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## Latina and Latino Critical Legal Theory: LatCrit Theory, Praxis and Community.

*Latina e Latino Teoria Legal Critica: LatCrit Teoria, Praxe e Comunidade*

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**Abstract**

LatCrit theory is a relatively recent genre of critical “outsider jurisprudence” – a category of contemporary scholarship including critical legal studies, feminist legal theory, critical race theory, critical race feminism, Asian American legal scholarship and queer theory. This paper overviews LatCrit’s foundational propositions, key contributions, and ongoing efforts to cultivate new generations of ethical advocates who can systemically analyze the sociolegal conditions that engender injustice and intervene strategically to help create enduring sociolegal, and cultural, change. The paper organizes this conversation highlighting Latcrit’s theory, community and praxis.

**Keywords:** LatCrit Theory; Anti subordination; OutCrit Theory.

**Resumo**

A teoria LatCrit é um gênero relativamente recente de teoria do direito "outsider" - uma categoria de estudos jurídicos contemporâneos incluindo os estudos jurídicos críticos, a teoria jurídica feminista, teoria crítica da raça, feminismo crítico da raça, estudo jurídico asiático-americano e teoria queer. Este artigo traça um panorama das proposições fundacionais do LatCrit, suas contribuições principais e esforços atuais para cultivar novas gerações de advogados éticos que possam analisar sistematicamente as condições sociojurídicas que engendram injustiça e intervir estrategicamente para ajudar a criar mudança sociojurídica e cultural duradoura. O artigo organiza essa conversaõ destacando a teoria, a comunidade e a prática do LatCrit.

**Palavras-chave:** LatCrit Teoria; Anti-subordinaçãõ; OutCrit Teoria.



## I. Introduction

Twenty five years ago a small group of committed scholars agreed to invest in a new project to produce critical sociolegal knowledge that would initially center on the multiply-diverse conditions and experiences of Latinas and Latinos in the United States and critique how those communities suffered injustice under the color of U.S. law and hegemony. Latina and Latina Legal Theory (LatCrit) since then has sought to develop an intellectual and political program founded on the anti-subordination principle<sup>1</sup>. The professors, lawyers, students, activists, and other social justice workers who have traverse LatCrit theory, community, and praxis continue to pursue the shared goal of critiquing the contemporary legal framework in order to help create a legal order where the aspiration of equal justice for all can become social reality. For the past twenty-five years, LatCrit has programmatically critiqued a myriad of manifestations of the sociolegal constructions of sex, gender, and sexuality, together with race, ethnicity, national origin, language, culture, and class relations, as multidimensional, interlocking, and co-synthetic categories and systems.

To ensure that transnational critical legal thinking does not inadvertently omit LatCrit's systematic development beyond the original Critical Legal Studies movement, this paper overviews LatCrit's foundational propositions, key contributions, and ongoing efforts to cultivate new generations of ethical advocates who can systemically analyze the sociolegal conditions that engender injustice and intervene strategically to help create enduring sociolegal, and cultural, change. This paper seeks to serve and as an

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<sup>1</sup> The term "Latina/o" encapsulates an amalgam of persons and groups, who in turn embody multiple diversities. See generally Francisco Valdes, *Latina/o Ethnicities, Critical Race Theory and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 La Raza L.J. 1, 8 n.31 (1996) (Foreword to Symposium, *Representing Latina/o Communities: Critical Race Theory and Practice*). This term therefore necessarily oversimplifies and centers identity in the colonial relationship while also lacking in gender inclusivity. While fully cognizant of these limitations, we have continued use "Latina/o" generally to signify persons with nationalities or ancestries derived from countries with Hispanic cultures; in the United States, these persons or groups are primarily (but not exclusively) Mexicans or Mexican Americans, Puerto Ricans and Cubans or Cuban Americans as we continue to have these conversation and convene in better/different more inclusive ways to refer to ourselves and our communities. We are cognizant that progressive communities in the United States and Latin American have been using Latinx/Latine as a common denominator we welcome authors within the community to use the term they are most comfortable with. Cf. *Luis Noe-Bustamante, Lauren Mora and Mark Hugo Lopez* Pew Research Institute, *About One-in-Four U.S. Hispanics Have Heard of Latinx, but Just 3% Use It* Young Hispanic women among the most likely to use the term. August 11. 2020. <https://www.pewresearch.org/hispanic/2020/08/11/about-one-in-four-u-s-hispanics-have-heard-of-latinx-but-just-3-use>



introduction to LatCrit theory and organizes the conversation highlighting Latcrit's theory, community and praxis.

## II. LatCrit Theory

LatCrit theory is the analytical framework developed over twenty five years by the sustained scholarly production and activism of activist scholars that have sought to develop functions, guideposts, values and practices that sharpen the social relevance of critical theorizing. It aims to promote theory as a catalyst for lasting social transformation from an anti-subordination perspective.<sup>2</sup> In these twenty five years LatCrit has also become an institution committed to the anti-subordination principle that seeks to give concrete and substantive meaning to this commitment.<sup>3</sup>

LatCrit was born as a result of the conversations started at a colloquium on how Latinas and Latino legal scholars in the United States related to Critical Race Theory.<sup>4</sup> It stemmed as a response "to the long historical presence and general sociolegal invisibility of Latinas/os in the United States."<sup>5</sup> The LatCrit innovation in critical outsider jurisprudence developed as a movement related to Critical Race Theory (CRT) and as part

<sup>2</sup> Sarudzayi M. Matambanadzo, Francisco Valdes, and Sheila Velez, Afterword: Kindling the Programmatic Production of Critical and Outsider Legal Scholarship, 1996-2016, 37 Whittier L. Rev. 439 (2016) See, e.g., Berta E. Hernández-Truyol, Angela Harris & Francisco Valdes, *Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis*, 17 BERKELEY LA RAZA L.J. 169 (2006); Pedro A. Malavet, Afterword, *Outsider Citizenships and Multidimensional Borders: The Power and Danger of Not Belonging*, 52 CLEV. ST. L. REV. 321, 333 (2005); Valdes, *Poised at the Cusp*, supra note 12, at 12; Francisco Valdes, *Rebellious Knowledge Production, Academic Activism, & Outsider Democracy: From Principles to Practices in LatCrit Theory, 1995 to 2008*, 8 SEATTLE J. SOC. JUST. 131, 145 (2009) [hereafter Valdes, *Rebellious Knowledge Production*]; Sheila I. Vélez Martínez, *Towards an Outcrit Pedagogy of Anti-Subordination in the Classroom*, 90 CHI.-KENT L. REV. 589 (2015).

<sup>3</sup> Francisco Valdes, *Legal Reform and Social Justice: An Introduction to LatCrit Theory, Praxis and Community*, 14 Griffith L. Rev. 148 (2005), Valdes, Francisco (2012) "Coming Up: New Foundations in LatCrit Theory, Community, and Praxis," California Western Law Review: Vol. 48 : No. 2 , Article 19. Margaret Montoya, *LatCrit at Ten Years*, 26 CHICANA/O-LATINA/O L. REV. 1 (2006). See also. <https://latcrit.org/about-latcrit/>

<sup>4</sup> Berta E. Hernández-Truyol, Angela Harris & Francisco Valdés, *Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis*, 17 Berkeley La Raza L.J. 169 (2006) Francisco Valdes, Foreword, *Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 LA RAZA L.J. 1, 7 n.28 (1996) [hereafter Valdes, *Latina/o Ethnicities*] (introducing the symposium publication of the 1995 HNBA colloquium). See also Francisco Valdes, Foreword, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997) [hereafter Valdes, *Poised at the Cusp*] (introducing the symposium publication of the first annual LatCrit conference).

<sup>5</sup> Pedro A. Malavet, *Outsider Citizenships and Multidimensional Borders: The Power and Danger of Not Belonging*, 52 CLEV. ST. L. REV. 321, 333 (2005); Francisco Valdés, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997).



of the reaction to the related experiences of subordination under the color of U.S. law and hegemony, and both evolved in resistance to, and critique of, the evolving ideologies and practices of Euroheteropatriarchy marked by capitalism, colonialism, homophobia, nativism, patriarchy and white supremacy that had been left mostly unchallenged by the initial Critical Legal Studies scholars. (Valdes et al) Furthermore, the combination of longstanding occupancy and persistent marginality of Latinas/latinos fueled an increasing sense of frustration among contemporary Latina/o legal scholars, some of whom already identified with CRT [(Critical Race Theory)] and participated in its gatherings.”<sup>6</sup> (Valdes, 1999)

Critical Legal Studies emerged as a loosely aligned and radically progressive network of scholars working in the American legal academy in the latter half of the 1970s. Early CLS scholars sought to inject these diverse theoretical perspectives into the production of legal scholarship as part of a broader political project to reveal the role of law in the social production of class hierarchies and human alienation. As Professor Iglesias has explained the critical analysis brought forth by the Critical Legal Studies scholars involved a wide range of legal fields and launched “a wholesale and highly controversial critique of American style liberalism”.<sup>7</sup> The critiques of CLS scholars interrogated and challenged the transformative potential of liberal rights, they highlighted the concept of indeterminacy of law and the impartiality of judicial interpretation. Critical Legal Scholars played an important role in challenging the public/private rights hypocrisy in American Law. CLS paved the way for the critical legal movement but it also had its short comings. Critical Race Theory scholars challenged CLS practices and theoretical approaches that failed to account for laws complicity in the marginalization of people of color in the United States.<sup>8</sup> At the level of practice, they questioned the whiteness of CLS (as well as the elite maleness of it) and the way these social positionings affected, and potentially limited, CLS analyses. At the level of theory, race critics questioned CLS proposition to abandon the “rights discourse” without taking into consideration the African American experience and the way in informed for example the Civil rights Movement in important ways.<sup>9</sup>

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.Francisco Valdes, *Theorizing “OutCrit” Theories: Coalitional Method and Comparative Jurisprudential Experience-RaceCrits, QueerCrits and LatCrits*, 53 U. MIAMI L. REV. 1265, 1299 (1999).

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Athena D. Mutua, *The Rise, Development and Future Directions of Critical Race Theory and Related Scholarship*, 84 Denv. U. L. Rev. 329 (2006) See generally *Minority Critique of the Critical Legal Studies*



In turn, Critical Race Theory emerged to challenge the very foundations of the liberal legal order.<sup>10</sup> CRT moved beyond the non-critical liberalism that often cabined civil rights discourses and a non-racial radicalism that was a line of debate within CLS.<sup>11</sup> Professor Crenshaw has emphasized that the eruption that served as a point of departure in CRT's trajectory was the institutional struggle over race, pedagogy, and affirmative action at America's elite law schools. That debate set the stage for a broader inquiry into the relationship between race and law, and for a critical interrogation of traditional legal education more broadly.<sup>12</sup> As CRT continued to develop as a theoretical movement it made abundantly clear that despite the great victories of the civil rights movement, liberal legal thought had consistently failed to engage the experience of African Americans and other outsider groups in the United States.<sup>13</sup>

As its origins indicate, this Latina/o-identified genre of outsider jurisprudence was conceived as a movement closely related to CRT. "Because it was born of the CRT experience, LatCrit theory views itself as a "close cousin" to CRT, a cousin that always welcomes CRT, both in spirit and in the flesh, to its gatherings."<sup>14</sup> But these roots include a critical assessment of CRT. This birthing reflects both the strengths and intersectional challenges of CRT.<sup>15</sup> LatCrit theory from its very inception has been determined to embrace CRT's original anti-subordination vision, CRT "methodologies, stances and emphases" remain integral to LatCrit: the social construction of race, the relationship between traditional legal scholarship with power and politics, the creation of a project of social justice and transformation, and the importance of embracing subjectivity.<sup>16</sup> LatCrit theory also departs from CRT in important ways, namely the inclusion of queer theory

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*Movement*, 22 HARV. C.R.-C.L. L. REV. 297 (1987) (including articles by Richard Delgado, Mari Matsuda, Patricia Williams, and Harlon Dalton); Kimberle Williams Crenshaw, *RaceReform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1356-86 (1988), re-printed in part in CRT: CASES, *supra* note 1, at 27-38; Richard Delgado, *The Ethereal Scholar: Does CriticalLegal Studies Have What Minorities Want?*, 22 HARV. C.R.-C.L. L. REV. 301, 302 (1987).

<sup>10</sup> See Derrick Bell, *RacialRealism*, 24 CONN. L. REV. 363, 377 (1992) [hereinafter Bell, *Realism*] (arguing that "a commitment to racial equality merely perpetuates [blacks'] disempowerment").

<sup>11</sup> Crenshaw, Kimberle Williams, "Twenty Years of Critical Race Theory: Looking back to Move Forward Commentary: Critical Race Theory: A Commemoration: Lead Article" (2011). Connecticut Law Review. 117.

<sup>12</sup> *Id.*

<sup>13</sup> Athena D. Mutua, *The Rise, Development and Future Directions of Critical Race Theory and Related Scholarship*, 84 DENV. U. L. REV. 329 (2006).

<sup>14</sup> Francisco Valdes, *Foreword - Latino Ethnicities, Critical Race Theory, And Post-Identity Politics In Postmodern Legal Culture: From Practices To Possibilities*, in 9 LA RAZA L.J. 1, 26-27 (1996).

<sup>15</sup> Francisco Valdes, *Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience-RaceCrits, QueerCrits and LatCrits*, 53 U. MIAMI L. REV. 1265 (1999).

<sup>16</sup> Steven W. Bender & Francisco Valdes, *At and Beyond Fifteen: Mapping LatCrit Theory, Community, and Praxis*, 1 U. MIAMI RACE & SOC. JUST. L. REV. 177, 187 (2011).



and post-colonial theory as an integral part of the LatCrit discourse.<sup>17</sup> LatCrit has benefited greatly from, and built substantively upon, the pioneering work of critical feminist legal theories and critical queer approaches that fundamentally challenged the jurisprudential architecture for traditional institutions like the family (assumed to be heterosexual and patriarchal) and the putatively objective and universal perspective of Law, and its “rational” actors (assumed to be white and cis-male). The influence of these sister critical postures became key to the theory, community, and praxis that LatCrit academics and activists have continuously sought to expand and develop. As Athena Mutua has highlighted the emergency of sister theoretical stances has actually deepened and broadened the Critical Race Theory project by providing the necessary intellectual expansion and theoretical bridges between identity politics and a politics of solidarity based on difference.

These important contributions from critical feminists, critical queer approaches and CRT have been taken by LatCrit theory in a direction that facilitates the development of an incipient big tent for all Outcrit legal studies. Outsider scholars have embraced of foundational commitment to anti-subordination praxis reinforced antiessentialism's call for serious, substantive consideration of the linkages between racial and other forms of injustice.<sup>18</sup> LatCrit theory proceeded from the understanding that “identity” is always a constitutive element of law and policy, and that multiple identities are always implicated in the adoption and imposition of any particular legal or policy regime. It acknowledges the centrality and relevance of “difference” in the understanding of the multiple identities embodied by all individuals, and messily present in every social group. LatCrit theory is presently firmly grounded in anti-subordination, as a normative anchor and substantive successor to the anti-discrimination principle, as elaborated by outsider scholars in previous years. The anti-subordination principle highlights intersectionality, anti-essentialism, and multidimensionality. Anti-subordination refers to a positionality that challenges practices and policies that by intent or effect enforce the secondary social status of historically oppressed groups. It also strives to develop practices and policies

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<sup>17</sup> See Francisco Valdes, “Coming Up: New Foundations in LatCrit Theory, Community, and Praxis,” 48 CAL. W. L. REV. 505 (2012).

<sup>18</sup> Francisco Valdes, Theorizing “OutCrit” Theories: Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits and LatCrits, 53 U. Miami L. Rev. 1265 (1999)





capable of redressing entrenched structures of inequality.<sup>19</sup> Further, the anti-subordination principle grounds the substantive insights and gains of “OutCrit” by framing *an enduring social justice that achieves systemic and cultural transformation* as the ultimate marker of relevance in the articulation of theory and the production of knowledge.<sup>20</sup>

#### a. LatCrit Values, Functions and Guideposts

The development of LatCrit theory has been a deliberate effort. in more than one way. It had to be intentional because it required recognition of how the law had failed outsider groups and has drifted away from justice as an aspiration. It has also been deliberative, as it has required an ongoing conversation within outsider groups towards the construction of the big tent of OutCrit Theory. LatCrit theory also aspires to be *un ejercicio de liberar* (of liberation) in the sense that it seeks to promote anti-subordination as a goal.<sup>21</sup>

Through the years LatCrit scholars have effectively prompted an explicit collective listing of values describing the foundations of LatCrit theory, praxis, and community: intergroup justice, antistubordination, anti-essentialism, multidimensionality, praxis/solidarity, community-building, critical/self-critical, ethical, transnational, and interdisciplinary. (Bender & Valdes 2011) Since early on LatCrit scholars have identified that LatCrit is grounded in four “functions”: (1) the production of knowledge; (2) the advancement of social transformation; (3) the expansion and connection of antistubordination struggles; and (4) the cultivation of community and coalition, both within and beyond the confines of legal academia in the United States.<sup>22</sup>

LatCrit scholars have also agreed on seven “guideposts” accompanying these four functions. The guidepost serve as a reminder of where critical theory comes from are what are our aspirations. These guideposts are: (1) Recognize and Accept the Political

<sup>19</sup> See generally Owen M. Fiss, *Groups and the Equal Protection Clause*, 5 PHIL. & PUB. AFF. 107 (1976); Reva B. Siegel, *The American Civil Rights Tradition—Anticlassification or Antistubordination?*, 58 U. MIAMI L. REV. 9 (2004); Marc Tizoc Gonzalez et. al, *Afterword: Change and Continuity: An Introduction to the LatCrit Taskforce Recommendations*, 8 SEATTLE J. FOR SOC. JUST. 303, 304 (2009) (on LatCrit’s anti- subordination positionality).

<sup>20</sup> Sarudzayi M. Matambanadzo, Francisco Valdes, and Sheila Velez, *Afterword: Kindling the Programmatic Production of Critical and Outsider Legal Scholarship, 1996-2016*, 37 Whittier L. Rev. 439 (2016)

<sup>21</sup>

<sup>22</sup> Francisco Valdes, *“Coming Up: New Foundations in LatCrit Theory, Community, and Praxis,”* 48 CAL. W. L. REV. 505 (2012).



Nature of Legal “Scholarship” Despite Contrary Pressures; (2) Conceive Ourselves as Activist Scholars Committed to Praxis to Maximize Social Relevance; (3) Build Intra-Latina/o Communities and Inter-Group Coalitions to Promote Justice Struggles; (4) Find Commonalities While Respecting Differences to Chart Social Transformation; (5) Learn from Outsider Jurisprudence to Orient and Develop LatCrit Theory and Praxis; (6) Ensure a Continual Engagement of Self-Critique to Stay Principled and Grounded; and (7) Balance Specificity and Generality in LatCritical Analysis to Ensure Multidimensionality.<sup>23</sup>

These functions and guideposts have led LatCrit scholars, experientially, towards four supplementary postulates, which collectively help to represent the development of LatCrit consciousness based on the shared work and lessons. The first postulate is simple: that our shared goal is a post-subordination society. The second postulate turns to execution: to get there from here, we need to generate transformative change at both micro and macro levels of human life and interaction. More specifically, the third postulate reaffirms a fundamental LatCrit conviction: that we need principled and proactive critical coalitions to produce post-subordination gains at both the micro and macro levels of transformation. The fourth postulate concludes with a similar reaffirmation of established LatCrit imperatives: that only shared substantive principles and principled practices, explicitly stated and critically applied as summarized below, can provide a sufficiently sturdy foundation for critical coalitions capable of resisting any devolution toward mere interest-convergence.

LatCrit theory also recognizes the need to accommodate “*rotating centers*” and “*shifting bottoms*.”<sup>24</sup> This requires recognizing the existence of diverse marginalities, which are sometimes the center of the struggle and should take a leading role, while at the same time recognizing that, depending on the circumstances, an outsider group might find itself “at the bottom” of the well while the other does not.<sup>25</sup> Athena Mutua coined

<sup>23</sup> Montoya, M. (2006). LatCrit at Ten Years. *Chicana/o Latina/o Law Review*, 26(1), Marc-Tizoc González, Cluster II: Tracing the Critical Education Tradition in LatCrit Theory, Praxis & Community, 4 FIU L. Rev. 85 (2008)

<sup>24</sup> . Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177, 1179 (1999).

<sup>25</sup> . See DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992). Bell uses this term, however, to contrast the power and wealth of the ruling elite with the larger group of the economically and socially disadvantaged. See also Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. CIV. RTS.-CIV. LIBERTIES. L. REV. 323 (1987) (arguing the people at the bottom, “those who . . . experience[] discrimination,” should be the source of normative law); Jack Miles, *Blacks vs. Browns*, ATLANTIC (Oct. 1992), <http://www.theatlantic.com/magazine/archive/1992/10/blacks-vs-browns/306655> (discussing the Los Angeles riots and economic competition between Latinos and African-Americans, as well as attitudes about immigration).



the “shifting bottoms” metaphor “to suggest there are many groups that suffer from oppression, and that they suffer differently. Specifically, Blacks are at the bottom (the most disadvantaged) of a colorized racial category, although there are other racial categories and, perhaps, multiple racial systems. The bottom often shifts among these categories and systems in relation to particular issues. For this reason an ongoing South-North collaboration has been central to the development of LatCrit theory to disrupt traditional colonial and neo colonial hierarchies of power and knowledge.”<sup>26</sup>

## b. LatCrit Scholarship

Margaret Montoya’s words still resonate true: “LatCrit has developed into a cohesive community of critical intellectuals who reveal and voice legal issues and analyze them by applying progressive principles and perspectives based on an ethos of anti-subordination and a strategic anti-essentialism.”<sup>27</sup> Strategic anti-essentialism relates to the pursuit of equality in a way that transcends conventional social meaning of identity constructs, and embraces difference and multidimensionality.<sup>28</sup> An ethos of anti-subordination, in turn, sets us in positionality challenging practices and policies that, by intent or effect, enforce the secondary social status of historically oppressed groups.<sup>29</sup>

LatCrit theory is constructed, in part, through the above discussed functions, guideposts, and postulates that serve to reflect the ways in which some of the earliest adherents of this enterprise viewed the larger jurisprudential, societal, and political moment, during which the LatCrit subject position was conceived. Although not aspiring to constitute any sort of a canon or metanarrative, the accumulation of twenty five years of experiences, community praxis, and knowledge production, these early anchors still serve as substantive and structural grounding for our collective initiatives in community-

<sup>26</sup> Tayyab Mahmud, Athena D. Mutua & Francisco Valdes, *LatCrit Praxis @ XX: Toward Equal Justice in Law, Education and Society*, 90 Chi.-Kent. L. Rev. 361 (2015).

<sup>27</sup> Margaret Montoya, *LatCrit at Ten Years*, 26 CHICANA/O-LATINA/O L. REV. 1 (2006).

<sup>28</sup> Multidimensionality theory, as set forth by Darren Lenard Hutchinson, involves considering the multidimensional nature of subordination. Hutchinson sees subordinating factors and their accompanying harms as varied rather than universal. Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561, 633–34 (1997).

<sup>29</sup> See generally Margaret Montoya, Margaret E., *Foreword: LatCrit at Ten Years*, 26(2006). *Chicana/o-Latina/o Law Review*, Vol. 26, No. 1, (2006) Sheila I. Vélez Martínez, *Towards an Outcrit Pedagogy of Anti-Subordination in the Classroom*, 90 CHI.-KENT L. REV. 589 (2015). Francisco Valdes, *Rebellious Knowledge Production, Academic Activism, & Outsider Democracy: From Principles to Practices in LatCrit Theory, 1995 to 2008*, 8 Seattle J. Soc. Just. 131 (2009)



building, coalition-building, and institution-building through LatCrit praxis.<sup>30</sup>

The body of scholarship brought into existence during these past twenty five years is the organic product of “personal collective praxis”<sup>31</sup> in the form of consistent, sustained programmatic action designed to nurture and inter-connect the OutCrit initiatives of diverse individuals across borders, disciplines, and decades.<sup>32</sup> It must be noted that the LatCrit community proceeded to make its own intellectual contributions in the ongoing elaboration of critical and outsider scholarship from within the legal academy of the United States. In a retrospective of the first twenty years of LatCrit theory, Bender and Valdes<sup>33</sup> and Matambadnadzo et. al.<sup>34</sup> through the years have highlighted five salient contributions of LatCrit knowledge production directed towards the continued advancement of OutCrit theory critical to traverse towards systemic justice.

First is the elaboration of “Latina/o” identity as a complex identity. LatCrit scholars have proposed diverse ways to better understand and engage with the intra-group diversities of “Latina/o” populations specifically, but not only, in the United States. LatCrit scholars have further worked to challenge the stereotypes of what it is to be Latina, Latino, Latinx in the United States. LatCrit scholars demonstrated and documented key demographic facts, namely that not all Latinas/os are Hispanic, not all are Roman Catholic, not all speak Spanish or even want to speak Spanish, and not all live in the United States due to immigration.<sup>35</sup> Conversely, these investigations showcased the complexities and

<sup>30</sup> Elizabeth M. Iglesias & Francisco Valdes, *LatCrit at Five: Institutionalizing a Postsubordination Future*, 78 *Denv. U. L. Rev.* 1249 (2001)

<sup>31</sup> . Steven W. Bender & Francisco Valdes, *At and Beyond Fifteen: Mapping LatCrit Theory, Community, and Praxis*, 1 *U. MIAMI RACE & SOC. JUST. L. REV.* 177, 187 (2011).

<sup>32</sup> LatCrit theorists have, in more recent years, begun to describe and define the sum total of our efforts as a collective commitment to practice critical “outsider democracy” as a form of rebellious knowledge-production and antistatist academic activism. . Of course, this still-developing conception of LatCrit theory, community, and praxis as a form of outsider democracy dedicated multidimensionally to social and systemic justice remains, as always, under construction.

<sup>33</sup> Steve Bender and Francisco Valdes. *LatCrit: From Critical Legal Theory to Academic Activism*, NYU Press 2021. Francisco Valdes, *Rebellious Knowledge Production, Academic Activism, & Outsider Democracy: From Principles to Practices in LatCrit Theory, 1995 to 2008*, 8 *Seattle J. Soc. Just.* 131 (2009) , Steven Bender, Et.Al. *What's Next? Into a Third Decade of LatCrit Theory, Community, and Praxis (Afterword)*, 16 *Seattle J. for Soc. Just.* 823 (2018).

<sup>34</sup> Sarudzayi M. Matambanadzo, Francisco Valdes, and Sheila Vélez, *Afterword: Kindling the Programmatic Production of Critical and Outsider Legal Scholarship, 1996- 2016*, 37 *Whittier L. Rev.* 439, 443 (2016).

<sup>35</sup> Mary I. Coombs, *LatCrit Theory and the Post-Identity Era: Transcending the Legacies of Color and Coalescing a Politics of Consciousness*, 2 *Harv. Latino L. Rev.* 457 (1997). (LatCrit serves not only as an analogy, but as a complication of racial identity as well, for one can construct Latino both as a third option (Black or white or Latino) and as a crosscutting category (Black and Latino or white and Latino). Ian F. Haney López. "Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory." *California Law Review* 85, no. 5 (1997): 1143-211. Accessed April 28, 2021. doi:10.2307/3481058.



diversities of Latina/o communities in terms of race and ethnicity, religion, culture, imperialism and colonialism, language and its suppression, class, and immigration status<sup>36</sup>. In short, these investigations de-centered uncritical assumptions that all Latinas/os fit predominant stereotypes, assumptions that skew law and policy to the detriment of multiply diverse Latina/o communities.<sup>37</sup>

Second, LatCrit theorists have sought to advance critical outsider jurisprudence by developing and calling for analyses and projects that encompass both intra-group and inter-group issues—that is, analyses and projects that promote both intra-and inter-group understanding. This approach to scope has facilitated a more detailed and accurate mapping of the patterns formed across groups by the particularities reflected in each, and invited comparative inter- and intra-group studies of common categories, like “race” or “culture,” relevant to the subordination of “different” social groups. Over time, this effort has helped produce a better comprehension and critique of the interlocking nature of the “different” systems of subordination, which jointly and severally allows for existing identity-related hierarchies of injustice and inequality to remain in place, both within and across cultures.

Third, LatCrit knowledge-production projects consistently have emphasized critical approaches to internationalism and comparativism in the on-going evolution of outsider jurisprudence from the United States legal academy in programmatic and collective terms. Transcending “domestic” constructions of race, ethnicity, and other categories relevant to law and policy, this expansion has helped not only to deepen and broaden critical and comparative understandings of those categories as exercises of systemic power, but has also helped expose how those “different” exercises of power, using the “same” categories, are tailored in myriad ways to local circumstances and varied regions or locales. This third contribution, akin to the effort to examine law and power in cross-group contexts, has helped bridge what used to be a gulf between the “local” and

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<sup>36</sup> Margaret Jane Radin & Madhavi Sunder, *The Subject and Object of Commodification in RETHINKING COMMODIFICATION: CASES AND READINGS IN LAW AND CULTURE* 8 (Martha M. Ertman & Joan C. Williams eds., 2005). As Chatterjee and Maira have described in their groundbreaking work, the US academy is an imperial university where “intellectuals and scholarship play an important role—directly or indirectly, willingly or unwittingly” in rationalizing American exceptionalism and repression both domestically and internationally. Piya Chatterjee and Sunaina Maira *The Imperial University: Race, War and the Nation State* in PIYA CHATTERJEE & SUNAINA MAIRA, *THE IMPERIAL UNIVERSITY* 6-7 (2014)

<sup>37</sup> Gómez, L. E. (1998). Introduction: Constructing Latina/o Identities. *Chicana/o Latina/o Law Review*, 19(1), Berta Esperanza Hernández-Truyol, Borders (En)Gendered: Normativities, Latinas, and a Latcrit Paradigm, 72 N.Y.U. L. Rev. 882 (1997)



“domestic” and the “global” and “foreign” in critical outsider jurisprudence.<sup>38</sup>

Thus, much like critical outsider jurisprudence focused mostly in/on the United States, LatCritical approaches to hemispheric justice studies similarly interrogate and challenge systemic Euro-heteropatriarchy<sup>39</sup> in its local and global expressions. In this way—and only through these ways—can critical networks of activist anti-subordination scholars help to produce the knowledge necessary to sustain social action to dismantle transnationally the centuries-old edifice of institutionalized Euro-heteropatriarchy through coalitional solidarity.<sup>40</sup>

A fourth contribution we have endeavored to make during the past twenty years toward the broader project of critical outsider jurisprudence is to push for greater interdisciplinary, or counter-disciplinary, texts, programs, and projects.<sup>41</sup> This emphasis

<sup>38</sup> For a sampling of readings on transnationalism and internationalism in LatCrit theory, see *International Law, Human Rights and LatCrit Theory*, *supra* note 46 (publishing the proceedings of the first LatCrit International and Comparative Law Colloquium, or ICC, which took place in Miami following the LatCrit I conference in San Diego and the pre- LatCrit colloquium in Puerto Rico); Max J. Castro, *Democracy in Anti-Subordination Perspective: Local/Global Intersections: An Introduction*, 53 U. MIAMI L. REV. 863 (1999); Gil Gott, *Critical Race Globalism?: Global Political Economy, and the Intersections of Race, Nation, and Class*, 33 U.C. DAVIS L. REV. 1503 (2000); Ivelaw L. Griffith, *Drugs and Democracy in the Caribbean*, 53 U. MIAMI L. REV. 869 (1999); Sharon K. Hom, *Lexicon Dreams and Chinese Rock and Roll: Thoughts on Culture, Language, Translation as Strategies of Resistance and Reconstruction*, 53 U. MIAMI L. REV. 1003 (1999); Irwin P. Stotzky, *Suppressing the Beast*, 53 U. MIAMI L. REV. 883 (1999); Ratna Kapur & Tayyab Mahmud, *Hegemony, Coercion and Their Teeth-Gritting Harmony: A Commentary on Power, Culture, and Sexuality in Franco's Spain*, 5 MICH. J. RACE & L. 995 (2000), 33 U. MICH. J.L. REFORM 411 (2000); Tayyab Mahmud, *Colonialism and Modern Construction of Race: A Preliminary Inquiry*, 53 U. MIAMI L. REV. 1219 (1999); Mario Martinez, *Property as an Instrument of Power in Nicaragua*, 53 U. MIAMI L. REV. 907 (1999); Julie Mertus, *Mapping Civil Society Transplants: A Preliminary Comparison of Eastern Europe and Latin America*, 53 U. MIAMI L. REV. 921 (1999); Ediberto Roman, *Reconstructing Self-Determination: The Role of Critical Theory in Positivist International Law Paradigm*, 53 U. MIAMI L. REV. 943 (1999); 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); Berta Esperanza Hemández-Truyol, *Building Bridges: Bringing International Human Rights Home*, 9 LA RAZA L.J. 69 (1996).

<sup>39</sup> . See generally Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of “Sex,” “Gender,” and “Sexual Orientation” in Euro-American Law and Society*, 83 CALIF. L. REV. 1 (1995); Francisco Valdes, *Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender & Sexual Orientation to Its Origins*, 8 YALE J.L. & HUMAN. 161 (1996).

<sup>40</sup> Marc-Tizoc González, *Multidimensional Solidarity: Community Lawyers, Interdisciplinary Scholars & Critical Race Praxis* (Aug. 6, 2007) (unpublished manuscript on file with authors) Multidimensional Advocacy as Applied: Marriage Equality and Reproductive Rights, 29 COLUM. J. GENDER & L. 1 (2015) (discussing the relationship between extralegal advocacy and litigation to secure marriage equality); Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2744 n.6 (2015) (defining social movements in the context of “contentious politics,” which include a focus on mobilizing] popular will., building on networks of social solidarity, and finding sites for narrative resistance in which to transpose/transport grievances into causes that resonate with the larger culture’s narratives of justice”).

<sup>41</sup> For an example of interdisciplinary LatCrit scholarship, see Mary Romero, *Class Struggle and Resistance Against the Transformation of Land Ownership and Usage in Northern New Mexico: The Case of Las Gorras Blancas*, 26 CHICANO-LATINO L. REV. 87 (2006). Pouncy, Charles, *Institutional Economics and Critical Race/LatCrit Theory: The Need for a Critical ‘Raced’ Economics* (November 9, 2009). Rutgers Law Review, Vol. 54, No. 4, p. 841, 2002, Florida International University Legal Studies Research Paper No. 08-21,



on inter—or counter—disciplinarity, like the cross-group and internationalist initiatives of the past two decades, aims to refine and develop the core categories or concepts of critical outsider jurisprudence. The proactive effort to make other disciplines integral to the elaboration of LatCrit theory, while not always successful, has helped both to bolster and texture our approaches to, and understandings of, “identity” as a legal tool of power deployed for particular purposes in particular places at particular times.

A fifth basic contribution is a collective and programmatic insistence that “class” and “identity” not be cast as oppositional categories of analysis and action, but instead be understood as “different” identitarian dimensions of the interlocking systems of oppression always under interrogation in OutCrit analyses.<sup>42</sup>

The concept of “class” itself is seen as an axis of sociolegal identity. Therefore it becomes necessary to frame it with intersectional and multidimensional analyses of structures, systems, and power in law and society. This approach allows us to better understand how class and other forms of identity are mutually constitutive and mutually reinforcing, both in law and in society.<sup>43</sup>

Scholars have conceived and conducted academic gatherings, usually with an accompanying published symposium, in the programmatic pursuit of these values in and by scholarship. Therefore, in the first instance, knowledge production (and dissemination) was a lived, shared, and programmatic experience for the diverse groupings that gather at the LatCrit conferences and related events.<sup>44</sup> These lines of inquiry have facilitated intellectual contributions that have now extended to other areas of knowledge production and serve as critical analysis tools in Education Theory<sup>45</sup>, public

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Lara, Hortencia, "Latinx Students in STEM Education Research: A CRT and LatCrit Analysis of NSF Funded Projects" (2017). Educational Administration: Theses, Dissertations, and Student Research. 284

<sup>42</sup> Sarudzayi M. Matambanadzo, Francisco V aldes, and Sheila V elez, A erword: Kindling the Programmatic Production of Critical and Outsider Legal Scholarship, 1996- 2016, 37 Whittier L. Rev. 439, 443 (2016).

<sup>43</sup> Id.

<sup>44</sup> .See LatCrit/SALT Junior Faculty Development Workshop (FDW), LATCRIT, [http://www.latcrit.org/content/teaching\\_resources/junior-faculty-development-workshop-fdw](http://www.latcrit.org/content/teaching_resources/junior-faculty-development-workshop-fdw) (last visited June 19, 2016).

<sup>45</sup> Anita Tijerina Revilla, LatCrit and CRT in the Field of Education: A Theoretical Dialogue between Two Colleagues, 78 Denv. U. L. Rev. 623 (2001) DANIEL G. SOLORZANO AND TARA J. YOSSO QUALITATIVE STUDIES IN EDUCATION, 2001, VOL. 14, NO. 4, 471±495 Critical race and LatCrit theory and method: counter-storytelling Chicana and Chicano graduate school experiences. Lindsay Pérez Huber - Using Latina/o Critical Race Theory (LatCrit) and Racist Nativism to Explore Intersectionality in the Educational Experiences of Undocumented Chicana College Students. Educational Foundations, 2010. Guajardo, A. D., Robles-Schrader, G. M., Aponte-Soto, L., & Neubauer, L. C. (2020). LatCrit theory as a framework for social justice evaluation: Considerations for evaluation and evaluators. In L. C. Neubauer, D. McBride, A. D. Guajardo, W. D. Casillas, & M. E. Hall (Eds.), Examining Issues Facing Communities of Color Today: The Role of Evaluation to Incite Change. *New Directions for Evaluation*, 166, 65– 75



health<sup>46</sup>, psychology<sup>47</sup>, economics<sup>48</sup> and social work<sup>49</sup>

### III. LATCRIT COMMUNITY

It is perhaps the *cultivation of community and coalition, both in the Global North and the Global South*, that is one of the most salient traits of LatCrit's endeavors during the last twenty five years. The LatCrit community operates as a not-for-profit corporation with 501(c) (3) status, which raises funds for educational purposes from various sources. A diverse Board of Directors and three co-chairs manage LatCrit, Inc., while the various events and activities described in the Portfolio of Projects are operated by self-selected Project Teams composed of interested scholars, activists and students. Participation in LatCrit projects is generally open to all students, scholars, activists, policymakers and other interested persons, and is warmly invited on the basis of *ethical* solidarity.<sup>50</sup>

The portfolio of LatCrit projects indeed represents the principled performance of the four functions of LatCrit theory. The production of knowledge through the LatCrit Bi-Annual Conference, the South North Exchange, the LatCrit Study Space Project, and the LatCrit Symposium Journals has promoted the creation of safe spaces for collaboration and discussion that foster coalitional ideas, relationships, and projects. Strengthening community and building the LatCrit institutional spaces are imperative if we want to avoid

<sup>46</sup> Padilla-Frausto, I. (2018). Latinos' Use of Mental Health-Related Services: Using a HealthCrit and LatCrit Lens to Examine the Role of Perceived Ethnic Discrimination as an Indicator of the Socio-Environmental Consequences of Living in a Racialized Society. *UCLA*. ProQuest ID: PadillaFrausto\_ucla\_0031D\_16910. Merritt ID: ark:/13030/m56739n1. Retrieved from <https://escholarship.org/uc/item/0zp2f307>

<sup>47</sup> Rivera, D. P., Campón, R. R., & Mazzula, S. L. (2017). *Psychological perspectives on ethnic-minority physical health disparities*. In T. V. Cooper, M. C. Skewes, K. B. Schmaling, & A. W. Blume (Eds.), *Social issues in living color: Challenges and solutions from the perspective of ethnic minority psychology: Promoting health and well-being* (p. 53–76). Praeger/ABC-CLIO.

<sup>48</sup> Charles Pouncy 54 Rutgers L. Rev. 841 (2001-2002) Institutional Economics and Critical Race/LatCrit Theory: The Need for a Critical Raced Economics.

<sup>49</sup> Latino Critical Perspective in Social Work Elizabeth Kiehne Social Work, Volume 61, Issue 2, April 2016, Pages 119–126,

<sup>50</sup> For background readings on empathy, law and justice, see, e.g., Susan Bandes, *Empathy and Artile III: Judge Weinstein, Cases and Controversies*, 64 DePaul L. Rev. 317 (2015); Susan Bandes & Jeremy Blumenthal, *Emotion and the Law*, 8 ANN. REV. L & Soc. SCI 161 (2012); see also Lynne Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574 (1987).





the experience of other efforts like CRT that ceased to exist as a community, even while it continued to thrive as an intellectual movement.<sup>51</sup>

In addition to providing theoretical insight, the rotating centers and shifting bottoms have led to institutional praxis. Institutionally, conferences and colloquia have remained mobile in their substance and form. This means that protagonist themes and scholars shift at LatCrit events in a way that emergent voices are encouraged and supported. The commitment to emergent voices is also reflected by a *non-hierarchical no star system* of approaching knowledge production and community engagement.<sup>52</sup> This involves an epistemological shift, from the longstanding practice of having star-scholars, to that of a more humble law that recognizes new voices, multi-dimensional identities, multi-perspectival political commitments, and interdisciplinary voices.

While based in the legal academy of the United States and influenced principally by United States-based legal developments, LatCrits have looked beyond nation-state borders from the outset.<sup>53</sup> From the earliest years, LatCrit and allied scholars, therefore, have experimented with programmatic initiatives, like the International and Comparative Law Colloquium (ICC)<sup>54</sup> and the Critical Global Classroom (CGC)<sup>55</sup> to give institutional, collective expression to internationalism and comparativism in/as LatCrit theory and praxis. The ICC helps United States-based LatCrit scholars connect with likeminded scholars based in other regions on issues of common interest to social justice advocates, as Chart B illustrates.<sup>56</sup> The CGC aimed to provide critical, progressive students better access to outsider jurisprudence and to each other.<sup>57</sup> Both endeavor to help foster communities of solidarity rooted in antistatist knowledge and action. The SNX, as its name denotes, has emphasized South-North framings, and the cultivation of critical studies and networks, particularly “across the Americas,” and more generally, with the

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<sup>51</sup> Berta E. Hernández-Truyol, Angela Harris & Francisco Valdés, *Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis*, 17 *Berkeley La Raza L.J.* 169 (2006)

<sup>52</sup> Aoki, Keith and Johnson, Kevin R., *An Assessment of Latcrit Theory Ten Years after* (October 17, 2008). *Indiana Law Journal*, No. 83, 2008, UC Davis Legal Studies Research Paper No. 151, Available at SSRN: <https://ssrn.com/abstract=1286181>

<sup>53</sup> . See *infra* Part III (discussing the original LatCrit commitment to inter/trans-national projects).

<sup>54</sup> . See <https://latcrit.org/wp-content/uploads/2020/07/icccolloquiumstructurememo.pdf>

<sup>55</sup> . See <https://latcrit.org/teaching-resources-overview/critical-global-classroom/>

<sup>56</sup> . *Id.*

<sup>57</sup> . See Francisco Valdes, *Insisting on Critical Theory in Legal Education: Making Do While Making Waves*, 12 *BERKELEY LA RAZA L.J.* 137 (2001).



Global South.<sup>58</sup> In addition, as the name likewise denotes, this project is designed to be a conversational exchange not only across region or location but also across discipline and perspective—an exchange on, and of, theory, law and culture, and an ongoing examination of their interplay.

In other words, each of these projects aims to provide a “safe space” for the incubation of inter-American justice networks, studies, and actions. They aim to provide a year-round “zone” of safety where these networks, discourses and efforts can meet, grow, and strengthen. This type of collective personal praxis to produce knowledge programmatically has become a LatCrit hallmark since the mid-1990s.<sup>59</sup> This distinctive combination of individual and communal knowledge production has been a key and continuing contribution of the LatCrit community to the sustainability and advancement of OutCrit studies and networks more generally.

During the past twenty five years, these internationalist/comparativist projects and programs, together with the “domestic” projects, have yielded forty-some publications, most in English and one in Spanish. Today, these texts are indexed by themes and keywords, and are globally accessible through the “Research Toolkit” of the LatCrit website.<sup>60</sup> Cumulatively, the hundreds of authors who have composed these and similar publications have helped to chart the contours of OutCrit scholarship to encourage its continual expansion in multiple, and ideally synergistic, directions. In effect, then, these globalizing initiatives, efforts, and projects amount to a sustained, collective, programmatic undertaking to nurture OutCritical approaches to hemispheric justice studies from and beyond the United States legal academy.

#### IV. LATCRIT PRAXIS

From an anti-subordination perspective, critical reflection of our praxis as scholar activists has to be constant to avoid the peril of having a discourse that reflects nothing more than

<sup>58</sup> . See <https://latcrit.org/latcrit-conferences/south-north-exchange-snx/>

<sup>59</sup> . See Margaret E. Montoya & Francisco Valdes, “Latinas/os” and Latina/o Legal Studies: A Critical and Self-Critical Review of LatCrit Theory and Legal Models of Knowledge Production, 4 FIU L. REV. 187, 222–23, 225 (2008) (explaining the notion and role of “spaces” and “zones” in LatCrit approaches to collective and programmatic knowledge production).

<sup>60</sup> . See <https://latcrit.org/teaching-resources-overview/>



empty words.<sup>61</sup> Because LatCrit theory has paid close attention both to knowledge production and to its principled performance, it has been uniquely positioned to develop institutional projects that fuse “theory and action as central to anti-subordination” in academic practice.<sup>62</sup> LatCrit’s commitment to praxis in the service of building a world that is free of subordination has led to the growth of projects in the portfolio. Projects like the UN Consultive Status<sup>63</sup>, and the Amicus Appearances<sup>64</sup> in critical litigation cases are projects designed to apply LatCrit theory to action, and to generate theory from practice and experience towards *the advancement of social transformation*.

One of the central institutional projects of LatCrit in performance of principled practice is the creation of a Critical Justice Coursebook.<sup>65</sup> For the last years LatCrit/OutCrit scholars from coast to coast (and beyond) have worked collaboratively to imagine, and then bring into existence, new means and ways of producing, conveying, and applying the specific knowledges, skills, and attitudes most necessary to producing justice in lived, material terms across diverse social and legal terrains.

The book bridges four divides in existing approaches to justice praxis: (1) theory and action, both in law and beyond; (2) law and other disciplines, especially history and economics; (3) class and other categories of identity, such as race, gender, ability, orientation, and the like; and (4) domestic and transnational frameworks of analysis, advocacy, and action. Also, to bridge these four existing divides, the Coursebook uniquely synthesizes four key bodies of contemporary literature focused on (1) social justice activism, including social justice lawyering; (2) critical and outsider jurisprudence, including ClassCrit scholarship; (3) law-and-society studies; and (4) “new” or “third world” approaches to international law (NAIL/TWAIL).<sup>66</sup>

The book focuses on “systemic advocacy” that integrates in-court as well as out-of-court skills, strategies, and goals. The substantive materials on theory, identity, and inequality equip students to engage in contextual, structural, historical, and intersectional analysis, while the inter-disciplinary materials on social impact advocacy expose the

<sup>61</sup> . Vélez Martínez, *supra*.

<sup>62</sup> . Bender & Valdes, *supra*

<sup>63</sup> <https://www.un.org/press/en/2006/ecosoc6199.doc.htm>

<sup>64</sup> Brief of Amicus Curiae Latina and Latino Critical Legal Theory, Inc. Supporting Plaintiffs-Appellants Urging Reversal, *Arce v. Huppenthal*, Nos. 13-15657, 13-15760 (9th Cir. Nov. 25, 2013) [https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1006&context=korematsu\\_center](https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1006&context=korematsu_center)

<sup>65</sup> Steven Bender, Afterword: Collective Knowledge Production Toward Transformative Social Change: A Community-Grounded Model, 23 *Harvard Latinx. L. Rev.* 333 (2020)

<sup>66</sup> Sarudzayi M. Matambanadzo, Francisco Valdes, and Sheila Velez, Afterword: Kindling the Programmatic Production of Critical and Outsider Legal Scholarship, 1996-2016, 37 *Whittier L. Rev.* 439 (2016) Steven Bender, Afterword: Collective Knowledge Production Toward Transformative Social Change: A Community-Grounded Model, 23 *Harvard Latinx. L. Rev.* 333 (2020)



students to skills and strategies mostly missing from law schools (and other justice studies) today.<sup>67</sup> This special attention to the fusion of OutCrit theorizing with “systemic advocacy” in the innovative practice of law for the material promotion of social justice leads also to a specific focus on knowledges, skills, and attitudes (KSA’s) that typically are absent from, or marginal in, contemporary approaches to formal legal education. Currently, and defying decades of reform, law schools still tend to emphasize “traditional” knowledges and skills tied to appellate opinions, and in-court tools or techniques bounded by technical notions of abstract doctrine or entrenched dogma;<sup>68</sup> in this entrenched traditionalist framing, rules, rights, and remedies are over-theorized in artificially asocial, individuated, and decontextualized terms.<sup>69</sup> In this framing, “real” clients are frequently omitted from consideration, while the inculcation of appropriate professional attitudes is crowded out of serious in-class discussion, and the tools or techniques that center decision-makers other than appellate appointees receive short shrift. Although this educational and professional myopia has been, and continues to be, widely understood as woefully inadequate to the exigencies of a successful law practice—both in the past century as well as the present one—it persists from coast to coast today, as the longstanding and continuing critiques of United States legal education have made so painfully clear.<sup>70</sup> (Katz 2013) This recurring institutional failure to adequately train law students to function as effective social justice advocates, in turn, facilitates the continuance of law’s complicity in unjust systems that substantially violate fundamental norms both of law and society.

## V. Conclusion: A Critical Time for LatCrit Theory

As LatCrit reaches its twenty-fifth anniversary, we aspire to continue to share LatCrit’s foundational propositions and ongoing efforts to cultivate new generations of ethical

<sup>67</sup> . For instance, the Coursebook is designed to teach students how to plan issue campaigns for social change in the context of legal action, and how to plan for community economic development projects that serve material needs of particular localities or populations.

<sup>68</sup> . See, e.g., Vélez Martínez, *supra*

<sup>69</sup> . See, e.g., Valdes, *Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender & Sexual Orientation to Its Origins*, *supra* note 62 (discussing the importance and limitations of rights).

<sup>70</sup> . See, e.g., Martin J. Katz, *Facilitating Better Law Teaching—Now*, 62 EMORY L.J. 823 (2013).



advocates who can systemically analyze the sociolegal conditions that engender injustice and intervene strategically to help create enduring sociolegal, and cultural, change.

We live in critical times with a shared unease about the future. A sense of unease coupled by profound disappointment, distrust and espanto towards the way the governments in the Global North and the Global South have handled the Pandemic of our lifetimes. The Covid 19 global pandemic has caused a global disruption only rivaled by a World War. This global emergency will probably remain with us in one way or another for many years to come. Before the emergency is over millions of people will die from Covid-19 and hundreds of thousands more would die from famine, other epidemics that are being sidelined, displacement and war.

This is also a historic opportunity to change or political imaginary. A Critical Time for Critical Theory. LatCrit theory looks at law as complicit in furthering systemic inequality from an anti-subordination positionality. LatCrit scholars and activists must continue their commitment to challenge all practices and policies that by intent or effect enforce the subjugated social status of historically oppressed communities within our society. The global pandemic has laid bare the systemic inequality that has contributed to the unnecessary deaths of millions of people without an opportunity to ‘stay socially distant’, to ‘work from home’, to have access to medicines and oxygen or to have access to a vaccine. We are seeing the naked distribution of the living in the domain and value of utility in furtherance of capitalism.

Critical outsider jurisprudence illuminates how the sociolegal systems of the status quo produces outcomes like the one the current pandemic makes so transparent. LatCrit’s relies on upcoming generations of activist students and lawyers to implement the critical theory and praxis breakthroughs of the past and future. Through collective action this moment can point toward a postsubordination future—when connected to community projects that build power to change the prevailing culture. LatCrit as a community is committed to that multifold intentionality in all it undertakes.

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