rights for Lesbians and Gay Men and the Intra-Community Critique*, 21 N.Y.U. REV. L. & SOC. CHANGE 567 (1994); John C. Beattie, Note, *Prohibiting Marital Status Discrimination: A Proposal for the Protection of Unmarried Couples*, 42 HASTINGS L.J. 1415 (1991).

spiritual fulfillment in egalitarian ways: do they enable the evolution of new ways of understanding sexual desire and connection, and of practicing the mutual interdependencies that intimacy inspires and impels in humans, or do they operate to obscure, mystify and sublimate the sexual oppression, repression and real violence that is too often centered in and around the “traditional” family?¹²⁶ This question asks LatCrit theorists to resist both the uncritical acceptance and uncritical rejection of religion as a social force and asks us instead to assess critically religion’s effects in this here and now. Returning again to the image of the Virgin Mary in Catholic dogma, this question might be reformulated as follows: do the meanings embedded in the image of the Virgin tend to rupture or reinforce relations of subordination in the way that human sexualities are understood, experienced and regulated? Answering this question requires, among other things, a critical analysis of the cultural and religious scripts that women and sexual minorities—those at the “bottom” of heteropatriarchal hierarchy—are called to enact or accept through the deployment of this image.

More concretely, this line of inquiry requires critical analysis of the way that Virginal scripts—such as sexual abstinence and maternal self-sacrifice—tend to structure relations between the women who perform them and the men who police their performance. It requires critical analysis, as well, of the more fundamental ways in which the semiotic logic of this image structures our understandings of the relationship between men and women, male and female, the masculine and the feminine, as well as the relationship between the spiritual and the sexual. As venerated as Mary may be, how do our cultural meaning systems and social practices reflect and articulate the dichotomization of sexuality and spirituality that is explicitly embraced in venerating the human impossibility of a virgin mother.¹²⁷ What, additionally, is the semiotic logic expressed through the exclusion of the feminine from the image of God? Elevated as mother, most exalted among women, the Virgin Mary nonetheless is not present in the Trinity worshiped by that religion—excluded from the

126. Domestic violence issues have received greater attention from legal scholars in recent years. See Mary Ann Dutton, *Understanding Women’s Responses to Domestic Violence: A Redefinition of Battered Women Syndrome*, 21 HOFSTRA L. REV. 1191 (1993); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991).

127. For a broad critique of the way women’s sexual autonomy is restricted and suppressed by social practices and legal regimes influenced by and organized around religious norms and cultural representations that negate the interdependence and interconnection of sexuality and spirituality in human experience, see Iglesias, *supra* note 34, at 934-943 (examining the psycho-sexual meanings embedded in the ritual practice of sacred prostitution as practiced in the ancient matriarchies that flourished before the hegemonic dominance of the one male god of Judeo-Christianity); 915-929 (examining the cultural logic of maternal authority in the matrifocal family arrangements that appear in some Black and Latin communities).

internal communion of the Father, Son and Holy Spirit, she is subordinate even to her own son.¹²⁸ This configuration constructs the Virgin—and symbolically, doctrinally and ideologically all “women”—as both insiders and outsiders at once, but always as subaltern.

This insider/outsider dynamic is similarly reflected in the larger ideology of religion and its part in the production of cultural scripts for sexual minorities. Like women, though in different ways, sexual minorities are positioned as outsiders in relation to the “family” by and through the interaction of religion and culture, and this interaction is evident in the substance and process of the law. Religiosity not only permeates Anglo-American legal doctrines and discourse about family, but legislatures and tribunals often cite religion to enact or uphold the legal imposition of heterosexist ideology and privilege through the activation of both criminal and civil law norms.¹²⁹ Legal culture thus relies explicitly as well as intuitively on religion to force and justify the exclusion of sexual minorities from the nation’s civic, social and economic life. The exclusionary status quo and history of this time and place show that sexual minorities are subordinated through the legal and cultural applications of religious precepts in the construction and operation of the traditional family. This subordination is effected and maintained, as well, by the zealous participation specifically of organized religious groups in promoting the continued hegemony of the heteropatriarchal family and its use in organizing and regimenting American society more generally.

Finally, from a LatCrit perspective, an anti-subordination analysis of these issues must also address their transcultural or transnational dimensions. The acknowledged centrality of international law and human rights advocacy in LatCrit theory offers important additional perspectives.¹³⁰ LatCrit scholars can use these perspectives to develop more comprehensive understandings of both the way religious norms and practices collaborate in the legal imposition and regulation of (compulsory hetero)sexuality and the way this particu-

128. For an effort to introduce the feminine into an account of the mystery of the Trinity, see LEONARDO BOFF, *TRINITY AND SOCIETY* 10 (Paul Burns trans., 1988). Not coincidentally, Boff is a liberation theologian, and his efforts to insert the feminine into the Trinitarian mystery represent a departure from mainstream Catholic orthodoxy, in which all three persons of God are represented as male. See, e.g., HARDON, *supra* note 83, at 63-67.

129. See, e.g., *supra* note 50 for discussion of key rulings hinged on religious precepts. The status quo represents a fairly systematic use of formal law to repress sexual minority identities and communities. See generally *Developments in the Law—Sexual Orientation and the Law*, 102 HARV. L. REV. 1508 (1989); see also Valdes, *supra* note 58, at 31 n.83 and sources cited therein on sexual orientation discrimination.

130. See, e.g., Colloquium, *supra* note 38 (presenting various works that center internationalist analysis in LatCrit Theory).

lar sexual regime intersects with other social and cultural processes and legal institutions to maintain class, race, sexual orientation and gender subordination, both domestically and internationally. These cross-cultural interventions by LatCrit scholars are important to critical legal theory in general because they represent a substantive expansion and significant contribution to existing discourses: while the feminist movement in the United States has made significant progress in identifying and revealing the interconnections between women's subordination in the family and their subordinated status in public and private institutions beyond the family, the analyses and reform agendas pursued by those at the "top" of this movement—white heterosexual middle-class feminists—do not consistently address the particularities of those at the "bottom" of its constituencies, including Latina and other non-white/Anglo lived realities, either in the United States or throughout Latin America and the globe.¹³¹

D. *Universality Through Particularity: Gender, Sexuality and Class in LatCrit Theory*

Addressing these manifold particularities and their socio-legal implications for anti-subordination analysis is, as Professor Luna so effectively urges in her contribution to this symposium, an imperative for LatCrit theorists: an imperative to seek social justice by finding the universal in the particular and the particular in the universal.¹³² By engaging and expanding feminist legal theory from a cross-cultural and international perspective, LatCrit scholars can contribute to the further evolution of feminist theory and reform strategies; by challenging feminist legal theory increasingly to take into account the cultural, ethnic, racial and other differences between women, including differences in the ways women conceptualize liberation under different circumstances, LatCrit theory can

131. See generally CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 1997). However, mainstream feminist legal scholars have begun to pay increased attention to the substantive and political imperatives that underlie the value of transnational and transcultural discourses, projects and communities. See, e.g., Catharine A. MacKinnon, *Rape, Genocide and Women's Human Rights*, 17 HARV. WOMEN'S L.J. 5 (1994) (critiquing sexual terror against women as war tactics); Frances Elisabeth Olsen, *Feminism in Central and Eastern Europe: Risks and Possibilities of American Engagement*, 106 YALE L.J. 2215 (1997) (linking domestic feminist theory with political developments in the former Soviet Bloc); Ruthann Robson, *The State of Marriage*, 1 YEARBOOK OF NEW ZEALAND JURISPRUDENCE 1 (1997) (comparing same-sex marriage issues in New Zealand, the United States and Canada to call for matrimony's abolition as a state institution).

132. See Guadalupe T. Luna, *Zoo Island: LatCrit Theory, Don Pepe and Senora Peralta*, 19 CHICANO-LATINO L. REV. 339, 341 (1998) (locating Chicano subordination in the ideological and rhetorical struggles between universal and particular); see also Enrique R. Carrasco, *Opposition, Justice, Structuralism and Particularity: Intersections Between LatCrit Theory and Law and Development Studies*, 28 U. MIAMI INTER-AMER. L. REV. 313 (1997) (on the importance of particularity in LatCrit theory).

foster critical appreciation for the differential positions of power/lessness from which multiply diverse groups of women struggle to attain dignity and agency. And in adopting an international and cross-cultural perspective, LatCrit scholars will of course confront the need to develop new anti-subordination strategies that take into account the different socio-legal contexts in which particular regimes of subordination operate.

For example, LatCrit theorists might explore the way religion, ideology and culture participate in the formal legal subordination of (presumably or compulsorily) heterosexual women in Latin America and elsewhere, producing complex socio-legal regimes like the Guatemalan Family Code. This code provides that married women can accept employment, practice a profession, accept a public office or engage in commercial activities only when such activity does not interfere with their child care obligations and other domestic responsibilities.¹³³ Additionally, even when a wife's outside activities do not interfere with her domestic responsibilities, Guatemalan law enables the husband to veto his wife's involvement in activities outside the home, so long as he earns enough to support the family and his reasons for opposing her outside activities are deemed reasonably justified—as interpreted by a (probably male, heterosexual and at least nominally Roman Catholic) judge.¹³⁴

In so prescribing, Guatemalan law does more than simply place in starker relief the gendered stereotypes and traditional family roles rooted in heteropatriarchy that prevent women from participating fully and freely either in the public or private spheres of human life and interaction. This statutory regime also presents a direct opportunity, obligation and challenge for LatCrit scholars to recognize the universal imperatives of liberation that are implicated in the particularities of women's legal and social subordination within the Guatemalan family structure and, by implication, in any other "particular" situation. Confronted by the provisions of this particular legal code, LatCrit scholars are called to consider and decide whether and/or how we will address such particularities in our critical theory

133. Cód. Civ., tít. I, cap.I, art. 113 (Guat.) ("La mujer podrá desempeñar un empleo, ejercer una profesión, industria, oficio o comercio, cuando ello no perjudique el interés y cuidado de los hijos ni las demás atenciones del hogar." translated by authors as "A wife may accept employment, engage in a profession, industry, public office or commercial activity when such activity does not undermine the interests and care of the children nor the performance of other domestic duties.").

134. Cód. Civ., tít. I, cap.I, art. 114 (Guat.) ("El marido puede oponerse a que la mujer se dedique a actividades fuera del hogar, siempre que suministre lo necesario para el sostenimiento del mismo y su oposición tenga motivos suficientemente justificados. El juez resolverá de plano lo que sea procedente." translated by authors as "The husband may prevent his wife from dedicating herself to activities outside the home, so long as he earns enough to maintain the household and his opposition is reasonably justified. Whenever necessary, the judge shall determine the appropriate resolution of a dispute as the law requires.")

and anti-subordination practice: How important, after all, are the particular provisions of the Guatemalan Family Code to the articulation of LatCrit theory, or even to the development of LatCrit social justice agendas?

Our answer is this: addressing these and other particular provisions is central to the development of LatCrit theory, precisely because addressing such particularities is, as Professor Luna urges, a way to enrich the substantive insights and to leverage the political impact of LatCrit theory both as discourse and as community.¹³⁵ By engaging these particularities, we thereby operationalize our anti-essentialist commitments in and through the efforts we make to understand and dismantle the particular instances of subordination established and enforced through this or, for that matter, any other particular legal regime. It is precisely, primarily, and perhaps only through an increasing investment in identifying, analyzing and dismantling particular instances of subordination that LatCrit scholars successfully will avoid the essentialist tendency to seek universal truths in generalities and abstractions, rather than seeking universal liberation in and through the material, though limited, transformation of the particular and the contingent.

To make the importance of specificity and multiplicity in LatCrit theory's anti-subordination critiques even more explicit, consider how a sustained effort to analyze the particular context of subordination in which the Guatemalan Family Code operates, in turn, reveals otherwise invisible interconnections in the production of subordination, thereby providing a critical perspective on the normative validity of religious prescriptions and cultural expectations about the role of women and men in the heteropatriarchal version of the family. The restrictions that the Guatemalan Family Code imposes on women's freedom to accept employment, practice a profession, accept public office or participate in a labor organization effectively subordinate women's rights of free association to the husband's prerogatives and discretion as head of "his" family—ostensibly due to the state's interest in ensuring that children receive necessary care, attention and supervision. To this extent, the Code reflects the same gendered stereotypes invoked in religious prescriptions about the role of women in the family structure—prescriptions already repeatedly and effectively challenged in feminist theory. This overlap thus marks a shared interest in social justice for "women" among LatCrit and feminist theorists.

But an anti-essentialist, anti-subordination perspective on the particular context of subordination experienced by Guatemalan "women" must situate its analysis even more broadly to sharpen its

135. See Luna, *supra* note 132, at 340.

critical edge and expand its practical or political impact. These persons, situated at the bottom of their context, are more than "women." Their lived realities are determined by the intersecting positions of privilege and subordination they may occupy, at all times and simultaneously, in various overlapping relations that are organized around the hierarchies of class, race, religion, and sexual orientation. Taking into account the impact of these statutory restrictions on women's class interests as Third World workers, for instance, reveals other and contemporaneous dimensions of subordination that are maintained by and organized around the gendered expectations that women should bear primary responsibility for child care and housework—expectations justified by the cultural and ecclesiastical as well as by the statutory regimes of that context.

This multidimensional approach is beckoned by the abundant evidence linking women's poverty and economic subordination to employment practices that maintain sex-segregated occupations through myriad means both in the United States and throughout the Third World. In other words, the formal restrictions established by the Guatemalan Code must be analyzed in light of the pervasive practice of employment discrimination directed at women as workers—practices like the discriminatory refusal to hire women for jobs traditionally occupied by men as well as the suppression of wage rates in jobs that are occupied primarily by women.¹³⁶ These employment practices, in tandem, construct the sex-segregated occupational structures which reinforce women's economic subordination even as women enter the workforce in increasing numbers.

The important point of this analysis for LatCrit theory's goal of relevance through anti-essentialist, anti-subordination praxis is that the employment practices by which sex-segregated occupational structures are constructed across various economic sectors or markets are linked directly to the sex-based division of labor within the family: indeed, there is ample evidence that "the origins of sex-segregated occupations are found in the unequal division of labor within the family."¹³⁷ This linkage is resilient in part because employers often justify employment practices channeling women into

136. See, e.g., Ruth Gerber Blumrosen, *Remedies For Wage Discrimination*, 20 U. MICH. J.L. REF. 99 (1986) (developing evidence that the same factors that produce a segregated job were likely to produce a discriminatorily depressed wage rate); Carin Ann Clauss, *Comparable Worth—The Theory, Its Legal Foundation, And The Feasibility Of Implementation*, 20 U. MICH. J.L. REF. 1 (1986) (noting the wage gap associated with sex-segregated occupational structures). For an analysis of these processes in the Third World, see *WOMEN WORKERS AND GLOBAL RESTRUCTURING* (Kathryn Ward ed., 1990); *WOMEN, MEN AND THE INTERNATIONAL DIVISION OF LABOR* (June Nash & María Patricia Fernández-Kelly eds., 1983).

137. Susan S. Green, *Silicon Valley's Women Workers: A Theoretical Analysis of Sex-Segregation in the Electronics Industry Labor Market*, in *WOMEN, MEN, AND THE INTERNATIONAL DIVISION OF LABOR*, *supra* note 136, at 317.

low-pay, dead-end jobs with few employment benefits on the grounds that women are temporary, and fundamentally unreliable, workers precisely because of their family responsibilities as allocated—and otherwise celebrated—by heteropatriarchy.¹³⁸ This vicious cycle, as this abbreviated critique displays, is produced through and by the mutually-reinforcing ideas and actions expressed via religious belief, social culture and legal regulation.

Thus, rather than ensuring the protection of actual families or ensuring that children receive necessary care and attention, the discriminatory allocation of family responsibilities and restrictions on womens' rights of free association reflected in (but hardly exhausted by) the provisions of the Guatemalan Family Code contribute directly to maintaining the sex-segregated occupational structures through which women are channeled into low-wage, dead-end jobs, as well as the practices through which wages and other job-related benefits are suppressed in jobs occupied primarily by women. As a result of these provisions and practices, women systematically are denied equal rights to obtain remunerative employment and to enjoy the increased autonomy and self-determination such employment affords. Moreover, to the extent women's participation in the workforce is occasioned by their husbands' inability to earn enough to support their families (or indeed, by the absence of a male wage earner in the family), discrimination against women workers, based on counterfactual assumptions that women's wages are a secondary source of discretionary income for families supported primarily by men, only restrict women's ability to lift their families out of poverty through wage labor. This broadening of anti-subordination critique within LatCrit theory thereby points to strategies of resistance that recognize the transnational interaction of these various institutions and industries.¹³⁹

138. As one commentator has noted: "Those attributes that women bring to the labour market by virtue of family obligations and socialisation [sic] are used by employers to select them for the secondary sector. . . . Women's cheap, flexible and disposable labour power, their situation both when employed and unemployed, stems fundamentally from their actual and assumed role in the family." *Id.* at 318-19, quoting Jackie West, *Women, Sex and Class*, in ANNETE KUHN & ANN MARIE WOLPE, *FEMINISM AND MATERIALISM* 247 (1978).

139. At the same time, a sustained and critical engagement with Latina/o particularities must also acknowledge, value and respect the degrees of individual and collective self-empowerment Latinas, in particular, have struggled and, at times, succeeded in organizing around heteropatriarchal representations of their maternal identities. See, e.g., MARGUERITE GUZMAN BOUVARD, *REVOLUTIONIZING MOTHERHOOD: THE MOTHERS OF THE PLAZA DE MAYO* (1994) (recounting how political resistance against the forced disappearances during Argentina's dirty war was organized around the politicization of women as mothers). That the power of maternal identities in heteropatriarchal ideology is inadequate to the ultimate task of liberation and may come at the expense of other identity positions women may presently occupy or aspire to create does not negate the real interests women may, as a class, share in protecting and promoting the further enhancement of social, cultural and legal frameworks that foster maternal empowerment

Equally important, this broadened analysis would be incomplete without similar recognition of the position in which this statute, and its normative or religious underpinnings, situate women due to the normative inter-linkage of class, color and sexual orientation. For instance, a Queer critical sensibility within LatCrit theory would move to apply and particularize the “double and nothing” dynamic articulated by feminist and lesbian legal scholars to describe the position of lesbians at the intersection of sex, gender and sexual orientation.¹⁴⁰ This dynamic describes the feminization (and devaluation) of all women in the workplace as a result of sex and gender stereotyping and its convergence with a simultaneous defeminization (and double devaluation) specifically of lesbian women due to sexual orientation stereotypes that cast lesbians as “butch,” masculinized or otherwise gender-atypical creatures. This confluence renders lesbians unfit workers because they are women and unfit women because they are lesbians. The social biases and legal scripts produced through the confluence of these stereotypes in the embodiment of the lesbian makes her “double and nothing”—or doubly nothing—both in public life as a worker and in private life as a woman.

Proceeding from the “double and nothing” insight, a particularized and transnational LatCrit analysis would interconnect how, as women, the Guatemalan Family Code similarly relegates lesbians to subordination within the family and throughout society and how, as lesbians, this Code projects and reinforces the exclusion and erasure of lesbian women within the family and throughout society. This broadened but particularized comparative analysis thus interconnects the particular socio-economic conditions of women and lesbians in Anglo and Latina/o contexts to produce similar and perhaps interconnected positions of subordination on the combined grounds of sex, gender and sexual orientation. This transnational analysis indicates that this “family” Code, like other social and legal scripts, generates direct as well as consequential effects that intersect in mutually-reinforcing ways to subordinate all women in different ways both within and beyond conventional family relations. This analysis thus heeds, and illustrates the anti-subordination efficacy of, Professor Luna’s call for transformative universality through critical particularity.

This broadened analysis also illustrates why the strategies needed to combat internationally and cross-culturally all forms of subordination imposed through the deployment of gendered stereotypes must be informed and guided by the particular conditions pre-

from a *matrifocal perspective*. See Iglesias, *supra* note 34, at 983-90 (elaborating this argument).

140. See Christine A. Littleton, *Double and Nothing: Lesbian as Category*, 7 UCLA WOMEN’S L.J. 1 (1996).

vailing in Latin America and other portions of the global village: LatCrit theory's search for effective reformatory interventions must deal with the fact that, in many of these countries, gendered stereotypes are still codified as domestic law; we must deal with the fact that, in many of these countries, domestic legal process is only barely relevant to the structuring of power and the accountability of the state; we must deal with the particular ways in which the subordinated status imposed on women through the legal structures of the family is reinforced by transnational economic processes, like export processing zones, flexibilization, and the international division and feminization of low-skilled labor.¹⁴¹ As we urged above and reaffirm here, LatCrit theorists must strive to progress continually from a generalized and abstract concern with subordination to a concrete engagement with the particular and contextual in order to craft holistic analyses of subordination systems that respect no borders or boundaries; as part of this effort, we specifically must develop international strategies and communities geared to international fora.¹⁴²

Returning in closing to our initial emphasis—the articulation of a critical anti-subordination analysis of religion's role in regulating sexuality and channeling it through a particular vision of the male-dominated family organized around the centrality of heterosexual marriage—what we have seen is the cumulative and interconnected structures and relations of subordination that have been licensed in part by the direct and indirect exertion of religious ideological and institutional power and influence. Though a critical assessment of religion's effects in this time and place requires LatCrit scholars neither to wholly accept nor wholly reject “religion” per se, it does require us to articulate with care how LatCrit theory might help to realign “religion” with social justice for all—including all non-European peoples, all women, and all sexual minorities. Certainly, the normative validity of an order that systematically produces and willfully legitimates so much subordination is at least questionable when approached from a social justice perspective. Questioning this validity in a penetrating and expansive way is a task pending for LatCrit theory, a task whose critical engagement we hope that these brief notes will help to hasten.

141. For a critical comparative analysis of these issues in contemporary settings, see Catherine T. Barbieri, *Women Workers in Transition: The Potential Impact of the NAFTA Labor Side Agreements on Women Workers in Argentina and Chile*, 17 COMP. LAB. L. 526 (1996).

142. See, e.g., Iglesias, *supra* note 101, at 207 (urging LatCrit attention to and intervention in ongoing legal and political struggles to combat neoliberal assaults on the welfare state—both domestically and internationally—by linking the enforcement of human rights to the international economic regimes that regulate trade relations and development finance).

III.

UNITY IN DIFFERENCE: OBSERVATIONS AND ASPIRATIONS ABOUT
LATCRIT THEORY'S DIVERSE SOCIAL JUSTICE AGENDAS

Like the preceding parts, the following discussion seeks to apply critical anti-subordination analysis to particular issues or themes that framed the LatCrit II conference, and that are represented in this symposium directly or indirectly. To do so, this Part divides into three sections. The first section focuses on issues arising from and related to the LatCrit commitment to pursue its anti-subordination agendas cognizant of and attentive to inter- and intra- group differences. The second section then examines the operation of poverty in Latina/o communities to encourage greater engagement of class within LatCrit theory. The third section closes the Afterword with some reflections linking the production of scholarship to the construction of a LatCrit community, and considering briefly how these inter-related objectives may best be accomplished in both the short and long term. In this way, we seek to develop LatCrit approaches to issues of knowledge, community and transformation that exemplify and implement an expansive anti-subordination consciousness and agenda within LatCrit theory.

A. *Inter/Intra-Group Solidarity Through Justice in LatCrit Theory*

Since the beginning of the LatCrit gatherings, talk of the "Black/White Paradigm" has become staple fare. We are heartened to see a rapid and constructive evolution of that discussion. As we read it, the evolution of the LatCrit critique of the Black/White Paradigm thus far has unfolded in five steps.

The first step was centering the paradigm and noting its marginalization of Latinas/os and other non-White/non-Black people of color.¹⁴³ The second was recognizing this paradigm as an apparatus specifically of white supremacy and acknowledging the particularized oppression of Blacks under the paradigm.¹⁴⁴ The third was considering the historical sources of the paradigm, which is rooted in the exceptionalism of blackness in the social and legal history of this nation.¹⁴⁵ The fourth was to acknowledge and thematize the trans-

143. See Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CAL. L. REV. 1213 (1997); Juan F. Perea, *Five Axioms in Search of Equality*, 2 HARV. LATINO L. REV. 231 (1997).

144. See Ian F. Haney López, *Race, Ethnicity, Erasure: The Saliency of Race to LatCrit Theory*, 85 CAL. L. REV. 1143 (1997); Ian F. Haney López, *Retaining Race: LatCrit Theory and Mexican American Identity in Hernandez v. Texas*, 2 HARV. LATINO L. REV. 279 (1997).

145. See Leslie Espinoza & Angela P. Harris, *Embracing the Tar-Baby—LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1585 (1997).

national dimensions of Latina/o identities¹⁴⁶ as well as the multiplicity of subject positions around which a Latina/o political identity might be constructed and contested in articulating or manipulating the anti-subordination objectives of LatCrit theory.¹⁴⁷ The fifth was to confront the erasure of indigenous peoples both by the paradigm, and by our preceding stages of critique.¹⁴⁸ We consider these five stages of theoretical development as truly remarkable progress in a short time period, and look forward to continuing the evolution of this critique.

As the proceedings of the LatCrit II conference clearly demonstrate, those early insights have continued to evolve in LatCrit discussions of race relations. One example is the difficult topic of racism within and between various groups of color, including Latinas/os.¹⁴⁹ This topic has been broached in one form or another at every LatCrit gathering, but the LatCrit community has not yet focused in a sustained way on the relevance for LatCrit theory's development of the complex issues and concerns underlying this topic. This topic, however, is crucial both to pan-group aspirations and to inter-group relations; the activation of racial identities within and among people-of-color groupings against the backdrop of white-black binarism can promote solidarity or division; it can facilitate or defeat the quest for social justice; it can illuminate or reify current understandings of "race" and racism. Because this topic awaits our collective scholarly attention, we include it here as a prime aspiration for LatCrit theory at this time.¹⁵⁰

We begin with Professor Kevin Johnson's incisive distillation of intra-Latina/o group conflict, which pivots on the interplay of race with ethnicity, language, class, social status and other factors.¹⁵¹ This account shows that Latina/o subordination encompasses hierarchies blessed both by Anglo and Latina/o cultures, thereby remind-

146. See, e.g., Celina Romany, *Claiming a Global Identity: Latino/a Critical Scholarship and International Human Rights*, 28 U. MIAMI INTER-AM. L. REV. 215, 220-21 (1996-97); Iglesias, *supra* note 101, at 177-84.

147. Iglesias, *supra* note 27, at 377-86 (noting instability and vulnerability of Latina/o political identity and intra-group solidarities to fragmentation and manipulation as a result of the manifold relations of privilege and subordination that are superimposed, in overlapping and divergent layers, upon and within Latina/o communities by the hierarchies—among others—of class, culture, and the inter-state system).

148. See Guerra, *supra* note 52, at 353.

149. This topic is being developed especially by LatCrit scholars who are Asian American. See generally Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395 (1997); Erik K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 UCLA ASIAN PAC. AM. L.J. 33 (1995); Erik K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821 (1997).

150. See Gloria Sandrino-Glasser, *Los Confundidos: De-Conflicting Latinos/as' Race and Ethnicity*, 19 CHICANO-LATINO L. REV. 69 (1998).

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

ing LatCrit scholars of the internal sources that yield intra-group tension and abet Latina/o subordination. But this account also reminds us that intra-group tensions and their detrimental effects have additional causes, which are imposed externally: intra-group tensions, for instance, are instigated by the "unequal distribution of legal rights among Latinas/os"—inequalities imposed by law on the basis of legislative and judicial choices regarding constructs like formal immigration or citizenship status.¹⁵² This reminder has wider implications because it calls for recognition of a like dynamic—the external imposition of white supremacy on various groups of color at once—that leads to similar inter-group-of-color tensions and consequences.

These intra- and inter-group tensions, as Professor Sandrino's article effectively suggests, may be due in part to an uncritical conflation of race and ethnicity in the social and legal discourse of the United States.¹⁵³ Among Latinas/os, as among other racialized and ethnicized classifications, the categories produced by these social constructions sometimes overlap and sometimes not: Latinas/os, Professor Sandrino's article makes plain, are clusters of multiracial and multiethnic populations.¹⁵⁴ Therefore, both racism and nativism are relevant to LatCrit theory's anti-subordination agenda. But racism and nativism can be combatted effectively only if white supremacy is understood to be their specific and actual formulation in this time and place; in other words, only if LatCrit and other out-group scholars approach antiracist struggle as a multifaceted engagement with, and resistance against, white supremacy's hegemony.

Given this conflicted backdrop, inter-group-of-color tensions can burst onto the national scene through the course of the everyday media attention given to popular culture, as the essay by Professor Bob Chang points out.¹⁵⁵ In this instance, the context was celebrity sports and its racialized dimensions in this white supremacist society. Using media and popular obsession with the racial (self-)identification of multiracial golf sensation Tiger Woods in 1997, Professor Chang interweaves culture, politics and power seamlessly, questioning: "Why have certain communities become so invested in his racial classification? What is to be gained?"¹⁵⁶ These are precisely the questions to which LatCrit theorists must subject all sources of inter-group conflict that enter or affect our work.

152. *Id.* at 200.

153. See Sandrino-Glasser, *supra* note 150, at 71-75.

154. *Id.* at 75-77.

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

156. *Id.* at 225.

In other words, all LatCrit encounters with tension and conflict, which inevitably take place against the omnipresent backdrop of white supremacy and privilege, should proceed from a self-critical analysis of the benefits to be gained and the relations of solidarity and/or confrontation that may be catalyzed through our interventions—and of whether our intervention is, in fact, tailored to produce our intended objectives—given this omnipresent backdrop. To be effective, LatCrit interventions must be supported and directed by a keen analysis of their likely impact on the overall but particular context of their occurrence. Professor Chang's questions thus prompt us to etch a few notes about the links between this symposium and LatCrit theory generally, as well as among some of the essays presented within this symposium, which are in part responsive to these queries.

In particular we seek here to bring together the LatCrit deconstruction of the Black/White Paradigm with the recent attention directed by outgroup scholars to inter-group tensions among and across non-White identity categories. This connection is substantively and strategically important at this stage of our still-unfolding critiques because further LatCrit discussion of Black-White polarities can benefit from recent analyses of the color-on-color inter-group grievances and relations that inevitably are set against the omnipresent backdrop of White supremacy.¹⁵⁷ These recent analyses have shown how groups of color can lose sight of long-term anti-subordination interests when they opportunistically redeploy structures of subordination to exploit a momentary advantage created by some permutation of White supremacy's power: inter-group alliances among communities and scholars of color to make common cause against the hegemony of whiteness can be compromised in profound and lingering ways through a shortsighted reaction to the appearance of opportunity. The pending question for LatCrit theorists, therefore, is: "How do we, as African Americans, we as White Americans, we as Asian Americans, we as Latina/Latino Americans participate together in struggles that involve people who are not ourselves?"¹⁵⁸

Or, more precisely, how do LatCrit scholars help to reconceive social justice struggles that appear to be attenuated from those that we imagine to be our own, but that in fact implicate our own? Conversely, how do we craft and apply anti-subordination analyses that display the wholism¹⁵⁹ interconnectivity¹⁶⁰ and cosynthesis¹⁶¹ both of

157. See, e.g., *supra* note 149 and sources cited therein on inter-group-of-color relations. See generally HARLON L. DALTON, *RACIAL HEALING: CONFRONTING THE FEAR BETWEEN BLACKS AND WHITES* (1995).

158. See Jerome McCristal Culp, Jr., *Latinos, Blacks, Others, and the New Legal Narrative*, 2 HARV. LATINO L. REV. 479, 481 (1997).

159. See E. Christi Cunningham, *The Rise of Identity Politics I: The Myth of the Pro-*

interlocking forms of oppression and of efforts to resist them? Equally important, but conceptually distinct, how do we develop an ethical vision beyond the imperatives of strategic alliances that can sustain our commitment to the liberation of others, particularly and precisely in those instances when their liberation challenges whatever privileges we may enjoy?¹⁶²

One path to and past the difficult issues raised by these queries, urged by Professor Martínez in his symposium essay, is the conscious and proactive embrace of “epistemic coalitions” that can help to cohere complex—and perhaps sometimes colliding—anti-subordination struggles.¹⁶³ The Martínez essay’s call to epistemic coalitions, joined with Professor Luna’s interweaving of particularity and universality, seems to us an especially useful lens through which to view the continuing effort specifically to transcend the prevalence of reductionist accounts of “race” relations that tend to focus social and legal discourse “exclusively or primarily” on white domination of black persons.¹⁶⁴ Taking our cue from the combined insights of the Martínez and Luna essays, LatCrit theorists must exercise heightened care to differentiate black from white in the paradigmatic status quo. More so, LatCrit theorists must make the particular and foundational degradation of blackness via the Black/White Paradigm organic to our critiques of white supremacy’s operation under that paradigm, while simultaneously striving to open a critical discourse that also incorporates other non-White, non-Black group interests. This expanded anti-subordination approach to inter- and intra- group

tected Class in Title VII Disparate Treatment Cases, 30 CONN. L. REV. 441 (1998) (on wholism).

160. See Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities & Interconnectivities*, 5 S. CAL. REV. L. & WOMEN’S STUD. 25 (1995) (on interconnectivity).

161. See Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257 (1997) (on cosynthesis).

162. Elizabeth M. Iglesias, *The Intersubjectivity of Objective Justice: A Theory and Praxis for Constructing LatCrit Coalitions*, 2 HARV. LATINO. L. REV. 467 (1997) (grounding such ethical vision in the aspiration to objective justice); Iglesias, *Structures of Subordination*, *supra* note 24, at 469-78, 486-88 (arguing that the realization of objective justice requires more than an ethical vision or empathetic solidarity, but rather a material transformation of the relations of power/lessness through which privilege is constructed and enjoyed).

163. See George A. Martínez, *African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*, 19 CHICANO-LATINO L. REV. 213 (1998); Iglesias, *supra* note 162, at 467-69 (arguing that the surest human path towards the universal of objective justice is through the proliferation of empowered political communities and the collective subjectivity created by the collision of their particular perspectives); *but see* Iglesias, *supra* note 24, at 473-78 (arguing that just as our evolving approximations toward objective truth depends upon the further emancipation of oppressed perspectives, the actualization of objective justice depends on the redistribution of effective social and institutional power).

164. It bears emphasis that LatCrit critiques of the Black/White Paradigm seek to counteract only prevailing tendencies toward analyzing and combating racism “exclusively or primarily” in white/black terms. See Perea, *supra* note 143, at 1219.

race relations within LatCrit theory and outsider jurisprudence is counseled by the need for epistemic coalitions forged through careful investigation of the particular to discern the universal.

A show of heightened care and differentiation is important to LatCrit theory's continuing rigor because it anticipates and responds to the possibility that LatCrit rejection of the paradigmatic status quo will be mistaken as a careless or uncritical equation of "Black" and "White" positions, interests or trajectories within this paradigm. This heightened demonstration of Black-White differentiation under the paradigm in future LatCrit projects furthermore will address inter-group concerns over displacement or competition. This concern is especially important given the overwhelming practical disadvantage of Black, Brown and other nonWhite groups in our corresponding and unfinished efforts to dismantle white supremacy and its legacies of social injustice against the backdrop of this entrenched paradigm. This approach is requisite because LatCrit theorists must consider carefully, consciously and critically the impact of our work not only on Latinas/os and our relationship to white supremacy, but also the effects of our interventions on the ongoing antiracist struggles of African Americans and other groups of color.¹⁶⁵

LatCrit theorists accordingly should endeavor in our next phase of paradigmatic deconstruction to express critical comparisons of African American, Native American, Asian American and Latina/o experience under the hegemony of whiteness to emphasize the interconnected yet differentiated anti-subordination insights and imperatives embedded in those group histories. This critical comparative approach not only will avoid the elision of particularity, it affirmatively can yield a deeper and broader exposition of whiteness' variegated oppressiveness. This approach also can temper headlong rushes to the sort of non-white opportunism that impedes antiracist struggle for all groups of color because it distracts and deflects anti-subordination energy away from the perpetration of white supremacy and redirects that energy toward a temporary or superficial alleviation of one oppressed group at the expense of another.¹⁶⁶ Comparative critiques thereby can produce a sturdier caliber of substantive anti-subordination insight, discourse and struggle: comparative critiques can delineate universality through particularity, and nurture coalitional projects through a shared epistemology on both intra- and inter- group levels.

165. These and similar concerns already have begun to be raised. See, e.g., John O. Calmore, *Our Private Obsession, Our Public Sin: Exploring Michael Omi's "Messy" Real World of Race: An Essay for "Naked People Longing to Swim Free"*, 15 *LAW & INEQ. J.* 25, 61 (1997) (cautioning against possible dilution of African American claims or interests).

166. See, e.g., Chang & Aoki, *supra* note 149, at 1423-46 (analyzing inter-group relations and politics in Monterey Park, California).

B. *Confronting Colon/ialism in LatCrit Theory and Practice*

LatCrit evolution on multicultural or multiracial antiracist concerns is further reflected in the fact that LatCrit II is the first time in LatCrit gatherings that our community focused directly on the relationship between "Latinas/os" and native peoples.¹⁶⁷ But this relationship is made especially complex in light of Latina/o *mestizaje*, or racial and ethnic intermixture. Indeed, various LatCrit scholars have noted from time to time that the cultural and racial mixture of Spanish and indigenous peoples is a key source of contemporary Latina/o identities.¹⁶⁸ Yet colonial histories and legacies also make the Spanish connection complex, a point that underlies the challenge issued by the Guerra essay in this symposium.¹⁶⁹

As activist Guerra points out in her essay, the very contents and usages of "Latina/o" as a denominator of identity can be problematic: it opens to question whether LatCrit theory is cognizant of indigenous roots and committed to the ongoing demolition of neocolonialism.¹⁷⁰ When Guerra asks whether LatCrit theory is committed to tackling "Colón" in neocolonialism, she knowingly highlights the actual name of the first conquistador, Cristobal Colón, in the word that describes the legacy he put into motion to prod us into thinking critically about our self-conception as Latinas/os or LatCrits. In fact, this essay challenges everyone to question whether anyone should embrace "Latina/o" as the category and label that designate our position in this country at this time. Guerra thus incites a provocative and underexplored question for LatCrit discourse: Should "LatCrit" denominate and describe our position, work and community in this particular place and time? This topic, as the Guerra essay begins to elucidate, is rich and ripe.

The Latina/o-identified scholars that in 1995 originated and adopted the "LatCrit" denomination did so in a self-aware and self-critical manner, and in a manner designed to convey the centrality of anti-subordination ideals to our action.¹⁷¹ We were aware of other possible designations, including most notably the "Hispanic" labeling, but we eschewed that positionality in a critical and conscious manner. That original decision stemmed from both geographic and

167. At LatCrit II, a plenary panel was devoted to the issues posed by indigenous populations for LatCrit theory. Of the several panel participants, only Guerra contributed an essay to this symposium. See Guerra, *supra* note 52.

168. See, e.g., Montoya, *supra* note 25, at 351-52.

169. See Guerra, *supra* note 52, at 351-52.

170. *Id.* at 355-57.

171. For early accounts of LatCrit origins, see Berta Esperanza Hernández-Truyol, *Invisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 HARV. LATINO L. REV. 199, 202-05 (1997); Valdes, *supra* note 23, at 3 n. 5; Valdes, *supra* note 69, at 6-11.

racial considerations, and it signals both geographic and racial messages.

The "Hispanic" category was and is a creature of this nation's federal government,¹⁷² a category that furthermore encompasses persons hailing from both within and without this hemisphere. It describes persons from Europe—Spain—and even Asia—Filipinos—as well as persons from South America and North America, such as those who have created "Spanish" Harlem in this country.¹⁷³ The "Latina/o" label, on the other hand, connotes a more regionalized—a hemispheric—designation that, indirectly, also evokes the indigenous dimension of the groups propagated through Spanish and native *mestizaje*, or intermixture. In our estimation, Latina/o therefore was the more appropriate and accurate geographic and racial self-inscription.

Additionally, in this country the "Hispanic" label signifies whiteness. For instance, "Hispanic" is used within and among Latina/o communities to communicate Spanish, and hence whitened European, ancestry: "Hispanic" expresses a claim of whiteness and a position of relative privilege within the racially mixed and diverse Latina/o communities of this country and world.¹⁷⁴ "Hispanic" is an identification that signals affinity for the most dominant and oppressive racial position in this country. On the other hand, the "Latina/o" label conveys an alignment with people of color in this country, as well as an embrace of the non-Spanish, or indigenous, elements that help to configure our present-day communities. Given these additional points of racial politics, the inter- and intra- group message of the "Hispanic" descriptor quickly yielded to "Latina/o" identification when the political choice arose in a room populated with critical anti-subordination scholars.

Nonetheless, the Guerra essay effectively calls upon the LatCrit community to revisit and even reconsider that initial choice. In this essay Guerra implies the real plausibility of—and perhaps she soon will make explicit—other self-identificatory options that in her view are better suited to our scholarly and political self-conception in this time and place. Because LatCrit conversation on this subject up to now can only be regarded as preliminary, and therefore in some ways uncritical or incomplete, we hope the issues raised by this es-

172. See Luis Angel Toro, "A People Distinct From Others": *Race and Identity in Federal Indian Law and the Hispanic Classification in OMB Directive No. 15*, 26 TEX. TECH L. REV. 1219 (1995); Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 STAN. L. REV. 957 (1995).

173. See generally PATRICIA CAYO SEXTON, *SPANISH HARLEM ANATOMY OF POVERTY* 9 (1965).

174. See, e.g., Kevin R. Johnson, "Melting Pot" or "Ring of Fire"?: *Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1259, 1295-96 (1997) (discussing Latina/o ploys to "whiten" identity through "Spanish" indicia).

say will be pursued as a timely and illuminating intervention in the continuing unfolding of a self-critical "LatCrit" community consistently devoted to its diversified anti-subordination pronouncements.

And in this self-critical spirit of anti-subordination unity through the positive embrace of difference and diversity, the LatCrit community also must attend to issues of language and its uses in our gatherings, publications and meetings. LatCrit theorists have time and again critiqued and rejected using the force of law to suppress the Spanish language in both professional and personal interactions.¹⁷⁵ LatCrit scholars have marshaled their training and skills to demonstrate how various legal regimes of English supremacy are inimical to the history and culture of this heterogeneous society.¹⁷⁶ LatCrit projects and gatherings accordingly have been dedicated to the exercise of pluralist language rights as an expression of Latina/o identity and LatCrit anti-subordination goals.

Increasingly, therefore, a hallmark of LatCrit theory is that LatCrit analyses sometimes are partially expressed in Spanish, both in verbal and in written settings. This phenomenon is reflected in various of this symposium's essays, albeit to different degrees and in different ways. Perhaps most notable in the symposium is the Castañeda essay, which exemplifies the power of bilingual texts in their demonstrative as well as declaratory dimensions.¹⁷⁷ The critical concern, however, is over the effects of this practice, and whether those effects are consonant with LatCrit anti-subordination goals in particular contexts. Despite the powerful use of bilingualism in this essay, this underlying concern always lurks because the dangers that excite it are perennial.

Thus, LatCrit use of bilingualism, like all other practices, is subject to critical interrogation to determine whether it operates in a productive, or in an unduly exclusionary, manner. This interrogation of course must be informed by particularized factors or contexts; for instance, whether the use of bilingual capacity occurs at a conference, or in an article; if at a conference, whether translation is somehow also provided. Though we have not drawn definitive conclusions about these queries, our ideal is that LatCrit theory should

175. See, e.g., Montoya *supra* note 25, at 351.

176. 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); Christopher David Ruiz Cameron, *How the Garcia Cousins Lost their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, 85 CAL. L. REV. 1347 (1997); Margaret E. Montoya, *Mascaras, Trenzas, Y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185 (1994); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269 (1992).

177. See Castañeda, *supra* note 52, at 229-31 (combining Spanish and English use).

employ bilingualism to resist the hegemony of English monolingualism, but we must devise ways of doing so that enable non-Spanish speakers to participate meaningfully in the project of resisting English hegemony. The LatCrit community's self-critical social justice egalitarianism, in other words, requires us to pursue at once both the reclamation of dignity for the Spanish language as well as the full and equal inclusion of English monolinguals in our anti-subordination projects and discourses.

This ideal in turn raises the related issue of indigenous language reclamation, a goal implicitly hinted by the points made in the Guerra essay¹⁷⁸ about the conjunction of Spanish and native elements in the construction of "Latina/o" people and in the Castañeda essay¹⁷⁹ about language and its multifaceted role in the production of power. While Spanish is a subordinated language vis-a-vis English in this Anglocentric society, it also is the language of conquest and attempted extinction vis-a-vis the indigenous societies that previously prospered on this land. Given this background, is the reclamation of Spanish effectively a redeployment of colonial legacies and their structures of subordination? Is the reclamation of Spanish an uncritical or undertheorized re/assertion of eurocentric and white, though not specifically Anglo, supremacy in public discourse? More specifically, is the reclamation of Spanish without a concomitant effort to reclaim indigenous names and idioms coherent in light of the logic underpinning the choice of "Latina/o" over "Hispanic" in the original self-ascription of "LatCrit" theorists?¹⁸⁰ The resolution of the points suggested by these complex questions cannot possibly be endeavored in the context of this Afterword, but a few preliminary observations may be useful to prospective LatCrit theorizing on this aspect of language rights as part of the LatCrit anti-subordination agenda.

We turn, again, to the particularities of context, and to the guidance of overarching anti-subordination principles, to approach this topic.¹⁸¹ In this place and time—the Anglocentric construction of the United States at the millenium—the reclamation of Spanish is indeed anti-subordination practice: it dislodges the hegemony of a single culture and its tongue in the discourse and governance of a multicultural society professedly dedicated to heterogeneity and equality. But given the history that underlies our present context and its configuration of power positions, that practice is woefully incomplete without an equally vigorous reclamation of the indigenous

178. See Guerra, *supra* note 52, at 357.

179. See Castañeda, *supra* note 52.

180. See *supra* notes 171–176 and accompanying text.

181. See *supra* notes 23–25 and accompanying text.

languages that Spanish coercively supplanted in an earlier time and through vast portions of the land that this country now occupies.¹⁸²

Of course, we do not mean by "reclamation" that LatCrit scholars should embark at once on a concerted effort to express our analyses in native tongues. In our view, the first phase of reclamation instead signifies a clear and conscious recognition that exploration specifically and contextually of native language suppression or extinction is part of LatCrit theory's collective critical panorama. Reclamation thus means undertaking an initiative not yet engaged in LatCrit theory: developing a critical account of the relevance for legal reform strategies and social transformation projects of the historic legacies and contemporary subordination created through the repression of native tongues by the forced imposition of Spanish, and also incorporating this knowledge into the broader account of "Latina/o" identities, lives and aspirations that LatCrit scholars are composing incrementally through our joint work. It also means attending to, engaging and contributing our critical energies and political solidarity to the ongoing efforts through which indigenous peoples are seeking to construct a transnational Indian rights network focused specifically on the preservation of native languages and cultural practices both in the United States and throughout Latin America.¹⁸³

This additional, specific, reclamatory effort may be more taxing than the former, but that relative difficulty makes the very point that underscores the importance of reclaiming our native idiomatic heritage and, perhaps, capacity: it is precisely because Spanish is the privileged language within Latina/o cultures that anti-subordination imperatives require LatCrit theory to mount a determined effort toward developing a critical consciousness about indigenous tongues.

182. See generally *supra* note 44 and sources cited therein on the European and Christian invasion and occupation of this continent. It bears mention that Spain's sort of imperialism was especially keen on Roman Catholicism, and that Spain thereby serves as the model for church-state relations in many of its former colonies. For further discussion of Spain's influence over, and relationship with, Latin America, see generally EDWIN WILLIAMSON, *THE PENGUIN HISTORY OF LATIN AMERICA* 233-47, 313-77 (1993); Jean Grugel, *Spain and Latin America*, in *DEMOCRATIC SPAIN: RESHAPING EXTERNAL RELATIONS IN A CHANGING WORLD* (Richard Gillespie et al. eds., 1995).

183. See, e.g., *INDIGENOUS PEOPLES AND DEMOCRACY IN LATIN AMERICA* 33 (Donna Lee Van Cott ed., 1994, 1995); INTERNATIONAL LABOUR ORGANISATION CONVENTION (No. 169) CONCERNING INDIGENOUS AND TRIBAL PEOPLES IN INDEPENDENT COUNTRIES, *reprinted in* 28 I.L.M. 1382 (1989); Catherine J. Iorns, *The Draft Declaration of the Rights of Indigenous Peoples* (1993) (visited May 19, 1998) <ftp://infolib.murdoch.edu.au/pub/subj/law/jnl/elaw/current/iorns2.txt> (recounting and critiquing the development of the Draft Declaration on the Rights of Indigenous Peoples and suggesting revisions that should be incorporated before it is adopted by the UN General Assembly); Fernand de Varennes, *Indigenous Peoples and Language* (1995) (visited May 19, 1998) <ftp://infolib.murdoch.edu.au/pub/subj/law/jnl/elaw/refereed/devarenn.txt> (articulating legal justifications for expansive interpretation of indigenous peoples language rights under international law).

An either/or approach to language reclamation and rights would decontextualize our anti-subordination struggle for language liberty, an approach inconsistent with LatCrit Theory's professed anchoring in an egalitarian and expansive social justice sensibility.

The LatCrit approach to language anti-subordination analysis therefore cannot be limited, or self-limiting, by a privileged centering of Spanish to the exclusion of analogous outgroup grievances regarding subordination through language regulation. The purpose of LatCrit language analysis must be to deconstruct and resist how English suppresses all other languages in this country's numerous and multicultural communities, and how this suppression erases identities and disorganizes communities. Only expansive and egalitarian critique is likely to bring into existence an environment that affirmatively encourages all persons and groups presently suppressed through language regulation to flourish with dignity.

Finally, anti-subordination language analysis in LatCrit theory must reject the gendered inequality that is integral to the structure and elements of Spanish. This rejection is evidenced by our use, in this Afterword, of "Latina/o" rather than simply "Latino" or even "Latino/a" wherever that term appears. This usage denotes the practice of anti-subordination principles within LatCrit discourse because it looks to, and attempts to center, the relative "bottom" of the relevant categories—in this instance of syntax, gender. This practice, though already more generally in use within LatCrit discourse, has not been consistently adopted.¹⁸⁴ We think this inconsistency represents a lapse among ourselves in self-aware and self-critical anti-subordination scholarship because at a minimum this lapse acquiesces to androsexism in Spanish and in its use within LatCrit theory. It is a lapse that in effect continues gender subordination, even if unwittingly.

But the LatCrit community easily can mitigate these effects: what it takes, as often is the case, is an individual and collective decision to practice our anti-subordination commitments with evermore vigilance and detail. Though this single change in our language habits will not of itself eradicate gender inequality within or beyond Latina/o communities, this change does represent an increment of progress toward the development of critical anti-subordination consciousness and community. More importantly, this relatively modest change signifies LatCrit fidelity to substantive principles and methods, and it constitutes an example of practicing theory because it represents anti-subordination praxis. We therefore conclude this brief overview of anti-subordination language issues that are pending for LatCrit theorists with a call to consistent adoption of "Latina/o"

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

within our discourse as part of our larger and ongoing effort to coalesce and advance social justice claims both between and beyond LatCrit scholars.

This brief discussion of race, ethnicity, colonialism, "Latina/o" self-identification and language reclamation in LatCrit theory of course does not exhaust the issues raised by LatCrit II. However, we hope that these notes present useful ideas in the development of LatCrit theory and community. In this instance, as in all others, our aim is to help ensure the relevance of LatCrit work and vision in the progressive pursuit of social justice along multiple legal fronts of oppression through anti-subordination collaboration.

C. Law, Poverty and Culture in the Construction of and Resistance to Latina/o Subordination

The economic tour of San Antonio, an unprecedented innovation within LatCrit programs, opened a variety of political and theoretical possibilities for future LatCrit conferences.¹⁸⁵ For one thing, the tour brought into concrete relief the very different life situations and conditions of poor Latinas/os in the Southwest compared, for example, to the urban slums of the Northeast. In our view, engaging these differences is and must remain a central focus of LatCrit theory. In this section, we therefore focus on class issues to advance the substantial contributions LatCrit scholarship already has made in deepening critical analysis of the multiple diversities within and between the various Latina/o communities throughout and beyond the territorial boundaries of the United States.

More specifically, we focus here on the advances to be made through the exposition of four major themes: first, we stress the need to further compare and contrast the specific legal events and regimes that have been particularly operative in the construction of poverty within and between different Latina/o communities; second, we urge LatCrit scholars to draw specifically on the wealth of interdisciplinary analysis examining the particularities of uneven development and economic restructuring in different geographical areas because this knowledge sheds significant light on the broader economic and political processes through which Latina/o poverty is differentially structured and, hence, on the need to tailor legal reform interventions and political strategies to the particularities of these

185. The tour was a planned program event designed to provide the conference participants with a better understanding of the local political and economic geography. The event was a guided bus tour, with two stops along the way, of various San Antonio areas not usually visited by most. The guide discussed the local and regional political economy that had produced municipal zoning decisions that reflected and perpetuated existing social hierarchies, as manifested materially and presently by the areas we were able to witness. The guide was a longtime Chicana community activist, Maria Antonietta Berriozábal.

processes in diverse localities; third, we emphasize the continuing need for LatCrit scholars to further explore the intersection of law and culture, focusing particularly on the way cultural norms and expectations operate in the social organization and subjective experience of poverty within Latina/o communities; and finally, we return once more to examine the subordination of women in the heteropatriarchal family, this time focusing on the way male supremacy contributes to the reproduction of Latina/o poverty by undermining the collective organization and political mobilization of women workers in Latina/o communities.

Professor Luna's essay within this symposium provides a particularly apt point of departure for this critical analysis.¹⁸⁶ This essay links the deployment of derogatory anti-Mexican stereotypes—currently used in public discourse to legitimate the poverty, marginalization and violence produced by anti-immigrant, anti-affirmative action, anti-welfare and English-only policies—to a historical analysis of the legal events following the conquest of Mexico in what is now the southwestern United States. Through critical analysis of the way race and national identity were represented in land-takings cases after the conquest, Professor Luna shows how the racialization and “othering” of Mexican people in legal discourse was used repeatedly to rationalize and legitimate the dispossession of their lands—in violation both of established constitutional doctrines and of the treaty obligations the United States government had undertaken to confer U.S. citizenship upon, and to respect the property rights of, Mexican people in the newly-acquired territories. Instead, the racialization of Mexicans, in and beyond judicial discourse, created a new class of “true” citizens—the white, Anglo settlers on whose behalf the territories had been conquered—while the citizenship conferred upon Mexican Americans proved to be a second-class concoction of judicial manipulation.

By linking the current structure of Chicana/o land tenure, or rather the lack thereof, to this historical account of the legal doctrines and interpretative manipulations through which Mexican Americans were deprived of their lands and denied the rights of equal citizenship status in Anglo-American jurisprudence, Professor Luna's essay effectively foregrounds important particularities and universalities in the legal construction of Chicana/o poverty. At the same time, her methodological approach, combining history and law, opens up new points of contrast and comparison for LatCrit theory. These gains accrue because Latina/o poverty has been constructed, across space and time, by many different legal events and is maintained in different places by different legal regimes, whose

186. Luna, *supra* note 132.

common elements and particular divergences provide important, and as yet unexplored, sites for LatCrit scholars as we seek to develop more comprehensive understandings of the ways in which Latina/o poverty is constructed and maintained through law. In this manner, LatCrit scholarship positions itself to make important contributions in two distinct but inter-related ways: first, by comparing and contrasting the different historical and contemporary legal events and regimes that have enabled upward mobility for some segments of the Latina/o population and produced poverty in others; and second, by identifying the different avenues of legal recourse and political resistance currently available in different contexts to different Latina/o groups. In this manner, LatCrit theory learns not only the particulars of structural subordination but also uncovers the particulars of effective and efficient resistance strategies.

Certainly, one particularly important legal event in the differential construction of poverty among Latina/o communities has been the different immigration status accorded to different Latina/o immigrant groups over the course of this nation's history: the welcoming reception that Cuban immigrants received in the early 1960s, and which included unprecedented government benefits programs and special speedy naturalization procedures, is in marked contrast to the hostile reception suffered by Salvadoran and Guatemalan refugees in the 1980s or Mexican immigrants in the 1990s.¹⁸⁷ While the early Cuban immigrants enjoyed massive public assistance, enabling them to create a successful entrepreneurial enclave in Miami, the Salvadoran, Guatemalan and Mexican immigrants have enjoyed only the disabilities of their illegal immigration status: low-wage jobs, vulnerability to labor exploitation, non-payment of wages and on-the-job harassment. Approaching the differential incidence of poverty in different Latina/o communities through a LatCrit analysis of the practical and material impact of U.S. immigration laws and related policies could enable LatCrit theorists to provide a powerful framework for developing much-needed counter-narratives in the rhetorical battle over the representation of Latina/o poverty, as well as ammunition supporting progressive policy initiatives in the areas of government assistance and immigration.

Similarly, the objective of identifying new avenues of legal recourse and creating new strategies for political and economic mobi-

187. IN THE BARRIOS: LATINOS AND THE UNDERCLASS DEBATE (Joan Moore & Raquel Pinderhuges eds., 1993) (comparing Cubans, Salvadorans and Guatemalans) [hereinafter referred to as IN THE BARRIOS]; AMNESTY INTERNATIONAL REPORT: UNITED STATES OF AMERICA: HUMAN RIGHTS CONCERNS IN THE BORDER REGION WITH MEXICO (AI Index: AMR 51/03/98) (reporting incidents of brutality by INS officers along the U.S./Mexico border including beatings, denial of food, water, blankets and medical attention, sexual abuse, abusive racist conduct and wrongful deportation of U.S. citizens of Mexican ancestry).

lization to combat Latina/o poverty calls on LatCrit theory to advance its critical analysis of Latina/o poverty by noting the existence and exploring the implications of the new economic and political analyses that are emerging in other disciplines. We especially urge a LatCrit encounter with the political economy and geographies of uneven development as well as the socio-geographies of economic restructuring.¹⁸⁸ These fields of social inquiry focus specifically on analyzing and explaining the way different economic and political processes have structured, and are now restructuring, socio-economic life in different parts of the country and the world. A sustained and critical engagement with this interdisciplinary literature promises significant contributions to our anti-subordination legal scholarship and activism because the kinds of anti-poverty legal strategies most likely to be effective in any particular place or time will depend, at least in part, on the broader economic and political contexts that generate the macro- and micro- processes through which poverty is being re/constructed in any particular place and time. The need for different strategies, policies and legal reform proposals follows directly from the fact that the forms of poverty experienced by different Latina/o communities in these different geographical areas are produced through different economic processes, respond to different political logics and are coalesced by different socio-legal regimes. Thus, LatCrit scholars will need to develop very different legal strategies for combating Puerto Rican poverty in New York, New Jersey and on the island of Puerto Rico as compared, for example, to the strategies needed to combat Chicana/o poverty in the border towns of Southern Texas, or the poverty of Central Americans and more recently-arrived Cubans in Miami.

To be more specific, combating Puerto Rican poverty requires strategies that can effectively intervene in and against the processes of economic disinvestment and industrial relocation that have closed so many industries in the Northeastern "Rustbelt" as well as addressing the particularities of underdevelopment that result from the history and current political logic of Puerto Rico's commonwealth status.¹⁸⁹ These strategies may call for, and therefore channel, LatCrit legal analysis into areas like plant-closing notification and employee-ownership laws, or the legal framework of collective bargaining, or legal restrictions on corporate relocations, or legal strategies to address particular structures and processes in Puerto

188. This literature has been growing in recent years. See, e.g., *NEWCOMERS IN THE WORK PLACE: IMMIGRANTS AND THE RESTRUCTURING OF THE US ECONOMY* (Louise Lamphere et al. eds., 1994); *STRUCTURING DIVERSITY: ETHNOGRAPHIC PERSPECTIVES ON THE NEW IMMIGRATION* (Louise Lamphere ed., 1992).

189. See generally Ediberto Román, *Empire Forgotten: The United States's Colonization of Puerto Rico*, 42 VILL. L. REV. 1119 (1997).

Rico itself. However, reform proposals and strategies developed in response to these particular situations may be completely ineffective or irrelevant to combating Chicana/o poverty in cities along the U.S.-Mexico border precisely because poverty and unemployment in the border towns are linked to different economic processes—and particularly to the mis/fortunes of the Mexican economy.¹⁹⁰ Combating poverty in the border regions may, consequently, call for different legal strategies—strategies, for example, that address the current distribution of land ownership, that promote enforcement of labor and environmental standards in the Maquiladora industry across the Mexican border, and that combat the militarization of the United States border patrol.

It follows from the foregoing that strategies appropriate for combating poverty in the border regions or the Northeast Rustbelt may be completely ineffective in combating the poverty of Central American and Caribbean immigrants in South Florida, nor will they necessarily address the poverty that Latinas/os and indigenous peoples are experiencing in Latin America as a result of involuntary resettlements and internal displacements incidental to development projects or natural resource exploration and exploitation practices of first-world multinationals. Nevertheless, an anti-essentialist anti-poverty social justice agenda must take these particularities into account and attempt to address and resolve them. In doing so, we urge LatCrit scholars to explore the resources available in other academic disciplines precisely because combating Latina/o poverty in its particular manifestations will require LatCrit theorists to understand the different but inter-related economic processes and political logics at work in different geographical areas as part of our efforts to devise, develop and deploy the most effective theoretical, legal and political interventions.

A third major component of a LatCrit anti-essentialist anti-poverty engagement with particularity calls on LatCrits to further our collective understandings of the role of culture in organizing the social dimensions, as well as mediating the subjective experience, of poverty. LatCrit scholars need to explore, and incorporate into our scholarship, more concrete understandings of the way Latina/o cultural norms, values and resources influence the ways that different Latina/o groups experience, understand and respond to the conditions of poverty that affect them. This work is crucial to the ultimate success of any anti-poverty social transformation strategy because both policymakers and other legal decisionmakers are routinely—and perhaps unconsciously—influenced by the way

190. See, e.g., Avelardo Valdez, *Persistent Poverty, Crime, and Drugs: U.S.-Mexican Border Region*, in *IN THE BARRIOS*, *supra* note 187, at 179-84 (recounting economic history of Laredo, Texas and the cities links to the Mexican economy).

Latina/o culture is externally represented in dominant mainstream public discourse.¹⁹¹ Consider, for example, how the deployment of cultural stereotypes about Latinas/os in the underclass debates helped to organize interventions around the presumptions of pathology within Latina/o communities as opposed to interventions that might restructure the lack of economic opportunity in the Barrios: Latinas/os, like African Americans, have been subject to blame-the-victim rhetoric which attempts to attribute poverty and violence within subordinated communities to prescriptively nonwhite cultural norms/values.¹⁹²

At the same time, Latinas/os' uncritical internalization of inherited cultural norms and values may also present real obstacles to political and transformative mobilization. In this vein consider, for instance, how the cultural practices and expectations of ethnic solidarity tend to disguise and legitimate class exploitation within immigrant communities. Focusing specifically on Cuban women working for Cuban American employers in Miami, sociologists Alan Stepick and Guillermo Grenier note that, while the working conditions imposed on Cuban immigrants may routinely violate applicable labor laws and often are equivalent in all respects to the conditions endured by the most exploited illegal immigrants in any other part of the country, Cubans working for Cubans nevertheless do not perceive themselves to be exploited. Their lived experience is mediated by an ideology of ethnic solidarity, and by the "hopes for self-employment within a context of paternalistic employee-employer relationships," that create a paradoxical situation in the Cuban enclave economy: "The enclave allows increased exploitation at the same time that it ameliorates exploitation by providing cultural advantages and the [often, but not always, illusory] hope of self-improvement."¹⁹³ This intra-group dynamic recalls the duality and

191. For a particularly infamous example of the way stereotypes about Latina/o culture can influence perceptions, attitudes and actual decisions made by judges, consider how the ability to speak Spanish was reinterpreted as a disability likely to condemn the speaker to a life of poverty in Judge Samuel Kiser's 1995 decision which held "in favor of a father's 'right' to prohibit the mother of his daughter from speaking Spanish to the child." Judge Kiser is quoted to have asked the mother: "What are you trying to do? Make her a maid for the rest of her life?" See CHALLENGING FRONTERAS: STRUCTURING LATINA AND LATINO LIVES IN THE U.S. 3 (Mary Romero et al. eds., 1997).

192. These imputed group characteristics include fatalism, failed individuation as a result excessive familial entanglements and interdependence reflected for example in the common practice among young Latinas/os to refuse educational or professional opportunities that would require them to move away from their families and a "God will provide" passivity. See, e.g., IN THE BARRIOS, *supra* note 187, at xi, xx-xxi. See Iglesias, *supra* note 34, at 925-29 (challenging assumptions underlying these representations of Latina/o culture and, in particular, providing an alternative account of the cultural and psychoanalytic logic of Latin cultural practices of familial interdependence and individual self-sacrifice).

193. See Alex Stepick III & Guillermo Grenier, *Cubans in Miami*, in IN THE

fluidity of self and social identification that Professor Johnson addresses in his contribution to this symposium,¹⁹⁴ Latina/o subordination is rooted both in Latina/o and in Anglo normativities, and in their interaction—Latina/o disempowerment hinges on internal and external frameworks similarly but differently biased by identity markers like citizenship, language, class, race, gender and other axes of social status. This intra-Latina/o dynamic is real, and Lat-Crit theorists must engage it as such; but internalized reality also must be distinguished critically from the external inscription of group stereotypes that motivate, and distort, policy-making on issues especially germane to Latina/o economic well-being.

The objective of designing appropriate and effective anti-poverty strategies and interventions thus raises all sorts of important and cross-disciplinary research issues about the role of culture in aggravating or mitigating the effects of economic marginality.¹⁹⁵ Recalling the economic tour of San Antonio, we therefore wonder how LatCrit scholars embarking on comparative, critical and particular analyses would assess the impact of assimilation on the cultural resources through which different Latina/o communities have sought to cope with and/or escape the experience of impoverishment and marginalization, and how different levels or forms of cultural and economic assimilation create tensions, obstacles or opportunities within and between poor Latina/o communities.¹⁹⁶ This overview, though necessarily abridged, should leave no doubt of the many cultural issues awaiting LatCrit attention and analysis in incorporating an anti-poverty agenda into our anti-subordination, anti-essentialist project.

Finally, no anti-essentialist anti-poverty social justice agenda would be complete without attending to, addressing, and ultimately intervening to reform the operation of male supremacy in heteropatriarchal Latina/o cultures and communities. Here we return to examine the particular situation of Guatemalan women workers, focusing specifically on those provisions of the Guatemalan Family Code that enable husbands to veto their wives' decision to participate in labor union activities, among others.¹⁹⁷ Just as cultural norms and internalized expectations may function to disguise and legitimate class exploitation, these external and internal influences

BARRIOS, *supra* note 187, at 93.

194. See Johnson, *supra* note 151, at 205-206.

195. For further readings, see IN THE BARRIOS, *supra* note 187; CHALLENGING FRONTERAS, *supra* note 191; NEWCOMERS IN THE WORKPLACE, *supra* note 191.

196. For recent reports, see Victor Perera, *Homogenized Latino*, THE WASHINGTON POST, Sept. 8, 1996, at C3; Maria Recio, *Hispanic Business Ranks Swelling; Assimilation, Affirmative Action Credited*, THE FORT WORTH STAR-TELEGRAM, July 11, 1996, at 1.

197. See *supra* notes 133-134 and accompanying text.

may render invisible the interconnections between the gender subordination of women in heteropatriarchy and the escalation of class exploitation through the poverty it produces. From this perspective, it is easier to see the extent to which the external imposition, legitimation and coercive enforcement of a male monopoly over the labor of women effected through these provisions of the Guatemalan Family Code, in turn, intersects with other practices and dynamics that currently are undermining working class unionization throughout the world.

The detrimental impact of heteropatriarchal cultural practices and expectations on the development of a strong and vigorous labor movement in Latina/o communities within and beyond the United States has been well documented. Indeed, in examining the organizing failures and successes among Chicanas/os in the cannery industry, Patricia Zavella, has noted that:

One of the major problems in the Sun Valley Cannery Workers Committee was the lack of participation by women. Of the original membership, only a few were women, and most of them left because of pressure from their husbands. . . . [This is because] women have domestic obligations and men do not.¹⁹⁸

From this perspective, the provisions of the Guatemalan Family Code convert the obstacles already occasioned by heteropatriarchal stereotypes and male resistance to new gender roles into a legal right for husbands to prevent their wives from engaging in union activity—to the detriment not only to their wives, who are denied the autonomy of self-determination and full and free participation in civil society, but also to the labor movement as a whole.

These ripple effects arise, and are profoundly significant in political and economic terms, because the future viability of the labor movement in the Americas is intricately linked to its future success or failure in organizing women workers: currently and increasingly, women are being employed instead of men precisely because their lack of workplace organization and their responsibilities in the home make them more vulnerable to labor exploitation.¹⁹⁹ As the number

198. Patricia Zavella, *The Politics of Race and Gender: Organizing Chicana Cannery Workers in Northern California*, in CHICANA CRITICAL ISSUES: MUJERES ACTIVAS EN LETRAS Y CAMBIO SOCIAL 127-53 (Norma Alarcón, et al., eds., 1993) (Zavella identifies the gendered division of labor in the family and the readiness with which men enforce it against their wives as a significant obstacle in organizing women workers).

199. Employers increasingly are hiring women because women will often accept lower wages and unstable employment conditions more readily than male workers. See, e.g., Susan S. Green, *Silicon Valley's Women Workers: A Theoretical Analysis of Sex-Segregation in the Electronics Industry Labor Market*, in WOMEN, MEN, AND THE INTERNATIONAL DIVISION OF LABOR, *supra* note 136, at 273-331. Green notes one important aspect of the new international division of labor: women are increasingly employed over men in industries undergoing rapid internationalization both in the Third World and in the United States. *Id.* at 274. The increasing employment of women is in turn related to a profit maximization strategy based on employing the cheapest labor

of women in the work force continues to increase, gendered stereotypes and traditional roles that prevent women from fully participating in workers associations will deprive the labor movement of access to the energies, commitment and engagement of the largest growing sector of workers. What emerges from this brief analysis is but one example of the myriad ways in which the cultural values and practices of heteropatriarchy in Latina/o communities are directly implicated in the dis/organization of class solidarity and collective action against economic exploitation and, in this way, the ripple effects of heteropatriarchy, as expressed through the Guatemalan Family Code and similar legal regimes, are partially responsible for at least as much poverty as might be avoided by the efforts of a vigorous and organized working class.

In sum, then, we are pleased and proud to see that LatCrit theory is beginning the project of developing a richer and more complete cumulative account of class and the different legal events through which Latina/o poverty has been constructed, as well as the role of culture and identity in Latinas/os' chosen methods and modalities of resistance and transcendence. To the extent that time and other limitations permit, exposure to local Latina/o communities during the LatCrit conferences, their places and spaces as well as their local issues and personalities, presents a powerful potential worth pursuing. If this exposure is made more and more ample and interactive, for example, through the inclusion of local activists and issues in LatCrit conference proceedings, it may help to ground our theoretical enterprise in the political struggles of Latina/o communities outside the academy,²⁰⁰ as well as provide LatCrit conferences with a common point of reference for exploring our many diversities over the course of different LatCrit gatherings held in different geographical areas from year to year.

D. *Some Concluding Reflections on LatCrit Scholarship, Community and Transformation*

From the outset of this discourse, LatCrit theorists have displayed an interest in building through our work both a body of trans-

"that is the most productive, exploitable and dispensable in order to maximize the opportunity for cutting costs without confronting the resistance of organized labour. . . . Women are invariably proved to be the source of the cheapest labour, regardless of the type of society we consider." *Id.* at 321; see also Alex Stepick III & Guillermo Grenier, *Cubans in Miami*, in *IN THE BARRIOS*, *supra* note 187, at 83 (noting that Miami's apparel industry was created by the relocation from the North East motivated by the new supplies of female labor and the ability to informalize production by sub-contracting to women who worked in their homes).

200. This move has been addressed by LatCrit scholars in recent years as well. See, e.g., Laura M. Padilla, *LatCrit Praxis to Heal Fractured Communities*, 2 HARV. LATINO L. REV. 375 (1997).

formative scholarship as well as a multiply inclusive community of critical scholars. LatCrit experience to date thus suggests that both our scholarship and our community should be tailored to the advancement of social justice for multiply diverse outgroups, including but not limited to Latinas/os. Most notably, we have embarked on a series of annual gatherings and related publications to advance these dual and synergistic aims.²⁰¹ In our view, these efforts at scholarship and community are co-equal means toward our expansive social justice objectives. Neither need yield to the other; on the contrary, we view scholarship and community in LatCrit theory as mutually-reinforcing anti-subordination methods. We therefore close this Afterword with a few thoughts on LatCrit II and its position or location within this embryonic and evolving record.

As Professor Espinoza's essay usefully reminds us, "Latina/o identity binds and breaks us."²⁰² It does both because this category of identity, like others, simultaneously "gives us power and it subverts us."²⁰³ This dis/empowering duality, which encompasses both external and internal dimensions, frames the production of LatCrit scholarship: LatCrit theory inevitably is produced in the midst of, and through, the identity currents that cross through the LatCrit community as well as throughout this society at large. To rise above crude or self-defeating identity politics, the LatCrit community, like many others, therefore must recognize and come to terms with the complex effects that multilayered identity issues visit on the production, as well as the contents, of our work.

This point motivates the analysis elaborated in the essay by Professor López, which demonstrates and affirms LatCrit theory as critical and self-critical scholarship committed to exploring intra-Latina/o and inter-people of color group issues from an anti-subordination perspective.²⁰⁴ In addressing the concept of "Learning About Latinos," this essay's careful review of the findings and methods of the Latino National Political Survey critiques both the benefits and limits of that project in light of the complexities presented by Latinas/os' socio-economic and political profiles. By reviewing the project in a detailed yet contextual way, the essay maps salient Latina/o interests and issues, including those of nationality, race, assimilation and language regulation. This essay, moreover, evinces anti-subordination purpose because the critique targets for scrutiny the sources and artifacts of dis/empowerment embedded in the project or its data. This essay thus sets an example calling for LatCrit repetition as LatCrit theory locates itself within the larger

201. See *supra* note 1 and sources cited therein on LatCrit symposia and colloquia.

202. Espinoza, *supra* note 61, at 194.

203. *Id.*

204. See López, *supra* note 76.

landscape of outsider jurisprudence and critical legal theory and praxis.

As our preceding discussion of narrative, criticality and social justice in the religion context strongly urges, LatCrit theory must situate itself in a critical and self-critical fashion within the broader discursive background that already has been created, through substantial efforts and at great cost, by outsider scholarship. We must, in other words, envision the gains as well as the limits of the recent past as our joint point of LatCrit departure. This positioning, however, requires a broad learning and a caring embrace of outsider jurisprudence and, in particular, of the lessons and limits to be drawn from its experience, its substance and its methods.

These lessons begin with multiplicity, intersectionality and multidimensionality, which avert essentialist oversight and poise us to manage both intra- and inter-group diversities.²⁰⁵ These lessons continue with the importance of balancing specificity and diversity to create self-critical communities and egalitarian coalitions devoted relentlessly to the vindication of "different" but pending social justice claims. These lessons include the imperatives of praxis and politics in all aspects of our professional lives, and particularly in the crafting of critical legal scholarship as an engine for material social transformation that actually benefits traditionally marginalized groups. These lessons thus begin and end with our personal and persistent commitment to practice LatCrit theory and its anti-subordination ideals in every endeavor and encounter. For us, the LatCrit II conference and this symposium are a reminder that LatCrit theory can realize its full potential only if our nascent community grounds itself in these lessons even as it seeks to transcend the limits of prior experiences and insights.

LatCrit appreciation for the gains and lessons of the recent past certainly is manifest in LatCrit II's formal program: in keeping with past LatCrit custom, this conference once again featured a program designed to ensure vigorous and diversified exchanges across multiple categories of critical legal discourse. LatCrit II welcomed both newcomers and veterans, community activists and policy makers, and academics from within the legal academy as well as from other disciplines. In addition, LatCrit II's formal program continued the LatCrit custom of including the participation of multiply diverse speakers to analyze the Latina/o condition from varied identity positions, and in comparison or relation to other outgroups. Moreover, this program once again evinced LatCrit theory's commitment to transnational and comparative analyses of law and culture. In this way, the LatCrit II program aimed to celebrate and solidify the Lat-

205. See *supra* note 23 and sources cited therein on these and similar concepts.

Crit ideal both of advancing critical knowledge and building intellectual community within and beyond “Latina/o” groups—an ideal born of the outsider jurisprudence and its insights.

Yet, as the experience of outsider jurisprudence also counsels, the transgressive aspects of our work require especially vigilant wariness of the external, institutional circumstances that surround and structure the emergence of LatCrit scholarship and community.²⁰⁶ It should go without saying that LatCrit scholars must guard against the many dynamics, incentives and temptations that might lead us to produce scholarship that is unable to withstand the critical scrutiny of mainstream academics, much less ourselves: to the extent that LatCrit theorists are seriously committed to social transformation and sincerely believe that the theoretical work we do in our scholarship is relevant to that transformation, we must be committed to producing scholarship that will move Latina/o concerns and interests to the center of legal discourse and culture. Only by subjecting our claims and our work to critical and self-critical scrutiny will we succeed in enabling ourselves and each other to achieve the new insights and develop the new strategies and solidarities so necessary to the continued evolution of our collective anti-subordination objectives. This imperative or objective necessitates scholarship that continually breaks new ground, is conceptually rigorous, well-researched and critically reasoned.

It does not, however, mean capitulation to dominant forms or standards of knowledge. LatCrit theory from inception has manifested a keen appreciation of legal scholarship’s inevitably political and politicized implications.²⁰⁷ From the beginning LatCrit theory has demonstrated the capacity to employ, critique and expand the analytical techniques, interpretative methodologies and interdisciplinary resources developed by Critical Race Theory and other outsider scholars.²⁰⁸ To amplify those gains, LatCrit theory need not “go back” and must instead forge ahead with the transgressive means and aims that outsider jurisprudence and prior LatCrit efforts have pioneered: we must collectively and individually dedicate ourselves to imagining and implementing new ways of going forward in light of the myriad lessons to be drawn from past experience.

206. For instance, the experience with legal storytelling, and in particular the nature of the mainstream attack on outsider narrativity, should forewarn LatCrit scholars about the types of critiques that we must anticipate and counter in the first instance. *See, e.g., supra* notes 77–78 and accompanying text. Our task is to show the groundlessness of those attacks without permitting them to chill or coopt our critical anti-subordination work.

207. *See, e.g.,* Cho, *supra* note 33; Culp, *supra* note 158.

208. *See supra* note 1 and symposia cited therein on LatCrit theory during the past several years.

To help ensure the long-term viability of LatCrit theory we proffer one means: we must push ourselves and our colleagues to articulate expressly and continually the linkage of identities to ideas and, more specifically, the linkage of insights derived from identities to ideas for doctrinal and institutional reforms with transformative potential. To secure our work's momentum, we consistently must explicate and emphasize in volatile and varied socio-legal settings the linkage of outsider identity critiques with critical analyses of substantive doctrines and policies that affect the social justice agendas of Latinas/os and other outgroups globally and in the United States. This intensified and explicit linkage of identities to ideas is precisely the insight that underlies Professor Carrasco's essay,²⁰⁹ and we could not agree more.

Reminding us that LatCrit scholars embody multiple roles at once—including employees, activists, teachers, scholars and lawyers—Professor Carrasco's essay insists that we connect insights derived from our performance of these roles to substantive legal doctrines and their progressive reformation.²¹⁰ In effect, Professor Carrasco's essay demands that LatCrit theorists employ multidimensional identities as springboards to anti-subordination theory and praxis. This method is sound and urgent, as it trains our attention to a perpetual source of critical insight: the everyday micro-aggressions that permeate our social and institutional environments daily as we perform our multifaceted roles.²¹¹ Connecting these micro-aggressions to their macro-structures—or connecting ideas derived from experiences shaped by identity—is a powerful source of anti-subordination insight. Through this method of express linkage and its widespread use we thus hope that all LatCrit projects increasingly will demonstrate the relevance and importance of perspective jurisprudence to the project of legal reform and social justice in the United States and beyond.

Of course, this push to link multiplicitous and intersectional identities to liberational insights and reforms is never-ending, and inexorably so. The frontiers of LatCrit theory must be ever-expanding until the outer consequences of our work meet and overtake progressively the edges and centers of social and legal subordination. LatCrit theory must grow in scope and depth until its contours match—and actually overhaul—the conditions of marginality and disempowerment that pervade Latina/o and other outgroup lives. The profundity and intricacy of LatCrit theory must be guided by the

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

210. *Id.* at 332-35.

211. See generally Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1989) (articulating the concept of microaggression in critical legal theory).

complexity and diversity of Latina/o and other outgroup experiences with social injustice.

To this end, we think it important to refocus our collective attention on the need for all LatCrit scholars to keep in mind that we have launched a momentous and long-term project: building a body of scholarship that is socially relevant, that is the basis of a functional multicultural social justice community, and that lives up to the ideals of egalitarianism and anti-subordination. Our enterprise is difficult, draining and continual work, in part because it necessarily entails conflict as well as conflict resolution. If LatCrit theory is to succeed over the long term, we must be willing to express, critique and accommodate difference across multiple axes of experience and position in ways that always are consonant with our anti-subordination proclamations and aspirations. Part of our conscious, collective enterprise therefore must be to conceive and construct a discursive culture where conflict and conflict resolution are integral to the production of enduring and transformative legal scholarship. In sum, the LatCrit community must collectively and individually reach out to understand, embrace and defend the marginalized wherever they be found in this society and beyond it—even, or especially, when we perceive “them” to be “different” from “us.”

Simply put, we cannot fear difference, its articulation, or its exploration. Instead we must welcome the manifestation of difference within and among LatCrit scholars, but with a sense of anti-subordination purpose: through the internal application of anti-subordination insights and methods, LatCrit scholars can focus on the construction of knowledge, communities and coalitions out of unavoidable differences. And when we misapprehend or alienate each other in the self-critical process of discovering various differences amongst us—as humans inevitably do from time to time—we must be able to help each other to learn from the experience and to continue our mutual work on behalf of Latina/o and outgroup anti-subordination objectives.

Thus, in closing this Afterword, our deepest hope and basic aim is that the richly diversified LatCrit community with which we proudly identify will approach each encounter with difference and conflict as an opportunity to reaffirm our individual and collective dedication to anti-subordination analysis and praxis. Indeed, as we have striven to do in this Afterword, we think it most important to seek out and apply anti-subordination methods for self-critical guidance on the very resolution of conflict among us. We can never forget that anti-subordination critique is more than rhetoric; it also is more than a method of understanding and reforming external social injustice. To secure the integrity and power of our work, purposeful anti-subordination consciousness and critical multidimensional

analysis are mandates that remain always applicable internally as well.

CONCLUSION

With this Afterword we seek to contribute to the ongoing construction of a LatCrit discourse and movement by articulating an anti-subordination critique of LatCrit theory as outsider legal scholarship. This critique self-consciously aims to advance multifaceted social justice agendas formed and informed by the multiple diversities of Latinas/os here and abroad. By emphasizing critical anti-subordination theorizing as an overarching method, value and goal of the LatCrit community, we seek through this Afterword both to engage and situate the multivocality of the symposium contributors on various issues, perhaps most notably at the intersection of religion and sexuality. In so doing, our hope is to demonstrate that anti-subordination analysis can provide a flexible yet workable means of confronting, ameliorating, and resolving resolving, the inevitable conflicts of priorities and subjectivities that any collective enterprise, including our own, is bound to encounter over time.