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The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History

BY STEPHANIE L. PHILLIPS*

This essay was sparked by my participation in a moderated panel at the LatCrit III conference, entitled “From RaceCrit to LatCrit to Black-Crit?: Exploring Critical Race Theory Beyond and Within the Black/White Paradigm.” From my point of view, this title, as well as the presentations by panelists Anthony Farley and Dorothy Roberts, posed following questions: 1) Do blacks in America have particularized experiences that should be articulated as such, and not simply subsumed under the rubric of the experiences of “people of color”?; 2) Is there such a thing as progressive black nationalism?; 3) If so, is “BlackCrit” an appropriate name for its articulation in legal academic scholarship?; and, 4) Should those working in a newly formulated “BlackCrit” tradition create a new institutional forum for our work, or should we do that work as part of the Critical Race Theory Workshop?

As to the first three questions, I find the answers very straightforward, and easily inferred from the presentations made by Anthony and Dorothy. Yes, the particularities of black experience must be articulated as such. Yes, there is such a thing as a progressive black nationalism,¹ which as Anthony alluded to features: a transgressive spirit, an internationalist perspective, and a stance against homophobia and all such ideologies that treat people as things. If anyone wants to use “BlackCrit” to designate those legal scholars who write about and from a progressive black nationalist perspective, I have no serious objection. I do, however, think that the proliferation of names and labels is on the verge of getting out of hand.

My essay primarily will explore the fourth question posed: assuming that the new label, “BlackCrit,” might be used to describe legal scholarship in the tradition of progressive black nationalism, should we create a new institutional forum for such work? My tentative answer to this question is no. I think it preferable for BlackCrit to develop within

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1. By “black nationalism,” I mean, principally, a stance that respects and works to preserve African American culture. See generally Gary Peller, *Race Consciousness*, 1990 DUKE L.J. 758 (1990).

the ambit of the Workshop on Critical Race Theory. My conclusion is largely derived from my experience as a participant in the Workshop, and my perspective on how its politics have evolved over the past nine years. In this essay, I give my version of part of that history, as well as my interpretation of it.

The history I recount concerns the Critical Race Theory Workshop, which held its first meeting in 1989 and continued to meet annually through 1997, when the Ninth Workshop was held at Tulane.² I do not mean to suggest an equivalence between the Workshop and the entire corps of people and corpus of work that constitute “Critical Race Theory.” There are many people who think of themselves as Critical Race Theorists, who have never attended a Workshop. There are people who once participated in the Workshops who no longer do. Moreover, there are different conceptions among the people who regularly attend the Workshop about what Critical Race Theory is. The following account, therefore, should be read as my version of the evolution of the politics of the Workshop, not as pronouncements on the nebulous Critical Race Theory.

A. *Founding the Critical Race Theory Workshop: Opposition to “All Forms of Oppression”?*

I think “jagged” is the best characterization of the political evolution of the Critical Race Theory Workshop. The person principally responsible for the idea of the Workshop, and the person who coined the label “Critical Race Theory,” is Kimberlé Crenshaw. Almost all of us who, constituted the Organizing Committees for the first two workshops had a leftist political orientation.³ Our agreed-upon description of the Workshop, and of the scholarship we hoped it would spawn, was that Critical Race Theory would apply the tools of critical theory to the task of dismantling racial hierarchy in the United States. In addition, the

2. There was no workshop during the summer of 1998, primarily because, given pressing publication deadlines and other commitments, no one was available to host it. It does not seem to me, however, that we have actually “skipped” a year. Rather, we convened and did our work in alternative fora. After the Ninth Workshop at Tulane, in June 1997, hosted by Robert Westley, we all participated in the Conference on Critical Race Theory in November 1997, situated at Yale and superbly organized under the leadership of Angela Harris and Harlon Dalton. We met again at the AALS law teachers’ conference in January 1998, where we participated in various panels and caucuses, and in the large, and successful demonstration against California’s anti-affirmative action measure, Proposition 209. Sumi Cho, who has played a prominent role in the Critical Race Theory Workshop in recent years, was a principal organizer of the demonstration. Then, of course, a substantial number of us attended the LatCrit III conference, in May 1998.

3. In addition to Kim, the leftist members of the first two Organizing Committees included Kendall Thomas, Neil Gotanda, Mari Matsuda, Richard Delgado, and myself. Linda Greene, who was a member of the Organizing Committee for the Second Workshop, probably would not describe herself as a leftist.

organizers adhered to a stance against all forms of oppression, including oppression on the basis of race, class, gender, and sexual orientation. Despite our controversial "invitation only" policy,⁴ it had become glaringly obvious by the end of the Second Workshop that not everyone in attendance shared the organizers' political orientation. The depth of disagreement was painfully obvious during the last session of the Second Workshop, which focused on political tenets we hopefully had in common.

The discussion was organized around a seven-point description of proposed "Tenets of Critical Race Theory":

Critical Race Theory:

1. holds that racism is endemic to, rather than a deviation from, American norms;
2. bears skepticism towards the dominant claims of meritocracy, neutrality, objectivity, and color-blindness;
3. challenges ahistoricism, and insists on a contextual and, historical analysis of the law;
4. challenges the presumptive legitimacy of social institutions;
5. insists on recognition of both the experiential knowledge 2nd

4. We required those who wished to attend the Workshop to submit applications, in which they described their work and their interest in the Workshop. Only those whose applications were accepted were invited to attend. This procedure was adopted for two reasons. First, we felt that it was important to keep the Workshop meetings small, so that we could all engage each other in a sit-in-a-circle format for the entire five days of the Workshop. Secondly, and much more importantly, the "invitation only" policy was thought necessary for the Workshop to reflect radical, transformative politics. We did not want to be seen as issuing a general invitation to all legal scholars of color, no matter how conservative or parochial, to simply come hang out. This was our attempt to institutionalize what Frank Valdes has recently phrased a "move from color to consciousness." Francisco Valdes, *Foreword: Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 *LA RAZA* L.J. 1, 27 (1996). Frank embraces the possibility of making the shift from the current practice of identity politics to a potential construction of politicized identities. This shift, pioneered by Professor Chang, Professor Harris, and like-minded scholars, entails recognition of the fact that alliances are best built on shared substantive commitments, perhaps stemming from similar experiences and struggles with subordination, rather than on traditional fault lines like race or ethnicity. This possibility thus entails rejection of automatic or essentialist commonalities in the construction of coalitions and entails the post-postmodernist combination of sophistication and disenchantment, which can create a platform for the politics of difference and identification. *Id.* (footnote omitted).

While the organizers of the early Workshops attempted to promote such a principled basis for the collaboration of scholars of color, white scholars were excluded. The debate continues about whether the exclusion of whites from the Workshop is unprincipled, or whether it is simply a pragmatic step necessary to assure that racial hierarchy is not replicated in the Workshop. However, as this essay, Frank's article, and many other recent writings demonstrate, exclusion of whites did not insulate us from replicating troubling hierarchies within the Critical Race Theory Workshop, in particular, the privileging of African American experience and of heterosexuality.

critical consciousness of people of color in understanding law and society;

6. is interdisciplinary and eclectic (drawing upon, inter alia, liberalism, post-structuralism, feminism, Marxism, critical legal theory, post-modernism, and pragmatism), with the claim that the intersection of race and the law overruns disciplinary boundaries; and
7. works toward the liberation of people of color as it embraces the larger project of liberating all oppressed people.⁵

Discussion of the first six points went fairly smoothly; those present could easily give formal assent to these propositions to these propositions.⁶ It was when we got to point number seven that all hell broke loose.

The principal bone of contention surrounding proposition seven was whether gay men and lesbians are "oppressed people," and if so, whether their liberation had anything to do with the fight against racial oppression.⁷ These questions were not, to say the least, propounded in a spirit meant to lead to further discussion. Rather, the questions exploded, as did the responses. All possibility of further engagement having been destroyed, the Second Critical Race Theory Workshop adjourned, with some people barely speaking to each other.⁸

As for the aftermath of this debacle, I regret to report that eight

5. From the notes of Professor Elizabeth H. Patterson, taken June 13, 1990, at the Second Critical Race Theory Workshop, held in Buffalo, New York. I am immensely grateful to Ginger Patterson for taking such excellent notes, and for taking time to dig them out of her archives to send to me.

6. As I recall, the only rough spot in discussion of the first six propositions was a definite lack of unanimity on the question whether Critical Race Theory encompassed an anti-capitalist stance.

7. It should be noted that there never was any doubt that Critical Race Theory encompassed a feminist stance against oppression on the basis of gender. Frank Valdes has misread articles written by Kim Crenshaw as asserting that the Workshop tended to privilege male experience, and to marginalize women of color. See Valdes, *supra* note 4, at 3 n.9, 5 n.15, 5 n.17 (discussing Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242-44 (1991) and *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 (1989)). Actually, when Kim wrote about how male experience had often been privileged in antiracist struggles, she was referring to such phenomena as the blatant sexism of some black nationalist organizations, including the latter-day S.N.C.C. and the Nation of Islam, as well as the refusal of the Southern Christian Leadership Conference to acknowledge the key leadership role being played, behind-the-scenes, by such women as Ella Baker.

As to gender issues within the early Critical Race Theory Workshop, if anyone tended to be silenced on gender issues, it was the men. Further, the dominant position of the early years of the Workshop, enforced by the women, clearly implied that there was no such thing as "gendered" oppression of males.

8. In fact, some people, including Kim Crenshaw, were so disaffected by the regressive

years passed before the Critical Race Theory Workshop fully embraced the principles that the fight against oppression of gay men and lesbians is important, and that it is, or should be, an integral part of the antiracist struggle.⁹ Gay and lesbian folks regarded the 1997 Workshop as the first one where their identities and issues were not contested. What had changed? Some of those who had opposed the view that gay and lesbian issues should be addressed as part of Critical Race Theory were converted to a new understanding; while others stopped attending the Workshop. Furthermore, by 1997, the number of (out) gays and lesbians attending the Workshop increased from the original one or two to between eight and ten.

In sum, while it took an excruciatingly long time for the Critical Race Theory Workshop to reflect a strong stance against heterosexism, it finally did. I have told this story here because LatCrit has taken a solid stance against heterosexism from its beginning, in 1996. At that time, LatCrit and the Critical Race Theory Workshop were not equally hospitable to gays, lesbians, and inquiries into sexuality-based oppression. That, in my opinion, has now changed, constituting my first example of how the Critical Race Theory Workshop has converged with the politics embraced by LatCrit.

B. *The First Critique of the "Black/White Paradigm" and the Workshop's Response*

My second convergence chronicle is more closely related to the topic proposed for discussion at LatCrit III: "Exploring Critical Race Theory Beyond and Within the Black/White Paradigm."¹⁰ This is an account of the undeniable fact that the Critical Race Theory Workshop, in its early years, focused almost exclusively on the experiences of African Americans, and of how the Workshop later developed a more inclusive perspective. This account is necessary to put to rest the suspicion

beliefs that had been paraded that they never again treated the Critical Race Theory Workshop as an important intellectual community.

9. Frank Valdes describes the inextricability of struggles against racism and struggles against heterosexism in the following way:

"[R]ace" is in fundamental ways contingent on "sexual orientation" and vice versa; that is, people of color oftentimes are required to manifest heterosexuality to be accepted as authentically raced, while lesbians and gays oftentimes must be white to be authenticated and accepted by those communities. * * * "[R]ace" and "sexual orientation" combine, or intersect, in the formation of individual and group identities, and . . . these combinations and intersections inform the way in which particular persons or groups are constructed and (mis)treated culturally and legally.

Valdes, *supra* note 4, at 6 n.21.

10. As noted above, the full title of the moderated focus group discussion was "From RaceCrit to LatCrit to BlackCrit?: Exploring Critical Race Theory Beyond and Within the Black/White Paradigm."

expressed in some LatCrit writings that the early Workshop deliberately denigrated the importance of the experiences and histories of American people of color who are not black.¹¹ One small piece of evidence that I hope will tend to counteract the suspicion is that, in the proposed “Tenets of Critical Race Theory,” propounded at the Second Workshop and discussed above, we continually referred to “people of color,” rather than “blacks,” in our formulations. Indeed, it would have been very odd had we done otherwise, considering the significant presence of non-blacks, including Mari Matsuda, Gerald Torres, and Neil Gotanda. Just two years later, in fact, Neil was part of the group that launched a critique of the Workshop’s overemphasis on the Black/White paradigm. Beyond that episode, which seems to have dropped from our collective memory, I wish to highlight the Workshop’s response to the critique, which demonstrated that our original parochialism was a function of ignorance, not of deliberately thought-out principles.¹²

The earliest critique of what has been called the “Black/White paradigm” which now is, more appropriately known as the “White Over Black paradigm,” occurred at the Fourth Critical Race Theory Workshop in 1992.¹³ The non-blacks who were present formed a caucus and emerged with the following challenge to the Workshop’s “Afrocentrism:” the Workshop had been, perhaps, overly-dominated by African Americans, and had, certainly, overemphasized the history and present circumstances of blacks, with an unprincipled neglect of the conditions of non-black peoples of color.¹⁴ Personally, I was both embarrassed and

11. Actually, the published work of LatCrit scholars is relatively mild in chastisement of African Americans for the scant attention paid to Latina/o and Asian issues during the early years of the Critical Race Theory Workshop, calling us “insensitive,” Valdes, *supra* note 4, at 5, and “indifferent.” Juan F. Perea, *The Black/White Binary Paradigm of Race: The “Normal Science” of American Racial Thought*, 85 CAL. L. REV. 1213, 1254 (1997). However, during face-to-face discussion of the Black/White paradigm at the Eighth Workshop, it seemed that Latinos and Latinas took the Workshop’s early neglect of their issues very personally. At least, that was how the African Americans in the “hot seat” heard the critique. We may have been mistaken, of course, our perceptions warped by the heat of our embarrassment that we had apparently done to Asians and Latinas/os what Critical Legal Studies had once done to us!

12. It is important that this gap in the Workshop’s understanding not be confused with what Angela Harris denominates a theory of “black exceptionalism”, that is, a thought-out, articulated, and defended position that the black experience, virtually to the exclusion of all others, is equivalent to the meaning of “race” in America. See Leslie Espinoza and Angela P. Harris, *Afterword: Embracing the Tar-Baby — LatCrit Theory and the Sticky Mess of Race*, 10 LA RAZA L.J. 499, 510-19 (1998), 85 CAL. L. REV. 1585, 1596-1605 (1997).

13. Harlon Dalton was the host, Yale was the sponsoring school, and the Workshop was held at a retreat center in the New Haven suburbs, of Madison, Connecticut.

14. This critique used the word “Afrocentrism” in the same way Frank Valdes later did:

As used here, “Afrocentric” denotes a focus on black or black/white relations and not a yearning for, or a return to, Africa. The perception addressed here with this term, . . . is that the scholarship and discourse produced under the rubric of “Critical Race Theory” generally and effectively has equated African American “blackness”

stunned. As for the collective black response to the critique: we apologized, confessed our ignorance, and said that since we knew nothing about ethnicity and little about various groups' histories, we would have to be taught. And that is exactly what happened.

The next year's Workshop¹⁵ prominently featured plenary discussion of ethnicity, as overlapping but distinct from race, and of the histories of Asian Americans and Latinos/as. A committee chaired by Lisa Ikemoto, and including Celina Romany, Hein Kim, Gerald Torres, and John Hayakawa Torok, compiled and led discussions on extensive readings concerning race and ethnicity.¹⁶ This institutional response to the critique of the Black/White paradigm was a significant step in the evolution of the Workshop. More generally, the Workshop's attempt to correct its "Afrocentrism" reflected an ability to grow and change that is essential to the long-term health of any organization.¹⁷

C. *The Workshop's Present Politics*

I did not attend the Sixth and Seventh Workshops, held in Miami and Philadelphia, respectively. From accounts I have heard, there continued to be a great deal of resistance to the idea that combatting heterosexism was an integral part of Critical Race Theory. This resistance was finally overcome, or rooted out, at the Eighth and Ninth Workshops. It is possible that in response to the 1993 Workshop's emphasis on Asian and Latina/o ethnicity, there were subsequent incidents of "backlash," whereby African Americans attempted to refocus most attention on black issues. On the other hand, I have been neither party to nor witness of any resurgent "Afrocentrism." Moreover, black history and politics were further decentered at the Eighth and Ninth Workshops.¹⁸ Another important feature of the Ninth Workshop, accom-

with "race" and measured that experience against Euro-American "whiteness" without examining how Asian American, Latina/o and Native American experiences or identities figure in the race/power calculus of this society and its legal culture.

Valdes, *supra* note 4, at 5 n.16.

15. The Fifth Critical Race Theory Workshop, held in 1993 at Mills College in Oakland, California, was sponsored by Santa Clara University Law School. Margaret Russell, Margalynne Armstrong, and Monica Evans were the hosts.

16. The seventeen articles we read included: Edna Acosta Belen, *Beyond Island Boundaries: Ethnicity, Gender and Cultural Revitalization in Nuyorican Literature*; Juan Flores and George Yudice, *Living Borders/Buscando America: Languages of Latino Self-Formation*; and Sau-ling Cynthia Wong, *Ethnicizing Gender: An Exploration of Sexuality as Sign in Chinese Immigrant Literature*, in *READING THE LITERATURES OF ASIAN AMERICAN III* (Lindling ed., 1992).

17. By contrast, the demise of Critical Legal Studies might be attributed, at least in part, to its inability or unwillingness to respond to critiques by women and people of color.

18. In fact, as I recall, the only specific attention given to blacks during sessions at the Eighth Workshop were critiques of black homophobia and chastisement of blacks for our role in enforcing repressive aspects of the Black/White paradigm.

plished largely through the efforts of Estevan Rael y Galvez, was a significant Indian presence.¹⁹

Where are we now? What are the current politics of the Workshop on Critical Race Theory? By 1997, the Workshop reflected an understanding that racism is not only historical slavery, Jim Crow laws and gerrymandered voting districts in the South; it is also immigration laws and internment camps; it is stolen land grants and silenced languages; it is standardized tests based on standardized culture; it is invisibility and lost identity. We also understand that racism is inextricably linked to oppression on the bases of gender and sexuality. These understandings in no way contradict the original goals of the founders of the Workshop. Rather, they actualize our original vision, vastly enriched by the struggles of the intervening years. Furthermore, what I have presented as a summary of the current politics of the Critical Race Theory Workshop is a paraphrase of Leslie Espinoza's description of LatCrit theory!²⁰

At the conclusion of its first decade, the Critical Race Theory Workshop, having struggled to understand that our work must encompass a fight against heterosexism and having critiqued the Black/White paradigm, has converged with the politics that have informed LatCrit from its beginning. This brings me to the second question I found implicit in the title of the panel at LatCrit III: What institutional arrangements are suited to our articulation of the particular culture and needs of African Americans, which may or may not come to be called "BlackCrit," but which should definitely take into account the convergence between the politics of the Critical Race Theory Workshop and LatCrit theory?

D. *An Institutional Proposal*

Because the Critical Race Theory Workshop and the LatCrit conferences reflect such similar politics, but together constitute such a small part of legal academia, it seems fairly clear that these two institutions should coordinate their work. There are many ways to do this, but the agreement I prefer is for the Critical Race Theory Workshop to move to an every-other-year schedule, to which everyone that shares the politics of the Workshop and LatCrit would be invited. In the alternate years, other groups would meet, including LatCrit, which has a distinctive role

19. Sometimes also known as "indigenous peoples" or "Native Americans." Until then, Estevan Rael y Galvez and Eric Yamamoto had been the only "indigenous" folk who regularly attended the Workshop, although others, including Rob Williams, had been invited every year. For the 1997 Workshop, however, Estevan succeeded in organizing a panel on indigenous people's issues. Patricia Monture, in particular, seemed to find the Workshop to be a congenial political and intellectual community.

20. See Espinoza and Harris, *supra* note 12, at 506-07, 85 CAL. L. REV. at 1593.

to play in the working out of Latina/o pan-ethnicity.²¹ Other one-time or long-term formations that might be organized to deal with specific issues or to focus on particular communities include: a conference devoted to immigration theory and policy; a workshop that brings together queers of color; and a BlackCrit organization. My preference as to BlackCrit is, however, that the working out of progressive black nationalist ideology be done under the auspices of the Critical Race Theory Workshop, rather than in a separate organization.

The principal reason why I would hesitate to endorse a separate BlackCrit organization is one that has been mentioned by Taunya Banks at LatCrit III and elsewhere. Historically and presently, there are many examples of regressive black nationalism that, for instance, deny that there is sexism in the black community, attempt to legitimate homophobia, and deny that blacks can be "racist" in relation to other people of color or whites. I think Taunya is probably right that, without the discipline that would be provided by working with people who come from other subject positions, there would be a substantial danger that a black nationalist formation would degenerate into the regressive type. Sadly, there also may be too few blacks in legal academia who endorse a distinctively progressive black nationalism for a new organizational form to be warranted. A conference and a few meetings might make sense, but not a whole new organization.

I wish to anticipate one objection that might be raised to my proposal that the Critical Race Theory Workshop, (1) be the institutional home for working out a progressive black nationalism among legal scholars, whether or not called "BlackCrit." Some participants may be concerned that the "Afrocentrism" that characterized the Critical Race Theory Workshop in the past would be resurrected if specifically black theoretical work were presented at the Workshop. My rebuttal is three-fold. First, an implication that blacks always occupy a privileged position vis-à-vis Asians and Latinos/as with respect to race issues would be insupportable. In relation to each other, Latinas/os, Asians, blacks, and Indians sometimes occupy positions of privilege and sometimes experience subordination.²² Second, I hope that the history of the Workshop I have recounted helps to allay fears of black dominance; a little trust is called for and should be tried. Third, and most importantly, I endorse the view

21. For a discussion of this aspect of LatCrit's mission, see Valdes, *supra* note 4, at 24-25. Please excuse my suggestion that LatCrit conferences occur every other year, rather than annually. I am motivated by time and resource concerns. In 1997, for example, I had to choose between attending LatCrit and attending the Critical Race Theory Workshop; I would much prefer to be able to attend all meetings of both.

22. See generally Eric K. Yamamoto, *Conflict and Complicity: Justice Among Communities of Color*, 2 HARV. LATINO L. REV. 495 (1997).

that the Critical Race Theory Workshop is a place where, among other things, the experiences of all groups of color are articulated and where narrow conceptions of group interest are critiqued.

Eric Yamamoto has provided a trenchant reminder of the central paradox of “interracial” tensions among American communities of color:

When we look hard at the practical struggles of our racial communities, we see continued white dominance. But we also see the reality of sometimes intense distrust and conflict among communities of color — coupled with efforts to forge multiracial alliances. When we listen hard, we hear stories of continued resistance by racial communities against mainstream subordination. But we also hear stereotypes and accusations of wrongdoing asserted by communities of color against one another — coupled with cautious optimism about future relations.²³

What forum could be better than the Critical Race Theory Workshop to address such conflicts, especially their manifestations in legal disputes?²⁴ What better way could we approach these problems than by sharing our communities’ particular experiences and goals? As to this crucially important aspect of the tasks facing the Critical Race Theory Workshop, I suggest that we consider the Black/White paradigm, its critique, and its reformulation as the White Over Black paradigm, as merely the first episode in tackling the myriad manifestations of conflict among our various communities.

23. *Id.* at 495.

24. Eric supplies several troubling examples of such disputes, including a case in which Chinese Americans object to a set-aside of spaces for Latinos/as and blacks at a prestigious school, Yamamoto, *supra* note 22, at 496 nn.1 & 2, and a suit brought by Latina/o and Asian groups to object to alleged favoritism by the city of Oakland, California, in its award of contracts to blacks. *See* Yamamoto, *supra* note 22, at 496-97 & n.3. Eric’s article is addressed to a LatCrit audience and, of course, I agree that inter-group tensions should be examined at LatCrit conferences. This does not detract from the importance of the Critical Race Theory venue, however, since the focus of LatCrit is on Latinas and Latinos, while the Critical Race Theory Workshop no longer privileges a particular group. I endorse Frank Valdes’ suggestion that LatCrit and the Critical Race Theory Workshop should proceed on separate, but closely related, tracks. *See* Valdes, *supra* note 4, at 26-27. The two institutions endorse the same political values, but have somewhat different emphases.