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ESSAY: AFRICAN-AMERICANS, LATINOS, AND THE CONSTRUCTION OF RACE: TOWARD AN EPISTEMIC COALITION

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BIO:

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SUMMARY: ... Latinos will soon become the largest minority group in the United States. ... In Part III, I argue that Critical Race Theory can benefit from considering the racialization of Latinos. Indeed, I contend that the racialization of African-Americans cannot be fully understood without considering the racialization of Latinos. ... Critical Race Theory can be enhanced by considering the racialization of Latinos. ... Critical Race Theory can benefit from considering the racialization of Latinos in other ways as well. ... Indeed, I believe that the racialization of African-Americans cannot be fully understood without considering the racialization of Latinos and other groups. ... Latinos will soon become the largest minority group in the United States. ... I have also argued that Critical Race Theory can benefit by considering the racialization of Latinos. Indeed, I have contended that the racialization of African-Americans cannot be fully understood without considering the racialization of Latinos. ...

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I. Introduction

Latinos will soon become the largest minority group in the United States. n1 African-Americans may therefore be about to give up political clout to Latinos. This prospect has generated tension between African-Americans and Latinos. n2 Given this background, it is important for Critical Race Theory n3 and Latino Critical Theory n4 to [*214] consider the matter of the African-American/Latino relationship. With this in mind, I would like to discuss two important questions posed by the organizers of this panel: (1) How is the relationship between African-Americans and Latinos affected by the construction of race? and (2) Can Critical Race Theory benefit by a consideration of the race or racialization of Latinos? In light of these questions, in Part II, I argue that the construction of race impacts the relationship between African-Americans and Latinos. Specifically, the legal construction of Mexican-Americans as white has generated tensions that form a barrier to coalition building between African-Americans and Latinos. I contend that Mexican-Americans should embrace a non-white identity to facilitate coalition building with African-

Americans. In Part III, I argue that Critical Race Theory can benefit from considering the racialization of Latinos. Indeed, I contend that the racialization of African-Americans cannot be fully understood without considering the racialization of Latinos. As a result, I call for an epistemic coalition comprised of all minority groups so that each group achieves knowledge about themselves and their place in the world.

II. How is the relationship between African-Americans and Latinos affected by the construction of race?

I want to focus on the example of Mexican-Americans. Mexican-Americans have been legally classified as white. ⁿ⁵ That legal [*215] classification impacts the relationship between African-Americans and Mexican-Americans. It creates a barrier to coalitions with African-Americans and other non-white minorities.

An example from Dallas, Texas is instructive. In the City of Dallas, there are currently major battles between African-Americans and Mexican-Americans over the direction of the Dallas School District. In connection with this conflict, African-Americans have recently expressed resentment toward Mexican-Americans. The resentment is expressed as follows: Mexican-Americans have been free riders. African-Americans fight for civil rights; Mexican-Americans ride their coat tails and share in the benefits.

This resentment has been significantly linked to the legal construction of Mexican-Americans as white. Recently, some African-American leaders in Dallas have argued that Mexican-Americans should not share in the benefits or gains achieved by African-Americans because Mexican-Americans have been legally classified as white. Thus, the relationship between African-Americans and Mexican-Americans is impacted by the construction of race. The legal designation of Mexican-Americans as white raises a barrier to coalition building between African-Americans and Mexican-Americans.

In order to help build a coalition ⁿ⁶ between African-Americans and Mexican-Americans, it makes sense for Mexican-Americans to reject their legal designation as white. Although white identity has been a traditional source of privilege and protection, ⁿ⁷ Mexican-Americans did not receive the usual benefits of whiteness. ⁿ⁸ Mexican-Americans experienced segregation in schools and neighborhoods. ⁿ⁹ Mexican-Americans have been discriminated against in employment. ⁿ¹⁰ Moreover, in non-legal discourse, Mexican-Americans have been categorized as irreducibly Other and non-white. ⁿ¹¹ For ex [*216] ample, one commentator described how Anglo-Americans drew a clear racial distinction between themselves and Mexican-Americans:

Racial Myths about Mexicans appeared as soon as Mexicans began to meet Anglo American settlers in the early nineteenth century. The differences in attitudes, temperament and behavior were supposed to be genetic. It is hard now to imagine the normal Mexican mixture of Spanish and Indian as constituting a distinct "race," but the Anglo Americans of the Southwest defined it as such. ⁿ¹²

Given all of this, it does not make sense for Mexican-Americans to retain the legal designation of white. If Mexican-Americans embraced a non-white legal identity, then Mexican-Americans and African-Americans would be able to build a better relationship. ⁿ¹³

It is pointless for Latinos and African-Americans to divide themselves over the issue of Latino "whiteness." Indeed, to preserve the current racial hierarchy, mainstream white society often attempts to create divisions among minority groups. ⁿ¹⁴ Given this, Latinos and African-Americans must work together as a coalition in order to dismantle racial subordination. ⁿ¹⁵ By rejecting the legal designation of white, Latinos would be taking a step toward building such a coalition.

III. Can Critical Race Theory Benefit or Be Enhanced By a Consideration of the Race or Racialization of Latinos?

Critical Race Theory can be enhanced by considering the racialization of Latinos. First, as discussed above, to the extent that Critical Race Theory reconsiders the legal designation of Mexican-Americans, Critical Race Theory can strengthen its own position by helping to create a stronger coalition with Latinos and Latino Critical Scholars. Second, to the extent that Critical Race Theory con [*217] sideres the racialization of Latinos, it can become more comprehensive and closer to the truth. In so doing, Critical Race Theory can help eliminate certain misunderstandings that generate tensions between African-Americans and Latinos.

For example, Critical Race Theory could help correct the free-rider misunderstanding previously mentioned - i.e., that African Americans fight for civil rights; Mexican Americans ride their coat tails. If Critical Race Theory were to consider Latinos, it would discover that Latinos have waged a long and rigorous battle for civil rights. n16 Mexican-Americans, for example, have been litigating school segregation of Latinos since 1930. n17 Indeed, two Mexican-American school desegregation cases - *Westminster School Dist. v. Mendez* n18 and *Gonzalez v. Sheely* n19 - specifically foreshadowed the reasoning and the result in the 1954 landmark case of *Brown v. Board of Education*. n20 In *Brown*, the Supreme Court held that the segregation of children in public schools on the basis of race deprived children of equal educational opportunities, and thus violated the Fourteenth Amendment. n21 In *Mendez*, Mexican-American children in California filed a petition for relief against officials of several school districts. District officials had segregated the children into schools attended solely by children of Mexican descent. The trial court held that the segregation violated plaintiffs' Fourteenth Amendment rights. n22 The Ninth Circuit affirmed, distinguishing cases - including *Plessy v. Ferguson* n23 - in which courts had upheld [*218] segregation based on legislative acts. n24 The court of appeals held that those cases were not controlling because the California legislature had not authorized segregation in *Mendez*. n25 Thus, seven years before *Brown*, the *Mendez* court anticipated the result in *Brown*.

Similarly, in *Gonzalez v. Sheely*, Mexican-Americans sued officials of the Tolleson, Arizona Elementary School District. The court found that defendants had segregated Mexican-American school children into one school attended solely by Mexican-Americans. n26 Following the reasoning of *Mendez*, the court held that this segregation violated plaintiffs' Fourteenth Amendment rights. n27 In reaching its conclusion, the *Gonzalez* court anticipated the reasoning in *Brown* by recognizing that segregation placed a stamp of inferiority on Mexican-Americans. n28 In *Brown*, of course, the Supreme Court observed that segregation creates enduring feelings of inferiority in children "that may affect their hearts and minds in a way unlikely ever to be undone." n29 The *Gonzalez* court's conclusion that segregation generated a feeling of inferiority in Mexican-Americans is also highly significant for its rejection of the notion in *Plessy* that legally compelled segregation did not stamp minorities with a badge of inferiority. n30 Thus, the case law developed by Mexican-Americans in their efforts to desegregate schools provided strong precedential support for the reasoning and the holding in *Brown*.

Critical Race Theory can benefit from considering the racialization of Latinos in other ways as well. Such consideration can provide further evidence to support the claims of Critical Race Theory. The insights of Critical Race Theory are not specific to African-Americans. These insights can also be applied to Latinos. n31 For example, one of the leading Critical Race Theory insights is that race is socially constructed. n32 By considering how the courts constructed the race of Latinos, it is possible to develop more evidentiary support for the Critical Race Theory claim that race is socially constructed.

[*219] Take, for example, the legal construction of Mexican-Americans as white. n33 The case law on this point provides powerful support for the Critical Race Theory insight that race is socially constructed. In *In re Rodriguez*, n34 an immigration case, a Texas federal court addressed the question of whether Mexicans were white. At that time, the federal naturalization laws required that an alien be white in order to become a citizen of the United States. n35 There, the court stated that from an anthropological perspective, Mexicans would probably be considered non-white. n36 The court noted, however, that the

United States had entered into certain treaties with Mexico, and that those treaties expressly allowed Mexicans to become citizens of the United States. Under these circumstances, the court concluded that Congress intended that Mexicans were entitled to become citizens. Thus, the court held that Mexicans were white within the meaning of the naturalization laws. In *re Rodriguez* provides compelling support for the Critical Race Theory claim that race is socially constructed. It clearly reveals how racial categories can be constructed through the social or political process. Through the give and take of treaty making, Mexicans became white.

Consider another example. Critical Race theorists have argued that the law has recognized racial group identity when such identity was a basis for subordination. n37 They contend, however, that the law often has failed to recognize group identity when asserted by racial minorities as a means for establishing rights. n38 Thus, dominant-group-controlled institutions often have defined racial groups and have imposed those definitions onto some groups as a way to maintain the status quo - i.e., racial subordination. Again, consideration of the case law involving Latinos provides compelling support for this Critical Race Theory argument. For example, in *Hernandez v. State*, n39 a Mexican-American had been convicted of murder. He sought to reverse his conviction on the ground that Mexican-Americans had been excluded from the grand jury and the petit jury. [*220] He relied on cases holding that the exclusion of African-Americans from jury service constituted a violation of due process and equal protection. The court recognized only two classes as falling within the guarantee of the Fourteenth Amendment: the white race and the African-American race. n40 The court held that Mexican-Americans are white people, and therefore, fall within the classification of the white race for purposes of the Fourteenth Amendment. n41 Since the juries that indicted and convicted the defendant were composed of members of his race - white persons - he had not been denied equal protection of the laws. n42 Thus, in *Hernandez*, Mexican-Americans sought to assert a group identity - the status of being a distinct group - in an effort to resist oppression - i.e., being excluded from juries. The Texas court refused to recognize their group identity. Instead, the Texas court imposed a definition of "white" on Mexican-Americans so as to maintain the status quo - i.e., exclusion from juries. Given this, a consideration of the racialization of Latinos provides important support for the critical race theory insight that courts often define racial groups in ways that maintain racial subordination.

Some of the participants at the LatCrit II Conference seemed to suggest that Latino Critical Theory poses a threat to Critical Race Theory or the interests of African-Americans. They suggested that a consideration of the racialization of Latinos may dilute the claims of African-Americans or undermine the claim of African-American exceptionalism - i.e., that the African-American experience is somehow unique and exceptional.

In response to these concerns, it seems that the following may be said. It is inevitable that Critical Race Theory must consider the racialization of Latinos. Currently, there is a world-wide movement - the Politics of Recognition and Multiculturalism - which generates the demand to consider Latinos. Today's political discourse often involves the "demand for recognition." n43 One leading philosopher, Charles Taylor, ties the "demand for recognition" to a person's notion of their identity. n44 The idea is that one's identity is partially determined "by recognition or ... misrecognition of oth [*221] ers." n45 Thus, people can be harmed if the community reflects back to them a disPging image of themselves. n46 "Nonrecognition or misrecognition," then, "can be a form of oppression." n47 Proper recognition, then, is an essential requirement for human beings. n48 Given this demand for recognition, Critical Race Theory must recognize Latinos and consider how Latinos have been racialized.

This does not require that the interests of African-Americans be marginalized. Indeed, I believe that the racialization of African-Americans cannot be fully understood without considering the racialization of Latinos and other groups. According to philosopher W.V.O. Quine's holism, "the truth of any one statement or proposition is a function not of its relationship to the world but of the degree to which it 'hangs together' with everything else we take to be true." n49 Thus, for Quine, it is incorrect to talk about the meaning of a single statement. n50 It is therefore, incorrect to talk about the truth of a statement sePte and apart from other propositions in the web of belief. n51 Hence, we cannot talk about the truth of statements about

African-Americans in isolation from propositions about Latinos within the web of belief. We cannot ascertain the truth about African-Americans without considering propositions regarding the racialization of Latinos. As Ludwig Wittgenstein explained, the world "waxes and wanes as a whole." n52

Quine's holism provides powerful support for the importance of establishing a coalition to combat the epistemic violence that has been practiced against minority groups. Scholars of western colonialism have emphasized the importance of the generation of knowledge - i.e., the writings and discourses of the white colonizers on the non-white Others - that justified the subordination of such Others. n53 The production of such knowledge has been termed "epistemic violence." n54 The Quinean insight - that the truth about the various minority groups (Latinos, Asian-Americans, Native Americans and African-Americans) cannot be ascertained without considering propositions about the various groups - means that minority [*222] groups must develop an epistemic coalition to learn the truth about themselves in order to fight against epistemic violence. Each group must contribute to that effort. They must develop knowledge about themselves. Only by considering the knowledge developed about each group will it be possible to learn the truth about any one racialized group.

Thus, minority groups must establish more than coalitions to achieve political results. Latinos, African-Americans, Asian-Americans and Native Americans must establish an epistemic coalition to achieve knowledge about themselves and their place in the world.

IV. Conclusion

Latinos will soon become the largest minority group in the United States. This prospect has generated tensions between Latinos and African-Americans. Given this, I have suggested that Critical Race Theory and Latino Critical Theory must consider the matter of African-American/Latino relations. In this regard, I have argued that the relationship between African-Americans and Latinos is affected by the construction of race. In particular, the legal construction of Mexican-Americans as white has generated tensions that form a barrier to coalition building. As a result, I have suggested that Mexican-Americans should embrace a non-white identity to better enable coalition building with African-Americans. I have also argued that Critical Race Theory can benefit by considering the racialization of Latinos. Indeed, I have contended that the racialization of African-Americans cannot be fully understood without considering the racialization of Latinos. In so doing, I have called for minorities to establish an epistemic coalition to achieve knowledge about themselves and their place in the world.

FOOTNOTE-1:

n1. See Bill Piatt, *Black and Brown in America: The Case for Cooperation 1* (1997); Kim Sue Lia Perkes, *Hispanic Growth Soaring, Census Says; Numbers to Match African-Americans at 13% by 2010*, *Ariz. Rep.*, Sept. 29, 1993 at B1.

n2. See Richard Estrada, *Don't Ignore Black-Hispanic Tensions*, *Dallas Morning News*, Dec. 8, 1995 at 31A; Piatt, *supra* note 1, at 4-12.

n3. Critical Race Theory has sought to provide new oppositionist accounts of race. See *Critical Race Theory: The Cutting Edge* (Richard Delgado ed., 1995); *Critical Race Theory: The Key Writings That Formed the Movement* xiii (Kimberle Crenshaw et al. eds., 1995); John O. Calmore, *Critical Race Theory*, Archie Shepp and *Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, [65 S. Cal. L. Rev. 2129, 2162-64 \(1992\)](#) (observing that critical race theorists are the "new interpreters"); Timothy Davis, *The Myth of the Superspade: The Persistence of Racism in College Athletics*, [22 Fordham Urb. L.J. 615, 623](#)

(1995) (noting importance of the reinterpretation of history by legal scholars of color). Interestingly, Edward Rubin has recently observed that critical race theory and contemporary law and economics share a common ground - the "effort to locate law, social policy, and social change in a closely analyzed institutional context." Edward L. Rubin, *The New Legal Process, the Synthesis of Discourse, and the Microanalysis of Institutions*, [109 Harv. L. Rev. 1393, 1394 \(1996\)](#). He therefore calls for a "new synthesis of discourse for legal scholarship." Id.

n4. Latino Critical Theory has emerged because Latinos were not being addressed in race discourse. For examples of Latino Critical Theory, see *No Longer the Silent Minority: Critical Perspectives on the Latino Condition - Law, History, Narratives* (Richard Delgado & Jean Stefancic eds., forthcoming NYU Press, 1998); Kevin R. Johnson, "Melting Pot" or "Ring of Fire"? Assimilation and the Mexican-American Experience, [85 Cal. L. Rev. 1261 \(1997\)](#); George A. Martinez, Legal Indeterminacy, Judicial Discretion and the Mexican-American Experience: 1930-1980, [27 U.C. Davis L. Rev. 555, 617 \(1994\)](#) (calling for Latinos to tell their stories to ensure that their experience is reflected in legal discourse); Margaret Montoya, Mascaras, Trenzas y Greñas: Unmasking the Self While Unbraiding Latina Stories and Legal Discourse, [17 Harv. Women's L.J. 185 \(1994\)](#). For examples of a parallel movement focusing on Asian-Americans, see Keith Aoki, "Foreign-ness" and Asian American Identities: Yellowface, World War II Propaganda and Bifurcated Racial Stereotypes, 4 *UCLA Asian Pac. Am. L.J.* (forthcoming 1997); Robert Chang, Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space, [81 Cal. L. Rev. 1241 \(1993\)](#); Margaret Chon, On the Need for Asian-American Narratives in Law: Ethnic Specimens, Native Informants, Storytelling and Silences, [3 UCLA Asian Pac. Am. L.J. 4 \(1995\)](#).

n5. See George A. Martinez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, [2 Harv. Latino L. Rev. 321 \(1997\)](#). Recently, critical race scholars have focused on the way that whiteness functions as a social organizing principle. See, e.g., Ian F. Haney Lopez, *White by Law* (1996); *Critical White Studies: Looking Behind the Mirror* (Richard Delgado & Jean Stefancic eds., 1997); Kevin R. Johnson, Racial Restrictions on Naturalization: The Recurring Intersection of Race and Gender in Immigration and Citizenship Law, 11 *Berkeley Women's L.J.* 142 (1996) (discussing immigration cases which attempted to define "white" for naturalization purposes and reviewing Ian Fidencio Haney Lopez, *The Legal Construction of Race* (1996)); Frank H. Wu, From Black to White and Back Again, [3 Asian L.J. 185 \(1996\)](#) (discussing whiteness and Asian-Americans).

n6. See 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, 30 n.118 (1996) (advocating a sophisticated approach to coalitional efforts).

n7. See Cheryl Harris, Whiteness as Property, [106 Harv. L. Rev. 1709, 1721 \(1993\)](#); see also Stephanie M. Wildman & Adrienne D. Davis, Language and Silence: Making Systems of Privilege Visible, [35 Santa Clara L. Rev. 881, 894 \(1995\)](#) (defining white privilege as "an invisible package of unearned assets").

n8. See Martinez, *The Legal Construction of Race*, supra note 5, at 336.

n9. See Richard Delgado, Rodrigo's Twelfth Chronicle: The Problem of the Shanty, [85 Geo. L.J. 179, 673 \(1997\)](#) ("school authorities sent Mexican kids to schools that were different from - and inferior to - the ones attended by Anglo children"); Martinez, *Legal Indeterminacy*, supra note 4, at 569, 574-602; Michael A. Olivas, Torching Zozobra: The Problem with Linda Chavez, *Reconstruction*, Vol. 2, No. 2, 48, 51 (1993) (noting that Mexican-Americans were isolated in underfunded schools).

n10. See Martinez, *The Legal Construction of Race*, supra note 5, at 336.

n11. See *id.* at 342.

n12. J. Moore, *Mexican-Americans* 1 (1970). See also Rodolfo Acuña, *Occupied America: The Chicano's Struggle Toward Liberation* 7 (1972) ("Anglo-Americans arriving in the Southwest believed they were racially superior to the swarthy Mexicans, whom they considered a mongrel race of Indian halfbreeds"); Guadalupe T. Luna, "Agricultural Underdogs" and International Agreements: The Legal Context of Agricultural Workers within the Rural Economy, [26 N.M. L. Rev. 9, 9 \(1996\)](#) ("The Mexican 'peon'... is a poverty-stricken, ignorant, primitive creature, with strong muscles and with just enough brains to obey orders and produce profits under competent direction.") (quoting Lothrop Stoddard, *Re-Forging America: The Story of Our Nationhood* 214 (1927)).

n13. My discussion has focused on Mexican-Americans. My conclusion, however, is consistent with Bill Piatt's position that, in general, Hispanics should embrace a non-white identity. See Piatt, supra note 1, at 159.

n14. See Kevin R. Johnson, *Some Thoughts on Professor Jenga's "Alien and Non-Alien Alike: Citizenship, 'Foreignness,' and Racial Hierarchy in American Law,"* 76 *Or. L. Rev.* (forthcoming 1997); Piatt, supra note 1, at 153.

n15. See Piatt, supra note 1, at 156 (calling for African-American/Latino cooperation); Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 *La Raza L.J.* 42, 66 (1995) (calling for a broad-based "rainbow coalition").

n16. See generally, Martinez, *Legal Indeterminacy*, supra note 4. One of the reasons that the history of Latino civil rights litigation is generally unknown is because of Latino invisibility. Latino Critical Legal theorists have observed that Latinos have been rendered invisible: Latinos are "Los Olvidados" or the "Forgotten Ones." See, e.g., Kevin R. Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement*, *BYU L. Rev.* 1139 (1993); Christopher David Ruiz Cameron, *How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving Speak English Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, [85 Cal. L. Rev. 1347 \(1997\)](#).

n17. See Martinez, *Legal Indeterminacy*, supra note 4, at 574-602. The first case to decide the question of whether segregation of Mexican-Americans was permissible was [Independent School District v. Salvatierra](#), 33 S.W.2d 790 (Tex. Civ. App. 1930), cert. denied, [284 U.S. 580 \(1931\)](#).

n18. [161 F.2d 774 \(9th Cir. 1947\)](#).

n19. [96 F. Supp. 1004 \(D. Ariz. 1951\)](#).

n20. [347 U.S. 483 \(1954\)](#). See also Derrick Bell, *Race, Racism and American Law* 544 (3d ed. 1992) ("As with other landmark cases, the Supreme Court's 1954 decision in *Brown v. Board of Education* has taken on a life of its own, with meaning and significance beyond its facts and perhaps greater than its rationale").

n21. [Brown](#), 347 U.S. at 493, 495.

n22. [161 F.2d at 776](#).

- n23. [163 U.S. 537 \(1896\)](#). For recent work on *Plessy v. Ferguson*, see Gabriel J. Chin, *The Plessy Myth: Justice Harlan and the Chinese Cases*, [82 Iowa L. Rev. 151 \(1996\)](#).
- n24. [161 F.2d at 780-81](#).
- n25. [Id. at 780](#).
- n26. [96 F. Supp. at 1006](#).
- n27. [Id. at 1005](#).
- n28. [Id. at 1007](#).
- n29. [347 U.S. at 494](#).
- n30. See [Plessy, 163 U.S. at 551](#) ("If [segregation makes minorities feel inferior], it is not because of anything found in the act, but solely because the colored race chooses to put that construction on it"); Martinez, *Legal Indeterminacy*, *supra* note 4, at 579-80.
- n31. See, e.g., Johnson, *Los Olvidados*, *supra* note 16 (applying critical race theory to Latino immigration issues); Martinez, *The Legal Construction of Race*, *supra* note 5 (applying insights of critical race theory to the question of how legal actors constructed the race of Mexican-Americans).
- n32. See, e.g., Martinez, *The Legal Construction of Race*, *supra* note 5.
- n33. *Id.* at 7.
- n34. [In re Rodriguez, 81 F. 337, 338-55 \(W.D. Texas 1897\)](#).
- n35. See Johnson, *Racial Restrictions on Naturalization*, *supra* note 5, at 143 (stating that from 1790 to 1952 only white immigrants could naturalize as citizens).
- n36. [In re Rodriguez, 81 F. at 349](#).
- n37. See Harris, *supra* note 7, at 1761. See also Anthony V. Alfieri, *Lynching Ethics: Toward A Theory of Racialized Defenses*, [95 Mich. L. Rev. 1063, 1069 \(1997\)](#) (observing that critical race theory is "probing the connections of law, race and identity"). For other studies of race and identity, see Jerome M. Culp, Jr., *Toward A Black Legal Scholarship: Race and Original Understandings*, [1991 Duke L.J. 39](#); Leslie G. Espinoza, *Multi-Identity: Community and Culture*, 2 *Va. J. Soc. Pol'y & L.* 23 (1994); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, [42 Stan. L. Rev. 581 \(1990\)](#); Kenneth L. Karst, *Myths of Identity: Individual and Group Portraits of Race and Sexual Orientation*, [43 UCLA L. Rev. 263 \(1995\)](#).
- n38. See Harris, *supra* note 7, at 1761.
- n39. [251 S.W.2d 531 \(Tex. Crim. App. 1952\)](#).
- n40. [Id. at 535](#).
- n41. *Id.*
- n42. [Id. at 536](#). For an argument that the equal protection clause produces inequality for Latinos, see Richard Delgado, *Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship and the Black White Binary*, [75 Tex. L. Rev. 1181, 1189-90 \(1997\)](#) (reviewing Louise Ann Fisch, *All Rise*, Reynaldo G. Garza, *The First Mexican American Federal Judge* (1996)).
- n43. See Charles Taylor, *The Politics of Recognition*, in *Multiculturalism: Examining the Politics of Recognition* (Amy Gutmann ed., 1994).

n44. See *id.* at 25.

n45. *Id.*

n46. *Id.*

n47. *Id.*

n48. *Id.* at 26.

n49. See Dennis Patterson, *Law & Truth* 159 (1996).

n50. See Willard V.O. Quine, *Two Dogmas of Empiricism*, in *From a Logical Point of View* 42 (2d ed. 1953); see also George A. Martinez, *On Law and Truth*, [72 *Notre Dame L. Rev.* 883, 890-91 \(1997\)](#).

n51. See Martinez, *On Law and Truth*, *supra* note 50, at 891.

n52. Ludwig Wittgenstein, *Tractatus Logico-Philosophicus* 72 (D.F. Pears & B.F. McGuinness trans., 1974).

n53. See Ruth Frankenberg, *White Women, Race Matters: The Social Construction of Whiteness* 16 (1993).

n54. *Id.*