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Preparing for the Reckoning of Law with Justice: Organizing LatCrit Hemispherically for Systemic and Material Power

Francisco Valdes
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I. INTRODUCTION: CONTEXT AND CRITICALITY, 2021–2023

As the 230 registrants of the 2023 biennial LatCrit conference marked the 28th anniversary of LatCrit theory, community, and praxis, we also marked our first “hybrid” conference in the Global North.¹ This method of convening is designed strategically to take advantage of combining resource-conserving virtual participation with a “hub” or anchor of in-person participation (this year, Cornell Law School) that enabled each registrant to participate as best for them and that enriched the program and community as a whole with this expanded kind of diversified engagement. On this remarkable occasion—experimenting with hybridity after a global pandemic whose lessons and ramifications we are still sifting—we are struck both by the continuities and the transformations that have marked our collective, continuing jurisprudential journey since 1995. Since our founding colloquium that year on the enchanted main island of Puerto Rico, LatCrit networks and projects have pursued the four functions we set out for ourselves from the start.² Developing, bit by bit, an array of year-round

¹ Our annual and then biennial convenings since our inception have taken place in person, with the exception during the pandemic in 2021 of the 25th-anniversary conference held entirely virtually. The 2023 biennial conference, while held virtually, also included an in-person gathering of professors, activists, and students, held at Cornell Law School around the topic of immigration.

² See Francisco Valdes and Steven W. Bender, *LatCrit XV Symposium Afterword—At and Beyond Fifteen: Mapping LatCrit Theory, Community, and Praxis*, 14 HARV.

projects and publications in partnership with each other, the LatCrit community has followed and fostered an ethic of collaboration that is strategic, principled, and sustained to help make a critical difference, both in law and society, as organized academic activists.

Along the way, throughout these 28 years of collaboration and persistence, and against all odds, we have managed together to conduct programs and curate over 60 publications, in law reviews and as books, in Spanish and English, that frequently have been a tangible product of those numerous, year-round programs, events, and projects that constitute, today, our Portfolio of Projects.³ To make them accessible worldwide, many of these publications are indexed by theme and by keywords on the LatCrit community website through a “Scholarship Research Toolkit”⁴—a resource that allows both students and teachers direct access to a body of literature composed during this time by hundreds of authors. As one whole, we have aimed to construct a functional antisubordination “zone” for the production, protection, and promotion of critical outsider jurisprudence.⁵ Since inventing “LatCrit” in 1995, we collectively have endeavored to organize academic activism rooted in antisubordination knowledge, solidarity, and action through every means we have been able to devise.

Reflecting this ambition, and apart from the flagship conferences and publications themselves, the LatCrit Portfolio of Projects since 1995 includes initiatives ranging from the Student Scholar Program⁶ (a pipeline

LATINO L. REV. 397 (2011); 1 U. OF MIAMI RACE & SOCIAL JUST. L. REV. 177 (2011); 22 BERKELEY LA RAZA L. J. 301 (2012).

³ See *Projects*, LATCRIT, <https://latcrit.org/projects/>.

⁴ See <https://latcrit.org/research-toolkit/>.

⁵ This denomination was coined by Mari Matsuda to signify as one whole the bodies of literature being generated by feminist, critical race, queer, and other scholarly formations in the U.S. during the 1980s, and now since. See Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2323 (1989).

⁶ See *Student Scholar Program*, LATCRIT <https://latcrit.org/student-scholar-program-ssp/>.

for students into law teaching) or the Faculty Development Workshop⁷ (a training program for newly or recently hired law teachers) to the International and Comparative Law Colloquium⁸ (a rotating but law-focused gathering) to the South-North Exchange on Law, Theory, and Culture⁹ (another rotating gathering focused on interdisciplinary and hemispheric studies). Our steady though imperfect programmatic efforts during the past more than quarter century manifest how LatCrit as a collective intentionally reached out from the very start seeking to interconnect like minds among students, professors, and communities, both in the U.S. and beyond, to produce and promote critical knowledge and coalitional action. Today, the technologies and possibilities of hybridity have expanded our capacity to interconnect across barriers of all kinds in new, contextualized ways, as this 2023 biennial conference illustrates.

The start of our collective LatCrit experiment with hybridity as an organizing and knowledge-production tool with this 2023 conference is notable in large measure because it shows a community of activist scholars (still) on the move. This first-ever hybridized LatCrit conference continues a long history of evolution and adaptation: although we conducted sixteen annual conferences after 1995, we moved to biennial conferences in and after 2013 intentionally to help open time, space, and resources for the continuing growth in critical events, formations, and projects. In collaboration with our sister organization, the Society of American Law Teachers (SALT), we each moved our respective annual conferences to every other year, thereby allowing us—and all—to alternate between the two annually, with the Faculty Development Workshop continuing to occur annually. In the decade of biennial LatCrit conferences since 2013, however, the roster of events, programs, and projects dedicated to the

⁷ See FRANCISCO VALDES AND STEVEN W. BENDER, LATCRIT: FROM CRITICAL LEGAL THEORY TO ACADEMIC ACTIVISM 45-46 (2021).

⁸ *Id.* at 73.

⁹ *Id.* at 74.

advancement of critical knowledge has only continued to grow. And, as the critical calendar continues to thicken with ClassCrits,¹⁰ the Critical (Legal) Collective,¹¹ and other demands on time and resources, this fundamental question of timing and resources may need to be revisited—perhaps periodically—to ensure LatCrit’s maximum relevance and impact through our choices of priorities and actions.

2023’s hybridized conference evidences this ongoing adaptation and experimentation specifically in response to our experience with the 2021 conference—our previous biennial conference—which in the wake of the COVID-19 pandemic was conducted entirely virtually. Although that online-only experience was manifestly successful, critical reflection and collective assessments pointed toward strategic combinations of in-person and virtual organizing to cohere ourselves and always advance our work to the maximum—a bottom line most acutely true for critical, bottom-up organizations, like LatCrit, that are not plugged into Big Money slush funds and their material resources. But today, two years after the fully online 2021 biennial conference, this year’s hybridized success is not the only cause for note and LatCrit community celebration.

¹⁰ For information on the ClassCrits collective for the critical analysis of law and economic inequality, see <https://www.classcrits.org/>.

¹¹ See *infra* notes 16 and 41 and accompanying text on the Critical (Legal) Collective. The Critical (Legal) Collective’s formation was driven by the rise of right-wing political violence targeting “Critical Race Theory” and much of the work we do to better prepare for the ongoing, increasing attacks on education, knowledge, and justice. For accounts on the formation of CLC, see Athena D. Mutua, *Reflections on Critical Race Theory In a Time of Backlash*, 100 DENV. L. REV. 553, 585 (2023); Angela Harris and Jennifer Hill, *The Law and Political Economy of Teaching and Learning: An Essay on Building a Movement*, TENN. L. REV. (forthcoming 2024); Francisco Valdes, *Mapping and Mobilizing Legal Criticalities: Making the Move From Diaspora to Collective or Legal Scholars Making a Difference as Cultural Warriors*, 100 DENV. L. REV. 625, 654-655 (2023); see also Francisco Valdes, *Recent Developments in Critical Legal networks: Mapping Academic Resources, Reframing the Fundamentals, and Organizing for Collective Action*, SEATTLE L. REV. (forthcoming 2024).

When we last met in 2021, two major community publications had just been released that same year: the LatCrit Primer¹² and the *Critical Justice* textbook,¹³ as we elaborate below. Since then, as we also outline below, we have worked collectively to help ensure these unique resources are being deployed to help fulfill our mission and functions. Now, this year's conference similarly takes place just as a third publication is on the verge of release. In keeping with the 2023 conference theme, next year's publication is not only in Spanish but also spearheaded by the Global South of this hemisphere: *Teoría Crítica y Justicia Social en las Américas*.¹⁴ This third key publication, in addition to providing a new and unique resource for multiple kinds of users, also marks a key step forward in our longstanding collective determination to build south-north networks of shared knowledge and collective action. Going forward, as we emphasize below, these three publications—these collective achievements during these past couple of years—are powerfully significant because they provide unique educational and epistemological resources for organized, proactive civic engagement in deliberately dangerous and turbulent times. As a set, this trio of epistemological and pedagogical resources allows LatCrit to organize hemispherically for systemic justice and material power like never before.

Moreover, the year of our last biennial meeting in 2021 also was momentous because it occasioned the incubation and, in 2023, the inauguration of the Critical (Legal) Collective as a coalitional formation of critical scholars and activists committed to “the right to teach, the right to learn, and the right to thrive,” as the theme of its Inaugural Convening

¹² See VALDES AND BENDER, *supra* note 7.

¹³ FRANCISCO VALDES, STEVEN W. BENDER, AND JENNIFER J. HILL, *CRITICAL JUSTICE: SYSTEMIC ADVOCACY IN LAW AND SOCIETY* (2021).

¹⁴ HUGO ROJAS CORRAL AND SHEILA VÉLEZ MARTÍNEZ, *TEORÍA CRÍTICA Y JUSTICIA SOCIAL EN LAS AMÉRICAS* (forthcoming 2024).

framed it.¹⁵ Coincidentally—or perhaps not—this recent incubation took place in conjunction with the 2021 publication of *Critical Justice*; by coincidence, this new formation was conceptualized and catalyzed by the recombined efforts and resources of the relatively most organized critical outsider formations within the U.S. legal academy today—most notably LatCrit, ClassCrits, and SALT.¹⁶ Though decidedly not limited to any of

¹⁵ See Inaugural Convening Schedule of Events, “Organizing for Democracy and Liberation: The Right to Learn, The Right to Teach, The Right to Thrive,” Nov. 10-12, 2023, Duke University School of Law (materials on file with authors).

¹⁶ As it happened, the *Critical Justice* book’s publication in 2021 prompted conversations about the best ways to raise awareness of this newly available unique resource. Those preliminary conversations led to other conversations which in turn led to what became the Critical (Legal) Collective:

Serendipitously—or tellingly—Jennifer Hill, a labor lawyer, community organizer, and part-time law teacher in South Florida, sparked Critical Legal Collective’s (CLC) conception and creation in conversations during the spring and summer of 2021. The earliest conversations were focused on ways to spread awareness of the forthcoming [*Critical Justice*] course book dedicated to critical knowledge and systemic problem-solving. . . which was published in May 2021. But that original focus was only an impetus for larger ambitions, as those early conversations soon aimed for “something more” beyond the jurisprudential status quo: as Jennifer put it, devising “practical ways of building strategically on the various existing networks or critically-minded formations” already in place—ranging from legal feminism, clinical networks, and critical race theory to Queer legal studies, LatCrit theory, and ClassCrits—as well as reaching out to allied organizations like SALT. . . . [Initial outreach] expanded relationally but steadily during the following weeks and months . . . [to] critical scholars associated with varied, overlapping critical networks. The point of that informal concentric outreach was to gauge interest in the concrete possibility of some practical coalescence that somehow cohered pre-existing critical formations, especially folks from the more relatively institutionalized networks already organized and active throughout legal academia (like LatCrit, ClassCrits, SALT, and others), in order specifically to defend and promote critical knowledge, scholarship, and teaching, both now and for the long term, through organized academic activism in higher education, starting with law. . . . By the end of summer 2021, a small “core” group agreed to

these relatively organized formations—and while affirmatively and explicitly committed to defending and advancing Critical Race Theory and other critical schools or advocacy approaches toward systemic change—the Critical (Legal) Collective simply never would have come into existence but for the prior coalitional choices of LatCrit, ClassCrits, and SALT scholars and boards. The CLC thus represents not only our continuing mutual commitment to the coalitional method and antisubordination criticality but also can help to take the work of aligned but scattered scholars and activists to the “next level.” Combined with the lessons of context-specific hybridity, our work can move from the current rich diaspora of individualized, and sometimes organized, resources toward a more interconnected collection of critical actors capable of strategic collective action both locally and nationally, as represented by the potential of the CLC—and as demanded by the exigency of these times.¹⁷

Finally, and fortuitously, since we last met our ongoing collective work has taken on a new urgency with the 2022 adoption of revised Standard 303 of the American Bar Association’s (ABA) legal education accreditation standards.¹⁸ ABA Standard 303 now charges professors and administrators

monthly Zoom sessions devoted to developing the concept of a “critical legal collective,” [that ultimately sparked] multiple projects . . . [and a fall 2023] inauguration event.

See Francisco Valdes, *Mapping and Mobilizing Legal Criticalities: Making the Move From Diaspora to Collective or Legal Scholars Making a Difference as Cultural Warriors*, 100 DENV. L. REV. 625, 654-655 n. 110 (2023). For more information on CLC and its projects or plans, see www.criticallegalcollective.org. For background on SALT’s shift from predominantly white leadership to leaders and initiatives of color, see Margaret Montoya’s new article (forthcoming in SEATTLE L. REV. 2024).

¹⁷ See Francisco Valdes, *Recent Developments in Critical Legal Networks: Mapping Academic Resources, reframing the Fundamentals, and Organizing Collective Actions*, SEATTLE L. REV. (forthcoming 2024).

¹⁸ See generally Steven W. Bender, *Revised ABA Standard 303: Curricular, Pedagogical, and Substantive Questions*, 47 SEATTLE L. REV. SUPRA 1(2024) (describing the 2020 campaign that led to revised Standard 303). That campaign came

at every accredited U.S. law school to dedicate resources—funded time, thought, materials, and programmatic experimentation—to eliminating racism and even advancing antiracism. This revision now requires schools and faculties to provide all law students with some formal education focused on eliminating racism and bias in law and promoting cross-cultural competence in practice, as part of their formal legal training.¹⁹ This regulatory action, in 2022, makes *Critical Justice*—and strategic collective action—timelier and more useful than we ever imagined. If taken seriously, this revised Standard in practice also entails school-level and ABA industrywide-level monitoring of its ongoing institutional implementation to support robust, effective implementation of locally tailored institutional plans and to advocate for complete fulfillment of Standard 303’s affirmative mandates.

But, as we know, legal education and the legal industry more broadly operate with ingrained ideological blindfolds and material handcuffs that constrain individuals and institutions from acting decisively to root out racism.²⁰ Well-funded, right-wing attacks on the teaching of Critical Race Theory aim to defang any advances that robust implementation of Standard 303 might bring by suppressing critical insights into the systemic nature of racism in legal education and practice and more generally in law and society. And yet, for these same reasons, this positive revision of Standard 303 underscores how timely and suited the *Critical Justice* textbook is, as we develop new strategies and collaborations to comprehend and fight back against, these ugly times. From our perspective, Standard 303 signals a strategic opportunity for us collectively to seize, especially in light of the

just before the backlash became palpable against critical knowledge and other antiracism measures that in turn helped spark and shape the CLC formation to protect those gains.

¹⁹ *Chapter 3 Program of Legal Education*, AM. BAR ASS’N 18 (2022-23), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2022-2023/22-23-standard-ch3.pdf.

²⁰ See CRITICAL JUSTICE *supra* note 13, at Ch. 9.

epic, continuing, national convulsions in the U.S. since we published the textbook in 2021.

Far too much indeed has transpired since our prior conference in 2021—events and doings designed to eliminate our capacity to exist, as well as to defeat our ongoing innovations aiming to maximize antistatist values in law and society. When we last convened, the live TV storming of the U.S. Capitol in Washington, D.C. on January 6, 2021, by riotous mobs of Trump-chanting-and flag-waving dupes and gangs doing their part to stop the peaceful transfer of power for the first time in U.S. history already had been attempted, with the whole multifaceted coup attempt being just barely, serendipitously, rebuffed.²¹ During the remainder of that year, leading up to this LatCrit conference in October 2021, it became clear that a campaign to overthrow the Republic had crystallized, and was being burrowed deeply, perhaps inextricably, into the infrastructure of the Republican Party to capture it completely, and to commandeer the Party’s assets and deploy them as resources for planning and fueling never-ending campaigns of deception and insurrection.²² These latest fascistic efforts, incubated and intertwined within a vast pre-existing infrastructure of rightist organizations funded by wealthy interests,²³ are now boldly attempting to disable permanently any limits that the “guardrails” of a

²¹ For the official report, see FINAL REP. OF THE SELECT COMM. TO INVESTIGATE THE JAN. SIXTH ATTACK ON THE U.S. CAPITOL, H.R. DOC. NO. 117-663 (2d Sess. 2022). For an in-depth account of the facts and outcomes of the criminal prosecutions following the January 6th storming of the U.S. Capitol, see RYAN J REILLY, SEDITION HUNTERS: HOW JANUARY 6TH BROKE THE JUSTICE SYSTEM (2023).

²² For insightful insider autopsies from now-former Republican strategists, see STUART STEVENS, IT WAS ALL A LIE: HOW THE REPUBLICAN PARTY BECAME DONALD TRUMP (2020); TIM MILLER, WHY DID WE DID IT: A TRAVELOGUE FROM THE REPUBLICAN ROAD TO HELL (2022). For journalistic first-hand accounts, see DAVID CORN, AMERICAN PSYCHOSIS: A HISTORICAL INVESTIGATION OF HOW THE REPUBLICAN PARTY WENT CRAZY (2022); MARK LEIBOVICH, THANK YOU FOR YOUR SERVITUDE: DONALD TRUMP’S WASHINGTON AND THE PRICE OF SUBMISSION (2022).

²³ See, e.g., JEAN STEFANCIC AND RICHARD DELGADO, NO MERCY: HOW CONSERVATIVE THINK TANKS AND FOUNDATIONS CHANGED AMERICA’S SOCIAL AGENDA (1996).

plural democracy may put in the way of their persistent drive for political hegemony and economic domination.

The igniting insurrection of January 6th bared an organized commitment to mobilize hate and violence that has varied historically in intensity and scope but shows neo-liberalized racial fascism to be a process²⁴ inherent in, not antithetical to, liberal democracies. Historically and today, organized racial terror has continuously existed within the U.S. through mass incarceration and criminalized borders, showing that fascism does not manifest only in forms directly analogous to 1930s-era totalitarian nation-states, as Cold War liberals would have us believe. The inception and development of LatCrit as an academic movement has been shaped by our opposition to this supremacist, oppressive, and reactionary zeitgeist.

Nevertheless, the recent, muscular, nationalist mobilizations of rightist reaction seem poised to hyper-accelerate into unbridled bigotries, panics, and persecutions recalling similar reactions during the 1930s on both sides of the Atlantic Ocean to the liberties of the 1920s, as we elaborate below. With generous financing from corporate beneficiaries, such efforts in the U.S. today promote Orwellian misinformation and escalate violence to stage a power grab that can reimpose a *de jure* system of racial totalitarianism similar to that of a century ago. For now, and despite the vocal opposition of groups like us, the outcome of these intensified rightist efforts during the upcoming November 2024 election period remains an open existential question, according to polls, historians, and pundits.²⁵

Depending on that contingent outcome, neoliberal politicians of all parties alternatively or concurrently could continue to direct state violence

²⁴ ANGELA DAVIS AND BETTINA APTHEKER, *Preface*, in *IF THEY COME IN THE MORNING: VOICES OF RESISTANCE* xiii-xviii (Angela Y. Davis ed., 2022).

²⁵ See Lisa Masarco, *Conservative groups draw up plan to dismantle the US government and replace it with Trump's vision*, AP NEWS (2023), <https://apnews.com/article/election-2024-conservatives-trump-heritage-857eb794e505f1c6710eb03fd5b58981>; David A. Andelman, *Opinion: Brace Yourself. The elections of 2024 could shock the world*, CNN (Dec. 18, 2023).

and popular aggression against “otherized” groups or movements—whether trans people or women or criminalized people of color or immigrants—in diffused fascistic ways, as if to resolve or “put down” threats to security or freedom.²⁶ Even before the recent political descent into open fascism, these same political-economic elites in the U.S. have focused extraordinary resources on undermining organized opposition—grassroots groups, social or epistemological movements, and community organizations with an institutionalized capacity to sustain political education and opposition to totalitarian control. For this reason, these reactionary neoliberal elites have viciously opposed labor organizing and strikes among coffeehouse, auto, warehouse, entertainment, education, and other workers as well as organized protests—from grassroots anti-policing movements like Stop Cop City in Georgia to indigenous opposition to pipeline projects and large dams to youth-led environmental and reproductive justice protests around the world. The role of those same elites is the same here and now—regarding criticality, education, law, and justice in the context of Standard 303’s revision.

Although analogies are limited, the current conjuncture between right-wing political leaders, corporate funders, and privatized supremacist groups has too many parallels in the relationships co-engineered in the 1930s U.S. by Americans (mainly in the Jim Crow South) and in Germany during that very same time by National Socialists seeking a similar legal and ideological architecture for their Third Reich.²⁷ For those two camps in their respective countries barely a century ago, the racial supremacist ideologies and agendas of the other were sources of inspiration, support, and power.²⁸ This two-way dynamic of mutual reinforcement continues today as

²⁶ Alberto Toscano, *Incipient Fascism: Black Radical Perspectives*, *CLCWEB: COMPARATIVE LITERATURE AND CULTURE* 23:1 (2021), doi.org/10.7771/1481-4374.4015.

²⁷ See JAMES Q. WHITMAN, *HITLER’S AMERICAN MODEL* (2017).

²⁸ To follow this ideological comradeship more closely from the U.S. side, see RACHEL MADDOW, *PREQUEL* (2023).

evidenced by the widespread use of Nazi symbology among U.S. right-wing insurrectionists and their sympathizers²⁹ while in Germany today's wanna-be Nazis wave the Confederate flag of the 1860s insurrectionists against the U.S. (because Germany forbids open displays of the swastika and Nazi symbology, and contemporary Nazi groups view the Confederate flag as the nearest thing to an expression of their belief system).³⁰ This modern-day, continuing two-way dynamic thus demonstrates how the use of supremacist ideology and law on both sides of the Atlantic during the past century is rooted in histories and traditions of conquest, exploitation, extraction, and genocide that are epitomized—as put by Hitler himself—by white extermination of Indians and enslavement of Blacks specifically in these United States.³¹ This well-documented historical and ideological parallelism is important to understanding today's zeitgeist as more than just random dangerous cacophony.

Instead, by 2023 this poisoned zeitgeist was commonly defined by a concerted, metastasizing campaign to replace the constitutional Republic with some form of dictatorship.³² Indeed, many feared openly that 2024

²⁹ See *QAnon's Antisemitism and What Comes Next*, ANTI-DEFAMATION LEAGUE (2021), <https://www.adl.org/resources/report/qanons-antisemitism-and-what-comes-next>; Ryan J. Reily *Feds say Jan. 6 rioter seen giving Hitler salute, sending racist messages*, NBC NEWS (2022), <https://www.nbcnews.com/politics/justice-department/feds-say-jan-6-rioter-seen-giving-nazi-salute-praised-hitler-sent-raci-rcna17645>. See also Lisa Mascaro and Stephen Groves, *Trump Invokes Nazi-era "Blood" Rhetoric Against Immigrants as Senate Border Security Talks Grind On*, ABC NEWS (Dec. 18, 2023), <https://abc7chicago.com/trump-immigrants-blood-purity/14198102/> (reporting Trump's remarks against undocumented U.S. immigrants as "poisoning the blood of our country," echoing Nazi slogans).

³⁰ See Joseph De Weck, *Germany's Lateral Thinkers, Unite*, FOREIGN POLICY, <https://foreignpolicy.com/2020/09/23/germanys-lateral-thinkers-unite/> (noting German use of Confederate symbols during 2020 anti-lockdown protest); Sanders Isaac Bernstein, *Germany's strange nostalgia for the antebellum American South* (2023), USC DORSNSIFE, <https://dornsife.usc.edu/news/stories/germanys-nostalgia-antebellum-american-south/>.

³¹ See WHITMAN *supra* note 27.

³² Not by mistake did the cult leader, Donald Trump, call for "termination" of inconvenient portions of the U.S. Constitution. See, e.g., Kristen Holmes, *Trump calls for*

could be the last contested formal elections in the U.S. precisely because more than just a few avidly hope for it and because a highly organized and well-funded complex of forces is fighting daily to make it so now, in 2023—and since 2021. However, these ongoing and potential national devolutions into rightist hysteria and dysfunction are not purely domestic.

The current existential threat to a functioning constitutional Republic in the U.S. in this historical moment runs even deeper, as demonstrated in the U.S. response to the Hamas attack on Israelis and Israeli bombardment of Palestinians in Gaza. The near-unanimous immediate response by U.S. political, corporate, and legal elites has shown that liberal democratic systems and fascistic processes of racial domination are not incompatible bedfellows. In this instance, domestic U.S. elites were shocked by the unexpectedly broad, sustained, multiracial, and cross-class mobilizations in support of Palestinian lives and self-determination internationally. In response, U.S. elites have marshaled political and material support not only for the overweening violence against Palestinians in the Middle East but to enact unlawful, anti-democratic reprisals against anyone in the U.S. expressing concern for Palestinian survival or rights—reprisals ranging from termination of individuals' employment to cancellation of groups' right to exist in scandalous contravention of professedly cherished, fundamental constitutional guarantees.³³ Bullied by rightist donors and

the termination of the constitution in Truth Social post, CNN (Dec. 4, 2022). Though posted on the Internet for the whole world to see, he then lied about it. *See, e.g.*, Olivia Olander, *Trump denies he suggested "termination" of Constitution, without deleting post*, POLITICO (Dec. 5, 2022), <https://www.politico.com/news/2022/12/05/trump-terminate-constitution-00072230>.

³³ *See* Alex Kane, *A McCarthyite Backlash Against Pro-Palestine Speech*, THE JEWISH CURRENT (2023), <https://jewishcurrents.org/a-mccarthyite-backlash-against-pro-palestine-speech#:~:text=Across%20the%20US%2C%20supporters%20of,in%20requests%20for%20legal%20help>; Andrea Long Chu, *The Free-Speech Debate is a Trap*, N.Y. MAG. Dec. 22, 2023), <https://nymag.com/intelligencer/article/free-speech-debate-free-palestine.html>. For backlash against law students by law firm employers *see* Timothy

politicians, among others, institutional decision-makers in 2023 too frequently have used apparatuses of the state, universities, and businesses to suppress freedoms of even “core” political expression, public or private association, and collective or individual protest,³⁴ as well as mobilizing or largely turning a blind eye to pervasive harassment and multiplying threats targeting Palestinians or their supporters specifically for their attempts peacefully but publicly exercise their own First Amendment rights.

Thus, by the time of our 2023 biennial conference and in the weeks following, the fragility of democratic processes and constitutional protections had been exposed, and the urgency of creative, coalitional anti-subordination work was reinforced in very public and pressing ways. The “culture wars” plaguing Americans since the mid-1970s³⁵ had hit fever pitch, and the drive to “resurrect” a new Golden Age of Robber Barons to re-establish a pre-New Deal, pre-Civil Rights, pre-modern America was undeniably in full and unabashed swing.³⁶ In just a few short years during the second decade of this century, the decades-long culture war agendas seeking to reinstate colonial-era identity castes had transmuted into a demand that democracy be disregarded and only one faction of self-

Bella, *Online Posts About Israel-Gaza War Are Costing Some People Their Jobs*, WASH. POST (Oct. 12, 2023), <https://www.washingtonpost.com/world/2023/10/12/israel-gaza-war-social-media-job-firings/>.

³⁴ See, e.g., Murtaza Hussein, *The Senate Condemns Student Groups as Backlash to Pro-Palestinian Speech Grows*, THE INTERCEPT, <https://theintercept.com/2023/10/27/palestine-israel-free-speech-retaliation-senate/>.

³⁵ See, e.g., LatCrit Symposium, *Countering Kulturkampf Politics through Critique and Justice Pedagogy*, 50 VILL. L. REV. 749 (2005), 35 SETON HALL L. REV. 1155 (2005); Francisco Valdes, *Culture, “Kulturkampf” and Beyond: The Antidiscrimination Principle under the Jurisprudence of Backlash*, in THE BLACKWELL COMPANION TO LAW AND SOCIETY (Austin Sarat ed. 2003).

³⁶ “Resurrection” of the “Constitution in Exile” is the polite legal euphemism for this reactionary top-down agenda. See, e.g., *Symposium—The Constitution in Exile*, 51 DUKE L. J. 1 (2001).

righteous fanatics be allowed to rule over all, and for all time.³⁷ By the time we convened with hybridity in 2023, the culture wars had yielded the ambition not only to control democracy—and the power of law—but to dispense altogether with both democracy and the rule of law.³⁸ And by the end of 2023, a rightist wanna-be American “dictator” and his cronies were openly bragging about it.³⁹ To many who were previously unaware or complacent, this headlong national descent into long-repudiated ideologies of racial supremacy and minority tyranny seemed breathtaking in its rawness and rapidity, as well as in its crudity and cruelty.

However—and moreover—this acceleration and devolution into neo-liberalized fascism also intentionally coincided with the direct targeting of education, educators, and access to knowledge as an integral “front” or part of these expanding and intensifying culture wars—targeting, specifically,

³⁷ Wisconsin is only one case in point, where the Republican nominee for governor, Tim Michels, publicly promised that if elected, “[Republicans] will never lose another election again.” See Martin Pengelly, *Republican says party ‘will never lose another election’ in Wisconsin if he wins*, THE GUARDIAN (Nov. 2, 2022). Although he lost that election, the ambition was made public and explicit and is reflected more broadly in the strategy driving that party in that state. For an in-depth analysis of factional entrenchment to defeat democracy and impose one-party rule, see Ari Berman, *How Wisconsin Became the GOP’s Laboratory for Dismantling Democracy*, MOTHER JONES, Oct. 25, 2022. This playbook reflected the larger Republican refusal to commit to respect election outcomes unless they were declared the winners and given power. See, e.g., Maggie Astor, *Lake won’t pledge to accept election results, and more news from the Sunday shows*, N.Y. TIMES (Oct. 16, 2022); Laura King, *Trump won’t commit to accepting result if he loses election*, L.A. TIMES (July 19, 2020).

³⁸ In keeping with that playbook, longtime Trump confidante Roger Stone proclaimed on camera before the 2020 elections: “Fuck the voting. Let’s get right to the violence. Shoot to Kill.” See Luke Broadwater, Alan Feuer, and Maggie Haberman, *Roger Stone promoted violence, then sought pardon after Jan. 6, evidence shows*, N.Y. TIMES (Sept. 27, 2022). Another “senior Trump advisor” similarly proclaimed before those elections that, “What Trump’s going to do is just declare victory right? He’s going to declare victory. But that doesn’t mean he’s a winner.” See Aaron Black, *The significance of the new Steve Bannon tape*, WASH. POST (July 13, 2022).

³⁹ See, e.g., Olivia Rinaldi, *Trump says he would be a dictator only on “Day One” if he wins a second term*, CBS NEWS (Dec. 6, 2023), <https://www.cbsnews.com/news/donald-trump-sean-hannity-dictator-day-one/>.

critical knowledge.⁴⁰ This deadly placement of ourselves and our work in the crosshairs of the culture wars had already prompted us to act proactively in the 2021 formation of the Critical (Legal) Collective.⁴¹ But this targeting, in conjunction with the ongoing campaign to destroy the limited democracy available to Americans, places us—as critical outsider scholars—in a newly nuanced structural position: defending a system of government engineered—as Hitler and his Party lucidly understood—to exclude, degrade, dispossess, disempower, subjugate, exploit, control, and slowly (or sometimes in a flash) kill us. How do we prop an oppressive system that we must transform to save? The contemporary resurrection of fascism in the U.S. that has become so palpable in these past two years since we last met requires us now—personally and collectively—both to defend and yet to demand more from the dominant systems that hang in the balance.

The new question since 2021, from which we cannot flinch in 2023, thus becomes: In helping now to defeat this latest iteration of fascism “here at home” how will we simultaneously continue to make better and quicker—and more enduring—material progress toward equal justice for all despite the prevalence of neoliberal greed and power? How can we best defend the gains of the past against the extraordinary combination of ideological and material evils of today while also moving forward with a critical transformation of law and society that is consistent with the (long-broken) promise etched on the Supreme Court portico: Equal Justice Under Law. How can we continue to share, sustain, and strengthen the solidarity,

⁴⁰ See Valdes, *supra* note 11; Jonathan Feingold and Joshua Weishart, *How Discriminatory Censorship Laws Imperil Public Education*, NATIONAL EDUCATION POLICY CENTER (2023), nepc.colorado.edu/publication/censorship; American Association of University Professors, REPORT OF A SPECIAL COMMITTEE: POLITICAL INTERFERENCE AND ACADEMIC FREEDOM IN FLORIDA’S PUBLIC HIGHER EDUCATION SYSTEM (Dec. 2023), aaup.org/file/AAUP_Special_Committee_Report_on_Florida_final.pdf.

⁴¹ See discussion *supra* note 16.

creativity, joy, and love that is at the heart of our lives, our organizations, and our ongoing marathon struggle for equal justice for all?

Today, amid this tectonic historical moment, we cannot possibly know the answers to existential questions like these. But we must know by now that sooner or later a reckoning of law with justice must take place. As professionals with legal expertise, we must not doubt by now that our role in that reckoning necessarily will be central, perhaps pivotal.

Thus, starting now, we must be critically cognizant—and proactively against—this newly toxified zeitgeist and its old yet new challenges, dangers, and lies. Equally important, and with all due humility, starting now we must marshal *all* our resources—intellectual, human, material, and otherwise—towards the common and twin causes of both preserving and transforming this constitutional Republic, but based on antistatist principles and bottom-up knowledge. To do so here, as always, we seek to build on what we already have, using what we already know,⁴² and creating as always a lively space and warm welcome for new people and ideas.⁴³

⁴² See Bill Ong Hing, *Coolies, James Yen, and Rebellious Advocacy*, 14 *ASIAN AM. L. J.* 1 (2007) (quoting Y. C. James Yen, a model for rebellious and collaborative advocates, who taught that advocates should go to, learn from, and work with the people, mindful to “Start with what they knew. [And] [b]uild on what they have”).

⁴³ From early on as an integral part of the annual (now biennial) conference and its aim to organize and build community, and later expanded to venues outside of LatCrit events such as the annual AALS meeting, the LatCrit Hospitality Suite has been a concrete example of how LatCrit has pushed back against the co-opting pressures of academic “standards”/exclusivity in concrete, creative, and fun ways. As one longtime LatCrit leader, Roberto Corrada, put it in reflecting on LatCrit’s role in awakening and developing his interest in critical scholarship and pedagogy, the LatCrit Hospitality Suite “is a living appendage to scholarship: so many ideas have been born there, so many ideas have been expanded and extended there.” See Steven Bender, Tayyab Mahmud, Francisco Valdes, Shelley Cavalieri, Jasmine Gonzalez Rose, Saru Matambanadzo, Roberto Corrada, Jorge Roig, Zsea Bowmani, and Anthony E. Varona, *What’s Next? Into a Third Decade of LatCrit Theory, Community, and Praxis (Afterword)*, 16 *SEATTLE J. FOR SOC. JUST.* 823, 857 (2018). Another LatCrit community member, Mario Barnes, spoke about the synergies of the Suite, situating:

[t]he whole notion of the hospitality suite, which I had never experienced at any other Law and Society or AALS or other large conference I had gone to.

In the two-part Afterword to the 2021 conference symposium, we emphasized points similar to those that we elaborate and update here, including a call to strategic hybridity in the production of knowledge and action against any form of fascism in law, education, and society and to do so through “advocacy projects” focused on the workings—and transforming—of dominant systems, including the rule of law.⁴⁴ As we imagined then, hybridized advocacy projects positively enable us to leverage scarce resources—from time and energy to money and other tangibles—to pierce through entrenched systemic webs of injustice that normalize the inequities and inequalities of the status quo. Hybridized advocacy projects designed to take on systems rooted in anti-subordination values could engender organic yet intentional networks of principled, practical solidarity across all kinds of differences or borders, including identity, discipline, time, and place.

With that understanding of advocacy projects in mind, we came to understand, and frame LatCrit itself, as an advocacy project of just the same sort: hybridized, organized, activist, and focused on the systemic

Not just in the social way where I got to meet and talk to so many people whose work that I admire. . . . At [LatCrit IX], I met for the first time a person who it turned out was writing on things similar to what I was writing on. In the hospitality suite, we said “you know what? We should write together” and that has been going on since. . . . But for LatCrit, it wouldn’t have happened.

Margaret E. Montoya and Francisco Valdes, “*Latinas/os*” and the Politics of Knowledge Production: *LatCrit Scholarship and Academic Activism as Social Justice Action*, 83 IND. L. J. 1197, 1217 (2008) (detailing Barnes’ oral history account describing his collaboration with Angela Onwuachi-Willig).

⁴⁴ See Francisco Valdes, Steven W. Bender, & Jennifer J. Hill, *Afterword LatCrit at Twenty-Five and Beyond [Part I]—Organized Academic Activism and the Long Haul: Designing “Hybridized” Advocacy Projects for an Age of Global Disruption, Systemic Injustice, and Bottom Up Progress*, 99 U. OF DENV. L. REV. 773 (2022); Francisco Valdes, Steven W. Bender, & Jennifer J. Hill, *Afterword: LatCrit at Twenty-Five and Beyond, [Part II]—Challenges and/as Opportunities: Centering “Hybridized” Advocacy Projects in Antisubordination Praxis to Connect Campuses and Communities for Material Long-Term Progress*, 20 SEATTLE J. FOR SOC. JUST. 1053 (2022).

transformation of law, education, the economy, and society for the long term through all kinds of organization-building and coalitional collaborations.⁴⁵ In this framing, LatCrit as one whole constitutes this kind of advocacy project, even as our Portfolio of Projects and related programs or publications constitute the actions that we, as an advocacy project, undertake from year to year, and from generation to generation. Based in legal academia, LatCrit thus is an advocacy project comprised mainly but not exclusively from the larger academic community; like other community-based advocacy projects, LatCrit endeavors to make a difference both within and beyond our immediate surroundings—from inception in 1995, as our functions made plain from the start, we aim always to make a difference both in law and throughout society.

Today, in 2023, we think the same—but even more strongly. We thus focus this Afterword on elucidating and propelling forward the epistemological, pedagogical, and organizing tools and gains of the past two years, as outlined here, in the particular form of hybridized advocacy projects. Keenly aware that we are now squarely on the front lines of a war over knowledge, history, truth, law, consciousness, and destiny itself, we elaborate below how the three new LatCrit publications and other LatCrit projects or resources stand by as “shovel ready” tools or instruments in varied kinds of advocacy projects or settings, including most notably (for us) classroom and clinical courses. In this context, we point to the recent revision of ABA Standard 303, which provides a new mandate for law schools to integrate antiracism into their formal educational programs and provides a timely opportunity to advocate for robust implementation using critical knowledge and materials.

This critical (re)consideration of the pressing ambient dangers—and recent gains, resources, or opportunities—in turn prompts us also to recall briefly the still-unfulfilled potential of Campo Sano, the 10-acre LatCrit

⁴⁵ Valdes, Bender, & Hill, *supra* note 44.

campus that also is a key community resource, in the development and sustenance of advocacy projects to promote robust implementation of Standard 303 specifically. Campo Sano’s development can help LatCrit organize itself better—and hemispherically—during these times and, importantly, using these resources and materials. This combination of materiality, hybridity, and epistemology is, we believe, the strategic puzzle to be solved to overcome the foundational challenges of these Orwellian times. In elaborating the interconnections between materiality, hybridity, and epistemology in the context of anti-subordination advocacy projects, and doing so specifically within LatCrit’s dynamic framework of ongoing critical innovation, we aim to advance both longstanding commitments to knowledge production and organized academic activism as well as this year’s conference theme highlighting for us (again) the importance of hemispheric interconnections within and through LatCrit theory, community, and praxis.

II. THE LATCRIT PRIMER: A SUMMARY LOOK AT ORGANIZED ACADEMIC ACTIVISM

The LatCrit Primer⁴⁶ is a relatively short book that recounts how LatCrit originated in 1995 as a “school” of critical outsider jurisprudence to help advance anti-subordination values, how we incorporated ourselves a few years later as a nonprofit group to create a base for our organizing and autonomy, and how we collectively have developed projects, programs, and publications consistently since 1995 to defend and promote critical legal knowledge and networks. But more than telling a story, this Primer also is designed to serve as a case study in organizing academic activism. With all royalties and proceeds going directly to the LatCrit community treasury for community projects—including Campo Sano⁴⁷—this new resource provides

⁴⁶ VALDES AND BENDER, *supra* note 7.

⁴⁷ See *infra* Part VI.

an example of what one group—LatCrit—has been doing since 1995, which hopefully now is useful to others endeavoring something that may be similar.

Since publication in 2021, the LatCrit Primer has been adopted at schools across the country⁴⁸ and stocked in most law libraries for easy student access. In addition, after the English-language book was published, we began the process of translation and expect a Spanish-language edition to be available in 2024. This new community resource is thus designed not only to tell a story but also to support our ongoing cultivation of South-North collaboration and exchange in substantive, programmatic, and sustained terms. This ready new resource is designed and available to support antistatist teachers, learners, organizers, and advocates engaged with practical and epistemological struggles or projects in varied locales or settings ranging from classroom seminars to field projects or practicums.

III. *CRITICAL JUSTICE: LATCRIT AND ADVOCACY PROJECTS*

The *Critical Justice* book is a carefully curated assembly of the foundational insights and key lessons accumulated since the 1980s by or through the various critical schools of legal knowledge (like feminism, Critical Race Theory, and others), along with the critical advocacy approaches (like rebellious, cause, and movement lawyering, among others) that inform each other and that, jointly, inform what we call systemic advocacy. It adds to pre-existing resources a highly flexible, or “shufflable,” set of materials that alleviates the need “to reinvent the wheel” in various courses that rely on knowledge of key critical concepts as a foundation for substantive learning. But in addition to the synthesis, framing, and dissemination of critical knowledge in accessible and adaptable terms, another key aspect of this publication project was its

⁴⁸ Most commonly to our knowledge the book has been used in Latina/o/x and the Law courses.

potential to help secure LatCrit’s independence, autonomy, and self-sustainability in material terms. Consequently, from the start, we assigned all book proceeds to the LatCrit community treasury, which supports our entire Portfolio of Projects and, importantly, Campo Sano’s maintenance.

In other tangible ways, the *Critical Justice* book brings LatCrit and the other critical schools of legal knowledge into the many classrooms in which it is taught: those critical classrooms effectively become havens—or safe zones—from a variety of venues hostile to critical knowledge, including those in states that have outlawed “CRT” and/or “DEI” in their schools⁴⁹ and those that adhere to the silliness of formalistic and fleeting education with doctrinal memorization for IRAC regurgitation while denying or diminishing the relevance of social identities, groups, interests, and power (IGIP)⁵⁰ at play everywhere in law and society. Therefore, in the LatCrit 2021 symposium, we situated both the multi-decades LatCrit Portfolio of Projects as one whole and the *Critical Justice* textbook itself, as distinct yet interrelated advocacy projects.⁵¹ In doing so, we followed and extended

⁴⁹ See Taifha Alexander, LaToya Baldwin Clark, Kyle Reinhard, & Noah Zatz, *CRT Forward: Tracking the Attack on Critical Race Theory*, UCLA SCH. OF L. CRITICAL RACE STUD. (2023), https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf.

⁵⁰ See Margaret E. Montoya, *Mascaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN’S L.J. 185 (1994); 15 CHICANO-LATINO L. REV. 1 (1994) (discussing through narrative how students raising identity questions around judicial opinions runs counter to traditional and tolerated legal discourse in the classroom and beyond). While law school classrooms tend to feed the needs and expectations of the legal industry, which points toward that IRAC focus, the *Critical Justice* textbook teaches a more complex focus on identities, groups, interests, and power that better helps explain past judicial decisions (and other legal and societal outcomes), as well as point toward methods of confronting and overcoming those outcomes going forward. The adoption of revised ABA Standard 303 bolsters the relevance in the classroom of race and other subordinated identities, particularly within a critical teaching framework that implicates legal outcomes in ongoing subordination instead of treating racism and other identity-bias as vanquished and the subject of individualized wrongdoing if they resurface, rather than as baked-in systemic failures by design, as the *Critical Justice* text reveals.

⁵¹ See *supra* note 46.

longstanding LatCrit traditions that emphasize the synergies between knowledge, collaboration, and action.

For almost thirty years, as noted here in the Introduction, LatCrit has served as a platform to organize law professors, both in the Global North and South, along with other professors activists, and students, toward antistatist theory and praxis, while aiming to change group consciousness and the broader academy culture to value academic activism and to enable community-oriented projects that cut across institutions and avoid individualized “glory” or stardom.⁵² While part of the LatCrit whole, standing alone the *Critical Justice* textbook is equally an advocacy project designed to help equip students (and other users) to eventually pursue their advocacy projects over a career or lifetime. As we have situated the text, “with the advocacy project model at its core, [the book] is itself an advocacy project toward fostering and feeding the critical classroom and training systemic advocates for long haul lawyering toward antistatist ends.”⁵³

In this way, an intergenerational succession of advocacy projects launched by and within LatCrit defines the work of activist professors steeped in critical theory who are central to that chain. LatCrit as an advocacy project launched and nurtured a variety of advocacy projects within and sometimes outside of the academy, including the decade-long or more editing and development of the *Critical Justice* textbook. In turn, that textbook invites adoption by professors in courses that challenge traditional legal education norms by creating classrooms steeped in critical theory. Using the *Critical Justice* framework, which in turn is a synthesis of the past several decades of critical outsider jurisprudence, professors in varied courses or settings are poised to help frame and nurture the advocacy projects of hundreds of students, whether in the critical classroom itself, in

⁵² See generally VALDES AND BENDER, *supra* note 7.

⁵³ *Supra* note 46, at 1071.

fellowships after graduation, or other employment and affiliations for the duration of their careers. Among these might—we think should—be advocacy projects that bring together students, faculties, and allies for robust implementation of the recently revised ABA Standard 303 using critical materials like (but not limited to) *Critical Justice*.

IV. IMPLEMENTING STANDARD 303 ROBUSTLY: *CRITICAL JUSTICE* AND THREE-LAYERED PROJECTS

As detailed in the *Critical Justice* book, advocacy projects necessarily—by design—are collaborative and coalitional organized efforts that aim at amelioration and transformation of the status quo of systemic injustice. The critical point here for advocacy projects focused on countering entrenched systems is the adoption of three-layered research, analysis, goals, and advocacy that are overlapping and synergistic.⁵⁴ This expanded advocacy framework combines: (1) winning technical fixes to ameliorate discrete social problems, (2) building organized group power for sustainable struggle, and (3) shifting consciousness and culture.⁵⁵ This three-layered framework is “designed to help advocates better account for the role of identities, groups, interests, and power in top-down systems and bottom-up struggles”⁵⁶ that contest material and other forms of inequalities.

Advocates working within a three-layered framework often use discrete legal tools—whether cases, contracts, or others—as part of a coordinated series of activities that, together, make up “complex actions” like issue campaigns or community development programs.⁵⁷ To transform, rather than simply ameliorate, requires both addressing the concerns and pain caused by the existing social problem as well as preparing to win changes that have a prospective impact—that reduce the likelihood of the problem

⁵⁴ See *CRITICAL JUSTICE*, *supra* note 13, at Ch. 8.

⁵⁵ *Id.* at § 8.4.

⁵⁶ *Id.* at 612.

⁵⁷ *Id.* at Ch. 12.

recurring or the scope or intensity of its future occurrence and that prepare the affected communities to defend and build on their wins. When advocates are always working with all three layers of goals in mind, they develop a disciplined practice of systemic advocacy to win incremental change that is both ameliorative and transformative as part of a continual equal justice struggle.

Here, we center this three-layered approach as a *Critical Justice* framework for robust institutional implementation of revised ABA Standard 303.⁵⁸ To do so, we present key threshold notes and questions—notes or questions of strategy and objectives. We recognize in doing so that these notes and queries are but a start, at best. We recognize also as we start that formal legal education is itself part of a larger industry—not just a uniquely noble profession—and that institutional change within the law as an industry requires the same approach as a systemic change in any other industry.

To begin, revised Standard 303 now formally requires schools to:

provide education to law students on bias, cross-cultural competency, and racism:

- (1) at the start of the program of legal education, and
- (2) at least once again before graduation.⁵⁹

In this instance, the institutional process of implementation would begin in good faith to satisfy the Standard's two-part timing mandate in the institutional context of each faculty or school. However, the minimalist

⁵⁸ For suggestions on course design and session-by-session content to implement Standard 303 throughout the program of legal education using the *Critical Justice* book as a primary text, see Appendix D to this article.

⁵⁹ *Chapter 3 Program of Legal Education*, AM. BAR ASS'N 18 (2022-23), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2022-2023/22-23-standard-ch3.pdf [<https://perma.cc/D94E-CZ6K>]. That Standard goes on to provide that “[f]or students engaged in law clinics or field placements, the second educational occasion will take place before, concurrently with, or as part of their enrollment in clinical or field placement courses”; *Id.*

institutional temptation—supported by inertia—might be to assert that the first part of this mandate is satisfied by already existing law school 1L Orientation components peripherally devoted to “diversity” and the like, perhaps with a bit of tweaking; and similarly, schools may be tempted to assert the second part of Standard 303’s mandate satisfied by existing or tweaked components of their clinical program or other existing upper division curriculum. If minimalist temptations are allowed to triumph, Standard 303 would mean nil, which in turn would press the very good question: if existing education already satisfies this two-part mandate, why did the ABA bother revising the Standard to begin with? Why did it follow the recommendation of so many law school deans urging that something more is needed?⁶⁰ Now that the ABA has responded to the call for more, those very same deans and their allies—including us—must be proactive and timely to ensure that minimalism doesn’t triumph. Rather, Standard 303’s revision should spark—and, with activism on each law school campus and coordinated across campuses, will generate—a robust response from most if not all deans, faculties, and schools.

At best, minimalist assertions like those sketched above might count as technical satisfaction but asserting that pre-303 education satisfies Standard 303’s revision would fail by far if measured against a three-layered approach to robust implementation at the institutional level using critical materials. A three-layered approach would include pre-existing moments or resources that might—but to us, dubiously—count as technical, first-layer compliance while simultaneously marshaling those baseline resources to build up second-layer and third-layer goals into the institutional plan as one, layered whole. In three-layered projects, each layer is employed as scaffolding for the next.

⁶⁰ See Bender, *supra* note 18, at n.2 (describing the campaign among deans that led to the revision of Standard 303).

To illustrate a robust three-layered compliance approach, schools might begin by developing, tweaking, and offering an orientation program combined with a first-year seminar to satisfy the first part of the mandate, reinforced later by clinical materials and an upper-division course to satisfy the mandate's second part. In addition, 303 education can be institutionally interwoven, reinforced, and deepened with appropriate substantive modules that teachers can integrate seamlessly into pre-existing syllabi for core courses like ethics, property, contracts, and various courses on constitutional law. Faculty could offer periodic or mid-semester "teach-ins" or "talking circles" to allow students time and opportunity for in-depth exploration of ideas and exchanges of backgrounds, experiences, and lessons being learned. Community members active in antiracist work—including public education—could be invited to do the same, or something similar. Student organizations could be encouraged (and funded) to hold discussion groups amongst themselves, or with invited (by them) guests. These are just some of the responsive actions that deans and faculties can take relatively easily, and in contextualized combinations, to timely and robustly provide students with an effective Standard 303 education—and *Critical Justice* already has been, or easily is, adaptable to any or all of these scenarios.

Each school can and should compose a curriculum of robust compliance—ranging from some basic components mandatory and others that are supplemental—to create an antiracist transformation of the institution as integral to the design of the school's formal legal training of the next generation's lawyers. Thus, robust implementation calls for every accredited law school to design a contextualized, school-specific response to Standard 303's revision that will affect the institutional environment as well as the academic resources of the status quo ante. And this kind of robust contextualized, three-layered approach requires faculties and deans to think institutionally, practically, holistically, and synergistically.

To do so, each offering or component would substantively incorporate critical analysis and discussion of race, racism, racial capitalism, and antiracism and bias concerning legal doctrine, education, professionalism, ethics, and practice. Each element of this flexible menu would be designed as mutually reinforcing. Over time, this menu would raise the profile of antiracism education as integral to formal legal training in a plural democracy of the 2020s; robust implementation thus requires affirmative recognition of already organized constituencies or resources—student and faculty groups, centers, journals, clinics, DEI, and clinical deans—in possession of various resources and with existing roles in institutional decision making. The “power” of antiracism, thus embodied through interested groups, leadership roles, budgets, and policies, means that institutional commitments can better withstand future attacks—the second layer of goals. Incrementally, culture shifts would take place that alter dominant understandings of the problem, the players, and the solutions—the third layer of goals.

Using technical first-layer goals as a starting point, rather than as the end point, makes all the difference between formalistic minimalism and critical robustness. Advocates of this critical approach should anticipate and prepare for objection and opposition precisely because this approach is most effective, especially in an environment already marked by rightist hysteria and reaction. For this very practical reason, “winning” three-layered goals almost invariably requires moving a strategic plan collectively using both persuasion and pressure.

To make three-layered gains, student advocates and professors necessarily must identify persuasion and pressure points most likely to affect each targeted decision maker—from the trustees, the president, the dean, and so on—and then plan and carry out leverage activities that use pressure, in tandem with persuasion, to advocate for robust institutional compliance. As just one illustration of this point, institutional mission statements that typically emphasize concepts like “equal justice” as

foundational to the institution can be emphasized in creative ways to pressure schools publicly for robust Standard 303 education. This leveraging of mission statements can be reinforced by insistent appeals on the merits for the institution to do its good faith best in living up to its stated mission. To succeed, three-layered advocacy projects for robust institutional implementation of Standard 303's two-part mandate must be both critically grounded and strategically minded—they must combine persuasion and pressure in context to defend and advance 303 education.

This combination of criticality with strategy infuses all three layers of goals. Criticality deepens the systemic insights and orients the workaround anti-subordination values; strategy deepens the functional knowledge of change-making, collaborative knowledge creation, and resilience in the face of opposition. Thus, to be maximally effective, three-layered advocacy must be both substantive from the bottom up and designed for the long term, in addition to being contextual. And, as we elaborate further below, first-layer starting points must be designed as scaffolding toward second and third-layer goals in substantive, practical, and strategic terms.

So how can advocacy projects for Standard 303 implementation be designed and carried out to build and measure organized group power for sustainable struggle? Threshold questions to be raised, researched, and resolved in the particular context of a school or site would include assessments of the landscape. Are there like-minded organizations already involved in antiracist work? How many members do they have? What resources do they have? What capacities for developing and implementing strategic action do they have? What relationships—and particularly solidaristic relationships—do they have with others in critical coalitions? As we emphasize in this sketch of three-layered advocacy for robust Standard 303 education, never forget that building organized group power means developing plans that leave in place, at the end of the campaign, more or stronger groups with greater resources, more capacity for

developing and carrying out strategies that both persuade and pressure targets and broader or deeper solidaristic relationships.

Even with an understanding of the context, systems are not changeable overnight, just as they were not placed in a flash; both the erection and dismantling of systems—including the routines of formal legal education—are the results of collective struggle and perseverance. Systemic change requires different kinds and combinations of collaborations because no person can credibly pretend to get the job done alone. To embark on this kind of three-layered work in the context of Standard 303 legal education, student advocates and professors therefore must assemble a team suited to their context—and self-sustainable for the longer run. To facilitate this crucial threshold step, the *Critical Justice* framework examines the differences between a team and a group in relationship to advocacy projects, along with some methods for ensuring the team shares a purposeful three-layered mission and a substantive, strategic agenda over time—and, again, that it is well prepared for reaction and opposition.⁶¹

In assembling local teams for robust Standard 303 implementation, student advocates and professors may be able easily to identify allies—individuals and/or already organized groups committed to racial justice or related missions to help with second and third-layer goals. There may, for example, be a National Lawyers Guild (NLG) chapter already on campus. There may be other professors, students, and community groups interested in this issue. There may be clinics or clinical deanships that could support robust 303 education as a clinic program or project. DEI deanships can be crucial to this institutional effort, as we emphasize below. There may be interested student organizations from the Student Bar Association on almost every law campus to a variety of identity-centered affinity groups. More expansively, the team's assembly might consider undergraduate organizations, whose disciplines are not subject to Standard 303 but who

⁶¹ See CRITICAL JUSTICE, *supra* note 13, at Ch. 7.

share an interest in advancing discussions of race and racism on campus: could they be part of the campaign team? Achieving second-layer goals makes proactive outreach to likely allies a threshold and a continuing aspect of building organized group power. Another part is building a loose collaboration into a high-functioning team capable of guiding a coalition forward in the long run.

Thus, if established organizations already exist with values and missions that support robust Standard 303 education, might a goal in this kind of context be to increase the membership of one or more existing organizations? What about long-term relationships with community organizations that share an interest in racial justice? What about projects or partnerships with worker groups, like faculty and staff unions at this or other sites, that have a stake in academic freedom and racial justice—and who now might support advocacy for robust Standard 303 implementation? Do the student advocates or professors have relationships with groups like that? If not, how, and where might they begin building and nurturing them? How do the student-advocates and faculties think about relating to such groups in a solidaristic way, not simply asking for their time or help with no compensation or reciprocity or engagement that is episodic and largely symbolic but rather sustainable, respectful, mutually beneficial—that is, solidaristic—relationships? These sorts of questions can help student advocates and professors carry out their Standard 303 advocacy projects for robust institutional implementation in a way that generates or strengthens organized groups to achieve second-layer goals for the long term.

But, in addition to building a capable team and coalition of allies for three-layered goals, student advocates, their professors, and their allies at this point also might consider problematic gaps that can obstruct this robust institutional approach. For example, what if there is no NLG or other natural-ally chapter on campus? How does this circumstance alter the work of robust Standard 303 education? Might a goal of the work in this kind of context therefore be to create and emplace an organization (affiliated with a

national group or autonomous) that can continue to work on monitoring robust implementation and similar issues related to antiracism in law and society? Regardless of the particulars, every context requires advocacy projects and teams capable not only of technical fixes but also of building group power for long-term impact.

This kind of long-term impact entails shifting consciousness and culture, and we thus turn to the third layer that advocacy must take into account to secure systemic change.⁶² Focusing on the culture of a particular school or site, what might changing consciousness and norms look like in terms of Standard 303 education? In addition to injecting a team-building and knowledge-creation process that transforms participants' understanding of what it means to understand people, problems, solutions, and strategies, student advocates and professors might define Standard 303 as having a more significant antiracist community heft. For instance, consider that Standard 303 requires only the introduction of notions of race and racism—but not racial capitalism or antiracist struggle—to the curriculum. Is the robust implementation of an accreditation standard that aims to diminish racism in the profession going to accomplish its goal if it simply introduces notions of race and racism? Robust implementation does not have to be defined by student advocates and professors in terms of the minimalist, lowest-common-denominator, or the most abjectly formalistic interpretation that constricts the standard. Why not aim for what is required institutionally to begin reducing racism in legal education and practice? In centering “race” according to Standard 303, shouldn't schools introduce critical understandings of antiracism that begin to untie the blindfolds of legal formalism? In discussing racism, shouldn't the links between material handcuffs that constrain legal practice be understood in terms of racial capitalism? And isn't it vital for law students to learn—and law professors to be able to teach—about antiracist education and struggle in historical as

⁶² See *supra* discussion at note 16.

well as contemporary frameworks produced and entrenched by those histories? These are the sorts of questions and shifts that align with the third-layer advocacy goal detailed in *Critical Justice* of shifting consciousness and culture.⁶³

In facing this third-layer goal, advocates often face a seeming conundrum: to win in the short term sometimes requires playing into resonant frames—values and understandings that targeted decision-makers or constituencies will accept because they are already accepted. But already-accepted values and understandings often also are system-justifying and thus limited in their transformative potential. Think, for example, of the framing that many immigrant rights advocates used in the past to promote pro-immigrant policy initiatives: “We’re all immigrants.”⁶⁴ That framing helped advance wins. But, as many have noted,⁶⁵ that framing is neither

⁶³ *Id.* at § 8.4.

⁶⁴ See Dakin Andone, *Coast-to-Coast Protests Denounce Trumps Immigration Policies*, CNN (Jun. 30, 2018), (covering protests across the country including slogans stating, “We are all immigrants”), <https://www.cnn.com/2018/06/30/us/june-30-immigration-protests/index.html>; Patricia Márquez, *Dean’s Message: We Are All Immigrants*, JOAN B. KROC SCHOOL OF PEACE STUD. (July 1, 2018); Colin Powell, *Making America: We Are All Immigrants—Wave After Wave Over Several Hundred Years*, Carnegie Corporation of New York (Oct. 26, 2016), <https://www.carnegie.org/our-work/article/making-america/>. For an organization announcing a framing shift see Cynthia Nayeli Carvajal, *Grounding Principles, Initiative on Immigration and Education*, CITY UNIV. OF NEW YORK, <https://www.cuny-iiie.org/grounding-principles> (“We will refrain from statements like ‘we are all immigrants’ and ‘this nation was built by immigrants,’ because this further invisibilizes the Native people and lived realities of slavery and the Black experience in the United States”), <https://www.cuny-iiie.org/grounding-principles>. For an example of politicians using this framing, see *Remarks by President in Immigration Town Hall in Miami, Florida*, THE WHITE HOUSE ARCHIVES (2015) <https://obamawhitehouse.archives.gov/the-press-office/2015/02/25/remarks-president-immigration-town-hall-miami-fl>.

⁶⁵ See Akiba Solomon, *For the Millionth Time, We Are Not ‘All Immigrants,’* COLORLINES (Jul. 16, 2019), <https://colorlines.com/article/millionth-time-we-are-not-all-immigrants/>; The Dig podcast, *Rethinking Migration with Aziz Rana* (Jan. 9, 2019) (arguing that both initial settlers and subsequent European migrants were settlers, rather than immigrants as traditionally defined, because all were part of a “racially defined project of settlement and [demographic] control”), <https://thedigradio.com/transcripts/transcript-rethinking-migration-with-aziz->

accurate nor helpful for unsettling deeply-entrenched settler colonial or anti-Black racist ideas. Native Americans were not immigrants because they were already living in North America when white settlers arrived. White settlers were not immigrants because they didn't come to assimilate into existing cultures.⁶⁶ Enslaved Black workers were not immigrants because there was nothing voluntary about their arrival. The resonant "We're All Immigrants" framing makes invisible these histories and reinforces the historical and continuing abuses and caste inequalities that have followed. So, student advocates and professors confront framing questions—how to develop and carry out a campaign, hoping to win the technical goal, while undermining system-justifying frames. The key to this is to change the way that student advocates understand knowledge creation.

When those who are affected by a social problem and committed to fighting back together coalesce to analyze and strategize, they create a shared understanding of people, problems, solutions, and strategies. Advocates are not generally taught how to engage in or facilitate this sort of shared, bottom-up discussion of problems that invariably combines personal stories, varied sorts of research and reporting, different perspectives, and interests, laughs and arguments, worries about risk and retaliation, questions of trust, and understandings of power. Student-advocates learn to inform these discussions by exploring problems and solutions in context using traditional legal research methods in combination with non-traditional methods, like analytical narrative, critical empiricism, and participatory action research.⁶⁷

In addition, advocates in search of bottom-up frameworks explore the roles of social identities, groups, interests, and power (IGIP) in constructing

rana/; Aziz Rana, *Settlers and Immigrants in the Formation of American Law* (2011), CORNELL LAW FACULTY PUBLICATIONS, Paper 1075 <http://scholarship.law.cornell.edu/facpub/1075>.

⁶⁶ See CRITICAL JUSTICE, *supra* note 13, at § 13.1.

⁶⁷ See *id.* at Ch. 11.

problems and imagining solutions—a framework that lends itself to advocacy projects for robust Standard 303 implementation.⁶⁸ This use of IGIP expands and complements the conventional applications of IRAC—issues, rules, analyses, and conclusions—taught routinely in law schools. Exploring the elements of IGIP generally provides a pathway from the doctrine-focused formalism of IRAC to the anti-subordination values that drive *Critical Justice* frameworks. This inclusion of IGIP in legal problem-solving effectively transforms the parameters of “relevance” both in diagnosing problems and in crafting strategies for effective bottom-up strategies rooted in critical knowledge. Exploring the elements of IGIP specifically to defend and advance robust Standard 303 implementation can help local teams identify the interests, decision-makers, influencers, and stakeholders that can help make the difference between progress and not in their context. At every step in this process, the collaboration itself will build knowledge and solidarity for the next steps. The collective and participatory processes of second and third-layer goals can thus transform how members of the advocacy team understand not only the immediate people, problems, solutions, and strategies at issue—but also how they understand who is important and what is relevant to knowledge creation itself.

Notably, the revised ABA Standard says nothing about what sorts of administrative or non-classroom-based resources are required to help achieve the goal of reducing racism in law schools and law practice. But many educational institutions started centers for race and law or hired DEI deans following the murder of George Floyd and the #BLM protests. Too frequently, these new centers and dean’s offices are underfunded, under-protected from outside attack by ideologically hostile legislators or others, isolated from school and community allies, and lacking adequate staff and authority to accomplish their missions or to contribute meaningfully to the

⁶⁸ See *id.* at § 3.3 (exploring IGIP in the context of a global pandemic).

goal of reducing racism in the profession.⁶⁹ Could collaborative campaigning for robust institutional implementation of Standard 303 using the *Critical Justice* framework persuade and pressure schools to more robustly support and defend antiracist centers and DEI deanships? Could industry-wide campaigning occasioned by Standard 303’s recent revision now strengthen accreditation requirements more broadly to ensure greater administrative support and protection for such vital antiracist initiatives?

Finally, as an education industry-level regulation, Standard 303 is a tool for motivating local university “site fights” around antiracist teaching and learning. But it also is likely to be under attack at the ABA, as reactionaries aim to “take out the opposition”⁷⁰ by re-writing ground rules—that threaten the systemic supremacy of their identities and interests—perhaps like revised Standard 303. David Luban has described similar industry-level regulations that prevented public interest lawyers in groups funded by the Legal Services Corporation (LSC) from working closely with organizers and organizing groups, participating in class or collective action cases, representing undocumented individuals (except in a narrow range of cases), or raising funds from other sources to carry out any of those prohibited activities.⁷¹ Though some restrictions were later eased,⁷² LSC-funded groups were largely reduced to ameliorative work for many years, resources had to be diverted to create a parallel set of non-LSC-funded (and thus less well funded) organizations that could carry out restricted activities, and

⁶⁹ See Liam Knox, *Shouting Down an Empty Hallway*, INSIDE HIGHER ED. (2023), <https://www.insidehighered.com/news/2023/02/03/frustrated-dei-staff-are-leaving-their-jobs> (detailing the high turnover in DEI positions in higher education due to lack of institutional support); for an example of legislative backlash see *Governor Stitt Signs Anti-Discrimination Executive Order, Takes Aim at DEI Measures*, OKLAHOMA.GOV, <https://oklahoma.gov/governor/newsroom/newsroom/2023/december2023/governor-stitt-signs-anti-discrimination-executive-order—takes-.html>.

⁷⁰ See CRITICAL JUSTICE, *supra* note 13, at § 9.3 (addressing how elites designed law as an industry for group power and privilege and to “take out” opposition).

⁷¹ See David Luban, *Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers*, 91 CAL. L. REV. 209 (2003).

⁷² See CRITICAL JUSTICE, *supra* note 13, at 718.

many of the constraints were incorporated into the culture of organizations, leading to a generation of advocates who restrict their activities even further than existing rules require or who lack knowledge of vital strategies, skills, and approaches for effective systemic advocacy. That history offers parallels and lessons for the current moment. As state legislatures restrict legal education with prohibitions on the teaching of “divisive concepts,”⁷³ many institutions are failing to push back effectively. Many state laws contain carve-outs for education required to maintain accreditation.⁷⁴ Any institution that incorporates critical concepts in its program of Standard 303 implementation thus does so to comply with accreditation requirements, and law schools can and should fight to ensure that Standard 303 serves to protect such programs of robust implementation—and should fight to ensure Standard 303 is not eviscerated or eliminated by reactionary racists and their lackeys.

V. *CRITICAL JUSTICE*: A COMMUNITY RESOURCE READY FOR ROBUST STANDARD 303 EDUCATION

To build up and out from the book’s 2021 publication, our focus as editors shifted and deepened during the past two years toward another phase of *Critical Justice* as an advocacy project—and not just as a book. This new phase focused on developing a campaign toward the community-wide adoption of the text and its three-layered framework for systemic advocacy. As part of this campaign, since the book’s publication, we have prepared a variety of instructor aids to facilitate comprehension and use of this new resource. In addition to the in-depth teachers manual available to instructors online at the book’s West Academic faculty website, we developed templates for syllabi in varied courses, including most recently a syllabus

⁷³ See, e.g., TENN. CODE ANN. § 49-7-1902 (2022).

⁷⁴ See TENN. CODE ANN. § 49-7-1906 (2022) (exempting from prohibition any educational content that would cause a failure “to comply with any applicable academic accreditation requirement”).

for use in clinic or legal ethics courses, and included these syllabi in those online materials.⁷⁵ We have also developed helpful summaries of the *Critical Justice* framework, both organized by focal points⁷⁶ and as “nutshell” bullet points.⁷⁷ We also prepared a word cloud poster⁷⁸ of key substantive words and phrases from the textbook that LatCrit Board members who are also clinicians featured at an in-person poster presentation during the 2023 AALS Conference on Clinical Legal Education held in San Francisco, which any teacher now can employ on the first day of class to introduce key terms for use throughout the course. Since 2021, using these and similar aids, professors across the country have begun teaching the *Critical Justice* framework in a variety of courses that connect to changing systems and laws toward anti-subordination ends.⁷⁹ All of these recently created resources provide ready starting points for robust institutional implementation of Standard 303’s mandates.

Since the book’s initial publication, we regularly have held informational sessions, particularly to detail its framework and the resources it offers, with the support of West Academic, our publisher. Showcasing our collective commitment to hybridity and innovation on a case-by-case basis, those sessions have been both in-person (such as at the annual AALS conference, whether in formal Section programming or more informally in the LatCrit Hospitality Suite or other unstructured settings) and virtually (such as through webinars hosted by West Academic Publishing, the Society of American Law Teachers, and LatCrit in its Virtual Friday series, as well as student-organized conferences, both virtual and in-person, such as the New York University Law School and Harvard Law School 2021 Latinx Student Conference, held virtually, and the 2018 La Alianza &

⁷⁵ Law faculty can access those materials by signing in at <https://faculty.westacademic.com/Book/Detail?id=17692&q=critical%20justice>.

⁷⁶ *See id.*

⁷⁷ *See id.*

⁷⁸ *See* Appendix A.

⁷⁹ *See infra* note 80 for a discussion of some of those courses.

NALSA Conference at Harvard Law School, held in-person). Similarly, now we can conduct informational sessions tailored to local institutional circumstances to ensure robust Standard 303 education in varied local settings.

These wide-ranging sessions have been supplemented by programs or workshops held during the biennial LatCrit conferences and/or through faculty presentations with interested faculty such as, for example, with the University of New Mexico and Gonzaga law faculties—we welcome your faculty to reach out to us for a targeted workshop that best serves your school and student needs. As a result, faculty around the country—including ourselves—have adapted and incorporated the book’s framework (or portions of it) into a variety of existing or new courses.⁸⁰ These courses range from 1L electives to mainstream courses like ethics and constitutional law, to specialty seminars focused on law and justice, and to varied kinds of practica and clinics. These initial but varied applications of the *Critical Justice* book or portions of it help ensure that diverse kinds of students are being introduced to this framework; importantly, students are responding resoundingly to the relevance and timeliness they perceive in these materials.⁸¹ And now, these materials stand ready for Standard 303 adaptations.

⁸⁰ This was true for Steven Bender’s Social Impact Advocacy course at Seattle, also taught by Tayyab Mahmud, and Frank Valdes’ courses at Miami both as a 1L elective and in the upper division, which Jennifer Hill co-taught during the development of the book. Other adoptions were made of the book in a wide variety of pre-existing (and mostly seminar) law courses that were not designed around the book in the first instance but benefited from its critical framework. For example, Verónica Gonzales-Zamora used the book in her Poverty Law in Practice course at New Mexico, as did Rachel Anderson for her Poverty Law and Policy Clinic at UNLV. Danielle Hart adopted the text for her Law and Social Change course at Southwestern, as Gonzaga faculty did for a clinical course, and Saru Matambanadzo at Tulane for her Constitutional Law, Legal History, and Race Relations course. Sheila Vélez Martínez at Pittsburg plans to use the book for her Latinx and the Law course.

⁸¹ See discussion *infra* note 84 of student evaluations.

Two of the co-editors, Frank Valdes and Steven Bender have taught the *Critical Justice* framework to hundreds of students during the past several years, and both uniformly report positive experiences in their critical classrooms. Bender appreciates how students find unique value in the advocacy projects the students collectively complete for their grades in his Social Impact Advocacy course, which vary in significant respects from the typical law school experience. Among other things, his students work and are graded primarily in teams and only in small part individually for individual self-reflections including those around their team experience. Although they work on their “dream” projects,⁸² the students must first negotiate and navigate team formation and norms and goals, which expose them to the dynamics of teamwork and also of conflict resolution and coalition. Rather than plunging into their areas of interest at the start of Bender’s course, the students only form teams after significant self-reflection and immersion in the *Critical Justice* framework. Without that framework, most of their projects and in-class presentations would likely focus on an extended statement of a particular legal-social problem, together with some ameliorative intervention that lawyers traditionally oversee before moving on to hit the next problem nail on the head. Armed with the *Critical Justice* framework and working on problems confined (but at the same time expanded) by a required project template the team must navigate,⁸³ the student outputs and learning outcomes better connect to more effective advocacy that builds critically on (and often departs from) the set of knowledge, values, skills, and attitudes they bring from other courses. This is where the magic happens, as confirmed by countless evaluations and reports from students, including one student in fall 2023

⁸² See CRITICAL JUSTICE *supra* note 13, at 585 (describing how “dream” jobs are in fact serious business for systemic advocates).

⁸³ A version of the advocacy project template is included in the *Critical Justice* text online teachers’ manual.

who opined that every law student should be required to take the course. Some student comments from anonymous evaluations include:

This fantastic course taught me essential lawyering skills for systemic advocacy and critical justice. During this semester, I broadened my thinking as a lawyer to think beyond IRAC and layer [identities, groups, interests, and power] IGIP to analyze societal issues critically. Moreover, the three-layered approach taught me how to organize my findings in a tangible way to advocate for communities and societal issues. Instead of a final exam, the group advocacy projects helped hone the principles and concepts into an actual frame of thinking [The professor] structured the course to set students up for success as systemic advocates.

I loved the Advocacy Project section of this class. It was an amazing experience to collaborate and work so closely with my peers in a law school setting.⁸⁴

In sum, the past two years since publication have seen the gradual seeding of the *Critical Justice* framework (in the U.S.) as a coherent, teachable, and actionable alternative to the fictions of legal formalism in education and practice. Unlike the substance and framing of other law school courses, *Critical Justice* represents the emergence of a bottom-up worldview synthesized from the works of many scholars and activists—and thus is unfamiliar to law teachers who, as law students, never received its benefits. And so the work of building familiarity is longer, but the results are energizing—both among teachers and among learners, as we are seeing. These kindlings are completely aligned with Standard 303’s antiracist mandates and provide not only paper (and ebook) resources but also human resources to support faculties and institutions in fulfilling Standard 303 contextually, critically, and robustly.

⁸⁴ Anonymous evaluations from the fall 2022 semester Social Impact Advocacy course at Seattle University School of Law (on file with author Steven Bender).

Beyond the U.S. context and Standard 303 education, the same is true, we know, for *El Curso Critico* and *Teoría Crítica*—the former a hybrid annual Spanish-language course launched hemispherically in 2021 and the latter a new book based on that inaugural program now due to be published in 2024.⁸⁵ In effect, as we explain below briefly, *El Curso Critico* and *Teoría Crítica* are the Global South counterparts to the annual/biennial LatCrit conferences and the *Critical Justice* text. The two sets of projects and publications mirror and reinforce each other as antisubordination tools by design. Each is a complement to the other, and both are a toolkit for teachers and learners whether in Spanish or English. Together, these achievements bring us closer to a long-held LatCrit goal: organizing hemispheric networks of critical academic activists committed to collaborative, bottom-up knowledge production capable of shaking societies and dismantling systems.

VI. TOWARD HEMISPHERIC ORGANIZING: EL CURSO CRITICO, *TEORÍA CRÍTICA*, AND THE SNX

As noted above, the 2023 LatCrit conference took place just as a new and unique Spanish-language learning-teaching resource was being readied for publication: *Teoría Crítica en las Americas*.⁸⁶ Presenting a collection of essays on law and justice from critical scholars both in the Global South and Global North, *Teoría Crítica* brings together in one place a timely introduction and unique survey of critical theory and justice. Spearheaded by Hugo Rojas of Alberto Hurtado University School of Law in Santiago, Chile, and Sheila Vélez Martínez at the University of Pittsburgh School of Law, this new publication epitomizes this year's conference theme, and LatCrit's original and steady commitment to, hemispheric studies, collaborations, and networks devoted to organized academic activism. Like

⁸⁵ See ROJAS CORRAL AND VÉLEZ MARTÍNEZ, *supra* note 14.

⁸⁶ *Id.*

Critical Justice in 2021, *Teoría Crítica* in 2024 offers a powerful tool for advancing critical knowledge and connecting South-North critical projects.

Not surprisingly, this new publication—like so many before—springs from another project or program, also based and spearheaded by the Global South—El Curso Critico—another example of the LatCrit community leveraging hybridity to take on systems, in this instance, hemispherically. Inaugurated in conjunction with the 2021 LatCrit conference, El Curso Critico that year brought together over 300 program participants virtually for a week-long critical examination of legal scholarship on justice across the Americas. That inaugural program two years ago provided the basis for 2024’s *Teoría Crítica* book. But even as work on the book advanced, El Curso Critico has been repeated annually each year and is now preparing for its third convening.

Exemplifying the potential of strategic hybridity in all our projects, El Curso Critico features an annually rotating hub—Chile in 2022, Uruguay in 2023, and Colombia in 2024—while connecting hundreds of others across the hemisphere virtually to that in-person anchor for the program as a whole. And demonstrating ongoing LatCrit innovation, last year in Uruguay El Curso Critico met back-to-back with another LatCrit project of long standing, the South-North Exchange on Law, Theory, and Culture (SNX). Much like El Curso Critico now, the SNX has met at rotating sites throughout the Americas since the early 2000s and has produced a host of publications as well.⁸⁷ This enriched combination of new and recent resources—the SNX, El Curso Critico, and Spanish language texts like *Teoría Crítica* and the translated LatCrit Primer⁸⁸—provides a substantive well of community resources for teaching and learning that can help LatCrit better organize critical hemispheric networks of academic activists and allies.

⁸⁷ See VALDES AND BENDER *supra* note 58, at Appendix D.

⁸⁸ See *supra* note 12 and accompanying text.

Coupled with the capacities of hybridity,⁸⁹ these substantive developments jointly move us programmatically and collectively toward long-unattainable goals: building hemispheric networks of legal scholars and community activists to act on shared critical pieces of knowledge. Meeting this goal depends on importing knowledge from the South into the North and vice versa, which has become attainable for LatCrit now because we finally have been able to produce the capacity and resources for it. This kind of hybridized innovation, supported by new critical texts both in Spanish and in English, positions LatCrit and allied scholars to exchange ideas and support each other across hemispheric divides based on language or region like never before. These substantive developments, coupled with the rapidly evolving technologies and possibilities of hybridity, thus lead to the baseline question of physical hubs or material anchors for our hybridized local-global projects, events, and networks.

VI. ORGANIZING FOR MATERIAL POWER: *CRITICAL JUSTICE*, *TEORÍA CRÍTICA*, AND CAMPO SANO

The availability of these potentially transformative texts now presses all of us to put them to their best possible uses to maximize their anti-subordination punch. Key practical questions thus arise for us, both collectively as a critical community of academic activists united by anti-subordination values as well as individual educators responsible for teaching and learning in classrooms across the hemisphere. These questions arise—and demand timely actionable answers from us—precisely because of the historically exigent times through which we are living and which we are determined to help shape our values—and all the might we can muster. But remember as we have learned, that might—our might—rather than being found in lavish funding from string-pulling fat cats, is to be found in

⁸⁹ See *supra* notes 12-16 and accompanying text.

the demonstrable truth, power, and solidarity of bottom-up struggle and critical knowledge forged from it.⁹⁰

Because knowledge is our biggest strength, perhaps the threshold question given the zeitgeist of this moment is: How can *Critical Justice* and *Teoría Crítica* function as organizing tools—specifically, how can they help strengthen LatCrit as a collective?⁹¹ As noted, the LatCrit collective is composed primarily of Global North law professors, including significant numbers of activists and other legal and community actors, along with Global South members. Reflecting on these facts, another set of pressing questions is emerging: How can or should LatCrit connect students and professors in the various far-flung classrooms using the *Critical Justice* and/or *Teoría Crítica* texts to current and future advocacy projects, both locally and globally?

As the anti-critical hysteria of the past several years has amply shown, the power of critical knowledge makes would-be tyrants and their acolytes shake with a fear of the future—the potential that can be realized when

⁹⁰ For example, we take inspiration from farm labor organizer César Chávez who said: “[W]e have something the rich do not own. We have our bodies and spirits and the justice of our cause as our weapons.” *Education of the Heart: Cesar Chavez in His Own Words*, <https://ufw.org/research/history/education-heart-cesar-chavez-words/>.

⁹¹ Among other things, LatCrit should consider how better to connect *Critical Justice* users and learners to our existing LatCrit networks and projects. One approach would be to develop and fund recent-graduate fellows (or current student research assistants) to deploy the *Critical Justice* framework both internally and externally in creative, systemic advocacy projects on and off campuses. Those advocacy projects could encompass further development of the *Critical Justice* text, such as through its updating, including overseeing copyright permissions for a new edition. Advocacy projects could focus on LatCrit nonprofit governance, with an alumni fellow effectively serving as LatCrit’s executive director. Or these fellows could work on existing LatCrit projects, such as using LatCrit’s UN consultative status credentials or running its social media, working to update the Scholarly Research Toolkit, or translating LatCrit texts and materials for Spanish and Portuguese-speaking audiences. Some fellows could point toward the academy, by helping to teach the *Critical Justice* book and working to develop networks to connect classrooms using the book. Or they could help us develop and implement a pre-law school orientation session encompassing a multi-school collective where ABA Standard 303 content using the *Critical Justice* framework is delivered.

people organize based on their lived realities to demand the inevitable, eventual, long-pending reckoning of law's promises with lived justice. The three community books we have detailed here provide key new resources that exemplify the demonstrable power of critical, bottom-up knowledge: the relentless top-down efforts to ban criticality everywhere and anywhere attest to the ultimate power of the worldview that critical legal scholars have developed since the 1980s and which all three books synthesize and highlight. In 2023, the power of critical knowledge to be put to use in real-world organizing and advocacy is thickly palpable in the social air.

But these three books represent more than the power of knowledge itself. As a set, they also represent the potential for material power through the royalty proceeds that go directly to the LatCrit community treasury. This collective self-sustainability is a potential gamechanger: as a critical outsider formation, LatCrit has been from inception perennially underfunded—which explains in part our emphasis on the advantages of strategic hybridity in all we do going forward in this Afterword and that published in 2021.⁹² Our resources—including human resources—are always scarce, but for us, money is the scarcest resource of all. A heightened potential for material power thus elevates the potential for our long-term independence and priorities, especially as profiteering corporations use neoliberal projects to capture greedy universities while fascists trample on U.S. education and educators as conduits of Truth writ large. Importantly, then, the adoption of these new books and their critical frameworks heightens the potential for material power, and this scenario prompts us to recall the importance of Campo Sano—the ten-acre LatCrit physical campus in central Florida established a decade ago—and the opportunities it presents now as an anchor for LatCrit hybridity employing these new texts and their critical frameworks, both within robust Standard 303 implementation projects as well as beyond them.

⁹² Valdes, Bender, & Hill, *supra* note 44.

LatCrit is fortunate to own outright a tangible, perpetual asset like Campo Sano. LatCrit is unique among all critical outsider formations in the U.S. in possessing and controlling its campus. Possession of a fee simple absolute—the land itself—in the U.S. has always been a red line reflecting and projecting status—either privilege/power or exclusion/subjugation. Real property ownership has been situated in U.S. history as both a condition to social and economic inclusion as well as a qualification for participation in the powers and privileges of liberty—including the power to control a nominally democratic society by force of law.⁹³ More to the material point, land ownership has been a traditional vehicle of wealth maximization over time, as well as a contested site from which many subordinated groups have been ousted through violence or other tools of law.⁹⁴ LatCrit’s ownership of assets—both physical in the form of land and intellectual in the form of key texts, with both contributing to LatCrit’s autonomy, effectiveness, and sustainability—are important markers of how far this academic critical community has come.⁹⁵

⁹³ For examples of inclusion and exclusion in the context of real property from the right to vote to the right to purchase or occupy a residence, see R. Bradley Lewis, *Property Ownership and the Right to Vote: The Compelling State Interest Test*, 30 LA. L. REV. (1970); *Shelley v. Kraemer*, 334 U.S. 1 (1948) (invalidating widespread restrictive covenants that excluded disfavored racial groups from property ownership or occupation).

⁹⁴ See, e.g., *Johnson and Graham’s Lessee v. M’Intosh*, 21 U.S. 543 (1823) (validating U.S. appropriation of Native land by forceful conquest); *United States v. Sandoval*, 167 U.S. 278 (1897) (holding that communal land in community land grants was not owned by the collective but by the sovereign, in this case México, thereby passing those lands to U.S. control through the Treaty of Guadalupe Hidalgo after the U.S. conquest of Northern México).

⁹⁵ Also, the threat perceived to the status quo and the powerful, and their pushback to that threat, signal to us the power in that ownership of physical assets, as well as the power of the intellectual heft of the words and concepts of critical theory. One example of backlash came in 2023. Viewed against the onslaught of attacks on critical theory, one of us speaking in a webinar about LatCrit framed Campo Sano, located in Florida within the belly of the beast, as a “critical physical haven” in a state otherwise hostile to critical knowledge. That 2023 webinar, part of the *Reimagining the Latinx Experience in America* series moderated and hosted by then, UC Irvine law professor Rachel Moran, featured notable books on Latinx law and policy issues. Attending the discussion

Undeniably, Campo Sano and its acquisition more than a decade ago helped nudge the LatCrit community to think and work toward sustainable, intergenerational goals. While interrupted by the COVID-19 pandemic of 2020-22, Campo Sano now stands ready again—ready to be reactivated as a community hub for projects, including projects connected specifically to these community texts and their varied uses to help implement Standard 303 robustly at schools around the country, and for other courses or purposes. Simultaneously, *Critical Justice* and *Teoría Crítica*, acting within both physical and virtual classrooms, now also have a similar capacity to

centered on what we call the LatCrit Primer was a Brigham Young University student who wrote an inflammatory piece, later picked up by Fox News, about LatCrit's Campo Sano property, our critical "haven." Thomas Stevenson, *Radical Leftist Legal Org With University Ties Has 10-Acre "Haven" in Florida "Enchanted Forest,"* CAMPUS REFORM (Mar. 21, 2023), <https://www.campusreform.org/article/radical-leftist-legal-org-with-university-ties-has-10-acre-haven-in-florida-enchanted-forest/21567>, see also Alexander Hall, *Latino CRT Group Acquires 10-Acre "Haven" in Florida, Slams State's Hostility to "Critical Knowledge,"* FOX NEWS (Mar. 22, 2023), <https://www.foxnews.com/media/latino-crt-group-acquires-10-acre-haven-florida-slams-states-hostility-critical-knowledge>. What is intriguing is both that the student reporter chose to be a fly on the wall during a webinar that had little or nothing to with his school, instead addressing LatCrit (which has never held any events or published symposia at BYU) and Latina/o/x and other subordinated communities, and also that what he chose to highlight in his "expose" was our community ownership of land. Campo Sano's integral connection to the transformative equality goals of the *Critical Justice* text helps explain the negative publicity and all the incendiary reader comments the Fox News story generated. As the *Critical Justice* textbook explains, formal legal equality falls short of being meaningful in everyday life for subordinated groups. See CRITICAL JUSTICE *supra* note 13, at Ch. 2. Rather, the key transformative goal is lived equality in material terms, something that the civil rights laws never delivered because that posed too large a threat to monied elite interests. See Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988). No doubt the realization that LatCrit as a non-profit entity owns substantial physical resources—land—is threatening to those who fear material remedies and progress for past and present and continuing injustices. Fear of foreign ownership, and construction of U.S. Latinas/os/x and Asians, among other groups, as perpetually foreign despite residency and even citizenship, also factor in. Among the hostile Fox News story reader comments is this one: "Buying American land for creating another country within our country to have your own laws and regulations inside our country need[s] to be forbidden no matter who [may] try to do that [whether] Chinese, Latino, or French." See Hall *supra* note 95.

support organization- and coalition-building to shift group consciousness in myriad spaces. In short, with the publication of the key texts outlined above and with Campo Sano in our control, the LatCrit community now is well positioned to organize hemispherically—as well as locally and globally—for critical knowledge using our bricks-and-mortar base of operations. Now, finally, in 2023, we are ready to combine the deployment of these texts with hybridized uses of Campo Sano that enable new collaborations across time and space that previously were impracticable if not prohibitive due to the difficulties of distance, logistics, or cost. As always, then, the question before us is, how: How do we, during these oppressive times, best connect these community texts to Campo Sano’s reactivation as a hybridized critical hub so that the synergies we create maximize by designing the accruing impact of our collective works as we prepare for the inevitable reckoning of law and justice? And, relatedly, in this immediate moment, how do we best connect and deploy these gains and resources for robust institutional implementation of Standard 303’s two-part mandate through three-layered advocacy projects? How we respond to these questions in collective deeds and choices will help to determine whether our ongoing work helps to defeat the determined spread of neo-liberalized fascism in this country and hemisphere during this decade and whether we make meaningful progress toward the long-broken promise of Equal Justice Under Law that we know is a real-life prerequisite to any kind of “a more perfect Union.”

VII. CONCLUSION: MEETING THE CALL OF THE MOMENT

LatCrit was born and raised in the midst and under the shadows of the spreading culture wars, both in law and society. Since 1995, we have been personally and collectively aware of the national regressions that we remain committed to overcoming. During this time we have been nimble often enough to navigate the cross-currents of perennial perils and strategic opportunities. To continue the same now, as the rightist violence of the now-vicious culture wars comes for us directly because of our work, we

must center the defense and promotion of critical knowledge in all we do. In doing so, we must keep anchored to known histories, changing contexts, and anti-subordination values. To do so, we must forge and deploy the intellectual, human, material, and other resources necessary for this ongoing, border-crossing, transnational work.

Since we last met in 2021, this vibrant LatCrit community collectively has been doing so—in this instance, producing unique resources suitable and ready for this uniquely perilous moment, both in English and in Spanish. These new resources represent the culmination of decades of ambition and collective persistence, as well as the start of newer efforts to meet and overcome neoliberalized fascism in the United States: in this context, the English language resources were created before the ABA revised accreditation Standard 303 but could not be better suited for robust institutional implementation of the Standard's two-part mandate. The Spanish language resources both reflect and take to the next level our multi-decade effort to cultivate hemispheric networks of critical knowledge, exchange, and action, as underscored by the 2023 conference theme.

As a set, these resources offer highly adaptable materials for varied uses and users, both inside and outside academic classrooms, and both in the mostly Spanish-speaking Global South and the mostly English-speaking Global North. Combined with our proven capacity to plan and conduct successful hybrid projects—like this very conference—the local-global possibilities for LatCrit theory, community, and praxis are more expansive than ever before. And with Campo Sano standing by ready for reactivation after the pandemic's shutdowns, we have at hand an autonomous physical location to serve as home—a hub or anchor—for the hybridized advocacy projects yet to come. Along with the LatCrit Portfolio of Projects and related publications, these are the community resources needed now—and at hand now—to meet the call to action of this gravest of moments.

Finally, as a reader, we therefore urge you after having absorbed this Afterword to self-reflect on how you can help advance the LatCrit network

of activist scholars and other participants in this momentous and challenging moment and specifically how you can help answer the queries posed above. If you are currently or soon teaching, consider how you can deploy the LatCrit community texts in your existing or newly imagined courses. If you are a student and your school does not offer a comprehensive curriculum steeped in the critical schools of legal knowledge and advocacy approaches toward material progress, or relatedly has not implemented a robust institutional response to the dictates of revised ABA Standard 303, organize and advocate with us for curricular reform that adopts and teaches the *Critical Justice* framework. We invite all your help and your collaboration to meet the moment, and moments to come, toward the strategies, actions, and outcomes that critical scholars and bottom-up knowledge have sketched and implemented to pull us from the brink of hegemony and toward the anchor of antistatist values and ends.

Appendix A

