

Navigating Diverse Identities: Building Coalitions Through Redistribution of Academic Capital—An Exercise in Praxis

*Aya Gruber**

INTRODUCTION

I have experienced two philosophically epiphanic moments in my adult life. The first occurred during a solitary traversing of the mountains in the Guanxi province of China, and the second occurred at LatCrit IX. What I mean by epiphany is less a collection of thoughts than a singular feeling. Much like the Joycean artist,¹ I felt at these moments an internal sense of realization and well-being, a feeling that something had just clicked into place. In China, I had a moment of finally feeling at peace with the uncertainty of my own future and life's goals. Similarly, at LatCrit IX, I had a momentary feeling of peace with the intricacies of my racial identity and my progressive agenda.

The organizers of the Second Annual Junior Faculty Development Workshop at LatCrit IX,² the first LatCrit conference I have ever attended, convened a plenary session on the LatCrit movement and LatCrit principles.³ After Tayyab Mahmud elegantly

* Assistant Professor of Law, Florida International University College of Law. I am grateful to Jorge Esquirol, Charles Pouncy, Karen Pita-Loor, and Lilian Aponte for helping develop ideas for this Essay. I also thank the organizers and participants of LatCrit IX for giving me a fresh perspective on legal scholarship. Finally, I praise the thoughtful and diligent work of the editors at the Seton Hall Law Review.

¹ See generally JAMES JOYCE, *A PORTRAIT OF THE ARTIST AS A YOUNG MAN* (1916).

² The Junior Faculty Development Workshop convened for two days. Its purpose was to provide tips to junior faculty and “provide junior faculty with a ‘network’ to turn to for future professional advice.” LatCrit IX Program Schedule 3 (Ninth Annual LatCrit Conference, Villanova University School of Law, Villanova, Pa., Apr. 29, 2004–May 2, 2004) (program schedule on file with the Seton Hall Law Review).

³ Although Angela Harris and Francisco Valdes were scheduled to facilitate the workshop entitled “On Jurisprudence: LatCrit Principles/LatCrit Values,” Tayyab Mahmud actually made this presentation. Angela Harris and Francisco Valdes, Facilitators, “On Jurisprudence: LatCrit Principles/LatCrit Values” (workshop held at Ninth Annual LatCrit Conference, Villanova University School of Law, Villanova,

explicated the history of the LatCrit movement, including its roots in legal realism, critical legal studies, critical race theory, and feminist legal theory, the conversation turned to the construction of identity, the use of the term “people of color,” and antistatutory goals. At this point, I made a comment about the tension between singular minority empowerment and anti-essentialist coalition building. I stated that as a biracial person, it had been my experience that being unable to capture an essentialist identity of myself and navigating the complicated maze of race and identity without a firm destination had left me feeling unsettled. After a moment, Tayyab Mahmud replied with an eloquent response to which I would not do justice were I to attempt to repeat it verbatim here; thus, I will put it plainly. He stated, “Being unsettled is okay.” I believe—although this memory may be a case of my own tendency to engage in revisionist history—he went on to say something like, “Being unsettled is actually good.”

Boom, there it was! It just hit me and flooded through me like a wave: a moment of true realization. I then understood that for so many years (and certainly as a law student, lawyer, and later academic), I had been grappling with where to fit my voice in the struggle for antistatutory and whether I was entitled a voice, given that I could not fit neatly into any of the categories of subordinated groups.⁴ I had always believed in the empowerment of subordinated groups, but that belief rarely, if ever, translated into an agenda involving groups to which I might conceivably belong, namely, biracial folks or Asian Americans.⁵ Rather, I spent most of my efforts attempting to secure more rights for what I considered and continue to consider one of the most unfairly subordinated groups in

Pa., Apr. 29, 2004–May 2, 2004 (hereinafter LatCrit IX)).

⁴ My mother is a second generation Japanese American, and my father is a second generation Russian American. I was born and raised in Miami, Florida, where there are few Asian Americans and even fewer mixed Asians.

⁵ There was one unique time in which I tried to embrace explicitly a multiracial identity and agenda. I made an unsuccessful attempt to start a group for interracial students at Harvard Law School. When I first entered Harvard Law School, perhaps out of my own naiveté, I was astounded at the number of mixed-race people at the law school. There were so many other gender and race-based groups on campus, and I felt that interracial students could have a say on antidiscrimination laws, census issues, and the like. At the beginning, many first year law students were very excited over the prospect of such a group, and we had extremely fruitful initial meetings. As time went on, however, students became worried about resumes and school work. Our group had no outlines; we had no particular job connections; in short, we had no power. The biracial African Americans tended to drift away to BLSA, the Asians went to APALSA, and so on. I remember one student, a mixed Native American, Caucasian, Asian, Latino. He held on to the very end, but a group of two is of little use.

our country: indigent minority criminal defendants.⁶ I realized at LatCrit IX that racial politics and progressive efforts were not about self-serving and essentialist agendas but rather about fighting against subordination and unfair privilege in whatever forms they might take. I began to think about how academicians could overcome essentialism and privilege traps by devoting their efforts to the causes of “others.”⁷

As the conference moved from workshop to panels, the centralized theme of “Countering Kulturkampf Politics Through Critique and Justice Pedagogy”⁸ included varied discussions of essentialism and multiplicity,⁹ and I began to understand more about intersectionality¹⁰ and post-intersectionality theory.¹¹ From Victor

⁶ I began interning at the Miami-Dade County Public Defender at age sixteen. In law school, I spent much of my time at the criminal defense clinic. Prior to becoming an academician, I was a staff attorney with the Public Defender Service of Washington, D.C., and the Miami Federal Defender.

⁷ By “others,” I mean members of minority groups whose minority traits are different from the minority academician’s specific minority traits.

⁸ LatCrit IX Program Schedule, *supra* note 2, at 1.

⁹ The LatCrit ideology includes critiques of essentialist doctrines, which tend to reduce people to a single subordinating trait. By doing so, essentialist doctrines, which may seem progressive, can actually reinforce institutions of privilege. See Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (Or Other -isms)*, 1991 DUKE L.J. 397, 401 (observing that many feminist theories center on “white issues . . . rendering women of color invisible”). Lisa Iglesias and Frank Valdes describe essentialism and anti-essentialism as follows:

“Essentialism” and “anti-essentialism” are key concepts in LatCrit theory, however, both terms mean different things in different contexts. Generally, “essentialism” is a label applied to claims that a particular perspective reflects the common experiences and interests of a broader group, as when working class men purport to define the class interests of “workers,” or white women purport to define the interests of all “women,” without acknowledging intragroup differences of position and perspective. Indeed, essentialist categories are routinely invoked precisely in order to suppress attention to intragroup differences, and thereby to consolidate a group’s agenda around the preferences of the group’s internal elites. By contrast, “anti-essentialist” theory seeks to reveal intragroup differences precisely in order to expose relations of subordination and domination that may exist within and among the members of any particular group.

Elizabeth M. Iglesias & Francisco Valdes, *LatCrit at V: Institutionalizing a PostSubordination Future*, 78 DENV. U. L. REV. 1249, 1256 n.39 (2001).

¹⁰ African American women scholars first introduced intersectionality theory in their critiques of essentialist racial and gender ideologies. See, e.g., Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139. Darren Lenard Hutchinson describes intersectionality theory as follows:

The pioneering works of critical race feminists have made the “intersectionality” model an established jurisprudential method among

Romero's interesting ideas on coalition building through self-sacrifice,¹² Camille Nelson's presentation on race and mental disability,¹³ and SpearIt's thought-provoking presentation discussing racial coalitions built by radical Islam,¹⁴ to Robert Chang's moving celebration of Jerome Culp's legacy, I learned about the complex relationships between systems of subordination and empowerment and began to formulate some legal academic strategies in the post-intersectionality progressive movement. Now, having spent the weeks since the conference reading various works on intersectionality, post-intersectionality, and multidimensionality theory,¹⁵ I have developed

antidiscrimination and identity theorists. Equality scholars have illuminated the inadequacies of essentialism in a host of doctrinal and political contexts by employing intersectionality. But the intersectionality critique extends beyond antiessentialism. Intersectionality theorists have also demonstrated the complexity and multiplicity of identity and oppression and the need for a more comprehensive analysis of subordination that resists the traditional temptation to analyze systems of subordination as unrelated and nonconverging phenomena.

Darren Lenard Hutchinson, *New Complexity Theories: From Theoretical Innovation to Doctrinal Reform*, 71 UMKC L. REV. 431, 432–33 (2002).

¹¹ Post-intersectionality theory has several goals. It seeks to analyze and refine the intersection analogy and further describe the multiplicitous nature of human beings. It also focuses on legal strategies and advocacy that embrace the multidimensional nature of voices in the progressive movement. See Robert S. Chang & Jerome McCristal Culp, Jr., *After Intersectionality*, 71 UMKC L. REV. 485 (2002); Nancy Ehrenreich, *Subordination and Symbiosis: Mechanisms of Mutual Support Between Subordinating Systems*, 71 UMKC L. REV. 251 (2002); Hutchinson, *supra* note 10; Peter Kwan, *Intersections of Race, Ethnicity, Class, Gender & Sexual Orientation: Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257, 1264 (1997); Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities & Interconnectivities*, 5 S. CAL. REV. L. & WOMEN'S STUD. 25 (1995).

¹² Victor Romero spoke during the "Connections Across Differences" panel. Victor Romero, "Rethinking Minority Coalition Building: Valuing Self-Sacrifice, Stewardship, and Anti-Subordination" (subpanel discussion held at LatCrit IX, *supra* note 3).

¹³ Camille Nelson's talk was part of the "How Race Operates" panel. Camille Nelson, "A Dangerous Intersection: Assessing the Interplay of Race and (Mental) Disability" (subpanel discussion held at LatCrit IX, *supra* note 3).

¹⁴ SpearIt also spoke during the "How Race Operates" panel. SpearIt, "God Behind Bars: Race, Religion & Revenge" (subpanel discussion held at LatCrit IX, *supra* note 3).

¹⁵ Multidimensionality theory, as set forth by Darren Lenard Hutchinson, involves considering the multidimensional nature of subordination. Hutchinson sees subordinating factors and their accompanying harms as varied rather than universal and critiques gay scholarship for ignoring this framework:

Instead of conceptualizing race as separate from and oppositional to sexuality (and, thus, susceptible to comparison), multidimensionality examines the interactions of these statuses to highlight the diverse harms gays and lesbians face. Multidimensionality portrays these harms without diminishing—but rather, acknowledging and

formative thoughts on building coalitions between differently subordinated groups. These thoughts relate back to Tayyab's initial remark that "being unsettled is okay."

The vast majority of the participants in the LatCrit IX conference possess one or more subordinating traits.¹⁶ LatCrit is composed of women, people of color, gays, religious minorities, immigrants, and people with some combination of these traits. We are all, however, empowered in many ways. Some of the women and gays are white. Some of the minorities and gays are men. Some of the people of color are heterosexual. Many of the participants are non-immigrants. Almost all of us are educationally and economically privileged. Many of the participants are even privileged within their own academic institutions, having gained tenure or administrative positions. What we all also possess is a measure of academic capital, which, in effect, is our ability to create change through what we teach, what we say, what we do, and what we write. Academic capital, like political or economic capital, is an asset.¹⁷ Because we cannot talk and write about everything, our capital is limited by time, energy, and even inclination. This Essay discusses how we can marshal our

emphasizing—the importance of race and other sources of empowerment and disempowerment. Thus, multidimensionality provides a methodology for moving beyond the failed analogies while recognizing—rather than distorting—the true impact of race. . . . By excluding issues of racial and class subordination from analysis, gay and lesbian legal theorists and political activists negate the experiences of people of color and the poor and give centrality to the experiences of race- and class-privileged individuals. Consequently, they create harmful conflicts with antiracist agendas and people of color and propose theories that inadequately explain and confront (if at all) the subordination of the poor and racially marginalized.

Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561, 633–34 (1997).

¹⁶ By "subordinating trait," I mean those characteristics of human beings that lead others to subordinate them, for example, race, gender, sexuality, socioeconomic status, or ethnicity. Other LatCrit scholars have referred to a person bearing a subordinating trait as "singly burdened" and a person bearing several subordinating traits as "doubly (or multiply) burdened." Ehrenreich, *supra* note 11, at 256–57, 272–73. I must admit, I have not yet mastered LatCrit linguistics, and I can only hope that I am using at least some of the terms correctly. I am also cognizant of the need for precision in this type of discourse, so I will try to define my own vague terms.

¹⁷ Indeed, the more prominent a teacher or scholar, the more her academic capital is worth. When, for example, Derrick Bell writes, people read. For a description of Professor Bell's accomplishments and an overview of his publications, see his curriculum vitae, *available at* http://www.law.nyu.edu/faculty/profiles/bios/belld_bio.html (last visited Apr. 14, 2005).

own academic capital so as to create coalitions and advance the antisubordination agenda.¹⁸

Although anti-essentialism is one of the touchstones of the LatCrit movement,¹⁹ I would venture that most academicians in the critical or rights fields tend to write about the struggles of those who share at least one of their minority traits or who possess very similar traits. Often—but not always—women write about gender discrimination, Asians write about Asians and immigration, African Americans write about racial discrimination, and gays write about gay rights and heterosexism. There is a natural tendency to identify with the subordinated parts of oneself and write from that perspective, which is not necessarily a bad thing. It is important for those with similar minority traits to come together in order to garner strength and power for fighting against their oppression. Moreover, it feels natural to write from the perspective of one's own negative experiences. Writing from the perspective of the oppressor as opposed to the oppressed can be an extremely disconcerting thing.²⁰

What I am arguing, however, is that such a feeling of being unsettled is “okay.” In order to build coalitions and advance a general strategy of antisubordination, one must, as Eric Yamamoto opines, envision oneself as both oppressed and oppressor.²¹ To

¹⁸ Frank Valdes describes the commitment to antisubordination and coalition building as a recognition of interconnectivity:

[I]nter-connectivity is a personal awakening to the tight interweaving of systems and structures of subordination. It represents a personal involvement with the cultivation of a consciousness that remains aware of this past, and alert to its malingering manifestations in the present. It entails a personal, and continuing, effort to exert inter-connective sensibilities in the task of forging a capacious, if not universal, theory of subordination. It calls for a personal engagement on various levels of political and theoretical operation in law and society toward a better future.

Valdes, *supra* note 11, at 49.

¹⁹ See Sylvia R. Lazos Vargas, *The Latina/o and APIA Vote Post-2000: What Does It Meant to Move Beyond “Black and White” Politics?*, 81 OR. L. REV 783, 813 (2002) (“A central tenet in LatCrit racial theory is its commitment to anti-essentialism”); Francisco Valdes, *Barely at the Margins: Race and Ethnicity in Legal Education—A Curricular Study with LatCritical Commentary*, 13 Berkeley La Raza L.J. 119, 147 (2002) (noting the LatCrit movement’s “longstanding commitments to antiessentialism multidimensionality, and antisubordination in and through legal education, discourse, and praxis”).

²⁰ Francisco Valdes discusses his difficulty speaking at a Lesbians and the Law conference. He recollects that his “maleness became a lightning rod for discontent.” Valdes, *supra* note 11, at 29.

²¹ Eric Yamamoto observes:

[T]he interracial justice concept locates racial group agency and responsibility within the tension between continuing group

effectuate this idea, I propose that academicians in the progressive movement devote some part of their academic capital to the struggle of those who are wholly unlike them—those to whom the progressive academicians most likely represent the oppressor class. In this manner, progressives will be able to redistribute to other subordinated groups the power gains they have made in their individual lives and causes. The converse of this ideal is that we all must, as people who identify with others who share our subordinating traits, open our arms to those in “oppressor groups” who seek to devote their academic capital to “our” causes.

In addition, redistribution of academic capital in a coalition-conscious way serves as a response to the power of institutionalized racial privilege. Charles Pouncy suggests that efforts of critical scholars are sometimes limited by conscious or unconscious use of subordinating institutional legal structures.²² The program to redistribute academic capital serves as a check on the pervasive allure of privilege and can help keep academicians focused squarely on antisubordination goals. In addition, minority law professors can capitalize on their acceptance by privileged institutions by devoting resources to the goals of those who are less privileged. In this way, one can “confront the institutions of privilege and subordination by using one’s ability to participate in those institutions to subvert them from within.”²³

The rest of this Essay will be dedicated to answering what is no doubt the obvious set of questions: Why should academicians devote capital to writing from an “oppressor’s” point of view? How does this

subordination and emerging group power. It posits that amid social structural shifts, racial groups may be, in varying ways, simultaneously privileged and oppressed, empowered and disempowered, uplifting and subordinating. It means understanding the influences of dominant, mostly white institutions in the construction of interracial conflicts. It also means understanding ways in which racial groups contribute to and are responsible for the construction of their own identities and sometimes oppressive inter-group relations. It thus acknowledges situated or constrained racial group agency and responsibility.

Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 ASIAN PAC. AM L.J. 33, 38 (1995) (footnotes omitted).

²² See generally Charles R.P. Pouncy, *Institutional Economics and Critical Race/LatCrit Theory: The Need for a Critical “Raced” Economics*, 54 RUTGERS L. REV. 841 (2002) (advocating the adoption of heterodox economic theory as an alternative to neoclassical economic theory and observing that neoclassical economic theory ignores race, racialization, and racism, thus forming a basis for institutional racism).

²³ Charles Pouncy made this comment upon reviewing an earlier draft of this Essay. He highlighted for me the connection between the concept of redistribution of academic capital and subversion of structures of racial privilege.

question relate to intersectionality and post-intersectionality theory? What are the pros and cons of this proposal? To that end, Part I of the Essay will briefly describe intersectionality theory as a way to ground and center the proposal. Part II will discuss the allure of identity politics and respond prospectively to potential reservations about the proposal. Part III will explain why the proposal furthers antisubordination goals and fosters multidimensional coalitions.

I. INTERSECTIONALITY AND POST-INTERSECTIONALITY THEORIES

Anti-essentialist writings have laid out the argument that each of us is a collection of different attributes.²⁴ In this society, one's attributes, whether gender, race, class, sexuality, or other characteristics, affect one's status differently in various contexts.²⁵ What may be subordinating and stigmatizing in one context can be empowering in others. This duality is often the case with stereotypes—they inure to the benefit or detriment of the subject depending on the context. For example, the stereotype of women as “weak” or “nurturing” subordinates them in the business context, yet actually empowers them in the parental context. In part because of these stereotypes, women suffer disempowerment and discrimination in the workplace but seem to fare much better than men in family court, especially in the context of child custody. Although each individual's attributes affect the individual and society differently in different contexts, creating what is sometimes referred to by critical scholars as “shifting bottoms,”²⁶ progressives are wary of anti-

²⁴ Yamamoto, for example, deconstructs the concept of Asian-ness. He observes that

questions about Asian American as a racial category give rise to questions about the category's shifting borders: Under what circumstances do individuals faced with justice issues shift between pan-racial and ethnic identities? How do differences concerning history, culture, economics, gender, class, mixed ancestry, immigration status and locale contribute to malleable victim and perpetrator racial identities? How do unstable racial identities detract from or provide opportunities for deeper understandings of interracial harms and group responsibility for healing?

Yamamoto, *supra* note 21, at 43–44.

²⁵ LatCrit employs “analyses that recognize and target the interlocking nature of different forms of oppression and privilege based on different axes of social position and group identity, whether race, ethnicity, sex, gender, class, sexual orientation, religion, ability, nationality or other similar constructs.” Iglesias & Valdes, *supra* note 9, at 1322.

²⁶ Athena Mutua proposed the idea of “shifting bottoms” as a complement to the LatCrit project of rotating centers. LatCrit had instrumentalized the concept of multiplicity by rotating its center and devoting at least one panel of the conference to concerns of non-Latina minorities. Athena Mutua observed that the LatCrit

essentialism leading to the co-opting of minority status by privileged members of society.²⁷ Thus, there must be a point at which an individual's characteristics can be described more generally as either privileged or subordinating.²⁸

There is an important need to generalize here in order to avoid hopeless relativism.²⁹ If the individual is thought of only as a

project must be cognizant of the shifts in the status of different groups in different contexts. She described "shifting bottoms" as follows:

I believe the "bottom" metaphor leads us to the idea that the groups represented at the "bottom" shift, depending on the issue and circumstance. The shifting "bottom" directs us to shift our focus, shift our thinking, and perhaps shift our analytical tools when we are trying to understand the experiences of different groups. It instructs us to look specifically at how different groups and issues are constructed and experienced both in similar and dissimilar ways. This essay suggests that although Blacks are at the bottom of a colorized racial hierarchy, Latino/as are at the bottom of a racialized language hierarchy, at a minimum, and perhaps at the bottom of a racial system marked by the Spanish language, among other things. The "bottom" has indeed shifted.

Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177, 1216 (1999).

²⁷ For example, some conservatives claim that because of affirmative action programs and diversity goals, white men are a minority. See, e.g., Martin D. Carcieri, *A Progressive Reply to the ACLU on Proposition 209*, 39 SANTA CLARA L. REV. 141, 149–50, 156–57, 177 & n.151 (1998) ("[T]he current trend in the private sector is to disfavor the hiring of white males in order to project the appearance of diversity . . ."). Although Justice Thomas does not imply that white men are a minority, he buys into this logic in his *Adarand* concurrence, when he states, "In my mind, government-sponsored racial discrimination based on benign prejudice is just as noxious as discrimination inspired by malicious prejudice. In each instance, it is racial discrimination, plain and simple." *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 241 (1995) (Thomas, J., concurring) (citations omitted).

²⁸ By privileged trait, I mean the converse of a subordinating trait. It is a trait that brings with it institutional advantages. For example, whiteness is generally privileged over other racial traits, maleness over femaleness, heterosexuality over gayness, citizenship over immigrant status, and so forth. Thus, for example, identifying a person as a "white female" is recognizing that the person possesses a subordinating trait and a privileged trait. Now, it is true that the interplay of those traits and others she possesses is different in different contexts. Nonetheless, there is a need for some generalization here.

²⁹ Robert Westley warns of the dangers of contextual multiplicity theories: Categorization of white people as the racial victims of reform efforts made on behalf of people of color is now a mainstay of conservative political backlash. It is an idea that has insinuated itself into federal equal protection jurisprudence with disastrous effect on the continuing viability of affirmative action and voting rights, forcing critical race scholars to re-examine the utility of framing the domination of people of color in terms of acontextual notions of racism or antidiscrimination. It has divided communities of color; some now see any racial redress which requires the cooperation of whites as futile, while others seek to reclaim the remedial focus in various ways.

collection of disparate attributes that act differently at different times, then group-think is almost impossible. Without some level of group-think, minority empowerment is simply not feasible, and indeed the LatCrit movement would have little basis for coalescence.³⁰ As a result, it is helpful to categorize certain attributes as generally privileged or generally subordinating. It is true, semantically, that subordinating traits can be described in certain scenarios as privileged.³¹ Blackness, Latina-ness, femaleness, and gayness, for example, all can be described as privileged features in the limited areas where African Americans, Latinas, women, and gays have strong holds on power, such as several spheres of popular culture. Margaret Montoya made the point during one of the panels that, despite the prevalence of bigotry and heterosexism, minorities and gays often have a corner on the market of what is “cool.”³² The important political reality, however, is that not all traits are similarly situated. Blackness and Latina-ness are traits that generally cause one to be subordinated whereas whiteness generally allows one to enjoy privilege. Femaleness is generally subordinating and maleness privileged. Gayness is generally subordinating and heterosexuality privileged. Poverty is subordinating and wealth privileged.

The first writings on intersectionality envisioned certain people as being at the junction of two or more subordinating traits.³³ Kimberle Crenshaw criticized both essentialist feminist and critical race movements for ignoring, in their discourse and strategies, black women, who stood at the crossroads of both race and gender subordination.³⁴ Crenshaw’s important scholarly contributions urged courts and theorists alike to consider discrimination against black women as unique and distinct from discrimination against blacks or discrimination against women.³⁵ While Crenshaw and similar authors

Robert Westley, *Reparations and Symbiosis: Reclaiming the Remedial Focus*, 71 UMKC L. REV. 419, 429 (2002) (footnotes omitted).

³⁰ Steven Bender and Keith Aoki describe the LatCrit movement as seeking “a political identity that aims to mobilize and build community around those willing to address Latina/o issues in imagining a post-subordination future.” Steven W. Bender & Keith Aoki, *Seekin’ the Cause: Social Justice Movements and LatCrit Community*, 81 OR. L. REV. 595, 619 (2002) (footnotes omitted).

³¹ See *supra* note 26 for a discussion of “shifting bottoms.”

³² Margaret Montoya & Robert Westley, Facilitators, “On Scholarship: What to Write, How to Finish” (workshop held at LatCrit IX, *supra* note 3).

³³ See Crenshaw, *supra* note 10 (discussing the intersectional experience of black women in terms of race and gender).

³⁴ *Id.* at 140.

³⁵ *Id.*

considered the cases of “doubly-burdened”³⁶ individuals, post-intersectionality theorists analyzed individuals as a collection of both subordinating and privileged features, thereby characterizing human beings as both oppressed and as having access to institutions of privilege.³⁷

The concept that individuals are collections of traits rather than essentialist beings resulted in a guarded rejection of identity politics by progressives.³⁸ The LatCrit movement, for example, began to see itself less as a movement solely designed to increase unilaterally the political power of Latinas and more as a movement embracing general goals of antisubordination and coalition building.³⁹ As such, the LatCrit movement now embraces all varieties of antisubordination discourse, not solely those addressing Latina rights. Regularly represented in LatCrit symposia and conferences are queer theory, race relations discourse, feminist legal thought, populist strategies, mental disability advocacy, and other concepts involving the empowerment of individuals and groups subject to discrimination.⁴⁰

In addition, the rejection of essentialism led to several theories concerned with bridging the gap between disparately situated and, at times, conflicting minority groups. Several of the panels at LatCrit IX discussed the intersection of race and gender, different races, race and sexuality, and race and socioeconomic status, and also addressed ways to build meaningful coalitions.⁴¹ In the post-intersectionality

³⁶ See, e.g., Ehrenreich, *supra* note 11, at 275 (describing the terms “singly-burdened” and “doubly-burdened”).

³⁷ See Yamamoto, *supra* note 21, at 38 (discussing the multiplicitous nature of individuals).

³⁸ See *supra* note 9 for a discussion of essentialist doctrines. I say guarded because, as noted above, a total rejection of group-think makes coalitions impossible. Also, only by invoking some essentialist notions of identity can the relativism problem be overcome and subordination prevented from being reduced to total contextualism. See *supra* notes 29–31 and accompanying text for a discussion of the need for some level of group-think to achieve a coalition.

³⁹ See Mutua, *supra* note 26, at 1184–85 (describing the LatCrit movement’s effort to rotate its center around non-Latina issues of subordination).

⁴⁰ LatCrit IX, for example, hosted the following presentations not directly related to Latina issues: Nancy Ehrenreich, “North American Exceptionalism and Failures of Feminist Coalition: On Genital Cutting Here & Abroad” (subpanel discussion held at LatCrit IX, *supra* note 3); Shirley Turpin-Parham, “Preserving the History of the Underground Railroad” (subpanel discussion held at LatCrit IX, *supra* note 3); Verna Williams, “Single Sex Education and the Construction of Race and Gender” (subpanel discussion held at LatCrit IX, *supra* note 3); and Adrian Wing, “The Future of Critical Race Feminism in the Age of Terror” (workshop held at LatCrit IX, *supra* note 3).

⁴¹ Panels on coalition building included: Michele Alexandre, “The Black/Latino

world, progressive scholars have embraced a project of developing strategies aimed at unifying the multiplicity of agendas, ideologies, races, genders, sexualities, classes, and ethnicities within the progressive movement to further a coherent agenda. These progressive scholars criticize essentialist identity politics and note that conflicts and stratifications within the movement, whether perceived or real, have given fuel to conservatives who seek to dismiss progressive agendas and claim that progressives' failure to coalesce is a reason to reject progressive politics.⁴²

Recognizing the importance of unification, progressive scholars set forth strategies for creating coalitions among seemingly disparate subordinated groups. Many of these theories are featured in a 2002 symposium issue of the *UMKC Law Review* entitled, "Theorizing the Connections Among Systems of Subordination."⁴³ Nancy Ehrenreich,

Divide" (subpanel discussion held at LatCrit IX, *supra* note 3); Wilfredo Caraballo, "A Problem of Latina/o-Black Coalition Politics in New Jersey" (subpanel discussion held at LatCrit IX, *supra* note 3); Angela Harris, "Theorizing Against Borders" (workshop held at LatCrit IX, *supra* note 3); Jon Márquez, "Anti-Racist Coalition-Building in Texas" (subpanel discussion held at LatCrit IX, *supra* note 3); Victor Romero, "Rethinking Minority Coalition Building: Valuing Self-Sacrifice, Stewardship, and Anti-Subordination" (subpanel discussion held at LatCrit IX, *supra* note 3); Anita Tijerina Revilla, "Raza Womyn Queer Dynamics: An Analysis of Emerging Queer Identities in a Chicana/Latina Activist Organization" (subpanel discussion held at LatCrit IX, *supra* note 3).

⁴² Nancy Ehrenreich describes the white conservative "divide and conquer" tactic:

Right-wing discourse is replete with arguments to the effect that one progressive reform cannot be accepted because it will jeopardize the rights of some other group that progressives like to support. Such arguments imply that the interests of identity groups are at cross-purposes, so that it is impossible to accommodate all of them. In so doing, they also implicitly criticize the reform efforts of particular groups, suggesting that those efforts ignore the legitimate interests of others and thus reflect little more than narrow self-interest.

Ehrenreich, *supra* note 11, at 259. Darren Lenard Hutchinson observes that the resistance to internal criticism in the progressive movement, which exposes such rifts, is based in part on the fear of disunification:

[A]ctivists and theorists have opposed internal criticism because they fear that such criticism will cause disunity within oppressed communities, thus detracting from collective opposition to subordination. Members of oppressed communities often rally around their socially constructed identities in order to challenge the oppression and discrimination mediated by these categories. The interposing of internal criticism is perceived as a threat to this history of "unified" political action.

Darren Lenard Hutchinson, *Beyond the Rhetoric of "Dirty Laundry": Examining the Value of Internal Criticism Within Progressive Social Movements and Oppressed Communities*, 5 MICH. J. RACE & L. 185, 195-96 (1999) (footnotes omitted).

⁴³ Nancy Levit, *Theorizing the Connections Among Systems of Subordination*, 71 UMKC L. REV. 227 *passim* (2002).

for example, advocates a process of “symbiosis,” by which different groups—including even privileged groups—can unify around convergent goals and neutral values.⁴⁴ By this theory, she hopes to avoid several identity-based problems that divide the progressive movement.⁴⁵ Others regard with skepticism the proposition that there exists a neutral solution, or indeed any solution, to the problems presented by identity.⁴⁶

This Essay is yet another attempt to discuss how to bridge the identity gap. Rather than asking subordinated groups to sublimate what is unique about them in favor of that which different groups share, I am instead proposing that groups embrace their uniqueness, but nonetheless find ways to reach out to other groups that do not share their attributes. Through this theory, I will try to meet Robert Chang and Jerome Culp’s challenge to find concrete ways in which antisubordination work can be done in the face of a multiplicity of identities.⁴⁷ They remark:

How do you maximize antisubordination activity when groups conflict? One method that we’ve explored requires sacrifice by disclaiming privilege. . . . If there are to be meaningful and longstanding coalitions between African Americans and Asian Americans, sacrifices, at least in the short term, are necessary.

⁴⁴ Indeed, Ehrenreich theorizes that some members of dominating groups can be convinced of the perils of privilege to their own interests. She argues, for example, that some, but not all, men can be convinced that patriarchy actually hurts them. Ehrenreich, *supra* note 11, at 324.

⁴⁵ Ehrenreich discusses four specific problems created by identity politics: (1) The Zero Sum Problem: the seeming impossibility of simultaneously furthering the interest of different groups; (2) The Battle of Oppressions Problem: the fight among groups for priority based on their unique oppression; (3) The Infinite Regress Problem: the problem of all arguments reducing to individualism making group based initiatives unlikely; and (4) The Relativism Problem: the amorphous nature of oppression and the idea that anyone could be oppressed depending on the context. *Id.* at 316–23.

⁴⁶ Chang and Culp argue:

Professor Ehrenreich proposes that we step outside the bounds of our identities and identify with the common “enemy.” Indeed, the hope seems to be to step outside the bounds of all identities and create an anti-essentialist solution to problems caused by identity oppression. This is a great hope. Unfortunately, it is not possible, and as we move to create coalitions, it may prove to be ultimately unsuccessful.

Chang & Culp, *supra* note 11, at 487; see also Mary Romero, *Historicizing and Symbolizing a Racial Ethnic Identity: Lessons for Coalition Building with a Social Justice Agenda*, 33 U.C. DAVIS L. REV. 1599, 1599 (2000) (“Although groups centering on discrete identities struggled to find a rallying point from which to advocate social justice and coalition building, this has proven to be a difficult project.”).

⁴⁷ Chang & Culp, *supra* note 11, at 490–91.

The willingness to sacrifice is in turn dependent on trust. And perhaps therein lies the real challenge. How do we establish trust in the absence of formalized accountability? It is a question we are still working on as we try to move past the intersection. It is the question we invite others to explore.⁴⁸

To begin exploring this question, I will start with an analysis of why, despite the general rejection of essentialism in the current progressive discourse, identity politics are so widely practiced by minority scholars.

II. THE ALLURE OF IDENTITY POLITICS: RESERVATIONS AND RESPONSES

This Part identifies several considerations that contribute to the allure of identity politics. Some of these considerations, I will argue, are powerful, important, and should inform my proposal, while others should be resisted. This Part has been divided into five reservations that the proposal could engender and the responses thereto.

A. *Dilution of Power*

Reservation: Pursuing the agenda of differently subordinated groups will take away members and advocacy from one's own minority group, thereby diluting its power.

There is power in numbers. Subordinated groups, whether they are African Americans, immigrants, women, or laborers, have learned from history that coming together is an effective way—perhaps the only effective way—of countering institutionalized privilege.⁴⁹ Indeed, the LatCrit movement prioritizes coalition building as a central goal.⁵⁰ The question is why groups tend to coalesce around specific shared ethnic, gender, racial, or sexual traits rather than other more general traits, such as, the fact that they all have suffered subordination. Why are there not more identity groups containing

⁴⁸ *Id.*

⁴⁹ See, e.g., LANI GUINIER & GERALD TORRES, *THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* (2002) (advocating political cohesion within minority groups).

⁵⁰ The LatCrit movement extended the idea of intragroup cohesion to forging coalition between disparate minority groups. See, e.g., George A. Martínez, *African Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*, 19 CHICANO-LATINO L. REV. 213, 214 (1998) (calling for an “epistemic coalition comprised of all minority groups so that each group achieves knowledge about themselves and their place in the world”).

both white women and African American men, both Asian Americans and gays, both poor white workers and immigrants? There are infinite answers to these questions, ranging from perceived or real “cultural” differences⁵¹ and conflicting agendas⁵² to the replication of patterns of privilege.⁵³ Here, I would like to discuss another reason for group identity politics.

One of the reasons why groups coalesce around particular subordinating traits rather than subordination in general, I submit, is the desire to protect the importance of their specific rights discourse, which the majority seeks to silence. For example, African Americans may fear that by pursuing agendas other than African American-centered agendas, the power of the African American movement will be diluted and the white privileged class will gain advantage in the end.⁵⁴ This fear is all too real, given the conservative movement’s attempt to show that racial affirmative action is an illegitimate proxy for legitimate economic affirmative action.⁵⁵ In the face of such an

⁵¹ See Rachel F. Moran, *What If Latinos Really Mattered in the Public Policy Debate?*, 85 CAL. L. REV. 1315, 1319 (1997) (noting that Latina-Asian coalitions in Los Angeles “may have remained weak because of the racial, ethnic, linguistic, cultural, and class differences between the two groups”).

⁵² Kevin Johnson offers the following example:

African Americans often have been concerned about the negative impacts of immigration on their community, and less concerned than Latinas/os with immigration enforcement as a civil rights issue. Many poor and working-class African Americans have felt in competition with Latina/o immigrants for low-skilled jobs and have seen some industries move from having predominately Black to Latina/o work forces. Some claim that employers prefer hiring undocumented Latinas/os over domestic African Americans. The “rivalry between blacks and Latinos/as . . . is fueled by innumerable factors, including contests over jobs, access to education and housing, and politicking of a wedge variety. . . . Blacks often see Latinos/as as a racially mobile group capable of leapfrogging over them, with access to whiteness and all that it entails. . . .” Such sentiments tend to foster African American support for immigration restrictions and heightened immigration enforcement.

Kevin R. Johnson, *The Case for African American and Latina/o Cooperation in Challenging Racial Profiling in Law Enforcement*, 55 FLA. L. REV. 341, 360 (2003) (footnotes omitted) (alterations in original).

⁵³ See *infra* notes 84–87 and accompanying text for a discussion of how scholars should strike a balance between promoting their group’s goals and the goals of other subordinated groups, thereby lessening the effect of dominant power structures.

⁵⁴ Coalition building and intergroup agendas divert time and effort from identity-based agendas. See Johnson, *supra* note 52, at 361–62 (“Political coalitions between diverse communities are complex and often fragile. Building such alliances requires significant time and effort to build trust.”).

⁵⁵ This pernicious argument is made in *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996):

The use of race, in and of itself, to choose students simply achieves a

argument, African American academicians are naturally loathe to take up a pro-economic affirmative action agenda in fear that it will dilute the effectiveness of their claims for racial justice.

An analogy to dilution analysis in the academic context can be made in the romantic relationship and procreation context. Jim Chen, for example, argues that one way to build personal coalitions among disparate racial or ethnic groups is through cross-racial domestic unions and procreation.⁵⁶ Conversely, some minorities who are against cross-racial unions articulate the fear that cross-racial procreation could ultimately lead to a total dilution of a specific minority's history, cultural practices, and even physiological traits.⁵⁷

student body that looks different. Such a criterion is no more rational on its own terms than would be choices based upon the physical size or blood type of applicants. . . . While the use of race *per se* is proscribed, state-supported schools may reasonably consider a host of factors—some of which may have some correlation with race—in making admissions decisions. . . . Schools may even consider factors such as whether an applicant's parents attended college or the applicant's economic and social background. For this reason, race often is said to be justified in the diversity context, not on its own terms, but as a proxy for other characteristics that institutions of higher education value but that do not raise similar constitutional concerns. Unfortunately, this approach simply replicates the very harm that the Fourteenth Amendment was designed to eliminate.

Id. at 945–46.

⁵⁶ Jim Chen's argument can certainly be taken to a disturbing eugenic extreme. He argues that legal and social harmony can be achieved through "cross-breeding":

With each passing American generation, integration nudges social reality closer toward legal utopia. Despite legal and physical barriers, people of different races and ethnicities will mix their cultural traditions over time. If ever a manifest destiny gripped this nation, this continent, this hemisphere, it was the fate that made America the world's biological and sociological clearinghouse. Five centuries of tempestuous interaction between the Old and New Worlds have spawned countless instances of cross-fertilization, both in ecological and in human terms.

Jim Chen, *Unloving*, 80 Iowa L. Rev. 145, 151 (1994). In addition, race-mixing alone, without social structural change, would not necessarily solve the problem of institutionalized racism. See discussion *infra* Part II.B on how the mixed-race people could themselves replicate patterns of privilege through their choices of identification.

⁵⁷ The fear is that assimilation, interracial reproduction, and Americanization will lead to the eradication of individual ethnic groups and practices. Kenneth Karst explains:

The word [assimilation] raises hackles among writers and community organizers who see threats to the survival of a culture and to an assumed group political solidarity. These fears are well founded. The integration of individuals into the larger society usually does imply some weakening of their "identification with" the racial or ethnic groups that served as their ancestors' "primordial" identities.

This fear is not unfounded in a world where ethnic cleansing exists and in a country that attempts to supplant individual racial awareness with a diluting concept of color-blind “Americanness.”⁵⁸ Thus, the argument is that it disempowers minorities when their members mix with other races, especially dominant races, because to do so lessens the numbers in—and, ultimately, the strength of—the minority group. Likewise, one might fear that pursuing other minorities’ agendas would disadvantage one’s own minority group by decreasing its number of advocates, lessening the strength of its message, and, in the end, diluting its power.

Responding to this reservation, one can note that there is an important distinction between procreation and distribution of academic capital, which is relevant to my proposal. Generally, one unites domestically and has children with limited numbers of other persons. In this sense, one’s “reproductive capital” is extremely limited. It would be unusual, for example, for one to have an African American child to offset the fact that one has previously had a biracial child, in order to avoid dilution problems.⁵⁹ This problem does not exist with academic capital. Although academic capital is limited in some sense, it is not limited in the manner noted above. One could devote, for example, eighty percent of one’s intellectual pursuits to writing about the subordination of one’s own minority group⁶⁰ and twenty percent to writing about other subordinated

Kenneth L. Karst, *Myths of Identity: Individual and Group Portraits of Race and Sexual orientation*, 43 UCLA L. Rev. 263, 296-97 (1995).

⁵⁸ Jerome Culp criticizes the tendency to embrace color blindness as a cure for racial evils. He states, “colorblindness permits us to avoid any discussion of the morality or justice of assimilation, nationalism, or cultural difference. Instead, its proponents simply assert that justice and morality are vested within colorblindness.” Jerome McCristal Culp, Jr., *Colorblind Remedies and the Intersectionality of Oppression: Policy Arguments Masquerading as Moral Claims*, 69 N.Y.U. L. REV. 162, 163 (1994).

⁵⁹ In addition, one could hardly propose such a solution to the problem of racial dilution without appearing a bit crazy. Romantic relationships, marriage, and especially procreation, are topics about which one would likely have trouble proposing legal or moral strategies based on race. Indeed, Jim Chen’s suggestion that cross-racial breeding represents the path toward Utopia was regarded with skepticism and even derogation in the legal academy. See Ilhyung Lee, *Race Consciousness and Minority Scholars*, 33 CONN. L. REV. 535 (2001) (discussing the strong negative reaction of progressive scholars to Chen’s article).

⁶⁰ It is extremely important for minority scholars not to abandon the agendas of their particular groups. As Jerome Culp has pointed out, even black legal scholarship (as opposed to black jurisprudence) is still in a formative stage, requiring that substantial academic capital be devoted to its development. Jerome McCristal Culp, Jr., *Toward a Black Legal Scholarship: Race and Original Understandings*, 1991 DUKE L.J. 39, 40. Similarly, Robert Chang declares an “Asian American Moment” and calls for specific Asian-American-related legal scholarship. Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative*

groups. In this way, a person can pursue both the agenda of those with whom she shares minority traits and an antisubordination agenda generally.

B. Marginalization

Reservation: Identifying with other subordinated groups will cause the member's own minority group to be similarly marginalized.

Between subordinated groups and within subcategorizable subordinated groups, there are those who fear that identifying with more marginalized group members will lead to a diminution of their group's gains. Latina scholars, for example, could fear that allying with gays will make them lose whatever racial gains they have made in heterosexist white society.⁶¹ In other words, those who may be receptive to the scholar's Latina-only message may not listen to a Latina/gay message. Minority groups that have had some access at "fitting in," such as heterosexual white women, African American men, and Asians, could believe that espousing philosophies that support other racial minorities, gays, transgender folks, certain religious minorities, and the socially disadvantaged (like criminal defendants), would radicalize them in the eyes of many and give them less general credibility.⁶² Put another way, people of color who have "made it" and are able to participate in institutions of privilege may be reluctant to trade this participation for the sake of those differently subordinated. This fear may be one of the reasons why

Space, 81 CAL. L. REV. 1241, 1323 (1993).

⁶¹ There are two possible reasons for this belief. First, the Latina may feel that her issues are legitimate whereas gay issues are illegitimate or fringe. See Darren Lenard Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Anti-Racist Politics*, 47 BUFF. L. REV. 1, 16 (1999) ("When skeptics reject the need to embrace multidimensional theories of equality, they falsely imply that their own essentialized theories are 'authentic' and 'pure.'"). Second, the Latina may see the gay issues as legitimate and important, but nonetheless bend to the dominant structure that marginalizes gay issues. See Ehrenreich, *supra* note 11, at 259–63 (discussing how identity politics supports entrenched systems of subordination).

⁶² Certain black clerics expressed agitation at comparisons between black civil rights struggles and the gay right to marry movement. Michael Paulson, *Top Clerics Join to Support Amendment*, BOSTON GLOBE, Feb. 8, 2004, at B1, available at, http://www.boston.com/news/local/massachusetts/articles/2004/02/08/top_clerics_join_to_support_amendment (last visited Jan. 30, 2006). Reverend Wesley A. Roberts, the president of the Black Ministerial Alliance and pastor of Peoples Baptist Church, for example, stated, "I don't see this as a civil rights issue, because to equate what is happening now to the civil rights struggle which blacks had to go through would be to belittle what we had gone through as a people." *Id.* By doing so, Reverend Roberts contrasted a perceived legitimate rights issue with a perceived illegitimate or fringe rights issue. *Id.*

some minority groups exclude members who stand at the intersections of more than one minority trait:

[E]xclusion may often be part of an effort to legitimate and gain respect for a group's claims to oppression. As Sherene Razack and Mary Louise Fellows note, relying on Regina Austin, "Blacks who are considered deviant by whites are excluded from standing in the Black community 'because they undermine our claims to greater respect and a larger share of the nation's bounty.'" Similarly, lesbians have been excluded from the (white) women's movement because of fear that homophobia would jeopardize that movement's goals. Exclusion and vulnerability work together to disable resistance and reinforce subordination.⁶³

Simply put, given the existing institutional structure of privilege, it may be easier to advance a singular agenda, such as equality for African Americans, than a multivariate agenda, such as equal rights for all people of color, all genders, and all sexualities. In addition, the more a single minority group makes gains in garnering equality for its members, the less the members will want to compromise those gains for the sake of individuals unlike them.⁶⁴ The "that's-not-our-issue" phenomenon is illustrated by Frank Valdes in discussing some lesbians' hostility toward including a discussion of transexuality in a "Lesbian Legal Theory" conference.⁶⁵ Darren Lenard Hutchinson similarly discusses how white, gay activist Richard Mohr views the integration of racial and feminist theory into the gay rights movement as "a wasteful drain on the movement" and claims that racial and women's equality fights "are not gays' fights."⁶⁶

On a related though slightly different note, progressive theorists observe that some minorities capitalize on their privileged traits in a way that actively subordinates other minorities. Nancy Ehrenreich describes the phenomenon of "compensatory subordination," whereby "lower-status" folk, because of their psychology of oppression, capitalize on their dominant traits and subordinate

⁶³ Ehrenreich, *supra* note 11, at 289 (quoting Mary Louise Fellows & Sherene Razack, *The Race to Innocence: Confronting Hierarchical Relations Among Women*, 1 J. GENDER, RACE & JUST. 335, 350 n.42 (1998)).

⁶⁴ This belief also accepts a false essentialist ideology that members of a certain group "are all the same." See *supra* note 9 for a discussion of essentialism.

⁶⁵ Valdes, *supra* note 11, at 37 (discussing reactions from members of the lesbian legal community that "transsexuals, and discussion of them, are out of place in lesbian venues").

⁶⁶ Hutchinson, *supra* note 42, at 193 (quoting RICHARD D. MOHR, GAYS/JUSTICE: A STUDY OF ETHICS, SOCIETY, AND LAW 328-29 (1988)).

others who do not possess those traits.⁶⁷ She offers several examples, including the seemingly high rate of domestic violence committed by working-class men, the racism of poor whites, and sexual harassment by “low-status” men.⁶⁸ Frank Rudy Cooper discusses how compensatory subordination can explain racial profiling by police officers.⁶⁹ He observes that many police officers are “[w]orking-class White males” who “tend to base their self-identities on conceiving of themselves as superior to men of color.”⁷⁰

I find these constructions of the lure of identity politics at once instructive and disanalogous. Ehrenreich’s empirical support for compensatory subordination theory is a bit disconnected because even if the research she cites is valid to show that, for example, poor men are more likely to engage in domestic violence than rich men,⁷¹ it does not appear to support the more general idea that subordinated people compensate for their subordination by acting out against other minorities relative to whom they are empowered.⁷² Assuming that it is true that “poor whites” are more likely to be sexist and racist, it simply does not lead to the conclusion that other types of subordinated people will engage in compensatory subordination. Poverty is a condition that is often accompanied by lack of education and a certain day-to-day hardship and frustration that are certainly ingredients of a racist, sexist, or homophobic disposition. I doubt, however, that a minority who is highly educated and does not face

⁶⁷ See Ehrenreich, *supra* note 11, at 276, 291–95.

⁶⁸ *Id.*

⁶⁹ See generally Frank Rudy Cooper, *Understanding “Depolicing”: Symbiosis Theory and Critical Cultural Theory*, 71 UMKC L. REV. 355 (2002).

⁷⁰ *Id.* at 367-68.

⁷¹ This proposition should be approached with a certain amount of skepticism. Although, at this time, I have no specific information on the methodology used to conclude that “lower status” men engage in domestic violence more than “higher status” men, I assert that such a conclusion is extremely difficult to make. If the conclusion is based on reports of or arrests for domestic violence, there are numerous reasons why “lower status” people may end up in the criminal system more often than “higher status” people, apart from the simple conclusion that “lower status” people commit more crimes. One could posit, rather than concluding that “lower status” people commit more bad acts, that the bad acts of “higher status” people are more often kept secret.

⁷² Ehrenreich explains the phenomenon of compensatory subordination as follows: “[W]hen systems of subordination coexist, they tempt singly burdened individuals to subordinate others in order to compensate for their own vulnerability and powerlessness.” Ehrenreich, *supra* note 11, at 300. I assert, however, that one simply cannot conclude that there is a general phenomenon that minorities act out against those relative to whom they are empowered from the supposed evidence that some men displace their anger from workplace emasculation by abusing their spouses or female co-workers.

such day-to-day hardships would act out “compensatory subordination.” This disparity makes Ehrenreich’s theory of compensatory subordination almost wholly inapplicable to the audience to whom this type of discourse is interesting. No one would ever say that minority male law professors are *more* likely to be sexist or racist than white male law professors because they are compensating for other subordination. Moreover, those economically advantaged minorities who are in fact racist, sexist, or homophobic may possibly be so because they are compensating for their minority status, but they may be so for a myriad of other reasons as well.⁷³ As a result, even assuming the truth of “compensatory subordination” in the context of the economically and educationally disadvantaged, it likely cannot explain scholars’ tendency to engage in identity politics.

What is instructive about the discussion of compensatory subordination is the idea that the relative empowerment of some minorities does not lead them to use their power on behalf of other minorities with whom they do not share traits.⁷⁴ It underscores the idea that minorities themselves can participate to some degree in power structures that ultimately subordinate them. I do not believe the reason for this disparaging action, in many contexts, is that the

⁷³ Ehrenreich admits that there are other explanations for acts of subordination by “low status” people:

I’m a bit uncomfortable with this example, for the conclusion it relies upon reinforces prevailing stereotypes about class differences. My own guess would be that the real-life pressures low-income men suffer account for as much if not more of their abusive behavior than any difference in cultural norms involving attitudes towards masculinity. This view is supported by the correlation between unemployment and male violence.

Id. at 292 n.197.

⁷⁴ Frank Wu discusses the fears of relatively empowered minority groups in the context of the Asian American legal agenda:

[L]ike anyone else who gains a measure of empowerment after agitating from the outside, Asian Americans are learning that it turns out to be altogether another issue how to use that power once on the inside. Given the risks of backlash towards uniting along racial lines even for defensive purposes such as addressing hate crimes, not to mention the tendency toward complacency once the urgency of mutual protection begins to subside, Asian Americans together must develop a principled agenda if we are to give the concept of “Asian American” as a group any substantive content. Such principles must be genuine, which is to say universal; they cannot appeal to Asian Americans exclusively or be indefensible if expressed openly in a diverse democracy.

Frank H. Wu, *The Arrival of Asian Americans: An Agenda for Legal Scholarship*, 10 *ASIAN L.J.* 1, 5–6 (2003).

minorities are acting out against other minorities; rather, it is that minorities, who have fought so hard for the little power they have, do not want to lose it by taking up the cause of someone even more disempowered. In this sense, some minorities, well-educated or not, are in part controlled by the dominant power structure that decides which minority agendas to privilege and which to disadvantage.⁷⁵

While the fear of marginalization may be very real, it is not a reason to reject the proposal outlined in the introduction. First, the proposal does not envision alliances so strong that they are necessarily intertwined in all contexts. Thus, for example, the Latina law professor could advance a Latina-only agenda with certain audiences, advance a gay rights agenda with others, and even advance a mixed Latina/gay strategy when expedient.⁷⁶ In our professional lives, we teach different courses, write about different things, and speak on a variety of subjects. This proposal is quite modest in that it counsels us to, at the very least, devote a fraction of our scholarship to the rights of others. This scheme does not necessarily require that it permeate all our academic endeavors. Second, we ought to be very critical about the costs of our own minority groups' power gains within the dominant infrastructure. If these gains come at the expense of larger agendas, other minorities' rights, or the rights of more subordinated members within the group, perhaps these gains are not worth their expense.⁷⁷

Some argue, however, that immediate gains to minority groups are more important than loftier, yet harder to achieve, general antisubordination goals.⁷⁸ Consider the current debate in gay

⁷⁵ See Ehrenreich, *supra* note 11, at 259–63.

⁷⁶ I submit that as a practical matter, it is difficult to be consistent with one's agenda in all contexts. While advancing the goal of antisubordination generally, one might have to tailor the discussion to achieve maximum effectiveness for a given audience.

⁷⁷ For example, if the only way an Asian American interest group can curry favor with a powerful white interest group is to advance an anti-gay marriage policy, the Asian American group has a moral responsibility to think twice about such an alliance. I disagree with Ehrenreich, however, that there is an easy way to show the Asian American group that forgoing the alliance with the powerful white group is in their best interest. See Ehrenreich, *supra* note 11, at 324; *supra* text accompanying note 44. Instead, one must convince the Asian American group that sometimes groups must act contrary to their interests in order to support more important goals. See Wu, *supra* note 74, at 6 (“Perhaps it is easier to identify what ought not be done, rather than what ought to be done. Aside from the obvious point of avoiding self-congratulation, the most important admonition is to reject self-interest.”).

⁷⁸ Samuel Marcossou observes that “[f]or over a decade now . . . there has been an active campaign by [lesbian, gay, bisexual, and transgender] activists to expand the institution of civil marriage to include equal recognition of the marriages between same-sex partners.” Samuel A. Marcossou, *Multiplicities of Subordination: The*

scholarship over gay marriage. Some believe that the gay marriage issue is a fundamental question of rights and one that may be resolved favorably to the movement in the imminent future.⁷⁹ To them, gay marriage represents a power gain to the gay rights movement.⁸⁰ Others feel, however, that by fighting for gay marriage and making it the central issue, the movement has accepted the dominant culture's exclusion of alternative forms of familial unions and child bearing and rearing.⁸¹ In this sense, the gay rights movement sacrifices long-term equality for the momentary advantage of participating in a very heterosexual form of union.⁸² Samuel Marcossou argues that those who stand to benefit from gay marriage will not be persuaded that it is in their best interests to abandon that quest to pursue larger equality in romantic unions.⁸³ Rather, he proposes that the solution to this impasse involves reordering goals. He argues that the gay rights movement can first be concerned with winning the gay marriage issue, but thereafter fight for broader familial rights.⁸⁴ The idea is that small steps precede big steps. Now,

Challenge of Real Inter-Group Conflicts of Interest, 71 UMKC L. REV. 459, 460 (2002).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Hutchinson asserts:

By decreeing legal marriage "the most important" goal for gay and lesbian politics, scholars and activists obscure racial, class, and gender distinctions among gays, lesbians, bisexuals, and transgender people, construct gay and lesbian political agendas upon gender, class, and racial hierarchies, and create conflict among antiracist, feminist, anti-heterosexist, and antipoverty activists and scholars.

Darren Lenard Hutchinson, *Identity Crisis: "Intersectionality," "Multidimensionality," and the Development of an Adequate Theory of Subordination*, 6 MICH. J. RACE & L. 285, 292 (2001).

⁸³ Marcossou observes that supporters of gay marriage will not likely be swayed away from their position by more ethereal antistatist goals:

The victory may not be as complete in terms of attacking the mechanisms of subordination, and the benefits may not extend as far and to as many individuals as a different approach might someday achieve, but the balance of the singly burdened group's interests tilts heavily in favor of obtaining the benefits (with certainty) today instead of (perhaps) achieving a fuller victory tomorrow.

Marcossou, *supra* note 78, at 471.

⁸⁴ Marcossou contends:

Reinforcement of the systems of subordination is a bad thing, and it is a bad thing specifically for sexual and gender minorities, including those who would get married if they had the opportunity. But the status quo represents a far worse state of affairs. Right or wrong, marriage is a valorized institution, and same-sex couples are barred from enjoying the benefits of that status. Right or wrong, civil marriage carries a host of legal and financial benefits, and gay men and lesbians

the critique of this proposal is that the small step of gay marriage is actually a gross impediment to the big step of equality for minorities because it solidifies dominant power structures.

Granted, there is a delicate balance to be struck here. There is always the risk that by taking on the struggle of the other, one may be ideologically disadvantaging one's own group. The reservation addressed here, however, is less about conflicting agendas and more about loss of credibility. My argument is that scholars, if need be, should sacrifice some mainstream credibility, which is likely premised on dominant structures of privilege and bigotry, for the sake of promoting the interests of the worst off. To the extent that the scholar has taken up the cause of a group whose interests conflict with his groups' interests, there are several ways to address this problem. The scholar may indeed, as Nancy Ehrenreich suggests, attempt to convince himself and his group that it does further their interests to pursue the struggles of the other.⁸⁵ Alternatively, the scholar may find ways to articulate to his group that some of their interests are tied to institutions of privilege that harm all minorities.⁸⁶ The scholar could even advance two seemingly disparate agendas, as Marcossou suggests.⁸⁷ The scholar could write about the rights of gays to marry and simultaneously question the institution of marriage. More likely, however, the scholar will choose to write about rights of others that do not conflict with the interests of his group. To bring it back to the Latina law professor example, she can first take steps to push forward the Latina agenda, which is not likely to directly conflict with gay rights, and thereafter or simultaneously advance a pro-gay rights agenda.

are denied those benefits.

Id.

⁸⁵ Ehrenreich observes:

I see no reason not to try, as well, to appeal to dominant groups' sense of self-interest. To point out, for example, the ways in which masculinity norms harm men is not to deny male power or to suggest that women are not subordinated. But it may win converts to a more feminist view of gender roles and norms. Not all men will be convinced of the harms of patriarchy, but some will. And the resulting coalition may be strong enough to carry the day.

Ehrenreich, *supra* note 11, at 324.

⁸⁶ See *supra* notes 73–75 and accompanying text for a discussion of how some empowered minorities choose not to use their power to aid more disempowered minority groups, not because they are acting out against the more disempowered minority groups, but because they are participating in the very power structures that subordinate them.

⁸⁷ See *supra* notes 83–84 and accompanying text for a discussion of Marcossou's suggestion that gay activists could first concern themselves with winning the gay marriage issue and thereafter pursue more generalized equality goals.

C. *External Criticism*

Reservation: People of color recognizing their own participation in oppression will give ammunition to conservatives to criticize, stereotype, and dismiss minority scholars and scholarship.

Members of minority communities understandably embrace at times a “show no weakness” ideology. They fear that by recognizing that each individual possesses both subordinating and privileged traits, minorities make themselves targets of those who seek to stereotype and trivialize them. Darren Lenard Hutchinson observes that this fear sometimes prevents internal critiques in the progressive movement:

[M]any of the opponents of internal criticism believe that such criticism will exacerbate the negative construction of oppressed individuals by the larger society. For example, Black men have opposed public critiques of Black sexism and Black anti-female violence on the grounds that such critiques may ultimately reinforce negative social stereotypes of Black men as violent and threatening.⁸⁸

There are several responses to this reservation. Hutchinson makes the point that the risk of further stigmatization is outweighed by the gains of internal critiques.⁸⁹ Similarly, one could argue that redistribution of academic capital will achieve more good than harm. In addition, there is the empirical issue of whether multidimensional thinking actually does further racists’ ability to stereotype minorities. The reality is that those who wish to marginalize and stereotype minorities will find a way to do so. The fact that the progressive academic community engages in post-intersectionality analysis is unlikely the ground upon which racists base their characterizations of minorities. A similar argument has been made by conservative minorities against affirmative action. They claim that affirmative action will lead to the larger community stigmatizing minorities and assuming them unqualified.⁹⁰ My response to this contention is

⁸⁸ Hutchinson, *supra* note 42, at 195–96.

⁸⁹ Hutchinson observes:

The commonly feared “disunity” and “negative” depictions of the oppressed are substantially outweighed by the potential benefits of an acceptance of internal dissent: the strengthening of coalitions within and across the body of subordinate communities; the much needed inclusion of excluded “voices” within progressive discourse; and the transformation of equality discourse into an instrument for confronting complex subordination.

Id. at 197.

⁹⁰ Justice Thomas passionately argues in *Adarand*:

So-called “benign” discrimination teaches many that because of

always that it is the racist predilection toward stigmatizing minorities against which one should fight, not the positive program that the racist happens to use as a ground for his prejudice.

Moreover, to some bigoted white people, the thought that, for example, some African Americans are homophobic would unfortunately be construed as a positive or unifying racial factor rather than a stigmatizing factor.⁹¹ For those in the majority who see homophobia as a negative factor, the fact that African American academicians are engaging in pro-gay scholarship and post-intersectionality work dealing with building gay–African American coalitions would undercut any presupposition that African Americans are homophobic.⁹² In the end, the risk of stigmatization is likely

chronic and apparently immutable handicaps, minorities cannot compete with them without their patronizing indulgence. Inevitably, such programs engender attitudes of superiority or, alternatively, provoke resentment among those who believe that they have been wronged by the government's use of race. These programs stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are "entitled" to preferences.

Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 241 (1995) (Thomas, J., concurring).

⁹¹ One conservative news source reports:

Yet, despite the attempt by gay activists to find empathy for their cause from black Americans, several conservative groups are encouraging black churches to outright deny the erroneous comparison.

....

Matt Daniels, executive director for the Alliance for Marriage, argues "communities of color" strongly support traditional marriage and a constitutional amendment that would define marriage as between one man and one woman.

Interestingly, black Americans, who have traditionally voted overwhelmingly for Democrats, are torn between supporting Republicans, the party that opposes gay marriage or the Democrats, who are leading the effort to give marriage rights to homosexuals.

Jimmy Moore, *African Americans Offended by Comparison Made by Gay Marriage Activists*, TALON NEWS, Mar. 8, 2004 (copy on file with author). The conservative Traditional Values Coalition's website ran a feature story on black clerics opposing the gay-rights amendment. One black cleric is praised for stating that "[m]arriage is a union created and recognized by God. Homosexuality is an abomination as far as God is concerned." *African-American Pastors Organize to Fight Homosexual Marriage*, available at <http://www.traditionalvalues.org/modules.php?name=News&file=article&sid=1662> (last visited Apr. 14, 2005). In an extreme example of the possible unholy alliances that could be forged in the name of homophobia, Reverend Gregory Daniels, a black minister, advised his ministry, "[i]f the KKK opposes gay marriage, I would ride with them." Keith Boykin, *Whose Dream*, THE VILLAGE VOICE, May 24, 2004, at 46, available at <http://www.villagevoice.com/news/0421,boykin,53751,1.html> (last visited Apr. 14, 2005).

⁹² For example, any claim that the African American community is homophobic

decreased rather than increased by following the proposal discussed in this Essay.

D. *Illegitimacy*

Reservation: It is illegitimate for an outsider to engage in critical analysis on behalf of a subordinated group, and the outsider will impose her disparate experience on the group.

Another barrier to post-intersectionality work is the belief that scholars may not legitimately advocate on behalf of those with whom they do not share a subordinating trait. The argument is that only through the experience of similar discrimination can one truly explicate the goals of the marginalized group. In addition, there is the concern that members of “oppressor groups” will, consciously or unconsciously, impose their views and experiences on the subordinated group.⁹³ For this reason, progressives criticize the history of black experience, for example, being defined by liberal or conservative whites. Against a backdrop of racial exclusion and white domination in the civil rights scholarship field, Richard Delgado put these concerns bluntly:

[W]hile no one could object if sensitive white scholars contribute occasional articles and useful proposals (after all, there are many more of the mainstream scholars), must these scholars make a career of it? The time has come for white liberal authors who write in the field of civil rights to redirect their efforts and to encourage their colleagues to do so as well. There are many other important subjects that could, and should, engage their formidable talents. As these scholars stand aside, nature will take its course; I am

is undercut by the testimony of Hilary Shelton, Director of the Washington NAACP, opposing the amendment banning gay marriage and stating in part:

The NAACP is greatly disappointed that President George Bush and others have decided to enter this election cycle by endorsing an amendment that would forever write discrimination into the U.S. Constitution, rather than focusing on the crucial problems and challenges that affect the lives of all of us.

Judicial Activism vs. Democracy: What are the National Implications of the Massachusetts Goodridge Decision and the Judicial Invalidation of Traditional Marriage Laws?: Hearing Before the Senate Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 100th Cong. (2004) (statement of Hilary Shelton, Director, NAACP Washington Bureau), available at

http://judiciary.senate.gov/testimony.cfm?id=1072&wit_id=3076 (last visited Apr. 14, 2005).

⁹³ See Culp, *supra* note 60, at 97 (“American legal scholarship occasionally has dealt with black concerns; however, this treatment has almost universally been from the perspective of the white majority. Black views are ignored and their concerns are subordinated to overriding issues of how black questions impact on white rights.”).

reasonably certain that the gap will quickly be filled by talented and innovative minority writers and commentators. The dominant scholars should affirmatively encourage their minority colleagues to move in this direction, as well as simply make the change possible.⁹⁴

Related to this concern is the reservation that when one engages the struggle of others, one loses many of the tools of persuasion held by those who advance their own causes. First, one cannot legitimately claim to be the victim of the discrimination. The vehemence, emotion, and rhetoric of victimhood is a very powerful tool. While it can lead to troubling doctrines, like the crime victims' rights movement,⁹⁵ it can also underlie powerful discourse in the quest for rights. In addition to the loss of the power attendant to victim status, one loses the ability to engage in the persuasive tool of personal narrative to underscore theoretical points. Pedro Malavet discusses the power of narrative as follows:

Minority and subordinated communities utilize narratives to counter the "singular homogenized experience" produced by the essentializing of identities imposed by majority society. Narrative, thus, is a vehicle to speak the truth to the "power"—the dominant American society. LatCritters embrace and celebrate the narrative. More specifically, LatCrit scholarship must and does include storytelling, because it is both antinormative and antiessentialist. In fact, our failure to use narrative would contribute to the preservation of privilege and, thus, to normativity and essentialism.⁹⁶

When a person writes about the subordination of those unlike him, that person loses the ability to describe the pain and struggles of being subordinated from a personal perspective. One thus loses the persuasive power that individual storytelling brings.

In responding to this set of concerns, I begin by questioning the general contention that only those within a certain subordinated group may legitimately write about the subordination. Such a contention would prevent any scholarship on behalf of others.⁹⁷

⁹⁴ Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561, 577 (1984).

⁹⁵ See generally Aya Gruber, *Victim Wrongs: The Case for a General Criminal Defense Based on Wrongful Victim Behavior in an Era of Victims' Rights*, 76 TEMP. L. REV. 645 (2003) (discussing the dangers the victims' rights movement poses to civil rights).

⁹⁶ Pedro A. Malavet, *Literature and the Arts as Antisubordination Praxis: LatCrit Theory and Cultural Production: The Confessions of an Accidental Crit*, 33 U.C. DAVIS L. REV. 1293, 1301-02 (2000).

⁹⁷ Some theorists, however, would open up the category of antisubordination work to any person of color so long as they could speak in a general voice of color.

While it is extremely important that minority scholars have a voice and that rights discourse is not dominated by white male scholars,⁹⁸ this imperative does not mean that one may only legitimately write about groups in which she is a member. First, the “voice of color”⁹⁹ can be used for or against subordination, depending on who is using it. For example, when Justice Clarence Thomas emotionally opposes affirmative action as stigmatizing minorities, he does so in a voice of color. His manipulation of language seeks to show the reader his special insights on affirmative action because of his color.¹⁰⁰ Similarly, Stephen Carter uses his voice of color to attack affirmative action, as Alex Johnson observes:

Most interesting about Professor Carter’s claims and contentions is that he used his status as an African American to attack affirmative action. In other words, if he had adopted a formal-race approach to attack affirmative action, he would have made no mention of his status as an African American. However, the very first sentence of the book, “I got into law school because I am black,” connotes that the reader should take the author’s race into account when reading and interpreting the work. Professor Carter used the sentence to color (pun intended) the reader’s perception of the work by asking the reader to employ an

See generally Culp, *supra* note 60. Presumably, then, blacks could write about Latina issues, Asians about gay issues, etc. White men could not write about minority issues. Opening up the categories becomes complicated, however. Can white women write about the struggles of Latina women, black men, immigrants? Can black men weigh in on the struggles of lesbians?

⁹⁸ Mari Matsuda states:

I want to hear the voices that represent different ways of living and knowing, particularly those ways that come out of the culture of the historically subordinated. I want to hear as well the literal voices of difference—differences in language, accent, cadence, and sound that have made the streets of the North American cities I love vibrant and alive. I ask that we nurture these voices and keep them from fading. My urgency in this quest is tied to my belief that it is what we must do, as a nation, to save our national soul.

Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329, 1333 (1991).

⁹⁹ Alex Johnson describes the concept of “voice of color”:

[P]roponents of the existence and value of the voice of color allege that scholars of color speak to all issues with a distinctive voice, especially to certain race-related ones, because scholars of color have shared the molding experiences created by racism that caused the voice of color to emerge.

Alex M. Johnson, Jr., *The New Voice of Color*, 100 Yale L.J. 2007, 2012 (1991).

¹⁰⁰ See *supra* notes 27 & 90 for a discussion of Justice Thomas’ concurrence in *Adarand*.

interpretive framework that acknowledges Carter's status as an African American.¹⁰¹

Consequently, voices of color could be used to advance or retard an antisubordination agenda. Similarly, white voices historically have and continue to make important discursive contributions to antisubordination causes.¹⁰² In addition, as the instant proposal relates to scholars who are minorities themselves, one could expect that those who engage in the enterprise of writing about the struggles of other minority groups will do so with sensitivity, empathy, and understanding.

Moreover, limiting group-rights scholarship only to those in the particular group is disadvantageous to minority groups whose members are few or whose members have not broken into the ranks of the legal academy.¹⁰³ In addition, perfect synthesis between writer and subject is not likely given the multiplicity of traits that make up individuals and groups. Scholars with some connection to a certain subordinated group often write about experiences they have not personally felt. For example, Asian American and Latina scholars who are not immigrants write about the struggle of immigrants in this country. Although the scholars and their subjects may share the trait of Asian-ness or Latina-ness, such scholars cannot personally claim to have felt the discrimination to which immigrants are subjected. Likewise, women write about domestic violence they have never personally experienced.¹⁰⁴

¹⁰¹ Alex M. Johnson, Jr., *Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship*, 79 IOWA L. REV. 803, 846 (1994) (quoting STEPHEN L. CARTER, REFLECTIONS OF AN AFFIRMATIVE ACTION BABY 11 (1991)).

¹⁰² Frank Wu observes:

[I]t is important to emphasize that scholarship about Asian Americans need not be written by Asian Americans alone. Just as not every Asian American is an Asian Americanist (i.e., a scholar concentrating on Asian Americans), so too not every Asian Americanist is an Asian American. Asian Americanists have rarely promoted racial nationalism and none have supposed that racial membership confers racial expertise. Two of the best among recent publications on the internment of Japanese Americans during World War II are Greg Robinson's *By Order of the President* and Eric Muller's *Free to Die for Their Country*. The leading empirical work on Asian Americans and the admissions process at the University of California was produced by William Kidder.

Wu, *supra* note 74, at 3 (footnotes omitted).

¹⁰³ See *infra* notes 121–22 and accompanying text for a discussion of the benefits of a redistribution of academic capital, particularly for smaller minority groups.

¹⁰⁴ Wu states that “[s]cholarship suffers for the neglect of comparative possibilities.” Wu, *supra* note 74, at 10.

The concern that one may impose one's own beliefs and experiences on other subordinate groups is important and merits discussion. Especially as persons who have experienced some discrimination related to our own subordinating traits, there may be a tendency to superimpose our experiences on others. The remedy, however, is not to refrain from writing about others, but rather to be extremely cognizant of the risk of imposing one's own experiences on others. Moreover, inserting oneself into the discourse is not necessarily a bad thing. Comparative analysis of one's own experiences with the experiences of others can lead to fruitful discoveries and interesting theory. Ediberto Roman remarks:

[I]f groups have commonalities, these stories should be told together in order to promote understanding and encourage coordinated action. . . . These intellectual endeavors should be continued in academic as well as political arenas. Again, exploring "common ground" of harmed groups has the potential of leading those groups to promote dialogue and change.¹⁰⁵

Turning to the contention that writing about others makes one unable to engage in "victim talk," claims of victim status are powerful but dangerous. While past victimization is often a predicate for gaining current rights, "victim talk" centers the discourse away from equality and antisubordination and more toward emotional reactions to the very worst cases of abuse.¹⁰⁶ Furthermore, "victim talk" is often connected with the very essentialist and stereotypical characterizations to which progressives generally object.¹⁰⁷ Consequently, one should be wary of engaging in "victim talk" even when one is a member of the subordinated group. Being unable to engage others in narratives of victimization should not impede one from discussing the struggles of others.

¹⁰⁵ Ediberto Roman, *Reparations and the Colonial Dilemma: The Insurmountable Hurdles and Yet Transformative Benefits*, 13 BERKELEY LA RAZA L.J. 369, 384-85 (2002).

¹⁰⁶ I have elsewhere discussed how the victims' rights movement has undermined equality and rights in the criminal context:

[T]he narrative of victims' rights serves as a rhetorical tool to justify and moralize the seemingly vengeful retributivist trend in criminal law. For this reason, "harmed and humble" victims are characterized as vengeful rather than forgiving, angry rather than merciful. Like the tough-on-crime movement, the victims' rights movement has grown into a major socio-political force in the criminal system.

Aya Gruber, *Righting Victim Wrongs: Responding to Philosophical Criticisms of the Nonspecific Victim Liability Defense*, 52 BUFF. L. REV. 433, 435-36 (2004) (footnotes omitted).

¹⁰⁷ See Gruber, *supra* note 95, at 662.

In addition, the inability to engage in personal narrative does not necessarily render such scholarship unpersuasive. First, personal narrative is only one way in which storytelling can convey effectively an antisubordination message. Often progressive writers convey the stories of others. Whether historical accounts of women or people of color, stories about migrant workers, or narratives involving domestic violence victims, the telling of non-law professor stories is a powerful and persuasive tool in the arsenal of discursive options for supporting a theory. I think about how interesting and useful it was to hear Hamid Kahn's account of the lives of taxi drivers in New York during LatCrit IX.¹⁰⁸ Moreover, one can engage in narrative from the perspective of a member of the "oppressor" class becoming involved in the struggles of others. For example, Frank Valdes eloquently recounts his experience of being a male on a Lesbian Legal Theory panel as a preface to his discussion of community and interconnectivity.¹⁰⁹ Such narrative is the story about a person of color's attempt to renounce unfair privilege and identify with differently subordinated groups, which can be as or more powerful than stories of victimization.

In keeping with my above contention, I will briefly indulge a discussion of my own attempts to counter legitimacy concerns as a public defender. As a public defender in Washington, D.C., I represented an indigent clientele, the vast majority of whom were African American men. The Public Defender Service actively engages in the fight to secure defendants' rights in a legal system, which if it is not invidiously discriminatory against them, at the very least is factually hostile to them. Currently, as an academic, my substantive scholarship has focused on securing justice for criminal defendants by reconceptualizing current criminal doctrines.¹¹⁰ I can honestly say, however, that at times I felt a bit conflicted about my work with

¹⁰⁸ Hamid Kahn, "'Culture' and 'Terrorism' in the Rhetoric of Imperialism" (panel discussion held at LatCrit IX, *supra* note 3).

¹⁰⁹ Valdes observes:

I therefore begin, as I did then, with the acknowledgment that I am viewed and treated—and hence privileged—as a man. Indeed, I self-identify as such. Under conventional sex/gender norms I therefore am unable to credibly function as a lesbian or to experience life as a lesbian. Nonetheless, I sometimes claim inclusion in the lesbian category to poke at the sex/gender essentialisms that rigidly and absurdly confine us all. Gender-bending is important and (sometimes) rewarding political work.

Valdes, *supra* note 11, at 30.

¹¹⁰ See generally Gruber, *supra* note 95; Gruber, *supra* note 106 (articles discussing wrongful victim conduct as a potential defense to criminal liability).

indigent defendants. In many aspects, they were wholly unlike me: indigent, African American, and male. Many of my clients in Miami were Latino, arguably an ethnicity with which I could possibly identify, as my outward appearance is most often taken for Latina. These clients, however, were nearly all Spanish-speaking and immigrant, two characteristics I do not possess. During my entire three-year tenure as a local and federal defender, I had only one white client and one Asian American client, neither of whom was female.

My sense of unsettledness came from my inability to engage in identity politics regarding my clients. Put another way, I could neither figure out nor explain why I had the right to represent my clients, as individuals or as a group. What privilege to advance their cause could I claim? What gave me the right to maintain the issue of their subordination as my own and fight against it? Eventually, however, these feelings of illegitimacy subsided as the struggle manifested itself as far more important than my place in the struggle. What turned out to matter in the end was not whether I was the right person to be a public defender, but whether I was a good defender—whether I produced change.¹¹¹ This motivation, I suspect, would likely be the result of engaging in scholarship about the rights of others. At first, there may be some unease concerning legitimacy. I believe, however, if the scholarship is meaningful and produces change, legitimacy will be relegated to an ancillary concern, if any concern at all.

E. Discomfort

Reservation: Engaging the struggles of others is not as comfortable as engaging the struggles of one's own group. Likewise, welcoming voices from the "oppressor class" is unsettling.

I put this reservation last, but it is likely empirically the biggest impediment to my proposal. Simply, people are more comfortable discussing those topics to which they have a connection. Some African Americans will naturally gravitate toward race-related scholarship, women to feminist legal theory, and Latinas to Latina legal theory. We care about the struggles of our own groups, of those

¹¹¹ When I began my career as a public defender, my African American clients were most concerned about my legitimacy based not on my whiteness, but rather on my femaleness, age, and Asian-ness. Clients wondered how a "little girl" could represent them effectively. Generally, however, these concerns subsided as clients observed my lawyering in court. Interestingly, once I won a murder trial, word got around at the jail. Inmates I had never met began to write me to solicit my services, having "heard" that I was a good lawyer.

who are like us, our parents, and our loved ones. It is not that we do not care about the struggles of others, but because of the reservations outlined above and the fear of an icy reception by those who view us as members of “oppressor classes,” engaging the struggles of others can be unsettling. Likewise, as members of subordinated groups, it may be uncomfortable for us to accept within our ranks members of oppressor groups. There could be a fear, for example, of professors entrenched in the dominant power structure appropriating the LatCrit movement.¹¹²

In responding to this concern, I go back to Tayyab Mahmud’s wise words that “being unsettled is okay.” Although it is more comfortable to write about our own traits and experiences and surround ourselves with those of similar experiences, sometimes change only comes through discomfort. Often in our personal lives, cross-racial friendships tend to be more difficult than others, but they also can be some of the most rewarding, fulfilling, and mind-expanding.¹¹³ In our pedagogy, we challenge students to move beyond their preconceived notions, which entails taking them and us out of the “comfort zone.”¹¹⁴ In all honesty, I am sometimes suspicious of comfort, because with comfort comes a certain

¹¹² Richard Delgado and others observe how white male law professors have historically appropriated civil rights scholarship to the exclusion of scholars of color. See Delgado, *supra* note 94, at 562–63.

¹¹³ Robert Chang and Jerome Culp discuss cross-racial friendship as a model for scholarly coalitions. See Chang & Culp, *supra* note 11, at 490–91 (comparing challenges of coalition building to the challenges of interracial friendship).

¹¹⁴ There are some important caveats to be added here. First, I am certainly not saying that the conditions of our discomfort in the classroom are good. Obviously, much of our discomfort in teaching progressive thought, especially as minority law professors, is a direct result of the operation of racism and the dominant power structure in society and the legal academy. Second, there can be a point at which the discomfort is so bad that the law professor is forced to abandon her attempts to introduce diverse and intellectually-stimulating classroom discourse. Charles Pouncy recounts the hostile reactions from students and administrators when he attempted to introduce heterodox economic theory into his business law classes:

The fact that heterodox economic theory provides useful platforms for the discussion of class, race, gender, and markets makes it an excellent vehicle for discussion of the ideological components of business law. However, the use of such theories in contemporary law classrooms, particularly by professors of color or members of other marginalized groups, can make such professors lightning rods both for those students who are particularly committed to the preservation of unearned privilege and power and for the institutional processes that have arisen in law schools to maintain the current distribution of power, privilege, and authority.

Charles R.P. Pouncy, *Applying Heterodox Economic Theory to the Teaching of Business Law: The Road Not Taken*, 41 SAN DIEGO L. REV. 211, 216 (2004).

complacency, and complacency tends to be incompatible with change. Bernice Johnson Reagon describes the challenges of coalition building by remarking, “Most of the time you feel threatened to the core and if you don’t, you’re not really doing no coalescing.”¹¹⁵ More than merely moving out of one’s primary area of scholarship, building connections with those who identify themselves with the oppressor class can be extremely challenging. Thus, one must approach this project with open-mindedness, a willingness to empathize, and, most importantly, a sense of humility.¹¹⁶ Exercises in humility are always a good thing for those who have achieved a certain level in the social hierarchy. Engaging the struggles of others, then, requires a certain responsibility on the part of the academic. The academic should not only attempt to understand the struggle of the other in the context of the social and/or political system, but also must analyze her own place in the institution of privilege.

The converse is that those in subordinated groups must be willing to accept the scholarship of outsiders. I do not believe that this acceptance will lead to a flood of white males desiring to do, for example, women-of-color scholarship. Most of those who are privy to this proposal will be minorities in the progressive movement.¹¹⁷ I would argue, however, if a white male, with an appropriate disposition,¹¹⁸ did desire to engage in such scholarship, he should be welcomed. One measure of power that comes from being a minority, especially being one of the worst off, is the ability to claim “ultimately oppressed” status and actively exclude those identified as oppressors.¹¹⁹ This power, however, should be exercised with caution,

¹¹⁵ Bernice Johnson Reagon, *Coalition Politics: Turning the Century*, in HOME GIRLS: A BLACK FEMINIST ANTHOLOGY 356 (Barbara Smith ed., 1983). Phoebe Haddon recalls Stephanie Wildman’s suggestion that “we re-read this publication of Ms. Reagon’s speech, delivered at a women’s music festival in the early eighties, when our work seemed daunting.” Phoebe A. Haddon, *Coalescing with Salt: A Taste for Inclusion*, 11 S. CAL REV. L. & WOMEN’S STUD. 321, 321 n.1 (2002).

¹¹⁶ Phoebe Haddon asserts that “openness to change, critical introspection and humility are hard but necessary components of coalition building and must be undertaken by all participants.” Haddon, *supra* note 115, at 334.

¹¹⁷ See *supra* notes 21–23 and accompanying text for a discussion about directing the proposal toward academicians in the progressive movement.

¹¹⁸ When I use the words “appropriate disposition,” I mean a person with a commitment to the enterprise. Conversely, “inappropriate disposition” would refer to a person who sought to engage in twisted rights talk for the sake of promoting a conservative agenda. In my opinion, it is likely, however, that this person will engage in deceptive rights jurisprudence regardless of whether progressives welcome him.

¹¹⁹ This measure goes hand in hand with the problem of identity politics that Nancy Ehrenreich describes as the “battle of oppressions problem.” She explains:

[Group conflict] inevitably leads to the battle of oppressions—to a rhetorical war over which group is worse off, which is most oppressed.

if at all. While it is probably wise to be wary of those from the privileged groups attempting to dominate progressive discourse, if a member of the privileged group is sincerely interested in the struggle of minorities, she should not be excluded *a priori*. Exclusivity is often a barrier to equality.

This section has discussed the allure of identity politics in light of five specific reservations one might have about my proposal. I have addressed each reservation with the aspiration of encouraging others to consider issues of minority status and subordination multidimensionally. I hope that we can all break out of our comfort zones in an effort to build coalitions with those different from us. In the next section, I will describe some of the potential benefits from this exercise.

III. THE BENEFITS

I have hinted at several benefits of the proposal to devote academic capital to the issues of others. This Part will more clearly explicate the goals of the proposal and where it fits into the coalition building and antisubordination agenda of the LatCrit movement. One of the most important goals of the proposal is redistribution of power gains among subordinated groups. For better or worse, certain groups have gained relative power in social and legal structures while others remain almost wholly disempowered. Minority groups or individuals that have gained some amount of social acceptance, economic power, or both have the ability and resources to fulfill their own agendas, sometimes rather swiftly.¹²⁰ Other groups, however, suffer constant stigmatization, have no

As Patricia Hill Collins puts it, when “[n]otions of an unproblematic unity” are “obsolete . . . groups police one another to maintain their place in the pecking order [D]ifferent groups vie for center stage, often striving to be the most oppressed or the most different.” Perhaps such intergroup rivalries are motivated by groups’ fears of being shut out of scarce resources (not only economic resources, but also publicity and public empathy); perhaps they are connected to a more intangible and emotional need to attain the status of paradigmatic victim.

Ehrenreich, *supra* note 11, at 269–70 (quoting PATRICIA HILL COLLINS, *FIGHTING WORDS: BLACK WOMEN & THE SEARCH FOR JUSTICE* 53–54 (1998)) (footnotes omitted) (alterations in original).

¹²⁰ Examples of minorities who have gained relative amounts of power might include white women, men of color, certain gay groups, and wealthy immigrants. See, e.g., Richard Delgado, *Locating Latinos in the Field of Civil Rights: Assessing the Neoliberal Case for Radical Exclusion*, 83 TEX. L. REV. 489 (2004) (reviewing GEORGE YANCEY, *WHO IS WHITE?: LATINOS, ASIANS, AND THE NEW BLACK/NONBLACK DIVIDE* (2003) (discussing the view that certain minorities who gain power become “white,” and the differing abilities of disparate groups to achieve this status)).

economic resources, and are not members of any power elite in our nation.¹²¹ These groups stand to benefit the most from a gain in numbers and advocacy on their behalf by prominent law professors.¹²² Hopefully, as a result of redistribution of academic capital, the very worst off groups will be more empowered than before.

In addition, there is a persuasive quality when an outsider takes up the cause of a subordinated group. This persuasion not only affects the outsider's own minority group but also society at large. Recall when the Massachusetts legislature engaged in debates over a constitutional amendment to ban gay marriage.¹²³ One can hardly deny the pure persuasive and emotive power of Dianne Wilkerson, an African American senator, who declared with tears in her eyes, "I know the pain of being less than equal and I cannot and will not impose that status on anyone else. . . . I could not in good conscience ever vote to send anyone to that place from which my family fled."¹²⁴ Similarly, African American representative Byron Rushing warned the legislature that by adopting the amendment, the Constitution was in danger of resembling its state "in the days before the Civil War." Rushing also criticized members of the black clergy who had condemned gay marriage, stating, "I am saying to that small group of leaders, shame on you."¹²⁵

This discourse was extremely powerful in several ways. It emphasized to the black community the analogy between racial oppression and bigotry against gays, thereby helping to secure

¹²¹ Examples of more subordinated minorities might include transgender people, poor immigrants like migrant workers, certain religious minorities, and persons with multiple minority traits. *Id.*

¹²² For example, transgender law professors are few and far between. As a result, law review articles involving transgender issues are often written by non-transgender law professors or non-law professor transgender people. For examples of articles written by non-transgender law professors, see Mary Coombs, *Sexual Dis-Orientation: Transgendered People and Same-Sex Marriage*, 8 UCLA WOMEN'S L.J. 219 (1998); Julie Greenberg, *Deconstructing Binary Race and Sex Categories: A Comparison of the Multiracial and Transgendered Experience*, 39 SAN DIEGO L. REV. 917 (2002); Darren Lenard Hutchinson, "Closet Case": Boy Scouts of America v. Dale and the Reinforcement of Gay, Lesbian, Bisexual, and Transgender Invisibility, 76 TUL. L. REV. 81 (2001); and Richard F. Storrow, *Gender Typing in Stereo: The Transgender Dilemma in Employment Discrimination*, 55 ME. L. REV. 117 (2003). For an example of an article written by a non-law professor transgender woman, see Katrina C. Rose, *Three Names in Ohio*. In re Bicknell, In re Maloney, and Hope for Recognition That the Gay-Transgender Twain Has Met, 25 T. JEFFERSON L. REV. 89 (2002).

¹²³ Scot Lehigh, *Political Stakes High in Gay Marriage Clash*, BOSTON GLOBE, Feb. 11, 2004, at A1.

¹²⁴ Frank Phillips and Raphael Lewis, *Two Marriage Amendments Fail; Lawmakers to Reconvene Today*, BOSTON GLOBE, Feb. 12, 2004, at A1.

¹²⁵ Rick Klein, *Gridlock in Marriage Debate*, BOSTON GLOBE, Feb. 13, 2004, at A1.

support for gay rights among the larger black community.¹²⁶ The discourse was also powerful vis-à-vis society at large. First, it exemplified to society that minorities would be a united front on the gay marriage issue. Second, and perhaps more importantly, it refuted by example those who believe that gay rights is an issue of small interest-group politics rather than fundamental equality. When African Americans weighed in on the gay rights issue from an outsider perspective, they could be seen as “objective,” emphasizing the fact that denial of marriage rights is fundamentally unjust.¹²⁷ Moreover, the message was a powerful reply to those who would seek to stigmatize African Americans as being homophobic because of the few black religious leaders who opposed gay marriage.¹²⁸ By lending their powerful voices to the gay rights agenda, the African American congressional leadership may not have been able to secure the defeat of the pernicious amendment, but they played a pivotal role in the struggle for justice, and they did it as outsiders.

In addition to benefits gained by the subordinated groups on whose behalf the academic engages in scholarship, the academic process itself is enhanced. When we teach our students, many of whom are white, straight males, about the struggles of racial minorities, women, sexual minorities, and others, we hope that they will learn something in the process. We hope that they will begin to engage in a type of reasoning that allows them to empathize with the struggles of others, whether through the application of certain “universal” values like equality and justice or through forging analogies to their own life experiences. This process, however, may not be intuitive to our students in a world where people generally fight on behalf of their own and not others. By fighting on behalf of others, we engage in the precise reasoning that we hope to instill in

¹²⁶ These voices were arguably necessary to counter the many voices of opposition to gay marriage in the black community. Even Jesse Jackson criticized comparisons between the civil rights movement and the gay rights movement, stating that “[g]ays were never called three-fifths human in the Constitution,” and “they did not require the Voting Rights Act to have the right to vote.” Boykin, *supra* note 91, at 46 (internal quotation marks omitted). Indeed, despite these statements by prominent members of the African American community, the NAACP issued a statement to the Senate Judiciary Committee condemning the marriage amendment. *See supra* note 92.

¹²⁷ It thereby countered the appropriation of the “black” opinion by conservative groups. *See supra* note 91.

¹²⁸ Some progressives could believe, as does African American Harvard Chaplain Reverend Peter Gomes, that “[t]he African American religious community has spent so much time trying to prove to the white community that it is the same, that for all intents and purposes it shares many of the worst prejudices of the white community.” Boykin, *supra* note 91.

our students and society at large. When engaging in scholarship about others, we can either discuss the set of values that makes us understand their treatment as unjust, as did Representative Rushing,¹²⁹ or discuss analogies between our situations of oppression and theirs, as did Senator Wilkerson.¹³⁰ This exercise is not only important for academics, it also sends a message that empathetic reasoning is valid and useful, that identifying with others is an important endeavor.¹³¹

Another benefit of this exercise is self-discipline. When we write about our own struggles all the time, the line between self-interest and the pursuit of more general justice and equality can become blurred. Identity politics is sometimes expedient,¹³² but it can definitely be abused. There certainly are those who claim minority status in order to advance their own careers or the agendas of their subgroup, but once they achieve a position of power, it does not translate to distributing gains to other subordinated groups or general antisubordination agendas. By making sure that we engage the struggles of others, we are constantly vigilant that we support the antisubordination cause generally and not our own personal causes particularly.¹³³ Moreover, relatively empowered minorities can use their gains from participation in institutionalized privilege to give a voice to the most subordinate groups. In this way, relatively empowered professors of color can actively subvert the institutions of privilege that subordinate all minorities. In this sense, all power gains made by a particular group would lead to the dismantling of unfair privilege and furtherance of the cause of antisubordination.

¹²⁹ See *supra* note 125 and accompanying text for a discussion of Representative Rushing's warning to the legislature that its attitude toward gay Americans mirrored its discriminatory attitude toward African Americans.

¹³⁰ See *supra* note 124 and accompanying text for a discussion of Senator Wilkerson's analogy between the oppression of African Americans in the past and gay Americans today.

¹³¹ See Roman, *supra* note 105, at 384–85 (discussing the value of identifying and comparing common experiences of harmed groups).

¹³² See *supra* notes 48–50 and accompanying text for a discussion of the importance of building coalitions among disparate minority groups.

¹³³ Gabriel J. Chin, Sumi Cho, Jerry Kang, and Frank Wu assert: APAs [Asian/Pacific Americans] must be mindful of their own blindspot: We possess a "simultaneity" in which we can be both victim and perpetrator of racial oppression. We must reject a self-congratulatory embrace of the model minority myth and policies justified only by the narrowest self-concern. Most importantly, we must denounce the prejudice within our own communities, which allows us to care less about social justice and more about individual self-interest.

Gabriel J. Chin et al., *Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice, A Policy Analysis of Affirmative Action*, 4 ASIAN PAC. AM. L.J. 129, 162 (1996).

Finally, writing about the subordination of others is a way to build bridges and conduct fruitful exchanges of knowledge and experiences. One thereby can make connections, conduct research, and learn about areas outside of one's immediate scholarly agenda. This dialogue will foster new alliances and interconnections between different subordinated groups. It will start positive dialogue amidst perceptions of conflict and competition. Consequently, by consciously redistributing our academic capital, we can create coalitions, exercise praxis, and further the goal of antisubordination.

CONCLUDING REMARKS

The vast majority of what I have discussed is not new or novel. This proposal stands on the shoulders of the many progressive academics who have pioneered the path of intersectionality, multidimensionality, and coalition building. This Essay represents my initial thoughts on how to instrumentalize these important ideas. My epiphany was about multidimensionality. My feelings were borne out of the realization that by choosing an elite existence as a law professor, one need not abandon antisubordination and justice ideals, as exemplified by the very nature of rights scholarship and the LatCrit movement. I see the possibility of an integration of what we do, who we are, and what others need. In a profession that often rewards self-interest and ambition and vilifies empathy and self-sacrifice, legal academicians can change the ethics and tenor of legal discourse by engaging in scholarship that rebuts essentialist assumptions and thoughtfully navigates the complex and interesting framework of multidimensionality.