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Identity Notes Part II: Redeeming the Body Politic

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PANEL: RACES, NATIONALITIES, ETHNICITIES: MAPPING LATCRIT (DIS)CONTINUITIES:
Identity Notes Part II: Redeeming the Body Politic *

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BIO:

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These remarks were given in April 1996 at the First Annual LatCrit Conference, co-sponsored by California Western Law School and the Harvard Latino Law Review. I would like to express my deep gratitude to both of the cosponsors, as well as to Professor Frank Valdes in particular for organizing the conference and inviting my participation in the beginnings of this exciting scholarly collaboration. I would also like to thank Professor Robert Change for graciously reading the original paper when I was unable to attend the physical symposium. Professor Chang's adoption of my persona for the purposes of reading this paper confirms our faith in the fluidity (and fun) of negotiating racial and gender identity. My thanks to James Boyle, Kevin Haynes, and to Joan Williams for their helpful comments and suggestions, and to Frankie Winchester for her administrative assistance.

SUMMARY: ... Political corpus, body politic, body of law, corporate law, body of evidence, body of knowledge, the footnote. ... While the body of Christ has not been used explicitly to order secular American law and political theory, a multi-dimensional analysis of his body in Western political theory would have to include its use at a critical historic moment as an organizing metaphor for the racial order of the United States and the consolidation of the national identity as white. ... Reclamation of the national identity as historically always diverse, documentation of the denial of citizenship to groups of color, and the rectification of the consequences of this, through both active and benign means, open the possibility of true redemption of the American character, and a vision of the participation of multiple bodies necessary for a serious democracy. ... Thus, in charting racial paradigms, I have focused on two bodies -- the American political corpus or body politic and that of Christ. ... Rather than searching to create a monolithic paradigm of "Latinos and the Law," LatCrit Theory should conceptualize a series of platforms, assumptions, and paradigm shifts and linkages, again at times contradictory, that will not only enrich our understanding of Latinos/as, but will also enhance our larger understanding about law and race in America. ...

[*267] INTRODUCTION

Political corpus, body politic, body of law, corporate law, body of evidence, body of knowledge, the footnote. Metaphors of the body dominate the rhetorical legal landscape, encroaching upon even the most casual of conversations. Intrigued by the various legal meanings and uses of the body, several years ago I proposed a seminar entitled, "Jurisprudence and Interpretation: The Human Body as a Legal Metaphor." In the course of discussing my proposal with a colleague, he frowned and responded without jest, "Hmmm, I doubt such a course would be appropriate for our student body."

Such a response illustrates perfectly the uses and abuses of anthropomorphism in law school and life, and in a way suggestive of similar uses and abuses in law and history. In daily encounters, [*268] people routinely and offhandedly evoke the body in order to cloak themselves in an image of consummate self-contained community. Evocations of the body, like any good metaphor, elicit a series of resonances.

For instance, my colleague's comment probably seemed to most readers to be no more than a routine and offhanded use of a convenient figure of speech. Why make any more of it than that? But consider for a moment the political framework established by his rhetorical appeal to "our student body." What resonances and alliances with our other colleagues did he hope to evoke by representing students of myriad and diverse interests and abilities as a solitary portrait? How and why would the collapse of 600-odd students into a single body authorize his position on the curriculum?

What is it exactly that a body represents? It suggests a singular and unified entity. But anthropomorphism, the use of the human body as a metaphor, has an even more specific connotation. It is an organism circumscribed by inflexible, unchanging boundaries, composed of discrete, hierarchical, discernible parts with a direct correlation between the number of the parts and their status in the hierarchy. One head, one heart, one soul, two arms, two legs, two eyes, ten fingers, 32 teeth, and unknown quantities of hair and epidermis. Some parts of the body grow rotten, die, and are excised, cut, or exfoliated. No one mourns dead skin and dead hair and few offer significant lament over dead teeth.

My colleague's adoption of anthropomorphism suggested a nonexistent unity of vision and will amongst our many students. I have been pondering the myriad images evoked by his metaphor in this instance. If all of our students were in fact "the student body," I wonder exactly which were the brain of that body, which were the heart, and which, if any, were the soul. More troubling, I am concerned that some of our students may in fact have been conceived as appendages, the things that we might lose, but without which we can go on. I hope none among the students would represent the rotten or dead parts, the split ends.

[*269] I. METAPHORS OF THE BODY

The study of the human body may be done in many ways. Inquiries into the body may be done as anatomies, classifying internal structure and function, or by drawing a genealogical tree, establishing ancestry, relationship, and pedigree. Alternatively, one might track the projection of bodies in time and space as a sort of discursive itinerary, documenting their starting point, destination, and stops. Finally, bodies may be mapped, describing the appearance and shape of their surfaces and characteristics.

There is much to be mined from the law about the persistent construction and use of the trope of the human body. This project is the starting point in attempting to graft coherent meaning from seemingly discrete and isolated instances of racial and other sorts of subordination and regulation.

What could a multi-dimensional inquiry of the body provide for the burgeoning theory of the Latino/a encounter with American law and history? More specifically, and politically, from the perspective of an already skeptical legal academy, what can the Foucauldian and radical feminist and literary analyses that generate these bodily mappings offer the latest child of racial legal theory, newly christened here as LatCrit Theory?

For the purposes of this paper, I decline to do the obvious, which would be an ancestral genealogy, a dissective anatomy, or a discursive itinerary of a Latino or Latina body. Instead, I will start with engagements between people of color and two of the most studied and analyzed bodies in Western culture, the metaphoric bodies of Jesus Christ and the body politic.

The body of Christ provided a literal anatomical map for canonical law and church structure, and it provided a parallel framework for medieval political theory: The Church, as a community of the faithful, is considered to be a *body* of which Christ is the Head It found its [*270] way into political ideology during the Carolingian period when the empire, which was for them an embodiment of the Church, formed

a single body of which Christ was the head, and which Christ directed on earth through two intermediaries, "the sacerdotal person and the royal person," that is, the pope and the emperor (or the king).ⁿ¹ As ecclesiastical and royal authority emerged and clashed, the institutions of the monarchy and the papacy each seized Christ's body to justify political authority and territorial dominion.

Thus, in the thirteenth century, Cardinal Hostiensis argued that, [A] bishop is anointed on the head but a king on the arms and a bishop with chrism but a king with oil, to inform us that the bishop is a vicar of our head, i.e. Christ, and to show how great is the difference between the authority of a pontiff and the power of a prince.ⁿ² Advocates of the superiority of royal authority fought back: "It is clear, therefore, that in Christ the royal power is greater and higher than the priestly in proportion as his divinity is greater and higher than his humanity."ⁿ³ Even the surgeon to Philip the Fair, king of France, linked his anatomical studies to the sovereign order: The heart is the principal organ par excellence [*membrum principalissimum*] which gives vital blood, heat and spirit to all other members of the entire body. It is located in the very middle of the chest, as befits its role *as the king in the* [*271] *midst of his kingdom*.ⁿ⁴

Meanwhile, the Pauline formulation of Christ as the head of the Catholic Church provided another series of rich metaphoric uses. Alanus, an avid proponent of a papally run theocracy, declared the monstrosity of an empire in which the king was not subordinate to the pope: "If the emperor was not subject to the pope in temporalities he could not sin against the church in temporalities. Again the church is one body and so it shall have only one head or it will be a monster."ⁿ⁵ Fellow canonist Vincentius Hispanus inverted the metaphor, but concurred.ⁿ⁶

Monarchy and papacy each represented its political function as analogous to anatomical in order to naturalize a claim to a sovereign power. And mapping political hierarchy onto the divine, yet anatomically human body of Christ, added authority to anthropomorphism.

While the body of Christ has not been used explicitly to order secular American law and political theory, a multi-dimensional analysis of his body in Western political theory would have to include its use at a critical historic moment as an organizing metaphor for the racial order of the United States and the consolidation of the national identity as white. That historic moment is the end of Reconstruction in the recently reclaimed southern United States and the metaphor is the white conservative label of the age: Redemption.

In the midst of Reconstruction and efforts to integrate free Blacks into southern life and national citizenship, white conservatives resisted, labeling themselves Redeemers and their successful challenge and resistance Redemption. In Christian theology, Christ is known as the Redeemer, who, by virtue of [*272] crucifixion and resurrection, provides the possibility of salvation, redemption for the world. It is telling that in the face of the crisis of political reunification, the demand of the South was for redemption.

It is suggestive first of the perception that the Civil War worked as a sort of crucifixion of the national body. If resurrection followed the physical reunification of the country, that is the elision of the political significance of the Mason Dixon line, then white southerners' redemption, national *spiritual* reunification, could only occur when total white economic and political control was restored in the southern states. Thus the nation that entered the twentieth century had chosen a racial order and hierarchy even as it integrated the white controlled South as equal partner in the new political order. The Hayes/Tilden Compromiseⁿ⁷ signaled the redemption of the South, and the possibility of salvation of the previously torn country. Reunification came of course at the expense of Black civil and human rights.

The possibility of meaningful citizenship ends in the late nineteenth century as the Fourteenth Amendment is eviscerated,ⁿ⁸ the Fifteenth Amendment is savaged in poll taxes, literacy tests, and [*273] grandfather clause exemptions,ⁿ⁹ and the Thirteenth Amendment goes down in flames at the end of the century as apartheid is sanctioned in *Plessy v. Ferguson*.ⁿ¹⁰ Even as rights of citizenship are stripped, a simulacrum of the old antebellum order is enforced as federal troops withdraw, enabling totalitarian violence to be enacted against any who seek to enforce their remaining nominal rights.

In the last quarter of the 1800s, the United States confronted a challenge to its fragile postbellum identity. It had to incorporate the newly reclaimed southern confederacy.

In linking salvation to the resolution of the perceived crisis in political power, the redemptive metaphor is ineluctably about sovereignty. Restoration of sovereign control to Redeemers defined the salvation both demanded and celebrated by the metaphor. Redeemers articulated their political success as the return of "home rule," casting the Republican (and Black) governance during Reconstruction as a foreign invasion. Christ's body was used to justify the violent reclamation of the south by whites and the casting of Blacks out of citizenship. In its connection of salvation with political control, the redemptive metaphor creates the illusion that southern sovereignty requires white governance. Following the religious origins of redemption, only some are fit (called) to correctly govern the southern states. Not all Americans are included within the body politic, constructed as redeemed.

Christ's body played the implicit role of ordering society that it played explicitly in canonical law and medieval political struggles. The critical question of sovereign identity was not theocracy or empire, but racially defined membership in democracy.

[*274] II. THE SECOND REDEMPTION

I would submit that a similar process is occurring on the eve of the next millennium, in the last quarter of this century. In this instance, it appears to be a consolidation that targets explicitly Latinos/as, hoping to construct them as outside of the racially white body as well. White economic concerns now appear directed against the southern border, and segregation and grandfather clauses are represented in English-Only laws, Proposition 187, and proposals to alter birth citizenship. Another crisis of national identity has occurred, and we may find ourselves confronting the Second Redemption.

The process of excluding Latinos/as from a racialized body politic may prove intriguing due in part to the failure of the American racial structure to provide adequate account for distinctions between Latinos/as and non-Hispanic whites. Charting this consolidation, and attempting to stop it, will be one of the early challenges for LatCrit Theory. Places to start are suggested by references to earlier efforts to consolidate national identity around whiteness.

Reclamation of the national identity as historically always diverse, documentation of the denial of citizenship to groups of color, and the rectification of the consequences of this, through both active and benign means, open the possibility of true redemption of the American character, and a vision of the participation of multiple bodies necessary for a serious democracy.

III. LATCRIT THEORY

Thus, in charting racial paradigms, I have focused on two bodies -- the American political corpus or body politic and that of Christ. Unraveling the metaphors of the body politic and redeemed body parallels the conference project of charting the still nascent body of LatCrit Theory.

Academic questions, both political and methodological, are [*275] raised by the process of charting an intellectual movement. If LatCrit Theory seeks to be a distinct body of legal scholarship, it must delimit its boundaries, and to expand the metaphor, in birthing itself, it must establish its genealogical tree. Scholarly movements typically are categorized along the lines of methodological approach, generational influence, or paradigm shifting. An early project for those commencing the intellectual genealogy of LatCrit Theory is to begin to establish the parameters of the discourse, as well as its point of entry into extant legal scholarship, specifically legal historical, critical legal, and civil rights scholarship.

The participants in this conference have denominated this emerging scholarly project Latino Critical Legal Theory. In offering a few tentative suggestions about possible avenues of exploration, I will commence with the name itself. Considered holistically, LatCrit Theory suggests that the project intends to document a distinctive legal history and identity for Latinos/as, while simultaneously drawing links to critical and racial

legal discourses. The stress on Latinos/as marks an intervention in legal scholarship on race. Conventional civil rights scholarship and critical race theory have made excellent inroads in exposing the falsity of the binary "white/black" nature of racial reasoning and logic in America. Yet, the old paradigms continue to structure legal thought and analysis. A mere shift in language is not sufficient. What is needed is a deepened analysis of the specific legal engagement of Latinos/as with American culture and history.

One intervention LatCrit Theory will offer is to establish paradigms that engage the uniqueness of the Latino/a legal experience. The notion of Latino/a community challenges outdated and essentializing notions of race that pervade both progressive and conservative dialogues about civil rights. The spectrum of hues and politics in the Latino/a community requires sophisticated modes of reasoning about the nexus of heritage and race that at this moment appears to comprise Latino/a identity.

Rather than reworking established paradigms to appear as a racial amendment (i.e. "How is [insert a racial issue] the [*276] same/different for Latinos/as?"), LatCrit Theory will articulate the distinctiveness of the Latino/a encounter with law in this country. Some scholars may draw on theories of imperialism and colonialism to explain the historical and contemporary complexity of law's regulation of the relationship between U.S. capital and Latino/a labor. Other scholars may consider how Latino/a legal history ought to be periodized? What are the pivotal events, cases, victories, and defeats? How ought they be grouped to constitute historic moments? Other LatCrits may engage how language has shaped community at the same time that it has been a primary justification for discrimination. Still others will analyze how the politics of sexuality in this community inform Latino/a (legal) feminism and understandings of gender discrimination. And finally, some will assess how the differential legal treatment afforded immigrants from various countries affects political affiliation? LatCrits may provide one of the most sophisticated structures for considering conservative strains in minority political culture.

Neither I nor LatCrit Theory ought to be understood as calling for essentialist historical inquiry. Instead, LatCrit's focus on a heretofore relatively ignored racial minority may expose flaws in historiographical methods that, applied neutrally, miss the presence of Latinos/as in our culture. Thus, LatCrit's project of documentation and inquiry will also challenge and enhance extant legal historiography.

The possibility of developing new methods of legal analysis and enhancing interdisciplinary study leads directly to the next piece of the project title. The designation of this project as "critical" suggests a desire to draw genealogical links to extant critical legal discourses, including possibly critical race theory, critical feminism, and one of the scholarly "ancestors" of both, critical legal studies. What sorts of interventions does LatCrit Theory perceive itself as offering into which specific legal discourses? Regardless of the call LatCrit makes as to its relationship to different types of theory, it cannot avoid landing squarely in the middle of academic debates raging over the role and effectiveness of critical theories in legal [*277] scholarship on race.

While here I will not delve into the substance or merits of that debate, I do want to take care to suggest that what is at stake for LatCrit Theory is not merely political affiliation, but rather, larger questions as to whether the insights yielded historically by critical race theory and fellow scholarly travelers might offer help and insight into the history of Latinos/as. This paper suggests, that in establishing its own genealogical tree, LatCrit Theory might benefit from grappling with the substantive issues of mapping Latino/a bodies and metaphors of exclusion, as well as engaging in a broader consideration of its own theoretical affiliation(s), directions for inquiry, and the role of methodological unity.

To address for a moment the need for methodological or political unity to constitute an intellectual movement, this paper does not mean to suggest that a monolithic paradigm of Latinos/as will emerge from this intellectual project. Rather, part of the task of LatCrit Theory is to offer and provide coherence for the ranging, and oft-times contradictory, and perhaps warring, theoretical, doctrinal, and historical documentations of the story(ies) of Latinos/as and the law in the United States. Rather than searching to create a monolithic paradigm of "Latinos and the Law," LatCrit Theory should conceptualize a series of

platforms, assumptions, and paradigm shifts and linkages, again at times contradictory, that will not only enrich our understanding of Latinos/as, but will also enhance our larger understanding about law and race in America.

In doing this terribly important work, LatCrit Theory will join battle against the Second Redemption.

FOOTNOTE-1:

n1 Jacques Le Goff, *Head or Heart? The Political Use of Body Metaphors in the Middle Ages*, in 3 FRAGMENTS FOR A HISTORY OF THE HUMAN BODY 14 (Michel Feher et al. eds., 1989).

n2 BRIAN TIERNEY, *THE CRISIS OF CHURCH AND STATE 1050-1300*, at 156 (1964).

n3 *Id.* at 77.

n4 Le Goff, *supra* note 1, at 23 (footnote omitted) (emphasis in the original).

n5 TIERNEY, *supra* note 2, at 123.

n6 "No kingdom can be excluded from the empire, for it would be headless and without a head it would be a monster." *Id.* at 162.

n7 In 1876, Democrats challenged the election of Rutherford B. Hayes to the presidency. In order to secure Hayes's election, Republicans agreed to concessions that largely restored control of the South to white conservatives. See ERIC FONER, *A SHORT HISTORY OF RECONSTRUCTION: 1863-1877*, at 566-80 (1988), for a fuller discussion.

n8 See, e.g., [United States v. Cruikshank, 92 U.S. 542 \(1875\)](#) (holding that while the Fourteenth Amendment prohibits a State from depriving any person of life liberty or property without due process of law, the amendment does not protect the rights of one citizen against another); [The Civil Rights Cases, 109 U.S. 3 \(1883\)](#) (holding that the Fourteenth Amendment is not intended to protect individual rights against individual invasion; and therefore congress has no authority to prevent private citizens from violating individual rights); [United States v. Harris, 106 U.S. 629 \(1883\)](#) (holding that the Fourteenth Amendment provides a guarantee against the exertion of arbitrary and tyrannical power on the part of any State government, and is not a guarantee against the commission of individual offenses).

n9 See, e.g., [United States v. Reese, 92 U.S. 214 \(1875\)](#) (holding that the Fifteenth Amendment does not confer suffrage on blacks, but merely prohibits the States from giving preference to one citizen of the United States over another on the basis of race, color or previous condition of servitude); DERRICK BELL, *RACE, RACISM, AND AMERICAN LAW 186-90* (3d ed. 1992).

n10 [163 U.S. 537 \(1896\)](#).