Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism:

Marking the Stirrings of Critical Legal Education

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INTRODUCTION

It surely is no coincidence that the syllabi of courses on Asian Americans and the Law featured in this Tenth Anniversary Issue of the *Asian Law Journal* share structural, substantive and methodological commonalities. They each marshal interdisciplinary materials to bring into sharp relief the uses of Law in the origin and construction of everyday realities shaping Asian American lives. They each study the milestones buried and ignored in mainstream education that nonetheless define, in historical and formal terms, these realities – shameful milestones like the web of acts constituting the Chinese Exclusion, for example. They each employ formal legal education to teach antisubordination knowledge and foster the ability of students to decolonize themselves and others. In the tradition of remembrance and resistance, the courses described in these syllabi effectively constitute a form of praxis that reflect the four primary functions of critical outsider jurisprudence[1] – at least as viewed from a

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1. The term "outsider jurisprudence" was first used by Professor Mari J. Matsuda. *See* Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2323 (1989). As described in more detail below, *infra* note 2, LatCrit theory is one strand in outsider jurisprudence, along with critical race theory, critical race feminism, Asian American scholarship, and Queer legal theory. *See generally* Francisco Valdes, *Afterword - Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience--RaceCrits, QueerCrits and LatCrits*, 53 U. MIAMI L. REV. 1265 (1999) (drawing lessons for LatCrit from the experiences of other outsider efforts, principally those of RaceCrits and QueerCrits); *see also* Elizabeth M. Iglesias, *Foreword – LatCrit Theory: Some Preliminary Notes Towards a Transatlantic Dialogue*, 9 U. MIAMI INT'L &

LatCrit[2] perspective: (1) the production of knowledge; (2) the advancement of social transformation; (3) the expansion and connection of antisubordination struggles; and (4) the cultivation of community and coalition, both within and beyond the confines of legal academia in the United States.[3]

By "critical outsider jurisprudence" – or OutCrit theory – I mean the insights and interventions of multiple diverse scholars and activists that identify and align themselves, and their work, with outgroups in the United

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COMP. L. REV. 1 (2000-01) (locating LatCrit theory in and against seven strains of critical legal discourse including Critical Legal Studies, Critical Race Theory, Feminist Critical Legal Theory, Critical Race Feminism, Asian Pacific American Critical Legal Scholarship, Chicana/o Studies, and Queer Legal Theory). For more on the "OutCrit" designation, see *infra* note 5 and accompanying text.

2. The term "LatCrit" was coined at a 1995 colloquium, held in Puerto Rico, on the relationship of critical race theory to "Latina/o" communities. From that colloquium, the annual conferences then flowed. On the emergence of a "LatCrit" subject position, see Elizabeth M. Iglesias & Francisco Valdes, *Afterword - Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 CHICANO-LATINO L. REV. 503, 568-71 (1998) (discussing the choice of "LatCrit" as partly a political decision to identify as much as possible with people of color, indigenous people, and other traditionally subordinated groups in the construction of this new discourse and praxis)[hereinafter *Coalitional Theory*]; *see also* Francisco Valdes, *Foreword - Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997) (introducing the papers and proceedings of the first LatCrit conference). For other accounts, see Berta Esperanza Hernandez-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 HARV. LATINO L. REV. 199, 200-05 (1997); Kevin R. Johnson & George A. Martinez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies, Activism and Scholarship*, 53 U. MIAMI L. REV. 1143 (1999). *Cf.* Margaret E. Montoya, *LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions*, 53 U. MIAMI L. REV. 1119 (1999).

Information on LatCrit theory, including the full text of the inaugural LatCrit symposium based on the First Annual LatCrit Conference, can be obtained at the LatCrit website, at www.latcrit.org. For other LatCrit symposia, including those based on subsequent conferences or colloquia, see Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997) (LATCRIT I); Colloquium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997) (publishing the proceedings of the first LatCrit colloquium focused on international law); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 CHICANO-LATINO L. REV. 1 (1998) (LATCRIT II); Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, 53 U. MIAMI L. REV. 575 (1999) (LATCRIT III); Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. DAVIS L. REV. 751 (2000) (LATCRIT IV); Colloquium, *Spain, The Americas and Latino/as: International and Comparative Law in Triangular Perspective*, 9 U. MIAMI INT'L. & COMP. L. REV. 1 (2000-01) (publishing the proceedings of the first and second colloquia held in Malaga, Spain on LatCrit theory and international and comparative law); Symposium, *Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U. L. REV. 467 (2001) (LATCRIT V); Symposium, *Latinas/os and the Americas: Centering North-South Frameworks in LatCrit Theory*, 55 FLA. L. REV. 1 (2003), 54 RUTGERS L. REV. (forthcoming 2002) (LATCRIT VI); Symposium, *Coalitional Theory and Praxis: Social Justice Movements and LatCrit Community*, 13 LA RAZA L.J. 113 (2002), 81 U. OR. L. REV. (forthcoming 2003) (LATCRIT VII). In addition, two joint symposia have been published during this time. *See* Joint Symposium, *LatCrit Theory: Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1998); Joint Symposium, *Culture, Language, Sexuality and Law: LatCrit Theory and the Construction of the Nation*, 5 MICH. J. RACE & L. 787, 33 U. MICH. J.L. REFORM 203 (2000).

3. Francisco Valdes, *Foreword – Under Construction: LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087, 1093-94 (1997), 10 LA RAZA L.J. 1, 7-8 (1998).

States and globally.[4] The "OutCrit" denomination is an effort to conceptualize and operationalize the social justice analyses and struggles of varied and overlapping yet "different" subordinate groups in an interconnective way.[5] And LatCrit theory is one strand of the OutCrit constellation; LatCrit theory emerged in 1995 in response to the longstanding presence *and* invisibility of varied "Latina/o" communities and persons in the United States and in the institutions of this Anglocentric society, including its legal education, doctrine, and theory.[6] As with other strands of critical outsider jurisprudence, LatCrit theory and praxis is a collective effort from within the legal academy of the United States to interject in substantive terms the needs, interests, and concerns of Latinas/os and other traditionally subordinated groups into the mix of considerations that produce law and policy in order to overcome, in part through legal reform, the conditions of historical and contemporary subordination in material, social, political, and cultural terms.

These syllabi – and the faculty that developed them – thereby help to illustrate and amplify the points of intersection between LatCrit and Asian studies: from the abuse of immigration law in support of white supremacy in the United States to the continuing prevalence of Anglocentric chauvinism that underlies supremacist tendencies today, these courses teach lessons on intergroup identity politics and policies that explain social conditions across many identity categories. In charting the Asian experience within the context of formal legal education, the identity maneuvers told in the materials in these syllabi help to enable students to find similar expressions of supremacy and subordination in the stories of "other" racial and/or ethnic "outsider" groups in and throughout this country. Indeed, the strategic deployment of Law to construct and justify racial, ethnic, and other forms of identity hierarchies captured in these syllabi effectively serve to remind members of *all* social groups that law and society are a constructed, not given, inheritance. And in so doing, these courses and syllabi help to produce the conditions of knowledge and affinity that are necessary to the cultivation of critical coalitions anchored

4. Thus, while "outsider jurisprudence" may be, but is not always nor necessarily, "critical" in perspective, the OutCrit stance is, by definition, critical in nature.

5. OutCrit positionality is framed around the need to confront in collective and coordinated ways the mutually-reinforcing tenets and effects of two sociological macro-structures that currently operate both domestically and internationally: Euroheteropatriarchy and neoliberal globalization. Therefore, among them are the legal scholars who in recent times have pioneered the various strands of outsider critical jurisprudence – OutCrits. For further discussion of this designation, see Francisco Valdes, *Outsider Scholars, Legal Theory and OutCrit Perspectivity: Postsubordination Vision as Jurisprudential Method*, 49 DEPAUL L. REV. 831 (2000) (discussing the relationship between Euroheteropatriarchy and OutCrit theory and praxis); *see also infra* notes 39-40 and accompanying text on Euroheteropatriarchy.

6. *See supra* note 2 for works on the origins and insights of LatCrit theory.

to antisubordination purpose.[7]

But in addition, these teachers and their syllabi thus point outsider scholars of all stripes – OutCrits – toward a critical pedagogy in formal legal education. The courses and efforts reflected in these syllabi, and other similar syllabi of faculty across the country,[8] are the stirrings of OutCrit faculty toward a critical approach to formal legal education. As a set, these innovative courses help set the stage for making the move from outsider jurisprudence to critical legal education in the promotion of local and global social justice.

Critical educational theorists have shown how all forms of education eventually become institutions that tend to operate either as instruments of colonization or of emancipation.[9] In the context of the United States, uncritical mainstream education teaches each generation to genuflect and maintain, the cultural, economic, and social skews constructed by the elites

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7. Coalitional discourse and praxis are central to LatCritical analysis. *See, e.g.*, Iglesias & Valdes, *Coalitional Theory, supra* note 2, at 562-57 (discussing theory and solidarity in both intra- and intergroup contexts); *see also* Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997) (discussing the challenges facing LatCrit theory); George A. Martinez, *African-Americans, Latinos and the Construction of Race: Toward an Epistemic Coalition*, 19 CHICANO-LATINO L. REV. 213 (1998) (urging Latinas/os, Blacks, and other groups of color to coalesce around "race" and our collective, cumulative knowledge of white supremacy); Ediberto Roman, *Common Ground: Perspectives on Latina-Latino Diversities*, 2 HARV. LATINO L. REV. 483, 483-84 (1997) (urging Latinas/os to focus on our similarities rather than ourr differences as a way of promoting intra-group justice and solidarity); Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 HARV. LATINO L. REV. 495 (1997) (analyzing inter-group grievances and relations among groups of color); Francisco Valdes, *Outsider Scholars, Legal Theory & OutCrit Perspectivity: Postsubordination Vision as Jurisprudential Method*, 49 DEPAUL L. REV. 831, 835-38 (2000) (elaborating critical coalitions). For further discussion of this concept, see Julie A. Su & Eric K. Yamamoto, *Critical Coalitions: Theory and Praxis, in* CROSSROADS, DIRECTIONS AND A NEW CRITICAL RACE THEORY 379 (Francisco Valdes, Jerome McCristal Culp, Jr. & Angela Harris eds., 2002).

8. My comments on these syllabi are necessarily informed by recent curricular surveys that help to contextualize the courses and syllabi featured here. These syllabi reflect the patterns and findings noted in those studies. *See, e.g.*, Francisco Valdes, *Barely at the Margins: Race and Ethnicity in Legal Education—A Curricular Study with LatCritical Commentary*, 13 LA RAZA L.J. 119 (2002); *see also* Francisco Valdes, *Tracking and Assessing the (Non)Inclusion of Courses on Sexuality and/or Sexual Orientation in the American Law School Curriculum: Reports from the Field After a Decade of Effort*, 1 NAT'L. J. SEXUAL ORIENTATION L. 149 (1995). The efforts reflected in the various syllabi collectively mark the stirrings of a particular kind of formal legal education devoted to social justice, which I here denominate as "critical legal education." *See infra* notes 22-24 and accompanying text.

9. The leading example, perhaps, is PAOLO FREIRE, PEDAGOGY OF THE OPPRESSED (rev. ed. 2000). While the integration or application of critical education theory to "critical legal education" is beyond the purview of this essay, my aim is to begin a process of exchange and dialogue whereby outsider scholars engage the insights of critical educational theorists in the design of individual courses, such as those reviewed here, as well as in other programmatic efforts that are substantively akin to the courses and syllabi reviewed here. For a brief description and discussion of some such efforts, see *infra* notes 59-65 and accompanying text. This collective integration of educational theory in critical approaches to legal education of course can, and should, build on earlier and ongoing efforts among outsider legal scholars to reform legal education from within. *See, e.g.*, Charles R. Lawrence III, *The Epidemiology of Color-Blindness: Learning to Think and Talk About Race, Again*, 15 B.C. THIRD WORLD L.J. 1 (1995).

that dominate society and control its institutions of education.[10] The principal aim (or effect) of such education has been, and still is, to assimilate and domesticate in the name of progress and prosperity, and even in the name of equality and liberty. This effect is achieved both by what is left out, as well as what is put into, the content or substance of "education" – by leaving out, for instance, the systematic imposition of supremacist politics to motivate conquest and rationalize subordination, a key part of the story that explains so much of the injustice embedded in students' social inheritance, and which every new generation struggles to understand. This act of omission – and other acts like it – enables the sanitized "history" of the status quo to be spoon-fed to students day in and day out across the country (and globe), keeping each succeeding generation socially tranquilized, culturally subjugated, and politically subordinated. Under this view, mainstream education, in its dominant, uncritical form, formalizes and systematizes the inculcation of cultural politics to ratify the world "as is" – as inherited by each generation of humans.[11] Mainstream legal education, then, perpetuates conquest.[12]

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10. The footprints of colonial conquest throughout the Americas are similarly well documented. *See generally* RICHARD DRINNON, FACING WEST: THE METAPHYSICS OF INDIAN-HATING AND EMPIRE-BUILDING (1990); CHARLES GIBSON, SPAIN IN AMERICA (1966); RAMON GUTIERREZ, WHEN JESUS CAME, THE CORN MOTHERS WENT AWAY: MARRIAGE, SEXUALITY AND POWER IN NEW MEXICO, 1500-1846 (1991); FRANCIS JENNINGS, THE INVASION OF AMERICA: INDIANS, COLONIALISM, AND THE CANT OF CONQUEST (1975); LYLE H. MCALISTER, SPAIN AND PORTUGAL IN THE NEW WORLD, 1492-1700 (1984); NATIVE AMERICAN TESTIMONY: A CHRONICLE OF INDIAN-WHITE RELATIONS FROM PROPHECY TO PRESENT, 1492-1992 (Peter Nabokov ed., 1991); DAVID J. WEBER, THE SPANISH FRONTIER IN NORTH AMERICA (1992); *see also* RICHARD C. TREXLER, SEX AND CONQUEST: GENDERED VIOLENCE, POLITICAL ORDER, AND THE EUROPEAN CONQUEST OF THE AMERICAS (1995) (documenting and discussing the patriarchal and homophobic aspects of the conquest). For a discussion of colonialism's combined effects from one LatCritical perspective, see Francisco Valdes, *Race, Ethnicity and Hispanismo in a Triangular Perspective: The "Essential Latina/o" and LatCrit Theory*, 48 UCLA L. REV. 305 (2000).

11. One example of deceptively sanitized knowledge offered via contemporary legal education is found in the omission of the so-called "Insular Cases" from the casebooks and courses employed to teach Constitutional Law to new classes of entering students nationwide every year. The Insular Cases – a series of controversies decided as the Nineteenth Century turned into the Twentieth – lent a judicial patina to North American imperialism during the years of "manifest destiny" to justify the conquest and subjugation of peoples in "territories" that are not "states" of the United States, including, for example, Puerto Rico. For discussion of North American imperialism, interventionism, and expansionism, see *supra* note 10 and sources cited therein. Among the Insular Cases, perhaps the most significant one is *Downes v. Bidwell*, 182 U.S. 244 (1901), in which the Supreme Court ratified the North American administration of Puerto Rico as a territory. These cases capture a brutal side of constitutional law and nation-building, and for this reason are not to be found anywhere that a typical contemporary law student might venture. The end result is a skewed understanding of legal history and constitutional law. *See generally*, Sanford Levinson, *Why the Canon Should be Expanded to Include the Insular Cases and the Saga of American Expansionism*, 17 CONST. COMMENT. 241 (2000).

12. For one law student's insightful view of his educational experience in social and structural terms, see David Aaron DeSoto, *Ending the Conquest Won Through Institutionalized Racism in Our Schools: Multicultural Curricula and the Right to an Equal Education*, 1 HISP. L.J. 77 (1998).

As OutCrit scholars have long explained – and these syllabi confirm – legal education is a site for the production both of knowledge and power;[13] knowledge *is* power, especially in the current "Information Age." As with other social institutions constructed in the service of supremacist political arrangements, legal education historically was structured to privilege white-identified groups, persons, and values; conversely, legal education was structured to exclude feared or "different" Others.[14] Indeed, the documented history of formal legal education in this country illustrates clearly that, like all forms of education, it was conceived and since then has been operated mostly as an instrument of social hierarchy.[15] In design and purpose, formal legal education was, and perhaps still is effectively, a means of ensuring the continued consolidation of legal knowledge, and of power over Law and policy, in the hands of social groups and institutions identified with the "original" immigrants from Europe to the lands now known as the United States.[16] Awareness or wariness of this power and

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13. *See, e.g.*, Elizabeth Iglesias & Francisco Valdes, *Afterword - LatCrit at V: Institutionalizing a PostSubordination Future*, 78 DENV. U. L. REV. 1249 (2001).

14. The formalization of legal education was shaped in explicit ways by the social, cultural and political dominance of white, Anglo-American nativist-racism as well as societal sexism. *See, e.g.*, Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 85 CAL. L. REV. 1449, 1475-92 (1997) (recounting how the American Bar Association, the bar examination, the Law School Aptitude Test, and other "gatekeeping" mechanisms were originated and calculated to be racist, anti-immigrant, sexist, and anti-Semitic); William C. Kidder, *The Rise of the Testocracy: An Essay on the LSAT, Conventional Wisdom, and the Dismantling of Diversity*, 9 TEX. J. WOMEN & L. 167 (2000) (discussing how the LSAT continues to project that history into the present); *see also* ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S (1983) (providing a comprehensive account of the politics—including the identity politics—that dominated the institutionalization of formal legal education). *See generally* NICHOLAS LEMANN, THE BIG TEST: THE SECRET HISTORY OF THE AMERICAN MERITOCRACY (1999) (providing a similar history focused, more generally, on the standardized tests used in various educational settings in the United States).

15. *See supra* note 14 and sources cited therein on the formalization of legal education in the United States.

16. As RaceCrit and LatCrit scholars have amply documented, the conflicted repercussions of historically dominant racist-nativist-sexist supremacist motives continue to be embedded in the norms, practices, and consequences of legal education today. *See, e.g.*, Charles R. Lawrence III, *Two Views of the River: A Critique of the Liberal Defense of Affirmative Action*, 101 COLUM. L. REV. 928 (2001); Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953 (1996); *see also* Marina Angel, *The Glass Ceiling of Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1 (2000); Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537 (1988); Richard Delgado, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349 (1989); Richard Delgado, *Affirmative Action as Majoritarian Device: Or, Do You Really Want to be a Role Model?*, 89 MICH. L. REV. 1222 (1991); Sumi Cho & Robert Westley, *Historicizing Critical Race Theory's Cutting Edge: Key Movements that Performed the Theory, in* CROSSROADS, DIRECTIONS AND A NEW CRITICAL RACE THEORY 32 (Francisco Valdes, Jerome McCristal Culp, Jr. & Angela P. Harris eds., 2002); Cheryl I. Harris, *Law Professors of Color and the Academy: Of Poets and Kings*, 68 CHI.-KENT L. REV. 331 (1992); William C. Kidder, *Situating Asian Pacific Americans in the Law School Affirmative Action Debate: Empirical Facts About Thernstrom's Rhetorical Acts*, 7 ASIAN L.J. 29 (2000); Charles R. Lawrence III, *Minority Hiring in AALS Law Schools: The Need for Voluntary Quotas*, 20 U.S.F. L. REV. 429 (1986); Rachel F. Moran, *Commentary: The Implications of Being a Society of One*, 20 U.S.F. L. REV. 503 (1986); Richard K.

knowledge is precisely why critical theory is still absent or marginal in formal law school curricula from coast to coast, effectively withholding from most law students any structured opportunity to acquire self-liberating knowledge in the general course of a typical legal education.[17] Thus, the insights of OutCrit legal theorists on legal education are congruent with the insights of critical education theorists more generally – a congruence that calls for engagement and emphasis as part of the effort to develop a critical approach or pedagogy within the confines of formal legal education in the United States today.

Today, this institutionalized tendency to naturalize neocolonialism and its particular form of traditionalist identity politics is alive, and rife, amongst us both within and beyond legal education. The culture wars, aimed to "reclaim" the national culture by "rolling back" through legal retrenchment the post-New Deal sociolegal evolutions of the past half-century or so, continue without abatement.[18] Bit by bit, backlash politicians in recent years have targeted legal scholarship and education, as

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Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313 (2000).

17. Students oftentimes query why their legal educations are so poor in critical theory and in "outsider" studies. For one example, see *supra* note 12. As a result, LatCrit and allied theorists have begun to establish programs that can serve as "lifelines" to law students who may be isolated in their "home" institutions. For a more detailed discussion of this problem, see Francisco Valdes, *Insisting on Critical Theory in Legal Education: Making Do While Making Waves*, 12 LA RAZA L.J. 137 (2001). As discussed below, LatCrit scholars have initiated programs designed to counter this status quo, including most recently the Critical Global Classroom, a study-abroad summer program devoted to social justice legal studies in international and comparative frameworks. This program, undertaken in partnership with The University of Baltimore School of Law, is open to students nationwide, permitting students from all law schools in the United States to gather in a "safe" educational environment to explore issues omitted or marginalized in their schools' formal curriculum. For more information on the "CGC" and similar programmatic efforts toward the establishment of critical legal education, see *infra* notes 62-65 and accompanying text.

18. The declaration of cultural warfare was issued formally, and perhaps most conspicuously, from Republican Presidential contender Patrick Buchanan during his address to the 1992 Republican National Convention. *See* Chris Black, *Buchanan Beckons Conservatives to Come "Home,"* BOSTON GLOBE, Aug. 18, 1992, at A12; Paul Galloway, *Divided We Stand: Today's "Cultural War" Goes Deeper than Political Slogans*, CHI. TRIB., Oct. 28, 1992, at C1; *see also* JAMES DAVISON HUNTER, CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA (1991); JAMES DAVISON HUNTER, BEFORE THE SHOOTING BEGINS: SEARCHING FOR DEMOCRACY IN AMERICA'S CULTURE WAR (1994). Since then, this social conflict has been waged with a vengeance to "take back" the civil rights gains of the past century in the name of the "angry white male." *See* Grant Reeher & Joseph Cammarano, *In Search of the Angry White Male: Gender, Race and Issues in the 1994 Elections*, *in* MIDTERM: THE ELECTIONS OF 1994 IN CONTEXT (Philip A. Klinkner ed., 1996). In recent years, critical legal scholars have noted the effects of cultural warfare on law and policy, especially regarding issues or areas related to antisubordination theory and praxis. *See generally* Keith Aoki, *The Scholarship of Reconstruction and the Politics of Backlash*, 81 IOWA L. REV. 1467 (1996); Kimberlé W. Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Kenneth L. Karst, *Religion, Sex, and Politics: Cultural Counterrevolution in Constitutional Perspective*, 24 U.C. DAVIS L. REV. 677 (1991); Francisco Valdes, *Afterword - Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality, and Responsibility in Social Justice Scholarship, or Legal Scholars as Cultural Warriors*, 75 DENV. U. L. REV. 1409, 1426-43 (1998).

well as Law itself, as primary instruments in the reconstruction of society based on selective notions of "traditional values" that simply privilege neocolonial dreams and vestiges.[19] Indeed, the daily news indicates that the onslaughts of the culture wars continue to increase, rather than abate. For example, the now-routine politics of stacking the federal courts as part of neocolonial or traditionalist backlash campaign has extended to the packing of federal advisory scientific panels.[20] Though vastly different in many ways, both kinds of governmental bodies have a similar impact: both are key instruments in the construction of formal knowledge associated with power – Law and Science. Each in its sphere is a crucible of social knowledge and power. Each is crucial to the cultural education – or inculcation – of society, of every succeeding generation; each can help to inform the direction and substance of cultural politics toward the reinforcement or disestablishment of neocolonial hierarchies.[21] Each therefore is a site of contestation in the struggle over the design and (re)construction of society as a whole. In its own ways, each illustrates the reasons why legal education and Knowledge is a similarly contested site of struggle over the direction of society's construction. Thus, the long histories and shadows of colonialism, including the current campaigns of the culture wars, help to form the framework for mapping the makings of a critical legal education.

By "critical legal education" I mean, at the most basic or general level, the application of critical theory – and in particular critical outsider jurisprudence – to the fields of formal knowledge that we teach in law school and elsewhere.[22] Critical legal education is the pedagogy that

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19. *See, e.g.*, ANDREA GUERRERO, SILENCE AT BOALT HALL: THE DISMANTLING OF AFFIRMATIVE ACTION (2002) (documenting the restoration of institutionalized preferences for whiteness in elite law schools, and the ensuing process of resegregation at one prominent institution). Another ongoing example is the so-called Solomon Amendment, which threatens to cut off federal funds to any university, or law school, that refuses to permit military recruiters to enforce homophobic recruitment policies on the nation's campuses. For in-depth discussion of this legislation, see Francisco Valdes, *Solomon's Shames: Law as Might and Inequality*, 23 T. MARSHALL L. REV. 351 (1998).

20. *See, e.g.*, Aaron Zitner, *Advisors Put Under a Microscope*, L.A. TIMES, Dec. 23, 2002, at 1 (reporting that current occupants of the White House are "using political and ideological screening" to reject advisory appointments that might, in time, help to produce recommendations for or against "policies that are out of step with the political agenda of the White House").

21. For a discussion of the use of "law" and, in particular, the federal courts and constitutional doctrine to construct culture according to "traditional values" and historically dominant conceptions of social stratification, see Francisco Valdes, *Culture, "Kulturkampf" and Beyond: The Antidiscrimination Principle Under the Jurisprudence of Backlash*, *in* THE BLACKWELL COMPANION TO LAW AND SOCIETY (Austin Sarat ed.) (forthcoming 2003).

22. Outsider and LatCrit scholarship have focused on the problems associated with actualizing a multidimensional, antiessentialist, antisubordination ethic and practice in the legal academy and profession. *See, e.g.*, Steve W. Bender, *Silencing Culture and Culturing Silence: A Comparative Experience of the Centrifugal Forces in the Ethnic Studies Curriculum*, 5 MICH. J. RACE & L. 913, 33 U. MICH. J.L. REFORM 329 (2000) (discussing how the status of Latinas/os in the legal system often demoralizes undergraduates otherwise drawn to the study of law as a means of social change); Sumi K. Cho, *Essential Politics*, 2 HARV. LATINO L. REV. 433, 441 (1997) (calling on scholars of color to

teaches law through the lens of OutCrit theorizing, a critical pedagogy representing a fusion of conventional doctrine and OutCrit knowledge with critical educational theory. Thus, from a LatCrit perspective,

> [C]urricular praxis must aim to foster a multidimensional pedagogy that reflects the advances of outsider jurisprudence and LatCrit theory in recent years. LatCritical curricular praxis must promote the study of Latinas/os in relationship to race and ethnicity within intergroup frameworks that include international and comparative perspectives as well as interdisciplinary materials and analyses, and these frameworks additionally must help to center intragroup diversities that affect law and policy. LatCritical praxis must embrace the study both of specific group histories and how they fit into larger patterns of subordination based on colonialism, identity politics, systems of supremacy, capitalism and, most recently, corporate globalization. These intergroup frameworks and cross-disciplinary approaches must be designed to help cultivate intra- and intergroup reconciliation and critical coalitions devoted to antisubordination legal reform and social transformation. In sum, LatCritical curricular praxis requires LatCrit theorists to apply and "perform" the theory in formal curricular contexts.[23]

And this "mission statement" claims for critical legal education a grounding and vision similar to the "critical pedagogy" posited more generally among critical education theorists for educational ventures devoted, as are these and similar efforts, to social justice for the traditionally subordinated of the world:

> Critical pedagogy refers to an educational approach rooted in the tradition of critical theory. Critical educators perceive their primary function as emancipatory and their primary purpose as commitment to creating the conditions for students to learn skills, knowledge and modes of inquiry that will allow them to examine critically the role that society has played in their self-formation. More specifically, critical pedagogy is designed to give students the tools to examine how society has functioned to shape

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combat the "big and little murders" that occur daily at law schools across the country); Virginia P. Coto, *LUCHA, The Struggle for Life: Legal Services for Battered Immigrant Women*, 53 U. MIAMI L. REV. 749 (1999) (describing alternative models for legal services to battered immigrant women); Lyra Logan, *Florida's Minority Participation in Legal Education Program*, 53 U. MIAMI L. REV. 743 (1999) (recounting inter-group struggles and compromises over the establishment of a "minority" law school in South Florida); Elizabeth M. Iglesias, *Foreword - Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community*, 53 U. MIAMI L. REV. 575, 606-07, 655-56 (1999) (discussing the need for interconnected reforms in the structure of legal education, the profession and the delivery of services to the poor); Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 5 MICH. J. RACE & L. 847, 33 U. MICH. J.L. REFORM 263 (2000) (critiquing how minority students are silenced in the classroom); Dorothy E. Roberts, *The Paradox of Silence: Some Questions About Silence as Resistance*, 5 MICH. J. RACE & L. 927, 33 U. MICH. J.L. REFORM 343 (2000) (elaborating some resistance strategies for minority students to help them survive the law school experience); Pamela J. Smith, *The Tyrannies of Silence of the Untenured Professors of Color*, 33 U.C. DAVIS. L. REV. 1105 (2000) (analyzing the vulnerabilities of untenured faculty).

23. Valdes, *Barely at the Margins*, *supra* note 8, at 142-43.

> and constrain their aspirations and goals, and prevent them from even dreaming about a life outside the one they presently know.
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> A major concern of critical pedagogy is that students develop the critical capacities to reflect, critique and act to transform the conditions under which they live.[24]

Critical legal education, at its best, thus provides lifelines of power based on knowledge and principle to marginalized students struggling to become aware of the ways and means through which felt and known oppressions are normalized, materialized, even valorized. Critical legal education must help to "create the conditions for students to learn skills, knowledge and modes of inquiry that will allow them . . . [to] develop the critical capacities to reflect, critique and act to transform the conditions under which they live." Like critical pedagogy, critical legal education is aimed at ending both the internal (or individual) as well as material (or societal) remains of the colonial conquest.

With the syllabi as a point of departure, this essay is a brief and tentative exploration of the meaning of "critical legal education" in the historic and contemporary context of formal legal education in the United States; this essay proffers a preliminary set of observations on what a critical legal education might look like as OutCrit scholars continue to experiment with critical approaches such as the ones depicted in these and similar syllabi. Thus, turning first to the challenges faced at the threshold of an enterprise that might be described as the making of a critical legal education, Part I focuses on history as a foundational discipline necessary to creating the intellectual conditions for critical analysis of contemporary sociolegal issues. Based in part on that discussion, Part II then takes up the purposes, elements, and means of critical legal education to produce a sketch of the project for further collective development. Part III then describes two recent collective experiments that aptly fit into the parameters of a critical legal education under the parameters suggested by the preceding parts of this essay. The conclusion closes with forward looking thoughts on the relationship of critical legal education specifically to community-building praxis. This essay, then, is only a small increment toward a larger and collective OutCrit project: the design and establishment of critical legal education in the United States. While this essay represents only one step toward the linkage of critical education theory and outsider jurisprudence in the design and establishment of critical approaches to contemporary legal education, this essay invites OutCrits everywhere to join in this project as a form of coalitional social justice praxis.

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24. ANTONIA DARDER, CULTURE AND POWER IN THE CLASSROOM: A CRITICAL FOUNDATION FOR A BICULTURAL EDUCATION xvii (1991) (citations omitted).

I. TOWARD A CRITICAL LEGAL EDUCATION: BUILDING MEMORY, IDENTITY AND AGENCY

The rich panorama of readings presented in the syllabi clearly signals the cultural, intellectual, and political baseline from which legal education proceeds. These syllabi are designed to convey a story rarely told in the confines of legal (and other fields of formal) education: the story of Asian identities in the United States and their formation through varied social and legal means. These syllabi thereby indicate that critical legal educators must be prepared to receive students whose formal educational experiences reflect the insights of critical education theorists: students, in other words, with little or no prior formal exposure to subversive and liberational knowledge – critical knowledge that enables individuals to connect the folds of history with the patterns of social experience. As a matter of critical pedagogy, in other words, the educator must anticipate the need to integrate coverage of instilled and inherited gaps, and the skews or blind spots that the gaps produce, with the analytical skills necessary to enable students to imagine and pursue "a life outside the one they presently know."[25] A key threshold task of these syllabi therefore is to provide the knowledge base and analytical skills to "connect the dots" of the past and present in intellectual as well as personal terms. These syllabi show by example how critical legal education must anticipate and navigate the cultural and intellectual obstacles to a critical education in law and legal analysis as a form of social justice praxis.

The syllabi clearly reflect a consistent approach aimed at building memory, embracing identity, and fostering agency among traditionally subordinated groups and students. For example, all of the syllabi cover "colonialism" and its relevance to the social and legal condition of Asian Americans in the United States, both historically and currently.[26] All explore how colonial and neocolonial sociolegal processes transmuted Chinese, Japanese, Korean, Filipino, and other individuals from Asia into the conglomerated "Asian Pacific American" position of subordination to "white" persons from Europe, and to their sociopolitical heirs.[27] And in

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25. *See supra* note 24 and accompanying text.

26. For instance, each syllabi contains course segments, readings or class sessions devoted to "Colonialism" (Professor Volpp), "Colonialism" (Professor Chang) or "Colonialism and Autonomy" (Professor Chin). In each instance, the coverage reflects the "internal" diversities of Asian Pacific Americans, including most notably those based on nationality or ethnicity. *See* 10 ASIAN L.J. 99, 110, 123 (2003).

27. In each syllabus, this line of inquiry is pursued principally through the story of "immigration, exclusion and repeal" – the regimes of substantive law and policy that served historically as the crucibles for the construction of "Asian Pacific" identity in the United States. This line of inquiry brings the supremacist identity politics of North American law and policy into sharp relief, as these legal regimes depended on formalized identity classifications to distinguish "white" from Asian, thereby helping to construct identity categories and hierarchies in the process. *See* 10 ASIAN L.J. 98, 106, 118 (2003).

telling the stark facts and continuing consequences of these historical macro processes, these courses strive to help instill a sense of agency in resisting the perpetuation of the neocolonial status quo.[28] On many levels and points, then, the syllabi consistently depict course designs that mix background information and critical analysis to provide both the historical context and intellectual interrogation necessary to a contextual, multidimensional understanding of a particular social group, condition, or phenomenon.

The syllabi thus portray an approach to critical legal education that proceeds simultaneously along two planes: both to describe *and* critique the history and legacy of the legal doctrine, concept, ruling, rule, scheme, or subject under study. The prime example is legal history. In each course, the work performed is, at once, both in the telling *and* critiquing of the history through which the present was constructed.[29] Overall, the syllabi's readings apparently are designed both to impart historical data denied through the sanitized presentations of conventional education as well as to critically analyze the data being imparted. The work that these syllabi and courses do, in sum, is twofold: first, to inform substantively and, almost simultaneously, to analyze critically.

A. Telling the Stories Hidden in "History": Identity Politics and the Structure of Subordination

As a set, the readings assembled in the syllabi tell stories buried and hidden in the annals of "history" as written and taught by the heirs of colonial conquest. And telling the stories hidden in history may be, in fact, the basic predicate for a critical legal education. As Professor Aoki noted in one of the articles featured in these syllabi, "The past is never dead. It's not even past."[30] Learning the past – and how "it's not even past" – is the threshold task of critical legal education. Thus, a critical unpacking of the lessons on "identity politics" in the construction of contemporary society through law and policy over the course of history is key.

By "identity politics" I mean the practice of fashioning substantive policies on the basis of social identities that define groups within society grounded in the volatile interplay of identity axis like race, ethnicity, color, class, gender, sexual orientation, religion, culture, language, and other

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28. Indeed, a review of the syllabi readily points to readings designed to prompt students into antisubordination alertness. *See, e.g.*, Mari Matsuda, *We Will Not Be Used*, 1 ASIAN PAC. AM. L.J. 79 (1993).

29. For examples of readings from the syllabi that illustrate this "inform-and-critique" approach, see Keith Aoki, *No Right to Own?: The Early Twentieth Century "Alien Land Laws" as a Prelude to Internment*, 19 B.C. THIRD WORLD L.J. 37 (1998); Janine Young Kim, *Are Asians Black?: The Asian-American Civil Rights Agenda and the Contemporary Significance of the Black/White Paradigm*, 108 YALE L.J. 2385 (1999); Mae M. Ngai, *The Architecture of Race in American Immigration Law: A Reexamination of the Immigration Act of 1924*, J. AM. HISTORY 67 (1999).

30. Aoki, *supra* note 29, at 37 (quoting William Faulkner).

vexed categories of human classification.[31] Thus, "identity politics" in the United States and beyond includes nationalistic and xenophobic expressions of law and policy in the form of exclusionary or suppressive legislation and doctrine. Similarly, the practices and ideologies of identity politics within and beyond the United States include Eurocentric assertions of racial and ethnic superiority in the form of white supremacy. Patriarchy and heterosexism, like other kinds of identity politics that predominate in the United States and other lands of the Americas, similarly reflect the practice of privileging some groups through law and policy on the basis of identity-based classifications. Thus, while the ideologies and practices associated with identity politics run the gamut of possibilities, their predominant form throughout the Americas, both in the present and the past, has been determined by the origins, processes, and legacies of colonial conquest since the fateful year of 1492.

Historically, as the record of nation-building on this continent attests,[32] identity politics has been a sport by and for colonial and neocolonial elites that have, and still do, occupy (in disproportionate numbers) the positions of power and privilege offered by the bounties of this country.[33] Historically, the centers of colonial ambition in Europe transplanted to these shores and prairies a particular brand of identity politics, which have produced Eurocentric patterns of white supremacy to the detriment of all other racialized social groups in the United States.[34] The vagaries and complexities abound, but the net sociolegal result over the course of U.S. history has been fairly consistent across identity category, time, and space: law, society, and identity are co-constitutive of the cultural, economic, and political stratification that elevates neocolonial groups and values, into which most of us are born despite the dawn of yet another millennium.[35]

While focused on the hidden history of a particular yet internally diverse social group – Asian Pacific Americans – these syllabi thus tell a larger story of social domination and national cohesion through supremacist cultural ideologies and politics. Indeed, the syllabi proactively

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31. *See generally* Elizabeth M. Iglesias & Francisco Valdes, *Expanding Directions, Exploding Parameters: Culture, and Nation in LatCrit Coalitional Imagination*, 5 MICH. J. RACE & L. 787, 811-16, 33 U. MICH. J.L. REFORM 203, 227-32 (2000) (discussing identity politics and critical legal theory, in particular LatCrit theory and praxis).

32. *See supra* note 10 and sources cited therein on North American expansionism and nation-building.

33. Social and economic disparities continue to be reflected in racial and other identity categories across multiple sectors and institutions of the United States. *See, e.g., infra* note 49 and sources cited therein on such disparities.

34. *See supra* note 10 and sources cited therein on colonial and imperial campaigns in the Americas.

35. As noted earlier, in effect if not in purpose, the culture wars are the current extension of this historical colonial and neocolonial effort. *See supra* note 18 and sources cited therein on the culture wars.

include materials designed to emphasize this crucial point.[36] As unfolded in these syllabi, the Asian Pacific American story in the United States necessarily is part and parcel of the larger – and multidimensional[37] – story of nation-building through racist and nativist variations of Anglocentric white supremacy (and related identity politics based on sex, gender, and the like). The story of Asian America, like the stories of African, Latina/o, and Native America, is the story of persons and groups associated with the "original" "immigrants" to – or, more accurately, invaders of – this continent who feverishly scrambled to institutionalize their demographic profile as the nation's own unchangeable portrait in cultural, economic, and political terms. The story of Asian America is the story of entrenching in law, policy, and society the identity politics that undergird white supremacy.

While these syllabi are not designed to tell the entire story of white supremacy's establishment, their attention to other axes of identity, and their operation in Asian American settings, do make clear to students that white supremacy, in all of its racist and nativist varieties, is never a stand-alone virulence. In covering issues like violence, crime, poverty, and inter-group relations, these syllabi call upon students to understand their racial, national, cultural, or ethnic identities in law and society not only in critical and historical terms, but also in contextual or "multidimensional" terms.[38] And the syllabi's attention to class, sex, gender, sexual orientation, and sexuality – in addition to immigration, citizenship and the like – affirm the sociolegal interconnection of racial and ethnic supremacy to "other" historically dominant forms of identity politics in this hemisphere as a consequence of European conquest and its aftermath. Indeed, the bottom-line lesson imparted substantively by the readings of the syllabi might be put this way: whether felt more or less strongly along one set of identity axes or another by any particular individual or group, the edifice of supremacy that lords over the lives of most (Asian) Americans is a multidimensional, flexible, and resilient structure of subordination that organizes (and explains) historically and currently dominant kinds of social

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36. Some examples from the syllabi include Gabriel J. Chin et al., *Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice, A Policy Analysis of Affirmative Action*, 4 ASIAN PAC. AM. L.J. 129 (1996); Chris K. Iijima, *The Era of We-Construction: Reclaiming the Politics of Asian Pacific American Identity and Reflections on the Critique of the Black/White Paradigm*, 29 COLUM. HUM. RTS. L. REV. 47 (1997); Natsu Taylor Saito, *Asserting Plenary Power Over the "Other": Indians, Immigrants, Colonial Subjects, and Why U.S. Jurisprudence Needs to Incorporate International Law*, 20 YALE L. & POL'Y REV. 427 (2002); Leti Volpp, *Talking "Culture": Gender, Race, Nation, and the Politics of Multiculturalism*, 96 COLUM. L. REV. 1573 (1996); Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 19 B.C. THIRD WORLD L.J. 477 (1998).

37. *See supra* notes 22-23 and accompanying text on multidimensionality in OutCrit theory and praxis.

38. For discussion of "multidimensionality" in critical legal theory, see *supra* note 23 and accompanying text.

stratification along multiple axes of law and life.

These readings, in short, teach that "Euroheteropatriarchy" names the neocolonial character of the cultural ideologies asserted by and through traditional identity politics:[39]

> The categories implicated in the [traditionally predominant form of identity politics in the United States] – nationality, citizenship, race, ethnicity, culture, class, gender, sexual orientation – thus are recognizable today as a result mainly of historically dominant practices and their resilient legacies. These categories are artifacts of particular, prevalent belief systems and their apparati of societal control – they are the contemporary indicia of "traditional" ideologies imposed by socially, economically and legally dominant groups to organize law and society around themselves, and to sustain their dominance in perpetuity, and in the wake of colonial conquest. These examples point to a particular set of "structures and ideologies" – and to their symbiotic operation in the form of a "single, complex" system of social and legal imperatives – as the target of critical antisubordination analysis and intervention.
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> This particular set of "structures and ideologies" might accurately be described as a "Euro-American heteropatriarchy" – a functional, working heteropatriarchy, in the Americas, and of European origins. By Euroheteropatriarchy, I mean a particular version of heteropatriarchy – a Eurocentric version, which in fact is the one in place throughout the Americas and other sites of European colonization. Consequently, by Euro-American heteropatriarchy I mean, even more specifically, the combination of supremacist ideologies that formed in Europe, particularly its northwestern environs, and since then has been inflicted on the world via European conquest and European-dominated mercantilism. This combination, as discussed below, favors the white European-identified male who is heterosexual and masculine, as well as able-bodied and financially secure in conventional capitalist terms. I thus use these terms here to denote a geographically and culturally specific variant on "heteropatriarchy."
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> As a descriptor, these terms encapsulate not only the national chauvinisms of Europe and its colonial powers, but also their particular brands of beliefs regarding race, ethnicity, gender, sexuality, economic relations and similar fault lines of societal organization. This particular set of "structures and ideologies" combines European strains of patriarchy, heterosexism and capitalism to construct both the individual and the society that s/he inhabits. The term "Euro-American heteropatriarchy" therefore seeks to capture the *interlocking* operation of *particular* forms of racism, ethnocentrism, androsexism and heterocentrism – those which

39. *See generally* Francisco Valdes, *Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender and Sexual Orientation to Its Origins*, 8 YALE J.L. & HUMAN 161 (1996) (describing some of the sex/gender and sexual orientation norms that underlie and animate androsexism and heterosexism to produce the patriarchal form of homophobia – heteropatriarchy – that still prevails in Euro-American societies, including the United States, today).

> operate in tandem in the United States (and beyond it throughout the "New World") to produce identity hierarchies that subordinate(d) people of color, women, and sexual minorities in different yet common ways.[40]

These are the identity politics through which critical pedagogy and legal education must pierce in order to open the imagination to the possibility of decolonization. Through materials that help make the cross-group connections and intersections of these identity politics clear and germane, these and similar syllabi teach not only the story of Asian Pacific America but also how that story intertwines with multiple others, ranging from the formal and cultural establishment of white supremacy over numerous nonwhite groups to the connection of this particular form of supremacy with others encapsulated in the identity ideologies of a Euroheteropatriarchy.[41] These syllabi thereby prompt students to appreciate that the structure of emancipation must be multidimensional because the structure of subordination is likewise.

These syllabi thereby evoke an educational experience that equips students to analyze current affairs in historical, contextual, critical *and* multidimensional critical terms. The kind of education reflected in these syllabi is designed to enable students to recognize the past in the present – to recognize, in other words, that the past is *not* past. In marshaling a rich array of interdisciplinary and critical readings, these syllabi strive to equip students to recognize themselves in historical terms, to recognize the complex and multidimensional cultural politics that subordinate them, and to connect contemporary realities and experiences to supremacist ideologies based on "traditional" (meaning colonial and neocolonial) values or preferences. These readings, as a set, perform the task of critical pedagogy: empowering students to remember the multidimensional lessons of history, and to resist their structural and cultural reification in the manifold terrains of everyday life.

B. Responding Now *to the Lessons of History: Identity Politics as Antisubordination Praxis*

As the hidden histories of identity politics in law and policy demonstrate, a multifaceted historical process of supremacist cultural politics based on identity and identification has systematically, structurally, and intentionally elevated certain social types over all others. This multidimensional elevation employs race and ethnicity, in combination with sex, gender, sexuality, religion, class and similar other axes of identity, to prescribe individual destinies. In this way, law and policy,

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40. Francisco Valdes, *Identity Maneuvers in Law and Society: Vignettes of a Euro-American Heteropatriarchy*, 71 UMKC L. REV. (forthcoming 2003).

41. For explanation of Euroheteropatriarchy as ideology, see *supra* notes 39-40 and sources cited therein.

society and culture, have been engineered to produce a hierarchy of identities in order to ensure white supremacy, male supremacy, and straight supremacy. Thus, Euroheteropatriarchy was established.

Identity, then, is the linchpin of a vicious cycle that has entrenched some groups and persons in persistent poverty while ensconcing others in corrupt comforts. This is the current societal context constructed through the histories told in the readings of the syllabi. The question confronting students born into this complex and contentious scenario is: What now . . . what next? This query points to the voids in conventional education that are key sites of knowledge production – voids into which critical legal education must (and does) step to help create the conditions for self de-colonization through critical pedagogy.[42]

But in engaging this personal and cultural query, today's students are likely to be confronted by calls that denounce the awakening of identity consciousness based on history to generate social justice agency. These calls take many forms, ranging from the apparently disingenuous to the merely uninformed. They appear in opinions issued by members of the Supreme Court who seek to perpetuate the past by any possible means as well as in classroom settings among students without a critical legal education who, therefore, may be more likely to fall prey to these Orwellian appeals.[43] While some well-meaning (yet uncritical) folks therefore like to think that identity *now* is a "personal" or "private" matter to be decided by each individual, history paints a bigger picture, and teaches stubbornly critical lessons – as these syllabi make painfully plain: the very same dominant social groups, who for two hundred years have been the most identity-conscious of all, *now* suddenly are found calling

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42. *See supra* note 24 and accompanying text on critical pedagogy.

43. The anti-equality agenda of the current majority of the Supreme Court both reflects and projects these kinds of calls, clothing them with the apparent authority of law. The Orwellian justifications proffered for judicial dismantling of varied affirmative action policies enacted by the democratic branches of the federal and various state or local governments is an exemplar of this phenomenon, as the assertion – "we are just one race here. It is American." – so colorlessly illustrates. *See* Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 239 (1995) (Scalia, J., concurring). For discussion of the identity-driven agenda behind these and similar calls or assertions, see Jed Rubenfeld, *The Anti-Antidiscriminatinon Agenda,* 111 YALE L.J. 1141 (2002) (critiquing the spate of anti-equality rulings since the 1990s); *see also* Valdes, *supra* note 17, at 145 (discussing the "culture war cases" of the past decade or so). This "wrong turn" in equality jurisprudence ignores the culture of subordination established socially and legally through invidious discrimination, which the Fourteenth Amendment formally repudiated but which remains in operation through institutional and other societal means. *See generally* Charles R. Lawrence III, *The Id, the Ego, and Equal Protection,* 39 STAN L. REV. 317 (1987); Lawrence, *Two Views of the River, supra* note 16; Susan Strum & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal,* 84 CAL. L. REV. 953 (1996). These historically instilled patterns of thinking and doing based on traditional or neocolonial identity politics are embedded in social life – at both the individual and institutional levels – and effectively immunize patterns of "unconscious" or institutional supremacies from any legal remedy despite the formal repudiation of supremacist identity politics as public policy. This jurisprudential strategy, and its foreseeable consequences, of course are part and parcel of the larger sociolegal backlash unleashed in recent decades via the culture wars. *See supra* notes 18 and sources cited therein on the culture wars.

loudly for a prompt end to "minority" exercises of their own historical practices to challenge the present legacies of those very practices.

Thus, one specific task of critical legal education in these particularly hard times is to equip students to anticipate, and not be duped by, the false sirens of the culture wars – including the "backlash" politics and jurisprudence of the culture wars – which seek to "retake"[44] the traditional preferences of supremacist identity politics on behalf of groups, persons, and institutions associated with the original conquest. Indeed, under the banner of combating "political correctness" and promoting "color blindness," traditional in-groups who have benefited themselves through traditional identity politics for the past two hundred-plus years, *now* call for a formal end to all identity politics in law and policy.[45] *Now* that they have constructed institutions and structures of subordination to ensure their socioeconomic dominion, they call for so-called "blindness" to sociolegal forms of identity through which they constructed their institutionalized supremacy.[46] *Now* that people of color, women, sexual minorities, and other traditionally subordinated groups have developed a self-empowered sense of identity, *now* that we actively are seeking redress for the violence perpetrated by the identity politics of the past and the present, *now* that the ingroup elites no longer hold an unchallenged monopoly over "identity" and over "politics" – *now*, at this important juncture in history, we are lectured from on high that we are all the same after all: we are all members of the same "American" "race" . . . one nation, free and equal . . . and, just in the nick of time, too.[47]

The identity politics and social repercussions of this turn to formal blindness are obvious. It is no accident that this analytical structure makes it mightily difficult to "prove" discrimination, much less to dismantle systematized structures of subordination. Thus, with seductive calls to unity that disclaim responsibility to remedy their own historical and continuing wrongs, established majoritarian elites and their foot soldiers seek to hang onto their accumulated, ill-gotten gains.[48] With a self-serving division of the "past" and the "present," they seek to deny that the past is *not* past and to distract public attention from the blatant hierarchies and

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44. *See supra* note 18 and sources cited therein on retrenchment and backlash in law and policy.

45. For a compelling analysis of this phenomenon in the context of legal education and outsider jurisprudence, see Cho & Westley, *supra* note 16.

46. Not coincidentally, the backlash jurisprudence of the culture wars has taken up this kind of call to formally "blind" identity politics. *See, e.g., supra* note 43 and sources cited therein on formally blind identity politics in equality law; *see also* Valdes, *supra* note 21 (on backlash jurisprudence and antidiscrimination law).

47. *See supra* note 43 and sources cited therein on these and similar kinds of claims and assertions.

48. *See generally* Robert Westley, *Many Billions Gone: Is it Time to Reconsider the Case for Black Reparations?*, 40 B.C.L. REV. 429 (1998) (discussing reparations as a remedial route for the historical exploitation of African Americans).

inequities that exist *today* in education, healthcare, employment, housing, income levels, and other indicants of social well-being due largely to yesterday's injustices.[49] With these kinds of self-righteous assertions, they make a big fuss about so-called "merit" when, in fact, they seek only to prevent the disgorgement of the unjust privileges, advantages, and riches accumulated not on the basis of "merit," but chiefly on the basis of prejudice and bias during a time when white supremacy, male supremacy, and straight supremacy were practiced with wholesale impunity.[50] With these and similar Orwellian attempts to distract our attention, these members and agents of the elite class prod the rest of us to forget that, for two hundred years, they have operated this nation, and its government,

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49. *See, e.g.* Roy L. Brooks, *The Ecology of Inequality: The Rise of the African-American Underclass*, 8 HARV. BLACKLETTER L.J. 1 (1991) (exploring the reasons for the continuing segregation of African Americans in pockets of poverty); Paul Ong & Suzanne J. Hee, *Economic Diversity, in* THE STATE OF ASIAN PACIFIC AMERICA: ECONOMIC DIVERSITY, ISSUES AND POLICIES 31, 31-56 (Paul Ong ed., 1994) (comparing the earnings of Asian Americans to Whites and noting that nearly half of all Americans of Southeast Asian descent live in poverty); Gerald P. Lopez, *Learning About Latinos*, 19 CHICANO-LATINO L. REV. 363 (1998) (discussing the socioeconomic and demographic condition of Latina/o communities in the United States); Diedre Martinez & Sonia M. Perez, *Toward a Latino Anti-Poverty Agenda*, 1 GEO. J. ON FIGHTING POVERTY 55 (1993) (exploring ways of eradicating or mitigating the impoverishment of Latinas/os in the United States). For a current "official" portrait, see Council of Economic Advisers, CHANGING AMERICA: INDICATORS OF SOCIAL AND ECONOMIC WELL-BEING BY RACE AND HISPANIC ORIGIN 2 (1998) (noting that "race and ethnicity continue to be salient predictors of well-being in American society . . . [affecting] health, education, and economic status"); Silvia A. Marotta & Jorge G. Garcia, *Latinos in the United States in 2000*, 25 HISP. J. BEHAV. SCI. 13 (2003). Thus, while "significant progress has been made in expanding the promise of America to members of minority groups . . . the legacy of race and color continues to limit opportunities. The life chances of minorities and people of color in the United States are constrained by this legacy AND by continued discrimination and racial disparities that are often the result of discrimination" – the combined effects of the past as the present. The President's Initiative on Race, THE ADVISORY BOARD'S REPORT TO THE PRESIDENT 59, Sept. 1998 (emphasis added). These "constraints" are reflected in the demographics of power centers in North American society. Fortune 1000 boards continue to be "bastions of aging white males" – they account for three quarters of all board seats that control corporate policy in North America and, increasingly by the extension of globalization, the world. *See, e.g., Good Old Boys' Network Still Rules Corporate Boards*, USA TODAY, Nov. 1, 2002, at 1; *see also* HISPANIC ASSOCIATION ON CORPORATE RESPONSIBILITY, SUMMARY, 2002-03 CORPORATE GOVERNANCE STUDY (Dec. 2002) (reporting that "Hispanics" account for 1.8% of the 10,417 board seats in the Fortune 1000 list). The same phenomenon is manifest on the federal judiciary, a similar demographic bastion that reflects the same neocolonial legacies of history on this continent: two thirds of all federal judges in 2002 were white (and openly heterosexual) males. *See* Alliance for Justice, *Status of the Judiciary: April 2002 Summary Update*, retrieved from http://www.allianceforjustice.org/judicial; Federal Judicial Center, *The Federal Judges Biographical Database*, retrieved from *http://www.fjc.gov/history*. These judges in turn seem "blindly" to reproduce themselves, demographically at least. By example, most of the Supreme Court clerks in 2001 were, again, mostly white (and apparently heterosexual) males. *See* Tony Mauro, *Court Loses Ground on Minority Clerks*, THE RECORDER, Oct. 30, 2001, at 1 (reporting both the historic and current "dearth" of clerks other than white (and openly heterosexual) men). Finally, and similarly, the same histories and legacies of constraint have produced the same demographic disparities that still define the legal professorate of the United States today. *See supra* note 16 and sources cited therein on the makeup of law faculties, and the conditions facing faculty who are not white (and openly heterosexual) white men.

50. For graphic historical examples, see *supra* notes 14 and 16 and sources cited therein on the formalization and institutionalization of legal education in this country to the present.

economy and culture, on the basis of 100 percent quotas in favor of those who identified as straight, white, Christian men. These calls seek to pressure or shame traditionally subordinated groups into surrendering longstanding claims to justice and equity that are firmly grounded and well-documented in the history of this nation and in its continuing, contemporary legacies.

In this way, ensconced ingroup elites vehemently oppose programs geared to redressing identity-based grievances based on sex, race, and other axis of subordinationist identity politics. Instead, they beckon us into a state of self-induced amnesia to join hands in a happy future based on tardy and strategic claims of individual merit designed to erase memory, suppress identity, and undermine agency – the diametric opposite goal of a critical legal education. Not surprisingly, during the culture wars, these kinds of calls have provided the slogans for affirmative action's shutdown as formal policy during the past decade or so.[51] In effect, then, these kinds of calls amount to an effort to anticipate and preclude any form of remedy that actually would rectify historical harms perpetrated in the name of identity. From a critical educational perspective, these kinds of calls fundamentally amount to a disingenuous effort to short-circuit our collective national capacity to fashion remedies on the precise basis of those identities used historically and structurally to oppress; remedies, in other words, focused tightly on the historical wrongs that they are supposed to rectify. The recognition of these insights must be one of the substantive aims and consequences of critical approaches to legal education.

Of course, the various types of self-deluding calls to "identity blindness" now being issued are appealing on the surface. All humans would like to be considered and treated on the basis of the "content of our character" rather than on perceptions or associations based on our perceived, imputed, acquired, or chosen identities. Unfortunately, this ideal is only a fantasy for most of us alive today. The identity politics that have constructed this nation's current realities make this ideal unrealistic, at least for the foreseeable future: the continuing and scandalous disparities in housing patterns, in Fortune 1000 boards, in the halls of Congress, in the corridors of education, on the bench of the Supreme Court and other tribunals, and in other positions of private or public power and privilege make plain the sobering reality.[52] Identity and identity politics remain a

51. For a detailed analysis, see Lawrence, *Two Views of the River*, *supra* note 16 (critiquing the liberal defense of affirmative action against this kind of onslaught).

52. Corporate elites, like legal and cultural elites, continue to be dominated by persons and groups with the most similarity to colonial elites. The federal judiciary is a representative and relevant example. Like many other institutions of North American society, federal judges continue to reflect the racial, ethnic, and sexual demographics of the "original" invaders. Today, like yesterday, most federal judges are white (and openly heterosexual) men. *See supra* note 49 and sources cited therein on judicial (and other) elite demographics that reflect the contemporary legacies of neocolonial histories and traditions.

salient fact of contemporary life, and every student can and should benefit from the acquisition of skills and knowledge to deal with the cards as they have been dealt – and to demand a reshuffling based on historical and contemporary knowledge of the facts that constructed the skews of today.

The employment of history, thus, is necessarily elemental; critical knowledge of hidden histories can prompt students to pause and observe how the "traditional" neocolonial politics of identity continue swirling furiously all around us. [53] Critical legal education can and should help equip students to recognize these politics in their contemporary permutations, and to expose how traditional identity politics help to shape their destiny today in specific, concrete, practical ways. To do so, critical legal education must also create a critical, contextual, multidimensional understanding of history and its legacy. Critical legal education, then, is the tool with which students can pierce the veil of received knowledge and reclaim hidden truths as part of a social self-empowerment process. Critical legal education must provide a platform of knowledge for self-decolonization, for once students educate themselves critically on the histories and legacies of "traditional" identity politics in this country, they can and do begin to understand exactly why straight white men exert clearly disproportionate control over this nation's immense bounties.[54] This attainment of historical and social understanding sets the stage for self-transforming epiphanies.

The threshold lesson of the syllabi in mapping the creation of a critical legal education is that history is a prerequisite to emancipation. And the threshold task of critical legal education, as indicated by the design and structure of the syllabi reviewed here and confirmed by the insights of critical education theory, is to deliver historical knowledge coupled with critical analysis as a point of departure from which to study the continuing legacies of that history in all its current manifestations, ranging from the curriculum to the tax code. In so doing, critical legal education simultaneously enhances students' capacity to think critically and empowers them to reject, forthrightly, the din of Orwellian calls to end identity politics at this particular historical juncture, and to label this call for what they are: a transparently strategic hypocrisy. Critical legal education can and should equip students to recognize these kinds of calls as a means of preserving the basic misallocation of power, privilege, opportunity, and wealth that was put into place systematically and intentionally, under the identity politics and preferences of white supremacy, patriarchy, and homophobia. Among other important lessons, the syllabi teach that those who know not history indeed are doomed to remain entrenched in its bitter legacies.

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53. *See supra* notes 26-42 and accompanying text on the critical uses of history in the syllabi.

54. *See supra* notes 23-24 and accompanying text on critical pedagogy.

II. TOWARD A CRITICAL LEGAL EDUCATION: A SUMMARY SKETCH

This brief discussion of identity, history, and legal education points to the likely purposes, elements, and means of a critical legal education on behalf of social justice activism. As this broad-brush sketch indicates, a critical legal education fundamentally would mirror the functions or objectives of critical legal theory.I In aim, substance and method, critical legal education largely represents the fusion, by application, of OutCrit theory and legal doctrine or public policy. To promote the benefits of this fusion, OutCrit scholars consciously and collectively must begin to elucidate the objectives, contents, and mechanisms of critical legal education in light of jurisprudential lessons and shared experience.

A. Aim and Purpose: Decolonizing Self and Society

As the syllabi indicate, and as critical educational theorists emphasize, a primary purpose of critical legal education is and must be to provide students with the tools necessary to decolonize themselves, and then their social relations and spaces, across multiple axes of identity and difference. Through the cross-disciplinary and inquiring process of critical legal education, students steadily become equipped to recognize particular (and interlocking) forms of hegemony as well as their roots. This recognition is the predicate to resistance, and in time, to the multidimensional articulation of emancipatory forms of counter hegemonies based on antisubordination principles. The design and operation of critical legal education, then, must be aimed at engendering among students a long-term, forward-looking praxis of resistance and transformation based on bodies of knowledge that span the historical, social, intellectual, and experiential.

B. Means, Methods, and Materials: The Substance and Elements of Critical Legal Education

As this basic purpose in turn suggests, the indispensable features of a critical legal education surely would include (1) a consistent commitment to antisubordination knowledge and praxis, (2) guided by multidimensional yet contextual understandings of law and society, and (3) informed by critical and self-critical analysis. Much has been written on these foundational features of OutCrit theorizing, [55] and on their importance to

55. In the context of outsider jurisprudence, much of this discourse stems from efforts to understand "difference" in "antiessentialist" ways that avert stereotyped identifications to cultivate antisubordination coalitions among diverse oppressed groups. *See, e.g.*, Kimberlé 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); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989); *see also* Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination*

critical theory in the service of social justice transformation: antisubordination principles ground the project substantively and normatively, while multidimensional and contextual analysis yields the knowledge that guides the direction of praxis, and the commitment to criticality and self-criticality safeguards the intellectual integrity of collective vision and community action.[56] For the same reasons, and as confirmed by the syllabi here, these three elements also must guide the substantive development of critical approaches to legal education. The record of insight and analysis collectively produced during the past two decades or so under the rubric of outsider jurisprudence, coupled with materials from history, critical educational theory and other disciplines, thus provides a rich collection of means, methods, and materials for the delivery of a critical legal education to contemporary law students.

Like the basic substance and elements, the means, methods, and materials of critical legal education stem from the accumulated record of three broad areas of substantive inquiry and scholarly discourse: (1) OutCrit scholars on law, policy and society; (2) critical scholars in the social sciences, such as history, sociology, economics, literature, cultural studies and similar disciplines that help to contexualize OutCrit renditions of law, policy and society; and (3) critical education theorists, whose focus on education as such helps to provide the premises and pedagogies for the methods of a critical approach to legal education. Bringing to bear the most contextually salient aspects of the resources offered by these three broad areas of knowledge on a particular course or program is one way to assemble the means, methods, and materials of a critical legal education as a formal enterprise within the legal academy of the United States today. These assemblies, as discussed below, can be organized individually as courses introduced into the formal curriculum, such as those reviewed here, or in more collective, institutional, or programmatic terms that take

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Doctrine, Feminist Theory and Antiracist Politics, 1989 U. CHI. LEGAL F. 139. Various RaceCrit and LatCrit scholars have continued to develop concepts and tools of critical legal theory to build on these foundational concepts, striving progressively to better capture the dynamics of "identity politics" in law and society. *See, e.g.*, e. christi cunningham, *The Rise of Identity Politics I: The Myth of the Protected Class in Title VII Disparate Treatment Cases*, 30 U. CONN. L. REV. 441 (1998) (on wholism); Berta Hernandez-Truyol, *Building Bridges – Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1991) (on multidimensionality); Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 U. CONN. L. REV. 561 (1997) (on multidimensionality); Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257 (1997) (on cosynthesis); 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) (on interconnectivity); *see generally* Charles R. Lawrence III, *Foreword—Race, Multiculturalism and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819, 834-35 (1995) (urging greater efforts along these lines to promote multifaceted projects of social transformation).

56. *See, e.g.*, Iglesias & Valdes, *supra* note 31, at 815-16, 231-32 (discussing relationship of multidimensional analysis, antisubordination purpose, and self-critical identity politics in critical theory generally, and specifically in LatCrit theory).

advantage of variable structures in formal legal education, as evidenced by other initiatives also currently underway.

C. *Individual and Institutional Interventions: Delivering Critical Legal Education*

The academic landscape points to two basic kinds of interventions in the development of critical approaches to legal education: individual interventions by scholars and faculty members and institutional interventions by collective initiative. Both must be animated by the decolonizing and social justice purposes of critical legal education. Both must aim to generate historical, multidimensional, and contextual understandings of law, policy, and society using a cross-disciplinary range of descriptive and critical materials. While each must be designed according to the calls of circumstance, both must be designed to ensure that critical legal education operates as a principled platform for self-empowerment and social justice activism in everyday life. Both, in short, must be designed to secure the decolonizing purposes of critical legal education, and to employ the most effective means for doing so through knowledge.

The first kind of intervention, as these and similar syllabi show, is the individual efforts of faculty members around the country whose pedagogical and personal initiatives have generated curricular reforms toward a critical legal education at various institutions across the nation. These faculty members, for the most part, are responsible for the progress made in recent years to integrate courses on race, ethnicity and other forms of identity into the formal law school curriculum:

> Perhaps the most striking aspect of the status quo depicted by the findings of [a recent curricular study of law school courses on race and ethnicity] is the crucial importance of individual law teachers and scholars who are filling the voids of knowledge created by the silence and ignorance that shrouds, today as it has over the ages, the subject of Latinas/os, race and ethnicity in American law, life and society.[57]

Individual faculty and scholars, such as those whose syllabi we celebrate here, thereby form the vanguard of progress toward the establishment of critical approaches to legal education within the formal, institutional setting of the traditional law school curriculum.

The second kind of intervention, as illustrated by the projects described briefly below, flow from collective actions to produce programmatic examples of critical legal education. These initiatives, like others around the country, combine personal commitment with collective and mutual cooperation.[58] The two programmatic initiatives used

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57. Valdes, *Barely at the Margins*, *supra* note 8, at 141.

58. For instance, the Critical Race Concentration at the UCLA School of Law is an example of

illustratively below are an important part, but not the entire story, of contemporary efforts to establish critical legal education in the United States.

The two projects described below effectively constitute the kind of education described here: education as a form of praxis committed to antisubordination principles and social justice activism, guided by multidimensional and contextual analyses of law and society, and grounded in critical and self-critical interrogation of knowledge, understanding, and action. While these two projects depend on the skills, talents, energies, and commitments of many individuals, they differ from the individual projects noted above in that they transcend the contributions or capacities of any one of us: these programmatic projects depend not only on sustained individual initiative but also on collective cooperation and community solidarity. And, as such, they also illustrate the community-building and coalition-building dimensions of LatCrit and OutCrit theory and praxis in the formal venues of legal education.[59] The following two programs, like other collective, curricular or institutional initiatives underway around the country, thus are not only exemplars of collaborative efforts toward critical legal education but are also a testament to the range of possibilities opened by a firm commitment to community building as part of outsider jurisprudence and praxis. These projects underscore the potential power of collective antisubordination action grounded in the strength and conviction of building communities and coalitions through the articulation of critical outsider jurisprudence.[60]

III. CRITICAL APPROACHES TO LEGAL EDUCATION: NOTES ON COLLECTIVE EXPERIMENTS

LatCrit and other OutCrit scholars recently have formed two "critical partnerships" to develop a pair of programmatic, mutually-reinforcing interventions in legal education that illustrate how a *critical* legal education might be institutionalized. The first, the Critical Global Classroom, is a six-week study abroad summer program devoted to social justice activism that will meet first in two cities in Chile, and then in Buenos Aires, Argentina. The second is the LatCrit Student Scholar Program, a writing

individual faculty members joining in a group effort to establish a formal curricular program focused on critical study of identity politics in law and policy, both historically and currently. The Critical Race Concentration, as much as the syllabi reviewed above and the collective efforts described below, reflect how critical legal education might be composed within the confines of the contemporary law school curriculum. For more on the UCLA course of study, see Valdes, *Barely at the Margins*, *supra* note 8, at 144-49.

59. For additional readings on community and coalition in LatCrit theory specifically, see *supra* note 7 and sourcescited therein.

60. Coalitional discourse has long been crucial to outsider jurisprudence and antisubordination praxis. *See supra* note 7 and sources cited therein on coalition and community building as features of LatCrit theory.

forum and mentoring program designed to help students develop and publish scholarly works. Both programs are open to all law students nationally, as well as to students from other disciplines and countries. Both are aimed at bringing to students the fields of knowledge necessary to their self-decolonization, and both strive to build through legal education, theory, and discourse diverse and enduring networks of critical knowledge devoted to antisubordination principles and goals as a personal and collective praxis.

A. A Study-Abroad Program in Law, Policy and Social Justice Activism: The "CGC"

The Critical Global Classroom will focus on human rights and comparative law from a critical perspective, and will include substantial study of critical legal theory in international contexts. The CGC's curriculum is designed to immerse students in the local legal and social culture through varied academic events, ranging from regular class sessions to field visits, guest lectures, and an optional "service component" consisting of various activities that will permit students to work with local attorneys, policymakers, or activists in social justice projects. In addition, students will attend the three-day LatCrit Colloquium on International and Comparative Law, where they will be able to interact with diverse critical scholars from different disciplines and regions. Through the program's curricular menu, CGC students will be offered a first-hand experience of law and society in both countries, and an opportunity to learn critical theory and international jurisprudence in the material context represented by each of these nations. CGC students will meet and discuss contemporary issues with leaders and activists from varied sectors of Chile and Argentina to learn about law, policy, and politics not only through books but also by experience. The regular class sessions will provide both background readings to help students achieve maximum benefit from the field visits and other academic events, as well as a venue for discussions that help "tie it all together" for the students as the program progresses.[61]

The CGC's menu of academic events is organized around the cross-disciplinary study of five substantive themes: (1) Pre-colonial Arrangements and Colonial Histories/Legacies; (2) Historic and Contemporary "Minority" Issues, and Inter-Group Power Relations; (3) Economic Control of Society and Wealth-Identity Distributions; (4) the Role of Constitutional and Legal Systems in Maintaining or Reforming the Status Quo; and (5) the Effects and Prospects of Globalization on the

61. The CGC is a partnership of the University of Baltimore School of Law and of LatCrit scholars. For a more complete description, or more information, please visit the program website at *www.cgc2003.cl*, email *cgc@ubalt.edu*, or contact Odeana Neal (*oneal@ubmail.ubalt.edu*) at the University of Baltimore School of Law.

Local/Regional Political, Social, Economic and Legal Arrangements. Chile and Argentina provide extraordinarily fertile grounds for the study of these themes from a critical and comparative perspective. As a set, these five themes are designed to provide CGC students with a contextual and multidimensional understanding of these nations and their legal systems, and of how the present status quo in each country has been constructed through the particular histories, policies, and politics that CGC students will study through the program's varied menu of academic events.

The integrated schedule of field visits, guest lectures, optional service component, LatCrit Colloquium and discussion circles, and in-class discussions during regular class sessions are designed to ensure a broad and balanced exposure to the host sites and societies in transnational and comparative terms. The curriculum is designed to show both power and disempowerment in local, regional, and global contexts, as well as in urban, provincial, and rural sites. To learn both about law and theory and about how they work in practice, CGC students will study not only diverse texts in law, policy, and politics but also how these forces operate in society.As a programmatic expression of critical legal education, the CGC is designed for students seriously committed to social justice knowledge and activism.

In addition to immersing students in local cultures and exposing them to critical studies, the CGC offers a unique opportunity for students interested in social justice to study international and comparative law in a "safe space" and with critically minded faculty. The time together during the program's sojourn through South America will provide the time and opportunity for students to establish relationships and networks based on social justice knowledge, experience, values, and activism. After the program concludes, the companion Cyber Classroom program will encourage and enable CGC graduates and other likeminded students and faculty to stay in touch via electronic means.[62] The CGC thus creates opportunities to forge relationships or build networks of likeminded individuals that will continue beyond the six weeks of the program to carry on social justice projects of various sorts in local communities as well as global venues.

In content, design, and aim, the CGC represents a current collective effort at institutionalizing critical approaches to legal education. Its substantive content employs interdisciplinary materials to produce antisubordination knowledge in multidimensional and contextual frameworks. The means and methods of the program are designed to help empower students with the knowledge necessary to decolonizing the self and, over time, perhaps society as well. The CGC both teaches and *is*

62. The cyber classroom is a closed list-serv in which faculty and students engage questions based on selected readings. For more information on this and other LatCrit programs, visit the LatCrit website at *www.latcrit.org*.

social justice practice.

B. A Writing-Mentoring Program on Race, Ethnicity and Justice: The "SSP"

Another recent initiative, the LatCrit Student Scholar Program (SSP), is another collective exercise in critical legal education. This program invites students from any discipline, in good standing at any accredited institution anyplace in the world, to submit each January an original, unpublished manuscript related to questions of race, ethnicity, and law. These parameters are deliberately flexible to accommodate innovative, cross-disciplinary work devoted to race, ethnicity, and social justice. All application materials may be submitted in Spanish or English, either in hard copy or via email. Students currently enrolled in seminars or other classes in which they already are writing a paper should be particularly interested in the SSP, as well as faculty who teach in these areas and may know of students with superior seminar papers.

After the annual submission deadline, a selection committee designates up to four applicants as that year's Student Scholars on the basis of the paper, and an accompanying personal statement.[63] The Student Scholars receive scholarships to that year's LatCrit Annual Conference to present their papers, and are invited to submit their papers for publication in the law review symposium based on the conference proceedings. The Student Scholars also receive scholarships to the Critical Global Classroom study abroad program described immediately above. Both scholarships cover housing, all program fees, and a travel stipend.

Following their participation in the LatCrit conference and in the CGC summer program, the Student Scholars will be teamed up with mentors to help them develop a follow-up scholarly paper over the course of the following year for presentation and publication in appropriate venues. To ensure maximum benefit to the Student Scholars and their professional aspirations, the Student Scholars' second papers may be devoted to any topic agreed upon between the Student Scholar and her/his mentors. The SSP mentoring relationships are focused specifically on the production of scholarship on race, ethnicity, and social justice to help students develop their intellectual horizons and agenda, as well as to foster critical legal scholarship and consciousness regarding law, policy, and identity.[64]

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63. The SSP 2002-03 Selection Committee consists of Elvia Arriola, Jerome Culp, Angela Harris, Berta Hernandez-Truyol, Margaret Montoya, Stephanie Wildman, and Eric Yamamoto.

64. The Student Scholar Program is a partnership of the University of California School of Law-Berkeley and of LatCrit scholars, and the program is co-sponsored by the University of Baltimore School of Law, the University of Florida Levin College of Law, the University of Miami School of Law, and Santa Clara University School of Law. For more information, please contact Professor Angela Harris (*aharris@law.berkeley.edu*) at the University of California, Berkeley School of Law, or visit the LatCrit website at *www.latcrit.org*, where students can download application packets.

As another ongoing experiment in critical legal education, the Student Scholar Program aims to help students produce knowledge that helps to explain the present in historical, contextual and multidimensional terms. The SSP is designed to cultivate antisubordination knowledge that spans disciplines, cultures and eras to promote critical awareness of human injustices, and of their constructed origins and nature. The SSP, like other forms of critical approaches to legal education, seeks to build memory, embrace identity, and foster agency among traditionally subordinated groups and students.

Finally, these two new experiments in collective social justice programs are designed to work hand in hand. Both the CGC and the SSP are designed to operate as "lifelines" to students at law school campuses nationwide – and beyond. Both programs offer formal, programmatic opportunities to study areas and approaches that otherwise might not be available to today's socially conscious students. Moreover, both the CGC and the SSP are intended to help cultivate critically minded students who might be interested in pursuing a teaching career in law or other disciplines. Both the CGC and the SSP are designed to work synergistically as lifelines to students *as well as* pipelines for them into the legal or other academy. Both are examples of collective LatCrit projects in critical legal education today. Along with the work of individual faculty from coast to coast, these collective experiments seek to establish the makings of a *critical* education within the confines of a *traditional* legal education. As a result of these and similar pioneering efforts, we stand collectively poised to inaugurate new experiments in critical legal education.

CONCLUSION

As these syllabi make plain, critical legal education is astir. The pieces are in place. Now it is up to us – OutCrits and allied scholars – to put them together in substantively and institutionally viable forms. In this essay, I have tried to mark these stirrings to aid these and similar efforts or aspirations among the critical scholars and teachers that comprise the OutCrit network of communities and coalitions devoted to antisubordination praxis. The efforts noted here, both on the individual as well as the collective levels, provide a point of departure for the discussion and expansion of the ways and means through which outsider scholars can deliver a critical legal education to students today and tomorrow.

To follow up on these ongoing efforts and summary observations, activist scholars interested in the development of critical approaches to formal legal education must organize events and venues to exchange experiences and ideas, and thereby to build networks of knowledge capable of tackling concrete tasks or needs, such as the production of materials. To that end, LatCrit scholars have organized an "action workshop" on "Formal Education, Curricular Reformation and LatCritical Praxis: Doctrinal,

Clinical and Programmatic Interventions" for the LatCrit VIII conference, which took place in Cleveland in May 2003 and was designed to provide a forum for group discussion and collective action on these issues. The workshop drew "our attention to a particular aspect of the status quo within legal education relating to . . . clinical education, urban education, curricular reform [and] pre-law school education" to set the stage for group discussion of individual and institutional projects.[65] The objectives of the workshop included a "brainstorming session to focus our attention collectively on practical reformatory projects that we might undertake as a group."[66]

The following suggestions, drawn from this summary review of the syllabi and similar current efforts, thus conclude this brief commentary. These suggestions outline five areas or points of connection that can help define the contents and dynamics of critical legal education as a kind of antisubordination project. These five "points of connection" suggest basic aims toward which critical legal educators might usefully strive in the development of materials and programs in critical legal education:

1. Connecting the Past and the Present: A key and threshold area of focus for critical legal educators must be to help students make connections between the past and the present. To learn, in other words, that "The past is never dead. It's not even past."[67] This first point of connection is designed to help students counter the calls demanding formal and personal blindness to the past, and to the present legacies institutionalized since 1492.[68] And, of course, this first point of connection attests amply to the centrality of history in any critical legal curriculum – a centrality illustrated by the syllabi reviewed here.[69]

2. Connecting the Personal and the Structural: Another crucial area of focus is the connection between the personal and the structural. This point of focus is designed to help students understand how personal or individual experience is part and parcel of dominant cultural, material, and political arrangements. This second point of connection focuses students on experiential knowledge as a reflection of broader societal dynamics, so that the personal and the structural are understood as integrated, rather than bifurcated, aspects of social reality. To make this point of connection, critical legal educators can marshal the record and technique of "storytelling" established in recent years through the work of OutCrit scholars – a technique that captures otherwise ignored insights and that encourages students by example to learn structural lessons from personal

65. *See LatCrit VIII Program Schedule with Substantive Program Outline* 10 at *www.latcrit.org.*

66. *Id.*

67. *See supra* note 30 and accompanying text.

68. For discussion of such calls, see supra notes 42-54 and accompanying text.

69. For discussion of the role of history as reflected in these syllabi, see *supra* notes 26-42 and accompanying text.

experiences and narratives.[70] This point thus includes the connection of historical and social knowledge with personal experience and knowledge; this connection envisions a combination of intellectual and experiential knowledge that helps to contextualize the personal in larger cultural frames. This point of connection thus provides one example of the ways in which the collective work of OutCrit scholars may and should be incorporated into the ongoing development of critical approaches to legal education.

3. Connecting the Social and the Legal: This third area of focus underscores the dialectics of law and society. This point focuses attention on the ways in which law and policy are deployed to construct society and social relations within and across groups, as well as among individuals. This third point of connection is designed to help students appreciate that "society" is a sociolegal construction put into place incrementally through the accumulated choices of the past and present – a macro-construction in which the past *is* the present and in which the personal meets the structural. To accomplish this point of connection, critical legal educators will need to incorporate materials from various disciplines – apart from history and law – so that students may understand sociolegal realities in multidimensional terms.[71] These disciplines, as suggested by the syllabi, necessarily will include sociology, cultural studies, economics, political science, cultural studies and similar fields of scholarly inquiry into human relations. This point of connection thereby attests to the importance of multidisciplinarity in critical legal education.

4. Connecting the Particular and the General: This fourth area of focus is designed to help students connect the particularities of a given situation or context with other situations or contexts that may reflect similar histories or conditions. This point of connection is designed to help students see how particularities form patterns – how local specifics interconnectively add up to global systems. This fourth point of connection positions students to analyze local and personal circumstances in comparative terms. This point of connection in effect emphasizes techniques of multidimensional analysis that are both critical and comparative on intergroup as well as intragroup levels. This point of connection thus strives to foster an analytical stance and mindset that leans toward coalitional analysis and collaboration.[72]

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70. For a recent and wonderful discussion of legal storytelling in OutCrit theory, see Margaret Montoya, *Celebrating Racialized Legal Narratives, in* CROSSROADS, DIRECTIONS AND A NEW CRITICAL RACE THEORY 243 (Francisco Valdes, Jerome McCristal Culp, Jr. & Angela P. Harris eds., 2002).

71. For discussion of multidimensional analysis in OutCrit theory, see *supra* notes 22-23 and accompanying text.

72. For more on the role of coalitional analysis and politics in OutCrit theorizing, see *supra* note 7 and sources cited therein.

5. Connecting Knowledge and Practice: This fifth and final area of focus trains attention on the relationship between education and action. This point of connection is designed to underscore how theory is supposed to generate and guide social justice activism, both collective and individual. In short, this closing point of connection aims to spur antisubordination praxis as a personal and shared commitment based on critical knowledge about law, policy, and society. This final point of connection in effect represents the culmination of the prior points: here, we call on educators and students alike to practice the knowledge imparted and gained through interactive exchanges of critical knowledge and consciousness among and between educators and students.[73]

These suggestions, like this brief essay, are designed simply to sketch some preliminary thoughts based on the reviewed syllabi and similar ongoing efforts at various schools across the country. But hopefully these five suggestions can and do provide some substantive guidance to help channel the discussions and energies of the coming days, weeks, and months. Hopefully, these concluding suggestions will spur both individual and collective action toward the establishment of critical legal education in the United States and, perhaps, beyond it.

To accomplish these five (and similar) aims, critical legal educators clearly will need to be flexible and pragmatic – we must be prepared to adapt materials and programs according to the circumstances and objectives of the institution or moment. The action workshop at the LatCrit VIII conference therefore is just one step among many that beckon the OutCrit community toward reformatory interventions on behalf of critical legal education. The coming years clearly will require additional programs and meetings of this sort to ensure that we make progress on the ground that enables interested students of every generation to practice both societal and self-decolonization. To leverage existing resources and opportunities, these programs and events may be strategically embedded in the planned activities of various organizations so that they build on each other substantively over time. If we plan ahead, stay focused and persevere, these and similar venues will help to facilitate the development and refinement of the kinds of efforts discussed above. Hopefully, over time, these follow up efforts will yield an enduring antisubordination legacy that contributes meaningfully to our shared aspiration of a decolonized, postsubordination society.

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73. For further discussion of theory as a basis for action, see Valdes, *supra* note 17.