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Interruptions and Intersections: Journeys to the Center of the Americas

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FOREWORD

**INTERRUPTIONS AND INTERSECTIONS: JOURNEYS TO THE
CENTER OF THE AMERICAS**

*Francisco Valdes**

Introduction

In December, 2007, a diverse group of scholars and students from various regions and institutions inaugurated a new project in knowledge production, the Study Space Seminar Series.¹ Devoted to critical perspectives in comparative and international studies, the Study Space Seminar Series follows a decade-long history of collaboration among legal scholars and friends associated with critical outsider jurisprudence. As outlined below, this new project

* Professor, University of Miami School of Law, and Co-Director, Center for Hispanic and Caribbean Legal Studies. I begin by thanking Dr. Daniel Suman for spearheading the development of this inaugural Study Space program and Professor Colin Crawford for spearheading the organization of the Study Space Seminar Series as an ongoing project. I thank also the many local hosts and participants, who made the study schedule spectacularly fruitful and the contingent of diverse scholars noted below who participated in the program, and whose essays capture its essence. I likewise thank the LatCrit community of scholars around the world, whose imaginative labors make possible this type of collaborative experiment in knowledge production. I am also grateful for assistance from the Center for the Comparative Study of Metropolitan Growth at the Georgia State University College of Law, which helped make my participation possible. I thank also the editors of the TENNESSEE JOURNAL OF LAW AND POLICY and especially Stevie Phillips and Ashley Musselman, for the work and support that not only help us to disseminate this knowledge, but that also improve our efforts with their talents. Finally, I thank Richard Cornier for his consistent assistance in all aspects of this work. All errors rest with me.

¹ The participants in the Study Space I program include Elvia Arriola, Colin Crawford, Jorge Esquirol, Sheila Foster, Carmen Gonzalez, Ruth Gordon, Ileana Porras, Eric Rogers, Daniel Suman, Robert Westley, Tiffany Williams, and myself.

both reflects and expands the rich record in democratic knowledge-production undertaken by “OutCrit” scholars of various stripes in previous years.²

The Study Space Series was designed to create opportunities for scholars and students interested in critical and comparative studies to share in a programmatic experience designed both to exchange and to produce knowledge. More particularly, the Study Space Series was designed to bring together scholars from the Global South with those from the Global North in a one-week immersion program focused on the study of a particular geographical location. The week-long program schedule was structured to expose the participants to localized insights in venues that permitted an exchange of impressions, views, and insights. In addition, the program schedule included daily readings and reflection periods to generate rich, substantive discussion each evening. Through this process of exposure, reflection, and exchange, the Study Space experience allowed all participants to learn from each other even as we were learning from and about our local environment.³ This synergis-

² Critical outsider jurisprudence, or “OutCrit” theorizing, is one way of describing the commonalities shared by varied genres of contemporary legal discourses that are defined both by outsider positionality and a critical stance. Among these are feminist legal theory, critical race theory, critical race feminism, queer legal theory, and LatCrit theory. These overlapping and intersecting genres share a common lineage with critical legal studies and realism. See generally Francisco Valdes, *Outsider Scholars, Legal Theory and OutCrit Perspectivity: Postsubordination Vision as Jurisprudential Method*, 49 DEPAUL L. REV. 831 (2000).

³ The Study Space Seminar Series was conceived as an immersion-style workshop combining varied approaches to the study of law and society. The concept calls for a relatively small group of scholars and students to embed themselves in a particular locale and to examine local conditions through interaction with the environment and local actors with specific areas of knowledge or expertise. These interactions are preceded and followed by readings tailored to the program schedule. In addition, the participants engage in intensive discussion of daily experiences, events, and readings. The aim each day is to build and

tic process aims to produce new insights and new trajectories in critical studies of law, policy, and society, as reflected in the symposium essays presented below.

As with other collaborative efforts of this sort, the community of scholars spearheading the Study Space Seminar Series aims to make this process of knowledge exchange and knowledge production socially relevant from an antisubordination perspective.⁴ Thus, we hope that the expanded opportunities for intellectual interaction created through the Study Space Seminar Series will facilitate enduring relationships and networks committed to the promotion of social justice action. Of course, the translation of theory into action can take many forms and many turns; our aim, in creating the Study Space Seminar Series, therefore was to provide a collective platform for individual scholars to do their social justice work in diverse yet programmatic terms. In this way, the Study Space Series provides another illustration of academic activism⁵ as we, in the “LatCrit” community, understand it.⁶

expand on the learning and reflection of previous days, such that each participant gradually develops a viewpoint on a particular aspect of the program. After the schedule concludes, participants compose short essays like the ones presented in this symposium. These efforts, we hope, will inform the participants’ teaching and scholarship in manifold ways, and the essays, we hope, will become a resource both for scholars and teachers in the areas of critical and comparative studies. For more information on the Study Space concept and project, visit www.latcrit.org.

⁴ See Jerome M. Culp, Jr., Angela P. Harris & Francisco Valdes, *Subject Unrest*, 55 STAN. L. REV. 2435 (2002) (on antidiscrimination and antisubordination).

⁵ For an elaboration of academic activism as a LatCritical concept, see Margaret E. Montoya & Francisco Valdes, *Afterword—Latinas/os and Latina/o Legal Studies: A Critical and Self-Critical Review of LatCrit Theory and Legal Models of Knowledge Production*, FLA. INT’L U.L. REV. (forthcoming 2008).

⁶ See generally Francisco Valdes, *Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 LA RAZA L.J. 1 (1996) (discussing the

As the symposium essays reflect, the inaugural Study Space program focused on Panama City, Panama. We chose this location because it symbolizes and represents the epicenter of the Americas in many different ways. Geography, history, and commerce place Panama City squarely at the center of the micro and macro processes leading to the construction of what we today know as the Americas. Panama City is a relatively small location through which much of the world (still) travels. Today, Panama City embodies the myriad vectors and valences resulting from the human and natural forces that converge precisely there. It is a place defined by interventions and interruptions—interventions mainly from Europe and the North, which repeatedly interrupt the aspirations, struggles, and accomplishments of local communities. As the symposium authors note in their essays, Panama is both symbol and site of hemispheric, if not global, convergences and contestations; today, it reflects and projects the cumulative record of humanity on these lands during the past half millennium, and beyond.⁷ No better place existed for the inauguration of the Study Space Seminar Series.

The eight essays presented below capture the observations and insights of most of the contingent that helped to

colloquium at which the “LatCrit” subject position was conceived); Francisco Valdes, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997) (discussing the First Annual LatCrit Conference, held in 1996, and the circumstances leading up to it). For current and historical information on LatCrit projects and publications, visit Latina and Latino Critical Legal Theory, Inc., www.latcrit.org.

⁷ For example, “In 1519, the Spaniards founded Panama City, the first permanent European settlement on the Pacific coast, locating it at the lowest and narrowest point of the landmass that separated the Atlantic from the Pacific. From its inception the city’s fate had been intimately linked to its function in facilitating international trade.” Ileana Porras, *Panama City Reflections: Growing the City in the Time of Sustainable Development*, 4 TENN. J.L. & POL’Y 360-61 (2008).

inaugurate this new project.⁸ These essays not only reflect our approach to knowledge exchange and production as noted above, but also set out several substantive themes drawn from the program and readings in Panama that build upon many of the lines of critical inquiry previously pursued in OutCrit legal studies. Outlining these broad substantive themes, how they are represented in these papers, and how they contribute to the ongoing development of OutCrit legal studies, provide the purpose and framework for this Foreword.

The Foreword is divided into two main parts, each devoted to a trio of thoughts or themes that recur in the essays, and both of which follow a prefatory note on Lat-Crit theory, community, and praxis. In Part I of this Foreword, the focus is on the recurring salience of history, the relevance of history, and the exacerbation of historical legacies by corporate globalization. The discussion of these three inter-related points in Part I, as reflected in the symposium essays, set the stage for the three insights or lessons spelled out in Part II of this Foreword. In Part II, attention shifts to the persistent yet multifaceted linkage of “class” to other categories of identity, to the complex role of law (or its absence) in the construction of social and material realities, and to the promise and limits of knowledge-production in the struggle toward complete de-colonization. The trio of lessons extrapolated from the symposium essays in Part II of this Foreword in effect confirm, deepen, and expand the ongoing work of LatCrit and other OutCrit scholars toward a post-subordination society.⁹ We thus begin with a LatCritical preface to help contextualize the Study Space Seminar Series and the symposium essays that help to inaugurate it.

⁸ Additional essays from the Study Space I program participants will be published in another upcoming symposium.

⁹ For a discussion of postsubordination vision as jurisprudential method, *see* Valdes, *supra* note 2.

Situating the Study Space: A LatCritical Preface

As the introduction notes, the Study Space Seminar Series is a project conceived and organized by a diverse group of legal scholars. Based in different universities across the hemisphere, the Study Space Seminar Series is a joint project specifically of the LatCrit community and the Center for the Comparative Study of Metropolitan Growth at the Georgia State University College of Law, where the project is principally based.¹⁰ The Study Space Seminar Series therefore is one of the “critical partnerships” organized by LatCrit-identified scholars in collaboration with other institutions of legal education in the United States and beyond. This brief preface thus aims to situate the Study Space Seminar Series within the context of LatCrit theory, community and praxis, as undertaken specifically in the form of various critical partnerships, to conduct joint projects of academic activism.

Based principally within the academy of the United States and other academic institutions around the world, the far-flung LatCrit community of multiply diverse scholars has devoted much of its time and energy to the production of knowledge in the form of traditional texts published in scholarly journals.¹¹ However, we have understood and approached this traditional work in both traditional and nontraditional ways. We have understood the core mission

¹⁰ For more information on the Center and its work, visit <http://law.gsu.edu/metrogrowth/>.

¹¹ Twenty-some LatCrit symposia have been published, both in mainstream academic journals, as well as in specialty journals devoted to difference and social justice. A list of these publications, as well as information on LatCrit theory, including the full text of most of the LatCrit symposia based on our Annual Conferences or other academic events (such as the International and Comparative Colloquia and the South-North Exchanges) can be obtained at the LatCrit website, available at <http://www.latcrit.org>.

of knowledge-production in ways that recognize yet transcend traditional paradigms of academic work. To capture this difference, we sometimes describe our approach as “academic activism” to underscore the joinder of critical theory and antistatist action in all that we do.¹²

While elaborated fully in other texts, the basic LatCrit approach to knowledge-production and academic activism aims consciously to unite the work of theory with the work of community-building through collaborative or coalitional group efforts.¹³ This general description applies to the varied projects in the “Portfolio of Projects” that constitutes the kinds of “collective personal praxis” that LatCrit scholarship has carefully cultivated during the past dozen or so years.¹⁴ However, the blending of theory, community and praxis in the context of any particular project, event or publication can take many different forms. Indeed, this flexible, imaginative, and nimble approach to innovation in diverse situations has become a hallmark of LatCrit projects, as the Study Space itself so richly illustrates.¹⁵

This earnest and proactive embrace of innovation has incrementally lead LatCrit scholars toward our own particular version of democratic knowledge production.¹⁶ To us, as explained more fully in other LatCritical texts, democratic models of knowledge-production tend to be generally open to participation across diverse categories of

¹² See Montoya & Valdes, *supra* note 5 (elaborating the concept of academic activism).

¹³ E.g., Berta Hernández-Truyol, Angela P. Harris & Francisco Valdes, *Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis*, 17 LA RAZA L.J. 167 (2006).

¹⁴ *Id.* at 194-96 (on LatCrit theory and personal collective praxis); see also www.latcrit.org (describing the projects in the LatCrit portfolio).

¹⁵ See *supra* note 5 and *infra* notes, 70-73 and accompanying text (on knowledge production models and their combination).

¹⁶ Montoya & Valdes, *supra* note 5 (on the LatCrit version of the democratic model).

discipline, perspective, geography, or professional status. In addition, democratic projects focus on the development of “safe zones” constituted through various academic projects or programs that span the entire year and thereby enable numerous opportunities for myriad interactions among individual scholars in the pursuit of their respective scholarly agendas.¹⁷ Finally, democratic models tend to emphasize both community-building and institution-building to create the conditions for knowledge-production unlimited by the constraints of mainstream institutional politics within legal academia.¹⁸ These characteristics lead democratic experiments toward interdisciplinary and inter-generational paths of development that combine theory and action in varied ways.¹⁹

In the LatCrit context, as noted above, these various ways of combining theory and action are grounded in the antisubordination principle and its promotion through academic activism. Our adherence to the principle of antisubordination trains our attention on analyses and solutions that spring from the “shifting bottoms” of diverse socio-legal situations across the globe.²⁰ In other words, the grounding of “academic activism” in LatCrit theory, community and praxis means that our work is informed and guided first and foremost by the insights to be drawn from the bottoms and the margins of society, rather than the

¹⁷ *Id.* (elaborating the relationship of safe “space” and safe “zone” in the context of different knowledge-production models).

¹⁸ *Id.*; see also Hernandez et al, *supra* note 13, at 196-99 (on LatCrit community and institution-building efforts).

¹⁹ See generally *supra* note 5 and *infra* notes, 70-73 and accompanying text (on strategic combinations of different aspects of knowledge production models to maximize the impact of scholarship as a form of academic activism).

²⁰ See Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177 (1998-99).

privileged bromides of “enlightened” elites.²¹ With this emphasis on academic activism LatCrit scholars do not question the centrality of knowledge-production in the totality of our labors. Instead, this emphasis provides an insistent reminder to each and all of us that knowledge-production can be conceived and practiced in and through many different ways and means. And, of course, different ways and means serve different ends or purposes;²² hence, our normative grounding in antisubordination values and our methodological grounding in democratic knowledge-production.

The important point in these prefatory notes regarding academic activism and knowledge-production as Lat-Critical practice is that our work as “academics” must transcend traditionalist paradigms in both method and substance if our work is to have antisubordination bite. We must not only re-imagine and re-conceive the project of knowledge production; we must also practice knowledge-production in innovative ways that enable persons and groups to challenge systems of subordination in diverse yet specific contexts. In other words, the fundamental substantive purpose of our knowledge-production work as academics must be to enable the self-determination of individuals and communities on egalitarian terms.

In method, the scope of our work as academics consequently must include efforts, projects, and work products not limited by or tailored to the elegant articles of mainstream academic journals. Academic activism should thus embrace a multidimensional set of practices against social injustice, both in the politics of knowledge-production as well as in the social and material construction of society at

²¹ See generally Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

²² See Jean Stefancic, *The Law Review Symposium Issue: Community of Meaning or Re-Inscription of Hierarchy?*, 63 U. COLO. L. REV. 651 (1992) (offering a good overview of basic possibilities).

large. This approach and grounding entails an appreciation for both the necessity and difficulty of collective action.²³ If nothing else, collaboration must be understood as a pragmatic imperative of antisubordination work: as the Civil Right and Labor Movements of the past century have demonstrated, collective action is necessary to challenge entrenched elites successfully. This insight is no less true when applied to academic elites in control of the institutions and processes that produce the knowledge through which individuals and societies understand their personal and collective realities.

However, OutCrit jurisprudential experience teaches that a key challenge in the initiation and maintenance of a robust antisubordination agenda is to root collective action in shared substantive principles, and in their principled, egalitarian practice.²⁴ Only when participants in collective action believe that collective principles are the object of their actions will a sense of collectivity endure and grow. In the long run, only principled transparency can provide the solidarity to overcome adversity. Without a shared and transparent commitment to a normative grounding, collective action will tend to be fleeting and minimally effective. The lessons of jurisprudential experience thus counsel community-building and democracy in the construction and development of scholarly formations and discourses dedicated to legal reformation as a vehicle toward social justice transformation.²⁵

²³ Coalitional collaboration is also a hallmark theme and practice among LatCrit scholars. *See, e.g.*, Hernandez et al, *supra* note 13 at 193-99 (on coalition-building as LatCrit praxis).

²⁴ *See, e.g.*, Francisco Valdes, *Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits and LatCrits*, 53 U. MIAMI L. REV. 1265 (1998-99) (outlining varying outsider approaches to theory-making, and detailing LatCrit practices as a synthesis).

²⁵ *Id.*; *see also supra* note 11 and sources cited therein (on LatCrit experience in this area).

Oftentimes, the first impulse toward collective social justice action is to seek the likeminded within our “home” institutions or local communities. These connections are no doubt helpful, even indispensable. But alone, local connections do not suffice. If we stop there—or focus only on those immediate connections—we will remain forever defined, encased, and delimited by those pools of possibility. Our efforts and horizons will be shaped by local vagaries and institutional politics. Because local politics oftentimes reduce us to a “society of one” (or two) within our home institutions, we must reach out if we are to realize the benefits of collective action as part of our work.²⁶

Thus, to ensure the integrity of knowledge-production in the service of self-determination, academic activists interested in collective action oftentimes must focus first on the creation of alternative and autonomous formations, organizations, or associations that avoid replication of traditionalist imperatives and dysfunctions.²⁷ We must, in short, create alternative support mechanisms for the incubation and sustenance of academic activism in tandem with critical theory. For me, and for many of the other scholars spearheading this innovative project, the LatCrit community has become this “home space” for principled and liberational academic activism.²⁸ This LatCrit

²⁶ See Rachel Moran, *Commentary: The Implications of Being a Society of One*, 20 U.S.F. L. REV. 503 (1985-86) (elaborating the “society of one” concept).

²⁷ LatCrit scholars began this process about a dozen years ago. See, e.g., Francisco Valdes, *Under Construction: LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087 (1997) and Francisco Valdes, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997).

²⁸ Lawrence *supra* note 9; see Charles R. Lawrence III, *Foreword: Who Are We? And Why Are We Here? Doing Critical Race Theory in Hard Times*, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes, Jerome McCristal Culp & Angela P. Harris, eds., 2002) xi, xvii (explicating the safe space context).

community is not the only possible home space for academic activists today, but I am grateful to the scholars behind the Study Space Seminar Series and similar projects for helping to expand the horizon of critical possibility. With these prefatory remarks as background, we can now turn to the program and papers that inaugurated this latest exemplar of academic activism in the service of antisubordination knowledge production.

I. Past, Present, and Future: Engineering the Structure of Social Inequality

A basic tenet of OutCrit jurisprudence is that context matters and, therefore, history matters.²⁹ History, in other words, provides the context for critical analysis of social realities as presently structured. This avoidance of ahistorical study is very much manifest in the symposium papers presented here: most authors weave into their essays historical sketches to set the stage for a comprehensible critique of present-day legacies.

In my view, this uniformity is remarkable. I find it remarkable because this high level of consistency is not a result of programming on the part of the Study Space organizers. Instead, this educated coincidence flows organically from the individual choices that each scholar made in mapping out the text she or he had in mind. Thus, each author, with her or his set of compositional choices, illustrates and confirms the fundamental tenet of critical studies in favor of historicizing all analyses. These choices point to the first substantive theme recurring in the symposium essays.

²⁹ Consequently, law school courses devoted to social justice studies typically begin with, or feature, a historical component that similarly helps to contextualize the specific areas of study and discussion. See, e.g., Francisco Valdes, *Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism: Marking the Stirrings of Critical Legal Education*, 10 ASIAN L.J. 65 (2003).

A. The Salience of History: Colonialism and Imperialism as Context

In the instance of Panama City, the history that the symposium authors sketch pivots on the processes of Spanish colonialism and (mostly) North American imperialism dating back to the 1500's.³⁰ This enormous historical expanse is thick with nuance, complexity, and contradiction—a thickness that continues to define specific and prevalent conceptions of the “Latina/o” today.³¹ The combined works of these eight authors similarly teach that we cannot fully understand this modern-day location without first comprehending the histories of colonialism and imperialism that incrementally lead up to the present moment.

Perhaps the essay by Osvaldo Jordan, focusing on the status of land taken from indigenous communities during colonial and imperial periods, provides the most extensive discussion of history as context.³² His focus trains critical attention on the uses of indigenous lands, sometimes in violation of legal instruments or political compromises, in ways that further damage indigenous communities to expand wealth or comfort for the successors-in-interest to colonial and imperial legacies. In this essay, Professor Jordan makes plain that the current structure of land allocation cannot be addressed, much less redressed, without a careful exposition of its colonial and imperial underpinnings. This essay pointedly demonstrates the salience of history in contemporary law and society.

³⁰ For a historical overview, *see generally*, Francisco Valdes, *Race, Ethnicity and Hispanismo in Triangular Perspective: The “Essential Latina/o” and LatCrit Theory*, 48 UCLA L. REV. 305 (2000-01).

³¹ These histories inevitably produce resilient legacies for the construction of Latina/o identities and communities today. *See id.*

³² Osvaldo Jordan, *“I Entered During the Day and Came Out During the Night”: Power, Environment and Indigenous People in a Globalizing Panama*, 4 TENN. J.L. & POL’Y 467 (2008).

In addition, the essay by Professors Carmen Gonzalez, focusing on the current expansion of the Canal facilities,³³ and the essays by Professors Jorge Esquirol,³⁴ Ileana Porras,³⁵ and Daniel Suman,³⁶ all of which focus on various aspects of housing and the re-development of properties, also provide historical background to analyze local present-day circumstances. Each of them explains how today's difficulties stem from historical decisions and actions taken during colonial and imperial regimes, and how the viability of potential policy solutions are defined by the possibilities for reform that those legacies have since established. Although each of these authors focuses on a different or particular subset of local histories in order to set the stage for their focused analysis of a specific topic, the composite conclusion derived from their common methodology is that history serves as an indispensable key to a critical comprehension of the present. These authors, each in her or his own way, illustrate and demonstrate the salience of history to antisubordination analysis and critical theory.

The brief historical snapshots presented in these papers indicate a long and multifaceted process of contestation, manipulation, exploitation, interruption, and interference. While not the exclusive focus of any paper in this symposium, this historical record nonetheless helps to provide a context for comprehension of modern-day realities. Without this background in mind, the present might seem random, but that would be mistaken, as the papers so

³³ Carmen Gonzalez, *Environmental Impact Assessment in Post-Colonial Societies: Reflections on the Proposed Expansion of the Panama Canal*, 4 TENN. J. L. & POL'Y 303 (2008).

³⁴ Porras, *supra* note 7 at 357.

³⁵ Colin Crawford, *Saving Biodiversity at the Crossroads of the Americas*, 4 TENN. J. L. & POL'Y 199 (2008).

³⁶ Daniel Suman, *Tamales & Bollos – Patrimonio de la Humanidad / World Heritage: Challenges Faced by Restoration Efforts in Panama City's San Felipe Historic District*, 4 TENN. J. L. & POL'Y 403 (2008).

clearly demonstrate. Thus, the relevance of the past to the present, as elaborated in the essays, points to the second recurring substantive theme outlined here.

B. The Present Relevance of History: Still Living the Past

As mentioned above, the authors in this symposium present their historical sketches not merely as an exercise in learning about the past, but as a step in the process of learning about the present. Thus, the authors use their historical sketches as a point of departure for their analyses of more specific and concrete contemporary realities in and around Panama City. Whether their focus turns to the allocation of land, the structuring of formal democracy, the non-regulation of “development” or the preservation of cultural and environmental assets from erosion or erasure, the authors all show us that today’s landscape is the cumulative result of the historical processes they have sketched for us.

In repeatedly demonstrating the present relevance of history, the symposium authors provide us a salutary reminder of a basic and crucial insight: it took centuries for the forces of oppression to engineer the structure of present-day inequalities,³⁷ and it should come as little (if any) surprise to learn that the project of dismantling these structures of subordination presents a similarly inter-generational struggle. This realization implies a scale and depth of struggle that cries out for collaborative and coalitional exertions rather than only individual, atomized actions.³⁸ This reminder effectively reinforces the basic lesson that underscores the need for individual yet concerted acts of will if the journey toward a postsubordination

³⁷ See Valdes, *supra* note 30 (on colonial and imperial histories).

³⁸ The point to emphasize is the need for both personal and collective actions, or “personal collective praxis.” See *supra* note 13 and accompanying text (on personal collective praxis as a LatCritical norm).

society is ever to end happily. These papers show that individuals must take the initiative to resist the momentum of an entrenched status quo, but that to succeed, motivated individuals must connect and combine to create and mutually sustain successful social justice interventions.

As noted above, the authors represented in this symposium each felt a substantive need to provide historical context to elaborate their analysis of a particular aspect or topic relating to contemporary Panamanian society. History, then, is the point of departure for critical analysis of present-day realities. Professor Gonzalez has perhaps phrased this point most aptly: “Even after the colonial power departed, the institutional and ideological vestiges of colonialism were not easily eradicated.”³⁹ Similarly, Professor Jordan roots his analysis of land and identity on “the persistence of colonial relations between indigenous peoples and the descendants of the colonizers.”⁴⁰ Focusing on North American imperialism, Professor Porras notes the “legacy of the U.S. controlled canal zone”⁴¹ while Professor Colin Crawford focuses on the continuing impact of the lands “reverted” to Panamanian control upon the departure of U.S. forces from precisely that zone.⁴² As a set, these essays underscore the substantive, analytical need to historicize contemporary law and society in order to understand—and reform—it.

In each of these examples, the symposium author shows us that contemporary inequalities are the proximate if not direct consequence of historical injustices. They show us, in effect, the social constructedness, and therefore contingency, of modern day societies. They show us the power of entrenchment, and the adversity facing individuals who seek to challenge the injustice of that power today.

³⁹ Gonzalez, *supra* note 33 at 304.

⁴⁰ Jordan, *supra* note 32 at 468.

⁴¹ Porras, *supra* note 7 at 357.

⁴² Crawford, *supra* note 35 at 199.

They show us that individuals who band together with others to undertake principled antissubordination action face daunting odds, yet sometimes succeed in denting the structures of subordination. In this way, they show us a microcosm of social justice work not only in Panama but also across the globe.

C. Corporate Globalization: Exacerbating Historical Legacies of Subordination

As an exercise in comparative scholarship, these symposium essays also suggest that the salience of history, and the relevance of history in present-day societies, are not phenomena isolated to Panama alone. Rather, they reflect larger historical patterns of domination and subordination, similarly carried out during the eras of colonialism and imperialism in varied regions of the hemisphere and globe, that shape much of the past several centuries in human affairs. In this way, the local focus of this Study Space program also serves to illuminate the larger processes, and effects, of corporate globalization today.

More specifically, the symposium essays effectively illustrate how historical legacies established by colonial and imperial enterprise help to structure the operations and imperatives of corporate globalization. These papers show how the “winners” under colonial and imperial regimes are best situated to remain “winners” in the corporate-oriented organization of globalization as we know it today. These papers also pointedly show how corporate globalization mirrors the dynamics of colonialism and imperialism. To some, these observations may lead to the suspicion that globalization is, in many ways, a structural extension of colonial and imperial power dynamics in both local and in global terms.

As with the prior two points and linkages, the relationship of corporate-style globalization to the legacies of colonial and imperial histories is made, sometimes explic-

itly and sometimes implicitly, in the symposium essays. An apt example of explicit linkage is provided in the essay by Eric J.D. Rogers, whose analysis focuses on the impact of housing issues specifically for the middle class in Panama City.⁴³ Viewing the various factors that serve as catalysts for the “unprecedented growth in all sectors” of that economy, and especially in the trafficking of property, Rogers notes that, “much of this housing development is aimed at “baby boomer” retirees and second home buyers from the US, Canada and Europe.”⁴⁴ Similarly, he notes, “foreign investors see a great deal of potential in Panama City as both a hub of shipping and industry, as well as a retirement mecca for North Americans and Europeans.”⁴⁵ The local, in other words, is driven by the global.

Professor Porras similarly notes that this influx of capital, persons, and development is “playing havoc with all sense of urban scale,” which she notes brings into question whether or not sustainable development can be a coherent policy concept in this economically globalized local context.⁴⁶ Conversely, Professor Porras reminds us expressly that sustainable development requires us to analyze “our new understanding of the interrelationship between economic activity, environmental impact and issues of intra- and inter-generational equity.”⁴⁷ These explicit and specific examples thus illustrate a point that travels through the symposium essays as a whole: the powerful forces of corporate globalization today not only affect localities everywhere, but also do so in ways that materially and structurally reinforce the legacies of colonial and imperial rule. The essays show how colonial and imperial baselines

⁴³ Eric J. D. Rogers, *Out with the Old in with the New: Housing Issues for the Middle-Class in Panama City, Panama*, 4 TENN. J.L. & POL’Y 507 (2008).

⁴⁴ *Id.* at 513.

⁴⁵ *Id.* at 514.

⁴⁶ Porras, *supra* note 7 at 360.

⁴⁷ *Id.* at 392.

effectively create the structural platforms from which variously-positioned persons or communities can (and cannot) participate in the promised benefits of globalization processes. Thus, history is not only salient, and not only relevant to the present, but it also serves as a point of staging for the skewed politics of corporate globalization that continue to reinforce unjust legacies.

As these illustrative examples show, corporate globalization—like colonialism and imperialism before it—is a complex and powerful process of contestation and exploitation. It is a human phenomenon structured to generate “winners” and, therefore, “losers.” The structure of this stratification is the structure of society, both yesterday and today. The resulting architecture is always local, and yet always representative of larger patterns. These patterns lead to critical substantive insights reflected also in the symposium essays, and outlined below in Part II of this Foreword.

II. Identity, Law and Knowledge: Pivots of Power and Action

As outlined in Part I of this Foreword, the symposium essays reflect three recurrent and inter-related themes drawn from the Study Space in Panama during December, 2007. These three themes focus on the salience of history, the present relevance of history, and the continuation of historical legacies through the dynamics of corporate globalization. These three themes in turn suggest three lessons or conclusions: the strong relationship between “class” and other forms of identity, the complex yet central role of law (or its absence) in the construction of social and material realities, and the promise and limits of knowledge-production in the quest toward a de-colonized reality. These three lessons or conclusions, as sketched below, both

confirm and build on the body of literature that OutCrit scholars have produced in recent years.⁴⁸

A. Beyond the Dichotomy: The Interconnection of “Class” to (Other) Social Identities

In the United States, class-based identities are oftentimes viewed as somehow oppositional to identities based on other social constructions, such as race, gender, ethnicity or sexual orientation.⁴⁹ In comparative South-North studies, class-based identities are oftentimes emphasized as markedly disconnected from other social identities, such as those based on race, or ethnicity.⁵⁰ As an exercise in experiential and immersion study, this Study Space program brought into sharp view the limitations inherent in both of these propositions. The symposium essays corroborate that class, in fact, is oftentimes co-constitutive of other social identities, and vice versa.⁵¹ The lesson, in other words, is

⁴⁸ See, e.g., *supra* note 11 and sources cited therein (listing the LatCrit symposia of the past decade or so).

⁴⁹ See, e.g., Hernandez et al, *supra* note 13 at 193-99 (on the mutually-reinforcing relationship of class and other axes of sociolegal identity as understood by LatCrit theorists); see also Elizabeth M. Iglesias & Francisco Valdes, *LatCrit at Five: Institutionalizing a Postsubordination Future*, 78 DENV. U. L. REV. 1249, 1270-73 (2000-01) (making the same point).

⁵⁰ See generally, Tanya Hernandez, *An Exploration of the Efficacy of Class-Based Approaches to Racial Justice: The Cuban Context*, 33 U.C. DAVIS L. REV. 1135 (1999-2000) (focusing on Cuba to explore, and debunk, the popular claim that color and class are not systemically correlated in the Caribbean and southern or central American societies).

⁵¹ Building on early concepts like intersectionality and antiessentialism, various OutCrit-identified scholars have developed this point during the past decade or so, steadily mapping the mutually-constructed nature of “different” identity categories. See, e.g., E. Christi Cunningham, *The Rise of Identity Politics I: The Myth of the Protected Class in Title VII Disparate Treatment Cases*, 30 U. CONN. L. REV. 441 (1997-98); Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257 (1997); Francisco Valdes, *Sex and Race in Queer Legal*

that class correlates to race, gender, ethnicity and other categories of identity in flexible and variegated yet *systematic* ways, rather than simply in idiosyncratic ways. This correlation is a key feature in the structure of stratification that defines many societies today, whether in the Global South or in the Global North.

This correlation of class and other forms of identity, both in the Global South and in the Global North, is made most vividly in the symposium essays by the contribution from Tiffany D. Williams, which focuses on a comparative study of three large cities that span the hemisphere: Atlanta, Panama City, and Rio de Janeiro.⁵² Examining the demolition of public housing projects in these different geographical and sociopolitical contexts, Williams notes repeatedly how “poor” areas slated for demolition typically are neighborhoods populated by indigenous people, African-descent populations, and other traditionally marginalized groups.⁵³ Empirically, each of these social groups shares two things in common with the others, despite their different geographical and sociopolitical particularities: none are white in the European sense, and all are poor in the economic sense.

This structural, far-reaching correlation between class and other categories of sociolegal identity is also reflected in the essays by Professors Porrás, Crawford and Jordan: in each instance, they note in the analyses of their respective topics how issues of material or environmental injustice oftentimes can be mapped along the lines of su-

Culture: Ruminations on Identities and Inter-Connectivities, 5 SO. CAL. REV. L. & WOMEN'S STUD. 25 (1995); see also *infra* note 58 and sources cited therein (on the multidimensional nature of social and legal identities).

⁵² Tiffany D. Williams, *The Ties that Bind: Capitalizing on the Existing Social Fabric in Public Housing to Revitalize Neighborhoods and Avoid Displacement in Panama City, Panama*, 4 TENN. J.L. & POL'Y 535 (2008).

⁵³ *Id.*

premacist identity politics based on race, ethnicity, class and similar identity axes. Professor Porras, for example, explains that re-development and gentrification of the old city of Panama was made possible only through the “displacement of the poor and mostly black community” that previously inhabited it.⁵⁴ Professor Crawford takes the point deeper into history, noting that “historically, the Spaniards left the wet forests and swamps of the Caribbean to the Indian and Black communities” and that this history has been “characterized by great social and economic inequality that persists to this day.”⁵⁵ Professor Jordan’s analysis, focused on the vexing relationship of indigenous communities and the descendants of white settlers or colonizers, similarly notes the identity-inflected distribution of land and related material resources along racial and ethnic categories:⁵⁶ “This historical legacy of uneven wealth distribution, that was associated with class, race and ethnicity,” he observes, was the catalyst for “an increased mobilization of indigenous peoples, peasant leagues, labor unions, student federations, and other popular organizations” in the latter half of the present century.⁵⁷ Thus, the authors as a whole provide a bill of particulars that concretely illustrates and establishes the correlation of class to other forms of identity in various physical and political settings; in other words, time and again they make clear the interlocking relationship of material or economic identity with “other” identities based on race, ethnicity and similar categories of law, policy and society—a relationship that resists all efforts to sever one from the other in a comprehensive analysis of present-day realities.

As these brief illustrations indicate, critical analyses of class that seek to isolate this category from other social

⁵⁴ Porras, *supra* note 7 at 359.

⁵⁵ Crawford, *supra* note 34 at 230.

⁵⁶ Jordan, *supra* note 35 at 474.

⁵⁷ *Id.*

identities will likely overlook aspects of local and global relations that are interactive, dynamic and mutually reinforcing. Put plainly, these essays indicate that efforts to segregate “class” from its relationship to other identity categories will lead to analytical blunders. Ideally, these essays will help to motivate multidimensional analyses of social realities that take into account the interlocking nature of multi-category identity politics.⁵⁸

B. Law and the Social Construction of Formal Democracy: The Power of the Absence

OutCrit legal scholars have long explored the indeterminate, complex, limited, yet powerful role of law in the creation of social systems and structures.⁵⁹ In addition, backlash politics preaches the evils of law and of legal regulation in modern day societies, whether in the Global South or in the Global North.⁶⁰ Thus, from all sides, it seems that the role of law, and its complexity, is understood to be a relevant, if not essential, element in the construction of social realities. The papers presented in this symposium

⁵⁸ Again, the multidimensional nature of sociolegal identities is a point developed in prior works by various LatCrit and OutCrit scholars. *See, e.g.,* Berta Esperanza Hernandez-Truyol, *Building Bridges – Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1993-94); Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561 (1997); 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, 1315-18 (1996-97).

⁵⁹ For a recent sampling, *see* CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes, Jerome McCristal Culp & Angela P. Harris, eds., 2002).

⁶⁰ For a critical unpacking of backlash jurisprudence, *see* Francisco Valdes, “*We Are Now of the View*”: *Backlash Activism, Cultural Cleansing, and the Kulturkampf to Resurrect the Old Deal*, 35 SETON HALL L. REV. 1407 (2004-05) and Francisco Valdes, *Culture by Law: Backlash as Jurisprudence*, 50 VILL. L. REV. 1135 (2005).

contribute to this discourse by painting a vivid portrait of a particular location in today's world of globalized commerce in which the absence of Law (or its principled enforcement) looms large.

In general, the symposium essays present a picture wherein formal law is oftentimes either absent or impotent, and wherein formal or customary practices help to fill to void. This dynamic, of course, is not unique to Panama. Yet, these papers do provide a vivid lesson in the dangers associated with the impotence or absence of formal law in the context of a formally democratic state.

In Panama, as the authors explain, formal law establishes a set of rules and rights that read quite reasonably, and that establish the parameters for a formal democracy. However, powerful figures and forces too often render them operationally null. Additionally, colonial and imperial legacies oftentimes leave in their wake grave gaps in legal structures and traditions, and powerful figures or forces step into this void as well. The sociopolitical bottom line is a set of laws on the books that read mighty nice but in fact exert very little influence on the dynamics of human affairs. The results for human communities and natural environments, as the essays suggest, are not only unjust but also alarming, and ultimately not only undemocratic but also self-destructive.

The various symposium essays focusing on issues relating to housing, property, land and re-development, all help to illustrate this point concretely. For example, Professor Esquirol's essay is an extended untangling of the complicated relationship between "formal" and "informal" types of law, or law-like customs, and the powerful effects of each on the human beings subject to both.⁶¹ As he so piercingly shows, neither approach—formality or informality—serves a panacea to historical and contemporary injus-

⁶¹ Esquirol, *Titling and Untitled Housing in Panama City*, 4 TENN. J.L. & POL'Y 243 (2008).

tices. However, as he and other symposium contributors help to illustrate, the absence of law altogether—or of principled law enforcement—oftentimes favors the biggest animals in the social, political and economic jungles of any given locality.

Thus, formal law *can* be a tool of justice-oriented reforms, but is oftentimes misused, or is absent altogether. By way of example, Professor Suman notes the fitful and laborious yet incremental real progress that legal regulation of redevelopment in the old city center has achieved, yet concludes that “the dizzying growth of Panama City also presents numerous challenges” due precisely to the pressures of globalization that formal (or informal customs) simply cannot withstand.⁶² The loss of cultural patrimonies is the result of this status quo, he observes: with a lack of effective and comprehensive legal protection for historical preservation, key areas within Panama City “are rapidly being altered and lost” in the local growth “explosion,” driven by globalized forces.⁶³ Shifting attention from the cultural to the natural, Professor Crawford, after reviewing available rules of formal law for environmental protection, notes that “these are powerful tools if applied intelligently and deliberately to the resolution of particular conflicts”.⁶⁴ Once again, the question raised in these essays regarding the role of law (or its absence) in local affairs is complex: the question extends not only to the existence of formal law, but also to its practical and principled enforcement in daily practice.

Professor Gonzalez raises the very same point with respect to the legal process—and its limitations—designed to control the billion-dollar expansion of the Panama Canal already underway.⁶⁵ As she so eloquently spells out, the

⁶² Suman, *supra* note 36 at 465.

⁶³ *Id.*

⁶⁴ Crawford, *supra* note 35 at 218.

⁶⁵ Gonzalez, *supra* note 33 at 303.

gap between law on the books and law in practice can be exploited, usually by the privileged, to manipulate and hijack legal processes, and thereby to bootstrap existing power hierarchies into even greater personal wealth for the already rich.⁶⁶ In each of these scenarios, this legal subversion of Law itself is the common thread mapped by the respective essays.

As a set, the symposium essays illustrate how the absence of formal law creates opportunities for informality, as in the case of housing discussed in Professor Esquirol's essay. In other instances, as in the essays by Professors Suman, Crawford and Gonzalez, the main problem is not the absence of formal law, but the absence of its principled enforcement. In these instances, we oftentimes see the embodiment of noble assertions and aspirations in the form of formal law, which are honored mostly in their breach, mostly by the rich and powerful. Thus, Law seems a central factor—whether viewed in formal or informal terms—and depending, also, on actual practices of non- or under-enforcement.

Once again these examples are brief. Yet, they capture both the centrality and complexity of Law—or its absence—in the construction of social realities or political decisions attributed to democratic self-governance. Moreover, they illustrate how the powerful dynamics of corporate globalization interact with a local status quo entrenched through colonial and imperial histories that inhibit the capacity for local democracy in actual, as opposed to merely formal, terms. More particularly, these brief examples help to show how the interaction of corporate globalization today helps to reinforce the socio-economic hierarchy of a Euro-American heteropatriarchy, a

⁶⁶ See generally *id.*

decidedly undemocratic legacy erected during colonial and imperial rule.⁶⁷

C. Knowledge-Production and De-Colonization: The Promise, the Limits and Beyond

As noted at the outset, the Study Space Seminar Series is designed to be an exercise in scholarly activism. As such, the program is designed both to exchange and to produce knowledge. The ultimate objective, however, is to employ knowledge to catalyze antisubordination action.⁶⁸ In this instance, the aim of action is to de-colonize; that is, to attain a truly post-colonial social reality.

The points developed in these essays, as sketched above, certainly should be sufficient to raise consciousness and motivate action responsive to the inequalities and injustices not only found in Panama, but all around us as well. The particularities mapped in the essays help us to become more aware not only of local issues, but of global patterns that structure local struggles for a post-colonial, post-subordination society. In effect, then, these acts of study, exchange, reflection and composition represent important but limited initial steps towards the development of an informed and coalitional antisubordination agenda without borders.⁶⁹

⁶⁷ For an elaboration of “Euro-American heteropatriarchy” as an ideological package deal, see Francisco Valdes, *Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender and Sexual Orientation to Its Origins*, 8 YALE J.L. & HUMAN. 161 (1996) and Francisco Valdes, *Identity Maneuvers in Law and Society: Vignettes of a Euro-American Heteropatriarchy*, 71 UMKC L. REV. 377 (2002-03).

⁶⁸ See *supra* notes 1-9 and accompanying text (on the Study Space concept and knowledge production).

⁶⁹ See *supra* notes 10-28 and accompanying text (on the Study Space concept, and knowledge production).

Thus, publication of these essays is but a part of a larger process, a process that requires continuing acts of initiative and collaboration to advance and sustain. These kinds of follow-up efforts, again, amount to academic activism designed to ensure not only the initiation but also the continuation of antisubordination knowledge and action.⁷⁰ And, as with all acts of academic activism, they will require imagination and persistence, as well as careful choices in the design of programs and events, to ensure productive encounters that nurture ongoing alliances. These pending choices will help to determine the potency, trajectory and durability of our ongoing efforts and experiments in LatCritical praxis.

In general, LatCrit scholars have designed our projects in democratic terms based on the lessons and insights we have drawn from other OutCrit experiments in legal scholarship.⁷¹ However, as the design of the Study Space Seminar Series illustrates, and as LatCrit scholars have previously urged, democratic approaches to scholarship can be combined strategically with other traditions or models of knowledge-production to help maximize anti-subordination efficacy.⁷² In this instance, the small and intensive design of the Study Space Seminar Series is reminiscent of the “safe space” (or “vanguard”) model of knowledge production, a model that emphasizes precisely this kind of focused and tight-knit grouping based on common reading lists and critical reflection to generate

⁷⁰ See *supra* notes 10-28 and accompanying text (introducing the concept of academic activism in LatCritical work).

⁷¹ See Montoya & Valdes, *supra* note 5 (describing the three main models of legal knowledge production and their general characteristics).

⁷² *Id.* (concluding that, although democratic approaches provide the sturdiest frameworks for antisubordination theory and action, scholars should combine aspects of all models in conscious and strategic ways to maximize the material impact, or social relevance, of our work).

new insights and texts.⁷³ This vanguard-style project within a fundamentally democratic academic community thus illustrates how LatCrit (and other) scholars can and should “mix and match” methods or models or knowledge-production in creative ways to maximize antisubordination punch.⁷⁴ In this way, the variety and richness of the papers produced by the small band of scholars that helped to inaugurate the Study Space Seminar Series in Panama during December, 2007, also serve to confirm that hybrid or combined approaches to knowledge-production *can* balance democratic elements with other scholarly traditions to generate piercing and illuminating texts designed for social justice relevance.

Such flexibility, moreover, helps to facilitate relationships and networks that hopefully will endure beyond the limited span of any given program or event. The immersion-style aspects of the Study Space design, coupled with the attendant opportunities to publish papers and plan future collaborations, ideally will help to nurture intellectual, political and human relationships among and between the diverse groups of Study Space participants. Through the planning and development of follow-up programs, these relationships can ripen into expanded networks of academic activists working collaboratively on various intersecting, synergistic projects. In time, the growth of relationships into networks can create the necessary conditions for communities and institutions devoted to this work—communities and institutions similar to the LatCrit Portfolio of Projects.⁷⁵ This attention to the long term, if cultivated and implemented in a principled, democratic and transparent manner, can help us stretch the reach and

⁷³ *Id.* (describing the safe space or vanguard model of legal knowledge production).

⁷⁴ *Id.*

⁷⁵ For more information on the LatCrit Portfolio of Projects, visit www.latcrit.org.

limits of our immediate efforts. Only through this sort of programmatic and substantive continuity can we, as academic activists, hope to sustain the historical struggles against the legacies of injustice that the symposium authors examine in their essays.⁷⁶

Conclusion

This brief Foreword is dedicated to highlighting some common themes in method and substance reflected in the following symposium essays, which in turn are based on the inaugural Study Space program of December, 2007, in Panama City, Panama. The brevity of this Foreword cannot do justice to the rich detail and nuance embedded in these diverse and thoughtful essays. Nor can the effort to link these essays and project to the larger record or corpus of LatCrit and other OutCrit works be fully unfolded here. Nonetheless, the summary sketch of highlights unfolded above, and amplified in the essays below, do help to confirm, as well as to enrich, the substance and methodology associated with critical outsider jurisprudence generally, and with the LatCrit approach to democratic knowledge-production specifically. In this way, the authors presented below demonstrate not only the continuing vitality of Out-Crit legal studies, but also the promise of the Study Space Seminar Series as an exercise in critical approaches to comparative scholarship and academic activism.

⁷⁶ This attention to continuity and long term planning is consistent with LatCrit praxis and OutCrit lessons in jurisprudential experiments. *See supra* notes 5, 6, and 13 and sources cited therein (on continuity as an element of effective and sustainable academic activism).

