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Academic Mestizaje:
Re/Producing Clinical Teaching and
Re/Framing Wills as Latina Praxis

Margaret E. Montoya*

J.M.J.1

* Associate Professor, University of New Mexico School of Law, J.D. 1978 Harvard, A.B. 1972, San Diego State University. This essay was improved by comments from Ann Scales, Christine Zuni, Beth Gillia, and my stepson, Charles G. Boyer. Mil gracias. Unas palabras de agradecimiento para las organizadoras y el organizador de este symposia. Francisco Valdes, Laura Padilla y Gloria Sandrino nos han abierto un espacio donde podemos colaborar. Ahora nos toca llevar a cabo este intercambio académico reconociendo que este tipo de conversación tiene riesgos y las relaciones que estamos estableciendo todavía son delicadas y frágiles.

I went to Catholic school in northern New Mexico and under the nuns’ watchful eyes, we unfailingly wrote "J.M.J." at the top of the page as we began our work. We were invoking the assistance of Jesus, Mary, and Joseph or "J.M.J." With all of the innocence of children we really believed that Jesus and his familia would inspire us. We also trusted with equal fervor in the guardian angel perched on our left shoulder. Our invocation of Jesus, Mary, and Joseph and our relationship with our guardian angel animated our pencils and released a force that we were sure brought greater coherence and brilliance to our written work. Even in this agnostic age and in secularized spaces, angels may be perched on our shoulders. Perhaps "J.M.J." is the religious corollary to the "C.S." or "con safos," the code that sometimes appears with Chicano/a graffiti. Cultural critic Jose Antonio Burciaga explains:

The c/s sign-off means con safos, and translates literally as “with safety.” It was meant as a safety precaution, a barrio copyright, patent pending. No one else could use or dishonor the graffiti. It was an honorable code of conduct, a literary imprimatur. Like saying “amen,” it ended discussion. Above all, it meant, “anything you say against me will bounce back to you.” . . . Chicano artists and writers of the late sixties and early seventies often used the c/s symbol in signing their works, especially when the works were political or cultural in nature. . . [M]y ending logo is the c/s sign, like an amen. Whether you agree with me or not, whether you like it or not, with all due respect, this is my reality.

c/s.
INTRODUCTION

¿Cómo comensaremos? ¿Con un grito, en silencio, con una oración? Hay que pensar esto porque estamos iniciando una meta muy ambiciosa: proponemos crear un nuevo discurso legal—un discurso de crítica latina—con un enfoque en la experiencia latina y con el propósito de usar la teoría para mejorar la situación de nuestras comunidades latinas. Actualmente académicos estadounidenses tienen poco conocimiento, no nomás de la historia de las comunidades latinas pero también de las condiciones actuales en que tratan de sobrevivir. Nosotros "los LatCrits" buscamos la oportunidad de (re)presentar el pasado y analizar el presente con esperanzas de moldear el futuro.

Comenzamos con confianza, confiando que palabras, ideas, y teorías puedan aliviar la miseria y la desesperación en que vive tanta gente latina. Comenzamos también con la confianza que este tejido intelectual y académico, esta nueva crítica latina, represente un esfuerzo colaborativo que nos pueda sostener en solidaridad.²

I am no longer as certain as I once was that there are angels among us, but I have no doubt that there are devils. Spaces and places, both physical and discursive, are inhabited by the demons of segregation, subordination, language prohibition, and exclusion. So I begin in Spanish as a cultural exorcism to see if we can summon


² We need to think about how we should begin: with a cry, in silence, with a prayer? We have set out on an ambitious quest: we propose to create a new legal discourse, a LatCrit discourse, focusing on the Latina/o experience and using theory to improve the material conditions of latina/o communities. Currently, most U.S. academics know little about either the history of latina/o communities or the conditions in which they try to survive. We, "the LatCrits," seek the opportunity to (re)present the past, analyze the present with hopes of molding the future.

We begin in the hope that words, ideas, and theories can alleviate the misery and desperation in which too many Latinas/os live. We also begin with the hope that this intellectual and academic tapestry that is becoming LatCrit will be a collaborative effort that will sustain us in solidarity.
forth those devils and in resisting and defying them, banish them. I begin in Spanish to denounce and counteract attitudes of linguistic bigotry by claiming Spanish as a primary mode of expression for public and intellectual discourse. This call to linguistic reterritorialization as a counter hegemonic strategy and bilingualism as emblematic of LatCrit space is not intended to create barriers or boundaries among those of us who do not speak Spanish. Rather, it is a cry of resistance against the monolingualism that has been imposed on us, on our parents, and on our communities.

What follows is an analysis that draws connections between activist teaching and activist scholarship and posits that it is the activism, the focus on the needs of Latinas/os, that makes them community service. In Part I I describe the community lawyering program, one of the clinical law options, available at the University of New Mexico School of Law. In Part II I undertake to re-frame the law of wills in order to make this end-of-life ritual more relevant to the lives of Latinas/os. Entonces enacto una crítica latina / Then I enact a LatCritique of academic discussions and Outsider discourses. I conclude by examining our roles as theorists and practitioners employing an anthropological model, LatCrits as "native informants" cum ethnographers.

I have called this paper "Academic Mestiza: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis". Mestiza and mestizo are the new world Spanish word for the members of the racial group that resulted from the sexual relations between the Spanish conquistadores and the indigenous women of the Americas. Different racial mixtures with their political and economic valences continue to be a prominent feature of Latin American societies.

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3 Choosing the right word is difficult here; perhaps rape is the accurate term, but it denies agency to all the indigenous women in the past who were involved in cross-racial relations.

4 Latin American countries today have varying proportions of mestizo/a populations with Paraguay and Mexico having high levels (94% and 84.8%, respectively) and Cuba and Dominican Republic low levels (8.5% each). See CLAUDIO ESTEVA-FABREGAT, MESTIZAJE IN IBERO-AMERICA 335 (John Wheat
Chicano/Latino scholars going back at least to José Vasconcelos have employed the notion of racial mixing or *mestizaje* as a metaphor for their academic work, emphasizing the melding together of traditional discourses with Latino/a experience. Hybridity—a mixing of languages, disciplinary practices and discourses—has been an enduring characteristic of Chicano/a and Latino/a literary, artistic, and academic production. This paper deliberately seeks to re/enact academic hybridity or *mestizaje*, proposing *mestizaje* as a LatCrit practice—as a correction to and subversion of the repressive and stultifying character of traditional legal discourse.

I. ACTIVIST TEACHING

Pedagogy is, in part, a technology of power, language, and practice that produces and legitimates forms of moral and political regulation, that construct and offer human beings particular views of themselves and the world. Such views are never innocent and are always implicated in the discourse and relations of ethics and power. To invoke the importance of pedagogy is to raise questions not simply about how students learn but also how educators (in the broad sense of the term) construct the ideological and political positions from which...
they speak. 

Henry Giroux

Activist teaching, specifically what I’ll call critical teaching, refers to a pedagogy that is sensitive to the fluidity of power relations, the constitutive nature of legal practices, and the synergies created by the metamorphoses of legal processes when distorted, altered, and reclaimed by Outsiders whose identities have multiple manifestations and expressions.

The law clinic in which I have been teaching has developed community sites throughout the state where we provide services for low income clients who are primarily persons of color, such as un/documneted persons at colonias near Las Cruces; black lung miners in Raton, New Mexico on the northern border with Colorado; female inmates of the county jail and clients in a variety of multi-service centers, including mental health clinics and senior citizen centers; as well as infants and toddlers born to mothers with substance-abuse problems in a multidimensional program pioneered by the pediatrics department of the medical school. In addition, we have begun to provide services for small businesses and non-profit organizations. One of the more innovative programs begun by one of my collaborators, Professor Alfred Mathewson, an African American who also teaches business courses and sports law, is

8 See discussion infra Part III.
9 See discussion infra Part II.B.
10 This phrase is another articulation of the notion of academic mestizaje, the organizing theme of this paper.
11 See Guadalupe T. Luna, “Agricultural Underdogs” and International Agreements: The Legal Context of Agricultural Workers Within the Rural Economy, 26 N.M. L. REV. 9 (1996) in which colonias are defined as “rural and unincorporated subdivisions characterized by substandard housing, inadequate plumbing and sewage disposal systems, and inadequate access to clean water. They are highly concentrated poverty pockets that are physically and legally isolated from neighboring cities.” Id. at 30.
intended to benefit recipients of athletic scholarships, principally black college athletes, by training coaches and counselors about NCAA eligibility rules.

Within this community lawyering context, the students are required to undertake individual representation of clients in a variety of matters — usually involving public benefit programs, family law, and wills, but, occasionally, even such areas as land-use planning. The students are also required to participate in collaborative projects examining issues systemically and developing transdisciplinary approaches with and for the affected communities. This clinic is a highly collaborative one in which the faculty have created spaces where we can bring our individual theoretical interests into clinical teaching. Thus, Alfred Mathewson has been developing the notion of clinician as coach, reframing sports metaphors to emphasize aspects of participation that are collaborative and affiliative. Another colleague this semester, Professor Christine Zuni, a Pueblo woman from Isleta, emphasized for us the centrality of culture and the delicacy and potentiality of working within indigenous communities, potentiality not only in the sense of work as yet undone but also in a different sense: indigenous cultures present us with spaces, topics, and techniques some of which are penetrable by, and available to, outsiders; others must be respected as off limits and not to be breached by outsiders. The delicacy in working with indigenous populations comes from the fluidity of these categories and in learning one’s proper role and place in the representation process.

My own emphasis has been on the relation between narrative and identity formation on the one hand and such legal skills as problem solving, interviewing, and counseling on the other, refining the existing scholarship that deploys translation practices and ethnography as metaphors for cross-cultural lawyering. My clinical teaching has permitted me to reflect on why it is crucial for us as law professors and lawyers to re-territorialize the spaces that have
been colonized linguistically, legally, architecturally, and spiritually.

Within the clinic we work with the students on story gathering, a process of learning both individual and collective narratives, the individual "problem-story" of the client but also the collective stories of the client's community. We endeavor to identify core information that is necessary to understand, decode and recode the client's narratives into acceptable legal approaches responding to the client's needs. For example, after examining the scholarship on lawyer as translator or ethnographer, Professor Zuni invited Esther Yazzie, a certified Navajo translator, to describe and enact the skills necessary to work successfully with language interpreters. Ms. Yazzie's presentation debunked for all of us the idea that languages are transparent, with representations of reality somehow existing apart from language.

Simply put, communities live within differently conceived realities, and our attempts to fashion legal options can require us to

12 As one enters the typical room for an academic conference and looks at the way it is set up, it is clear that the room is gendered and raced -- gendered male and raced white. The linearity and order of the furnishings -- chairs in their militaristic formations, rows within exact rectangles facing forwards towards a dais equipped with a podium and microphone, authority-creating accoutrements which hierarchical and epistemic constraints on interactions. Such arrangements make it harder to see others' faces and to read one another's eyes, and harder to think messy, disruptive, chaotic, and subversive thoughts.


14 One of several examples that Ms. Yazzie provided involved different conceptualizations of time: February translated into Navajo as the time when the baby eagles are born.
work within realities of which we are unaware. Therefore, we must be mindful of our potential for harming our client’s larger interests, even when we prevail in our lawyering efforts.

We have been using transdisciplinary, multicultural and polylingual concepts and practices to introduce new vocabularies, techniques, and approaches to the students, proposing different schema or frames for understanding and interpreting information and experience. Such practices and concepts help us as well as our students reposition our/them/selves with respect to how we/they listen and interact with clients and respond to the multiple issues that clients bring.

Most students find the work exhilarating, complex, and engaging, but some leave with feelings of anguish, ambivalence and sometimes cynicism because of the ambiguity of justice. These feelings are caused at one level by the fact that we work very hard for our clients, but for the most part we do not substantially improve the material conditions of our clients’ lives. Rarely are our clients pulled out of poverty or their cyclical involvement with the criminal justice system, nor do we end the degradation they suffer at the hands of the multiple bureaucracies that control their lives. When we do prevail in our cases, it is an important improvement in the lives of clients but such improvements are usually not enduring nor sufficiently life-altering.¹⁵

Feelings of anguish, ambivalence, and cynicism about social justice are also provoked by the limitations of traditional legal discourse. Legal rights, claims, defenses, and remedies can circumscribe and curtail our ability to collaborate with our clients to alter the realities of their lives and ours.

The activism in my teaching comes in helping students listen to clients, assisting them to address problems and develop un/conventional options and remedies in conjunction with their clients, and then utilizing reflection to tolerate the ambiguities

¹⁵ I do not mean to minimize the clients’ need for the divorces, or the guardianships, or the criminal defense that the clinic and the Law provide.
implicit in legal processes and outcomes. To paraphrase Henry Giroux,\textsuperscript{16} teaching and pedagogy become critical when we recognize their potential for producing ill/legitimate forms of moral and political regulation.

The synergy between my teaching and scholarship comes in working with students to identify the limits of traditional legal discourse and traditional legal practices and then developing ideas that challenge, subvert, and/or transform discourse and practices. Occasionally, the process moves from my scholarship to the classroom or clinic rather than the other way around.

II. ACTIVIST SCHOLARSHIP: WILL-WRITING AS LAT/CRIT PRAXIS

What becomes apparent from Deena González's revisionist history is that the Spanish/Mexican women were growing increasingly aware of the collusion between church and state in the newly colonized lands.

In response, the wills gained a clearly political valence, solidifying an important collaboration between the women's private and public lives. The wills were therefore a means of using the form provided by the courts both to dispose of one's possessions \textit{and to officially mark the significance of one's life.}

Carl Gutierrez-Jones\textsuperscript{17}

What follows is an example of a tentative analysis of the boundaries of the law of wills and how such boundaries function in

\begin{itemize}
\item \textsuperscript{16} See supra text accompanying note 7.
\item \textsuperscript{17} CARL GUTIÉRREZ-JONES, RETHINKING THE BORDERLANDS: BETWEEN CHICANO CULTURE AND LEGAL DISCOURSE 155 (1995) (emphasis added).
\end{itemize}
hegemonic ways to compel a certain view of the world — a view that devalues, displaces, and obfuscates the "wealth" of subordinated communities. Focusing on recent scholarship on hispana will-writing practices using the work of historian Deena González and others, the Chicano cultural critic Carl Gutierrez-Jones posits that narratives about loss are a means of resistance against U.S. hegemony through a reverse manipulation of legal rhetoric. Specifically, Gutierrez-Jones declares that “[González’s] research points to an important history of politicized mourning in which [Spanish-speaking] women used Anglo institutional practices to define both their dealing with loss and their resistance to post-treaty Anglo rule.”

With Gutierrez-Jones’s historical analysis in mind and my objective of identifying the limits of contemporary legal discourse, I have begun to examine wills as providing a discursive space for experimenting with counter-hegemonic legal practices, including the use of autobiographical narratives within legal documents.

We begin with some questions, pertinent to wills generally, but especially poignant when thinking about Latinas: Who decides what is considered “wealth” for purposes of end-of-life planning? What are the cultural dimensions of “wealth”? What are the consequences of providing a legal mechanism for the transfer of money or its equivalents? What losses do such legal mechanisms represent to communities that do not participate in the economies of pre-determined “wealth”?

Does the will-writing ritual displace other more culturally appropriate end-of-life rituals, displace other rituals of public mourning? Can will-writing be transformed to provide a time and place for public mourning practices that are consistent with a Latina/o view of property, wealth, life and death? In short, can wills be oppositional legal discourse?

18 Id. at 154.
19 My colleague Scott Taylor helped sharpen my thinking in this section. I emphasize that this analysis is tentative and exploratory.
A. Using Wills to Preserve Latina/o’s “Personal” Property

In contemporary times, wills are typically written to exercise the right to decide how one’s property will be disposed of upon one’s death. Wills can be vitally important because all states have laws of intestate succession prescribing how to distribute the property of a person who dies without a valid will. Moreover, wills have also been used to record decisions about guardians for surviving minor children and about who will manage their money and property until they reach maturity.

It is not uncommon for elderly hispanos/as to make wills. From my four years of experience as a clinician, I have noted that many elderly within communities of color indicate an interest in writing wills. Will writing, according to historian Deena González, was not uncommon among hispanas in the 1800’s and I believe it persists to today.

To the extent that will-writing does occur within the Latino community, my concern and the focus of this analysis is with the sentimental and cultural property of Latinas. Nuestras abuelitas, tías, ninas and, of course, our mothers (y quizás debieramos incluir la propiedad de nuestros abuelos, tíos, niños y papás pero ahorita estoy enfocada en la situación de la mujer latina) have quilts, crocheted doilies, knick-knacks, photographs, letters, and other items that are not what the majority culture considers valuable.

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22 This sentence translates as “Our grandmothers, aunts, godmothers, and, of course, our mothers (and perhaps we should include the property of our grandfathers, uncles, godfathers and fathers but at the moment I am focusing on the Latina’s experience). . .


Although these objects have little monetary value, they are embedded with memories and meaning. Moreover, such property, as we shall see below, is linked to the construction of Latinas' individual and collective identities. Such property can represent the encoding of family and, by extension, of community secrets, lore, chismes, mitotes, wisdom and knowledge.

Professor Margaret Radin has developed a concept of property that is related to personhood, property as personal and constitutive of identity.\(^ {23} \) "These objects are closely wound up with personhood because they are part of the way we constitute ourselves as continuing personal entities in the world. They may be as different as people are different, but some common examples might be a wedding ring, a portrait, an heirloom, or a house."\(^ {24} \) Radin considers fungible property, the type of property that is typically transferred through wills, "object[s] . . . perfectly replaceable with other goods of equal market value."\(^ {25} \) For Radin, fungible property is the theoretical opposite of what she has defined as "personal property." The important aspect of Radin's concept for our purposes is the relation of such personal property to the person's identity.

My point in arguing for the expansion of property bequeathed through wills is not to suggest that personal property in Radin's terms is not now included in the inventorying of property. Rather, the personal character of property, how objects are related to the "way we constitute ourselves as continuing personal entities in the world"\(^ {26} \) is contextualized within our family experiences and further embedded within our ethnic and cultural backgrounds.

In most cases the will-writing process begins with a form questionnaire provided to the client, asking about marriages, dissolutions, children and other family relations. An important

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24 Id. at 36.
25 Id.
26 Id.
purpose of such questionnaires is to assist the client in preparing an inventory of his/her “valuable” property. Such questionnaires have not been formulated to capture “personal” or culturally significant property. Traditionally-trained lawyers do not know to ask about quilts, handkerchiefs, or photographs as cultural and “personal” property. Should the client inquire about such bequests, it is likely that the lawyer will suggest that the client use a separate letter to be left with a trustworthy friend or relation in order not to lengthen the will or burden the probate process.

The Uniform Probate Code permits the use of a separate writing for the disposition of tangible personal property even though the writing may not satisfy certain will formalities, such as the execution procedures. Consequently, many states allow the use of a “Tangible Personal Property Memorandum” or other such writing by a person who wishes to dispose of tangible property. However, the statutory requirements impose “a relatively high burden on users of this device.” Even this mechanism is not likely to accomplish the objectives of preserving “personal” property.

The type of “personal” property that passes through wills fits within commonly understood economies of value, namely money. Value and worth are measured almost exclusively by the monetary premium of the good. I propose to expand the types of property bequeathed under wills to challenge the currencies of value imposed by the dominant culture, to contribute to family and community solidarity, and to preserve the role of older Latinas/os as repositories and interpreters of markers of identity.

We all have a stake in expanding legal discourse to allow for such bequests. At the family level, failing to make these types of arrangements may mean that the items are lost, fought over, or that

27 Id. at 190.
30 Id.
their meaning is forgotten. At the community level, failing to preserve this type of personal property means a diminution in our cultural heritage, a loss of histories, and the silencing of the voices of our ancestors, nuestras antepasadas.

Wills have become formulaic for reasons that are both good and bad. Predictability and efficiency have great value in probate matters. Given, therefore, that our communities have relied on this end-of-life arrangement, can we make wills do work that is more consistent with the individual and collective needs and concerns of Latinas? Currently, the disposition of fungible property is what drives the doctrinal and statutory development in this area of law, but much of the property of Latinas -- property that has a gendered quality because it is tied to womanly activities, i.e., kitchen items; sewn, embroidered, woven or crocheted materials; sentimental writings -- has little fungible value and therefore falls outside of formal bequests. Perhaps the undeveloped zones, these lacunae in wills doctrine, permit us to write different kinds of wills, wills written against the grain of conventional systems of property valuation. Wills that protect and preserve the property of value to our communities -- the wealth of our communities.

B. Using Wills to Preserve Autobiographical Stories

Wills may provide a place for the expansion or deformation of the dominant legal discourse to include autobiographical narratives that have legally enforceable consequences. My quest is to find fissures within legal discourse for first-person stories and to invoke the power of the state to protect and sanction the act of narration.31

31 In other papers my interest has focused on narratives that, in various ways, elucidate the workings of legal structures, stories linked to legal analysis, stories confined within law reviews and legal journals. Here my interest turns to autobiographical narratives in documents that have legal consequences. See Margaret E. Montoya, Máscaras, Trenzas y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse, 17 HARV. WOMEN'S L.J. 185 (1994); Melissa Harrison & Margaret E. Montoya, supra note 13; and Margaret
Wills used to be named testaments, as in, Last Will and Testament, providing a place for reflecting upon one’s life and an opportunity to interpret one’s life for one’s progeny. An ancestor’s life story can be an invaluable and irreplaceable gift for the living, even when and if there is no other fungible or personal property to be bequeathed. Moreover, everyone has a story to be told. Wills may offer a place for the telling of these stories.

Shouldn’t wills offer a discursive space for the re/collection of one’s experiences? Shouldn’t narrative, the testament of one’s life, be the object of a bequest? Can’t we return to using wills “to officially mark the significance of one’s life” as Gutierrez-Jones explains was done by nineteenth century hispanas?

C. Using Wills as a Public Mourning Ritual and Rite

Wills can reframe, and, in an oppositional way, redeem conventional legal discourse. Conventional legal discourse undervalues and consequently displaces certain types of wealth that are of importance to the Latina/o community. The emphasis on fungible property has pushed out certain types of property for disposition through wills—not only sentimental and cultural property, but also the non-tangible, the life stories and the distilled wisdom that comes from a reflective life.

Conventional legal discourse may now be redeemed in the sense of accomplishing utilitarian functions while at the same time allowing wills to incorporate aspects of the sacred and the spiritual. I am importing into this analysis a tradition from the Jewish community and a document called an ethical will. Dvora Waysman was a distinguished writer in Israel and an excerpt from her ethical

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32 GUTIERREZ-JONES, supra note 17.
33 See discussion supra beginning of Part II.
will provides an example of what an ethical will sounds like. She writes:

I’m at an age where I should write a will but the disposition of my material possessions would take just a few lines. They don’t amount to much. . . had we stayed in Australia where you my four children were born there would be much more. I hope you won’t blame me for this. Now you are Israelis and I have different things to leave you. . .

I am leaving you the fragrance of a Jerusalem morning. . . unforgettable perfume of thyme, sage and rosemary. . .

I am leaving you an extended family—the whole house of Israel. They are your people. They will celebrate with you in joy, grieve with you in sorrow. You will argue with them, criticize them, and sometimes reject them (that’s the way of families). . .

I am leaving you the faith of your forefathers. Here, no one will laugh at your beliefs, call you “Jew” as insult. . . You can be as religious or secular as you wish, knowing it is based on your own convictions and not because of what the “goyim” might say.

I am leaving you pride. Hold your head high. This is your country and your birthright.

I am leaving you memories. Some are sad. . . the early struggles to adapt to a new country and new language and new culture. . .

And so my children, I have only one last bequest. I leave you my love and my blessing. I hope you will never again need to say: “Next year in Jerusalem.” You already are there—how rich you are!34

34 So That Your Values Live On: Ethical Wills and How to Prepare Them 88 (Jack Riemer & Nathaniel Stampfer eds., 1991). The existence of ethical wills was brought to my attention by Stephen and Rachel Wizner, who graciously provided me with a copy of the book.
Historically, ethical wills have functioned as spiritual and religious writings, a summing up of what one has learned about life. This wisdom extracted from lived experiences can provide a different sort of legacy to one’s heirs.

Will-writing is a frequently employed end-of-life activity. It is difficult to think of other rituals that occur as death is contemplated either because of advancing age or serious illness. Even religious rites such as the last confession or extreme unction, as the sacrament used to be known among Catholics, have become less common as public life has become more secular.

Many within our communities are impoverished in the material goods of modern society, but our communities are rich in personal narratives and in culturally salient and personally valuable property. Our communities have different forms of wealth, but such wealth currently gets squandered or abandoned because it falls outside of what gets transferred formally and legally.

We can and should create mechanisms for the preservation and transfer of this property. Wills may provide one such mechanism. LatCrit theory and practice can create fissures within legal discourse so that other mourning practices and activities connected with the end of life can emerge, practices more consistent with the experiences and communal values of Latinas and Latinos within our communities.

III. HABITS OF SELF-CRITIQUE

A. Turning the Gaze on Me and on Us

Hegemony thus operates in a dualistic manner: as a “general conception of life” for the mass of people, and as a “scholastic programme” or set of moral-
intellectual principles, which is reproduced by a sector of the educated stratum.

Antonio Gramsci (via Carl Boggs)\textsuperscript{35}

The Gutierrez-Jones book is valuable for other observations: his practice of self-critique and use of multivocal text in critical analyses and his encoding techniques.\textsuperscript{36} First, the metaphor in the book’s title, RETHINKING THE BORDERLANDS, defines spheres of cultural conflict, particularly conflict between Chicano artists and the majoritarian sociolegal order but also the patriarchal contestation between Chicanos and Chicanas. Gutierrez-Jones pauses in his analysis to interrogate the propriety of what he calls “non-Chicanas” intervening in the struggle of Chicanas to explore, define, and create our identities. By engaging in this self-critique, he is modeling for all of us an “interrogation of our positionality” as an academic practice. Such an interrogation is particularly salient because of his refusal to conflate gender with ethnicity. Even a Chicano who shares significant life experiences with the Chicana must nonetheless search for interventions which allow him to engage in cross-gender dialogues with Chicanas. He finds such a technique in the multivocal writings of Chicana/Latina novelists and poets.\textsuperscript{37}

Second, the book’s title uses non-traditional capitalizations and juxtapositions, compelling the reader to consider the meaning of the words “RETHINKING THE BORDERLANDS” in relation to its subtitle “Between Chicano Culture and Legal Discourse.” The title

\textsuperscript{36} GUTIÉRREZ-JONES, supra note 17.
\textsuperscript{37} GUTIÉRREZ-JONES, supra note 17, \textit{passim}. He pays special attention to the María Elena Viramontes’ short story, “Cariboo Café,” noting that “this story offers a subtle rethinking of positioning -- of what it means as a writer to treat historically silenced others -- . . . [and] has much to say to readers and writers who find themselves in analogous situations.” Id. at 122.
subtly encodes information with its juxtaposition of words that are fully capitalized with words with initial caps. This encoding inveigles us into rethinking all borderlands — geographic, linguistic, artistic, disciplinary — as well as rethinking the boundaries between Chicano culture and legal discourse.

Like Gutierrez-Jones, I too have been prevailing upon you the reader to rethink borders and boundaries and to collaborate in re-framing information. Throughout the paper I have used Spanish, parentheses, or footnotes when moving into a different voice. Rethinking the borders of the page can also add a level of information that is not usually available to the reader. I have decided to play38 with the placement of information on the page because I particularly want this section of self-critique to be heard as having two stances. This section is meant to have a multivocal and dialogic quality. Thus, I have decided to place general comments along the left hand margin and to place more personal comments along the right margin.

Ahora para una crítica latina / Now for a LatCritique of what I have been describing as critical teaching and critical scholarship by examining these ideas against Antonio Gramsci’s ideas of the organic intellectual and the intelligentsia’s role in hegemony. I recognize that these Gramscian comparisons have become routine and even hackneyed in critical literature of late. Nonetheless, I think there may be something important for those of us who come from poor and marginalized communities. Are we organic intellectuals? Can we be academics and remain connected to our communities? Has the situation we find ourselves in changed fundamentally from the 1920’s when Gramsci developed the idea of organic intellectuals—theorists who would emerge and be formed by the lived experiences of the

38 This playfulness is connected to a spirit of "jouissance," of tonterías or outright buffoonery, which belongs in a category of Bakhtinian (or carnivalesque) academic techniques deserving our attention and further analysis.
working class, combining understanding and passion, utopianism and pragmatism, theory and practice, the political and the social. Isn’t this one possible definition of LatCrit theorists?

So, as a preliminary inquiry, is organic intellectuality something to which the Latina/o LatCrit theorist should or even can aspire?

Some of us did emerge and have been formed by the lived experiences of the Latina/o community. But did Gramsci mean formative experiences that are confined to our childhood and youth, given that as adults we live in relative affluence, separated from family and barrio? I suspect that education, socialization, and professionalization have such a strong pull on us, even when we resist the more obvious and perverse aspects of acculturation or assimilation, that it is very difficult for us to remain connected to our communities and even our extended families.

Like many other Latina/o professionals, my family and I don’t live in “the barrio.” We don’t face deprivation (gracias a Dios) and if there is an economic issue for us as a family, it has to do with excess, waste and over-consumption. These are not, I suspect, the life experiences and the quality of angst Gramsci had in mind.

Gramsci’s ideas about organic intellectuals grew directly from his earlier theory of ideological hegemony which is also pertinent to LatCrit work. Gramsci warns us that hegemony is reproduced by the “scholastic programme” of a sector of the educated elite. Carl Boggs, a student of Gramsci, writes:

Ruling elites seek to justify their power, wealth and status, ideologically with the aim of securing general popular acceptance of their dominant position as something

39 See Boggs, supra note 35, at 161.
“natural,” part of an eternal social order and thus unchallengeable. The idea of hegemony. The oppressed strata accept or consent to their own daily exploitation and misery. . . Hegemony thus operates in a dualistic manner: as a “general conception of life” for the mass of people, and as a “scholastic programme” or set of moral-intellectual principles, which is reproduced by a sector of the educated stratum. 40

Consequently, as LatCrit theorists and practitioners, as academics and intellectuals, we must be aware of our role in the reproduction of hegemony, aware that our work operates within complex dynamics of interwoven forces of liberation and oppression, of resistance and dominance. One aspect of this self-critique is to question where we do our work. LatCrit discussions might be different if they were conducted in a colonia along the border rather than in beach cafes.

Ay, what am I saying? I’m seduced by nice hotels, posh restaurants, and chic boutiques more easily than others. More worried than most about my masks and disguises, 41 I have capped off earnest scholarly discussions about subordination in its many forms by searching out local shopping venues. My life is replete with such contradictions.

Our interactions at academic meetings, at LatCrit conferences, might be different if people from the communities for which we work were in attendance, and not just cleaning up after us.

Yet assuming that others want to be at our meetings is an

40 Id.
41 See Montoya, Máscaras, Trenzas y Greñas, supra note 31.
aspect of our arrogance and elitism. Forgetting that others do not have the time, money, or energy to sit around talking about theory is an aspect of our hidden privilege. Many in the community/ies (wherever it/they might be) would likely not want to “interact” with us at academic meetings.

Some of our students are still very much a part of the impoverished communities that create the principal epistemic site for LatCrit theory. Active student participation would inform us of community experiences of which we may be unaware and help us re-establish connections that have attenuated because of our economic and social ascendancy. Some of us experience education as a benefit accompanied by a class-jumping phenomenon, but many of our students are closer to the communities and socio-economic class from which many of us “escaped.”

Another aspect of this self-critique involves how we do our work and how we resist reproducing and re-enacting forms of subordination which we already recognize. Of particular note are the hierarchies of privilege that re-establish themselves as we seek to develop new analyses about the Latina/o experience within legal discourses. We must be attentive to patterns of interactions: Whose voices are amplified while others are silenced? Is my own voice amplified to silence others? Who is identified with the core and who occupies the margin (and, it is instructive to think about who sits where, are there invitadas/os and arrimadas/os)? Are the vocabularies we choose those that include or those that exclude, occlude and elide? How do gender, color, language, sexual identity, and age form, inform and deform our nascent LatCrit movement?

The ivory tower with all its elitism—and because of its detachment—fosters an environment in which we can

42 Those who are invited and those who are made to feel like noncontributing hangers-on.
explore ideas. Our work, the production of knowledge and intellectual capital, is of utmost importance to our communities. This critique is not intended to destabilize the importance of our work but to bring to it a self-awareness of its hegemonic potential.

B. Lat/Crits: "Natives" and Western Wo/Men.
Of Trobrianders and Malinowski

What I am suggesting is a mode of understanding the native in which the native's existence — i.e., an existence before becoming "native" — precedes the arrival of the coloniser. Contrary to the model of Western hegemony in which the coloniser is seen as a primary, active 'gaze' subjugating the native as passive 'object', I want to argue that it is actually the coloniser who feels looked at by the native's gaze... Western [wo]man henceforth became 'self-conscious', that is, uneasy and uncomfortable, in his/her 'own' environment.

Rey Chow

Allow me a final point about "positionality" and academic activism. Our reliance on the discourses and analytical practices of the dominant society makes us complicit in those activities and their hegemonic effects. This dilemma has been noted in post-colonial writings. The editors of The Post-Colonial Studies Reader, in

45 See Ali Rattansi, 'Western' Racisms: Ethnicities and Identities in a 'Postmodern' Frame, in Racism, Modernity & Identity 1 (Ali Rattansi & Sallie Westwood eds., 1994). Rattansi raises a parallel concern about modernity's
identifying the complicity or appearance of complicity of "post-colonial" linkages and articulations with imperial practices, write:

[S]uch complicit activities occur in all post-colonial societies... [and the study of the complicit practices that are arguably more obvious in settler societies] may... be especially useful in addressing the problem of complicity in all oppositional discourse, since they point to the difficulties in escaping from dominant discursive practices which limit and define the possibility of opposition.46

It is precisely this difficulty which can evoke in us the feelings of anguish, ambivalence and cynicism that I earlier attributed to some of my students.47 This concern with complicity can incapacitate us. Paradoxically, this concern is based on an observation that is imprecise because our analytical frames and disciplinary discourses are no longer just "theirs." They have become "ours" -- that's one of the lessons of academic mestizaje.

What makes our academic tasks so difficult and what fills our analytical paths with potholes and cul-de-sacs is that we are simultaneously in and out of the dominant culture. We are at once involved in naming a new reality and in shrugging off realities that have been mis/named on our behalf. We are at once Malinowski, the ethnographer, and Trobriander, the native informant.48 I am constraints (which are related to but different from those constraints imposed by imperial discourse and its epistemic twin, traditional legal discourses). He rhetorically asks, "Is there a contradiction involved in interrogating the nature, foundations, and limits of Western modernity while still using some of its own logics and devices?" Id. at 20.

46 THE POST-COLONIAL STUDIES READER 1, 3 (Bill Ashcroft et al. eds., 1995).
47 See discussion supra end of Part I.
48 See Sarah Williams, Abjection and Anthropological Praxis, 66 ANTHROPOLOGICAL Q. 67 (1993). Williams, a feminist anthropologist, has written what she calls "a silhouette," a representation of an imagined reality. This particular silhouette takes place at a conference on ethnography. A student of Malinowski is giving a talk on the Trobriand Islanders. As Williams imagines the
deploying this anthropological device to elucidate one of the central dilemmas for LatCrit theorists and practitioners: How do we engage Malinowski in a discussion from the perspective of the Trobriander ethnographer? Like the Trobriander, the techniques we have, the frames we use, the discourses we employ are those of the colonizer, those of the dominant culture, and therefore, aren’t we blinded and deafened to an un-named reality within our communities? We are involved in discourses that “Other-ize” our communities, our students, our clients, and ourselves. However, those very discourses can and do ameliorate the oppressive consequences of prior Other-izations. That’s the promise and the challenge of LatCrit theories and practices.

Con safos.

scene what makes this meeting different from any other such meetings is that in the audience is a graduate student of ethnography who is a Trobriander. So Williams asks, “Does the Trobriander read Malinowski in order to know something about his or her identity?” Id. at 74.