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Alice G. Abreu

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# Lessons from LatCrit: Insiders and Outsiders, All at the Same Time

ALICE G. ABREU\*

Legal scholars seem to love binary paradigms. We speak of outsiders and insiders, minorities and majorities, rights and wrongs, black and white. While such polarized categorizations are useful heuristics, eventually we must move beyond the simplicity of the polarity to embrace the complexity of real life. Narrative scholarship has provided a vivid picture of that complexity and has helped to develop a more nuanced characterization of the human experience upon which law ultimately acts. LatCrit scholars have advanced this effort by offering perspectives that further break down the binary paradigms with which much analysis begins but beyond which it must eventually move.<sup>1</sup>

Like much critical scholarship, LatCrit scholarship is grounded in the outsider experience. LatCrit scholars have contributed to the critical enterprise by exploring the implications and effects of being outsiders for multiple reasons, such as being simultaneously Black and Hispanic<sup>2</sup>,

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\* Professor of Law, Temple University School of Law. This Essay is drawn from my remarks as a Discussant in the Moderated Focus Group Discussion: Critical Recollections: Reclaiming Latina/o Experiences with the Legal Academy of the United States, on May 7, 1998 at LatCrit III in Miami Beach. I am deeply indebted to the many friends and colleagues who were generous with their time and thoughts during and after LatCrit III, most especially Berta Hernandez-Truyol, who's always made me feel included, Taunya Banks, who encouraged me to write my story, Paulette Caldwell and Celina Romany, whose narratives inspired me and helped me to put many things in perspective, Michael Olivas, whose efforts have helped to put us on the academic map as a group, and Lisa Iglesias and Frank Valdez, who organized LatCrit III and this symposium. My colleagues Jane Baron, Rick Greenstein, Phoebe Haddon and Nancy Knauer prompted me to examine my reflections more deeply and offered valuable commentary after reading an early draft. I am also indebted to the many colleagues who offered thoughtful commentary before, during, and after the Temple Faculty Colloquium at which I discussed this Essay. Temple Law School has provided a nurturing environment in which to work and financial support for my attendance at LatCrit III as well as for the writing of this Essay. As usual, all errors, as well as the views expressed here, are mine alone.

1. See, e.g., Juan F. Perea, *The Black/White Paradigm of Race: The "Normal Science" of American Racial Thought*, 10 LA RAZA L.J. 127 (1998), 85 CAL. L. REV. 1213 (1997) and the scholarship collected in n.2 thereof.

2. See, e.g., Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 BERKELEY WOMEN'S L.J. 16, 22 (1995); Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implications of Making Comparisons Between Racism and Sexism (or Other Isms)*, in RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL WHITE STUDIES* 619 (1997).

or Latina and Lesbian.<sup>3</sup> This scholarship shows that numerous aspects of identity intersect, and it urges a more holistic, anti-essentialist, view of the person.

The richness of LatCrit scholarship suggests that it might now be time to move beyond the outsider/insider dichotomy and perhaps even beyond intersectionality. The outsider/insider dichotomy and the concept of intersectionality have advanced our thinking and our understanding, but they might now yield to an even more nuanced view of human interaction. That more nuanced view would recognize that many of us are outsiders, and many of us are insiders, all at the same time. Aspects of identity don't just intersect, they co-exist. They affect and inform one another.<sup>4</sup>

As a participant in LatCrit III, a conference at which most of the participants were Latina/o, I was both an insider and an outsider. I was an insider because I am quite unequivocally Latina: I was born in Cuba, both of my parents are Cuban, and I did not learn to speak English until I was nearly nine; I still speak fluent Spanish and I even kept my Cuban surname when I got married over 26 years ago.

But at LatCrit III I was also an outsider. I am a tax lawyer and my scholarship has, until now, been entirely in tax. I have not written about immigration policy, civil rights, or critical theory, and I have read only sporadically in those fields. The tax law is at the core of my professional identity and has served as the foundation for many of my professional friendships. As a tax lawyer at LatCrit, I was outside and alone.

Exploring why I felt like an outsider just where I should have felt most like an insider has proven interesting and instructive for me, and I think that my story, and the lessons I have drawn from it, can serve as a vehicle for exploring some of the themes that LatCrit scholars are developing and can help to chart the course of that development.<sup>5</sup> I do not claim to be either the first or the only one to do this and indeed, I have

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3. See, e.g., Elvia Arriola, *Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self*, 2 HARV. LATINO L. REV. 398 (1997).

4. The move that I am urging is not unlike that which has occurred over time in other areas of the law and in other progressive movements. Thus, the early common law saw the doctrine of consideration evolve from a binary concept that was, like a light switch, either on or off, through the development of the doctrine of promissory estoppel, which allowed recovery even when consideration might be lacking, and eventually to relational contract, which is a considerably more complicated, but arguably more apt, model for contractual relationships. See ROBERT S. SUMMERS & ROBERT A. HILLMAN, *CONTRACT AND RELATED OBLIGATION: THEORY, DOCTRINE, AND PRACTICE* 42-43 (3rd ed. 1997); GRANT GILMORE, *THE DEATH OF CONTRACT* (1974); Ian MacNeil, *Economic Analysis of Contractual Relations: Its Shortfalls and the Need for a "Rich Classificatory Apparatus"*, 75 NW. U. L. REV. 1018 (1981); Ian MacNeil, *The Many Futures of Contracts*, 47 S. CAL. L. REV. 691 (1974). The evolution of feminism provides perhaps a richer and closer parallel, but I cannot explore it here.

5. See, e.g., Arriola, *supra* note 3, at 398.

decided to do it because I found reading the narratives of those who have gone before me so helpful and interesting.

I will begin this reflection with a narrative, even though narrative is a new form of discourse for me.<sup>6</sup> I am a tax lawyer, teacher and scholar. As I will describe in somewhat greater detail later, that is a definitional aspect of my identity. While my tax scholarship reflects my experiences as a foreign-born Latina, it is not narrative scholarship. For example, my work on tax-motivated expatriation proceeded from my views on the value of U.S. citizenship and discloses my personal connection to the subject, but it is not written as a narrative. In this Essay, by not only telling the story in narrative form, but connecting it to others I've long wanted to tell, I hope to provide a vehicle for continuing the illuminating discussion that other critical scholars have started.

### I. ONE STORY: OF MINORITIZING AND OF COUNTING

I became minoritized relatively late in life.<sup>7</sup> I was born in Cuba, of Cuban parents, both of whom had been born and educated in Cuba, and I had not traveled outside of Cuba until 1960, when I was 8 years old and Fidel Castro's government nationalized the Esso refinery of which my father, though Cuban-born and Cuban-educated, was the manager.<sup>8</sup> I remember heated discussions over Castro's demand that the Esso refinery process the Soviet crude oil which filled the hulls of a ship that had been dispatched to Havana harbor, and I remember my father's strongly held belief that acceding to Castro's demands would be wrong, but it

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6. See Alice G. Abreu, *The Difference Between Expatriates and Mrs. Gregory: Citizenship Can Matter*, 67 TAX NOTES 692, 695 n.14 (1995) (disclosing that my status as a naturalized, rather than native born, citizen largely explains the value that I place on the status of U.S. citizenship); Alice G. Abreu, *Taxing Exits*, 29 U.C. DAVIS L. REV. 1087 n.251 (1996) (again disclosing how a proposal would affect me, a naturalized citizen).

7. I owe the term to Professor Celina Romany, who has spoken eloquently of her move to the United States from Puerto Rico and poignantly described the experience of being "minoritized" for the first time in her life. The phenomenon that Professor Romany described as minoritization is not unlike the process that Zora Neale Hurston refers to as "becoming colored". See Zora Neale Hurston, *How It Feels to Be Colored Me*, in *I LOVE MYSELF WHEN I AM LAUGHING . . . AND THEN AGAIN WHEN I AM LOOKING MEAN AND IMPRESSIVE* 152 (A. Walker ed., 1979), quoted and cited in Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 610 (1990). I adopt Professor Romany's term — minoritization — because it captures the essence of my own experience.

8. Esso was the trade name used by Standard Oil of New Jersey for many of its foreign, as well as some of its domestic, operations. Standard Oil used various trade names in the United States until 1972, when it decided to unify its domestic operations under the name Exxon. For a succinct history of the trade names used by Standard Oil as well as some of the legal issues that arose from its use of multiple names and its subsequent decision to use the name Exxon in the United States, see *Exxon Corporation v. Humble Exploration Company*, 695 F.2d. 96, 98 (5th Cir. 1983), on remand, *Exxon Corporation v. Humble Exploration Company*, 592 F. Supp. 1226 (N.D. Tex. 1984).

was not until the summer of 1998, when I was writing this Essay, that I learned, while reading a *tax* case, a fuller version of what had occurred.<sup>9</sup>

The case describes the role that the U.S. Department of State played in the decision to refuse to process the Soviet crude. While reading the case, I discovered that the order to refuse to process the Soviet crude, which eventually triggered the nationalization of the refinery and my father's departure from Cuba, came from none other than the President of the United States, Dwight D. Eisenhower.<sup>10</sup>

My father left Cuba in July, 1960, and my mother, younger brother, and I, who did not even have passports when my father left because we had never been out of the country, followed shortly thereafter. We lived in Miami for about a year and a half, and it was there that I learned to speak English.

My parents valued bilingualism and figured that part of the silver lining borne by the Castro cloud would be that their children would become bilingual. My brother and I learned quickly, since we were forbidden to speak Spanish at home and had to make do with signs and Anglified approximations of Spanish words. As soon as we had mastered English, however, my parents changed the rules and English became the forbidden language at home so that we would not lose our fluency in Spanish. Later, when we lived in other countries, the pattern continued. If Spanish was the language we spoke at school, as it was in El Salvador and Argentina, we had to speak English at home. When we spoke English at school, as we did in Aruba, the rule was that we had to speak Spanish at home. At the time, I thought it was perverse that my parents denied me the ability to speak in whatever language seemed easier. Now that I also value bilingualism, I know differently.

My brother, my twin cousins, and I, were the only Cuban — indeed, the only non-American<sup>11</sup> — children in what is now an almost

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9. *Exxon Corp. v. United States*, 7 Cl. Ct. 347 (1985). The case arose out of Exxon's deduction of a \$27.4 million debt owed to it by the subsidiary that owned the Cuban refinery which my father managed. The debt was not repaid following the nationalization and Exxon sought to deduct it as a bad debt. The tax litigation had a long and tumultuous history and was not resolved until 1991. Exxon won. *See Exxon Corp. v. United States*, 931 F.2d 874, 98 (Fed. Cir. 1991), *aff'g*, *Exxon Corp. v. United States*, 7 Cl. Ct. 347 (1985), *rev'd* 785 F.2d 277 (Fed. Cir. 1986), *on remand*, 12 Cl. Ct. 434 (1987), *vacated*, 840 F.2d 916 (Fed. Cir. 1988), *on remand*, 19 Cl. Ct. 755 (1990).

10. *Exxon Corp. v. United States*, 7 Cl. Ct. 347, 350 (1985).

11. I will refer to non-Cuban, non-Hispanic Anglos as Americans because that reflects the way I saw the differences between me and others whom I saw as belonging here. While I recognize that awarding to residents of one country in the Americas an appellation that implies ownership of two continents is controversial, I nevertheless use it here because it illustrates who and what it was that I regarded as the other. It was not others of a different race, gender or sexual orientation. It was others who were native and therefore belonged in the United States.

exclusively Cuban school in Southwest Miami.<sup>12</sup> I started the 4th grade in September, 1960, having learned to speak English during the summer, spurred by my parents' draconian no-Spanish rule. (I'll save you the need to do the math by telling you: I am 47.) The problem was that although I could speak English, I could neither read it nor write it. I therefore did terribly on all tests, except for math. The Cuban school system had forced me to cover fractions and long division the year before, so in math, I excelled. Unfortunately, my ability to get the right answer was not enough for my teacher, who could either not abide that an otherwise illiterate foreign child could outshine all the blonde and blue-eyed Americanitos, or he wanted to leave no stone unturned in my own Americanization. He therefore told me that in America the number seven did not have a little bar across its stem, and decreed that if I wrote the number seven as I had been taught to do in Cuba, with the little bar across its stem, he would mark the answer wrong. He succeeded in teaching me to write what I've always thought of as an American seven, and even now, almost 40 years later, I still think of him when I write a seven and defiantly put a little bar across its stem.

Reflection shows that throughout this time I was an insider and an outsider, at the same time. As a member of my family and a native Spanish speaker, I was an insider, but as a non-English speaker when the rule at home was to speak English, I was an outsider there as well. At school, my ability to speak unaccented English and my apparent mathematical prowess made me an insider, but my inability to read English and my unusual sevens branded me an outsider.

'While feeling like an outsider could have minoritized me — could have caused me to long for inclusion in the group that formed the numerical majority — it did not, chiefly because I saw my being in Miami as a temporary detour and that allowed me to preserve my insider identity. At that time, being in Miami as a refugee was simply the lesser of two undesirables (living in Cuba under Castro was the other), and it was not one which I expected to have to endure for very long. Since I did not see myself as belonging in Miami or as wanting to belong there, the legitimacy of my identity was not impaired by the demeaning experiences I endured there. In Miami, I was a "mere transient or sojourner,"<sup>13</sup> and that made all the difference. For many Cubans, it still

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12. The cognoscenti will recognize this as a part of Miami where a large concentration of Cubans now reside. It is referred to as "la sauguesera", a term that connotes thorough Cubanization — a place where everyone is Cuban and Americans would feel like foreigners, down to having trouble understanding the spoken language and reading the signs on storefronts, only some of which proudly proclaim "We Speak English" in stark contrast to the early 1960's when shops eager for Cuban business would advertise "Se Habla Espanol" (Spanish spoken here).

13. The term comes from regulations that interpret the Internal Revenue Code. Treas. Reg.

does.<sup>14</sup>

Seeing myself as a mere transient or sojourner meant that I did not perceive the ill-treatment I sometimes received as representative of a pattern which would follow me for the rest of my life and which I should therefore work to eradicate. As a child who felt powerless because of her status as a child, particularly one that had been uprooted from her home, country and language and been deposited in a strange place where all the rules were different, it was easy for me to catalogue these events as one more example of adult, or American, imponderability. Moreover, the circumstances under which we left Cuba, leaving both family and possessions behind, and the knowledge that only the United States' willingness to take us in had allowed us to leave the malestorm that was, for us, Cuba, generated a sense of gratitude that was incompatible with feelings of entitlement.

Like travelers who crash a party because their car has stalled in a storm, we were grateful for the food and for the shelter. It did not bother us that the food consisted of leftovers or that it was perhaps cold and sometimes spoiled. It was food. It did not permanently damage our sense of self that some of those at the party treated us less courteously than if we had been invited guests, for we had not come seeking their friendship or acceptance, or wanting to insinuate ourselves into their circle. We knew that had the Castro storm not occurred, we would have continued on our way. Like stranded travelers, we intended to get back in our car and return to our lives just as soon as we could get the car, our country, fixed. Since we were grateful for the refuge and did not expect to be treated like invited guests, it was neither surprising nor symbolic of

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§ 1.871-2(b). Until 1984, a non-resident alien who was a "mere transient or sojourner" was not treated as a U.S. resident for federal income tax purposes. Although section 138 of the Tax Reform Act of 1984, Pub. L. 98-369, 98 Stat. 672 (1984) changed the rules for determining residency status for tax purposes, the "transient or sojourner" classification remains significant for other purposes, such as determining whether an individual qualifies for the foreign income exclusion provided by I.R.C. § 911. See Treas. Reg. § 1.871-2(c).

14. Max J. Castro has written about what he has referred to as the Cuban "master narrative" that "explains [Cubans'] condition as immigrants not in terms of personal circumstances but of historical necessity. That perspective confers meaning and dignity to the exile's condition regardless of external hardships and protects self-esteem against the stigma attached by some in this society to newcomers and to Latinos." Max J. Castro, *Making Pan Latino: Latino Pan-Ethnicity and the Controversial Case of the Cubans*, 2 HARV. LATINO L. REV. 180 (1997). I find the "master narrative" label pejorative, for it implies an artificially imposed world view — something that has been "narrated" to us and thus imposed from outside — that is at odds with my experience. My aunt, now 71 and barely able to walk, refused to learn English because it would mean that she had accepted that she would have to make a life in the U.S. — that she would no longer be a transient or sojourner. That she has been in the U.S. for over 35 years, longer than she lived in Cuba, and that she has learned to understand English in spite of herself, has not altered the way she sees herself: She is Cuban, not Cuban American, and she still feels that she really belongs somewhere else. That is not a master-narrative, it is her reality.

some greater evil that we were not. Like travelers or visitors everywhere, we were insiders to our own culture even though we were outsiders to the foreign culture. Like an American who does not think less of herself because a French waiter in Paris treats her rudely, whatever shabby treatment we received here did not compromise our sense of self. Being outside is not so bad if one is also inside.

Like the travelers we felt ourselves to be, we expected to return to Cuba soon, and even though we have not yet returned to Cuba, my family did not stay in Miami long. My father continued to work for Exxon and was transferred to El Salvador, and later, to Aruba and to Argentina. In those days, my mother's career always took a back seat to my father's. My mother had been a kindergarten teacher in Cuba but was not certified as a teacher in the U.S. She later earned a U.S. college degree and became the Director of the Day Care Division of Catholic Community Services in Miami, a position from which she only recently retired after having made a difference in the lives of thousands of children and having had new day care center building dedicated in her name as a tribute.

By the time I finished the 9th grade the choices for schooling were either high school in Dutch in Aruba or Catholic girls' school in Miami, where I could board during the week and spend weekends with my aunt. My parents, feeling that I was in need of a Catholic education, decided that a Catholic girls' school in Miami would be the best place for me. We had also considered a Catholic girl's boarding school in West Palm Beach but unlike the school in Miami, the West Palm Beach school seemed primarily to attract wealthy American girls. I felt out of place the moment I walked in and was grateful that my parents chose the Miami school.

Going to high school in Miami was crucial to the development of my identity. In that high school there were only two American girls in the entire 10th grade class of 24 girls, and the American girls were the outsiders.<sup>15</sup> Most of us were Cuban, but there were also girls from Nicaragua, Venezuela, Haiti, the Dominican Republic, and even Surinam. Although classes were held in English, outside of class we spoke a comfortable mixture of Spanish and English, reserving for each language those things that seemed most fitting to it.<sup>16</sup>

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15. Again, I use the term American because it is a translation of what they were to us: Americanas. We were, and are, Cubanas.

16. Professor Margaret Montoya has written about the effect of weaving English and Spanish and has cited evidence that it is a linguistically competent practice that serves a subtle signaling function. 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 n.6 (1994), 15 CHICANO-LATINO L. REV. 1 (1994), citing Rodolfo Jacobson, *The Social Implications of Intra-*



My Cuban classmates and I had a strong sense of entitlement to our identities as Cubanas. We could communicate and feel at home anywhere in Miami, and indeed, as Cubanas, felt that we were where it was at. We did not think of ourselves as Cuban-American for we did not claim an American identity. While we were not unaffected by American culture, the rituals and traditions of Cuban culture provided the primary structure for our lives. Thus, our parents required that we be chaperoned on dates, and chaperones even accompanied us when we went out, as a group, after that most American of institutions, the Senior Prom. We eschewed the teen and young adult American culture of the 60's, whose apparent acceptance of drugs and free love made it as foreign to us as if we had been living in another country. We dated Cuban boys, danced to Cuban music at parties and thought of ourselves as quite simply Cuban. We were insiders to the culture that mattered to us, and outsiders to the American culture. Being outside, in that context, was good. We were inside where it counted.

Things changed radically when I went to college, for I ended up going to Cornell University in Ithaca, New York. I went to Cornell for a number of complicated reasons, many of which boil down to going to the place where the nuns least wanted me to go.

As a freshman at Cornell I filled out numerous forms, some of which asked me to identify myself by race and ethnicity. I had not given much thought to either my race or my ethnicity as separate constructs — I simply thought of myself as Cuban — and I certainly hadn't been introduced to the concept of race as a social construct.<sup>17</sup> I thought that my race, as a biological construct, was Caucasian and therefore white.<sup>18</sup>

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*Sentential Code-Switching*, in *NEW DIRECTIONS IN CHICANO SCHOLARSHIP* 227, 240-41 (1978). This weaving of two languages together, once confined to our personal lives, has itself become emblematic of Latina/o and LatCrit scholarship. See, e.g., Berta Esperanza Hernandez-Truyol, *Borders (En)gendered: Normativities, Latinas, and a LatCrit Paradigm*, 72 N.Y.U. L. REV. 882 (1997); Berta Esperanza Hernandez-Truyol, *Building Bridges — Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1994). Professor Yvonne Tamayo has written of the more recent reaction to the prevalence of Spanish speakers in Miami, where, she has observed, "Spanish is not the language spoken only by people who work in low-paying jobs and who occupy an inferior place in the professional, political and social strata: rather, in Miami Spanish is spoken as well by people who own thriving businesses, are elected to public office, and are active participants in the city's social and cultural life." Yvonne Tamayo, "Official Language" Legislation: *Literal Silencing/Silenciando La Lengua*, 13 HARV. BLACKLETTER J. 107, 120 (1997).

17. For some of the recent work discussing race as a social construct, see Kevin R. Johnson, "Melting Pot" or "Ring of Fire"?: *Assimilation and the Mexican-American Experience*, 10 LA RAZA L. J. 173 (1998), 85 CAL. L. REV. 1259 (1997); Theresa Glennon, *Race, Education, and the Construction of a Disabled Class*, 1995 WIS. L. REV. 1237, 1290-1297, and sources cited therein.

18. Apparently, many Cubans still do. See, e.g., Mary Coombs, *LatCrit Theory and the Post-Identity Era: Transcending the Legacies of Color and Coalescing a Politics of Consciousness*, 2 HARV. LATINO L. REV. 457 (1997). Coombs observed that "[m]any of my Cuban students —

I don't remember giving the matter much thought during the application process, and I don't remember how I identified myself, but I suspect I had simply identified myself as white, although my status as a foreigner was patent: I was a non-citizen and my parents, also non-citizens, were living out of the country, (in Argentina), at the time.<sup>19</sup>

Nevertheless, as a freshman at Cornell I was intensely conscious of my Cuban identity, for I knew I was very different from most of my classmates. For someone who had gone to a Catholic girl's boarding school in Miami, where phone calls were monitored by a nun who spoke six languages lest we attempt to arrange a tryst with a boy, Cornell in 1969 was quite a shock. The contrast between my Latina Catholic girl's school experience and the freshman dorm at Cornell in 1969 could not have been more stark: even though the dorms did not become officially co-ed until the following year, I often saw men in other student's rooms, in the halls and in the bathrooms. I felt like I was in an alien land. I missed being able to switch into Spanish whenever the Spanish words seemed more apt and I resented having been transformed from Alicia Abreu (pronounced "A-lee-see-a A-breh-oo"), into "A-lee-sha A-brew," which is how Americans pronounce my name until they are told otherwise.<sup>20</sup> I was living the difference of my Cuban identity every day. I

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who would be appalled (regardless of their skin tone) at being considered people of color — would self-identify as Cubano/Cubana or perhaps, as Hispanic." *Id.* at 460.

19. The subject of race is, of course, complicated, as many scholars have shown. For now, I limit myself to describing how I felt, as a Cuban teenager in Miami in the late 60's. As others have noted, many Cubans are biologically Caucasian, and tend, or tended, to self-identify that way, distinguishing race from ethnicity. See Johnson, *supra* note 17, at 1284 n.90 (describing Cubans who emigrated before 1980 as "mostly White,"), n.134 (citing EARL SHORRIS, *LATINOS* 64 (1992) for the proposition that "the first wave of Cubans were mostly White). Many Cubans are also Black, others are Asian, and still others are bi- or multi- racial. Given the racial diversity that existed in Cuba itself, for me the separation of race and ethnicity seemed both obvious and natural. *Id.* at 1293 (describing racial tensions between the pre-1980 Cuban emigres and the refugees who emigrated as part of the Mariel boatlift of 1980, many of who were Black); see also Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 *BERKELEY WOMEN'S L. J.* 16, 22 (1995) (Professor Grillo, who generously shared many insights through her writing before dying of cancer way before her time, identified herself as Black, Cuban and Italian). The question whether race as a construct can or should be separated from ethnicity has recently occupied a number of scholars, including Professor Grillo, *id.* and Professors Espinoza, Harris, Lopez, and Perea. See Leslie Espinoza & Angela P. Harris, *Afterword: Embracing the Tar-Baby—LatCrit Theory and the Sticky Mess of Race*, 10 *LA RAZA L. J.* 499 (1998), 85 *CAL. L. REV.* 1585 (1997); Ian Haney Lopez, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 10 *LA RAZA L. J.* 57 (1998), 85 *CAL. L. REV.* 1143 (1997); Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 10 *LA RAZA L. J.* 127 (1998), 85 *CAL. L. REV.* 1213 (1997). The contemporary debate promises to, and should, continue.

20. Eventually, I gave up on my first name, opting instead to use Alice because at least that is a name different from my real one and not a corruption of it, although I continue to insist on the correct pronunciation of my surname. I do of course, endure countless mispronunciations and misspellings. It will be interesting to see if that changes now, at least in Philadelphia, because the

was an outsider everywhere, even with respect to my Cuban friends, none of whom had gone away to college. It was awful.

Even speaking was awkward. I recall vividly how difficult it was to carry on conversations wholly in English during the first few weeks at Cornell after having come from an environment where it seemed that everyone was fully bilingual. I was disconcerted by the monolingualism that surrounded me. Probably because of that, when filling out the obligatory stack of forms, I noticed that although the form didn't list Cuban, it did list Hispanic as an option. To me, Hispanic meant having to do with Spanish, and the label beckoned. Checking it seemed like a way of connecting to and claiming the identity that had once seemed so right. Moreover, the label, though imperfect and overbroad, seemed unquestionably to fit.<sup>21</sup> I was not even an American citizen at the time, and as I have already explained, I was born in Cuba of Cuban parents and had not even learned to speak English until I was nearly 9. I therefore checked the box for Hispanic.

What happened next is a metaphor for the uneasy relationship between Cubans and other Latina/os and people of color,<sup>22</sup> and affected the way I identified myself for more than a decade thereafter. What happened is that I was summoned to the Dean of Students' office, where I was asked where I had gotten the idea that I might be Hispanic. When I explained that I was born in Cuba, of Cuban parents, was not even an American citizen yet and had not learned to speak English until I was nearly 9 years old, I was nevertheless told that I was mistaken. Only Mexicans and Puerto Ricans counted as Hispanic, I was told. Cubans did not.<sup>23</sup> I was then accused of trying to gain the benefit of programs not meant for me and was so humiliated that even a return to the nuns in Miami began to look good.

I then learned a lesson: Since I did not want to be accused of attempting to steal privilege, I never checked Hispanic again.

I graduated from Cornell in 1973, magna cum laude in psychology, worked in drug abuse and delinquency prevention programs, became the Executive Director of one such program, and then went back to Cornell

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Philadelphia Phillies have a new player, Bobby Abreu, who insists on the correct Spanish pronunciation of his surname. Bobby Abreu is from Venezuela and is not a known relation, but I confess that I love hearing Bobby Abreu's name pronounced correctly. The subject of names, and how they relate to our identities as Latina/os is an important and complicated one, which I will not elaborate on here. For thoughtful commentary, see Montoya, *supra* note 16, at n.8, and Johnson, *supra* note 17, at 209-25.

21. On the excessive breadth of the term, see Berta Esperanza Hernandez-Truyol, *Building Bridges*, *supra* note 16, at 404-06.

22. See Castro, *supra* note 14.

23. This theme appears again in more contemporary legal scholarship. See Berta Esperanza Hernandez-Truyol, *Building Bridges*, *supra* note 16, at 411.

for law school. I became a tax lawyer, worked for a big firm in Philadelphia and eventually decided to do what I had wanted to do since I was an undergraduate, so I entered the Academy. It was then, more than 15 years after that initial encounter with the term Hispanic as a freshman at Cornell, that the classifications on those ubiquitous forms returned to haunt me.

After I had accepted the offer of a position on the Temple faculty, I received the obligatory stack of forms. I filled them out, returned them and then received a telephone call from a then-Assistant to the Dean. "Aren't you Cuban?" she asked. "Of course," I replied. "Then why haven't you checked 'Hispanic'?" she continued. If you've read this far, you know what my answer was: "Because I thought that being Cuban didn't count as being Hispanic — only Mexicans and Puerto Ricans count," I replied. "Oh, no," she said, "Cubans count here. Do you mind if we count you as Hispanic?" Of course I didn't mind, and of course she could count me as Hispanic, but I again felt accused and humiliated. This time, I felt accused of hiding my identity and humiliated at having been unmasked.

## II. SOME REFLECTIONS

Counting as Hispanic at Temple, while potentially affirming, was not completely positive. It essentialized, or made dominant to the exclusion of others, one aspect of my identity — my ethnicity. It was as if no other part of me was worthy of note. I now think that not having counted as Hispanic during all those pre-Temple years had some salutary effects and helps to answer some of the questions I've had since.

For example, I have long wondered why I did not feel like an outsider, or like a minority, as those terms have been constructed in legal scholarship, until I entered the Academy, 25 years after I first arrived in the United States. By any objective criteria (to the extent that such a thing even exists), I was both. As a Cuban in the United States I was an outsider and a minority. I was certainly not in Cornell's political mainstream in 1969, and as a woman, a Cubana, and a founder of a Cuban organization that had only 3 members, I was certainly not in any numerical majority.<sup>24</sup> As the only Cuban or Latina/o lawyer at the law firm

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24. Cubans as a group are politically conservative. See Johnson, *supra* note 17, at 1293. As Max Castro and others have noted, Cubans tend to be politically conservative in part because they blame President Kennedy, and his party, for the Bay of Pigs debacle. See Castro, *supra* note 14, at 193. During the 60's, I was much more conservative than the majority of my classmates at Cornell. The three-person organization that I helped to found was the Cuban Student Society (CSS). There were only three of us in the CSS because we were the only three Cubans we could find, but we took on the then-powerful Students for a Democratic Society (SDS) to offer an alternative to the SDS version of the effects of the Cuban revolution. We not only organized a

with which I practiced, I was hardly in the mainstream. But although I knew I was different, I did not feel inferior. I now think that this was because even though I was outside in some ways, I was inside in others. Being both inside and outside was key to preventing the essentializing of my outsider status.

Being granted membership in the group "Hispanic" when I joined the Academy not only essentialized the outsider aspect of my status, but it undercut the ways in which my ethnicity also makes me an insider. The classification "Hispanic" obliterates the ways in which my ethnicity makes me an insider because it is a homogenized view of Spanish-speaking people, a view that has been constructed and defined by Americans. When I was in high school in Miami with a diverse group of Latinas, it would not have occurred to me to describe all of us as belonging to the same group. The non-Cuban Latinas were very different from us. Not only were the non-Cuban Latinas all very wealthy, but they spoke Spanish differently, with different accents and different colloquialisms. They were in the U.S. voluntarily and could and could go home to their countries, and their extended families, when school was over. With the Cuban girls I shared a culture, a history, a language, an accent and a longing for the relatives we had left behind. Our stories were variations on a theme of diaspora. Only an outsider to our culture could have considered us to be part of the same group as the non-Cuban Latinas.

The homogenization of the Latina/o identity that is wrought by lumping all of us within the classification Hispanic, dilutes our ethnicity and thus dilutes the sphere in which we are insiders. As a Cuban, I am an insider, and being an insider in some ways is what makes it alright to be an outsider in other ways. As a Catholic attending a bar mitzvah, I am an outsider, but that is not troublesome to me because I am also an insider, to my own religion, at the same time. Outside is negative when it is constructed as such, but it is less likely to be constructed as such if we are insiders in other respects.

The homogenization of ethnicity, and the destructive way in which it undercuts the spheres in which we are insiders, does not stop with the attempt to classify all Spanish-speaking people as members of one undifferentiated group.<sup>25</sup> It is also evident when we are referred to as

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debate on the Cuban revolution that drew a capacity crowd to the student union, but obtained departmental sponsorship for a course on the Cuban revolution and arranged for a Cuban scholar, from Harvard, to visit Cornell and teach it. These activities hardly put me inside the Cornell mainstream in 1969. I was outside that, but I was inside another group, one that was valuable to me, so I did not consider myself a minority.

25. The lumping of very different groups under one homogenizing label is not restricted to Latina/os. For a good discussion of the phenomenon, and a description of the many ways in

hyphenated Americans, as if we needed to be labeled American to be legitimate. I born in Cuba. I am Cuban. I am not Cuban-American.

Like the classification Hispanic, the designation Cuban-American is a construct, and it is an American construct. The Cuban-American label not only dilutes my Cuban identity, but it also suggests that the "American" modifier is necessary to legitimize it. Although I am now an American citizen and I value that status, I am still Cuban. I have absorbed a tremendous amount of American culture, and I am grateful for all it has given me, but I am still Cuban. My children, who were born in this country, are, to me, the real Cuban-Americans, but I am Cuban.

It should be enough for me to be Cuban. So why do I now only count as a Cuban-American? If I had been born in Canada, Britain, or Australia, would I be described as a Canadian-American, a British-American or an Australian-American? No, because I would not need to be cleansed. Being Canadian, or British, or Australian would be enough.

Of course, I may be overstating my case. Perhaps since I have been away from Cuba for nearly 40 years, I can no longer claim to be just Cuban. I've probably become too Americanized for that. I am not Cuban in the same way that my parents, who grew up and came of age in Cuba, are Cuban, nor am I Cuban in the same way that someone who has grown up in Cuba and still lives in Cuba now is Cuban. American life and American culture have had too much influence to allow me to claim that. But neither can I say that I am American. To claim that would be to deny the foundational influence that having been born in Cuba has had on me and to appropriate an identity that is not my birth-right. I am different from people born here. For many years, first as a refugee and later a resident alien, I was here at sufferance, and even now that I am a naturalized citizen I feel quite keenly the difference between me and those who can claim U. S. citizenship as a result of their birth. Even the Constitution acknowledges the fundamental difference between citizenship by birth and citizenship by ex-post act of law, so I can never be President.

If I am too Cuban to be American and too American to be just Cuban, what, then, am I to be? One obvious response is to say that I am Cuban-American, but, I reject that label as well. To call me a Cuban-American is to put my core at the periphery. It is to pluck the nucleus and relegate it to the status of modifier. To refer to me as a Cuban-

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which it distorts public responses to problems, see Dvora Yanow, *American Ethnogenesis and Public Administration*, 27 ADMIN. & Soc'Y 483 (1996).

American is to take the place where I am most inside and put it on the outside.

So where does this conundrum leave me? If I am not Cuban and I am not American and I find the label Cuban-American offensive, what am I? For me the answer is that classification depends upon context. To full-fledged, natural born Americans, I am Cuban. That's what makes me different from them and it is, all by itself, legitimate and enough. To Cubans who are still, or until recently were, living in Cuba, I am an Americanized Cuban.

The term Americanized Cuban, which can be shorted to Ameri-Cuban, is not one which I've ever heard anyone use. Nevertheless, I find it appealing. Unlike the term Cuban-American, the term Ameri-Cuban leaves the Cuban at the center. It acknowledges the impact of nearly 40 years of exile but keeps the Cuban core on center stage. It is less homogenizing, less assimilationist. Perhaps we should give it a try.

But change is hard. A very long time ago, in reading through a self-study prepared by a Faculty Committee, I noted that I was described as a Cuban-American and I asked why I couldn't just be Cuban. After all, if the point is to highlight the difference between me and other members of the faculty, referring to me as Cuban is most apt, for to the extent I am American, I am the same. While my listener was vaguely amused by the notion that I would find the label Cuban-American not only inaccurate but vaguely demeaning, the classification remained unchanged. In a more recent self-study, pie charts set out the percentages of faculty who are Puerto Rican Hispanics or Mexican Hispanics, but a Cuban Hispanic is just an "other" Hispanic. Still marginalized, after all these years.

It has been suggested to me that my objection here is not to essentializing, but to essentializing the wrong thing. I disagree. I am arguing in the alternative. I would prefer not to have one aspect of my identity — my ethnicity — highlighted to the apparent exclusion of all others. Nevertheless, if an aspect of my identity is going to be essentialized, I'd at least like it to be something that is as central to my own view of myself as its essentialization would suggest that it is. In other words: I'd prefer that you don't essentialize, but if you're going to essentialize, at least get it right.

I now think that perhaps being told I was not Hispanic when I was at Cornell was probably a good thing. It helped me to preserve my Cuban identity by making my ethnicity non-essential. It allowed me to view myself, and, I believe, to be viewed, as a whole person. A person different from others, to be sure, but difference is not per se negative.

Difference is negative only when it is constructed as such. The

talent that makes Luciano Pavarotti or Kathleen Battle different from the rest of us is not negative because it is not viewed negatively. Albert Einstein's intellect was different from that of most people, but its difference did not make it negative. Throughout my professional life, until I joined the Temple faculty and became minoritized, I did not feel that the differences that came from being Cuban were negative. In my life as a student and later as a tax lawyer with a big Philadelphia firm, the differences that come from being Cuban (bilingualism, understanding Latina/o culture, knowledge of the Caribbean and Central and South America), were and are assets, not liabilities. I saw them that way and I believe others did as well.

For my honors thesis at Cornell, *Coping with Culture Conflict*,<sup>26</sup> I studied the ways in which the conflicts between the Cuban and American cultures were reflected in the degree to which children spoke English with a Spanish accent, and my work was not only encouraged but praised. When I became a tax lawyer, my fluency in Spanish brought me into transactions that were on the cutting edge of tax practice.<sup>27</sup> I could revel in these differences because with them I was also an insider. I was an insider to a culture and group that I valued.

Of course, being denied admission to a group, (in my case, the group labeled Hispanic), can be disempowering when it stands in the way of redressing wrongs. Refusing to acknowledge victimization does not transmute a victim into a non-victim. But we should question whether there is another way of righting those wrongs — a way that doesn't disempower us,<sup>28</sup> and a way that doesn't essentialize one aspect of our identities to the exclusion of others.<sup>29</sup> While being encouraged to check Hispanic when I came to Temple was empowering because it recognized my ethnicity, it was also marginalizing because it essentialized that aspect, and it essentialized it in a homogenized and therefore incomplete and inaccurate way.

So, what am I (we) to do? If the price of counting is the homogeni-

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26. Unpublished manuscript on file with the author.

27. When working on transactions with Latin American lawyers and businessmen (and they were *all* men), I felt the full force of the gendered roles of women in Latin American societies. We may have a long way to go before achieving the kind of equality of opportunity we want in this country, but, in Latin America, women have an even longer road to travel. That, unfortunately, is another story.

28. Although power, like choice, can be both positive and negative, in this context I regard it as largely positive. For a somewhat more detailed discussion of the positive and negative aspects of choice and power, see Alice G. Abreu, *Taxes, Power, and Personal Autonomy*, 33 SAN DIEGO L. REV. 1, 50-57 (1996).

29. For a thorough and contemporary treatment of some of the problems of identity politics and essentialism, see MARTHA MINOW, *NOT ONLY FOR MYSELF: IDENTITY, POLITICS AND THE LAW* (1997).



zation of my Cuban identity, do I want to count? If the price of counting is being cast in the role of victim, do I want to count? Does counting as Hispanic essentialize my ethnicity so that all other aspects — woman, mother, wife, daughter, tax lawyer, friend — dissolve? LatCrit scholars have begun to ponder these questions, and have offered a number of useful insights. Work on intersectionality has helped to reveal us as multidimensional individuals capable of functioning and delighting in a variety of roles. It has shown that we can move between worlds and between languages while valuing and being a part of each, and it has applauded the diversity that exists within us. Yet, I want to offer a few words of caution.

First, in our zeal to reveal ourselves as multidimensional whole people whose many characteristics intersect in interesting ways, we should resist the urge to appropriate intersectionality itself. We should celebrate it, but we should not claim exclusive ownership of it. Intersectionality is part of the human experience and we should not fall into the trap of essentializing the very vehicle we have chosen as a de-essentializing device. Intersectionality, while a useful tool for deconstructing essentialism, should not itself be essentialized as a phenomenon either unique to or amplified by the Latina/o experience, for to do so will only divide us further. We should avoid getting into an intersection contest.

Second, we should neither forget nor denigrate professional intersections. I am a tax lawyer, teacher, and scholar. I became a tax lawyer because I found tax challenging and fascinating as a law student when I took my first tax course. I love the intellectual challenge and the rigor of it, but I am also drawn by the deeper meaning of taxation, for in a tax system a society reveals its values. While a tax system developed through the democratic process will reveal all of the imperfections of that process, it can also provide an antidote to the ills that befall a society plagued by dramatic income inequality. Tax policy, developed and implemented through a democratic process that values human rights, can prevent the rise of dictators like Fidel Castro, who used force to obtain and retain the power to redistribute wealth, and who abrogated human rights in the process.<sup>30</sup>

Tax systems reflect who and what we care about, and in studying a tax system we study who we really are. In debating tax policy we debate who we think we should be. As Professors Blum and Kalven noted in their classic article on progressive taxation,

[I]n the end it is the implications about economic inequality which impart significance and permanence to the issue and institution of

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30. See Berta Esperanza Hernandez Truyol, *Out in Left Field: Cuba's Post-Cold War Strikeout*, 18 FORDHAM INT'L L.J. 15, 77-94 (1994).

progression. Ultimately a serious interest in progression stems from the fact that a progressive tax is perhaps the cardinal instance of the democratic community struggling with its hardest problem.<sup>31</sup>

My work with Professor Marty McMahon addresses issues of income inequality and progressive taxation and reflects that perspective.<sup>32</sup>

Despite the importance of tax policy for the preservation of human rights, property, and other things we value, within the Academy I have felt more like an outsider as result of being a tax lawyer and scholar than as a result of any other aspect of my identity. Colleagues seem to think nothing of saying about tax lawyers as a group things that they would be pilloried for saying about many other groups. I have heard colleagues refer to us as dull, narrow, intellectually shallow, and pedestrian. Evaluation of tax scholarship for tenure or promotion often expresses surprise that the work is interesting, creative, or well-written, and the one area that aspiring law teachers seem to have no compunction about listing under "Subjects Not Preferred" in the AALS recruitment conference form, is Tax. In two years as Chair and several more years as a member of Temple's Faculty Selection Committee I looked at several thousand AALS forms, as there are typically about one thousand a year. I think fewer than 20, out of all of those thousands of applicants, listed anything other than tax as "not preferred," and only one listed Constitutional Law. I confess that I wanted to interview that applicant just because of that.

Being a tax lawyer made me feel like an outsider when I arrived at LatCrit III. Exploring that intersection — the intersection of our identities and our chosen fields of scholarly interest — can help the LatCrit movement to grow and can advance some of its objectives. Perhaps a second story will provide useful insight into the point I will try to make.

### III. A PIANIST'S STORY

One evening during the summer I was writing this essay, I went to a concert by the Philadelphia Orchestra at the Mann Music Center, an outdoor venue which serves as the Orchestra's summer home. The program that evening was billed as "Scandinavian Summer" and promised a selection of "Scandinavian Favorites,"<sup>33</sup> including Grieg's Piano Concerto, a beautiful, difficult, and well-known piece of the classical repertoire. The pianist was Terrence Wilson, a Juilliard student who had made his professional debut with the Philadelphia Orchestra in 1992, at

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31. Walter J. Blum & Harry Kalven, Jr., *The Uneasy Case for Progressive Taxation*, 19 U. CHI. L. REV. 417, 520 (1952).

32. See Martin J. McMahon, Jr. & Alice G. Abreu, *Winner-Take-All Markets: Easing the Case for Progressive Taxation*, 4 FLA. TAX REV. 1 (1998).

33. Pamphlet, *The Mann Center for the Performing Arts, A Festival for the Senses* (1998) (on file with the author).

the age of 17.<sup>34</sup>

When Mr. Wilson walked onto the stage the audience surprise was polite but apparent. Not only is Mr. Wilson young, (now 22), but he is Black. Although there was a picture of Mr. Wilson in the program for the evening, there was no picture of him in the pamphlet that announced the season, which is where subscribers get information about the schedule of works and performers, and given the relaxed atmosphere of the Mann, where many people picnic on the grass surrounding the stage and the covered seating area during the performance, I suspect that many had not paid close attention to the program.

At that performance Terrence Wilson was a soloist not only because he was the pianist, but because he was the only Black person on the stage. Although other Black classical concert pianists exist (Andre Watts comes prominently to mind), it is fair to say that Blacks are under-represented within the ranks of classical instrumentalists.<sup>35</sup>

Terrence Wilson gave a marvelous performance that night and received a richly-deserved standing ovation. Still, after it was over I found myself reflecting on the possible parallels between his life as a Black classical concert pianist and mine as a Cuban tax lawyer and academic.

#### IV. REFLECTIONS

Both Terrence Wilson and I are playing against type. He, because he is Black and a classical concert pianist and I, because I am Cuban and a tax lawyer. Our identities create expectations that we breach. Although the civil rights movement has resulted in a climate in which the existence of Black professional musicians and Latina/o lawyers is, happily, no longer remarkable, we have not yet succeeded in creating a climate in which our race or ethnicity does not limit the ways in which we are expected to use our talents. Audiences are not surprised when a Black musician plays jazz, or hip hop. Black jazz musicians and hip hop artists are commonplace, as are Latina/o constitutional, immigration and criminal defense lawyers. But Black classical concert pianists cause a stir and Latina/o business lawyers in the U. S. are often regarded with

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34. *Id.*

35. A number of the press accounts of Mr. Wilson's appearances remark on the scarcity of Black concert pianists and the impact that scarcity has on Mr. Wilson's career. See, e.g., Valerie Scher, *Terrence Wilson Doesn't Want to be Known as Just a Black Pianist*, SAN DIEGO UNION-TRIBUNE, Oct. 23, 1994, at E-6; Kenneth Young, *Wilson Plays With Consummate Brilliance*, BUFFALO NEWS, Oct. 16, 1995, at 6B; Jeff Bradley, *Young Pianist Struck Right Chord with Patrons*, DENV. POST, Oct. 7, 1996, at F-8; Marc Shulgold, "Addicted to the Stage", *Juilliard Talent Terrence Wilson Romances Grieg Piano Concerto with CSO*, ROCKY MTN. NEWS, Oct. 10, 1996, at 8D.

incredulity. Reviews and announcements of Terrence Wilson's performances often mention that he is Black even though they never mention the race of a white concert pianist,<sup>36</sup> and at least one very prestigious prospective employer insisted that I had to be interested in developing an immigration practice, not in being a tax lawyer.

To open the doors of opportunity fully for those who come behind us, legal discourse should move beyond these narrow taxonomies. Entire fields should be available. This process of expanding the field, of opening the doors fully, is slow and often woefully incremental, but it is the next step in developing an inclusive society. Just as women had first to fight to be admitted into law school and then fight to be allowed to practice law and then fight to be hired by large and prestigious Wall Street law firms and then fight to be accepted as tax, banking and finance lawyers, so must Latina/os.<sup>37</sup> We should be able to celebrate our race, gender, ethnicity, sexual orientation, and myriad other defining characteristics and allow them to enhance what we choose to do, but they should not cost us the chance to do what we want to do. As a community we should nurture the development of interest in many different aspect of the law (yes, including even tax) not only because it is the right and inclusive thing to do but because it is also the practical thing to do. Many law faculties face limits in the number of experts in particular fields than they can afford to hire, but by diversifying the areas of our academic expertise, Latina/os can increase our numbers in the academy. If we all do the same thing, we reduce our chances of securing greater representation.

What I am suggesting is not assimilation, with its subtext of homogenization and erasure of ethnicity. Just as it is important for law students to be exposed to a diverse faculty because it offers them a variety of role models and allows them to experience diversity in the possession of power, so it is important that diversity extend to the subject matter areas we pursue.<sup>38</sup> This more complete vision of diversity, which

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36. See *id.* See also Karin Remesch & Lori Sears, *African and American: Remembrance: Black History Month is Celebrated in Historical and Art Exhibits, Contests, Dramatic and Musical Presentations, Storytelling and More*, BALTIMORE SUN, Jan. 30, 1997, at 3; Marc Shulgold, *Internet Web Site Offers 'Virtual Tour' of Carnegie Hall*, ROCKY MTN. NEWS, Oct. 6, 1996, at 9D; Derrick Henry, *The 1995-96 Master Season: ASO Schedules Crowd-Pleasing Lineup*, ATLANTA J. & CONST., Mar. 1, 1995, at 1B; J. Wynn Rousuck, Stephen Wigler, *Robert Goulet is in Royal Form in Camelot at Lyric*, BALTIMORE SUN, May 29, 1994, at 2H.

37. See KAREN BERGER MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA, 1638 TO THE PRESENT* 197, 250 (1986).

38. For a recent compilation of the body of empirical work that describes the ways in which the composition of the classroom affects student performance, and goes beyond it to provide "comparative information about race dynamic in law school classrooms," see Elizabeth Mertz, with Vamucii Njogu and Susan Gooding, *What Difference Does Difference Make? The*

extends to subject matter, will make the range of career and life options most graphically visible to students. As Latina/os become more visible throughout the spectrum of areas of practice and professions generally, others will become accustomed to seeing us in those roles and we will be seen as rightful participants in those endeavors. We don't have to surrender our ethnicity to do that.

When Terrence Wilson commands the piano in the classical repertoire he proclaims both that race is not a bar to the classics and that classical music must not remain a whites-only club. Of course, I am not suggesting that a Black pianist can be taken seriously only by performing the classics or that the classics are more worthy than other types of music with which Black musicians are more closely identified. What I am suggesting is that Black musicians can and should perform whatever type of music they choose to perform and that all types of music, including classical music, should be seen as within their province, just as they are for whites and just as whites are not barred from performing jazz. Terrence Wilson's race should not limit what he plays, any more than Alicia De Larrocha's nationality (she is from Spain) ought to prevent her from playing Mozart. Madame De Larrocha has probably done more to disseminate the music of the Spanish composer Enrique Granados than any other pianist, but she is also renowned as an exceptional interpreter of Mozart.

When he speaks to groups of students and young musicians Terrence Wilson demonstrates that Blacks can reach for the stars as classicists, and all students can profit from that message.<sup>39</sup> I hope that seeing me teach tax opens similar doors for my students<sup>40</sup> and that reading my tax scholarship broadens the perspective of my colleagues.<sup>41</sup>

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*Challenge for Legal Education*, 48 J. LEGAL EDUC. 1, 2 (1998). Mertz et. al. found that "students of color participated more in the classrooms with teachers of color." *Id.* at 3.

39. See Michael Sangiacomo, *Keys to His Dream Right on the Piano: Terrence Wilson, 21, Astounds Aspiring Students at Cleveland Orchestra Rehearsal*, PLAIN DEALER, Aug. 1, 1997, at B; Valerie Sher, *supra* note 35.

40. Although my physical appearance does not announce my ethnicity (because of stereotyped notions of what Latinas should look like), I nevertheless make it a point to let my students know I am Cuban. For example, in class I always pronounce student and case names like Hernandez as a native would; when we discuss citizenship and jurisdiction to tax, I raise questions about the possible distinctions between citizens and non-citizen residents, openly drawing on my own experiences as both a citizen and a non-citizen. Although it has been suggested to me that I might be embarrassing some students by pronouncing their names in an obviously Spanish way, which I can do because I am a native Spanish speaker, I've never received anything but gratitude from students who appreciate not having their names mangled or mispronounced.

41. I have both identified myself as a Cuban and a naturalized citizen in print and explored the connection of that identity to my scholarly exploration of matters involving the tax consequences of the renunciation of US citizenship. See *supra* note 6. I have also brought my perspective as a Latina and my understanding of Latina/o culture to discussions of Internal Revenue Service's treatment of immigrants who claim the Earned Income Tax Credit. As

Terrence Wilson does not want his race to be essentialized, although he is keenly aware of its importance. As he has said in interviews, "There are dangers in being a black concert pianist . . . I'm worried that I'll only be a role model. I'll probably get work because of my color . . . [and] these can be great opportunities for me. But these advantages also have a downside — I don't want to be ghettoized. . . . Just because I'm black . . . doesn't mean that my favorite pianist is Andre Watts."<sup>42</sup> I concur, on both counts, and I believe that it is possible, if difficult, to achieve that goal.

The essentializing of race has imposed on Terrence Wilson a burden other pianists do not have. Thus he has been criticized for playing classical standards, such as Tchaikovsky's Piano Concerto No. 1, rather than concerti written by Black composers.<sup>43</sup> In effect, his critics would deny him the pleasure of playing Tchaikovsky's Piano Concerto No. 1 because of his race.<sup>44</sup>

importantly, by simply being a tax lawyer I think I help to break down stereotypes and to make it easier for the many Latina/o tax lawyers who I hope will follow.

42. Marc Shulgold, *supra* note 36. Other interviewers have noted that "Wilson hopes he will not be pigeonholed as an African-American artist." Jeff Bradley, *supra* note 35. "It really shouldn't mean much at all, but in terms of marketability, its inevitable that because we are so rare, some orchestras feel it can help demographically. There's a danger of being ghettoized, being featured only in events honoring Martin Luther King or only being invited to play in the month of February [Black history month]." *Id.* Most poignantly, he has observed that "I always get people who come over to me and say, 'You'll be the next Andre Watts.'" They don't tend to say I'll be the next Krystian Zimerman or Martha Argerich." *Id.* Both Zimerman and Argerich are young, but established, concert pianists whose playing has been widely celebrated.

43. See e.g. Derrick Henry, *Concert Review*, ATLANTA J. & CONST., Jan. 12, 1996, at B (noting that "Tchaikovsky's First Piano Concerto was the vehicle 20-year-old pianist Terrence Wilson chose to play. While it's appropriate to spotlight promising black talent in a King celebration — and Wilson played with impressive power and fluency if not much individuality — surely he could have learned something more relevant to the occasion, say the powerful concerto of black composer George Walker"). Amazingly, Mr. Henry laid none of the blame for Mr. Wilson's selection of music at the feet of the Atlanta Symphony Orchestra's Music Director Yoel Levi, whose program he described sympathetically in a piece that appeared the day before the concert, and whom he quoted as saying "I'm very happy that we've found pieces that are good music, stimulating music, and quite inspiring at the same time. . . music that comes from the soul." Derrick Henry, *Conducting a Celebration: Yoel Levi's Tribute to King Comes from Heart*, ATLANTA J. & CONST., Jan. 11, 1996, at 1F. Mr. Henry levied his criticism of Mr. Wilson's choice of music, despite having noted that Spelman College President Johnnetta Cole, who hosted the program, had reminded the audience of "King's exhortation to embrace both the white and black keys of 'life's piano,' *id.*, and having commented, when previewing the performance the day before that "A promising new talent: Pianist Terrence Wilson, 20, will play the most famous of all piano concertos, Tchaikovsky's First. Derrick Henry, *ASO Listener's Guide: Glee Clubs to Have Part in King Tribute*, ATLANTA J. & CONST., Jan. 11, 1996, at 7F.

44. See *supra* note 43. Exploring *why* Terrence Wilson chose to play Tchaikovsky's Piano Concerto No. 1 is really beside the point. He might have chosen simply because it is a beautiful piece of music, or he might have chosen it because it is a piece he plays particularly well and he wanted to display his talents to maximum advantage. He could also have chosen it to celebrate the sexual orientation of the composer, who is now widely regarded as having been gay. The point is that if he wanted to play Tchaikovsky as a tribute to Dr. King, he should be able to. The

I have felt similar pressures. I have been told that I should not waste my time on tax but that, because I am Latina, I should devote my professional life to areas of the law which bear a more direct relation to the Latina/o, condition. I have rejected that advice. I have as legitimate a claim to being a tax lawyer as any white American male and neither my gender nor my ethnicity should stand in the way. My experiences in Cuba and later as an exile have no doubt shaped my view of the role and importance of tax policy, just as they have shaped other aspects of my identity, but even if I could see no connection between my experiences as a Cubana and my interest in tax policy, it would still be legitimate for me to be a tax lawyer.

I will continue to be a tax lawyer, just as Mr. Wilson has continued to play Tchaikovsky's First Piano Concerto, but my plea here is for greater understanding and acceptance from my own community. Being a Cuban tax lawyer made me feel like an outsider at LatCrit III. While some of that feeling may have been attributable to my being Cuban, I think most of it was attributable to my being a tax lawyer. When people asked me what I taught and I said tax, I felt them wrinkle their brows and silently wonder "so what are *you* doing here," as if I couldn't be both Latina and a tax lawyer. It is time for that to change.

#### V. CONCLUSION: TIME TO COME IN FROM THE COLD

The good news is that things are indeed changing. After all, I, a Cuban tax lawyer, was asked to be a discussant at LatCrit III. For that I am grateful. LatCrit scholars are nudging legal discourse to move beyond binary, bipolar paradigms, and the diversity of the participants in LatCrit III is a testament to the success of their efforts. As the theme of LatCrit III implies, it is now time to take the next step. For me, that next step is to make a concerted effort to find the places where I am inside, and to celebrate and revel in that insiderness, so that it is with me even when I am outside.

What I am suggesting does not require assimilation or denial of difference. On the contrary, claiming the inside requires that we acknowledge our differences. It requires that we see that many of the things that make us outsiders also make us insiders, so that we are insiders and outsiders, all at the same time.<sup>45</sup>

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fact that Terrence Wilson is a concert pianist whom thousands of people, of many races, pay to hear, should be the point.

45. In saying this I am reminded of and inspired by Professor Paulette Caldwell, who spoke movingly at LatCrit III of the way in which changing how we define ourselves can change our interactions with others as well as our view of the world. Professor Paulette Caldwell, *Critical Recollections: Reclaiming Latina/o Experiences*, Address Before the Legal Academy of the United States 38 (May 7, 1998) (transcript on file with U. MIAMI L. REV. and U. TEX. HISPANIC

I recognize that it may seem easy for me to urge this because I may be seen as privileged: my parents are both college graduates who spoke English even before becoming exiles, we did not emigrate for economic reasons, and we were not, in our home country, the victims of racial discrimination. I am now inside the community of tax professors and was once inside the community of practicing tax lawyers, and being inside those communities has been very nurturing. So, for others it might be more difficult to find and celebrate that inside than it has been for me. Nevertheless, difficulty does not mean impossibility, and deciding to look for that insider place is the first step. Some members of our diverse community will find it easier to do that than others, but all of us should try. By the very act of uniting to find that place of comfort and belonging, that insider's place, we can create it.

At LatCrit I Professor Jerome Culp exhorted us to "build a theory that recognizes our differences and builds coalitions for change,"<sup>46</sup> but cautioned that "[t]his new theory has to avoid falling prey to the temptation to become complicit in the description of the other. We will not build a theory for change if we replicate the structures of the other created by society."<sup>47</sup> The construction of outside as a place that stands in opposition to inside is one such structure. That structure was necessary to break down the barriers that kept us on the outside looking in, but accepting and using that structure should not prevent us from also finding the places where we are inside.<sup>48</sup>

A model in which we categorize ourselves as either insiders or outsiders replicates the structure of a society that treats us as being outside. But our world does not exist outside of some other, more important, world. Every day, we are insiders in some respects, even as we are outsiders in others.

To claim the inside, we need to value the diversity among us. The ways in which we are different from others are what make us the individual persons that each of us is. We should celebrate those differences. We are diverse in ethnicity, gender, sexual orientation, area of professional interest and a host of other things. These differences do not just make us outsiders, they also make us insiders to the communities whose members share them, even if they don't share other characteristics we possess.

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L.J.). See also, Jerome McCristal Culp, Jr., *Latinos, Blacks, Others, and the New Legal Narrative*, 2 HARV. LATINO L. REV. 480 (1997).

46. Culp, *supra* note 45, at n.68.

47. *Id.*

48. See Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN'S RTS. L. REP. 297 (1992).



Writing about the gay and lesbian communities, my colleague, Professor Nancy Knauer, recently observed that:

The myth of a single community prompts arguments over the production of a single agenda. When much of the disagreement stems from fundamental questions of perspective and goal articulation, the challenge is not to determine whose goal prescription is right or more desirable, but rather, to try to respect the myriad of differing articulations emanating from our diverse communities.<sup>49</sup>

LatCrit scholars have shattered the myth of a single minority community and have shown that there isn't even a single Latina/o community. They have been instrumental in beginning the process of allowing us to experience one another as multidimensional people who also have many things in common. We have started to move beyond the binary paradigm that essentializes one aspect of our identity, but we need to go further.

Latina/os are insiders and outsiders. It is time for us to claim all the places where we are inside, and to build others. We should nurture the communities to which we belong and build bridges to those we do not yet know well. We should bring our insights and our diversity to different areas of the law — including tax and business— areas where we continue to be seriously under-represented. By doing so we need not become either whitewashed or lost. Bridges need not fuse what they bridge.

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49. Nancy J. Knauer, *Domestic Partnership and Same-Sex Relationships: A Marketplace Innovation and a Less Than Perfect Institutional Choice*, 7 TEMP. POL. & CIV. RTS. L. REV. 337, 361 (1998).