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ANTI-SUBORDINATION AND THE LEGAL STRUGGLE OVER CONTROL OF THE "MEANS OF COMMUNICATION": Finding the Me in LatCrit Theory:

Thoughts on Language Acquisition and Loss *

* My title alludes to Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, [77 Va. L. Rev. 539 \(1991\)](#); "One cannot talk about race in America without addressing ... personal experience, feelings and values." Charles R. Lawrence, III, *The Word and the River: Pedagogy as Scholarship as Struggle*, [65 S. Cal. L. Rev. 2231, 2241 \(1992\)](#). See generally *Critical Race Theory: The Key Writings That Formed the Movement* (Kimberle Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas, eds. 1995); *Critical Race Theory: The Cutting Edge* (Richard Delgado, ed. 1995).

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SUMMARY: ... In Part V, I assert that the United States white-over-Black paradigm is the mother tongue for United States race discourse. ... My mother's mother tongue is Japanese while my father's mother tongue is Hungarian. ... Thus, I lost my mother's mother tongue, something my mother now deeply regrets and which she makes me regret too. ... As I listened to her, I realized I had heard talks like hers before, not in this particular room in Miami Beach, but in Washington D.C. leadership training seminars organized by Japanese and Chinese American civil rights organizations. ... I believe this language is the mother tongue of United States race discourse. ... However, just as, English has become my mother tongue, the white-over-Black paradigm has become the mother tongue of American race discourse, displacing what I call the "colonizing settler-over-native" language. ... In other words, as we center Latina/os in critical race discourse, we must continue to attend to the white-over-Black mother tongue; however, we must learn to incorporate the settler-native racialization into our discussion. ...

[*1019]

I. Introduction

I have been invited to join an exciting, collective intellectual and political enterprise, centering Latina/os in critical race discourse. The third LatCrit conference continues the LatCrit Theory project, building both community and knowledge in the service of transformation. The four principal goals of LatCrit Theory are (1) knowledge production, (2) the advancement of transformation, (3) the expansion and connection of struggle(s), and (4) the cultivation of community and coalition. n1 Celina Romany n2 suggested a fifth goal at the opening plenary, strategic knowledge. n3

In this essay, I reflect on LatCrit Theory through the lens of my personal and intellectual history. In part II, I present background information on my heritages, ancestry, citizenship, and multinational childhood. In

Part III, I focus on the idea of language acquisition and loss by discussing how I learned or did not learn Japanese and Hungarian, and how English became my mother tongue. In Part IV, I relate language to outsider jurisprudence by discussing how the "languages" - in other words knowledge about paradigms of racial and other forms of subordination - that I have learned shape the intellectual communities I move within. I argue that learning many languages is necessary for sophisticated and effective anti-subordination work. In Part V, I assert that the United States white-over-Black paradigm is the mother tongue for United States race discourse. I use language as a metaphor for race paradigms, and I examine the limitations of the white-over-Black language for understanding Latina/o and Asian American racialization. I argue specifically that another language, which I call the "colonizing-settler-over-native" language, declined when white-over-Black became the dominant language through which racism is understood. I suggest that this buried language may help us better understand the racialization of Latina/os and Asian Americans. I conclude in Part VI by drawing out some implications of American racial history for how we understand contemporary developments in immigration-related practices and policy.

The following poem, which raises questions about the complexity of identity and community, might also be a reading of the LatCrit conference:

cultural politics
 i have a hard time
 defining what my community is.
 i work with people
 to build a place for myself,
 a sense of home,
 [*1021] making a heritage festival
 working to gather
 people
 and i remember a story
 i think i read once
 about a naive activist
 giving a rap
 then feeling abashed when
 one of the audience said
 "we have a word for that:
 colonization."

II. Background

I am the child of a refugee and an immigrant, born in the U.S.A. on the Fourth of July. As a non-white person, I claim American-ness in a country that conflates citizenship and whiteness. My mother is an immigrant from Japan, who came to the United States after marrying my father against her father's wishes. My father had arrived earlier as a refugee from Hungary, having been active in the 1956 Hungarian uprising. Despite both my parents being naturalized citizens, we left the United States when

I was six. I returned to my birth country at nineteen to attend college at the University of California at Santa Cruz. Although English-speaking and born here, I too consider myself in many ways an immigrant - and thus, a settler. n12

I am a child of transnational capital. My father worked for the Anglo-Dutch multinational Shell Oil from 1970 until 1981. Our family moved from one Shell location to another - we lived in England, Japan, Malaysia, and Brunei over the years. I was exposed to many languages and cultures, which eventually lead to a cosmopolitan outlook and limited multilingual skills. However, as a child I was so invested in learning, and perhaps, thereby becoming English, that I did not value the experiences or take seriously the opportunities to learn other languages.

Certain experiences in my childhood reflected the continuing legacy of British colonialism. For example, in Brunei, I attended a summer camp for Shell children organized by the Tenth Princess Mary's Own Gurkha Rifles Regiment. Gurkha or Gorkha is a town in central Nepal on a hill overlooking the Himalayas from which British troops were recruited. n13 These soldiers gave us jungle survival and military training ostensibly to help fight the "communist guerillas," which was heady stuff for a fourteen-year old boy. In addition, I attended an "English public school" - actually a private boarding school for boys in England. I believe that the school was founded in the 1860s for the purpose of training administrators for the British colonies.

This account makes clear that my early life was a privileged one, but it was not without experiences of prejudice and discrimination. The following should be suggestive. In Sarawak (Malaysia) and Brunei, on the island of Borneo, we lived in Shell residential camps that were racially segregated based on occupational stratification - white officers and Asian men. My father was white, and my mother was Asian. As children, my sisters and I participated in the discussion between our parents about whether the white officers' club or the Asian men's club was more "comfortable." My father was more comfortable in the white club. [*1023] Another instance is that in boarding school in England, I was routinely asked, as a joke, whether I lived in a grass hut.

I recently learned that my English former guardian is now the Deputy Director of the Bank of England. My father retired in 1998 as a United Nations civil servant based in Bangkok, Thailand. His job involved technical consulting to Asian governments on energy resources development. Both are alumni of Columbia Business School. Some believe that one objective of the United States war in Vietnam was to create a favorable investment climate for multinational corporations, including for the extraction of resources such as oil. The war's effects continue into the present:

school assignment n14 today a man in fatigues
with an uzi killed
one cambodian and five vietnamese children
six to eight years old
in Stockton, California
he just sprayed the playground with bullets
killed six wounded thirty Asian kids
just like that
some say
he said "victory"

before he pulled the trigger of the revolver
he'd put to his right temple
the police said it was not racial
Koppel on Nightline failed to ask if it was racial
today my child
has an assignment from school
write about a current event
who what where when why
he's scared to go to school now
asks, is everybody inside yet?
when he asks me why
I look into his eyes
and know no answer

[*1024]

Finally, I am the child of an artist. My mother is one of four or five independent female artist-potters in a town of over four hundred potters in Bizen, Japan. She makes a wood-fired stoneware pottery called Bizen-yaki, well known in Japan. This is a non-English cultural form that I have some access to. While I can appreciate her art, I am unable to speak with her in her native language.

III. Language Acquisition and Loss

My mother's mother tongue is Japanese while my father's mother tongue is Hungarian. Japanese and Hungarian were my first languages. At an early age, my parents spoke Japanese at home. Further, while living in Hungary with my grandparents, I learned Hungarian. When I started school, my parents were determined to see me succeed in English-speaking societies; therefore, they began to speak mostly English at home. This meant my mother had to learn English too. Before college, I learned Hungarian again, with the help of a tutor, while living in Hungary for about seven months. I studied Latin, French, German and a little Russian in grade school. I studied Japanese three times, once in grade school and twice in college, but did not acquire the language.

Thus, I lost my mother's mother tongue, something my mother now deeply regrets and which she makes me regret too. I stumble along in English when I visit Japan and am dependent upon my sister Juli's Japanese language skills. I am unable, without help, to communicate with my grandfather, aunts, uncles and cousins because of my almost non-existent Japanese.

I suspect immigrant children often lose family and history through losing their parents' language because there is strong pressure to learn the language of their new country. In some cases, such as the late nineteenth and early twentieth century placement of Native American children, who of course were the children of conquered peoples, not immigrants, in Christian boarding schools designed to teach Anglo-American settler language, culture, and religion, the disassociation from their native language, family and culture was intended. My parents, presumably like many other immigrant parents, desired to see their child succeed in English-speaking societies. This combined with the intolerance I experienced from school peers for linguistic difference made me escape learning my parents' native languages. Through learning the

English language, I became an insider in an English-speaking society. Persons who do not speak English, where English is the dominant language, are outsiders to the extent that society does not provide translation and interpretation services on demand. The pressure of English-language conformity made me lose my mother's language, and broke my connection to my maternal relatives and their culture. I thus became an outsider in my mother's family.

IV. Language and Outsider Jurisprudence

Early in the LatCrit III conference, Paulette Caldwell asks what may be the other question to this gathering. What are we saying when we say we are outsiders? Are we not really, in some sense, insiders? I am both an insider and outsider at the LatCrit Conference - an outsider as a graduate student and first-time LatCrit conference participant and an insider because I know many other participants from my participation in the Critical Race Theory movement. LatCrit, at first glance, is a conference for Latina/o law professors. I am not Latina/o, although I could be. Nor am I a law professor.

I was invited, however, to join the community of critical race scholarship some time ago, and that community brings me to this conference and draws me to law teaching. Through this community and my reading, I have acquired some ease with critical legal discourse. I have learned the language. In our work against subordination, we need careful description and analysis, but I wonder about that language. I live with a philosophy professor whose training is continental philosophy. Critical legal scholars often draw upon translated continental philosophers's work. Thus, many of the words I use, that seemed familiar, are suddenly foreign.

As I see it, the purpose of anti-subordination legal theory is to articulate justice and related legal claims through attention to the experience and perspectives of subordinated persons, communities and peoples. LatCrit Theory continues that enterprise, along with the Queer Legal Theory, Feminist Legal Theory, and Critical Race Theory movements in legal scholarship. Whether we call these Outsider Jurisprudence or Perspective Jurisprudence, the fundamental objective of all these movements is the same - advancing human liberation. Careful attention to the exclusions in our discourse inevitably results in the articulation of further and deeper critiques. As I understand it, LatCrit Theory arises in part out of a critique of Critical Race Theory as experienced by Latina/o participants in the Seventh Annual CRT Workshop, which was held in 1995 in Philadelphia.

Mari Matsuda has urged us to embrace an ethical commitment to learn about and address subordination - to look to the bottom. She conceptualized outsider jurisprudence: Outsiders are "women, people of color, poor people, gays and lesbians, indigenous Americans, and other oppressed people who have suffered historical under-representation and silencing in law schools." She uses the term to avoid using 'minority,' because outsiders collectively are the numerical majority. It is "not intended to deny the need for separate consideration of the circumstances of each group. It is a semantic convenience used here to discuss the need for epistemological inclusion of the views of many dominated groups." Outsider jurisprudence has been critiqued.

One agenda of this LatCrit Conference is to relate outsider jurisprudence to national public policy. Therefore, Maria Echaveste, a Latina, of the White House Office of Public Liaison, was invited to speak about the President's Initiative on Race and White House policy formulation on bilingual education. As I listened to her, I realized I had heard talks like hers before, not in this particular room in Miami Beach, but in Washington D.C. leadership training seminars organized by Japanese and Chinese American civil rights organizations. Talking with us, she gave us an illusion of access, allowed us to genuflect to power and to become insiders in the language of policy in and through her talk. Ms. Echaveste herself seemingly cares about the Latina/o condition. She attends and may speak at White House meetings; her inclusion makes it seem like we are represented.

Learning the language of public policy may help us to participate in formulating policy. Learning the language of Critical Race Theory helped me become an insider in the community of critical race scholars. Learning the language of American race relations - the white-over- Black paradigm - helped me to function in the context of anti-racist politics. However, language also limits understanding.

V. American Race Theory and LatCrit Theory

A language acquisition project I have sustained is the white-over- [*1028] Black paradigm within the United States. When I studied race n32 the focus in most of my coursework was white racism and Black subordination. Often, the experiences of Native Americans, Latina/os and Asian Americans were invisible. I thus learned the American language of race is the white-over-Black paradigm. I believe this language is the mother tongue of United States race discourse. n33

However, just as, English has become my mother tongue, the white-over-Black paradigm has become the mother tongue of American race discourse, displacing what I call the "colonizing settler-over-native" language. n34 I mean by this the set of understandings developed by European settlers and their descendants about "Indians" in North America during the seventeenth through nineteenth centuries. n35 This paradigm explains: (1) the ideas that supported the dispossession, slaughter, and removal of indigenous peoples, (2) how those ideas changed over time, and (3) how those ideas were embedded in American law and culture. The work on articulating this paradigm has begun in Critical Race Theory. n36

[*1029] My post-secondary schools made the white-over-Black language available to those who chose to learn it, and also permitted study of other non-whites. n37 I read widely in Asian American history in college and then law school. In this way, I became bilingual in my knowledge of African American and Asian American subordination. I continued to read in these areas, and then expanded my reading to include Latina/o and Native American subordination in and through law. Parsing racial subordination in its full complexity requires multilingual knowledge. n38 As a critical race scholar and legal historian, given my limited multilingualism, I try to avoid making over-broad claims. n39

To understand race in America we need both the white-over-Black language and the settler-over-native language. As I show below, the settler-over-native language is necessary, but neither language alone has vocabulary adequate to describe Latina/o and Asian subordination in American law and culture. Latina/o and Asian American subordination derived in part from the legal ideas and practices developed in the subordination of Indians. n40 There are four analogies n41 to settler treatment of North American indigenous peoples - (1) wars of conquest followed by treaty-making, n42 (2) failures of treaty enforcement, n43 (3) forced removal [*1030] and concentration in reservations/camps, n44 and (4) forced cultural - including linguistic - assimilation. n45

First, Native Americans were deprived of land by treaty on numerous occasions after wars of conquest. n46 Latina/o and Asian land similarly came into the possession of the United States through the Treaty of Guadalupe-Hidalgo after the Mexican-American War in 1848 n47 and through the Treaty of Paris in 1898. n48 Second, although the treaties often contained guarantees of certain rights to the conquered peoples, those guarantees generally were honored in the breach. n49 Third, forced removal and mass imprisonment of peoples and populations affected both Native Americans and Asian Americans. n50 Finally, conquered peoples and populations and their children were often required to learn English.

The education of Native American children was a colonizing mechanism because the children became alienated from their native languages and cultures and thus susceptible to guidance and control by the colonizers. n51 The educational program ideal emphasized speaking only English in sexually segregated boarding schools distant enough from the children's parents to ensure that the parent's cultural and linguistic influences would not subvert the educational mission. n52

While the white-over-Black paradigm does not emphasize these instances in its discussion of race, it nonetheless remains significant to understanding Latina/o and Asian American racialization. For example, the questions of color hierarchy and its relationship to the control of [*1031] enslaved persons or non-free labor are analyzed in the white-over-Black paradigm. Those analyses may provide insights, for example, into color hierarchy among Latina/os and Asians. A further benefit of the white-over-Black paradigm is, however, that it helps ensure a necessary focus on white supremacist ideology in both race critique and anti-racist politics. n53

One insight LatCrit Theory may bring to the white-over-Black paradigm is that discussions of Black politics often do not disaggregate American Blacks from immigrants and refugees from Haiti, Cuba, Jamaica, or other places in the Caribbean or Central and South America, many of whom are of African descent. Such immigrants and refugees face issues around linguistic and cultural assimilation comparable to those faced by Asian and Latina/o refugees and immigrants compounded by color hierarchies. Thus, the white-over-Black paradigm arguably misses ethnicity for some African descent migrants.

The white-over-Black and settler-over-native languages developed concurrently because European settlement and African enslavement and Indian de-territorialization occurred simultaneously in the colonies, and then the United States. n54 The colonial era Black and Indian languages preceded the development of scientific racism. n55 With the development of scientific racism in the nineteenth century, white-over-Black grew in salience. n56 At the end of the nineteenth century, with the end of wars of conquest against Indians, historian Frederick Jackson Turner articulated his thesis that the frontier experience had a lasting, permanent impact on American character and society. n57

Thereafter, I believe the need for the settler-over-native language for understanding race and justifying the subordination of Native Americans declined in the domestic context. Interestingly, the century's end also saw the Spanish-American war, which involved the Philippines, inaugurated a series of twentieth century American wars in the Caribbean and Central America, as well as in Asia - against Japan, Korea and Vietnam. Unlike the American wars against Indians and Mexicans in [*1032] what became the continental United States, the wars in Asia did not result in European settlement and Asian de-territorialization.

Historian Vincent Harding wrote, the "historic sufferings of our [Black] foreparents and the coming life of our children demand that we make sober estimations of the possible directions of a society which has produced the near decimation of the native population of this land, atomized tens of thousands of Japanese, and destroyed a massive portion of Indochina and its population." n58 It is worth remembering that Dr. W.E.B. DuBois chose the word "Colored," over "Afro-American" or "Negro," when naming the National Association for the Advancement of Colored People ("NAACP") to proclaim the NAACP's "intention to promote the interests of dark-skinned people everywhere[.]" n59

LatCrit Theory argues that we must center Latina/os in critical race theory because the white-over-Black language marginalizes Latina/o racialization. I argue here that the settler-over-native racialization language, lost when white-over-Black became the mother tongue, may have much to tell us about both Latina/o and Asian American racialization. In other words, as we center Latina/os in critical race discourse, we must continue to attend to the white-over-Black mother tongue; however, we must learn to incorporate the settler-native racialization into our discussion. Therefore, when we speak of and learn about and work against subordination, let us learn and speak many tongues.

The more limited our understanding of the problem - racism and its intersection with other forms of subordination - the likelier it is that our anti-subordination strategies both domestically and internationally will be inadequate. Mari Matsuda observes that the way to understand "the interconnection of all forms of subordination is through a method I call "ask the other question." When [we] see something that looks racist, [we should] ask, "Where is the patriarchy in this?" When [we] see something that looks sexist, [we should] ask, "Where is the heterosexism in this?" When we see something that looks homophobic, [we should] ask, "Where are the class interests in this?"

"Working in coalition forces us to look for both the obvious and non-obvious relationships of domination, helping us to realize that no form of subordination ever stands alone." n60 A multilingual understanding of subordination, or - to use another Mari Matsuda concept, articulated at the first National Women of Color and the Law Conference, [*1033] multiple consciousness as jurisprudential method n61 - is required for effective anti-subordination work. This principle applies not only to gender, sexuality and class intersectionalities, but also to the interaction among the racialization processes of the groups now called Native American, African American, Asian American, and Latino/a.

V. Conclusion

"Like slavery, conquest tested the ideals of the United States. Conquest deeply affected both the conqueror and the conquered, just as slavery shaped slaveholder and slave. Both historical experiences left deep imprints on particular regions and the nation at large. The legacy of slavery and the legacy of conquest endure, shaping events in our own time." n62

I hope this essay helps promote the progressive internationalism n63 that Anthony Farley's n64 remarks directed us towards. Europeans colonized indigenous peoples in the Americas, Asia, and Africa. The following poem may help us be clear in our anti-subordination work. n65

rice n66 rice
au naturel
is brown
[*1034] hulled
and polished
it is white.
did you know
when they introduced white rice in Asia
hundreds of thousands
died
of malnutrition?

Laura Gomez n67 remarked n68 that we need to examine, within Chi cana/o identity, the hatred of the Indian-ness and African-ness in our selves. This would be valuable at the personal, historical, and cultural levels not only for its own sake, but also because it opens a window into race both in the United States n69 and in the Other Americas. n70 These Americas are the source of much contemporary migration. n71 At least in this century, migration to the United States Central and South America, and from the Caribbean and from Asia, may at least partly be attributed to the effects of American foreign policy on those peoples and areas. That most of these immigrants are non-white is, I believe, connected to the change in immigration law towards more restriction and the increasingly harsh enforcement of the law. n72

We do well to remember the reasons why people migrate, as the following poem reflects:

exile n73 exile is
when your brothers
[*1035] and friends
are not there any longer
because they died in the war
exile is
when home
is not home any longer
when you know
if you go back
you'll die in the war

Describing the Black scholar's vocation in 1974, Vincent Harding wrote that our calling requires us "to speak truth to our people, to speak truth about our people, to speak truth about our enemy - so that black men, women and children may build beyond the banal, dangerous chaos of the American spirit, towards a new time." n74 As colonized peoples cannot honestly be studied in isolation from their colonizers, he encouraged the production of "precise, carefully documented studies of the educational, political, economic, military, and cultural systems of white oppression." n75 He recognized, finally, that becoming "personally involved in the concrete, active struggle for liberation, entering deeply into its life, and opening our own lives to its risks, is, of course, the most unrespectable aspect of the vocation[.]" n76 It is "not enough for people to be angry - the supreme task is to organize and unite people so that their anger becomes a transforming force." n77

A multilingual approach to race allows us to see that the movement to restriction and strict enforcement in contemporary immigration law and policy is connected to American racism. n78 The white-over-Black language gives us some, but not enough, vocabulary to understand a political and cultural climate that permits the routine denial of human rights n79 to non-white, undocumented persons coming into the United [*1036] States. Indian conquest and resettlement and extermination, n80 Latina/o conquest, Asian exclusion, as well as African enslavement and subordi nation should frame our reading of contemporary developments in the immigration arena.

White supremacy was established as an organizing principle for the American settler colonial state through a violent historical process. Understanding how that principle developed and is maintained helps put contemporary immigration-related human rights abuses in their proper context. If cultural, linguistic and racial diversity, rather than white supremacy, were central to American national identity, there would be no need for immigration restriction, English Only movements, and the violence at the border.

FOOTNOTE-1:

n1. Francisco Valdez, Under Construction: LatCrit Consciousness, Community and Theory, [85 Cal. L. Rev. 1087, 1093-94 \(1997\)](#)

n2. Professor of Law, C.U.N.Y. Law School. I submitted the poems included in this essay as part of my paper for her Jurisprudence class at C.U.N.Y. law school. All poems Copyright John Hayakawa Torok © 1989. All rights reserved.

n3. By this I understood her to mean knowledge about relations of racial and gender power at law schools with the purpose of intervening to support Latina/os in law teaching when necessary to either maintain continued Latina/o presence, to improve representation, or to advance individual careers.

n4. Winthrop D. Jordan, *White over Black: American Attitudes Towards the Negro 1550-1812* (1968, 1971 reprint). I use "White over Black" to allude to Jordan's germinal historical work. For some years, I have wondered whether to use "ovular" instead of "seminal" in discussing foundational work in a field, and I am grateful to Professor Adrienne Davis of American University - Washington College of Law for the "germinal" formulation.

n5. Viewing "race in the United States only through a binary lens is an imperfect analytical tool ... [but] it may be unwise to totally abandon the Black-White paradigm." Taunya Lovell Banks, *Both Edges of the Margin: Blacks and Asians in Mississippi Masala, Barriers to Coalition Building*, [5 Asian L. J. 7, 39 \(1998\)](#) (emphasis in original). While Banks says it may be unwise, I believe it is unwise.

n6. I capitalize the word "Black" because I share the view that "Blacks, like Asians, Latinos, and other "minorities," constitute a specific cultural group and, as such, require denotation as a proper noun." Cheryl I. Harris, *Whiteness as Property*, [106 Harv. L. Rev. 1707, 1710 n. 3 \(1993\)](#) (citing Kimberle Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Anti-Discrimination Law*, [101 Harv. L. Rev. 1331, 1332 n. 2 \(1988\)](#)). Accord, Neil Gotanda, *A Critique of "Our Constitution is Color-Blind"*, [44 Stan. L. Rev. 1, 4 n. 12 \(1991\)](#).

n7. Professor Linda Greene, in her review of Patricia Williams, *The Alchemy of Race and Rights: Diary of a Law Professor* (1991), notes that "to illuminate the oppressive effects of fundamental jurisprudential forces, Williams moves beyond conventional legal and scholarly techniques[.]" Linda Greene, *Breaking Form*, [44 Stan. L. Rev. 909 \(1992\)](#). By including poetry in an essay on critical legal theory, I too aspire to commit "a literary act of "carefully composed intelligent rage" directed at a legal system that selectively admits and excludes those it chooses to protect." [Id. at 925](#) (footnote omitted). There is precedent for poetry in legal scholarship, and poetry is related to anti-subordination work. See Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, *22 Harv. C.R.-C.L. L. Rev.* 324, 333 n. 34, 336 nn. 55-56.

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n9. I identify as "Asian American," which, as a political identity, encompasses a critique of and resistance to white supremacy, among other forms of subordination. Chris K. Iijima, *The Era of We-Construction: Reclaiming the Politics of Asian Pacific American Identity and Reflections on the Critique of the Black/White Paradigm*, [29 Colum. Hum. Rts. L. Rev. 47, 56-60, 72 n. 83, 73 n. 88 \(1997\)](#); see generally William Wei, *The Asian American Movement* (1993); Karin Aguilar-San Juan, *The State of Asian America: Activism and Resistance in the 1990s* (1994).

n10. I realize this may, for some, be a controversial proposition. The formal law of American citizenship was racially exclusionary between 1790 and 1952. See Act of March 26, 1790, ch. 3, 1 Stat. 103 (1790); Act of July 14, 1870, ch 254, 7, 16 Stat. 254, 256 (1870) (providing, respectively, that "free white persons" and "aliens of African nativity, and persons of African descent" were eligible for naturalization); Act of May 6, 1882, ch. 126, 14, 22 Stat. 58, 61 (1882) (codifying ruling in [In re Ah Yup, 1 F. Cas. 228 \(D. Cal. 1878\)](#) that Chinese were

neither white nor Black and therefore ineligible for naturalization); [Petition of Easurk Emsen Charr, 273 F. 207 \(W.D. Mo. 1921\)](#); [Ozawa v. United States, 260 U.S. 178, 43 S. Ct. 65 \(1922\)](#); [United States v. Thind 261 U.S. 204, 43 S. Ct. 338 \(1923\)](#) (Koreans, Japanese, and Asian Indians racially ineligible for naturalization); Note, Status of Filipinos for Purposes of Immigration and Naturalization, 42 Harv. L. Rev. 809, 810 (1928) (Filipino naturalization preclusion under dictum in [Toyota v. United States, 268 U.S. 402, 45 S. Ct. 563, 410-12 \(1925\)](#) "sound"); Act of March 24, 1934, Pub. L. 127, ch. 84, 48 Stat. 456, 464 (1934) (providing that upon "deferred" Philippine independence, racial ineligibility for naturalization would apply to Filipinos); Immigration and Nationality Act, Pub. L. No. 414, ch. 477, 311, 66 Stat. 163, 239 (1952) (person's right to naturalize "shall not be denied or abridged because of race or sex"). See generally Ian Haney Lopez, *White by Law: The Legal Construction of Race* (1996). Fewer would accept that race in the definition of citizenship continues to matter, in light of the formal neutrality of American naturalization law today. Immigration and Nationality Act, 311, [8 U.S.C. 1142](#) (1998). However, that formal neutrality obscures how in the common sense of race, "American" still means European-derived or white. See *Bigotry on Display*; Senator D'Amato's Slur, N.Y. Times, Apr. 6, 1995, at A30; D'Amato Gives a New Apology on Ito Remarks, N.Y. Times, Apr. 7, 1995, at A1.

n11. Depending on which cold war perspective one takes, it can be characterized as a rebellion, or a counter-revolution. See generally James A. Michener, *The Bridge at Andau* (1957); Herbert Aptheker, *The Truth About Hungary* (1957, 1977 reprint). Both my parents' land-owning families were dispossessed after World War II, respectively, after the Hungarian Socialist Workers Party came to power in Hungary and during the American military occupation of Japan.

n12. See *infra* notes 34-36, 40-52 and accompanying text for discussion of settler-native politics.

n13. Great Britain heavily recruited troops from there starting in the mid-1800s, and since Independence in 1947, Gurkhas have been a significant minority in the armed forces of India. See 5 *Encyclopedia Britannica* (Micropaedia) 575 (15th ed. 1991).

n14. Copyright John Hayakawa Torok © 1989. All rights reserved. This poem was based on a conversation I had with Professor Sharon Hom at the C.U.N.Y. while I was a J.D. student. On the underlying incident, the California State Attorney General later determined it was racially motivated. See *The United States Commission on Civil Rights, Civil Rights Issues Facing Asian Americans in the 1990s* 30-31 (1992). My poems' facts are not completely accurate: the gunman used an AK-47; one of the children was nine, not eight; and four Vietnamese children, not five, were killed. I choose to leave the poem as I wrote it in 1989.

n15. Jorge Noriega, *American Indian Education in the United States: Indoctrination for Subordination to Colonialism*, in *The State of Native America: Genocide, Colonization, and Resistance* 380-81 (M. Annette Jaimes, ed., 1992).

n16. Professor, N.Y.U. Law School.

n17. I use this here in a different sense than the context I draw it from. See Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, [43 Stan. L. Rev. 1183 \(1991\)](#).

n18. Presumably this is because law teachers, as a group, cannot be considered under-privileged and thus "outsiders."

n19. Accidents of birth, migration and acculturation being what they are, there are "Asians" who grew up in Spanish or Portuguese-speaking countries. I am thinking, for example, of the Japanese-Peruvian President of Peru, Alberto Fujimori, who is not celebrated for his record on human rights. See *Fujimori defends record on human rights*, U.P.I., Tues. Oct. 27, 1998 (available on LEXIS); *Peru trade welcomed, but democracy must be strengthened*, Canada Agence France Presse, Oct. 30, 1998 (available on LEXIS). Or of New York-based designer Jussara Lee and filmmaker Iara Lee, who are sisters of Korean ancestry but grew up in Sao Paulo, Brazil. See Amy M. Spindler, *Fashion's Future*, in *Computer Hues*, N.Y. Times, Oct. 3, 1995, at A-23; *New York: Spring 99 / Leader of the Pack*, etc., Newsday, Sept. 21, 1998, at B-3. New York City has numerous Chinese-Cuban, Chinese-Jamaican, and other such restaurants that reflect similar migration, settlement, and secondary migration. The former Chinese immigration quota of 105 "Chinese" persons per year between 1943 and 1965 counted Chinese persons based on race, no matter what their national origin. Given that history, counting as "Asian" persons of Asian descent from South America feels odd. See Act of Dec. 7, 1943, ch. 344, sec. 2, 57 Stat. 600 (1943); *Debate on H.R. 3070 (Repeal of Chinese Exclusion)*, 89 Cong. Rec. 8582 (Oct. 20, 1943) (Remarks of Representative Gossett).

n20. I am grateful to Professors Francisco Valdez and Lisa Iglesias for making my participation possible.

n21. I believe Professor Derrick Bell, for whom I worked in late 1991, and Professor Richard Delgado, who I met when I was a fellow in 1992-1993 at the University of Colorado at Boulder's then Center for the Study of Race and Ethnicity in America, both encouraged the organizers to invite me to the Fifth Annual Critical Race Theory ("CRT") Workshop in 1993. I attended the workshop in 1994, 1996, and 1997 in whole or in part. The CRT workshop exists to support scholarship and knowledge production.

n22. Marcos Bisticas-Cocoves is a Hegel scholar and Visiting Professor, John Jay College of Criminal Justice, City University of New York.

n23. This is what I understand Professor Martha Fineman at Columbia to mean when she has used the term "perspective jurisprudence." See Elizabeth M. Iglesias & Francisco Valdez, *Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, [19 Chicano-Latino L. Rev. 503, 586 \(1998\)](#).

n24. This grounds my approach to legal theory. See Matsuda, *supra* note 7, at 331 (Symposium: *Minority Critiques of the Critical Legal Studies Movement*).

n25. Mari J. Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-up Ground*, 11 Harv. Women's L. J. 1, n. 2 (1988).

n26. *Id.*

n27. See generally Daniel A. Farber & Suzanna Sherry, *Beyond All Reason: The Radical Assault on Truth in American Law* (1997). One useful conceptualization is that of shared communal narratives as sources of law, or as "jurisgenerative." When the narratives of different communities within the national community come into conflict, and become the subject of lawsuits, the court's function is to determine which "law" wins, to declare what the law for the broader community within which the conflicting communities contend is. By so doing, the court's function is "jurispathic" - it kills the "law" that is the product of the communal narrative of the community that lost the lawsuit. Robert M. Cover, *Foreword: Nomos and Narrative: The Supreme Court 1982 Term*, 97 Harv. L. Rev. 4, 15-16, 39-42 (1983).

n28. Ms. Echaveste observed that this office was originally organized during the Nixon administration as a way to reach out to "minorities."

n29. In an article about the organizing that accompanied her hiring discrimination lawsuit against a law school, Vietnamese American (now C.U.N.Y.) law professor and left activist Maivan Clech Lam discusses the complicity of community-oriented Asian American professionals in silencing her advocates at a community service organization's fundraiser that honored three other Asian immigrant women. She writes "suddenly, I felt myself catapulted back through space and time to Southeast Asia where, reframed, I startlingly recognized myself as a native who looks on in silence while the colonial power dispenses charity to other natives." Maivan Clech Lam, *Resisting Inside/Outside Classism*, in 11:3 *Forward Motion*, 59, 60 (July 1992) (Special Issue: Asian Americans and Pacific Islanders: Changing Realities, Revolutionary Perspectives). See also [Lam v. University of Hawaii, 40 F.3d 1551 \(9th Cir. 1994\)](#).

n30. The Japanese American Citizens League ("JACL") and the Organization of Chinese Americans organize an annual Washington D.C. leadership training for officers of their local chapters. I participated in 1994, as board secretary of the New York chapter of JACL.

n31. See *The Latino/a Condition: A Critical Reader* (Delgado, Richard & Jean Stefancic, eds. 1998).

n32. My teachers on racism and law have included Professors Thomas F. Pettigrew, Haywood Burns, Denise Carty-Bennia, F. Michael Higginbotham and Ronald L. Ellis. My first job after graduating from law school was as a research assistant to Professor Derrick Bell.

n33. See Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, [85 Cal. L. Rev. 1213 \(1997\)](#); Juan F. Perea, *Ethnicity and the Constitution: Beyond the Black and White Binary Constitution*, [36 Wm. & Mary L. Rev. 571 \(1995\)](#).

n34. The following books are the basis for this settler/native conception of race, but none of them articulate the paradigm in those terms because they do not center a critique of the black/white binary paradigm of race. Two key works, although without a legal focus, are Roy Harvey Pearce, *Savagism and Civilization: A Study of the Indian and the American Mind* (1953, rev. ed. 1988) and Reginald Horsman, *Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism* (1981). A germinal work that focuses on law, but that stops with the American revolution, is Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (1990). Chapter Two, entitled "The Perfect Instrument of Empire: The Colonizing Discourse of Renaissance Spain" is relevant to the LatCrit project. See also Tomas Almaguer, *Racial Fault Lines: The Historical Origins of White Supremacy in California 107-150* (1994) (describing context for white settler extermination of California's indigenous peoples). See generally Felix S. Cohen, *Felix S. Cohen's Handbook of Federal Indian Law* (1970) Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (1987); Richard Drinnon, *Facing West: The Metaphysics of Indian-Hating and Empire-Building* (1980); Richard Drinnon, *Keeper of Concentration Camps: Dillon S. Meyer and American Racism* (1987).

n35. The periodization scheme that I was going to use initially - colonial, ante-bellum, post-civil-war - does not work for the "colonizing settler/native paradigm." The Civil War probably merely slowed the settlement of Indian country, by distracting the United States military from protecting settlers from Indian resistance to settler land grabs.

n36. At the November 1997 Yale CRT Conference, a key plenary centered this project in critical race discourse. The CRT and Indigenous Peoples Plenary was moderated by Professor Jo Carillo; Speakers included Professor John Borrows, Professor Patricia Monture-Angus, Kekailoa Perry, and Estevan Rael y Galvez. Estevan, at the invitation of Professor Sumi Cho of DePaul Law School, has been deeply engaged in the last several workshops in opening up the space for this discussion in critical race discourse. I do not know whether Indigenous Peoples were a focus in the first four workshops.

n37. This is defined as non-Black racial minorities other than Native Americans, including Latina/os and Asian and Pacific Islander groups. Neil Gotanda, "Other Non-Whites" in *American Legal History: A Review Essay on Justice at War*, [85 Colum. L. Rev. 1186, 1188 \(1985\)](#).

n38. An article that takes a multilingual approach to case and race analysis is Adrienne D. Davis, *Identity Notes Part One: Playing in the Light*, [45 Am. U. L. Rev. 695, 702-16 \(1996\)](#) (analyzing [Hudgins v. Wright, 11 Va. \(1 Hen. & M.\) 134 \(1806\)](#) and [People v. Hall, 4 Cal. 399 \(1854\)](#)).

n39. I find problematic, for example, the claim that the 1885 Rock Springs, Wyoming, massacre, in which the Chinese section of town was destroyed and twenty-eight Chinese miners were killed, was "one of the worst race riots in nineteenth-century American history." Charles J. McClain, *In Search of Equality: The Chinese Struggle Against Discrimination in Nineteenth Century America* 173 (1994). Cf. Almaguer, *supra* note 34, at 122-125 (describing 1849 Clear Lake and 1853 Smith River massacres, in which predominantly white mobs killed, respectively, over 200 and over 450 indigenous persons).

n40. See Horsman, *supra* note 34, at 189-207 (chapter entitled "Racial Destiny and the Indians" discussing how ideas of Indian inferiority and unassimilability developed to justify conquest and forced removal). "The racialization of identity and the racial subordination of Blacks and Native Americans provided the ideological basis for slavery and conquest. Although the systems of oppression of Blacks and Native Americans differed in form - the former involving seizure and appropriation of labor, the latter entailing the seizure and appropriation of land - undergirding both was a racialized conception of property implemented by force and ratified by law." Harris, *supra* note 6, at 1715 (footnote and citation omitted)

n41. At my first CRT Workshop, Professor Cheryl Harris stated that it is important in our work to be careful about, and I am mindful of, the distinctions between analogy, equivalence, and alliance. The four analogies are not meant to be exclusive.

n42. Limerick, *supra* note 34, at 235-36.

n43. See, e.g. Vine Deloria, Jr. *Behind the Trail of Broken Treaties: An Indian Declaration of Independence* (1985); Edward Lazarus, *Black Hills, White Justice: The Sioux Nation Versus the United States 1775 to the Present* (1991).

n44. Limerick, *supra* note 34, at 192-95 (discussing federal policies of Indian removal, concentration and confinement on reservations).

n45. Noriega, *supra* note 15, at 371-402.

n46. Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (1994); Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (1984).

- n47. Rodolfo Acuña, *Occupied America: A History of Chicanos* 18-20 (3d ed. 1988); Treaty of Peace with the Republic of Mexico, Feb. 2, 1848, U.S.-Mex., 9 Stat. 922 (Treaty of Guadalupe-Hidalgo) (encompassing territory which became Texas, New Mexico, California and part of Colorado). See Horsman, *supra* note 34, at 208-48 (chapters entitled "Anglo-Saxons and Mexicans" and "Race, Expansion and the Mexican War").
- n48. Treaty of Paris, Dec. 10, 1898, U.S.-Spain, 30 Stat. 1754 (encompassing the Philippines, Puerto Rico and Cuba). See generally Horsman, *supra* note 34, at 272-97 (chapter entitled "Expansion and World Mission").
- n49. See e.g. Acuña, *supra* note 47, at 20.
- n50. Acuña, *supra* note 47, at 143-49 (federal Indian reservations in California); Report of the Commission on Wartime Relocation and Internment of Civilians: *Personal Justice Denied* (1982); Michi Weglyn, *Years of Infamy: The Untold Story of America's Concentration Camps* (updated ed. 1996).
- n51. Noriega, *supra* note 15, at 375-80.
- n52. *Id.* at 380-81.
- n53. See Iijima, *supra* note 9, at 68-74.
- n54. On the colonial era development of the white-over-Black language, see A. Leon Higginbotham, Jr., In the Matter of Color: Race and The American Legal Process: The Colonial Period (1978, 1990 reprint).
- n55. See generally Stephen Jay Gould, *The Mismeasure of Man* (rev. ed. 1996); Thomas F. Gossett, *Race: The History of an Idea in America* (1963). On the development of scientific racism, see William R. Stanton, *The Leopard's Spots: Scientific Attitudes Toward Race in America, 1815-1859* (1960).
- n56. See generally C. Vann Woodward, *The Strange Career of Jim Crow* (3d ed. 1974).
- n57. Frederick Jackson Turner in *The Reader's Companion to American History* 1090 (Eric Foner & John A. Garraty, eds. 1991).
- n58. Vincent Harding, *The Vocation of the Black Scholar and the Struggles of the Black Community in Education and Black Struggle: Notes from the Colonized World* 17 (Institute of the Black World ed. 1974).
- n59. David Levering Louis, *W.E.B. Du Bois, Biography of a Race* 405 (1993).
- n60. Matsuda, *supra* note 17, at 1189.
- n61. Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 *Women's Rts. L. Rep.* 297 (1992)
- n62. Limerick, *supra* note 34, at 18. For a broader - perhaps an Atlantic - lens, see Eric Williams, *From Columbus to Castro* (1970); Michel Beaud, *A History of Capitalism, 1500-1980* (1983); Eric Williams, *Capitalism and Slavery* (1944, 1966 reprint); C.L.R. James, *The Black Jacobins: Toussaint L'Ouverture and the San Domingo Revolution* (1963, 1989 reprint); Walter Rodney, *How Europe Underdeveloped Africa* (rev. ed. 1981).
- n63. I define progressive internationalism as the antithesis of the internationalism produced by the globalization of capital. My cosmopolitanism and internationalism is a product of a childhood shaped by my father's employment by a transnational corporation and later by the U.N. Progressive internationalism projects the National Lawyers Guild's statement of purpose,

"that human rights be held more sacred than property interests," internationally. The International Association of Democratic Lawyers is one such internationalist group. See Charles J. Ogletree, Jr. In Memoriam: A Tribute to W. Haywood Burns and M. Shanara Gilbert: Revolutionaries in the Struggle for Justice, [2 Clinical L. Rev. 5, 11-12 \(1996\)](#); Capetown Commemoration (April 1996) Haywood Burns, Shanara Gilbert, Felicia Roberts (videotape available from sirotkin@nela.org). See also Elizabeth M. Iglesias, Foreword: International Law, Human Rights and LatCrit Theory, 28 U. Miami Inter.-Am. L. Rev. 177 (1996-1997) (Symposium: International Law, Human Rights and LatCrit Theory).

n64. Final plenary, of the LatCrit III Conference.

n65. I do not mean to suggest by the poem that a golden age preceded the period of conquest, colonization, enslavement, and settlement in the Americas, Africa, and Asia. Rather, I hope that by careful examination of the historical processes of subordination, we can recognize that more unites us than divides us in the common struggle against white supremacy. Cf. Lothrop Stoddard, *The Rising Tide of Color Against White World-Supremacy* (1922).

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n67. Professor of Law, U.C.L.A. School of Law.

n68. *Supra* note 64.

n69. The call to examine Black and indigenous histories and claims is not entirely new in critical race discourse. See Matsuda, *supra* note 7, 335 n. 50.

n70. I allude to Michael Harrington's book, *The Other Americans: Poverty in the United States* (1962). This book helped to prompt and shape the War on Poverty during the Kennedy and Johnson administrations. See Michael Harrington, in *The Reader's Companion*, *supra* note 57, at 489-90. I do not thereby intend to de-center Central and South America, the Caribbean and Canada, but rather to point to the relations of inequality that exist between these regions and countries and the United States.

n71. The idea that non-white migration threatens white supremacy was integrated with the United States version of the yellow peril idea. Gary y. Okihiro, *Margins and Mainstreams: Asians in American History and Culture*, 131-35 (1994).

n72. See generally Kevin R. Johnson, Fear of an "Alien Nation": Race, Immigration and Immigrants, [7 Stan. L. & Pol'y Rev. 111 \(1996\)](#); Kevin R. Johnson, Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century, 8 *La Raza L. J.* 42 (1995); Kevin R. Johnson, The Antiterrorism Act, the Immigration Reform Act, and Ideological Regulation in the Immigration Laws: Important Lessons for Citizens and Noncitizens, [28 St. Mary's L. J. 833 \(1997\)](#).

n73. I wrote this in 1988 after a conversation with a New York City cabdriver from Afghanistan. See also *Exiled in the Land of the Free: Democracy, Indian Nations and the U.S. Constitution* (Oren Lyons & John Mohawk, eds. 1992); Mary Francis Berry, *Black Resistance, White Law: A History of Constitutional Racism in America* (2d ed. 1994).

n74. Harding, *supra* note 58, at 8.

n75. *Id.* at 14, 16.

n76. *Id.* at 26.

n77. *Id.* at 27-8 (quoting Martin Luther King, Jr., Honoring Doctor DuBois, in *Freedomways* 109 (Spring 1968)).

n78. See Stephen Fan, Note: Immigration Law and the Promise of Critical Race Theory: Opening the Academy to the Voices of Aliens and Immigrants, [97 Colum. L. Rev. 1202 \(1997\)](#); Leti Volpp, Essay: Talking "Culture": Gender, Race, Nation and the Politics of Multiculturalism, [96 Colum. L. Rev. 1573 \(1996\)](#).

n79. Although the concept of human rights became part of international law in the latter half of the twentieth century, the practices now defined as human rights violations pre-existed the legal idea of human rights. See Amnesty International U.S.A., Human Rights Concerns in the Border Region with Mexico (1998).

n80. Put another way, using today's language, ethnic cleansing of North American indigenous peoples is at the foundation of the settler colonial state.