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Constructing LatCrit Theory: Diversity, Commonality, and Identity

LatCrit

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INTRODUCTION

Constructing LatCrit Theory: Diversity, Commonality, and Identity

George A. Martínez

The *U.C. Davis Law Review* is an especially appropriate venue for this LatCrit Symposium. The *Law Review* recognized early on the significance of legal discourse focused on Latinos and published some of the early LatCrit works. It seems appropriate to acknowledge the pioneering work of law reviews, just as Kevin Johnson has suggested in the Foreword to this issue that it is important to recognize the path-breaking pre-1996 LatCrit work. This cluster of essays continues the *Law Review's* fine work in this area and is titled: Diversity, Commonality, and Identity.

One of the major themes of LatCrit theory has been to critically scrutinize the evolution of law. Leti Volpp’s contribution fits nicely within this tradition. In her piece, she provides a history of the California laws that prohibited marriages between Filipinos and whites. She describes how such laws were motivated by concerns that such unions would create a new type of racial hybrid — an

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2 The first annual LatCrit Conference — LatCrit I — took place in 1996.


"American Mestizo."\(^6\) In defending these laws in court, the attorneys for the state argued that without such laws, the United States would suffer the "evil effects" of "race mixture" that had already been experienced by Mexico.\(^7\) The legal authorities tended to classify Filipinos as "Mongolians" and, therefore, Filipinos fell within the statute that outlawed marriages between whites and Mongolians.

Volpp's piece provides another piece of the puzzle regarding mainstream society's concern about racial mixture. Indeed, LatCrit theory has been at the forefront of addressing and analyzing such "mestizaje" or racial mixture.\(^8\) In addition, Volpp points out that the conventional view is that Latinas/os were not covered by the miscegenation laws. With so many Mexican Americans in California, one might wonder why. The answer seems to be this. Mexican Americans were legally classified as white, largely because of the Treaty of Guadalupe Hidalgo\(^9\) that ended the war between the United States and Mexico.\(^10\) Thus, the miscegenation laws did not extend to Mexican Americans. Beyond this, it made good business sense for Anglos to marry the daughters of rich Mexican landowners in California.\(^11\) Given this incentive, there were prudential reasons not to craft laws to prohibit intermarriage between Anglos and Mexican Americans.

Victor Romero also addresses the situation of Filipinos.\(^12\) In particular, he uses the history of Filipinos to emphasize the impor-

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\(^6\) Id. at 809.

\(^7\) Id. at 815.


\(^10\) See Martínez, supra note 4, at 326.


tance of coalitions among minority groups. It is, of course, a fundamental principle of LatCrit theory that the various subordinations are interrelated in complex ways. Thus, he contends that the Filipino community was shortsighted when it challenged the California statute outlawing marriages between whites and blacks or Mongolians on the ground that Filipinos were not Mongolian. He suggests it would have been better for the affected minority groups to unite and attack the law's premise. He then employs narrative—an important critical tool—to provide a contemporary example to illustrate the importance of minority coalitions. He tells a story arising out of his experience as an immigrant from the Philippines. During the immigration process, he experienced insensitivity at the hands of a Latina INS agent during his citizenship interview in 1995. As a result, he urges minorities not to treat each other as the "Other." Instead, he urges them to reach out to one another and avoid "minority on minority oppression." He believes that such coalitions are particularly important in light of recent efforts to roll back the gains of minority groups, such as the current attack on affirmative action.

Romero's point that members of minority groups must establish coalitions is well taken. LatCrit theorists have consistently called

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14 Romero, supra note 12, at 840.


16 Romero, supra note 12, at 840-41.

17 Id. at 841.
for coalition building, recognizing that mainstream society often seeks to divide minority groups in an effort to perpetuate subordination. In this regard, it is important for LatCrit theorists to establish more than political coalitions, but also epistemic coalitions in order to learn the complex truth about and the interconnections among the various minority groups.

LatCrit theorists recognized early on, the importance of exploring the connection between Native peoples and Latinas/os. In her essay, Berta Hernández-Truyol employs narrative to explore her native heritage. In so doing, she embraces her "own mestizaje." At the same time, she recounts that her exploration of her native roots provoked some criticism from those who argued that "you cannot claim a tribe, the tribe has to claim you" and that "tribal existence is inextricably tied to land." This unexpected response caused her to wonder whether she "was wrong to have claimed [her] native heritage." In the end, she concludes that it is important for LatCrit theorists to continue to explore their native origins.

It seems to me that Hernández-Truyol is certainly correct to claim that it is important for Latinas/os to acknowledge their indigenous roots. To offer formalistic slogans and barriers to doing so seems unproductive and counter-intuitive. It seems clear that

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12 See Martínez, supra note 13, at 221-22.


15 Id. at 867.

16 Id. at 868.

17 Id.
one could be of native descent without knowing one's tribal origins or being claimed by a tribe.

In her conference presentation, Rebecca Tsosie also discussed indigenous peoples. She explained the significance of time and place to Native Americans. She also described the effort of Native Americans to preserve their cultures in the face of pressure to assimilate. In this regard, she explained that a tribe can preserve its right to exist as a separate political entity only to the extent that a tribe resists assimilation into mainstream society. She closed by discussing intersections between Native American identity and Chicana/o identity. She saw Chicana/o identity as a function of time and place just as with Native Americans. In particular, she noted that the mythical Chicana/o homeland — Aztlan — and "la Frontera," or the borderlands, are key aspects of Chicano identity. Thus, she saw "rich parallels" between the Chicana/o experience and the Native American experience.

To be sure, racial identity is a complex notion. Nevertheless, I believe that Rebecca Tsosie is correct that there are certain parallels between Native American and Chicano experience regarding issues of identity. LatCrit theorists, for example, have discussed the importance of retaining Latina/o culture and resisting pressure to assimilate. Similarly, I have argued elsewhere that there is a special connection between the American Southwest and Chicanas/os. It is there that Chicanas/os "belong." Thus, in some ways Chicano identity can be connected to place. Another interesting parallel is found in the way that American courts have formulated the

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15 See Rebecca Tsosie, Native Cultures, Comparative Values and Critical Intersection Presentation at LatCrit IV (Apr. 30, 2000) (notes on file with author).
16 See id.
19 See Martínez, supra note 28.
identity of Chicanas/os and Native Americans. In this regard, Tsosie pointed out that American courts determine whether an "Indian community" exists by reference to whether they are discriminated against by whites. In *Hernandez v. Texas*, the U.S. Supreme Court also took the position that Chicano identity is a function of whether they are the target of local prejudice. Because of this legal definition, both Native Americans and Chicanos apparently would lose their legal identity to the extent that they achieved assimilation.

In his piece, Eric Yamamoto analyzes the notion of "cultural frameworks." As he uses the term "cultural frameworks," which are the lens through which people understand the world, He argues that cultural frameworks influence the way that judges decide cases. He suggests that such frameworks will influence the U.S. Supreme Court as it decides the important Hawaiian rights case *Rice v. Cayetano*. He closes by suggesting that it is possible to transform cultural frameworks, for example through a hula dance program, in a way that influences legal decisionmakers in a positive way.

In my view, Yamamoto's notion of "cultural frameworks" is useful. It seems to be consistent with what other theorists have called "mindset," "conceptual schemes or frameworks" or "paradigms." I agree that it is possible to provoke paradigm shifts or transformation in cultural frameworks.

As Frank Valdes has explained, LatCrit theory seeks to produce knowledge, transform society, exhibit connections between the

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30 See Tsosie, supra note 25.
32 See *Rice*, 347 U.S. at 477-79.
34 *Id.* at 881.
35 146 F.3d 1075 (9th Cir. 1988), rev'd, 120 S. Ct. 1044 (2000).
36 Delgado, supra note 15, at 2413.
37 Martínez, supra note 15, at 689-91.
various subordinations, and construct coalitions. The essays contained in this cluster help advance all of these goals. As LatCrit realizes these important goals, LatCrit will be in a better position to withstand any external challenges that might arise.

