

## FOREWORD

### CLASS IN LATCRIT: THEORY AND PRAXIS IN A WORLD OF ECONOMIC INEQUALITY

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The fifth annual Latina/o critical legal theory (“LatCrit”) conference was held on May 4-7, 2000 in Breckenridge, Colorado. The mountain resorts of Colorado present an almost metaphorical location for a critical theory meeting. The majesty and apparent harmony of the natural environment contrast so vividly with the quotidian conflicts in the human environment, and the elites exhibit a banal<sup>1</sup> oblivion to the vicious racial and class-based violence that provide the grist for critical theorists. These resort locations dedicated to a lifestyle of money, recreation and pampering and infused with the invisible oxygen of privilege offer a space for theoretical work that is rich with conflicting histories, untold stories and inequalities, both obvious and subtle. As with all academic meetings, fiscal considerations influence the choice of meeting location, but with LatCrit conferences great care goes into making the decision about where to hold the conference because of the relationship between the place/space and the interactions that will occur during the meeting.

#### I. THE PROCESS OF “CONSTRUCTING” A LATCRIT CONFERENCE

Within the LatCrit scholarly movement, there is a planned continuity from one year’s program to the next. For example, the Planning Committees over a span of years intentionally have some of the same

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1. See generally Hannah Arendt, *EICHMANN IN JERUSALEM; A REPORT ON THE BANALITY OF EVIL* (Hannah Arendt ed., Viking Press 1964) (referring to Hannah Arendt’s exploration of the banality of evil during the Holocaust). See also Sherrilyn Ifill, *Ordinary Complicity*, *BALT. SUN*, June 17, 2001, for a more contemporary analysis linking racial violence to the everyday actions and inaction by ordinary white citizens.

participants. Professors Roberto Corrada and Nancy Ehrenreich helped to plan the LatCrit IV conference before they undertook a central role in organizing the LatCrit V meeting in Colorado. The planning process is also systematized through a set of organizational practices that have been developed over several years and that have become emblematic of the LatCrit community of scholars. These organizational practices are compiled in a LatCrit conference manual developed for use by the Planning Committees. These practices include 1) a rigorous group interaction that results in a substantive outline detailing the themes and dimensions of each plenary panel or roundtable; 2) the careful consideration that is given to the identity characteristics and the perspective of each panel or roundtable participant; and 3) the collaborations that occur initially between the Planning Committee and the conference speakers and later between the editors of the symposium volume and the authors of the written works.

The process of planning the intellectual program begins with extended conversations among the Planning Committee about the connection of the chosen theme to those of prior conferences, i.e., why is the chosen theme of specific importance to the further growth of the LatCrit intellectual enterprise and the scholarly community? What cross-disciplinary or intergroup or transnational opportunities does the theme offer? What are the links between the theme and the local region and the concerns of the local Latina/o communities in which the meeting is planned? Such queries insure that there will be continuity over time. Thus, each conference develops a central theme while at the same time creating space for presentations by scholars and activists from the area who are able to connect the struggles of the local Latina/o communities to LatCrit theory.

Because each LatCrit conference seeks to advance the effort of creating an intellectual discourse as well as nurturing a scholarly activist community,<sup>2</sup> the process of planning the conference has been carefully theorized. The techniques for planning the conferences are based on academic work that provides a rationale for the choices that are made in the construction of a LatCrit meeting. These techniques are a conscious attempt to take critical theory seriously by applying it in everyday situations. For example, Professor Robert Chang developed the concept of "subject position" to explain that the perspective, standpoint or approach of an author or theorist regarding the topic or issue being addressed has

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2. These dual objectives have been at the heart of the LatCrit movement since its inception. See Francisco Valdés, *Under Construction: LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087, 1094-95 (1997); 10 LA RAZA L.J. 1, 8-9 (1998) [hereinafter Valdés, *LatCrit Consciousness*].

significance.<sup>3</sup> Consequently, each Planning Committee carefully considers the “subject position” of panel participants to try to ensure discussions from a range of diverse, albeit progressive, perspectives. Also, each LatCrit project endeavors to bring new voices into the discussions and to explore issues from fresh perspectives.<sup>4</sup>

Early each year the Planning Committee mails out registration materials for the upcoming meeting usually held in early May to coincide with the Cinco de Mayo holiday. Like with other conferences, the materials provide information on the timing, location and travel arrangements for the meeting. Unlike other conferences, the Substantive Outline articulates a highly detailed conceptualization of the objectives for each portion of the program. Each participant is encouraged to read the Outline in order to prepare in advance for the discussions that are to take place.

The process by which a LatCrit conference is planned also involves a close collaboration between the Planning Committee and each of the plenary panels. One or more members of the Planning Committee will have a series of conference calls with each panel to discuss the overall theme of the meeting and the planned presentations. Finally, meeting participants, whether they have been invited speakers or not, are asked to submit essays for publication in a symposium volume. This collaboration over many months and involving dozens of people, all paying attention to LatCrit theory and past practices, results in the written work that you are now holding.

## II. CONSTRUCTING A LATCRIT MEETING WITH A FOCUS ON CLASS AND COLORADO

The title of this Foreword “*Class in LatCrit: Theory and Praxis in a World of Economic Inequality*” borrows the theme of the program for the Colorado conference. The Planning Committee’s purposes in focusing on the issue of class were 1) to deepen prior conversations about the economic inequalities and the material deprivations that are experienced by the Latina/o communities and other subordinated groups, and 2) “to begin new explorations of social and legal issues relevant to Latinas/os in intergroup and transnational contexts.”<sup>5</sup> While economic issues have been theorized, discussed and written about in past LatCrit conferences

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3. See Robert S. Chang, *Essays The End of Innocence or Politics After the Fall of the Essential Subject*, 45 AM. U. L. REV. 687, 690-91 (1996).

4. The process of moving issues from the margin to the core and considering ideas from the perspective of the subordinated (or what Professor Mari Matsuda has called “looking to the bottom”) has been termed a practice of rotating centers and shifting bottoms. See Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177 (1999).

5. Cover Letter of LatCrit V Program Materials, Feb. 25, 2000, p. 3.

and the resulting symposia that have appeared in various law reviews,<sup>6</sup> the year 2000 meeting sought to center the topic of class in each of the plenary panels and encouraged all presenters to consider the economic dimensions of the particular topics being analyzed. The main objective of this Foreword is to draw attention to the sustained discussion of the issue of class and the ramifications of wealth and income inequalities in the written contributions in this symposium volume. A related objective of this Foreword is to echo Professor Kevin Johnson whose Introduction to the symposium volume for LatCrit IV exhorted future participants to “seriously engage the existing scholarship, study the literature and acknowledge previous contributions.”<sup>7</sup> This Foreword concludes with a description of a new project called “Maestros” that seeks to develop a collaboration between professors and students in law schools and schools of education with K-12 teachers, students and community activists. As a founder and participant in Maestros, I am attempting to create mechanisms by which we make LatCrit Theory and Practices accessible to a wider audience, particularly K-12 teachers of Latina/o students.

A. *Political Economies of Subordination in LatCrit Perspective:  
“Piercing the Veils” of Class and Identity in Traditional Curricula*

A focus on class issues creates the opportunity to broaden LatCrit Theory to areas of law such as tax law and policy that have not been subjected to an intensive analysis from the multiple points of view of the Latina/o communities and other subordinated communities. A focus on class also allows us to reflect on one of the questions that Professor Guadalupe Luna obliquely poses in her article, “*La Causa Chicana*” and *Communicative Praxis*,<sup>8</sup> namely, whether LatCrit is sufficiently grounded

6. See, e.g., Elvia R. Arriola, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 UCLA CHICANO-LATINO L. REV. 1 (1998) (referring to the LatCrit II Symposium); Elizabeth M. Iglesias & Francisco Valdés, *Expanding Directions, Exploding Parameters: Culture and Nation in LatCrit Coalitional Imagination*, 5 MICH. J. RACE & L. 787 (2000); 33 U. MICH. J.L. REFORM 203 (2000) (referring to the Special Symposium); Elizabeth M. Iglesias, *Foreword: International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997) (referring to the Miami Colloquium); Dean Rex Perschbacher, *Welcoming Remarks for LatCrit IV*, 33 U.C. DAVIS L. REV. 751 (2000) (referring to the LatCrit IV Symposium); Francisco Valdés, *Foreword: Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997) [hereinafter Valdés, *Outsider Jurisprudence*] (referring to the LatCrit I Symposium); Francisco Valdés, *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) [hereinafter Valdés, *Post-Identity Politics*] (referring to the Puerto Rico Colloquium); Valdés, *LatCrit Consciousness*, *supra* note 2 (referring to the Special Symposium). See also Richard Delgado & Jean Stefancic, THE LATINO/A CONDITION: A CRITICAL READER (Richard Delgado & Jean Stefancic, eds., New York University Press 1998), for an anthology of writings about Latinas/os from a critical legal perspective.

7. See Kevin R. Johnson, *Celebrating LatCrit Theory: What Do we Do When the Music Stops?*, 33 U.C. DAVIS L. REV. 753, 784 (2000).

8. Guadalupe T. Luna, “*La Causa Chicana*” and *Communicative Praxis*, 78 DENV. U. L. REV. 553 (2001).

in its professed objective of producing transformative knowledge—knowledge that improves the material conditions of Latina/o communities and other impoverished peoples.<sup>9</sup>

Professor Luna's article is a fine example of what Professor Johnson is encouraging other LatCrit scholars to do.<sup>10</sup> Specifically, she takes his suggestion about reading, studying and citing other LatCrit works and provides us with a construct that she borrows from another discipline called "communicative praxis" referring to "the construction of meaning, projects, visions, values, styles, strategies, and identities through the interaction with and against one another."<sup>11</sup> Professor Luna then proceeds to give us an example of communicative praxis by reading LatCrit texts against Chicana/o Studies<sup>12</sup> and, more particularly, by reading LatCrit against the history of Chicana/o Studies in Colorado.<sup>13</sup> She counsels LatCrit theorists to learn from the experiences of Chicana/o scholars who organized NACCS, the National Association of Chicana/o Studies, and to be aware of those scholars and activists who came before and who have faced some of the same challenges that LatCrit currently faces, especially the need to make scholarship transformative.<sup>14</sup> The material needs of Latina/o communities translate into legitimate claims on the scholarly agendas of LatCrit and other progressive theorists. This imperative to be practical in our theory highlights the importance of the issue of class and explains why it is the organizing principle of this symposium.

Professor Alice Abreu provides a superb example of weaving traditional legal analysis with LatCrit perspectives and methodologies. In her article, *Tax Counts: Including the Money Areas of the Law*,<sup>15</sup> Professor Abreu convincingly demonstrates why it is important for LatCrit and other progressive theorists to develop what she terms "a second generation of critical analysis"<sup>16</sup> - the areas associated with business, tax policy, money, and economic wellbeing. Her paper, written in an accessible style for tax novices, examines how power is allocated (and how hierarchies are re/produced) through the design of taxation systems. Her analy-

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9. See Valdés, *LatCrit Consciousness*, *supra* note 2.

10. See Luna, *supra* note 8.

11. *Id.* at 555 (citing Markus S. Schulz, *Collective Action Across Borders: Opportunity Structures, Network Capacities and Communicative Praxis in the Age of Advanced Globalization*, 41 SOC. PERSP. 587 (1998)).

12. See also 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); Margaret E. Montoya, *Introduction: LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions*, 53 U. MIAMI L. REV. 1119 (1999) (providing other examples linking LatCrit to Chicana/o Studies).

13. See Luna, *supra* note 8, at 560.

14. *Id.* at 567.

15. See Alice G. Abreu, *Tax Counts: Including the Money Areas of the Law*, 78 DENV. U. L. REV. 575 (2001).

16. *Id.* at 577.

sis of income and tax burden distributions provides the type of data that inform and particularize a critical analysis of class hierarchies in the US.<sup>17</sup> This numerical analysis when told against her personal narrative that has Fidel Castro dismissing such concerns as “*preocupaciones burgesas*”<sup>18</sup> is illuminating for two reasons. One, she gives those of us who don’t share the cultural lens of Cuban émigrés the detail and nuance of good stories and, two, she explains why business- and tax-based analyses are not trivial bourgeois concerns.<sup>19</sup> Her skill in using storytelling, one of the signature tools of critical theory, is evident in her technique of engaging the reader with her stories while effectively demonstrating how tax law can be a tool for class-based analysis. Her story conveys rich details about her “subject position” as a member of an immigrant family, as a Spanish speaker, and as someone who values the family as a social unit. This information about citizenship, language and culture provides the nuance to her more quantified legal analysis and provides a template for other LatCritters who are interested in working in these somewhat arcane areas of law.

Professor Abreu juxtaposes her first person narrative with the formal expository tone of tax policy. She shows why those who earn more have the ability, through changes in economic behavior, to decrease tax burdens and to benefit from tax credits, deductions and myriad loopholes.<sup>20</sup> Those who earn less, a category that includes most populations of color, don’t have that power of choice. Thus, Professor Abreu shows us why and how the design of tax systems is an exercise in the state’s allocation of power through the mechanism of tax-structured economic choice. I look forward to future contributions from Professor Abreu and others working to put “money-law knowledge to work” for Latinas/os and other economically marginalized populations.

Professor Alfredo Mirandé also employs personal narrative in his essay, *Alfredo’s Mountain Adventure: The Second Chronicle on Law, Lawyering and Love*.<sup>21</sup> Professor Mirandé uses an epistolary format for his series of chronicles—letters to an imaginary colleague named Fermina Gabriel. He uses his letters to Fermina to reflect on the Colorado

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17. *Id.* at 585-93. In a comparison by race, the distribution of wealth is even more concentrated than that of income. The median Black household’s net worth [difference between assets and debts] is 12 percent of the median White’s, but Latina/o household’s net worth is only 4 percent of the median White’s. When one looks at what economists call financial wealth, which eliminates the family home as an asset and the mortgage as a liability, the more liquid assets are even more concentrated in the hands of Whites with Blacks owning only 3 percent and Latinas/os, 0 percent. See Doug Henwood, *The Nation Indicators: Wealth Report*, THE NATION, April 9, 2001, at 8.

18. Abreu, *supra* note 15, at 576.

19. See *id.* at 578-85.

20. See *id.* at 582-92.

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

conference--raising meaningful, class-conscious questions about the locations in which LatCrit conferences are held and he opines about the isolation of the meetings from Latina/o communities.<sup>22</sup> He also examines other aspects of the meeting but his chronicles leave this reader with more questions than answers and with a sense of disquietude rather than clarity.<sup>23</sup>

One of the most exciting developments in this cluster of articles is the interest in LatCrit Theory being shown by students and scholars in graduate schools of education. The essays contributed by Anita Revilla, a graduate student at the UCLA Graduate School of Education and Information Studies and by Professor Daniel Solórzano and Tara Yosso, also a UCLA graduate student, accelerate a process of disciplinary cross-fertilization with ideas, vocabularies, and bibliographical sources flowing in several directions.

Anita Revilla's article *A Theoretical Dialogue Between Two Friends: Critical Race Theory, Critical Pedagogy, and the Move Toward LatCrit*<sup>24</sup> brings the concerns of educators to the attention of the LatCrit community. Employing the device of a colloquy between two fictional friends, a Latina and a Latino, Revilla draws a comparison between the approaches taken by Race Critics, such as Charles Lawrence and Race/Lat/Crits such as Richard Delgado<sup>25</sup> and Ian Haney Lopez,<sup>26</sup> with those of critical pedagogues such as Peter McLaren.<sup>27</sup> Given this focus on class within the race-conscious discourse of LatCrit Theory, Revilla's article is especially pertinent because of her description of critical pedagogy as more of a class-conscious discourse.<sup>28</sup> Critical pedagogy builds on a Marxist approach that keeps capitalism and the exploitation of the working class at the center of its concerns. As Revilla notes, critical theo-

22. *Id.*

23. Professor Mirandé's chronicles differ from those constructed by Professors Bell or Delgado in that the reader hears only one side of the colloquy and it's therefore a monologue. The power of the dialogue is that the author is engaged in an interrogation of the propositions s/he posits. Professor Mirandé leaves us wondering what Fermina would have responded. For Professor Bell's dialogues with Geneva Crenshaw, see Derrick A. Bell, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (Derrick Bell ed., Basic Books 1987). For Professor Delgado's dialogues with Rodrigo Crenshaw, see Richard Delgado, *THE RODRIGO CHRONICLES: CONVERSATIONS ABOUT AMERICA AND RACE* (Richard Delgado ed., New York University Press 1995).

24. See Anita Tijerina Revilla, *LatCrit and CRT in the Field of Education: A Theoretical Dialogue Between Two Colleagues*, 78 *DENV. U. L. REV.* 623 (2001).

25. An exceptionally prolific scholar, Professor Delgado is one of the founding figures in Critical Race Theory. See Richard Delgado, *CRITICAL RACE THEORY: AN INTRODUCTION* (Richard Delgado & Jean Stefancic eds., New York University Press 2001).

26. See Ian Haney-López, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (Ian F. Haney López ed., New York University Press 1996).

27. See Peter McLaren, *CRITICAL PEDAGOGY AND PREDATORY CULTURE: OPPOSITIONAL POLITICS IN A POSTMODERN ERA* (Peter McLaren ed., Routledge 1995).

28. See Revilla, *supra* note 24, at 624.

rists, including LatCrits, who work within the careerist pressures of elitist universities, can be blind to economic oppression.<sup>29</sup>

Critical pedagogy has also been highly influenced by the work of Paulo Freire and other South American activist intellectuals and their work often draws on examples from that region of the world.<sup>30</sup> This is a different but equally compelling reason for LatCrit with its geographic orientation towards Latin America to form academic alliances with those working in critical pedagogy.

I reach the conclusion from Revilla's title that, with the publication of this essay, her future work will move towards LatCrit. Her article, like of Professors Solórzano and Yosso,<sup>31</sup> draws on work produced within Critical Race Theory although there is some overlap with LatCrit Theory in that Richard Delgado, Ian Haney Lopez and many others have connections with both genres of critical theory. This distinction is important because LatCrit's roots within Critical Race Theory have been rigorously traced and the differences in their respective approaches carefully theorized.<sup>32</sup> Although it is likely that these historical differences are of great moment to those of us who have been part of this process and who see LatCrit as our academic home but of considerably less urgency, even when apparent,<sup>33</sup> to scholars in other disciplines. Professors Solórzano and Yosso's article refers to LatCrit Theory although most of the work cited is from Critical Race Theory. Because I think their fusion of critical pedagogy with Critical Race Theory is so successful, my hope is that more LatCrit scholarship will be woven into their analyses in future work.

The work by Professors Solórzano and Yosso points the direction for using our classrooms and our roles as educators as locations for theoretical inquiry. Like Anita Revilla, Professors Solórzano and Dr. Yosso bring the tensions of academic work and the ambiguities associated with testing, grading and competing for tenured positions into the field of critical analysis. Also, the task of developing a critical consciousness in their students, most of whom will become K-12 teachers, appears to be a more urgent preoccupation for critical pedagogues. It may be the case

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29. *Id.* at 625.

30. *Id.* at 624.

31. See Daniel G. Solórzano & Tara J. Yosso, *Maintaining Social Justice Hopes Within Academic Realities: A Freirean Approach to Critical Race/LatCrit Pedagogy*, 78 DENV. U. L. REV. 595 (2001).

32. See Valdés, *Post-Identity Politics*, *supra* note 6; Francisco Valdés, *Theorizing "OutCrit" Theories: Comparative Antisubordination Experience and Subordination Vision as Jurisprudential Method* in CRITICAL RACE THEORY: HISTORIES, CROSSROADS, DIRECTIONS (forthcoming); Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 U. MIAMI L. REV. 1247 (1999); Sumi Cho & Robert Westley, *Critical Race Coalitions: Key Movements that Performed the Theory*, 33 U.C. DAVIS L. REV. 1377 (2000).

33. See Solórzano & Yosso, *supra* note 31, at 598.



that many of us who work in law schools can opt out of this aspect of teaching, especially when we are assigned to the traditional first year courses. Yet, the need that is identified by Professor Solórzano and Dr. Yosso to develop students with a critical consciousness, motivated by social justice and equipped with an understanding of transformative oppositional behavior should be just as great for lawyers as for teachers.<sup>34</sup> Therefore, cross-disciplinary alliances are crucial to our mutual efforts to develop transformative knowledge for use in and out the classroom.<sup>35</sup>

As I describe in the third section of this Introduction, I am currently working with a group of critical pedagogues<sup>36</sup> including Dr. Marcos Pizarro, another of Professor Solórzano's students, to address the educational needs of Latina/o youth and, from my perspective, make LatCrit Theory more accessible to K-12 teachers and students. Hopefully, the work in this Symposium being undertaken by critical pedagogues signals future collaborations with educators at all levels of education who take on the LatCrit label and that the resulting synergies transform our classrooms in the way that LatCrit Theory has enhanced our scholarship.

### B. Comparative Racializations

The name for this cluster of articles is taken from the first plenary panel of the Conference and calls our attention to the ways in which the social construction that is race takes different forms among different groups during different historical periods.<sup>37</sup> This cluster of articles invites the reader to make comparisons in the way that the boundaries of different racial categories are drawn with respect to the normative category of Whiteness and the ways in which the dominant society engineers<sup>38</sup> its race relations with the different subgroups, especially Latinas/os. These articles prompt us to ask: What does it mean for South Asians to be "Aryan"<sup>39</sup> or "white"? Is it equivalent to the "white" category that applies to Latinas/os under federal regulations?<sup>40</sup> How do we understand the vocabulary of the Model Minority when applied to South Asians and to Cubanos/as under very different conditions? What does the *racings*<sup>41</sup> of

34. See *id.* at 607 (referring to the figure on page 16 titled "Letty's Figure in Progress").

35. See Valdés, *LatCrit Consciousness*, *supra* note 2.

36. The teachers and activists in the *Maestros* project would never use such high-falutin' language to refer to ourselves. One of our objectives is to use plain English/Spanish in our teaching materials.

37. See LatCrit V Substantive Outline at 6.

38. See Tayyab Mahmud, *Review Essay: Genealogy of a State-Engineered "Model Minority": "Not Quite/Not White" South Asian Americans*, 78 DENV. U. L. REV. 657 (2001). I am borrowing Professor Mahmud's term "engineer" to emphasize the role of state power in the formation and regulation of racial boundaries.

39. *Id.* at 674.

40. See George A. Martinez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, 2 HARV. LATINO L. REV. 321, 323 (1997).

41. See Mahmud, *supra* note 38, at 662 (noting that "Racing, then, is a modern technology of power/knowledge technology of insertion of the body into the population in a subordinated position,

South Asians teach us about the racing of other racial subgroups, including Latinas/os? Are we to interpret the insertion of the ambiguous Latina/o imagery associated with a Ricky Martin or a Cristina Aguilera or the hypersexualized “J-Lo” into mainstream popular culture as a weakening or an emboldening of the *racing* technologies of a hegemonic dominant culture?<sup>42</sup>

In reviewing *The Karma of Brown Folks* by Vijay Prashad,<sup>43</sup> Professor Tayyab Mahmud has produced another article<sup>44</sup> that fuses post-colonial theory with a cultural studies approach to demonstrate a truth that has been repeatedly borne out by the insectionality that characterizes LatCrit projects: namely, studying subordination and exclusion in a particular location and in a given historical period elucidates subordination and exclusion in other places and times. In other words, all racial subgroups gain an understanding of the structures, vocabularies, and power-knowledge forces of race, racing and racism by understanding the application of these structures, vocabularies and forces to a specific racial subgroup. And more specifically, Latina/o subgroups can gain a deep understanding of their own race-based subordination through Professor Mahmud’s compelling analysis of the engineering of various identities for South Asians by succeeding hegemons—first the British during the Raj and later the U.S. through its labor market and immigration policies. Indeed, our understanding of the racing of any given group is deepened by reading with a consciousness that this particular racing is at once similar and different for other groups. Professor Mahmud invites this dual mindedness by often reminding us of how the racing policies and practices against the South Asians had corresponding effects on other people of color, for example, African Americans with whom South Asians were more favorably compared in their rendering as a Model Minority<sup>45</sup> and on Mexican women who were available as non-white brides for South Asian men within the anti-miscegenist social conventions of the late 1800’s.<sup>46</sup>

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with the positioning assigned to ‘natural,’ pre-political deficiencies. This insight can furnish a very productive point of departure for the critical projects of anti-essentialism and anti-subordination: when you want to see racism, *look for racing not race*”).

42. See Steven W. Bender, *Will the Wolf Survive: Latino/a Pop Music in the Cultural Mainstream*, 78 DENV. U. L. REV. 719 (2001) (analyzing de-racialized “eye candy” Latina/o entertainers).

43. VIJAY PRASHAD, *THE KARMA OF BROWN FOLK* viii (2000).

44. See, e.g., Tayyab Mahmud, *Colonialism and Modern Constructions of Race: A Preliminary Inquiry*, 53 U. MIAMI L. REV. 1219 (1999), in which he inter-relates three ideas: the colony is a space in which the rule of law is saturated with the illegalities of the racial regime; the instability of racial categories are supported by pseudo science; and, other differences based on religious belief, tribal affiliations, or regional loyalties are contaminated with a racialized hegemony.

45. See Mahmud, *supra* note 38, at 658, 669.

46. *Id.* at 669, 674.

Professor Mahmud notes that Professor Prashad emphasizes that the state's engineering of the Model Minority identity for the "desis," a self-chosen term that means "those from the homeland" rests on two images: 1) hard-working high achievers and 2) spiritual and pliant.<sup>47</sup> This imagery is then used as "another weapon to assign degradation of African Americans to their supposedly inherent incapacities and deficiencies."<sup>48</sup> It has also been used against Mexican Americans in the pervasive stereotypes of the lazy, immoral Bandido.<sup>49</sup> One can't help but remark on the self-mocking irony of a white-supremacist system that subjugates black and brown peoples exploiting them mercilessly in farms, factories, fields, mines, and railroads and they respond with patriotism, economic productivity, and a genuine devotion to God and church. This same system then creates a hierarchy among them by labeling only some as hard-working and spiritual.

Both Professors Mahmud and Hernández-Truyol explore this Model Minority discourse to expose its utility in advancing the interests of the dominant White society and its inconsistencies and unevenness even when being applied to racial subgroups that fall in and out of favor, such as South Asians or Cubans. In *On Becoming the Other: Cubans, Castro, and Elian—LatCritical Analysis*,<sup>50</sup> Professor Berta Esperanza Hernández-Truyol examines the treatment of Cubanas/os as a result of the Elian González episode. Professor Hernández-Truyol is also analyzing "desis," to borrowing Professor Mahmud's vocabulary for those who yearn for the homeland, if we think of Cubanas/os as a different group of displaced homelanders who like South Asians are treated as a Model Minority. Both Professor Mahmud and Professor Hernández-Truyol are explicit about the class valances of this label of Model Minority;<sup>51</sup> the purported over-achievement that the label implies masks the economically discriminatory immigration policies that the U.S. government has employed for South Asians and Cubanas/os. U.S. immigration permitted educated professionals to leave India, Pakistan, Cuba and other impoverished lands, yielding benefits to the selected émigrés and to the U.S. But unlike the South Asians, Cubanos/as merit the label as they primarily advance the *political* interests of the dominant society and its racial interests only secondarily. In this way, these two articles illustrate the rationale for placing the articles within a named cluster (e.g., "Comparative Racializations") within the symposium volume: the reader gains insight process

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47. *Id.* at 678-79. For an analysis of Mexican-American women as religiously submissive, see Laura M. Padilla, *Re/Forming and Influencing Public Policy, Law and Religion: Missing from the Table*, 78 DENV. U. L. REV. 1223 (2001).

48. See Mahmud, *supra* note 38, at 658-59.

49. See Mary Romero, *State Violence, and the Social and Legal Construction Latino Criminality: From El Bandido to Gang Members*, 78 DENV. U. L. REV. 1087, 1096.

50. See Berta Esperanza Hernández-Truyol, *On Becoming the Other: Cubans, Castro and Elian—LatCritical Analysis*, 78 DENV. U. L. REV. 687 (2001).

51. See Mahmud, *supra* note 38, at 678 *et seq.*; Hernández-Truyol, *supra* note 50, at 693.

by reading them separately and comparatively. Employing a tone of irony, Professor Hernández-Truyol argues that the favorable treatment of Cubanos/as based on their usefulness as an anti-Communist symbol during the Cold War and the perception of Cubanos/os as adhering to the rule of law, having strong family values, and professing conservative political leanings<sup>52</sup> was not stable enough to withstand public dissent with the US government. Their Model Minority status was quickly jeopardized once the majority of Cubanos/as (and the differences within the community become obvious with Professor Hernández-Truyol's interviews with other Cubano/a law professors) took an unpopular political stance with respect to the immigration rights of Elian, an unaccompanied minor within the U.S. borders.<sup>53</sup> The result, she asserts, is the Otherizing of the Cubana/o community by the majority and its attendant distancing once the political interests of the White majority were not aligned with respect to the Castro regime.<sup>54</sup> Specifically, the politico-legal system of the Congress, Courts, INS and President were willing to allow Castro to win the tug-of-war over Elian while the larger Cubana/o community was committed to keeping the child in the U.S.

Professor Hernández-Truyol provides us with a thorough analysis of the Elian Gonzalez incident, including the case's treatment by the Eleventh Circuit Court, and in doing so, she makes at least two points of relevance to LatCrit analysis. One, the narrative that the larger Cubano/a community was acting consistently in advocating for Elian to remain in the U.S and that the U.S. government through the INS was acting inconsistently, especially with respect to Cubano/a immigrants, in seeking his prompt return did not receive prominent exposure in the media. Two, this case is yet another demonstration of the indeterminability of legal disputes and the malleability of rule of law rationales.<sup>55</sup> The Cubana/o émigré community and the U.S. government have long considered the Castro regime to be an unlawful and non-democratic government and have marshaled considerable resources for its overthrow.<sup>56</sup> Professor Hernández-Truyol posits that the Otherizing and essentializing of the larger Cubana/o community gained momentum once the legal system acted to return Elian to Cuba against the wishes of the community.

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52. See Hernandez-Truyol, *supra* note 50, at 688-90.

53. The number of immigrant children being detained by the INS has soared to 4,600 per year. On any given day, the INS cares for over 500 children. Many remain in detention for months and sometimes years awaiting resolution of their claims. See Eric Schmitt, *I.N.S. Both Jailer and Parent to Children Without Nation*, <http://www.nytimes.com/2001/06/24/national/24DETA.html> (last visited on June 23, 2001).

54. See Hernández-Truyol, *supra* note 50, at 708-11.

55. *Id.* at 711-17.

56. *Id.* at 709.

The next three articles in this cluster, *The Accidental Crit II: Culture and the Looking Glass of Exile* by Professor Pedro A. Malavet,<sup>57</sup> *Will the Wolf Survive: Latino/a Pop Music in the Cultural Mainstream* by Professor Steven W. Bender,<sup>58</sup> and *Confessions of a White Salsa Dancer: Appropriation, Identity, and the "Latin Music Craze"* by Professor Nancy Ehrenreich<sup>59</sup> examine the multiple ways that the majority culture uses and misuses the cultural capital of the Latina/o subgroups. An important aspect of being subordinated within a society is to be seen as belonging to an inferior culture—the language, literature, food and other identifying characteristics including the music are seen as vulgar, common and unworthy of emulation. Being subordinated can also be experienced when the majority alternatively rejects and/or appropriates the cultural production of a subgroup that is largely powerless to affect these taste preferences or to benefit on a large scale from the concomitant economic transactions. These three articles provide an in-depth analysis of this phenomenon with respect to contemporary Latina/o music.

Professor Malavet begins in a paradigmatic LatCrit way by interrogating his own positionality as a certain type of Puertorriqueño: an exile, a Ponceño, an educated man of color, a denizen of the island and the mainland, *hijo de patisucio y, al fin, un patisucio racial*.<sup>60</sup> Clearly, in choosing the term *patisucio*, encoded with racial and class meaning, he is signaling the interconnectedness of these two characteristics. Without using Professor Mahmud's term, Professor Malavet is also a *desis*,<sup>61</sup> a U.S. resident who yearns for his Puerto Rico homeland. This personal interrogation of identity is coupled with a careful explanation of the labels (*gringo, isleño, niuyorican*) that are used within various localities for and by Puertorriqueños/as both in Puerto Rico and here in the U.S. It is within that context of the personal and collective as experienced by the teller of the story that the analysis about the colonial process can be fully appreciated for its nuance and complexity. Out of this complexity comes the justification for the assertion that the current Latin music craze typified by Ricky Martin or Jennifer López does not represent Professor Malavet's own musical preferences.<sup>62</sup> He emphasizes that music represents identity and, more particularly, popular music represents Puerto Rican identity (and identities),<sup>63</sup> given that different musical forms are

57. See Pedro A. Malavet, *The Accidental Crit II: Culture and the Looking Glass of Exile*, 78 DENV. U. L. REV. 753 (2001).

58. See Bender, *supra* note 42.

59. See Nancy Ehrenreich, *Confessions of a White Salsa Dancer: Appropriation, Identity, and the "Latin Music Craze,"* 78 DENV. U. L. REV. 795 (2001).

60. See Malavet, *supra* note 57, at 759-61 where *Hijo de patisucio* literally means "son of someone with dirty feet." Professor Malavet uses the expression both literally to describe his father's poverty and metaphorically to name his own racializing within the US borderlands.

61. See Mahmud, *supra* note 38.

62. *Id.* at 767-71.

63. *Id.*

associated with different racial subgroups within the larger Puerto Rican community.

Professor Malavet engages the work of Professors Bender and Ehrenreich, the two other authors in this cluster, and by doing so makes this notion of “comparative racializations”<sup>64</sup> explicit. By drawing attention to the problem (as analyzed by the three authors in this cluster) of the commodification of identities and images in the narratives of the new Latin music, Professor Malavet helps the reader understand how “the structure of [the entertainment] industry restrict[s] the production and dissemination of authentically transformative cultural forms and events”<sup>65</sup> while “promot[ing] the production of homogenized MacCulture or of hegemonic cultural stereotypes.”<sup>66</sup>

In his article *Will the Wolf Survive: Latina/o Music in the Cultural Mainstream*,<sup>67</sup> Professor Steven Bender also takes up the issue of the cultural hegemony of mainstream music but does so by focusing on the language of commercial success.<sup>68</sup> He carefully examines the linguistic choices by recording artists, comparing the English and Spanish language music produced by some of the leading Latina/o pop musicians. He concludes that English is necessarily the language of choice as artists become mainstream because of “the unwillingness of the American public to accept Spanish as a legitimate language of mainstream communication.”<sup>69</sup> For this reason, commercial success becomes cultural hegemony as cultural appropriation.<sup>70</sup>

Commercial constraints limit what can be sung about. Thus, Professor Bender interprets popular Latino music as a particularized misrepresentation of Latina/o culture with its emphasis on artists who are “bilingual, young, attractive (‘eye candy’), light-skinned, middle to upper class and heterosexual.”<sup>71</sup> They partake of “the good life,”<sup>72</sup> which means the identities and entitlements available to the elites of the upper middle class. Only Selena and Santana acknowledge the widespread poverty that afflicts Latina/o communities.<sup>73</sup>

Professor Bender takes us through an analysis of the specific ways that Latina/o artists construct their identities (and, by extension, the

64. *Id.* at 787-92.

65. *See* LatCrit V Conference Substantive Outline at 9.

66. *Id.*

67. *See* Bender, *supra* note 42.

68. *Id.* at 722.

69. *Id.* at 724.

70. *See id.*; *see also* Ehrenreich, *supra* note 59, at 796, n.9 (defining appropriation to mean “use for economic benefit, use that misunderstands or misrepresents, and use without appropriation”).

71. *See* Bender, *supra* note 42, at 731.

72. *Id.* at 732.

73. *Id.* fn 62.

identities of their respective communities)<sup>74</sup> through their artistry—e.g., the sexist and hetero-normative content of the lyrics, the use of English in place of Spanish, etc. We are moved to ask whether this mainstreaming of Latina/o music isn't another, perhaps more seductive, cultural intervention that further subordinates the Latina/o communities. As much of LatCrit analysis demonstrates, this mainstreaming of Latina/o pop music is not liberatory or subjugatory; it is not one *or* the other, rather it is both at once. It represents a weakening of stereotypes, an acceptance of cultural differences even as it enforces linguistic and lyrical conformity as the price for success.

Professor Nancy Ehrenreich begins her article by acknowledging her positionality as an Angla “into salsa.”<sup>75</sup> She engages the same issue being examined by Professors Malavet and Bender from their perspective as Latinos, namely, cultural appropriation.<sup>76</sup> She also joins Professors Mahmud and Hernández-Truyol in bringing a concern about “orientalizing exploitation,”<sup>77</sup> a concern about the Otherization of Latinas/os, a concern about exoticized stereotypes,<sup>78</sup> to her analysis of salsa dancing.

Professor Ehrenreich's article exemplifies LatCrit analysis that rejects either/or thinking in favor of more variegated and complex conclusions. For example, she posits choices as binary: is it appreciation or is it appropriation?<sup>79</sup> She then rejects such thinking as reductionist and essentializing.

She carefully shows us why the mass marketing of Latina/o music is appropriation, an unfair taking of the cultural capital of the powerless which is then rendered as something smoother, less risky, and less different—what she terms a McDonaldization.<sup>80</sup> Then she just as convincingly shows how the mass marketing is also cross-cultural appreciation with ancillary benefits, economic ones for the artists and, at least, modest social transformation for the larger White society.<sup>81</sup> Professor Ehrenreich then offers us an extended personally revealing narrative about her own experiences with salsa dancing as evidence of the transformative possibilities of cultural borrowings.<sup>82</sup> We are inclined to agree with her about this potential; however, Professor Ehrenreich begins her narrative by telling us that she was unusual among her circle of White friends in fre-

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74. See Romero, *supra* note 49, at 1105, for more on the relation between individual and collective identities.

75. See Ehrenreich, *supra* note 77, at 795.

76. *Id.* at 796, n.9.

77. *Id.*

78. *Id.* at 799.

79. *Id.* at 798.

80. *Id.* at 798-02.

81. *Id.* at 801-03.

82. *Id.* at 802-06.

quencing Latin dance clubs.<sup>83</sup> We can assume that even fewer Whites, unlike Professor Ehrenreich who, after all, shares LatCrit sensibilities, are likely to avail themselves of the opportunity to learn about Caribbean racial tensions, the Mexican political system, or immigrant conditions while salsa dancing.<sup>84</sup> On balance, the potential for social transformation is, unfortunately, largely inchoate. Nonetheless, Professor Ehrenreich's article makes a strong and convincing argument that having exposure to marginalized cultural experiences, in her case Latin dance, can provide a window into another set of experiences that define aspects of social hierarchy.

### C. *Post-colonial Relationships and LatCrit*

If the conquest of peoples and nations in the last century was accomplished and maintained through militaristic force, the conquest during this first part of the next millennium is being extended through transnational capitalism and other forms of globalization.<sup>85</sup> The United States now occupies unchallenged domination in every part of the globe through its control of capital, munitions, information and technology. The articles in this cluster examine different aspects of the post/colonial relationship by asking some probing questions: can the most subordinated and impoverished subjects exercise choice and agency when deciding to use their sexuality as an economic resource? Do LatCrit academics play any role in supporting the agency of the sexual subaltern, "a market actor who understands the economic and other opportunities available to her in other parts of the world"?<sup>86</sup> If certain classes have acquired control of the mechanisms of state violence for their own colonial and imperial ends and have thereby distorted the purposes of the nation, what role do LatCrit theorists have in dismantling the power of these violence-prone classes? More specifically, if LatCrit theory fails to link cultural and racial tensions with the political and economic relations imposed by transnational corporate capitalism, doesn't LatCrit risk "remain[ing] abstract and consequently trivializing [and] . . . obscur[ing] the reality and effect of material inequities."<sup>87</sup> What is the relation of LatCrit theory to revolutionary theories that do not eschew violence, such as those propounded by Marx or Fanon, or, more recently, by Walter Ben-

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83. *Id.* at 795.

84. *Id.* at 802-03.

85. The New War that is currently being waged against the Taliban and Afghanistan as a result of the attacks on the World Trade Center and the Pentagon on September 11, 2001 now make this statement written before these events seem curiously misplaced. Force has again become the principal tool of foreign policy.

86. See Ratna Kapur, *Post-Colonial Economies of Desire: Legal Re-presentations of the Sexual Subaltern*, 78 DENV. U. L. REV. 857-85 (2001).

87. See E. San Juan, Jr., *Post-Colonialism and the Question of Nation-State Violence*, 78 DENV. U. L. REV. 889-898. (2001).



jamin or Charles Taylor?<sup>88</sup> What is the relation of postcolonial theory to LatCrit theory about the U.S. colonies, such as Puerto Rico? In other words, are the discursive and analytical tools of the postcolonial theorists different from those of the LatCrit theorists? Are postcolonial theory and LatCrit theory about U.S. colonies, such as Puerto Rico, similar in their focus on space/place as linked to structures of subordination and exclusion within socio-legal systems?

In *Post Colonial Economies of Desire: Legal Re-presentations of the Sexual Subaltern*,<sup>89</sup> Professor Ratna Kapur uses the narrative and imagery in the Indian film "India Cabaret" to introduce her bold analysis of the ways in which Indian sex workers are represented in cultural images and how such images are used to justify the need for legal regulation, especially in anti-trafficking legislation proposed by Western feminists.<sup>90</sup> Professor Kapur uses both postcolonial and feminist theory to shatter our stereotypical and moralistic perceptions of sex workers both in past historical and contemporary periods. Her discussion of "home" and "family" as privileged and uncontaminated ("uncontaminated by the colonial encounter")<sup>91</sup> cultural spaces<sup>92</sup> offers some provocative insights into the ways that women's work raising families and homemaking can be put into the service of those who would restrict women's rights, in and out of the home. While her focus is India and the Hindu Right, her analysis has applicability outside of India and should be of interest to those of us who see similar manipulation of Latinas by organized churches<sup>93</sup> and the political Right in the U.S. The policing that the global HIV/AIDS crisis is foisting on many communities of color, in and out of India, increases the criminalization of certain behaviors (e.g., those that place people "at risk") and increases the surveillance of certain populations (e.g., sex workers).<sup>94</sup> The challenge for feminists is to promote treatment and prevention programs for substance abuse and HIV/AIDS without falling into the grasp of religious and ideological zealots.

This article is particularly appropriate in a symposium that is dedicated to issues of class in LatCrit theory and practice. Professor Kapur

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88. *Id.* at 904-05; see also Gil Gott, *Identity and Crisis: The Critical Race Project and Postmodern Political Theory*, 78 DENV. U. L. REV. 817 (2001), in which he interrogates the efficacy of the legal and its step-child, critical legal theory by reconfiguring responses to the weakening of the nation-state and the concomitant realignments of power and authority. Where, he asks, is the political, or more precisely, where is the emancipatory in the minor transgressions of postmodernity (hybridity, mobility, diasporas, indeterminacy, etc.)? To this important question, I would respond that these transgressions are both emancipatory and subordinating, sometimes in a serial way, where the emancipation can be experienced and savored; but too often in a simultaneous way, where the gain is immediately illusive.

89. See Kapur, *supra* note 86.

90. *Id.* at 857-58.

91. *Id.* at 862.

92. *Id.*

93. See, e.g., Padilla, *supra* note 47.

94. Kapur, *supra* note 86, at 864-66.

clearly demonstrates that the immigration policies of the U.S. as articulated in anti-trafficking legislation closes the borders to workers other than the most strictly defined victims.<sup>95</sup> Anti-trafficking legislation must be understood as a labor market control benefiting the interests of labor importing countries. For example, the U.S. excluded from protection the large number of women “who are in or know that they will be going into the sex industry, but are not accurately informed about the conditions of work or the amount of money they will receive.”<sup>96</sup> Through this careful analysis, Professor Kapur brings us to the most stereotype-shattering portion of her article from my point of view, namely, the reconstitution of the sex worker as a willing traveler, a border crosser, who “migrat[es], including for sex work, in search of increased autonomy and economic independence.”<sup>97</sup>

Many of us in critical theory have been using borders, literal and metaphorical, in our work,<sup>98</sup> and our understanding of this diasporic traveler must be informed and, when necessary, re-framed in light of Professor Kapur’s compelling analysis. She respects the agency and informed self-interest being exercised by these women, even when they travel in order to work in the sex industries.<sup>99</sup> Professor Kapur does not accept that economic deprivation robs women of their ability to choose; instead, she argues that women, some without education and some with graduate degrees, can decide to leave their country of birth and travel to other parts of the world to improve their economic conditions.<sup>100</sup>

Professor Kapur concludes by rejecting what she terms “sexual negativity, which perpetually addresses sex and sexuality, especially in the third world in the language of pain, anguish, abuse and exploitation.”<sup>101</sup> This “recuperation of desire [offers] the possibility of a more liberatory and emancipatory politics within the third world.”<sup>102</sup> The challenge for LatCrit scholars is to extend Professor Kapur’s superb analysis to the particularities of Latina/o communities because, in my opinion, their sexual repression by church and state ideologies and the resulting suppression of sexual desire has been under-analyzed in LatCrit theory.

In *Postcolonialism and the Question of Nation-State Violence*,<sup>103</sup> Professor San Juan proffers an analysis of violence that poses a challenge

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95. *Id.* at 876-77.

96. *Id.* at 879-80.

97. *Id.* at 882-84.

98. *See e.g.*, fns. 131-37, *infra*.

99. Kapur, *supra* note 86, at 881-83.

100. *Id.*

101. *Id.* at 887.

102. *Id.*

103. *See* San Juan, *supra* note 87.

for LatCrit theorists. In examining the link that is often made between nationalism and state violence, Professor San Juan provides a spirited critique of postcolonialist thinking by such icons as Homi Bhabha who “resort to a questionable use of the discursive performativity of language to ascribe a semiotic indeterminacy to the nation, reducing to a formula of hybridity and liminality<sup>104</sup> the multifarious narratives of nations/peoples.”<sup>105</sup> If so, doesn’t this criticism also apply to LatCrit theory, especially given the way in which such linguistic jingles as “One nation under God,” “manifest destiny” and “America” have come to be used ideologically to mask the conquest and domination of land and peoples that has been the nation-building project of the U.S. But Professor San Juan would answer that while such debunking is necessary, it doesn’t go far enough because it fails completely in undermining the violent power of the nation-state.<sup>106</sup> He goes on, “[t]he source of political violence . . . is the competitive drive for the accumulation in the world market system where the propertied class is the key actor mobilizing its symbolic capital made up of ethnic loyalties and nationalist imaginaries.”<sup>107</sup>

Professor San Juan is particularly disparaging of culturalist theorists for producing analyses that are abstract and trivial.<sup>108</sup> I fear, though, that the charge he makes against postcolonialists is one that he would also apply to much of LatCrit theory that also fails to expose the workings of corporate capitalism and its corresponding political effects.<sup>109</sup> Professor San Juan’s project is the revivification of a Marxist/Fanonian approach to liberation theory that fuses social justice with class struggle.<sup>110</sup> Using the work of Walter Benjamin, he brings the analysis into the sphere of law by linking justice and communication as the antidote to state violence as differentiated from nation-related violence<sup>111</sup> but questions the efficacy of “the reconciling charisma of language” in the face of internecine conflicts throughout the world.<sup>112</sup> Professor San Juan concludes by using Charles Taylor’s formulation of violence as a struggle for recognition and the recovery of dignity.<sup>113</sup> Warriors are locked in an embrace of mortal danger to both. “In this struggle, the possibility of violence mediates the individual’s discovery of his finite and limited existence, his vulnerability, and his need for community.”<sup>114</sup> However, appealing this

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104. For an analysis employing hybridity and liminality as discursive tools, see Juan Velasco, *Making Evil: Crime Thrillers and Chicana Cinema*, *infra* note 156.

105. San Juan, *supra* note 87, at 891.

106. *Id.* at 891-92.

107. *Id.* at 895.

108. *Id.* at 896-97.

109. *Id.* This charge is appropriate and resonates with Professor Guadalupe Luna’s exhortation to produce transformative knowledge. See Luna, *supra* note 8.

110. San Juan, *supra* note 87, at 890.

111. See text accompanying fn. 170, *infra*.

112. San Juan, *supra* note 87, at 906-07.

113. See *id.* at 907.

114. See *id.*

image might be, Professor San Juan also rejects it given the reality of nuclear weapons in the hands of the possessive/acquisitive classes which he identifies as the origin and locus of state violence.<sup>115</sup>

With *History, Legal Scholarship, and LatCrit Theory: The Case of Racial Transformations Circa the Spanish American War, 1896-1900*<sup>116</sup>, Professor Sylvia R. Lazos Vargas has made another important contribution to the LatCrit project. Professor Lazos has undertaken a complex task, viz., using original documents she has set out to excavate the racial motivations of the diplomats who negotiated the Treaty of Paris of 1898 ending the Spanish American War. This historical excavation is embedded within a larger project of using the analytical tools of LatCrit theory and Critical Race Theory to examine the possibilities and limitations of cross-disciplinary scholarship.

Professor Lazos accomplishes a number of things with this article. First and foremost, her historical account of the events surrounding the Treaty of Paris of 1898 and the expansion of the U.S empire to include Hawai'i, Philippines, Guam, Puerto Rico and Cuba is an excellent example of traditional legal research with extensive documentation from original sources.<sup>117</sup> She also demonstrates why it is important to have scholars in the academy who are able to bring their personal experiences to bear on their research. In fact, I would assert that this article is evidence of why it is important to have Latinas in the legal academy to produce this kind of positioned analysis. Professor Lazos enacts a rationale for this contested assertion as she examines the historical accounts of this period from a racialized perspective.<sup>118</sup>

Professor Lazos is particularly effective, for purposes of this symposium, in providing an analysis that is explicitly grounded in LatCrit methodology and sources. For example, she is careful to show that the Spanish American War teaches us important lessons on about a number of LatCrit themes: anti-subordination, interracial coalition-building, the racialization of specific populations of Latinas/os, and racial and disciplinary positionality.<sup>119</sup> Finally, using a positionality analysis, she examines her hypotheses going into this research and explains why she rejects the central premise of her original inquiry about the racial motivations of the Treaty of Paris negotiators.<sup>120</sup>

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115. *Id.* at 907-09.

116. See Silvia 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. 923 (2001).

117. *Id.* at 929-44.

118. *Id.* at 944-46.

119. *Id.*

120. See *id.* at 952-65.

Both Professors Lazos and Venator's articles have been included in this cluster on post-colonial relationships, but their articles should be differentiated from those written by Professors Kapur and San Juan. These latter articles fall within the genre that is referred to as Postcolonial Theory, with its shared vocabulary (i.e. subaltern, third space, settler societies, etc.) and established scholars (Gayatri Spivak, Edward Said, Homi Bhabha). Professors Lazos and Venator, on the other hand, do not write within this genre but do write about the subject of post/colonial relationships, specifically looking at the mechanisms, legal and political, that were used to acquire sovereignty over Puerto Rico's land and peoples.<sup>121</sup>

In *Race, Space, and the Puerto Rican Citizenship*,<sup>122</sup> Professor Charles R. Venator Santiago, while agreeing that citizenship for Puerto Ricans was purposely obfuscated by racist ideologies, contends that this particular citizenship must be understood within the liminality of space and geography.<sup>123</sup>

He rejects the analysis of Rogers M. Smith<sup>124</sup> that the ambiguities of Puerto Rican citizenship resulted exclusively from the racism of the justices at the turn of the century. From the Foraker Act of 1900 forward, this variety of Puerto Rican citizenship, he argues, was neither that of colonial subjects nor that of second class citizens, such as women who could not vote; neither a citizen with rights nor an alien with specific constitutional protections.<sup>125</sup>

Professor Santiago asserts that the decisions from the early 1900's when the Congress and the Courts were defining the boundaries of Puerto Rican citizenship must be understood within a notion of spacial specificity—that persons with connections to different places would be treated differently. For example, under Article IX of the Treaty of Paris,<sup>126</sup> the document that formalizes Puerto Rico as a U.S. Colony, persons from Spain would be treated differently than those from Puerto Rico.<sup>127</sup> Professor Santiago, however, is not talking only about geography; he is also using space as a concept to talk about the legal status that is conferred on Puerto Ricans.<sup>128</sup> The legal categories (citizen, alien) had to be deformed (not-citizen *and* not-alien) in order to allow for this am-

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121. *See id.*

122. Charles R. Venator Santiago, *Race, Space, and the Puerto Rican Citizenship*, 78 DENV. U. L. REV. 909 (2001).

123. *Id.* at 910.

124. *Id.* at fn 7, citing ROGERS M. SMITH, CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY (1997).

125. Santiago, *supra* note 122, at 911.

126. *Id.* at fn 22.

127. *Id.* at 913.

128. *See id.* at 914.

biguous status to be imposed on Puerto Ricans, and this deformation creates what he calls this "liminal juridical space."<sup>129</sup>

The articles in this cluster, while not centered on issues of class and economic inequality, elucidate the manner in which the U.S. has acquired and maintained colonial relationships with the Philippines, Hawaii, Puerto Rico, and other countries such as Panama and Cuba. Colonial histories are crucial to our understanding of regional and global economic patterns and trends, such as the neo-colonial effects and the hyper-concentration of economic resources within multinational corporations under NAFTA and other free trade arrangements. The subversion of constitutional freedoms represented by the arbitral decisions protecting corporate capital, especially through the use of the "takings" doctrine, is only one example of the re-distribution of wealth upward from the most impoverished to the obscenely wealthy.<sup>130</sup>

#### D. *Border Crossings*

Borders with their geopolitical and/or metaphoric meanings have become a signature theme in Chicana/o Studies<sup>131</sup>, Latina/o Studies<sup>132</sup> and with this group of articles now in LatCrit Legal Theory. My own work has examined the geographic,<sup>133</sup> pedagogical,<sup>134</sup> linguistic and cultural,<sup>135</sup> racial and gendered<sup>136</sup> meanings of borders.

Professor Carmen Gonzalez, Maria Pabon Lopez and Juan Velasco stake out different aspects of this common theme.<sup>137</sup> Professor Gonzalez's

129. *Id.* at 921.

130. See William Greider, *The Right and US Trade Law: Invalidating the 20th Century* in THE NATION, October 15, 2001, at 21.

131. See e.g., Gloria Anzaldúa, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* (1987); *CRITICISM IN THE BORDERLANDS: STUDIES IN CHICANO LITERATURE, CULTURE AND IDEOLOGY*, Héctor Calderón and José David Saldívar, Eds. (1991); *U.S.- MEXICO BORDERLANDS: HISTORICAL AND CONTEMPORARY PERSPECTIVES*, Oscar J. Martínez (1996) and Guillermo Gómez-Peña, *THE NEW WORLD BORDER* (1996) and *DANGEROUS BORDER CROSSERS: THE ARTIST TALKS BALK* (2000).

132. See e.g., Ruth Behar, *TRANSLATED WOMAN: CROSSING THE BORDER WITH ESPERANZA'S STORY* (1993) and *THE LATINA/O CONDITION: A CRITICAL READER, PART XII*, Richard Delgado & Jean Stefancic, Eds. (1998).

133. See Margaret Montoya, *Border Crossings in an Age of Border Patrols: Cruzando Fronteras Metaforicas*, 26 N.M. L. REV. 1 (1996).

134. See Margaret E. Montoya & Melissa Harrison, *Voices/Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, COL. J. OF GENDER AND LAW 387 (1996).

135. See Margaret E. Montoya, *Lines of Demarcation in a Town Called Frontera: A Review of John Sayles' "Lone Star"*, 27 N.M. L. REV. 223 (1997).

136. See Margaret E. Montoya, *Border/ed Identities: Narrative and Social Construction of Personal and Collective Identities* in *CROSSING BOUNDARIES: TRADITIONS AND TRANSFORMATIONS IN LAW AND SOCIETY RESEARCH*, Austin Sarat, et al. (Eds. 1998).

137. Carmen G. Gonzales, *Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade*, 78 DENV. U. L. REV. 981 (2001), Maria Pabon Lopez, *The Phoenix Rises from El*

article deals with geopolitical borders, and specifically with the regulation of the environment, in the free trade regime that has developed in the Bush-Clinton-Bush decades.<sup>138</sup> Trade liberalization or “free trade” has become the bipartisan mechanism by which borders are made porous to expedite the movement of capital, know-how, products and jobs and to lessen the movement of persons from one country to another.<sup>139</sup> Professor Pabon Lopez’s article deals with the innovative public policy responses by one Texas community to the linguistic and cultural needs of the population that resides in the U.S.-Mexico borderlands.<sup>140</sup> Finally, Professor Velasco’s paper interprets the cinematic treatment that is given to the border and analyzes how the border as an imaginary and symbolic space can be configured either as menacing and contaminated or as nurturing and fertile with cultural potential.<sup>141</sup>

Thus, this group of articles has several sub-themes in common. First, in reflecting on the treatment of “border people,” these articles deal with those who have little political clout as people who resist in a variety of ways. The resistance is evident in their fashioning of new strategies to expose the environmental degradation caused by the West’s consumption patterns. Their resistance is seen in the Ceniza, Texas legislation protecting the right to speak Spanish as a public language. Resistance is both narrative and method for Lourdes Portillo as she cinematically portrays migrants as complex and resourceful in their search for identities that capture the ambiguities of their diaspora. A second sub-theme that the three articles have in common is nature of the hegemony exerted by the United States whether in its environmental politics vis-a-vis Mexico, in the dominance of English even in regions in which the majority of the population speaks a language other than English, or in its control over cultural symbols (the dangerous and sexualized Mexican) that become the visual text of movies and other art forms. Finally, a third sub-theme is the economic impoverishment of the border and its people. This is a land that is resource starved. The people who inhabit the borderlands experience the lack of job security, poor nutrition, contaminated air and water systems, with the corresponding diseases and illnesses. This sub-theme connects these articles to the larger themes of this symposium exploring LatCrit theory and praxis in the worlds of economic inequality.

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*Cenizo: A Community Creates and Affirms Latino/a Border Cultural Citizenship through its Language and Safe Haven Ordinances*, 78 DENV. U. L. REV. 1021 (2001), Juan Velasco, *Making Evil: Crime Thrillers and Chicana Cinema*, 78 DENV. U. L. REV. 1055 (2001).

138. See Carmen G. Gonzales, *Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade*, 78 DENV. U. L. REV. 981 (2001).

139. See *id.*

140. See María Pabón López, *The Phoenix Rises from El Cenizo: A Community Creates and Affirms Latino/a Border Cultural Citizenship through its Language and Safe Haven Ordinances*, 78 DENV. U. L. REV. 1021 (2001).

141. See Juan Velasco, *Making Evil: Crime Thrillers and Chicana Cinema*, 78 DENV. U. L. REV. 1055 (2001).

In *Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade*,<sup>142</sup> Professor Carmen G. Gonzalez exposes how skewed most environmental analyses of trade liberalization policies, such as NAFTA, are in failing to focus on the “North’s systematic and ongoing appropriation of the South’s natural resources.”<sup>143</sup> Professor Gonzalez’s purpose is to reframe the arguments against free trade by taking the perspective of those who are most adversely impacted by the over-consumption of the wealthy nations; to do so, she uses the “North-South” designation that has become common in the environmentalist debates.<sup>144</sup> Professor Gonzalez introduces us to a vast set of resources and scholars working in this area and arguing against the eco-imperialism of the North. Her footnotes are an impressive display of scholarship and argumentation.<sup>145</sup>

The WTO and GATT have become symbols of the global inequities and misappropriations of resources and products. The mass rallies that have been organized to oppose the WTO in Seattle, Genoa, and Washington, D.C. give testimony to the strength of the arguments against the quick passage of the free trade legislation (the so-called “fast track” approval) pending before Congress. Professor Gonzalez’s article adds to the work that has been done by LatCrits in earlier symposia on globalization and international monetary policies that are related to trade liberalization laws and practices.<sup>146</sup>

In *The Phoenix Rises from El Cenizo: A Community Creates and Affirms Latino/a Border Cultural Citizenship through its Language and Safe Haven Ordinances*,<sup>147</sup> Professor Maria Pabon Lopez’s article expands the LatCrit analysis of language-based issues by focusing on the Texas border town “that adopted an ordinance which makes Spanish its ‘predominant language.’”<sup>148</sup> Other LatCrit articles have analyzed aspects of language regulation, and most often language prohibition, from the

142. See Gonzales, *supra* note 138.

143. *Id.* at 983.

144. See *id.* at 984-86.

145. See Gonzales, *supra* note 138.

146. See e.g., Sylvia R. Lazos Vargas, *Globalization or Global Subordination?: How LatCrit Links the Local to the Global and the Global to the Local*, 33 U.C. DAVIS L. REV. 1429 (2000); Chantal Thomas, *Globalization and the Reproduction of Hierarchy*, 33 U.C. DAVIS L. REV. 1451 (2000); Gil Gott, *Critical Race Globalism? Global Political Economy and the Intersections of Race, Nation and Class*, 33 U.C. DAVIS L. REV. 1503 (2000); Ediberto Roman, *A Race Approach to International Law (RAIL): Is There a need for Yet Another Critique of International Law?*, 33 U.C. DAVIS L. REV. 1519 (2000); Timothy A. Canova, *Global Finance and the International Monetary Fund’s Neoliberal Agenda: The Threat to the Unemployment, Ethnic Identity, and Cultural Pluralism of Latino/a Communities*, 33 U.C. DAVIS L. REV. 1547 (2000) and Tayyab Mahmud, *Race, Reason, and Representation*, 33 U.C. DAVIS L. REV. 1581 (2000) (reviewing Uday Singh Mehta, *LIBERALISM AND EMPIRE: A STUDY IN NINETEENTH-CENTURY BRITISH LIBERAL THOUGHT* (1999)).

147. See Pabón López, *supra* note 140.

148. *Id.* at 1019, citing El Cenizo, TX, Predominant Language Ordinance, No. 1999-8-3(a) (August 3, 1999).



perspective of Spanish-speaking communities,<sup>149</sup> or that of the Chinese<sup>150</sup> and Japanese<sup>151</sup> communities, or with cross-disciplinary tools.<sup>152</sup> Professor Pabon Lopez, however, uses the Ceniza ordinance as an opportunity to consider how a predominantly Spanish-speaking community can protect its linguistic heritage by requiring that city business—its meetings and notices—be in Spanish, the language that is used by most of the people in the community.<sup>153</sup> This community of Mexican immigrants also enacted a Safe Haven ordinance “prohibit[ing] the City’s elected officials and employees from disclosing, investigating or requesting information concerning a resident’s immigration status.”<sup>154</sup>

Here we have an example of a small border town with few public services; a community of workers who must travel daily to find low wage jobs; citizens with mostly elementary school educations.<sup>155</sup> Yet, these marginalized citizens are able to use the mechanisms of local government to carve a niche of safety for themselves and their families. Their ordinances are courageous acts of citizenship that preserve their ability to participate in their own governance and simultaneously to safeguard their language and cultural heritage. These ordinances are acts of praxis, collective acts of resistance by some of the least powerful members of our society. We in the LatCrit community with our economic and educational advantages have much to learn from the town of El Cenizo.

In *Making Evil: Crime Thrillers and Chicana Cinema*,<sup>156</sup> Professor Velasco asks us to consider the crossing of the U.S.-Mexico border as an act filled with metaphorical meanings. In contrasting the manipulation of the border as symbol by Orsen Welles with that of the Chicana filmmaker Lourdes Portillo, he shows how Welles infuses the border and Mexicans/Mexican-Americans with a dark, evil subtext. Welles is aware of the racist stereotypes of the day and of the region and he plays on the

149. See 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); William Bratton, *Law and Economics of English Only*, 53 MIAMI L. REV. 973 (1999); Drucilla Cornell, *The Imaginary of English Only*, 53 MIAMI L. REV. 977 (1999); Madeleine Plasencia, “*Suppressing the Mother Tongue*”—*Anti-Subordination and the Legal Struggle Over Control of the Means of Communication*, 53 MIAMI L. REV. 989 (1999); and Yvonne A. Tamayo, *Literal Silencing/Slenciando la Lengua*, 53 MIAMI L. REV. 995 (1999).

150. See Sharon K. Hom, *Lexicon Dreams and Chinese Rock and Roll: Thoughts on Culture, Language, and Translation as Strategies of Resistance and Reconstruction*, 53 MIAMI L. REV. 1003 (1999).

151. See John Hayakawa Torok, *Finding the Me in LatCrit Theory: Thoughts of Language Acquisition and Loss*, 53 MIAMI L. REV. 1019 (1999).

152. See Keith Aoki, *Introduction: Language is a Virus*, 53 MIAMI L. REV. 961 and Catharine Pierce Wells, *Speaking in Tongues: Some Comments on MultiLingualism*, 53 MIAMI L. REV. 983 (1999).

153. See Pabón López, *supra* note 140.

154. *Id.* at 1023.

155. *Id.* at 1025-27.

156. See Velasco, *supra* note 141.

fears shared by his audience to give his movie its depth.<sup>157</sup> The audience is assumed to be complicit with Welles in the perception that the wife (played by Janet Leigh) is in danger—from her Mexican-American husband and the brooding Mexican characters on the streets of the border town.<sup>158</sup> Some thirty years later, the camera and the script are in the hands of the Chicana border crosser and she inverts the imagery of the border.<sup>159</sup> For Lourdes Portillo, “since her identity is of both lands and cultures[,] . . . the space in-between is . . . a nurturing space where ritual, tradition and culture meet.”<sup>160</sup>

Professor Velasco’s article is an excellent example of the fusion of cultural studies with LatCrit theory where the tools of textual analysis (in this case cinema) are woven with the experiences and sensibilities of the Latina/o communities.<sup>161</sup> He is asking us to read these cinematic texts for their encoded messages about race, gender, sexual orientation, and place and space. Professor Velasco’s article is enhanced because, even though he is an accomplished writer, his English has some of the irregularities of those who use English as a second language. His article is, thus, a linguistic enactment of the multiple border crossings of which he writes.

### E. *LatCrit and Criminal Justice*

In a symposium volume that focuses on Class in LatCrit Theory and Praxis, it is particularly appropriate to feature articles on the over-policing of Latino/a youth in schools and the criminalization of Latina/o youth behavior. Such practices contribute to the excessively high drop-out rates among Latinos. Not finishing high school or pursuing vocational or post-graduate studies are the leading predictors for low socio-economic outcomes, such as low wage jobs, inadequate housing, higher incidence of divorce, poor health, etc. The 1998 high school completion rate for Latinas/os aged 25 and over was 55.5% versus the rate of 83.7% for whites.<sup>162</sup> Equally disturbing is the fact that 40% of Latinos/as who drop out of school do so before the eighth grade.<sup>163</sup>

157. *See id.* at 1054.

158. *See id.* at 1055.

159. *See id.* at 1058.

160. *Id.* at 1059.

161. For other examples of LatCrit-type analyses that employ textual analysis, *see* Elvia Arriola, *Lone Star and the Faces of Despair in INS Raids*, 28 U. MIAMI INTER-AM. L. REV. 245 (1997); Montoya, *Review of John Sayles’ Lone Star*, *supra*, note 135; and Nicholas A. Gunia, *Half the Story Has Never Been Told: Popular Jamaican Music as Antisubordination Praxis*, 33 U.C. DAVIS L. REV. 1333 (2000). *See also*, the articles by Pedro A. Malavet, Steven W. Bender, and Nancy Ehrenreich in this symposium.

162. Facts on Hispanic Higher Education. [wysiwyg; //91/http://www.hispanics.com/higheredu.asp](http://www.hispanics.com/higheredu.asp) (visited on 9/10/01), citing the Statistical Abstract of the United States 1999, U.S. Bureau of the Census.

163. *Id.*, citing the *ERIC Clearinghouse on Urban Education, 1995*.

In *Police in School: The Struggle for Student and Parent Rights*,<sup>164</sup> Professor Norberto Valdez and his colleagues Marcia Fitzhorn, Cheryl Matsumoto, and Tracey Emslie provide a case study of the police practices in Northern Colorado schools. Specifically, they provide specific examples of “high school children being questioned by the [law enforcement] officers without another adult present and without notification of parents.”<sup>165</sup> According to the article, such practices violate federal laws, international standards, and the law of Colorado and yet go unchecked because there is no one who is responsible for ensuring that the rights of the students (and the applicable Colorado statute extends the rights to the parents).<sup>166</sup> This blatant disregard of the constitutional and statutory rights of students and parents can end in tragic results. According to the authors, sometimes the students land in jail; sometimes they drop out of school in frustration with the “system;” and occasionally they take their own lives.<sup>167</sup>

In *State Violence, and the Social and Legal Construction of Latino Criminality: From El Bandido to Gang Members*,<sup>168</sup> Professor Mary Romero demonstrates that the construction of identities can have life and death consequences. As long as Latino youth are portrayed (and often self-portrayed) in newspapers, movies, hip-hop lyrics and in conventional wisdom as *pachucos*, *cholos*,<sup>169</sup> or gang members, they will continue to be at risk of being killed by poorly trained police.

Professor Romero’s titling of her article suggests her analysis might agree with the distinction between state-driven violence and nation-driven violence drawn by Professor San Juan<sup>170</sup> (and emphasized by Professor Gott in his introduction to the cluster of articles on post-colonialism in this symposium).<sup>171</sup> In Professor Gott’s words,

San Juan distinguishes *state-* from *nation-*driven violence. The state, in this sense, is a uniquely modern institution that exists by, for, and of capital, and violence, which the state orchestrates, directly and/or indirectly serves capital’s interests. Meanwhile, San Juan sees vio-

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164. See Norberto Valdez, Marcia Fitzhorn, Cheryl Matsumoto, and Tracey Emslie, *Police in Schools: The Struggle for Student and Parent Rights*, 78 DENV. U. L. REV. 1069 (2001).

165. *Id.* at 1070.

166. *Id.* at 1075, referring to Colo. Rev. Stat., §19-2-511.

167. *Id.* at 1070, *et seq.*

168. See Mary Romero, *State Violence, and the Social and Legal Construction of Latino Criminality: From El Bandido to Gang Members*, 78 DENV. U. L. REV. 1089 (2001).

169. The words *pachucos* and *cholos* are Mexicano/Chicano slang for “homeboys” denoting gang members. The word *pachuco* dates from the 1940’s and was popularized by the LA Times in referring to Mexican-American youth. The word *cholo* has acquired more recent usage.

170. See San Juan, *supra* note 87.

171. See Gott, *supra* note 88.

lence on behalf of the people or nation as potentially anti-imperial and anti-capitalist in its origins and effects.<sup>172</sup>

To whatever extent there is barrio gang violence, much of it internecine, where does it fit in this dichotomy? Can the low-end violence (violence directed at those without power or capital) of the Latina/o gangs be thought of as nation-driven violence, is it not potentially anti-imperial and anti-capitalist in its origins and effects? Or is it?

I concede that I may be misreading and/or misunderstanding both Professors San Juan and Gott in their deployment of this conceptualization of violence. Nation-driven violence may be limited to situations in which the colonizer-colonized relationship is more sharply drawn (as in the Fanonian environment) than in the Latino-youth-versus-police paradigm. On the other hand, isn't Professor Romero suggesting that the disaffection and anomie of Latino youth is knowingly ignited by the state into self-annihilating violence? Isn't this violence counted on and expected by the state in its deliberate engineering of bandido/bad guy identities, in ways that are consistent with Professor Romero's analysis of the construction on the Latino criminal stereotype?<sup>173</sup>

Professor Romero's article also accomplishes a number of other objectives that are consistent with the LatCrit project: it's an interdisciplinary fusion of the legal (interrogating policing and criminality) with history, sociology and cultural studies; a nuanced analysis of identity formation; and a fine example of theory positioned within the historical experiences of the Chicana/o communities.<sup>174</sup> In examining how and why Julio Valerio was killed by the Phoenix police, Professor Romero exposes how language, immigration, poverty, alcohol, family violence and police racism intertwined with lethal consequences.<sup>175</sup>

#### F. *Gender, Class and LatCrit*

From the beginning, LatCrit conferences have endeavored to incorporate a strong female and feminist perspective. I remember the call for a Latina caucus at the first LatCrit meeting when some of us realized that the discussion was male-dominated. When we convened, we sat in a circle, introduced ourselves and reflected on the fact that here we were—some seventeen or so Latina law professors in one room at one time. It was a magic moment.<sup>176</sup> After all, we had all experienced most of our professional lives as a "Society of One."<sup>177</sup> There has been an uneven

172. *Id.* at 820.

173. *See* Romero, *supra* note 168, at text accompanying fns 33 *et seq.*

174. *See id.* at 1107.

175. *See id.* at 1112 *et seq.*

176. As I write this, I am aware of the anti-essentialism that is supposed to define LatCrit Theory and I wonder how to describe this memory and reminiscence without contravening this ideal. When we convened as a circle of Latinas, it was because we formed a loose coalition, sharing common cultural, racial/ethnic *and* gendered experiences while recognizing and valuing that there

sional lives as a “Society of One.”<sup>177</sup> There has been an uneven record of including issues of gender and hearing the Latina voice in LatCrit projects.<sup>178</sup> Therefore, this has emerged as an important reason for the atten-

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were differences among us. We also recognized that we were in coalition with men, other women of color, white women, . . . but for that short time, we were giving emphasis to what it meant to be Latinas (and more specifically Chicanas, Cubanas, Puertorrique\*as, etc.)—the ways in which race/ethnicity and gender have imprinted us as we move through our personal and academic lives. I write that anti-essentialism is *supposed* to define LatCrit because I have always been of two minds about this ideal. I came to critical theory through my activism in the Chicana/o movement. My racial/ethnic identity was *not* formed through my theoretical work as a law professor although my identities have been refined and deepened through that work. Since the 1960’s, I have been active in a variety of community-based, Chicana/o-identified projects—United Farm Worker boycotts, voter registrations, prison/jail tutoring, etc. as well as MECHA (the student organization for Chicanos/os) and Chicano/a Studies projects. During this period, my father was also active in local Chicano-identified work as a social worker. At the same time, I was at the edge of the woman’s movement. I remember devouring each issue of Ms. Magazine, marveling at the barriers that were falling, and knowing that my horizons were expanding, but I was not a participant in that movement. Let me offer a personal narrative: around 1986, I joined NY NOW and attended a conference that had been organized by Phyllis Chesler and others. During the meeting and later in a face to face confrontation, I objected to the fact that there were no brown women or poor women as panel participants or as subjects of study. Ms. Chesler later called me at home and was very angry that I had raised this objection. When she calmed down and conceded that there could have been more diversity on the panel (I am sure she didn’t read me as a woman of color), she offered to have me participate in some other activity; I declined. (Forgive my faux pas for foisting these stories on you, but it is context that I cannot ignore. See, Sumi Cho and Robert Westley, *Critical Race Coalitions: Key Movements that Performed the Theory*, 33 U.C. DAVIS L. REV. 1377, fn 75 and accompanying text.)

In my opinion LatCrit’s anti-essentialism ideal has, at times and for me, made it harder to understand how the law impacts Latinas or Chicanas. Expanding the viewpoints and the participants in order to understand the complexity of identities is critically important and LatCrit’s work on developing mechanisms for doing so is a significant accomplishment. The LatCrit project can rightly take credit for this innovation, insight and intervention. However, I think it’s a serious mistake not to allow time and space for Latinas (with or without other women, of color and white) to meet and interact at LatCrit meetings. The Chicana/Cubana/Puertorrique\*a voice is still muted at the meetings, and many of our stories are still untold. But perhaps I feel this need and desire to meet as Latinas (and sometimes as Chicanos/as within LatCrit) because of my age and my memories from another time. It is ironic to me that, from my perspective, the LatCrit anti-essentialism ideal has isolated us within a discursive space where we can see one another and hear our common realities analyzed but where we don’t connect through our group identities—as Latinas or as Chicanas/os. Moreover, I think that recovering a gendered time/space or ethnicized time/space within LatCrit could not be easily done. When Latinas have met, there is an awkwardness fostered by the group norm against essentialism that impedes cohesion and comfort.

177. I am borrowing Rachel Moran’s evocative phrase. See Rachel Moran, *The Implications of Being a Society of One*, 20 U.S.F. L.REV. 503 (1986).

178. I will offer only one example. At the meeting with the editors of the California Law Review that resulted in a highly prized LatCrit symposium, several of us argued that the proposed deadlines were unrealistic, especially for those of us who had child care responsibilities. We were told the deadlines were fixed and nothing could be done. Most of the Latinas opted out. Later I learned that the deadlines had been largely ignored.

One lesson we in LatCrit have learned and relearned is that hearing marginalized voices takes effort. We must occasionally quiet the dominant voices so that the muted ones come through. We must scan the room to see who hasn’t spoken and make time for them. We must occasionally consider the effect of deadlines and other rules.

tion that is paid to the make-up of each panel and program at a LatCrit meeting.<sup>179</sup>

The theme of the Colorado conference focused on the connections between LatCrit Theory and issues of class. Re-considering the concept of the “feminization of poverty,” a topic at the center of a gender-based analysis of class, presented the opportunity to explore the intersections and disjunctions between LatCrit Theory and feminist theory. “Feminization of poverty” is one of those phrases that enter into academic parlance and capture our attention by refracting and focusing some previously overlooked aspect of reality. Over time, however, the term itself is revealed to contribute to obfuscation. The substantive outline for the conference informs us that

[t]his discursive construct was deployed to mobilize shame and outrage against the conservative public policies and corporate greed that produced new levels of unprecedented poverty, as well as to draw attention to the way the structure of rights and obligations in American family law regimes inflicted substantial economic disadvantages on divorced women and the children over whom they often retained primary custody.<sup>180</sup>

As this concept gained currency, however, it became clear that it failed to encompass the ways in which women of color experience poverty. This cluster of articles explains why the concept “feminization of poverty” should be abandoned or, as Professor Mutua explains,<sup>181</sup> already has been abandoned.

Engaging the concept directly, Professor Kendal Broad analyzes it from the point of view of transgendered persons,<sup>182</sup> Professor Park looks at its effect on low income immigrant women<sup>183</sup> and Professor Mutua explores the multiple ways in which poverty is gendered for women and for men.<sup>184</sup> Professor Padilla, on the other hand, looks at the issue of gendered politics more generally and asks us to consider why Mexican American women are absent from the debates on law, public policy and religion and how they might be included in the future.<sup>185</sup>

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179. See fn 3 and 4 and accompanying text, *infra*.

180. See LatCrit V, Substantive Outline at 8.

181. See Athena Mutua, *Why Retire the “Feminization of Poverty” Construct*, 78 DENV. U. L. REV. 1171 (2001).

182. See Kendal L. Broad, *Critical Borderlands*, 78 DENV. U. L. REV. 1151 (2001).

183. See Lisa Sun-Hee Park, *Perpetuation of Poverty through “Public Charge*, 78 DENV. U. L. REV. 1205 (2001).

184. See Mutua, *supra* note 181.

185. See Laura M. Padilla *Reforming and Influencing Public Policy, Law and Religion: Missing from the Table*, 78 DENV. U. L. REV. 1223 (2001).

With *Critical Borderlands*,<sup>186</sup> Professor Broad advances the development of LatCrit Theory and particularly in its engagement with issues of sexual identity and its continuing experimentation with various disciplinary perspectives.<sup>187</sup> She situates herself as “a white, non-Latina/o, middle class, U.S.-born-and-raised, gender-bending, dyke”<sup>188</sup> and interrogates her ability to mitigate her race and class privileges by naming and acknowledging them. She does this in an act of coalition with groups she does not belong to (namely women of color and impoverished women) and to avoid “reproducing hegemonic discourse”<sup>189</sup> by “creating interdisciplinary borderlands.”<sup>190</sup> She is, in my opinion, successful in modeling how to link LatCrit with other schools of Outsider discourse.

Professor Broad is familiar with earlier LatCrit work that raises questions of heteronormativity, such as the work by Frank Valdes and Berta Hernandez-Truyol.<sup>191</sup> Thus, having linked with this foundational work, Professor Broad then proceeds to have us consider the partial analysis represented by the concept of the feminization of poverty, a concept that leaves out Latinas and lesbians as well as other sexual minorities even though their poverty can be more extreme and more intractable.<sup>192</sup>

Professor Broad’s work is particularly powerful because it brings the issue of transgendered persons into our field of analysis. Even though LatCrit has struggled to avoid or at least to attenuate heteronormativity, thanks in large measure to the groundbreaking work of Frank Valdes and his leadership in the development of many LatCrit projects, much of the discussion has focused on gays, lesbians and occasionally bisexuals. Professor Broad is insistent that the experience of transgendered persons is of special importance because it disrupts binary gender norms.<sup>193</sup> Professor Broad’s analysis reinforces the performance art presentation by Kim Coco Iwamoto, a transgendered person, who participated in the discussion held at LatCrit V entitled “Queering LatCrit Discourse: Confronting Latina/o Homophobia.”<sup>194</sup> Coco Iwamoto conducted a live conversation

186. See Broad, *supra* note 182.

187. See *id.* at 1152.

188. See *id.*

189. See *id.*

190. *Id.*

191. See *id.* at 1149-50.

192. See *id.* at 1150-51.

193. See *id.* at 1159. This disruption of binary categories should be of special interest to Latinas/os who have historically been caught between the white/non-white racial categories of the dominant U.S. racial scheme.

194. At this time, Coco Iwamoto was a third year law student at the University of New Mexico School of Law and had taken several of my courses. I met Coco during her second year when she staged an intervention to force the law school to create unisex bathrooms by circulating a brochure that artfully disclosed her transgendered identity and asked which bathroom s/he should or could use. The Dean resisted making a change for about twenty-four hours when it was clear that Coco

with herself by alternating between Coco-male and Coco-female, talking about a variety of subjects.

Professor Broad's carefully analyzes whether the discursive tool of "situated standpoints" can help us move beyond identity politics to a more textured theory that incorporates difference.<sup>195</sup> Professor Broad provides the theoretical impetus for seeking out the experiences and the voices of lower class women because they have something to teach us. She explains,

[t]he assumption that 'one's everyday life has epistemological consequences and implications—the disadvantaged have the potential to be more knowledgeable, in a way, than the dominant group' is an important mean by which we can create and legitimate subjugated knowledges.<sup>196</sup>

In short, Professor Broad has made an excellent contribution to this symposium: she has woven the core topics of LatCrit Theory such as intersectionality, transformative knowledges, difference as voice and as politics with her sociological perspectives while focusing the discussion on the theme of the symposium. Her critical theory—a queered LatCrit—improves our understanding of LatCrit Theory, and of Queer Theory and the marginality of impoverished sexual minorities. Thus, we are provided with a better analysis of gendered poverty.

In *Perpetuation of Poverty through "Public Charge,"*<sup>197</sup> Professor Lisa Sun-Hee Park provides a cross-disciplinary analysis of gendered poverty. Although this analysis involves legal materials, namely the 1996 Immigration Act (the Illegal Immigration Reform and Immigration Responsibility Act of 1996)<sup>198</sup> and the so-called Welfare Reform Act (the Personal Responsibility and Work Opportunity Reform Act of 1996),<sup>199</sup> the approach is more sociological than legal. It is for that reason and because Professor Park's degree is a Ph.D. rather than a J.D., that I am concluding that this is a cross-disciplinary contribution to LatCrit Theory.

One of the strengths of this paper is that Professor Park is explicitly engaged in a dialogue with Professor Mutua, one of the other authors in this cluster of articles, in her critique of the Feminization of Poverty notion.<sup>200</sup> Professor Park provides specific reasons as to why this concept

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was not to be silenced or appeased. She was a paradigm-shattering experience for many of us. She taught students and faculty to work in coalition by recognizing differences and valuing them.

195. Broad, *supra* note 182.

196. *Id.* at 1165.

197. See Park, *supra* note 183.

198. Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, Sept. 30, 1996, 110 Stat. 3009-346.

199. Personal Responsibility & Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-113, Aug. 22, 1996, 110 Stat. 2105.

200. See Park, *supra* note 183.



fails to reflect the experiences of low-income immigrant women, especially undocumented pregnant Latinas in need of prenatal medical care. Thus, we have a better understanding as to why this Feminization of Poverty concept is flawed and why class-analyses must expand to include structural poverty, race, patterns of relational privilege and the frame that capitalism provides to other social relations.<sup>201</sup>

Professor Park provides a detailed case study of how these two statutes “have created a chilling effect that has discouraged use of Medicaid by immigrants who are *legally* eligible in California.”<sup>202</sup> Consequently, these low-income women receive inadequate prenatal care and have poorer birth outcomes. Professor Park demonstrates that the federal government was slow in clarifying whether those who received certain benefits including Medicaid would be prevented from obtaining legal permanent residency because of the “Public Charge” policy of the INS.<sup>203</sup> The government was so slow, in fact, that it took the INS some three years to exclude these benefits as income maintenance and to discontinue the repayment demands that were being made *illegally* by the California Department of Health Services.<sup>204</sup>

With her article, *Why Retire the “Feminization of Poverty” Construct*,<sup>205</sup> Professor Mutua completes this cluster of three articles that critique the concept of the Feminization of Poverty from different perspectives. Professor Mutua’s article examines this concept historically and concludes that it is seriously flawed and deserves to be withdrawn from use.<sup>206</sup> She concedes that it may have served a useful purpose at one time but by now it has become clear that the concept masks the reality of poverty for whole communities for whom poverty is the norm, for women of color, for sexual minorities and for impoverished men, some of whom are in poverty for the same reasons as women.<sup>207</sup>

Professor Mutua’s article is written as a dialogue with Professors Park and Broad. Her article, more than others in this symposium, evinces that she had a thesis that she presented as a short talk at the conference and that thesis has now undergone a change. Her analysis is deepened and broadened by the observations and analyses of her co-presenters. This technique works particularly well for this topic on gendered poverty because of its nexus to the theme of the conference, i.e., LatCrit Theory and Class. The readers benefit from the interactions at the conference once the authors incorporate those insights into their articles. I would

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201. See *id.* at 1209-14.

202. See text accompanying fn. 42.

203. See text accompanying fn. 47.

204. See text accompanying fn. 50.

205. See Mutua, *supra* note 181.

206. See *id.* at 1171-72.

207. See *id.* at 1172-73.

hope that this technique would be used more frequently in future LatCrit symposia.

In *Reforming and Influencing Public Policy, Law and Religion: Missing from the Table*,<sup>208</sup> Professor Laura M. Padilla explores the reasons why Mexican American women are absent from the spheres of influence. Professor Padilla's important contribution is to insist that, for Mexican American women, these spheres are both secular and religious.<sup>209</sup>

Professor Padilla begins her analysis by situating the Mexican American woman historically. She posits that the colonization of the Mexican American communities has produced women (and men but they are not her focus) who are "powerless [and have] a lack of control over those institutions which have a direct impact on them, such as schools, the political system, and businesses."<sup>210</sup> She further observes that many Mexican Americans internalize "feelings of inferiority, lack of self-worth, hostility, apathy, apparent indifference, passivity, and a lack of motivation in relation to the goals of the dominant society,"<sup>211</sup> This internalization, she opines, "explains an oblique sense of inevitability about oppressive living conditions."<sup>212</sup> I don't disagree with Professor Padilla that we Mexican American women experience powerlessness and have internalized negative impressions of ourselves, and may, at times, feel that change is nearly impossible. However, too many Mexican American women live lives that belie these statements (and others that are equally unqualified). Professor Padilla's article is at odds with this introduction as it offers a more variegated analysis. The powerful stories that she includes provide examples of Mexican American women who exercise power, overcome any internalized doubts they have about themselves and create change in the face of great odds.

Professor Padilla's article is important for another reason. She has become an important voice in LatCrit Theory for those who are linking critical theory, especially from the perspective of discrete racial/ethnic communities, with progressive religious theory and practices. There is a split among critical theorists, including LatCritters, about the possibility of organized religions being progressive.<sup>213</sup> Yet, organized religions con-

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208. See Padilla, *supra* note 185.

209. See *id.* at 1225.

210. *Id.* at 1226.

211. *Id.* citing Jeanette Rodriguez, OUR LADY OF GUADALUPE: FAITH AND EMPOWERMENT AMONG MEXICAN AMERICAN WOMEN at 61 (1994).

212. See Padilla, *supra* note 185.

213. See, e.g., *Religion and Spirituality in Outsider Theory: Toward a LatCrit Conversation* (a cluster of articles by Margaret E. Montoya, Verna Sánchez, Nancy K. Ota, Reynaldo Anaya Valencia, Emily Fowler Hartigan, and Max J. Castro) in 19 CHICANO-LATINO L. REV. 417-503 (1998) and Elizabeth M. Iglesias & Francisco Valdes, *Afterword: Religion, Gender, Sexuality, Race*

tinue to be an important force in Latina/o communities and to ignore them places our theoretical project at the risk of being irrelevant to the very communities we strive to serve.

### III. MOVING LATCRIT THEORY AND PRAXIS INTO LATINA/O COMMUNITIES

In July 1999 Professor Danny Solarzano<sup>214</sup> introduced me to Professor Marcos Pizarro, who teaches Chicana/o Studies at San Jose State University in California. Prof. Pizarro was organizing a group of educators and community activists to work with K-12 teachers involved with Latina/o youth. Over the next two years a group formed, calling itself MAESTROS, and sponsored a series of workshops and a Summer Institute in June, 2001. While each of the workshops included presentations on curriculum and pedagogy, the purpose of the group has evolved into one that focuses on process not on a product per se.

As the LatCrit scholar and law professor in the group, I have attempted to share lessons learned through LatCrit projects with the MAESTROS group. Much of what I have contributed to the group has been an outgrowth of the theory developed within LatCrit; it has been my attempt, borrowing Sumi Cho and Robert Westley's evocative phrase, to "perform the theory."<sup>215</sup> Thus, we in MAESTROS, have been attentive to the issue of anti/essentialism choosing to call ourselves "*raza*" instead of either Chicanas/os or the more inclusive Latinas/os. *Raza* has the advantage of linking us to our mixed linguistic roots and to emphasize our racialized identities. MAESTROS, like LatCrit, is also committed to anti-subordination—we are cautious about issues of differences based on race, gender, sexual orientation, language, religion, etc. We intervene to insure that we are not unthinkingly reproducing power inequities. We have consciously involved, mostly through Prof. Pizarro's networks and outreach, educators, activists, and organizers from California, Arizona and New Mexico, all of whom are involved with low-income *Raza* communities. Our workshops have experimented with several of the core issues thematized and theorized by LatCrit scholars, such as bilinguality, voice and silence, identity, religion, and class. The pedagogical workshops have incorporated hip-hop music, plays about farmworkers, humor and gang subcultures.

At the Summer Institute, I demonstrated the work that had been developed by my law students for K-12 teachers in a seminar I taught last spring. In a loose collaboration with Professor Juan Velasco's class on Chicana/o literature at Santa Clara University, my four students de-

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and *Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19 CHICANO-LATINO L. REV. 503 (1998).

214. See, Solarzano & Yasso, *supra* note 31 *et seq.*

215. See, Cho & Westley, *supra* note 32.

veloped PowerPoint presentations on NAFTA and the WTO, the Chicano/a youth movement, stereotyping of indigenous populations and the drug war. My purpose is to give importance to the writing by law students by making their work product available to K-12 teachers. This is an experiment in *raza* literacy on several levels—to teach law students to write for lay audiences as well as to make race-based and other progressive materials available to teachers.

The educational model we are developing through MAESTROS includes several components: participant input, welcoming & parting rituals, work circles, and curricular & pedagogical workshops. But what we are endeavoring to create is not a model as such; instead, we are engaged in producing an educational ethic that has relevance for any level of education. That ethic is based on these values and commitments: love and respect for students, trust, a foundation of *familia y historia*, and an appreciation for the power of *palabras*, vocabularies and truth.

What follows is an excerpt from an article<sup>216</sup> describing the work of the MAESTROS group and a poem, both written by Professor Pizarro.

#### LIVING EDUCATIONAL REVOLUTION

We have attempted to define our work, encapsulating our approach and ethic, as *Raza Studies*. We adopted this label because some of our members were using this as a way of acknowledging that they were not doing the typical Chicana/o Studies work and that they were working with diverse populations that also included other Latinas/os. We use this term as a way of symbolizing these realities (and have no affiliation with the programs who use this label in their titles or courses). We provide this definition now because it reinforces the ideas introduced earlier and allows readers another opportunity to understand our work.

For MAESTROS, *Raza Studies* transcends pedagogy and curriculum, going beyond approaches to learning and toward approaches to living. The whole person (students and teachers) enters the classroom and that is who must teach and who must learn.

*Raza Studies* is holistic education [emphasizing mind, body, spirit, and heart] in which we meld methods, content, identity issues, policy/political struggles, family and history, via student-centered (context-specific), spiritually-principled, problem-posing that is based on community service learning/collaboration and develops organizing skills. This is grounded in *raza* ways of knowing and seeks a new form of literacy--*raza* literacy.

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216. See, Marcos Pizarro, *Seeking Educational Self-Determination: Raza Studies for Revolution*.

Note: We look at history in unique ways. It is not the westernized construct of the past. We are history as we live with ancestors, descendants, and living families simultaneously. We refer to this as *raza* wisdom. Finally, we assert our moral authority to transform education!

The daily lives of *Raza* youth demand that we transform our work in education. They need researchers who engage in social justice work. They need researchers who use their publications and research to move toward concretely addressing the problems they regularly face. This work, therefore, ends with a call for researchers and journals to use their work to engage in social justice, acknowledging that the blind belief in the need for their objectivity in fact typically reaffirms and supports a status quo that is waging war against *raza* youth and other working class students of color.

Our goal is to help teachers adapt our work in MAESTROS to their own classrooms. The ethic we describe as well as the process itself is one that can be done in any educational setting. Our members have applied it to their work in lower elementary, middle school, high school, college and law schools. For now, our work focuses on exposing *raza* and our allies to the MAESTROS ethic and process. Revolution begins with breaking people's consciousness. When they are able to liberate their minds from the constrictions imposed by the norms of schooling, then they can be creative and will know how to begin to look for and tap into the resources and people who will help them develop this approach in their own work. In the end, MAESTROS is simply an idea, lived.

For Miguel

By Marcos Pizzaro

For Miguel

i'm a 6<sup>th</sup> grade teacher, it's 1991, and Miguel Sanchez is going down.  
He's going down brothers and sisters.  
going down.

dan dallape,

the Vice Principal of Oak Street Elementary School on the West Side  
of Inglewood, CA,  
a working-class community of Raza,  
has made it his personal mission to take Miguel Sanchez down:  
because Miguel is learning his own power  
because Miguel scares him  
because the only way to stop the revolution is to suffocate the spirits  
of our youth  
and so Miguel Sanchez is going down.

He's going down and

we feel it; we complain about the schools  
we see it; we complain about teachers  
we smell it; we complain about counselors  
we hear it; we complain about administrators  
we taste it; we complain about "the system"  
and Miguel Sanchez is going down.

He's going down,

and we watch,  
all of us, watch,  
and He's going down.

10 years later, too long, *MAESTROS* asks us: What are we going to  
do about it?

concretely, what are we going to do about it?  
everyday, what are we going to do about it?

we are a pro-active effort to make sure

Miguel Sanchez does not go down!  
because if He does, if She does  
-> they do assault our young women just as forcefully, but in different ways  
if They go down,

We all go down brothers and sisters  
We're all going down...

wake up

[Note: the names have not been changed because we must speak truth]