

Fall 2008

## Cluster II: Tracing the Critical Education Tradition in LatCrit Theory, Praxis & Community

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Online ISSN: 2643-7759

### Recommended Citation

Marc-Tizoc González, *Cluster II: Tracing the Critical Education Tradition in LatCrit Theory, Praxis & Community*, 4 FIU L. Rev. 85 (2008).

DOI: <https://dx.doi.org/10.25148/lawrev.4.1.11>

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## Cluster II: Tracing the Critical Education Tradition in LatCrit Theory, Praxis & Community

Marc-Tizoc González<sup>1</sup>

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### I. INTRODUCTION

Four Essays constitute the “Critical Education” cluster of the LatCrit XII symposium, the publication of some of the proceedings of the Twelfth Annual Latina/o Critical Legal (“LatCrit”) Theory Conference, held in Miami, Florida in October 2007. LatCrit XII was thematically oriented around the notion of “critical localities: Epistemic Communities, Rooted Cosmopolitans, New Hegemonies, and Knowledge Processes.”<sup>2</sup>

Beyond their important individual contributions of critical insights into contemporary issues in education, these Essays also collectively extend the discourse about education in LatCrit theory, praxis, and community—a discourse that has been integral to the LatCrit movement from the beginning but perhaps inadequately recognized as its own branch or stream of scholarship within LatCrit theory, praxis, and community.<sup>3</sup>

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<sup>2</sup> See generally Annual LatCrit Conference XII, Latina & Latino Critical Legal Theory, Inc., <http://www.law.du.edu/latcrit/ACXII.htm>; see also Charles R.P. Pouncy, *Foreword: LatCrit XII—The Critical Locality and the Processes of Community*, 20 ST. THOMAS L. REV. 387 (2008).

<sup>3</sup> The symposium based on the first annual LatCrit conference [hereinafter “LatCrit I”] featured a cluster of four Essays thematized as “Teaching, Scholarship and Service: Practicing LatCrit Theory.”

In this cluster introduction, I first graphically represent how the Essays in this cluster relate to LatCrit XII's conference theme, as well as LatCrit's four standing guideposts, following a heuristic recently innovated by Margaret Montoya.<sup>4</sup> I then introduce the notion that the new Essays can be usefully viewed as constituting a "critical education" tradition in LatCrit theory, praxis, and community by contextualizing the new Essays in the twenty published LatCrit symposia and the twenty-one *previous* LatCrit symposia Essays that have focused on issues in education.<sup>5</sup> (While the published symposia do not constitute the sum total of the knowledge produced under the rubric of LatCrit, it is fair to consider the symposia as the core of LatCrit's extant discourse.)<sup>6</sup>

In the remainder of the Essay, I describe my understanding of the critical education tradition in LatCrit theory, praxis, and community—both inside and outside of the legal academy—by discussing the new Essays in light of three categories that seem to constitute distinct epistemic communities and the major branches of LatCrit's critical education tradition—education law and policy scholarship, critical legal pedagogy, and CRT/LatCrit in Education scholarship.

For at least eleven years, education scholars have been applying the insights of critical race theory and now LatCrit theory to their work.<sup>7</sup> Their work has been evolving CRT/LatCrit insights, *qua* CRT or LatCrit theory but outside of the U.S. legal academy. By applying critical legal theory to situations and in contexts that are different from those usually chosen by legal scholars, these education scholars have been extending, adapting, and

Enrique Carrasco, *Introduction to Panel Three: Intellectuals, Awkwardness, and Activism: Towards Social Justice Via Progressive Instability*, 3 HARV. LATINO L. REV. 317 (1997).

<sup>4</sup> See Margaret Montoya, *Foreword: LatCrit at Ten Years*, 26 CHICANA/O-LATINA/O L. REV. 1, 7, 9 (2006) (introducing the LatCrit X symposium).

<sup>5</sup> See *infra* notes 17-25 and accompanying text. To access the published LatCrit symposia, see LatCrit, Latina & Latino Critical Legal Theory, Inc., <http://www.law.du.edu/latcrit/PublishedSymposium.htm>.

<sup>6</sup> Several obvious examples of additional knowledge produced under the LatCrit rubric include the live performances of LatCrit theory, praxis, and community throughout the Annual LatCrit Conference, South North Exchange, Study Space Series, Board-and-Friends Retreat and LatCrit-SALT Junior Faculty Workshop. Additional examples are likely abound in the classes taught by LatCrit-affiliated professors, as well as the scholarship they publish outside of the symposia explicitly identified with LatCrit.

<sup>7</sup> See, e.g., Daniel G. Solorzano, *Images and Words that Wound: Critical Race Theory, Racial Stereotyping, and Teacher Education*, 24 TEACHER EDUC. QUARTERLY 5 (1997). See also Daniel G. Solorzano & Tara J. Yosso, *Maintaining Social Justice Hopes within Academic Realities: A Freirean Approach to Critical Race/LatCrit Pedagogy*, 78 DENV. U. L. REV. 595 (2001); Anita Tijerina Revilla, *LatCrit and CRT in the Field of Education: A Theoretical Dialogue between Two Colleagues*, 78 DENV. U. L. REV. 623 (2001).

refining critical insights as they struggle on their front of the ongoing struggle against subordination.

As LatCrit evolves in its second decade, we should recognize the valuable contributions of those of us whose training and scholarship are based outside of the legal academy and strive to integrate all of our scholarship more completely into a trans-disciplinary LatCrit theory, praxis, and community.<sup>8</sup>

## II. LATCRIT'S CRITICAL EDUCATION TRADITION

Reviewing Table 1, *infra*, it is important to recall Margaret Montoya's admonition, "Classification schemes inevitably enforce over-simplification on what is complex and boundary-defying."<sup>9</sup> Like *Profesora* Montoya, "I apologize ahead of time to the authors if I have done damage to their analysis or presentation by reducing long and precise arguments, histories, and proposals to a series of short phrases."<sup>10</sup> Nevertheless, I graphically represent these new Essays because I too believe that, "As we are bombarded and overloaded with information, our task is to find mechanisms for sorting and managing it efficiently."<sup>11</sup> Moreover, a cluster introduction is precisely the place where heuristic devices are appropriate to quickly inform potential readers of the sociolegal issues treated by particular Essays and to orient readers as to how new symposium Essays engage LatCrit's dozen-plus years of published critical legal theory.

**Table 1:** New Critical Education Essays in Light of the LatCrit XII Conference Theme and LatCrit's Four Standing Guideposts

<b>Author</b>	<b>critical localities: Epistemic Communities, Rooted Cosmopolitans, New Hegemonies,</b>	<b>I Latina/o Identities</b>	<b>II Local Spaces</b>	<b>III Cross-group Histories</b>	<b>IV Other Genres of Critical</b>
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<sup>8</sup> While how to integrate CRT/LatCrit in Education scholarship should be determined by a community discussion and collective decision-making, one relatively simple act toward integration involves collaboratively identifying the corpus of CRT/LatCrit in Education scholarship, collecting electronic copies of these texts and featuring them in the Publications section of the LatCrit website. Doing so can help legal scholars, especially those who study education law and policy, identify texts that may bear on their scholarly projects, and will also make CRT/LatCrit in Education scholarship more accessible, especially to LatCrit's audience beyond the U.S.

<sup>9</sup> Montoya, *supra* note 4, at 8.

<sup>10</sup> *Id.* at 9.

<sup>11</sup> *Id.*

	<b>and Knowledge Processes</b>				<b>Theory</b>
L. Darnell Weeden <sup>12</sup>	Scholars of Education Law & Policy		Connecticut; Los Angeles; Tuscaloosa, Alabama	School Desegregation, Educational Equity	Civil Rights, Education Law & Policy
Pamela Edwards, Raquel Gabriel, Donna Lee & David Nadvorney <sup>13</sup>	Law Professors Interested in Teaching in a Multicultural / Multilingual Context		CUNY School of Law	Unconscionable installment payment contracts	Critical Race Pedagogy; Clinical Legal Education
Lindsay Perez Huber <sup>14</sup>	Education Scholars, Critical Race <i>Testimonio</i> , Counterstorytelling, Critical Race Spatial Analysis	Rigoberta Menchú, Latina Feminist Group		apartheid of knowledge, school racism	CRT/ LatCrit in Education, Critical Race Methodology
Veronica Nelly Velez <sup>15</sup>	Education Scholars, Community Organizing, Critical Parental Engagement, Latina/o Immigrant Civic Engagement	Latina/o immigrant parents, <i>Comite de Padres Latinos</i> , ALIANZA	Los Angeles Unified School District	racist nativism, cultural deficit arguments about People of Color	CRT/ LatCrit in Education

<sup>12</sup> L. Darnell Weeden, *Implication of the No Child Left Behind Act for Educational Equity and Segregation*, 4 FIU L. REV. 101.

<sup>13</sup> Pamela Edwards, Raquel Gabriel, Donna Lee & David Nadvorney, *Teaching Law in a Multicultural, Multilingual Context*, 4 FIU L. REV. 145.

<sup>14</sup> Lindsay Perez Huber, *Towards Building a Critical Race Theory Paradigm in Educational Research: Critical Race Testimonio as Method*, 4 FIU L. REV. 159.

<sup>15</sup> Veronica Nelly Velez, *Challenging Lies LatCrit Style: A Critical Race Reflection of an Ally to Latina/o Immigrant Parent Leaders*, 4 FIU L. REV. 119.

As Table 1 shows, each of the Essays in this cluster engages at least three of LatCrit's Standing Guideposts, and all of the Essays engage LatCrit XII's theme of "critical localities: Epistemic Communities, Rooted Cosmopolitans, New Hegemonies, and Knowledge Processes." Notably, the primary audiences implied by each Essay constitute three distinctive "epistemic communities":

- Scholars of education law and policy,
- Law professors interested in teaching law in a multicultural/multilingual context (and law students interested in understanding legal education critically), and
- Education scholars.

Below, I develop why I distinguish the new Essays in this way. Stated succinctly, reviewing the extant LatCrit corpus demonstrates that naming these three epistemic communities provides a useful way to reflect on and categorize the various LatCrit texts that have treated issues of education over the past dozen-plus years. As I have come to theorize them, these three epistemic communities constitute branches of the "critical education" tradition within LatCrit theory, praxis and community.

I base my claim on the following process. First, I reviewed the tables of contents for the twenty published LatCrit symposia.<sup>16</sup> I then identified the Essays whose clustering or title suggested they focused on education. After reviewing these Essays, I identified twenty-six Essays that I believe constitute the critical education tradition in LatCrit theory. These include two Essays in LatCrit I;<sup>17</sup> three Essays in the Second Joint LatCrit Symposium;<sup>18</sup> four Essays in LatCrit V;<sup>19</sup> three Essays in LatCrit VII;<sup>20</sup> one Essay

<sup>16</sup> As of today, twenty symposia or colloquia publications have been explicitly linked to LatCrit. See Published Symposium, LatCrit, Latina & Latino Critical Legal Theory, Inc., <http://www.law.du.edu/latCrit/PublishedSymposium.htm>.

<sup>17</sup> Carrasco, *supra* note 3; Margaret E. Montoya, *Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis*, 2 HARV. LATINO L. REV. 349 (1997).

<sup>18</sup> See Steven W. Bender, *Silencing Culture and Culturing Silence: A Comparative Experience of Centrifugal Forces in the Ethnic Studies Curriculum*, 33 U. MICH. J.L. REFORM 329 (2000); Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 33 U. MICH. J.L. REFORM 263 (2000); Dorothy E. Roberts, *The Paradox of Silence: Some Questions about Silence as Resistance*, 33 U. MICH. J.L. REFORM 343 (2000).

<sup>19</sup> See Elvia Rosales Arriola, *Talking about Power and Pedagogy, Introduction for Cluster: "Lat-Crit Theory in New Contexts"*, 78 DENV. U.L. REV. 507 (2001); Revilla, *supra* note 7; Solorzano & Yosso, *supra* note 7; Norberto Valdez, Marcia Fitzhorn, Cheryl Matsumoto & Tracey Emslie, *Police in Schools: The Struggle for Student and Parental Rights*, 78 DENV. U.L. REV. 1063 (2001).

<sup>20</sup> See Robert S. Chang, "Forget the Alamo:" *Race Courses as a Struggle over History and Collective Memory*, 13 BERKELEY LA RAZA L.J. 113 (2002); Francisco Valdes, *Barely at the Margins: Race and Ethnicity in Legal Education—A Curricular Study with LatCritical Commentary*, 13 BERKELEY LA

in LatCrit VIII;<sup>21</sup> five Essays in LatCrit IX;<sup>22</sup> one Essay in LatCrit X;<sup>23</sup> two Essays in LatCrit XI;<sup>24</sup> and, of course, the latest four Essays and this cluster introduction.<sup>25</sup> As I read these Essays, I began recognizing several significant patterns, which, for purposes of this cluster introduction, I have distilled into three categories or types of LatCrit scholarship that focus on issues of education, mentioned briefly above and described further below.

One group appears to follow the norms of conventional sociolegal scholarship focused on education law and policy but adds a critical edge.<sup>26</sup> The second group reflects on and theorizes about teaching critically in law school.<sup>27</sup> The third group can be usefully distinguished by its authors' training outside of the legal academy, often in Education or Ethnic Studies and its explicit application of critical race theory or LatCrit theory to education—as a discipline of scholarship, the practice of training teachers and a social institution.<sup>28</sup>

Of course, this categorization is heuristic: while it includes all of the twenty-five education-focused LatCrit Essays (not including this Cluster Introduction), other scholars might prefer to organize the Essays in different ways, either within these categories, within new ones or by eschewing my categorization entirely. Nevertheless, I submit that these three categories

RAZA L.J. 119 (2002); John Hayakawa Török, *The Story of "Towards Asian American Jurisprudence" and its Implications for Latinas/os in American Law Schools*, 13 BERKELEY LA RAZA L.J. 271 (2002).

<sup>21</sup> See Anita Tijerina Revilla, *Raza Womyn Engaged in Love and Revolution: Chicana/Latina Student Activists Creating Safe Spaces within the University*, 52 CLEV. ST. L. REV. 155 (2005).

<sup>22</sup> See Fran Ansley & Cathy Cochran, *Going On-Line with Justice Pedagogy: Four Ways of Looking at a Website*, 50 VILL. L. REV. 875 (2005); Roberto L. Corrada, *Toward an Ethic of Teaching: Class, Race and the Promise of Community Engagement*, 50 VILL. L. REV. 837 (2005); Antonia Darder, *Schooling and the Empire of Capital: Unleashing the Contradictions*, 50 VILL. L. REV. 847 (2005); María Pabón López, *Reflections on Educating Latino and Latino Undocumented Children: Beyond Plyler v. Doe*, 35 SETON HALL L. REV. 1373 (2005); Nelson E. Soto, *Caring Relationships: Developing a Pedagogy of Caring*, 50 VILL. L. REV. 859 (2005).

<sup>23</sup> See Lindsay Perez Huber, Robin N. Johnson & Rita Kohli, *Naming Racism: A Conceptual Look at Internalized Racism in U.S. Schools*, 26 CHICANA/O-LATINA/O L. REV. 183 (2006).

<sup>24</sup> See Lindsay Perez Huber & Maria C. Malagon, *Silenced Struggles: The Experiences of Latina and Latino Undocumented College Students in California*, 7 NEV. L. J. 841 (2007); Jessica Solyom, Jeremiah Chin, Kristi Ryuijin, Nicol Razón, Thanhtung Thantrong & X. Yvette González, *Be Careful What You Ask For: Educación Para Todas/os, the Perils and the Power*, 7 NEV. L. J. 862 (2007).

<sup>25</sup> Edwards et al., *supra* note 13; Perez Huber, *supra* note 14; Velez, *supra* note 15; Weeden, *supra* note 12.

<sup>26</sup> E.g., Bender, *supra* note 18; Chang, *supra* note 20; Darder, *supra* note 22; López, *supra* note 23; Weeden, *supra* note 12.

<sup>27</sup> E.g., Ansley & Cochran, *supra* note 22; Arriola, *supra* note 19; Carrasco, *supra* note 3; Corrada, *supra* note 22; Montoya, *supra* note 17; Montoya, *supra* note 18;; Valdes, *supra* note 20; Török, *supra* note 20;

<sup>28</sup> E.g., Perez Huber, *supra* note 14; Perez Huber et al., *supra* note 23; Perez Huber & Malagon, *supra* note 24; Revilla, *supra* note 7; Revilla, *supra* note 21; Solorzano & Yosso, *supra* note 7; Solyom et al., *supra* note 24; Soto, *supra* note 22; Valdez et al., *supra* note 19; Velez, *supra* note 15.

accurately describe the vast majority of the twenty-six education-related Essays published in LatCrit symposia so far. Moreover, I believe that deploying these categories when thinking about LatCrit's education-focused Essays is useful.

While I discuss below several reasons for adopting the notion of a critical education tradition in LatCrit theory, praxis, and community, my main concern is to stimulate self-criticality about how LatCrit can truly include all of us in order that we increase our potential to produce scholarship that materially advances antisubordination in education.

Additionally, theoretically, LatCrit's aspiration toward interdisciplinarity seems substantially constrained by the predominance of scholars trained and based inside of the U.S. legal academy. Therefore, like Mary Romero's recent call to revisit the "sociological imagination,"<sup>29</sup> I encourage recognizing LatCrit's critical education tradition because I believe it will help LatCrit build solidarity with education scholars committed to evolving CRT/LatCrit in Education, who by definition and in fact are trained and situated outside of the U.S. legal academy. In turn, such solidarity can advance "structural explanations of inequality and [help] build social movements and organize collective political engagement."<sup>30</sup> One reason this outcome is likely is that education scholars tend to be closer to teachers of primary and secondary school, whose students' concrete situations constitute a cutting edge of social in/justice. The work of CRT/LatCrit in Education scholars to illuminate those conditions in progressive and transformative ways is significant and worthy of substantial support from critical legal scholars. Moreover, based on their LatCrit symposia Essays, such scholars have been engaging the LatCrit experiment at least since LatCrit V. Sustained engagement on the part of education scholars invites reciprocity from U.S. law professors. Finally, at least since LatCrit X, new cohorts of Education and Ethnic Studies Ph.D. candidates and new professors have consistently attended the annual LatCrit conference, presented at panels and contributed to the annual symposia.<sup>31</sup>

This salutary development should be encouraged, and one way to do it is to use the significant organizational power established by LatCrit to support CRT/LatCrit in Education organizing. While I have several ideas as to how LatCrit might start such an effort, true solidarity requires people to

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<sup>29</sup> See Mary Romero, *Revisiting OutCrits with a Sociological Imagination*, 50 VILL. L. REV. 925 (2005).

<sup>30</sup> *Id.* at 927.

<sup>31</sup> E.g., Perez Huber et al., *supra* note 23; Perez Huber & Malagon, *supra* note 24; Perez Huber, *supra* note 14; Revilla, *supra* note 7; Revilla, *supra* note 21; Velez, *supra* note 15.



recognize their community of interests, to gather and discuss what collective activity would benefit the whole, and then to act upon that shared and mutually agreed upon understanding. Thus, this Cluster Introduction is an invitation to those interested in such a project.

The remainder of this Cluster Introduction develops the notion of a critical education tradition in LatCrit theory, praxis, and community by describing the four new Essays published in this symposium and highlighting their relevance to the idea of a critical education tradition in LatCrit theory, praxis, and community.

#### A. Scholars of Education Law and Policy

Viewed in the context of the dozen-plus years of LatCrit discourse, L. Darnell Weeden's interest in the "Implication of the No Child Left Behind Act for Educational Equity and Segregation" appears to be part of an established LatCrit tradition of relatively conventional law review articles that describe sociolegal issues, analyze them critically, and discuss their relevance for the broader movement of anti-racist and antistatist struggle.<sup>32</sup>

The sociolegal issue of concern in Weeden's Essay is "whether the No Child Left Behind Act (NCLBA) is a proper tool for advancing equity in education."<sup>33</sup> Disclosing his normative stance against NCLBA, Weeden argues, "There are many good reasons for opposing the NCLBA accountability provisions and developing the position that NCLBA accountability provisions are in violation of the Spending Clause."<sup>34</sup>

Weeden begins his Essay with an evocation "of the historical development of federal aid for public elementary and secondary education[.]"<sup>35</sup> ranging from the Elementary and Secondary Education Act of the 1965, to the *A Nation at Risk* report issued by President Reagan's Administration, to the Goals 2000: Educate America Act, the Improving America's Schools Act, and finally to the NCLBA.

Before focusing on the recent litigation brought by the state of Connecticut against the federal Secretary of the Department of Education, Weeden glosses Spending Clause jurisprudence, namely the four requirements that the U.S. Supreme Court established in *South Dakota v. Dole*.<sup>36</sup> Thus prepared, Weeden analyzes the federal district court's rulings on the claims

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<sup>32</sup> See *supra* note 26 and accompanying text.

<sup>33</sup> Weeden, *supra* note 12, at 101.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> 483 U.S. 203 (1987).

brought by the plaintiff in *Connecticut v. Spellings*.<sup>37</sup> These complaints included declaratory judgment for the Secretary of Education to clarify the meaning of the NCLBA's Unfunded Mandate Provision, allegations "that the Secretary's interpretation of the Act violates the Spending Clause and the Tenth Amendment[.]" a challenge to "the Secretary's denial of waivers and alleged failure to comply with statutory requirements," and alleged "violation of the federal Administrative Procedures Act[.]"<sup>38</sup>

As Weeden reports, the district court ruled that Connecticut "sought pre-enforcement declaratory rulings" and "that it did not have subject matter jurisdiction to hear" the Spending Clause and Tenth Amendment claims because the state had yet to suffer a harm because Connecticut "was not in danger of imminent enforcement and thus not subject to any hardship."<sup>39</sup> The court also "found that Congress did not grant the Court any authority to consider a matter that is committed to the agency's discretion."<sup>40</sup> Finally, Weeden reports, "The Court found the APA violation count moot because the State did not seek to remand the issue for [an administrative] hearing [by the Department of Education], but rather wanted the Court to decide the merits of the plan amendments."<sup>41</sup>

As to this particular litigation and its implications for NCLBA litigation in general, Weeden concludes, "the litigation landscape involving NCLBA is challenging. As indicated in *Connecticut v. Spellings* one can anticipate a battle over jurisdiction about who has the power to hear disputes between the state and the DOE."<sup>42</sup> In his view:

These disputes clearly raise issues of accountability requested by the federal government and the state's reluctance to comply with federal requests because it believes that the federal government has issued an unfunded mandate. The . . . court clearly indicated that it would rather not enter the NCLBA litigation thicket without the benefit of prior agency proceedings. . . . I think it is fair to conclude that the battle for control over education policy has only begun. I anticipate in the absence of strong congressional intervention that NCLBA litigation will be a persistent pattern for years to come.

As asserted above, in parts, Weeden's Essay appears as a relatively conventional text of legal scholarship. In its final parts, however, Weeden develops a set of critical points that resonate with the antisubordination

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<sup>37</sup> 453 F. Supp. 2d 459 (D. Conn. 2006).

<sup>38</sup> Weeden, *supra* note 12, at 104.

<sup>39</sup> *Id.* at 105.

<sup>40</sup> *Id.* at 107.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 108.

purpose of LatCrit theory, praxis, and community. His argument, however, would benefit from increased textual engagement with the corpus of LatCrit discourse. For example, foregrounding George Martínez's important discussion of the role of judicial indeterminacy in the legal construction of race<sup>43</sup> would have provided critical historical context for the federal district court's refusal to accept jurisdiction until Connecticut had gone through the administrative procedures of the Department of Education.

Without highlighting the invidious history of courts' mis/use of discretion to determine claims in accord with contemporary white supremacist racism, Weeden fails to provide readers with a critical understanding of *Connecticut v. Spellings*. Indeed, read with a conventional or mainstream mindset, the case looks like a relatively unimportant decision upholding well-known doctrines of justiciability. Lacking standing and bringing unripe or even moot claims, how could Connecticut have expected to have its claims heard on the merits in federal court?

Had Weeden grounded his discussion of this case in Martínez and others' insights about the mis/uses of judicial discretion, he would have buttressed his Essay's significant reportage that Congress and the Bush Administration passed the NCLBA and then the federal courts refused to hear a state's complaints, holding that it must seek justice from the very federal agency responsible for the injustice at hand—but only having recourse *after* the state had already suffered the harms complained of and which the state sought to avoid by petitioning the court prior to experiencing harm.

Indeed, Weeden's discussion of *Connecticut v. Spellings* further details and extends the critical insights of Martínez and others who have analyzed the mis/uses of judicial discretion: in an era where the neoconservative project to seize and reshape the federal judiciary has triumphed in the confirmation of Associate Justice Samuel Alito and Chief Justice John Roberts to the U.S. Supreme Court, the outcome of *Connecticut v. Spellings* seems chillingly redolent of the early 19th century adage, "Conquest gives a title, which the courts of the conqueror cannot deny[.]"<sup>44</sup> Indeed, 185 years after Chief Justice Marshall delivered the opinion in *Johnson v. M'Intosh*, even an entity so relatively powerful as a state must seek relief for perceived injustice from the hand of the very agency responsible for the acts complained of.

While some may argue that such political or historical points are not Weeden's focus, they appear to be within the scope he has chosen to en-

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<sup>43</sup> George A. Martínez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, 2 HARV. LATINO L. REV. 321 (1997) (part of the "Teaching, Scholarship and Service: Practicing LatCrit Theory" cluster of the LatCrit I symposium).

<sup>44</sup> *Johnson v. M'Intosh*, 21 U.S. 543, 588 (1823).

gage. He ends his Essay with a discussion of the relevance for NCLBA of school integration—arguably one of the most significant sociolegal issues of the 20th century. Surfacing past critiques of judicial discretion or the politicization of the judiciary would help Weeden connect his doctrinal and policy analysis to the critical points his Essay raises about educational equity in the 21st century.

## B. Law Professors Interested in Critical Legal Pedagogy

The second Essay, “Teaching Law in a Multicultural, Multilingual Context” by Pamela Edwards, Raquel Gabriel, Donna Lee, and David Nadvorney, exemplifies the group identified above as one that reflects on and theorizes about teaching critically in law school. As an Essay in the genre of critical legal pedagogy, Edwards et al.’s discussion of their collaboration at the CUNY School of Law is about “teaching law in a multicultural/multilingual context[.]”<sup>45</sup>

Significant precursors to this Essay exist in the critical education tradition of LatCrit theory, praxis, and community.<sup>46</sup> Ranging from Margaret Montoya’s significant early explication of activist critical teaching in a law clinic setting and reframing of wills as Latina praxis to her powerful theorization of the subordination of silencing and the liberatory possibilities of silence in court rooms and law school classrooms; through Dorothy E. Roberts’ commentary and questions about misinterpreting silence and silence as complicity; through Robert S. Chang’s reflections on race courses, memory, and the struggle over history; through Francisco Valdes’ empirical study of race and ethnicity in U.S. law school curricula and John Hayakawa Török’s description of the student struggles required to establish the first course of Towards Asian American Jurisprudence; to Roberto Corrada’s reflections on and synthesis of an ethic of teaching class, race, and community engagement; to Fran Ansley and Cathy Cochran’s case study of their collaboration to represent the justice pedagogy of community-based field projects via a website, Edwards et al.’s Essay adds to a rich collection of insights about the promises and perils of teaching law critically.

In particular, Edwards et al. describe an exciting collaboration between professors “of diverse racial, ethnic, gender, religious and sexual orientation backgrounds [who] teach across various parts of the curriculum . . . in the areas of legal research, large classroom, clinic, and academic support” and

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<sup>45</sup> Edwards et al., *supra* note 13.

<sup>46</sup> See, e.g., Montoya, *supra* note 17; Montoya, *supra* note 18; Bender, *supra* note 18; Roberts, *supra* note 18; Chang, *supra* note 20; Valdes, *supra* note 20; Török, *supra* note 20; Corrada, *supra* note 22; Ansley & Cochran, *supra* note 22.

who attempt to use their class rooms to ameliorate a “phenomenon that many law students of color face[;] they enter law school to become agents of change in their communities but become indoctrinated by the patterns of white privilege embedded in traditional legal education.”<sup>47</sup>

Reporting on the design and implementation of the workshop they held at LatCrit XII, Edwards et al. discuss a series of hypothetical classroom situations, which structured their workshop’s discussion of how to make law school classrooms ameliorate the indoctrination effects of white privilege—a highly important subject for activist scholars and emblematic of the critical legal pedagogy branch of the critical education tradition in LatCrit theory, praxis, and community. Ranging from a large Contracts classroom to a small Legal Research classroom, Edwards et al. offer several suggestions on how individual law teachers can support students with race or class-subordinated social backgrounds and positions. For example, Pamela Edwards notes the importance of assigning readings early in the semester to provide such students with a variety of perspectives on contract law, including “critical race critiques, feminist legal critiques, critical legal studies perspective, etc.”<sup>48</sup> She also briefly mentions the “use of technology, such as a clicker [to] allow students to express views anonymously that they would not want to share if they had to comment in class.”

Edwards’ discussion is an important contribution to the discourse of critical legal pedagogy. Sharing methods of ameliorating white male privilege is useful. However, the Essay would benefit from greater explication of how law classrooms indoctrinate students of color into white (male) privilege. Certainly, the Essay’s descriptions evoke this process, but it would be helpful at least to reference the extensive corpus of white privilege studies in law.<sup>49</sup> Less about citation, my point is that Edwards et al.’s focus on what an individual law teacher can do would benefit from a corollary mention of what law students can do individually and together. While providing textual excerpts to begin informing students about critical perspectives on legal doctrines is important, as is having a consciousness about the class privileges that conventional law teaching reinforces and naturalizes, the

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<sup>47</sup> Edwards et al., *supra* note 13.

<sup>48</sup> *Id.*

<sup>49</sup> *E.g.*, BARBARA J. FLAGG, WAS BLIND, BUT NOW I SEE: WHITE RACE CONSCIOUSNESS & THE LAW (1998); STEPHANIE M. WILDMAN, ET. AL., PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA (1996); Stephanie M. Wildman & Adrienne D. Davis, *Language and Silence: Making Systems of Privilege Visible*, 35 SANTA CLARA L. REV. 881 (1995); Barbara J. Flagg, “Was Blind, But Now I See”: *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953 (1993); Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implications of Making Comparisons Between Racism and Sexism (or Other-Isms)*, 1991 DUKE L.J. 397 (1991).

Essay would benefit from discussion of how else an individual law professor might support students (of color) who desire to become lawyers who serve their communities.

Certainly, the collaboration of authors helps. For example, Raquel Gabriel, discussing small classroom teaching of Legal Research, complements Edwards' suggestions by discussing how her school's "unique mission—to train lawyers for public service and public interest practice, and to recruit and train lawyers from historically underserved communities[,]” facilitated her five critical observations, namely (1) to examine the classroom composition with an eye toward perceiving different learning styles, (2) to explain how a course connects to actual lawyering practices, (3) to collaborate where possible with other colleagues or at least to be aware of the approaches and deadlines of other classes, (4) to be open to contact with and learning from students, and (5) to know school resources adequately in order to refer students to them when helpful.<sup>50</sup>

### C. CRT/LatCrit in Education

The third group which applies critical race theory and LatCrit theory to education, is well developed by Lindsay Perez Huber's "Building Critical Race Methodologies in Educational Research: A Research Note on Critical Race *Testimonios*" and Veronica Nelly Velez's "Challenging Lies LatCrit Style: A Critical Race Reflection of an Ally to Latina/o Immigrant Parent Leaders." The application of LatCrit and Critical Race Theory to education theory and praxis is one of the most exciting developments in the evolution of the paradigm.<sup>51</sup> The processes of subordination are deployed throughout all of the institutions that impact the lives of people of color and other subordinated groups and operate with a particular viciousness in primary and secondary education.<sup>52</sup> The Essays by Professors Velez and Huber build

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<sup>50</sup> *Id.*

<sup>51</sup> Beginning with Margaret Montoya's Essay, *Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis*, *supra* note 17, the LatCrit literature has been enriched and advanced by the work of education scholars and legal scholars concerned with the processes of education. See Solorzano & Yosso, *supra* note 7; Anita Tijerina Revilla, *LatCrit and CRT in the Field of Education: A Theoretical Dialogue Between Two Colleagues*, *supra* note 7; Chang, *supra* note 20; Valdes, *supra* note 20; Török, *supra* note 20; Corrada, *supra* note 22; Antonia Darder, *supra* note 22.

<sup>52</sup> One of LatCrit's longstanding projects has been the P-20 Education project, aka "The Pipeline Project." This project recognizes that the processes resulting in the underrepresentation of Latina/o scholars in the academy and academics starts in the primary and secondary school education system. Unfortunately, most education systems over produce academic frustration and failure for Latina/o students and students from other subordinated groups. This project, directed by Professor Margaret Montoya, seeks to stem the leakage of Latina/o students from the education system by exposing them to materials and strategies that provide cultural validation and the conviction that they can succeed and

upon LatCrit literature and praxis to expose some of the processes of subordination present in primary and secondary education and to subvert the processes associated with academic education research to give voice and agency to the subjects of academic research.

Professor Velez examines the ways in which the processes constructed to permit parental involvement in primary and secondary education attempt to marginalize and silence Latina/o immigrant parents. Education research frequently conveys the message that Latina/o immigrant parents are uninvolved if not disinterested in their children's education. Armed with this misinformation, school teachers and administrators conclude Latina/o parents do not care about education and construct processes of parental involvement that attempt to validate that conclusion. However, in her Essay, Professor Velez marshals the educational research literature that demonstrates the immigrant Latina/o parents' commitment to education, their efforts to confront educational practices that marginalize them and their children, while providing home environments which communicate a strong value for learning and academic achievement. Professor Velez attributes the disjuncture between the literature demonstrating immigrant Latina/o parents' commitment to education and the perceptions that immigrant Latina/o parents do not care about education to racism. The notions of "good parenting" and "parental involvement" have been racialized allowing school teachers and administrators to discount the character and value of Latina/o parental engagement because it does not fit into the patterns associated with parental involvement by white parents. Professor Velez argues that the construction of a model of parental engagement along the lines of the LatCrit model of civic engagement can reverse the perceptions of immigrant Latina/o parental disinterest and, through the creation of Latina/o parent organizations, create opportunities for engagement and agency that will benefit Latina/o parents and children as well as the larger community.

Professor Huber's Essay also addresses the issue of agency, but from the perspective provided by academic research.<sup>53</sup> Professor Huber seeks to use LatCrit theory to construct research tools based on LatCrit and critical race theory and offers the critical race *testimonio* as such an intervention. In her Essay, Professor Huber examines the role that Eurocentric education research methodology plays in converting research subjects, and in particu-

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flourish in their educational pursuits. See LatCrit Portfolio of Projects, available at <http://www.law.du.edu/latcrit/portfolioOfProjects.htm>.

<sup>53</sup> Professor Huber's other efforts to incorporate LatCrit and critical race theory into education theory and research include Lindsay Perez Huber, Robin N. Johnson & Rita Kohli, *Naming Racism: a Conceptual Look at Internalized Racism in U.S. Schools*, 26 CHICANO-LATINO L. REV. 183 (2006); see also Lindsay Perez Huber and Maria C. Malagon, *Silenced Struggles: The Experiences of Latina and Latino Undocumented College Students in California*, 7 NEV. L.J. 841 (2007).



lar people of color and other subordinated subjects, into data points. Such research subjects are forced into a role of passive conveyors of information and not included in the processes in which the data they have conveyed is interpreted and used to formulate policy. Professor Huber analyzes some of the critical race theory research methodologies that have been developed including critical race counterstories, critical race spatial analysis, and critical race *testimonio*, focusing on the *testimonio* as a challenge both to the processes of education research and the subordinated role of the research subject. For Professor Huber “[c]ritical race testimonies seek to document, analyze, and validate the experiences of People of Color as well as the researcher while working towards dismantling the apartheid of knowledge that perpetuates white supremacy and the forms of oppression it manifests within and beyond the academy.” The *testimonio* constructs collaboration between the researcher and the research subject that is likely to enrich the ways in which each participates in the project and constructs its meaning and value.

The work of Professors Velez and Huber are both instructive of the way that LatCrit scholarship should reach back to its antecedents both within and outside of the tradition. Both of these papers engage in a substantive review of the research relevant to their concerns and contributing to their analyses. Both papers identify the roles played by earlier scholarship in formulating the problems their research examines and both papers, either directly or indirectly, suggest potentially fruitful lines of future inquiry. Although these analytical methodologies may be more frequently encountered in social science research than in legal scholarship, they nonetheless are integral to the evolution of LatCrit both as a paradigm and as a community. It is difficult to know where you are going without a meaningful appreciation of where you have been. The knowledge of our antecedents and the incorporation of that information into our scholarship are essential if the LatCrit literature is to retain the vitality and authenticity necessary to survive as a paradigm and as an agent of change in the arenas we seek to influence.

### III. CONCLUSION

As these Essays demonstrate, LatCrit remains a vital movement of scholar activists who have dedicated their intellectual work to supporting anticolonial struggles. Within LatCrit theory, praxis, and community, issues of education have been a perennial concern that appears to have grown over the years. As LatCrit evolves in its second decade, recognizing the critical education tradition seems important in order to build solidarity amongst differently trained and situated scholars who have a common in-



terest in helping to transform educational institutions into entities that cultivate human flourishing, critical intellect, and an ethic of antisubordination.

If LatCrit theory, praxis, and community can transcend the disciplinary divides and develop a transdisciplinarity, I believe these goals will be reached for and attained with greater frequency and with a qualitatively better touch.

*¡Adelante!*