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## Foreword: LatCrit@25: Mapping Critical Geographies and Alternative Possibilities

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## Foreword: LatCrit@25: Mapping Critical Geographies and Alternative Possibilities

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Tayyab Mahmud<sup>1</sup>

Don't you understand that the past is the present; that without what  
was, nothing *is*?<sup>2</sup>

Getting its history wrong is part of being a nation.<sup>3</sup>

### I. INTRODUCTION

Since its formation over 25 years ago, Latina and Latino Legal Theory (LatCrit) has developed outsider jurisprudence, launched a wide array of projects, and built a vital community engaged in critical knowledge production and transformatory praxis.<sup>4</sup> Over the years, LatCrit Conferences have been a vital space to build theory, cultivate community, create zones

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<sup>1</sup> Professor of Law, Seattle University School of Law. This symposium would not have been possible without the leadership of Saru M. Matambanadzo, who spearheaded the planning of the LatCrit 2021 Conference. I remain deeply indebted to the LatCrit community for their friendship, support, and intellectual engagements. Any errors are, of course, mine alone.

<sup>2</sup> W.E.B. DUBOIS, *THE WORLD AND AFRICA* 80 (1947).

<sup>3</sup> E. J. HOBSBAWM, *NATIONS AND NATIONALISM SINCE 1780* 12 (1990) (quoting Ernest Renan).

<sup>4</sup> For the genesis and growth of LatCrit, see FRANCISCO VALDES & STEVEN W. BENDER, *LATCRIT: FROM CRITICAL LEGAL THEORY TO ACADEMIC ACTIVISM* (2021); Francisco Valdes, *Foreword, Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 *LA RAZA L.J.* 1 (1996); Francisco Valdes, *Foreword, Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 *HARV. LATINO L. REV.* 1 (1997); Sarudzayi M. Matambanadzo, Francisco Valdes, & Sheila I. Velez Martinez, *Afterword: Kindling the Programmatic Production of Critical and Outsider Legal Scholarship, 1996 - 2016*, 37 *WHITTIER L. REV.* 439 (2016); Steven Bender et al., *What's Next? Into a Third Decade of LatCrit Theory, Community, and Praxis (Afterword)*, 16 *SEATTLE J. FOR SOCIAL JUSTICE* 823 (2018); Margaret Montoya, "Who is LatCrit?" *Jerome Culp and Angela Harris Provide Answers and Ways of Being*, 18 *SEATTLE J. FOR SOCIAL JUSTICE* 217 (2020).

of critical safety, and coordinate engagements both within and beyond the legal academy. In 2021, the COVID-19 pandemic necessitated that the LatCrit Conference meet virtually.<sup>5</sup> While celebrating the twenty-fifth anniversary of LatCrit, this conference addressed the unique confluence of five cosynthetic, existential, and longstanding epidemics. The call-for-papers of the Conference described these as:

First, the epidemic of sexism, racism, settler colonialism, ableism, nationalism, cisnormativity, and straight supremacy continues to undermine the dignity of individuals and shape their life chances. Second, the epidemic of economic inequities continues to redistribute the spoils of capitalist economic “opportunity” to the “One Percent.” Third, the epidemic of sociolegal determinants continues to utilize inequality itself as a mechanism to further distribute benefits and burdens unequally, creating vicious cycles of unequal and inadequate education, health, and wellbeing. Fourth, the epidemic of destructive environmental changes wrought by the “Great Acceleration” of industrial and postindustrial pollution continues to impinge upon peoples in the Global South. And finally, the epidemic of coloniality—from the obviously extractive and exploitive capitalism of plantations, colonies, and empires, to the (somewhat) less obvious persistence of neo-imperialist economic frameworks, continues to exacerbate the intentionally-created national disparities and vast inequities between rich and poor nations.<sup>6</sup>

The participants of the Conference were tasked to address the following questions in the context of the unique and challenging historical conjecture:

Amidst this situation, how should people who affiliate with LatCrit, and related movements of critical, antisubordinationist, and progressive scholars, teachers, lawyers, law students, and

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<sup>5</sup> For an account of the LatCrit 2021 Conference, see Shelley Cavalieri, Saru M. Matambanadzo, & Lua Kamal Yuille, *Foreword: Mapping Critical Geographies in Virtual Space*, \_\_\_ DENVER L. REV. \_\_\_ (forthcoming).

<sup>6</sup> *Call for Papers: LatCrit 2021 Biennial Conference*, LATCRIT (June 1, 2021), <https://latcrit.org/call-for-papers-latcrit-2021-biennial-conference/> [<https://perma.cc/WAT6-93UN>].

other activists, attempt to move forward? Should we devote our energy to organizing for incremental reform, attempting to work within existing frameworks and power structures? Or is it time to resist the impulse for incrementalistic reform, and instead organize and agitate vigorously for transformative action? Or should we instead take some time to rest and regroup in order to live and fight another day? Or can we do all three while remaining a critical movement?<sup>7</sup>

The over 400 participants of the Conference addressed these questions in an engaged and dynamic atmosphere. Papers produced by participants of the Conference now form part of LatCrit Symposia published by the Seattle Journal for Social Justice and Denver Law Review. Part II below outlines a critical feature of the historic conjunction. Part III briefly introduces the articles in this symposium and Part IV lists conclusions.

## II. RESISTANCE, TRANSFORMATION, AND THE CRITICAL GEOGRAPHIES OF THE HISTORICAL CONJUNCTURE

In 2004, LatCrit IX addressed the issue: *Countering Kulturkampf Politics through Critique and Justice Pedagogy*.<sup>8</sup> At that juncture, we borrowed the German word *Kulturkampf* as it:

Beckon[ed] critical attention to the ways and means through which political conservatives are currently employing law and policy to “roll back the New Deal” and undo the civil rights gains of the past century. In the U.S., as part of the domestic “culture wars,” Supreme Court Justice Scalia has denigrated the claims of traditionally subordinated groups to equality and dignity under the Constitution as a *kulturkampf*. Internationally, “globalization” monetary policies, the rise of right-wing parties and the “War on

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<sup>7</sup> *Id.*

<sup>8</sup> *Call for Papers: Countering Kulturkampf Politics through Critique and Justice Pedagogy*, LATCRIT (2004), <https://latcrit.org/latcrit-conferences/latcrit-biennial-conferences/latcrit-ix-2004/> [<https://perma.cc/4G25-58GC>]. Papers from this conference were published in LatCrit Symposia: 50 VILLANOVA L. REV. 4 (2005) & 35 SETON HALL L. REV. 1155 (2005)

Terrorism” daily constrict the horizons of cultural pluralism, democratic self-determination and human rights. Both domestically and internationally, kulturkampf has become the new order.<sup>9</sup>

It appears that today we must again borrow a word from German that captures a troubling feature of the moment: *Erinnerungsgesetz*.<sup>10</sup> Roughly translated as *Memory Law*, the word refers to laws governing how the past may or may not be publicly recalled. Memory laws are typically deployed to address difficult and violent histories and fall in two categories: one that bans and criminalizes a positive perception of an atrocious past such as mass violence or genocide, and the other that bans a negative perception of a violent past.<sup>11</sup> An array of laws in Europe outlawing denial of the holocaust are an example of the first category.<sup>12</sup> We want to highlight a variant of the second category that is increasingly at large in the political/legal/cultural space of the United States: a ban on teaching of *Critical Race Theory*. Since January 2021, 42 states have introduced bills or taken other steps that would restrict teaching critical race theory or limit how teachers can discuss racism and sexism, according to an Education Week analysis. Fifteen states have imposed these bans and restrictions either through legislation or other avenues.<sup>13</sup>

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<sup>9</sup> See *id.*

<sup>10</sup> English translation of “*errinnerungsgeszt*,” LINGUEE (last visited Apr. 25, 2022), <https://www.linguee.com/german-english/translation/erinnerungsgesetz.html>.

<sup>11</sup> Yifat Gutman, *Memory Laws: An Escalation in Minority Exclusion or a Testimony to the Limits of State Power?* 50 LAW & SOCIETY REV. 575, 576 (2016). See generally NIKOLAY KOPOSOV, MEMORY LAWS, MEMORY WARS: THE POLITICS OF THE PAST IN EUROPE AND RUSSIA (2017); George Soroka & Félix Krawatzek, *Nationalism, Democracy, and Memory Laws*, 30 J. OF DEMOCRACY 157 (2019).

<sup>12</sup> See, e.g., *Briefing: Holocaust denial in criminal law: Legal frameworks in selected EU Member States*, EUROPEAN PARLIAMENT (Jan. 26, 2022), [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2021\)698043](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)698043) [perma.cc/EG4H-7DVZ].

<sup>13</sup> Sarah Swartz, *Map: Where Critical Race Theory Is Under Attack*, EDUC. WEEK (June 11, 2021), <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06> [https://perma.cc/2ZS4-KPTW].

Memory laws, designed to shape public interpretation of the past, assert a mandatory view of historical events, forbid discussion of enumerated historical events or interpretations, and provide guidelines that lead to censorship and self-censorship. Laws that ban negative accounts and perception of a violent history become part of an effort to fortify a positive memory of the nation-state. These laws are intended to shape, rather than to reflect, social norms about how the past should be understood and discussed. Reflecting anxieties about preserving national unity, these laws enforce an officially sanctioned way of relating to the past. They rest on exclusivist interpretations of the past that ignore or deny the legitimacy of dissenting voices. While such laws threaten free speech and any pluralistic approach to historical memory, they particularly put in jeopardy memories, values, and identities of groups that bore the brunt of the violence and injustices of the past. The mere existence of such laws is likely to create a body of legally enforced knowledge of the past that the law shelters from the public's scrutiny and removes from the realm of historical dispute and contestation. The anti-CRT laws exemplify “nationalist solidarity amnesia,” a state-sanctioned form of national solidarity that supports, and is supported by, forgetting.”<sup>14</sup> Ernest Renan famously said that nation-building is an exercise in forgetting.<sup>15</sup> Not for nothing narratives of history are exercises in erasure; erasure of pain, blood, and death that built social orders. How do progressive formations resist these moves and bring into relief alternative possibilities of social justice, human dignity, and peace?

Perhaps the last formal act of the Trump administration was issuing the 1776 Report of the President's Advisory 1776 Commission.<sup>16</sup> The

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<sup>14</sup> RODANTHI TZANELLI, NATION-BUILDING AND IDENTITY IN EUROPE: THE DIALOGICS OF RECIPROCITY 48 (2008).

<sup>15</sup> Ernest Renan, *What is a Nation?*, in NATION AND NARRATION 8 (Homi K. Bhabha ed. 1990).

<sup>16</sup> See *The 1776 Report*, THE PRESIDENT'S ADVISORY 1776 COMMISSION (Jan. 2021), <https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/The-Presidents-Advisory-1776-Commission-Final-Report.pdf> [<https://perma.cc/MZV5-LLTE>].

Commission described its task as the “restoration of American education.” Slavery is discussed as one of the numerous “challenges to America’s principles,” a list that includes “progressivism” and “identity politics.” Finally, the Report puts forward a framework of “teaching Americans about their country.”<sup>17</sup> While the anti-CRT moves were already underway when the 1776 Report was made public, the language and recommendations of this report have made an indelible imprint on the various anti-CRT laws adopted by the various states.

What better antidote to *Erinnerungsgesetz*, mandated forgetting and erasure of the past than cultivation and articulation of memory? Counter-stories from below and from the margins are excavated and articulated memories of the oppressed and vanquished of yesterday. By confronting mandated forgetting with articulated memory, the normalized calculus of yesterday’s victories and defeats is disrupted and the settled equilibrium between victors and vanquished is unsettled. Out of this unsettling, new possibilities raise their insistent heads. Possibilities of re-readings of history; possibilities of de-naturalizing the present; and possibilities of reimagining futures. Above all, counter-stories make decolonization of imaginaries possible, and, thus, open the path towards the decolonization of imagination. Furthermore, taking cognizance of subaltern agency and deploying memory in transformative counter-stories is an evocative site to engage the mutually constitutive relationship of the personal and the political. Being and the political are not static, contained, and unencumbered states or categories. Counter-stories ground identities in materialities of history and bring into sharp relief the braiding of the personal and the political in specific spatial and temporal contexts.

Counter-stories are the archive of counter-histories of the modern state written from the margins.<sup>18</sup> These narratives display a situational

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<sup>17</sup> *Id.* at 34 (Appendix IV).

<sup>18</sup> For examples of such historiography, see generally ERIC HOSBAWM, THE AGE OF CAPITAL 1848–1875 (1975); ERIC HOSBAWM, THE AGE OF EMPIRE 1875–1914 (1987).

consciousness, where the telling of the individual story and the individual experience cannot but ultimately involve an implied story of the collectivity itself.<sup>19</sup> Narrators of counter-stories, of necessity, underscore their positioning at the margins. All footprints of life are fragmentary traces, but traces themselves bear witness to the drama of history. Counter-stories, even when based on fragmentary traces, embody cultural difference that emerges as resistance to hegemonic modes of representation. At work in counter-stories is activation of subaltern agency to transform conditions of impossibility into possibility.

### III. LATCRIT 2021 COUNTER-STORIES

The articles in this symposium respond to the challenge of the new wave of memory laws by articulating vantage points, positionalities, perspectives, experiences, and possibilities that fashion discursive, pedagogical, and substantive tools of resistance and transformation.

In *Awakening the Law: A LatCritical Perspective*, Berta Esperanza Hernández-Truyol asserts that the project of critique and transformation starts with “awakening,” which signifies “attaining a deep consciousness about and connection with the human condition, human actions, and their consequences.” Building on Paolo Freire’s construct of critical consciousness, Hernández-Truyol conceptualizes the process of awakening to involve “interrogating the status quo,” by “by listening to and analyzing narratives and counternarratives, in particular those voices that have been excluded, erased, or marginalized.” The objective is to “to explore and identify the existence of sites of power, exclusion of voices, and presence of hierarchies.” Hernández-Truyol posits awakening as an on-going, indeed a life-long, process that entails critical self-reflection and deconstruction of one’s perceptual playbook—“the collection of systems of beliefs, cognitive

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<sup>19</sup> Frederick Jameson, *Third World Literature in the Era of Multinational Capitalism*, 15 SOCIAL TEXT 65 (1986).



scripts, created and passed down by families, religious traditions, cultures, the societies in which we live as well as by law . . .” Awakening is a tool to disrupt injustice by unveiling stereotypes, implicit biases, and structural biases and thus facilitates “revealing of raw truths.”

Hernández-Truyol then presents a bird-eye view of the history of law in the United States and finds it generally “asleep” with “cycles of semi-awakenings—the ebbs and flows of progress and retrenchment.” Usurpation of native lands, oppression of natives, and slavery created a system of white male privilege and power, that produced “the racialized and gendered structural bias in law and legal culture of today.” Hernández-Truyol sees “periodic attempts at awakening” prodded by social and racial justice movements, but each such attempt “triggered backlashes.” Hernández-Truyol proposes a methodological approach to awakening that she designates REDeS formula, one that involves *Recognition* of the legal quandary, its *Exposure*, *Deliberation* on the predicament, and a *Solution* that eliminates the unearthed injustice. As for the substantive framework of awakening, dignity is presented as the essential element along with three substantive pillars: antistatization, multidimensionality, and marginability. The article ends with underscoring that awakening, an ongoing process of examination and self-examination, will help accentuate the transformatory potential of law and bring it in sync with justice.

In *Reflections on a Crit Clinic*, Elizabeth L. MacDowell reports from the trenches of legal education by means of a thoughtful reflection on the three semesters of the Policing and Protest Clinic (PPC) that she founded in Fall 2020. The clinic was founded as a response to the murder of George Floyd and the ensuing police violence against protestors. The mission of the PPC is to be a community-centered clinic working to increase legal empowerment and uplift the voices of impacted persons and communities. The clinic explored partnerships with grassroots community organizations working with impacted communities and other organizations with similar goals for structural change.

The article is structured as a fictionalized retelling of a conversation between the author and one of the founding students in the clinic. The conversation first explored a shared basic premise that a horizontal, democratic clinic classroom is better suited to social justice goals. The student emphasizes the importance of egalitarian communication and students' participation in decision-making. Such changes are difficult for those in position of authority and required self-reflection, introspection, non-hostility, and being open to feedback. The conversation turns to the toxic climate of legal education and law practice as both are marred by hierarchies and non-democratic practices. The social justice goals of a clinic can be achieved only by creating a more horizontal structure with democratic decision making in the clinical classroom. Finally, in order to survive the toxic effects of hierarchical and non-democratic educational contexts, it is critical to pay attention to physical emotion well-being and to recognize the political nature of self-care. In this context, it becomes critical to make working for social justice pleasurable and to seek joy in collaboration and solidarity.

In *Chile at the Crossroads: From Social Explosion to a New Constitution*, Hugo Rojas traces the precedented resistance from below that has reshaped Chile's political geography and overturned the legacies of the notoriously brutal dictatorship. Note that the neoliberal counterrevolution was road tested in Chile before it unfolded across the globe. The September 1973 military coup in Chile unleashed a brutal political and economic order that lasted for 17 years. Cultural and ideological "purification" was part of this order that aimed at erasing the memories of democracy, equality, and justice. Even when the military regime formally ended, it left in place a constitutional order that ensured rule by the economic elite. Rojas shows how this led to social fragmentation, inequality, lack of citizen participation, and a culture of individualism and consumerism. Then came the explosion, initiated by high school students' protests of a spike in the fare of public transportation. Having failed to quell the ever-widening

protests, those in power were forced to agree to a plebiscite about whether to have a new constitution. The following plebiscite and elections have put in place a process to rewrite the constitution. Finally, Rojas lists the 16-point agenda of constitution-making that has been shaped by the protest movement. It is an agenda that promises to set Chile back on a democratic and progressive path. The resistance from below in Chile presents a great example of how a people united can overturn suppression of memory, reclaim their past, and build new futures.

In *Pedagogies of Refusal as Racial Realist Praxis*, Ceci Lopez and Dolores Calderon report on their own practice as educators guided by critical race theory. Drawing from critical race theory, critical higher education studies and Indigenous and ethnic studies approaches, Lopez and Calderon lay out a pedagogical practice that braids memories with the situation at hand. Here we have a wonderful example of story telling as a weapon of the oppressed and marginalized. Weaving joint reflections with personal excavation of cultural and historical memory, Lopez and Calderon demonstrate how to use excavation of memory as an armor when confronted with oppression and alienation.

While situated in varied contexts, the four articles in this symposium issue underscore that counter stories give voice to untapped reservoirs of memory; memories buried under sedimented layers of hegemonic canons of socialization and lost in the haze of hegemonic ideology. These articles show that counter-stories can collide with officially-sanctioned histories and discourses. Counter-stories can touch what has never been touched, can bring into relief what never come into the field of vision, and can oppose what never has been opposed. These potentials spawn the transformative political dimension of counter-stories. The authors have headed the call by the late Jerome Culp, a guiding light of LatCrit, that “We have to have a name, and in order to be understandable it has to have a history . . . if we

are to be great, we have to be more than our histories, but at the same time have to learn from them.”<sup>20</sup>

## V. CONCLUSION

LatCrit 2021 Conference was entitled *Resistance and Transformation: Mapping Critical Geographies and Alternative Possibilities in Legal Scholarship and Praxis for the Next Twenty-Five Years*. By braiding scholarship with praxis, LatCrit has always assigned us the task of deploying critique as a strategic practice in the service of resistance and transformation. In this context, as in others, LatCrit aims to align with the marginalized, oppressed, and subordinated. The articles in this symposium live up to the challenge. They demonstrate that there are always non-hegemonic or counter-hegemonic values and tools available to the oppressed to resist, restrict, and qualify the operations of the hegemonic order. These articles testify that no hegemony can be so penetrative and pervasive as to eliminate all grounds for contestation or resistance. Among effective tools of contestation and resistance are counter-stories that construct subjectivity through negation of hegemonic discursive and material constructs. These counter-stories excavate and articulate lived experiences of resistance in the midst of oppression. Counter-stories are an effort to recover the experiences, the distinctive collective traditions, identities, and active historical practices of subaltern groups in a wide variety of settings—conditions and practices that have been silenced and erased by hegemonic historiography. These articles show that hegemonic orders and mandated erasures of memory are never quite able to eliminate alternative constructions of belonging and identity. These alternative constructions must be marshaled to fashion foils of resistance and transformation. Counter-stories, by articulating the social practices of actual

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<sup>20</sup> Jerome Culp, *Latinos, Blacks, Others, and the New Legal Narrative*, 2 HARV. LATINO L. REV. 479, 482 (1997).

historical agents, are and will remain a most valuable tool in the struggle for social justice, human dignity, and peace.