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PANEL: LATINA/0 IDENTITY AND PAN-ETHNICITY: TOWARD LATCRIT SUBJECTIVITIES: Five Axioms in Search of Equality *

* This title is inspired by and borrowed from Luigi Pirandello's brilliant play SIX CHARACTERS IN SEARCH OF AN AUTHOR.

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SUMMARY: ... I do seek to fuel thought about and discussion of these and other axioms necessary to the development of LatCrit studies that move us away from the repetition of old arguments and toward a fuller realization of equality. ... Neither the concept of "race," as currently understood, nor the concept of "ethnicity," standing alone, will enable us to better understand the racism that affects Blacks, Latinos/as, Asian Americans, Native Americans and other racialized groups. ... The concept of race, understood as the Black/White binary paradigm, does not promote equality for Latino/a people because, in part, many races and ancestries constitute Latino/a people, one of whose salient traits is racial mixture. ... *Axiom V. The 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. ... The breadth of the concept of ethnicity, which corresponds in large measure to the notion of the social construction of race, encompasses the breadth of varying Latino/a identities and the discrimination consequent. For example, introducing "ethnic traits" into our understanding of race makes Latino/a traits such as shared language, religion, history, color, culture, and accent relevant to discrimination analysis. ...*

[*231] As scholars we do not want to be criticized for asserting a conclusion without axioms and postulates from which the conclusion follows. I offer several axioms, therefore, as starting points for discussion. I do not presume to be either final or comprehensive. I do seek to fuel thought about and discussion of these and other axioms necessary to the development of LatCrit studies that move us away from the repetition of old arguments and toward a fuller realization of equality.

As I think about the problems of civil rights for Latinos/as, I always return to the same questions. Why do we remain invisible as Americans? Why is our political voice not commensurate with our numbers? Why are our voices unheard at large in articulating the meaning and content of civil rights for us? I seek to express axioms and ideas that will facilitate recognition of our unique Latina and Latino voices and add our voices to the debate on identity in America in a significant way. My axioms have unifying themes: the pervasiveness of the Black/White binary paradigm of race in America; the centrality of Anglocentric premises for full American identity; the way these premises silence Latino/a voices. I begin with the least controversial axiom, how we might understand equality.

[*232] *Axiom I. Our goal must be the most broad understanding of equality. It must be a full equality, admitting of no qualifications or impediments.*

The scope of equality has been expressed differently by different scholars. As Kenneth Karst wrote regarding the principle of equal citizenship, "every individual is presumptively entitled to be treated by the organized society as a respected, responsible, and participating member." n1 Furthermore, the equality principle "forbids the organized society to treat people as members of an inferior or dependent caste, or as nonparticipants." n2 Or as Christine Littleton has expressed the idea, equality must mean a condition in which we pay no price for who we are, in which my identity costs me no more than anyone else's. n3

Latinos/as are obviously far from attaining equality in these and most other senses. We are treated as an inferior caste. Official English laws render the Spanish language, and symbolically our identity, into an unofficial, second class status. n4 Society treats its use as evidence of ignorance and even child abuse. n5 We exist in the public imagination only as drug criminals, illegal aliens, and [*233] accented sex symbols. Our presence arouses suspicion. For example, one California legislator, in the wake of Proposition 187, suggested that all persons appearing "Hispanic" should be required to carry identity cards to prove their legitimacy upon demand. n6

We continue to pay a heavy price for our identity. We may legally be discharged from employment merely for speaking Spanish words in the workplace. n7 We may be thrown off of juries for being bilingual and for the discomfort our bilingualism generates in attorneys and judges. n8 Many of our young people continue to be segregated, entombed in remedial and vocational classes, carefully steered away from the college preparatory courses they need to succeed.

Axiom II. The concepts of "Race" and "Racism" must be amplified to promote Latina/o equality.

Our understanding of race must be amplified so that it encompasses all peoples afflicted by racism. As Joel Kovel wrote insightfully, "racism antecedes the notion of race, indeed, it generates the races." n9 Our understanding of race and racism must [*234] be amplified so that the concepts also encompass ethnic characteristics, which often form the basis for prejudice and racism against Latinos/as, Asian Americans and Blacks. The concept of ethnicity, in turn, must also be amplified and informed by an understanding of racism, which all too often is left out of discussions of ethnic groups and their presumed ability to assimilate. Neither the concept of "race," as currently understood, nor the concept of "ethnicity," standing alone, will enable us to better understand the racism that affects Blacks, Latinos/as, Asian Americans, Native Americans and other racialized groups.

As we currently understand "race," it is entirely dominated by a binary Black/White paradigm in which only two races exist with legitimacy in the United States: the Black and the White. This binary paradigm has a stranglehold on the consciousness of most people in this country. It excludes Latino/as from public view and consideration comprehensively and with regularity. I will give one example: the national reporting of the recent Los Angeles riots and what we take to be facts about those riots.

The media presented the riots as though they were a conflict between Blacks and Whites, symbolized by the videotaped violence against Reginald Denny, and between Blacks and Korean-Americans, the latter presented as "good," upwardly striving ethnics. With the possible exception of local California media, the national media ignored entirely the multiple roles of Latinos/as in these riots: Most of the early victims of crowd violence were Latino/a;

One-third of the dead were Latino/a;

Between twenty and forty percent of the businesses damaged were Latino/a owned;

One-half of those arrested were Latino/a. n10 [*235] These statistics all make perfect sense, because fully half of the population of South Central Los Angeles is Latino/a; the Latino/a community there was bound to have been deeply involved in the riots.

The lesson I draw from the missing stories of Latino/a victimization and criminality in the Los Angeles riots is that significant racial events in this country are perceived and understood only within a binary Black/White paradigm, n11 and sometimes with little regard for what actually happened.

The persistent reproduction of the binary Black/White paradigm occurs as well across time in some of the leading literature on race in America: from Gunnar Myrdal's *An American Dilemma*, n12 to the 1968 Kerner Report which concluded that "our nation is moving toward two societies, one black, one white-separate and unequal" n13 to Andrew Hacker's book *Two Nations: Black and White, Separate, Hostile, Unequal*. n14

The concept of race, understood as the Black/White binary paradigm, does not promote equality for Latino/a people because, in part, many races and ancestries constitute Latino/a people, one of whose salient traits is racial mixture. Many races, in a genetic or biological sense, constitute Latino/a people, since racial mixture with Europeans began after the arrival of the Spanish in the sixteenth century. This includes blacks, browns, beiges, whites and colors in-between. This high degree of racial mixture is well illustrated from the beginnings of European colonization of the [*236] current United States by the first census of Los Angeles, conducted by Spanish authorities in 1781. Only two of the forty-six persons counted, approximately four percent, were Spaniards; the vast majority were identified as Indians, mestizos, mulattoes, and blacks. n15 Historians and scholars of racial mixture have noted that "virtually all Latinos are . . . multiracial." n16 Racial mixture, in a genetic or biological sense, does not fit a binary Black/White paradigm and disrupts this paradigm.

Because "race" is commonly understood to mean Black or White, arguments by analogy to race have generally not been helpful in recognizing or redressing claims of discrimination against Latinos/as. The virtual failure of Title VII and jurisprudence under the equal protection clause to provide any redress for claims of discrimination brought by Latinos/as illustrates the failure of arguments by analogy. In *Hernandez v. New York*, n17 the case allowing the peremptory exclusion of bilingual jurors from jury service, the Court reasoned that "it may well be . . . that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis." n18 "It may well be" according to the court, but language is not treated as a proxy for race under the equal protection clause and it receives no protection by the courts under Title VII. n19

[*237] *Axiom III. The concept of Civil Rights is so dominated by the Black/White binary understanding of American racial identity that it is currently of little utility for Latinos.*

The binary conception of race operates to exclude Latinos/as from important forums for the discussion of racial issues and justice. Typically, but with exceptions, Latinos/as have no place at the table to voice our conception of civil rights and wrongs.

All the civil rights enactments and court decisions in this area that most of us would consider to be major, even if of limited effect, attempted to redress harms to Blacks, and to a lesser extent, women. The Reconstruction Amendments have frequently, and correctly, been understood to have been enacted to reverse the *Dred Scott* n20 decision and to protect newly freed slaves from hostile state action. The pre- and post- Reconstruction Civil Rights Acts intended Blacks to be the principal beneficiaries. *Brown v. Board of Education* n21 abolished separate but equal education and was widely understood as a vindication of Black equality interests, although Latinos too benefitted from the abolition of segregated education. The Civil Rights Act of 1964 was passed to attempt to establish equal treatment for Blacks in crucial social, educational and economic institutions. The history of these Civil Rights enactments corresponds, of course, to the history of slavery, Jim Crow laws and violence directed at African Americans. While Latinos/as have benefitted from these reforms, the intended beneficiaries were African Americans.

Because African Americans have suffered most, and most visibly, the horrors of slavery, abusive Jim Crow laws, lynching, and the Ku Klux Klan, among many other injustices, and because African Americans resisted racism most powerfully during the organized resistance of the Civil Rights movement of the 1960s, African Americans can and do lay special claim to the major civil [*238] rights enactments as theirs. We must acknowledge with deep respect the African-American suffering and struggle that has made civil rights possible for us all.

The history of the Reconstruction amendments and Civil Rights statutes is so dominated by the experience of African Americans, however, that it obscures the efforts and history of Latinos/as struggling too for civil rights. Furthermore, the absence of Latinos/as in mainstream civil rights history undermines the legitimacy of Latino/a claims to equal civil rights.

When I talk about a Latino/a conception of civil rights, I am often met with arguments about the long history of African American slavery and the struggle for civil rights during the 1960s. It seems to me that these arguments assert African American claims to civil rights based on two notions: 1) reparations for past harms inflicted by whites and 2) freedoms and equality hard-won from whites in the more recent past. I agree with these and any other bases that may be asserted for more meaningful equality for African Americans.

However, I perceive two problems with this historically-founded and legitimate claim to civil rights. First, it leads to the assumption that Latinos/as have not suffered discrimination nor have struggled on behalf of greater civil rights. Because Latinas/os history in the United States is neither well known nor well accepted, and because it is different from the history of African Americans, we are perceived as late-arriving trespassers (perhaps undocumented immigrants) encroaching on the already-settled and distributed terrain of civil rights. Second, a possessory attitude towards civil rights makes the recognition of additional and different conceptions of civil rights exceedingly difficult. If the prevailing social conception is that civil rights belong more to African Americans than to Latinos/as or other racialized groups, what right do other groups have to demand changes in that conception of civil rights? This, I believe, is the difficult position in which Latinos/as find themselves.

I prefer, perhaps out of necessity, not to conceive of equality as [*239] a limited good but rather as a work in progress, a project in need of further elaboration and commentary from all concerned. In my view, steps toward greater equality and less subordination benefit us all in the long run.

The exclusion of Latinos/as from the discursive space on race and civil rights is also well illustrated by the academic literature on race. n22 Books on race and racism tend to focus exclusively on the problematic relationship between Blacks and Whites. Employment discrimination casebooks, and courts, focus prominently on problems of race and sex discrimination, and give only marginal treatment to other kinds of discrimination. Most law review symposium issues on race in America feature articles by African American and White writers, focusing on Black and White issues. Articles by Latino or Latina writers usually do not appear. I collect these symposium issues, and with very few and very recent exceptions, all the articles are on Black and White race, by Black and White writers. n23

The persistent tendency to equate civil rights leadership and scholarship only with African American voices continues largely unabated. As long as only Blacks and Whites are seen as constituting the full relevant civil rights universe, the limited binary nature of discourse about civil rights will merely continue to replicate itself. I do not see how one can even begin to have a useful conversation about a civil rights agenda for the 21st century without including the concerns voiced by Latino/a, Asian-American and Native American scholars.

[*240] *Axiom IV. "National Origin" is not a helpful concept in understanding discrimination against Latinos/as nor in redressing such discrimination.*

The "national origin" concept focuses our attention on the ancestral lands of our parents or earlier ancestors outside the United States. Yet for most Latinos/as our national origin, our place of birth, is the United States. "National origin's" focus on ancestral lands and traits outside the United States facilitates the attribution of foreignness to Latinos/as, our "symbolic deportation" from within these borders. Thus we are removed from our full and constitutive role in a plenary conception of American identity. Thus too is our history within the United States marginalized as a kind of "foreign history" that does not really belong as part of American history.

Unfortunately, "national origin" is currently the well-accepted, but wholly ineffective, concept purportedly providing constitutional and statutory protection from discrimination because of ethnic characteristics. Since the national origin concept assumes and creates the foreignness of a plaintiff claiming its protection due to perceived racial and ethnic differences, the concept more often functions to reject Latino/a claims for civil rights than to redress them. n24 Rejection of the claims of perceived foreigners to protection from discrimination because of their racial or ethnic traits reinforces the closely held, Black/White binary conception of American identity.

[*241] *Axiom V. The 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.*

The breadth of the concept of ethnicity, which corresponds in large measure to the notion of the social construction of race, encompasses the breadth of varying Latino/a identities and the discrimination consequent. n25 For example, introducing "ethnic traits" into our understanding of race makes Latino/a traits such as shared language, religion, history, color, culture, and accent relevant to discrimination analysis. Only careful study of the history of the several Latino/a peoples in the United States and historical patterns and features of discrimination will enable us to better identify and understand the ways and means of discrimination against Latinos/as today. As one example, the attribution of deportable illegal alien or foreigner status to all Mexicans and Mexican Americans, and to all Latinos, regardless of citizenship [*242] status, results in part from the long established Bracero programs, the cyclical importation and deportation of inexpensive Mexican labor corresponding to domestic labor shortages and surpluses, respectively. n26 This history also explains why our border with Mexico has always been highly permeable, largely in response to the demands of large American corporate and agricultural interests for cheap labor. n27

* * *

I offer these five axioms and these comments in search of equality. These, and other axioms, should be discussed and examined critically. We need not agree on this or any other set of axioms. But I believe there is wisdom in beginning LatCrit studies with some common understandings, always subject to development and always open to the knowledge and discoveries that await us.

FOOTNOTE-1:

n1 Kenneth H. Karst, *Citizenship, Race, and Marginality*, [30 WM. & MARY L. REV. 1 \(1988\)](#).

n2 *Id.*

n3 See Christine A. Littleton, *Restructuring Sexual Equality*, [75 CAL. L. REV. 1279, 1285 \(1987\)](#) (describing "equality as acceptance:" "To achieve this form of sexual equality, male and female 'differences' must be costless relative to each other.").

n4 For a detailed history of American multilingualism and the Official English movement, see Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, [77 MINN. L. REV. 269 \(1992\)](#).

n5 For example, in Texas, District Court Judge Samuel Kiser accused a Latina mother of child abuse and of consigning her daughter to life as a "housemaid" by speaking in Spanish to her daughter at home. See Patty Reinert, *Amarillo Judge Does About Face/Girl's Parents Resolve Language Dispute*, HOUS. CHRON., Sept. 19, 1995, at A11.

n6 California State Senator Craven stated that "the state legislature should explore requiring all people of Hispanic descent to carry an identification card that would be used to verify legal residence." Maria C. Hunt, *Craven Says All Hispanics Should Carry I.D. Cards*, SAN DIEGO UNION-TRIB., October 18, 1994, at A1.

n7 See [Garcia v. Spun Steak Co., 998 F.2d 1480 \(9th Cir. 1993\)](#), cert. denied, [512 U.S. 1228 \(1994\)](#).

n8 See [Hernandez v. New York, 500 U.S. 352 \(1991\)](#). For extended critiques of the result and reasoning of *Hernandez*, see Juan F. Perea, *Hernandez v. New York: Courts, Prosecutors, and the Fear of Spanish*, [21 HOFSTRA L. REV. 1 \(1992\)](#); Deborah A. Ramirez, *Excluded Voices: The Disenfranchisement of Ethnic Groups from Jury Service*, [1993 WIS. L. REV. 761](#).

n9 JOEL KOVEL, WHITE RACISM: A PSYCHOHISTORY IX (1984). On the social construction of race, see Ian Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, [29 HARV. C. R.-C. L. L. REV. 1, 20-24 \(1994\)](#).

n10 David E. Hayes-Bautista et al., *Latinos and the 1992 Los Angeles Riots: A Behavioral Science Perspective*, 15 HISPANIC J. BEHAVIORAL SCI. 427, 429 (1993).

n11 For a detailed study of the Black/White binary paradigm of race, see Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CAL. L. REV. ____ (forthcoming 1997).

n12 GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND AMERICAN DEMOCRACY (1944).

n13 REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 1 (1968).

n14 ANDREW HACKER, TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL (1992).

n15 See *First Census of Los Angeles* (Thomas W. Temple II trans.), in FOREIGNERS IN THEIR NATIVE LAND: HISTORICAL ROOTS OF THE MEXICAN AMERICANS 34-35 (David J. Weber ed., 1973).

n16 RACIALLY MIXED PEOPLE IN AMERICA 9 (Maria R. P. Root ed., 1992). See also Temple, *supra* note 14 at 33.

n17 [500 U.S. 352 \(1991\)](#).

n18 [Hernandez, 500 U.S. at 354](#).

n19 See *id.* at 379. See also [Garcia v. Gloor, 618 F.2d 264 \(5th Cir. 1980\)](#) (holding no violation of Title VII in firing Mexican-American worker for speaking Spanish in violation of English-only rule), cert. denied, [449 U.S. 1113 \(1981\)](#); [Garcia v. Spun Steak, 998 F.2d. 1480 \(9th Cir.](#)

[1993](#)) (holding no violation of Title VII in firing Mexican-American workers for speaking Spanish in violation of English-only rule), *cert denied*, [512 U.S. 1228 \(1994\)](#).

n20 [60 U.S. 393 \(1856\)](#).

n21 [347 U.S. 483 \(1954\)](#).

n22 See Perea, *supra* note 11 on the Black/White paradigm, which structures much literature on race and racial discourse.

n23 For exceptions, see *Symposium on LatCrit Studies*, 85 CAL. L. REV. (forthcoming 1997).

n24 See Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, [70 N.Y.U. L. REV. 965, 981-990 \(1995\)](#).

n25 I do not want to be misunderstood here. I do not intend to suggest that "ethnicity theory," with its incorrect assumption that the experiences of American minority groups are comparable to those of assimilated white European immigrants, is an appropriate theory for considering Latino identity. "Ethnicity theory" neglects to consider racism as a formidable, and perhaps insurmountable, barrier to assimilation for many minority groups. For an apt critique of "ethnicity theory," see Ian Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, [29 HARV. C.R.-C.L. L. REV. 1, 20-24 \(1994\)](#). See also IAN HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996). My use of the terms ethnicity and ethnic traits is meant only to suggest that amplifying our understanding of race to include the constituent characteristics of ethnicity may provide a better way to understand Latinos than the current conception of race, which is highly binary and underinclusive. The constituent aspects of ethnicity include "common geographic origin; migratory status; race; language or dialect; religious faith or faiths; ties that transcend kinship, neighborhood and community boundaries; shared traditions, values, and symbols; . . . an internal sense of distinctiveness; an external perception of distinctiveness." HARVARD ENCYCLOPEDIA OF AMERICAN ETHNIC GROUPS VI (Stephen Thernstrom ed., 1980).

n26 See Gilbert Paul Carrasco, *Latinos in the United States: Invitation and Exile*, in IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES, 190-204 (Juan F. Perea ed., 1997).

n27 See *id.*