Foreword: Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*

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I.

INTRODUCTION

During the past decade or so the birth and growth of "Critical Race Theory" has enlivened and transformed critical legal scholarship.[1] Not only has Critical Race Theory animated and advanced the law's discourse on race matters, it also has helped to diversify this discourse: Critical Race Theory has ensured (for the first time in American history) that law review race scholarship is produced and published in significant or mainstream venues by scholars self-identified with subordinated racial groups and perspectives.[2] In so doing, Critical Race Theory has ensured that this

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1. Though it is not susceptible of any one definition, Critical Race Theory has been described as the genre of critical legal scholarship that "focuses on the relationship between law and racial subordination in American society." Kimberle Crenshaw, *A Black Feminist Critique of Antidiscrimination Law and Politics, in* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 195, 213 n.7 (David Kairys ed., rev. ed. 1990). *See generally*, Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741 (1994) (introducing the first Symposium devoted specifically to Critical Race Theory in an American law review).

2. Even as recently as the mid-1980s, the *status quo* of American civil rights scholarship was exceedingly white and male. *See* Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561, 561-63 (1984) (arguing that an inner circle of a dozen legal scholars, all white and male, dominated American civil rights legal literature by citing to each other). Today, the various symposia cited below in note 6 include authors speaking from various

expanded written record on race, law, and society includes the experiences, "stories" and insights of marginalized "voices" and communities.[3]

While still in its developmental stages, this lively and influential genre of critical legal scholarship has produced theoretical insights that have begun to penetrate the judicial consciousness.[4] Critical Race Theory, in

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racial/ethnic self-identifications, including Anglo or Euro-American. *See generally infra* note 6 and sources cited therein on critical race discourse.

3. This development, in turn, has produced questions over voice, identity, authenticity, and community both from within and without Critical Race Theory. *See, e.g.*, Robin D. Barnes, *Race Consciousness: The Thematic Content of Racial Distinctiveness in Critical Race Scholarship*, 103 HARV. L. REV. 1864 (1990); Robert S. Chang, *Toward an Asian-American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241, 1 ASIAN L.J. 1 (1993); Jerome McCristal Culp, Jr., *Voice, Perspective, Truth, and Justice: Race, and the Mountain in the Legal Academy*, 38 LOY. L. REV. 61 (1992); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989); Alex M. Johnson, Jr., *The New Voice of Color*, 100 YALE L.J. 2007 (1991); Gerald Torres, *Critical Race Theory: The Decline of the Universalist Ideal and the Hope of Plural Justice -- Some Observations and Questions on an Emerging Phenomenon*, 75 MINN. L. REV. 993 (1991). Not surprisingly, similar issues, themes or points arise in Feminist Legal Theory. *See, e.g.*, Kathryrn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1990); Toni M. Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?*, 87 MICH. L. REV. 2099 (1989). Therefore, it is also not surprising that women of color -- Critical Race Feminists -- have been key participants in this discourse. *See, e.g.*, Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989); Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV C.R.-C.L. L. REV. 401 (1987). Most recently, similar discussions have arisen in the context of sexual minority critical legal scholarship, or Queer Legal Theory. *See, e.g.*, William N. Eskridge, Jr., *Gaylegal Narratives*, 46 STAN. L. REV. 607 (1994); Marc A. Fajer, *Can Two Real Men Eat Quiche Together?: Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men*, 46 U. MIAMI L. REV. 511 (1992).

This scholarship, in turn, has drawn skeptical or hostile rejoinders from various quarters. *See, e.g.*, Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993); Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989). These attacks have inspired spirited responses from scholars identified with Critical Race Theory, Feminist Legal Theory, Critical Race Feminism, and Queer Legal Theory. *See, e.g.*, Jane B. Baron, *Resistance to Stories*, 67 S. CAL. L. REV. 255 (1994); Colloquy, *Responses to Randall Kennedy's Racial Critiques of Legal Academia*, 103 HARV. L. REV. 1844 (1990); 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, *When a Story Is Just a Story: Does Voice Really Matter?*, 76 VA. L. REV. 95 (1990); Marc A. Fajer, *Authority, Credibility, and Pre-Understanding: A Defense of Outsider Narratives in Legal Scholarship*, 82 GEO. L.J. 1845 (1994); Alex M. Johnson, Jr., *Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship*, 79 IOWA L. REV. 803 (1994). These responses likewise have elicited further replies from the skeptics. *See, e.g.*, Daniel A. Farber & Suzanna Sherry, *The 200,000 Cards of Dimitri Yurasov: Further Reflections on Scholarship and Truth*, 46 STAN L. REV. 647 (1994).

4. In some ways, this penetration already may be discerned. A case in point is Lam v. University of Hawaii, 40 F.3d 1551 (9th Cir. 1994) in which the Ninth Circuit adopts an "intersectional " analysis of race, ethnicity, and gender discrimination to grant relief to an Asian woman subjected to illegal employment biases. *See id.* at 1561-62. Under these facts, the racialized, ethnicized, and gendered dimensions of the discrimination could have been parsed and atomized, such that no illegality would be found at the conclusion of the analysis. Resisting this formalism, the court instead focused on the ways in which multiplicitous identities form intersections of oppressions. This sort of analysis originates with the work of leading Critical Race Theorists, including Kimberle Crenshaw and Angela Harris. *See, e.g.*, Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); *see also* Berta Esperanza Hernández-Truyol, *Building Bridges -- Latinas and Latinos at the Crossroads: Realities, Rhetoric, and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1994) (discussing the "multi-dimensionality" of identity in the Latina/o context). *See generally*, Clark Freshman, Note, *Beyond Atomized Discrimination: Use of Acts of Discrimination Against "Other" Minorities to Prove Discriminatory Motivation Under Federal Employment Law*, 43 STAN. L. REV. 241 (1990) (advocating judicial recognition of the inter-connectedness of "different" species of discrimination).

other words, promises to keep affecting not only the way in which race discrimination is conceived and discussed but also litigated and adjudicated,[5] thereby helping to make the sort of practical difference that is a key aim of activist scholars. This branch of critical legal theory thus has filled conceptual, discursive and practical voids in American legal culture, both through its written literature and its repertoire of live events.[6]

Indeed, among the key contributions of Critical Race Theory (and its jurisprudential counterparts) has been the pioneering of post-modern[7] legal theorizing that is skeptical yet progressive, as well as increasingly inter-disciplinary.[8] In particular, the critical legal scholarship of race (and gender or sexual orientation) in recent times has interrogated and helped to debunk various essentialisms and power hierarchies based on race, color, ethnicity, sex, gender, sexual orientation and other constructs.[9] This

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5. *See generally*, Richard Delgado, *Brewer's Plea: Critical Thoughts on Common Cause*, 44 VAND. L. REV. 1, 6-8 (1991) (discussing the limitations of filing amicus briefs, of coining new litigation strategies, and of writing conventional law review articles as sources of impetus for the initiation of Critical Legal Theory).

6. For instance, during the past few years a new set of regional conferences for legal scholars of color has come into existence, in part, as a result of the intellectual room and momentum created by critical race discourse. Today, these annual conferences cover the Northeastern region, the Mid-Atlantic Region, the Southwest/Southeast region, the Western region, and the Midwest region of the country. Though the regional conferences are not focused on Critical Race Theory as such, the annual Critical Race Theory Workshop is a nationwide gathering of scholars devoted specifically to the advancement of critical race discourse. The first of these Workshops was held in 1989 at the University of Wisconsin. For a history of critical race discourse, see generally John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129, 2135 (1992); *see also*, Harris, *supra* note 1, at 741 (providing another, personal account of Critical Race Theory and its origins).

In addition to these ongoing events, the pages of the law reviews during recent years have made plain the contributions of Critical Race Theory to the written literature. *See, e.g.*, Symposium: *Critical Race Theory*, 82 CAL. L. REV. 741 (1994); Symposium: *Race and Remedy in a Multicultural Society*, 47 STAN. L. REV. 819 (1995); Symposium: *Representing Race*, ___ MICH. L. REV. (forthcoming 1996); *Women of Color at the Center: Selections From the Third National Conference on Women of Color and the Law*, 43 STAN. L. REV. 1175 (1991); *see also* Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography*, 79 VA. L. REV. 461 (1993).

7. The term "postmodern" describes a critical approach to various assumptions about the human condition, and to their social construction through words and practices. *See* Harris, *supra* note 1, at 748. *See generally* Anthony E. Cook, *Reflections on Postmodernism*, 26 NEW ENG. L. REV. 751 (1992) (discussing postmodernism in a socio-historical context).

8. Exemplars of this critical and progressive legal scholarship tap into history, sociology, literature, psychology, cultural studies, and other disciplines to push for social redress through theoretical insight and doctrinal reform. *See, e.g.*, Kimberle W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Charles R. Lawrence, III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987); Neal Gotanda, *A Critique of "Our Constitution is Color-Blind"*, 44 STAN. L. REV. 1 (1991); Ian F. Haney-Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1 (1994); Harris, *supra* note 4; Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993).

9. *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. L. FORUM 139 (exposing how women of color are marginalized under the race/whiteness essentialism of Feminist Legal Theory and the gender/maleness of Critical Race Theory); Harris, *supra* note 8, at 588-89 (critiquing the race/whiteness essentialism of Feminist Legal Theory). This sort of non-essentialist work therefore both informs and inspires similar critiques of essentialism in sexual orientation contexts and discourses. *See, e.g.*, William N. Eskridge, Jr., *A Social Constructionist Critique of Posner's* Sex and Reason*: Steps Toward a Gaylegal Agenda*, 102 YALE L.J. 333 (1992); Janet E. Halley, *Sexual Orientation and the Politics of Biology: A Critique of the Argument from Immutability*, 46 STAN. L. REV. 503 (1994); Daniel R. Ortiz, *Creating Controversy: Essentialism and Constructivism and the Politics of Gay Identity*, 79 VA. L. REV. 1833 (1993); *see also infra* note 17 and sources cited therein on sexual minority critiques of Feminist Legal Theory.

discourse has given rise to "outsider jurisprudence"[10] and "perspective scholarship,"[11] which have helped to constitute and establish innovative fields and kinds of legal theorizing. Perhaps most notable among these newer strands of critical and outsider perspectives on the law are Feminist Legal Theory, Critical Race Theory, Critical Race Feminism, and Queer Legal Theory.[12]

An obvious pending task is delineating the inter-relationship, if any, of these various and varied jurisprudential enterprises; indirectly, this Colloquium's focus on a group as diversified as "Latinas/os" calls for some reflection on this task, and on the questions that its undertaking raises. Nonetheless, one point is already clear: driven by a sense of progressive activism, Critical Race Theory, together with these other jurisprudential viewpoints, has infused contemporary legal discourses with a newfound concern for social and legal transformation on behalf of communities traditionally subordinated by dominant legal and social forces.[13] Without doubt, the body of literature and the convening of individuals that flow from the enterprise known as Critical Race Theory have made a continuing difference on multiple planes in the race/power *status quo* within American legal culture.[14]

From its inception, however, moments of tension have punctuated this

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10. The term "outsider jurisprudence" was coined by Professor Mari J. Matsuda to signify the schools of legal literature and discourse that emanate from and focus on "outsider" voices, interests, and communities. *See* Mari Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2323 (1989); *see also* Mary I. Coombs, *Outsider Scholarship: The Law Review Stories*, 63 U. COLO. L. REV. 683, 683-84 (making a similar point with a similar term).

11. The term "perspective jurisprudence" was proffered more recently by Professor Martha Fineman, who defines it as "a body of scholarship that is built explicitly upon the assertion of relevant differences among people, whether they be found in race, class, sexual orientation, social situation or gender." This body of scholarship thus comprises "complementary critical" viewpoints, that are brought to bear on legal doctrines and practices in order to argue for reform. MARTHA FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES 11-12 (1995).

12. *See generally* 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, 343-76 (urging and discussing Queer legal theory).

13. *See generally*, Charles R. Lawrence III, *Foreword: Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819 (1995) (urging a reconceptualization of race and racism as a substantial societal condition that affects entire groups of people rather than simply individuals as such).

14. Sometimes, the best measure of such inroads is the reactions it generates from the established quarters of the status quo. In the case of Critical Race Theory specifically, and of critical legal theorizing more generally, the reactions thus far indicate a certain unease over the methodology and influence of critical race scholarship, at least when produced by scholars of color. *See supra* note 3 and sources cited therein on reactions to and discussions of techniques and points associated with Critical Race Theory. This state of affairs indicates that Critical Race Theory indeed has had an impact on the *status quo*, but it does not mean that Critical Race Theory is comfortably ensconced within the legal Academy. On the contrary, young scholars of color continue to be undermined by a *status quo* that on the whole insists on questioning the very legitimacy of Critical Race Theory, viewing the enterprise as somehow below conventional or traditional legal discourse. *See generally*, Baron, *supra* note 3, at 259 (describing the "nasty" tone of criticism leveled at Feminists and Critical Race Theorists). This self-serving value judgment, of course, has the foreseeable and inevitable result of keeping legal culture and discourse racialized in favor of persons and projects associated with whiteness. *See generally* Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outsider Writing*, Ten Years Later, 140 U. PA. L. REV. 1349 (1992) (discussing practices within the Legal Academy that continue to devalue the work of scholars associated with traditionally subordinated communities).

ongoing constitution of "RaceCrits" as theory and community,[15] and a sense of oddness surrounds this tension because it derives from a curious and continuing paradox: despite the original and sustained centrality of individuals who are women and/or non-African people of color to this enterprise, despite the increased diversity of perspectives and insights that it has brought to legal discourse on race, Critical Race Theory is sometimes experienced and described as both androcentric and Afrocentric,[16] as well as heterocentric. Thus, in recent years, Critical Race Theory (like Feminist Legal Theory) has found itself confronted with the objection that it has replayed the omissions and oversights of the majoritarian *status quo*.[17]

In brief, Critical Race Theory may have been insufficiently attentive to the interplay of patriarchy and white supremacy in the shaping of race and racialized power relations. Its interrogation of "race" perhaps left important "intersections" unexplored.[18] Likewise, Critical Race Theory perhaps has been insensitive to the limitations in scope and depth of the "Black/White paradigm"[19] as an exclusive lens for the deconstruction of race and race-based subordination in a multi-cultural society. The struggle against "race" subordination, if operationally narrowed to the

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15. *See, e.g.*, Crenshaw, *supra* note 4, at 1244 ("Because of their intersectional identity as both women *and* of color within discourses that are shaped to respond to one *or* the other, women of color are marginalized within both" Critical Race Theory and Feminist Legal Theory).

16. As used here, "Afrocentric" denotes a focus on black or black/white relations and not a yearning for, or a return to, Africa. The perception addressed here with this term, as discussed immediately below, is that the scholarship and discourse produced under the rubric of "Critical Race Theory" generally and effectively has equated African American "blackness" with "race" and measured that experience against Euro-American "whiteness" without examining how Asian American, Latina/o and Native American experiences or identities figure in the race/power calculus of this society and its legal culture.

17. *See, e.g.*, Crenshaw, *supra* note 4, at 1242-44 (critiquing the marginalization of women of color in Critical Race Theory and other discourses); Harris, *supra* note 4, at 587-89 (critiquing the failure of Feminism to expressly interweave women of color in Feminist legal theorizing). A similar critique has been leveled at Feminist Legal Theory from a sexual minority perspective. *See, e.g.*, Elvia R. Arriola, *Gendered Inequality: Lesbians, Gays, and Feminist Legal Theory*, 9 BERKELEY WOMEN'S L.J. 103 (1994) (rejecting the use of arbitrary categorization adopted in Feminist Legal Theory); Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191 (1989-90) (examining the marginalization and invisibility of lesbian experiences in Feminist Legal Theory).

18. *See generally* Crenshaw, *supra* note 4.

19. Harris notes:

> African American theorists have, until now, dominated [Critical Race Theory], and African American experiences have been taken as a paradigm for the experiences of all people of color.

Harris, *supra* note 1, at 775. The "Black/White paradigm" thus signifies the reduction of race relations in American society and law to the relations between "white" Euro-Americans to "black" African Americans. Consequently, this paradigm ignores or denies the existence and relevance of persons hued with other colors, such as Asian Americans, Native Americans, and Latinas/os. In addition, this paradigm marginalizes even persons who are hued white or black but who derive from cultural or geographic destinations other than Europe or Africa, such as persons from Caribbean nations, who identify as both black and Latina/o. For a recent discussion of current issues raised by the continued operation and domination of the Black/White paradigm in American law and society, see generally William R. Tamayo, *When the "Coloreds" Are Neither Black nor Citizens: The United States Civil Rights Movement and Global Migration*, 2 ASIAN L.J. 1 (1995) (discussing the limitations of the Black/White paradigm in light of increasingly multicultural and international events, problems, movements, and discourses).

oppression of African Americans, misses the Latina/o, Asian American , Native American and other dimensions of "race"-based power relations.[20] And if Critical Race Theory still wonders "what sexual orientation has to do with race," it is only because it has overlooked the poignant and powerful testimony of the many lesbians, gays, and bisexuals of color who have raised their voices against both homophobia of color and gay racism.[21]

If accurate, these particular shortcomings would be irony in the pure, for Critical Race Theory itself was born of well-warranted reaction to the careless and false homogeneities of traditional legal culture, or even an antecedent movement in modern legal culture—Critical Legal Studies.[22] This earlier movement, which conceived of itself as pluralistic and progressive, discovered that legal scholars from three overlapping communities or groups—women, people of color, and women of color[23] —were profoundly disaffected with the tendency of Critical Legal Studies to slight "minority" scholars and communities even as it dedicated itself to improving the lot of the oppressed.[24] Critical Legal Studies, as a relatively direct precursor of Critical Race Theory, therefore contained or indicated lessons that recent events or dialogs suggest may not have been fully appreciated among RaceCrits themselves. For those of us who affiliate with and are supporters of Critical Race Theory (or of Feminist Legal Theory) the challenge, of course, is to ensure that the omissions or oversights of the past, wherever they be, are rectified resolutely and completely. But that is not all.

In this historical and contemporary context, as this Colloquium shows, the specific roles and places of Latina/o[25] voices, communities, and

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20. *See generally* Chang, *supra* note 3.

21. *See generally* Valdes, *supra* note 12, at 356-60 and accompanying notes. In particular, see *id.* at 359, n.1266 and sources cited therein by lesbians and gays of color. In those writings, the authors decry both the racism of lesbian and gay communities as well as the demands of their communities of color that they lay aside their sexual personalities in order to attain acceptance as "true" members of those communities. These texts, through personal testimony and analysis, show that "race" is in fundamental ways contingent on "sexual orientation" and vice versa; that is, people of color oftentimes are required to manifest heterosexuality to be accepted as authentically raced, while lesbians and gays oftentimes must be white to be authenticated and accepted by those communities. *See also* Valdes, *infra* note 29 (generally discussing the same phenomenon). These texts thus show that "race" and "sexual orientation" combine, or intersect, in the formation of individual and group identities, and that these combinations and intersections inform the way in which particular persons or groups are constructed and (mis)treated culturally and legally. Ultimately, the conceptual and normative background established by these texts indicates that the "race" in Critical Race Theory must be expounded -- preferably by Critical Race Theorists -- to clarify this double-edged ambiguity of the term.

22. *See, e.g.*, Symposium, *Critical Legal Studies*, 36 STAN. L. REV. 1 (1984) (describing, and presenting works of, the Critical Legal Studies movement).

23. *See generally*, Symposium, *Minority Critiques of the Critical Legal Studies Movement*, 22 HARV. C.R.-C.L. L. REV. 297 (1987).

24. *See, e.g.*, Robert A. Williams, Jr., *Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color*, 5 LAW & INEQ. J. 103 (1987) ("Divorced from the essential historical situation of peoples of color ... CLS poses the peril of dangerous irrelevancy for minority people." *Id.* at 126-27); *see also* Joel F. Handler, *Postmodernism, Protest, and the New Social Movements*, 26 LAW & SOC'Y REV. 697, 707-710 (1992) (reporting various minority critiques, asserted during the 1987 Critical Legal Studies Conference).

25. Latina/o law professors come in all colors, sizes, shapes, genders, sexualities, and the like. Nonetheless, those present at the Colloquium gathered there with a sense of ethnicized identity, which was a commonality that co-existed with the other diversities that our bodies, backgrounds, or minds

interests (among others) become an open question: is Critical Race Theory a project of or for Latinas/os *qua* Latinas/os . . . should it be, can it be?[26] For Latina/o legal scholars, several key underlying questions immediately arise. Does the Black/White paradigm somehow define or delimit Critical Race Theory in a conclusive or definitive manner? Conversely, do or can critical race discourses and venues place Latinas/os at the center, at least for some significant portion of the time? Is critical "race" theory concerned with "ethnicity"? Should it be? Is, can, or should Critical Race Theory be a viable and inviting project to those with a Latina/o subject position?[27]

To nudge the discourse on these pending questions, the pages that follow present the remarks delivered at a Colloquium on *Representing Latina/o Communities: Critical Race Theory and Practice*, held by the Law Professors Section of the Hispanic National Bar Association in October 1995.[28] These remarks present an array of perspectives, foci, methodologies, and conclusions. On their face, these diversities evidence both the richness of the existing work produced by Latina/o legal scholars and the range of identity and intellectual pluralisms that presently exist in the Latina/o law professorate of the United States. Whether or not one (dis)agrees with any of these scholars on any given point or conclusion, these multiply-diversified authors and works display the extent of contribution that Latina/o critical legal scholars have made, are making, and will continue to make, to contemporary conversations about race, ethnicity, and gender subordination.

Precisely because of their multiple diversities, these works confront a dilemma prominent in current critical legal discourses, including Critical Race Theory: the sameness/difference dilemma.[29] In recent years this

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exhibited. My collectivization of law professors who self-identify as "Latinas/os" is meant to invoke that sense of shared groupness.

26. Consider the following observations focused specifically on the participation and representation of Latinas/os in Critical Race Theory. The first anthology devoted to Critical Race Theory was published only last year. Though edited by a Latino legal scholar of towering influence among RaceCrits -- Richard Delgado -- its authors are primarily Black, heterosexual men. For instance, of the 41 authors represented in that compilation, seven self-identify as Latinas/os. Likewise, the first full-fledged Symposium by a major law review devoted to Critical Race Theory, published in 1995 by the California Law Review, featured nine authors. *See supra*, note 6. Of those, one -- again, Richard Delgado -- was Latina/o. *Id.* Similarly, the most recent Critical Race Theory Workshop, held at Temple University School of Law in 1994, gathered about 35 individuals. Of those, two were Latinas/o (and three were *openly* lesbian, gay or bisexual).

It bears emphasis that, in each of these instances, the organizers of the events or programs were sensitive to issues of diversity. Nonetheless, the recurring results are relatively homogenized. These and other results therefore raise, at the very least, an appearance of underinclusiveness, which is problematic at least to those who are left with a sense of exclusion.

27. The term "subject position" denotes the perspective, standpoint or approach of the author regarding the topic or issue being addressed. *See* Robert S. Chang, *The End of Innocence, or, Politics After the Fall of the Essential Subject*, 45 AM. U. L. REV. 687, 690-91 (1996).

28. The Colloquium was organized by the Law Professor Section of the Hispanic National Bar Association (HNBA), and took place in conjunction with the 1995 annual meeting of the HNBA. The Colloquium was sponsored by University of Miami School of Law and co-sponsored by the *La Raza Law Journal*. The University of Puerto Rico sponsored related events. The works that follow represent most, but not all, of the remarks or papers delivered at the Colloquium.

29. This dilemma is the negotiation of sameness and difference, which in turn implicates essentialist and constructionist views of society and identity. *See generally* MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW (1990). This sameness/difference dilemma is related to the critiques of Critical Race Theory and Feminist Legal

dilemma has attracted much commentary in critical legal discourses of race (and gender) as scholars self-identified with traditionally subordinated communities sought to theorize from particularized subject positions.[30] The recent proliferation of outsider or perspective jurisprudence has brought with it questions and critiques of identity and community, of sameness and difference. This sameness/difference multilog, as the works presented in this Colloquium attest, remains open-ended for and among Latinas/os as well.

In fact, these works suggest that sameness/difference discourses are compelling to Latinas/os because the category "Latina/o" is itself a conglomeration of several peoples from varied cultures and localities, all of which have managed to become thoroughly embedded in American society through different yet similar experiences. These group experiences include, but are not exclusively about, Mexican-American, Puerto Rican, and Cuban-American communities.[31] Each of these (and other) Latina/o sub-groups not only comprises "different" national origins and cultures but also diverse spectrums of races, religions, genders, classes, and sexualities. Given these multi-textured groups, and their wide ranges of overlapping experiences vis a vis the dominant culture of this Euro-American society, issues of sameness and difference *must* be a source of fascination and dissection for Latina/o legal scholarship—they are exactly the issues with which any conception or practice of coalitional Latina/o pan-ethnicity in the United States must grapple.[32]

Theory, which object to the apparent and exclusionary assumptions of race and gender within those discourses. *See supra* notes 17 and 19 and sources cited therein on critiques of Critical Race and Feminist Legal Theory. The challenge, it seems, is to recognize and accommodate differences while using commonalities to build coalitions. *See generally*, Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities and Inter-connectivities*, 5 S. CAL. REV. L. & WOMEN'S STUD. 25 (1995) (discussing issues of sameness and difference based specifically on race and sex within lesbian and gay legal scholarship, and urging a sense of "inter-connectivity" to help traditionally subordinated communities develop more effective and enduring coalitions).

30. *See, e.g.*, Regina Austin, *Black Women, Sisterhood, and the Difference/Deviance Divide*, 26 NEW ENG. L. REV. 877, 879 (1992); *see generally* Joan C. Williams, *Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist and Critical Race Theory*, 1991 DUKE L.J. 296.

31. *See* Hernández-Truyol, *supra* note 4, at 383-96 (providing a demographic and historical summary of Latinas/os in American society); *see also* Gloria Sandrino-Glasser, *Los Confundidos: De-Conflating Latinas/os' Race and Nationality* 10-54 (providing a comparative review of the Mexican American, Puerto Rican, and Cuban American histories and experiences) (unpublished manuscript on file with author).

32. The notion of Latina/o pan-ethnicity rests on "the pan-Latin[a/]o consciousness emerging in this country" in tandem with a recognition that "we must never obscure the uniqueness of the experiences of these various Latino groups." Angelo Falcon, NEWSDAY, Sept. 3, 1992, at 106. Pan-ethnicity in the Latina/o sameness/difference context results from the conclusion that "more brings [Latinas/os] together than separates them within the political [and legal] process" of American society. *Id.* The works presented in this Colloquium manifest precisely this sort of consciousness with respect to Latina/o pan-ethnic identity. *See also infra* notes 99 - 118 and accompanying text for a further discussion of coalitional pan-ethnicity.

Yet, within these (and other) diversities, the remarks below manage to share and exude a sense of commonality that threads them into one whole here: they are the work of scholars who identify as, or are concerned with, Latinas/os in American society. These scholars, due to heritage, experience, and volition are well-positioned, and they have elected, to speak here as agents of Latina/o legal scholarship in a social and theoretical context that frequently overlooks Latina/o existence. As a set, these works display both a sense of individuality and collectivity, of difference and sameness. This Colloquium manifests, in a specifically Latina/o context, some ability to traverse the grounds of a postmodern pan-ethnicity with caring, constructive, and progressive outlooks. In this way, this Colloquium also reflects the larger issues confronting Critical Race Theory at this historical moment.

This moment in the history of Critical Race Theory, so gracefully and incisively presented by Angela Harris in her Foreword to the 1994 Symposium on the topic by the California Law Review, captures the stresses, lessons, and opportunities posed by our era's experience with modernism and postmodernism.[33] In that Foreword, Professor Harris engages three complex phenomena and points, which inevitably frame and inform not only the current state of Critical Race Theory, but also this Colloquium. These three phenomena and points are: 1) the benefit in turning the tensions that arise from the interplay of modernism and postmodernism in critical legal scholarship into an opportunity to advance critical legal theory;[34] 2) the simultaneous pursuit of sophistication and embrace of disenchantment to achieve a creative discursive balance that generates progressive and transformative theorizing;[35] and, 3) the need to initiate a politics of difference and identification that will foster a nuanced and capacious jurisprudence of reconstruction to alleviate myriad forms of human suffering.[36] These points, in turn, can aid the design and creation of a "reconstructed"[37] and "sophisticated"[38] modernism via Critical Race Theory and outsider jurisprudence.

Professor Harris' Foreword therefore serves as an excellent point of departure and reference for any consideration of the works constituting this Colloquium. The participants are outsider scholars electing to identify with each other despite differences of race, sex, class and sexuality, using this Colloquium as an opportunity to practice a "politics

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33. Harris, *supra* note 1, at 759-84.

34. *Id.* at 759-63. This interplay entails a continuing the pursuit of modernist ideals, such as equality and dignity related to constructs such as race, sex, ethnicity or sexuality, while recognizing the instability and subjectivity that problematizes these ideals and constructs in a postmodern setting.

35. *Id.* at 766-80. The balancing of sophistication and disenchantment effectively calls for a careful parsing and articulation of modernist ideals and goals from a continually critical, and postmodernist, stance.

36. *Id.* at 760, 783-84. A politics that embraces both difference and identification can accommodate particularity within an overarching sense of alliance against the myriad forms of discrimination that interlock in various ways to secure the devaluation of non-male, non-white, non-heterosexual people and groups.

37. *Id.* at 775.

38. *Id.* at 778.

of difference" and a "politics of identification" through various jurisprudential methods. Their remarks indeed are charmed by the "creative balance" of "sophistication and disenchantment" that can yield a "jurisprudence of reconstruction" from the current sameness/difference identity tensions in critical legal scholarship.

In fact, the remarks presented below consistently exhibit a strong sense of commitment to the modernist goals of dignity, equality, and justice while accepting and proceeding from the postmodern problematization of these concepts. The tension that resides in the coexistence of modernist and postmodernist influences within these works provides a glimpse into a critical legal discourse "suspended in creative balance" to advance the anti-subordination project.[39] These remarks, individually, display that the tensions between modernist identity politics and postmodern identity theorizing does not entail incoherence;[40] this Colloquium, as a whole, is an act of creative balance, suggestive of a post-postmodernism in critical legal scholarship that bodes well for the future of Latina/o participation in critical legal discourses devoted to race, ethnicity, and subordination.

This Colloquium thus occurs at the intersection of progressive critical legal discourse: the residual, resilient power of the Black/White paradigm over the American consciousness regarding race/ethnicity group relations, and the emergence of post-postmodern identity theories and politics . Because current discourses regarding race/power relations often seem to track mostly the relationship of unitary blackness to unitary whiteness, this Colloquium is, first and foremost, a by-product of the discursive practices that operate within America generally, and within Critical Race Theory specifically, to the exclusion of other racialized (and gendered) groups, such as Latinas/os. The message is simple: the politics and techniques associated with this paradigm keep *all* peoples of color in subordinated positions. Its dismantlement requires a more textured critique and a more expansive discourse.

Indirectly, if not frontally, this Colloquium consequently occasions continuing reflection on the inter-related meanings of the Black/White paradigm and the sameness/difference dilemma in post-postmodern theorizing, and it specifically invites a place at the table for Latina/o legal scholars and others interested in the conditions of Latina/o communities.[41] The remarks presented at this Colloquium therefore do more than display the vigor, richness, and promise of a nascent Latina/o legal scholarship. They beckon a larger renewal of the broader anti-subordination project with Latinas/os as full discursive participants.

The work and thought that unfold below thus suggest a need and place for a prospective community of critical legal scholars that is self-consciously Latina/o; this Colloquium, in addition to occasioning

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39. *Id.* at 780.

40. *Id.* at 759.

41. Persons who do not self-identify as "Latina/o" may be interested in, or implicated by, this Colloquium. Indeed, as the works that follow attest, participation in this Colloquium confirms the point. *See, e.g.*, Robert Chang, *The Nativist's Dream of Return*, 9 LA RAZA L.J. 55 (1996).

reflection on Latinas/os and Critical Race Theory, also provides an occasion for contemplation of "LatCrit" theory or discourse.[42] Because they prompt reflection on the underlying questions noted above, the set of remarks that constitute this Colloquium indirectly call for further exploration of the prospects for a Latina/o critical legal discourse that is more openly, directly, and unabashedly Latina/o in content and focus.[43] However, this prompting of further reflection is only a beginning.[44]

Set against this background this Foreword is focused on both the Practices and the Possibilities that I associate with Latinas/os and critical legal scholarship on race, ethnicity, and other sources of subordination in American law and society. Its title thus reflects this Foreword's core thesis: as illustrated by this Colloquium, the time has arrived to move from past and present practices to the powerful possibilities that beckon. This progression not only will preserve the gains of recent years but also can help reinvigorate the anti-subordination agenda.

This Foreword thus divides into two parts. The first is devoted to practices and the second to possibilities. Neither part, however, is an attempt to catalog comprehensively either practices or possibilities; rather, each is limited to the practices or possibilities that are evidenced or suggested by this Colloquium.

Focusing mostly on the express or implied messages contained in the texts of these remarks, this Foreword reflects on current practices, as addressed in these works, to raise some of the possibilities that these messages might augur specifically for the future of Latina/o legal scholarship. In these opening lines, my purpose is to speak both to the present that is, but also to the future(s) that might be. After reviewing and discussing the predominant or common themes and points or practices within each of the following presentations, I therefore conclude with some thoughts about the possibilities they might foretell as a set.

Finally, it bears emphasis that, by publishing these remarks in this way, the Colloquium organizers and participants, and the *La Raza* editors, seek several gains. First, we seek to make the thoughts and ideas presented at the live version of the Colloquium more readily accessible to those who were unable to; we hope, in other words, to create opportunities for a form of virtual attendance. Second, we seek to amplify the body of legal literature devoted to the discussion of issues particularly germane to Latina/o concerns and communities; in consequence, we intend to elevate both these concerns and communities, as well as the current state of knowledge and awareness in American legal culture. Third, we seek to

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42. Indeed, the "LatCrit" naming occurred during conversations that took place during the Colloquium. For a historical account of LatCrit theory's origination, see Francisco Valdes, *Poised at the Cusp: LatCrit Theory, Latina/o Pan-Ethnicity and Latina/o Self-Empowerment*, 1 HARV. LATINO L. REV. (forthcoming 1996-97) (Foreword to Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*).

43. Consequently, this further consideration and exploration is taking place in the form of the First Annual LatCrit Conference, scheduled for May 2-5, 1996 in La Jolla, California. This LatCrit Conference is sponsored by California Western School of Law and co-sponsored by the Harvard Latino Law Review, which will publish the papers and proceedings of the conference in its inaugural issue during 1996-97. *See id.*

44. Preliminary planning for the Second Annual LatCrit Conference, to be held in May of 1997, already is underway. For more information, contact the author.

build relationships among and between Latina/o legal scholars and journals; in this way, we aim to foster the success of both. The seven presentations that follow, each somewhat akin to an "oral essay" in its published format, make evident the value of this effort.

II.

ON PRACTICES:

LATINAS/OS AS AGENTS AND OBJECTS OF CRITICAL LEGAL DISCOURSES

The first presentation, by Leslie Espinoza, could not be more timely, given the current state of legal and cultural politics and practices regarding group relations based on race, ethnicity and gender in American law and society.[45] These relations and practices, increasingly characterized by a politics of backlash against the recent gains of women, people of color, and sexual minorities in American society,[46] have resurrected an old conception of "merit" as an antidote to "reverse discrimination."[47] The backlashers wage their politics of retrenchment in part by valorizing falsely "objective" markers of merit as the cornerstone of a supposedly color-blind utopia in American law and society.

Within legal culture specifically, these politics of backlash and retrenchment designate merit, as constructed and assigned under the LSAT, to be the exclusive device policing the gateway to the power and privilege that attaches to the legal profession in the United States.[48] With the return to the primacy of the LSAT ensuring a legal meritocracy, we are granted license to disengage from a critical or vigilant approach to race, ethnicity, and gender hierarchies in American legal culture. In this current retrenchment, merit will save American law from race and its related practices or constructs.

But the futility of this yearning for a merit that never was, is driven home by the direct and sustained unpacking of this paragon of objective merit in contemporary American legal education. Through her dissection of actual and recent LSAT questions—the means by which the revelation, imputation, and allocation of lawyerly "merit" is to be practiced—Professor Espinoza reveals how the social construction of merit under the LSAT operates as a reification of stereotypes and power relations rooted in the social construction of race, ethnicity, and gender. In this way, she confirms that merit itself is a construct, which also is pervasively racialized,

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45. Leslie Espinoza, *Comments by Leslie Espinoza*, 9 LA RAZA L.J. 33 (1996).

46. Keith Aoki, *Foreword: The Politics of Backlash and the Scholarship of Reconstruction*, 81 IOWA L. REV. (forthcoming 1996).

47. *See generally*, Daniel A. Farber, *The Outmoded Debate Over Affirmative Action*, 82 CALIF. L. REV. 893, 909-11 (1994) (discussing critiques of "merit" in law school admissions and other settings).

48. *See generally* Leslie Espinoza, *The LSAT: Narratives and Bias*, 1 AM. U. J. GENDER & LAW 121 (1993).

ethnicized, and gendered. Her scrutiny of the LSAT exposes how the biased construction of race and gender in American culture biases the construction of merit itself specifically in American legal education.

Thus, it is Professor Espinoza's work that can save us from the ravages of this lopsided vision of merit, and from its pernicious consequences on people of color and women. She asks, "Should [admissions decisions] be based on biased questions?" Even more fundamentally, she poses a question that backlashers never address directly: "What makes a good lawyer?"[49] Acknowledging that the educational testing community has made "consistent efforts" at the elimination of bias during the past ten years, Professor Espinoza concludes that, today, the practice of "bias is less obvious although it is still pervasive. Often the bias now appears in the answer choices."[50] Professor Espinoza's work shows the futility of seeking haven from our racialized and gendered world in this resurrected (mis)conception of merit.

The following presentation, by Juan Perea, follows Professor Espinoza's substantive deconstruction of the LSAT in a practical setting: using anecdotal and episodic data, he further unpacks the same or similar normative stereotypes and practices that distort the LSAT and that, consequentially, infect the minds and attitudes of those provided entree via the LSAT to American legal culture.[51] Presented with wit and brevity, this unpacking takes the form of four seemingly lighthearted but profoundly revealing questions, which frequently are asked of Latinas/os in American legal settings. Each of these questions opens a window into the construction and operation of Latina/o identity in American law and society, and into the practice of racialized and ethnicized discrimination against Latinas/os within contemporary legal culture.

By posing this set of questions in this particular sequence, Professor Perea prompts us to consider, from different angles or through different experiences, the place and prospects of Latina/o people in an Anglo-constructed society and legal system. By addressing the passive-aggressive sub-text of each query, Professor Perea demonstrates how they operate to undermine the status and position of Latinas/os in the law and throughout society. Ranging from the "what are you question" to the "you don't belong here conundrum,"[52] this litany of subversive and offensive queries reminds us that Latinos/as, like other people of color, have secured only a tenuous toehold in America's legal professions.

Accompanied by a host of suggested responses, Professor Perea's questions also point out how daily life presents Latina/os with manifold opportunities to engage the microaggressions[53] of daily life in a racist and ethnocentric society and legal system. Each of the queries and episodes effectively describe the practice and precepts of racism, ethnocentrism,

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49. Espinoza, *supra* note 45, at 34.

50. *Id.* at 36-37.

51. Juan Perea, *Suggested Responses to Frequently Asked Questions about Hispanics, Latinos and Latinas*, 9 LA RAZA L.J. 39 (1996).

52. *Id.*

53. *See generally* Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1989).

and nativism; each of these instances thus create occasions for the practice of anti-racist, pluralist, and egalitarian politics. Presented as they are with humor and grace, these questions and episodes display both the need for, and the exercise of, individual action and courage in blunting the social and legal forces that deploy Latina/o identity to subordinate those who are Latina/o-identified.

These two presentations, by Professors Espinoza and Perea, therefore ought to prompt Latina/o scholars to reflect in earnest on the way in which the classrooms and corridors of our legal institutions might look after the current wave of regressive politics is exhausted. These presentations are topical and propitious because they can, and should, excite increased and prompt resistance to this current wave among Latina/o legal scholars. As Professor Keith Aoki points out in a similar setting, the current wave of backlash is "far from being a phenomenon of mass consensus, the social terrain on which backlash occurs is hotly contested. It is far from clear that 'backlashers' will carry the day."[54] Thus, it is crucial for Latina/o legal scholars to weigh in with discursive and activist interventions while it (still) counts. With their remarks at this Colloquium, Professors Espinoza and Perea present us with vivid reasons for acting without delay, as Latina/o legal scholars, in the service of the social and legal causes that resist retrenchment in all its forms and fronts.

The third presentation, by Angel Oquendo, shifts the discussion to a broader and more theoretical plane.[55] Through an explicit consideration of Latina/o identity as a species of "race" in American society, Professor Oquendo invites Latinas/os to consider in tandem the social construction of ethnicity and race. By pivoting the discussion explicitly on a comparative and cultural approach to these constructs, Professor Oquendo accomplishes two important points regarding current practices and their discontents. First, he underscores the social construction both of race and of ethnicity in the norms and rules of American society, both historically and presently. Second, Professor Oquendo's historical and conceptual approach allows for a lingering contemplation on the commonalities among and between African Americans and Latinas/os as "people of color" in a society that culturally and legally has espoused white supremacist ideology for most of its time as a nation.[56] These two points are broadly important because they elucidate both the current practices and prospective possibilities regarding "sameness" and "difference" that sometimes separate African American and Latina/o perspectives and efforts.

By reflecting on the meaning of "race" to Latinas/os in this country, Professor Oquendo's presentation illuminates the way in which both African Americans and Latinas/os are implicated in the current, or in alternative, social constructions and applications of this concept. It follows, then, that both African Americans and Latinas/os are implicated in the resistance against the current practice of race/ethnicity backlash and

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54. Aoki, *supra* note 46, at ___.

55. Angel Oquendo, *Comments by Angel Oquendo*, 9 LA RAZA L.J. 43 (1996).

56. *See generally* DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM (1992).

retrenchment. These points thus can help to facilitate and inform the coalitional outreach that leaders and activists, both in the law and outside of it, must undertake mutually and continually in order to bring the energies of these two communities into line with one another in our corresponding quests to extirpate white supremacy from American law and society.

In this vein, Professor Oquendo's analysis also leads to a similar consideration of sameness and difference between Latinas/os and other colorized immigrant groups, such as Asian Americans. This prompting follows in particular from Professor Oquendo's identification of immigration-related experiences and nativist prejudices as central to the creation and texturing of Latina/o communities and concerns. In this way, Professor Oquendo contextualizes race in its relationship to culture, ethnicity, and nativism. Professor Oquendo's remarks consequently leave us thinking about the ways in which Latina/o legal discourses might converge specifically with its Asian American counterpart.[57]

Past and present experience points to several areas of convergence. For both Asian Americans and Latinas/os, the dominant constructions of race, ethnicity, and culture become salient features of colorized otherness, despite the diversity of humans grouped under each of these generalized categories. Both of these groupings takes place outside of, and suffer erasure under, the Black/White paradigm. At the same time, both of these groupings ignore or deny the diversities crowded into them. For these reasons, both Asian American and Latina/o scholars have many sources and sites of possible or potential sameness and difference to excavate in the years to come.

However, Professor Oquendo's presentation accomplishes even more. In pointing us toward a contemplation of sameness and difference between the various communities of color that have come into existence within, and as part of, the American nation, Professor Oquendo also reminds us of the sameness/difference dilemmas *within* Latina/o communities. His words serve to remind us of the historical and demographic fact that this generalized group—"Latinas/os"—in fact comprises several distinctive groups, each with even more specialized ethnic identities: Mexican-American, Puerto Rican, Cuban, Dominican, Nicaraguan, Salvadoran, and more.[58] Recognizing that the American experiences of each such population has been different from the rest, Professor Oquendo nevertheless posits relevant parallels among them. In this way, this presentation can help lay some of the groundwork for Latina/o pan-ethnicity.[59]

For instance, he describes issues that revolve around language as common to all Latinas/os, even though the migration patterns of Mexicans, Puerto Ricans or Cubans may have differed from each other,

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57. *See generally* Chang, *supra* note 3 (calling for the initiation of a consciously Asian American genre of critical legal scholarship and discourse); *see also* Colloquy, *The Scholarship of Reconstruction and the Politics of Backlash*, 81 IOWA L. REV. (forthcoming 1996) (a collection of works by Asian American scholars devoted to issues of Asian American legal scholarship).

58. *See supra* note 31 and sources cited therein on Latina/o diversities, both historically and presently.

59. *Id. See also* accompanying text.

and also from those of other Latina/o groups in American society. Indeed, Professor Oquendo discerns a common uniqueness among Latinas/os, resulting specifically from the unfolding of the Latina/o colonial experience on this continent: focusing on the territorial expansionism of American policy, Professor Oquendo observes that "[t]he Latina/o community did not come to the United States; the United States came to the Latina/o community."[60] This unique history, he argues, positions Latinas/os singularly vis a vis other immigrant groups while also situating Latinas/os in a common position vis-à-vis each other.

While characterizing the historical Latina/o experience vis-à-vis the American government as unique in its colonial dynamic, this presentation nevertheless raises the specter of similar colonial experiences. Professor Oquendo's historical exposition reminds us that, in some ways, the conqueror always comes to the conquered. He reminds us that American and European governments practiced colonialism against native peoples around the world by journeying to their lands, deceiving and destroying their systems of order, ravaging and looting their economies and cultures, and obliterating the memories of indigenousness.[61] Paraphrasing his main point, Professor Oquendo's presentation reminds us that, in some ultimate sense, people of color did not come to the United States; the United States, and other imperial powers, came to us.

Consequently, this presentation can serve as a reminder that struggles framing the historical experience and group psyche of Asian Americans and African Americans in some ways reflect the Latina/o experience. Though different imperialist powers or geographic locales were involved, the basic strategy of colonial aggression and transgression remains invasive; in each instance, imperialism recurs as a mission of search, and then of destruction. Professor Oquendo's presentation thus invites us to revisit sameness and difference, both within and beyond Latina/o communities, in colonial and post-colonial terms. Indirectly, this presentation invites us to engage at a broad, inter-people of color level, the politics of difference and identification that may lead productively to a next wave of critical race discourse.[62]

This presentation, like the preceding two, consciously pursues a synthesis of theory and practice. Focusing on litigation and other strategies of socio-legal reform, Professor Oquendo presents his analysis as an act of political resistance to the use of law in the continuation of white supremacy. Or, in Professor Aoki's terms, against the reimposition of white supremacy through the politics of backlash.[63] Like Professors Espinoza and Perea, Professor Oquendo thus helps to bring into the open the bottom-line stakes involved in Latina/o critiques of the power relations embedded and maintained in the law: these stakes, even in a postmodern world, include modernist objectives like individual and community safety,

60. Oquendo, *supra* note 55, at 43.

61. *See, e.g.*, Valdes, *supra* note 12, at 236-42, n.873 for a similar discussion, and additional sources, focused on the Native American experience.

62. *See supra* notes 33 to 40 and accompanying text.

63. *See supra* note 46 and accompanying text.

dignity, and even—sometimes—survival itself.[64]

These three scholars, by word and deed, demonstrate how Latina/o legal scholarship can be an activist undertaking responsive to the historical and contemporary conditions of Latinas/os in this country. By helping to document and deconstruct these conditions, and the law's complicity in their creation and perpetuation, these three scholars individually and collectively show why Latina/o critical legal scholarship must be consciously activist: to be relevant to the communities that it purports to serve in a more than (merely) theoretical or abstracted way, Latina/o legal scholarship must be informed by and directed at the lived experiences of the people who constitute and populate these communities.

The next presentation, by Celina Romany, takes up this thematic progression as if by design.[65] In her presentation, Professor Romany explicitly focuses on the relationship of Critical Race Theory and Feminism from her professed subject position—she is a woman of color, a Latina, whose social and physical identities occupy both of these theoretical domains by straddling the divides between them. She notes how colleagues from the island of Puerto Rico view with skepticism Critical Race Theory; she notes how critical race theorizing has advanced her work while, at times, marginalizing her community. "As we speak, Critical Race Theory has a North American face . . . Critical Race Theory not only must go 'international' but also should expand its discourse to properly address the multifacetedness of racism . . . Moving beyond the Black and white framework in an political account [of racism] is an important first step."[66] Fortunately for us, she helps us to take it.

With this opening, Professor Romany invokes a hybrid theoretical stance. She positions herself as a Critical Race Feminist.[67] And she does so, unmistakably, as a Latina "who wishes to seize commonalities among Latinas while respecting the differences."[68] Echoing themes similar to Professor Oquendo's, Professor Romany specifies that "[i]dentity, language, and form the tripod on which [her] analysis rests."[69]

Proceeding from the "cultural resistance to Anglo assimilation" that is the hallmark of Latina/o civil rights struggles, Professor Romany's aim is to expose the "gender specific character of racial, ethnic, and cultural devaluation."[70] This positioning and focusing, specified explicitly at the outset of the paper, epitomizes the practice of willful synthesis and creative balance that symbolizes the finest of political and theoretical possibilities for the future of Latinas/os, Critical Race Theory, and post-

64. The fundamental nature of these stakes is what makes "rights talk" important to subordinated communities. *See* Harris, *supra* note 1, at 750-51.

65. Celina Romany, *Gender, Race/Ethnicity and Language*, 9 LA RAZA L.J. 49 (1996).

66. *Id.* at 49-50.

67. *Id.* at 50.

68. *Id.*

69. *Id.*

70. *Id.*

postmodern anti-subordination legal discourses.[71] This blending of modernist purpose and postmodern perspective points the way to a powerful future for the nuanced sort of outsider or perspective jurisprudence that may yet be crafted.

With this purpose, Professor Romany at once expands the analysis beyond race and into gender, while managing to situate ethnicity at the center of this expanded discourse. With this approach, she highlights the inter-connectedness of race, ethnicity, and gender in American law; that is, with this approach, Professor Romany brings into sharp relief why critical legal scholarship must be expansive and inclusive, and specifically why Latina/o analyses of our places and prospects in the social and legal scheme of a patriarchal, Anglo power structure must take varied sources of oppression into account. With this analysis, Professor Romany brings a salutary sense of inter-connectivity to Latina/o critical legal discourse, and also to the two theoretical genres that she critiques and unites in this presentation.[72]

In this way, Professor Romany inevitably and forcefully confronts the sameness/difference dilemma within or between Latina/o groups. She acknowledges at the outset a "clear recognition of the heterogeneity of the Latina/o community and hence of Latinas."[73] By placing Latinas at the center of her work—which avowedly is calculated to "seize commonalities"—and by recognizing difference and heterogeneity, Professor Romany provides a positive example of detailed yet balanced critical legal scholarship: she demonstrates how Latina/o legal theorizing can be at once focused and expansive, specific yet contextual. In this way, Professor Romany displays a "dual commitment to eliminating oppression and celebrating difference" that defines the best moments and hopes of critical legal theory.[74]

The following presentation by Robert Chang helps to broaden and strengthen the insights and practice emanating from the preceding ones.[75] As a scholar with an Asian American subject position, Professor Chang brings an allied but distinct perspective to this Colloquium. In some respects, Professor Chang's presentation fulfills the allusions of sameness and difference between Asian Americans and Latinas/os previously raised by Professor Oquendo.[76]

Specifically, Professor Chang cites "the attribution of foreignness" as a common theme running through the American experiences of both Asian Americans and Latinas/os.[77] He elaborates how this inscription of foreignness erects a figurative border, which all Asian Americans and

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71. *See supra* notes 33 to 40 and accompanying text.

72. For prior exhortations on inter-connectivity, see Valdes, *supra* note 12, at 371-75; *see generally* Valdes, *supra* note 29.

73. Romany, *supra* note 65, at 50.

74. *See* Harris, *supra* note 1, at 760.

75. Chang, *supra* note 41.

76. *See supra* notes 55 to 64 and accompanying text.

77. *See* Chang, *supra* note 41, at 57.

Latinas/os carry with us as individuals.[78] This metaphorical border accompanies us everywhere, even—or perhaps especially—when our physical movements take us to the heartland of this country, far away from any literal or geographic borders.

Likewise, Professor Chang notes how the "negative identity" signified by labels such as "Asian American" or "Latina/o" in an American context connotes that "our true home lies elsewhere," even though that connotation and its negativity depends on imagined places or homelands.[79] In this in-between eternity, Asian Americans and Latinas/os are reduced indefinitely to neither here nor there. We vanish both from the American landscape as well as from our native lands under the cloak of this false yet definitive interstitiality. Professor Chang thus critiques this romantic and complex dream because it displaces the reality of Asian American and Latina/o permanence, potentially to our detriment.

This inscription of negative identities generates an acute sense of identity ambivalence, as Professor Chang notes, precisely because it situates Asian Americans and Latinas/os nowhere; the negative label constructs peoples without countries. The resulting loss of identification with either "here" or "there" is potentially harmful because it causes Asian Americans and Latinas/os to internalize fractured and conflicted identity relations that perpetuate disempowerment: are we here, for real, permanently, or are we simply cultural impostors biding time until a return to the true site of our belonging occurs? This "dream of return" ultimately—and ironically—may paralyze the development of a full commitment to resistance against racist nativism in the here and now, by Asian Americans and Latinas/os who are here now.[80]

This paralysis flows from the ambiguity and ambivalence of the disorientation inherent in this displacement, and the consequential disempowerment based on a sense of inauthenticity as members of the American body politic: if we are transients, why insinuate and invest ourselves fully in controversies over which we lack cultural standing and which, in any event, are only temporary for us? Asian Americans and Latinas/os, both permanently resident in the United States for spans of generations, are constructed as perpetual strangers in a manner that may instill and perpetuate our subordination. Professor Chang's remarks thus raise an insidious specter: this dream of return to a homeland, largely imaginary but still a way of cherishing cultural roots, may postpone struggles against past and present subordination.

With these stalwart words, Professor Chang effectively urges all Asian Americans and Latinas/os to reconsider the implications and challenges of our permanence in the United States, to act as if we realize that we are here to stay because, well, we are. For both Asian American and Latina/o legal scholars, the internalization of such fractured and conflicted identities by our selves and among our communities is problematic because it enervates the struggle against the law's complicity in current oppressions. The challenge posed by Professor Chang to us, then, is to craft balance from

78. *Id.*

79. *Id.*

80. *Id.* at 58.

ambiguity and ambivalence, resolution from displacement and disempowerment.

Underlying and animating this presentation is an immensely important and intricate larger question: can the numerous issues emanating from immigration, language, and nativism be a source of commonality specifically between and among Asian American and Latina/o scholars, communities, and agendas? Both—"Asian American" and "Latinas/os"—embrace distinct groups with specialized identities, both categories exist as foreignized counterpoints to "true" American identity, and neither construct is accommodated within the "comfortable binary" of the Black/White paradigm.[81] Engaging this question, Professor Chang effectively challenges critical legal discourse, and specifically Latina/o critical legal discourse, to interrogate the lessons proffered to Latina/o legal scholars by the Asian American experience. By inference, he also challenges nascent Asian American critical legal discourse to engage and interrogate the Latina/o experience.[82]

This dual engagement and interrogation has tremendous revelatory and transformative capacity because it focuses on two traditionally subordinated, but currently ascendant, subject positions, neither of which is accommodated by the Black/White paradigm of American society.[83] From either or both of these positions, Professor Chang can and does question the putative necessity of this paradigm; from both of these positions, Professor Chang acts as interloper to disrupt the dichotomous cross-oppositions of whiteness and blackness that occlude Asian Americans and Latinas/os in the United States.[84] By making Asian and Latina/o ethnicity salient, he emphasizes how these racialized communities problematize the construction of both blackness and whiteness in American society. Professor Chang thus brings us full circle: how can we assess the relevance of Critical Race Theory to Latinas/os, and other non-Black people of color, in a socio-legal context that is not only bracketed but blanketed with whiteness and blackness?

The next two presentations close the Colloquium, aptly, with forward-looking critiques of current practices in legal culture and American society. The first focuses on the way in which domestic coalitional work

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81. *Id.* at 55.

82. *See supra* note 57 and sources cited therein on Asian American legal scholarship.

83. Various articles have noted in recent times that Latinas/os are poised to become a majority in California, the nation's largest state. *See, e.g.*, Frank Sotomayor, *State Shows 69.2% Rise in Latino Population*, L.A. TIMES, March 28, 1991, at 1. This increase in population, in turn, can lead to increased Latina/o political activity and influence. *See, e.g.*, Olga Briseno, *Hispanics Try to Translate Numbers into Political Clout*, SAN DIEGO UNION-TRIBUNE, May 28, 1990, B1; James Fay & Roy Christman, *Future Looks Good for State's Latino Politicians*, SACRAMENTO BEE, July 24, 1994, at F2.

News reports consequently have suggested that Latina/o communities from coast to coast appear to be stirring from social or political marginality and dormancy. *See, e.g.*, Manuel Perez-Rivas, *One Language, Many Voices*, NEWSDAY, Oct. 13, 1991, at 7 (reporting that the "signs of Latino influence are everywhere" after decades as New York's "invisible minority"); Gordon Smith, *How Hispanics are Gaining in Political Influence*, SAN DIEGO UNION-TRIBUNE, April 24, 1994, at A1 (describing political gains in numerous communities of California). For similar accounts focused on Asian American history and developments, see generally THE STATE OF ASIAN AMERICA: ACTIVISM AND RESISTANCE IN THE 1990S (Karin Aguilar-San Juan ed. 1994); BILL ONG HING, MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850-1990 (1993).

84. *See* Chang, *supra* note 41, at 55-56.

is premised on acts of learning and understanding that, in turn, permit scholarly imagination, creativity, and energy to cross key lines. Among these lines are the ones that unnecessarily separate academics from activists, as well as the lines that sow undue divisiveness among subordinated communities based on race, class, and ethnicity. The second of these presentations joins fields of international law with agendas for domestic social transformation to carve out new opportunities for reformatory projects through the scholarly development of uncharted legal strategies. This second presentation thus crosses additional lines—those that separate the "domestic" from the "foreign" domains of the law in the current practices of critical legal scholarship. Both of these therefore speak expressly to the urgency of building bridges. In this way, the next two works display and urge the necessity and benefits of Latina/o legal scholarship that transcends traditional boundaries regarding identities, communities, doctrines, and politics.

The first of these, by Deborah Ramirez, presents a case study in community service and activist scholarship to help secure reform on the ground.[85] This presentation, inspired by personal life experience, is drawn from Professor Ramirez' recent work with the Hispanic Advisory Commission in Boston, which was formed to develop state policy initiatives on behalf of Latina/o communities in Massachusetts. This fusion of life and politics with scholarship thereby models, in a Latina/o setting, the essence of praxis—the vital blending of practice with theory, a blending that ideally animates and undergirds outsider or perspective jurisprudence.[86]

But this example of scholarly activism also clears narrative space and provides discursive privilege for community voices—this example shows how a community can educate the educators on the hidden effects, specifically on Latinas/os, of current legal and social practices and their political or conceptual themes. Professor Ramirez encountered first their visceral sense of marginalization under the Black/White paradigm; Boston's Latinas/os "asked for recognition of Latin[a/os]" as such, she reports.[87] The community, articulating itself in the language of lived experience, thus confirmed a concrete reality; an inclusive racial/ethnic discourse to help guide public policy and lawmaking beyond the Black/White paradigm is more than an academic matter.

This work similarly trains our sights on the front-line operation and impact of the sameness/difference dilemma. Professor Ramirez reports that her community's response focused on the need for the government, and hence the law, to recognize the racial, economic, and cultural similarities *and* differences that delineate the Latina/o experience in the United States vis a vis other population groups. In particular, they sought

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85. Deborah Ramirez, *Forging a Latino Identity*, 9 LA RAZA L.J. 61 (1996).

86. Harris writes:

> A jurisprudence of reconstruction cannot afford to become enchanted with either 'theory' or 'practice'; its work . . . is to refuse that dichotomy.

Harris, *supra* note 1, at 780.

87. Ramirez, *supra* note 85, at 63.

official recognition that Latina/o histories and conditions distinguish this experience from those that ground the African American communities of the United States, even though both groups face similar issues of disempowerment and impoverishment. Professor Ramirez reports that Boston's Latina/o community would "like the government to recognize not just that these differences exist, but that we as a community also exist."[88]

This work thus illustrates the joint operation in American law and society of two themes that permeate the Latina/o experience in the United States, and hence this Colloquium: these community voices cry out for official responses to the joint effects of the Black/White paradigm's tendency to suppress recognition and understanding *both* of commonalities and of differences between *and* among racialized and ethnicized groups in American society and its legal regimes. This response encapsulates the importance of praxis and nuance in critical legal scholarship. This community outcry vividly underscores the urgency of critical legal discourses informed by the sophistication and disenchantment, and guided by a politics of difference and identification.[89]

The concluding presentation, by Berta Hernández-Truyol, takes these lessons beyond the physical boundaries of the United States. On this note, the Colloquium closes with a conjunction of legal fields that occupy and affect both the interiors and exteriors of American law and society.[90] With this expansion of scope and focus, Professor Hernández-Truyol' presentation reminds us that the present practice of subordination inside the United States implicates multiple fields of law and life, and that contemporary strategies of resistance to it must cross conventional lines and borders in order to achieve optimal results.

The core of her presentation urges us to "globalize our domestic legal practice by integrating international human rights norms as a means of developing, expanding and transforming the content and meaning of our human/civil rights jurisprudence."[91] This globalization, Professor Hernández-Truyol points out, is made both imperative and problematic by the "current political-social climate," which caters to backlash and favors retrenchment on many fronts.[92] But "the benefits to be reaped from the incorporation of accepted human rights principles into our domestic rights discourse" are too important to be neglected.[93] To obtain these benefits, Professor Hernández-Truyol embraces and espouses a "diversity perspective," which is calculated to build bridges both within and beyond Latina/o groups and communities.[94]

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88. *Id.*

89. *See supra* notes 33 to 40 and accompanying text.

90. Berta Esperanza Hernández-Truyol, *Building Bridges: Bringing International Human Rights Home*, 9 LA RAZA L.J. 69 (1996).

91. *Id.*.

92. *Id.*

93. *Id.*

94. *Id.*

In the first portion of this presentation, Professor Hernández-Truyol takes an inward look at intra-group sameness/and difference between and among Latina/os. She reviews historical circumstances and contemporary conditions to review contextually and critically the myriad sources of Latina/o sameness and difference. By urging us to recognize, celebrate, and balance the "complexity and diversity of our Latina/o roots,"[95] Professor Hernández-Truyol urges us to negotiate the intra-Latina/o sameness/difference dilemma with care and generosity—with sophistication and disenchantment. By invoking "our comunidad latina" in the face of complexity and diversity, Professor Hernández-Truyol sets out to "build bridges between our own peoples," and to achieve an "internal coalescing" of Latinas/os as a predicate of Latina/o success specifically in legal academic circles specifically.[96] This first portion of the presentation transports back to ourselves, literally; with this discussion, Professor Hernández-Truyol notes for our sake that the success of Latina/o law professors and scholars depends on our ability to practice what we preach. In doing so, she both practices and preaches scholarly sensibilities to nurture Latina/o pan-ethnicity and coalition-building within contemporary legal culture.

In the second portion of this presentation Professor Hernández-Truyol then turns to "the great racial divide" that replicates Black/White color divisions. In doing so, she invites us to consider how this divided and divisive status quo inflicts invisibility and marginality both on Latinas/os and on Asian Americans. In this presentation we therefore encounter, once again, the suggestion that Latinas/os and Asian Americans share a situational kinship as non-Black immigrants of color within American society and under its Black/White paradigm. In this portion of the presentation, we once again encounter the sameness/difference dilemma, its effects on intra-Latina/o group affinities, and its impact on people of color inter-group relations.

This general non-recognition of identity multi-dimensionality that the Black/White paradigm facilitates, Professor Hernández-Truyol points out, impoverishes social and legal discourses on race relations given its absurd underinclusiveness. Not only is this underinclusiveness pernicious for the many reasons already noted in the preceding presentations, Professor Hernández-Truyol emphasizes here that recognizing this multi-dimensionality also is the foundation for connecting domestic practices to international law.[97] To build this final bridge between the domestic and international domains of the law, Professor Hernández-Truyol focuses on three issues particularly important to traditionally subordinated racial and ethnic groups in the United States: "Penalties (as in death), Privacy (as in personal) and Indecent Propositions (as in 187)."[98] Each of these legal and political fronts, Professor Hernández-Truyol points out, provide

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95. *Id.*

96. *Id.*

97. *See id.* at 71.

98. *Id.*

opportunities for African Americans, Asian Americans, and Latinas/os to work together as diverse peoples of color in pursuit of more than bare survival under a white supremacist society. Each of these fronts effectively provides opportunities for the practice and politics of difference and identification.

And, in each of these contexts, Professor Hernández-Truyol' analysis shows the transformative synergy that resides at these intersections of domestic case law and international norms or rules. In each instance, the application of international law strengthens the case for domestic reform. In each instance, a transnational analytical framework helps to reveal the narrowness that inspires the practices and politics of backlash domestically. This concluding presentation considers a dimension of Latina/o critical legal discourse that remains generally under-utilized in outsider jurisprudence: marshaling international law in the cause of domestic liberation for America's people of color.

As noted at the outset, these seven presentations also compel us to consider the possibilities that await Latina/o critical legal discourse. These scholars, in addition to elucidating current practices in American law and society vis a vis Latinas/os and other people of color, highlight the potential of legal discourses to add impetus to the theoretical and political advances already secured under the banner of Critical Race Theory. This Colloquium, in effect, can serve as a platform in the shift from practices to possibilities for Latina/o legal scholars. The remainder of this Foreword takes note of three such possibilities which, collectively, are designed to help Latina/o legal scholarship capitalize on the prospects raised by, or to be implied from, the current practices of American critical legal discourses evidenced within or by this Colloquium.

III.

ON POSSIBILITIES:

LATINAS/OS, PAN-ETHNICITY, AND POSTMODERNISM

As with the preceding discussion of practices, the three possibilities noted below obviously do not exhaust the realm of Latina/o potential in critical legal scholarship. Instead, this trio of possibilities is calculated to focus Latina/o legal scholars on the tensions that await us as we seize the opportunities open to us. By focusing on these three possibilities, I hope to promote within Latina/o legal discourse a sense of post-postmodernism, by which I mean a productive engagement with "sophistication" and "disenchantment" as we stand at the threshold of LatCrit theory.[99]

These three possibilities therefore are posed as partial means through which LatCrit theory can negotiate issues of sameness and difference toward a progressive sense of a coalitional pan-ethnicity. If Latina/o legal scholarship can help to unpack the particular legal and material conditions that affect Latina/o-identified individuals and communities in

99. By "post-postmodernism" I mean precisely the balancing of modernist and postmodernist concepts and tenets, as urged by Professor Harris, in the next phase of critical legal discourse. *See supra* notes 33 to 40 and accompanying text.

the United States, helping through this knowledge to empower and improve Latina/o positions and interests, we will have performed a great service. But if this scholarship also helps to cultivate a sense of sophisticated commonality, or post-postmodern pan-ethnicity, among the "different" groups of Latinas/os in American society, we also will have provided a sturdy basis for an intra-Latina/o politics of difference and identity. If so, we will have helped to foster an intra-Latina/o consciousness as a potent and enduring means toward Latina/o self-empowerment.

Moreover, by cultivating post-postmodern coalitions, LatCrit theory can position itself to be a strong and positive collaborator in the broader and joint resistance to subordination, which animates the work of RaceCrits, FemCrits, Race/FemCrits, QueerCrits, and other emergent outsiders. Each of these schools of perspective jurisprudence shares with the others issues of oppression, methodology, authenticity, identity, community, and legitimacy;[100] each of these subject positions seeks to deconstruct and reconstruct the role of law in subordination. Working from sophistication and with disenchantment, and embracing an inter-people of color politics of difference and identification, LatCrit theory can be a solid partner, specifically of Critical Race Theory, in building the jurisprudence of reconstruction and transformation that communities of color in American society so much need.[101]

Accordingly, the first of these possibilities is the very prospect of a discursive or theoretical genre openly focused on and driven by Latinas/os, and denominated and deployed with Latinas/os *qua* Latinas/os uppermost in mind. This threshold possibility springs from recurrent themes in the presentations of this Colloquium: a continuing sense of Latina/o marginality under all extant discourses or critiques of law even though the concepts, issues and goals of the discourses are familiar and important to Latinas/os. Whether it be the vestigial omnipresence of the Black/White paradigm in the American mainstream or the more recent Afrocentrism[102] and heterocentrism of Critical Race theory (or the apparent whiteness and straightness of Feminist legal scholarship), the loss of diverse Latinas/os *qua* diverse Latinas/os from the discourse truncates Latina/o needs and aspirations.

At this juncture, it appears that this loss can be rectified or alleviated in one or both of two basic ways: an inward turn, focused on initiating LatCrit theory, or an outward emphasis, renewing our commitment to existing discourses. In other words, Latinas/os can endeavor to elevate ethnicity within Critical Race theorizing and gatherings (and to rejecting the whiteness of Feminist legal theory) or move to initiate a similar enterprise focused specifically on Latina/os. Or, Latinas/os can pursue a two-track approach, which combines at once both inward and outward directions.

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100. *See supra* note 3 and sources cited therein on issues or techniques common to outsider scholars. *See generally*, Harris *supra* note 1, at 766-80 (discussing various concepts, themes or linkages shared by different genres of critical legal theory).

101. *See generally* Harris, *supra* note 1; Lawrence, *supra* note 13.

102. *See supra* note 16.

Without doubt, the two-track approach is preferable. The presentations of this Colloquium, again, either spell it out or imply it: Critical Race Theory creates discourses that are relatively conducive to critical examinations of ethnicity, to nuanced explorations of sameness and difference within and beyond any group of color, to gains and insights in corresponding quests toward equality and dignity. For these reasons, Latinas/os should continue to participate in and support Critical Race (and Feminist) legal scholarship. For these same reasons, Critical Race Theory (and Feminist Legal Theory) must continue opening itself to Latinas/os, Asian Americans and other people who are neither African nor Anglo. Latinas/os should help to inform Critical Race (and Feminist) theorizing, but, as Professor Harris' Foreword demonstrates by example, making that happen requires mutual commitment and sustained effort.[103]

Experience consequently suggests that Latina/o legal scholars also must begin to create the discourses that will help to coalesce and advance the prospects of Latinas/os *qua* Latinas/os in American society and legal culture. A self-aware and focused Latina/o legal scholarship, and the dialogs that it creates, can sharpen Latina/o political discourse and activism, both in law and throughout society. This sort of legal scholarship therefore is key to the improvement of social and legal conditions for all Latina/o groups and communities in the United States. The benefits of LatCrit theorizing can be secured only by undertaking the work of LatCrit theory because, in my view, LatCrit theory faces a specific project: the exploration of Latina/o pan-ethnicity.

The concept of pan-ethnicity, as I use it here, provides a frame for sameness/difference discourse in Latina/o contexts. It poses a threshold query: do the varied Latina/o groups of this country, including the Mexican American, Puerto Rican and Cuban American ones, perceive sufficient similarities in language, culture, history or circumstance to generate a sense of pan-group affinity? If so, to what extent—where are the limits of pan-ethnic groupness? This query of course may be applied with validity and utility in Asian American and African American contexts, but the examination of this question has remained mostly inchoate. LatCrit theory can—it should and must—open the question to examination, illuminating the issues that it raises for each of these groups.[104]

Thus, the possibility of LatCrit theory is not antagonistic to the continuation of Critical Race Theory, nor to continued (and increased) Latina/o involvement in race critical scholarship. Nor is LatCrit theorizing incompatible or competitive vis-à-vis RaceCrit theorizing. Instead, LatCrit theory is supplementary, complementary, to Critical Race Theory. LatCrit theory, at its best, should operate as a close cousin—related to Critical Race Theory in real and lasting ways, but not necessarily living under the

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103. *See generally supra* note 1.

104. Appropriately, the first step in this direction is being taken at the First Annual LatCrit Conference, *see supra* note 43, which is designed both to explore the concept of "pan-ethnicity" among Latinas/os and to further consider the relationship of LatCrit theory to Critical Race Theory. For the published papers and proceedings of that conference, *see* 1 HARV. LATINO L. REV. (forthcoming 1996-97). For a brief elaboration of "pan-ethnicity" see *supra* note 32.

same roof.[105] Indeed, and ideally, each would be a favorite cousin of the other—both always mutually present at least in spirit, and both always mutually welcome to be present in the flesh.

Juxtaposed against the threshold possibility of LatCrit theory is a second possibility: making the shift from the current practice of identity politics to a potential construction of politicized identities.[106] This shift, being pioneered by Professor Chang, Professor Harris, and like-minded scholars, entails recognition of the fact that alliances are best built on shared substantive commitments, perhaps stemming from similar experiences and struggles with subordination, rather than on traditional fault lines like race or ethnicity. This second possibility thus entails rejection of automatic or essentialist commonalities in the construction of coalitions and entails the post-postmodernist combination of sophistication with disenchantment, which can create a platform for the politics of difference and identification.

And, therefore, it is this move from color to consciousness that permits reconstructed modernism to refine the dynamics of post-postmodern identity politics and to chart the directions of perspective jurisprudence in the coming years. This move and its potential riches are viable both in intra-Latina/o group contexts as well as in inter-people of color group contexts. This pending move from color to consciousness, motivated by the blending of sophistication and disenchantment, is therefore a theoretical and political anti-subordination strategy for legal scholars self-identified as Latina/o, as well as other subordinated communities.

In fact, as Professor Harris has indicated, this acceptance and balancing of sophistication and disenchantment is precisely what makes it conceivable to mount critical legal movements that are race-conscious, ethnicity-conscious, gender-conscious and sexual orientation-conscious without blindly assuming, embracing, and replicating political or analytical essentialisms.[107] This balance is what permits the tension of modernism and postmodernism to be marshaled creatively toward the remediation of common yet personal suffering. This second possibility, in sum, conjures a vision of diverse critical legal scholars emphasizing different subject positions to engage and abet each other by mutually mapping multiple "chains of equivalences," all of which accumulate to oppress women, people of color, and sexual minorities in different yet similar ways, forms, and settings.[108]

Coupling the possibility of LatCrit theory with the possibility of a post-identity and post-postmodern era in critical legal discourse consequently recognizes that commonality is not grounded in some

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105. Accordingly, the First Annual LatCrit Conference featured a wide range of scholars, including Critical Race theorists such as Keith Aoki, Robert Chang, Sumi Cho, Jerome Culp, Adrienne Davis, Richard Delgado, Ian Haney-Lopez, Angela Harris, Gerald Torres, Robert Westley, and Eric Yammamoto.

106. *See* Chang, *supra* note 27, at 688.

107. *See* Harris, *supra* note 1, at 754-66 (discussing modernism and its discontents).

108. Chang, *supra* note 27, at 692-93 (using term introduced in Chantal Mouffe, *Hegemony and New Political Subjects: Toward a New Concept of Democracy, in* MARXISM AND THE INTERPRETATION OF CULTURE 89-90 (Cary Nelson & Lawrence Grossberg eds., 1988)).

innate or essential universality, but that it is engineered by socially constructed experience—the infliction of suffering and the attendant struggles against even more suffering.[109] Among Latinas/os, these experiences take place around the historical and contemporary issues of white supremacy, Eurocentrism, nativism, language, immigration, and culture. In and across these various issues, Latinas/os manifestly are both different and similar. The individual and collective suffering involved in these experiences, and the challenges posed by these issues, provide the source of a balanced and sophisticated sense of Latina/o pan-ethnicity.

This second possibility and vision thus are rooted in the peronal and group *experiences* of subordination and suffering, which in turn are based on race, ethnicity, gender, sexual orientation, and other socio-legal fault lines; this possibility, intentionally moving away from essentialist appeals to race, ethnicity, gender or sexual orientation, anchors the potential post-identity movements of the post-postmodern era to the consciousness, struggles, and affinities produced by varied yet shared experiences of oppression and suffering based on these and similar constructs.[110] This move is radical because it causes a shift away from the customary anchors of personal and group identity politics, but it is a key shift in basic identity paradigms because it draws strength both from modern and postmodern precepts, practices, and traditions.

The move to consciousness helps to mediate Latina/o commonalities and diversities regarding past history and present conditions because it allows us to focus on shared aspirations and common purposes. It is a vehicle for joining like-minded forces from groups or communities that otherwise may be configured along fractious and self-defeating lines. This move thereby can facilitate pan-ethnic and coalitional Latina/o agendas, projects, and efforts.

To some extent, the juxtaposition of these possibilities—LatCrit theory, Latina/o pan-ethnicity, and post-identity subjectivities—simply reflects the discursive and conceptual practices already pioneered by Critical Race Theory (and Feminist Legal Theory). Conceptual devices and analytical tools, like multiplicity,[111] multi-dimensionality,[112] and intersectionality[113] permit critical legal scholars—Latina/o and otherwise—to speak from cognizable subject positions without imprisoning ourselves within any given position.[114] Against this background, this juxtaposition

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109. *See* Harris, *supra* note 1, at 750-54 (discussing the commitment of Critical Race Theory to ending suffering due to racism).

110. *See generally* Regina Austin, *"The Black Community," Its Lawbreakers, and a Politics of Identification*, 65 S. CAL. L. REV. 1769 (1992) (arguing that oppression and suffering due to racism can provide the basis for solidarity in the face of differences based on class, gender, geography and other constructs that keep African Americans apart).

111. *See* Harris, *supra* note 4, at 608 (on multiplicity).

112. *See* Hernández-Truyol, *supra* note 4, at 429 (on multi-dimensionality).

113. *See* Crenshaw, *supra* note 4, at 1242-44 (on intersectionality).

114. *See also* Valdes, *supra* note 12, at 360-61 (discussing concepts of positionality and relationality vis-à-vis concepts of multiplicity and intersectionality); *see generally* Valdes, *supra* note 29 (further discussing these concepts and extending the discussion by elaborating the concept of interconnectivity).

effectively describes a Latina/o critical legal scholarship that is analytically insightful and functional because it is culturally inclusive and conceptually flexible.

This juxtaposition of Latina/o theory, pan-ethnicity, and post-identity politics, in turn, illuminates the third possibility: the renewal and enhancement of collaboration and coalition between and among scholars who identify with traditionally subordinated communities.[115] Emerging from the ongoing mapping of sameness and difference, this possibility is about collective empowerment and improvement—about collaborating mutually to enhance the social and legal conditions of Latina/o *and* of other subordinated communities. This final possibility is about the broader alteration of individual and group power relations legally and socially. It is the promise of empowerment for self/kin/community through coalitions stemming, again, from common yet diverse experiences with oppression and suffering.[116]

Through comprehensive examinations of bigotry and domination, LatCrit projects can help to locate the appropriate sites of coalitional cooperation, thereby deepening the law's commitment to reform on multiple fronts of oppression and broadening Latina/o resistance to the politics of backlash and retrenchment. Furthermore, by appreciating how varied species of discrimination become systems of subordination, which then operate as inter-linked networks of oppression, all genres and subject positions of critical legal scholarship can contribute to a capacious anti-subordination project.[117] Only this sort of mutual, collaborative project, based on a clear vision of inter-connected group/power relations, can counter the pervasive and insidious cross-linkages of racism, nativism, androsexism, heterosexism, and classism in law and in society.

The benefits inherent in these three possibilities are crucial because they offer hope in Latina/o struggles against the (mis)use of law to inflict or permit human suffering, debasement, and exploitation. These benefits include the development of Latina/o self-awareness and understanding, the advancement of Latina/o civil rights, the improvement of material conditions for Latina/o people, and a broader lessening of oppression and suffering among outsider groups in American society. These benefits obviously do not preclude areas or times of divergence and contention within Latina/o communities, or even among people of color more generally,[118] but these benefits cannot be foreclosed simply because

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115. *See generally* Harris, *supra* note 1, at 779 (discussing the role of academics and scholars in the maintenance of power relations).

116. *See* Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183 (1991) (considering the relationship of legal theory to coalitional politics).

117. Matsuda writes:

> Working in coalition forces us to look both for the obvious and non-obvious relationships of domination, helping us to realize that no form of subordination ever stands alone.

Id. at 1189.

118. Thus, examples of divergence or disagreement abound in daily life. *E.g.*, Nanette Asimov, *A Hard Lesson in Diversity: Chinese Americans Fight Lowell's Admissions Policy*, S.F. CHRON., June 19, 1995, at A1 (reporting the still-unfolding controversy between Asian Americans and other people of color regarding admissions to a prestigious public school in San Francisco); Patrick J. McDonnell, *As*

oppressed groups may disagree on any given issue or situation. As we contemplate moving from practices to possibilities, LatCrits must apply our talents and energies to securing these benefits for ourselves, our communities, and our situational kin.

This vision of balance and broadness in critical legal scholarship is perhaps optimistic, but the presentations delivered at this Colloquium provide cause for some optimism. In each instance, the presentations that follow this Foreword proceed from a decided and conscious subject position that is racialized and/or ethnicized and/or gendered. Yet, in each instance, these scholars have endeavored to elucidate the connections between each particular position and the positions of those who might, in varying degree, be regarded as the situational and intellectual kin of these scholars. In this Colloquium, we witness the balance and broadness—the politics of difference and identification—that provides cause for optimism about the discursive, theoretical, methodological, and political possibilities that await us. In this Colloquium, we see both sophistication and disenchantment put to good use in the service of reconstruction and transformation through jurisprudence.

IV.

CONCLUSION

During the past several years, traditionally subordinated voices have sought to find our selves and our kinds in American law and society. In doing so, we have sometimes supposed commonality or similarity only to discover difference and diversity. During this time, we have problematized identities and their meanings to foreclose the re-inscription of simplistic homogeneities and to engender a discourse that was both realistic and reformatory. With these efforts, we have abandoned various essentialisms; we have moved from various modernisms to various post-modernisms.

Yet, we have not been entirely successful. Despite our best and continuing efforts, outsider critiques of entrenched biases and power relations in American law and society have perpetuated historic erasures or elisions based on race, ethnicity, gender, sexuality, and other features of multiplicitous, multi-dimensional, intersecting identities. Now, perhaps, outsider legal scholars are ready to take the next step in the ongoing project of liberation through critical legal scholarship and activism. Now, perhaps, we are prepared to practice sophistication and disenchantment. Now, perhaps, we are ready to usher in a post-identity politics so that we can enter and help create the post-postmodern era in critical legal scholarship. My hope is that diverse Latina/o articulations of LatCrit theory, in tandem with strong Latina/o participation in Critical Race

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Change Again Overtakes Compton, So Do Tensions; Latino Plurality Seeks Power; A Generation After Winning it, Blacks Find Bias Charge a Bitter Pill, L.A. TIMES, Aug. 21, 1994, at A1 (describing political disputes between Latina/o and African American communities in one California city). Consequently, a sophisticated approach to coalitional efforts should proceed from an express understanding that sometimes one group may be justified or required to disagree with another. By expressly recognizing the inevitability of disagreement, coalitional efforts can negotiate specific instances of divergence without trivializing differences and without surrendering altogether the real, continuing, and substantial benefits of allied efforts.

Theory, Feminist Legal Theory, and Queer Legal Theory, will advance us toward this crucial step in an ongoing, broad-based, and ultimately successful anti-subordination project.