

## An Assessment of LatCrit Theory Ten Years After

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With the democratization of legal academia to include law professors of different genders, races, and sexual orientations has come a loss of community, cohesion, and coherence. But what has been gained has been a more democratic and inclusive community. To believe that academics can again speak with a unified voice is no longer possible. *Instead of despairing, legal academics must come to accept a new order in which disagreement is a constant. In this new order, the way in which legal academics choose to disagree will be just as important as the merit of their ideas.*\*\*\*

### INTRODUCTION

A symposium about Latina/os and the law could not be more timely. In the 1992–93 academic year, “fewer than 100 of the over 5700 law teachers (less than 2%) in the approximately 175 accredited law schools in the fifty states and Washington D.C. [were] Latinos.”<sup>1</sup> However, by the beginning of the 2007-08 academic year, the academy neared a record high 200 Latina/o tenure track law professors at law schools in the continental United States.<sup>2</sup>

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\*\*\* Sylvia R. Lazos Vargas, “*Kulturkampf[s]*” or “*fit[s] of spite*”? : *Taking the Academic Culture Wars Seriously*, 35 SETON HALL L. REV. 1309, 1310–11 (2005) (emphasis added). This article was published in the ninth annual LatCrit symposium issue. See *The Ninth Annual LatCrit Conference—Countering Kulturkampf Politics Through Critique and Justice Pedagogy*, 25 SETON HALL L. REV. 1155 (2005).

1. Michael A. Olivas, *The Education of Latino Lawyers: An Essay on Crop Cultivation*, 14 CHICANO-LATINO L. REV. 117, 129 (1994).

2. Much work, of course, remains to be done. For example, a number of elite law schools never have had a tenure-track Latina/o law professor on their faculties. See Ediberto Roman & Christopher B. Carbot, *Freeriders and Diversity in the Legal Academy: A New Dirty Dozen List?*, 83 IND. L.J. 1235 (2008) (listing Latina/o law professors currently at U.S. law schools). Moreover, about one-half of all U.S. law schools fail to have a Latina/o tenure track faculty

One might wonder what impact, if any, the doubling of the number of Latina/os in the legal academy has had, and will have, on legal scholarship. This essay evaluates the contributions of Latina/os law professors to a growing body of Latina/o civil rights scholarship and, specifically, a scholarly movement that emerged in no small part as a result of the increase of Latina/o law professors.<sup>3</sup> As we shall explain, the contributions have been great and are growing. Nonetheless, this new movement currently is experiencing growing pains that are the focus of this article.

Over the years, Latina/os have written on some critically important civil rights issues, including, but not limited to, constitutional law,<sup>4</sup> language regulation,<sup>5</sup> immigration,<sup>6</sup> bilingual education,<sup>7</sup> voting rights,<sup>8</sup> and the legal status of Puerto Rico.<sup>9</sup>

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member. See Roman & Carbot, *supra*, at 1259, App. B. Surprisingly enough, one top law school (UCLA) in Los Angeles, a city dubbed the “Latino Metropolis” given its large Latina/o population, VICTOR M. VALLE & RODOLFO D. TORRES, *LATINO METROPOLIS* (2000), as of January 1, 2008 failed to have a single Latina/o tenure-track faculty member. See *id.* There admittedly have been some disputes over whether there in fact is a Latina/o on the law faculty of some law schools. See Luz E. Herrera, *Challenging a Tradition of Exclusion: The History of an Unheard Story at Harvard Law School*, 5 HARV. LATINO L. REV. 1, 109–10 (2002) (discussing dispute over whether Argentine-born professor was Latino).

3. See STEVEN W. BENDER, *GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION* (2003); DEVON CARBADO & RACHEL F. MORAN, *RACE STORIES* (forthcoming 2008); “COLORED MEN” AND “HOMBRES AQUÍ”: *HERNANDEZ V. TEXAS* AND THE EMERGENCE OF MEXICAN AMERICAN LAWYERING (Michael A. Olivas ed., 2006); RICHARD DELGADO, *JUSTICE AT WAR: CIVIL LIBERTIES AND CIVIL RIGHTS DURING TIMES OF CRISIS* (2003); LAURA E. GÓMEZ, *MANIFEST DESTINIES: THE MAKING OF THE MEXICAN AMERICAN RACE* (2007); LAURA E. GÓMEZ, *MISCONCEIVING MOTHERS: LEGISLATORS, PROSECUTORS AND THE POLITICS OF PRENATAL DRUG EXPOSURE* (1997); *THE LATINO/A CONDITION: A CRITICAL READER* (Richard Delgado & Jean Stefancic eds., 1998); IAN F. HANEY LOPEZ, *RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE* (2003); RACHEL F. MORAN, *INTERRACIAL INTIMACY: THE REGULATION OF RACE & ROMANCE* (2001); JUAN F. PEREA, RICHARD DELGADO, ANGELA P. HARRIS, & STEPHANIE M. WILDMAN, *RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA* (2d ed. 2007); *READINGS IN AMERICAN INDIAN LAW: RECALLING THE RHYTHM OF SURVIVAL* (Jo Carrillo ed., 1998); CLIFFORD RECHTSCHAFFEN & EILEEN GAUNA, *ENVIRONMENTAL JUSTICE: LAW, POLICY, & REGULATION* (2002); George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930–1980*, 27 U.C. DAVIS L. REV. 556 (1994).

4. See, e.g., Margaret E. Montoya, *A Brief History of Chicana/o School Segregation: One Rationale for Affirmative Action*, 12 LA RAZA L.J. 159 (2001); Juan F. Perea, *Buscando América: Why Integration and Equal Protection Fail To Protect Latinos*, 117 HARV. L. REV. 1420 (2004).

5. See, e.g., Steven W. Bender, *Direct Democracy and Distrust: The Relationship Between Language Law Rhetoric and the Language Vigilantism Experience*, 2 HARV. LATINO L. REV. 145 (1997); Christopher David Ruiz Cameron, *How the García Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, 85 CAL. L. REV. 1347 (1997), 10 LA RAZA L.J. 261 (1998); Cristina M. Rodriguez, *Language and Participation*, 94 CAL. L. REV. 687 (2006).

6. See, e.g., Jennifer M. Chacón, *Unsecured Borders: Immigration Restrictions, Crime Control and National Security*, 39 CONN. L. REV. 1827 (2007); Gerald P. López, *Undocumented Mexican Migration: In Search of a Just Immigration Law and Policy*, 28 UCLA L. REV. 615 (1981); George A. Martinez, *Immigration and the Meaning of United States Citizenship: Whiteness and Assimilation*, 46 WASHBURN L.J. 335 (2007); Maria Isabel Medina, *The Criminalization of Immigration Law: Employer Sanctions and Marriage Fraud*, 5 GEO. MASON

Latina/o law professors also have scrutinized some previously ignored episodes of U.S. history, such as the wrongful removal of as many as one million persons of Mexican ancestry—U.S. citizens as well as immigrants—from the United States during the Great Depression and the “Bracero” Program that brought “guest” workers from Mexico to the United States from World War II to the 1960s.<sup>10</sup>

This recounting of scholarship, of course, should not be understood to suggest that Latina/o law professors have written exclusively about civil rights, which could not be further from the truth. Indeed, Latina/o law professors have written on the full range of legal topics, from international law to federal income taxation to securities regulation to the federal courts.<sup>11</sup> Added diversity to the ranks of legal academics thus has broadened the perspectives of many bodies of legal scholarship, not exclusively race and civil rights research. Indeed, the varied contributions to this symposium

L. REV. 669 (1997); Michael A. Olivas, *The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 ST. LOUIS U. L.J. 425 (1990); Maria L. Ontiveros, *To Help Those Most in Need: Undocumented Workers' Rights and Remedies Under Title VII*, 20 N.Y.U. REV. L. & SOC. CHANGE 607 (1993–94); Raquel Aldana & Sylvia R. Lazos Vargas, “*Aliens*” in *Our Midst Post-9/11: Legislating Outsiderness Within the Borders*, 38 U.C. DAVIS L. REV. 1683 (2005) (book review).

7. See, e.g., Rachel F. Moran, *Bilingual Education as a Status Conflict*, 75 CAL. L. REV. 321 (1987); Rachel F. Moran, *The Politics of Discretion: Federal Intervention in Bilingual Education*, 76 CAL. L. REV. 1249 (1988).

8. See, e.g., Luis Fuentes-Rohwer, *Baker's Promise, Equal Protection, and the Modern Redistricting Revolution: A Plea for Rationality*, 80 N.C. L. REV. 1353 (2002); Luis Fuentes-Rohwer, *Legislative Findings, Congressional Powers, and the Future of the Voting Rights Act*, 82 IND. L. J. 99 (2007).

9. See, e.g., PEDRO A. MALAVET, *AMERICA'S COLONY: THE POLITICAL AND CULTURAL CONFLICT BETWEEN THE UNITED STATES AND PUERTO RICO* (2004); EDIBERTO ROMÁN, *THE OTHER AMERICAN COLONIES: AN INTERNATIONAL AND CONSTITUTIONAL LAW EXAMINATION OF THE UNITED STATES' NINETEENTH AND TWENTIETH CENTURY ISLAND CONQUESTS* (2006); Sylvia R. Lazos Vargas, *History, Legal Scholarship, and LatCrit Theory: The Case of Racial Transformations Circa the Spanish American War, 1896–1900*, 78 DENV. U.L. REV. 921 (2001).

10. See Gilbert Paul Carrasco, *Latinos in the United States: Invitation and Exile, in IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES* 190, 194–98 (Juan F. Perea ed., 1997); Ruben J. García, *Labor as Property: Guestworkers, International Trade, and the Democracy Deficit*, 10 J. GENDER RACE & JUST. 27, 46–47 (2006); Kevin R. Johnson, *The Forgotten “Repatriation” of Persons of Mexican Ancestry and Lessons for the “War on Terror”*, 26 PACE L. REV. 1 (2005); cf. Maria L. Ontiveros, *Noncitizen Immigrant Labor and the Thirteenth Amendment: Challenging Guest Worker Programs*, 38 U. TOL. L. REV. 923 (2007) (evaluating critically proposals for new guest worker programs). The intertwined nature of subordination of different minority groups is exemplified by the World War II internment of persons of Japanese ancestry on the West Coast, which, combined with the war, caused a shortage of agricultural labor and the emergence of the Bracero Program that exploited Mexican workers. See Carrasco, *supra*.

11. See, e.g., JOSE E. ALVAREZ, *INTERNATIONAL ORGANIZATIONS AS LAW-MAKERS* (2005); Alice Abreu, *Taxing Exits*, 29 U.C. DAVIS L. REV. 1087 (1996); Ana Maria Merico-Stephens, *Of Federalism, Human Rights, and the Holland Caveat: Congressional Power to Implement Treaties*, 25 MICH. J. INT'L L. 265 (2004); Christiana Ochoa, *The Individual and Customary International Law Formation*, 48 VA. J. INT'L L. 119 (2007); Troy A. Paredes, *Blinded by the Light: Information Overload and Its Consequences for Securities Regulation*, 81 WASH. U.L.Q. 417, 419, 420, 446 (2003); Carlos Manuel Vazquez, *The Four Doctrines of Self-Executing Treaties*, 89 AM. J. INT'L L. 695 (1995).

demonstrate the breadth of the scholarship of Latina/o law professors in the American legal academy.

Nonetheless, one genre of civil rights scholarship in no doubt came into being precisely because of the emergence of a “critical mass”<sup>12</sup> of Latina/os in the law professoriate. Building on Critical Race Theory,<sup>13</sup> critical Latina/o, or LatCrit, Theory emerged in the mid-1990s, premised in no small part on the promise to expand the exploration of civil rights analysis beyond race to, among other things, include nationality, gender, sexual orientation, and class.<sup>14</sup> Without a critical mass of Latina/o law professors, it is hard to see how, as a practical matter, LatCrit theory could have been born.<sup>15</sup>

As the LatCrit movement has evolved, it has come to constitute an eclectic group of scholars, with a core group of Latina/o law professors, joined by scholars from a variety of racial, national origin, sexual orientation, and other backgrounds. LatCrit theory has produced an expanding body of scholarship,<sup>16</sup> with the most prominent scholarly venue for this scholarship being the symposium issues composed primarily of papers presented at the annual LatCrit conferences.<sup>17</sup> The articles in the annual symposium issues tend to be short and to the point. The rule is that, with relatively few exceptions, most articles submitted are published.

For purposes of this Article, we limit our definition of “LatCrit scholarship” to those articles in the symposia published in connection with the annual LatCrit

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12. Cf. *Grutter v. Bollinger*, 539 U.S. 306, 330–31 (2003) (discussing the University of Michigan Law School’s goal of enrolling a “critical mass” of minority students because of the educational benefits to all students). See generally Adeno Addis, *The Concept of Critical Mass in Legal Discourse*, 29 CARDOZO L. REV. 97 (2007) (analyzing critically the “critical mass” concept).

13. See Berta Hernández-Truyol, Angela Harris, & Francisco Valdés, *LatCrit X Afterword: Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis*, 26 CHICANO-LATINO L. REV. 237, 241–52 (2006) (discussing the emergence of, and complex relationship between, Critical Race Theory and LatCrit theory); Athena D. Mutua, *The Rise, Development and Future Directions of Critical Race Theory and Related Scholarship*, 84 DENV. U. L. REV. 329 (2006) (to same effect); Tara J. Yosso & Daniel G. Solórzano, *Conceptualizing a Critical Race Theory in Sociology*, in THE BLACKWELL COMPANION TO SOCIAL INEQUALITIES 119–23 (Mary Romero & Eric Margolis eds., 2005) (sketching Critical Race Theory’s “family tree”).

14. See *infra* Part I.

15. See Francisco Valdes, *Foreword: Under Construction—LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087, 1134–37 (1997), 10 LA RAZA L.J. 1, 48–51 (1998).

16. See *infra* Part I.

17. See generally Margaret Montoya, *Foreword: LatCrit at Ten Years*, 26 CHICANO-LATINO L. REV. 1 (2006) (introducing the symposium issue for the tenth annual conference); Charles R. Venator Santiago, *Foreword: Countering Kulturkampf Politics Through Critique and Justice Pedagogy, Race, Kulturkampf, and Immigration*, 35 SETON HALL L. REV. 1155 (2005) (introducing the ninth annual conference); Francisco Valdes, *Foreword: City and Citizen: Community-Making as Legal Theory and Social Struggle*, 52 CLEV. ST. L. REV. 1 (2005) (introducing the eighth annual conference). For a discussion of the importance of the annual conferences to LatCrit theory, see Elizabeth M. Iglesias & Francisco Valdes, *LatCrit at Five: Institutionalizing a Post-Subordination Future*, 78 DENV. U. L. REV. 1249, 1289–94 (2001).

conferences. We decline to attempt to create a canon of LatCrit articles that have appeared outside of the symposium issues, which could be part of the task of establishing the boundaries of LatCrit scholarship.

The institutional practice of generally publishing all papers submitted represents a deep—and, to this point, enduring—commitment by LatCrit theory to egalitarian and anti-hierarchical treatment of scholars. It is one attempt to avoid the emergence of a “star system” like those that have sidetracked other intellectual movements, including, to a certain extent, Critical Race Theory. Importantly, the carrot of publication has encouraged scholars to participate in the new LatCrit scholarly project and thus serves as a device to recruit adherents to the movement in addition to helping build a body of scholarship.

The inclusiveness of LatCrit symposia differs dramatically from the competitive student selection process for law review articles, which has its own set of problems but remains the current way through which most legal scholarship—including Critical Race Theory scholarship—is published in the United States today.<sup>18</sup> Symposium issues in law reviews often involve invitations to senior scholars in a field, with law reviews ordinarily reserving the right to reject submissions that fail to satisfy minimum quality standards.<sup>19</sup>

In another sign of inclusiveness and devotion to community building, LatCrit—despite denoting itself as critical *Latina/o* theory—as a scholarly movement has not been restricted to Latina/o scholars. It has been open and encouraging of the participation of scholars from a wide diversity of backgrounds, including white, African American, Asian American, feminist, and gay and lesbian scholars.<sup>20</sup> In

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18. The efficacy of the student-run law review, in which students select articles for publication, has been seriously questioned. See Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 628–54 (1996); Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131, 1131–35 (1995). However, student editors may be more open to innovative, cutting-edge scholarship than the professors reviewing scholarship for peer-reviewed journals, which predominate in nonlegal disciplines. See Richard Delgado, *Rodrigo's Final Chronicle: Cultural Power, the Law Reviews, and the Attack on Narrative Jurisprudence*, 68 S. CAL. L. REV. 545, 557–58 (1995); Natalie C. Cotton, Comment, *The Competence of Students as Editors of Law Reviews: A Response to Judge Posner*, 154 U. PA. L. REV. 951, 953–54 (2006) (defending student-edited law reviews). But see Rachel J. Anderson, *Revisiting the Imperial Scholar: Market Failure on Law Review?* (unpublished manuscript), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1117764](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1117764)

19. We have heard of a few instances of symposium editors rejecting a solicited submission. Indeed, one of the coauthors was involved in a recent symposium devoted to analyzing a path-breaking Supreme Court civil rights decision in which student editors rejected several of the solicited submissions. Such rejections obviously can create tension and controversy. At the same time, however, the possibility of rejection serves as an incentive to symposium authors to submit high quality work.

20. See Sumi Cho & Robert Westley, *Critical Race Coalitions: Key Movements that Performed the Theory*, 33 U.C. DAVIS L. REV. 1377, 1422–24 (2000); Barbara J. Cox, *Coalescing Communities, Discourses and Practices: Synergies in the Anti-Subordination Project*, 2 HARV. LATINO L. REV. 473, 473–75 (1997); Adrienne D. Davis, *Identity Notes Part II: Redeeming the Body Politic*, 2 HARV. LATINO L. REV. 267, 274–76 (1997); Nancy Ehrenreich, *Confessions of a White Salsa Dancer: Appropriation, Identity, and the “Latin Music*

important respects, LatCrit has become more a *political* than a *racial* movement.<sup>21</sup> This reflects a foundational premise of LatCrit theory—the need to encourage participation of any and all persons who share a commitment to an anti-subordination agenda. This is a very different approach than the staunchly nationalistic stances taken by kindred race-conscious intellectual movements such as Chicana/o Studies and, to a certain extent, Critical Race Theory. The inclusiveness is entirely consistent with the movement’s commitment to the building of multiracial coalitions as a necessary and appropriate way to bring about meaningful social change.<sup>22</sup>

LatCrit theorists, through an organized institutional structure, have instrumentally built a community of scholars and fostered a collective commitment to issues of social justice. Moreover, to its credit, LatCrit theory in little over a decade has produced a considerable body of scholarship analyzing race and racism, as well as other forms of subordination, in the United States and globally. It has, for example, made important contributions to the analysis of the Black/White paradigm of civil rights, which historically has marginalized Latina/o civil rights concerns.<sup>23</sup> LatCrit theory also has shed fresh new insights on deep, enduring, and complex issues of Latina/o identity,<sup>24</sup>

*Craze*,” 78 DENV. U. L. REV. 795, 796–97 (2001); Gil Gott, *Critical Race Globalism?: Global Political Economy, and the Intersections of Race, Nation, and Class*, 33 U.C. DAVIS L. REV. 1503, 1504–05 (2000); Stephanie M. Wildman, *Reflections on Whiteness & Latina/o Critical Theory*, 2 HARV. LATINO L. REV. 307, 308–09 (1997).

21. See LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* 15 (2002) (coining term “political race” as a tool to build multiracial coalitions)

22. See Cho & Westley, *supra* note 20, at 1413–16; 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, 562–88 (1998); George A. Martinez, *African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*, 19 CHICANO-LATINO L. REV. 213, 214–16 (1998); Ediberto Roman, *Common Ground Perspectives on Latino-Latina Diversity*, 2 HARV. LATINO L. REV. 483, 483–84 (1997); Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 HARV. LATINO L. REV. 495, 498–500 (1997); see also Margaret E. Montoya, *Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis*, 2 HARV. LATINO L. REV. 349, 352–65 (1997) (analyzing the importance of activist teaching and scholarship to the social change mission of LatCrit theory).

23. See Richard Delgado, *Rodrigo’s Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181, 1185–86 (1997) (book review); Rachel F. Moran, *What if Latinos Really Mattered in the Public Policy Debate?*, 85 CAL. L. REV. 1315, 1331–44 (1997), 10 LA RAZA L.J. 229, 245–58 (1998); Rachel F. Moran, *Neither Black Nor White*, 2 HARV. LATINO L. REV. 61, 66–69 (1997); Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177, 1178–80 (1999); Juan F. Perea, *The Black/White Binary Paradigm of Race: The “Normal Science” of American Racial Thought*, 85 CAL. L. REV. 1213, 1213–15 (1997), 10 LA RAZA L.J. 127, 127–29 (1998). The challenge to the Black/White Paradigm initially generated resistance—at times heated—from within LatCrit theory. See Leslie Espinoza & Angela P. Harris, *Afterword: Embracing the Tar-Baby—LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1585, 1604–07 (1997), 10 LA RAZA L.J. 499, 518–21 (1998); Anthony Paul Farley, *All Flesh Shall See It Together*, 19 CHICANO-LATINO L. REV. 163, 171–75 (1998).

24. See, e.g., Ruben J. Garcia, *Across the Borders: Immigrant Status and Identity in Law and LatCrit Theory*, 55 FLA. L. REV. 511, 530–37 (2003); George A. Martinez, *The Legal Construction of Race: Mexican Americans and Whiteness*, 2 HARV. LATINO L. REV. 321, 323–25

as well as criminal justice, immigration enforcement, and the building of multiracial coalitions for social justice.<sup>25</sup>

From its outset, LatCrit has stood firmly committed to anti-essentialism—the acknowledgment of the great diversity in the Latina/o community—and anti-subordination.<sup>26</sup> These two foundational principles are now so embedded in the critical literature that they are difficult to seriously dispute today.

However, one vitally important—and unquestionably fundamental—question inevitably nags at virtually any scholar in evaluating critical Latina/o theory at this time in its history: beyond some original insights at the movement's inception, what has LatCrit come to affirmatively stand for today as a scholarly movement?<sup>27</sup> Given the current state of LatCrit scholarship, one would be hard pressed to answer this question with any degree of certainty.<sup>28</sup> A review of LatCrit's sprawling body of work reveals that the unifying themes and common threads are difficult to identify with specificity.

In 2006, LatCrit theory published a symposium issue commemorating its tenth annual conference, an important milestone.<sup>29</sup> In this essay, we hope to use this historical moment as an opportune time to assess both LatCrit theory's scholarly achievements as well as its future trajectory. In so doing, we bring to print issues that have been discussed extensively inside and outside of LatCrit circles for many years.<sup>30</sup>

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(1997); Laura M. Padilla, *Social and Legal Repercussions of Latinos' Colonized Mentality*, 53 U. MIAMI L. REV. 769, 770–71 (1999).

25. See, e.g., Espinoza & Harris, *supra* note 23 (exploring the tensions between the belief in Black exceptionalism and multiracial coalitions); Leslie Espinoza, *Introduction to Panel One: Latino Pan-Ethnicity? Histories and Conditions that United and Divide Our Communities*, 2 HARV. LATINO L. REV. 175, 176–77 (1997) (discussing multifaceted nature of Latina/o identities); Maria Pabón López, *The Phoenix Rises from El Cenizo: A Community Creates and Affirms a Latino/a Border Cultural Citizenship Through Its Language and Safe Haven Ordinances*, 78 DENV. U. L. REV. 1017, 1021–26 (2001) (analyzing community response to language and immigration issues facing the immigrant community); Alfredo Mirandé, *Is There a "Mexican Exception" to the Fourth Amendment?*, 55 FLA. L. REV. 365, 368 (2003) (identifying the lack of Fourth Amendment protections for persons of Mexican ancestry); Mary Romero, *State Violence, and the Social and Legal Construction of Latino Criminality: From El Bandido to Gang Member*, 78 DENV. U. L. REV. 1081, 1087–98 (2001) (studying tangible impacts of stereotypes of Latino criminality); Mary Romero & Marwah Serag, *Violation of Latino Civil Rights Resulting from INS and Local Police's Use of Race, Culture and Class Profiling: The Case of the Chandler Roundup in Arizona*, 52 CLEV. ST. L. REV. 75, 79–81 (2005) (criticizing immigration raid, and its impacts on Latina/o community generally, in suburb of Phoenix, Arizona); Yamamoto, *supra* note 22, at 495–99 (analyzing inter-group relations among groups of color); see also *supra* note 22 (citing LatCrit scholarship on coalitions).

26. See Valdes, *supra* note 15, at 1107–08, 1139–40.

27. It is illustrative to compare LatCrit theory to Critical Race Theory, which has demonstrated its staying-power. See RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* (2001) (articulating basic tenets of CRT in a type of primer).

28. See *infra* Part I.B–C.

29. The LatCrit X conference actually generated two symposium issues, perhaps to accommodate the number of submissions. See Symposium, *LatCrit X*, 26 CHICANO-LATINO L. REV. 1 (2006); Symposium, *LatCrit X: Critical Approaches to Economic In/Justice*, 17 LA RAZA L.J. 1 (2006).

30. See *infra* Part I.B–C.

These sensitive issues, however, have largely escaped commentary in LatCrit scholarship—effectively sacrificed to the goal of inclusion and to the concerted efforts to construct a lasting scholarly community. In our estimation, the prolonged silence about the unevenness of LatCrit scholarship jeopardizes the intellectual component of the burgeoning movement.

We begin this examination with the good faith intention of evaluating the future of a movement about which we care deeply, and with the hope of positively influencing its scholarly trajectory. Both authors believe that we are well-situated to critically assess the extant body of LatCrit scholarship. We participated in many of the early LatCrit conferences and symposia, including the First Annual LatCrit conference in 1996, and have continued to be involved in some of the various annual conferences and related events over the years.<sup>31</sup> Our scholarly communities include an array of scholars who are central to the LatCrit project. Our scholarship<sup>32</sup> embraces LatCrit's fundamental mission and the quest for racial justice. We both are committed to Latina/o civil rights, the fight against subordination, and a vision of a more just world.<sup>33</sup>

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31. See, e.g., Keith Aoki, *(Re)presenting Representation*, 2 HARV. LATINO L. REV. 247 (1997); Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395 (1997), 10 LA RAZA L.J. 309, (1998); Kathay Feng, Keith Aoki & Brian Ikegami, *Voting Matters: APIAs, Latina/os and Post-2000 Redistricting in California*, 81 OR. L. REV. 849 (2003); Kevin R. Johnson, "Melting Pot" or "Ring of Fire"?: *Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1259 (1997), 10 LA RAZA L.J. 173 (1998) [hereinafter Johnson, *Melting Pot*]; Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997) [hereinafter Johnson, *Latino Legal Scholarship*]; Kevin R. Johnson, *The Case for African American and Latina/o Cooperation in Challenging Race Profiling in Law Enforcement*, 55 FLA. L. REV. 341 (2003).

32. See, e.g., Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. LAW. 295 (2002); Keith Aoki, *No Right to Own?: The Early Twentieth-Century "Alien Land Laws" as a Prelude to Internment*, 40 B.C. L. REV. 37 (1998), 19 B.C. THIRD WORLD L.J. 37 (1998); Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 FORDHAM URB. L.J. 699 (1993); Kevin R. Johnson & Angela Onwuachi-Willig, *Cry Me a River: The Limits of "A Systemic Analysis of Affirmative Action in American Law Schools"*, 7 AFR.-AM. L. & POL'Y REP. 1 (2005); Kevin R. Johnson, *The End of "Civil Rights" as We Know It?: Immigration and Civil Rights in the New Millennium*, 49 UCLA L. REV. 1481 (2002).

33. We have been made aware that this essay has generated controversy among some LatCrit theorists. Although we sincerely regret any tensions, we took steps in advance in the hopes of minimizing them. For example, we shared the article in draft form with a group of people who are or have been integrally involved in LatCrit, including several members of the board of directors of LatCrit, Inc. and several current and past co-chairs. We attempted to respond to the various comments that we received and met with several LatCrit board members to discuss this article, its arguments, and impacts.

We want to distinguish ourselves from the most vociferous critics of Critical Race Theory. See *infra* note 56 (citing authorities). The two coauthors were involved in LatCrit's inception, continue to voice support for LatCrit scholarship, and have made suggestions in this article about how to improve it. See *supra* text accompanying notes 31–32.

Our past role in LatCrit theory presumably has contributed to the controversy over this article, a glimpse of which is exemplified by the response of Professors Montoya and Valdes to this symposium. See Margaret E. Montoya & Francisco Valdes, "Latinas/os" and The Politics



With that said, this article critically assesses LatCrit theory at age ten. Despite its early high energy and initial scholarly breakthroughs, we regret that LatCrit scholarship in certain respects has lost its focus. The movement's egalitarian commitment to publish virtually all submissions in the annual symposium issue has resulted, we believe, in a distinctly uneven scholarly quality to the LatCrit academic project, which has limited its influence and readership—even among LatCrit adherents.<sup>34</sup> Ultimately, we conclude that LatCrit has been relatively successful at establishing a community and at institution-building<sup>35</sup> but less successful with respect to the production of high quality scholarship. This is not to say that there is not some solid scholarship in the annual symposia. There undoubtedly is. However, the overall quality of LatCrit scholarship varies significantly.

Today, LatCrit theory appears rudderless, often serving as an umbrella for the publication of eclectic approaches to a diverse array of social justice questions. Variety may be the spice of life, but a lack of intellectual focus in a scholarly movement unquestionably is a flaw.<sup>36</sup> As one influential critical scholar has observed, LatCrit scholarship, as well as much Critical Race Theory scholarship, has devolved into too much discourse about discourse, while failing too frequently to directly and constructively engage the most serious social justice issues of our times.<sup>37</sup>

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*of Knowledge Production: LatCrit Scholarship and Academic Activism as Social Justice Action*, 83 IND. L.J. 1197 (2008).

We confess to being extremely reluctant to criticize the quality of the LatCrit symposia because of the fear that some scholars might wrench our words out of context in future debates over academic personnel (tenure and appointment) decisions. Several LatCrit theorists on the LatCrit board of directors made this claim after reading a draft. Others, however, expressed the view that any damage to LatCrit scholars already had been done by the uneven quality of the LatCrit symposia issues. Indeed, one minority dean at a top law school remarked that the quality of the LatCrit symposium publications of a few faculty candidates had doomed their candidacies at his school.

It soon became readily apparent that, generally speaking, the views stated in this article were viewed radically differently by people other than those on the current LatCrit board of directors. Except for some of the current members of the board, nobody—with one exception—who offered comments on this paper advocated that we not publish this article.

We took the concern about the possible impacts on academic personnel decisions especially seriously because of our commitment to fair treatment of scholars of color, as well as our long-time commitment to the mentoring of junior faculty at schools across the country. We also both regularly devote much time and effort to preparing scores of extramural review letters each year. Despite a certain degree of hesitation, we felt it important to raise these issues and hopefully begin a project of remedying them in a scholarly project to which we have devoted significant parts of our careers. *See supra* text accompanying notes 31–33.

34. *See infra* Part I.B–C.

35. For a critical evaluation after five years of the various steps taken to institutionalize LatCrit scholarship, see Iglesias & Valdes, *supra* note 17, at 1289–94.

36. *But see* Lazos Vargas, *supra* note \*\*\*, at 1345 (“As LatCrit grows and responds to new pressures it may appear to lose its focus, but these may just be the growing pains and the cost of commitment to a ‘no star’ system that ensures the inclusion of all contributors.”)

37. *See* Richard Delgado, *Crossroads and Blind Alleys: A Critical Examination of Recent Writing About Race*, 82 TEX. L. REV. 121, 122–25, 131–35 (2003) [hereinafter Delgado, *Crossroads*] (reviewing CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes, Jerome McCristal Culp & Angela P. Harris eds., 2002)); *see also* Richard Delgado, *Si Se Puede, But Who Gets the Gravy?*, 11 MICH. J. RACE & L. 9, 12–14 (2005)

Importantly, although scholarly discourse unquestionably has its place,<sup>38</sup> it will not remedy the material deprivation facing so many in today's world, the nativist hysteria that grips the U.S. immigration debate, the mortgage crisis dramatically impacting communities of color, persistent educational inequality, and the lack of adequate health care, to name just a few of the pressing issues of contemporary concern. Put bluntly, a fair question is what besides putting the Black/White paradigm into question has LatCrit theory given to legal scholarship?<sup>39</sup>

There is another development within LatCrit scholarship worthy of critical note. Symposia articles have become more of a junior scholar activity with senior scholars more likely to remain on the sidelines. More senior scholars write some kind of introduction to, or commentary on, the LatCrit symposium articles than stand-alone scholarship. The good news is that junior scholars enjoy publication venues and there are no true "stars" within LatCrit theory. However, there are relatively few senior scholars actively participating in the primary venue for LatCrit scholarship.<sup>40</sup> Given the uneven quality of the symposia, senior scholars may well shy away from them; indeed, some have told us bluntly that they declined to publish in the LatCrit symposia precisely for that reason. Some junior scholars, we have been told, have even been advised to avoid placements in LatCrit symposium issues given their shaky scholarly reputation.

Part I of this article studies the initial promise and early achievements of LatCrit theory; it proceeds to critically assess the evolution and current state of LatCrit scholarship, which seems to have moved toward stagnation, lack of focus, and excessive repetition of similar general themes.<sup>41</sup> Part II proceeds to consider some specific social justice issues that LatCrit could and should engage in a concrete way.<sup>42</sup>

This is our conclusion in a nutshell: to ensure its scholarly survival, LatCrit must focus more on "quality control"<sup>43</sup> of its symposia, if scholarship is to be—as has been

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(raising similar issues with respect to Critical Race Theory); Robert S. Chang & Neil Gotanda, *Afterword: The Race Question in LatCrit Theory and Asian American Jurisprudence*, 7 NEV. L. J. 1012 (2007) (raising a variety of issues that require further LatCrit analysis).

38. See, e.g., Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989) (contending that storytelling by outgroups can provide valuable perspective); Kevin R. Johnson, "Aliens" and the U.S. Immigration Laws: *The Social and Legal Construction of Nonpersons*, 28 U. MIAMI INTER-AM. L. REV. 263 (1996–97) (explaining the legal and social functions of the "alien" terminology in the U.S. immigration laws); Margaret E. Montoya, *Mascaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 15 CHICANO-LATINO L. REV. 1 (1994), 17 HARV. WOMEN'S L.J. 185 (1994) (showing how stories of masking and unmasking from the perspectives of subordinated groups can shed light on personal and collective identity and contribute to interpretations of the law and legal system). One coauthor praised this last article as "[p]erhaps the best known article on [the] topic" of Latina/o identity. Kevin R. Johnson, *On the 30th Anniversary of the Chicano-Latino Law Review*, 23 CHICANO-LATINO L. REV. 1, 3 (2002).

39. See *supra* text accompanying notes 23.

40. Again, we are limiting ourselves to the LatCrit symposia. Some senior scholars produce LatCrit scholarship in other venues.

41. See *infra* Part I.

42. See *infra* Part II.

43. See *infra* Part I.C.

stated in foundational LatCrit scholarship<sup>44</sup>—one of the centerpieces of its academic project. A number of relatively minor changes to the current procedure might do much to significantly improve the quality of the LatCrit symposium issue.<sup>45</sup> We truly hope that future LatCrit scholarship regains its creative edge, with a deep commitment to quality and to ensuring fair access to, all scholars committed to a general anti-subordination agenda.

We understand that the definition of “quality” in scholarship is fraught with definitional difficulties. Similarly, “control” implies the exercise of power by some over others. Despite these preliminary concerns with the very concept of “quality control,” we conclude that the concept remains of strategic value in the context of a legal academy premised on unequal power dynamics and deeply rooted hierarchical structures. Nor are quality judgments foreign in the least to academics. Scholars—critical or not—make quality judgments on a daily basis, from deciding which scholarship to cite to which faculty candidates to hire. Indeed, some kind of quality control, we believe, is necessary to ensure the intellectual survival of LatCrit scholarship.

Importantly, to constitute a true scholarly movement, LatCrit must affirmatively stake out affirmative positions and stand for something more specific than vague generalities.<sup>46</sup> It should not *just* be a community of ambitious scholars seeking out mentoring relationships, scholarly presentation opportunities, and ready and willing publication venues. If it is to survive, LatCrit must directly confront and thoughtfully analyze the most pressing social issues of our times. And it must come to stand for something concrete intellectually.

Unfortunately, too many LatCrit symposium articles recognize an interesting civil rights/social justice issue, offer some analysis, and move on to the next article. More in-depth, critical analysis is essential to the future of LatCrit scholarship. Steps must be taken to encourage deep and enduring scholarship rather than publication for publication’s sake.<sup>47</sup>

We recognize that we are asking LatCrit to walk nothing less than a tightrope. Building both community and scholarly quality are extremely difficult to balance. Nonetheless, we believe it a necessary journey for a scholarly movement seeking to seriously engage the mainstream academy—and to be taken seriously in that milieu. We think it is essential for LatCrit theory to establish itself as a legitimate, recognized, and enduring genre of legal scholarship. Such action is necessary for LatCrit to survive as a an intellectual endeavor rather than disintegrate into a fragmented body of a thousand (scholarly) pieces loosely organized around a well-organized annual conference that provides mentoring, nurturing, and support to junior faculty and allows for easy publication opportunities in a symposium issue, but exhibits uneven scholarly quality, integrity, and true vision.

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44. *See infra* text accompanying notes 73–74.

45. *See infra* text accompanying notes 148–54.

46. *See infra* Part II.

47. *See infra* Part I.C.

## I. LATCRIT'S PROMISE

Coming on the scholarly scene in the 1990s, LatCrit initially showed great promise. Like many scholarly movements, however, it has experienced growing pains and has yet to fully grapple with the issues raised by its growth. In essence, LatCrit theory must work to make itself relevant to race and civil rights scholarship in particular and to legal scholarship generally. It thus far has failed to attract attention from—much less gain scholarly legitimacy in—legal academic circles beyond LatCrit theory.<sup>48</sup> A variety of factors contribute to the failure of mainstream scholarship to confront LatCrit theory. Whatever the reasons, LatCrit evidently has failed to marshal the intellectual force necessary to make itself impossible to ignore.

Nonetheless, LatCrit has enjoyed some institutional and scholarly success. It has built and nurtured a community of progressive scholars committed to race studies. Some have secured tenure; a number have remained involved in the movement. The annual LatCrit conferences are well-attended. Calls for proposals each year generally yield many more submissions than there are available time slots. The conferences bring forth a rich array of panels and much energetic intellectual interchange.<sup>49</sup>

In addition, LatCrit theory has created an effective institutional structure for the mentoring of junior scholars and has done an excellent job of recruiting junior scholars to the nascent movement. Held in conjunction with the annual LatCrit conference, the junior faculty development workshop (which in 2007 with LatCrit XII celebrated its fifth year and was co-sponsored by the Society of American Law Teachers)<sup>50</sup> has created a safe and supportive environment for the growth and nurturing of junior progressive scholars.

The LatCrit conferences provide an academic “safe space” through small group works-in-progress sessions, as distinguished from real or perceived “unsafe spaces” at participants’ home institutions. The workshops include relatively secure venues for presentations of scholarly papers, informational sessions on personal and professional survival and institutional advancement in the legal academy, and general mentoring interactions between junior faculty and more established scholars.

Unfortunately, the scholarship emerging from the LatCrit movement—especially in recent years—has not been as successful as the mentoring and community—and institution—building functions. Uneven quality regularly mars the annual symposia, which are the primary venue for the publication of LatCrit scholarship.<sup>51</sup> We believe that these problems stem in no small part from the nearly unqualified, egalitarian

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48. *See infra* Part I.C.

49. For information about the annual conferences and symposia issues, see the LatCrit, Inc. website, <http://www.latcrit.org>.

50. *See* <http://www.latcrit.org> (providing information about the workshop, and the twelfth LatCrit annual conference in October 2007); Aya Gruber, *Navigating Diverse Identities: Building Coalitions Through Redistribution of Academic Capital—An Exercise in Praxis*, 35 SETON HALL L. REV. 1201, 1201–03 (2005) (describing the benefits to one junior scholar from a junior faculty development workshop). Both of the coauthors of this article have participated in a LatCrit junior faculty development workshop.

51. *See infra* Part I.C.

commitment to inclusiveness and the virtual guarantee of publication to any and all symposium contributions, without meaningful review or screening of submissions.<sup>52</sup>

Perhaps due to the quality issues, the body of LatCrit scholarship unfortunately has reached a relatively limited audience primarily of like-minded critical theorists.<sup>53</sup> To make matters worse, the scholarship often fails to recognize or cite to relevant LatCrit scholarship.<sup>54</sup> If LatCrit theorists themselves fail to fully engage LatCrit scholarship, it should not be much of a surprise that it has not been engaged by the mainstream. And, in the final analysis, unlike Critical Race Theory, LatCrit theory, for the most part, has not been seriously engaged by mainstream legal scholarship.<sup>55</sup>

A body of mainstream scholarship expressed deep hostility to Critical Race Theory (CRT), its intellectual claims about the centrality of race to the fabric of the law, and its innovative methodology—especially narrative scholarship.<sup>56</sup> As a result, much CRT scholarship was forged from intense dialogue, conflict, and confrontation over what, as a normative matter, CRT contended about its foundational ideas and positions.<sup>57</sup>

52. See *infra* Part I.A.

53. See *infra* Part I.C.

54. See *infra* Part I.C.

55. See *infra* Part I.C.

56. See, e.g., DANIEL A. FARBER & SUZANNA SHERRY, BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW 6-14 (1997); Daniel A. Farber & Suzanna Sherry, *Is the Radical Critique of Merit Anti-Semitic?*, 83 CAL. L. REV. 853, 854-57 (1995); Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 814-19 (1993); Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745, 1748-49 (1989); Mark Tushnet, *The Degradation of Constitutional Discourse*, 81 GEO. L.J. 251, 263-76 (1992); see also Mary I. Coombs, *Outsider Scholarship: The Law Review Stories*, 63 U. COLO. L. REV. 683 (1992) (suggesting need for standards for evaluation of outsider scholarship); Richard Delgado & Daniel A. Farber, *Is American Law Inherently Racist?*, 15 T.M. COOLEY L. REV. 361, 364 (1998) (colloquy between Critical Race Theory founder and prominent critic of Critical Race Theory); Richard A. Posner, *The Skin Trade*, NEW REPUBLIC, Oct. 13, 1997, at 40, 42 (“[C]ritical race theorists teach by example that the role of a member of a minority group is to be paid a comfortable professional salary to write childish stories about how awful it is to be a member of such a group.”); Lazos Vargas, *supra* note \*\*\*, at 1311-16 (analyzing “neo-traditionalist” attacks on Critical Race Theory). Compare Kennedy, *supra* (challenging Critical Race Theory), with Colloquy, *Responses to Randall Kennedy’s Racial Critiques of Legal Academia*, 103 HARV. L. REV. 1844 (1990) (including articles by Scott Brewer, Milner S. Ball, Robin D. Barnes, Richard Delgado, and Leslie G. Espinoza, defending Critical Race Theory).

57. See Mutua, *supra* note 13, at 330 (“Conflict, as a process of intellectual and institutional growth, marks the development of critical race theory and provides concrete and experiential examples of some of its key insights and themes.”). See generally CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw, Neil Gotanda & Kendall Thomas eds., 1995) (showing the genesis of the CRT movement and its different methodological strands through a compilation of essays). In later years, CRT was not subject to the same level of attention from the mainstream, and the scholarship arguably has been less focused. See, e.g., Delgado, *Crossroads*, *supra* note 37, at 131-36. In our estimation, meaningful scholarly debates, which might be termed “productive tensions” by some LatCrit theorists, Hernández-Truyol et al., *LatCrit X Afterword*, *supra* note 13, at 278-79, seem to have been relatively rare in LatCrit analysis in the last few years.

Pushback from the mainstream has been missing for the most part from the evolution of LatCrit theory. The lack of meaningful dialogue appears to be reflected in a certain softness and lack of focus, as well as urgency, to LatCrit scholarship.<sup>58</sup> Consequently, the scholarship is not as strong as it might be.

#### *A. LatCrit's Early Promise*

Critical Race Theory (CRT) unfortunately failed to construct an institutional structure that allowed it to continue as an intellectual community; the lack of an organizational structure, internal rifts, and personal conflicts hindered the building of a lasting scholarly community.<sup>59</sup> The failure to create institutions ultimately affected the production of CRT scholarship. After a few years, annual conferences and workshops evaporated due to personal and scholarly conflicts and the lack of an institutional structure.

Substantively, to the chagrin of some Latina/o law professors, CRT had failed to fully integrate Latina/o concerns into the critical race project.<sup>60</sup> Pressure and frustration from Latina/o law professors for this study emerged from within CRT.

Hoping to learn from Critical Race Theory, the LatCrit founders understood the need to build an institutional structure to support the scholarly mission and a community of scholars. To their credit, they invested considerable time and effort in building such a structure, including the creation of a nonprofit corporation with an institution, mission, and budget.<sup>61</sup>

LatCrit strived to fulfill significant voids in Critical Race Theory. It sought to provide a structure and community to help critical theorists committed to the anti-subordination agenda promote the study of Latina/o and related civil rights concerns.<sup>62</sup> In these important ways, LatCrit theory offered something of importance to a great many scholars—including many Latina/o law professors—interested in a supportive scholarly community devoted to critical scholarship.

The optimistic early days of critical Latina/o theory held great promise. Many scholars—senior as well as junior—brought incredible energy and enthusiasm to a project committed to studying the civil rights issues of Latina/os and how they intersect with, and diverge from, the struggles of other subordinated groups. It is difficult to describe in words the positive energy, enthusiasm, and high hopes surrounding the first annual LatCrit conference in 1996.<sup>63</sup> Critical scholars from across

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58. See *infra* Part I.B–C.

59. See Elvia R. Arriola, *Foreword: March!*, 19 CHICANO-LATINO L. REV. 1, 9–11 (1998).

60. See Johnson, *Latino Legal Scholarship*, *supra* note 31, at 106–17.

61. See Iglesias & Valdes, *supra* note 17, at 1306–11 (discussing the creation of LatCrit, Inc.).

62. See Arriola, *supra* note 59, at 10–11.

63. See Francisco Valdes, *Foreword: Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1, 2–4 (1997) (discussing LatCrit I). Before the first annual conference, there was an initial colloquium on LatCrit theory in Puerto Rico. See Francisco Valdes, *Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 LA RAZA L.J. 1 (1996) (foreword to colloquium on Latino and Latina Critical Race Theory and Practice at the 1995 Hispanic National Bar Association annual conference).

the United States came together in southern California with the goal of creating a new and improved anti-subordination movement building on, but different and independent from, Critical Race Theory.

The enthusiasm of LatCrit I resulted in an important scholarly breakthrough. The first annual LatCrit conference attracted participants of national and international stature and the result was high-quality scholarship. The *Harvard Latino Law Review*<sup>64</sup> published the symposium, which was composed primarily of papers presented at LatCrit I, was both path-breaking and inspiring. A full range of scholars from diverse backgrounds, both junior and senior, participated in the conference and delivered papers on a full range of topics central to the development of the scholarly movement.

The symposium contributors included, in order of their publication in the first annual LatCrit symposium issue, the following: Francisco Valdes, Rachel F. Moran, Kevin R. Johnson, Steven W. Bender, Leslie Espinoza, Max J. Castro, Berta Esperanza Hernández-Truyol, Juan Perea, Robert Westley, Keith Aoki, Adrienne D. Davis, Ian F. Haney López, Michael Luis Principe, Stephanie M. Wildman, Enrique Carrasco, George A. Martínez, Margaret E. Montoya, Laura M. Padilla, Elvia Arriola, Robert S. Chang, Sumi K. Cho, Mary Coombs, Elizabeth M. Iglesias, Barbara J. Cox, Jerome McCristal Culp, Jr., Ediberto Román, and Eric K. Yamamoto.<sup>65</sup>

This amazing array of scholars have significant achievements inside and outside of LatCrit—both before and after the first annual LatCrit conference. They commenced the new movement with a true devotion to creating an inclusive body of anti-subordination scholarship that considered Latina/o, Asian Americans, African Americans, gays and lesbians, the poor, and other groups as integral parts of the complex civil rights puzzle in the United States. The group sought to move beyond race to a more inclusive, comprehensive, explanatory, and realistic approach to combating subordination in global social life.

Additional participants in LatCrit I who did not publish in the symposium issue. Their mere presence and involvement, however, suggested the momentous nature of the first annual LatCrit conference. A founder of Critical Race Theory,<sup>66</sup> Richard Delgado delivered the first keynote address of the conference.<sup>67</sup> Michael Olivas, the unofficial “dean” of Latina/o law professors,<sup>68</sup> Gerald Lopez, an influential social

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64. See Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997). In the publication process, a minor flareup occurred when the student editors selected several articles to lead the issue.

65. See *id.*

66. See CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado & Jean Stefancic eds., 2d ed. 2000); Stephanie B. Goldberg, *The Law, a New Theory Holds, Has a White Voice*, N.Y. TIMES, July 17, 1992, at A23. Besides many books and over one hundred articles, he is co-editor of THE LATINO/A CONDITION: A CRITICAL READER, *supra* note 3, an anthology of foundational readings on LatCrit Theory. Delgado is a pioneer in many fields besides Critical Race Theory, including Critical White Studies. See CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR (Richard Delgado & Jean Stefancic eds., 1997). Delgado, who (along with Jean Stefancic) contributed the foreword to this symposium, has not published in a LatCrit symposium. See Richard Delgado & Jean Stefancic, *Foreword: Latinos and the Law Symposium*, 83 IND. L.J. 1141 (2008).

67. See Program to LatCrit I, <http://www.latcrit.org>.

68. Olivas is an influential scholar. See “COLORED MEN” AND “HOMBRES AQUIT”: *HERNANDEZ V. TEXAS* AND THE EMERGENCE OF MEXICAN AMERICAN LAWYERING, *supra* note 3;

change scholar,<sup>69</sup> and Cruz Reynoso,<sup>70</sup> a former Associate Justice of the California Supreme Court, also made keynote addresses. Thus, four leading Chicano law professors—all of whom hold near iconic status in the law professorate—participated in important ways in LatCrit I.<sup>71</sup> Other prominent professors also participated in the LatCrit I program, including Angela Harris and Gerald Torres.

In certain respects, the proof is in the pudding. Despite the fact that it is over a decade old, the scholarship in the first LatCrit symposium issue continues to attract considerable attention. Although some of the work has become dated (as one would expect after more than a decade), the bulk of the immense scholarly contribution remains intact.

LatCrit I also was the birthplace of a foundational symposium published concurrently in the *California Law Review* and in the *La Raza Law Journal*.<sup>72</sup> Student law review editors began planning the symposium in earnest at the first annual LatCrit conference. They held an open meeting among conference participants to discuss a possible symposium issue. Although organizing the issue took much time and effort (and was not without controversy),<sup>73</sup> this volume was eventually completed, and the result was an impressive cutting edge group of articles published concurrently in an elite law review and a leading Latina/o law journal. The volume initially brought the

Olivas, *supra* note 1. A chaired professor at the University of Houston Law Center, he has labored tirelessly throughout his career to recruit Latina/os into law teaching and to mentor them through the academic personnel process. Olivas, another contributor to the current symposium, has not published in a LatCrit symposium. See Michael A. Olivas, *The "Trial of the Century" that Never Was: Staff Sgt. Macario Garcia, the Congressional Medal of Honor, and the Oasis Café*, 83 IND. L. J. 1391 (2008).

69. A chaired professor at New York University, López also has taught at UCLA and Stanford and has produced influential scholarship on the role of lawyers in promoting social change. See GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); López, *supra* note 6. He later published a piece in the LatCrit II symposium. See Gerald P. López, *Learning About Latinos*, 19 CHICANO-LATINO L. REV. 363 (1998).

70. Besides serving on the California Supreme Court, Reynoso was a founder of California Rural Legal Assistance, an organization that fights for the rights of the rural poor. See Michael Bennett & Cruz Reynoso, *California Rural Legal Assistance (CRLA): Survival of a Poverty Law Practice*, 1 CHICANO L. REV. 1, 1–2 (1972). A law professor at New Mexico, UCLA, and UC—Davis, Reynoso has written important scholarship. See generally Cruz Reynoso, *A Survey of Latino Lawyers in Los Angeles County—Their Professional Lives and Opinions*, 38 U.C. DAVIS L. REV. 1563 (2005) (presenting the findings of a two-year-long empirical research project that surveyed the Latina/o members of the Los Angeles bar); Cruz Reynoso, *Educational Equity*, 36 UCLA L. REV. 107 (1988) (discussing his work with the California Post-Secondary Education Commission). Because of his life-long commitment to civil rights, including serving as Vice Chair of the U.S. Commission on Civil Rights, Reynoso was awarded the Presidential Medal of Freedom in 2000. See Jacqueline L. Salmon, *The President's Honor Roll: Clinton Awards Medal to 15 American Standouts*, WASH. POST, Aug. 10, 2000, at C1. Reynoso has not published in a LatCrit symposium.

71. The absence of women as keynote speakers at the LatCrit I conference was problematic; later LatCrit conferences saw an improvement in the gender mix of keynote speakers.

72. See Joint Symposium, *LatCrit Theory: Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1998).

73. See *infra* text accompanying notes 73–74.



nascent LatCrit movement considerable national attention and some initial scholarly credibility.

However, the selection process for the symposium issue generated controversy among LatCrit theorists. Unlike the practice from the outset in LatCrit symposia, the student editors accepted some submissions, and rejected others. The selective process was in tension with the inclusiveness generally fostered by the LatCrit movement and the guaranteed publication of virtually all submissions to the LatCrit annual symposia. Nonetheless, that much-cited symposium remains the only truly elite law review with a full issue devoted to LatCrit theory. Authors in the symposium, in order of publication include Francisco Valdes (Foreword), Ian F. Haney López, Juan F. Perea, Kevin R. Johnson, Rachel F. Moran, Christopher David Ruiz Cameron, Robert S. Chang and Keith Aoki, Daria Roithmayr, Jean Stefancic, Leslie Espinoza and Angela Harris (Afterword), and Anthony V. Alfieri (Book Review). This tight symposium is perhaps the most read and cited LatCrit symposium issue.

Importantly, the visionary foreword to the *California Law Review/La Raza Law Journal* symposium issue offered benchmarks by which we can evaluate LatCrit's scholarly progress over its first decade. Frank Valdes, perhaps the principal founder of LatCrit, outlined four levels upon which LatCrit should strive to operate:

1. "The Production of Knowledge";
2. "The Advancement of Transformation";
3. "The Expansion and Connection of Struggle(s)"; and
4. "The Cultivation of Community and Coalition."<sup>74</sup>

Evaluating LatCrit by looking to these stated goals, we contend that LatCrit theory has succeeded in cultivating community and coalition among critical theorists of many different types, as well as expanding and connecting struggles (Goals 3 and 4). However, it has, to a certain extent, been less successful in maintaining a high level of "production of knowledge" and "advancement of transformation" in its scholarship. (Goals 1 and 2). We will discuss what we mean precisely in the next sub-sections of this article.<sup>75</sup>

LatCrit I followed up with well-attended, high energy conferences at St. Mary's University School of Law (LatCrit II), Miami (LatCrit III), and Lake Tahoe (LatCrit IV). The published symposia for these conferences were substantial,<sup>76</sup> and included important scholarly contributions. Lively and productive debates about religion

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74. Valdes, *supra* note 15, at 1093–94.

75. See *infra* Part I.B–C. In evaluating LatCrit by its scholarship, we are informed by the words of philosopher George Santayana in a comparable situation: "It is hardly fair to a writer like Nietzsche, so poetical, fragmentary, and immature, to judge him as a philosopher; yet he wished to be so judged . . ." GEORGE SANTAYANA, *THE GERMAN MIND: A PHILOSOPHICAL DIAGNOSIS* 114 (Apollo ed., 1968). Thanks to George A. Martínez for this insight.

76. See Symposium, *Difference, Solidarity, and Law: Building Latina/o Communities Through LatCrit Theory*, 19 *CHICANO-LATINO L. REV.* 1 (1998) [hereinafter *LatCrit II Symposium*]; Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, 53 *U. MIAMI L. REV.* 575 (1999); Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 *U.C. DAVIS L. REV.* 751 (2000) [hereinafter *U.C. Davis LatCrit Symposium*].

(particularly the place of Catholicism in LatCrit theory), gender, and sexual orientation took place at these conferences.

The annual symposium issue continues to be the mainstay of LatCrit scholarship and clearly its most widely visible contribution to the legal academy. In addition, there have been several other LatCrit colloquium and symposium issues connected with events other than the annual conference.<sup>77</sup> The annual symposium, along with the other issues, demonstrate LatCrit theory's enduring commitment to scholarship. The symposia have included some influential work. That scholarship in our estimation has floundered, however, in no small part because of the lack of meaningful quality controls in the selection of articles for inclusion in the annual LatCrit symposia. Again, we emphasize that there is some solid LatCrit scholarship; however, as will be explained, we contend that the quality is somewhat uneven.

### *B. The Limits of LatCrit Theory*

This article is far from the first critical assessment of LatCrit theory. Richard Delgado,<sup>78</sup> who has attended and participated in several of the annual LatCrit conferences,<sup>79</sup> harshly questioned the scholarship generated by the LatCrit movement.<sup>80</sup> He specifically stated:

The annual Lat/Crit conferences . . . have generated [by that date] no fewer than five symposium issues of various reviews, some running over 1200 pages and replete with articles addressing the mainstay issues of the discourse school [that is, according to Delgado, intellectual discourse about discourse rather than scholarship analyzing the material problems endemic to American social life]. Even a symposium on Lat/Crit theory in a world of economic inequality [LatCrit V] was no exception, featuring articles on such topics as communicative praxis, the appropriation of Latino pop music, the social construction of Latino gangs, and crime thrillers in Chicano cinema.

*Might it be the lure of easy publication, not to mention that of attending an annual conference where one might meet one's friends and relax in spa-like splendor, that accounts for the proliferation of discourse scholarship . . . ? And, from the dean's perspective, is it not safer to fund scholarship that examines literary tropes than that which has the effrontery to propose that America's proudest moment—Brown v. Board of Education[, 347 U.S. 483 (1954)]—came about because white folks decided to do themselves a favor?*

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77. See, e.g., Symposium, *Centering Constitutionalism: LatCritical Theory in International and Comparative Law*, 14 GRIFFITH L. REV. 143 (2005); Colloquium, *Spain, The Americas and Latino/as: International and Comparative Law in Triangular Perspective*, 9 U. MIAMI INT'L & COMP. L. REV. 1 (2000–2001); Joint Symposium, *Culture, Language, Sexuality and Law: LatCrit Theory and the Construction of the Nation*, 5 MICH. J. RACE & L. 787 (2000), 33 U. MICH. J.L. REFORM 203 (2000); Colloquium, *International Law, Human Rights, and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997).

78. See *supra* notes 66–67 and accompanying text.

79. See *supra* notes 66–67 and accompanying text.

80. See Delgado, *Crossroads*, *supra* note 37, at 145–46.

*From the perspective of the young scholar seeking tenure, it is certainly safer to attack a word or media image than law school hiring, the Supreme Court, or the Pioneer Fund. A media image cannot fight back or send a letter to one's dean.<sup>81</sup>*

Committed to the scholarship and other goals of LatCrit theory, one of the co-authors of this article defended LatCrit theory against Professor Delgado's attacks, emphasizing the important successes of the movement, as well as the need for caution in the tone employed in constructive scholarly criticism:

The LatCrit project is fully committed to scholarship. To that end, each annual LatCrit conference publishes its full proceedings in an issue of a national law review. Although this innovation results in a certain variation in quality among the contributions to the symposia, it avoids the creation of a star system in LatCrit, which some claim to have marred [Critical Race Theory].

....

*None of this discussion is meant to suggest that LatCrit scholarship should not be criticized . . . . Constructive engagement and dialogue are essential to the scholarly mission. However, we must be fair as well as critical, knowing that tone and manner affect the intended audience's willingness to listen.<sup>82</sup>*

Time has passed since this defense was penned. LatCrit unquestionably has had scholarly achievements. However, LatCrit theory has failed to catch fire in legal scholarship generally and, in our estimation, has lost its (cutting) edge in certain respects. Importantly, to this point, LatCrit theory arguably has not added its own lasting scholarly imprimatur on critical studies.

Along these lines, despite the continuous proliferation of the annual symposia, the current focus and direction of LatCrit scholarship is far from clear. LatCrit now is the home to a great diversity of legal theorists and theoretical approaches, with some of the scholarship regularly failing to fully engage the history or scholarship of LatCrit theory.<sup>83</sup> Radically different analytical approaches can be found in any of the lengthy LatCrit symposium issues. As a result, it is difficult to ascertain what LatCrit stands for except for the broadest principles (anti-essentialism, anti-subordination, praxis, and coalition building, to name four examples). Although we hardly endorse a lockstep

81. *Id.* (emphasis added) (footnotes omitted). Just three years before publishing this article, Professor Delgado and Jean Stefancic published a considerably more upbeat appraisal of LatCrit theory. See Richard Delgado & Jean Stefancic, *Latino/a Critical ("LatCrit") Legal Studies: Review Essay*, AZTLÁN, Fall 2000, at 161, 173–76. The views in those two articles together are consistent with the observations in this article—that LatCrit theory showed great promise in its early years only to lose focus.

82. Kevin R. Johnson, *Roll Over Beethoven: "A Critical Examination of Recent Writing about Race,"* 82 TEX. L. REV. 717, 731–33 (2004) (emphasis added) (citations omitted); see also Lazos Vargas, *supra* note \*\*\*, at 1323–26, 1344–45 (discussing internal critiques of Critical Race Theory and LatCrit theory, including those presented by Richard Delgado).

83. See *infra* Part I.C.

approach to LatCrit scholarship, we would hope that LatCrit theory would strive to stand for something more specific.

True, the LatCrit annual symposia have helped build a body of critical race scholarship. However, as mentioned previously, we believe that the commitment to generally publish all submissions—with little screening of the articles and a limit on page lengths of the articles in order to have room to publish all submissions—has contributed to a distinctly uneven quality in the final product. Accepting and publishing virtually all submissions has meant that scholars lack an incentive to write their highest quality scholarship.<sup>84</sup> The rejection of a submission is generally unlikely to occur. The lack of any meaningful disciplining device, we believe, has almost inevitably resulted in a certain laxness in LatCrit scholarship.

Strict page limits of about twenty pages, necessary to publish almost all of the submissions received, have meant that the analysis of some LatCrit symposium contributions appears somewhat superficial. The strict page limits may explain, in part, the failure to cite and refer to LatCrit scholarship or to provide in-depth analysis of issues that warrant—and, indeed, demand—such inquiry.<sup>85</sup> Whatever the reason, the care, detail, and depth of analysis of some LatCrit scholarship has lagged. Over the years, a number of scholars within LatCrit have candidly admitted to the authors of this article that this is the case.

Disputes with the student law reviews over the quality of the submissions and the length of the symposium issue, occur regularly, if not annually. One co-author of this Article worked with the *U.C. Davis Law Review*, which published the papers prepared in connection with the LatCrit IV annual symposium,<sup>86</sup> and intervened when student editors complained about the length of the symposium (875 pages) and wanted to reject some of the contributions due to quality concerns. Although fearing that the students had legitimate complaints about the size of the issue and the quality of some of the contributions, this co-author, under pressure from LatCrit organizers, defended LatCrit's commitment to inclusiveness and insisted on compliance with the contractual agreement to publish all symposium submissions. In the end, the student editors acquiesced, and the LatCrit IV symposium issue published all of the submissions.

One of the things that has been most striking has been the near wholesale ignorance of LatCrit scholarship by the mainstream. Externally, mainstream scholarship has failed to engage, much less challenge, LatCrit theory. This stands in stark contrast to the aggressive criticism—perhaps attacking and vilification are better descriptors—of Critical Race Theory by mainstream scholars.<sup>87</sup> Indeed, there has not been much of a response to LatCrit scholarship except in some scholarship of LatCrit theorists.

Even some scholars who touch on issues analyzed in LatCrit scholarship, such as immigration,<sup>88</sup> often ignore that scholarship and write as if the critical scholarly slate

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84. In working on the *U.C. Davis LatCrit Symposium*, *supra* note 76, one of the co-authors of this article saw a submission to a LatCrit symposium in which the majority of footnotes read “Cite to be added.”

85. *See infra* text accompanying notes 130–40.

86. *See U.C. Davis LatCrit Symposium*, *supra* note 76.

87. *See supra* note 56 (citing authorities that question Critical Race Theory).

88. *See* Jennifer Gordon & R.A. Lenhardt, *Citizenship Talk: Bridging the Gap Between Immigration and Race Perspectives*, 75 *FORDHAM L. REV.* 2493, 2497–2511 (2007) (analyzing how mainstream immigration scholarship has failed to engage critical scholarship on issue of

were clean.<sup>89</sup> Moreover, although LatCrit theory is mentioned in some articles in mainstream law reviews by those engaged in the movement,<sup>90</sup> it at times has been largely ignored by those involved in LatCrit theory in articles on topics that have been the subject of LatCrit analysis.<sup>91</sup>

In sharp contrast, Critical Race Theory provoked a heated response, obviously striking a nerve, if not a chord, in the mainstream.<sup>92</sup> LatCrit has not, apparently failing to demonstrate fresh insights and intellectual relevance to many observers analyzing the most pressing social justice issues of our times. Nor has it benefited from the scholarly give-and-take in the academic marketplace that critical scrutiny would bring.<sup>93</sup>

Why has LatCrit scholarship largely been ignored? LatCrit evidently has failed to convince mainstream scholars of its staying power or its intellectual coherence; put simply, it has not established the need to engage this new brand of scholarship. Perhaps it is only civil rights discourse falling into the Black/White paradigm that attracts the attention of mainstream scholars.<sup>94</sup> This might well be the case, suggesting that LatCrit theorists must continue in their efforts to destabilize the Black/White paradigm. It further suggests that LatCrit, to this point in time, has failed to dislodge the Black/White paradigm of civil rights in dominant legal scholarship.<sup>95</sup>

Although nothing is as common as resistance to new genres of scholarship, it should be candidly admitted that the mega-symposia of short articles produced by critical Latina/o theorists have not resulted in the kind of the groundbreaking work of leading Critical Race Theorists—relatively early in that movement—such as Derrick Bell,<sup>96</sup> Kimberlé Crenshaw,<sup>97</sup> Richard Delgado,<sup>98</sup> Mari Matsuda,<sup>99</sup> and Patricia Williams.<sup>100</sup> This may seem as if it is asking too much of a nascent scholarly movement. It is

immigration); Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2000 U. ILL. L. REV. 525, 528–35 (2000) (making similar arguments).

89. See, e.g., SAMUEL P. HUNTINGTON, WHO ARE WE? THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY 221–51 (2004); Charles J. Ogletree, Jr., *America's Schizophrenic Immigration Policy: Race, Class, and Reason*, 41 B.C. L. REV. 755, 767–70 (2000).

90. See, e.g., Emily M. S. Houh, *Critical Interventions: Toward an Expansive Equality Approach to the Doctrine of Good Faith in Contract Law*, 88 CORNELL L. REV. 1025 (2003); Angela Onwuachi-Willig, *Using the Master's "Tool" to Dismantle His House: Why Justice Clarence Thomas Makes the Case for Affirmative Action*, 47 ARIZ. L. REV. 113, 132–34 (2005).

91. See, e.g., Ian F. Haney López, *Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination*, 109 YALE L.J. 1717 (2000); Perea, *supra* note 4.

92. See *supra* text accompanying notes 56–57.

93. See *id.*

94. Thanks to George A. Martínez for this idea.

95. Mainstream scholarship also should receive some blame in ignoring LatCrit Theory. Rather than engage that critique, conventional scholarship simply has ignored it.

96. See, e.g., Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

97. See, e.g., Kimberlé Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

98. See, e.g., Richard Delgado, *Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 HARV. C.R.-C.L. L. REV. 133 (1982).

99. See Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320 (1989).

100. See, e.g., PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991).

important, however, to set high scholarly goals for which to strive and to acknowledge when goals have not been achieved.

Most of the foundational, path-breaking writings of CRT were published in mainstream law reviews as stand-alone pieces subject to the same quality and other selection standards employed in legal academia, not short contributions to huge symposia issues prepared with publication virtually guaranteed. There have been a few Critical Race Theory symposia<sup>101</sup> but nothing at all resembling the LatCrit symposium issues of hundreds of pages, with no independent student (or, for that matter, any meaningful) screening or evaluation of the submissions.

Like it or not, publishing the annual LatCrit symposia in non-elite law reviews may be a contributing factor to the lack of attention paid to LatCrit scholarship. It is difficult to dispute that little LatCrit scholarship has been published in the most cited law reviews. Consequently, LatCrit scholarship may lag in citations for that reason. This may not be “fair” but it is a reality of modern legal academia.

Moreover, senior scholars do not as fully participate as junior scholars in LatCrit scholarship. For example, one of the most prolific, and most cited, legal scholars of his generation, Richard Delgado,<sup>102</sup> has never published in a LatCrit symposium issue (even though he has participated in the annual conferences). Neither has the unofficial dean of Latina/o law professors, Michael Olivas, or civil rights icon Cruz Reynoso.<sup>103</sup> The LatCrit conferences currently tend to be more of a junior faculty event, with the body of the symposium issues generally dominated by untenured faculty. Senior scholars generally are more likely to provide an introduction to the symposium, an introduction to a cluster of essays, or some concluding remarks.<sup>104</sup> Still, some junior scholars may avoid publication in LatCrit symposia because of the uneven reputation of the symposium issues.

Unlike its early days, senior scholars are somewhat distant from LatCrit scholarship. This creates scholarly room for junior scholars. Whatever the reason, senior LatCrit professors do not appear as deeply engaged in the scholarship published in the LatCrit symposia. At the same time, they are central to the organization of the annual conferences and other LatCrit events and activities. Many have been very productive from a research perspective in other venues.

All in all, the published symposia in recent years has lacked the overall energy, ambition, and intellectual rigor of LatCrit’s promising early days. Although disappointing, the current malaise is not uncommon as scholarly movements mature. We fervently believe that the next few chapters in LatCrit scholarship will be critical to its future intellectual influence—indeed, its very academic survival.

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101. See, e.g., Colloquy, *supra* note 56; Symposium, *Minority Critiques of the Critical Legal Studies Movement*, 22 HARV. C.R.-C.L. L. REV. 297 (1987) [hereinafter, Symposium, *Minority Critiques*]; Symposium, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989).

102. See *supra* notes 66–67 and accompanying text.

103. See *supra* notes 68, 70.

104. There, of course, are exceptions. See, e.g., Lazos Vargas, *supra* note \*\*\*; Guadalupe T. Luna, *Land, Labor and Reparations*, 52 CLEVE. ST. L. REV. 265 (2005); Tayyab Mahmud, *Postcoloniality and Mythologies of Civil(ized) Society*, 26 CHICANO-LATINO L. REV. 41 (2006); Mary Romero, *Class Struggle and Resistance Against the Transformation of Land Ownership and Usage in Northern New Mexico: The Case of Las Gorras Blancas*, 26 CHICANO-LATINO L. REV. 87 (2006).

*C. The Uneven Quality of LatCrit Scholarship*

LatCrit's strength has been its inclusiveness and willingness to embrace a diversity of progressive scholars interested in racial justice and the greater anti-subordination project.<sup>105</sup> Unfortunately, that egalitarian spirit has proven to be a contributing factor to perhaps its most glaring weakness—an Achilles' heel that, in our view, places this scholarly movement at risk of nothing less than academic oblivion. As we have discussed,<sup>106</sup> the quality of the annual LatCrit symposium contributions vary dramatically, a problem that has persisted for at least the last five years.

The tenth anniversary of LatCrit theory was a time to celebrate many achievements.<sup>107</sup> However, one essay in the LatCrit X symposium, in our estimation, included personal snubs and attacks on various LatCrit scholars by name, while also raising an entirely legitimate point about which reasonable minds might disagree—that Chicana/os have been somehow excluded or marginalized from LatCrit theory and scholarship.<sup>108</sup> We believe that this single article exemplifies the uneven quality of LatCrit scholarship and illustrates the serious problems resulting from the absence of meaningful quality controls with the current LatCrit symposium issues. Its publication is indicative of the more general problem of quality control and the lack of a filter for screening substandard pieces.

The challenge in the article in question unfortunately was couched, at least in part, on nothing less than what we term here “identity assassination,” an attack upon an individual's racial identity in a subtle attempt to discredit his or her scholarship. As we use the phrase here, “identity assassination” constitutes a form of microaggression—a subtle, yet unmistakable, “put-down,”<sup>109</sup> by questioning an individual's bona fides as a person of color. Such conduct is antithetical to LatCrit's stated commitments to of anti-essentialism—the recognition of the heterogeneity of the Latina/o community—and inclusiveness, the embrace of people of different backgrounds.<sup>110</sup> It further undercuts efforts at community-building.

The article specifically stated:

Off-hand, I can only think of two Chicanas that are visible in LatCrit, Margaret Montoya and Mary Romero. Montoya is a law professor from New Mexico, and Romero is a sociologist in criminal justice at Arizona State University and Co-Chair of LatCrit for next year. Laura Gomez . . . has a joint Sociology/Law degree from Stanford and was in attendance. She does really good work but does not attend the meetings regularly and is not that visible in LatCrit. She was at the

105. *See supra* Part I.A.

106. *See supra* Part I.B.

107. *See supra* text accompanying notes 29–30.

108. For an attempt to tie LatCrit theory into Chicana/o Studies scholarship, see Kevin R. Johnson & George A. Martínez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship*, 53 U. MIAMI L. REV. 1143 (1999); Guadalupe T. Luna, “*La Causa Chicana*” and *Communicative Praxis*, 78 DENV. U. L. REV. 553 (2001); Margaret E. Montoya, *Introduction: LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions*, 53 U. MIAMI L. REV. 1119 (1999).

109. Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559, 1565 (1989).

110. *See supra* text accompanying note 26.

University of California at Los Angeles School of Law and just moved back to Albuquerque, New Mexico, her hometown. What is shocking is that there are virtually no Chicanos of prominence in LatCrit, except for *Steve Bender and Kevin Johnson, who are half white, and Kevin did not attend. Richard Delgado attends occasionally, but stays in the background, [and] also did not attend this year. There are two Latinos who occupy key positions in LatCrit, Frank Valdes (Cuban), one of the fathers of LatCrit and Pedro Malavet (Puerto Rican), who used to run the LatCrit website. Both Valdes and Malavet teach in Florida.*<sup>111</sup>

As we readily acknowledge, there are important points to be made about the proper place of Chicana/os in LatCrit theory.<sup>112</sup> Despite the fact that Chicana/os constitute the largest group of Latina/os in the United States,<sup>113</sup> they are not as prominent as they might be in critical Latina/o theory. Importantly, more LatCrit scholarship arguably should focus on the status of Chicana/os in the United States.

Some LatCrit observers have gone further in this critique, claiming that, because of its zealous commitment to inclusiveness, LatCrit theory fails to focus sufficiently on Latina/os and the Latina/o condition. As one commentator bluntly noted, “I am aware that some of the old-timers . . . have been openly asking important questions like ‘where is the ‘Lat’ in LatCrit?’”<sup>114</sup>

Despite the substance to the critique, the personal details included in the LatCrit symposium article quoted above obfuscate and sting, rather than elucidate and ameliorate. The personal nature of the marginalizing snubs in the above-quoted paragraph are problematic in too many ways to analyze in depth here. Still, a few are worth highlighting for purposes of this article.

Two LatCrit theorists, including one of the co-authors of this article, who have been involved in LatCrit since its inception<sup>115</sup> are marginalized *by name* as “half white.”

111. Alfredo Mirandé, *Alfredo's Caribbean Adventure: LatCrit Theory, Narratives, and the Politics of Exclusion*, 26 CHICANO-LATINO L. REV. 207, 216–17 (2006) (emphasis added). Professor Mirandé is the author of several important works. See, e.g., ALFREDO MIRANDÉ, GRINGO JUSTICE (1987); ALFREDO MIRANDÉ, THE STANFORD LAW CHRONICLES: DOIN' TIME ON THE FARM (2005); Mirandé, *supra* note 25. A professor and Chair, Ethnic Studies, and professor of Sociology, at the University of California, Riverside, see Mirandé, *Alfredo's Caribbean Adventure*, *supra*, at 207 n.\*, he did a brief stint as a law teacher at Texas Tech. To clarify, Professor Mary Romero, who is mentioned in the quote, is a Professor of Justice and Social Inquiry at Arizona State University. A sociologist by training, she has produced some influential LatCrit scholarship and formerly served as a co-chair of LatCrit. See, e.g., Romero, *supra* note 25; Romero, *supra* note 104.

112. See *supra* note 108. One of the co-authors for a number of years unsuccessfully worked with the LatCrit leadership in an attempt to establish a project that would have promoted collaboration between LatCrit and Chicana/o Studies scholars.

113. See PEW HISPANIC CENTER, A STATISTICAL PORTRAIT OF HISPANICS AT MID-DECADE tbl. 4 (2007) (statistical data showing that 64 percent of all Hispanics were of Mexican ancestry), available at <http://pewhispanic.org/files/other/middecade/Table-4.pdf>.

114. Pedro A. Malavet, *Afterword: Outsider Citizenships and Multidimensional Borders: The Power and Danger of Not Belonging*, 52 CLEV. ST. L. REV. 321, 334 (2005) (emphasis added) (footnote omitted).

115. See Bender, *supra* note 5; Johnson, *Latino Legal Scholarship*, *supra* note 31. The background of another mixed race Latino, perhaps because of his Spanish surname, discussed in this same passage is not mentioned. See THE LAW UNBOUND! A RICHARD DELGADO READER, at



The implicit question being raised is not difficult to discern: are they true Chicana/os (like the author of the article)? Do they “count” as Chicanos for purposes of their participation in LatCrit theory? This, of course, raises highly contested issues of racial classification and identity for persons of mixed race backgrounds.<sup>116</sup> These deeply personal issues cut to the core of one’s very being and thus should not be randomly tossed out for public consumption in an insensitive way, especially in a genre of scholarship that is ostensibly committed to community-building, inclusiveness, and racial sensitivity.

One of the co-authors named in the text cannot fully explain the sorrow and grief experienced upon reading the questioning, if not attack, on his racial identity in print. Issues of racial identity had plagued him for his entire life and have been a subject of some of his scholarship.<sup>117</sup> Questions about his racial identity contributed to his initial uncertainty about whether he should even attend LatCrit I in 1996. LatCrit theory had come to be a “safe” place for him, which no longer can be the case. Reading this passage brought to mind the kind of “spirit-murder” identified in the Critical Race Theory literature.<sup>118</sup> To make matters worse, the lack of a response of any kind in the rest of the symposium issue to this personal attack was disheartening, devastating, and as hurtful as the original comment itself.<sup>119</sup>

To make matters worse, the relevance of thinly-veiled name calling to the overall point of the essay is left unclear, as are many references in this passage. What do the following personal facts about individual law professors (and the naming of names) have to do with the main point of the essay? The reference to one professor’s move from UCLA to “her hometown” in New Mexico, another prominent professor’s “stay[ing] in the background,” and that two non-Chicano Latino law professors “teach in Florida.”

LatCrit’s commitment to inclusion, and anti-essentialism,<sup>120</sup> is seriously undermined by personal attacks that some scholars—LatCrit and otherwise—would claim fail to constitute legitimate scholarly inquiry. Indeed, such attacks in a LatCrit symposium tarnish the very legitimacy of LatCrit scholarship generally and put into question the entire movement at a time when it vies for scholarly legitimacy and acceptance.<sup>121</sup> It further lends support to the critics of narrative scholarship.<sup>122</sup>

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xi (Adrien Katherine Wing & Jean Stefancic eds., 2007). This omission demonstrates the error—common as it is—to judge Latina/o identity by Spanish surname. See Johnson, *Melting Pot*, *supra* note 31, at 1295–96, 209–10.

116. See generally KEVIN R. JOHNSON, HOW DID YOU GET TO BE MEXICAN?: A WHITE/BROWN MAN’S SEARCH FOR IDENTITY (1999) (analyzing through autobiographical account the complexities of mixed race identity of persons of Anglo and Latina/o backgrounds); MIXED RACE AMERICA AND THE LAW: A READER (Kevin R. Johnson ed., 2002) (presenting an anthology of readings analyzing legal rules touching on people of mixed race backgrounds); LUIS ALBERTO URREA, NOBODY’S SON (1998) (presenting an autobiographical account of mixed Anglo/Latino).

117. See JOHNSON, *supra* note 116; Johnson, *Melting Pot*, *supra* note 31.

118. See Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerprinting as the Law’s Response to Racism*, 42 U. MIAMI L. REV. 127 (1987).

119. See *infra* text accompanying notes 120–22.

120. See Iglesias & Valdes, *supra* note 17, at 1267.

121. See *supra* text accompanying notes 53–57.

122. See *supra* note 56.

Inexplicably, despite the personal nature of the comments, neither the Foreword nor Afterword to the LatCrit X symposium issue mention, much less address, the passage in question, or the more general points being raised by it. They in effect ignore the article,<sup>123</sup> which alone suggests much about its scholarly quality. Ironically enough, both the Foreword (more than 60 pages) and Afterword (sixteen pages) discuss, among other things, the importance of community-building to the LatCrit project, a goal certainly not fostered by this article.<sup>124</sup> Unfortunately, in seventy-five pages of commentary on the various contributions to the symposium, the attacks on this “half white” co-author went unaddressed, un rebutted, and ignored, with the personal damage left fully intact.

Of course, the authors of the symposia forewords and afterwords face a difficult task of seeking to promote inclusivity and encouraging participation in the LatCrit movement as well as commenting on the scholarship. It is a fine line, however, between supporting the production of LatCrit scholarship and allowing poor scholarship to go unquestioned and its errors and omissions unaddressed. At a bare minimum, we would err on the side of identifying clearly problematic scholarship and attempt to ensure some modicum of quality control. At a minimum, a truly *scholarly* movement should seek to deter personal attacks and other snubs inappropriate for a scholarly community and intellectual endeavor. Such intervention is necessary, we contend, to ensure the highest quality in a genre of scholarship that we wholeheartedly support, and necessary to ensure that LatCrit achieves its stated scholarly goals.<sup>125</sup>

This is not the only example of the lack of quality control in LatCrit scholarship, just one of the most egregious. Unfortunately, similar problems in previous submissions by the same author had been chided repeatedly but to no avail. Put differently, subtle efforts at improving the scholarly quality of this author’s scholarship within the LatCrit symposia to this point have failed. For example, in LatCrit IV, the Foreword to the symposium by one of the co-authors of this article cautioned the same author on the characterization of a fictitious Chicana who “looks great in her Black *Charra* outfit,” in a narrative.<sup>126</sup> An introduction to the section of the symposium issue

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123. See Hernández-Truyol et al., *supra* note 13; Montoya, *supra* note 17. Professor Montoya lists the symposium contributions by category but omits this article from the list. See Montoya, *supra* note 17, at 7 tbl. 1.

124. See Hernández-Truyol et al., *supra* note 13, at 273–75; Montoya, *supra* note 17, at 13–14.

125. See *supra* Part I.B. Such gentle criticism itself can trigger criticism. For example, in a cluster introduction to one LatCrit symposium, one co-author attempted to offer constructive criticism on articles analyzing the impact of stereotypes of Latina/o culture, only to be criticized for, among other things, taking the scholarship “too seriously.” See Kevin R. Johnson, *Comparative Racialization: Culture and National Origin in the Latina/o Communities*, 78 DENV. U. L. REV. 633, 634–47 (2001).

126. See Kevin R. Johnson, *Foreword: Celebrating LatCrit Theory: What Do We Do When the Music Stops?*, 33 U.C. DAVIS L. REV. 753, 776 (2000) (observing that reference in Alfredo Mirandé González, *Alfredo’s Jungle Cruise: Chronicles on Law, Lawyering and Love*, 33 U.C. DAVIS L. REV. 1347, 1355 n.10 (2000), to a fictitious—and ideal—Chicana, Fermina, who “looks great in her Black *Charra* outfit,” “lack[ed] gender sensitivity”).

that included this article analyzes it in detail,<sup>127</sup> and concludes that the “*narrative choices reflect problematic constructions of Chicana/o femininity and masculinity.*”<sup>128</sup>

The gender insensitivity was so troubling that the Foreword to the symposium and cluster introduction both commented upon it. In retrospect, the issue obviously needed to have been highlighted more emphatically to deter future transgressions by the same author.

More generally, the Foreword to LatCrit IV observed that the problematic narrative “fails to present a unified thread of inquiry and neglects relevant LatCrit . . . scholarship.”<sup>129</sup> Unfortunately, a failure to articulate a thread of inquiry and neglect of relevant LatCrit scholarship, have been endemic to too many pieces published in the annual LatCrit symposia.<sup>130</sup> With all its flaws, one can only wonder what justified publication of the article as submitted besides a blind commitment to publish all submissions.

The author remained undaunted. He wrote a chronicle in the very next (LatCrit V) symposium issue that referred to the same fictitious Chicana as a “beautiful young woman” as if beauty were necessary for her to approach the perfection that he described her possessing.<sup>131</sup> In her Foreword to the symposium issue that included that narrative, Margaret Montoya aptly wrote that the “chronicles leave this reader with more questions than answers and *with a sense of disquietude rather than clarity.*”<sup>132</sup> An introduction to the cluster of articles in which this one was included expressed concern with a statement in the article about the place of gender and sexual preference in LatCrit theory.<sup>133</sup> It concludes that LatCrit narrative, like this one, are “streams of thought . . . going somewhere, *or nowhere.*”<sup>134</sup>

Nor has the failure to acknowledge LatCrit scholarship is not limited to a single author. The recurring problem of failing to cite relevant scholarship in symposium contributions has been commented upon in numerous LatCrit forewords and afterwords. For example, Margaret Montoya stated that one of the purposes of her Foreword to LatCrit V was to exhort, once again, future LatCrit participants to seriously engage, and acknowledge, existing LatCrit scholarship.<sup>135</sup> In the very next symposium issue, Ediberto Román’s Afterword to LatCrit VI commented that “[a] review of the interdisciplinary works submitted for this symposium issue often illustrated a lack of familiarity with Critical Race Theory in general, or LatCrit works,

127. See Robert S. Chang & Natasha Fuller, *Performing LatCrit*, 33 U.C. DAVIS L. REV. 1277, 1285–89 (2000).

128. *Id.* at 1288 (emphasis added).

129. Johnson, *supra* note 126, at 776.

130. See *infra* text accompanying notes 131–40.

131. Alfredo Mirandé, *Alfredo's Mountain Adventure: The Second Chronicle on Law, Lawyering, and Love*, 78 DENV. U. L. REV. 517, 518 (2001).

132. Margaret E. Montoya, *Foreword: LatCrit V Symposium, Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U. L. REV. 467, 473 (2001) (emphasis added).

133. See Elvia Rosales Arriola, *Talking About Power and Pedagogy, Introduction for Cluster: “LatCrit Theory in New Contexts”*, 78 DENV. U. L. REV. 507, 511 (2001) (questioning statement that “gender and sexual preference are overarching issues” in LatCrit theory (quoting Mirandé, *supra* note 131, at 524)).

134. Arriola, *supra* note 133, at 512 (emphasis added).

135. See Montoya, *supra* note 132, at 470 (citing Johnson, *supra* note 126, at 784).

*specifically.*"<sup>136</sup> These are nothing less than damning criticisms, basically suggesting that the authors of the articles had failed to perform adequate research.

Once again, in the Afterword to LatCrit VIII, Pedro Malavet bluntly questioned the quality of the symposium contributions. He stated that "[m]any of the works included in this symposium could have been markedly better pieces of scholarship *if their authors had studied our existing body of work.*"<sup>137</sup> He further explained that

[a]t the very least, ignoring existing scholarship exposes the author to charges of poor research, and of general lack of familiarity with "the literature." . . . As scholars we must always strive to reach a proper balance between the hyperbole of arrogant, an ultimately ignorant claims to newness, and the ambitious development of our scholarship.<sup>138</sup>

Professor Malavet specifically sees the quality of the research as undercutting the LatCrit commitment to the "production of knowledge,"<sup>139</sup> and states that this value "should lead us to inform each other and to be informed about what others in our group have already published. It is logical to start with the growing volumes of our Symposia."<sup>140</sup> In certain respects, such advice should be self-evident but the recurring basic deficiency of LatCrit scholarship has required that it be given time and time again.

Unfortunately, the relatively diplomatic cautionary notes respected in numerous forewords and afterwords—which seem to have grown more strident and impatient over time—have failed to have a noticeable positive impact on the scholarship in the LatCrit annual symposium issues. This results, we believe, from the structural problems that hinder in-depth scholarship in the LatCrit symposium issues. The requirement of short pieces in order to accommodate publication of all of the articles submitted in the symposium issue and the acceptance of the vast majority of submissions (with rejection not much of a possibility), together cut against meaningful responses to gentle criticism.<sup>141</sup>

There is another structural difficulty posed by the LatCrit symposia, which are linked to building a scholarly community. As suggested previously,<sup>142</sup> the authors of forewords and afterwords, given LatCrit's egalitarian commitment and promotion of inclusion, may feel inhibited from criticizing the articles in the symposium, which include many written by untenured scholars who are vulnerable in the tenure process. This is understandable in a nascent movement that seeks to promote and encourage membership and growth in its numbers. However, as the maturation process continues, one would hope and expect that legitimate scholarly engagement, disagreement, and debate could be possible.

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136. Ediberto Román, *Afterword: LatCrit VI, Outsider Jurisprudence and Looking Beyond Imagined Borders*, 55 FLA. L. REV. 583, 600 (2003) (emphasis added).

137. Malavet, *supra* note 114, at 335 (emphasis added).

138. *Id.* at 331 (emphasis added).

139. *See supra* text accompanying notes 73–74.

140. Malavet, *supra* note 114, at 336.

141. *See supra* text accompanying notes 16–22.

142. *See supra* text accompanying note 125.

None of this is to say that LatCrit theory has been devoid of intellectual engagement. For example, the early debate over the Black/White paradigm among LatCrit theorists was protracted and, at times, emotional; however, we would contend that the scholarship ultimately was better because of the debate.<sup>143</sup> Similarly, healthy, yet heated, discussion of the relevance of religion to LatCrit theory in the LatCrit II symposium, although heated and at times disconcerting, ultimately proved productive from a scholarly standpoint.<sup>144</sup> A specific example of constructive dialogue is Margaret Montoya's "gendered criticism,"<sup>145</sup> of an article co-authored by one of the authors of this article.<sup>146</sup>

In the end, it is extremely difficult to determine from the current annual LatCrit symposia what the current core issues of debate are within LatCrit theory. The same themes (anti-subordination, anti-essentialism, coalition-building, praxis) seem to be played and replayed (and replayed) year after year, symposium issue after symposium issue. In replaying the same old record, all too often a symposium contribution fails to mention or cite relevant LatCrit scholarship on the identical topic about which he or she is writing.<sup>147</sup> All too often chaff, not wheat, is published in LatCrit symposia. The bottom line problem, in our estimation, is the lack of meaningful quality controls.

There are perhaps a number of changes in the works that might improve the overall body of LatCrit scholarship. LatCrit now issues instructions to various participants in the annual symposium to be vigilant in identifying problems in paper submissions.<sup>148</sup> A new LatCrit journal (CLAVE) run by LatCrit scholars recently began publishing LatCrit scholarship.<sup>149</sup> In October 2007, the board of directors of LatCrit, Inc. created a committee to review symposia guidelines, talk with LatCrit collaborators, and make recommendations on how to improve the selection and publication process.<sup>150</sup> There also is a chance that an editorial board might be created in the future to supervise the selection of symposium contributions.<sup>151</sup>

Improved mentoring of junior faculty is another way to improve the LatCrit scholarly project.<sup>152</sup> In addition, another possibility

might be to ask that articles be submitted for comment before the conference, so that they may be critiqued during the annual conference and the writer ~~may have~~ the opportunity to re-draft the piece and resubmit it. One possible solution to the "volume of scholarship" problem might be to publish an edited anthology of

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143. See *supra* text accompanying note 23.

144. See *LatCrit II Symposium*, *supra* note 76.

145. Montoya, *supra* note 108, at 1124.

146. See Johnson & Martínez, *supra* note 108.

147. See *supra* text accompanying notes 129–40.

148. See Symposium Coordination Guidelines: LatCrit XII (unpublished document on file with author).

149. See CLAVE: Counterdisciplinary Notes on Race, Power & the State, <http://www.clave.org/mission.html>.

150. See E-mail from Margaret E. Montoya, Professor of Law, Univ. of N.M. Sch. of Law, to Kevin R. Johnson, Assoc. Dean for Academic Affairs & Mabie-Apallas Professor of Pub. Interest Law and Chicana/o Studies, Sch. of Law of the Univ. of Cal., Davis (Nov. 20, 2007) (on file with the authors).

151. See *id.*

152. See Malavet, *supra* note 114, at 336–37.

[LatCrit] works, an updated “LatCrit Primer,” perhaps as the inaugural volume of the LatCrit Journal project.<sup>153</sup>

Perhaps assigning general editors to comment on and edit the symposia, as is the practice followed in some journals, symposia, and in other disciplines,<sup>154</sup> to the LatCrit symposia issues might improve the final product. Peer, or perhaps student, review of submissions might bring the discipline necessary to improve scholarly quality.

The especially challenging issue is how to improve quality while also maintaining the much-cherished and highly successful community and inclusivity of LatCrit, two of the movement’s stunning achievements. Although the building of an intellectual community is important, structural reform is necessary to improve the scholarly quality of the annual symposium.

The next Part of this Article outlines specific substantive issues about which LatCrit theory could and should clearly stake out specific and concrete positions in order to be relevant in the scholarly debates over race and civil rights. This list is by no means exclusive; it simply maps out possible directions in which LatCrit might go if it wants to return to the cutting edge scholarship of the early, heady days of the movement.

## II. LATCRIT’S LOSS OF FOCUS ? A TALE OF TWO MOVEMENTS—LATCRIT, INC. AND LATCRIT SCHOLARSHIP

LatCrit’s early visionaries advanced a normative commitment to promoting the salutary goals of anti-subordination, anti-essentialism, praxis, and coalition-building.<sup>155</sup> The commitment to developing a steadily increasing body of anti-subordination scholarship bore fruit.

Although the volume of LatCrit scholarship has swelled over the past decade, LatCrit has also seen a substantial drift in its abilities to address its goals in a consistent and coherent fashion. Perhaps such a drift is inevitable, something that occurs as any intellectual movement reaches out to embrace more adherents. However, within the expanding LatCrit enterprise in recent years, it has been vexingly unclear exactly what as a scholarly matter new members are adhering to.<sup>156</sup> The current lack of a clearly stated theoretical agenda that goes beyond a vague anti-subordination, anti-essentialism, praxis and coalition-building agenda should be of considerable concern.

Part of the problem arises from the largely unacknowledged duality of the LatCrit enterprise. On one hand, particularly in recent years, LatCrit has offered itself as a “safe space”<sup>157</sup> for younger scholars of color to present works in progress and to build and maintain professional networks. One may think of this project as “LatCrit, Inc.”<sup>158</sup>

153. *Id.* at 337.

154. *Cf.* Posner, *supra* note 18, at 1136 (stating that student law reviews should leave doctrinal scholarship to faculty-edited journals because they are more competent to review such scholarship).

155. *See supra* text accompanying notes 20–26.

156. *See* Hernández-Truyol et al., *supra* note 13.

157. *Id.* at 240 (“[W]e have sought . . . to create a ‘safe space’ for critical outsider jurisprudence . . .”).

158. *See id.* at 270–71 (“The first . . . major developmental step[] [for LatCrit] was the decision to incorporate ourselves formally as a non-profit entity. The move to incorporate was

In many ways, LatCrit, Inc. has been a stunning success, creating and providing a hospitable and supportive environment for scholarship and a broad network necessary for new scholars of color to build their careers.

On the other hand, however, the overarching purpose of the LatCrit enterprise—that of creating a coherent, cutting-edge body of legal theory and scholarship—has not been nearly as successful. Rather, we argue that even as the quantity of LatCrit scholarship has steadily increased, it has lost focus so much so that the scholarly product currently is of uneven quality.

Importantly, the lack of focus in LatCrit scholarship may be undermining the LatCrit, Inc. project of helping new scholars of color build their scholarly careers. As stated earlier, it appears that some, perhaps even many, junior and senior scholars who have been or are associated with LatCrit withhold their most important and significant scholarship from publication in LatCrit symposia.<sup>159</sup>

In our opinion, as a whole, it appears that LatCrit scholarship has lost its edge. The metaphor of a blurry camera image, becoming fuzzier and increasingly out of focus, comes to mind. This may be partially due to LatCrit theory's near-unconditional acceptance of an increasingly broad variety of approaches and styles, including some from disciplines outside the legal academy. Yet, at this point in time, when forces of retrenchment that do not share foundational assumptions with critical scholarship are ascendant in the legal academy, it is all the more important that progressive legal scholarship possess qualities of methodological rigor, precision, and clarity.

The following sections of this article identify recurring dichotomies upon which LatCrit scholarship has floundered: (1) the tension between theory and practice, which purports to be resolved through "praxis," which remains susceptible to multiple, sometimes contradictory, wildly varying meanings; (2) deep tensions between identity-based and post-identity approaches that call LatCrit's self-avowed anti-essentialism into question; and (3) tensions between the impulses toward centralization and decentralization of institutional power within LatCrit that give rise to confusing, multiple, and contradictory theoretical iterations under the increasingly large, but disorderly, LatCrit scholarly tent. At this juncture, LatCrit, Inc. might be analogized to a big top circus with multiple acts/entertainers performing at the same time, thereby drawing the audience's focus in many different directions at once.

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designed to facilitate two key needs: the need for formal, institutionalized continuity to help ensure programmatic progression, and the need for fiscal independence to ensure our collective freedom to act in a manner we deemed principled, rather than in a manner designed to appease the political considerations that oftentimes attach to our dependence on our 'home' institutions.").

159. See *supra* text accompanying note 40. Senior scholars might rationalize this behavior as making room for junior scholars. Junior scholars might rationalize this behavior as a function of the hierarchical valuation of placements by the legal academy in general.

*A. A Specter is Haunting LatCrit: “Theory-Guilt” and “Praxis”*<sup>160</sup>

The ghost of “theory-guilt” has hovered over LatCrit conferences since their inception. Theory-guilt may be characterized as an attitude that creates a false dichotomy between morally, intellectually, and ethically compromised ivory tower intellectuals and morally, intellectually, and ethically superior activists. It contains a certain element of self-loathing insofar as it is fed by legal academics creating intellectual spaces such as LatCrit conferences that may have the effect of romanticizing struggles outside—and even inside—the legal academy in which the law and legal scholarship are themselves implicated. Paradoxically, although legal analysis is seen as a site of struggle and contestation, these struggles may not seem as “real” as those occurring outside the ivory tower.

1. The Professional is Political<sup>161</sup>

Although the occasionally nasty politics of the legal academy remains a frequent subject of conversation, chitchat, and gossip at annual LatCrit conferences, until the emergence of feminism and Critical Race Theory, the professional was not seen as necessarily political—at least in a way that could be the subject of legal scholarship. The rise of LatCrit, Inc. and related networks reflects the reality that an aspiring legal academic must have not only a support network in one’s home institution but also in the legal academy at large. As Richard Delgado has emphasized, “imperial scholars” tend to network with, mentor, and cite the scholarship of younger versions of themselves.<sup>162</sup> This dynamic, Duncan Kennedy postulates, facilitates the reproduction of illegitimate hierarchy.<sup>163</sup> The danger is not merely one of replicating hierarchical structures and practices, but also of narrowing methodological and discursive terrain, replacing intellectual rigor with self-reproduction.

Taking to the institutional jungle to wage guerilla warfare in the legal academy in terms of tenure and promotion through the creation of symposia publications and “safe spaces”<sup>164</sup> may be smart tactics in the short run. However, are they a sound strategy for creating a lasting and influential body of legal scholarship? Although Delgado and Kennedy both decried the illegitimacy of the then-current legal academic status quo, it is important to recall that both in their own ways engaged with the fundamental conventions of the legal academy, including the scholarly and the “realpolitik” sort.

160. LatCrit “praxis” has been described as “conceiv[ing] and promot[ing] approaches to formal legal education that might help reform the structure of the status quo.” Hernández-Truyol et al., *supra* note 13, at 240. Note that the concept of “praxis” is traceable to early twentieth century Italian Marxist Antonio Gramsci. See SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI (Quintin Hoare & Geoffrey Nowell Smith eds. & trans., 1971).

161. Duncan Kennedy, *Radical Intellectuals in American Culture and Politics, or My Talk at the Gramsci Institute*, in SEXY DRESSING ETC. 1, 6 (1993).

162. See Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984).

163. See Duncan Kennedy, *Legal Education as Training for Hierarchy*, in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 38, 50–58 (David Kairys ed., 1990).

164. See, e.g., Linda S. Greene, *From Tokenism to Emancipatory Politics: The Conferences and Meetings of Law Professors of Color*, 5 MICH. J. RACE & L. 161, 162–64, 169, 184 (1999).



Over the past decade, the LatCrit network has undoubtedly helped progressive scholars gain tenure and promotion. However, these important advances may not have been without cost. In particular, although attempting to create an “alternate” anti-subordination/anti-essentialist scholarly universe,<sup>165</sup> LatCrit’s ability to engage substantively with the norms of the traditional legal academy may have been limited. Ironically, by taking an anti-hierarchical stance, LatCrit scholarship might well have limited the ability to define, implement, and pursue standards of scholarly “quality” and excellence.

We fully acknowledge the difficulty of coming up with a satisfactory definition of “quality.” Indeed, disputes over the definition(s) of what constituted “quality” scholarship are precisely what fueled early disputes over the legitimacy of Critical Legal Studies and Critical Race Theory. At the very least, it should be clear we are not talking about a transcendental “quality” with a capital “Q” but a more nuanced “quality” with a lowercase “q.” However we note that law professors regularly make evaluations of quality in hiring decisions, assessments for tenure and promotion, and, last but not least, in grading student performance.

Therein lie related but deeper questions: Does the rejection of traditional indicia of legal scholarly quality as problematic artifacts of illegitimate hierarchy mean that *all* such indicia and attempts at judging quality are illegitimate? If LatCrit scholarship is a project that attempts to generate counter-norms of quality within the legal academy, could self-marginalization and inability to engage with mainstream legal scholarship result from generating and implementing such counter-norms?

In determining what standards to use to evaluate the quality of legal scholarship, the problem is telling the baby from the bathwater. Our point here is that to transform problematic and hierarchical norms in the traditional legal academy, one needs close, critical, and sustained engagement with those norms. Creating an “alternate (scholarly) universe” may be one solution to the problems attending “imperial scholarship.” But it is neither the only nor necessarily the most productive solution.

## 2. Taking Scholarship Seriously: Gentrifying Academic Neighborhoods (herein of Unstable Equilibrium, Neighborhood Effects, and Circular Causation)<sup>166</sup>

To switch metaphors, law faculties (and even legal movements) are like neighborhoods. They are like neighborhoods in that one’s career is a “big-ticket” item like a house. One wants to see appreciation in the value of one’s home as well in one’s career. Unfortunately, housing markets and law faculties alike are both subject to troubling market distortions and failures, such as racial segregation produced by the market, exclusionary zoning,<sup>167</sup> and other adverse factors that tend to produce racial impacts, if not reflecting outright discriminatory intent.<sup>168</sup>

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165. Established science fiction genre posits either parallel universes with different crucial key historical events, or the existence of multiple “alternate” universes co-existing alongside, but not in communication with one another.

166. See Duncan Kennedy, *The Effect of the Warranty of Habitability on Low Income Housing: “Milking” and Class Violence*, 15 FLA. ST. U. L. REV. 485, 512–13 (1987) (analyzing neighborhood effects, unstable equilibria, and circular causation in the context of rental housing deterioration).

167. See Richard Briffault, *The Local Government Boundary Problem in Metropolitan*

Two functions of the “value” or “prestige” of law faculty neighborhoods are the quantity and perceived quality of faculty scholarship. These are not only individual functions, but examples of “neighborhood effects.” If one’s colleagues or neighbors engage in activities that maintain or increase the “value” of their property (or scholarship), the “value” of the entire neighborhood increases. Conversely, if one’s property (or scholarship) is neglected, the value of the entire neighborhood decreases.<sup>169</sup>

One way to augment the quality of scholarship is to utilize or make available critical input on scholarship at a relatively early stage in its production. Although it is much more of an art than a science, too much strong criticism can nip a young faculty member’s scholarship in the bud. Conversely, too little critical input may result in the publication of something in a premature form that the scholar herself later comes to regret, as it affects the “value” of the scholar’s own scholarship and career and, indeed, the value of the entire neighborhood.

LatCrit is not a law faculty, but it is time to ask whether the value of LatCrit’s scholarly real estate is in decline. One important aspect of professional development that has recently been absent in LatCrit scholarship is the relative lack of internal critique. The lack of healthy critique works itself out in unfocused LatCrit symposia. Beyond a general anti-subordination, anti-essentialism, praxis, and coalition-building orientation, what are the current parameters and agendas of LatCrit scholarship? What are the key disagreements and debates? Put another way, what makes LatCrit scholarship interesting to someone unconnected to LatCrit? Preaching to the choir may be good for the souls (of the choir and the preacher), but does it sharpen and extend LatCrit scholarship’s reach and influence? Wherein lies the current iteration of LatCrit’s transformative power?<sup>170</sup>

“Neighborhood effects”<sup>171</sup> are an example of “circular causation.”<sup>172</sup> That is, one action triggers effects that have an impact on others in the neighborhood. This in turn causes “unstable equilibrium,”<sup>173</sup> in which relatively small inputs or actions have amplifying effects later in time and feed a “vicious circle.”

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*Areas*, 48 STAN. L. REV. 1115, 1133–34 (1996) (discussing some of the externalities associated with artificially imposed metropolitan boundaries); J. Peter Byrne, *Are Suburbs Unconstitutional?*, 85 GEO. L.J. 2265, 2286 (1997) (book review) (“Fragmentation of suburban jurisdictions, local control of land use regulation, and weak national provisions for social welfare have created powerful incentives to escape and exclude.”); Sheryll D. Cashin, *Building Community in the Twenty-First Century: A Post-Integrationist Vision for the American Metropolis*, 98 MICH. L. REV. 1704, 1704 (2000) (book review) (“[T]he problem of the color line continues in the form of local political borders.”). *But cf.* S. Burlington County NAACP. v. Township of Mount Laurel, 336 A.2d 713, 724 (N.J. 1975) (holding that a municipality may not use zoning regulations to render it physically and economically impossible for low- and moderate-income residents to settle there).

168. See *Washington v. Davis*, 426 U.S. 229, 239–40 (1976) (holding that a state actor must act with “discriminatory intent” for action to violate Equal Protection Clause).

169. As Critical Race Theory has demonstrated, problematic notions of race distort both real estate and law faculty “markets.”

170. See Hernández-Truyol et al., *supra* note 13, at 278 (“[D]espite our proactive inclusivity, we have not been as successful as we had hoped.”).

171. See Kennedy, *supra* note 166.

172. See *id.*

173. *Id.* at 513.

The potential “vicious circle” for a “neighborhood” like LatCrit might go something like this: uneven symposia lead to disinvestment (i.e., junior and senior scholars withholding their best work to publish in better “neighborhoods”); as the quantity and quality of submissions decline, the “circular causation” effect kicks in; scholars withhold their best writing because they know it will be discounted, marginalized, or attacked at tenure or promotion time because of the declining value of the “neighborhood”; younger scholars are discouraged from citing to or engaging with LatCrit scholarship, even those writing in areas that LatCrit scholarship has addressed in depth, such as immigration,<sup>174</sup> and so on. Thus, a vicious circle gets locked into place.

*B. Identity v. Post-Identity: Racial (and National) Fault Lines?*<sup>175</sup>

LatCrit scholarship may properly be viewed as possessing a lineage leading through Critical Race Theory,<sup>176</sup> Critical Legal Studies,<sup>177</sup> and even Legal Realism.<sup>178</sup> It is far from clear, however, where LatCrit scholarship’s intellectual commitments currently lie.

One fault line within LatCrit scholarship is the split between identity and post-identity politics.<sup>179</sup> Because LatCrit scholarship was created in part as a response to the perceived boundedness of Critical Race Theory in the early 1990s<sup>180</sup>—bounded by national, racial, linguistic, cultural, gender, and sexuality-based markers as

174. See *infra* note 221 (citing LatCrit scholarship that addresses immigration).

175. The heading of this Part is an allusion to TÓMAS ALMAGUER, *RACIAL FAULT LINES: THE HISTORICAL ORIGINS OF WHITE SUPREMACY IN CALIFORNIA* (1994).

176. See *CRITICAL RACE THEORY: THE CUTTING EDGE*, *supra* note 66; *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT*, *supra* note 57; *CROSSROADS*, *supra* note 37.

177. See MARK KELMAN, *A GUIDE TO CRITICAL LEGAL STUDIES* (1987); Peter Gabel & Duncan Kennedy, *Roll Over Beethoven*, 36 *STAN. L. REV.* 1 (1984); Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 *HARV. L. REV.* 1685 (1976); Duncan Kennedy & Karl E. Klare, *A Bibliography of Critical Legal Studies*, 94 *YALE L.J.* 461 (1984).

178. See, e.g., LAURA KALMAN, *THE STRANGE CAREER OF LEGAL LIBERALISM* 13–22 (1996) (outlining the historical underpinnings of legal realism); EDWARD A. PURCELL, JR., *THE CRISIS OF DEMOCRATIC THEORY: SCIENTIFIC NATURALISM AND THE PROBLEM OF VALUE* 74–94 (1973) (tracing the development of legal realism); Note, *‘Round and ‘Round the Bramble Bush: From Legal Realism to Critical Legal Scholarship*, 95 *HARV. L. REV.* 1669, 1670–76 (1982) (outlining legal realism methodologies and the movement’s relationship to Critical Legal Studies). For examples of works written from the Legal Realist perspective, see Felix S. Cohen, *Transcendental Nonsense and the Functional Approach*, 35 *COLUM. L. REV.* 809 (1935); Robert L. Hale, *Bargaining, Duress, and Economic Liberty*, 43 *COLUM. L. REV.* 603 (1943).

179. See Cho & Westley, *supra* note 20. But see Kimberlé Williams Crenshaw, *The First Decade: Critical Reflections, or “A Foot in the Closing Door”*, 49 *UCLA L. REV.* 1343 (2002).

180. See Hernández-Truyol et al., *supra* note 13, at 251–52 (“[T]he race-crits argued about whether to conceptualize themselves as an inclusive community that would welcome anyone interested in racial justice, or whether CRT should view itself as a vanguard of sophisticated thinkers committed to a set of basic principles who would work closely together as a cadre over time.”); Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 *U. MIAMI L. REV.* 1247 (1999) (discussing debates on this topic in Critical Race Theory).

determinants, this split perhaps may be constitutive of LatCrit itself. Although different forms of nationalist identity may have their purposes, particularly for political mobilizations, they may be also vulnerable to anti-essentialist critiques. However, LatCrit scholarship as a whole takes a deeply ambivalent attitude towards identity politics, contributing to a loss of a sense of internal direction.

### 1. The Critique of the Critique of the Critique . . . : A Short, Extremely Idiosyncratic Intellectual History

If Critical Legal Studies (CLS) represented an attempt to critique the traditional U.S. legal academy's reluctance to acknowledge the "politics of law,"<sup>181</sup> as well as a tendency to marginalize issues of class, it nonetheless was itself vulnerable to similar critiques on dynamics of politics and power. It was vulnerable, in fact, to radical and other feminist critiques that CLS failed to address imbalances of power occurring along gendered lines. CLS also was especially susceptible to critique from Critical Race Theorists, on the grounds that CLS marginalized issues of race. Both the feminist and CRT critiques contended that the initial CLS scholars were privileged white male academics at elite private institutions.<sup>182</sup>

Although CLS was relatively open to these critiques and began to expand its understanding of legal subjectivity,<sup>183</sup> Critical Race Theory (CRT) moved away from CLS to build a body of scholarship premised on race as a central feature of the enduring inequality in the U.S. legal system.<sup>184</sup> Following the CLS model, from the late 1980s on to the mid-1990s, CRT scholars organized small, invitation-only workshops where works in progress were vetted and critiqued.<sup>185</sup> Even in CRT pieces that overtly utilized novel (to legal scholarship) techniques such as narrative form (e.g., parable, autobiography), thought experiments, and discourse analysis, there was explicit recognition that such works were engaging adversarially with scholarly and jurisprudential conventions in order to make the point that these conventions were themselves implicitly gendered and raced.<sup>186</sup> By the mid-1990s, CRT had attracted substantial criticism and attack from the mainstream legal academy.<sup>187</sup>

181. See THE POLITICS OF LAW, *supra* note 163.

182. See Symposium, *Minority Critiques*, *supra* note 101.

183. See PIERRE SCHLAG, THE ENCHANTMENT OF REASON (1998); Pierre Schlag, *Normative and Nowhere to Go*, 43 STAN. L. REV. 167 (1990); Pierre Schlag, *The Problem of the Subject*, 69 TEX. L. REV. 1627 (1991); Pierre Schlag, *U.S. CLS*, 10 LAW & CRITIQUE 199 (1999).

184. See *supra* notes 92–101.

185. See Hernández-Truyol et al., *supra* note 13, at 249, 252 ("In 1989, the first annual summer workshop on Critical Race Theory was held at a retreat center outside Madison, Wisconsin. The participants were a multiracial group, including [Mari] Matsuda, [Richard] Delgado, Kendall Thomas, Kimberlé Crenshaw, Harlan Dalton, Neil Gotanda, Phil Nash, Angela Harris, and Ginger Patterson. . . . The workshops were initially designed to implement the vanguard theory: the same small group of people would meet regularly to push each other's thinking forward, so participation would be limited to twenty or so people by invitation only."); see also Phillips, *supra* note 180 (discussing early CRT workshops).

186. See Hernández-Truyol et al., *supra* note 13, at 250 ("CRT also added a new method of analysis to the CLS playbook: storytelling. . . . [centering on] the claim that there is an epistemological gap between white people and people of color such that in many ways whites and nonwhites do not live in the same social and political world."). For an example of the

Narrative scholarship significantly challenged and made explicit those conventions and to a greater or lesser extent, foregrounded racial identity. Mari Matsuda,<sup>188</sup> Angela Harris,<sup>189</sup> and Kimberlé Crenshaw<sup>190</sup> stressed beginning in the late 1980s the intersectionality of race, class, and gender and the social construction of racial identity by and within U.S. law. Furthermore, while early CRT innovators such as Derrick Bell focused on the Black/White paradigm,<sup>191</sup> leading CRT scholars, such as Richard Delgado and Mari Matsuda critiqued the limits of that paradigm.<sup>192</sup>

However, if one looks at the early editions of Professor Bell's *Race, Racism, and American Law*,<sup>193</sup> it is clear that another strand of CRT centered the African American experience within the United States as a dominant heuristic.<sup>194</sup> The tension between these two strands—the intersectionality strand and the Black exceptionalist strand—has been utilized as a source of methodological and pragmatic power, for example, in the role that CRT played in challenging the anti-affirmative action rhetoric of “white innocence” and bringing attention to slavery through various reparations movements. Yet the tension between these two strands was also, in large part, what led to the crystallization of LatCrit in the mid-1990s.

In particular, the Black exceptionalist strand of CRT can wield a powerful exclusionism toward other outsider groups. Two anecdotes illustrate what we characterize as a form of identity assassination<sup>195</sup>—that is, the discounting/erasure of

storytelling technique, see Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539 (1991).

187. See *supra* note 56.

188. See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989).

189. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).

190. See Crenshaw, *supra* note 97; Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

191. See DERRICK A. BELL JR., *RACE, RACISM, AND AMERICAN LAW* (1st ed. 1973).

192. See Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258 (1992).

193. See BELL, *supra* note 191.

194. See Delgado, *supra* note 23 (critiquing the dominance of the Black/White paradigm in U.S. civil rights law); Moran, *supra* note 23 (same); Mutua, *supra* note 23 (same); Perea, *supra* note 23 (same); see also Darren Lenard Hutchinson, *Critical Race Histories: In and Out*, 53 AM. U. L. REV. 1187, 1200–03 (2004) (discussing Black/White paradigm); Frank H. Wu, *Neither Black Nor White: Asian Americans and Affirmative Action*, 15 B.C. THIRD WORLD L.J. 225 (1995) (same). But see Espinoza & Harris, *supra* note 23, at 1596, 1603 (outlining the “black exceptionalist” claim: “‘African Americans play a unique and central role in American social, political, cultural, and economic life, and have done so since the nation’s founding. From this perspective, the ‘black-white paradigm’ . . . is no accident or mistake; rather it reflects an important truth. . . . In its strongest form, black exceptionalism argues that what ‘white’ people have done to ‘black’ people is at the heart of the story of America; indeed, the story of ‘race’ itself is the story of the construction of blackness and whiteness. In this story, Indians, Asian Americans, and Latino/as do exist. But their roles are subsidiary to, rather than undermining, the fundamental binary national drama. As a political claim, black exceptionalism exposes the deep mistrust and tension among American ethnic groups racialized as ‘nonwhite.’”).

195. See *supra* text accompanying notes 109–11.

the relevance of the group to which one belongs or identifies with—as a form of boundary policing. The first example comes from a 1994 CRT Workshop at the University of Miami Law School.<sup>196</sup> A gay Asian and a gay Latino had included some readings critical of the ways the U.S. race discourse privileged, presumed, and centered Black heterosexual masculinity. During the portion of the workshop devoted to these readings, an African American male raised a strong normative objection (to paraphrase): “Critical Race Theory is about *RACE*, not sexuality.”<sup>197</sup>

At the final CRT workshop, in New Orleans,<sup>198</sup> the white partner of a Latina lesbian was asked to leave a session that was intended to be an exclusive space for “people of color.” This painful experience for the Latina exemplifies the costs of adopting a strict nationalist perspective, be it according to a particular race or even along the more general (and often similarly problematic) trope of people of color.<sup>199</sup>

Seeking to avoid these types of identity assassinations, the initial LatCrit conferences in part represented a reaction to the small, invitation-only CRT workshops of the early-to-mid- 1990s and were explicitly intended to be inclusive, open, and committed to community-building.<sup>200</sup> LatCrit proved extremely successful at promoting this inclusive atmosphere and agenda and, as it developed into LatCrit, Inc. this inclusionary impulse proved to be conducive to forming and extending professional networks, but not without costs of its own; costs reflected, we argue, in the dilution of LatCrit scholarship.

## 2. Becalmed in the Identity Wars?

Early LatCrit scholarship seemed to be simultaneously swamped but also exhilarated by the destabilizing moves by scholars, including but not limited to, Elizabeth Iglesias,<sup>201</sup> Angela Harris,<sup>202</sup> Leslie Espinoza,<sup>203</sup> Berta Hernández-Truyol,<sup>204</sup>

196. See Phillips, *supra* note 180.

197. See Hernández-Truyol et al., *supra* note 13, at 252 (“Although the presence of many strong feminists made a commitment to thinking through race and gender together central to CRT, there was tension over whether sexual orientation issues ought to be central or peripheral to the project. This tension led to personal tensions among the participants.”).

198. See Ninth Annual Critical Race Theory Workshop, Tulane University Law School, June 1997 (materials on file with authors).

199. Cf. Hernández-Truyol et al., *supra* note 13, at 252 (“[T]he CRT project attracted a great deal of interest and excitement . . . and slots in the workshop were eagerly sought after. This led to a series of semi-public arguments and controversies over the criteria for inclusion, what the substantive ‘tenets’ of CRT should be, and the processes for decision making.”).

200. See *id.* at 269 (“[S]ome early adherents of the movement now known as LatCrit theory concluded from their prior involvement with critical race theory and critical race feminism that inclusivity and continuity had become necessary to the enduring sustenance of critical outsider jurisprudence within the United States.”).

201. See, e.g., Elizabeth M. Iglesias, *Human Rights in International Economic Law: Locating Latinas/os in the Linkage Debates*, 28 U. MIAMI INTER-AM. L. REV. 361 (1996–97); Elizabeth M. Iglesias, *LatCrit Theory: Some Preliminary Notes Towards a Transatlantic Dialogue*, 9 U. MIAMI INT’L & COMP. L. REV. 1 (2000–01); Elizabeth M. Iglesias, *The Inter-Subjectivity of Objective Justice: A Theory and Praxis for Constructing LatCrit Coalitions*, 2 HARV. LATINO L. REV. 467 (1997).

202. See Espinoza & Harris, *supra* note 23.

Sylvia Lazos Vargas,<sup>205</sup> Guadalupe Luna,<sup>206</sup> Margaret Montoya,<sup>207</sup> Laura Padilla,<sup>208</sup> Juan Perea,<sup>209</sup> Jerome Culp, Jr.,<sup>210</sup> and Francisco Valdes.<sup>211</sup> They unmoored U.S. racial identity from a grounding within U.S. borders and from heterosexist frames. Intersectionality begat multidimensionality, and a spate of theoretical frameworks to try and capture the complexity of the lived experience of racial, gender, ethnic, sexual, and cultural identi(ties),<sup>212</sup> to name but a few social and institutional constructs. However, within the United States, by replacing the relatively single-minded, nationally bounded frame of racial identity, LatCrit in many cases unleashed an unfocused multicultural inclusionism that, in many instances, may obscure as much as it reveals.

In the case of the development of LatCrit scholarship, this had the effect of losing focus with regard to the non-LatCrit, but critical, scholarship on race (as distinct from CRT) that seeks to mediate or navigate between the two distinct strands of tension—intersectionality and exceptionalism.

For example, in his groundbreaking book *Covering*,<sup>213</sup> Kenji Yoshino uses the tropes of conversion demands, closeting demands, and covering demands<sup>214</sup> to

203. *See id.*

204. *See, e.g.,* Berta Esperanza Hernández-Truyol, *Borders (En)Gendered: Normativities, Latinas, and LatCrit Paradigm*, 72 N.Y.U. L. REV. 882 (1997); Berta Esperanza Hernández-Truyol, *Latina Multidimensionality and LatCrit Possibilities: Culture, Gender, and Sex*, 53 U. MIAMI L. REV. 811 (1999).

205. *See, e.g.,* Sylvia R. Lazos Vargas, *Globalization or Global Subordination?: How LatCrit Links the Local to Global and the Global to the Local*, 33 U.C. DAVIS L. REV. 1429 (2000); Lazos, *supra* note 9.

206. *See, e.g.,* Guadalupe T. Luna, *Gold, Souls, and Wandering Clerics: California Missions, Native Californians, and LatCrit Theory*, 33 U.C. DAVIS L. REV. 921 (2000); Guadalupe T. Luna, *On the Complexities of Race: The Treaty of Guadalupe Hidalgo and Dred Scott v. Sandford*, 53 U. MIAMI L. REV. 691 (1999).

207. *See, e.g.,* Montoya, *supra* note 4; Montoya, *supra* note 38.

208. *See, e.g.,* Padilla, *supra* note 24; Laura M. Padilla, *Intersectionality and Positionality: Situating Women of Color in the Affirmative Action Dialogue*, 66 FORDHAM L. REV. 843 (1997); Laura M. Padilla, *Latinas and Religion: Subordination or State of Grace?*, 33 U.C. DAVIS L. REV. 973 (2000).

209. *See* Juan Perea, *Five Axioms in Search of Equality*, 2 HARV. LATINO L. REV. 231 (1997); Perea, *supra* note 23.

210. *See* Culp, *supra* note 186.

211. *See* Francisco Valdes, *Theorizing “OutCrit” Theories: Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits, and LatCrits*, 53 U. MIAMI L. REV. 1265 (1999); Valdes, *supra* note 15.

212. *See, e.g.,* Crenshaw, *supra* note 186 (analyzing intersectionality); Berta Esperanza Hernández-Truyol, *Building Bridges—Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUMAN RTS. L. REV. 369, 429–31 (1994) (presenting a theory of multidimensionality); Darren L. Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561, 636–44 (1997) (same); Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257, 1280–90 (1997) (presenting a theory of cosynthetic identity); Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities and Inter-Connectivities*, 5 S. CAL. REV. L. & WOMEN’S STUD. 25, 46–71 (1995) (analyzing inter-connectivity of identities).

213. KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* (2006). For a sophisticated analysis and critique of the book, *see* Russell K. Robinson, *Uncovering Covering*,

articulate a theory of difference that cuts across sexuality, gender, race, and nationality. In a way, his claim is that identity (or rather, identities) is everything, and that the claims of the majority that a minority group member “cover” their difference creates room for thinking about legal identity in a fresh, more nuanced way.

In contrast, Richard T. Ford, in *Racial Culture*,<sup>215</sup> is decidedly more skeptical and critical of the legal significance of identity claims. In the Title VII context, Ford views legal claims about the “right” to wear one’s hair in cornrows made by an African American woman against her employer, for example, as a distraction from the persistent problem of maldistribution of access to resources such as jobs, homes, and education on the basis of race. One might understand Ford as a materialist: what matters is the problematic distribution of resources in a material world. The difference thus is one of concern for cultural identification as self-expression versus institutional racism manifested as and reinforcing distributive inequalities. To Ford, denial of the “right” to wear cornrows at work falls in the domain of cultural self-expression.<sup>216</sup> It is not a matter of institutional racism, and not the proper subject matter of constitutional or civil rights remedies. The solution, Ford might argue, is not creating new legal iterations of “identit(ies),” but rather finding ways to use the legal system to redistribute the resources, something that will not happen easily. Furthermore, litigation focused on trying to get people to “think better” about racial or other difference, that is, diversity, may be barking up the wrong tree. To paraphrase Kimberlé Crenshaw’s trenchant observation: “only in the United States can you have ‘integrated’ all-white suburbs, neighborhoods and workplaces and ‘desegregated’ all-white (or Black) schools.”<sup>217</sup> Fixating on identity, racial or otherwise, keeps us from this all-important task.

Admittedly, we have constructed something of a false dichotomy between Yoshino and Ford. One might argue that creating legal rights to the expression of one’s identity (or more broadly, culture) is a precondition to the redistribution of power in society. If so, then expanding the legal anti-discrimination arsenal to more aspects of identity as self-expression may set the stage for more egalitarian distribution of resources in society. Still, the contrast between Ford’s skepticism toward expanding identity-based anti-discrimination litigation and Yoshino’s endorsement of substantive due process as the “new” equal protection is striking.<sup>218</sup>

Why do we bring up the post-CRT, post-LatCrit works of Ford and Yoshino, who are working at constructing a post-CRT, post-civil rights paradigm to critically analyze racial and other types of subordination in their scholarship? There are two reasons.

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101 Nw. U. L. REV. 1809 (2007).

214. YOSHINO, *supra* note 213.

215. RICHARD THOMPSON FORD, *RACIAL CULTURE: A CRITIQUE* (2005).

216. *See id.*

217. Crenshaw, *supra* note 97.

218. For example, Yoshino argues that the traditional civil rights/equal protection paradigm may be exhausted. He first notes that the U.S. Supreme Court has not recognized a new “suspect” class since 1971. *See* YOSHINO, *supra* note 213. Yoshino further argues that “substantive due process” may allow the articulation of legal claims against “coercive” demands aimed at interests that fall within the protection of substantive due process, such as *Meyer v. Nebraska*, 262 U.S. 390 (1923), or, more recently, *Lawrence v. Texas*, 539 U.S. 558 (2003). *See* YOSHINO, *supra* note 213.



First, LatCrit scholarship has seemingly been disengaged from or unaware of some of the scholarly debates occurring in the post-CRT, post-civil rights era—so much so that LatCrit scholarship seems to have stalled. Why this is, is far from clear. Is it because Yoshino is at Yale and Ford is at Stanford and LatCrit scholarship, for better or worse, has exhibited an anti-elitist strand (an outgrowth, although not a necessary outgrowth, of the inclusionary beginnings of LatCrit)? Is it a “battle” of mutual “ignorances”? After all, there is nary a mention of LatCrit scholarship in either Ford’s or Yoshino’s work, and vice versa. If imitation is the sincerest form of flattery, then surely ignoring an entire body of scholarly work may be a passive-aggressive insult, or even an implicit statement of contempt or irrelevance. Remember the turrets of the big guns that turned on the first generation of CLS and CRT scholars; those scholars were vigorously and substantively involved in engaging with the critique of the critique.<sup>219</sup>

Second, Ford’s and Yoshino’s works are relevant to LatCrit scholarship because LatCrit has been one of the major scholarly sites where the meaning of citizenship and its relation to identity, racial and otherwise, has been deeply interrogated. Although Yoshino’s scholarship does incorporate his experience being raised in both Japan and the United States, his focus is resolutely on the construction and contestation of U.S. domestic identi(ies). Yoshino focuses primarily on sexual orientation. However, his framework of “covering demands” could easily be expanded to include nationality, country of origin, accent, religion, language, and much more. Meanwhile, Ford explicitly situates himself in the U.S. experience of race that includes a history of slavery and Jim Crow that is partially responsible for producing the skewed distribution of resources in this country.

This exposes a problem with the “let’s create an alternate (scholarly) universe” approach, discussed earlier,<sup>220</sup> which LatCrit, Inc. encourages. Such an approach represents an alternative to engaging with elitist hegemony using the powerful tools of critique. The consequences of this move—intentional or unintentional—is that it not only weakens LatCrit scholarship but it also leaves elitist hegemony relatively uninformed by, and disengaged from, important topics and subject areas about which LatCrit scholarship is (or should be) concerned.

For example, part of the reason why Ford and Yoshino’s post-identity theories may fail to speak to the dynamics of immigration is because the dominant analysis in conventional immigration law scholarship is to view it as a body of law that has developed apart from U.S. race relations law.<sup>221</sup> Although race as an area of legal

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219. Some examples of the attacks leveled at CLS include Paul D. Carrington, *Of Law and the River*, 34 J. LEGAL EDUC. 222, 227 (1984) (accusing CLS of embracing “nihilism” and arguing that CLS had no place in the legal academy); Phillip E. Johnson, *Do You Sincerely Want to Be Radical?*, 36 STAN. L. REV. 247 (1984) (accusing CLS of lacking a positive/constructive agenda); Louis B. Schwartz, *With Gun and Camera Through Darkest CLS-Land*, 36 STAN. L. REV. 413, 448 (1984) (calling CLS proposals “irresponsible). For attacks on CRT, see *supra* note 56.

220. See *supra* text accompanying notes 162–65.

221. Notable exceptions include BILL ONG HING, MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY 1850–1990 (1993); KEVIN R. JOHNSON, THE “HUDDLED MASSES” MYTH: IMMIGRATION AND CIVIL RIGHTS (2004); VICTOR C. ROMERO, ALIENATED: IMMIGRANT RIGHTS, THE CONSTITUTION, AND EQUALITY IN AMERICA (2005); Aldana & Lazos Vargas, *supra* note 6; Chacón, *supra* note 6; Gabriel J. Chin, *Segregation’s Last Stronghold: Race*

discourse is increasingly bracketed, the two dominant approaches in U.S. immigration law are a center-left liberal reformist strand and a conservative right exclusionist strand that has worked to steadily pull the reformist strand to the right; both minimize the salience of race in U.S. immigration law and policy. LatCrit scholarship has the potential to intervene in, and disrupt, this dynamic, but only if LatCrit scholars are willing to engage substantially in what may lead to some heated academic battles. Certainly, there have been calls to arms, but only by marshaling academic capital and credibility can such substantive engagement occur.<sup>222</sup>

With regard to Yoshino and Ford, where are the challenges and engagements with their post-identity, yet startlingly nation/state-bound visions? Surely constructive critique and engagement can deepen and expand their ideas by incorporating the increasingly ubiquitous subjectivity of the immigrant, undocumented or otherwise, into a post-CRT, post-civil rights vision of progressive social struggle, within and without U.S. borders.

*C. A Few Words on Centralization vs. Decentralization of Institutional Power in LatCrit, Inc. and LatCrit Scholarship*

The egalitarian, anti-hierarchical motives that led to the inclusionary approach of LatCrit theory to membership and publication has been decentralized: put out a call for papers, set a general theme for each annual conference, and employ the LatCrit network to fill the panels.<sup>223</sup> Although decentralization of power certainly has its merits in many contexts, sharpening the intellectual edge of a scholarly movement may not be one of them.

However, there may be more here than meets the eye. Although LatCrit, Inc. ostensibly embraces a loose, decentralized approach to scholarly production and community building, the actual structure of its board of directors is fairly centralized. This makes perfect sense if one thinks of LatCrit, Inc. as also being a business organization that is responsible for organizing and funding an increasing array of projects from the Global Classroom to a United Nations-recognized nongovernmental organization to the annual conference.<sup>224</sup> One of the costs of the decentralized-on-the-outside/centralized-on-the-inside approach of LatCrit may be that quality control of the content of the annual LatCrit symposia falls by the wayside. As long as the content keeps flowing into the symposia, the bureaucratic function of ensuring that operations run smoothly is satisfied. To use a crass marketing metaphor, as the LatCrit product

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*Discrimination and the Constitutional Law of Immigration*, 46 UCLAL. REV. 1 (1998); Gordon & Lenhardt, *supra* note 88; Martínez, *supra* note 6; Olivas, *supra* note 6; Romero & Serag, *supra* note 25. After a draft of this Article was written, LatCrit critically engaged immigration law in a section of a symposium released after we completed a draft of this article. See Symposium, *LatCrit XI—Working and Living in the Global Playground: Frontstage and Backstage*, 7 NEV. L. J. 685, 685–882 (2007). Much more, however, remains to be done.

222. See, e.g., Johnson, *supra* note 88.

223. See Hernández-Truyol et al., *supra* note 13, at 275 n.124 (“As expressed in the form and structure of the Annual LatCrit Conferences . . . [the] emphasis on community-building is manifest in the ‘twin pillars’ of our approach to personal collective praxis. The commitment to continuity reflects this emphasis in the practice of rotating centers . . . . The commitment to inclusivity equally reflects this emphasis . . .”).

224. See *id.* at 271–74 (describing LatCrit’s “Portfolio of Projects”).

line has expanded, the LatCrit “brand,” at least with respect to scholarship, has become diluted.

Perhaps it is inevitable that scholarly movements have a moment of birth, life, and ultimately death, leaving behind the work of the scholars involved in them as the evidence on which their success or failure will be later judged. CLS had its moment,<sup>225</sup> as did CRT.<sup>226</sup> Both movements morphed into other forms, such as New Approaches to International Law (NAIL)<sup>227</sup> and Third World Approaches to International Law (TWAIL).<sup>228</sup> The movements also gave rise to—or, by their limitation, made apparent a need for—other orientations such as Critical Race Feminism,<sup>229</sup> Critical Disability Studies,<sup>230</sup> Critical White Studies,<sup>231</sup> and other critical studies fields (both inside the realm of legal scholarship and scholarship outside of, but informed by, that realm). Other scholarly movements, such as Law and Society,<sup>232</sup> chose to institutionalize themselves, presenting less of a set of ideas or critiques but a relatively open annual forum accessible to anyone who signs up and pays membership dues.

Early CRT scholarship was analytically tight as a drum, the rough edges smoothed by tough internal critique in small workshops. Perhaps as a function of the relatively small size of LatCrit in the mid-1990s, early LatCrit scholarship had the feel of a group of scholars reading and critiquing each other’s work. The experience changed substantially as LatCrit grew in size and became more institutionalized.

LatCrit is an experiment in the ongoing tension between constitutionalists and anti-constitutionalists. It possible to create an institution that is capable of self-correcting its course with the appropriate channels and tools to make self-critique and course correction possible (the constitutionalist position)? Anti-constitutionalists would say, no, it’s not possible: every institution, large or small, inevitably runs into the ditch, with its wheels flying off. Although some institutions last longer than others, whether because of wisdom or luck, the costs of institutionalizing and bureaucratizing a movement inevitably blunt the sharp intellectual edge that it possessed at its inception.

So what are the forks ahead in the road for LatCrit, Inc. and LatCrit scholarship?

One model would recognize the value of creating a social network for academics of color in the legal academy and the mentoring function for beginning law teachers and

225. See *supra* text accompanying notes 176–78.

226. See *supra* text accompanying notes 176–78.

227. See, e.g., Thomas Skouteris, *Fin de NAIL: New Approaches to International Law and its Impact on Contemporary International Legal Scholarship*, 10 LEIDEN J. INT’L L. 415 (1997).

228. See, e.g., BALAKRISHNAN RAJAGOPAL, *INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS AND THIRD WORLD RESISTANCE* (2003); Antony Anghie & B.S. Chimni, *Third World Approaches to International Law and Individual Responsibility*, 2 CHINESE J. INT’L L. 77 (2003).

229. See generally CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 2003).

230. See Michael A. Stein, *Disability Human Rights*, 95 CAL. L. REV. 75, 86–87, 86 n.56 (2007).

231. See generally CRITICAL WHITE STUDIES, *supra* note 66.

232. See generally The Law and Society Association, Law and Society Association Home Page, <http://www.lawandsociety.org> (“The Law and Society Association, founded in 1964, is a group of scholars from many fields and countries, interested in the place of law in social, political, economic and cultural life. Members bring training in law, sociology, political science, psychology, anthropology, economics, and history as well as in other related areas to the study of sociolegal phenomena.”).

those contemplating entering the teaching market. However, it may be worth severing the annual symposium function from LatCrit, Inc. either totally or partially. As discussed above, tying the two together may have costs to the former if the LatCrit symposia are incapable of engaging with the major serious scholarship of the day—which is likely so long as the symposia remain an uneven hodgepodge with an unpredictable set of analytical tools and approaches. A total severance would simply drop the symposia production and call for papers. This would leave the question of what the substantive content of the panels at the annual conference would be. It could be that, as with early CRT, scholars would present works that they had placed elsewhere or were in the process of placing.

Another approach would be to take the centralization of administration of function that has occurred with LatCrit, Inc. seriously.<sup>233</sup> If there is a board of directors making important decisions, a subcommittee should be assigned the duty to read and evaluate all submissions for LatCrit symposia for thematic consistency, quality, and other editorial decisions, such as suggested rewriting. In some ways, this is the type of work that law professors already perform with one another in evaluating and commenting on the work of their colleagues, in and out of their own law schools. Why should LatCrit be a space in which virtually every submitted piece gets a seemingly uncritical “green light”?<sup>234</sup> Arguably, the idea of treating LatCrit as a “safe space” has crossed over from LatCrit, Inc. into LatCrit scholarship in a way that is reflected in the quality of recent LatCrit published symposia.

One might say that the individual works-in-progress sessions are a way to retain the critical input in a small group setting that was characteristic of early CRT. However, many of the pieces that are vetted in these works-in-progress sessions are going to be placed or have already been placed in scholarly venues with which LatCrit scholarship is not directly associated. Furthermore, it is unclear whether these works in progress share certain common theoretical commitments in the way that early CRT works in progress did.

#### CONCLUSION

The increase of Latina/os in legal academia over the last twenty years has forever transformed legal scholarship, offering new perspectives on traditionally-recognized subjects as well as creating entire new bodies of scholarship. This article has analyzed the many significant contributions of the new genre of critical race scholarship known as critical Latina/o, or LatCrit, theory.

In the emerging LatCrit movement, progressive Latina/o and other law professors have forged an organized, structured, and tight-knit scholarly community that has devoted itself to building a body of progressive scholarship. The early results are most impressive: LatCrit theory has made many important contributions to the legal

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233. See Hernández-Truyol et al., *supra* note 13, at 271 n.116 (“The [LatCrit, Inc.] Steering Committee and Board include members from various countries, regions and disciplines, who bring varied identity perspectives to common questions.”).

234. See *id.* at 276 n.128 (“The [LatCrit] Symposium Submission Guidelines request that authors keep their texts brief, and lightly footnoted, akin to an ‘oral essay’ that reflects the basic substance of the conference proceedings.”).

academy. It has expanded the scope of critical studies to include much more than race, including nationality, immigration status class, gender, and sexual orientation.

However, we also have identified in this article several pressing issues concerning the quality of LatCrit scholarship that warrant care and attention. Specifically, for a variety of structural reasons, LatCrit scholarship today suffers from a lack of focus and distinctly uneven quality. Measures that ensure high quality scholarship in the LatCrit symposia—the primary vehicle for LatCrit scholarship—are necessary to ensure that LatCrit meets its lofty goals of producing scholarship that helps to promote social transformation.

This article offers a roadmap on the direction that LatCrit might take to fulfill its scholarly goals. It contends that “theory-guilt” has in part kept LatCrit from realizing its potential. Carefully conceived, tightly written, and meticulously researched legal scholarship is capable of being a powerful tool against subordination both within and outside the legal academy. There are barricades at which to congregate within our very own professional communities, and substantial engagement with our colleagues may be an effective form of praxis.

This article also argued that for better or worse, we are in a post-Critical Race Theory, post-civil rights era, and that anguishing over tensions between identity or post-identity may be counterproductive, even to the point of retarding the growth of LatCrit scholarship. LatCrit scholarship has the potential to supplement some of the most interesting theoretical work on identity and race being done by scholars, such as Richard T. Ford and Kenji Yoshino,<sup>235</sup> by foregrounding the issue of immigration and borders, a longtime LatCrit theme, which (judging from their citations) unfortunately has not yet made much of an impact on Yoshino’s and Ford’s work. As an intellectual movement, LatCrit has the unrealized potential of transforming the ideological field of immigration law itself,<sup>236</sup> but only if it manages to refocus its considerable intellectual energy.

Finally, this article contends that LatCrit has evolved into two related but essentially separate entities. LatCrit, Inc. organizes and promotes an annual conference and supports a useful social network for legal scholars of color and mentoring for new law teachers of color. Meanwhile, the LatCrit scholarship that appears in an annual symposium issue is often marked by incongruous approaches and uneven quality. The mish-mash of theoretical approaches obfuscates what, if anything, LatCrit theory stands for intellectually. It is about time for LatCrit, Inc. to begin to exercise a greater degree of editorial control over the scholarship that appears under its imprimatur, and take action to restore the LatCrit scholarship brand.

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235. See *supra* text accompanying notes 213–22.

236. See *supra* text accompanying notes 221–22.