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AFTERWORD

THE RACE QUESTION IN LATCRIT THEORY AND ASIAN AMERICAN JURISPRUDENCE

Robert S. Chang* & Neil Gotanda**

ABSTRACT

In the tradition of LatCrit Afterwords, Professors Chang and Gotanda take the liberty of raising questions that extend beyond the particular themes of this LatCrit Conference and the papers published in this Symposium. They return to two issues – ethnicity versus race, and Black exceptionalism – that were raised in early LatCrit Conferences but that have since been moved to the background. They ask what Lat-Crit Theory and Asian American Jurisprudence might teach us about minority-on-minority conflict and other ethno-racial fault lines. They present an analytic model to help understand commentaries on racial conflict and coalition. This model is organized around a loose historical and theoretical progression, beginning with first-order binary analyses that focus on majority-minority relations; moving to second-order binary analyses that focus on minority-minority relations; and then to third-order multigroup analyses that examine the relationships among the majority and two or more minority groups. They then use this model to examine the comparative racialization projects in Asian American Jurisprudence. In Asian American Jurisprudence, they note that there have been explorations of both the racial and the ethnic and that in analysis of legal doctrine and legal materials, race is the dominant analytic mode. They suggest that the language of race may facilitate a comparative analysis around White supremacy that can provide a basis for coalition around a common platform of anti-racist politics. They speculate that despite the significant success LatCrit has had in fostering coalitions (within the Latina/o group and with

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Our title is drawn from a standard CRT methodology. See Jerome McCristal Culp, Jr., *Neutrality, the Race Question, and the 1991 Civil Rights Act: The "Impossibility" of Permanent Reform*, 45 RUTGERS L. REV. 965, 966-67 (1993) (discussing as method, "[h]ow does race alter the contours of legal reality?" and how the failure to ask the race question is a methodological failing).

others), *LatCrit's failure to address squarely those early questions and challenges may in time jeopardize this success. Also in the tradition of LatCrit Afterwords, Professors Chang and Gotanda end with more questions than answers but hope that their set of questions will provide useful guideposts during LatCrit's second decade.*

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We are told that the relationship between Latinas/os and African Americans is “acrimonious” and “growing hard to ignore.”¹ We are told that there is a trend of “Latino ethnic cleansing of African Americans from multiracial neighborhoods.”² We hear of a “black-versus-Latino race riot at Chino state prison.”³ Apparently, things aren’t much better on the Korean-Latino front. We are told that “[i]n clubs, schools, and the work place Koreans and Latinos are increasingly sharing the same spaces, and yet there is little interaction between them.”⁴ *La Opinión*, the Los Angeles Spanish-language daily, reported the sentiment of a Colombian-born immigrant who “believes Koreans exploit the Latino community through the high price of goods sold in local stores and the low wages paid to Latino employees.”⁵ We are told that “nearly 60 percent of [Los Angeles’] Koreatown’s labor force is Latino” and that “[t]wo out of three Latino employees say they would prefer to work for non-Koreans, who would have more respect for labor laws.”⁶ On the other hand, “74 percent of Korean business owners say they prefer to hire Latinos.”⁷ The reported tension between Koreans and Latinos comes on the heels of Korean-

¹ Tanya K. Hernandez, *Roots of Anger: Longtime Prejudices, Not Economic Rivalry, Fuel Latino-Black Tensions*, L.A. TIMES, Jan. 7, 2007, at M1.

² *Id.* But see Jill Leovy, *The Homicide Report: Jill Leovy Chronicles L.A. County Homicide Victims, Are Black vs. Brown Racial Tensions Driving Homicide?*, http://latimes-blogs.latimes.com/homicidereport/2007/03/marchers_protes.html (Mar. 1, 2007). Leovy, a crime reporter for the LOS ANGELES TIMES, while acknowledging some cross racially motivated killings, finds that statistics do not indicate that black versus brown racial tensions are driving up the homicide rate.

³ Hernandez, *supra* note 1.

⁴ Aruna Lee, *Korean-Latino Relations Grow Icy*, NEW AMERICA MEDIA, Mar. 12, 2007, http://news.newamericamedia.org/news/view_article.html?article_id=956104e550c2a5e61502487bd2912c9e.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Black conflict that was much hyped before and after the 1992 Los Angeles Unrest/Riots/Rebellion.⁸

I. INTRODUCTION: ETHNO-RACIAL FAULT LINES⁹

One immediate problem in trying to decipher the conflicts described above is the slippage between ethnicity and race. “Latino” is posed in opposition to “Black,” suggesting that both “Black” and “Latino” are racial categories. “Korean” is posed in opposition to Latino, yet the quoted source is a “Colombian-born” immigrant. Here, “Korean” appears to be an ethnic designation while “Latino” appears to be a panethnic one, with an immigrant from Colombia being subsumed under the panethnic Latino designation. The Korean-Black conflict might be characterized as one between a racialized ethnic group and a racial group, at least within the ethno-racial vocabulary of the United States.

The question of ethnicity and race was raised during the early LatCrit Colloquia, Conferences, and Symposia, as was the implicitly related question or claim of Black exceptionalism and its relation to LatCrit Theory.¹⁰ Engagement with these questions seems to have dropped off after LatCrit III and, as a result, ethnicity and race have been undertheorized in LatCrit. At the level of theory, the result is a diminished capacity to describe and address Latina/o subordination as well as a diminished capacity to theorize minority-minority conflict. At the level of politics, it jeopardizes the possibility and durability of coalitions.

In Part II, we examine the role of ethnicity and race in LatCrit Theory and the question of Black exceptionalism. As part of our examination of minority-minority conflict, we present in Part III an analytic model for asking the race question. In Part IV, we describe the comparative racialization projects in Asian American Jurisprudence. We conclude with questions for LatCrit from the experience of Asian American Jurisprudence.

II. UNANSWERED QUESTIONS AND CHALLENGES IN LATCRIT THEORY: ETHNICITY, RACE, AND BLACK EXCEPTIONALISM

In 1997 at the first annual LatCrit Conference,¹¹ Juan Perea made a call that was heard by one of us as an attempt to shift the terms of the debate with regard to Latinas/os to ethnicity rather than race. He stated that “[t]he concept of Civil Rights is so dominated by the Black/White binary understanding of

⁸ See generally READING RODNEY KING/READING URBAN UPRISING (Robert Gooding-Williams ed., 1993); Mark Bernheim, *Los Angeles, April 29, 1992 and Beyond: The Law, Issues, and Perspectives*, 66 S. CAL. L. REV. 1313 (1993); Colloquy, *Racism in the Wake of the Los Angeles Riots*, 70 DENV. U. L. REV. 187 (1993).

⁹ We take this phrase from TOMAS ALMAGUER, *RACIAL FAULT LINES: THE HISTORICAL ORIGINS OF WHITE SUPREMACY IN CALIFORNIA* (1994). For an excellent examination of contemporary fault lines, see ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* (1999).

¹⁰ See *infra* Part II.

¹¹ For an account of the history of LatCrit through LatCrit X, see Francisco Valdes, *Afterword: Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis* (forthcoming 2007) (*passim*, manuscript on file with authors).

American racial identity that it is currently of little utility for Latinos”¹² and that “[t]he concepts of ethnicity and ethnic identity may be the most appropriate set of group traits for amplifying our understanding of race in a way that discrimination against Latinos/as can be recognized and understood.”¹³ Later that day, Ian Haney López responded to Juan Perea’s invitation to explore the question of Latinas/os and race and ethnicity, arguing that “[w]hile ethnicity offers a powerful paradigm for conceptualizing Latina/o identity, one that has been extensively and fruitfully used, . . . race remains indispensable to understanding Latino/a experiences and to improving the welfare of Latino/a communities.”¹⁴ Both Perea’s and Haney López’s positions contained some notion of the relationship between ethnicity and race. But while each took a position with regard to the more relevant concept for addressing the Latina/o condition, neither fully articulated the relationship between ethnicity and race.¹⁵

Though this exchange was a great setup for an important discussion, the issue seems to have been resolved in favor of using the term Latina/o without any theoretical consensus or resolution.¹⁶ Our observation is that the Latina/o category that emerged after LatCrit III has primarily been a panethnic designation. Here, we use panethnicity as elucidated by Yen Espiritu – a conscious coming together of ethnic and national-origin groups in a new umbrella group.¹⁷ The problem, though, is that panethnicity may not sufficiently address the race question. We note one divergence based on regional focus: LatCrit scholarship on the Caribbean, Caribbean immigrants, and the North-South Dialogue tends toward an ethnicity or panethnicity analysis while LatCrit scholarship on the Southwest and Mexican Americans tends toward an implicit race

¹² Juan F. Perea, *Five Axioms in Search of Equality*, 2 HARV. LATINO L. REV. 231, 237 (1997).

¹³ *Id.* at 241.

¹⁴ Ian F. Haney López, *Retaining Race: LatCrit Theory and Mexican American Identity in Hernandez v. Texas*, 2 HARV. LATINO L. REV. 279, 280 (1997).

¹⁵ We want to note here that although the question is sometimes posed as a choice, further examination of the question will reveal that it’s not either/or but rather a complicated relationship that will depend on historic era, geographic specificity, and other contextual details. It may turn out that panethnicity may go hand in hand with the ongoing process of racial formation at work in the United States. Michael Omi and Howard Winant note the difficulty and contradictions with regard to the U.S. project of categorizing the group now officially known as Hispanic. See MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES 82 (2d ed. 1994). The fact that it is an ongoing process highlights the importance for LatCrit to engage with this question.

¹⁶ Cf. Valdes, *supra* note 11 at 51. Valdes discusses the “productive tensions focused on the relevance of ‘race’ to Latina/o populations, to which we turned our attention in the first couple years.” *Id.* He then goes on to focus on a different aspect of the race question within LatCrit, what the “role and relevance of groups or communities racialized and/or ethnicized as something other than ‘Latina/o’ – and whether scholars who identify with such communities are within the bailiwick or scope of LatCrit inquiry.” *Id.* This is a very different race question than the one we are posing, although our questions may help answer the one that Valdes discusses.

¹⁷ See generally YEN LE ESPIRITU, ASIAN AMERICAN PANETHNICITY: BRIDGING INSTITUTIONS AND IDENTITIES (1992).

analysis.¹⁸ This is admittedly a crude breakdown, but it may reflect a theoretical divide that has been left unaddressed as a matter of politics. With regard to intra-Latina/o solidarity, the call of panethnicity may unite; the call of race may divide.¹⁹

These questions suggest a re-examination of the relationship between Latinas/os with African Americans and Whites in at least two ways: (1) at the theoretical level of the Black/White racial paradigm and (2) at the political level with regard to coalitions. With Perea, the move to ethnicity goes hand in hand with his critique of what he calls the Black/White binary paradigm of race.²⁰ There is a danger that Perea's analysis allows Black/White race relations to be sidestepped in order to explore ethnicity with regard to White/Latina/o relations as a phenomenon independent from the broader current of American race. Haney López responds directly to Perea's first move by demonstrating the racialization of Mexican Americans in the Southwest and thus the salience of retaining race in LatCrit Theory.²¹ Leslie Espinoza and Angela Harris respond to Perea's second move with their concerns about what a rejection of the Black/White racial paradigm at the theoretical level would do to relations between Latinas/os and Blacks. In their co-authored piece, in which they retain their individual voices, Angela Harris sets forth the "Black exceptionalism" claim:

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.²²

Harris goes on to state:

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 non-whites" 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 . . . Indians, Asian Americans,

¹⁸ *But cf.* Kevin R. Johnson, *Comparative Racialization: Culture and National Origin in Latina/o Communities*, 78 DENV. U. L. REV. 633 (2001) (comparative racialization of different Latina/o groups accounting for differences such as national origin).

¹⁹ Here, we mean that a notion of panethnicity may operate to construct a panethnic or pan-Latina/o identity. If it does not engage with the racial diversity that exists within Latina/o communities, then one of the consequences is a glossing over of intra-Latina/o racial or color antagonism. It is in this sense that we mean that with regard to Latinas/os, panethnicity may unite while race may divide. For an exploration of this, see Gloria Sandrino-Glasser, *Los Confundidos: De-Conflating Latinos/as' Race and Ethnicity*, 19 CHICANO-LATINO L. REV. 69 (1998). We return to this idea in our discussion of the racial self-identification of Hispanics. *See infra* Part V.

²⁰ Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CAL. L. REV. 1213 (1997), 10 LA RAZA L.J. 127 (1998).

²¹ Haney López, *Retaining Race*, *supra* note 14; Ian F. Haney López, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 85 CAL. L. REV. 1143 (1997), 10 LA RAZA L.J. 57 (1998).

²² Leslie Espinoza & Angela P. Harris, *Afterword: Embracing the Tar-Baby: LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1585, 1596 (1997), 10 LA RAZA L.J. 499, 510 (1998).

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."²³

As important as these questions are, there has been surprisingly little engagement with the challenge that the Black exceptionalism claim poses to LatCrit.²⁴ When it has been taken up and engaged beyond a footnote reference, the authors have primarily been Black, speaking both within and outside of the LatCrit context.²⁵ The lack of engagement might stem from an unarticulated effort to ease coalitions among the diverse groups that meet under the rubric of LatCrit. Angela Harris hints at this possibility when she states that "[t]he argument for black exceptionalism is usually not articulated in mixed company in the interests of interracial solidarity."²⁶ But this kind of politeness leaves unanswered questions about the relationship of Latinas/os to the Black/White racial paradigm, along with the related question of whether Latinas/os constitute a panethnic or a racial group or some hybrid.²⁷ As a result, ethnicity and race remain undertheorized in LatCrit, which can also weaken in the long run coalition with other groups.

In the next Part, we pose a framework that allows for a deeper engagement with these questions through an examination of conflict and coalition on the racial terrain.

III. CONFLICT AND COALITION ON THE TERRAIN OF RACE: AN ANALYTIC MODEL

Against the backdrop of conflict between members of minority communities, White supremacy often gets lost. Despite calls by scholars such as Charles Lawrence to talk about racism in terms of White supremacy,²⁸ there is a ten-

²³ Espinoza & Harris, *supra* note 22, 85 CAL. L. REV. at 1603, 10 LA RAZA L.J. at 517.

²⁴ Our search on Westlaw of the law journal database revealed only twenty-one articles that engaged or referenced the claim of Black exceptionalism described by Angela Harris.

²⁵ See, e.g., Paulette M. Caldwell, *The Content of Our Characterizations*, 5 MICH. J. RACE & L. 53 (1999); Devon W. Carbado, *Race to the Bottom*, 49 UCLA L. REV. 1283 (2002); Darren Lenard Hutchinson, *Foreword, Critical Race Histories: In and Out*, 53 AM. U. L. REV. 1187 (2004); Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177 (1999).

²⁶ Espinoza & Harris, *supra* note 22, 85 CAL. L. REV. at 1603, 10 LA RAZA L.J. at 517.

²⁷ For a discussion of this hybridized identity and the challenges presented for constructing a Latina/o identity, see Mary Romero, *Afterword, Historicizing and Symbolizing a Racial Ethnic Identity: Lessons for Coalition Building with a Social Justice Agenda*, 33 U.C. DAVIS L. REV. 1599, 1608 (2000) ("[T]he construction of racial, ethnic and national identity is inexorably tied to myth-making and is highly selective, particularly when the identity is a gloss of two to five hundred years of conquest, occupation, the destruction and creation of nation states, transitions from feudalism to capitalism, and shifting boundaries of citizenship status."). One particularly important aspect of this project is the need to confront "our mesizo heritage." *Id.* at 1615.

²⁸ See Charles R. Lawrence III, *Foreword, Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819, 826 (1995) (stating that "Blacks, whites, Asians, biracials, multiracials, Zulus, Xhosas, Sothos: All were dehumanized by the ideology and institutions of white supremacy" and posing the question: "[i]n what different, complex, and

dency in scholarship on race to focus on what we will describe as first-order binary and second-order binary analyses.

In our analytic model of first-, second-, and third-order racial analyses, the first-order binary model restates the duality of the primary racial opposition in U.S. history – Black and White – and recognizes that many analyses of racial and ethnic conflict follow this basic majority-minority binary opposition. Commentaries and analyses that focus upon majority-minority relations are first-order binary analyses. In LatCrit, many articles and commentaries focus upon White-Latina/o relations in a first-order binary analysis.

There is nothing wrong with such scholarship unless it purports to constitute the entire analysis of the way racism works to subordinate all groups. For example, too great a focus on the relationship between Whites and Blacks can lead to push back in the form of a critique of such scholarship. Such a critique typically includes two components: (1) a critique of the Black/White paradigm as incomplete (2) which may then provide the space for the analysis of the relationship between the dominant group and minority *B*.²⁹ Though a second (or third or fourth) minority group has been introduced, we would still describe this as a first-order binary race analysis, and in the aggregate, as multiple first-order binary analyses.³⁰

Second-order binary analysis stays within a group-to-group binary framework, but looks at the relationship between minority *A* and minority *B*.³¹ Scholarship using a second-order binary analysis might include rudimentary

interrelated ways is the experience of each group related to the maintenance of white supremacy?”).

²⁹ Both of us have made these moves. See Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241 (1993), 1 ASIAN L.J. 1 (1994); Neil Gotanda, “Other Non-Whites” in *American Legal History: A Review of Justice at War*, 85 COLUM. L. REV. 1186 (1985) (reviewing PETER IRONS, *JUSTICE AT WAR* (1983)). For a similar move in the LatCrit context, see Perea, *supra* note 20.

³⁰ We also want to note that while we focus on race, there is a necessary further complexity to any analytic race model that includes other identity attributes. A different sort of critique of the Black/White racial paradigm (or of an essentialized male/female gender paradigm) would address the failure to understand the interaction of gender and race, sexuality and race, and other complex identity considerations. Intersectional analyses then examine race and additional sociolegal categories such as gender. See generally Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. CHI. LEGAL F. 139 (1989); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 42 STAN. L. REV. 581 (1990); Marlee Kline, *Race, Racism, and Feminist Legal Theory*, 12 HARV. WOMEN’S L.J. 115 (1989).

Following that, there are interconnected, multidimensional, cosynthetic, symbiotic analyses that examine the complex interaction of multiple sociolegal categories. See, e.g., Nancy Ehrenreich, *Subordination and Symbiosis: Mechanisms of Mutual Support Between Subordinating Systems*, 71 UMKC L. REV. 251 (2002); Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561 (1997); Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257 (1997); Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities and Inter-Connectivities*, 5 S. CAL. REV. L. & WOMEN’S STUD. 25 (1995).

³¹ For a call to do this kind of work, see Shirley Hune, *An Overview of Asian Pacific American Futures: Shifting Paradigms*, in *THE STATE OF ASIAN PACIFIC AMERICA: A PUBLIC*

comparative racialization, a comparison of the similarities and differences between minority A's and minority B's experience with oppression.³² Sometimes, this comparison is characterized as or in fact devolves into a squabble between minority A and minority B over which group is the most oppressed.³³ An example of the former is the one that reportedly took place on President Clinton's national commission on race between John Hope Franklin and Angela Oh over the scope of their investigation.³⁴ Mari Matsuda's description of what took place is helpful:

There is a reason why historian John Hope Franklin's admonition that we must learn the history of white over black is seen as oppositional to Angela Oh's admonition that we must remember the unique issues facing a largely immigrant Asian American community. As long as the mainstream press can frame this as an opposition, it can deflect discussion from the core issue of white supremacy.³⁵

The lesson is that care must be taken when doing second-order binary analysis not to lose sight of the larger political, legal, and social forces that foster conflict between minority groups. In the American context, one must never lose sight of White supremacy.

Another example of second-order binary analysis comes from Tanya Hernandez, whose op-ed we quoted in our prologue. She appears to engage in second-order binary analysis to try to understand the conflict between Latinas/os and African Americans in Los Angeles. Her title, *Roots of Latino/Black Anger: Longtime Prejudices, Not Economic Rivalry, Fuel Tensions*, gives away her punch line. Though mindful of other explanations – labor market competition, tensions arising from changing demographics in neighborhoods, Latinos “learning the U.S. lesson of anti-black racism,” or resentment by Blacks of “having the benefits of the civil rights movement extended to Latinos”³⁶ – she performs a racial mea culpa of sorts and locates the roots of anti-Black racism among Latinos in Latin America and the Caribbean.³⁷ While we

POLICY REPORT: POLICY ISSUES TO THE YEAR 2020 1, 5-6 (LEAP Asian Pac. Am. Pub. Pol'y Inst. & UCLA Asian Am. Studies Ctr. eds., 1993).

³² We call this first-order because the binary analysis remains as a comparison of the two groups as a result of minority A's and minority B's separate and independent relationship to the majority.

³³ Cf. Mary Louise Fellows & Sherene Razack, *The Race to Innocence: Confronting Hierarchical Relations Among Women*, 1 J. GENDER, RACE & JUST. 335, 335 (1998) (discussing the problem that they name as “competing marginalities”).

³⁴ See, e.g., William Douglas, *Panel Meant to Heal Is Split: Race-Relations Group Divided on History*, NEWSDAY, July 15, 1997, at A15 (quoting John Hope Franklin saying, “This country cut its eyeteeth on black-white relations” in response to Angela Oh's comment, “We need to go beyond [Black-White relations in America], because the world is about more than that.”); Evan Gahr, *Racial Monologue: Clinton's Racial Advisory Board Has a Suspicious Lack of Diversity*, NAT'L REV., Oct. 13, 1997, at 59 (“Angela Oh and John Hope Franklin in a mad contest to out-victim each other”); but see Douglas Stanglin et al., *Race to Judgment*, U.S. NEWS & WORLD REP., Sept. 15, 1997, at 18 (quoting John Hope Franklin: “There was no disagreement whatever between what Angela Oh said and what I said . . .”).

³⁵ Mari Matsuda, *Planet Asian America*, 8 ASIAN L.J. 169, 179-80 (2001).

³⁶ Hernandez, *supra* note 1.

³⁷ *Id.* We find it interesting that Hernandez mentions White supremacy in her op-ed, but only in the context of Latin America and the Caribbean. While we denote her op-ed as engaging in second-order binary analysis that fails to account sufficiently for the operation of White supremacy in the United States, we note that Hernandez in her scholarly work pays

agree with her conclusion that minority groups must address their own racism, we agree with Taunya Banks, who in the context of Black-Asian relations, stated that the “[r]enunciation of simultaneous racism alone, however, will not foster racial coalitions between Asians and Blacks.”³⁸ Further, we worry that the big picture, how the relationship among minority groups is structured by White supremacy, might be lost.

Trying to understand, avoid, exploit, or resolve such conflicts can lead to what we call third-order multigroup analysis. We want to emphasize here our clear understanding that any of these analyses, including third-order multigroup analysis, can serve subordination or anti-subordination efforts. We will discuss three examples of third-order multigroup analysis that serve to subordinate minority groups.

Example 1: Asian Americans as a “model minority” or “honorary” Whites. William Petersen, the Berkeley demographer who is credited with coining the phrase, offered the success of Japanese Americans, who overcame the hurdles of racism through their hard work and culture, as a model for “non-achieving” Blacks and Chicanos.³⁹ Petersen’s efforts were directed against Lyndon Johnson’s Great Society Programs. More recently, Asian Americans were inserted into the debate over affirmative action as a model minority in coalition with Whites and therefore in opposition to Blacks and Latinas/os.⁴⁰ Some Asian Americans have accepted this coalition, failing to recognize that the minority status in “model minority” includes the possibility of negative action, such as the treatment of Asian Americans in admissions to elite institutions of higher education.⁴¹

Example 2: Blacks as American. In 1986, Congress enacted the Immigration Reform and Control Act, which included sanctions against employers who hired undocumented workers. Althea Simmons, the NAACP’s representative in Washington, D.C., “testified repeatedly during congressional debates . . . that undocumented immigrants competed with African Americans for jobs and that consequently the NAACP supported strong employer sanctions.”⁴² Fear about competition from undocumented immigrants is often extended to all immigrants, regardless of legal

careful attention to this dynamic. See Tanya Katerí Hernández, *Multiracial Matrix: The Role of Race Ideology in the Enforcement of Antidiscrimination Laws, A United States-Latin America Comparison*, 87 CORNELL L. REV. 1093 (2002). Perhaps this says something about what messages are palatable in the mainstream press.

³⁸ Taunya Lovell Banks, *Both Edges of the Margin: Blacks and Asians in Mississippi Masala, Barriers to Coalition Building*, 5 ASIAN L.J. 7, 10 (1998).

³⁹ ROGER DANIELS, *ASIAN AMERICA: CHINESE AND JAPANESE IN THE UNITED STATES SINCE 1850* 317-18 (1988) (citing William Petersen, *Success Story, Japanese American Style*, N.Y. TIMES, Jan. 6, 1966, (Magazine), at 20).

⁴⁰ See, e.g., Frank Wu, *Neither Black nor White: Asian Americans and Affirmative Action*, 15 B.C. THIRD WORLD L.J. 225, 270 (1995) (“U.S. Representative Dana Rohrabacher revealed that sensitivity to discrimination against Asian Americans meant attacking affirmative action: ‘So in a way, we want to help Asian Americans, but at the same time, we’re using it as a vehicle to correct what we consider to be a societal mistake on the part of the United States.’”). Sumi Cho calls this phenomenon “racial mascotting.” See Sumi Cho, *A Theory of Racial Mascotting*, Remarks at the First Annual Asian Pacific American Law Professors Conference (Oct. 14, 1994).

⁴¹ DANA Y. TAKAGI, *RETREAT FROM RACE: ASIAN-AMERICAN ADMISSIONS AND RACIAL POLITICS* (1992); Jerry Kang, *Negative Action Against Asian Americans: The Internal Instability of Dworkin’s Defense of Affirmative Action*, 31 HARV. C.R.-C.L. L. REV. 1 (1996).

⁴² William M. Tamayo, *When the “Coloreds” Are Neither Black nor Citizens: The United States Civil Rights Movement and Global Migration*, 2 ASIAN L.J. 1, 18-19 (1995).

status.⁴³ Coalition between Whites and Blacks was made possible on issues regarding immigration by implicit and explicit appeals to a common Americanness in opposition to the foreignness attributed to Latinas/os and Asian Americans.

Example 3: Latinas/os as White. Early litigation strategy by the League of United Latin American Citizens ("LULAC") deployed what has been termed the "other White" strategy to overcome Jim Crow-style segregation deployed against Mexican Americans.⁴⁴ Though it had some success in combating discrimination against Mexican Americans,⁴⁵ the "other White" strategy ultimately supported White supremacy without actually resulting in equal Whiteness for Mexican Americans and other Latinas/os. A startling example of this took place in Texas public schools in the 1960s "when schools began to use Mexicans' 'other White' status cynically to 'desegregate' black schools using Mexicans"⁴⁶ The failure to understand this cynical deployment of Whiteness in the face of an ideology of White/Anglo supremacy allows for Whiteness to reign and complicates coalition between Latinas/os and African Americans and Asian Americans.⁴⁷

An important aspect of each of these third-order multigroup analyses is the way that the multigroup analysis ends up collapsing into a false binary to create a privileged top and subordinated bottom. There is cynicism and hypocrisy at work because which group is invited to join in coalition with the privileged top may change and shift depending on the particular issue. This political dimension to the multigroup analyses above – the ease with which the dominant group can manipulate coalition politics – reveals the theoretical shortcomings of the minority group politics. In each of the examples, the seduction of being included with the in-group ultimately leads one minority group to lose sight of White supremacy in order to achieve a short-term gain while jeopardizing progress in the long run. Third-order multigroup analysis in the service of subordination makes the following move: within the framework of an established top

⁴³ Bill Ong Hing, *Immigration Policies: Messages of Exclusion to African Americans*, 37 How. L.J. 237, 237 (1994) ("Among many African Americans, there is concern that immigrants are taking away jobs, depressing their wages, or taking away business opportunities in their communities.").

⁴⁴ See Richard Delgado, *Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181, 1189 (1997) (reviewing LOUISE ANN FISCH, *ALL RISE: THE FIRST MEXICAN AMERICAN FEDERAL JUDGE* (1996)).

⁴⁵ See George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. DAVIS L. REV. 555 (1994).

⁴⁶ Ariela J. Gross, "The Caucasian Cloak": *Mexican Americans and the Politics of Whiteness in the Twentieth-Century Southwest*, 95 GEO. L.J. 337, 387 (2007). In challenging this practice in a case involving Corpus Christi, James DeAnda

complained that Corpus Christi Independent School District, like many Texas districts, had turned the "other white" notion to its own illegitimate purposes. In order to delay the court-ordered desegregation, while at the same time obscuring its slow pace, district officials frequently assigned African and Mexican Americans to the same schools, rather than to white schools, a practice often facilitated by the close proximity of the ghettos to the barrios. The administrators maintained that, because Mexican Americans were "white," the barrio-ghetto schools had been desegregated.

Steven H. Wilson, *Some Are Born White, Some Achieve Whiteness, and Some Have Whiteness Thrust Upon Them: Mexican Americans and the Politics of Racial Classification in the Federal Judicial Bureaucracy, Twenty-Five Years After Hernandez v. Texas*, 25 CHICANO-LATINO L. REV. 201, 213 (2005).

⁴⁷ We return to a discussion of the complications in Part V.

group and a bottom group, a third group is invited to join the top.⁴⁸ The third group is told: “You are like us; you are not like them.” This invitation can be seductive. It’s easy to say, “Yes, thank you, we are like you and not like them” and to accept the psychological wages that come with Whiteness or Americanness, actual or honorary.⁴⁹ There are also significant levels of cynicism and denial in accepting such a coalition. Coalitional group politics requires a self-conscious group decision that another minority group will lose important social benefits. And that decision must also include a calculated denial that participation as the junior partner in a racial coalition will eventually mean the enforcement of “glass ceiling” or even worse in future political developments. Part of the work for LatCrit Theory and Asian American Jurisprudence is to provide the theoretical, moral, and pragmatic grounds for resisting these invitations. There seem to be two imperatives at work here: (1) to get it right as a matter of theory; and (2) to get it right as a matter of politics to foster coalitions.⁵⁰

IV. COMPARATIVE RACIALIZATION IN ASIAN AMERICAN JURISPRUDENCE:⁵¹ FROM FIRST-ORDER BINARY TO THIRD-ORDER MULTIGROUP

In this Part, we briefly review four bodies of scholarship as examples of efforts in Asian American Studies and Asian American Jurisprudence to address two areas we discussed at the outset – ethnicity versus race, and Black exceptionalism – and work it through our analytic model for thinking about conflict and coalition. We include important scholarship from Asian American studies because of the close personal and intellectual connections between Asian American Studies and Asian American Jurisprudence.

⁴⁸ Toni Morrison describes the traditional way that immigrants adopt anti-Black racism as a pathway to Americanization. See Toni Morrison, *On the Backs of Blacks*, TIME, Fall 1993 Special Issue, at 57.

⁴⁹ Though we focus on racial minorities, Whites are extended this same invitation. Cf. W. E. B. DuBois, BLACK RECONSTRUCTION IN AMERICA, 1860-1880 701 (1962) (discussing psychological wages of Whiteness that promote White solidarity and undercut class solidarity between Blacks and working-class Whites); DAVID R. ROEDIGER, WAGES OF WHITENESS (1991) (same); Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1741-45 (1993) (same).

⁵⁰ See, e.g., Richard Delgado, *Derrick Bell’s Toolkit – Fit to Dismantle That Famous House?*, 75 NYU L. REV. 283, 306-07 (2000) (discussing the possibility of coordinating antidiscrimination efforts around interest convergence); Kevin Johnson, *The Struggle for Civil Rights: The Need for, and Impediments to, Political Coalitions Among and Within Minority Groups*, 63 LA. L. REV. 759, 767 (2003) (discussing the need for coalitions to understand and attack racial hierarchy and White supremacy); Catherine Smith, *Queer as Black Folk*, WIS. L. REV. (forthcoming 2007) (using social psychology to provide a framework for building coalitions around superordinate goals) (on file with authors).

⁵¹ The study of Asian Americans and law has been called a number of things. See ROBERT S. CHANG, DISORIENTED: ASIAN AMERICANS, LAW, AND THE NATION-STATE (1999) (Critical Asian American Legal Studies); Chang, *supra* note 29 (Asian American Legal Scholarship); Elisabeth M. Iglesias, *Out of the Shadow: Marking Intersections in and Between Asian Pacific American Critical Legal Scholarship and Latina/o Critical Legal Theory*, 40 B.C. L. REV. 349 (1998) (APACrit); Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489 (2005) (Asian American Jurisprudence); Adrien K. Wing, *USA 2050: Identity, Critical Race Theory, and the Asian Century*, 99 MICH. L. REV. 1390 (2001) (reviewing CHANG, DISORIENTED, *supra*) (Asian Crit).

With regard to ethnicity, Yen Le Espiritu offers the notion of panethnicity as a way to theorize an Asian American group that arises out of multiple ethnic or national origin subgroups.⁵² She develops this theory of panethnicity against the background of sociological theories of ethnicities.⁵³ Panethnic Asian Americanness is offered as an oppositional identity that is a product of discrimination but which includes a political aspiration, offering its members some instrumental benefits, including what comes from being part of a larger group. One limitation, though, is that she does not develop themes of Black-Asian conflict or coalition in this work. She notes at the beginning a possible comparison of Asian Americans and other groups, Latinas/os, Native Americans, and African Americans, but the comparisons are not developed. Further, comparison is complicated because the relationship between panethnicity and race is not worked out. We would characterize this work as being a first-order binary analysis. As with many first-order binary analyses, it is excellent for what it does but is limited with regard to what it can tell us about the relationship of multiple groups in racially stratified America.

With regard to race, one of us has developed a theory of Asiatic racialization that adapts and modifies ethnic categories and existing understandings of Black-White racialization.⁵⁴ An examination of the federal and Supreme Court cases in the era of Chinese Exclusion reveals that the federal courts modified their understanding of the Chinese category. After initially considering Chinese as a term of national origin or national citizenship, Congress definitively adopted a racial understanding – Chinese refers to any person of Chinese ancestry – a form of bloodline categorization. To that category, however, foreignness – a permanent condition of inassimilability and disloyalty – becomes the primary racial trait. Foreignness was the assigned racial trait or racial profile rather than any notion of biological or cultural inferiority. The basic method of legal analysis – finding foreignness embedded in judicial decisions and other legal materials – has been developed by other authors writing on Asian Americans and the law.⁵⁵

While this theory of Asiatic racialization by itself is first-order binary, this model is explicitly intended to provide a common language of racialization that permits a comparative analysis around White supremacy. Because the Chinese category is racialized and the primary attribute of foreignness is assigned to the Chinese-Asiatic body, this racialization is similar to historical Black-White

⁵² *ESPIRITU*, *supra* note 17.

⁵³ *Id.* at 3-9 (discussing sociological theories of ethnicity).

⁵⁴ Neil Gotanda, *Asian American Rights and the "Miss Saigon Syndrome"*, in *ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY 1087* (Hyung-Chan Kim ed., 1982); Neil Gotanda, *Towards Repeal of Asian Exclusion: The Magnuson Act of 1943, the Act of July 2, 1946, the Presidential Proclamation of July 4, 1946, the Act of August 9, 1946, and the Act of August 1, 1950*, in *ASIAN AMERICANS AND CONGRESS: A DOCUMENTARY HISTORY*, *supra* at 309.

⁵⁵ See, e.g., Keith Aoki, "Foreign-ness" & Asian American Identities: *Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes*, 4 *UCLA ASIAN PAC. AM. L.J.* 1 *passim* (1996); Robert S. Chang, *Closing Essay: Developing a Collective Memory to Imagine a Better Future*, 49 *UCLA L. REV.* 1601, 1607 (2002); Natsu Taylor Saito, *Alien and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy in American Law*, 76 *OR. L. REV.* 261 *passim* (1997).

racialization. The structurally similar bases for racialization offer a theoretical basis for building racial coalitions. As an immediate political platform, such an analysis does not provide immediate common interests as a basis for coalition. But a presentation of foreignness as a racial profile inscribed on Asiatic bodies does provide the beginnings of a common language of racialization which is then available for anti-racist politics, something that panethnicity does not do. On the contrary, panethnicity has the danger, like other ethnicity theories, of being organized around a common language of assimilation.⁵⁶

Assimilation is the great promise offered by proponents of the model minority designation for Asian Americans.⁵⁷ Thinking through it as a multigroup analysis may offer some theoretical clarity. Here, the idea of racial triangulation holds a lot of promise, especially as advanced by Claire Jean Kim, a political scientist. Her work on Black-Korean conflict developed a mapping of Blacks, Asian Americans, and Whites against two axes – Superior-Inferior and Foreigner-Insider.⁵⁸

Central to Kim's project is the central attention paid to the relationship between Blacks and Asian Americans in relation to the White position.

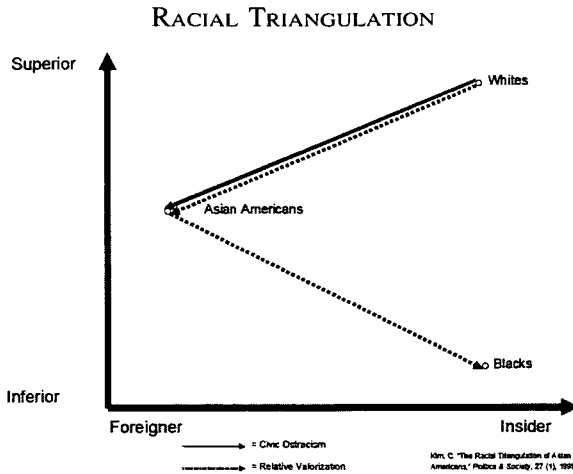
Consider how racial triangulation in the form of inverted triangles can help us to understand the three examples posed above as third-order multigroup analyses in the service of subordination. Depending on the issue, a different group is placed on a horizontal plane of formal equivalence with Whites. The triangle is a useful device to emphasize the issues at stake in the coalition and helps to avoid collapsing the politics into a false binary. The triangulation diagram demonstrates the issue-specific way that the invitation to Whiteness (actual, honorary, or formal) or Americanness is issued, and it highlights the inconsistencies and the hypocrisies.

The cynical deployment of the language of equality, "You are like us and not them," can be seen to be issue-specific. It masks attempts to co-opt without

⁵⁶ See WERNER SOLLORS, *BEYOND ETHNICITY: CONSENT AND DESCENT IN AMERICAN CULTURE* (1986); Stanford L. Lyman, *The Race Relations Cycle of Robert E. Park*, *PAC. SOC. REV.* 16 (1968).

⁵⁷ See *supra* text accompanying notes 39-41. As indicated in our discussion above, the designation as a model minority is an attempt at the theoretical level of ascribing the social position of Asian Americans and an attempt at the political level of fostering coalition between privileged Whites and Asian Americans and dividing Asian Americans from Blacks, Latinas/os, and poor Whites. The critique of the model minority designation is extensive. See, e.g., ERIC K. YAMAMOTO ET AL., *RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERMENT* 267-69 (2001) (discussing and criticizing the model minority myth); Pat Chew, *Asian Americans: The "Reticent" Minority and Their Paradoxes*, 36 *WM. & MARY L. REV.* 1 *passim* (1994) (same); Gabriel J. Chin et al., *Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice, A Policy Analysis of Affirmative Action*, 4 *ASIAN PAC. AM. L.J.* 129, 148-151 (1996) (same); Natsu Taylor Saito, *Model Minority, Yellow Peril: Functions of "Foreignness" in the Construction of Asian American Legal Identity*, 4 *ASIAN L.J.* 71 *passim* (1997) (same); Frank Wu, *Neither Black nor White: Asian Americans and Affirmative Action*, 15 *B.C. THIRD WORLD L.J.* 225 *passim* (1995) (same).

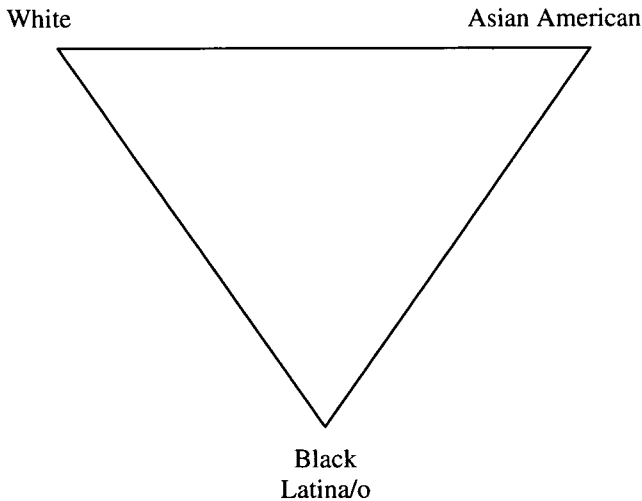
⁵⁸ Claire Jean Kim, *The Racial Triangulation of Asian Americans*, in *ASIAN AMERICANS AND POLITICS: PERSPECTIVES, EXPERIENCES, PROSPECTS* 39, 42 (Gordon H. Chang ed., 2001).



any real granting of equality with Whites. It is a way to maintain White dominance.⁵⁹

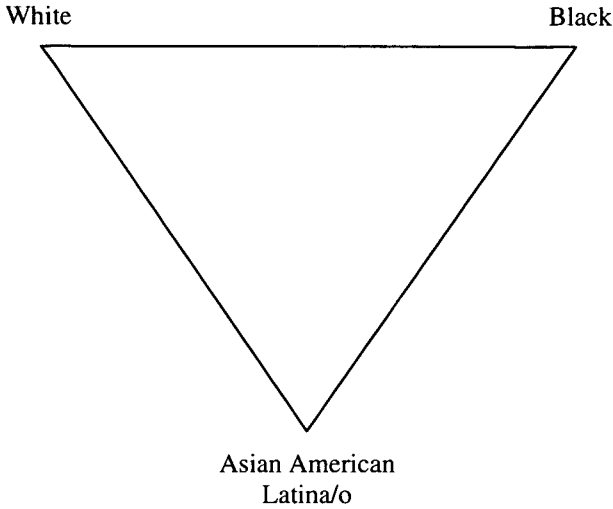
The use of racial triangulation is not new. One of us pointed out in 1985 the rhetorical and structural use of racial triangulation (though not in those

EXAMPLE 1. ASIAN AMERICANS AS A MODEL MINORITY.



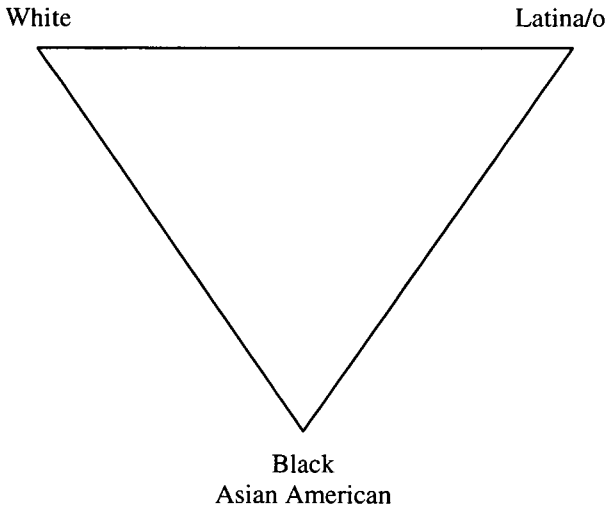
⁵⁹ One of us made this point at LatCrit X. See Robert S. Chang, *Racial Triangulation, or Why Multiple Races Are More Effective than Binary Paradigms in Maintaining White Racial Domination*, LatCrit X, San Juan, Puerto Rico, Oct. 7, 2005. Richard Delgado makes a similar point in his discussion of differential racialization. See Richard Delgado, *Locating Latinos in the Field of Civil Rights: Assessing the Neoliberal Case for Radical Exclusion*, 83 TEX. L. REV. 489, 513-17 (2004) (reviewing GEORGE YANCEY, WHO IS WHITE?: LATINOS, ASIANS, AND THE NEW BLACK/NONBLACK DIVIDE (2003)).

EXAMPLE 2. BLACKS AS AMERICAN.



words) in Harlan’s famous dissent in *Plessy*.⁶⁰ In what is taken as Harlan’s call for colorblindness, which would have invalidated the Louisiana statute requiring that Negroes have a separate coach from that of Whites, Harlan would have

EXAMPLE 3. LATINAS/OS AS WHITE.



placed Blacks on a horizontal plane of formal equality with White Americans, but he set this up by posing Whites and Blacks together in juxtaposition to the Chinese:

⁶⁰ Gotanda, *supra* note 29, at 1189 n.11. Gabriel Chin developed and expanded upon this idea. See Gabriel J. Chin, *The Plessy Myth: Justice Harlan and the Chinese Cases*, 82 IOWA L. REV. 151 (1996).

There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race. But by the [segregation] statute in question, a Chinaman can ride in the same passenger coach with white citizens of the United States, while citizens of the black race in Louisiana . . . who are entitled, by law, to participate in the political control of the State and nation . . . and who have all the legal rights that belong to white citizens, are yet declared to be criminals, liable to imprisonment, if they ride in a public coach occupied by citizens of the white race.⁶¹

These examples show the way that careful multigroup analysis that keeps an eye on White supremacy can help us see beyond binaries, real and false. Our sense is that this kind of analysis has been developed further in Asian American Jurisprudence than in LatCrit Theory. Our sense also is that this might be due in part to the greater consensus in Asian American Jurisprudence about the role of race.⁶²

V. CONCLUSION: BACK TO THE RACE QUESTION IN LATCRIT

George Martinez at LatCrit II called for Mexican Americans to “embrace a non-White identity to facilitate coalition building with African-Americans.”⁶³ We believe that one barrier to this is the lack of resolution of the ethnicity versus race question. As we noted earlier, Latina/o panethnicity dodges the race question and permits the following kind of White identification. The U.S. Census for 2000 reports that 48% of Hispanics identify as White, 2% as Black, 6% as belonging to two or more traditional race categories, and 43% self-identifying as “some other race.”⁶⁴ Perhaps

[m]ore importantly, whiteness is clearly associated with distance from the immigrant experience. Thus, the U.S.-born children of immigrants are more likely to declare themselves white than their foreign-born parents, and the share of whiteness is higher still among the grandchildren of immigrants. In addition, the acquisition of U.S. citizenship is associated with whiteness.⁶⁵

⁶¹ *Plessy v. Ferguson*, 163 U.S. 537, 561 (1896) (Harlan, J., dissenting).

⁶² While we believe that there is a greater consensus about the role of race in doctrinal legal analysis about Asian Americans and discrimination, Asian American Jurisprudence could also benefit from greater clarity about the relationship between race and panethnicity. This is a point that we are going to raise in informal discussion during an upcoming conference, CAPALF 13 (Conference of Asian Pacific American Law Faculty), William Mitchell College of Law, St. Paul, Minnesota, April 27-28, 2007. We also want to note that there are fault lines with regard to the coherence of the Asian American racial category. This has long been a concern with regard to Filipinas/os, and this is becoming especially acute with the differential racialization of South Asians following 9/11.

⁶³ George A. Martínez, *African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*, 19 CHICANO-LATINO L. REV. 213, 214 (1998).

⁶⁴ Press Release, Pew Hispanic Center, *Latinos See Race as a Measure of Belonging* (Dec. 6, 2004), available at <http://pewhispanic.org/newsroom/releases/release.php?ReleaseID=16> (last visited April 1, 2007).

⁶⁵ *Id.*

For Latinas/os, the persistence of the claim to Whiteness in the face of discrimination must be noted. We would urge LatCrit to re-visit Martinez's argument in his article about the racial construction of Latinas/os.⁶⁶

At the level of theory, what kind of scholarship would provide for LatCrit a more clear disclaiming of the legacy of Whiteness? It might include a more critical examination of cases such as *Mendez v. Westminster*⁶⁷ that have played an important role in the critique of the Black/White racial paradigm.⁶⁸ Reynaldo Valencia notes that *Mendez* has been denoted as the *Brown v. Board* for Latinas/os.⁶⁹ He goes on to note the intervention in that case of the African American, Japanese American, and Jewish American communities, marking it as "one of the earliest examples of successful coalition building among communities of color."⁷⁰

We can compare Valencia's reading with the account of Toni Robinson and Greg Robinson, who offer a more cautionary tale of the coalitions that emerged from this litigation. Rather than a "golden moment of intergroup unity among Latinos, Asian Americans, and African Americans,"⁷¹ they note that there were important differences with regard to the legal arguments advanced by the litigants and the amici on appeal. The most serious breakdown was based on race, and the stipulation that the litigants in this case were members of the White race.⁷² As a result, the primary legal argument of the original plaintiffs on appeal in this case was that the California legislature had not authorized the segregation of Mexican American children. The amicus brief that the Japanese American Citizens League participated in, as well as the amicus brief filed by the NAACP, went much further.⁷³ Robinson and Robinson conclude by stating that "[a]lthough the *Mendez* case did not lead the Mexican Americans to identify themselves as a minority in common cause with the Japanese Americans or African Americans at that time, the case did help cement the alliance between the JAACL and NAACP," which went on to participate in each group's efforts to combat discrimination.⁷⁴ We learn that one of the leading Mexican American civil rights lawyers, who participated in *Hernandez v. Texas*, initially thought that *Brown v. Board of Education* had little to do with the Mexican Americans and their efforts to achieve educational justice.⁷⁵

⁶⁶ The work required would be broader than the work of Ian Haney López, who has focused on Mexican Americans and Chicanas/os.

⁶⁷ *Mendez v. Westminster Sch. Dist.*, 64 F. Supp. 544 (S.D. Cal. 1946), *aff'd*, 161 F.2d 774 (9th Cir. 1947).

⁶⁸ See Perea, *supra* note 20.

⁶⁹ Reynaldo Valencia, *What If You Were First and No One Cared: The Appointment of Alberto Gonzalez and Coalition Building Between Latinos and Communities of Color*, 12 WASH. & LEE J. CIV. RTS. & SOC. JUST. 21, 31 (2005).

⁷⁰ *Id.*

⁷¹ Toni Robinson & Greg Robinson, *Mendez v. Westminster: Asian-Latino Coalition Triumphant?*, 10 ASIAN L.J. 161, 161-62 (2003).

⁷² Tom Saenz offers the White stipulation as one of the reasons that *Mendez* did not become *Brown*. See Thomas A. Saenz, *Mendez and the Legacy of Brown: A Latino Civil Rights Lawyer's Assessment*, 11 ASIAN L.J. 276, 278 (2004).

⁷³ Robinson & Robinson, *supra* note 71, at 176-80.

⁷⁴ *Id.* at 183.

⁷⁵ See Steven H. Wilson, *Brown Over "Other White": Mexican Americans' Legal Arguments and Litigation Strategy in School Desegregation Lawsuits*, 21 LAW & HIST. REV. 145

As questions of LatCrit theory and LatCrit politics, it is crucial that we examine closely the positions and actions taken in past and present racial coalitions. We firmly believe that the “race question” in its theoretical complexities of ethnicity versus race, the coalitional diversions illustrated by our binary and multigroup analytical model, and the political imperative to re-examine “Black exceptionalism,” should all be part of a LatCrit agenda. Failure to examine these questions will lead to ruptures such as the one that followed *Hernandez v. Texas* or failed opportunities to move forward on our anti-racist agenda.

(2003). In an article discussing the evolution of the litigation strategy pursued by James DeAnda, Wilson notes that in the “first post-*Brown* school desegregation case to be brought on behalf of Mexican Americans,” DeAnda in his pretrial memorandum “referred to the *Brown* decision only to dismiss its relevance.” *Id.* at 166-67.

