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PostColonial Encounters in the PostPinochet Era: A LatCrit Perspective on Spain, Latinas/os and "Hispanismo" in the Development of International Human Rights

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**PostColonial Encounters in the PostPinochet Era:
A LatCrit Perspective on Spain, Latinas/os and “Hispanismo”
in the Development of International Human Rights**

Francisco Valdes*

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I. Introduction

During the past several years Spain riveted the world as it affirmatively sought to raise the stakes of human rights law to unprecedented heights through its determined prosecution of former Chilean dictator Augusto Pinochet for human rights abuses.¹ Fittingly, this first-ever symposium on Spain and LatCrit theory testifies in part to the hopes that Spain’s efforts have excited the world over.² Thus,

* Professor, University of Miami School of Law; Co-Director, Center for Hispanic and Caribbean Legal Studies, University of Miami School of Law; Co-Director, Spain Summer Abroad Study Program, University of Miami School of Law. I thank first and foremost my friend and colleague, Lisa Iglesias, for spearheading the inauguration of this LatCrit-in-Spain Summer Colloquium. I thank also my Spanish friends and colleagues in the conception and inauguration of this project, principally Angel Rodriguez and Ana Salinas of the Universidad de Málaga Facultad de Derechos. I thank also Dean José Manuel Ruíz-Rico Ruíz of the Universidad de Málaga Facultad de Derechos, all the participants at the symposium and the editors of the *University of Miami International and Comparative Law Journal*, particularly Zel Saccani and Aniella Gonzalez. Finally, I thank librarian Clare Membiela for timely and reliable research support. All errors are mine.

¹ The worldwide attention of Pinochet’s prosecution has generated much public controversy. Most recently, the prosecuting judge was honored with receipt of the “Humanitarian of the Year Award” at the 5th Annual Bravo Business Awards for “his dogged pursuit of the truth over the years.” Sergio R. Bustos, *By Challenging Former Chilean Dictator Augusto Pinochet, Spanish Judge Baltasar Garzon has Made Violating Human Rights a Global Offense*, LATIN TRADE, Oct. 1; see generally Richard J. Wilson, *Prosecuting Pinochet: International Crimes in Spanish Domestic Law*, 21 HUMAN RTS. Q. 930 (1999). At the time of this writing, Pinochet was celebrating his 84th birthday – and his second under house arrest in England– by issuing a handwritten letter to his followers characterizing himself as a political prisoner and asserting that he has been “dishonored and hounded by Spanish courts in a seemingly unending abduction.” *Chilean Ex-Leader’s Birthday No Party*, MIAMI HERALD, Nov. 27, 1999, at 6A. However, shortly afterward the “seemingly unending abduction” began to unravel in a show of mercy that Pinochet seems never to have shown for his victims. See R. Ried, *Pinochet is Found Too Sick for Trial; Former Dictator May Return to Chile*, WASH. POST, Jan. 12, 2000, at A1. Eventually, due to a finding of frail health, Pinochet was released and he then returned to Chile, where new proceedings began. See Kevin G. Hall, *Chilean Court to Rule on Pinochet’s Immunity Status*, MIAMI HERALD, April 29, 2000, at 9A.

² This colloquium is not a direct result of the *Pinochet* proceedings, nor is it principally focused on those proceedings, but the choice to include the impact of that ongoing case in this symposium does reflect its importance in any antisubordination consideration of current affairs in international human rights law.

the general theme of this symposium is the intersection of international relations, human rights, Spain and Latin America – a framing that invites LatCrit and Spanish legal scholars to focus on the role of Spain in the history and current development of Latin America as well as “Latinas/os” the world over.³

This framing is fitting as well, for it underscores and advances three points or circumstances that converge in this program. The first is the unprecedented opportunity to introduce “LatCrit theory”⁴ to critical legal scholars in Spain, an opportunity that elicits reciprocal contributions to a critical understanding of Spain’s current position in the world in light of its troubling imperial past and the continuing present effects of that past.⁵ The second, directly correlated to the first, is the opportunity to focus critical inquiry on how Spain as a modern progressive nation-state could or should position itself *vis-à-vis* its former colonies and, most importantly, *vis-à-vis* the multiply diverse and still relatively disempowered peoples that Spain’s imperial policies and practices either helped to impoverish and subjugate or brought into existence through conquest and assimilation.⁶ The third is the opportunity to showcase the growing significance of, and to further develop, an especially important contribution of LatCrit theory to the articulation of “outsider jurisprudence”⁷ in the United States and beyond: the linkage of “domestic” equality issues with “international” human rights issues.⁸ In this Essay, I join and explore these three convergent themes from a “LatCrit perspective” – an evolving subject position that has been adopted by many critical legal scholars in the United States during the past five years, both Latina/o and otherwise.⁹

Taking liberties with this symposium’s general theme and framing, I use the *Pinochet* case in this Essay as a point of departure for some broader, critical thoughts and introductory questions. They flow specifically from four sources. First is the continuing postcolonial legacy of Spain’s imperial past, especially as it affects Latin America and Latinas/os.¹⁰ Second is Spain’s persistent self-positioning within world councils and in international relations as an exemplary “model” of a modern

³ “Latinas/os” constitute multiply diverse groups of persons. For demographic portraits of Latina/o heterogeneity in the United States, see Berta Hernandez-Truyol, *Building Bridges—Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1994); Gloria Sandrino-Glasser, *Los Confundidos: De-Conflating Latinas/as’ Race and Ethnicity*, 19 UCLA CHICANO-LATINO L. REV. 69, 75-77 (1998).

⁴ “LatCrit theory” as used in this Essay refers to the loose collection of multiple diverse individual scholars, both Latinas/os and not, who in recent years have participated in the construction of this discourse and subject position. See *infra* notes 45-87 and accompanying text.

⁵ See, e.g., sources cited *infra* notes 88-91.

⁶ See, e.g., sources cited *infra* notes 16-23.

⁷ I borrow the term from Professor Mari Matsuda. See Mari Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 MICH. L. REV. 2320, 2323 (1989).

⁸ See Elizabeth M. Iglesias, *Foreword – International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997); see also Berta Esperanza Hernandez-Truyol, *Bringing International Human Rights Home*, 9 LA RAZA L.J. 69 (1996) and Celina Romany, *Gender, Race/Ethnicity and Language*, 9 LA RAZA L.J. 49 (1996).

⁹ See generally sources cited *infra* note 48.

¹⁰ See *infra* notes 88-91 and accompanying text.

and progressive state that upholds human liberty, dignity and prosperity.¹¹ Third is Spain's economic "thrust" into Latin America during the past several decades as part of its determined campaign to activate a sentimental and uncritical sense of "Hispanismo" or "Hispanidad" throughout its former colonies so as to bind them to her.¹² Lastly is Spain's dramatic leadership in the *Pinochet* proceedings, including the impact of that decisive intervention more generally for the development of human rights and for the cultivation internationally of social justice norms.¹³ Basically, this Essay employs the *Pinochet* case as a point of departure to ask, from a LatCrit perspective, how may or should a progressive state such as Spain exercise leadership in other arenas of law and justice in light of the principles underlying – and professedly motivating – Spain's proactive involvement in the *Pinochet* experience?¹⁴

In bringing to bear a "LatCrit perspective"¹⁵ on Spain and its postcolonial encounters in light of the *Pinochet* proceedings and Spain's pivotal role in them, I am, of course, enveloped by the love/hate relationship that exists between "Latinas/os" and Spain (as well as the United States). After all, who are "Latinas/os"?¹⁶ We are, to a great extent, simply the progeny of Spain's and other European powers' imperial assaults on indigenous peoples in what was then called the New World and today is known as the Americas, a hemisphere that encompasses rich terrains stretching from the North to the South poles of the Earth. We are, as current circumstances make plain, also dominated by Anglo American predilections, and throughout this century and before have been subjected to North American imperialism. We are, in a very real sense, a "universal that contains all particulars, and whose liberation is therefore intricately intertwined and directly implicated in the liberation of all particulars."¹⁷

"Latinas/os" are the multiply diverse peoples who today, because of that heritage, are situated in so many intermediate, hybrid, uncertain, and richly variegated categories that a foundational and perpetual question in LatCrit and

¹¹ See *infra* notes 93-97 and accompanying text.

¹² See *infra* notes 98-120 and accompanying text.

¹³ See *infra* notes 121-28 and accompanying text.

¹⁴ Of course, Spain's proactivity in *Pinochet* can be cast as the result of a maverick magistrate's overreaching; this characterization, however, does not dispose of the themes and questions addressed here. See *infra* note 123.

¹⁵ "LatCrit theory" comprises many scholars with varying views, and therefore it is somewhat misleading to speak of "LatCrit theory" in the singular. Nonetheless, the multiply diverse critical legal scholars who coalesced around the collective effort to articulate LatCrit theory "exhibited ... [a] sense of shared groupness." See Francisco Valdes, *Foreword - Latina/o Ethnicities, Critical Race Theory, And Post-Identity Politics In Postmodern Legal Culture: From Practices To Possibilities*, in 9 LA RAZA L.J. 1, 7 n.25 (1996).

¹⁶ Enrique R. Carrasco, *Who Are We?*, 19 UCLA CHICANO-LATINO L. REV. 331 (1998); see Juan F. Perea, *Los Olvidados*, 70 NYU L. REV. 965 (1995); see also Gerald P. Lopez, *Learning About Latinas*, 19 UCLA CHICANO-LATINO L. REV. 363 (1998) (critiquing contemporary demographic portraits of "Latinas/os" in the United States.); see generally Hernandez-Truyol, *supra* note 3 and Sandrino-Glasser, *supra* note 3.

¹⁷ Elizabeth M. Iglesias, *Foreword – Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community*, 53U. MIAMI L. REV. 575, 609 (1999).

similar “Latina/o” venues has been, “Who are we¹⁸ ... what should we call ourselves?” Hispanics? Latinas/os? Simply, Latinos? Or something else entirely?¹⁹ History, culture and politics have shown that Latinas/os certainly are not Spaniards, though we have much in common with Spaniards and others shaped in part by the continuing effects of Spanish imperialism – a cultural, political and economic post/neo/colonial phenomenon that has been described as “Hispanismo” and “Hispanidad”²⁰ – and we certainly are not Anglos, despite the fact that we also have endured for generations this additional strain of Euro imperialism and assimilation.²¹ Latinas/os, then, are the “mixed” and diasporic results of the centuries-old clashes between European whiteness and native colors in the context of colonizer and colonized throughout this hemisphere, a phase of history beginning with the fateful year of 1492, when Columbus and his motley crew stumbled upon this “new” world under the auspices of the Spanish crown.²² As such, we simultaneously identify with and fear the powers that brought us into, and continue to dominate our, existence.

Many Latinas/os thus may – and do – claim “Hispanic” links or roots, but many do not or cannot. Latinas/os certainly are bound by cultural and other ties both to Hispanic *and* Anglo identifications, yet we are not – and never have been allowed by dominant social forces to become, even when we wanted to – one with either of these white-identified Eurocentric social groups.²³ This interstitial positioning produces concrete shocks in today’s world, and LatCrit scholars therefore have delineated some basic premises, practices and principles to help us build collectively

¹⁸ See, e.g., Carrasco, *supra* note 16.

¹⁹ For a discussion of these issues in the particular context of LatCrit theory, see Elizabeth M. Iglesias & Francisco Valdes, *Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19UCLA CHICANO-LATINO L. REV. 503, 568-70 (1998).

²⁰ “Hispanismo” or “Hispanidad” generally signify Spanish-Latina/o commonalities– the “ties that bind” – such as language, religion and other sociocultural indicia left over from Spain’s centuries of colonialism in the American hemisphere. See Frederick B. Pike, *Latin America, in SPAIN IN THE TWENTIETH CENTURY* 183 (James W. Cortada ed., 1980). Hispanismo/Hispanidad also refers to Spain’s “aggressive strategy ... to resurrect and spread Hispanic culture, pride, and also hegemony throughout its former colonies.” HOWARD J. WIARDA, *THE TRANSITION TO DEMOCRACY IN SPAIN AND PORTUGAL* 297 (1989); see also Jean Grugel, *Spain and Latin America, in DEMOCRATIC SPAIN* 141, 142-47 (Richard Gillespie et al., eds., 1995). In this Essay, the term signifies these meanings.

²¹ For one example – California – see Guadalupe T. Luna, *Gold, Souls and Wandering Clerics: California Missions, Native Californians and LatCrit Theory*, 33U.C. DAVIS L. REV. 921 (1999); see also RODOLFO ACUNA, *OCCUPIED AMERICA* (3d ed., 1988). See generally Symposium, *Understanding the Treaty of Guadalupe Hidalgo on Its 150th Anniversary*, 35.W.J.L. & TRADE AM. 1 (1998).

²² See generally EDWIN WILLIAMSON, *THE PENGUIN HISTORY OF LATIN AMERICA* (1992); see also sources cited *infra* note 88.

²³ For a personal LatCrit testimonial, see Kevin R. Johnson, “*Melting Pot*” or “*Ring of Fire*”? *Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1262, 1262-77 (1997).

and mutually a critical coalitional understanding²⁴ of the past and present toward a future of social justice through law and public policy.

Given this backdrop, Hispanismo – and especially the uncritical, romanticized variety – represents a highly problematic assertion of solidarity. Indeed, Hispanismo begs questions of purpose and principle that are crucial to LatCrits; a threshold question, for instance, would ask, solidarity based on what? LatCrit theorists, along with other outsider legal scholars in the United States, have learned well that mere “identity” cannot substitute for commitment to antistatist principles and purposes.²⁵ LatCrits therefore have eschewed calls to a superficial sense of “commonality” that ignores the sociolegal significance of relevant differences while balking also at any tendency to magnify differences unduly.²⁶ To the extent that Hispanismo does either, LatCrit scholars are likely to question the efficacy of this construct, and to establish instead a substantive basis or vision around which to coalesce, and upon which build, an antistatist, antiessentialist community.²⁷

Furthermore, to the extent that Hispanismo may serve actively to reproduce within multiply diverse Latina/o communities a blind preference for white and Euro-identified normativities, it becomes a world view that not only must be questioned, but also rejected – at least from a LatCrit perspective.²⁸ Ultimately, Hispanismo may be nothing more than a self-serving assertion of “essentialized” identifications²⁹ that reinforce Eurocentric biases and white supremacy within Latina/o communities throughout the Americas, and which are made possible only as a direct result of colonialism’s continuing resonance on both sides of the Atlantic; in this sense, Hispanismo may be nothing more than an updated reproduction of colonial scripts that formally have been repudiated by Spain and other states pursuant to various international covenants.³⁰ If so, Hispanismo may become but a sentimental interposition of post/neo/colonial artifacts to postpone or evade an inter/national reckoning with past imperial abuses and their continuing everyday repercussions – a

²⁴ Coalition building has been a central LatCrit theme from the very beginning of this experiment, and LatCrit efforts at coalitional method have helped to produce the notion of “critical coalitions” as potentially effective antistatist vehicles. See Francisco Valdes, *Afterword - Theorizing OutCrit Theories: Coalitional Method and Comparative Jurisprudential Experience-RaceCrits, QueerCrits, LatCrits*, 53 U. MIAMI L. REV. 1256 (1999). In this way, LatCrit theory embraces and extends the importance of coalitional initiative in outsider jurisprudence. See, e.g., Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183 (1991); see also Iglesias & Valdes, *supra* note 19, at 562-67.

²⁵ See, e.g., Robert S. Chang, *The End of Innocence, or Politics After the Fall of the Essential Subject*, 45 AM. U. L. REV. 687 (1996).

²⁶ See, e.g., Iglesias & Valdes, *supra* note 19, at 582-88.

²⁷ Indeed, community building has been integral to LatCrit theory from inception. See *infra* notes 58-84 and accompanying text.

²⁸ Thus, LatCrit theorists from the inception of this discourse have opted for “Latina/o” over “Hispanic” in part to signal identification with peoples of color. See Iglesias & Valdes, *supra* note 19, at 568-74; see also George A. Martinez, *African Americans, Latinos and the Construction of Race: Toward an Epistemic Coalition*, 19 UCLA CHICANO-LATINO L. REV. 213 (1998).

²⁹ See sources cited *infra* note 69.

³⁰ See, e.g., Univ. Dec. Human Rts. (1946); see generally INTERNATIONAL HUMAN RIGHTS: LAW, POLITICS, MORALS (Henry J. Steiner & Philip Alston eds., 1996).

deflection of national responsibility that strikes an odd note when juxtaposed against Spain's conspicuous espousal of social justice values and human rights in other inter/national moments, as well as its current insistence on bringing Pinochet to justice.

But, the problematics of uncritical or romanticized Hispanismo are magnified and concretized when the sentiment is activated to push not only for symbolic, cultural and political self-aggrandizement but also for the material self-enrichment of the former colonial master through the re/construction of contemporary structures and arrangements. This push, again, effectively reflects the skews and wrongs of imperial power relations. The viability of Hispanismo as a form of collective, transnational consciousness binding Latinas/os to Spain suggests that colonialism and its legacies have not yet yielded all the pecuniary gains that they can – and do – offer to present-day Spain. Hispanismo can be – and is – deployed as a lens through which to view the present-day world not only in intangible or social terms, but also in material and economic terms. It proffers and promotes a “feel good” worldview in which Latinas/os are beckoned not only to supply cultural and political allegiance to Spain, but also to engage in a host of economic activities that replay in varying degrees the dynamics of post/neo/colonial exploitation. As discussed briefly below, Hispanismo can be – and is – used to create the mindsets and discourses that enable present opportunities for even more unjust enrichment built directly or indirectly on “past” colonial wrongs.

Thus, from a LatCrit perspective, Hispanismo is a troubling ideology that can be transcended only through a critical and self-critical engagement of its ramifications for the still-pending project of Latina/o empowerment – as well as for the larger, and also still-pending, project of constructing an international civil society based on antisubordination principles and social justice goals, including the development of strong human rights norms. Descriptively, Hispanismo describes with some accuracy (and undue pride) some of Spain's historic legacies throughout the Americas; prescriptively, Hispanismo triggers Latina/o alarms precisely because it evokes what it does not seek to describe. Whether practiced through political or economic regimes, Hispanismo and its various contemporary manifestations constitute a policy, attitude and agenda that LatCrit theorists cannot help but interrogate from an antisubordination, antiessentialist perspective.³¹

While Part I of this Essay unfolds a more detailed description of LatCrit theory,³² three points deserve immediate foregrounding because they are most relevant to this Essay's focus on postcolonial encounters between Spain and Latinas/os in a post*Pinochet* era. First, LatCrit perspectivity seeks to center Latinas/os *qua* Latinas/os in sociolegal analysis, including the many diversities that construct and affect Latinas/os on intragroup as well as intergroup levels, both domestically and internationally.³³ This first point means that LatCrit analysis and discourse eschew superficial or sentimental identifications, and often may seem to veer tangentially, when in fact the “tangent” is the creation of a sociolegal context

³¹ See Iglesias & Valdes, *supra* note 19, at 513-15; see also sources cited *infranote* 48.

³² See *infra* notes 45-87 and accompanying text.

³³ See *infra* notes 72-78 and accompanying text.

for critical analysis of issues and principles that affect the fates of multiply diverse Latinas/os, as well as the fate of our collective antsubordination project.³⁴ Second, LatCrit perspectivity entails both critical as well as self-critical discussion so that the LatCrit community may remain alert at all times to the evolutionary nature and continually self-adjusting obligations of LatCrit discourse as antsubordination praxis.³⁵ This second point means that LatCrit discourse and praxis at times will “turn inward” as part of the effort to conceive, assemble and operate critical coalitions grounded in antsubordination commitments.³⁶ The third, and perhaps most important, preliminary point about LatCrit perspectivity is the emphasis on antsubordination transformation as a foundational and sometimes dispositive principle of sociolegal analysis – a foundation that helps to guide our efforts when in doubt about the “right” thing to do in a given social justice setting.³⁷ This third point means that LatCrit analysis, discourse and praxis – whether turned inward or outward – will tend to produce “shared” agendas and help resolve social justice conflicts not through invocations of identity but through critical analysis of complex power relations and principled promotion of pragmatic yet egalitarian re/arrangements in law and society.³⁸ These three preliminary features of LatCrit theory have helped LatCrit and allied scholars to conceptualize and embrace the challenges that we have encountered in the past,³⁹ and they similarly may help LatCrit and Spanish legal scholars to engage the issues that post/neo/colonial injustice raises for any critical consideration of Spain’s contemporary relationship to Latinas/os and its former colonies globally.⁴⁰

³⁴ See, e.g., Iglesias, *supra* note 17, at 617-29.

³⁵ See *infra* notes 78-82 and accompanying text.

³⁶ See, e.g., Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997); Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177 (1999); see generally Richard Delgado, *The Inward Turn in Outsider Jurisprudence*, 34 WM. & MARY L. REV. 741 (1993).

³⁷ See *infra* notes 62-71 and accompanying text.

³⁸ See, e.g., Iglesias & Valdes, *supra* note 19.

³⁹ *Id.* at 504-35.

⁴⁰ For example, when Latinas/os and LatCrits pursue an antsubordination agenda in the United States to resist the imposition of “English Only” or “English First” rules and norms, we seek in part to vindicate the subordinated language of Spanish in the context of an Anglocentric society—the United States. See generally Steven W. Bender, *Direct Democracy and Distrust: The Relationship Between Language Law Rhetoric and the Language Vigilantism Experience*, 2 HARV. LATINO L. REV. 145 (1997); Christopher David Ruiz Cameron, *How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Produce of Racial Dualism, Latina/o Invisibility and Legal Indeterminacy*, 85 CAL. L. REV. 1347 (1997). In opposing a formal dictate to speak “only” or mostly the language of the latest conqueror we resist the further homogenization of life in North America and the further consolidation of Anglo domination over life, law and culture in the lands presently known as the United States. Ironically, Latina/o resistance of “English-Only” or “English-First” laws in this century is a rejection of a formal legal dictate on language liberty and diversity that the Founders of the United States similarly rejected over two centuries ago. See Juan Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism and Official English*, 77 MINN. L. REV. 269 (1992). See generally Mari Matsuda, *Voices of America: Antidiscrimination Law and a Jurisprudence for a Last Reconstruction*, 100 YALE L.J. 1329 (1991). Yet, at the same time, Latinas/os and LatCrits are

These and similar features of the ongoing LatCrit experiment in critical jurisprudence can provide a flexible, yet principled approach to the project of building sturdy and substantive transatlantic bridges between Spanish legal scholars and LatCrits in the Americas. As the most recent articulation of outsider jurisprudence in the United States,⁴¹ LatCrit theory can bring to this project a wealth of comparative jurisprudential experience and insight that spans feminist legal theory, critical race theory, Asian American legal studies and Queer legal theory.⁴² This cumulative jurisprudential well is one rich source of scholarly insight that we bring to this symposium and offer to critical legal scholars in Spain in a spirit of antisubordination collaboration and exchange. In this way, we look forward as well to the ways in which the perspectives of our Spanish counterparts can and will contribute to the continuing expansion and deepening of LatCrit theory.⁴³

In addition, however, I take to heart and invoke now the Dean's opening remarks during the symposium, in which he called for a spirit of *intercambio abierto* – “open exchange” – between Spanish and LatCrit scholars.⁴⁴ Only with a spirit of open inquiry and candid exchange can we collectively enable a critical dialog to help build bridges over the gulfs and gaps constructed by the histories and legacies of colonialism – histories and legacies that today make “Spanish” and “Latina/o” at once both similar and oppositional categories under the general and conflicted rubric of “Hispanic” identification. Only through persistent intellectual exchange about pending antisubordination issues and mutual substantive commitment to postsubordination vision can Spain and Latinas/os make common cause on behalf of human rights and inter/national norms that can rescue us from repeating the mistakes of our “shared” past.

As one hopeful contribution to that joint project, this Essay next divides into two parts. Part II opens with a sketch of LatCrit theory to properly contextualize the questions raised below within the jurisprudential framework that I seek to apply in this Essay to Spain's postcolonial encounters with Latinas/os in the aftermath of its *Pinochet* interventions, and in light of the self-image it propagates

confronted by the preceding and simultaneous legacy of Spanish conquest in this hemisphere, which brought with it the attempted obliteration of native tongues. See Iglesias & Valdes, *supra* note 19, at 568-74. In this hemisphere, Spanish, like English, thus has operated as a tool of oppression; the two are alike in a key respect – both represent a language of *subordination vis-à-vis* the indigenous and marginalized peoples of these lands. This observation of course implicates related questions, including whether LatCrit theory's efforts betray our antisubordination ideals when “Latinas/os” implicitly or explicitly identify with the vestiges of the Spaniard within us. See, e.g., Luz Guerra, *LatCrit y La Des-Colonización Nuestra: Taking Colon Out*, 19UCLA CHICANO-LATINO L. REV. 351 (1998).

⁴¹ See Valdes, *supra* note 24, at 1299-1306.

⁴² *Id.* at 1293-99.

⁴³ Indeed, we look forward to following up on this inaugural colloquium with another next summer, and also to arrange for Spanish legal scholars participating in the LatCritin-Spain summer colloquia to join us at the annual LatCrit conferences held in the United States. See *infra* notes 63-65 and accompanying text.

⁴⁴ The colloquium commenced with Opening Remarks by Dean José Manuel Ruiz-Rico Ruiz of the Universidad de Málaga Facultad de Derechos. For more information about the colloquium program, please visit the (temporary) LatCrit website cited *infra* note 64.

internationally as a progressive modern state. Part III turns by way of illustration to a concrete and pending “encounter” between Spain and its former empire in the Americas – an encounter that epitomizes but does not fully illustrate the larger and complex questions over Spanish accountability and intra-Hispanic issues of postponed justice that Hispanismo inflames. In this way, this Essay seeks to nurture the commencement of a critical and self-critical dialog grounded in antisubordination principles as a first step toward collaborative global justice projects between Spanish and LatCrit legal scholars.

II. LatCrit Theory: A Summary Overview

LatCrit theory is an infant discourse that responds primarily to the long historical presence and general sociolegal invisibility of Latinas/os in the lands now known as the United States. As with other traditionally subordinated communities in this country, this combination of longstanding occupancy and persistent marginality fueled an increasing sense of frustration among contemporary Latina/o legal scholars, some of whom banded together in the mid-1990s to initiate from the legal academy of the United States a social justice discourse under the newly-minted “LatCrit” rubric.⁴⁵ Since then, this collective project has included ongoing efforts to learn from and develop further the gains posted by three contemporary jurisprudential movements within the United States, movements with which many of today’s LatCrits also identify.

LatCrit theory, the most recent of “outsider” jurisprudential experiments in the legal academy of the United States, is both similar to and different from its main precursors – feminist legal theory, critical race theory, critical race feminism, Asian American legal scholarship, and Queer legal theory. Generally, but in different ways and to different degrees, these outsider jurisprudential efforts strive similarly to: represent sociolegally marginalized viewpoints; espouse critical, egalitarian, progressive, antisubordination projects; accept analytical and discursive subjectivity; recognize postmodernism; favor praxis; yearn for community.⁴⁶ Each, in its own

⁴⁵ From my perspective, the specific origins of “LatCrit” theory are traceable to a prior colloquium, held in 1995 in Puerto Rico, on the subject of Latinas/os and critical race theory. See *infra* note 48 and accompanying text; see also Iglesias & Valdes, *supra* note 19, at 568-69 (discussing the origins of LatCrit theory).

⁴⁶ For general readings on feminist legal theory, see KATHARINE T. BARTLETT & ANGELA P. HARRIS, *GENDER & LAW: THEORY, DOCTRINE, COMMENTARY* (2nd ed., 1998.); AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY (Martha A. Fineman & Nancy Thomadsen eds., 1991); THEORETICAL PERSPECTIVES ON SEXUAL DIFFERENCE (Deborah Rhode ed., 1991). For general readings on critical race theory, see sources cited *infra* note 49; see also CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 1997). For general readings on Queer legal theory, see Francisco Valdes, *Afterword – Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality and Responsibility in Social Justice Scholarship, or Legal Scholars as Cultural Warriors*, 75 DENVER U. L. REV. 1409 (1998); Francisco Valdes, *Queer Margins, Queer Ethics: A Call to Account for Race and Ethnicity in the Law, Theory and Politics of “Sexual Orientation”*, 48 HASTINGS L.J. 1293 (1997); Francisco Valdes, *Queers, Sissies, Dykes and Tomboys: Deconstructing the Conflation of Sex, Gender and Sexual Orientation in Euro-American Law and Society*, 83 CAL. L. REV. 1, 344-75 (1995). For general readings on LatCrit theory, see sources cited *infra* note 48.

way, is a part of a growing body of literature that may be described as "OutCrit" theories because each, as well as all, of these scholarly genres identifies and aligns with the social justice quests of outgroups in the United States and beyond it.⁴⁷ As the collective record of OutCrit jurisprudential experiments demonstrates, FemCrits, RaceCrits, Race/FemCrits, QueerCrits and LatCrits, along with other outsiders, in the past decade or two have helped to yield the initial texts and basic commitments of a progressive "OutCrit jurisprudence" in the United States.

While influenced strongly by the respective records and collective lessons of these preceding experiments in outsider jurisprudence, LatCrit theory in my view shares most affinity with critical race theory (CRT), both for historical and substantive reasons. Born most immediately from and during a 1995 colloquium on Latinas/os and CRT, LatCrit theory is an intervention consciously and critically modeled on the lessons drawn from its several proximate jurisprudential precursors and designed to highlight Latina/o concerns and voices in legal discourse and social policy.⁴⁸ It is, in many ways, a fusion and expansion of FemCrit, RaceCrit and QueerCrit insights because many LatCrit scholars are well versed in, and have experience with, these outsider jurisprudential experiments. But, as its specific origins indicate, this Latina/o-identified genre of outsider jurisprudence was conceived as a movement most closely related to CRT.⁴⁹ And because it was born most proximately of the CRT experience, LatCrit theory views itself as a "close

⁴⁷ See Francisco Valdes, *Outsider Scholars, Legal Theory and OutCrit Perspectivity: Postsubordination Vision as Jurisprudential Method*, 49 DEPAUL L. REV. 101 (1999).

⁴⁸ The proceedings of this first-ever gathering appear in Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 LA RAZA L.J. 1 (1996). The proceedings of another colloquium and of the subsequent annual conferences also have been published, as follows: the proceedings of the other colloquium, on LatCrit theory and human rights, held in Miami in 1996, appeared in Colloquium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997). The proceedings of the "LatCrit I" conference, held in San Diego in 1996, appears in Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997) while the proceedings of LatCrit II, held in San Antonio in 1997, appear in Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 UCLA CHICANO-LATINO L. REV. 1 (1998). The proceedings of LatCrit III, held in Miami in 1998, appear in Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, 53 U. MIAMI L. REV. 575 (1999). In addition to these conference-based publications, one LatCrit symposium was published jointly by the *California Law Review* and *La Raza Law Journal*. See Symposium, *LatCrit Theory: Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997), 10 LA RAZA L.J. 1 (1998). Upcoming LatCrit symposia also include the proceedings of LatCrit IV, slated to appear as Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 33 U.C. DAVIS L. REV. 751 (1999) and the proceedings of LatCrit V are slated for publication in the DENVER UNIVERSITY LAW REVIEW. Most recently, THE MICHIGAN JOURNAL OF RACE AND LAW and THE MICHIGAN JOURNAL OF LAW REFORM similarly have decided to publish jointly an independent symposium, tentatively titled *Culture, Language, Sexuality and Law: LatCrit Theory and The Construction of the Nation*.

⁴⁹ For readings on Critical Race Theory, see CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado ed., 1990); CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberle Crenshaw et al., eds., 1995); CRITICAL RACE THEORY: HISTORIES, CROSSROADS, DIRECTIONS (Jerome Culp, et al., eds., 2001).

cousin” especially to CRT, a cousin that always welcomes CRT, as well as other outsider scholars, both in spirit and in the flesh, to its gatherings.⁵⁰

But these roots also include a critical assessment of CRT and other OutCrit experiments – this birthing reflects both the strengths and shortcomings of CRT specifically and outsider jurisprudence generally, as revealed by a Latina/o-identified critique of antistatutory public discourse and legal scholarship.⁵¹ Molded (in part) by a critical assessment of outsiders’ substantive and structural record in critical legal scholarship, LatCrit theory from its very inception has been self-consciously devoted to practicing outsider commitments and pioneering techniques in self-critical ways. LatCrit theorists, in other words, have been determined to embrace CRT’s and other outsiders’ pre-existing antistatutory insights, employing comparative jurisprudential experience and our collective historical record as this project’s point of departure.⁵² Not surprisingly, then, LatCrit theory has devised a conscious and critical self-conception very similar though not identical to CRT’s and other OutCrits’ self-conception.⁵³

Not all the “differences” (or similarities) between feminist legal theory, CRT and/or Queer legal theory on the one hand, and LatCrit on the other, can be attributed to the lessons drawn from comparative jurisprudential experience, however. Other factors inevitably influence or enable LatCrit’s make-up. For example, LatCrit emerges at a time in which the demographics of the legal professorate are much more diverse than a decade ago, during the initial emergence of outsider jurisprudence.⁵⁴ And, as yet “another” outsider subject position, LatCrit theory has been required to anticipate and navigate carefully the perennial charge of interjecting or aggravating a destructive “balkanization” within legal discourse.⁵⁵

⁵⁰ See Valdes, *supra* note 15, at 26-27.

⁵¹ See, e.g., Romany, *supra* note 8, at 49-50; Valdes, *supra* note 15, at 4-11. For a similar type of critique, but issued from a sexual minority subject position, see Darren Lenard Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Antiracist Politics*, 47 *BUFF. L. REV.* 1 (1999); see generally Elvia R. Arriola, *Gendered Inequality: Lesbians, Gay Men, and Feminist Legal Theory*, 9 *BERKELEY WOMEN’S L.J.* 103 (1994) (questioning feminist categories around sex, gender and sexuality); Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 *BERKELEY WOMEN’S L.J.* 191 (1989-90) (critiquing the invisibility of minority sexual orientations in feminist analyses of law).

⁵² See Francisco Valdes, *Foreword - Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 *HARV. LATINO L. REV.* 1, 3-6 (1997) (describing the circumstances leading up to the origination of LatCrit theory).

⁵³ For early readings on CRT and its self-conception, see Symposium *Minority Critiques of the Critical Legal Studies Movement*, 22 *HARV. C.R.-C.L. L. REV.* 297 (1987); see also John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 *S. CAL. L. REV.* 2129 (1992); see generally Sumi K. Cho & Robert Westley, *Historicizing Critical Race Theory’s Cutting Edge: Key Movements that Performed the Theory*, 33 *U.C. DAVIS L. REV.* 1377 (2000) (providing a student-based retrospective on CRT and its origins).

⁵⁴ In particular, the nonwhite demographics of the legal academy have changed dramatically. See Cho & Westley, *supra* note 53.

⁵⁵ This charge is excitable by LatCrit’s assertion of Latina/o identification and, ironically but predictably, it exploits the preexistence of CRT as the relatively established exemplar of nonwhite outsider jurisprudence. Implying that one “outsider” or nonwhite subject position tests the

These factors and others, in addition to the lessons of OutCrit jurisprudential experience,⁵⁶ have helped to shape and give meaning to LatCrit theory today, both in substantive and in structural terms. Like feminist legal theory, CRT and Queer legal theory, LatCrit theory not only reflects but also must respond to the conflicts, circumstances and conditions that preceded and surrounded its emergence. Like all genres of critical legal scholarship, LatCrit literature tends to reflect the conditions of its production as well as the conditioning of its early and vocal adherents.⁵⁷

Also like other outsider experiments in critical jurisprudence, LatCrit theory self-consciously endeavors both the creation of scholarship through community and the creation of community through scholarship.⁵⁸ The idea of, and need for, regular meetings accordingly have been integral to the constitution of LatCrit theory and to the production of a LatCrit body of legal literature generated in connected, rather than atomized, conditions.⁵⁹ Like feminist legal theory and CRT but unlike gay and lesbian (or Queer) scholarship, LatCrit theory has undertaken the construction of structural conditions conducive to these twin objectives.⁶⁰ And also like other OutCrit efforts, LatCrit theory expresses this commitment to the production of both knowledge and community specifically as a means toward an end – the attainment of social justice.⁶¹ LatCrit theory thus seeks to combine elements of outsiders' early and formal self-conception with lessons drawn from actual jurisprudential experience and historical practices to employ and expand upon all OutCrits' collective gains in law and society.

As crafted by its earliest proponents, LatCrit theory attempts to balance multiple factors that conjoin the production of knowledge and cultivation of community. This balancing serves as the theoretical frame for legal reform and social transformation through LatCrit discourse and praxis. Therefore, from the beginning, LatCrit theorists have theorized about the purpose(s) of legal theory, and

mainstream capacity for diversity of perspectives in legal discourse, this charge is likely to confront any other effort to activate dormant or potential forms of positionality in critical legal theory. *See generally* Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 U. MIAMI L. REV. 1247 (1999) (expressing similar concerns over "BlackCrit" positionality).

⁵⁶ See Valdes, *supra* note 24, at 1278-93.

⁵⁷ For a similar discussion of developmental circumstance focused on the emergence of sexual orientation legal scholarship and Queer legal theory, *see* Valdes, *Queer Margins, Queer Ethics*, *supra* note 46.

⁵⁸ The two are synergistic, or can be made so. *See* Iglesias & Valdes, *supra* note 19, at 582-88; Valdes, *supra* note 24, at 1306-11.

⁵⁹ A key feature of LatCrit theory has been the publication of conference-based symposia, which feature presented papers with various forms of commentary, and which provide a concrete, integrated and enduring record of our efforts, "conversations" and collective learning curve. *See* Valdes, *supra* note 15, at 11-12.

⁶⁰ In addition to the symposia, a key feature of LatCrit theory has been the organization of regular gatherings. For instance, LatCrit events thus far include two colloquia and, now, this Annual LatCrit-in-Spain Summer Colloquium, in addition to the annual conferences. *See infra* note 64.

⁶¹ LatCrit theory thus far has displayed a keen appreciation of the relationship between legal scholarship, politics, and power. *See, e.g.*, Valdes, *supra* note 52, at 44, 49, 53 (acknowledging the political relevance of legal scholarship and, therefore, of LatCrit theory); *see also* Sumi K. Cho, *Essential Politics*, 2 HARV. LATINO L. REV. 433 (1997).

about the role of structure and substance in light of such purpose(s). In my view, these preliminary LatCrit efforts have pointed to four basic aims or functions of critical legal theory: the production of critical and interdisciplinary knowledge, the promotion of substantive social transformation, the expansion and interconnection of antistatist struggles, and the cultivation of community and coalition among outsider scholars.⁶² As these four aims or functions indicate, a dual and coequal commitment to expansive, substantive programs and community-building structures and events underpins LatCrit theory.

This dual and coequal commitment to critical knowledge and antistatist community is applied mainly in the context of the annual LatCrit conferences. The annual LatCrit conferences are mid-sized gatherings of about 75-135 attendees – academics and otherwise – that meet in a different location each year.⁶³ In the five years since their inception, these gatherings have been the chief instrument that annually brings many diverse legal scholars and friends together for a critical and continuing engagement of social justice issues important, in this instance, to Latinas/os, as well as to other outgroups.⁶⁴ Because these conferences are cosponsored by law reviews, they also annually help to generate published texts that reflect this framing – this symposium being the latest case in point.⁶⁵ LatCrit theory therefore has been characterized by a self-instilled and self-critical sense of collectivity, situatedness and purpose, which is evidenced not only by the structuring of the annual LatCrit conferences but also by their substantive scope and focus.

Thus far, the configuration of LatCrit interventions, both written and physical, has been guided by a solid conviction that the social and legal positions of many diverse Latina/o populations may be understood best – maybe only – when approached from multiple perspectives in collaborative but critical and self-critical fashion. Therefore, LatCrit theory's substantive scope and focus is shaped by a firm resolve to center "Latinas/os" in social and legal discourse, but to do so in a way that foregrounds the multiple diversities of Latina/o communities and that contextualizes

⁶² For further discussion of these four functions and their relationship to LatCrit theory, see Francisco Valdes, *Foreword - Under Construction: LatCrit Consciousness, Community and Theory*, 85 CAL. L. REV. 1087, 1093-94 (1997).

⁶³ The idea is to select geographically diverse sites, all of which thus far have been in the United States. However, informal discussions about meeting in appropriate locations outside of the United States have percolated during the past year or two. My sense is that LatCrit conferences soon will move to locations outside of the United States, as illustrated indirectly by this summer colloquium.

⁶⁴ To date, the LatCrit gatherings include two colloquia, four conferences and, now, this summer colloquium. The first prior colloquium was held in Puerto Rico in 1995, and the second in Miami in 1996. The first conference, "LatCrit I" was held in San Diego in 1996, LatCrit II in San Antonio in 1997, LatCrit III in Miami in 1998 and LatCrit IV near Lake Tahoe in 1999. The next three LatCrit conferences, LatCrit V, VI, and VII, are scheduled for Denver, Florida and Oregon. Subsequent conferences are being planned for locales in the Northeastern and Mid-Atlantic regions of the United States, respectively. For more information on these and other events, visit the (temporary) LatCrit website, available at <http://nersp.nerdc.ufl.edu/malavet>; see also www.latercrit.org, (visited February 25, 2000).

⁶⁵ For the published and upcoming LatCrit symposia, see sources cited *supra* note 48.

these issues within a broad critique of intergroup relations and out group positions.⁶⁶ The structural design – featuring a wide range of attendance and participation in LatCrit programs and projects – is related to and reinforces this interconnective substantive purview. In both structural design and substantive scope, the LatCrit approach to outsider jurisprudence is calculated to nurture cross-group communities and intergroup coalitions spurred by “multidimensional” discussions and projects that broaden, deepen and contextualize OutCrit self-empowerment quests both within and beyond “Latina/o” contexts.

By “multidimensional” I mean an approach to social and legal analysis that consciously seeks to excavate and interconnect the multiply “intersecting” forms or “cosynthetic” systems of subordination based on race, ethnicity, class, sex, gender, sexual orientation and/or culture⁶⁷ that culminate in the ideology of Euroheteropatriarchy.⁶⁸ Multidimensional analysis, the emergent standard in OutCrit jurisprudence, flows from earlier, path breaking outsider insights related to antiessentialism, multiplicity, intersectionality and similar concepts.⁶⁹ Each of these concepts represents a collective outsider effort to grapple with the sociolegal significance of multiple diversities across subordinated groups in social justice projects⁷⁰ – an ongoing effort that is central to LatCrit theory, too.⁷¹

Thus, and perhaps most notably, the annual LatCrit conferences have been employed consciously to elucidate intra- and intergroup diversities across multiple

⁶⁶ To review the annual programs of past LatCrit conferences, please visit the (temporary) LatCrit website. See *supra* note 64.

⁶⁷ See Berta Hernandez-Truyol, *Building Bridges – Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1991) (on multidimensionality); Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561 (1997) (on multidimensionality). See also Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257 (1997) (on cosynthesis); E. Christi Cunningham, *The Rise of Identity Politics I: The Myth of the Protected Class in Title VII Disparate Treatment Cases*, 30 CONN. L. REV. 441 (1998) (on wholism); Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities and Inter-Connectivities*, 5 SO. CAL. REV. L. & WOMEN'S STUD. 25 (1995) (on interconnectivity).

⁶⁸ See generally Francisco Valdes, *Unpacking Hetero-Patriarchy: Tracing the Conflation on Sex, Gender and Sexual Orientation to Its Origins*, 8 YALE J.L. & HUM. 161 (1996) (describing some of the sex/gender and sexual orientation norms that underlie and animate androsexism and heterosexism to produce the patriarchal form of homophobia– heteropatriarchy – that still prevails in Euroamerican societies, including the United States, today).

⁶⁹ See Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989); see also sources cited *supra* note 67.

⁷⁰ See generally, Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post Civil Rights America*, 95 MICH. L. REV. 821 (describing color-on-color tensions and urging the importance of attending to them); see also Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, UCLA ASIAN PAC. AM. L.J. 33 (1995) (examining why minority racial groups practice or exploit white supremacy, and offering some solutions to this self-destructive phenomenon).

⁷¹ See, e.g., Martinez, *supra* note 28; see also sources cited *supra* note 48.

identity lines, including those based on perspective and discipline.⁷² This expansive approach to the articulation of LatCrit theory is designed to ensure that Black, Asian American, Native American, feminist, Queer and other OutCrit subjectivities, in addition to white progressives, are brought to bear on Latinas/os' places and prospects under the Anglocentric,⁷³ heteropatriarchal,⁷⁴ and neoliberal⁷⁵ rule of the United States.⁷⁶ Though we obviously cannot train our collective attention on all diversities, issues or contexts at once, LatCrit theorists have guided the creation of holistic programs and projects to search out and progressively map Latina/o diversities and their interrelationships, aiming via this process to unpack comprehensively and critically the complex, power relations that accounts for the myriad forms of Latina/o subordination.⁷⁷

This approach consciously is designed to center not only Latinas/os and our many diversities in a manner that minimizes privileging any one Latina/o interest over another, but also to ensure critical discussion of Latinas/os as part of the larger

⁷² Interdisciplinarity has been a programmatic feature of every LatCrit program thus far. See sources cited *supra* note 48.

⁷³ By "Anglocentric" I mean the myriad premises and practices that structure law and society according to Anglo norms and imperatives, which are alien and sometimes inimical to Latina/o wellbeing. See generally, Berta Esperanza Hernandez-Truyol, *Borders (En)gendered: Normativities, Latinas and a LatCrit Paradigm*, 72 NYU L. REV. 882 (1997).

⁷⁴ By "heteropatriarchal" I mean the fusion of androsexist and heterosexist ideology to construct and sustain both male and straight supremacies in law and society. See generally Valdes, *supra* note 68.

⁷⁵ By "neoliberal" I mean the national economic policies and global political economy that impose "free" markets on diverse societies for the benefit of corporate profits, oftentimes subjugating humans to exploitation and poverty. See generally PAUL HIRST & GRAHAME THOMPSON, *GLOBALIZATION IN QUESTION: THE INTERNATIONAL ECONOMY AND THE POSSIBILITIES OF GOVERNANCE* (1996); *DEVELOPMENT STUDIES: A READER* (Stuart Corbridge ed., 1996). The United States government has created a "special envoy to the Americas" whose principal task, according to the current envoy, is to ensure "economic integration of the hemisphere" under neoliberal dictates. See Don Bohning, *MacKay on "Learning Curve" as Clinton's Envoy to Americas*, MIAMI HERALD, June 3, 1999, at 14A. The accelerating drive to impose neoliberal economies worldwide through international instruments of coercion, oftentimes at the expense of humans, provoked bloody street protests during the most recent meeting of the World Trade Organization, held in Seattle, USA, as the millennium drew to a close. See, e.g., Kenneth Klee, *The Siege of Seattle*, NEWSWEEK, Dec. 13, 1999, at 30.

⁷⁶ This commitment to expansiveness is reflected in LatCrit theory's written record – the symposia based on the various LatCrit gatherings published by the journals that have cosponsored LatCrit conferences, or that otherwise have published independent symposia on LatCrit theory. For instance, the symposium based on the First Annual LatCrit Conference includes 28 authors, of which (by my count) approximately 11 are non-Latina/o in self-identification. See Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship* 2 HARV. LATINO L. REV. 1 (1997); see also *supra* note 48 and the LatCrit symposia cited therein. However, the LatCrit commitment to expansiveness is not always fully evident in the published symposia based on our programs. This disjunction stems from the fact that each year some program participants do not submit a contribution for publication in the symposium. Partially because programmatic initiatives are not always reflected in the written record, LatCrit theorists have established a website, at which all LatCrit programs to date are posted. To visit the (temporary) LatCrit website, see *supra* note 64.

⁷⁷ See sources cited *supra* note 48.

social schematics formed, in part, through law.⁷⁸ This LatCrit drive for diversity and particularity ideally will help to create an intellectual and social culture enabling the LatCrit community collectively to overcome Latina/o and other essentialisms, which sometimes stand in the way of critical outgroup and OutCrit coalitions.⁷⁹ This incremental effort is intended to promote and ground intra- and intergroup antisubordination coalitions by ensuring diverse representation in the construction of knowledge and community, and by facilitating critical investigation within and beyond the LatCrit community of various power hierarchies and their interplay.

As coalitional method, this constant and perpetual balancing of diversities and specificities produces a “rotation of centers.”⁸⁰ At each gathering, LatCrit programs have allocated time and prominence to “intersectional”⁸¹ issues in a manner that, in effect, rotates “the center” of LatCrit discourse among various, and sometimes overlapping, intra- and intergroup issues or interests. This rotational practice effectively requires all participants to “decenter” from time to time their salient identities or preferred issues, and to juggle judiciously their collective limited resources. The joint objective every year, and also from year to year, remains constant, even while sites and centers rotate: to incorporate as fully as possible in all LatCrit programs, as well as in the overall LatCrit record, the manifold intraLatina/o diversities and intergroup issues that affect outgroup social justice quests, including those of Latinas/os. If assessed critically and pragmatically, and if managed responsibly, this process of continual and rotational analysis is the best – if not the only – route to balancing *and* expanding from year to year the programmatic attention given to these intricate issues and to their complex interrelationships in light of the discursive demands established by postmodern, intersectional insights.⁸²

This system of rotation, however, obviously depends on a collective yet individual commitment to continuity and progression. Since rotation in part means that each year’s events build on those of the prior year(s), LatCrit programs and projects place a premium on repeat attendance and participation in annual or special events. To engineer the continual advancement of this discourse, knowledge and community, rotation calls for a personal and annual (re)commitment to the LatCrit enterprise among an ever-fluid yet identifiable and self-selected group of scholars. The forms of commitment among the many individuals in the LatCrit community vary over time, of course. Generally, this commitment encompasses not only attendance and participation but also planning. Because the passage of time will

⁷⁸ See, e.g., Elizabeth M. Iglesias, *Out of the Shadow: Marking Intersections in and Between Asian Pacific American Critical Legal Scholarship and Latina/o Critical Theory*, 4B.C.L. REV. 349, 19 B.C. THIRD WORLD L.J. 349 (1998) (focusing specifically on Asian American and Latina/o positionalities from a LatCrit perspective).

⁷⁹ See, e.g., Valdes, *supra* note 24, at 1278-93.

⁸⁰ I especially thank my friend and colleague, Lisa Iglesias, for discussions that developed these thoughts.

⁸¹ LatCrit programs strive to foster “multidimensional” analysis by producing opportunities to showcase projects that are intersectional, or more precisely, “multiintersectional.” See LatCrit Call for Papers, at the (temporary) LatCrit website, *supra* note 64.

⁸² See, e.g., sources cited *supra* notes 67 and 69 (postmodern analysis in outsider jurisprudence).

likely make it progressively more difficult to sustain individual commitments across the board, the goal is to ensure a critical mass of continuity in attendance, participation and planning every year – and then to balance these levels of continuity and consolidation with incremental innovation, expansion and inclusion.

Additionally, this balancing of continuity and development must anticipate and accommodate the varying levels of knowledge and experience that individual scholars bring with them to LatCrit events. Inevitably, different individuals bring with them not only varied backgrounds but also varied levels of exposure to, or involvement in, outsider jurisprudence.⁸³ This accommodation contains both substantive and structural components, and both are reflected in LatCrit programs, which seek to blend the familiar with the novel and to represent newcomers as well as veterans. The perpetual task of the group is to create an environment where all present can access, participate and contribute to our collective act of learning and advancement through critical discourse and community. This task, of course, is never-ending, and necessarily becomes increasingly challenging with the passage of time and the expansion of the group.⁸⁴

Given the diffused and nuanced nature of the decisions and considerations that underlie these group and personal commitments, only time - and effort - will determine how far LatCrit theory will (or won't) reach. In both substance and structure, LatCrit theory is an experiment-in-progress, and only time and effort will determine how far LatCrit theory actually reaches. The ultimate challenge, of course, is to persist for as long as the material conditions of subordination also persist. For the moment, it seems to be working because enough OutCrit scholars deem LatCrit worth it. The immediate and ongoing challenge, then, is to locate, excavate and rotate sites of theoretical contestation and political action to keep the LatCrit antisubordination project continuously on balance, and on the move.⁸⁵

Finally, as this symposium shows yet again, LatCrit theory from inception has sought collaboration with Latina/o and other law reviews. Each event to date has been co-sponsored by one or more law journals, which publish edited versions of

⁸³ For instance, this consideration is relevant in the context of this colloquium and its contemplated follow-ups. See *supra* note 64.

⁸⁴ Therefore, immediately after the LatCrit III conference, the planning committee for the following year's annual conference began to discuss the advisability of compiling an informal "LatCrit Primer" to be distributed to conference goers each year. This Primer in fact was produced, and prepared for distribution to those who attended the Fourth Annual LatCrit Conference in Lake Tahoe, to help orient newcomers by providing an easy way to overview some explanatory LatCrit writings. See LATCRIT PRIMER (on file with author).

⁸⁵ LatCrit engagement of this challenge already has produced vigorous exchanges, for instance, over the relative utility of "race" and "ethnicity" as categories of LatCrit analysis. See, e.g., Ian F. Haney Lopez, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 85 CAL. L. REV. 1143 (1997); Ian F. Haney Lopez, *Retaining Race: LatCrit Theory and Mexican American Identity in Hernandez v. Texas*, 2 HARV. LATINO L. REV. 279 (1997); Juan F. Perea, *The Black/White Binary Paradigm of Race: The 'Normal Science' of American Racial Thought*, 85 CAL. L. REV. 1213 (1997); Juan Perea, *Five Axioms in Search of Equality*, 2 HARV. LATINO L. REV. 231 (1997); see also Leslie Espinoza & Angela P. Harris, *Embracing the Tar-Baby: LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1585 (1997); see generally note 48 and symposia cited therein.

conference proceedings.⁸⁶ This feature of the LatCrit enterprise seeks to support, and build a coalition with, law reviews (especially those of color) while also creating collective projects and opportunities for all participants in LatCrit programs. This particular aspect of the LatCrit venture has been tailored to provide support and community both to scholars and to journals while igniting the creation of a new field in legal literature. By producing a similarly diversified, printed record of our gatherings and exchanges, this final feature of LatCrit projects advances the antiessentialist principles and antisubordination aims of this movement with respect both to community and to theory.

This is a summary description of the jurisprudential backdrop and mindset that I bring to this symposium, and activate in this Essay. It is through the lens of LatCrit theory as a form of OutCrit jurisprudence that I view and engage the three themes that converge in this Essay.⁸⁷ This "LatCrit perspective" informs my contributions to a new transatlantic dialogue on Spain's relationship to Latinas/os in light of her colonial past, her present staunch stance on behalf of human rights in international law, and her general self-positioning in contemporary world affairs.

III. Spain and International Human Rights Norms in the PostPinochet Era: LatCrit Extrapolations on Pending Postcolonial Encounters

Of course, any discussion of Spain's contemporary relationship to Latinas/os takes place against the omnipresent legacies of its colonial past in the Americas. Those legacies include the destruction of native civilizations and a record of wholesale genocide.⁸⁸ As in other regions recovering still from colonial rape, these legacies are encased today in highly stratified and polarized nation-states afflicted by widespread poverty, white male domination, political instability and social misery.⁸⁹ When Latinas/os contemplate Spain today, the burdens of these

⁸⁶ For more information about the publications corresponding to the LatCrit colloquia and conferences held in various locales since LatCrit theory's inception in 1995, see *supra* notes 48 and 64.

⁸⁷ See *supra* notes 3-9 and accompanying text.

⁸⁸ Spain's colonial record throughout the Americas has been well documented, especially in more recent years. See generally RICHARD DRINNON, *FACING WEST: THE METAPHYSIC OF INDIAN-HATING AND EMPIRE-BUILDING* (1990); FRANCIS JENNINGS, *THE INVASION OF THE AMERICA: INDIANS, COLONIALISM AND THE CANT OF CONQUEST* (1975); GEOFFREY PARKER, PHILLIP II (1978); DAVID J. WEBER, *THE SPANISH FRONTIER IN NORTH AMERICA* (1992); WILLIAMSON, *supra* note 22, at 3-167; CHRIS WILSON, *THE MYTH OF SANTA FE: CREATING A MODERN REGIONAL TRADITION* (1997); see also J.H. ELLIOTT, *IMPERIAL SPAIN, 1469-1716* (1963).

⁸⁹ Ironically, even progressive Spaniards overlook this linkage: "The Socialist Miguel Angela Martínez, then President of the Foreign Affairs Committee in the Congress of Deputies, argued that it was the 'absence of freedom and democracy and national dignity' which led to 'underdevelopment, illiteracy, unemployment and chronic illness' in [Latin America]," as if those "absences" in turn had no roots in Spanish colonial legacies. Grugel, *supra* note 20, at 152. These socioeconomic problems affect both the countries of Latin America as well as Latina/o communities in the United States. See generally Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender and Class*, 42 *UCLA L. REV.* 1509 (1995); Dierdre Martínez & Sonia M. Pérez, *Toward a Latino Anti-Poverty Agenda*, 1 *GEO. J. ON FIGHTING POVERTY* 55 (1993); WILLIAMSON, *supra* note 22, at 247-84; see also *supra* note 88 and sources cited therein.

legacies necessarily enter the analysis because they pervade current socioeconomic realities, even though Latinas/os often tend to think of Spain fondly, and warmly identify with her in many ways.⁹⁰ However, harsh social and political realities just as often tend to intrude on such reveries, creating a heavily conflicted relationship based on historical and contemporary factors that romantic and strategic versions of Hispanismo simply cannot long occlude.⁹¹

Both before and since Generalissimo Francisco Franco's death in 1975 and the subsequent shift to a parliamentary monarchy under King Juan Carlos, Spain's governments have sought mightily to pursue a strategic re/positioning of Spain in world affairs using conditions or rationales that also are directly relevant to any LatCrit consideration of Spain and human rights in international law and relations. Generally, these efforts have focused on two endeavors: first, the effort to cast Spain as the traditional and unique holder of special "access" to Latin American countries and economies based on "shared" histories and cultures (an effort to construct Hispanismo that predates today's democratic Spain) and, second, the effort to cast postFranco Spain as the paragon of modern state transitions from dictatorial regimes and bankrupted economies to progressive "democracies" and "free" markets. These dual efforts form a crucial part of the backdrop for Spain's prosecution of Pinochet, because they implicate the fundamental values or ideals underlying the human rights that Spain seeks to vindicate through that action. As such, they also help to inform this Essay's post*Pinochet* extrapolations.⁹² The first of these efforts, as explained below, is in tension with the second as well as with the effort to make Pinochet accountable for past crimes. Together, these efforts also bring into question whether Spanish policy is in fact grounded in the social justice values that Spain expounds. The interplay of these efforts and claims also call for LatCrit engagement of the tensions that inhere in this state of current affairs.

The second and more recent of these efforts – Spain's self-conception and self-promotion as a model modern democracy – is continued and advanced by Spain's championing of international human rights through its dramatic prosecution of Pinochet. However, Spain has a history that may be said to commence with the King's pivotal role in subduing the attempted Francoist coup that arose shortly after the shift to a parliamentary monarchy.⁹³ The orderly transitions of power following

⁹⁰ This sense of identification is manifested in myriad ways, including Latina/o affinity for Spain's religious, linguistic and culinary legacies in this hemisphere. See generally sources cited *supra* note 20.

⁹¹ See *infra* notes 130-40 and accompanying text. For a succinct and incisive discussion of these issues, see Kathryn E. Jones, *Spain and Latin America: Historical Perspectives and Current Realities* (1991) (on file with author); see also generally THE LATINO/A CONDITION: A CRITICAL READER (Richard Delgado & Jean Stefancic eds., 1998).

⁹² At the same time, I begin with a caveat: as is the nature of extrapolations, I will not concern myself with the many technicalities that have concerned the judges and prosecutors seeking to bring Pinochet to justice; instead, I focus in this Essay on questions of principle, policy and trajectory that might be seen as flowing proximately from Spain's prosecution of Pinochet. For a doctrinal or technical discussion of *Pinochet*, see Wilson, *supra* note 1.

⁹³ See JOHN HOOPER, *THE SPANIARDS: A PORTRAIT OF THE NEW SPAIN* 35-46 (1986); see also VICTOR ALBA, *TRANSITION IN SPAIN: FROM FRANCO TO DEMOCRACY* (Barbara Lotito trans.,

democratic elections which occurred regularly since then have helped to consolidate the acceptance of political pluralism, the rule of law and cultural diversity in the former dictatorship.⁹⁴ Externally, Spain has showcased democracy and human rights, and their spread, as a foreign policy theme. Specifically, following its own post-Franco transition, Spain has sought to “export” its embrace of democracy and affinity for human rights to Latin America.⁹⁵ Thus, Spain’s foreign and domestic policies oftentimes are calculated, framed and implemented with the objective of promoting both the substance of “democracy” and “human rights” as well as Spain’s “enlightened” image regarding those constructs. As a result, Spain now is viewed as both exemplar and upholder of democratic values and human rights domestically as well as internationally and, more specifically, hemispherically.⁹⁶ To the extent that these efforts contribute positively to the well-being of the Spanish people and to the development of an international order capable of social justice transformation, Spain’s pro-democracy and pro-human rights efforts – including the *Pinochet* prosecution – should be applauded because they help to make the world a safer place for humans, including Latinas/os and other traditionally subordinated groups.⁹⁷

Through its first of these continuing efforts – its engineering of Hispanismo/Hispanidad – during and after Franco, Spain strives to construct the reality and appearance of a “natural” or historically ordained bloc with Spain at the center and her former colonies reliably all around her.⁹⁸ Not surprisingly, “Latin America occupies a unique place on the agenda of Spanish foreign policy in that there are a significant number of agencies and areas within the public arena in Spanish society that are interested in demonstrating solidarity with the region.”⁹⁹ In this vein, democratic Spain has argued in recent times to the masters of contemporary Europe and their allies that she can serve a valuable role in world governance, and ought to be granted entree to international inner councils, in part because she possesses a special and unique relationship to the Hispanicized portions of today’s world.¹⁰⁰ In effect, Spain has cast and used arguments about this “special

1978); see generally CAROLYN P. BOYD, “HISTORIA PATRIA”: POLITICS, HISTORY AND NATIONAL IDENTITY IN SPAIN, 1875-1975 (1997).

⁹⁴ See generally HOOPER, *supra* note 93, at 38-46; see also Jonathan Story, *Spain’s External Relations Redefined: 1975-89*, in DEMOCRATIC SPAIN, *supra* note 20, at 30.

⁹⁵ See, e.g., Grugel, *supra* note 20, at 147-50.

⁹⁶ *Id.* at 144-45; see also Frank Calzon, *Juan Carlos Can Teach About Democracy*, MIAMI HERALD, Nov. 12, 1999, at 9B.

⁹⁷ Thus, the extrapolations proffered here should not be received as an effort to “bash” Spain or minimize its own progress since Franco’s death, but rather as an effort to ground transatlantic LatCrit discourse in antisubordination consciousness and commitments. See *infra* notes 124-40 and accompanying text.

⁹⁸ For instance, in 1940 Franco opened the Consejo de la Hispanidad (Council for Hispanidad), an office that has been followed by many others like it; their basic function has been to serve “as a vehicle for cultural penetration in Latin America.” Grugel, *supra* note 20, at 143-46.

⁹⁹ *Id.* at 145.

¹⁰⁰ See, e.g., Eric N. Baklanoff, *Spain’s Economic Strategy Toward the “Nations of Its Historical Community”: The “Reconquest” of Latin America?*, 38J. INTER-AM. STUD. & WORLD AFFAIRS 105 (1996); see generally WARD, *supra* note 30, at 289-320; see also Fernando Rodrigo, *Western Alignment: Spain’s Security Policy*, in Democratic Spain, *supra* note 20, at 50. Spain’s aggressive commercial policies are directed both toward Latinas/os in the United States as well as

relationship” built on Hispanismo as an asset uniquely hers, an asset of political and economic value that she proffers to Europe as her special and unique contribution to European/Western power, and which justifies her admittance into the West’s inner sancti: NATO and the European Union.¹⁰¹ Hispanismo, in other words, is the capital through which Spain leverages her power and influence in today’s world.

To magnify and further embed the reality of this special relationship, Spain launched a series of annual summit meetings for the heads of state of her former colonies, a form of convocation that affirms and entrenches Spain’s post/neo/colonial assets both in symbolic and material terms.¹⁰² These annual Ibero-American summit meetings not only provide a highly-publicized series of spectacles in which Spain basks in its sociopolitical superiority, but also generates commercial and political deals that materially maintain this post/neo/colonial hierarchy. In short, before and since Franco’s demise, Spain has striven mightily to command more respect, inclusion and influence in deciding the future of the world, arguing and believing that her own political and economic development, as well as her postcolonial network, has been undervalued by the current masters of world

toward Latin societies throughout the Americas, sometimes causing conflicted relations. See Frank Alvarado, *Cuba Policy Kills County Deal with Spanish Agency*, MIAMI TODAY, Oct. 7, 1999, at 1. These policies and similar actions, as noted below, combine the pragmatic and self-interested with idealistic or romantic notions of Ibero-American kinship. See *infra* notes 106, 115 and 127.

¹⁰¹ See, e.g., Wolf Grabendorff, *European Community Relations with Latin America: Policy Without Illusions*, 4 J. INTER-AM. STUD. & WORLD AFFAIRS 69 (1987-88); see also Alfred Tovias, *Spain in the European Community, in DEMOCRATIC SPAIN*, *supra* note 20, at 88. See generally WIARDA, *supra* note 20, at 375-92.

¹⁰² The most recent of these meetings took place in Havana, Cuba in 1999, effectively spotlighting the irony between Spain’s high profile in human rights and Cuba’s repression of political pluralism. See Juan O. Tamayo, *Cuba Toughens Crackdown, “Biggest Wave of Repression so Far this Year”*, MIAMI HERALD, Nov. 11, 1999, at 1A. In one of the most bizarre pre-summit actions, the day after the crackdown, Cuban dictator Fidel Castro “summoned” foreign journalists in Havana to “a seven-hour news conference that ended at 3 a.m.,” during which he proclaimed that his policies of repression would continue unabated despite world attention. Juan O. Tamayo, *Dissidents Get a Castro Warning*, MIAMI HERALD, Nov. 12, 1999, at 3A. Despite Castro’s performance, Spain’s King Juan Carlos and other government leaders present at the summit, along with 45 prominent former dissidents from Eastern Europe, either met with Cuba’s current dissidents or issued statements condemning Castro’s continued tyranny. See Elaine de Valle, *Havel, Walesa Lend Their Support*, MIAMI HERALD, Nov. 15, at 8A. Cuban dissidents in exile also used the summit to “fight” the dictatorship. See Elaine de Valle, *Exiles Use Summit to Fight Castro*, MIAMI HERALD, Nov. 14, 1999, at 1B. After the Havana Ibero-American summit, the Spanish government established a permanent office in Madrid to further implement Hispanismo as an economic enterprise via these annual gatherings and related projects, an office that joins a long list of similar efforts. See Grugel, *supra* note 20, at 142-47; see also *supra* note 98.

affairs.¹⁰³ She has sought, through the promotion of democratic values and the notion of Hispanismo, to attain both *presencia* and *prestigio*.¹⁰⁴

This determined undertaking has transcended changes of official power, having now been pursued both by socialist as well as conservative Spanish governments. It has, from time to time, emphasized to varying degrees both idealistic notions and aspirations as well as pragmatic calculations of world politics and Spain's ambitions and mis/fortunes within them.¹⁰⁵ Spain's sustained, orchestrated campaign to assemble a Hispanic "community of nations" with her at the center and lead, clearly is both a sincere and a strategic project – both lyrical and practical.¹⁰⁶ But, while Spain's efforts dramatically helped to better the political and economic situation of Spaniards,¹⁰⁷ it remains less clear whether they helped in any substantial way to better the lives of impoverished and oppressed Latinas/os, most particularly the indigenous and mestiza/o communities who bear most the brunt of Spanish imperialism and its legacies.¹⁰⁸

A real and threshold question is whether Spain's unrelenting promotion of Hispanismo – in both symbolic and material ways, as well as in political and economic terms – is but another form of self-enrichment, of self-aggrandizement. Hispanismo, in various ways, can be seen as inconsistent with the pursuit of social justice and the imperative of accountability that Spain simultaneously advocates through its exportation of enlightened values to its former colonies and its prosecution of a cruel, haughty *caudillo* hailing from them who ruled Chile much like the *caudillos* and elites installed throughout the Americas by Spain during its colonial supremacy. This tension is illustrated vividly by Spain's "direct investments" throughout the Caribbean and Latin America – a determined, decades-

¹⁰³ Thus, in pursuing Hispanismo as a self-promoting policy, Spain has had to tow a fine line: she has sought to position herself as a progressive and enlightened fully European society that selectively shares some cultural features with her former colonies but that, as a developed European power, does not share or approve of the sociopolitical ills that she effectively created and left behind – but only after military defeat – in her colonial wake. See HOWARD J. WIARDA, *IBERIA AND LATIN AMERICA: NEW DEMOCRACIES, NEW POLICIES, NEW MODELS* (1996).

¹⁰⁴ Richard Gillespie, *Perspectives on the Reshaping of External Relations, in DEMOCRATIC SPAIN*, *supra* note 20, at 196, 201.

¹⁰⁵ Este Barbé, *European Political Cooperation, in DEMOCRATIC SPAIN*, *supra* note 20, at 107, 107-12; see also WIARDA, *supra* note 20, at 310-20; Baklanoff, *supra* note 100, at 107-17.

¹⁰⁶ See Baklanoff, *supra* note 100, at 107.

¹⁰⁷ See Wiarda, *supra* note 20, at 95-106.

¹⁰⁸ Spain at times has operated as an "advocate of Latin America" in international or European councils. See Baklanoff, *supra* note 100, at 115-17. The effects of this advocacy have been limited generally, and probably even more so when it comes to the lives of the poor, rather than the elites, of Latin America. The poor, at best, might have seen some benefits "trickle down" to them by classic neoliberal design. See generally sources cited *supra* note 75. The elites, moreover, tend to be more the heirs (and allies) than the victims of Spanish colonial ruler(s). The point here, however, is not to criticize Spain's well-intentioned advocacy of Latin American trade interests; at bottom, the point of this Essay is that obvious avenues of direct action to disgorge unjust enrichment have been sidestepped while direct actions to exploit past wrongs have been pursued with vigor. One exemplar of this basic point is Spain's construction of a tourist industry based on colonial plunder and its failure to remit the profits as a form of moral and material restitution. See *infra* notes 143-62 and accompanying text.

long drive for power and prosperity, as well as for *presencia* and *prestigio*, which has raised for some observers the spectre of today's Spaniards as the New Conquistadores.¹⁰⁹

Over the past several decades, Spanish direct investments throughout Latin America gave the Spanish direct or indirect ownership of some of the hemisphere's most significant industries, including banking and finance, telecommunications, mining and agriculture.¹¹⁰ Similarly, Spain has "emerged as a creditor-lender *vis-à-vis* its former colonies and Brazil."¹¹¹ Moreover, as in colonial times, "Spain's economic thrust into Latin America often [has] involved coordination among the Spanish government and other sectors of Spanish society," including Big Business.¹¹² Epitomizing this public-private enterprise and its mind-set, the chairman of Telefonica de España, Candido Velazquez-Gaztelu, proclaimed a few years ago that, "For any Spaniard, Latin America is the prolongation of our land. Our people have the same language, the same culture. There are great opportunities for us to do business together."¹¹³ Thus, Spain's public-private self-positioning as newly enlightened and geopolitically unique has been directed in programmatic and powerful ways both to her preferred peers in world affairs and to her former colonies in the Americas.¹¹⁴

As noted above, this self-positioning clearly has been both substantive as well as strategic:¹¹⁵ it is in fact the case that Spain has progressed tremendously in political and economic terms since the end of fascism,¹¹⁶ as it equally is the case that Spain has exploited that progress to demand and justify better treatment for herself and her people in world affairs.¹¹⁷ No evil inheres in this practice, but it may

¹⁰⁹ See, e.g., Baklanoff, *supra* note 100, at 117. Another prime example is Spain's aggressive pursuit of what may be called neocolonialist tourism. See *infra* notes 143-62 and accompanying text. Spain's "reconquest" also may be seen as an effort to "overtake" the United States in hemispheric influence. See *infra* note 123.

¹¹⁰ Baklanoff, *supra* note 100, at 117-22.

¹¹¹ *Id.* at 109.

¹¹² *Id.*

¹¹³ *Id.* at 117.

¹¹⁴ This self-positioning, it bears repetition, has mixed both idealistic and pragmatic considerations; the observations presented in this Essay, while critical, do not overlook either the sincerity or the utility of Spanish sentiment or action toward Latin America and Latinas/os. See *infra* note 124 and accompanying text; see also Baklanoff, *supra* note 100, at 112-17. See generally Grabendorff, *supra* note 101.

¹¹⁵ See *supra* notes 105-08 and accompanying text.

¹¹⁶ Not only has post-Franco Spain substantially expanded personal liberty for its people, it also initiated a period of relative economic prosperity. See e.g., MICHAEL T. NEWTON & PETER J. DONAGHY, INSTITUTIONS OF MODERN SPAIN: A POLITICAL AND ECONOMIC GUIDE 164-71 (1997). As a formal matter, "Article 9.2 of the post-Franco Spanish constitution places an obligation on the public authorities to ... remove obstacles to the full participation of all citizens in the political, economic, social and cultural life of the country." *Id.* at 18. Last year, 1998, "Spain experience[d] one of the highest levels of growth among the countries of the euro-zone." SPAIN: REVIEW 1999, EURO. REV. OF WORLD INFO., Nov. 11, 1999, at 1, available in LEXIS, News Library, News Group File. See generally Keith Salmon, *Spain in the World Economy*, in DEMOCRATIC SPAIN, *supra* note 20, at 67.

¹¹⁷ See sources cited *supra* notes 100-01.

devolve into a self-serving convenience, for this pattern of state practice seeks to foster, and invites, respect for Spain as a progressive modern nation-state from all quarters – both from her “more developed” preferred partners and her “less developed” former colonies – while deflecting, and even exacerbating, pending postcolonial accountings in both material and political terms. Spain’s craving for power and prosperity, in addition to *presencia* and *prestigio*, may give rise to, and help to legitimate, policies and practices tantamount in tangible and symbolic terms to another form of post/neo/colonial self-enrichment, a continuation of past wrongs perhaps achieved, yet again, mostly at the expense of the original victims – the indigenous peoples of the Americas.¹¹⁸ After all, Spain’s “special relationship” with Latin America and Latinas/os, and its current value in world affairs, are based entirely on conquest and forced assimilation – the enduring artifacts of Spain’s colonial rampage throughout the Americas.¹¹⁹ While recognizing Spain’s postFranco advances, LatCrit scholars cannot long ignore recognizing, also, the incongruities raised by a continuing national self-enrichment that further exploits past imperial wrongs, even if the incongruities are accompanied by strategic activations of Hispanic “community” and sentimentality.¹²⁰ Rather, any consideration of current Spanish policies, practices and omissions in relation to human rights norms and social justice ideals can and should be measured critically against both Spain’s history and legacies as well as its contemporary claims and acts of self-conception and self-construction.

Not surprisingly, these divergences and their tensions are to be found percolating in the *Pinochet* case as well. From one perspective, as the essay by Professor Magdalena Maria Martin Martinez in this symposium points out, Spain has helped decisively and profoundly to advance the cause of justice and the prospects of transnational accountability for State-sponsored abuse not only perpetrated against its citizens but against other humans as well.¹²¹ However, from another – and perhaps more critical – perspective, Spain’s formal insistence that Pinochet pay for his abuse of power, can be viewed as, for example: a paternalistic disciplining of an errant former colony by its now-enlightened former colonizer; or as a selective, maybe even hypocritical, assertion of principle and accountability by a former colonial power that today continues *by design* to benefit politically and economically from its colonial past, rather than to disgorge ill-gotten gains. This duality of interpretation is made possible precisely by the combination of elements noted above regarding current Spanish posturing in international relations: (1) Spain’s self-conception and self-promotion as a model and progressive nation-State that respects human rights and secures human prosperity under fundamentally just and democratic governance and (2) Spain’s concurrent claim to a “special” relationship with Latin America and Latinas/os in political and economic affairs based on a “shared” history, language and culture that is reduced to Hispanismo or

¹¹⁸ See generally sources cited *supra* note 88.

¹¹⁹ See generally sources cited *supra* note 88 .

¹²⁰ See generally *infra* notes 128-40 and accompanying text.

¹²¹ See Magdalena Maria Martin Martinez, 9 U.MIAMI INT'L & COMP. LAW REV. 171; see also sources cited *supra* note 1.

Hispanidad.¹²² While the prosecution of Pinochet may be characterized as a one-judge vendetta by some,¹²³ it also is a formal governmental effort that suits very well the larger schematics of Spain's self-positioning in international relations during the past several decades – and that raises also serious and difficult questions about national integrity in other contemporaneous, and somewhat analogous, sociolegal contexts.

As with other postFranco advances, I think it a mistake to overlook the utility, or sincerity, of Spain's interventions in bringing Pinochet to justice.¹²⁴ This prosecution, coupled with similar activities in other cases and scenarios, has elevated the prospects that future dictators will not receive absolute immunity for murderous policies.¹²⁵ This prosecution perhaps will force dictators to act with less than total impunity, knowing in advance that corrupt assertions of sovereignty to cover up misdeeds may not succeed automatically. This prosecution makes life personally more dangerous and difficult for dictators and ex-dictators seeking to live comfortably on their stolen power and loot.¹²⁶ This prosecution may, and ideally

¹²² These two points, as elaborated further below, are further complicated by Spain's systematic exploitation – for present unjust enrichment – of her “monuments” to colonial wealth, power and glory. See *infra* notes 143-62 and accompanying text.

¹²³ The prosecution, directed primarily by Judge Baltasar Garzon, has been controversial within Spanish society generally and its ruling circles because the prosecution may “damage Spain's ambition to overtake the United States as the main foreign investor in Latin America.” See, e.g., Giles Tremlett, *The Slick Young Superjudge Behind Pinochet's Problems*, THE SCOTSMAN, Oct. 25, 1998, at 18. At the same time, public opinion polls indicate that a vast majority—over 70%—of polled Spaniards support the prosecution. *Id.* More broadly, Spanish Prime Minister Jose Maria Aznar “and other government officials have complained that the judge's activities are complicating Spain's relations in Latin America.” Marlise Simons, *Spain's Firebrand Judge; Baltasar Garzon Takes Aim at High Places*, INT. HERALD TRIB., Oct. 20, 1998, at 4. See generally sources cited *supra* note 1.

¹²⁴ See *supra* notes 114-18 and accompanying text.

¹²⁵ For instance, the war crimes investigations of recent years also have helped to raise the stakes for those whom would use government as an apparatus of abuse. See, e.g., James C. McKinley, Jr., *U.N. Tribunal, in First Such Trial Verdict, Convicts Rwandan Ex-Mayor of Genocide*, N.Y. TIMES, Sept. 3, 1998, at A14; Philip Shenon, *U.S. Seeks War Crimes Trial of Top Khmer Rouge Leaders*, N.Y. TIMES, Jan. 5, 1999, at A3. Similarly, Austrian police recently arrested a high-ranking Bosnian war criminal while he was on a visit to Vienna and “sent him to a prison in the Netherlands.” Charles Trueheart, *Bosnian Serb Leader Held on Charges of Crimes Against Humanity*, MIAMI HERALD, Aug. 26, 1999, at 11A; see also Marlise Simons, *Bosnian Croat Leader Goes on Trial in War Crimes*, N.Y. TIMES, April 12, 1999, at A14.

¹²⁶ For instance, the *Pinochet* prosecution already is being applied as a precedent to another notorious case from Latin America – Cuba's Fidel Castro, the only remaining dictator in the Americas. The possibility of personal incarceration while travelling abroad, as in Pinochet's case, can have the salutary effect of threatening even sitting dictators with a direct deprivation of the symbolic privileges and creature comforts to which they have accustomed themselves. “If Chilean dictator Augusto Pinochet can be held in British custody . . . or ordering the murder of Spanish citizens in Chile, then Castro must stand trial in the United States for murdering U.S. citizens,” declared one member of Congress. See Juan O. Tamayo, *Seattle Abuzz about Castro*, MIAMI HERALD, Nov. 27, 1999, at 3A. Coincidentally, Castro was holding a press conference in Portugal when he heard about Pinochet's arrest. His reaction: “Is it true?” he asked reporters incredulously. “This interests me very much,” Castro added. Brook Larmer, *What's a Tyrant to Do?*, NEWSWEEK, Nov. 2, 1998, at 39.

will, enhance the human rights environment worldwide – and the same observations apply to Spain's larger record of support for democratic values and human rights both at home and abroad during the postFranco era.¹²⁷ At the same time, it equally would be a mistake to overlook the tensions that inhere in Spain's relationship to Latin America, Latinas/os and global justice ideals in light of the complex legacies that endure from Spain's colonial history *and* from Spain's current exploitation of that history and its legacies.¹²⁸

From a critical antisubordination perspective, the history and its legacies are *a* – but not *the* – chief concern; rather, it is Spain's current exploitation of them, coupled with an inconsistent self-conception and self-promotion in international affairs, that most call for a critical accounting. From this perspective, it is clear that, in the past, Spain enriched itself through massive expropriations of indigenous resources – both human and natural – while busily and happily building monuments to its imperial supremacy with those stolen riches throughout its provinces and cities. Now, in the present, it seems (at least to some observers) that Spain seeks to enrich itself again by promoting Hispanismo, buying up what remains of Latin America under the influence of Hispanismo, and retrofitting for profitable display its colonial monuments – effectively, monuments to Hispanismo past *and* present. Despite Spain's democratic makeup and progressive exhortations, from a critical perspective it is not difficult to detect in Spain's promotion of itself and its Eurocentric moneyed interests via Hispanismo a common thread that links Spain's past colonial outrages to its present foreign and domestic policies, including trade and tourism¹²⁹ – a linkage perhaps also conjured in some ways by the *Pinochet* proceedings and Spain's leading role in them.

In so doing, Spain not only reifies colonial dynamics in economic and political terms but also further erases the centrality of indigenous peoples in the construction of Latina/o identities, both historically and presently.¹³⁰ This erasure, as a form of present-day cultural imperialism, runs directly against the LatCrit effort to excavate and reclaim Latina/o diversities, whether or not “Hispanic” in nature. This erasure impedes not only the LatCrit effort against essentialized identifications that blindly privilege one particular type of “Latina/o” over all others but, in doing so, also subverts the LatCrit commitment to antisubordination both within and beyond “Latina/o” communities. Hispanismo thereby interferes directly and seriously with foundational LatCrit commitments to antisubordination praxis and to antiessentialist analysis.¹³¹ Unless confronted collectively and critically through *intercambio abierto*, Hispanismo may come to signify nothing more than a thin and brittle form of “solidarity” that demands Latina/o willed ignorance of (or

¹²⁷ See sources cited *supra* notes 93 and 94.

¹²⁸ See *supra* notes 98-109 and accompanying text.

¹²⁹ See *infra* notes 143-62 and accompanying text.

¹³⁰ See, e.g., Siegfried Wiessner, *¡Esa India! LatCrit Theory and the Place of Indigenous Peoples Within Latina/o Communities*, 53 U. MIAMI L. REV. 831 (1999); see also Guerra, *supra* note 40.

¹³¹ See *supra* notes 45-82 and accompanying text.

indifference to) the oppressive dimensions of the “shared” past that it calculatedly invokes.

In openly asking for an accounting of Hispanismo and its uses in varied social, political and economic venues, this Essay effectively suggests that Hispanismo can serve more as an obstruction to the cultivation of a transnational community that includes both Spaniards and Latinas/os as coequal partners in the reconstruction of colonial legacies. While cast as the “glue” that brings Spain and Latinas/os together in today’s complex world, Hispanismo can fragment rather than unite Spain and Latinas/os throughout all of the Americas because it reproduces and further entrenches the unjust and unjustifiable invisibility of indigenous peoples in Latina/o communities. Similarly, Hispanismo recreates unjust and unjustifiable colonial hierarchies based on race, color, national origin, religion, language and other axes of identity. And while centering uncritically one sub-set of Latina/o commonalities, Hispanismo simultaneously flattens Latinas/os’ multiple diversities in language, culture, religion and other aspects of human society. Hispanismo, moreover, provides a romantic but misleading environment for Spanish-Latina/o economic relations that are, at a minimum, eerily reminiscent of colonial exploitation.

These objections, however, do not deny the possibility of Hispanismo’s antisubordination value; these objections should initiate, rather than foreclose, an *intercambio abierto* animated and framed by mutual and collective commitments to basic ideals of social justice and social responsibility – ideals that Spain professedly seeks to vindicate through its systematic exportation of democracy and human rights to its “less developed” former empire, and through its determined prosecution of Pinochet. As in other instances where LatCrit theorists have encountered oppressive structures rooted in colonial outrages and embedded in current social realities,¹³² the challenge here is to reimagine, reconfigure and redeploy an entrenched structure of subordination – in this instance, the ideology of uncritical Hispanismo – in order to transform it into an efficient platform for critical social justice coalitions grounded expressly in antisubordination principles, purposes and projects. The challenge here, as elsewhere, is a forward-looking enterprise that seeks consciously and consistently to build from the remains that we have inherited a better world with and for those “at the bottom” of extant hierarchies.¹³³

While it may be true that persons alive today cannot change “ancient” history,¹³⁴ thinking human beings certainly can and necessarily must choose how to align ourselves *vis-à-vis* the continuing aftershocks of a known history with present effects as part of the never-ending task of building the future. Once a history and its

¹³² One notable example has been the impact and the future of another colonial artifact—Roman Catholicism as the preferred religion of Latina/o communities— which LatCrit scholars have engaged vigorously in the past. See, e.g., Iglesias & Valdes, *supra* note 19, at 511-45; see also sources cited *infra* note 161.

¹³³ See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987); see also Iglesias & Valdes, *supra* note 19, at 515-27.

¹³⁴ This denial of social and moral responsibility for unjust enrichment, interposed by current social groups that benefit from the present effects of past injustice, is well known in outsider jurisprudence. See *id.*

problematic have been reclaimed and critically centered, as is the case with Spain's colonial mistreatment of the Americas, today's generation cannot innocently or ethically evade the present lessons of the past – at least not among those in today's generation that profess to embrace and formally espouse a principled commitment to democracy, human rights and accountability, as does Spain.¹³⁵ Instead, an observed disjunction among known historical problematics, present courses of action, and self-ascribed policy commitments, calls for serious and sustained critical engagement and, if possible, a reconciliation of knowledge, deeds and words to make them all consonant with antisubordination principles. From a LatCrit perspective, this is the place at which Spain is situated today *vis-à-vis* Latin America, Latinas/os worldwide, and the aspirational as well as actual ideals of global justice.

Whichever characterization one thinks is most appropriate to evaluate Spain's overall record and trajectory, the contrasting potential viewpoints sketched above raise even broader pending questions of identity, policy, principle, and law with profound potential consequences. From a LatCrit perspective, these and similar questions might and should be applied to many nation-States, not just Spain and/or the United States.¹³⁶ But as applied to Spain and the United States – both of whom claim a special relationship to all of the Americas¹³⁷ and both of whom consistently cast their national policies and global actions as noble from a progressive human rights perspective¹³⁸ – these questions go to the very heart of the role of law as an instrument of social justice or, more particularly, the role of law and policy in the establishment of international social justice norms. For instance:

- How should or may a progressive State come to terms with its colonial past through policies and practices that are both principled and pragmatic?

¹³⁵ See generally *supra* notes 93-96 and accompanying text.

¹³⁶ Indeed, one increasingly predictable, perhaps reflexive, reaction to the questions engaged here has been to note that other countries, and not just Spain or the United States, should be called to account. This reaction always elicits my ready agreement, but does little to advance the analysis. This reaction ultimately cannot distract us either from Spain or the United States because these two powers, more so than any others, continue to exert a relatively omnipresent sway over Latina/o life. See generally *supra* notes 15-23 and accompanying text; see also sources cited *infra* notes 137 and 138.

¹³⁷ The United States, at least since the Monroe Doctrine, has viewed the Americas as its special sphere of dominion. See generally LESTER D. LANGLEY, *THE UNITED STATES AND THE CARIBBEAN IN THE TWENTIETH CENTURY* (4th ed., 1989); PETER H. SMITH, *TALONS OF THE EAGLE: DYNAMICS OF U.S.-LATIN AMERICAN RELATIONS* (1996). Spain, as noted above, claims and cultivates a “special relationship” based on similar power relations rooted in history and geopolitics. See *supra* notes 98-120 and accompanying text.

¹³⁸ Thus, the United States sends its emissaries around the globe proclaiming the correct standards of political enlightenment. See, e.g., *Remarks by Secretary of State Madeleine K. Albright, Remarks at the Slave Labor Meeting, Berlin, Germany* (Dec. 17, 1999); Madeleine K. Albright, *Enlighten Castro on Pluralism, Freedom*, *MIAMI HERALD*, Nov. 12, 1999, at 9B. Spain similarly professes her embrace, practice and protection of human rights ideals, both domestically and internationally. See *supra* notes 98-120 and accompanying text.

- How should or may a progressive State take “affirmative action” to remediate the ill-gotten gains of past imperial abuses and disgorge efficiently its unjust self-enrichment?
- How should or may a progressive State intervene in current international affairs to promote transnational social justice, regardless of differences based on race, ethnicity, gender, religion, class or sexual orientation, in part to ameliorate the prejudices it helped to entrench through colonial social engineering?
- How should or may a progressive State act to ensure that the benefits of political, economic, and social integration and development reach in material ways peoples subordinated both by past imperial imperatives as well as by present capitalist prejudices?

These questions of course cover much, and contentious, substantive ground. They raise numerous issues with complex social, political, legal and economic ramifications.¹³⁹ But from a LatCrit perspective, and for Latinas/os worldwide, these questions are unavoidable. Indeed, they are especially urgent and especially applicable to Spain – and to the United States – because of the specific historical and current relationships that bind Latinas/os to *both* of these particular countries and their sociolegal regimes.¹⁴⁰

Because these questions are presented above in the abstract, or in macro-examples drawn from Spain’s recent history in international politics, allow me to conclude with a short concrete example of their everyday applicability. This example, appropriately I think, is born of the inaugural experience with the Tour de España Summer Abroad Study Program (the “Program”), which allows us to hold this LatCrit-in-Spain Summer Colloquium.¹⁴¹ Also appropriately, I think, this example employs and illustrates a methodology of critical outsider jurisprudence in the United States that LatCrit and other OutCrit theorists have embraced – that is, narrative, or legal storytelling.¹⁴² Below follows my concrete, illustrative story.

¹³⁹ Therefore, outsider scholars already have engaged some fundamental questions, including the issue of remedies like reparations. *See, e.g.,* Matsuda *supra* note 133; Robert Westley, *Many Billions Gone: Is it Time to Reconsider the Case for Black Reparations?*, 40 B.C.L. REV. 429 (1998); *see also* ROY L. BROOKS, *WHEN SORRY ISN’T ENOUGH: THE CONTROVERSY OVER APOLOGIES AND REPARATIONS FOR HUMAN INJUSTICE* (1999). *See generally* Justin H. Roy, Comment, *Strengthening Human Rights Protection: Why the Holocaust Slave Labor Claims Should be Litigated*, 1 THE SCHOLAR 153 (1999).

¹⁴⁰ *See supra* notes 15-23 and accompanying text.

¹⁴¹ The Tour de España Program was initiated to provide students from the United States increased academic opportunities to study in a Spanish-language setting. For more information, please *see* <http://www.law.miami.edu/europrog/spain.html>, (visited Feb. 24, 2000).

¹⁴² Outsider legal scholars ranging from FemCrits to RaceCrits to QueerCrits and LatCrits have used critical narratives to pierce the “master narrative” of the law, and this method’s success in the development of outsider jurisprudence during the past decade or so has attracted backlash from mainstream quarters that fear the consolidation of a postliberal, identity-conscious critical discourse in North American legal theory. *See generally* Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1990); Jane B. Baron, *Resistance to Stories*, 67 SO. CAL. L. REV. 255 (1994); Robert S. Chang, *Toward an Asian-American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241, 1 ASIAN L.J. 1 (1993); Derrick Bell,

Last year, the Program took our students to visit Sevilla, which included of course a tour of the cathedral.¹⁴³ We did not take our students to see the Sevilla cathedral spontaneously of our own initiative. Rather, the State-sponsored tourism literature of Spain touts this particular cathedral as the “largest” in the world and encourages visitors such as our selves to visit this beautiful building. I was shocked – though I’m not sure why – when, in reading the description of that majestic structure, one of the details that the “official” brochure recounts with apparent pride is the fact that four thousand pounds of gold stolen five hundred years ago from the Indians of today’s South America remain buried in that cathedral’s altar.¹⁴⁴ Through the Program, we paid into the coffers of State-affiliated tourist authorities¹⁴⁵ an entrance fee for over fifty students and faculty to witness and participate in that continuing spectacle of ill-gotten gain. Once inside, our group joined the others from around the globe marveling at the obscene, breathtaking excesses of size and wealth that make so many of Spain’s historical sites into viable and lucrative tourist attractions. Both financially and morally, we lent our support to Spain’s present practice of showcasing proudly and for profit the tangible remains of its imperial transgressions, spanning centuries of dominion over so much of the Americas. It was an experience that made me more critically and self-critically observant about the everyday scenarios of complicity in – or resistance to – the continuing legitimization of post/neo/colonialism’s wrongs.¹⁴⁶ More alert, I began noticing

Racial Realism – After We’re Gone: Prudent Speculations on America in a Post-Racial Epoch, 34 ST. LOUIS U.L.J. 393 (1990); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989); William N. Eskridge, Jr., *Gaylegal Narratives*, 46 STAN. L. REV. 607 (1994); Marc A. Fajer, *Can Two Real Men Eat Quiche?: Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men*, 46 U. MIAMI L. REV. 511 (1992); Alex M. Johnson, Jr., *Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship*, 79 IOWA L. REV. 803 (1994); Toni M. Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?*, 87 MICH. L. REV. 2099 (1989); Jerome McCristal Culp, Jr., *Voice, Perspective, Truth and Justice: Race and the Mountain in the Legal Academy*, 38 LOY. L. REV. 61 (1992); Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539 (1991); Margaret E. Montoya, *Mascaras, Trenzas y Grenas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN’S L.J. 185 (1994); Michael A. Olivas, *The Chronicles, My Grandfather’s Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 ST. LOUIS U.L.J. 425 (1990); Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987).

¹⁴³ Every year, the Tour de España Program includes cultural and legal visits to supplement the formal curriculum, and Sevilla has been included in these visits because it is one of Spain’s principal cities; the royal palace at Sevilla, the Alcazar, and the Sevilla cathedral are deemed to be among Spain’s most historically significant buildings— indeed, both are designated World Heritage Sites. See sources cited *infra* note 154.

¹⁴⁴ The brochure is dispensed along with the entry ticket upon payment of the entry fee.

¹⁴⁵ See *infra* notes 147-58 and accompanying text.

¹⁴⁶ Not only did this occasion spark some of the thoughts leading up to this Essay, but it also sparked immediate and animated conversations during that and subsequent Program visits to other, similar cultural and historical sites. Those conversations illustrate how the Program’s visits are both integral and supplemental to the Program’s academic purposes, which include opportunities to better understand the host country and society.

specifically how Spain and its state-run institutions consistently nurture, manage and promote international tourism as one of Spain's most lucrative industries.¹⁴⁷

During and since Franco, Spain has had a "mixed economy" over which the government exercises substantial control and derives direct benefits.¹⁴⁸ In the early 1990's, for example, the national and provincial governments entered into a five-year General Plan of Competitiveness for Spanish Tourism, which calls for a concerted collaboration among public and private sectors to build up Spain's tourism infrastructure and intensify promotional campaigns.¹⁴⁹ Culminating only now, those efforts have created an international tourist industry that operates as a primary engine for Spain's entire economy, and which is crucial to Spain's drive for "First World" living standards and international status.¹⁵⁰ 1999 estimates, for example, call for Spain's tourism industry to lead the European Union in several key indicators – and the European Union is "the largest single regional producer of Travel & Tourism in the world," followed by the United States.¹⁵¹ Industry analysts acknowledge the "phenomenal growth" of tourism, and forecast Spain's continued careful cultivation and expansion of this "golden goose."¹⁵² Our visit to Sevilla to behold its colonial monuments, I realized in retrospect, represented a small triumph for Spain's self-enrichment through neo/colonialist tourism as well as for its policy of cultivating Hispanismo as a benign worldview.¹⁵³

¹⁴⁷ For instance, according to Spain's tourism authorities, over seven million tourists visited Spain between January-August 1999. See Tourism Trends (visited Dec. 14, 1999) <http://www.iet.tourspain.es/new/ingles/princip.htm>. See generally ALLAN M. WRIGHT & GARETH SHAW, TOURISM AND ECONOMIC DEVELOPMENT: WESTERN EUROPEAN EXPERIENCES 40-50 (2nd ed. 1991).

¹⁴⁸ See NEWTON & DONAGHY, *supra* note 116, at 164-73.

¹⁴⁹ See Direccion General de Turismo, Real Decreto 2346/96, de 8 de Noviembre, <http://www.mcx.es/turismo/dgtur/rdturis.htm>; see also Elena Kandilakis, *Tourism: The Golden Goose of the Spanish Economy*, 109 BUS. AM. 18 (1998).

¹⁵⁰ "Tourism is a key element in Spain's balance of payments and one of the country's most important sectors for generating employment." *Record Tourism Year in 1994*, BUSINESS SPAIN (May 1995); see also Kandalis, *supra* note 149.

¹⁵¹ For instance, "Travel and tourism jobs are most significant in Spain with 24.3% of total employment generated." The other Iberian state, Portugal, ranked second. Similarly, tourism is estimated to account for 22.7% of Spain's gross domestic product in 1999, followed again by Portugal. The same is true for capital investment—Spain is expected to lead the European Union, with tourism expected to account for 27.5% of all capital investment. See WORLD TRAVEL & TOURISM COUNCIL, 1999 ESTIMATES—SPAIN TRAVEL AND TOURISM ECONOMY (July 1999).

¹⁵² See Cambridge International Forecasts Country Report, *Spain: Tourism*, July 1999; see generally Kandalis, *supra* note 149.

¹⁵³ By "neocolonialist tourism" I mean: (1) a concerted effort (2) by a former colonial power (3) to generate new profits for itself and its elites (4) by showcasing specifically its colonial plunder for a retail price. Thus, the display of the gold and Spain's showcasing of the Paradores or similar buildings to enrich itself further—rather than to pay even some restitution to its victims—is part of this reprehensible phenomenon. See generally Kandalis, *supra* note 149. This type of tourism is reprehensible, even though it may be said to do some good, like helping to "preserve" the world's heritage, because it is exploitative—it is reminiscent of, though different from, "sex tourism" in that it uses structural socioeconomic advantage to compound self-interest. See generally Eric Thomas Berkman, *Responses to the International Child Sex Tourism Trade*, 19B.C. INT. & COMP. L. REV. 397 (1996); see also Serge F. Kovaleski, *Child Sex Rises in Central America*, WASH. POST, Jan. 2,

The state of course collects substantial tax receipts from tourism generally but, in some instances, the national government exercises direct ownership and control, and reaps even more direct benefits, both culturally and economically; in other instances provincial governments do so.¹⁵⁴ Perhaps most notably, in recent decades the state has refurbished fabulously, and still owns directly, the chain of 85 colonial palaces, convents, castles, cathedrals and other royal and/or religious buildings known as the “Paradors Nacionales” – state inns that provide relatively pricey but reliably comfortable and elegant “stop” points for travelers.¹⁵⁵ The state even has constructed, and advertises, “Tourist Routes” that are organized around stays at its Paradors.¹⁵⁶ More recently, Spain’s Secretary of State for Commerce, Tourism and Smaller Businesses, Señor Fernandez Norriella, established new agencies to coordinate tourism, announcing his intention of further “maximizing collaboration and communication between Madrid and tourist sectors at all regional levels” while also declaring that the Paradors, specifically, “are unique to Spain. There’s no other country that can offer a hotel chain with such a combination of artistic and cultural heritage. The Paradors are a good way of preserving our rich inheritance and they attract a special type of tourism.”¹⁵⁷ The Paradors, in other words, epitomize both self-enrichment and Hispanismo as current extensions of Spanish colonialism in the Americas. Gleefully, nonetheless, the government has announced that the “Paradors beaten all records,” and that it plans to spend millions of dollars “in opening new Paradors in historic buildings and further restoration of existing gems” to make the chain even more prominent and profitable.¹⁵⁸ In sum, since the experience at Sevilla, I have begun increasingly to understand why it might seem that Spain’s very lucrative tourist industry amounts to a self-enriching, intentional exploitation of riches amassed unjustly through generations of imperial theft and abuse. Also, I realize why a national tourist industry built largely (though not exclusively) around a reglorification of colonialism might be seen as an inflammatory reminder of, and reason to also rebuke, the larger policy and project of Hispanismo and all that it presently evokes.¹⁵⁹

2000, at A17. In addition, this type of exploitation raises at least the appearance of inconsistency, perhaps even hypocrisy, when Spain proclaims the importance of accountability in the rendition of justice and pursues it, as she rightly does so today in the *Pinochet* proceedings. See generally Wilson, *supra* note 1.

¹⁵⁴ For instance, as of 1996 the national and provincial governments of Spain owned 19 “cultural sites” – mainly castles, cathedrals and the like – on the World Heritage Sites List, a list of exceptional natural and cultural sites designated under UNESCO international conventions, a list that also tends strongly to reify such sites as tourist magnets – Spain’s golden geese. See *World Heritage Sites in Spain*, available at <http://www.spaintour.com/heritage.htm>, (visited Dec. 15, 1999).

¹⁵⁵ See Kandalis, *supra* note 149.

¹⁵⁶ See *Paradors of Spain*, available at <http://www.parador.es/en/rutastur.htm>, (visited Dec. 15, 1999).

¹⁵⁷ Edward Owen, *Pounds 44m Parador Boost for New Visitors Boom*, THE TIMES, Dec. 19, 1997, at 37.

¹⁵⁸ *Id.*

¹⁵⁹ Of course, Spain is not the only country to engage in this sort of enterprise, but it surely has become in recent years one of the most consummate. In any event, other countries’ similar

Whether “intentional” or not in its unjust implications, the steady stream of promotions currently mounted by the Spanish government to attract tourism revenues for itself and Spanish business inevitably seek to capitalize on, rather than to disgorge and atone for, unjust enrichment based on colonial prerogatives, which is antithetical to emerging human rights norms and democratic Spain’s self-image as the upholder and exporter of enlightened aspirations and values.¹⁶⁰ At bottom, Spain’s tourism strategy urges that I today – that *we* today – should not only plan our cultural itineraries around seeing the remains of the preserved and glorified monuments to Spain’s sordid past but pay a price at the door of palaces, cathedrals and like buildings mainly to relive vicariously the thrills of naked, even if holy, plunder.¹⁶¹ In this way, Spain’s management of tourism is a means through which Latinas/os are invited to further ingest and internalize a Hispanic identification – that is, to forget the bad and exaggerate the good as a means of strengthening Hispanismo in order to strengthen Spain so that it can champion the cause of Latinas/os and Hispanics in the corridors of power from which we, but not Spain, are destined to be excluded even now. The hope that Latinas/os must harbor under this scheme is that, eventually perhaps, some benefit will trickle “down” to us, who have inherited not the dazzling monuments but the impoverished former colonies.

The orchestrated governmental effort called “Spain’s tourist industry” of course is economically worthwhile only if we – its targets – submit to happy promotional depictions that sanitize and normalize the human horrors that built those monuments, and then blithely plunk down our hard currencies or plastic cards to embark on an entirely uncritical “enjoyment” of a history that is as shameful as, and even worse than, today’s exploitative advertising – at least if viewed from the perspective of a modern and progressive State, much less from a critical antisubordination perspective. Thus, we all are complicit, in varying degrees, to the perpetuation of post/neo/colonial injustice, as we are complicit in other structures and systems of oppression that surround and envelop us on a daily basis. But, as we

practices cannot and do not answer for Spain’s. *See generally supra* note 140 and accompanying text.

¹⁶⁰ Generally speaking, today’s Spain is exploiting for current gains the ill-gotten gains of yesterday’s Spain. *See generally supra* notes 115-20 and accompanying text.

¹⁶¹ In a sense, Spain’s most venerable buildings provide a tangible record of the Church-State partnership in Spain’s colonization of the Americas—a topic that has attracted the attention of LatCrits over the past several years. *See also* Iglesias & Valdes, *supra* note 19, at 511-55. *See generally* Francisco Valdes, *Piercing Webs of Power: Identity, Resistance and Hope in LatCrit Theory, Praxis and Community*, 33 U.C. DAVIS L. REV. 897 (1999). *See, e.g.,* Luna, *supra* note 21; *Religion and Spirituality in Outsider Theory: Toward a LatCrit Conversation*, 19 UCLA CHICANO-LATINO L. REV. 417 (1998). Though I use the Sevilla story to illustrate pending issues around post-colonial equity, other stories recount similar encounters. For instance, the royal palace in Segovia invites visitors to experience the thrill of being in the same, tiny room where the kings and queens of Spain counted their imperial booty as it arrived from the colonies of the Americas. At Spain’s equivalent of Versailles, *El Escorial*, the visitor similarly is titillated by the overwhelming scale, richness, and detail of the royal compound. *See generally* ELLIOTT, *supra* note 88, at 253. The marble-laden, cavernous vault in which most of Spain’s kings and queens are interred is especially awesome as obscene self-indulgence. At both sites, as at the Sevilla cathedral and similar sites around the country, the Spanish government’s tourism authorities levy and collect entry fees.

embark on this *intercambio abierto* between Spanish and LatCrit scholars, we should take care not to confuse a basic point: Spain's national choice to further exploit in various ways, rather than to disgorge in proactive ways, its imperial "patrimony" is, from the perspective of living Latinas/os and LatCrits, a conscious election of policy and politics that goes to the very heart and purpose of any "community" or solidarity that might otherwise be nurtured among us.

This thumbnail critique is not to suggest that the Paradors, for example, should be leveled and salt poured over their sites. On the contrary, this brief critique of Spain's management of its affairs, and how they impact on Latina/o and indigenous communities throughout the Americas, is to suggest that the immediate and ultimate beneficiaries of the present-day profits generated from Spain's colonial loot should be rethought from a principled (albeit "pragmatic") perspective. Because Spain positions itself as a modern and progressive champion of democracy, accountability and justice¹⁶² and because I seek to apply LatCrit perspectivity in this Essay, I ask you now, as I asked myself then and since: Whose gold is that, anyway? Who should reap its benefits, direct and otherwise, today? What should be the ethics and policy of an "enlightened" state under these and similar circumstances? How would – or should – critical legal scholars guided by antisubordination principles and ethics answer the four questions posed above when applied to this particular example, and also to similar ones? And how does the romance with Hispanismo urged upon us by Spain serve to distract us from these fundamental questions of equity and integrity, delaying indefinitely, perhaps in perpetuity, their substantive resolution?

Of course, in the spirit of this unprecedented colloquium, the points raised and queries posed throughout this Essay are more than anything an embrace of the Dean's invitation to commence an *intercambio abierto* – a dialog that also is both *critico* and *autocritico* in the pursuit of social justice for Latinas/os globally. This Essay is but one effort to engage unavoidable present issues of global justice that potentially divide Latinas/os and Spain, and to find common ground with Spanish scholars in coming to a joint understanding, guided by antisubordination principles, of how best to manage the legacies of a history that no one can change. This Essay, like the colloquium that occasioned it, ideally will be viewed now and in retrospect as one step toward a transatlantic LatCrit discourse dedicated to antisubordination solidarity and social equity worldwide.

IV. Conclusion

Throughout this Essay, I have projected a subject position described as "LatCrit perspectivity" in order to bring its premises, problematics and possibilities to the attention of critical scholars in Spain's legal academy.¹⁶³ This effort is part of a first step toward a transatlantic antisubordination discourse and community. It also necessarily entails the risk of "intruding" on internal dialogs among Spaniards regarding these or related questions. Acknowledging that risk, I confess also that I do not know the substance or nuances of Spain's internal discourse about these

¹⁶² See sources cited *supra* note 93.

¹⁶³ See *supra* notes 45-87 and accompanying text.

issues, nor even if any exists. I have, however, tried to find out, again via the Tour de España Program.

Since the visit to Sevilla recounted above, I have brought up these questions with various Spaniards that we have encountered via the Program, but have not yet found much interest or willingness to engage them.¹⁶⁴ Yet I do know that everyday Spaniards can and do possess a critical consciousness about the linkage of present acts to the continuing vitality of symbols and structures that represent and may perpetuate past oppressions. Again, legal storytelling¹⁶⁵ helps to demonstrate the point.

While in Madrid, over dinner with some locals, I commented by chance that after the Program's conclusion some of us planned to visit *El Valle de Los Caidos* – the Valley of the Fallen. This complex of buildings today is generally deemed the most hallowed monument to dictator Francisco Franco's fascist regime, which ruled Spain autocratically and brutally from its civil war victory of the 1930s until the close of the 1970s.¹⁶⁶ Franco, along with many of his fellow civil war soldiers, are buried there; indeed, Franco reserved a spot for his corpse right next to the altar of the incredible cathedral that he also ordered built there with the slave labor of his beaten opponents and other political prisoners after his civil war triumph.¹⁶⁷ This site, like the Sevilla cathedral, is as heavily freighted with conflicted history as it is heavily promoted in Spain's tourism literature.¹⁶⁸

That off-hand remark triggered the most passionate conversation among Spaniards that I witnessed during the entire ten weeks of our stay in Spain. Several of the Spaniards present strongly objected to visiting the site, and embraced a boycott of it, because those visits promote a sanitized and false version of history that erases Franco's victims to help validate in symbolic and material terms the injustices of Franco's militaristic rule. Others shrugged off the vehement objections to visiting *El Valle de los Caidos* – in much the same way as my similar questions about the Sevilla visit were shrugged off every time I brought them up. Since that conversation in Madrid, I have continued to bring up the current questions of ethics and principle that are raised by the well-manicured existence and prominent formal promotions of these and similar sites as culturally and nationally significant to modern Spain. Generally, during those conversations, I have found the same dynamics replayed: many Spaniards I have encountered are aware of a contemporary debate about the ethics of visiting *El Valle de los Caidos*, and responded to my questions about personal participation in a boycott either vehemently or indifferently, but none yet has seemed interested in a sustained

¹⁶⁴ As I explained above, the basic themes of these questions became the subject of vigorous discussion with the students and amongst the faculty during the remainder of the Program. See *supra* note 146. Perhaps the reticence to speak about the Sevilla questions with me was due precisely to my status as an outsider to Spain – though that status did not inhibit discussion of the substantively similar questions about *El Valle de los Caidos*. See *infra* notes 166-70 and accompanying text.

¹⁶⁵ See sources cited *supra* note 142

¹⁶⁶ See generally SHEELAGH ELLWOOD, FRANCO (1994).

¹⁶⁷ *Id.* at 182.

¹⁶⁸ *Id.* at 181-83.

engagement of the similar questions I have posed about the Sevilla cathedral's cache of gold during the course of those same conversations.¹⁶⁹

Those conversations, at the very least, display a critical consciousness among everyday Spaniards in which present personal acts are linked directly to past evil. This critical consciousness, while not pervasive, has been palpable among the cross-range of Spaniards I have encountered in various towns, cities and regions of the country. If everyday Spaniards can and do think critically about issues raised by *El Valle de Los Caidos* and its boycott on social justice grounds, and additionally discuss them vigorously to inform consciously their future personal conduct, it seems that legal scholars interested in questions of global justice can ask no less, and perhaps more, of their government and leaders.¹⁷⁰ At a minimum, it seems entirely warranted on the terms of Spain's formal self-conception to insist on postcolonial commitments designed to avoid present complicity in past wrongs, and to foster affirmatively the consistent pursuit in every policy context of the basic human rights values and ideals that Spain seeks to vindicate in its *Pinochet* prosecution – and which she proclaims as her own more generally. If so, Spain's LatCrit scholars can count on the solidarity and criticality of their transatlantic counterparts.

¹⁶⁹ The complete indifference to the Sevilla questions may be due to differences in time-lapse and Spanish culture's longtime tradition of Roman Catholic domination, causing it to appear distinguishable from *El Valle de Los Caidos*: the Sevilla questions implicate a long-ago and far-away injustice, and they also impinge on the internalized sense of piousness that organized religion instills so effectively in Spain and other Hispanic areas, while *El Valle de Los Caidos* is relatively close in time and nominally secular. The latter distinction, of course, neglects the imposing cathedral in which Franco's corpse majestically is enshrined, as well as his political and ideological collusion with organized religion during his regime. See ELLWOOD, *supra* note 166, at 183. While differences in time-lapse could help explain the different reactions, the point here is that the critical consciousness about personal complicity *vis-à-vis El Valle de los Caidos* displayed in those conversations shows that the basic concept of linkage between the past and the present, and between the individual and the national, is in fact recognized and accepted among everyday Spaniards.

¹⁷⁰ This observation, like so many other aspects of the Essay, raises questions that are applicable not only to Spain. However, recognizing the larger applicability and complexity of this topic does not substitute for Spain's engagement and acceptance of its own accountability. See generally *supra* note 140 and accompanying text.