

**LENGTH:** 23649 words

**AFTERWORD:** Embracing the Tar-Baby - LatCrit Theory and the Sticky Mess of Race

Copyright © 1997 California Law Review, Inc. Leslie Espinoza \* and Angela P. Harris \*\*

**BIO:**

\* Associate Professor of Law, Boston College Law School. This article is a true collaboration. Angela Harris and I shared thoughts, hopes, fears, frustrations and food. We endeavored to be honest with each other and with you, the reader. A special thank you to Dean Aviam Soifer for arranging my research leave, without which this article would not be. A debt is owed to Lisa Orube and Jennifer Nye for their unfailing research assistance. And finally, I would like to thank Mr. Timothy G. Garvey, an Irish patriot, who taught me that racism, while not always about color, is unfailingly about power.

\*\* Professor of Law, University of California, Berkeley School of Law (Boalt Hall). Although Leslie Espinoza and I write separately in this essay, my comments are the product of our marathon conversations over coffee, tea, and pancakes. I would like to thank the participants in the LatCrit II Conference in San Antonio in April 1997, where I presented an earlier version of these comments. Finally, I would like to thank Catharine Wells and Jack Balkin for pressing me to think harder about the implications of black exceptionalism. All errors and misjudgments remain, of course, mine.

**SUMMARY:** ... In this Afterword, Leslie Espinoza and Angela Harris identify some of the submerged themes of this Symposium and reflect on LatCrit theory more generally. ... LatCrit theory also changes the image of the face attached to the victim of racial oppression. ... Asian Americans and Latinos are imagined as eternal "strangers," people who carry the border of American territorial power and cultural integrity within them. ... As an intellectual claim, black exceptionalism answers Perea's criticism of the black-white paradigm by responding that the paradigm, though wrongly making "other nonwhites" invisible, rightly places black people at the center of any analysis of American culture or American white supremacy. ... For there to be racism, there must be race. ... The black/white racial myth renders Latino/a experiences of race invisible, and ultimately this leaves Latino/as themselves powerless. ... B. Race, culture, and nation: LatCrit theory and critical race theory ... LatCrit theory, by rejecting the focus on color discrimination as the essence of racial discrimination, reminds us that language and culture are often as important as skin color in separating privileged groups from oppressed ones. ... To the extent that white supremacy maintains itself by attacking the cultural practices that sustain blackness as an ethnicity, African Americans and Latino/as have a shared interest in questioning the bright line between mutable and immutable traits, biology and culture. ...

[\*1585]

In this Afterword, Leslie Espinoza and Angela Harris identify some of the submerged themes of this Symposium and reflect on LatCrit theory more generally. Professor Harris argues that LatCrit theory reveals tensions between scholars wishing to transcend the "black-white paradigm" and proponents of "black exceptionalism." Professor Espinoza argues that the papers presented in this Symposium often

reproduce in their critiques the very problems they have identified with race theory, illustrating the proposition that race in the United States is a "Tar-Baby." Professor Harris argues that LatCrit theory's value lies in its insistence that questions of language, culture and nation are inextricably intertwined with questions of race. Professor Espinoza, placing LatCrit theory in the broader context of critical theory, expresses hope that storytelling as a method of scholarship will allow us to "re-story" the past and "re-imagine" the future.

[\*1586]

Introduction

Leslie sojourns to Angela:

The building loomed before me. This was my first time on the campus of Yale Law School, yet I had taken this uncomfortable journey before. Whenever I go to one of the bastions of the rich and powerful, I seem to be moving forward and backward at the same time. I confidently step up to the establishment edifice, while I quietly retreat in my mind to that little Mexican girl who just does not fit in. n1 What have I in common with all those old puritan gentlemen, the ones with the funny names like Cotton Mather and Increase Mather. How can I walk their hallways? n2

Through the entrance doors, with lots of stone and wood, and naturally a security desk, the guard looks up at me, very friendly. I almost say, "It's OK, I was invited, I am supposed to be here." But I don't. Instead, I put on my professional mask. n3

"Good morning, I am Professor Espinoza, here to see Professor Angela Harris." Looking at the register sheet, I ask, "Do I need to sign in?"

"Oh no," the friendly guard replies. Well, I think, I really must look like I belong. n4 I seem to have mastered the exterior. Mastered is, of course, the right word. n5 [\*1587]

Angela Harris and I are meeting to discuss five papers, five ventures into this legal/theoretical world labeled LatCrit. n6 We are going to write about the papers and we are going to write about race. However, first we need to talk. Some things will be said, others will be unsaid but understood. Certain things will not even be broached. Angela and I have lived race all our lives. n7 There are certain ways in which we share a pain of understanding race, a joy of surviving despite the odds. Yet, there are other ways in which our differences drive us apart, making us question each other's ability ever to appreciate what race has meant in our lives. n8 You are invited to listen.

Seeing is important too. You need to see the heavy granite walls, the leaded windows and the carved wood of Brahmin intellectuality. More importantly, you need to see us. Angela is African American and looks African American. I am Mexican American and do not look Mexican American. These are simple statements of visible truth and invisible deception. The statements recognize a prototypical picture of [\*1588] "African American" and of "Mexican American." n9 This image is an internalized shared visual norm of both the dominant American society and, ironically, of the outsider American society - the very victims of the stereotypical misidentification. n10 Appearances have played an important role in our personal and social understanding and misunderstanding of race. n11

Angela and I are shaped by our life experiences - by our appearance, by our family histories, by our education and by our profession. Our personal experience pervades and guides our discussion of race. As women of color, race has been the powerful prism that fractures the invisible white light of dominant society. We see more than one surface, we hear more than one story. n12 As legal academics, our discussions of race always seem to circle back to law. When we discuss history, it is the history of case law and legislation. When we discuss injustice and suffering, our examples seem to cluster around the highly

edited factual stories of appellate judges. When we discuss policy and change, we focus on law reform. It is astounding how much our perception of race is law-oriented.

Critical scholars of color are simultaneously disempowered by race and empowered by their professional status. We are thus confronted [\*1589] with a dilemma. How do we, as Audre Lorde writes, use the master's tools to pull down the master's house? n13 Critique is difficult when one is, as Angela and I are, living comfortably in the master's house. We see but are also blinded. More troubling, often we see, but desire to be blinded. We are outsiders who want both to remain outside and to belong.

The struggle to retain and nourish dual consciousness n14 is the central component to critical scholarship. Critical scholarship requires vigilance. First, if we believe that our experience as members of the community of color has been instrumental in our ability to develop a critical perspective on race, we need to actively nurture our connection to the community. n15 Second, critical scholars need to worry that their work and their consciousness has been co-opted by their success in the dominant community. n16 Traditional law, which reflects entrenched racism, structures our discussion and limits our ability to be truly critical; n17 au courant legal debates, by the dominant academy and particularly by [\*1590] our critics, frame our discussions. n18 If we "outsiders" n19 want to belong, if we want our issues heard, we are forced to play the game of those in power. However, the game is seductive. It lures us into forgetfulness. We may lose sight of the issues, the injustice, that first inspired us to play. Thus, we must constantly scrutinize our work for authenticity. Critical scholarship, then, must be a journey, not an end. Our work provides insight, it does not provide definitive answers that end our inquiry.

This Symposium is a model for dynamic theory. All of the Symposium scholars use LatCrit theory to challenge the usual positionality of the critical race scholars who are part of the critical race movement. The LatCrit authors recognize the important critique of law by critical race scholars. Critical race theorists begin by noticing how law supposedly impacts racial justice and how law actually impacts racial [\*1591] justice. n20 Legislators and judges reflect society's dominant understanding of race. The dominant group claims to address racism by first identifying the problem and then by providing a solution. The basic analysis of race in our society, the "dominant discourse," n21 is that there is a white/black divide. n22 Race is about the unfortunate history of slavery. n23 The legacy of slavery is that whites unjustifiably feel superior and blacks feel oppressed. What to do? First, pass anti-discrimination laws to address white bias and then provide encouraging opportunities to help with black defeatism. If whites have to be colorblind n24 and if blacks have to assimilate, n25 then racism will end. Racial injustice, thus, is an evolutionary problem of a too slowly melting ingredient in the pot.

Critical race scholars have revealed how the dominant society's mythological discourse on race is deceptive. There is little real effort to recognize or address racial injustice. Indeed, the laws and judicial decisions often are palliatives that obscure how much things stay the same or [\*1592] have become worse. n26 Furthermore, critical race scholars argue that the remedy for racism, the conception of colorblindness, is merely a ruse for white power. n27 It assumes that whites will first see color, that is race, and then choose to ignore it. n28 It is a trope for allowing whites to notice color but then exercise power by deciding not to notice it. It denies the reality of race and leaves persons of color "raced" or not "raced" at the whim of whites.

Likewise, assimilation is a remedy that ultimately leaves power in the hands of whites. Assimilation places a burden on outsiders to become like the dominant society, i.e., "white." n29 It is, of course, impossible to assimilate unless you are allowed to assimilate. n30 Assimilation may also be undesirable. Difference may have value. Critical race scholars have demonstrated that law most often operates to perpetuate the myth that racial justice is around the corner while in actuality assuring that the heavy, white male foot of injustice remains firmly planted on the throat of racial outsiders. n31

LatCrit theorists want to complicate our understanding of the mechanics of oppression. Racism is not only historical slavery, Jim Crow laws and gerrymandered voting districts in the South. It is also [\*1593]

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. LatCrit theory also changes the image of the face attached to the victim of racial oppression. The face is not only African American, it is Asian and Latino/a, Caribbean black and Native American. It is a woman's face and the face of a child. The color of the face varies; it is milk chocolate and jasmine tea; it is burnished copper and golden sand; it is espresso and double latte; it is fair, it is dark, it is a medley.

LatCrits posit that by not complicating our understanding of race, critical race scholars have fallen into the trap of duplicating American society's foundational understanding of race. Critical race scholars see race as a black/white binary problem. Failure to see the complexity of race leads to failure to understand racism. LatCrit theory endeavors to transform our understanding of race. Angela and I aspire to critique the LatCrit critics of the critical race scholars. We hope to further complicate our understanding of the meaning of the word "race." We hope that knowledge of race will evolve into power over race; we hope that our discussion will provide a further step toward changing the tragic legacy of racism in all its manifestations.

In Part I of this Afterword, "Waiting To Exhale," Angela ponders the challenge that LatCrit theory brings to the centrality of African Americans in the American racial narrative. In Part II, "The Tar-Baby," we reflect on the contributions to this Symposium. Leslie analyzes the [\*1594] papers from the perspective of LatCrit theory; Angela analyzes them from the perspective of critical race theory. In Part III, "Tales and Transformations," we consider LatCrit theory as part of the larger problem of doing critical scholarship. Are we "just another brick in the wall" when we engage in critical scholarship? After all, we are comfortably seated in the faculty wing of the Yale Law School. We are not only caught up in the system, we have become part of the system. How much authority would we have to speak were we not bonded to the very power structure that we critique? Leslie examines the convergence of critical projects and therapeutic projects; Angela ends with some reflections on avoiding the oppression sweepstakes in identity politics.

I

Waiting To Exhale

Angela replies to Leslie:

I laughed when I read Leslie's description of her first visit to Yale Law School. Her sense of discomfort is so familiar to me. Rather than using the front entrance with its steps and archways, I've noticed that I go out of my way to use the back door, which is marked only by a narrow ramp and a railing. The path to that door takes me by the kitchen, where most of the other black people who work at the law school work. In the mornings, there are delivery trucks and pallets of canned goods, spilled and dirty fruit in the slush. I hear the clang of pots and raised voices from the kitchen as I walk by, carrying in my pocket the building and office keys that will complete my Superwoman transformation from anonymous black woman on the street (where my faculty colleagues often hurry by without a glance) to a Yale law professor. I nod and speak to the middle-aged black man wearing a cook's apron who stands in the doorway smoking a cigarette; to the young black delivery man unloading crates; and, inside, to the elderly black men and women who dump the trash. Once, one of the very few black secretaries stops me to ask what courses I teach. She ends the conversation by saying, "It's good to see you here." I say, "It's good to see you, too." We both laugh, knowing that we both know why.

Why do I use the back door when I'm entitled to use the front? Part of my diffidence is, as Leslie suggests, the fear of being found out as a fake, the fear of being forced to return my borrowed authority. But [\*1595] this is a common anxiety, not limited to women of color. Indeed, I feel a certain kinship with this big, drafty, warren-like and ever so Gothic building that I sneak into every morning, for its authority is also

partly borrowed. The campus buildings of Yale University were designed, I've been told, to imitate Cambridge University in England, a center of learning far more ancient and august than any American college. Moreover, the wealthy alumni who are paying for a multi-million dollar renovation of the law school building have insisted that no expense be spared in making the new aspects of the building look just like the law school they fondly remember from their own law school days. This requires the new elements of the building to imitate the older elements, which in turn imitate elements of buildings constructed an ocean away and many centuries ago. So, like the authority of this building, my authority rests in part on mere association: Yale (the building) must be good because it looks like Cambridge; I (the professor) must be good because I'm at Yale. Like the windows in my office, painstakingly broken and repaired with lead inserts imported from England in order to imitate Cambridge windows broken by accident, I am both real and fake.

Yet wielding borrowed authority is exhilarating as well as unsettling. The most offhand mention of my visitorship in "New Haven" (delivered, of course, modestly with downcast eyes, or carelessly in mid-conversation) causes people to make surprised exclamations and to congratulate me. In fact, my new status revives an old fantasy. As a visiting professor at Yale Law School (number one in the U.S. News & World Report list of best law schools in the country!), I can imagine I've finally transcended race. Or, at least, finally appropriated a club of respectability heavy enough to outweigh my disfavored race and gender. I've been waiting to exhale and now is my chance. I've made it to the top.

But the moment I exhale, a new version of an old joke occurs to me.

"What do you call a black woman with a visitorship at Yale Law School?"

"Nigger."

I feel a similar discomfort, a mixture of exhilaration and anxiety, at having been asked to co-author this Afterword on "LatCrit." As Juan Perea argues in his essay in this Symposium, the project of Latino/a critical legal theory forces us to rethink the black/white paradigm that [\*1596] has dominated American thinking about race for so long. n35 The prospect is challenging and exciting. Yet for me, an African-American woman, the journey begins with some self-conscious and unsettling reflections on the elements of blackness.

I want to make an argument that I know will be provocative and disturbing in the context of a symposium on LatCrit theory. I want to make this argument, not because I believe it to be true, but because I think it needs to be articulated in a clear and strong form in order for us to begin to critique it. The argument is an argument for what I will call "black exceptionalism." The claim is, quite simply, that African Americans play a unique and central role in American social, political, cultural, and economic life, and have done so since the nation's founding. From this perspective, the "black-white paradigm" that Perea condemns is no accident or mistake; rather it reflects an important truth.

The claim of black exceptionalism can be supported in at least two ways: by examining the historic and continuing centrality of African-American ethnicity to American political and social life; and by examining the centrality of anti-black racism to the patterns of domination we call white supremacy. Consider first the importance of African-American ethnicity to the project of defining "America." American black people have lately christened ourselves African Americans, and many of us look back to an imagined Africa for history, names, customs, religious and intellectual traditions, and even the way we speak. As "African Americans," we have not only claimed a motherland, we have accumulated a pantheon of heroes, distinguished artistic traditions, a canonical history, distinctive ways of talking, moving, cooking, laughing, and even a national anthem. Our pride in this distinctiveness is an ethnic pride, arguably no different from any other group that imagines itself as a people. But African Americans also have a claim that is different in kind not only from the claims of "white" ethnic groups, but other groups racialized as "nonwhite." In the popular imagination, groups racialized as "nonwhite" each have their own particular stereotypical

relationship to the American national project. Native Americans are thought to have vanished long ago, leaving behind only their noble spirituality for non-Indians to admire and appropriate at will. n36 Asian [\*1597] Americans and Latinos are imagined as eternal "strangers," n37 people who carry the border of American territorial power and cultural integrity within them. n38 But African Americans, for all our talk about Mother Africa, are profoundly and unmistakably Americans. More to the point, Americans are distinctively African. n39

For example, the people who now call themselves "whites" originally developed that identity, and continue to maintain it most insistently, in contrast to "blacks." Our slavery became their freedom: our degraded labor produced their "free labor," our political nonexistence, their political belonging. n40 Our ugliness, our promiscuity, our simple natures reflected their beauty, continence, and refinement. n41 Our simple joys and pleasures, our songs and dances and folktales (mocked and admired in their minstrelsy) enabled their sophistication and formed a basis for their nostalgia. n42 Toni Morrison argues: [\*1598]

For the settlers and for American writers generally, [the] Africanist other became the means of thinking about body, mind, chaos, kindness, and love; provided the occasion for exercises in the absence of restraint, the presence of restraint, the contemplation of freedom and of aggression; permitted opportunities for the exploration of ethics and morality, for meeting the obligations of the social contract, for bearing the cross of religion and following out the ramifications of power. n43

Ralph Ellison concludes that for white Americans, the "Negro" eventually became "a human 'natural' resource who, so that white men could become more human, was elected to undergo a process of institutionalized dehumanization." n44 In these and other ways, American culture - to the very great extent that it is coextensive with "whiteness" - is founded upon an image of "blackness."

Moreover, America is distinctively African not just by way of contrast, but also by active incorporation. Here a few cultural examples will make the point. It has often been noted that the profitability of rap music, including hard-core "gangsta rap," depends on its appeal not just to urban black kids, but to suburban white kids. Black music has long been an important resource that white artists have turned to for inspiration. In the 1950's, many white artists became superstars either by re-recording black music for white audiences, like Pat Boone, or by drawing more indirectly on African-American musical traditions, like Elvis Presley. Indeed, the phenomenon called "rock 'n' roll," now [\*1599] associated primarily with white artists and white audiences, emerged from the African-American blues tradition. n45 In addition, jazz, which is sometimes called America's classical music, was developed by and brought to its highest pinnacle of sophistication by African-American artists and white artists working within African-American traditions.

More broadly, African-American styles define what is hip and cool for many Americans, including white Americans. Suburban white kids seeking validation through identification with black culture even have a nickname: "wiggers." n46 In Spike Lee's movie, "Do the Right Thing," a young Italian-American man rattles off racist stereotypes about black people, yet names African Americans as his favorite sports heroes, comics, and entertainers. n47 In the past two decades, an extraordinary number of Hollywood action movies have featured heterosexual male "buddies," one white and one black, who gradually learn to respect and love one another. n48 White Americans not only distance themselves from black people, they also admire them, imitate them, crave their approval. n49 Whether it is expressed in positive or negative terms, this obsession with blackness and black people is a central feature of American culture.

The centrality of blackness to American history and society is reflected in the law as well. As Perea notes in his essay in this Symposium, American anti-discrimination law emerged in response to experiences of [\*1600] and with black people. The constitutional and statutory provisions of the First Reconstruction reflect the Radical Republicans' effort to bring the freed slaves into the polity; n50 the statutory innovations of the Second Reconstruction emerged from a renewed effort to make that inclusion real. n51

Moreover, the African-American political and cultural resistance that finally forced these legal innovations has become a defining moment for American movements for social change. The moral claim to inclusion that African Americans made during the 1960s civil rights movement has become the rhetorical template for all subsequent civil rights struggles. Abortion protesters now sing "We Shall Overcome"; gay and lesbian activists liken marriage restrictions to miscegenation laws. Indeed, observing the history of black struggle from the American Revolution to the present, some writers have concluded that "equality" itself is an "Anglo-African word." n52

The claim of black exceptionalism does not rest only on the special role African Americans as an ethnic group have played in America's cultural, economic, political and social history. It also acknowledges the unique position of "blacks" in the material and symbolic framework of American white supremacy. As I, a black person who "looks" black, gaze at Leslie, the Latina who doesn't "look" Latina, I wonder, what can she really know about racism? There is a kind of pain, to be sure, that is experienced by those whose outsider status isn't visible on their faces, those who are forever assumed by others to be in the club and then must be outed or out oneself ("Excuse me, you must think I'm white."). n53 But in American social life, the operation of day-to-day white supremacy has always depended principally on color prejudice, and color prejudice has been most centrally associated with anti-black prejudice.

Color prejudice involves the unique humiliation of knowing that one is seen by others as physically frightening, ugly, or loathsome. Focused on the body, it incorporates the powerful drives of sexuality: the recognition of physical distinctiveness permits currents of sexual [\*1601] repulsion and attraction, fear, loathing, and desire to twist themselves around the notion of "race." n54 One consequence of color prejudice and its location in the body, then, is the experience of black people of being reduced to their bodies. n55 Another consequence is that one's claim to individuality is constantly vulnerable to being erased. n56 That well-to-do as well as poor black people are unable to catch taxis at night, are stopped by the police, and suffer from random racist violence has contributed to a sense of solidarity among all black people, based on the sense that color prejudice serves as a brutal leveler, erasing distinctions of class and status. Conversely, the mistrust and hostility often directed at light-skinned African Americans by dark-skinned African Americans has in part to do with the sense that what it means to be black is to have one's inferior status indelibly written on one's skin, hair, and features. In a perverse way, then, to be "authentically" African American is to be noticeably dark-skinned, continually vulnerable to being raced as black.

Of course, I do not mean to suggest that all African Americans "look" black and no Latinos do. But color, the experience of being visually raced through one's skin tone, lies at the very core of what it means to be African American. Consider, for example, the names we have been given: darky, colored, black, Negro, nigger. Blacks - and whites - have, unique among American ethnic groups, centered their identities on a notion of putative skin color, a phenomenon that attests to the centrality of color. For African Americans, but not for Latino/as, "ethnicity" converges with the biological fiction of "color."

Blackness is central to American white supremacy in another, deeper, way. Black people embody the nigger in the American imagination: a creature at the border of the human and the bestial, a being whose human form only calls attention to its subhuman nature. To be a [\*1602] nigger is to have no agency, no dignity, no individuality, and no moral worth; it is to be worthy of nothing but contempt. In the American collective unconscious, some nonwhites are more unequal than others. When compared with "whites," Latinos, like Asian Americans and Native Americans, are all considered abnormal, exotically different, inferior or somehow ominously superior. But when compared with one another, blackness is the worst kind of nonwhiteness. Words like "chink" and "spic" dehumanize. But they lack the horrific obliteration of nigger, a word reserved for black people. n57 The paradigmatic image of the racial Other in American life has been the black body. n58 Thus, learning to have fear, loathing, and contempt for niggers is central to American white supremacy in a way that racism against "other nonwhites" is not. Toni Morrison argues

that, in the United States, learning to distinguish oneself from and express contempt for blacks is part of the ritual through which immigrant groups become "American." n59 [\*1603]

Nor is this distancing limited to nonblacks. Many of us who grew up in middle class, "respectable" African-American homes can recall being told by parents or other relatives to stop "acting colored." The image we were all fleeing was the image of the nigger, the lower-class black person who talked too loudly in "Black English," laughed too heartily, and was vulgar in appearance, word, and deed. A similar tension exists in many American communities between black Caribbean immigrants and native-born African Americans. The immigrants often ascribe to African Americans the stereotypical qualities of the nigger: lazy, shiftless, too many children, searching for government handouts and always whining about racism. In this way, the nigger is kept alive, a source of contempt mixed with anxiety, shame, and self-hatred for blacks. The image of the nigger keeps individual racism alive, and it provides a powerful emotional engine for the institutions of white supremacy, from individual unconscious racism to notions of "merit" based on contrast with the nigger.

The argument for black exceptionalism is usually not articulated in mixed company in the interests of interracial solidarity. I have set out the argument, not because I believe it to be right, but because I believe that Perea's direct challenge to the black-white paradigm and the power and promise of LatCrit theory more generally forces it into the open. The claim of black exceptionalism presents both an intellectual and a political challenge to LatCrit theory. As an intellectual claim, black exceptionalism answers Perea's criticism of the black-white paradigm by responding that the paradigm, though wrongly making "other nonwhites" invisible, rightly places black people at the center of any analysis of American culture or American white supremacy. In its strongest form, black exceptionalism argues that what "white" people have done to "black" people is at the heart of the story of America; indeed, the story of "race" itself is the story of the construction of blackness and whiteness. In this story, Indians, Asian Americans, and Latino/as do exist. But their roles are subsidiary to, rather than undermining, the fundamental binary national drama. As a political claim, black exceptionalism exposes the deep mistrust and tension among American ethnic groups racialized as "nonwhite."

Even after having issued my disclaimers, I feel queasy writing these words. Not only does black exceptionalism present a serious threat of [\*1604] political division; the fact that I write about it in a symposium on LatCrit theory is politically suspect. Trina Grillo and Stephanie Wildman have written perceptively about the ways in which people who are members of a dominant group expect always to be given center stage, and will attempt to take back the center if they are momentarily denied it. n60 In these circumstances, I am a member of the dominant group. Until very recently, African Americans have numerically dominated critical race theory. To turn the subject back to African Americans at the end of a symposium devoted to Latino/as is a perfect example of taking back the center.

Nevertheless, I think I can justify this politically suspicious move, at least to myself. First, the claim of black exceptionalism represents something larger than the narrow interests of African Americans: it is an example of the conflicts that emerge from what Eric Yamamoto calls "differential racialization" and "differential disempowerment." n61 LatCrit theory is emerging at a time when the United States is rapidly becoming more multiracial than ever before. As the preceding examples of conflict among "people of color" suggest, contemporary race theory must come to terms with tensions among "nonwhite" groups as well as the ever-present tension with "whites." Indeed, LatCrit theory's attack on the black/white paradigm itself engages the problem of developing a multidimensional race theory. On its own terms, then, LatCrit theory demands an understanding of white supremacy that goes beyond the binary of oppressed/oppressor. [\*1605]

Second, the problem of mediating conflicts among different "subject positions" is central rather than peripheral to the LatCrit project. Latino/a identity, and LatCrit theory, are being constructed out of a complex mix of ethnic identities, some of which are differently racialized. Leading LatCrit theorists have



also made the link between race-ethnicity and gender a focus of their intellectual projects. n62 In acknowledgment of these complicated differences, rather than attempting to construct the "authentic" Latino/a, many LatCrit theorists have committed themselves to an antiessentialist politics. n63 The search for what Frank Valdes calls "connectivity" is imperative if the group "Latino/as" is to retain any internal coherence. Thus, the question of black exceptionalism does not disrupt but rather furthers the LatCrit project.

Finally, the problem of black exceptionalism offers me a way to make sense of my presence in these pages, rather than simply feeling as if I don't belong here. I cannot speak as a Latina or for Latino/as. But I can try and ask myself what LatCrit theory requires of me as an African American. How is the way I am used to analyzing white supremacy changed by LatCrit theory? How is my way of experiencing the world altered by trying to imagine it through Leslie's eyes? To what extent am I invested, as an individual and as a black person, in the black/white paradigm?

## II

### The Tar-Baby

#### A. What Is LatCrit Theory?

Back to Leslie:

Race is like a riddle. The answers seem obvious, yet with each answer we find that this thing called race becomes even more puzzling, almost mysterious. In this section, I will first examine the common ways all of us define race. We think we know race, yet none of the definitions seem to work. It is no accident that race is clear cut and unknowable at the same time. Race works as an effective system of oppression because it is there and not there, race is a reality and a social construction. Race [\*1606] is quite like the "Tar-Baby." n64 You punch the Tar-Baby, you think you have got him, but instead you become stuck. n65 The more you try to exercise dominion, the more you are dominated. It may well be impossible to know what race is. Nevertheless, by critically examining that which we call race, we may move closer to an operational understanding of that which is experienced as real oppression. [\*1607]

Second, I will examine the LatCrit works that challenge our common understanding of race, particularly focusing on the critique of race as a black/white binary problem. However, in each paper, the LatCrit critics become stuck in the sticky mess of race. Ironically, the LatCrit works reproduce in their critiques the very problems they have identified. This does not make them failed critiques. With each struggle, the intractable nature of race is further exposed. Rather than looking at each critical piece as an answer or solution, the papers reveal the need for tenacious endurance. Indeed, as I commence to critique the critics, I will no doubt often find myself in the "brier-patch," n66 with no clear path to understanding, making mistakes, causing injury, but continuing to struggle to be free.

#### 1. Blindness and Bloodlines

I remember looking up at Angela. "What if I had a magic wand? What if I waved my magic wand and made all people the same color? Would there be such a thing as race?"

Angela paused. From deep inside, she replied, "Of course."

There is a horrific beauty about the system of oppression we call racism. For there to be racism, there must be race. Race is perceived in our society as easily knowable. n67 It fits snugly into the modern Western way of knowing and naming the world. n68 Race is all inclusive; everyone [\*1608] has a race. n69 There is a scientific certainty to race. n70 There are racial categories, much as there are the biological categories phyla and species and families. Each individual can name his or her own race. There are a few

marginal outsiders who have to name their race by reference to more than one category. n71 However, even these messy cases conceive of their complexity categorically. Persons of mixed race break themselves into pieces, half this, a quarter that, tracing bloodlines that have an imagined recipe-like reality. n72

Knowability of racial categories is one of the myths of race. Racial categories have been taught as if the categories, Negroid, Caucasoid and Mongoloid, had scientific bases. n73 Today, the scientific terminology has changed to "Black," "White" and "Asian." Social categories of race have grown to include "ethnic" racial groupings, including what is [\*1609] usually referred to as "Hispanic." n74 But what of Pacific Islanders? Are they a racial group or an ethnic group? And what of South Asians? Undoubtedly our categories expand to serve social and political needs.

This is the problem of race. It is both easily knowable and an illusion. It is obviously about color and yet not about color. n75 It is about ancestry and bloodlines and not about ancestry and bloodlines. n76 It is about cultural histories and not about cultural histories. n77 It is about [\*1610] language and not about language. n78 We strive to have a knowable, systematic explanation for race. We struggle with its elusivity. We name our categories, we refine our categories, and then inevitably we find too many exceptions to the categories, too many people who just do not fit. n79 Race should be rational and it is not.

Race certainly is operational. n80 For each group, race provides benefits and burdens. As a hierarchical system, the benefits and burdens are distributed in a grossly unequal and unjust way. Other systems of oppression, such as misogyny, homophobia and poverty, intersect with racism and synergistically operate to disempower some and empower others. n81 Yet for all the complexity, we recognize race as a correlate, negative and positive, to well-being. At the moment we recognize it, however, we also discount it - it could be capitalism, sexism, colonialism, etc. The complexity of oppression contributes to, and indeed may be at the heart of, our inability to understand race. In the same way that we think we know who is white, who is black, who is brown, and who is [\*1611] yellow, we think that we know why she is poor, why she was fired, why she cannot read and why she is in jail.

Naming and understanding oppression seems like a catch-22. We use the master's tools to try to dismantle the master's house and think we are making headway, only to discover that the destruction of this house was part of a larger "urban renewal" plan to build a "Master's Fortress." For example, as we break down racial categories, we find that each group has a stake in maintaining their place in the racial order. Undocumented workers break their back in the hot sun, but are grateful for work; women, in dilapidated housing and with no hope for education or child care, raise small children and are thankful for a welfare check; sweatshop slaves work interminable hours for a pittance but are relieved to pay off the cost of their passage to America. And there are those who have moved up a step to own a small house in the barrio or a vegetable cart in the market; or those whose third-cousin's daughter managed to finish technical school and who have hope that one of their children will be in college instead of in a gang. It is the focus on the crumb thrown their way that keeps even the most oppressed from taking action for change. n82

There are many examples of small benefit programs that are premised on definitional categories for racially oppressed groups:bracero work permits, welfare benefits, refugee immigration exceptions, targeted lending grants, minority business set-asides and affirmative action. The benefits are always tenuous because the benefactor can alter the application and understanding of the definitional category. This ambiguity is often used to pit different groups against each other in a scramble for benefits. n83 It is also used to pit persons within categories against each other. n84 [\*1612]

Tension and conflict within and between oppressed racial groups keep us from forming coalitions. Yet, united action is the only hope for effectively changing the vast disparities in wealth between social strata in this country. Racial outsiders are stuck in the "bottom of the well" n85 if they buy into the myth that equality means individual equality of opportunity. "Opportunity" has competition conceptually built into it. Equality is viewed as the responsibility of the individual to take advantage of opportunity. It is not

understood as actual equality of basic material needs and it is not understood as something derived from group action.

Race definitions operate to define the "have-nots" and to mask the correlation between race and the "haves." American social discourse attaches negative characteristics by group; for example, he is poor because he is a lazy Spic. We do not attach success by racial group. Success is the reward of individual characteristics, e.g., he is rich because he is smart, he works hard and he is ruthless. We do not acknowledge that, as a statistical reality, he is rich because he is a white male. Race definitions go to the heart of our conception of equality. We learn that being racially identified can hurt us: we are part of a group that is unfairly stereotyped and unfairly treated. Likewise, we are taught that group identity does not lead to material success. We "race" ourselves in a way that leaves us lonely, isolated and mired in poverty.

## 2. Bearings, borders and barbed wire

I have my bearings. I know where I am. And I know where I must go: across the border. I make my move, but the boundary is marked by barbed wire. I am tangled and torn, blood mixes with tears. I break free. But did I cross over or fall back? I am at the border, but I have lost my bearings.

For those of us whose lives are transcribed by borders, n86 there are constant crossings-over. We experience the border both as a line of [\*1613] demarcation and as a zone of dual meanings. There are moments when our outsider status means that we are excluded, that we are on the wrong side of the line. There are other times when we straddle two worlds, two consciousnesses. At these moments, the border itself may seem to be moving, but we have to worry about the delusion that we have crossed borders or that the borders do not exist.

The papers in this Symposium are about borders. The papers define borders, challenge the need for borders, examine how borders operate and endeavor to cross them. The first border is the color-line. In broad brush strokes, Professor Perea traces the use of color to create an understanding of race based on a black/white binary construct. The black/white understanding of race is so compelling, Perea demonstrates, that both mainstream and critical discourse on race adopt the two-sided construct as real. n87 Perea analyzes a wide variety of works by authors ranging from prominent black social critics, such as Andrew Hacker, n88 to black artists, such as Toni Morrison, n89 to reveal the omnipresence of the black/white racial concept. The black/white construct is everywhere and yet is decidedly not real. Latino/as, Asians, Native Americans and other outsiders exist. The black/white racial myth renders Latino/a experiences of race invisible, n90 and ultimately this leaves Latino/as themselves powerless.

Professor Cameron takes the theme of invisibility n91 and applies it to Title VII employment discrimination cases. n92 He demonstrates how Title VII protections are constrained because race is understood as color, and color is understood as immutable. n93 However, language is one of the prime racial markers for Latino/as. Language is understood as mutable by the courts, and, therefore, language discrimination is not prohibited either as race discrimination or as national origin discrimination. Cameron complicates our understanding of race by first positing that language may be ingrained in a way that makes it as immutable as [\*1614] color. n94 To make this argument, Cameron has to challenge both our understanding of language and our understanding of color. n95 Language is not the simple set of equivalents that Berlitz primers seem to indicate. Indeed, such a simplistic understanding of language might only be possible in a country such as the present United States, so unabashedly unilingual.

The color-line border is also a border between public and private selves. The operation of this border is examined by Professor Johnson. Johnson poignantly tells the story of his mother and her futile attempts to define herself as "Spanish." n96 The cultural racism defining Mexican Americans bound her private life, her identity. In the most telling part of his narrative, Johnson speculates on the relationship between his mother's mental illness and her ragged identity. n97

Similarly, Cameron's Title VII critique demonstrates the wall between public erasure of ethnicity and private cultural survival. He shares the stories - the legal cases - of Latino/as who are forced to leave their language at home. n98 Bringing their Spanish into the workplace was tantamount to an invasion across borders. Law enforces the barricade between the public and private lives of Latino/as, fracturing Latino/as' individual senses of self. n99 The public/private boundary also works to fragment Latino/as as a group. We can be Chicano, but only at home. It prevents us from seeing the racism that plagues Chicanos in the public sphere. This is the racism that convinces us that bad education and poor jobs are our lot: we are lazy and slow, we lack merit. We are victims of our individual shortcomings. The public/private boundary also keeps us from seeing the racism that affects us as a group in the private sphere. This is the racism that convinces us that mental illness, dysfunctional families, and domestic violence are not linked to our oppression as Latino/as but are an attribute of being Latino/a. [\*1615]

In the minds of critical scholars, there is an important boundary between ourselves as outsiders and ourselves as insiders. There is a border between the academic and the real, between our scholarship and our lives. This is a personal boundary. We are tangled in this stuff called law. Law frames our critiques and limits them. We see the color-line border and we explicate it. But we see it through the dominant lens of traditional legal categories, and we critique it within the accepted bounds of objection. We need to go further and question how the border came to be. Who does it benefit and who does it hurt? What kind of actions are called for?

The LatCrit articles in this Symposium cross the bounds of usual critique. Professor Perea's article, for example, could be read as a criticism of African-American scholars, a set piece for black/brown conflict. Arguably, Latino/as are asking why black scholars continually ignore the suffering of other racial groups. African Americans seem to have bought the franchise on race victimhood and don't want to share the territory of suffering - and righteous indignation - with other outsider groups. What seems to get lost as Perea documents black/white racial discourse, is the important story at the end of the article about Latino/a legal battles, particularly against school desegregation. n100 Paradoxically, Perea's article itself reproduces the focus on black/white race discourse - most of the article is a description of how race discourse is black/white. The focus on black/white discourse buries the powerful story of outsider groups working together for several decades to break segregation, the way Thurgood Marshall, Robert L. Carter and Loren Miller worked together with the litigants in the Mendez case. n101 As academics, we can lose our sense of why there is a border at all. We must remember that African Americans did not create the binary color line.

Why is it that outsider groups must tread so carefully? When we speak of our own oppression, why do we seem to reinforce the oppression of other outsider groups? Interracial conflict often occurs in the context of jobs. n102 Professor Cameron's critique of Title VII legal reform provides insight as to why we seem to conflict with each other whenever we try to assert our rights. Cameron argues that anti-discrimination law suffers from "indeterminacy." n103 Indeterminacy allows the courts to maneuver around the underlying intent of the law. [\*1616] Title VII was passed to stop discrimination against outsider groups. However, the courts interpret Title VII to exclude protection for the very groups at which the law was aimed. Given the EEOC guidelines and the accepted interpretation of legislative history, the lack of Title VII protection is not a problem of the statutes but rather of the judges. Indefiniteness allows racism. Critical scholars need to be willing to speak the truth and not lose themselves in the intricacies of border politics. We will never keep our bearings if we continue to play by the rules of the dominant society. Society's rule number one for critical scholars is that it is unacceptable for a legal scholar, an insider, to openly call another insider, a judge, racist. We are relegated to fighting amongst ourselves for crumbs. It is taboo to notice, let alone to point out, who is gobbling the cake.

The LatCrit theorists unearth the history of Latino/a repression: the history of material poverty, immigration internment, land seizures, police brutality, and lynchings. There is also the history of segregated schools, employment discrimination, and voting exclusion. However, the suffering is too often

contextualized to the role of the critical scholar as an academic. The history of suffering is divorced from the pain of the community. While it is arguable that the academic world permits a window on oppression to be opened a crack, it also can be a myopic self-indulgence that distorts the real legacy of racism.

The point is driven home by Professor Roithmayr's expert description of the history of law school admissions practices. n104 She traces the racist and economically elitist history of the development of "standards." Expanding on Stephen Gould's work, Roithmayr provides a compelling critique of the "science" of merit standards. Gould argues that science is used primarily to justify political ends. n105 Roithmayr focuses on who gets to develop "merit" standards. She argues that affirmative action is appropriate, because it gives outsiders the opportunity to fairly participate in developing standards. Unfortunately, Roithmayr's work is diluted, because it is given in the context of a specific critique of merit and reason. She misses the broader social perspective. In her examination of merit, she challenges the justification for tests based on the relationship between test scores and law school success by arguing that the process of developing standards was tainted. n106 However, even a racist process could conceivably result in [\*1617] accurate standards, much the same way that an incompetent construction company can still build a sound building. Roithmayr needs to clarify that admitting law students is not the same as constructing buildings. Racist standards keep law schools from having the material by which they can construct a sound legal profession. Roithmayr misses the fundamental issue of whether there is a relationship between successful law students n107 and successful lawyering. More importantly, she overlooks the relationship of lawyering as it is and lawyering as it should be. The "merit" question is: "Who gets to be lawyers?" The more meaningful question is: "Who should be lawyers to best serve the overall communities' interests in fairness and justice?"

The influence of the dominant society in Roithmayr's argument is further reflected in her focus on individuals and their right to be admitted to law school. The importance of current merit standards can be viewed another way. Merit standards play an important role in the political game of keeping outsiders from forming coalitions. For example, the interracial conflict over admission to the Lowell School in San Francisco centered on test scores. n108 Arguing about the validity of tests and entitlements to limited slots keeps outsiders from asking the real question, "Why is there only one good school in San Francisco?" n109

Professor Cameron also traces the roots of language discrimination. Under Title VII analysis race is defined as color, as a characteristic that is "immutable." However, Latino/as are racially categorized by [\*1618] language. It is often language alone that renders them outsiders. n110 For example, an employer can prohibit Latino/a workers from talking in their own language. It is as if an employer had a work rule that required African Americans to straighten their hair or to bleach their skin. n111 There is little economic consequence for this abuse, because there are few job choices for disempowered Chicano/as.

Language discrimination is invisible to the monolingual majority. "There can be no progress unless and until the majority culture recognizes there is a victim." n112 Invisibility is a terrible kind of oppression. Cameron, however, overlooks the fact that invisibility is also a form of resistance. There is value and power to silences, to building coalitions far from the sight of the oppressors. For example, we need to trace the history of monolingualism in Chicano/a culture. We need to recall the history, the repression, that led so many Mexican-American parents to raise their children to speak only English. Bilingualism is difficult if Spanish-speaking children are placed in classes for the mentally retarded, if Spanish-speaking children are physically beaten or ridiculed for using Spanish words. Bilingualism is difficult if Spanish-speaking adults are fired for moving between two languages, if they are kept from juries, if they are punished for their accents. n113 Bilingualism is difficult in the face of discrimination, but it is language that often binds us. [\*1619]

And then there is the problem of the Tar-Baby; we get stuck in the messiness of our own critique. Latino/as are invisible, and yet they are not. California has had two major referenda that targeted this

"invisible" group. n114 In a further twist, while it is language that binds us, it is also language that breaks us apart. Parents consciously choose not to teach their children Spanish. n115 It facilitates assimilation, but it also breaks the children from their culture and their families. In the language of Chicano/as, there is a special word for Chicano/as who lose their language, who no longer can speak Spanish. The word is "pocho"; it is pejorative. Language should not further divide us, but it does.

When we cross borders, we become tangled in the barbed wire, we are injured and in pain. This is the history of our oppression. We must be careful not to forget it. We also must continue to see across borders. We must have the courage to confront even the most fearsome obstacles, to pull ourselves out of the barbed wire and struggle to overcome. At times, we see the border and acquiesce to its existence. We create a border within a border, the border between resistance and quiet capitulation. [\*1620]

## B. Race, culture, and nation: LatCrit theory and critical race theory

Angela continues:

In their pioneering work on race theory, sociologists Michael Omi and Howard Winant argue that race is neither a biological fact nor a mere illusion, but a system of power that operates simultaneously at material and symbolic levels. n116 One aspect of "racial formation," in their view, concerns the processes by which individuals and groups pursue power and advantage as agents with racial interests. A second aspect concerns the processes by which those racial interests are themselves formed: how racial concepts are given meaning and racial identities are created, altered, and maintained. Thus, racial formation encompasses "race relations": how racial groups jockey with one another around the globe in relations of economic production and consumption, in and between nation-states for political power, and in social systems for status and cultural hegemony. But racial formation, as a system of power, is also about how groups and individuals come to have or be "races" in the first place. n117

The essays in this Symposium speak particularly to the second aspect of racial formation. Critical race theorists have become increasingly interested in tracking the way in which racial meanings are created, maintained, and altered, and LatCrit theory offers insights into the way "race" operates as an ideological system. First, LatCrit theory highlights how the proliferating meanings of "race" can be used to preserve the project of white supremacy, even in the midst of significant changes in form. Second, LatCrit theory demonstrates how language, culture, and nationality, as well as color, can be used to separate the privileged from the oppressed. These insights together point toward a more sophisticated understanding of race. They also begin to suggest some of the limitations of black exceptionalism. [\*1621]

### 1. Race law as an ideological system

As Barbara Fields has said, "If race lives on today, it does not live on because we have inherited it from our forbears of the seventeenth century or the eighteenth or nineteenth, but because we continue to create it today." n118 The essays in this Symposium consider the operation of race as an ideological system at the end of the twentieth century.

The legal enforcement of white supremacy in the United States has retained certain continuities even in the midst of sometimes drastic shifts. n119 At the nation's inception, race law was a form of status law: a person's legal rights depended on his or her racial designation. n120 After the Civil War and the Reconstruction amendments, American race law passed into a new phase, characterized by a new acknowledgment of political and civil equality across racial lines. As Keith Aoki and Robert Chang note, this shift was accompanied by a rhetorical shift from notions of racial superiority and inferiority to mere racial "difference." n121 As commentators have noted, however, the law accommodated white supremacy under this new regime by declaring "social rights" outside the purview of anti-discrimination laws and preserving a broad scope of discretion for state and local governments to enforce racial segregation based

on "difference" in the name of social custom. n122 The era of open white supremacy in the "social" sphere enforced by law crumbled with a new approach to equality that the Court recognized in *Brown v. Board of Education*. n123 But, once again, white supremacy was preserved: this time by a redefinition of "racial discrimination" as intentional malice [\*1622] and by rendering unconstitutional in most cases the use of racial categories to remedy existing racial inequality. n124

How have these transformations been accomplished while retaining the appearance of logical consistency in judicial precedent? Lawyers are taught that the most effective communication is that which is most precise. Good legal writing reduces ambiguity, making chains of logic possible. But some kinds of communications are more effective the more ambiguous they are. Great works of art are machines for producing proliferating meanings. Similarly, discourses of power are machines for producing interlocking meanings; and accordingly, the success and power of the idea of "race" lies in its very indeterminacy and complexity. n125

Studying "Euro-American heteropatriarchy" as a rhetorical system, Francisco Valdes argues that it operates through what he calls the "conflation" of three distinct but interrelated concepts: "sex," "gender," and "sexual orientation." n126 These three concepts are sometimes treated as mutually determining: what sex your body has determines your social gender and what sort of body you will desire. At other times, however, the concepts are treated as distinct and separate: courts have concluded, for example, that laws against "sex discrimination" do not address discrimination on the basis of "sexual orientation." The result is not only that sexual minorities remain unprotected by anti-discrimination law; anti-discrimination law itself functions to police existing hierarchies of sex, gender, and sexual orientation.

Like the rhetoric of heteropatriarchy, the legal rhetoric of race brims over with meanings. To talk about "race" in this country means to talk about a welter of ideas - race, ethnicity, biology, culture, national origin, color, language - that turn race into a Tar-Baby. By illustrating the ways that some of these concepts can be used alternately to support one another and be played off against one another, LatCrit theory sheds new light on how legal white supremacy can be maintained, even while the language and practices of oppression may drastically change.

Three characteristics of race talk have enabled the persistence of white supremacy even while its forms drastically change. First is the proliferation of many different meanings for the same word. For [\*1623] example, Neil Gotanda has identified four different meanings of "race" in Supreme Court doctrine. n127 By shifting from one meaning to another, Gotanda argues, the Court has been able over time to condemn some forms of white supremacy while keeping others intact, and to obscure the contradictions in its reasoning.

In this Symposium, Christopher Cameron takes note of two other ways in which the legal rhetoric of "race" is used to maintain white supremacy. One is what he calls "indeterminacy." As he notes, the concept of "national origin" is sometimes treated as synonymous with, or at least closely related to, "race," suggesting that people who are discriminated against based on being perceived as "foreign" or based on the language they speak should be protected as if they were being discriminated against based on their skin color. But at other times, "national origin" is treated as something completely unrelated to race: the Court, for example, has defined national origin for Title VII purposes as simply the country of one's birth, completely unrelated to race. The uncertainty about what "national origin" means keeps Latino/as from being either fully protected by anti-discrimination law or clearly out in the cold. It allows courts to pay lip service to the value of anti-racism while permitting racism to continue.

Finally, the legal rhetoric of race helps maintain white supremacy through the use of "binary oppositions." n128 As Cameron notes, one of these oppositions appears in the idea of race as an "immutable trait." If race is an immutable trait - for example, if it is reduced to skin color - then anything that looks "mutable" must not be protected by laws against race discrimination. In this way, discrimination against Latino/as on the basis of the language they speak is legally maintained - and even fostered. For the opposite of an immutable

trait in the law turns out to be a free choice, and it is perfectly legitimate for employers and others to encourage people to choose one thing over another: to "choose" to speak English rather than Spanish, for example.

The shifting content of "race," the indeterminacy of racial references, and the use of binary oppositions have all contributed to making discrimination against Latino/as seem to be not racial discrimination, indeed, sometimes not discrimination at all. In his contribution to this Symposium, Ian Haney Lopez argues that this liminal status is [\*1624] potentially dangerous to Latino/as. n129 Latino/as are offered a lure by mainstream society: the choice of not identifying with African Americans and not identifying as racial minorities. In *Hernandez v. Texas*, n130 the lure was whiteness; more recently, Haney Lopez argues, the lure is to claim "ethnicity" rather than "race." But to the extent that Latino/as take the bait, they collaborate in making invisible their oppression, both historical and present. To the extent that being Latino/a is characterized as an "ethnicity" and not a "race," Latino/as take on the historical baggage of ethnicity: a term developed as a way of not talking about white supremacy. Yet, as Haney Lopez argues, the history of American white supremacy demonstrates that Latino/as have in fact consistently been treated as "nonwhite."

## 2. Race, culture and nation

Haney Lopez argues for the retention of the race concept with respect to Latino/as in recognition of the fact that Latino/as as well as African Americans have historically been the targets of white supremacy. More generally, LatCrit theory makes it plain that discrimination against people on the basis of "cultural" traits is as common in our history as discrimination against them on the basis of "biological" traits. Indeed, white supremacy has always depended on a conflation between the biological and the cultural.

Racialism n131 is sometimes described as the belief that biological differences cause cultural differences. But racialism is more complicated than that. As historians of race science have noted, a striking feature of nineteenth-century race science was the circle around which scientists [\*1625] pursued the truth of race. If cultural variation was taken to be the expression of biological variation, similarly the search for biological markers of race was guided by their correlation with cultural differences assumed to represent inherent racial differences. As Stephen Jay Gould has shown, when the indicators of "race" used by early race scientists failed to reaffirm the social differences they were supposed to cause, the scientists simply picked different indicators. n132

In the law, as well, enforcers of racial identity pursued a long circle from biology to culture and back again. As Eva Saks has shown in her investigation of miscegenation cases in the early twentieth century, judges often used "blood" as a more reliable clue to an individual's racial identity than her skin color. n133 Yet the best evidence of "blood" often came from social acceptance in the white community (a "cultural" trait), which in turn might rely heavily on skin color (a "biological" trait). Thus, the law went in a long circle in attempting to establish racial identities.

Fundamental to understanding the grammar of racialism both in law and in society, then, is to recognize it not as a one-way causal link between biology and culture, but as a circular relationship. The content of this mutual dependency is variable. Formal race science looked to biology to find the source of capacities and characteristics that today are seen as the product of cultural, not physical, evolution. Though most contemporary public thinkers would reject this approach, the assumption that race is a biological marker of innate differences between human groups lingers, often unstated and unrecognized in popular discourse. The recent obsession with IQ and the popularity of the book *The Bell Curve* illustrates the continuing desire to reaffirm the link between biology and cultural characteristics like "intelligence." n134 Other writers are more likely to speak in terms of culture, expressing concern for the survival and transmission of "Western culture" or, in terms more familiar from the nineteenth century, "Western civilization." Behind attacks on - and defenses of - multiculturalism, however, are often old fears about "hybridization" and



"miscegenation," or the [\*1626] unstated assumption that each "race" (or "ethnicity") has a unique "culture." n135

Regardless of the content of such arguments and beliefs, however, they all take a similar form: the tendency to attribute social and cultural difference to biology. This tendency is usually reflected in a conservative political agenda. As Stephen Jay Gould has pointed out regarding biological determinism, "After all, if the status quo is an extension of nature, then any major change, if possible at all, must inflict an enormous cost - psychological for individuals, or economic for society - in forcing people into unnatural arrangements." n136 In this way, as the eighteenth-century political theorist Condorcet put it, such beliefs "make nature herself an accomplice in the crime of political inequality." n137

Viewing "biology" and "culture" as mutually exclusive, then, is a mistake when it comes to race. Moreover, it is a mistake that results in the maintenance of material injustice. As Ian Haney Lopez argues in his contribution to this Symposium, the assumption that Mexican Americans in Texas in the 1950s were "white" rested on the misapprehension that skin color, rather than power, is at the heart of white supremacy. In recent years, rather than correcting this misapprehension, the courts have moved to widen the gulf between biology and culture, advancing the position that anti-discrimination laws that forbid "racial" discrimination protect persons against discrimination on the basis of "color" but not on the basis of "language," "ethnicity," or "cul-ture." Stepping outside the circle of "race" did not harm the Mexican-American plaintiffs in 1954. But doing so in 1997 may well further the Supreme Court's project of eliminating the recognition of group power differentials by reducing race to color and re-visioning America as a "nation of minorities," all equally different and possessing indistinguishable claims to political representation and economic power. n138 [\*1627]

LatCrit theory, by rejecting the focus on color discrimination as the essence of racial discrimination, reminds us that language and culture are often as important as skin color in separating privileged groups from oppressed ones. Racial hierarchy may be maintained by excluding those who do not physically conform: those whose skin color is dark, or whose eyes are distinctively shaped. Racial hierarchy is also preserved, however, by the establishment and maintenance of (white) cultural norms, norms to which those with the "choice" are pushed to aspire. Kevin Johnson's article in this Symposium sensitively describes the costs of choosing assimilation for Latino/as. To the extent that social acceptability and respectability is equated with whiteness, issues of cultural assimilation are issues of "race."

LatCrit theory also draws the attention of race-crits back to the importance of nationality and citizenship in the emergence and maintenance of white supremacy. History makes the point most vividly. The concept of race as we know it today emerged in a period of global trade, conquest, migration and economic production we call "colonialism," a period usually said to have begun around 1415 and ended around 1940. In this period, Western Europeans traveled around the globe in search of profit, glory, souls to save, and territory to claim; they spun elaborate theories about the people they encountered in the process. In some countries, European colonists settled to make a new nation, pushing out or exterminating the "natives"; in others, Europeans considered themselves only sojourners. In some countries, colonialists ruled directly; in others, an indigenous administrative class developed to form a buffer between the "natives" and the colonial masters. Slavery formed the base of economic relations in some countries and areas and not others. All of these various relationships, however, involved asymmetries of power: while cultures influenced one another, economic exploitation and political oppression went overwhelmingly in one direction. And to explain and justify this asymmetry, European theorists developed the concept of "civilization."

"Civilization" was both a descriptive and a normative term. Descriptively, a superior civilization was what enabled Europeans to dominate non-Europeans. Normatively, the concept of civilization made the continuance of that domination both essential and inevitable. At its [\*1628] roots, civilization was a religious concept, resting on the long-recognized distinction between Christians and heathens. n139 But it soon took on distinctively Enlightenment inflections, chief among which was the notion of progress.

Civilization marked the journey of the human race toward greater and greater perfection, and "race" marked the stops of various human groups along the way.

More specifically, the formal race science that reached its peak of prestige and sophistication in the nineteenth century drew on at least two different currents in Enlightenment thinking. Race science was in part a science: it drew on the emerging "science of man" to connect biological differences with mental, moral, and characterological ones, linking biology and culture. Race science was also a theory of history. Indeed, the study of race emerged from the study of nation formation. Race as a historical concept helped explain not only European ascendancy over various groups of non-Europeans, but the power struggles among the European nations, their rise and fall, and the emergence of new nations. n140 The way in which it did so was to discern an invisible order behind the seemingly chaotic clash of peoples around the globe. The order began with the idea of peoples as distinct groups; n141 it continued by imagining the tumult of contemporary history as not simply a series of accidents and clashes of power but as the expression of inner essences that were fixed and persistent over time, though constantly interacting in new ways. n142 Thus, the power of nineteenth century race [\*1629] science was in its ability to connect the study of the natural world with the study of history - the rise and fall of nations. Indeed, theorists regularly used the term race to speak both of primordial, biologically fixed groupings and of "cultural" groupings we would today describe as nations or languages. n143

As Keith Aoki and Bob Chang show in their contribution to this Symposium, this historical legacy is carried forward into the present day with the politics of borders, immigration, and citizenship. To the extent that the territorial borders of the American state are imagined as the borders of a white national body, questions of immigration and citizenship become questions about which foreign groups are capable of being assimilated into whiteness. Aoki and Chang point out that nativist movements in the United States have been at their most virulent when directed toward immigrants racialized as nonwhite. The current political attack on immigrants, both documented and undocumented, flows from a paranoia about the threat that racial Others pose to the white homeland. Domestically, Asian Americans and Latino/as are thought of as "foreign": as Aoki and Chang put it, "Foreign-ness is inscribed upon our bodies in such a way that Asian-Americans and Latina/os carry a figurative border with us." n144

By noting the interplay between concepts of race and concepts of nation, LatCrit theory also brings back into critical race theory a focus on white supremacy as a world system. For example, current American [\*1630] immigration laws and policy create the conditions for an economic underclass of undocumented Mexican workers who have no political voice or legal rights, yet who contribute to American economic productivity. n145 Treaties like NAFTA help maintain a world system in which formerly colonialist nations of the North enjoy both economic and political dominance over formerly colonized nations in the South. A LatCrit focus on Latin America, South America, Central America, Mexico, and the Caribbean, and the relationship of these countries with the United States makes possible an analysis that joins together domestic "race relations" with international relations.

### III

#### Tales and Transformations

##### A.

#### "Therapeutic" Critical Theory?

Leslie expresses hope:

I am somewhat comforted that I am only visiting Angela. I wonder if Angela is comforted that she is only visiting Yale. Angela and I have borrowed authority throughout our lives. As an African-American woman and as a Latina, we were not born with an entitlement to power. So perhaps this venture to Yale is no more

dangerous than our privileged lives as legal academics at our home schools. And perhaps there is a way that it is safer. The more we feel our difference, the more we feel the pain of being an outsider, the more we will move both backward and forward, remembering who we were, who we are and who we might become. Critical theorists tell stories, both "real" n146 and "fictional." n147 Arguably, the most significant impact of critical theory has been the reformation of legal analytical practices through the use of stories. Outsider tales provide an opportunity to breach the limits of language in [\*1631] describing oppression. n148 They lead to the creation of new language. That which has not yet been named can be understood. n149 Most importantly, the narrative potential of critical theory lies in its ability to free us to move backward and forward in time, to "re-story" the past and to "re-imagine" the future. n150 Racial oppression is a disease of domination that has proved itself immune to accepted treatments. It is time for curanderas, healers who base their art on an oral tradition rooted in the community and attentive to the suffering of individuals.

Our stories are our reality. They are the way we understand who we are and who we might become. Within feminism, consciousness-raising is achieved through the sharing of stories - of experiences, worries, dreams and thoughts - in a safe group setting. Safety is assured by confidentiality and by a commitment not to judge, but to listen, to offer and to interact with the purpose of better understanding who we are as women. Consciousness-raising is the methodology by which women break the dilemma of positionality. Consciousness-raising allows the participants to break the bonds of dominant language and the tyranny of false consciousness. n151

Often, without the vehicle of a story, the story of oppression would be untold. n152 Language as a product of a hierarchical society often [\*1632] renders mute the experience of oppression. n153 If we do not see our oppression we cannot counter it. Stories have the power to build individual lives and to reveal the workings of the systems of power that affect our lives. n154

Feminist therapists treating women and children who have been traumatized by violence and sexual assault use stories, individual and cultural, to heal. n155 The process of storytelling allows the individual to re-examine and reconstruct the meaning of her own life in a cultural context. n156 However, "it is hard to link past, present, and future in one's life when the cultural stories that frame one's experience are storied in stereotypical, inaccurate, narrow, and rigid ways." n157 Thus, the individual story must also be an instrument for breaking the oppression of the stories of the dominant discourse. n158

Narrative therapists recognize the need to place individual stories in a cultural context. n159 Likewise, for race theorists, it is important to put cultural stories in an individual context. n160 This becomes a test for reality. Each reiteration of our experience, of our stories, gives us the [\*1633] power of articulating a number of different visions. n161 With each telling and retelling, both listener and speaker are better able to construct a meaning for their own individual life and to sort through false visions of our individual stories and of the cultural stories that constrain us.

Sometimes in order to teach, to theorize, to illustrate, we have to share ourselves. Sometimes this is done through personal narrative, such as in Kevin Johnson's touching story of his family. Sometimes this is done through fiction, such as Derrick Bell's chronicles, n162 Alice Walker's novels, n163 or Luis Valdez's films and plays. We find a tool that we can use from the Master's tool box. We refashion it, maybe use it in ways that were not originally intended. We have to be ingenious because the lesson of our history is that we too often are subverted and ineffective. It is the lesson of consciousness-raising, developed first by folklorists n164 and then feminists.

And when we are effective, we are attacked. n165 For example, critical theorist Richard Delgado uses the character "Rodrigo" to move through a series of Chronicles. n166 The Chronicles are part fiction, part fact, and part allegory. n167 Rodrigo claims to be a person of color, black. Yet, Rodrigo is developed ambiguously, neither clearly colored nor clearly European; his father was black and his mother was Italian. Rodrigo occupies the border region of the color line. [\*1634]

Who then is Rodrigo? Rodrigo is Richard Delgado, and he is not Richard Delgado. Richard Delgado is us; he is the pseudo-insider who is always an outsider. Rodrigo, on the other hand, is Richard without the pain of being Richard, of being brilliant and unrecognized for so long, of being Chicano, a person of the earth, and unrooted for so long. Rodrigo is a trope: he can engage on any subject with insight; he can speak without being choked by personal pain. I really think of Rodrigo as "Brer Rabbit." He is the universal folktale trickster. n168 He engages and comments, as both insider and outsider, and always seems to escape, if not unscathed, at least whole. Rodrigo is not the fragmented, dual consciousnessed, self-doubting, usual race crit scholar. He is smooth, even when he is warmly naive.

Should Rodrigo exist? I would say yes. Rodrigo's existence bespeaks of the healing of narrative. Richard Delgado can be so unrelentingly pessimistic. He has such an unerring eye. So much of his scholarship, his life's work has been dedicated to debunking the myth of our equality, to revealing our dismal state. Delgado uses Rodrigo to continue this work. Nevertheless, the fact that Delgado is able to imagine Rodrigo, imagine a critical raced person who is able to struggle without being destroyed, is a sign of hope for all of us.

Racism damages us. The material circumstances of outsiders are inferior. If you are African American, Latino/a, Asian, or otherwise an other, you are more likely to be poorly housed, poorly fed, poorly educated, poorly employed and in poor health. Beyond what we eat and where we sleep, racism injures our ability to know ourselves. It is the spirit injury of which Patricia Williams writes. n169 It is a loss of identity.

We imagine ourselves as Spanish, we imagine ourselves as Mexican, we imagine ourselves as "Americans," but none of these labels seem to fit. Indeed, any Chicano/a who travels to Spain or to Mexico is quickly reminded of how Americanized they are. Yet living in "America," that same Chicano/a is constantly reminded either by little tweaks or [\*1635] wrenching yanks that they are not Anglo, not assimilated and unassimilable. Who are we then? What is most obvious also seems to be that which is most repressed. We are who we are, a culture that is Southwestern Chicano/a - or Puerto Rican, or Cuban-American-Miamian, or Central American-American. We are a colonized people, convinced that we are immigrants in our own country. n170 Chicano/as belong to the land of the Southwest. The Anglos are attached to the land by law, the Treaty of Guadalupe-Hidalgo. Similarly, Puerto Ricans are in New York and Boston because the United States is in Puerto Rico. Guatemalans are in Los Angeles because United Fruit and the CIA are in Central America. Cubans are in Miami because of a century of United States imperialism in Cuba. The most effective colonialism is that which colonizes the mind and the spirit. You feel an outsider in your own home. You are punished for speaking out loud, and find that you lose your ability to think silently. Professors Aoki and Chang capture the internal change when they write of carrying the border within ourselves. n171 The power of the border is that it is definitive not only for the recent immigrant but also for indigenous outsider groups. We lose our sense of entitlement to be here; we have become psychological immigrants whose status is tenuous and dependent on the benevolence of the Anglo power structure.

This "immigrant" aspect of racial oppression is not equalized in the traditional black/white racial paradigm. African Americans know which side of the border they are on. African-American exceptionalism - and I agree with Angela that there is an exceptionalism - is much more tied to slavery. There is, however, Chicano/a exceptionalism. Like Native Americans, we are colonized. Unlike Native Americans, we have not had the symbolic recognition of our original sovereignty. I worry that this identity will be forgotten.

It is hard for immigrants to be visible when they can be deported. It is dangerous to resist when you worry about your right to exist. Chicano exceptionalism is different from African-American exceptionalism. Who is more "exceptional"? When we ask that question, we are buying into the hierarchical system that oppresses us. Latino/as are seen [\*1636] as immigrant interlopers; blacks are seen as intractable criminals. n172 Does it really matter if resistance is met with deportation or with imprisonment? n173 The important questions are: "What is the nature of our oppression? Who benefits by it? And, how can we resist?"

## B. Toward a multidimensional politics of race

Angela continues:

What, then, of the claim to black exceptionalism? Is the LatCrit attack on the black/white paradigm, as Leslie suggests, a veiled attack on African Americans? Certainly one scenario of the decades to come is a struggle for intellectual as well as political and economic power between African Americans and Latinos, the struggle that Jack Miles names "blacks against browns." n174

The message of black exceptionalism is that this struggle can have only one outcome. Consider a model of American race relations in which "whiteness" is at the top and "blackness" at the bottom. Ethnic groups lacking a stable identification with either category have a choice: [\*1637] they may struggle to be accepted as white; they may proclaim themselves "black"; or they may struggle to be accepted as neither. n175 Of course, both color categories are metaphysical rather than biological: achieving whiteness may be accomplished through cultural assimilation rather than plastic surgery, and people visually identified as "black" may nevertheless strive to distance themselves from niggers. The prize here is not physical conformity but social status.

The claim of black exceptionalism reveals the fear that nonwhite, nonblack people will choose not to challenge the hierarchy that places white over black but to accommodate it. Haney Lopez describes the lure of "ethnicity" for Latino/as, who, in rejecting a racial designation for themselves, are implicitly rejecting blackness, just as in earlier generations Latino/as protected their status as "white." Similarly, many African Americans suspect that Asian Americans will find the "model minority" myth a convenient way to achieve social, economic, and political power: a way to distance themselves from, indeed contrast themselves to, black people. Even if this is not the conscious intent of nonwhite, nonblack people, the power of the opposition between white and black may be such that any attempt to distinguish oneself from black people simply reinforces the degraded status of blackness. n176 Thus, whether Latino/as and Asian Americans seek to profit from the black-white paradigm by struggling to be accepted as white or simply by struggling to be accepted as not black, the result for African Americans is the same: once again, as with the Irish and other formerly "not yet white" ethnic groups, African Americans serve as the stepstool that other groups stand on as they advance in achieving social power and status.

What this model leaves out, however, is the complexity that LatCrit theory can bring to the analysis of blackness itself. Take, for example, LatCrit's shift in focus from viewing "race" as an immutable trait to viewing it as a conflation of biology, culture, and nation. At first glance, this shift may appear to have little relevance for African Americans. After all, white supremacy against African Americans has been based for the most part on color discrimination, supplemented by notions of "blood," rather than on cultural or national origin discrimination. Moreover, since the passage of the Fourteenth Amendment, African [\*1638] Americans have been citizens, not subject to the sovereign exclusionary power of the United States. n177 But just as it would be a mistake for Latino/as to accept the current bifurcation of discrimination into that based on "immutable" traits versus that based on "mutable" ones - and the attendant bifurcation of racialism into "race" and "ethnicity" - it would be a mistake for African Americans as well. The move beyond color begins to acknowledge the cultural bases of African-American identity in other, more subtle ways. Not all African Americans look "black" or experience color discrimination. n178 Not all black people in the United States are African Americans; there are important, if often unacknowledged, divisions between African and Caribbean immigrants and native-born African Americans. Many African Americans feel the pressure to assimilate to white culture, a pressure that leaves them struggling to "pass" socially if not physically. n179 The project of black liberation is left incomplete if employers are prevented from refusing to hire or promote African Americans but are free to force them to look and act as "white" as possible. n180

Finally, the Supreme Court's increasingly vehement denial that race is anything other than skin color threatens the political strength of African-American communities. n181 As Alex Johnson has noted, for African Americans, blackness is not simply an accident of birth but the [\*1639] focus of an ethnicity - a distinct way of being in the world. n182 To the extent that white supremacy maintains itself by attacking the cultural practices that sustain blackness as an ethnicity, African Americans and Latino/as have a shared interest in questioning the bright line between mutable and immutable traits, biology and culture.

African Americans also have an interest in recognizing a larger geopolitical context for white supremacy. For instance, to the extent that African Americans are concerned about Africa and its relations with the West, it is necessary to understand that white supremacy is not solely a domestic phenomenon, but is inextricable from the colonial practices that gave it birth. n183 Finally, the concept of nativist racism shines a different sort of light on the claim of black exceptionalism. Focusing on the unique oppression of blacks obscures both the global and the local complexities of white supremacy. From a global perspective, the perpetuation of nativist racism puts American whites and blacks into collusion against foreign, nonwhite Others. From a local perspective, the exclusive focus on black oppression obscures the fact that African Americans are not always the niggers. In some areas in the Southwest where few black people live, it is Mexicans, or Indians, who are treated as niggers. Black exceptionalism takes the part for the whole, and in so doing not only damages the material interests of African Americans but also enlists them in the project of preserving white supremacy.

Consider, then, a different model of United States race relations: a box with the mystical Other (perhaps a nigger; perhaps a threatening foreigner) at the bottom and perfectly transparent, cultureless whiteness at the top. African Americans still have a unique liability in their historic association with the nigger, but each ethnic group has ways and means, some more powerful than others, of strengthening its position within the box. People who speak unaccented Standard English, people with pale skins, round eyes, and straight hair, and people who are citizens all have the opportunity to profit by distancing themselves from the Other. Some groups have the opportunity to access white privilege through language, others through color, still others through familiarity with the [\*1640] dominant culture. This model is slightly more complex than the previous one, in that it does not suggest that blacks and no others are locked into the bottom position. Which group wins the competition for power and status depends in part on local conditions.

Yet ultimately, this model provides ample cause for pessimism as well. For, as set up, both models suggest the inescapability of ethnic-racial competition. In the long term, all "people of color" stand to benefit from destroying the box that pits blackness and whiteness, or whiteness and Otherness, against one another. But in the short term, the temptation is great simply to exploit the system rather than to transform it. Interracial and interethnic cooperation are difficult and painful to achieve, and smashing the box requires a direct challenge to white supremacy. How much easier to close the border, to organize on the basis of presumed racial-ethnic "sameness" as given by the existing hierarchy, and to seek an immediate advantage within the existing framework.

If the temptation to close the border is great among privileged law professors (and from personal experience I must say that it is), then how much greater must it be for communities that lack the material security we enjoy? Like the tensions that erupted into violence between African Americans and Korean Americans in the Los Angeles rebellion of 1992 and like the growing economic and political competition between working-class African Americans and Latinos in inner cities, the grim reality of ethnic-racial competition raises the possibility of destructive political, social, and even physical conflict among "nonwhites." n184 [\*1641]

These conflicts, like other American social conflicts, will ultimately be played out in the legal arena. Deborah Ramirez offers case examples in which African Americans are pitted against Asian Americans or Latino/as involving voting rights, education, and employment. n185 Eric Yamamoto examines an employment discrimination case, ironically titled *United Minorities*, in which tensions between African-

American and Latino job applicants and Asian-American applicants, supervisors, and an investigator apparently played a significant role. n186 As legal disputes involving racial discrimination become increasingly fought out among people of color rather than between "whites" and "nonwhites," the claim of African-American exceptionalism may become a legal strategy to claim priority over Latino/as. Under such circumstances, African-American litigants may seek to write the black/white paradigm explicitly into anti-discrimination law.

Two potential injuries loom here: the material injury of a politics of all against all in which no one wins, and the spiritual injury of a politics that bases identity on woundedness and lack. The nature of the material injury is clear. To the extent that every ethnicity can point to discrimination somewhere in its past or present, every ethnicity has a claim to redress from the state. This battle must ultimately devolve into an "oppression sweepstakes," in which each group has an interest in portraying its victimization as the most horrific. The Supreme Court has [\*1642] already begun to react to this fear of a racial war of all against all by increasingly finding all claims for racial remediation to be invalid. n187

The spiritual injury is more subtle but no less real. Political theorist Wendy Brown describes the politics of victimization and woundedness eloquently:

In its emergence as a protest against marginalization or subordination, politicized identity...becomes attached to its own exclusion both because it is premised on this exclusion for its very existence as identity and because the formation of identity at the site of exclusion, as exclusion, augments or "alters the direction of the suffering' entailed in subordination or marginalization by finding a site of blame for it. But in so doing, it installs its pain over its unredeemed history in the very foundation of its political claim, in its demand for recognition as identity. In locating a site of blame for its powerlessness over its past - a past of injury, a past as a hurt will - and locating a "reason" for the "unendurable pain" of social powerlessness in the present, it converts this reasoning into an ethnicizing politics, a politics of recrimination that seeks to avenge the hurt even while it reaffirms it, discursively codifies it. Politicized identity thus enunciates itself, makes claims for itself, only by entrenching, restating, dramatizing, and inscribing its pain in politics; it can hold out no future - for itself or others - that triumphs over this pain. n188

Such a nightmare vision of identity politics begins to become real when, for example, the claim to black exceptionalism becomes an attachment to black victimhood, in which the story of our slavery - "three hundred years ago our ancestors were brought here in chains" - becomes a story endlessly told and endlessly unchanging, a story told to silence others and to paralyze ourselves beneath the heavy weight of our own degradation. The spiritual injury emerges, as well, when African-American people refer to one another as "niggers," "bitches," and "hoes," literally equating our identity with negation in a kind of "spirit suicide." n189

How can we face up to the reality of differential racialization without ending the struggle against white supremacy in a squabble among Asian Americans, Latino/as, Indians and African Americans for pride of place in a hierarchy of oppression? And how can we keep our identity [\*1643] politics from sliding into a discourse of endless woundedness, blame, exclusion, and resentment?

Eric Yamamoto offers several principles that must be acknowledged in the search for what he calls "interracial justice."

The first is the notion that healing, whether by individual or group, entails some combination of acknowledgment of the humanity of the Other and of the sources of the conflict (including the historical roots of present conflict), acceptance of appropriate responsibility (often in the form of an apology) and material change (structural alteration of the relationship). n190

One step on this journey toward racial healing can be what Leslie has called therapeutic critical theory: the telling of stories and listening to those stories. Even if some hierarchy of oppression were ultimately to be constructed, we could not know which group should be placed where until we know each group's story. The LatCrit project of uncovering lost and obscured histories is essential to this end. But, as Leslie suggests, the ultimate goal is not telling the same story over and over again, unchanged. Rather, stories should change as one tells them, for narratives serve not just as explanations of the past but as road maps for where we wish to go. And the subject of the story, as well, should change in the telling. It is important, then, to acknowledge that the story of black oppression changes in light of the story of Latino/a oppression, and that the subject of each story - "black identity" or "Latino/a identity" - itself is constantly changing even in the process of telling its story.

Interracial justice in Yamamoto's sense may also require that we question the underlying assumption of the oppression sweepstakes: that the competition is for more and special goodies from the state, and that these will be distributed in accordance with a remedial paradigm in a zero-sum game. A narrow focus on securing a privileged place within the existing legal framework prevents us from challenging the framework itself; the oppression sweepstakes ignores the possibility that liberation is not a zero-sum game.<sup>n191</sup> And like an unremitting focus on past injury in therapeutic discourse, the remedial paradigm endorsed by the Supreme Court in anti-discrimination law and furthered by various reparations movements has its dangers. It is important to acknowledge past injury; yet true remediation is impossible, both politically and symbolically. No amount of money distributed to present-day African Americans can undo the loss of forty acres and a mule at the end of the [\*1644] Civil War. Present-day Indian nations will never be given all of their land back, and even if they were, no land transfer could undo the genocide and the spirit-murder that Indian conquest wrought. The search for remediation as the way to undo the wounds of the past threatens to lock whites and nonwhites into a never-ending tango of guilt, despair, and hostile denial.

The way forward, then, depends on a fragile hope: the hope for transformation, both material and spiritual. For African Americans, I think the LatCrit challenge asks us to give up the co-dependent relationship we have with whites, in which we are repaid for our oppression with white guilt and obsession. "Whites" and "blacks" love to hate one another, to dwell on one another, to seek recognition and love from one another. Transcending the black-white paradigm means letting go, to some extent, of this obsession and with it the black claim to specialness, to a special wound that demands special acknowledgment. This letting-go should not be seen as a sacrifice, however, but as an opportunity to reimagine blackness for the new century, to reimagine blackness in the context of culture, language, and nation as well as color.

At the same time, it is important not to lose sight of the need for material renewal, not just spiritual reinvigoration. Destructive racial-ethnic antagonisms and spirit-suicide occur in a context in which the gap between the rich and the poor is rapidly growing, attempts at race-conscious redistribution of social goods are rapidly being dismantled, and the possibility of broad-based mass politics dedicated to economic redistribution becomes ever more remote. As law professors, we are fond of telling and listening to stories, but there is also a time to take to the streets.

\*\*\* I write these last words back at Berkeley, my home school, where the incoming class is nearly devoid of African-American students for the first time in a generation and I am the only black professor on the faculty. Letters to the editor in the San Francisco Chronicle praise the return of "merit" and offer the reduction in black people as proof that the new colorblind society is working. In my view, LatCrit theory offers race-crits a way to imagine telling new stories and forming new alliances in pursuit of social justice. Yet I feel caught between hope and despair. As black people disappear from the universities and are herded into the prisons, will "other nonwhites" stand with us? As legal immigrants are thrown off the benefit rolls, will African Americans stand with them? As [\*1645] Sweet Honey in the Rock put it: "Will you harbor me? Will I harbor you?"



**FOOTNOTE-1:**

n1. See generally Margaret E. Montoya, *Mascaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, [17 Harv. Women's L.J. 185 \(1994\)](#) ("examining the various masks ('mascaras') used to control how people respond to us and the important role such masks play in the subordination of Outsiders").

n2. As if to remind us of who owns the law schools, not only the Harvards and Yales, but also the Boston Colleges, the hallways are lined with pictures of dead white men, glaring down disapprovingly. See Catharine Weiss & Louise Melling, *The Legal Education of Twenty Women*, [40 Stan. L. Rev. 1299, 1322-23 \(1988\)](#) (noting that "entirely absent were images of women and men of color. These surroundings kept us distrustful, reminding us that the institution that admitted us had traditionally denied entrance to women and people of color. The pictures, the furniture, the male professors - all indicated that the place had always belonged to white men."); cf. Patricia J. Williams, *The Alchemy of Race and Rights* 80-92 (1991) (describing the way in which law school examinations reinforce feelings of exclusiveness and create a hostile atmosphere).

n3. See *Making Face, Making Soul, Haciendo Caras* at xv (Gloria Anzaldua ed., 1990) [hereinafter *Making Face*] ("The masks, las mascararas, we are compelled to wear [as women of color], drive a wedge between our intersubjective personhood and the persona we present to the world."); Montoya, *supra* note 1, at 218 (describing putting on her public mask).

n4. See Williams, *supra* note 2, at 44-51 (relating a story of not fitting the appropriate image of who should be let into a Benetton store in New York).

n5. See Noell Bissere Moreau, *Education, Ideology, and Class/Sex Identity*, in *Language and Power* 59 (Cheris Kramarae et al. eds., 1984) ("Language is the medium through which the dominant and the dominated consciously and unconsciously perceive and interpret their social roles.").

n6. See Christopher David Ruiz Cameron, *How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules As The Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, [85 Calif. L. Rev. 1347 \(1997\)](#), [10 La Raza L.J. 261 \(1997\)](#); Robert Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, [85 Calif. L. Rev. 1395 \(1997\)](#), [10 La Raza L.J. 309 \(1997\)](#); Kevin R. Johnson, *"Melting Pot" or "Ring of Fire?": Assimilation and the Mexican-American Experience*, [85 Calif. L. Rev. 1259 \(1997\)](#), [10 La Raza L.J. 173 \(1997\)](#); Juan Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, [85 Calif. L. Rev. 1213 \(1997\)](#), [10 La Raza L.J. 127 \(1997\)](#); Daria Roithmayr, *Deconstructing the Distinction Between Merit and Bias*, [85 Calif. L. Rev. 1449 \(1997\)](#), [10 La Raza L.J. 363 \(1997\)](#).

n7. See, e.g., Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, [10 Berkeley Women's L.J. 16, 22 \(1995\)](#) (describing how the issue of race pervaded every aspect of her life as a Black, Cuban and Italian woman the author notes: "My race and my skin color have been issues that have preoccupied me for a good part of my life, I see little prospect of this changing soon."); see also Robert Staples, *Introduction to Black Sociology* 250 (1976) ("Being Black or White affects every element of individual existence, including access to jobs, education, housing, food, and even life or death.").

n8. How can I, a Latina, know what it means to be African American? "It is utterly exhausting being black in America... While many minority groups and women feel similar stress, there is no respite or escape from your badge of color." Marian Wright Edelman, *The Measure of Our Success* 23 (1992). How can Angela understand my continual struggle to regain my ability to speak Spanish? My clumsy Spanish, singing in my memory, fumbling out of my mouth, makes me feel an outsider in my own community, often in my own family. How can she know the conflict, my desire to simultaneously embrace and reject my father for his difficult choice not to keep us Spanish-speaking? As we became school age, his fear that his children would endure the cruelty and bias he suffered for being a Spanish speaker overpowered his longing for his children to be able to speak with his own mother. See Leslie G. Espinoza, *Multi-Identity: Community and Culture*, 2 Va. J. Soc. Pol'y & L. 23, 26-27 (1994). Will our differences drive us apart, create a suspicion that will keep us from working together? From being friends?

n9. See Michael Omi & Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s* at 59 (1994) ("One of the first things we notice about people when we meet them (along with their sex) is their race. We utilize race to provide clues about who a person is....Our ability to interpret racial meanings depends on preconceived notions of a racialized social structure. Comments such as, 'Funny, you don't look black,' betray an underlying image of what black should be."); Richard H. Ropers & Dan J. Pence, *American Prejudice* 32 (1995) ("When we asked over 200 people this very question [how do we define race], more than 60 percent defined race in terms of physical appearance, which was usually specified as skin color. Perhaps the most descriptive comment was 'Races are to humans what breeds are to dogs. We all have the same parts but look different.'"). See generally Judy Scales-Trent, *Notes of a White Black Woman* (1995).

n10. See Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, [39 Stan. L. Rev. 317, 318 \(1987\)](#) ("We were all victims of our culture's racism. We had all grown up on Little Black Sambo and Amos and Andy.").

n11. Appearances affect everything from whether a cab will stop, see Cornel West, *Race Matters* at x (1993) (describing how difficult it is for a black man to hail a cab), to whether you will be told a particular joke while sitting at a bar. See Johnson, [85 Calif. L. Rev. at 1262-63, 10 La Raza L.J. at 176-77](#); see also Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, [1991 Duke L.J. 365, 393](#) ("Judgments about aesthetics do not exist apart from judgments about the social, political, and economic order of a society.").

n12. See, e.g., W.E.B. DuBois, *The Souls of Black Folks* 1-12 (Johnson Reprint Corp. 1968) (1903); Ralph Ellison, *Invisible Man* 3-14 (Modern Library Ed. 1992) (1947). See also the discussion of W.E.B. DuBois' concept of double consciousness by Professor Matsuda in Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 Harv. C.R.-C.L. L. Rev. 323, 333 (1987).

n13. See Audre Lorde, *Sister Outsider* 110-11 (1984) ("What does it mean when the tools of a racist patriarchy are used to examine the fruits of that same patriarchy? It means that only the most narrow perimeters of change are possible and allowable.").

n14. The dual consciousness I am exploring stems, but is different, from DuBois' double consciousness, at least in emphasis. As people of color, we have double consciousness. I argue that our role as academics and scholars further fractures our consciousness, or at the very least widens the gap. We see ourselves as people of color and see ourselves as players, or hope-to-be-players, in the power system of the dominant culture. Cf. Alex M. Johnson, Jr., *The New Voice of Color*, [100 Yale L.J. 2007 \(1991\)](#) (noting the use by communities of color of majoritarian languages, while retaining their other "dialects").

n15. See Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 *Women's Rts. L. Rep.* 7 (1989) (urging the development and use of "multiple consciousness" in thinking about lawyering practice and theory). See generally Gerald P. Lopez, *Rebellious Lawyering* (1992) (discussing the author's vision of a progressive law practice).

n16. See Charles R. Lawrence, *The Word and the River: Pedagogy As Scholarship As Struggle in Critical Race Theory* 336, 343 (Kimberle W. Crenshaw et al. eds., 1995).

Translation of the colonizer's canon spreads its hegemonic message to ears and minds that it might not otherwise have reached. I experience a strong sense of ambivalence as I help black law students to understand and work with legal doctrine. As they become fluent in this new language, I watch them internalize its assumptions and accept its descriptions and meanings. I see them lose fluency in first and second languages of understanding that they brought with them to law school. I also watch myself struggle to maintain some fluency in languages that are expressive of liberating themes. This is particularly difficult when one is submerged in an institutional and professional culture where neither these languages nor the themes they express are valued or rewarded.

Id.

n17. See, e.g., Richard Delgado, *Mindset and Metaphor*, [103 Harv. L. Rev. 1872 \(1990\)](#); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, [87 Mich. L. Rev. 2411 \(1989\)](#) [hereinafter Delgado, *Storytelling*].

n18. See, e.g., Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, [45 Stan. L. Rev. 807 \(1993\)](#) (critiquing narrative scholarship as used by outsider scholars). There are numerous responses. See, e.g., Jerome McCristal Culp, Jr., *Water Buffalo and Diversity: Naming Names and Reclaiming the Racial Discourse*, [26 Conn. L. Rev. 209 \(1993\)](#); Richard Delgado, *On Telling Stories in School, A Reply to Farber & Sherry*, [46 Vand. L. Rev. 665 \(1993\)](#); Alex M. Johnson, Jr., *Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship*, [79 Iowa L. Rev. 803 \(1994\)](#); Eleanor Marie Brown, *Note, The Tower of Babel: Bridging the Divide Between Critical Race Theory and "Mainstream" Civil Rights Scholarship*, [105 Yale L.J. 513 \(1995\)](#) (critiquing the "undermining" of "merit" standards by outsider scholars). For another example of Farber and Sherry's work, see Daniel A. Farber and Suzanna Sherry, *Is the Radical Critique of Merit Anti-Semitic?*, [83 Calif. L. Rev. 853 \(1995\)](#), for which there will be responses, including Professor Roithmayr's response in this Symposium. See [85 Calif. L. Rev. at 1449](#), [10 La Raza L.J. at 363](#). Richard Delgado's groundbreaking article, *Richard Delgado, The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, [132 U. Pa. L. Rev. 561 \(1984\)](#), critiques mainstream scholars for ignoring minority scholars and posits that majority scholars' views construct a distorted understanding of civil rights history and of appropriate legal remedies. Delgado demonstrates that the result of dominant discourse scholarship fashioning remedies for race discrimination has been a reordering of remedies and of the fundamental understanding of what gives rise to current inequality. Rather than recognizing the history of racial terror and de jure discrimination, with the concomitant need and justification for reparations, dominant discourse civil rights scholars developed a "diversity" concept for racial equality. Conceptually, such a remedy focuses on the need for the dominant society to be exposed to the piquante, that is "minority" folks - and, of course, for the minorities to be given "opportunity" but no guarantee of equality.

n19. Outsider is a term adopted by Professor Mari Matsuda to designate persons of color, feminists, gays, lesbians and members of other oppressed groups. See Mari Matsuda, Public Responses to Racist Speech: Considering the Victim's Story, [87 Mich. L. Rev. 2320, 2323 n.15 \(1989\)](#). In support of this alternative terminology, Matsuda explains that the term "minority" is a misnomer because of the large number of persons in excluded groups. See *id.* Professor Matsuda also discusses the importance of recognizing outsider perspectives to various legal issues. See Mari Matsuda, Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground, 11 Harv. Women's L.J. 1, 2 (1988) (discussing the need to include outsider perceptions in order to combat racist preconceptions); see also Delgado, Storytelling, *supra* note 17, at 2412 (describing outsiders as "groups whose marginality defines the boundaries of the mainstream, whose voice and perspective - whose consciousness - has been suppressed, devalued, and abnormalized").

n20. See, e.g., Critical Race Theory (Richard Delgado ed., 1995); Readings in Race and Law (Alex Johnson ed., 1994).

n21. See Delgado, Storytelling, *supra* note 17, at 2411 (describing how the dominant discourse perpetuates and protects the status quo); see also Martha Minow, The Supreme Court 1986 Term - Foreword: Justice Engendered, [101 Harv. L. Rev. 10, 13-15 \(1987\)](#) (describing how conscious recognition of viewpoint does not happen in the traditional academic/legal world since most scholars and judges, being both white and male, share the same unspoken perspective of self).

n22. See Perea, [85 Calif. L. Rev. at 1219, 10 La Raza L.J. at 133](#), *passim*; see also Charles R. Lawrence III, Foreword: Race, Multiculturalism, and the Jurisprudence of Transformation, [47 Stan. L. Rev. 819 \(1995\)](#); Rachel F. Moran, Foreword - Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond, 8 La Raza L.J. 1, 12 (1995); Juan F. Perea, Ethnicity and the Constitution: Beyond the Black and White Binary Constitution, [36 Wm. & Mary L. Rev. 571 \(1995\)](#); Deborah Ramirez, Multicultural Empowerment: It's Not Just Black and White Anymore, [47 Stan. L. Rev. 957 \(1995\)](#); William R. Tamayo, When the "Coloreds" are Neither Black nor Citizens: The United States Civil Rights Movement and Global Migration, [2 Asian L.J. 1 \(1995\)](#); Frank H. Wu, Neither Black nor White: Asian Americans and Affirmative Action, 15 B.C. Third World L.J. 225 (1995).

n23. See Delgado, Storytelling, *supra* note 17, at 2417.

n24. See T. Alexander Aleinikoff, A Case for Race-Consciousness, [91 Colum. L. Rev. 1060 \(1991\)](#) (discussing how colorblindness perpetuates racism, and arguing for color-consciousness); Jerome McCristal Culp, Jr., Colorblind Remedies and the Intersectionality of Oppression: Policy Arguments Masquerading as Moral Claims, [69 N.Y.U. L. Rev. 162 \(1994\)](#) (arguing that a colorblind principle is not a moral requirement, but rather a policy argument resting on invalid assumptions); Neil Gotanda, A Critique of "Our Constitution is Color-Blind," [44 Stan. L. Rev. 1 \(1991\)](#) (asserting that a color-blind interpretation of the Constitution legitimates, and thereby maintains, the social, economic, and political advantages that whites hold over other Americans).

n25. For a prominent example of this mindset, see [Adarand Constructors v. Peña, 515 U.S. 200, 239 \(1995\)](#) (Scalia, J., concurring in part) ("To pursue the concept of racial entitlement - even for the most admirable and benign of purposes - is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of government, we are just one race here. It is American.").

n26. See Derrick Bell, Faces at the Bottom of the Well 2-3 (1992).

n27. See Barbara Flagg, "Was Blind, But Now I See": White Race Consciousness and the Requirement of Discriminatory Intent, [91 Mich. L. Rev. 953, 970 \(1993\)](#) ("Whites rely on primarily white referents in formulating the norms and expectations that become criteria of decision for white decisionmakers... It's [therefore] unlikely that white decisionmakers do not similarly misidentify as race-neutral personal characteristics, traits, and behaviors that are in fact closely associated with whiteness."). For a discussion of the power of white privilege, see Ruth Frankenberg, *White Women, Race Matters* (1993); Stephanie M. Wildman, *Privilege Revealed* (1996); Cheryl I. Harris, Whiteness as Property, [106 Harv. L. Rev. 1707 \(1993\)](#).

n28. See Gotanda, *supra* note 24, at 18. This is a denial of the fundamental way that cognition works. One has to assume the nonexistence of unconscious racism and the ability to mask conscious racism. See Peggy C. Davis, Law as Microaggression, [98 Yale L.J. 1559, 1560 \(1989\)](#) ("The claim of pervasive, unconscious racism is easily devalued. The charge has come to be seen as egregious defamation and to carry an aura of irresponsibility. Nonetheless, the claim is well founded.").

n29. This assimilation is really acceptance of the system, that is, becoming a willing participant in a hierarchical system in return for the small benefits meted out to you.

Instead of race, ethnicity is the term used by academic scholars today to codify the conventional belief in the virtue of assimilation, the gradual homogenizing of diverse groups predicated on value consensus ("the American Creed") and the norms of social integration. In this sense, "Americanization" virtually means cultural and psychological suicide for peoples of color.

E. San Juan, Jr., *Racial Formations/Critical Transformations* 6 (1992).

n30. See Chang & Aoki, [85 Calif. L. Rev. at 1414, 10 La Raza L.J. at 328](#) ("The early Chinatowns, which were used to demonstrate the unwillingness of the Chinese to assimilate, were often the result of residential segregation.").

n31. See Catharine A. MacKinnon, *Feminism Unmodified* 45 (1987) ("Take your foot off our necks, then we will hear in what tongue women speak.").

n32. The use of the term "American" is deliberate. It is ironic that the dominant culture of the United States is overinclusive in designating its citizens as "Americans." Given the history of anti-immigrant sentiment and action, it is clear that this designation was not a sweeping camaraderie with all the peoples of that America. See Reginald Horsman, *Race and Manifest Destiny, The Origins of American Racial Anglo-Saxonism* (1981) (claiming that entitlement to the name "American" was making explicit the implicit imperialist presumption that manifest destiny designated the whole of the Western Hemisphere quite rightly to the Anglo-Saxon assimilationist imperative of United States culture).

n33. I use the word "race" rather than "ethnicity" to designate Latino/as. See generally Luis Angel Toro, "A People Distinct From Others": Race and Identity in Federal Indian Law and the Hispanic Classification in OMB Directive No. 15, [26 Tex. Tech L. Rev. 1219 \(1995\)](#) (noting that Latino/as are generally racialized in the context of United States society as Latino/as, but that in reality Latino/as are comprised of a mix of Spanish, Amerindian and African). I use this terminology intentionally. Ethnicity discourse has developed to eradicate the power differential implied in the use of the term race.

Race, not ethnicity, articulates with class and gender to generate the effects of power in all its multiple protean forms. Ethnicity theory eludes power relations, conjuring an illusory state of parity among bargaining agents. It serves chiefly to underwrite a functionalist mode of sanctioning a given social order. It tends to legitimize a pluralist but hierarchical status quo.

San Juan, Jr., *supra* note 29, at 5.

n34. See Pink Floyd, *Another Brick in the Wall*, on *The Wall* (Columbia Records 1979).

n35. See Perea, [85 Calif. L. Rev. at 1214-15](#), [10 La Raza L.J. at 128-29](#).

n36. See Jimmie Durham, *Cowboys and...: Notes on Art, Literature, and American Indians in the Modern American Mind*, in *The State of Native America* 423, 427 (M. Annette Jaimes ed., 1992).

The master narrative of the U.S. proclaims there were no Indians in this country, only wilderness, "vacant land."...Then, that the Indians all died, unfortunately. Then, that the Indians of today are (1) basically happy with their situation, and (2) in any event, no longer "real" Indians. Then, most importantly, it is held that this is the "complete" story. Nothing contrary can be heard.

*Id.* On the appropriation of Indian ceremonial objects, names, spiritual concepts, and stories by white writers and poets, see Wendy Rose, *The Great Pretenders: Further Reflections on Whitemaniamism*, in *The State of Native America* *supra*, at 403, 403-18.

n37. On the legal and social treatment of Asian Americans as "foreigners," see Ronald Takaki, *Strangers from a Different Shore* (1989). On the transformation of Mexicans living in the Southwest from land-holding citizens to dispossessed "foreigners" and wage workers after the Mexican-American war shifted the border and whites appropriated land from Mexican Americans in the wake of the Treaty of Guadalupe Hidalgo, see Rodolfo Acuña, *Occupied America* (1988); *Foreigners in Their Native Land* (David J. Weber ed., 1973).

n38. See Chang & Aoki, [85 Calif. L. Rev. at 1396-97](#), [10 La Raza L.J. at 310-11](#).

n39. Cf. Ralph Ellison, *What America Would Be Like Without Blacks*, in *Going to the Territory* 111 (1986) ("Something indisputably American about Negroes not only raised doubts about the white man's value system but aroused the troubling suspicion that whatever else the true American is, he is also somehow black."); Albert Murray, *The Omni-Americans* (1970) (arguing that American culture is "incontestably mulatto").

n40. For example, in a fascinating historical study, David Roediger argues that, before the Civil War, "chattel slavery provided white workers with a touchstone against which to weigh their fears and a yardstick to measure their reassurance," while after the war white workers organized on racial terms to combat the prospect of job competition with the newly freed slaves. In the process, the working class struggle for decent wages and even the concept of "free labor" itself became identified with whiteness. David Roediger, *The Wages of Whiteness* 66, 172 (1991). Drawing on the work of Frantz Fanon, Priscilla Wald argues that the "uncanny" existence of human beings officially excluded from personhood - African Americans and Indians, but particularly African Americans - ultimately called into question white Americans' sense of their own legal and social self-ownership. See Priscilla Wald, *Constituting Americans* 44 (1995).



n41. On the rhetorical oppositions, partly inherited from the English, that associated whiteness with beauty and blackness with ugliness, see Winthrop Jordan, *White Over Black* (1968).

n42. For a history of minstrelsy, see Eric Lott, *Love and Theft* (1993). Much of what can be considered "Americana" draws on white-created images of blackness. Consider, for example, the Uncle Remus stories themselves, as well as stories like Little Black Sambo, on which many white children as well as black were raised. Consider, as well, Stephen Foster songs like "Old Black Joe," "Dixie," and "My Old Kentucky Home," all of which draw on images of slavery to create an atmosphere of fond nostalgia. A recent article in the *New York Times* pointed out that even the University of Mississippi, long a bastion of white supremacy, relies on images of blackness: its nickname, "Ole Miss," "was derived from a phrase used by slaves to refer to a plantation's mistress." Kevin Sack, *Old South's Symbols Stir a Campus*, *N.Y. Times*, Mar. 11, 1997, at A14.

Thirty-five years ago, James H. Meredith integrated Ole Miss. Now, the university's black students are deeply offended by the state-supported institution's continued use of the symbols, including the Confederate battle flag, the song "Dixie," the nickname Rebels, the white-whiskered mascot known as Colonel Reb, streets named Confederate Drive and Rebel Drive, and even the name Ole Miss itself.

Id.

n43. Toni Morrison, *Playing in the Dark* 47-48 (1992).

n44. Ralph Ellison, *Shadow and Act* 29 (1964). Ellison argues elsewhere that:

It is practically impossible for the white American to think of sex, of economics, his children or womenfolk, or of sweeping socio-political changes, without summoning into consciousness fear-flecked images of black men. Indeed, it seems that the Negro has become identified with those unpleasant aspects of conscience and consciousness which it is part of the American's character to avoid.

Id. at 100. Ellison goes on to argue that the avoidance of these unpleasant thoughts has led to an anemic national literature: "literary offspring without hearts, without brains, viscera or vision, and some even without genitalia." Id. at 101.

n45. For an argument that the birth of white rock 'n' roll represented the death of black rhythm 'n' blues as a result of racist and capitalist appropriation, see Nelson George, *The Death of Rhythm 'n' Blues* (1988).

n46. See William Upski Wimsatt, *Wigger: Confessions of a White Wannabe*, *Chicago Reader*, July 8, 1994, at 1. The embrace of black culture by white kids is sometimes met with violent reprisals. In the spring of 1994, Noel Ignatiev and John Garvey reported that several female students at a junior-senior high school near Morocco, Indiana, had recently begun to braid their hair in dreadlocks and wear baggy jeans and combat boots in hip-hop style, calling themselves the "Free To Be Me" group. See Editorial, *Free To Be Me*, 3 *Race Traitor* 33 (1994).

Whites in the town accuse the group of "acting black," and male students have reacted by calling them names, spitting at them, punching and pushing them into lockers, and threatening them with further violence. Since mid-November there have been death threats, a bomb scare,

and a Ku Klux Klan rally at the [overwhelmingly white] school. "This is a white community," said one sixteen-year-old male student. "If they don't want to be white, they should leave."

Id.

n47. See *Do the Right Thing* (Universal Pictures 1989).

n48. For a subtle and complex reading of the race, gender, sexual, and class codes worked out in such movies, see Fred Pfeil, *From Pillar to Postmodern: Race, Class, and Gender in the Male Rampage Film*, in *White Guys* 1, 1-33 (1995).

n49. Phil Rubio argues that the figure of the "exceptional white" who is able to mingle freely and on equal terms with black people represents antiracist liberation: "White cultural assimilation is not the same thing as political defection from the white race, but it is already a form of political awareness." Phil Rubio, *Crossover Dreams: The 'Exceptional White' in Popular Culture*, in *Race Traitor* 149, 161 (John Garvey & Noel Ignatiev eds., 1996).

n50. See, e.g., [The Slaughter-House Cases, 83 U.S. \(16 Wall.\) 36, 71-72 \(1873\)](#).

n51. On the relationship between black protest and the legislative innovations of the Second Reconstruction, see Manning Marable, *Race, Reform, and Rebellion* (2d ed. 1991).

n52. See Celeste Michelle Condit & John Louis Lucaites, *Crafting Equality* (1993).

n53. For a remarkable account of how white and black people have reacted to the author, an African-American woman who "looks white," see Adrien Piper, *Passing for White, Passing for Black*, 58 *Transition* 4 (1992); see also Scales-Trent, *supra* note 9. Noel Ignatiev suggests that white people should respond to anti-black slurs with the remark, "Oh, you probably said that because you think I'm white. That's a mistake people often make because I look white." Noel Ignatiev, *How to Be a Race Traitor: Six Ways to Fight Being White*, *Utne Reader*, Nov./Dec. 1994, at 85.

n54. For a discussion of this phenomenon, see Calvin C. Hernton, *Sex and Racism in America* (1965).

n55. Iris Marion Young argues, for instance, that "the experience of racial oppression entails in part existing as a group defined as having ugly bodies, and being feared, avoided, or hated on that account." Iris Marion Young, *Justice and the Politics of Difference* 123 (1990). Young explains:

Much of the oppressive experience of cultural imperialism occurs in mundane contexts of interaction - in the gestures, speech, tone of voice, movement, and reactions of others... Pulses of attraction and aversion modulate all interactions, with specific consequences for the experience of the body. When the dominant culture defines some groups as different, as the Other, the members of those groups are imprisoned in their bodies.

Id.

n56. For an examination of this process and its life-and safety-threatening consequences for black men, see Jody D. Armour, *Race Ipsa Loquitur: Of Reasonable Racists, Intelligent Bayesians, and Involuntary Negrophobes*, [46 \*Stan. L. Rev.\* 781 \(1994\)](#).

n57. It is telling in this respect that, throughout the period of formal race science, "Negroes" were consistently considered lower on the totem pole of "civilization" than "Asiatics," native peoples, and other "nonwhites." Although different theorists held different views about the



composition of racial groups and how they were to be classified, European "whites" were typically placed at the top and African "blacks" at the bottom. See Nancy Stepan, *The Idea of Race in Science* 8-9, 14-15 (1982) (describing the traditional "chain of being" as beginning with Europeans at the top and moving gradually down to the Negro, who was placed next to the great apes).

n58. Frantz Fanon's account of inadvertently frightening a small white child and in the process realizing that he is viewed as frightening and loathsome is one of the most powerful moments in the literature of anti-racism.

My body was given back to me sprawled out, distorted, recolored, clad in mourning on that white winter day. The Negro is ugly, the Negro is animal, the Negro is bad, the Negro is mean, the Negro is ugly; look, a nigger, it's cold, the nigger is shivering, because he is cold, the little boy is trembling because he is afraid of the nigger, the nigger is shivering with cold, that cold goes through your bones, the handsome little boy is trembling because he thinks that the nigger is quivering with rage, the little white boy throws himself into his mother's arms; Momma, the nigger's going to eat me up...

I sit down at the fire and I become aware of my uniform. I had not seen it. It is indeed ugly. I stop there, for who can tell me what beauty is?

Frantz Fanon, *Black Skin, White Masks* 114 (1967).

n59. As Morrison explains:

If there were no black people here in this country, it would have been Balkanized. The immigrants would have torn each other's throats out, as they have done everywhere else. But in becoming an American, from Europe, what one has in common with that other immigrant is contempt for me - it's nothing else but color. Wherever they were from, they would stand together. They could all say, "I am not that." So in that sense, becoming an American is based on an attitude: an exclusion of me.

It wasn't negative to them - it was unifying. When they got off the boat, the second word they learned was "nigger." Ask them - I grew up with them. I remember in the fifth grade a smart little boy who had just arrived and didn't speak any English. He sat next to me. I read well, and I taught him to read just by doing it. I remember the moment he found out that I was black - a nigger. It took him six months; he was told. And that's the moment when he belonged, that was his entrance. Every immigrant knew he would not come as the very bottom. He had to come above at least one group - and that was us.

Bonnie Angelo, *The Pain of Being Black*, *Time*, May 22, 1989, at 120; see also Bell, *supra* note 26, at 155-56 (quoting Morrison, and noting that Andrew Hacker and Ralph Ellison have made the same argument).

n60. See Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other-isms)*, [1991 Duke L.J. 397, 402](#). As Grillo and Wildman observe:

So strong is this expectation of holding center-stage that even when a time and place are specifically designated for members of a non-privileged group to be central, members of the dominant group will often attempt to take back the pivotal focus. They are stealing the center - usually with a complete lack of self-consciousness.

*Id.* (citations omitted).

n61. See Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, [3 UCLA Asian Pac. Am. L.J. 33, 59 \(1995\)](#). Borrowing these concepts from Michael Omi and Jeff Chang, Yamamoto argues that they are significant for two reasons:

First, an acknowledgement of differential power within and among racial groups, however unstable and shifting, is also an acknowledgement of some degree of group agency and responsibility. It raises the questions similar to those raised by postcolonial theory: To what extent do groups in a given situation have power over each other? And what ethical responsibilities attend the exercise of that power? Second, situational or differential racial group power analyses historicize and localize inquiry into contemporary group relations in ways that postcolonial theory does not.

[Id. at 62.](#)

n62. See, e.g., Montoya, *supra* note 1.

n63. See, e.g., Melissa Harrison & Margaret E. Montoya, *Voices/Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, 6 *Colum. J. Gender & L.* 389, 411-412 (1996).

n64. See Joel Chandler Harris, *The Complete Tales of Uncle Remus 1* (Houghton Mifflin 1955). The Uncle Remus stories themselves demonstrate the complicated working of racism. The stories are so obviously racist. They are the slave owner's reality in setting the stage:

One evening recently, the lady who Uncle Remus calls "Miss Sally" missed her little seven-year-old boy. Making search for him through the house and through the yard, she heard the sound of voices in the old man's cabin, and, looking through the window, saw the child sitting by Uncle Remus. His head rested against the old man's arm, and he was gazing with an expression of the most intense interest into the rough, weather-beaten face, that beamed so kindly upon him. This is what "Miss Sally" heard...

*Id.* at 3. Uncle Remus speaks, in contrast to the narrator, in the "negro" English of the plantation slave. The stories, however, have a depth and double entendre. They are classic animal tales of the folktale variety. The main character, Brer Rabbit, has a series of adventures with a cast of many other animal personalities. Brer Fox is always trying to capture Brer Rabbit and make a nice meal of him. Brer Rabbit always seems to make his escape. Joel Chandler Harris interpreted the tales as a symbol of how black people responded to slavery, writing: "the negro [sic] selects as his hero the weakest and most harmless of all animals and brings him out victorious." Julius Lester, *More Tales of Uncle Remus* at viii (1988) (quoting Harris and

arguing that the tales would more appropriately be interpreted as classic folktales and not narrowly as slave tales, which is the most common interpretation); see also Americo Paredes, *Uncle Remus Con Chile* (1993) (collecting radical folk stories of Mexican Americans).

n65. The story of the Tar-Baby is a multi-layered fable of deception, the futility of power and unexplainable survival. "'Didn't the fox never catch the rabbit, Uncle Remus?' asked the little boy the next evening. 'He come mighty nigh it, honey, sho's you born - Brer Fox did....'" Harris, *supra* note 64, at 6.

Uncle Remus then describes how the crafty Brer Fox "got 'im some tar, en mix it wid some turkentime, en fix up a contrapshun w'at he call a Tar-Baby...." *Id.* Brer Fox then puts the Tar-Baby in the road; Brer Fox crawls off to the bushes, hiding himself and waiting to see what will transpire. Brer Fox has not long to wait. Hippity-hoppity, along comes Brer Rabbit, friendly as can be. "'Mawnin'!' sez Brer Rabbit, sezee - 'nice wedder dis mawnin',' sezee. Tar-Baby ain't sayin' nothin', en Brer Fox, he lay low.'" *Id.* at 7.

Brer Rabbit greets the Tar-Baby again. Still there is no response. This is most unfriendly. Brer Rabbit asks, "Is you deaf?" He is getting agitated and offers to "holler louder." The Tar-Baby lies still. Now Brer Rabbit is quite peeved: "You er stuck up, dat's w'at you is...." He carries on about how "'I'm gwine ter larn you how ter talk ter 'spectubble folks ef hit's de las' ack....'" *Id.*

Silent is the Tar-Baby. True to his threat, Brer Rabbit hauls off and punches the Tar-Baby. Still there is no sound. But now, Brer Rabbit's fist is stuck: "Ef you don't lemme loose, I'll knock you agin...." *Id.* And so it goes, Brer Rabbit now has both arms stuck, and the Tar-Baby is unrelenting. So Brer Rabbit threatens to kick him good. And he kicks the Tar-Baby, first with one foot, then with the other. Still, there is no capitulation. So Brer Rabbit butts the Tar-Baby with his head. Brer Rabbit is totally stuck and howling. Now, out waltzes Brer Fox, laughing so hard he is holding his sides.

"'I speck you'll take dinner wid me dis time....'" says the Fox. *Id.* at 8. Here Uncle Remus stops the story. The little boy wants to know if the Fox ate the Rabbit. "'Dat's all de fur de tale goes,' replied the old man. 'He mought, en den agin he moughtent.'" *Id.* Like the little boy, we are left to wonder at what miracle freed the rabbit.

n66. See *id.* at 12-13. Here, Brer Fox catches Brer Rabbit. Brer Fox is mad at him and promises to do the Rabbit in. Brer Rabbit is usually brash and taunting of Brer Fox, but not this time. "'Den Brer Rabbit talk mighty 'umble. 'I don't keer w'at you do wid me, Brer Fox,' sezee, 'so you don't fling me in dat brier-patch. Roas' me, Brer Fox,' sezee, 'but don't fling me in dat brier-patch,' sezee.'" *Id.* at 13.

Brer Rabbit goes on to say how he would prefer hanging, drowning, skinning - anything but the brier-patch - that dreaded field of thorns and tangled bramble. Of course, Brer Fox, "wanter hurt Brer Rabbit bad es he kin, so he cotch 'im by de behime legs en slung 'im right in de middle er de brier-patch." *Id.* After considerable commotion, Brer Fox sees Brer Rabbit at the top of the hill, on the other side of the brier-patch, sitting comfortably. Brer Rabbit "holler out: 'Bred en bawn in a brier-patch, Brer Fox - bred and bawn in a brier-patch!' en wid dat he skip out des ez lively ez a cricket in de embers." *Id.* at 14.

n67. See Ropers & Pence, *supra* note 9, at 32 (noting that for a sizable portion of the American public, the perception and definition of race is common sense or taken for granted). Professor Gotanda explains:

American racial classifications follow two formal rules: 1) Rule of recognition: Any person whose Black-African ancestry is visible is Black. 2) Rule of descent: (a) Any person with a known trace of African ancestry is Black, notwithstanding that person's visual appearance; or, stated differently, (b) the offspring of a Black and a white is Black.

Gotanda, *supra* note 24, at 24.

n68. The operation of racism is to eliminate other identities that might alter the power structure. See Gotanda, *supra* note 24, at 25 (discussing the failure of the legal system to acknowledge intermediate, "mixed" racial categories); Sharon M. Lee, Racial Classifications in the U.S. Census: 1890-1990, 16 *Ethnic & Racial Stud.* 75 (1993) (identifying and discussing four themes in U.S. race classifications: importance of skin color, belief in "pure" race, role of census categories in creating pan-ethnic groups, and the confusing of race and ethnicity classifications).

n69. See Lee, *supra* note 68 (arguing that a belief in "pure" race is reflected in official census data). Controversy over census categories continues. See Lynn Norment, *Am I Black, White or In Between? Is There a Plot to Create a "Colored" Buffer Race in America?*, *Ebony*, Aug. 1995, at 108 (discussing politics of the push to categories, and worrying about the effort now officially to dilute Black power with mixed race classifications). Census categories are particularly galling for Latino/as. See Clarence Page, *Showing My Color; Biracial Kids Face Burden of Two Worlds*, *Houston Chron.*, Mar. 14, 1996, at 1. Most Mexicans regard themselves as "mestizo" - part Spanish and part indigenous; mixed race is almost part of the official culture in Mexico and Mexico has not asked the "race" question on its census since 1921. See *id.*

n70. For a century, scientists tried to develop biological notions of race; now science still attempts to give scientific meaning to race by attributing certain characteristics to certain racial groups. See Omi & Winant, *supra* note 9, at 63-65.

n71. See Andrew Hacker, *Two Nations* at ix (1992) ("Dividing people into races started as convenient categories. However, those divisions have taken on lives of their own, dominating our culture and consciousness, coloring passions and opinions, contouring facts and fantasies.").

n72. The politics of identity in our society erases any complexity of identity by imposing strict categories and classifying individuals by pushing them to the most oppressed category. See Espinoza, *supra* note 8, at 27; Judy Scales-Trent, *Commonalities: On Being Black and White, Different, and the Same*, 2 *Yale J.L. & Feminism* 305 (1990) (arguing that impermeable boundaries are drawn both within and between the categories of race and gender). American dominant culture has long refused to recognize the progeny of interracial sex, indeed the very term "mulatto" comes from the word mule, the sterile offspring of a horse and a donkey. See Scales-Trent, *supra* note 9, at 99-100.

n73. See Ropers & Pence, *supra* note 9, at 35-36.

The classification that was most widely accepted separated humans into three major categories: Negroid, with dark skin and woolly textured hair, located primarily in Africa south of the Sahara; Caucasoid, with light skin and straight or wavy hair, located primarily in Europe; and Mongoloid, with yellowish skin and an unique skin fold around the eyes, located mostly in Asia and North and South America...

Id. According to most social and biological scientists, then, race as a concept has little or no scientific meaning.

n74. See Jose Cuello, Essay: Latinos and Hispanics: A Primer on Terminology, *Noticias*, Mar. 1997, at 2-3 (Mass. Assoc. of Hisp. Attys., Inc. & the MAHA Found.).

"Latino" is a term adopted by groups primarily in the West and Midwest who reject "Hispanic" as a colonial imposition by the government [who started using the term in 1973]. They also argue the term "Hispanic" is so broad that it includes everyone of Hispanic heritage, including those in Latin America and Spain, thus diluting and sabotaging the focus on the struggle for equality by Latinos in the U.S.... It too has a political charge. Self-identified Latinos are more confrontational than Hispanics and feel that the struggle for equality and opportunity in America is far from over....Academicians and social activists are the biggest promoters of the term "Latino."

Id. at 3. Credit and kudos should be given to Professor Berta Esperanza Hernandez who unswervingly, indeed relentlessly, insisted in every meeting of Latino and Latina law professors that the two genders be consciously acknowledged as we named ourselves. To do otherwise would render invisible the women who comprise over half of Los Olvidados. See Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, [70 N.Y.U. L. Rev. 965 \(1995\)](#) (showing how Latinos are treated as Los Olvidados - the invisible ones). "Latino/as" is now almost universal among scholars of color. See generally Angel R. Oquendo, *Reimagining the Latino/a Race*, [12 Harv. BlackLetter J. 93, 97 \(1995\)](#) (tracing the root of Latino/a to the term "latinoamericano" which strictly refers to peoples in the Americas who were colonized by Spain, Portugal or France, and excluding those colonized by the English and the Dutch).

n75. See Ramon A. Gutierrez, *When Jesus Came, the Corn Mothers Went Away* 198-99 (1991).

The Chilean sociologist, Alejandro Lipschutz, called the racial system that developed in Spanish America a "pigmentocracy," because honor, status, and prestige were judged by skin color and phenotype. The whiter one's skin, the greater was one's claim to the honor and precedence Spaniards expected and received. The darker a person's skin, the closer one was presumed to be to the physical labor of slaves and tributary Indians, and the closer the visual association with the infamy of the conquered.

Id. Likewise, skin color and hair texture were important in the African-American community.

For example, poet and novelist Maya Angelou described how, one hundred years ago, some American churches had a pinewood slat with a fine-toothed comb hanging outside the door. People could enter the church only if their skin color was not darker than the pinewood and if they could run the comb through their hair without it snagging.

Ropers & Pence, *supra* note 9, at 32-33.

n76. See Gotanda, *supra* note 24, at 24 (noting the classification of who is black by a rule of recognition or rule of descent, for example, "one-drop" of blood, is inadequate); Calvin Trillin, *American Chronicles: Black or White*, *New Yorker*, Apr. 14, 1986, at 62 (discussing history of race-defining laws using ancestry, in context of lawsuit brought by Louisiana woman to have racial designation of "col." on birth certificate changed to "white").

n77. Culture and ethnic identity are not simply matters of choice. Individual choice is limited by social and political limits on the categories available. See Joanne Nagel, *Constructing Ethnicity: Creating and Recreating Ethnic Identity and Culture*, 41 *Soc. Probs.* 152 (1994); see also Clara E. Rodriguez, *Challenging Racial Hegemony: Puerto Ricans in the United States*, in *Race* (Steven Gregory & Roger Sanjek eds., 1994) (noting the complicated development of ethnic/race identity by Puerto Ricans, which stems from the complicated colonial history of mixing of Europeans, Amerindians and Africans).

n78. Language is more than an immigrant vestige for Chicano/as. It is also a symbol and an action of resistance to colonization. "The hallmark of resistance still was the maintenance of Spanish. That Mexicans kept their language in the U.S. territory longer than most other ethnic groups is partially due to continuous Mexican immigration but also to the resistance to Anglo domination offered in previous generations." F. Arturo Rosales, *Chicano!* 18 (1996).

n79. See Ian Haney Lopez, *The Social Construction of Race*, [29 \*Harv. C.R.-C.L. L. Rev.\* 1, 38-49 \(1994\)](#).

n80. See Omi & Winant, *supra* note 9, at 60.

[In our society,] we expect differences in skin color, or other racially coded characteristics, to explain social differences. Temperament, sexuality, intelligence, athletic ability, aesthetic preferences, and so on are presumed to be fixed and discernible from the palpable mark of race. Such diverse questions as our confidence and trust in others (for example, clerks or salespeople, media figures, neighbors), our sexual preferences and romantic images, our tastes in music, films, dance, or sports, and our very ways of talking, walking, eating, and dreaming become racially coded simply because we live in a society where racial awareness is so pervasive. Thus in ways too comprehensive even to monitor consciously, and despite periodic calls - neoconservative and otherwise - for us to ignore race and adopt "color-blind" racial attitudes, skin color "differences" continue to rationalize distinct treatment of racially identified individuals and groups.

n81. *Id.* See *id.* at 68.

Going beyond this, it is crucial to emphasize that race, class, and gender are not fixed and discrete categories, and that such "regions" are by no means autonomous. They overlap, intersect, and fuse with each other in countless ways....There are no clear boundaries between these "regions" of hegemony, so political conflicts will often invoke some or all these themes simultaneously. Hegemony is tentative, incomplete, and "messy." For example, the 1991 Hill-Thomas hearings, with their intertwined themes of race and gender inequality, and their frequent genuflections before the altar of hard work and upward mobility, managed to synthesize various race, gender, and class projects in a particularly explosive combination.

n82. *Id.* See Omi & Winant, *supra* note 9, at 66-67.

Antonio Gramsci - the Italian communist who placed this concept at the center of his life's work - understood it as the conditions necessary, in a given society, for the achievement and consolidation of rule. He argued that hegemony was always constituted by a combination of coercion and consent. Although rule can be obtained by force, it cannot be secured and maintained, especially in modern society, without the element of consent. Gramsci conceived of consent as far more than merely the legitimation of authority. In his view, consent extended

to the incorporation by the ruling group of many of the key interests of subordinated groups, often to the explicit disadvantage of the rulers themselves.

n83. *Id.* See Deborah Ramirez, Multicultural Empowerment: It's Not Just Black and White Anymore, [47 Stan. L. Rev. 957, 973 \(1995\)](#) (noting "the potential for interracial conflict whenever members of distinct racial and ethnic groups compete for access to limited remedies and benefits").

n84. Intra-group conflict is often based on economics. For example, should middle-class African Americans benefit from affirmative action in colleges? The irony is that nonimpoverished outsiders, that is, middle and upper class African Americans, are more likely to succeed. Successful African Americans might debunk the myth that people are smart by race. How much harder is it to make it through college if you have no financial support and a poor educational background? Intragroup conflict can also be based on color. See Gutierrez, *supra* note 75, at 198-99.

n85. See Bell, *supra* note 75.

n86. See Gloria Anzaldua, *Borderlands, La Frontera* at Preface (1987) (describing how psychological borderlands are "physically present wherever two or more cultures edge each other, where people of different races occupy the same territory, where under, lower, middle and upper classes touch, where the space between two individuals shrinks with intimacy"); Melissa Harrison & Margaret E. Montoya, *Voices/Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, 6 *Colum. J. Gender & L.* 1, 33 (1996).

n87. See Perea, [85 Calif. L. Rev. at 1219-21](#), [10 La Raza L.J. at 133-35](#).

n88. See [85 Calif. L. Rev. at 1221-26](#), [10 La Raza L.J. at 135-40](#).

n89. See [85 Calif. L. Rev. at 1230](#), [10 La Raza L.J. at 144](#).

n90. See [85 Calif. L. Rev. at 1220](#), [10 La Raza L.J. at 134](#).

n91. See Cameron, [85 Calif. L. Rev. at 1372](#), [10 La Raza L.J. at 286](#).

n92. See [85 Calif. L. Rev. at 1374-80](#), [10 La Raza L.J. at 288-94](#). Professor Roithmayr similarly applies the color line to the concept of merit-based selection processes. See [85 Calif. L. Rev. at 1469-82](#), [10 La Raza L.J. at 383-96](#).

n93. See Cameron, [85 Calif. L. Rev. at 1367-72](#), [10 La Raza L.J. at 281-86](#) (noting the common discourse that it is better to reserve our sympathy for the person who is treated badly due to his color or race, markers which are perceived as immutable, or beyond his ability to control).

n94. See [85 Calif. L. Rev. at 1372](#), [10 La Raza L.J. at 286](#) ("The limits of racial dualism are reflected perfectly in the notion that bilingualism can be both a blessing and a curse. Whereas a bilingual person can view the world in its complexity, in stereophonic sound, a monolingual person can view the world only in its simplicity, in monophonic sound.").

n95. See [85 Calif. L. Rev. at 1370](#), [10 La Raza L.J. at 284](#) (noting how race and sex are social constructs). I would add that it is difficult, but medically possible, to alter even the most "immutable" characteristics, such as through transsexual surgery, skin bleaching or darkening, changes to hair, etc.

n96. See Johnson, [85 Calif. L. Rev. at 1269-77](#), [10 La Raza L.J. at 183-91](#).

n97. See [85 Calif. L. Rev. at 1276-77](#), [10 La Raza L.J. at 190-91](#).

- n98. See Cameron, [85 Calif. L. Rev. at 1361-64](#), [10 La Raza L.J. at 275-78](#).
- n99. See Making Face, supra note 3, at xv ("After years of wearing masks we may become just a series of roles, the constellated self limping along with its broken limbs.").
- n100. See Perea, [85 Calif. L. Rev. at 1242-52](#), [10 La Raza L.J. at 156-67](#).
- n101. See [85 Calif. L. Rev. at 1246-47](#), [10 La Raza L.J. at 160-61](#).
- n102. See Ramirez, supra note 83, at 972-74 (describing the conflict between blacks and Latino/as over postal jobs).
- n103. See Cameron, [85 Calif. L. Rev. at 1386](#), [10 La Raza L.J. at 300](#).
- n104. See [85 Calif. L. Rev. at 1475-94](#), [10 La Raza L.J. at 389-408](#).
- n105. See [85 Calif. L. Rev. at 1490-91](#), [10 La Raza L.J. at 404-05](#).
- n106. See [85 Calif. L. Rev. at 1475-94](#), [10 La Raza L.J. at 389-408](#).
- n107. It is unclear if there is a valid relationship between test scores and law school success. There is the obvious issue that test prep courses are quick, expensive training of merit for the well-heeled. See Leslie G. Espinoza, The LSAT: Narratives and Bias, 1 Am. U. J. Gender & L. 121 (1993) (discussing test bias, unproved correlation to success, and the myth of predictive precision; also discussing test prep courses and coaching "tricks"). It is also important to remember that the LSAT only claims a correlation between test scores and first year law school performance. Any further correlation that we anecdotally might observe is tainted by the self-perpetuating nature of first year success. Law schools reward first year achievers with a plethora of advantages, including law review status, which may entail access to office space in the law school, access to outlines and course preparation material that is often part of those offices, financial support and networking as research assistants, credit for law review work, and so on. The circle of "merit" measurements is completed with standardized bar exams.
- n108. See [San Francisco NAACP v. San Francisco Unified Sch. Dist., 576 F. Supp. 34, 53 \(N.D. Cal. 1983\)](#) (integrating Lowell High School by setting a forty-five percent limit on enrollment by any one of nine designated ethnic and racial groups).
- n109. Jews and Asians do better on standardized tests than other outsiders. See Roithmayr, [85 Calif. L. Rev. at 1543](#), [10 La Raza L.J. at 367](#). It is consistent with hegemony analysis for the dominant, ruling class to allow some outsiders access, particularly in a way, as with tests, that legitimizes the admission (really, exclusion) criteria. It also drives a wedge between outsider groups. I found it interesting that law schools were opened to Jews in the 1960s. This corresponds to the time period when there was a strong coalition between Jews and blacks in the civil rights movement.
- n110. See Cameron, [85 Calif. L. Rev. at 1365](#), [10 La Raza L.J. at 279](#).
- n111. Cf. Caldwell, supra note 11, at 376-81 (discussing [Rogers v. American Airlines, Inc., 527 F. Supp. 229 \(S.D.N.Y. 1981\)](#), in which the court found no discrimination for a work rule that barred braided hair).
- n112. Cameron, [85 Calif. L. Rev. at 1356](#), [10 La Raza L.J. at 270](#).
- n113. In the early 1800s in Ireland, eight-million Irish lived on their island and most spoke Gaelic. England had colonized Ireland hundreds of years before and wanted to complete the colonization by establishing English as the only language. "The Tudors under Henry VIII and his successors undertook to pacify their turbulent Irish subjects by enforcing English law and



imposing the English language." Reg Hindley, *The Death of the Irish Language* 5 (1990). Laws were passed forbidding the use of Gaelic in government and business. See Colman L. O Huallachain, *The Irish Language in Society* 4, 6, 7 (Micheal A. O Murchu ed., 1991). Towns were renamed in English transliterations and Gaelic Irish were forced to anglicize their names in order to obtain passports. See Ed Siegel, *Fluent, Rich "Translations," Boston Globe*, Feb. 17, 1995, at 33. Until the early 1800s, the Gaelic-speaking Catholic population was denied schooling. Indeed, teaching Gaelic was punishable by death or transportation to a British penal colony. After the Catholic emancipation in the early 1800s, the only legal schools were government schools which were legally obligated to teach only in English. See O Huallachain, *supra* at 10. Another Irish historian writes that "British politicians of all persuasions discussed the Irish Question in racist terms. Disraeli and Salisbury thought the Irish were savages, as incapable of self-government as the Hottentots. Advanced Liberals like Sir Charles Dilke and Fabians Sidney and Beatrice Webb considered the Irish an inferior race." Lawrence J. McCaffrey, *Ireland* 121 (1979). The population of Ireland diminished as a result of famine and emigration. See Christine Kinealy, *A Death-Dealing Famine* 2-3 (1997). Now, of the remaining Irish, only a small percentage have working fluency in Gaelic. Similar to Mexico, emigration has become an accepted feature of life, and it is understood that English is needed to emigrate. See O Huallachain, *supra* at 9. Spanish will likely survive in Spain and Latin America, but will it be lost to Chicano/as? To Mexicans?

n114. Proposition 187 and Proposition 209. See Chang & Aoki, [85 Calif. L. Rev. at 1409-10, 10 La Raza L.J. at 323-24](#) (discussing Proposition 187 and its progeny).

n115. At her mother's funeral, Laura Munter-Orabona remembers her mother's dying words: "No lo creo. No lo creo." [I don't believe it. I don't believe it.] This memory takes the author back:

I don't know at what point I had turned from my native language. "Talk English or don't talk at all," my father had said as my brother and I passed from the warmth of mi familia's arms from the island of my birth to my father's snow-covered home. My mother had left him years earlier, me in her belly, my brother on her arm. "Talk English or don't talk at all," he said when we came to America. I stopped speaking for two years, they said. "We thought you were damaged. We were going to see doctors, then one day you said, "Bubba gum."

Maybe Dad thought he was helping. Maybe he felt threatened that we could leave him with conversation....But now standing mute at my mother's passing, Mami calling out to us in terror, calling out in her native tongue, I felt awakened in the middle of a rape. Each foreign word another thrust. "No lo creo. No lo creo." Mami, we don't know your language. My rage rising, I understood the lunatic gunning wildly through a crowd.

Laura Munter-Orabona, *On Passing, in Making Face*, *supra* note 3, at 128.

n116. For Omi and Winant, race is something "real"; it refers to group differences in power, wealth, social status, and even health that can be objectively identified and measured. At the same time, they stress that racial difference is not biological in origin but ideological. Thus, rather than speaking of race as a thing, they prefer to speak of it as a "concept which signifies and symbolizes social conflicts and interests by referring to different types of human bodies." Omi & Winant, *supra* note 9, at 55.

n117. Omi and Winant express this by noting that "from a racial formation perspective, race is a matter of both social structure and cultural representation." *Id.* at 56.

n118. Barbara Jeanne Fields, *Slavery, Race and Ideology in the United States of America*, *New Left Rev.*, May-June 1990, at 95, 117.

n119. Reva Siegel refers to this notion as "preservation through transformation." See Reva B. Siegel, "The Rule of Love": Wife Beating as Prerogative and Privacy, [105 \*Yale L.J.\* 2117, 2178-87 \(1996\)](#) (discussing preservation of patriarchy through various legal regimes); Reva B. Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, [49 \*Stan. L. Rev.\* 1111, 1119-29 \(1997\)](#) [hereinafter Siegel, *Equal Protection*] (discussing preservation of white supremacy through various legal regimes).

n120. See, e.g., [Dred Scott v. Sandford](#), [60 U.S. \(19 How.\) 393, 406 \(1856\)](#) (denying African Americans the right to political citizenship based on their designation as persons of African descent); [Johnson v. McIntosh](#), [21 U.S. \(8 Wheat.\) 543, 591-92 \(1823\)](#) (holding that, as indigenous persons outside the family of European nations, Indians did not possess "title" to land vis-a-vis Americans, but only a right of occupancy); cf. Harris, *supra* note 27 (arguing that "whiteness" became a form of "status property" after slavery and conquest).

n121. See Chang & Aoki, [85 \*Calif. L. Rev.\* at 1401](#), [10 \*La Raza L.J.\* at 315](#).

n122. See Siegel, *Equal Protection*, *supra* note 119; cf. Gotanda, *supra* note 24, at 11 (arguing that contemporary constitutional law protects a "private right to discriminate").

n123. [347 U.S. 483 \(1954\)](#).

n124. See, e.g., [Washington v. Davis](#), [426 U.S. 229 \(1976\)](#); [Richmond v. J.A. Croson, Co.](#), [488 U.S. 469 \(1989\)](#).

n125. See *supra* Part II.A.1.

n126. See Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, [83 \*Calif. L. Rev.\* 3, 12-20 \(1995\)](#).

n127. See Gotanda, *supra* note 24, at 3-5 (defining "status-race," "formal-race," "historical-race," and "culture-race").

n128. See Kimberle Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, [101 \*Harv. L. Rev.\* 1331, 1373 \(1988\)](#) (describing the use of "black" and "white" images as binary opposites).

n129. See Ian Haney Lopez, [85 \*Calif. L. Rev.\* 1143 \(1997\)](#), [10 \*La Raza L.J.\* 57 \(1997\)](#).

n130. [347 U.S. 475 \(1954\)](#).

n131. In my view, the word "racism" has suffered from both rhetorical inflation and deflation. As Robert Miles has argued, "racism" as a concept has suffered from rhetorical inflation to the extent that it is often used to describe not only "discourses (whether formal or disaggregated), but also (and more important) all actions and processes (whatever their origin or motivation) which result in one group being placed or retained in a subordinate position by another...." Robert Miles, *Racism* 52 (1989). At the same time, "racism" in popular conversation is often deflated; limited to mean only intentional and conscious bigotry. Because this inflation and deflation makes the term "racism" difficult to use, I use the term "racialism" to refer to the rhetorical system underlying white supremacy, a rhetorical system that is centered on the concept of "race" but is not limited to situations where "race" is explicitly under discussion. I

use the term "white supremacy" to refer to the material and institutional practices by which groups identified either as "white" or as not "black" gain economic, political, social and cultural power over groups identified as "nonwhite." As bell hooks notes, the term "white supremacy" permits the recognition that nonwhite people, including black people, can benefit from and work to reinforce this hierarchy. See bell hooks, *Talking Back* 113 (1989).

n132. Gould argues that nineteenth-century race scientists "began with conclusions, peered through their facts, and came back in a circle to the same conclusions." Stephen Jay Gould, *The Mismeasure of Man* 85 (1981).

n133. See Eva Saks, *Representing Miscegenation Law*, *Raritan*, Fall 1988, at 39, 40-42, 48-50.

n134. See Richard J. Herrnstein & Charles Murray, *The Bell Curve* (1994).

n135. Walter Benn Michaels, for example, argues that many contemporary arguments about "multiculturalism," on the left as well as on the right, rely on the unstated thesis that distinct groups of people inherently "possess" distinct cultures - an argument that only makes sense in biological terms. See Walter Benn Michaels, *Our America* 16 (1995).

n136. Gould, *supra* note 132, at 21. Similarly, Colette Guillaumin argues that "what is urged upon us in the form of racial (or natural) symbols is the great law of obedience to order and necessity, the law enjoined in so many different ways by oppressors upon the oppressed." Colette Guillaumin, *Racism, Sexism, Power and Ideology* 62 (1995).

n137. Gould, *supra* note 132, at 21.

n138. As Alexandra Natapoff argues:

At the heart of its arguments about race, the Court uses the image of a thoroughly multiracial America to recast whites as just another group competing with many others. By transforming whites into a victim group with the same moral and legal claims as any other minority group, the Court gives intuitive plausibility to its attack on racial set-asides, majority-minority voting districts, and affirmative action programs that burden white economic interests.

Alexandra Natapoff, *Trouble in Paradise: Equal Protection and the Dilemma of Interminority Group Conflict*, [47 \*Stan. L. Rev.\* 1059, 1062 \(1995\)](#).

n139. See Robert A. Williams, Jr., *The American Indian in Western Legal Thought* (1990).

n140. As Robert Miles writes:

The idea of "race" emerged in the English language in the early sixteenth century...and was used initially largely to explicate European history and nation formation. As it appeared in historical writing, the idea of "race" referred to those various groups which, collectively, constituted the populations of emergent nation states such as England and France, and which supposedly exhibited qualities which were subsequently transformed into national symbols.

Miles, *supra* note 131, at 31; see also Guillaumin, *supra* note 136, at 72 (arguing that the idea of race has its source not in a "static and hierarchical view of the world," but rather in "an awareness of the antagonisms and power relationships which disturb the very organization of society").

n141. Colette Guillaumin argues that the central idea of the nineteenth century was that instead of one vast Society of Man, there existed finite, bounded groups of people. She further notes

that the idea of "society" and of separate and distinct "societies" emerged at the same time that "race" was taking shape. See Guillaumin, *supra* note 136, at 72; see also David Carrithers, *The Enlightenment Science of Society*, in *Inventing Human Science* 232-70 (Christopher Fox et al. eds., 1995) (discussing the emergence in the eighteenth century of a new science of "society" along with the new science of human nature).

n142. As Etienne Balibar puts it:

Racism is a philosophy of history..., a philosophy that merges with an interpretation of history, but makes history the consequence of a "secret" hidden and revealed to men about their own nature and birth; a philosophy that reveals the invisible cause of the destiny of societies and peoples, ignorance of which accounts for degeneration or for the historical power of evil.

Etienne Balibar, *Paradoxes of Universality*, in *Anatomy of Racism* 283, 287 (David Theo Goldberg ed., 1990); see also Alexander Saxton, *The Rise and Fall of the White Republic* 14 (1990) ("Racism reaches beyond [physical differences] to assert that moral, intellectual and psychological qualities are also racially characteristic; that they are transmitted, along with physical traits, by heredity; and that these together constitute a major chain of historical causation. Racism is thus fundamentally a theory of history.").

n143. For example, George Stocking notes that Edward Tylor's arrangement of races in order of their culture placed Italians at the top, and comments:

The national specificity of Tylor's highest category is worth noting...because it most strikingly instances the ambiguity of the cultural and the biological in Tylor's scale. From our present anthropological perspective "Italian" denotes either a language or a nation; it is a cultural rather than biological category. That Tylor should have spoken of the Italian (or, for that matter, of the Tahitian) "race" no doubt reflected a more pervasive looseness in the usage of the term. But like much of that usage, it could also have an implicit biological rationale in the Lamarckian (and Spencerian) assumption of the inheritance of acquired characteristics, which...provided a mechanism by which habitual behavior became instinctive, and cultural inheritance became part of biological heredity.

George Stocking, *Victorian Anthropology* 235 (1987).

n144. [85 Calif. L. Rev. at 1414](#), [10 La Raza L.J. at 328](#).

n145. See Linda S. Bosniak, *Exclusion and Membership: The Dual Identity of the Undocumented Worker Under United States Law*, [1988 Wis. L. Rev. 955, 989](#) (noting that "immigrant workers, both legal and undocumented, have come to occupy a vital place in the labor markets...").

n146. "Non-fiction" stories are told with the intention to accurately describe events understood through memory. The postmodernist's understanding of reality includes an acknowledgement of the knower's specific position, which includes both identity (factors such as gender, race, class) and context - relation to the thing known. See Katharine T. Bartlett, *Feminist Legal Methods*, [103 Harv. L. Rev. 829, 880-81 \(1990\)](#).

n147. Most authors of fiction move between experiences they would call real and fold them into their creative, imagined story. Certainly there is not a sharp line between fiction and nonfiction, but rather a spectrum only partly based on the intention of the author.

n148. See Martha Minow, Words and the Door to the Land of Change: Law, Language, and Family Violence, [43 Vand. L. Rev. 1665, 1688 \(1990\)](#) (stating that stories "can create a bridge across gaps in experience and thereby elicit empathic understanding").

n149. See Delgado, Storytelling, *supra* note 17, at 2437 (arguing that stories are therapeutic for outsiders); see generally Minow, *supra* note 148 (arguing that stories give voice to suppressed perspectives and help build a reservoir of alternative understandings of existing practices).

n150. See Janine Roberts, Tales and Transformations 4 (1994) ("[In stories t]here is a resonance, an echoing of themes and issues, that helps us to understand that in the present we are always carrying our past as well as imagining our future. The present is the pivot point linking past and future.").

n151. See Catharine A. MacKinnon, Toward a Feminist Theory of the State 83-125 (1989) (providing a description of consciousness-raising as feminist method and of the relationship between method and politics).

n152. Antonio Gramsci understood that the power of hegemony was to rule with the consent of the oppressed. Certain limited benefits would actually be given to the oppressed. But keeping the underclass from seeing the reality of their situation was tricky.

Gramsci's treatment of hegemony went even farther: he argued that in order to consolidate their hegemony, ruling groups must elaborate and maintain a popular system of ideas and practices - through education, the media, religion, folk wisdom, etc. - which he called "common sense." It is through its production and its adherence to this "common sense," this ideology (in the broadest sense of the term), that a society gives its consent to the way in which it is ruled.

Omi & Winant, *supra* note 9, at 67. To break the grip of hegemony, the underclass must develop a new set of understandings, of myths, of tales, of stories.

n153. See Lucie E. White, Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G., 38 Buff. L. Rev. 2, 8-9 (1990) (noting how the dominant language restricts and how it has been used as an instrument of resistance: "Every word that they speak, every silence, carries the risk of subversion, of a double meaning that those in power can never fully understand.").

n154. See generally Delgado, Storytelling, *supra* note 17 (examining the use of narratives in legal discourse to challenge status quo perpetuated and protected by dominant discourse).

n155. See Judith Lewis Herman, Trauma and Recovery 175-96 (1992); Toni Ann Laidlaw et al., Healing Voices at xiv (1990) ("The healing they [feminist therapists] refer to involves an inner change made up of two parts: the identification and expression of feelings and the reframing of destructive and unhealthy beliefs."); Roberts, *supra* note 150, at 1-11.

n156. See Roberts, *supra* note 150, at 129 ("It is important to have the possibility of resonance between personal stories and cultural stories - resonance that allows people to see how their particular experience is intertwined with the political and social history of their society.").

n157. *Id.* at 130.

n158. See *id.* ("Cultural stories also have profound implications for how the past can be explained as well as the future imagined.").

n159. See *id.* at 134.

It can be very healing for people to see that the dilemmas they are caught in are not unique to their experience, but rather are embedded in larger societal problems and societal change. This can help them move out of stances of self-blame to positions that recognize how the social context affects individual lives. Sometimes this also leads to political action or advocacy work.

n160. *Id.* These individual visions also provide an opportunity to change cultural structures. See Angela P. Harris, Foreword: The Jurisprudence of Reconstruction, [82 Calif. L. Rev. 741, 764 \(1994\)](#) ("Storytelling serves to create and confirm identity, both individual and collective.").

n161. See Roberts, *supra* note 150, at 7-8 ("Therapists need to let the multitude of perspectives that clients bring be told, hold them, and then help them construct new meanings that work better for them and in their relationships with others.").

n162. See, e.g., Derrick Bell, *And We Are Not Saved* (1987).

n163. See, e.g., Alice Walker, *Possessing the Secret of Joy* (1992).

n164. Author Alan Dundes notes:

There may well be other terms that might be considered more appropriate than "folk ideas," for instance, "basic premises," "cultural axioms," or "existential postulates." The particular term is really not the point. What is important is the task of identifying the various underlying assumptions held by members of a given culture. All cultures have underlying assumptions and it is these assumptions or folk ideas which are the building blocks of worldview. Any one worldview will be based upon many individual folk ideas and if one is seriously interested in studying worldview, one will need first to describe some of the folk ideas which contribute to the formation of that worldview.

Alan Dundes, Folk Ideas as Units of Worldview, in *Toward New Perspectives in Folklore* 93, 96 (Americo Paredes & Richard Bauman eds., 1972).

n165. See, e.g., Jeffrey Rosen, *The Bloods and the Crits*, *New Republic*, Dec. 9, 1996, at 27 (criticizing the narrative scholarship of critical race scholars).

n166. See Richard Delgado, *The Coming Race War?* (1996); Richard Delgado, *The Rodrigo Chronicles* (1995).

n167. Cf. Ramon Saldivar, Introduction to *The Hammon and the Beans* at xvi (Americo Paredes ed., 1994) (noting that folktales have played a significant role in Mexican-American resistance to Anglo cultural domination).

n168. See Lester, *supra* note 64, at ix.

Among North American Indian groups similar tales [to Brer Rabbit] are found with the hero taking the form of Raven, Mink, Bluejay, Coyote, Rabbit, Hare and Spider. Among blacks of the Bahamas and West Indies the figure is known as Compe Anansi, as T Malice in Haiti, and as Reynard the Fox in Europe. Whatever name a particular culture gives to this creature, he is the Trickster, or as the Winnebago Indians called him, "the cunning one."

*Id.*; see also Angel Vigil, *The Corn Woman* 160-61 (1994) (relating a wonderful story where the Rabbit tricks the Coyote with the use of tar).

n169. See Patricia J. Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerprinting as the Law's Response to Racism*, [42 U. Miami L. Rev. 127, 128 \(1987\)](#) (describing racism as "spirit-murder").

n170. Chicanos are attached to the land that was Mexico before the Mexican-American War. However, the meaninglessness of that border has continued because of continuing immigration from what is now Mexico. In 1990, thirty-three percent of the population that self-identified as of Mexican origin was foreign born. *Chicanas/Chicanos at the Crossroads* 33 (David R. Maciel & Isidro D. Ortiz eds., 1996).

n171. See Chang & Aoki, [85 Calif. L. Rev. at 1397, 10 La Raza L.J. at 311](#).

n172. Adeno Addis comments on this phenomenon:

The image of the criminal black is one many whites are introduced to, not through individual experience, but rather through the media. Indeed, given the fact that most aspects of life such as neighborhoods and schools are still highly segregated...the only sustained contact that whites and blacks have is through the media. Therefore, the media plays an important role in the construction of a national image of the criminal (transgressing) black....It is the image of the dangerous black criminal that apparently convinced jurors in the Rodney King case that it was Officer Laurence Powell, not Rodney King, whose life was threatened in the encounter between the two. This, despite the video showing that Powell continued brutally to beat King on the head (about thirty times) after it was clear that he could have arrested him without any resistance.

Adeno Addis, *Recycling in Hell*, [67 Tul. L. Rev. 2253, 2264 \(1993\)](#). It is common for black males to be stopped by the police, not listened to and not believed. See, e.g., Jerome McCristal Culp, Jr., *Notes from California: Rodney King and the Race Question*, 70 *Denv. U. L. Rev.* 199, 201 (1993) (relating the story of a large black male student, stopped by the university police while crossing campus and arrested, despite showing his student identification card, when he became angry for being stopped); West, *supra* note 11, at x (remembering ugly racial memories of being stopped while driving and falsely accused of drug trafficking and being mocked when he said he was a professor; of being stopped three times in ten days for "driving too slowly" in a residential area of Princeton; and of his fifteen year old son having similar experiences).

n173. See, e.g., Alexander Cockburn, *All in Their Family*, *Nation*, Jul. 24-31, 1989, at 113, 114 (reporting the alarming statistic that "today more black men are in jail than in college"); Derrick Z. Jackson, *The Double Standard on Drug Crimes*, *Boston Globe*, Aug. 23, 1996, at A19 ("The result is that African-Americans, 13 percent of the drug users, make up 35 percent of the arrests, 55 percent of the convictions and 74 percent of the sentences for drug charges. African Americans and Latinos make up 90 percent of those sentenced on drug possession in state courts. Affirmative action may be out for jobs but very in for jails.").

n174. See Jack Miles, *Blacks v. Browns*, *Atlantic*, Oct. 1992, at 41, 51-54.

n175. For an argument that nonblack minorities occupy a "middleman" position in American economic and social hierarchies, see Edna Bonacich, *A Theory of Middleman Minorities*, 38 *Am. Soc. Rev.* 583 (1973).

n176. This is the likely source of African-American suspicion of mixed-race people who do not wish to identify themselves as solely black. See Norment, *supra* note 69 (discussing this phenomenon).



n177. Indeed, the federal naturalization statute was amended after the Civil War to permit persons of African descent to become naturalized citizens, even while other "nonwhite" persons were barred from naturalization.

n178. See Scales-Trent, *supra* note 9.

n179. See generally Caldwell, *supra* note 11 (demonstrating that employment discrimination against African Americans may be based on cultural practices as well as on skin color).

n180. Consider, for example, the recent "ebonics" controversy. To what extent might Christopher Cameron's analysis of the meaning of language for Latino/as have relevance to African Americans who speak Black English? Indeed, in the Ann Arbor "Black English" case, [Martin Luther King Junior Elem. Sch. Children v. Ann Arbor Sch. Dist. Bd., 473 F. Supp. 1371 \(1979\)](#), the plaintiffs, seeking better elementary education for Black English speaking children, "attempted to enlarge the scope of the laws governing education beyond matters of 'race, color, sex, or national origin' to issues involving 'cultural, social and economic differences.'" Richard W. Bailey, Education and the Law: The King Case in Ann Arbor, in *Black English and the Education of Black Children and Youth* 99 (Geneva Smitherman ed., 1981). Toward this end, the plaintiffs sought support (unsuccessfully) from cases involving Chinese-speaking children, [Lau v. Nichols, 414 U.S. 563 \(1973\)](#), Mexican-American and Yaqui Indian children, [Guadalupe v. Tempe, 587 F.2d 1022 \(1978\)](#), and Hutterite German-speaking children, [Deerfield Hutterian Ass'n v. Ipswich Bd. of Educ., 468 F. Supp. 1219 \(1979\)](#). See Bailey, *supra* at 105-07.

n181. See [Miller v. Johnson, 115 S. Ct. 2475, 2490-94 \(1995\)](#) (holding that the assumption that race creates commonalities of interest is unconstitutional racial stereotyping); [Shaw v. Reno, 509 U.S. 630, 657-58 \(1993\)](#) ("Racial classifications of any sort pose the risk of lasting harm to our society.").

n182. See Alex M. Johnson, Jr., Bid Whist, Tonk, and United States v. Fordice: Why Integrationism Fails African-Americans Again, [81 Calif. L. Rev. 1401, 1403 \(1993\)](#) ("Only by acknowledging and accommodating the reality of the unique and separate African-American culture or nomos will the process of integration ever move forward to accomplish the ideal state of integration sought by Brown and its progeny.").

n183. See Ruth Gordon, Saving Failed States: Sometimes a Neocolonialist Notion, [12 Am. U. J. Int'l L. & Pol'y 101 \(1997\)](#) (noting the present move to reinstall colonialism for certain Third World countries).

n184. The Los Angeles uprising prompted commentators to look closely at interracial tensions in Southern California. See, e.g., Lisa C. Ikemoto, Traces of the Master Narrative in the Story of African American / Korean American Conflict: How We Constructed "Los Angeles," [66 S. Cal. L. Rev. 1581 \(1993\)](#); Miles, *supra* note 75, Reginald Leamon Robinson, "The Other Against Itself:" Deconstructing the Violent Discourse Between Korean and African Americans, [67 S. Cal. L. Rev. 15 \(1993\)](#).

Signs of ignorance and mistrust among different groups racialized as "nonwhite" appear even in opinion surveys, where people might be expected to express tolerance and goodwill. An opinion survey taken in 1994 for the National Conference of Christians and Jews discovered that many "people of color" agreed with common racist stereotypes about other racialized groups. See Steven A. Holmes, Survey Finds Minorities Resent One Another Almost as Much as They Do Whites, *N.Y. Times*, Mar. 3, 1994, at B8. For instance, the survey revealed that:



46 percent of Hispanic Americans and 42 percent of blacks agreed with the statement that Asians were "unscrupulous, crafty and devious in business." At the same time, 68 percent of Asians and 49 percent of blacks said Hispanic Americans "tend to have bigger families than they are able to support." In addition, 31 percent of Asians and 26 percent of Hispanic Americans agreed with the statement that blacks "want to live on welfare."

Id. "Divide and conquer" is, of course, one of the oldest chapters in the book of oppression. The possibility of destructive interracial conflict brings to mind the old folktale of the crabs in a barrel: the man who has caught the crabs reports satisfiedly to a friend that he doesn't need a lid for the barrel, because every time one crab reaches the point of crawling out the others pull it back in.

n185. See Ramirez, *supra* note 22, at 969-77. In [De Grandy v. Wetherell](#), 815 F. Supp. 1550 (N.D. Fla. 1992), *aff'd* in part and *rev'd* in part sub nom. [Johnson v. De Grandy](#), 512 U.S. 997 (1994), a group of African Americans and a group of Latinos claimed that Florida's reapportionment plan for its congressional districts violated the Voting Rights Act of 1965, because it unlawfully diluted the strength of African Americans and Latinos in the Dade County area. The district court found that the remedies for African Americans and Latinos seemed to be mutually exclusive: creation of a majority-Latino voting district would have diluted the voting strength of African Americans, and vice versa. In the end, the court chose a remedy that admittedly violated Section 2 of the Act, yet seemed the best remedy available, referring to the problem as a "political question." See [Wetherell](#), 815 F. Supp. at 1579-82 (citing [DeBaca v. County of San Diego](#), 794 F.Supp. 990, 992-93 (S.D. Cal. 1992)).

The conflict at Lowell High School involved the admission of students to a magnet school under a desegregation decree. Under the quota system established by the decree, Chinese-American students were disadvantaged as compared to African-American and Latino students, and a group of community leaders sued the San Francisco public school system on equal protection grounds. See [San Francisco NAACP v. San Francisco Unified Sch. Dist.](#), 576 F. Supp. 34, 53 (N.D. Cal. 1983).

Finally, Ramirez reports that the U.S. Postal Service has been accused of hiring a disproportionate number of African-American workers at the expense of "Hispanics." See Ramirez, *supra* note 22, at 972-74.

n186. See Eric K. Yamamoto, Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America, [95 Mich. L. Rev.](#) 821, 855-57 (1997). Yamamoto notes that not only were the plaintiffs' complaint and briefs silent on the question of "color on color interplay"; the attorneys in the case agreed to "'protect' against public disclosure the 'racial designations' of the participants in the hiring and promotion process." [Id.](#) at 856-57.

n187. Cf. *supra* note 138 and accompanying text.

n188. Wendy Brown, *States of Injury* 73-74 (1995).

n189. Cf. Williams, *supra* note 169, at 128 (describing racism as "spirit-murder").

n190. Yamamoto, *supra* note 61, at 69.

n191. I thank Leslie for this point.