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As a child, I learned in school about the Alamo and of the courageous men who fought to their death against the overwhelming forces of the Mexican Army. My classmates and I were told that their defeat became a rallying cry for Texans who sought independence from Mexican rule. The Texans were likened to the founding fathers of our nation who sought independence from British rule. I wanted to learn more, so I went to my small town's public library and found in the children's section a biography of Davey Crockett, one of the brave fighters who fell at the Alamo. It was with excitement that I read about the men in the Alamo. I read about how they responded to the news of the huge army of General Santa Anna, how they drew a line in the sand so that those who would stay and fight were to cross over it and those who didn't could leave before the enemy army came. I remember the story of one man who was sick or injured in a stretcher who asked to be carried over the line to join the men who were going to stay and fight. When the battle ensued, the men in the Alamo fought bravely but were overcome not by the Mexican army's superior tactics or martial skills but by their sheer numbers. Davey Crockett, after running out of bullets, fought Mexican soldiers with his bare hands until he too was killed. This is how I was taught as a child to remember the Alamo.

As an adult, I read Rodolfo Acuna's *Occupied America: A History of Chicanos*,[1] which tells a very different story about the battle at the Alamo. In this account, "from all reliable sources, it is doubtful whether Travis ever drew a line in the sand."[2] And Davey Crockett didn't fight to his death. He was among those who were surrendered and was later executed. Although Texans did struggle to liberate themselves from Mexican rule, their goals were not as noble as the professed aspirations of the founding fathers of the United States. One of the driving impulses of the elite leading the Texas independence movement was the desire to maintain the institution of slavery, which was abolished by Mexico in 1829.[3]

There is the childhood memory of what was taught in school alongside the history contained in works such as Acuna's. They represent very different versions, and visions, of what this country's history is, and consequently, what this country is today. In the same way that an individual is constituted by her or his memory,[4] a

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† Professor of Law and J. Rex Dibble Fellow, Loyola Law School, Loyola Marymount University. My title is drawn from a statement by one of the characters at the end of the film *Lone Star*. JOHN SAYLES, LONE STAR (Castlerock Entertainment 1996). Elvia Arriola and Margaret Montoya each offer very interesting readings of the film. *See* Elvia R. Arriola, *LatCrit Theory, International Human Rights, Popular Culture, and the Faces of Despair in INS Raids*, 28 U. MIAMI INTER.-AM. L. REV. 245 (1997); Margaret E. Montoya, *Lines of Demarcation in a Town Called Frontera: A Review of John Sayles' Movie* Lone Star, 27 N.M. L. REV. 223 (1997).

1. RODOLFO ACUNA, OCCUPIED AMERICA: A HISTORY OF CHICANOS (3d ed. 1988).

2. *Id.* at 11.

3. *Id.* at 7-8.

4. *See* MARITA STURKEN, TANGLED MEMORIES: THE VIETNAM WAR, THE AIDS EPIDEMIC, AND THE POLITICS OF REMEMBERING 1 (1997) ("memory provides the very core of identity").

nation is constituted by its official history.[5] Perhaps this helps to explain what Stephen Gottlieb has observed, that history as taught in secondary schools is bent or distorted in order to foster feelings of patriotism.[6] I wonder if the same can be said of law schools, whether a similar charge can be brought based on the way race is taught or not taught in U.S. law schools. The way race is taught or not taught may reflect positive curricular choices that serve consciously or unconsciously to foster a colorblind ideology. The standard constitutional narrative is one that mourns the sins of the founding fathers with regard to the stain that slavery left upon our Constitution but that celebrates the eventual, inevitable march toward progress as we leave our racial and racist past behind. Students are left with a historical predicate where the chief lesson is that the nation's constitutional mistake came from its formal use of race. This historical predicate doesn't sit well when these same students, later our judges and political leaders, are asked to take heed of the factual predicate that would justify state-sponsored race-conscious remedial measures.[7] The way race is taught or not taught in law schools is reflective of the historical and factual predicates we want our students to have.

The two articles in this cluster might be understood as laying the groundwork for this charge. Francisco Valdes, in *Barely at the Margins*, begins his article by stating that "[f]inding 'Latinas/os' in the law school curriculum at the dawn of the new millennium is no easy task."[8] Valdes reports the results of two nationwide surveys of U.S. law schools to determine the presence/absence of courses devoted primarily to the study of Latinas/os and the law along with courses that include coverage of Latinas/os in related race-themed courses and related "mainstream" doctrinal courses. He found that only 7 schools offered courses specifically devoted to "Latinas/os and the Law"[9] and that most of these courses were not offered every year.[10] With regard to related courses, Valdes provides a summary analysis of three kinds of related courses: "Critical Race Theory" courses; "Race, Racism and Race Relations" courses, and "mainstream" doctrinal courses.[11] In these courses, he finds that the race-themed courses devote on average 10-15% of course time to Latina/o issues.[12] Surprisingly, the "mainstream" doctrinal courses that cover Latinas/os reported that they devote on average 20% of course time to Latina/o issues.[13]

Valdes then extrapolates from reported average enrollments and scheduling cycles for the course to conclude that "nationwide, less than 5% of all law students in the 1999-2000 and 2000-01 academic years would have been enrolled in one of these [primary or related] courses."[14] Stated differently, fewer than "5 in 100 law students received *any* formal education on race, ethnicity or Latinas/os and the law

5. *Cf.* at 259 ("Discourses of memory and forgetting are both essential to the construction of national meaning.").

6. Stephen E. Gottlieb, *In the Name of Patriotism: The Constitutionality of "Bending" History in Public Secondary Schools*, 62 N.Y.U. L. REV. 497 (1987).

7. *Cf.* City of Richmond v. J.A. Croson, 488 U.S. 469 (1989) (O'Connor's opinion).

8. Francisco Valdes, *Barely at the Margins: Race and Ethnicity in Legal Education—A Curricular Study With LatCritical Commentary*, 13 BERKELEY LA RAZA L.J. 119 (2002).

9. *Id.* at 133, n.53.

10. *Id.* at 134.

11. *Id.* at 131-41.

12. *Id.* at 135.

13. *Id.* at 136 (Valdes notes that this figure might be viewed with some skepticism).

14. *Id.* at 137.

during the past two academic years."[15] Valdes notes that this is probably an overstatement because it does not factor in the possibility that a student might enroll in more than one of these courses, if offered at their school, so that the true figure is probably less than he reports.[16] What this means is that students at most institutions have little opportunity to engage in the formal study of race and the law. Students have even less opportunity to engage in the formal study of Latinas/os and the law.

Most, if not all, of the courses on critical race theory are taught by faculty-of-color.[17] Most of the primary courses on Latinas/os and the law are taught by Latinas/os.[18] If more related and primary courses are going to be offered by schools, then it seems that schools must hire faculty-of-color who have research and teaching interests in the area of critical race theory and on Latinas/os and the law. Valdes notes that many of these courses came to be taught because of the specific interest of a faculty member sometimes combined with student efforts to establish these courses.[19] While he lauds these successes, Valdes

> wonder[s] whether any progress in the formal law curriculum would be evident but for the presence of minority faculty and interested students—and whether such courses can be sustained in spite of the onset of backlash and retrenchment via the "culture wars" that already have decimated diversity and begun to resegregate some prominent law schools around the country.[20]

The Valdes study provides a much-needed snapshot of legal education that can "raise awareness of the gaps and needs in . . . [the areas of race and ethnicity in] the contemporary law school curriculum."[21] It also provides wonderful resources in terms of the syllabi bank and contact information of those teaching courses on Latinas/os and related race courses and "mainstream" doctrinal courses. The question, though, is how law school administrators, law school faculty, and law students will respond to Valdes's threshold observation that "the 'primary' courses

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15. *Id.*

16. *Id.* at 137, n.78. I can attest to this phenomenon because I have had students take all three of my race-related courses and know of other students in my classes who have taken race-related courses taught by my colleagues.

17. *Id.* at 138. Valdes does not comment about the racial makeup of the faculty teaching related race, racism and race relations courses. I imagine that this is because these courses are more numerous and he doesn't know offhand all the faculty who teach the courses, but I would guess that the majority are faculty-of-color. I will not venture a guess on the racial makeup of those teaching related "mainstream" doctrinal courses that include some coverage of Latinas/os.

18. *Id.*

19. *Id.* at 138, n.85 (discussing how these courses become introduced along with one anecdotal account). I came to be the one non-Latina/o to teach a primary course on Latinas/os and the law because some students from La Raza, who knew that I taught a course on Asian Americans and the Law and who knew that I was active in the LatCrit movement, asked me to teach the course and simultaneously approached the administration with a list of currently enrolled students interested in taking such a course. I agreed to teach the course on a temporary basis because of the student interest, to get the course established in our curriculum, and with the hope that we might eventually hire a Latina/o whose research and teaching interests were in this area. I get the sense that some students would prefer to have a Latina/o teaching the course. Apparently, at a La Raza meeting last year, a student asked why the course couldn't be taught by Latina/o. While I am sympathetic to this sentiment, at present, none of the Latinas/os on our faculty want to teach the course and we have yet to hire a Latina/o with research and teaching interests in this area.

20. *Id.* at 139.

21. *Id.* at 155.

on 'Latinas/os and the law,' as well as the 'related' courses on critical race theory, are taught exclusively (or virtually so) by faculty of color who have taken on the task of introducing and incorporating those courses into their institution's formal curriculum."[22]

Law schools have a choice with regard to what courses they offer. Sometimes, though, this choice is not exercised in a conscious way. The Valdes study allows this choice to be made in a knowing, culpable manner. If, after the Valdes study is published and its results disseminated, law schools still choose not to broaden or integrate their curricular offerings (or to hire faculty interested in integrating the curriculum), then the choice is reflective of a conscious prioritizing within a framework of limited resources. Choosing not to broaden the curriculum (or to hire interested faculty) reflects a decision that the study of the legal treatment of race and ethnicity is not sufficiently important to warrant the allocation of the school's limited resources. The choices a school makes in this regard is an indicia of a school's commitment to diversity and integration.

The insight confirmed by the Valdes study, that minority faculty tend to be the ones most interested in teaching primary race-themed courses, is something that law students at some schools have already observed.[23] John Hayakawa Török's symposium contribution tells the story of students at Columbia Law School and their struggle to promote faculty diversity and to establish in the curriculum a course on Asian American Jurisprudence (AAJ).[24] Töröok presents the Columbia experience as a blueprint for those at institutions that do not have Latina/o law professors or Latina/o curricular offerings.[25] The strength and weakness of the article as a blueprint for others is its particularity.

The detail that Török provides of the participants and their roles and the issues and disputes that arose can prove to be very helpful for those engaging in or already engaged in similar struggles at other institutions. Török very carefully sets forth the objectives:

1. to argue for faculty and curricular diversification;
2. to demonstrate that there was (a) demand for [and] (b) intellectual validity to [an] Asian Americans and the Law curriculum;
3. to allow participants to teach and learn as Asian Americans; and
4. to produce Asian American legal scholarship.

These provide a wonderful starting point for student activists. Török also describes how the readings were chosen and the coalition work that took place to get faculty sponsors for the initial student-run course and the work with students at other schools.

Török, as a graduate law student pursuing a J.S.D. at Columbia, was able to play an active role for several years. One problem with this first-person participant ethnography serving as a blueprint is that at most law schools there will not be someone such as him to provide continuity and institutional memory over a several year period. Law students typically are at an institution for three years. This is not to take anything away from the achievements of the students at Columbia Law School, but only to note that students at other schools face the challenge of

22. *Id.* at 141. Part III. Observations and Recommendations.

23. *See, e.g.*, Luz Herrera, *Challenging a Tradition of Exclusion: The History of an Unheard Story at Harvard Law School*, 5 HARV. LATINO L. REV. 51 (2002).

24. John Hayakawa Török, *The Story of "Towards Asian American Jurisprudence" and Its Implications for Latinas/os in American Law Schools*, 13 BERKELEY LA RAZA L.J. 271 (2002).

25. *Id.* at 307-08.

maintaining student interest as student participants graduate and that efforts must be made to preserve and transmit the institutional history in such a way that it survives the graduation of those student participants.

As Török notes, though, the efforts at Columbia have only partially succeeded. The course has been offered the last several years, including a greater commitment on the part of the school in the last five years when it has hired adjuncts to teach the course, often flying them in to teach the course.[26] It has yet to hire an Asian American on a full-time basis to teach the course. Thus, their efforts toward faculty diversification have yet to bear fruit.

The fact that faculty and students must struggle to achieve faculty and curricular diversification raises the important question of what is at stake in this struggle. At the core is a struggle over this nation's history. If the history of legal discrimination and legal neglect of persons and communities of color along with the resultant sedimentation of racial inequality are of consequence today, then there wouldn't be a question of curricular diversification: the curriculum would already be diversified and integrated in such a way that attention to race would exist across the entire curriculum rather than in the few segregated "safe zones" of race-themed courses that exist in some institution.[27] The fact that this is not the case indicates that this history is not of consequence. It is a history that we are supposed to forget. It is part of the colorblind fantasy, which tells us that in order to get along, we must forget the past and ignore current-day reality. But without a critical history,[28] we are left with the story of the Alamo that I learned as a child. That is a story I would rather forget.

But maybe forgetting is not quite the right solution. What we need is broad-based remembering. We need to remember the standard narrative about the Alamo and how that narrative has been deployed to foster nativistic racism directed against persons of Mexican ancestry. We need to remember the revised account presented by Rodolfo Acuna as a partial antidote to the standard narrative. This remembering, if it is to be effective, must not be limited to segregated safe zones. It must take place across the curriculum and become part of the official history of this nation. Perhaps, then, we as a nation will believe that the necessary factual predicate exists that would justify race-conscious remedial measures. Perhaps, then, we would move a step or two closer to realizing the dream of *Brown*.[29]

Professor Francisco Valdes and John Hayakawa Török in this symposium document some of the challenges that exist along with recommendations to help achieve this broad-based remembering. The Alamo isn't something that can or

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26. Keith Aoki taught one year; Neil Gotanda taught the course the last three years; Frank Wu is teaching the course this year. Aoki commuted from Boston; Gotanda at least one of the years commuted from Los Angeles; Wu is commuting from Ann Arbor, Michigan.

27. Valdes notes that these "safe zones" may exist "within institutional context that otherwise may lend little more than neglectful tolerance" to faculty and students of color. Valdes, *supra* note 8, at 138.

28. Robert Gordon discusses the notion of a critical history as:

> . . . any approach to the past that produces disturbances in the field—that inverts or scrambles familiar narratives of stasis, recovery, or progress; anything that advances rival perspectives . . . for surveying developments; or that posits alternative trajectories that might have produced a very different present—in short any approach that unsettles the familiar strategies that we use to tame the past in order to normalize the present.

Robert W. Gordon, *Foreword: The Arrival of Critical Historicism*, 49 STAN. L. REV. 1023, 1024 (1997).

29. Brown v. Board of Education, 347 U.S. 483 (1954).

should be forgotten. The struggle, though, is how we will be allowed to remember it.