

# Seattle University School of Law Digital Commons

---

Faculty Articles

Faculty Scholarship

---

2002

## Seekin' the Cause: Social Justice Movements and LatCrit Community

Steven W. Bender  
Keith Aoki

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/faculty>



Part of the [Law and Society Commons](#), and the [Legal History Commons](#)

---

### Recommended Citation

Steven W. Bender and Keith Aoki, Seekin' the Cause: Social Justice Movements and LatCrit Community, 81 *OR. L. REV.* 595 (2002).

<https://digitalcommons.law.seattleu.edu/faculty/358>

This Article is brought to you for free and open access by the Faculty Scholarship at Seattle University School of Law Digital Commons. It has been accepted for inclusion in Faculty Articles by an authorized administrator of Seattle University School of Law Digital Commons.

## Seekin' the Cause:<sup>1</sup> Social Justice Movements and LatCrit Community

These are revolutionary times. All over the globe men are revolting against old systems of exploitation and oppression, and out of the wounds of a frail world, new systems of justice and equality are being born. The shirtless and barefoot people of the land are rising up as never before. The people who sat in darkness have seen a great light. We in the West must support these revolutions. It is a sad fact that because of comfort, complacency, a morbid fear of communism, and our proneness to adjust to injustice, the Western nations that initiated so much of the revolutionary spirit of the modern world have now become the arch anti-revolutionaries . . . . Our only hope today lies in our ability to recapture the revolutionary spirit and go out into a sometimes hostile world declaring eternal hostility to poverty, racism, and militarism. . . .<sup>2</sup>

Philip Vera Cruz stated that a movement is an idea, a philosophy. Leadership "is only incidental to the movement. The movement should be the most important thing. . . . The movement must go beyond its leaders. It must be something that is continuous, with goals and ideals that the leadership can then build upon."<sup>3</sup>

---

\* Professor of Law, University of Oregon School of Law. Rosa Chávez provided her usual able research assistance.

\*\* Professor of Law, University of Oregon School of Law.

<sup>1</sup> Our article title was inspired by Miguel Piñero's poem, *Seekin' the Cause*, from his collection *LA BODEGA SOLD DREAMS* 23 (1985).

<sup>2</sup> Martin Luther King, Jr., *Beyond Vietnam*, Speech at Riverside Church (Apr. 4, 1967).

<sup>3</sup> CRAIG SCHARLIN & LILIA V. VILLANUEVA, *PHILIP VERA CRUZ: A PERSON-AL HISTORY OF FILIPINO IMMIGRANTS AND THE FARMWORKERS MOVEMENT* 104 (Glenn Omatsu & Augusto Espiritu eds., 1992) (Philip Vera Cruz, along with César Chávez and Dolores Huerta, helped build the United Farm Workers (UFW) organization. Cruz was part of the Agricultural Workers Organizing Committee of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) in 1965 and was involved in the Pilipino sitdown in the Coachella Vineyards

LatCrit VII, held May 2-5, 2002, in Portland, Oregon, adopted the theme Coalitional Theory and Praxis: Social Justice Movements and LatCrit Community.<sup>4</sup> The conference's opening roundtable set an activist tone by centering within LatCrit discourse several progressive movements for sociopolitical transformation existing in academia and beyond. This opening roundtable, and the conference overall, were designed:

[T]o deepen our collective encounter with the project of imagining what it means to aspire to, and in fact to create, a coherent sociopolitical movement of scholars and activists within the legal academy . . . [and to ask] [w]hat practical lessons can LatCrit learn from successes and failures other sociopolitical movements have experienced in their efforts to transform legally mediated structures of power?<sup>5</sup>

From the discussions at LatCrit VII emerged six symposia clusters, some housed in this volume of the *Oregon Law Review*, with others in the University of California at Berkeley's *La Raza Law Journal*.<sup>6</sup> Joining and building on the rich scholarly record

---

that helped trigger the formation of the UFW. Cruz served as vice-president of the UFW until 1977).

<sup>4</sup> LatCrit VII was sponsored by the University of Oregon School of Law and cosponsored by the University of Miami Center for Hispanic and Caribbean Legal Studies, the University of Oregon Law Review, Seattle University School of Law, and Willamette University College of Law. Special appreciation is owed by LatCrit participants and the authors to Rennard Strickland, former Dean of the University of Oregon School of Law, for his financial support and encouragement of critical scholarship.

<sup>5</sup> Substantive Program Outline, LatCrit VII, available at <http://personal.law.miami.edu/~valdes/latcrit/lcvii/docs/substantiveprogram.htm> (last visited Apr. 4, 2003).

<sup>6</sup> These articles are: Robert S. Chang, "Forget The Alamo": Race Courses as a Struggle Over History and Collective Memory, 13 LA RAZA L.J. 113 (2002); Roberto L. Corrada, *Osmotic Borders: Thinking Locally, Thinking Globally About the Causes and Effects of Labor Migration*, 13 LA RAZA L.J. 311 (2002); Sylvia R. Lazos Vargas, "Latina/o-ization" of the Midwest: Cambio de Colores (Change of Colors) as Agromaquilas Expand Into the Heartland, 13 LA RAZA L.J. 343 (2002); Donna Maeda, *Agencies of Filipina Migrants in Globalized Economies: Transforming International Human Rights Legal Discourse*, 13 LA RAZA L.J. 317 (2002); Pedro A. Malavet, *Reparations Theory and Postcolonial Puerto Rico: Some Preliminary Thoughts*, 13 LA RAZA L.J. 387 (2002); Manuel Rodríguez Orellana, *Vieques: The Past, Present, and Future of the Puerto Rico-U.S. Colonial Relationship*, 13 LA RAZA L.J. 425 (2002); Hugo Rojas, *Cambios Sociales y Cambios Jurídicos en Chile: Construyendo Nuevos Puentes Entre Sociología y Derecho en la Promoción del Realismo Jurídico Latinoamericano* [Social and Legal Change in Chile: Constructing New Bridges Between Sociology and the Law Through the Creation of a Latina/o-American Legal Realism], 13 LA RAZA L.J. 453 (2002); Ediberto Roman, *Reparations and the Colonial Dilemma: The Insurmountable Hurdles and Yet Transformative Benefits*, 13 LA RAZA L.J. 369 (2002); Charles R. Venator Santiago, *The Uses and Abuses*

of past LatCrit symposia,<sup>7</sup> these new clusters engage social movements,<sup>8</sup> political representation,<sup>9</sup> communities of color and civil rights in the aftermath of September 11,<sup>10</sup> Puerto Rico,<sup>11</sup> labor markets,<sup>12</sup> transformation in Chile,<sup>13</sup> and the experience of Latinas/os and other communities of color in legal academia.<sup>14</sup> Each cluster is framed by a separate introduction situating the cluster theme and individual articles within the growing volume

---

of the Notion of Legal Transculturation: *The Puerto Rican Example?*, 13 LA RAZA L.J. 441 (2002); John Hayakawa Török, *The Story of "Towards Asian American Jurisprudence" and Its Implications for Latinas/os in American Law Schools*, 13 LA RAZA L.J. 271 (2002); Francisco Valdes, *Barely at the Margins: Race and Ethnicity in Legal Education—A Curricular Study With LatCritical Commentary*, 13 LA RAZA L.J. 119 (2002).

<sup>7</sup> See Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997) (LatCrit I); Colloquium, *International Law, Human Rights, and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1996) (LatCrit colloquium on international law); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 UCLA CHICANO-LATINO L. REV. 1 (1998) (LatCrit II); Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, 53 U. MIAMI L. REV. 575 (1999) (LatCrit III); Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. DAVIS L. REV. 751 (2000) (LatCrit IV); Colloquium, *Spain, The Americas and Latino/as: International and Comparative Law in Triangular Perspective*, 9 U. MIAMI INT'L. & COMP. L. REV. 1 (2000) (colloquium on LatCrit theory and international and comparative law); Symposium, *Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U. L. REV. 467 (2001) (LatCrit V); Symposium, *Latinas/os and the Americas: Centering North-South Frameworks in LatCrit Theory*, 54 U. FLA. L. REV. (forthcoming 2003); 54 RUTGERS L. REV. (forthcoming 2003) (LatCrit VI); Symposium, *LatCrit Coalitional Theory and Praxis: Social Justice and LatCrit Community*, 81 OR. L. REV. 587 (forthcoming 2003); 13 LA RAZA L.J. 113 (2002) (LatCrit VII). See also Joint Symposium, *LatCrit: Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1998); Joint Symposium, *Culture, Language, Sexuality and Law: LatCrit Theory and the Construction of the Nation*, 5 MICH. J. RACE & L. 787; 33 U. MICH. J.L. REF. 203 (2000). For an index of LatCrit symposia scholarship, as well as information on LatCrit projects, see *LatCrit: Latina and Latino Critical Race Theory*, at <http://www.latcrit.org> (last visited Apr. 23, 2003).

<sup>8</sup> See *infra* Symposium Cluster, *Social Justice Movements and LatCrit Community*.

<sup>9</sup> See *infra* Symposium Cluster, *Focusing the Electoral Lens*.

<sup>10</sup> See *infra* Symposium Cluster, *LatCritical Perspectives: Individual Liberties, State Security, and the War on Terrorism*.

<sup>11</sup> Symposium Cluster, *The Past, Present and Future of the Puerto Rico-U.S. Colonial Relationship: Vieques, Transculturation, and Reparations*, 13 LA RAZA L.J. 369 (2002).

<sup>12</sup> Symposium Cluster, *Inter/National Migration of Labor: Latcritical Perspectives on Addressing Issues Arising With the Movement of Workers*, 13 LA RAZA L.J. 311 (2002).

<sup>13</sup> Rojas, *supra* note 6.

<sup>14</sup> Symposium Cluster, *Progressive Pedagogy: Master Narratives With Racial and Ethnic Curricular and Faculty Diversity*, 13 LA RAZA L.J. 113 (2002).

of LatCrit scholarship.<sup>15</sup> Here, we embrace the conference theme as an opportunity to examine and compare the LatCrit scholarly movement with those beyond academia, particularly current and past sociopolitical movements originating in Latina/o communities.

## I

### CENTERING LATINA/O SOCIAL MOVEMENTS IN LATCRIT

With a historical experience rooted in such academic discourses as Critical Legal Studies, Feminist Legal Theory, Critical Race Theory, Critical Race Feminism, and Queer Legal Theory,<sup>16</sup> LatCrit emerged in the mid 1990s as a movement within legal academia.<sup>17</sup> Early on, the LatCrit movement aimed to disseminate its scholarship outside the legal academy “to agents of social and legal transformation,”<sup>18</sup> as well as to adopt a commitment toward “praxis”<sup>19</sup> not always rewarded in traditional academic circles. Still, the primary mission, and the success, of LatCrit, has been the opening of an academic discourse on law

<sup>15</sup> Due to time constraints, there is no separate introduction for the opening cluster. Instead, Part III *infra* briefly introduces those cluster pieces.

<sup>16</sup> See Francisco Valdes, Foreword, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1, 4-5 (1997). See also Kevin R. Johnson & George A. Martínez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship*, 53 U. MIAMI L. REV. 1143 (1999) (reminding that LatCrit’s roots also extend to the Chicana/o Studies experience); see generally CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed. 1997); CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado ed. 1995); CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al., eds. 1995); MARI J. MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT (1993); Sumi Cho & Robert Westley, *Critical Race Coalitions: Key Movements That Performed the Theory*, 33 U.C. DAVIS L. REV. 1377 (2000); Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography*, 79 VA. L. REV. 461 (1993).

<sup>17</sup> See Francisco Valdes, *Under Construction: LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087, 1142 (1997) (referring to LatCrit as the “newest scholarly movement within the [U.S.] legal academy”).

<sup>18</sup> Elizabeth M. Iglesias & Francisco Valdes, Afterword, *LatCrit at Five: Institutionalizing a Post-Subordination Future*, 78 DENV. U. L. REV. 1249, 1261-62 (2001).

<sup>19</sup> The term praxis originated with Italian Marxist Antonio Gramsci in the 1920s as a way of describing the activity of “organic intellectuals” and has been adapted and used by Critical Race theorists. See generally PAULO FREIRE, PEDAGOGY OF THE OPPRESSED ch. 4 (1970) (describing praxis toward revolution); ERIC K. YAMAMOTO, INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA (1999).

and policy regarding Latinas/os, who previously were near invisible in legal academia; indeed, even in most scholarly discussions of race.<sup>20</sup> To date, the LatCrit movement has begun producing a substantive vision in areas of racial<sup>21</sup> and religious<sup>22</sup> identity, as

---

<sup>20</sup> The general problem of group invisibility of Latinas/os in legal and policy discourse is shared with Asian Americans. Specifically, both historically and recently, scholarship reviewing the political activism of the 1960s has focused on the agency of upper middle class white (and generally male) students at elite universities involved with the so-called "New Left," and the contributions to such social movements of Latinas/os and Asian Americans marginalized. See EDWARD J. BACCIOCCO, *THE NEW LEFT IN AMERICA: REFORM TO REVOLUTION, 1956 TO 1970* (1974); MILTON CANTOR, *THE DIVIDED LEFT: AMERICAN RADICALISM, 1900-1975* (1978); RICHARD FLACKS, *MAKING HISTORY: THE AMERICAN LEFT AND THE AMERICAN MIND* (1988); TODD GITLIN, *THE SIXTIES: YEARS OF HOPE, DAYS OF RAGE* (1987); MAURICE ISSERMAN, *IF I HAD A HAMMER—: THE DEATH OF THE OLD LEFT AND THE BIRTH OF THE NEW LEFT* (1987); IRWIN UNGER, *THE MOVEMENT: A HISTORY OF THE AMERICAN NEW LEFT, 1959-1972* (1974); GEORGE R. VICKERS, *THE FORMATION OF THE NEW LEFT: THE EARLY YEARS* (1975).

As William Wei points out:

Asian Americans [have] historically stood outside the institutionalized framework of American society, addressed significant social issues, participated in a plethora of political activities, and started numerous organizations in order to change the country into an authentic ethnically pluralist society. Though their organizational formats varied, the ultimate goal of all these groups was the same: to gain greater equality for Asian Americans . . . [However] the Asian American . . . has been overlooked . . . [and] Asian American activists have received short shrift even in works that mention significant events in which they have played a major role.

WILLIAM WEI, *THE ASIAN AMERICAN MOVEMENT* 5 (1993). Everything that might be said about the relative invisibility of Asian Americans might also be said about Latinas/os.

These accounts omit the central role of Latina/o and Asian American student groups in the 1968-69 San Francisco State College Strike, which was the longest student strike of the 1960s, lasting from November 6, 1968 to March 27, 1969 at San Francisco State and from January 19, 1969 to March 14, 1969 at UC-Berkeley. See generally Karen Umemoto, "On Strike!" *San Francisco State College Strike, 1968-69: The Role of Asian American Students*, 15 *AMERASIA* J. 1 (1989). There are many parallels and links between the Chicano movement in the 1960s and the Asian American movement. Asian American activist Amy Uyematsu wrote in 1971:

Asian Americans can no longer afford to watch the black-and-white struggle from the sidelines. They have their own cause to fight, since they are also victims—with less visible scars—of the white institutionalized racism. A yellow movement has been set into motion by the black power movement. Addressing itself to the unique problems of Asian Americans, this "yellow power" movement is relevant to the black power movement in that both are part of the Third World struggling to liberate all colored people.

Amy Uyematsu, *The Emergence of Yellow Power in America*, at 9, in *ROOTS: AN ASIAN AMERICAN READER* (Amy Tachiki et al. eds., 1971); see also *ASIAN AMERICANS: THE MOVEMENT AND THE MOMENT* (Steve Louie & Glenn Omatsu eds., 2001).

<sup>21</sup> E.g., Symposium Cluster, *Races, Nationalities, Ethnicities: Mapping LatCrit*

well as local, national, and international labor relations,<sup>23</sup> language policy,<sup>24</sup> Latinas/os in the academy,<sup>25</sup> coalition-building,<sup>26</sup> criminal justice,<sup>27</sup> cultural intersections,<sup>28</sup> and other subjects.

By now, it is apparent that even within the confines of academia, the LatCrit movement has broken new ground in its commitment to articulate an anti-subordination and anti-essentialist future for Latinas/os. However, academic movements have serious limitations, particularly those seeking sociopolitical change in hierarchical power structures. These limits include the lack of institutional rewards (including outright hostility manifested in tenure denials) for nontraditional scholarship and for praxis that seeks to effect community change, as well as the shortcomings of legal and lawyer-based strategies for community empowerment, mass mobilization, and social transformation. To LatCrit's collective credit, scholars such as Kevin Johnson and others have recognized these limits.<sup>29</sup>

---

(Dis)Continuities, 2 HARV. LATINO L. REV. 243 (1997); Symposium Cluster, *Race, Ethnicity & Nationhood*, 85 CAL. L. REV. 1143 (1997); Symposium Cluster, *Race, Ethnicity, & Nationhood*, 10 LA RAZA L.J. 57 (1998).

<sup>22</sup> E.g., Symposium Cluster, *Religion and Spirituality in Outsider Theory: Towards a LatCrit Conversation*, 19 CHICANO-LATINO L. REV. 417 (1997); Symposium Cluster, *Piercing Webs of Power: Identity, Resistance, and Hope in LatCrit Theory and Praxis*, 33 U.C. DAVIS L. REV. 897 (2000).

<sup>23</sup> E.g., Symposium Cluster, *Labor Law and LatCrit Identity Politics*, 53 MIAMI L. REV. 1037 (1999); Symposium Cluster, *Forging Our Identity: Transformative Resistance in the Areas of Work, Class, and the Law*, 33 U.C. DAVIS L. REV. 1057 (2000); Symposium Cluster, *Globalization or Global Subordination?: How LatCrit Links the Local to Global and the Global to the Local*, 33 U.C. DAVIS L. REV. 1429 (2000).

<sup>24</sup> E.g., Symposium Cluster, *Anti-Subordination and the Legal Struggle Over Control of the "Means of Communication": Technology, Language and Communicative Power*, 53 U. MIAMI L. REV. 961 (1999); Steven W. Bender, *Direct Democracy and Distrust: The Relationship Between Language Law Rhetoric and the Language Vigilantism Experience*, 2 HARV. LATINO L. REV. 145 (1997).

<sup>25</sup> E.g., Symposium Cluster, *Teaching, Scholarship and Service: Practicing LatCrit Theory*, 2 HARV. LATINO L. REV. 317 (1997); Symposium Cluster, *Progressive Pedagogy: Challenging Master Narratives With Racial and Ethnic Curricular and Faculty Diversity*, 13 LA RAZA L.J. 113 (2002).

<sup>26</sup> E.g., Symposium Cluster, *Latinas/os and Inter-Group Jurisprudence: Building LatCrit Communities and Coalitions*, 2 HARV. LATINO L. REV. 467 (1997); Symposium Cluster, *Inter-Group Solidarity: Mapping the Internal/External Dynamics of Oppression*, 53 U. MIAMI L. REV. 761 (1999).

<sup>27</sup> E.g., Symposium Cluster, *Cluster III*, 55 FLA. L. REV. 319 (2003); Symposium Cluster, *LatCrit and the Criminal Justice System*, 78 DENV. U. L. REV. 1059 (2001).

<sup>28</sup> E.g., Symposium Cluster, *Cluster I*, 55 FLA. L. REV. 1 (2003); Symposium Cluster, *Performing LatCrit*, 33 U.C. DAVIS L. REV. 1277 (2000); Symposium Cluster, *Comparative Racialization*, 78 DENV. U. L. REV. 633 (2001).

<sup>29</sup> E.g., Kevin R. Johnson, *Lawyering for Social Change: What's a Lawyer to Do?*, 5 MICH. J. RACE & L. 201 (1999) [hereinafter Johnson, *Lawyering for Social*].

In seeking to spark and to influence social change, there are important lessons that LatCrit scholars may learn from the successes and failures of past and current sociopolitical movements originating in Latina/o communities. Further, LatCrit scholars must keep an eye toward the progress of these community-based movements to help ensure that LatCrit projects aid their causes and are accessible to these movements. Moreover, at a time when most progressive social agendas seem stymied, LatCrit discourse might contribute to the articulation of a new path toward an anti-subordination future.

Looking back, one could consider the 1960s and the scope of social upheavals rippling across the globe as both a prelude and backdrop to Latina/o movements for social change within the United States. The 1960s saw the rise and rearticulation of the Civil Rights movement,<sup>30</sup> the Antiwar movement,<sup>31</sup> and Feminism<sup>32</sup> as interrelated mass social movements. Additionally, rev-

---

*Change*] (arguing that significant social transformation is more likely accomplished through mass political movements than by litigation); Kevin R. Johnson, *Racial Hierarchy, Asian Americans and Latinos as "Foreigners" and Social Change: Is Law the Way to Go?*, 76 Or. L. Rev. 347 (1997).

<sup>30</sup> See, e.g., BOB BLAUNER, *BLACK LIVES, WHITE LIES: THREE DECADES OF RACE RELATIONS IN AMERICA* (1989); HENRY HAMPTON & STEVE FAYER, *VOICES OF FREEDOM: AN ORAL HISTORY OF THE CIVIL RIGHTS MOVEMENT FROM THE 1950s THROUGH THE 1980s* (1990); MANNING MARABLE, *RACE, REFORM AND REBELLION: THE SECOND RECONSTRUCTION IN BLACK AMERICA, 1945-1982* (1991); JUAN WILLIAMS, *EYES ON THE PRIZE: AMERICA'S CIVIL RIGHTS YEARS, 1954-1965* (1987).

<sup>31</sup> LAWRENCE M. BASKIR & WILLIAM A. STRAUSS, *CHANGE AND CIRCUMSTANCE: THE DRAFT, THE WAR AND THE VIETNAM GENERATION* (1978); CHARLES DeBENEDETTI & CHARLES CHATFIELD, *AN AMERICAN ORDEAL: THE ANTIWAR MOVEMENT OF THE VIETNAM ERA* (1990); MICHAEL FERBER & STAUGHTON LYNDE, *THE RESISTANCE* (1971); IRVING LOUIS HOROWITZ, *THE STRUGGLE IS THE MESSAGE: THE ORGANIZATION AND IDEOLOGY OF THE ANTI-WAR MOVEMENT* (1970); NANCY ZAROULIS & GERALD SULLIVAN, *WHO SPOKE UP?: AMERICAN PROTEST AGAINST THE WAR IN VIETNAM, 1963-1975* (1984).

<sup>32</sup> See SARA EVANS, *PERSONAL POLITICS: THE ROOTS OF WOMEN'S LIBERATION IN THE CIVIL RIGHTS MOVEMENT AND THE NEW LEFT* (1979); JO FREEMAN, *THE POLITICS OF WOMEN'S LIBERATION: A CASE STUDY OF AN EMERGING SOCIAL MOVEMENT AND ITS RELATION TO THE POLICY PROCESS* (1975); CATHERINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987); CATHERINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989); GAYLE GRAHAM YATES, *WHAT WOMEN WANT: THE IDEAS OF THE MOVEMENT* (1975); but cf. Esther Ngan-Ling Chow, *The Feminist Movement: Where are All the Asian American Women?* in *MAKING WAVES: AN ANTHOLOGY OF WRITINGS BY AND ABOUT ASIAN AMERICAN WOMEN* 362 (Asian Women United of California ed., 1989); PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS AND THE POLITICS OF EMPOWERMENT* (1990); Sonia Shah, *Presenting the Blue Goddess: Toward a National Pan-Asian Feminist Agenda*, in *THE STATE OF*



olutionary iterations such as the Black Panthers, the Black Power movement,<sup>33</sup> and the Weathermen faction of the SDS (Students for a Democratic Society)<sup>34</sup> received both heightened media and

---

ASIAN AMERICA: ACTIVISM AND RESISTANCE IN THE 1990s 147 (Karin Aguilar-San Juan ed., 1994); ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (arguing that viewing discrimination/subordination as occurring only along a single axis erases Black women and undermines efforts to expand the scope of feminist and antiracist politics); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) (critiquing gender essentialism in feminist legal theory as marginalizing voices of black women).

<sup>33</sup> See STOKELY CARMICHAEL & CHARLES V. HAMILTON, *BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA* (1967); CLAYBORNE CARSON, *IN STRUGGLE: SNCC AND THE BLACK AWAKENING OF THE 1960s* (1981); ELDRIDGE CLEAVER, *SOUL ON ICE* (1968); GENE MARINE, *THE BLACK PANTHERS* (1969); DON A. SCHANCHE, *THE PANTHER PARADOX: A LIBERAL'S DILEMMA* (1970); BOBBY SEALE, *SEIZE THE TIME: THE STORY OF THE BLACK PANTHER PARTY AND HUEY P. NEWTON* (1968); MALCOLM X, *THE AUTOBIOGRAPHY OF MALCOLM X* (1964). William Wei writes:

The Black Power movement emerged from the left wing of the civil rights movement, rejecting its integrationist ideology and assimilationist approach. Instead, Black Power adherents advocated "community control," that is, local control of economic, political, social and cultural institutions in African American communities. African American urban ghettos in America, they argued, were "internal colonies" that paralleled African colonies, while the Black Power movement paralleled the national liberation movements in Africa. In this "internal colonialism" paradigm, both were legacies of nineteenth-century imperialism that had divided the Third World into colonies exploited by a capitalist-dominated world economy.

The ["internal colony" paradigm] synthesized the disparate elements of racism—economic exploitation, political powerlessness, geographic ghettoization, cultural contempt—into an intelligible system of oppression.

....

The Black Panther Party for Self-Defense was founded in Oakland in 1966 by Bobby Seale, who served as its chairman, and Huey P. Newton, who served as its minister of defense. The Panthers were organized along military lines and advocated armed resistance to racial oppression, especially the police, whom they perceived as an army of occupation in the black urban ghetto.

Wei, *supra* note 20, at 41-42, 208; see also Jennifer Jordan, *Cultural Nationalism in the 1960s: Politics and Poetry*, in RACE, POLITICS AND CULTURE: CRITICAL ESSAYS ON THE RADICALISM OF THE 1960's [sic] 29 (Adolph Reed, Jr. ed., 1986).

<sup>34</sup> HARVEY KLEHR, *FAR LEFT OF CENTER: THE AMERICAN RADICAL LEFT TODAY* (1988); JAMES MILLER, "DEMOCRACY IS IN THE STREETS": FROM PORT HURON TO THE SIEGE OF CHICAGO (1987); KIRKPATRICK SALE, *SDS* (1973); *THE SIXTIES PAPERS: DOCUMENTS OF A REBELLIOUS DECADE* (Judith Clavir Albert & Stewart Edward Albert eds., 1984); Wei, *supra* note 20, at 204 ("[The SDS maintained that the] capitalist system of the United States was responsible for creating injustice at home and aggression abroad and that conventional means of change,

police attention.<sup>35</sup> However, one must be careful to critically interrogate those histories as much for what they omit and what communities are marginalized as for what issues they foreground.<sup>36</sup>

Of the many past and current movements for social change grounded in Latina/o communities, perhaps the two most substantial have been the Chicano movement of the 1960s and the farm worker/labor movement of the 1960s and 1970s. Others of note include the ongoing movement for Puerto Rican independence, as well as the 1960s Young Lords political party originating in New York's Puerto Rican community. Of course, our study is mindful that the dominant race-based movement for social change in the last century has been the 1960s Civil Rights movement led by African Americans, but consideration of Latina/o movements may help deepen and expand our understandings of that very important ongoing struggle.<sup>37</sup>

### A. *The Tools of Latina/o Revolutions*

Our comparison of LatCrit with Latina/o-community-based movements for social change begins by examining the missions and tenets of these movements. The farm worker movement initiated by César Chávez and Dolores Huerta sought to "change

---

such as the electoral system, was ineffectual, they advocated the elimination of capitalism, through violence if necessary.").

<sup>35</sup> WARD CHURCHILL & JIM VANDER WALL, *THE COINTELPRO PAPERS: DOCUMENTS FROM THE FBI'S SECRET WARS AGAINST DOMESTIC DISSENT* (1990); HUEY P. NEWTON, *WAR AGAINST THE PANTHERS: A STUDY OF REPRESSION IN AMERICA* (1980).

<sup>36</sup> Glenn Omatsu observes:

Those who took part in the mass struggles of the 1960s and early 1970s will know that the birth of the Asian American movement coincided not with the initial campaign for civil rights but with the later demand for black liberation; that the leading influence was not Martin Luther King, Jr., but Malcolm X; that the focus of a generation of Asian American activists was not on asserting racial pride but reclaiming a tradition of militant struggle by earlier generations; that the movement was not centered on the aura of racial identity but embraced fundamental questions of oppression and power; that the movement consisted of not only college students but large numbers of community forces, including the elderly, workers, and high school youth; and that the main thrust was not one of seeking legitimacy and representation within American society but the larger goal of liberation.

Glenn Omatsu, *The "Four Prisons" and the Movement of Liberation: Asian American Activism from the 1960s to the 1990s* in *THE STATE OF ASIAN AMERICA: ACTIVISM AND RESISTANCE IN THE 1990s*, at 19, 20-21 (Karin Aguilar-San Juan ed., 1994).

<sup>37</sup> See sources cited *supra*, note 30.

the conditions of human life" for farm workers, who were predominantly Latina/o.<sup>38</sup> As Chávez once put it, "[a]ll my life, I have been driven by one dream, one goal, one vision: to overthrow a farm labor system in this nation which treats farmworkers as if they were not important human beings . . . [but as] beasts of burden to be used and discarded."<sup>39</sup> This labor movement made progress on several fronts, working to overcome paltry wages, miserable working and housing conditions, sexual harassment of women workers, and improper use of pesticides as perhaps the first large-scale environmental effort on behalf of people of color.<sup>40</sup> Mass mobilization, the hallmark of any social movement, was accomplished under the rallying motto of "Viva La Causa!" (Long Live the Cause), and the nationalist cry of "Viva La Raza!" (Long Live the [Mexican] People).

The Chicano movement's mission was embodied in such documents as *El Plan del Barrio*, with its call for bilingual education and economic development in the barrios,<sup>41</sup> and *El Plan Espiritual de Aztlán* (The Spiritual Plan of Aztlán),<sup>42</sup> which sought economic self-determination, bilingual education, restitution for past exploitation, and creation of an independent political party.<sup>43</sup> Later, the Chicano movement used repressive police

---

<sup>38</sup> JOHN C. HAMMERBACK & RICHARD J. JENSEN, *THE RHETORICAL CAREER OF CÉSAR CHÁVEZ* 38 (1998) (remarks of Chávez). These authors relate that much of Chávez's discourse was grounded in his Mexican American heritage. For example, the United Farmworkers flag portrayed an Aztec eagle, Chávez invoked the Mexican Revolution in calling strikes, and the farm worker theme song was *De Colores*, a religious song in Spanish. *Id.* at 39. Also, the rallying motto of the workers was "Viva La Causa!" (Long Live the Cause), or "Viva La Raza!" (Long Live the [Mexican] People). Thus, we treat the UFW labor movement as a Latina/o struggle.

<sup>39</sup> REMEMBERING CESAR: THE LEGACY OF CESAR CHAVEZ 1 (Cindy Wathen ed., 2000).

<sup>40</sup> LUKE W. COLE & SHEILA R. FOSTER, *FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT* 27 (2001) (commenting on how the farm labor movement contributed to today's environmental justice movement).

<sup>41</sup> F. ARTURO ROSALES, *CHICANO!: THE HISTORY OF THE MEXICAN AMERICAN CIVIL RIGHTS MOVEMENT* 180 (1996). Although the Chicano movement ultimately targeted several community ills, its mission statement remained to establish a Chicana/o identity and to achieve Chicana/o self-determination, as reflected by the concept of Aztlán as a spiritual, cultural, economic, and political homeland. See JUAN GÓMEZ-QUINONES, *CHICANO POLITICS: REALITY AND PROMISE, 1940-1990*, at 141 (1990).

<sup>42</sup> See GÓMEZ-QUINONES, *supra* note 41, at 141 for discussion of Aztlán.

<sup>43</sup> See *infra* note 142 and accompanying text for discussion of La Raza Unida Party.

tactics and brutality as a galvanizing force,<sup>44</sup> as well as anti-war sentiments in the Chicana/o community directed at the Vietnam War.<sup>45</sup>

The Puerto Rican independence movement seeks to liberate the island of Puerto Rico from United States control. Described more fully in the LatCrit symposium cluster on Puerto Rico,<sup>46</sup> the struggle to oust the U.S. military presence in Vieques is but one manifestation of the larger ongoing effort toward self-determination and the end of centuries of colonial rule.

LatCrit is a decidedly scholarly movement composed primarily of law professors and activist lawyers. By contrast, the leaders of these prominent Latina/o movements, such as César Chávez, Dolores Huerta, Philip Vera Cruz and Rodolfo "Corky" Gonzáles, tended to be grassroots organizers from the working class, not lawyers or academics.<sup>47</sup> Still, lawyers and academics have played some role in grassroots Latina/o struggles. Although the

---

<sup>44</sup> Ian F. Haney López, *Protest, Repression, and Race: Legal Violence and the Chicano Movement*, 150 U. PA. L. REV. 205, 232 (2001).

<sup>45</sup> See sources cited *supra* note 31 for discussion of the broader Antiwar movement.

<sup>46</sup> See *supra* note 11.

<sup>47</sup> There is a complex interaction between African American intellectuals and activists that intersected in the civil rights movement in the 1960s with Martin Luther King, Jr., a Gramscian "organic intellectual" if ever there was one. See A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR. (James M. Washington ed., 1991). The African American community has a long tradition of intellectuals lending their insights to activists. See FREDERICK DOUGLASS, NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS: AN AMERICAN SLAVE, WRITTEN BY HIMSELF (Benjamin Quarles ed., 1960); W.E.B. DuBOIS, THE AUTOBIOGRAPHY OF W.E.B. DuBOIS: A SOLILOQUY ON VIEWING MY LIFE FROM THE LAST DECADE OF ITS FIRST CENTURY (1968); W.E.B. DuBOIS, W.E.B. DuBOIS: A READER (David Levering Lewis ed., 1995); W.E.B. DuBOIS, THE SOULS OF BLACK FOLK (Bantam Books 1989); DAVID LEVERING LEWIS, W.E.B. DuBOIS: BIOGRAPHY OF A RACE, 1868-1919 (1993); MANNING MARABLE, W.E.B. DuBOIS: BLACK RADICAL DEMOCRAT (1986); see also ANGELA DAVIS, ANGELA DAVIS: AN AUTOBIOGRAPHY (1974); AUDRE LORDE, ZAMI: A NEW SPELLING OF MY NAME (1982); PAUL ROBESON, HERE I STAND (1958); ASSATA SHAKUR, ASSATA: AN AUTOBIOGRAPHY (1987); BOOKER T. WASHINGTON, UP FROM SLAVERY (1900). Note the relation between the Black Power movement and the writings of FRANTZ FANON, BLACK SKIN, WHITE MASKS (Charles Lam Markmann trans., 1967); FRANTZ FANON, THE WRETCHED OF THE EARTH (Constance Farrington trans., 1968); ALBERT MEMMI, THE COLONIZER AND THE COLONIZED (Howard Greenfeld trans., 1965); HUEY P. NEWTON, TO DIE FOR THE PEOPLE: THE WRITINGS OF HUEY P. NEWTON (Toni Morrison ed., 1972); Frantz Fanon, Decolonization and Independence, in TOWARD THE AFRICAN REVOLUTION: POLITICAL ESSAYS 99 (Haakon Chevalier trans., 1967). Note also the work of Derrick Bell. See, e.g., DERRICK BELL, AFROLANTICA LEGACIES (1998); DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987); DERRICK BELL, CONFRONTING

farm worker movement sought to influence labor policy through mass mobilization and economic pressure, litigation was used on occasion, such as the 1969 defamation lawsuit filed by Chávez against members of the Desert Grape Growers League,<sup>48</sup> and the lawsuit brought by the California Rural Legal Assistance organization that succeeded in outlawing the short-handled hoe, a farm implement that caused undue spine injury.<sup>49</sup>

While the Chicano movement relied primarily on nationalist mobilization through school walkouts and anti-war protest rallies, it employed innovative legal strategies to defend Latinas/os charged with criminal offenses in the struggle. Funded in part by donations to the Chicano Legal Defense Committee, legendary Chicano activist lawyer Oscar "Zeta" Acosta<sup>50</sup> drew his defensive theories from guarantees of free speech and equal protection to validate picketing and to attack institutional racism in selecting grand jurors,<sup>51</sup> while conducting ongoing dialogue in Chicana/o publications to educate his gente (people) on his strategies of defense.<sup>52</sup> Intellectuals also played some role in the Chicano movement, one that has increased since the late 1960s with the development of Chicana/o Studies programs in universities, and the establishment of Chicana/o journals and academic associations.<sup>53</sup>

Lawyers and intellectuals propelled the independence movement in Puerto Rico from its earliest moments. For example, in

---

AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER (1994); DERRICK BELL, GOSPEL CHOIR: PSALMS OF SURVIVAL IN AN ALIEN LAND CALLED HOME (1996).

<sup>48</sup> WINTHROP YINGER, CESAR CHAVEZ: THE RHETORIC OF NONVIOLENCE 98 (1975).

<sup>49</sup> STEVEN W. BENDER, GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION (forthcoming 2003) (manuscript at 230, on file with *Oregon Law Review*).

<sup>50</sup> For autobiographical and biographical accounts of his influential life, see OSCAR ZETA ACOSTA, THE AUTOBIOGRAPHY OF A BROWN BUFFALO (1972); OSCAR ZETA ACOSTA, THE REVOLT OF THE COCKROACH PEOPLE (1973); ILAN STAVANS, BANDIDO: OSCAR "ZETA" ACOSTA AND THE CHICANO EXPERIENCE (1995).

<sup>51</sup> Ian F. Haney López, *Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination*, 109 YALE L.J. 1717 (2000).

<sup>52</sup> López, *supra* note 44, at 235-39 (describing articles attributed to Acosta during his defense of the so-called East LA Thirteen on charges stemming from their leadership of school walkouts in East Los Angeles).

<sup>53</sup> See MARIO BARRERA, BEYOND AZTLAN: ETHNIC AUTONOMY IN COMPARATIVE PERSPECTIVE 171 (1988) (observing that prior to these developments there were only scattered Chicana/o intellectuals, working in isolation); Johnson & Martínez, *supra* note 16, at 1148 (suggesting that activism was linked closely to Chicana/o Studies scholarship).

the 19th century, José de Diego, one of the intellectual precursors of this movement, was a lawyer. Today, the independence party officials tend to be lawyers and former law professors.<sup>54</sup> Litigation has also played a role in this struggle, from challenges to the Little Smith Act<sup>55</sup> to lawsuits against the United States stemming from environmental degradation in Vieques.<sup>56</sup>

Particularly in the 1960s, several Latina/o organizations formed to deploy litigation and legal maneuvers in aid of larger societal struggles. For example, the Mexican American Legal Defense and Educational Fund (MALDEF), formed in 1968,<sup>57</sup> participated in the legal defense of affirmative action<sup>58</sup> and the right of Mexican children of undocumented immigrants to public schooling,<sup>59</sup> as well as challenged California's Proposition 187 and redistricting injurious to Latina/o political representation.<sup>60</sup> In the late 1960s, to bolster its campaign against the derogatory media image of the Frito Bandito, the National Mexican-American Anti-Defamation Committee threatened to file a \$610 million defamation lawsuit against the Frito-Lay Corporation, its advertising agency, and the television networks CBS and ABC on behalf of all Mexican Americans.<sup>61</sup> Further, that Committee invoked the FCC's then-existing fairness doctrine as an adminis-

---

<sup>54</sup> For example, Manuel Rodríguez Orellana, currently the party's Secretary for North American Relations, and a speaker at LatCrit VII, was once a law professor at Northeastern University School of Law and Inter-American University of Puerto Rico.

<sup>55</sup> See Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 MICH. J. RACE & L. 1, 71-72 (2000) (describing a Puerto Rican gag law used to suppress nationalist leaders).

<sup>56</sup> Thanks to Pedro Malavet for these insights on the role of lawyers and litigation in the Puerto Rican independence movement. E-mails from Pedro Malavet to Steven Bender on file with *Oregon Law Review*.

<sup>57</sup> See GÓMEZ-QUINONES, *supra* note 41, at 112 for background on its formation. MALDEF's website provides the organization was formed in 1968 in San Antonio. *About Us*, MALDEF Website, at <http://maldef.org/about/index.htm> (last visited Mar. 12, 2003).

<sup>58</sup> *Hopwood v. Texas*, 78 F.3d 932, 934 (5th Cir. 1996) (noting the amicus brief filed by MALDEF in this litigation attacking the admissions policy of the University of Texas School of Law).

<sup>59</sup> *Plyler v. Doe*, 457 U.S. 202 (1982).

<sup>60</sup> Kathay Feng, Keith Aoki & Brian Ikegami, *Voting Matters: APIAs, Latinas/os and Post-2000 Redistricting in California*, 81 OR. L. REV. 849 (2002); Kevin R. Johnson, *Latinas/os and the Political Process: The Need for Critical Inquiry*, 81 OR. L. REV. 917 (2002); Sylvia R. Lazos Vargas, *The Latina/o and APIA Vote Post-2000: What Does It Mean to Move Beyond "Black and White" Politics?*, 81 OR. L. REV. 783 (2002).

<sup>61</sup> BENDER, *supra* note 49 (manuscript at 340).

trative strategy of counterspeech against the Bandito image.<sup>62</sup> The Puerto Rican Legal Defense Fund similarly has employed litigation against racial defamation and other cancers in the Puerto Rican experience.<sup>63</sup> Over the years, that Fund has litigated in aid of school desegregation efforts,<sup>64</sup> and against discrimination in housing,<sup>65</sup> employment,<sup>66</sup> and election laws and procedures.<sup>67</sup> Further, the Fund participated in litigation challenging Department of Defense regulations barring homosexuals from the Navy and Naval Academy.<sup>68</sup>

As the primary scholarly group of law professors addressing Latina/o concerns, the LatCrit movement is well situated to aid these legal efforts.<sup>69</sup> Yet, LatCrit's connections to these groups thus far have been disappointing.<sup>70</sup> Among the possibilities for more active and sustained involvement are to create sabbatical internships for LatCrit scholars in these Latina/o litigation and policy organizations, and to aid ongoing litigation by participating in amici brief writing and offering expert witness testimony. LatCrit scholars might even help to recruit progressive law students into these organizations by creating a pipeline to the legal academy from these organizations. Finally, LatCrit scholars and these groups might keep an eye toward each other's work, so that LatCrit can develop scholarship in aid of active litigation, and that these groups might shape litigation agendas based on doctri-

---

<sup>62</sup> *Id.*

<sup>63</sup> *E.g.*, *Puerto Rican Legal Defense Fund v. Grace*, 9 Media L. Rptr. 1514, 1514 (N.Y. Sup. Ct. 1983) (dismissing defamation claim against presidential appointee who claimed the government food stamp program "is basically a Puerto Rican program").

<sup>64</sup> *See Morgan v. Burke*, 926 F.2d 86 (1st Cir. 1991).

<sup>65</sup> *See Quiñones v. Nescie*, 110 F.R.D. 346 (E.D.N.Y. 1986).

<sup>66</sup> *See Luevano v. Campbell*, 93 F.R.D. 68 (D. D.C. 1981).

<sup>67</sup> *See Avrutick v. Wilson*, 382 F. Supp. 984 (S.D.N.Y. 1974) (targeting New York statute requiring advance registration in last general election as condition to eligibility to vote in primary); *Torres v. Sachs*, 381 F. Supp. 309 (S.D.N.Y. 1974) (challenging New York City's English-only election procedures).

<sup>68</sup> *See Steffan v. Aspin*, 8 F.3d 57 (D.C. Cir. 1993) (submitting amici curiae brief with American Jewish Committee, Asian-American Legal Defense Fund, and American Jewish Congress).

<sup>69</sup> *See Laura M. Padilla, LatCrit Praxis to Heal Fractured Communities*, 2 HARV. LATINO L. REV. 375, 382 (1997) (urging that LatCrits team with advocacy groups such as MALDEF toward eliminating oppression).

<sup>70</sup> On occasion, lawyers from these groups have participated as speakers in LatCrit conferences. For example, Kathay Feng from the Asian Pacific American Legal Center of Southern California participated in a LatCrit VII political participation workshop, and Julie Su, an attorney with the same organization, spoke at LatCrit IV.

nal prerogatives identified by LatCrit scholars.<sup>71</sup>

As a scholarly movement, LatCrit has tended to espouse non-violent solutions to subordinating relationships, such as advocating for, or opposing, legislation, and suggesting curricular and other changes in legal education.<sup>72</sup> Nonviolence tends to be the norm for academic movements composed of scholars within privileged institutions, particularly law professors in legal institutions whose survival depends on respect for the rule of law.

However, this begs the question: To what degree is the "rule of law" entitled to respect? To the extent that the "rule of law" systematically countenances, indeed ratifies and endorses, institutional practices that eviscerate the interests of individuals and communities of color through the criminal justice system, or embraces a tortured decision like *Bush v. Gore*,<sup>73</sup> one might begin to question the near-reflexive predisposition to nonviolence. Nonetheless, if only in the interest of instrumental self-protection, in a society where might makes right, nonviolence may not only be desirable but necessary.

Of the various Latina/o movements, the farm labor movement most fervently articulated a principle of nonviolence. Influenced by Gandhi and Martin Luther King, Jr., César Chávez employed nonviolent strategies of boycotts, marches, and personal disciplines such as fasts and worship.<sup>74</sup> By contrast, the Chicano

---

<sup>71</sup> For example, LatCrit scholarship is uniquely suited to expose the disingenuity of unprincipled judicial pronouncements, Sumi K. Cho, *Essential Politics*, 2 HARV. LATINO L. REV. 433 (1997) (suggesting LatCrit theory as a tool for exposing doctrinal dishonesty and combating judicial complicity in hurtful politics). As another example, LatCrit has helped to establish theory toward judicial recognition of group rights against the backdrop of a dominance of individual-rights-based jurisprudence. See Natsu Taylor Saito, *Beyond Civil Rights: The Potential of "Third Generation" International Human Rights Law in the United States*, 28 U. MIAMI INTER-AM. L. REV. 387 (1996-97).

<sup>72</sup> See Valdes, *supra* note 6.

<sup>73</sup> 531 U.S. 98 (2000). See generally SAMUEL ISSACHAROFF ET AL., WHEN ELECTIONS GO BAD: THE LAW OF DEMOCRACY AND THE PRESIDENTIAL ELECTION OF 2000 (2001).

<sup>74</sup> YINGER, *supra* note 48, at 59-60; HAMMERBACK & JENSEN, *supra* note 38, at 37 (noting Chávez embraced Gandhi's idea of boycott as particularly suited to mobilizing poor people because it did not require their time or money). King once sent Chávez a telegram during one of his fasts praising his commitment to justice through nonviolence, "You stand today as a living example of the Gandhian tradition with its great force for social progress and its healing spiritual powers." YINGER, *supra* note 48, at 50. Chávez contrasted Gandhi's philosophy, which he embraced, to that of Malcolm X, who declared in his autobiography that "it's a crime for anyone who is being brutalized to continue to accept that brutality without doing something to de-



movement looked to rhetoric of the Black Panthers in adopting a right to self-defense against oppressive Anglos and Anglo institutions;<sup>75</sup> as did the youthful Brown Berets group, which invoked the philosophy of Malcolm X in calling on use of "any and all means necessary . . . to resolve the frustrations of our people."<sup>76</sup> Yet, overall, the Chicano Movement proved predominantly non-violent in execution.<sup>77</sup> A few fringe elements of this movement did practice violence, most notably the Chicano Liberation Front, which took credit for bombings of government targets in Los Angeles in 1971.<sup>78</sup>

Two Latina/o movements were associated with violence—the 1960s land grant movement and the Puerto Rican independence struggle. Led by Reies López Tijerina, the New Mexico land grant movement sought to reclaim national forest land from the federal government by aggressive tactics. In one 1966 incident, López Tijerina and other activists, while occupying forest land, took two law enforcement officers hostage and put them on "trial" for trespassing before releasing them. Later, in 1967, López Tijerina and others attempted to make an armed citizen's arrest of a district attorney, leaving a jailer and police officer

---

fend himself." JACQUES E. LEVY, *CÉSAR CHAVEZ: AUTOBIOGRAPHY OF LA CAUSA* 269 (1975).

An oft-ignored dynamic in the farm labor movement is the role of women in leadership, particularly Dolores Huerta, in shaping its nonviolent direction. See RICHARD GRISWOLD DEL CASTILLO & RICHARD A. GARCIA, *CÉSAR CHÁVEZ: A TRIUMPH OF SPIRIT* 71 (1995).

<sup>75</sup> El Plan Espiritual de Aztlán, as the ideological framework of the Chicano movement, provided in its action plan for "[s]elf defense against the occupying forces of the oppressors at every school, every available man, woman, and child." El Plan Espiritual de Aztlán, *AZTLÁN: ESSAYS ON THE CHICANO HOMELAND* 4 (Rudolfo A. Anaya & Francisco A. Lomelí eds., 1989). See López, *supra* note 44, at 217 (noting that as late as 1965, Mexican American civil rights organizations distinguished themselves from supposed militancy in the Black community, citing a resolution sent by the League of United Latin American Citizens to President Johnson contrasting its assimilationist orientation with Black militancy evidenced by the 1965 Watts riots).

<sup>76</sup> ERNESTO CHÁVEZ, "¡MI RAZA PRIMERO!" (MY PEOPLE FIRST!): NATIONALISM, IDENTITY, AND INSURGENCY IN THE CHICANO MOVEMENT IN LOS ANGELES, 1966-1978, at 46 (2002) (statement of jailed Brown Beret organizer David Sánchez); see also ARMANDO B. RENDON, *CHICANO MANIFESTO* 205 (1971) (elaborating on the reference to "all means necessary" by quoting the Beret credo that "[i]f those Anglos in power are willing to do this in a peaceful and orderly process, then we will be only too happy to accept this way. Otherwise we will be forced to other alternatives.").

<sup>77</sup> IGNACIO M. GARCÍA, *CHICANISMO: THE FORGING OF A MILITANT ETHOS AMONG MEXICAN AMERICANS* 4 (1997).

<sup>78</sup> ROSALES, *supra* note 41, at 207.

wounded in the ensuing gun battle.<sup>79</sup>

The Puerto Rican independence movement sought to utilize violence to achieve its objectives, most dramatically the 1950 assassination attempt against President Truman and the 1954 shooting of five Congressmen within the U.S. House of Representatives by four Puerto Rican nationalists.<sup>80</sup> In the 1970s, a Puerto Rican nationalist group, FALN,<sup>81</sup> claimed credit for several bombings in Chicago, New York, and Puerto Rico, including one bombing that killed four and injured over fifty in a historic New York tavern.<sup>82</sup>

Unfortunately, while the public may regard Latinas/os as violent and most Latina/o movements as militant, what went far less publicized was government (and private)<sup>83</sup> action that surveiled, infiltrated, and repressed Latinas/os involved in these struggles.<sup>84</sup> For example, the FBI surveiled the Brown Berets and Puerto Rican nationalists.<sup>85</sup> The Los Angeles Police Department targeted the Brown Berets,<sup>86</sup> and police breaking up an East Los Angeles Chicana/o anti-war rally in 1970 gassed the crowd and killed bystander journalist Rubén Salazar.<sup>87</sup> Police infiltrated the Puerto Rican Young Lords political party group and prosecuted its lead-

---

<sup>79</sup> López, *supra* note 44, at 220-21; see generally REIES LÓPEZ TIJERINA, *THEY CALLED ME "KING TIGER": MY STRUGGLE FOR THE LAND AND OUR RIGHTS* (José Angel Gutiérrez, ed. & trans., 2000).

<sup>80</sup> See Steven W. Bender, *Sight, Sound, and Stereotype: The War Against Terrorism and Its Consequences for Latinas/os*, 81 OR. L. REV. 1153, 1159-60 (2002).

<sup>81</sup> Fuerzas Armadas de Liberación Nacional—Armed Forces of National Liberation.

<sup>82</sup> Bender, *supra* note 80, at 1160.

<sup>83</sup> See LEVY, *supra* note 74, at 5-6 (discussing the strategy of César Chávez to turn violent repression of workers by growers and others into publicity that neutralized future violent acts against the farm labor movement and mobilized the general public).

<sup>84</sup> See CHURCHILL & VANDER WALL, *supra* note 35; see also NEWTON, *supra* note 35. To compare Mexico's response to the Zapatistas in the 1990s, see SUBCOMANDANTE MARCOS, *SHADOWS OF TENDER FURY: THE LETTERS AND COMMUNIQUÉS OF SUBCOMANDANTE MARCOS AND THE ZAPITISTA ARMY OF NATIONAL LIBERATION* (Frank Bardacke et al., trans., 1995).

<sup>85</sup> Richard Delgado, *Explaining the Rise and Fall of African American Fortunes—Interest Convergence and Civil Rights Gains: Cold War Civil Rights: Race and the Image of American Democracy*, 37 HARV. C.R.-C.L. L. REV. 369, 381-82 (2002).

<sup>86</sup> ROSALES, *supra* note 41, at 206.

<sup>87</sup> *Id.* at 200-05 (Salazar was sipping a beer when he was hit by a tear gas projectile that a deputy sheriff fired into a tavern). See also RENDON, *supra* note 76, at 279 (pointing to this police response as evidence that violence as a tactic will be self-defeating and destroy the Chicana/o people because the "gringo" will respond with excessive force).

ers, allegedly in rigged trials.<sup>88</sup> Within Puerto Rico, too, government efforts to sabotage the nationalist movement were sustained and bloody.<sup>89</sup>

### B. *Membership of Latina/o Movements*

I believe that there will ultimately be a clash between the oppressed and those who do the oppressing. I believe that there will be a clash between those who want freedom, justice and equality for everyone and those who want to continue the system of exploitation. I believe that there will be that kind of clash, but I don't think it will be based on the color of the skin. . . .<sup>90</sup>

From its inception, the LatCrit movement has benefitted from diverse participation in its community-building project unbounded by race, ethnicity, sexual orientation, gender, religion, or age. At LatCrit VII, for example, conference speakers included Asian Americans, African Americans, Anglos, Native American men, a Jewish man, a Palestinian man, and two dozen Latinas/os from diverse backgrounds. Inclusion in the LatCrit community has never depended on skin color, language, sexual orientation, religion, or such characteristics. Rather, LatCrit association has stemmed from a willingness to confront "the ways in which the Law and its structures, processes and discourses affect people of color, especially the Latina/o communities."<sup>91</sup> LatCrit scholarship has profited from LatCrit's diverse solidarity among RaceCrits, QueerCrits, FemCrits, and those participating in other progressive academic movements. This diversity has spurred LatCrit scholars to develop blueprints for coalitional-based social change in such areas as political representation,<sup>92</sup> language policy,<sup>93</sup> and racial profiling.<sup>94</sup>

---

<sup>88</sup> Gloria Sandrino-Glasser, *Los Confundidos: De-Conflating Latinos/as' Race and Ethnicity*, 19 CHICANO-LATINO L. REV. 69, 83 n.53 (1998).

<sup>89</sup> See Malavet, *supra* note 55, at 70-73.

<sup>90</sup> Malcolm X, interview on the Pierre Breton Show, Jan. 19, 1965, in MALCOLM X SPEAKS 216 (George Breitman ed., Grove Press 1966) (1965).

<sup>91</sup> Fact Sheet: LatCrit 1 (Apr. 29, 1999) (on file with *Oregon Law Review*). See also Iglesias & Valdes, *supra* note 18, at 1288 ("LatCrit theory represents an ongoing collective encounter with fundamental issues of anti-essentialist community and coalitional solidarity to advance anti-subordination causes, while interjecting the multiple diversities of Latinas and Latinos into public policy debates ever more sharply.").

<sup>92</sup> See, e.g., Feng, Aoki, & Ikesagi, *supra* note 60.

<sup>93</sup> See sources cited *supra* note 24.

<sup>94</sup> E.g., *infra* Symposium Cluster, *LatCritical Perspectives: Individual Liberties*,

The 1960s Civil Rights movement ultimately moved beyond African Americans to embrace a class-based coalition. In 1972, George Jackson declared that "[a]fter revolution has failed, all questions must center on *how* a new revolutionary consciousness can be mobilized around the new set of class antagonisms that have been created by the authoritarian reign of terror. At which level of social, political and economic life should we begin our new attack?"<sup>95</sup>

Similarly, the farm labor movement led by César Chávez and Dolores Huerta was a class-based struggle that aimed to attract membership and support beyond the Latina/o community. Chávez once observed:

[I]f we wanted civil rights for us, then we certainly had to respect the rights of blacks, Jews, and other minorities. . . .

That's why today we oppose some of this La Raza business [in the Chicano Movement] so much. When La Raza means or implies racism, we don't support it. But if it means our struggle, our dignity, or our cultural roots, then we're for it. . . . [W]e can't be against racism on the one hand and for it on the other.

. . . [At the time of my earlier involvement with the Community Service Organization,] the constitution of most [barrio-based] groups said members had to be Mexican, but our constitution had no color, race, religion or any other restrictions, and we stuck to it.<sup>96</sup>

As Chávez lamented, the Chicano movement was marked by a nationalist orientation toward self-determination and anti-assimilationism that was hostile toward Anglos. The movement's manifesto, *El Plan Espiritual de Aztlán*, declared:

Brotherhood unites us, and love for our brothers makes us a people whose time has come and who struggles against the

---

*State Security, and the War on Terrorism*; Symposium Cluster, *LatCrit and the Criminal Justice System*, 78 DENV. U. L. REV. 1059 (2001).

For other discussions of coalitions, see Symposium Cluster, *Latinas/os and Inter-Group Jurisprudence: Building LatCrit Communities and Coalitions*, 2 HARV. LATINO L. REV. 467 (1997); Symposium Cluster, *Inter-Group Solidarity: Mapping the Internal/External Dynamics of Oppression*, 53 U. MIAMI L. REV. 761 (1999). See also George A. Martínez, *African-Americans, Latinas, and the Construction of Race: Toward an Epistemic Coalition*, 19 UCLA CHICANO-LATINO L. REV. 213 (1998).

<sup>95</sup> GEORGE L. JACKSON, *BLOOD IN MY EYE* 117 (Black Classic Press 1990) (1972).

<sup>96</sup> LEVY, *supra* note 74, at 123. Chávez also said "[e]very man who comes to the picket line is our brother, immediately, regardless of color." HAMMERBACK & JENSEN, *supra* note 38, at 84. Presumably, LatCrit's own "constitution" would demand for membership only a commitment toward antiessentialist and antisubordination scholarship and praxis.

foreigner "gabacho" [Anglo] who exploits our riches and destroys our culture. . . . We are a bronze people with a bronze culture. Before the world, before all of North America, before all our brothers in the bronze continent, we are a nation, we are a union of free pueblos, we are Aztlan. . . .

Nationalism as the key of organization transcends all religious, political, class, and economic factions or boundaries. Nationalism is the common denominator that all members of La Raza can agree upon.<sup>97</sup>

In the late 1960s, other groups and struggles related to the Chicano movement shared its limiting ideology of nationalism, a direction that contributed to the Chicano movement's eventual stagnation.<sup>98</sup> Despite the Chicano movement's nationalist bent, the history of struggle for dignity in Latina/o and other communities of color is marked by minority coalition on issues as diverse as school desegregation litigation<sup>99</sup> to, most recently, coalition against derogatory or absent portrayals of people of color by network television and other media.<sup>100</sup>

Addressing concerns expressed over marginalization of female voice(s) at the LatCrit I conference, the organizers of subsequent LatCrit conferences have sought to honor inclusive Latina, female, and feminist perspectives.<sup>101</sup> Subsequent conferences, for

---

<sup>97</sup> BARRERA, *supra* note 53, at 37-38 (excerpting El Plan Espiritual de Aztlán).

<sup>98</sup> See discussion *infra* Part II. One of the leaders of the Chicana/o student organization, the Brown Berets, once warned his comrades to avoid Anglos: "Do not talk to the enemy, for he is either a dog or a devil." CHÁVEZ, *supra* note 76, at 46. Similarly, Malcolm X had declared that Anglos were satanic. MALCOLM X & ALEX HALEY, THE AUTOBIOGRAPHY OF MALCOLM X 183 (13th prtng. 1966).

In New Mexico, Reies López Tijerina led a struggle against the government for restoration of Mexican farmer land rights that at times clashed with the Black-led Civil Rights movement. Although López Tijerina once announced an agreement with Black Panthers leadership that "Brown and Black should be together" against the "CRIME and SINS" of the federal government, López, *supra* note 44, at 224, on another occasion he announced that while inviting Martin Luther King to attend his movement's convention, "[W]e are only going to admit the Negroes when Martin Luther King speaks. After that they have to get out, because the convention belongs to our *raza*." SUZANNE OBOLER, ETHNIC LABELS, LATINO LIVES: IDENTITY AND THE POLITICS OF (RE)PRESENTATION IN THE UNITED STATES 63 (1995).

<sup>99</sup> See Johnson, *Lawyering for Social Change*, *supra* note 29, at 226 (examining the history of coalition between Latinas/os and other groups of color in efforts to desegregate schools).

<sup>100</sup> See BENDER, *supra* note 49, at ch. 14 (discussing efforts of the Multi-Ethnic Media Coalition, consisting of the Asian Pacific American Media Coalition, the American Indians in Film and Television, and the National Latino Media Council).

<sup>101</sup> For discussions of concerns over the male-dominated approach of initial LatCrit endeavors, see Margaret E. Montoya, *Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U. L. REV. 467, 494-496 (2001) and Elvia

example, fostered gender-based analysis of Latina/o issues.<sup>102</sup> In Latina/o movements, Latinas often were subordinated, as they have been in the Latina/o culture and in the dominant Anglo model. Foreshadowing the early LatCrit conference “blow-up,” at a 1969 Chicano movement conference in Denver, Latinas held an impromptu workshop, producing a statement condemning chauvinism within the movement.<sup>103</sup> A commentator recounted that:

[W]omen were denied leadership roles and were asked to perform only the most traditional stereotypic roles—cleaning up, making coffee, executing the orders men gave, and servicing their needs. Women who did manage to assume leadership positions were ridiculed as unfeminine, sexually perverse, promiscuous, and all too often, taunted as lesbians.<sup>104</sup>

One Chicano leader had even decried feminism among activists as a government-backed initiative to destroy the Chicano and Black liberation movements.<sup>105</sup> These marginalizations were replicated in the youthful Chicana/o organization Brown Berets<sup>106</sup> and the early history of the Puerto Rican Young Lords political party.<sup>107</sup> Although the farm worker movement was

---

R. Arriola, *March*, 19 CHICANO-LATINO L. REV. 1, 12-13 (1998) (implicating the prominent role of male speakers, the choice of topics, and the arrangement of the conference room as leading to a spontaneous caucus, a talking circle, among Latinas, that altered future LatCrit consciousness and planning).

<sup>102</sup> For example, integration of the concept of the feminization of poverty infused the LatCrit V symposium cluster Gender, Class, and LatCrit. See K.L. Broad, *Critical Borderlands & Interdisciplinary, Intersectional Coalitions*, 78 DENV. U. L. REV. 1141 (2001); Athena Mutua, *Why Retire the Feminization of Poverty Construct?*, 78 DENV. U. L. REV. 1179 (2001); Julie Nice, *Partiality*, 78 DENV. U. L. REV. 1137 (2001); Laura M. Padilla, *Reforming and Influencing Public Policy, Law and Religion: Missing from the Table*, 78 DENV. U. L. REV. 1211 (2001); Lisa Sun-Hee Park, *Perpetuation of Poverty Through “Public Charge,”* 78 DENV. U. L. REV. 1161 (2001); see also Symposium Cluster, *Race, Ethnicity, & Gender as Anti-Subordination Identities: LatCrit Perspectives*, 19 CHICANO-LATINO L. REV. 187 (1998) (symposium cluster of articles from LatCrit II).

<sup>103</sup> ROSALES, *supra* note 41, at 181-83.

<sup>104</sup> Ramón A. Gutiérrez, *Community, Patriarchy and Individualism: The Politics of Chicano History and the Dream of Equality*, 45 AM. Q. 44, 47 (1993).

<sup>105</sup> ROSALES, *supra* note 41, at 182 (remarks of ex-Brown Beret leader Chris Cebada).

<sup>106</sup> CHÁVEZ, *supra* note 76, at 57 (detailing subjugation of women in the Brown Berets organization through its paramilitary structure, its exclusion of women from leadership roles, and its emphasis on recruitment of male members); IAN F. HANEY LÓPEZ, *RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE 200-02* (2003) (examining the masculine ethos of the Berets).

<sup>107</sup> OBOLER, *supra* note 98, at 54-56 (identifying subordination in the party's early days similar to that in the Chicano movement relegating female members to office

buoyed by Dolores Huerta's position as a leader of the United Farmworkers organization, Huerta was criticized then as neglectful of her family, and marginalized later in the historical record and memory among Anglos of the farm labor movement, which continues today under Huerta's guidance.

The LatCrit movement also seeks to include the youthful voices of students, thus far law and graduate students, in its scholarly practice. Almost every conference has included student speakers; most recently, over a dozen law students from Berkeley attended LatCrit VII, one speaking at a concurrent panel, others informally to the conference during meals, and one publishing an article in the LatCrit VII symposium.<sup>108</sup> Boalt's participation in the conference also led to the inclusion of part of the LatCrit VII symposium in the *La Raza Law Journal*. Recently, Lisa Iglesias and Frank Valdes reviewed the history of past inclusion of students within LatCrit activities, and the exciting new opportunities being developed for law students interested in aiding the LatCrit movement.<sup>109</sup>

Latina/o movements reached out to youth as well, not to law students, but to college students, nonstudents, and high school youth. The latter were mobilized as part of the 1968 Chicana/o school "blowouts" in which thousands of Chicana/o students walked out of Los Angeles high schools to protest educational conditions.<sup>110</sup> Students also played key roles in supporting Chicana/o anti-war rallies.<sup>111</sup> Youthful Latina/o organizations formed during the 1960s included the still active Chicana/o student group MEChA (Movimiento Estudiantil Chicano de Aztlán), the Brown Berets,<sup>112</sup> and the Puerto Rican Young Lords political party.<sup>113</sup> The farm worker movement, with its class and political-based identity, embraced student activists regardless of

---

work and child care duties; ultimately, however, women were admitted to the central committee of the party and given leadership roles).

<sup>108</sup> See Maeda, *supra* note 6.

<sup>109</sup> Iglesias & Valdes, *supra* note 18, at 1314-19 (describing the Critical Global Classroom and Student Scholar Program).

<sup>110</sup> See generally ROSALES, *supra* note 41, at 184-95.

<sup>111</sup> See *infra* note 133 and accompanying text for discussion of the Chicano anti-war movement.

<sup>112</sup> See generally CHAVEZ, *supra* note 76, at 42-60 (describing the goals of the Brown Berets as primarily involving education, economic, and law enforcement policies). The Brown Berets expressed a nationalist vision of unity based on Chicana/o heritage "regardless of age, income, or political philosophy." *Id.* at 49.

<sup>113</sup> See generally OBOLER, *supra* note 98, at 51-58 (describing the movement as encompassing a critical stance toward Puerto Rico's colonial status). Primarily, the

ethnicity, particularly college students from Berkeley.<sup>114</sup> The LatCrit movement needs to develop inroads to educate and to mobilize undergraduate and high school students,<sup>115</sup> and to steer students from subordinated communities toward legal education. However, such students also need support once in law school in order to resist powerful norms pushing for co-optation and political demobilization.<sup>116</sup>

## II

### SEEKIN' THE CAUSE IN THE POST-CIVIL RIGHTS ERA

#### Revolution

Where did it go?  
 Can't say that I know  
 Those times of revolution  
 Of burnin', burnin', burnin'  
 All so cool and gone  
 What was, just was  
  
 We tried, my brother  
 To hold on to our fate  
 Or was it late for revolution?  
 Too tired, too tired, sister  
 To hold my fist so high  
 Now that it's gone  
  
 Too tired brother, sister  
 To hold my fist so high  
 Now that it's gone  
 Gone away  
  
 Where did it go?  
 Can we say we know  
 Those times of revolution  
 Our time of revolution<sup>117</sup>

Young Lords addressed neighborhood issues such as education, local politics, and tenement housing codes.

<sup>114</sup> J. CRAIG JENKINS, *THE POLITICS OF INSURGENCY: THE FARM WORKER MOVEMENT IN THE 1960s*, at 143 (1985).

<sup>115</sup> See Keith Aoki, *Critical Legal Studies, Asian Americans in U.S. Law & Culture, Neil Gotanda, and Me*, 4 *ASIAN L.J.* 19 (1997) (discussing teaching an Asian Americans in U.S. Law & Culture class to undergraduates at the University of Oregon in 1994); Steven W. Bender, *Silencing Culture and Culturing Silence: A Comparative Experience of Centrifugal Forces in the Ethnic Studies Curriculum*, 5 *MICH. J. RACE & L.* 913 (2000) (describing author's undergraduate course, Chicanos/as and the Law, which uses LatCrit readings).

<sup>116</sup> See generally DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* (1983); Duncan Kennedy, *How the Law School Fails: A Polemic*, 1 *YALE REV. L. & SOC. ACTION* 71 (1970).

<sup>117</sup> "Revolution," written by David Hildalgo and Louie Perez © 1996, Davince



Of course, the revolution has failed. Fascism has temporarily succeeded under the guise of reform. The only way we can destroy it is to refuse to compromise with the enemy state and its ruling class. Compromises were made in the thirties, the forties, the fifties. The old vanguard parties made gross strategic and tactical errors. At the existential moment, the last revelation about oneself, not many of the old vanguard choose to risk their whole futures, their lives, in order to alter the conditions that Huey P. Newton describes as "destructive of life."<sup>118</sup>

Although some commentators contend the Latina/o sociopolitical movements addressed above have evolved and remain active,<sup>119</sup> no doubt they have long lost their heyday mobilizing momentum and have slipped from the public's consciousness. Several factors played a role in dampening the mobilization of these groups in the late 1960s and early 1970s. Among them was the conservative political backlash against the farm worker movement after the assassination of presidential candidate Robert Kennedy in 1968 and the subsequent election of Richard Nixon, who opposed workers' interests. Nixon also successfully implemented the Republican's "Southern Strategy" whose racial repercussions resound today. Using race as a wedge issue, Nixon managed to shift (for the foreseeable future) the votes of the southern states into the republican column.<sup>120</sup> Also playing a role was government repression and sabotage of these social movements.<sup>121</sup> During the 1980s, the Reagan administration and attendant conservative ideology emphasizing individual merit

---

Music (BMI)/No K.O. Music (BMI)/Administered by BUG. All rights reserved. Used by permission.

<sup>118</sup> JACKSON, *supra* note 95, at 120.

<sup>119</sup> See, e.g., CHÁVEZ, *supra* note 76, at 117-20 (maintaining that Chicana/o reform efforts behind the Chicano movement shifted to electoral politics). See generally LÓPEZ, *supra* note 106, at 236-39 (evaluating the Chicano movement). The Puerto Rican independence movement remains active, at least among academics, as evidenced by the Puerto Rican cluster in this LatCrit VII symposium, *The Past, Present and Future of the Puerto Rico-U.S. Colonial Relationship: Vieques, Transculturation, and Reparations*, 13 LA RAZA L.J. 369 (2002).

<sup>120</sup> Troy Duster, *Individual Fairness, Group Preferences, and the California Strategy*, 55 REPRESENTATIONS 41, 53-54 (1996) (analyzing the effects of Richard Nixon's "Southern Strategy" and describing how by the 1990s "[w]hite bloc voting for white candidates and 'white group interests' has become one of the untold stories of American [and Californian] politics").

<sup>121</sup> GARCÍA, *supra* note 77, at 142 (characterizing the subversive tactics as constant and intense, causing job loss, arrests, economic hardship, and social marginalization of activists, also pointing to the dynamic of potential adherents being lured away by the rise of government employment opportunities for the Latina/o middle class).

and supply side economics did not bode well for Latinas/os in general and for Latina/o labor organizing in particular. Furthermore, Reagan's appointees to the federal bench, including the Supreme Court, consolidated the coalescing conservative judicial majority in the federal courts. Internal forces also shattered these Latina/o movements. In the Chicano movement, these forces included the dominance of individual egos, ideological splits, and the lack of a national structure and explicit, understandable ideology.<sup>122</sup>

More fundamentally, these movements were bounded by what Lisa Iglesias has called their exclusionary visions of community—the labor movement's class-based essentialism and the Chicano movement's race-based essentialism.<sup>123</sup> The Puerto Rican independence movement shares this nationalist agenda that hampers cross-national solidarity. By contrast, the LatCrit scholarly movement has sought a political identity<sup>124</sup> that aims to mobilize and build community around those willing to address Latina/o issues in imagining a post-subordination future. Still, LatCrit faces its own external and internal perils of survival and growth that sometimes mirror those plaguing the larger Latina/o social movements. Among these are the "star" system in academia emphasizing individual careerism over community-building,<sup>125</sup> backlash from conservative forces in academia,<sup>126</sup> and the potential for schisms along such lines as gender, class, national origin, race, and language.<sup>127</sup>

---

<sup>122</sup> *Id.* at 141-43 (quoting a Chicana leader as revealing she never understood what the movement meant by seeking self-determination—"Was it revolution, or a nation within a nation?").

<sup>123</sup> Elizabeth M. Iglesias, *International Law, Human Rights, and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177, 181 n.4 (1997).

<sup>124</sup> See generally ROBERT S. CHANG, *DISORIENTED: ASIAN AMERICANS, LAW, AND THE NATION-STATE* 128-29 (1999) (emphasizing the importance of interracial coalitions); cf. Mary Romero, *Historicizing and Symbolizing a Racial Ethnic Identity: Lessons for Coalition Building with a Social Justice Agenda*, 33 U.C. DAVIS L. REV. 1599, 1622-25 (2000) (suggesting the limiting factors within the Chicana/o Studies academic movement experience as including its focus on identity politics and cultural nationalism rather than antisubordination praxis, hampering coalition building).

<sup>125</sup> Iglesias & Valdes, *supra* note 18 at 1289. See also Richard Delgado, *The Imperial Scholar: Reflection on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984); Richard Delgado, *The Imperial Scholar Revisited: How To Marginalize Outsider Writing, Ten Years Later*, 140 U. PA. L. REV. 1349 (1992).

<sup>126</sup> Keith Aoki, *The Scholarship of Reconstruction and the Politics of Backlash*, 81 IOWA L. REV. 1467 (1996).

<sup>127</sup> Kevin R. Johnson, *Celebrating LatCrit Theory: What Do We Do When the*

The growth of LatCrit as an academic movement in the post-civil rights era belies the current stagnation of social movements within the Latina/o community that lack national leaders and national mobilizing structures. Because the vision of LatCrit scholars extends beyond academia to anti-subordination transformation locally, nationally, and internationally, the LatCrit movement must continue to aspire toward developing scholarship that social movements can draw upon, and toward conducting praxis<sup>128</sup> that connects to and helps mobilize support for these groups. In determining the academic and praxis pathway toward mass mobilization for social change in Latina/o communities, LatCrit scholars must be mindful of the likelihood that successful strategies will entail coalition among subordinated groups. Further, LatCrit scholars must remain apprised of mobilizing forces in these other groups that may well resonate for Latinas/os.<sup>129</sup> Among the many substantive areas where LatCrit might contribute a scholarly framework toward mobilization and an engagement of praxis are resistance to U.S. military intervention abroad, promoting community policing, examining labor and immigration policies critically, advocating the continuance of affirmative action programs in higher education and employment,<sup>130</sup> leading K-12 funding reform,<sup>131</sup> and aiding political

---

*Music Stops?*, 33 U.C. DAVIS L. REV. 753, 781-86 (2000) (suggesting and examining future challenges to LatCrit). See also Guadalupe T. Luna, *LatCrit VI, America Latina and Jurisprudential Associations*, 54 RUTGERS L. REV. (forthcoming 2003) (suggesting LatCrit will become irrelevant without an emphasis on praxis).

<sup>128</sup> On the imperatives of LatCrit praxis, see, e.g., Margaret E. Montoya, *Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis*, 2 HARV. LATINO L. REV. 349 (1997); Padilla, *supra* note 69.

<sup>129</sup> For example, the galvanizing issue of reparations in the African American community has relevance for Latinas/os too. See Malavet, *supra* note 6.

<sup>130</sup> Several LatCrit scholars helped to prepare amicus curiae briefs in the Supreme Court's recent scrutiny of the University of Michigan's affirmative action program at its undergraduate and law schools. *Gratz v. Bollinger*, 539 U.S. \_\_\_\_ (2003); *Grutter v. Bollinger*, 539 U.S. \_\_\_\_ (2003).

<sup>131</sup> While at first glance, school district funding may seem like a prosaic area of inquiry, there are some interesting developments in the area as state supreme courts take a different tack than the federal courts on the issue of district power equalization. Compare *Edgewood Independent School District v. Kirby*, 77 S.W.2d 391 (Tex. 1989) with *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). Both cases involve challenge to the same school district in Texas brought by parents living in a school district with a high population of poor and minority students with a low property tax base that gave rise to increasing differentials between rich (Alamo Heights) and poor (Edgewood) districts. Applying the 14th Amendment Equal Protection Clause, the U.S. Supreme Court in *Rodriguez* found no constitutional violation. *Rodriguez*, 411 U.S. at 62. By contrast, in *Kirby*, the Texas

participation.<sup>132</sup> We examine each briefly below.

The Chicano movement, and offshoots such as the Brown Berets, embraced an anti-war ideology directed at the Vietnam War. This sentiment stemmed from imperatives of nationalism and cultural survival (given the disproportionate casualties of color in the war) and from concerns over U.S. soldiers of color killing foreigners of color.<sup>133</sup> With the withdrawal of U.S. troops from Vietnam, this anti-war impetus ended. Today, the war on terrorism raises the same concerns of a disproportionate impact on U.S. soldiers of color, and on U.S. and international communities of color who represent the enemy. The amorphous war on terrorism holds more comparison to the Cold War than to Vietnam in its potential for infinite duration and for backlash against "up-pity" communities of color in the United States. Confronting excesses in the war on terrorism holds the promise of coalition among Latinas/os, Asian Americans, Arab Americans, and others bearing the brunt of backlash. Thus, LatCrit initiatives of critical scholarship and praxis directed toward abuses in the war on terrorism are worthwhile.<sup>134</sup>

LatCrit scholars have begun to examine police-community relations, such as racial profiling,<sup>135</sup> repressive police tactics,<sup>136</sup> and

---

Supreme Court applied the Texas Constitution to find that glaring disparities between different school districts' ability to raise revenues from property taxes violated the Texas Constitution's mandate to support and maintain an "efficient" public education system, in order that "districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort." *Kirby*, 77 S.W.2d at 397.

<sup>132</sup> Note the efforts of MALDEF in voting rights litigation. See *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990) (holding that the L.A. County Board of Supervisors had violated the federal Voting Rights Act of 1965 by intentionally fracturing the voting strength of Latina/o voters in drawing Supervisor voting districts); *Gomez v. City of Watsonville*, 863 F.2d 1407 (9th Cir. 1988); *Cano v. Davis*, 211 F. Supp. 2d 1208, 1246 (C.D. Cal. 2002) (rejecting both a 14th Amendment and a Voting Rights Act Section 2 challenge by MALDEF to three of the California legislature post-2000 congressional districts, noting that "Latino legislators and interest groups played a significant role in the 2001 redistricting process" and that Latinos comprised over twenty-two percent of the legislature). See also Johnson, *supra* note 60; Rodolfo O. de la Garza & Louis DeSipio, *Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation After Seventeen Years of Voting Rights Act Coverage*, 71 TEX. L. REV. 1479 (1993).

<sup>133</sup> CHÁVEZ, *supra* note 76, at 55 (quoting the Brown Berets' newspaper, *La Causa*, as opining that the Vietnam War "is the ultimate weapon of genocide of non-white peoples by a sick decadent *puto* [cursed] western culture.").

<sup>134</sup> This LatCrit VII symposium addresses these issues. See *supra* note 10.

<sup>135</sup> See *supra* note 27.

<sup>136</sup> E.g., López, *supra* note 44.

the war on drugs.<sup>137</sup> The interrogation of urban themes in upcoming LatCrit VIII will present a further opportunity for continued examination of community policing practices, particularly the impact of September 11 on racial profiling and other detrimental police practices, and more generally in casting police and law enforcement authorities as heroes and those who criticize them as anti-American. Inclusion of police-community relations also harbors potential for coalescing Black/Brown interests given their disproportionate prison populations.

Labor has been a focus of LatCrit scholars, most recently in this LatCrit symposium.<sup>138</sup> The LatCrit movement's connection to labor causes was particularly evident when UFW co-founder Dolores Huerta delivered a keynote address at LatCrit V. That conference theme of class and economic inequality brought home the reality that Latina/o interests lie largely with those of the working class. Despite the sustained scholarly focus of LatCrit on labor, class, and immigration policy, the LatCrit movement suffers from an absence of input from the working class. Touring the side streets of San Antonio by bus does not constitute input from the working class. Even hearing from activists as we have done at some conferences is not the same as developing a sustained process for input from field and factory workers who in some areas are predominantly Latina/o. The LatCrit movement needs to embrace an institutional means of connecting directly with these workers, so that their causes will inform our scholarship and spur our praxis, helping to position LatCrit scholars at the crest of future galvanizing forces in labor, rather than as mere scribes of history. A challenge for LatCrit scholars

---

<sup>137</sup> E.g., Bender, *supra* note 80; Ivelaw L. Griffith, *Drugs and Democracy in the Caribbean*, 53 U. MIAMI L. REV. 575, 869 (1999).

<sup>138</sup> E.g., Symposium Cluster, *Inter/National Migration Of Labor: Latcritical Perspectives On Addressing Issues Arising With the Movement Of Workers*, 13 LA RAZA L.J. 311 (2002); see also Symposium Cluster, *Forging Our Identity: Transformative Resistance in the Areas of Work, Class, and the Law*, 33 U.C. DAVIS L. REV. 1057 (2000); Symposium Cluster, *Globalization or Global Subordination?: How LatCrit Links the Local to Global and the Global to the Local*, 33 U.C. DAVIS L. REV. 1429 (2000); Christopher David Ruiz Cameron, *The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers*, 53 U. MIAMI L. REV. 1089 (1999); Roberto L. Corrada, *Familiar Connections: A Personal Re/View of Latino/a Identity, Gender, and Class Issues in the Context of the Labor Dispute Between Sprint and La Conexion Familiar*, 53 U. MIAMI L. REV. 1065 (1999); Mary Romero, *Immigration, the Servant Problem, and the Legacy of the Domestic Labor Debate: "Where Can You Find Good Help These Days?"*, 53 U. MIAMI L. REV. 1045 (1999).

is to work to meaningfully bridge the distance between the relatively bourgeois lives that law professors (LatCrit and other) lead and the economically marginal lives that many Latinas/os and other communities of color find themselves enmeshed in.

Being a scholarly movement, LatCrit has addressed education issues from the outset, and in this symposium.<sup>139</sup> Still, the LatCrit movement has emphasized higher education, especially legal education, in its discussions of curriculum, affirmative action, tenure, and lack of institutional support, and in its praxis by joining the 1998 Society of American Law Teachers (SALT) Communities Affirming Real Equality (C.A.R.E.) march in San Francisco. To serve Latinas/os, and Blacks, whose populations are both disproportionately youthful, LatCrit's analysis must encompass issues of elementary, secondary, and pre-schooling. Both the Chicano movement in its "blowouts" and the Young Lords in their demand for bilingual education in New York City schools provide examples from Latina/o movements of the salience of K-12 education in the Latina/o community. At LatCrit VIII, in its urban-themed setting, and beyond, LatCrit scholars should attend to the crisis in schooling that encompasses the eradication of bilingual education, curriculum that ignores or misrepresents Latinas/os and other communities of color, funding inadequacies, and other shortcomings.

Finally, aiding the political participation of subordinated groups in a democratic society provides a basis for coalition among these groups.<sup>140</sup> Yet, until this year's symposium,<sup>141</sup> polit-

---

<sup>139</sup> See *supra* note 14.

<sup>140</sup> See generally YAMAMOTO, *supra* note 19. See also James A. Regaldo, *Community Coalition-Building*, in *THE LOS ANGELES RIOTS: LESSONS FOR THE URBAN FUTURE* 230 (Mark Baldassare ed., 1994):

[C]oalition failures in this period have been due to a combination of conceptual, structural and organizational problems: (1) improperly understanding the complexity of race and class relations and issues in Los Angeles, inclusive of a reliance on and not going beyond building middle class memberships and constituencies; (2) becoming too comfortable with critically unchallenged concepts of pluralism and multiculturalism; (3) being oblivious to the degree to which traditional theories and beliefs of representative democracy and public policy formation are not working for communities of color; (4) failures to broadly recognize and confront the degree to which anti-democratic corporatist approaches have failed those most in need of economic development and job creation; (5) failure to set clear and strategic goals, realizable objectives and targeted activities and outcomes; and (6) being unwilling to overcome provincial outlooks and agendas.

<sup>141</sup> See *supra* note 9.

ical representation of Latinas/os and other subordinated groups has not received sufficient attention within the LatCrit movement. The history of Latina/o movements and struggles evidences an attention towards securing a political voice, even to the length of forming a separate political party, La Raza Unida (the United People), which was briefly active in the late 1960s and early 1970s in several states, particularly in California, Colorado, and Texas state and local politics.<sup>142</sup> LatCrit scholars must forge connections with Latina/o politicians and those from other subordinated groups.<sup>143</sup> At the same time that globalization, the war on terrorism, and other events and circumstances pull LatCrit's gaze internationally, politics provide a counter influence that reminds LatCrit scholars of the equally salient notion that movements often start small, and in one's own backyard.

### III

#### OPENING CLUSTER: SOCIAL JUSTICE MOVEMENTS AND LATCRIT COMMUNITY

Having centered current and past Latina/o social movements within LatCrit, we turn in conclusion to the opening cluster of articles in this LatCrit VII symposium. These five articles address broader ongoing socio-political movements such as anti-globalization protest and the lesbian/gay rights movement. Here, we comment briefly on their lessons for the evolution of the LatCrit movement.<sup>144</sup>

Evident in the opening cluster articles are the diverse backgrounds of the authors and the expansive themes they engage under the LatCrit umbrella. The first article, *On Making Anti-Essentialist Arguments in Court*,<sup>145</sup> is written by Suzanne

---

<sup>142</sup> See generally ROSALES, *supra* note 41, at 228-47 (addressing the rise and fall of La Raza Unida Party); GOMEZ-QUINONES, *supra* note 41, at 131-38 (stating the party platform of La Raza Unida included a "guaranteed annual income, national health insurance, no land taxation, bilingual education, parity in federal employment, an increase in admissions to medical schools, parity in jury selections, support for organizing farm workers, and a call for the enforcement of the Treaty of Guadalupe Hidalgo.").

<sup>143</sup> Susan Castillo addressed participants at LatCrit VII during her successful campaign to become Oregon's superintendent of public schools. She is the first Latina/o to hold statewide office in Oregon.

<sup>144</sup> Due to time constraints, we were not able to include a separate introduction to this cluster. Our truncated remarks here replace a more substantial introduction, with apologies to the cluster authors.

<sup>145</sup> 81 OR. L. REV. 629 (2002).

Goldberg, a former staff attorney with Lambda Legal Defense and Education Fund, and now a professor at Rutgers-Newark Law School. Goldberg's article confronts the risks of making anti-essentialist arguments to courts in their adjudication of anti-discrimination claims by multidimensional plaintiffs, particularly in lesbian and gay rights litigation. Ward Churchill contributes the second cluster article. Churchill, a Keetoowah Band Cherokee and Professor of Ethnic Studies at the University of Colorado at Boulder, is one of the country's foremost experts on indigenous peoples and their struggles in the Americas. In his cluster article, *The Law Stood Squarely on Its Head: U.S. Legal Doctrine, Indigenous Self-Determination and the Question of World Order*,<sup>146</sup> Churchill posits that the decolonialization of Native North America is a crucial component of transforming the unjust global dictatorship of the United States over world politics and economies. Ibrahim Gassama, our colleague at the University of Oregon School of Law and former counsel with TransAfrica, contributes *Confronting Globalization: Lessons from the Banana Wars and the Seattle Protests*.<sup>147</sup> His piece explores the opportunities and challenges in building an international movement against economic globalization. Next is Peggy Maisel's essay, *Lessons From the World Conference Against Racism: South Africa as a Case Study*.<sup>148</sup> Maisel, a professor at the University of Natal School of Law in Durban, South Africa, looks to South Africa's experience to illustrate the difficulties faced by former colonizing countries in meeting their obligation under the Durban Declaration to repair colonialism's damage. The final cluster article, *Reparations Litigation: What About Unjust Enrichment?*,<sup>149</sup> is written by Margalynne Armstrong, a professor at Santa Clara University School of Law who has contributed to the LatCrit movement since its inception. Armstrong's piece examines the role of the doctrine of unjust enrichment and the remedy of constructive trust in reparations litigation on behalf of the descendants of enslaved Africans.

Evident in these five opening cluster articles are several themes that resonate for Latinas/os and the LatCrit movement. For example, mindful of LatCrit's vision of an anti-essentialist

---

<sup>146</sup> 81 OR. L. REV. 603 (2002).

<sup>147</sup> 81 OR. L. REV. 707 (2002).

<sup>148</sup> 81 OR. L. REV. 739 (2002).

<sup>149</sup> 81 OR. L. REV. 771 (2002).



future, Goldberg's article injects jurisprudential reality and a warning in illustrating the risks of pitching anti-essentialist arguments to some judges in anti-discrimination litigation. Armstrong, Churchill, Gassama, and Maisel each confront strategies for remedying the enduring and pervasive economic and socio-political harms wrought by colonialism, a legacy that has had a profound impact on Latinas/os as well as on African Americans, Native Americans, and other subordinated groups. Churchill and Gassama both acknowledge the obstacles to local and international justice posed by legitimizing mythology of the "Rule of Law." Further, in addressing litigation-based strategies, Armstrong, Churchill, and Goldberg remind those struggling against subordination of the importance of attention to constructing viable legal arguments toward social change. At the same time, these and the other articles in the cluster recognize the broader range of galvanizing and operational strategies necessary to restore or obtain dignity in subordinated communities—from grassroots protests (utilized prominently in protests against globalization in Seattle and other meeting sites for multinational economic institutions) to more formal efforts, yet conducted outside the courtroom, such as the United Nations' sponsored World Conference against Racism (WCAR).

Some of the contributors caution against a narrow approach of confronting anti-subordination that attends to seemingly localized problems with only localized strategies. Maisel, for example, concludes that South Africa's experience counsels that even the most reformed government will be unable to achieve equality for its subordinated people without a commitment from the international community.<sup>150</sup> Similarly, LatCrit scholars have long recognized the shortcoming of strategies toward an anti-subordination future for Latinas/os that fail to confront more general barriers in society—those local, national, and international—that subordinate all oppressed groups.

Finally, the cluster articles remind LatCrit scholars that many progressive movements toward social change must overcome what Gassama calls the war against memory<sup>151</sup>—efforts to deny a place for considering past injustice whose consequences still endure. In addition to Gassama, authors Armstrong, Churchill, and Maisel advocate strategies relevant to the LatCrit movement

---

<sup>150</sup> Maisel, *supra* note 148, at 768-69.

<sup>151</sup> Gassama, *supra* note 147, at 724.

that aim to restore our collective memory of discrimination, colonialism, and apartheid in addressing their past and present damage. Ironically, while seeking to ensure international recognition of the continuing legacy of crimes against humanity, Maisel points out how the WCAR proceedings themselves fell victim to the war against memory just three days after the conference ended when the events of September 11 rewrote our remembered history and recast our future priorities.<sup>152</sup> The Lat-Crit movement, then, moves forward, mindful of the invisibility and mistreatment of Latinas/os in our historical and cultural record, and cognizant of the challenges ahead to forging an anti-subordination future in a post-September 11 environment where communities of color are cast to warrant recrimination, not repair.<sup>153</sup>

---

<sup>152</sup> Maisel, *supra* note 148, at 739.

<sup>153</sup> For a comprehensive discussion of the aftermath of September 11th on communities of color, see *infra* Symposium Cluster, *LatCritical Perspectives: Individual Liberties, State Security, and the War on Terrorism*.

