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THE UNIVERSITY OF
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Critique in Memory of Trina Grillo**

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Multiracialism: A Bibliographic Essay and Critique in Memory of Trina Grillo

Jean Stefancic*

Long ago, before the time of troubles, a small group of friends came together to discuss passion—not the breathtaking, spininggling, change-the-world kind of feeling—but Roberto Unger's book by that title.¹ How this came about I'm not really quite sure. Perhaps it was an extension of a continuing conversation John Powell and John Denvir had been having. Nevertheless, Powell, Denvir, Charles Lawrence, Stephanie Wildman, DeDe Donovan and I gathered in Stephanie's dining room one Friday morning to examine the cryptic and mysterious Unger. By the end of the session, we had exhausted Unger and ourselves, considered a feminist perspective on a theory of emotions, and discovered the exhilaration of being together with no obligation other than to think and to talk.

Six months passed and with it another semester. We decided to tackle Derrick Bell's *Supreme Court, 1984 Term, Foreword: The Civil Rights Chronicles*,² published the previous fall. A new person joined the group, not yet a member of the University of San Francisco law faculty, but soon to be one after Lawrence left for Stanford. Her name was Trina Grillo; they all knew her.

At first I couldn't quite get who she was: White, but black; Italian, but Spanish-surnamed; very smart and very kind. With a cloud of soft dark hair that caressed your cheek every time she gave you a hug, Trina had a warm womanly body that

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1. See ROBERTO MANGABEIRA UNGER, *PASSION: AN ESSAY ON PERSONALITY* (1984).

2. See Derrick Bell, *The Supreme Court, 1984 Term, Foreword: The Civil Rights Chronicles*, 99 HARV. L. REV. 4 (1985).

made the hug worthwhile. Her sparkling dark eyes lit up her smile. I see her dressed in purple and black.

A graduate of the University of Minnesota Law School, Trina could talk law-talk with the best of them. She could also talk fem-talk and crit-talk, as well as woman-talk and kid-talk. Trina knew all kinds of folks and moved in many different worlds. She didn't care if you lived on another planet, or just went to visit one sometimes. She'd leave you alone until you were ready to return, but was intensely curious about what life there had been like for you. She respected everyone's personhood.

Trina was tough, though she often felt vulnerable. Her razor-sharp mind incisively cut through fuzzy thinking, questioning authority and challenging the arrogance of those who, privileged by knowledge, patronized others who were dependent on them for that knowledge. In her illness, as in her scholarship, she challenged conventional wisdom. On the day she was diagnosed with Hodgkin's disease, she asked if I would go to the Planetree, a consumer health library in San Francisco, to research the disorder. With a heavy heart, but inspired by her tenacity to manage her illness and help take responsibility for its cure, I culled every file. For the next six years she continued to call to account those in the medical profession who too easily assume their patients are ignorant, meek, or docile. She would not knuckle under.

Through it all she did not abandon her friends; they were as necessary to her as she was to them. Every once in a while she would tell you something outrageous about yourself, and what you could accomplish. Often her predictions would come true. Did she have a supersense about possibility? An extraordinary faith in inevitability? I believe that many of her students and friends accomplished certain things because she believed in them and told them they could achieve their goals if they worked hard enough. Or maybe, like Rudolfo Anaya's transfigured curandera-owl, she could see the path through the woods that was obscured to everyone else.³

All these things I found out later. Looking back on that day when we felt so proud of Derrick Bell and grateful for his pathbreaking scholarship, I see another common thread that wasn't as apparent then. While some of us lived multiracial

3. See RUDOLFO A. ANAYA, *BLESS ME, ULTIMA* (1972).

lives, Trina foremost, others were yet to go down that road or would travel it more extensively than we had in the past.

Trina lived a multiracial life in a multiracial world, part of which she has described elsewhere.⁴ Though she and I were comfortable talking about race, we did not talk a great deal about multiracialism. Had she remained in good health, had I not moved from San Francisco, perhaps we would have. The product of an interracial marriage herself, she knew and approved of my many deep friendships with men and women of color.

Trina wrote that, while not a burning issue twenty years ago, multiracialism has become almost a fad.⁵ So much changed so quickly. What has made the difference? Could it be that cross-racial marriages like Trina's and her parents', banned in much of the United States until the mid-twentieth century, suddenly multiplied and blossomed in post-war America? Are children of those unions, perhaps a little younger than Trina, now reaching a small critical mass? Are younger people more likely to cross racial lines than their parents?

In 1980 I moved to San Francisco, a city so Chinese that Richard Rodriguez has said, "I am Chinese because I live in San Francisco, a Chinese city."⁶ My mother, visiting me soon after my move to the Bay Area, confessed she could never live there because there were too many "different" people. Sixteen years later, however, she participated raptly in the pre-wedding Chinese tea ceremony of her grandson, my son Ben, who married his Chinese American high school sweetheart in San Francisco. When Ben and his wife have a child, will Ben, my mother, and I have become Chinese? Will the family tree eventually start to look like that of the Delaney sisters Trina describes in one of her articles?⁷ How many such family trees are beginning to have these intertwined branches? Where do

4. See Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 BERKELEY WOMEN'S L.J. 16, 22-23 (1995).

5. See *id.* at 23.

6. Richard Rodriguez, *My Discovery of California: A Writer's Story*, Address at the University of San Francisco (Nov. 8, 1992); see also Rena Pederson, *Diversity and Assimilation*, DALLAS MORNING NEWS, Apr. 9, 1995, at J2 (recounting a conversation between Rodriguez and Bill Moyers where Rodriguez explained he was becoming Chinese as a result of living in a predominantly Chinese neighborhood).

7. See Grillo, *supra* note 4, at 25 n.36 (noting that the family tree of the Delaney sisters, a prominent African American family, "shows mostly white ancestry").

we find the language to describe what happens? Can we even talk about multiracialism without first having solved the problems of race? Is it easier for the media to focus on multiracialism than on race itself? I would like to have heard Trina's thoughts.

Thus, when I was asked by the editors of the *Minnesota Law Review* to write a brief article celebrating my friend Trina Grillo, I wondered what would have happened had Trina lived another forty years, and continued to apply her prodigious talents to developing a line of scholarship we might call Critical Multiracial Studies. What would that body of scholarship have looked like? What major themes would it have included? What books and articles would form its early corpus?

A multiracial person herself, Trina identified strongly and easily with blacks, Latinos, and of course, multiracial people. Imbued with a fierce instinct to ameliorate the plight of the oppressed and disadvantaged, Trina would surely have addressed issues like the ones outlined below. Here, then, is my modest contribution to an emerging genre, which awaits development by an author, probably young and as yet unknown, who will carry out the legacy that might have been Trina's.

I. CRITICAL MULTIRACIAL STUDIES: EARLY WRITING AND THEMES

Critical Multiracial Studies began in earnest in the years following the U.S. Supreme Court decision in *Loving v. Virginia*,⁸ which struck down antimiscegenation statutes in nearly one-half the states.⁹ Before this time, of course, a few social scientists had written about the paths of immigrants,¹⁰ while scientists, pseudoscientists, and outright racists wrote about the benefits and dangers of racial mixture and assimilation.¹¹ With *Loving* and the loosening of immigration restrictions, both occurring in the mid-1960s, multiracialism

8. 388 U.S. 1 (1967).

9. See *id.* at 12 (holding that restricting the right to marry based on racial classifications violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment).

10. See, e.g., NATHAN GLAZER & DANIEL PATRICK MOYNIHAN, *BEYOND THE MELTING POT: THE NEGROES, PUERTO RICANS, JEWS, ITALIANS, AND IRISH OF NEW YORK CITY* (1963).

11. See, e.g., James Armstrong, Jr., *The Race Question and Its Solution*, in *DISFRANCHISEMENT PROPOSALS AND THE KU KLUX KLAN: SOLUTIONS TO THE NEGRO PROBLEM* (John David Smith ed., 1993); MADISON GRANT, *THE PASSING OF THE GREAT RACE* (1916); CHARLES HERBERT STEMBER, *SEXUAL RACISM: THE EMOTIONAL BARRIER TO AN INTEGRATED SOCIETY* (1976).

came to the fore on the national scene. The number of interracial couples and children grew rapidly;¹² scholarship addressing the legal status of multiracialism and multiracial people followed suit.

The following bibliographic essay is divided into seven parts; later bibliographies will no doubt contain new headings and entries as the field grows in directions now difficult to anticipate. In each section, I describe the main works and areas of emphasis in the literature now written. I limit myself to what appear to be the principal works—the ones most cited by others writing about issues of multiracialism—aware that many excellent pieces may have escaped my attention. The Essay concludes with a few thoughts on likely directions Critical Multiracial Studies may take in years ahead.

II. MAJOR THEMES AND WRITERS

A. INTERRACIAL RELATIONSHIPS AND MARRIAGE

My father was born in Tampa, Florida of Cuban Black parents. Much of his life was spent firmly claiming his place among American Blacks. My mother was the daughter of Italian immigrants. I was born in 1948 and soon thereafter moved to the San Francisco Bay Area. There were four children in my family. . . . [O]ur skin color and our parents' interracial marriage were always causes for comment.¹³

United States society has always included multiracial people, some the product of loving (if illicit) unions, others the product of sexual predation and rape by white slaveholders of black women. A number of historians explore these issues. Leon Higginbotham and Barbara Kopytoff examine racial purity and interracial sex in pre-Civil War Virginia.¹⁴ Emily Field Van Tassel traces the history of antimiscegenation laws which, enacted in the wake of the Civil War, served as symbols of white resistance to progress by former slaves.¹⁵ The laws became

12. See G. Grosz, *From Sea to Shining Sea: A Current Listing of Interracial Organizations and Support Groups Across the Nation*, *INTERRACE*, Nov.-Dec. 1989, at 24. The reader may also want to consult such periodicals as *Biracial Child*.

13. Grillo, *supra* note 4, at 22.

14. See A. Leon Higginbotham, Jr. & Barbara K. Kopytoff, *Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia*, 77 *GEO. L.J.* 1967 (1989).

15. See Emily Field Van Tassel, "Only the Law Would Rule Between Us": *Antimiscegenation, the Moral Economy of Dependency and the Debate Over Rights After the Civil War*, 70 *CHI-KENT L. REV.* 873 (1995).

even more symbolically important in the twentieth century, as a means of limiting the rights and status of the former slaves.

Derrick Bell summarizes the law and social science of interracial love, sex, and marriage, providing cases and hypotheticals to show that both white and nonwhite persons in interracial relationships end up enjoying fewer rights than they would have in same-race relationships.¹⁶ He advances the view, also held by some social scientists,¹⁷ that taboos against race mixing, especially liaisons between black men and white women, lie at the heart of discrimination in housing, employment, education, and other areas.¹⁸ In a separate work, Bell examines interracial relationships through storytelling, presenting the dilemma of an African American activist hero who falls in love with a white doctor while recovering from wounds he received in a bomb attack against his organization.¹⁹ Bell brings to light the effect of such an interracial relationship on African American women, many of whom complain that the most marriageable black men date outside their race. The psychological dimensions of these themes are explored in an earlier work by Charles Stember.²⁰

Gary Cretser and Joseph Leon present a collection of essays that analyze intermarriage in general, as well as relationships between persons of specific racial groups.²¹ Edward Murguia examines marriages between Mexican Americans and Anglo Americans, finding that intermarriage is an indicator of the ease with which the minority race assimilates into the majority culture.²²

16. See DERRICK BELL, *RACE, RACISM AND AMERICAN LAW* §§ 2.1-2.12 (3d ed. 1992).

17. See, e.g., OLIVER COX, *CASTE, CLASS, AND RACE: A STUDY IN SOCIAL DYNAMICS* 386-87, 526-27 (1948) (arguing that the emphasis on sexual taboos "functions in the fundamental interest of economic exploitation"); CALVIN C. HERNTON, *SEX AND RACISM IN AMERICA* 176-77 (1965) (concluding that sexual racism is supported by and for an economic-political-social system that privileges white Americans).

18. See BELL, *supra* note 16, §§ 2.5-2.10.

19. See Derrick Bell, *The Last Black Hero: A Chronicle of Interracial Love and Sacrifice*, 8 HARV. BLACKLETTER J. 275 (1991).

20. See STEMBER, *supra* note 11.

21. See INTERMARRIAGE IN THE UNITED STATES (Gary A. Cretser & Joseph J. Leon eds., 1982).

22. See EDWARD MURGUIA, *CHICANO INTERMARRIAGE: A THEORETICAL AND EMPIRICAL STUDY* 6 (1982).

He shows that intermarriage is likely to increase in the future, especially in the upper-middle class.²³

Paul Spickard discusses intermarriage and ethnic identity, focusing in particular on Japanese Americans, Jewish Americans, and black Americans.²⁴ Interviews with twenty-one African American/white couples by Paul Rosenblatt, Terri Karis, and Richard Powell contrast the reactions of each partner's family to the relationship and examine difficulties encountered in raising biracial children.²⁵

B. RACIAL IDENTITY

*At times it seemed to me that we were half the biracial population of the Bay Area. We were stared at wherever we went, although it took me awhile, probably until I was five, to realize that the stares were not always ones of admiration. Of course, we did not define ourselves as biracial then. Instead, we were considered, and considered ourselves, Black, or Negro as we then said. . . . My race and my skin color have been issues that have preoccupied me for a good part of my life, and I see little prospect of this changing anytime soon.*²⁶

Since 1967, when *Loving v. Virginia* struck down laws against miscegenation, the number of interracial marriages has increased dramatically. From these marriages came a crop of children that others found hard to name. Formerly called mulatto, if born of black and white parents, these children and those of other mixed races were identified phenotypically if their features more strongly resembled one race than another. While the "one-drop" rule once assigned all children with a trace of black blood to the black race, today this rule has been relaxed, at least formally. More often than not, however, these individuals still have had to endure rude glares and questions such as, "What are you?"

Judy Scales-Trent,²⁷ Gregory Williams,²⁸ Adrian Piper,²⁹ and Kevin Johnson³⁰ have recently written about their experiences

23. See *id.* at 113 (predicting that the continued upward mobility of Chicanos will lead to increased intermarriage rates).

24. See PAUL R. SPICKARD, *MIXED BLOOD: INTERMARRIAGE AND ETHNIC IDENTITY IN TWENTIETH-CENTURY AMERICA* (1989).

25. See PAUL C. ROSENBLATT ET AL., *MULTIRACIAL COUPLES: BLACK AND WHITE VOICES* (1995).

26. Grillo, *supra* note 4, at 22.

27. See JUDY SCALES-TRENT, *NOTES OF A WHITE BLACK WOMAN: RACE, COLOR, COMMUNITY* (1995).

growing up as mixed-race children in biracial homes. In an anthology of autobiography and storytelling, Becky Thompson and Sangeeta Tyagi present a collection of essays by such authors as Harry Kitano, Calvin Hernton, Angela Davis, Cherrié Moraga, June Jordan, Ruth Frankenberg, and David Wellman that reflect on life in the United States as seen through the prism of race.³¹

In a much-cited anthology edited by Maria P.P. Root, a number of authors address the identity concerns of biracial children.³² Other writers in the collection explore racial ecology and the recovery of our nation's multiracial past, and challenge the insufficiency of existing census categories.

C. RACIAL FORMATION

*To begin with, we must fully understand that race is not a biological concept, but a social and historical construct. The reason that I grew up considering myself, as we then said, Negro, is that a racist system described me in that way. Most Blacks in the United States are persons of "mixed blood," if such a thing can be said to exist, and have both white and Black ancestors. If there were such a thing as a biological white, I would be at least half that, and so would many other Blacks. However, the fact that race is an historical and social construct certainly does not mean that it does not exist. Experiences, histories, and communities have all developed around this concept; so if we abandon race, we abandon communities that may have been initially formed as a result of racism but have become something else entirely.*³³

Much of the difficulty in talking about multiraciality arises from uncertainty about the definition of race itself. No longer regarded as purely biological, race nevertheless determines how people regard one another.

Pioneering work in racial formation began in England with Michael Banton³⁴ and in the United States with Michael Omi

28. See GREGORY HOWARD WILLIAMS, *LIFE ON THE COLOR LINE: THE TRUE STORY OF A WHITE BOY WHO DISCOVERED HE WAS BLACK* (1995).

29. See Adrian Piper, *Passing for White, Passing for Black*, 58 *TRANSACTION* 4 (1992).

30. See Kevin Johnson, *The Ring of Fire: Assimilation and the Mexican American Experience*, 85 *CAL. L. REV.* (forthcoming 1997).

31. See *NAMES WE CALL HOME: AUTOBIOGRAPHY ON RACIAL IDENTITY* (Becky Thompson & Sangeeta Tyagi eds., 1996).

32. See *RACIALLY MIXED PEOPLE IN AMERICA* (Maria P.P. Root ed., 1992).

33. Grillo, *supra* note 4, at 24.

34. See MICHAEL BANTON, *RACIAL AND ETHNIC COMPETITION* (1983).

and Howard Winant.³⁵ Using data from the 1980 census, Stanley Lieberson and Mary Waters examine the racial composition of the United States.³⁶ Kenneth Karst argues that individuals should be free to self-identify, knowing they are protected by laws against discrimination on the basis of race or sexual orientation.³⁷

Ian Haney López observes that racial classifications are relatively new constructions, consciously fabricated to serve various social purposes.³⁸ He shows that because such classifications take whiteness as the norm, law has played a major role in shaping and legitimating social ideas that accept subordination of those who are not white. López reflects on the story of Piri Thomas, a man of mixed Indian, African, and European parentage who, though his family chose to define itself as white, nevertheless defined himself as black because society regarded him that way.³⁹ Anthony Appiah⁴⁰ and Epifanio San Juan⁴¹ also question conventional wisdom about the objectivity of race, arguing that racial descriptors say more about those who use them than those to whom they supposedly refer.

Chicano scholar Tomás Almaguer describes the way three major groups in California—Mexican Americans, Native Americans, and Asian Americans—were racialized during the nineteenth century.⁴² George Martinez's research shows that while courts defined Mexican Americans as white when no benefit

35. See MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S* (2d ed. 1994).

36. See STANLEY LIEBERSON & MARY C. WATERS, *FROM MANY STRANDS: ETHNIC AND RACIAL GROUPS IN CONTEMPORARY AMERICA* (1988).

37. See Kenneth L. Karst, *Myths of Identity: Individual and Group Portraits of Race and Sexual Orientation*, 43 UCLA L. REV. 263 (1995).

38. See IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996); Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1 (1994) [hereinafter *Social Construction*].

39. See Haney López, *Social Construction*, *supra* note 38, at 45-59 (analyzing THOMAS PIRI, *DOWN THESE MEAN STREETS* (1967)).

40. See Anthony Appiah, *The Uncompleted Argument: Du Bois and the Illusion of Race*, in "RACE," *WRITING AND DIFFERENCE* 21 (Henry Louis Gates, Jr. ed., 1986).

41. See EPIFANIO SAN JUAN, JR., *RACIAL FORMATIONS/CRITICAL TRANSFORMATIONS: ARTICULATIONS OF POWER IN ETHNIC AND RACIAL STUDIES IN THE UNITED STATES* (1992).

42. See TOMÁS ALMAGUER, *RACIAL FAULTLINES: THE HISTORICAL ORIGINS OF WHITE SUPREMACY IN CALIFORNIA* (1994).

accrued, in most other cases society regarded them as non-white.⁴³

Gloria Anzaldúa uses the metaphor of the border to examine racial, cultural, and personal complexity.⁴⁴ Her anthologies of writings by radical women of color challenge identities traditionally assigned them.⁴⁵ Performance artist Guillermo Gómez-Peña uses multiple voices to show that identity and culture are not closed systems, but increasingly fluid and multi-dimensional.⁴⁶ Antonia Darder's anthology contains essays on border culture, racial stereotyping, the ascription of identity by the dominant culture, class divisions and intragroup relations, as well as the idea of *mestizaje*, or racial mixture.⁴⁷ Articles by Margaret Montoya address many of the same issues.⁴⁸

D. CENSUS CATEGORIES AND OTHER CLASSIFICATIONS

The move for a "multiracial" category, both on census and other forms, and in terms of how we talk in daily life, is in part an attempt to recognize what is in fact the case—that some people have parents of two races, that even people who have parents of the same race may have other ancestors of a different race. A multiracial category would permit children to claim a racial relationship to both, or all, their parents, rather than being forced to choose. Moreover, even though over the years many Black leaders have been biracial, today some multiracial people, especially those with very light skin or who have been raised only by a white parent, may not feel completely comfortable or accepted in Black groups. But the move to define people as multiracial has serious risks. How would we distinguish between those who are multiracial because they have one white parent, such as myself, and the general Black population of the United States, many

43. See George Martinez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, 2 HARV. LATINO L. REV. (forthcoming 1997).

44. See GLORIA ANZALDÚA, *BORDERLANDS LA FRONTERA: THE NEW MESTIZA* (1987).

45. See MAKING FACE, MAKING SOUL HACIENDO CARAS: CREATIVE AND CRITICAL PERSPECTIVES BY WOMEN OF COLOR (Gloria Anzaldúa ed., 1990); THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR (Cherrié Moraga & Gloria Anzaldúa eds., 1981);

46. See GUILLERMO GÓMEZ-PÉÑA, *WARRIOR FOR GRINGOSTROIKA: ESSAYS, PERFORMANCE TEXTS, AND POETRY* (Coco Fusco trans., Graywolf Press 1993).

47. See CULTURE AND DIFFERENCE: CRITICAL PERSPECTIVES ON THE BICULTURAL EXPERIENCE IN THE UNITED STATES (Antonia Darder ed., 1995).

48. See 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. 387 (1996); Margaret E. Montoya, *Law and Language(s): Image, Integration and Innovation*, 7 LA RAZA L.J. 147 (1994).

*of whom in one way or another have a similar amount of white ancestry? Why would we want to make such a distinction?*⁴⁹

America's obsession with racial purity and race mixing reached its apogee with the institution of the "one-drop" rule. The consequent essentializing of black identity not only disallowed anyone to be other than black or white, it also stood in stark contrast to the ways in which other groups were racialized. Latinos, for example, take into account the issues of culture, national origin, and language when racializing. Some Asians do likewise.

F. James Davis examines laws enforcing the "one-drop" rule, showing that how one is treated by society influences the way one forms one's racial identity.⁵⁰ Davis also analyzes seven ways that varying status assignments affect how multiracial people are regarded. Lawrence Wright examines the debate about racial and ethnic categories, and the establishment of one for multiracials in the 2000 census.⁵¹

Bijan Gilanshan discusses proposals to establish a separate category for multiracial people by examining the benefits the category would confer on multiracials as well as resentments harbored for such a category from minority people who did not, could not, or chose not to identify themselves as multiracials.⁵² Kathy Russell and others examine intragroup hostilities over "colorism" and the resentment felt toward lighter-skinned blacks because they are more acceptable to whites.⁵³

Luther Wright discusses the conflicting methods used by the government to categorize different races, demonstrating that sometimes the government emphasizes immutable physical traits while at other times cultural ones.⁵⁴ He exposes the difficulties inherent in classifying mixed race people in existing racial classifications, and argues that the current Hispanic

49. Grillo, *supra* note 4, at 25.

50. See F. JAMES DAVIS, *WHO IS BLACK? ONE NATION'S DEFINITION* (1991).

51. See Lawrence Wright, *One Drop of Blood*, *NEW YORKER*, July 25, 1994, at 46.

52. See Bijan Gilanshan, *Multiracial Minorities: Erasing the Color Line*, 12 *LAW & INEQ. J.* 183 (1993).

53. See KATHY RUSSELL ET AL., *THE COLOR COMPLEX: THE POLITICS OF SKIN COLOR AMONG AFRICAN AMERICANS* (1992).

54. See Luther Wright, *Who's Black, Who's White, and Who Cares: Reconceptualizing the United States' Definition of Race and Racial Classifications*, 48 *VAND. L. REV.* 513 (1995).

classification should be replaced with a biracial category encompassing all biracial and multiracial people.⁵⁵

A number of writers have examined the origin and historical use of the label "Hispanic." Suzanne Oboler, in addition to showing how Latino identity in the United States is constructed, observes that labeling determines the distribution of resources to various groups as well as their inclusion in the political process.⁵⁶ Alex Saragoza and others show how the construction of "Hispanic" under Title VII poses difficulties in seeking relief for discrimination.⁵⁷ Angel Oquendo discusses Latino classifications and condemns subcategories such as "white Hispanic" or "black Hispanic" as divisive.⁵⁸ Rodolfo Torres and ChorSwang Ngin urge more comparative studies examining class divisions and intragroup relations between racial groups.⁵⁹ Finally, Berta Hernandez calls for an end to single-trait characterizations regarding race, gender, and sexual orientation, proposing instead a straightforward recognition of multidimensionality.⁶⁰

E. ESSENTIALISM AND INTERSECTIONALITY

*If we accept the definition of Black which we have been given—a definition which historically defined anyone with "one drop of Black blood" as Black—we ignore the existence of multiracial people. We ignore people whose experiences may be different from those experiences which have been defined as constituting the . . . "essentialized" Black experience. By so essentializing, we assume that the taxonomy of race proposed by nineteenth-century white supremacists—that human beings can be classified into four races and everyone fits neatly into one slot—is a valid one.*⁶¹

Another major theme in the emerging body of literature dealing with multiracialism is essentialism and intersectional-

55. See *id.* at 564.

56. See SUZANNE OBOLER, *ETHNIC LABELS, LATINO LIVES: IDENTITY AND THE POLITICS OF (RE)PRESENTATION IN THE UNITED STATES* (1995).

57. See Alex M. Saragoza et al., *History and Public Policy: Title VII and the Use of the Hispanic Classification*, 5 *LA RAZA L.J.* 1 (1992).

58. See Angel R. Oquendo, *Re-Imagining the Latino/a Race*, 12 *HARV. BLACKLETTER J.* 93 (1995).

59. See Rodolfo D. Torres & ChorSwang Ngin, *Racialized Boundaries, Class Relations, and Cultural Politics: The Asian-American and Latino Experience*, in *CULTURE AND DIFFERENCE: CRITICAL PERSPECTIVES ON THE BICULTURAL EXPERIENCE IN THE UNITED STATES* 66 (Antonia Darder ed., 1995).

60. See Berta E. Hernandez Truyol, *Building Bridges—Latinas and Latinos at the Crossroads: Realities, Rhetoric, and Replacement*, 25 *COLUM. HUM. RTS. L. REV.* 369, 429-31 (1994).

61. Grillo, *supra* note 4, at 25.

ity. These works deal with issues and persons lying at the juncture of two or more categories. Some authors treat the issue in historical perspective. Paul Finkelman, for example, discusses how early American society invested only certain groups with "color" and then faced line-drawing problems when questions arose about the legal status of persons of mixed race.⁶²

Another group of writers, including Kenneth Karst,⁶³ John Martinez,⁶⁴ and Jayne Lee,⁶⁵ addresses some of the challenges contemporary society faces in dealing with individuals and groups who use marginality and mixture strategically for advantage. Kimberlè Crenshaw⁶⁶ and Angela Harris,⁶⁷ in path-breaking law review articles, challenge the legal system to solve the problems and issues facing black women while avoiding the trivialization and erasure of identity that occurs when essentialism is deployed. Authors such as Richard Delgado⁶⁸ call attention to the way in which racialization at the hands of majority culture can challenge a minority group to coalesce around and resist marginalization—essentializing their own experience in the interest of achieving greater solidarity.

Neil Gotanda challenges perhaps the greatest essentializing tool of all, color-blindness, where the legal system studiously avoids making any differentiation or taking any note of race or ethnicity.⁶⁹ A group of gay and lesbian activists, including Elvia Arriola⁷⁰ and Francisco Valdes,⁷¹ recently has called

62. See Paul Finkelman, *The Crime of Color*, 67 TUL. L. REV. 2063 (1993); Paul Finkelman, *The Color of Law*, 87 NW. U. L. REV. 937 (1993) (reviewing ANDREW KULL, *THE COLOR-BLIND CONSTITUTION* (1992)).

63. See Karst, *supra* note 37.

64. See John Martinez, *Trivializing Diversity: The Problem of Overinclusion in Affirmative Action Programs*, 12 HARV. BLACKLETTER J. 49 (1995).

65. See Jayne C.S. Lee, *Navigating the Topology of Race*, 46 STAN. L. REV. 747 (1994) (reviewing KWAME A. APPIAH, *IN MY FATHER'S HOUSE: AFRICA IN THE PHILOSOPHY OF CULTURE* (1992)).

66. See Kimberlè Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

67. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).

68. See Richard Delgado, *Rodrigo's Sixth Chronicle: Intersections, Essences, and the Dilemma of Social Reform*, 68 N.Y.U. L. REV. 639 (1993).

69. See Neil Gotanda, *A Critique of "Our Constitution is Color-Blind"*, 44 STAN. L. REV. 1 (1991).

70. See Elvia R. Arriola, *Gendered Inequality: Lesbians, Gays, and Feminist Legal Theory*, 9 BERKELEY WOMEN'S L.J. 103 (1994).

attention to the forgotten status and voices of sexual minorities in communities of color. Several authors, including Leslie Espinoza,⁷² Mari Matsuda,⁷³ and Richard Delgado⁷⁴ point out that intersectional status may confer multiple consciousness, enabling a person to see and analyze experience in several ways at once. Stephanie Wildman and Adrienne Davis,⁷⁵ as well as Trina Grillo,⁷⁶ further analyze problems of intersectionality, showing the inadequacy of the law's system of rigid categorization.

F. TRANSRACIAL ADOPTION AND CHILD CUSTODY

*The confusion that a biracial child feels does not derive from being classified as Black, but from essentialist notions that being Black is one particular experience, and that this experience is not hers or his.*⁷⁷

As barriers against interracial mixing fall, more Americans begin to consider adopting children of races and ethnicities different from their own. At the same time, divorce among mixed-race couples with children presents the problem of whether custody should be awarded to the black or the white parent. Because many communities of color view with alarm the loss of children from custody or adoption decisions, the entire area is highly controversial.

An early and influential statement by the National Association of Black Social Workers (NABSW)⁷⁸ opposes transracial adoption for black children, and a recent federal statute, the Indian Child Welfare Act,⁷⁹ imposes hurdles in the way of non-Indians wishing to adopt Indian children. Many writers who

71. See Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 CAL. L. REV. 1 (1995).

72. See Leslie G. Espinoza, *Multi-Identity: Community and Culture*, 2 VA. J. SOC. POL'Y & L. 23, 26 (1994).

73. See Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7, 8 (1989).

74. See RICHARD DELGADO, *THE RODRIGO CHRONICLES: CONVERSATIONS ABOUT AMERICA AND RACE* 122 (1995).

75. See Stephanie Wildman & Adrienne Davis, *Language and Silence: Making Systems of Privilege and Subordination Visible*, in *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* 7, 22 (Stephanie Wildman ed., 1996).

76. Grillo, *supra* note 4.

77. *Id.* at 26.

78. See NATIONAL ASS'N OF BLACK SOCIAL WORKERS, *POSITION PAPER* (Apr. 1972), reprinted in *TRANSRACIAL ADOPTION* 50-52 (Rita Simon & Howard Alstein eds., 1977) [hereinafter NABSW POSITION PAPER].

79. 25 U.S.C. §§ 1901-1963 (1996).

support transracial adoption, such as Elizabeth Bartholet,⁸⁰ point out that unless white couples are permitted to adopt children of color, these children will often languish in temporary homes because of the dearth of couples of color who meet the requirements of social service agencies.

Other commentators, such as Jacinda Townsend⁸¹ and Eileen Blackwood⁸² take a position more sympathetic to the black nationalist or Indian sovereignty position. Blackwood points out that interracial adoption and child custody present different issues, and that considering race is more defensible in multiracial adoption disputes than in ones having to do with child custody where one or more parents have a biological tie to the child.⁸³ Excellent overviews by Twila Perry,⁸⁴ Julie Lythcott-Haims,⁸⁵ and Dorothy Roberts⁸⁶ identify the cultural, genetic, and legal aspects of this controversy.

The NABSW position paper, never repudiated, espouses that black children should be raised whenever possible in black homes.⁸⁷ It recognizes that the black family is essential to the self-determination of the black community and is a requirement of psychological wholeness and health in black children.⁸⁸ The organization argues that black children raised in white homes are cut off from their communities, find it difficult to develop a black identity, and are unable to fend off racial assaults.⁸⁹ It concludes by charging that a policy of permissive transracial adoption might be tantamount to black genocide.⁹⁰ Congress disagreed, and in 1994 passed the Multiethnic

80. See Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PA. L. REV. 1163, 1201-07 (1991).

81. See Jacinda T. Townsend, *Reclaiming Self-Determination: A Call for Intra-racial Adoption*, 2 DUKE J. GENDER L. & POLY 173 (1995).

82. See Eileen M. Blackwood, *Race as a Factor in Custody and Adoption Disputes: Palmore v. Sidoti*, 71 CORNELL L. REV. 209 (1985).

83. See *id.* at 215-16, 224-25.

84. See Twila L. Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. REV. L. & SOC. CHANGE 33 (1993-1994).

85. See Julie C. Lythcott-Haims, *Where Do Mixed Babies Belong? Racial Classification in America and Its Implications for Transracial Adoption*, 29 HARV. C.R.-C.L. L. REV. 531 (1994).

86. See Dorothy E. Roberts, *The Genetic Tie*, 62 U. CHI. L. REV. 209 (1995).

87. See NABSW POSITION PAPER, *supra* note 78, at 50.

88. See *id.*

89. See *id.*

90. See *id.*

Placement Act,⁹¹ which forbids the use of race in adoption placements. This Act has spawned a considerable literature. For a pro and con analysis see Randall Kennedy⁹² and Carol Moseley-Braun.⁹³

G. TOWARD THE NEW MULTIRACIAL SOCIETY

When I began teaching at Hastings Law School in 1977, I knew that I wanted to write about multiraciality. I did a little research, and proceeded to write—nothing. At that time there was little interest in the popular culture in that subject, and virtually nothing in the legal literature, so it is easy to see why I gave up on my project. Multiraciality did not seem to matter to anyone but me.

*But now I cannot turn on "Oprah" without seeing a segment on multiraciality*⁹⁴

A small group of writers and scholars has been addressing broad questions concerning the new multiracial and multicultural society that the United States will become early next century. Some of this work, like Kevin Johnson's,⁹⁵ focuses on the impact of immigration. A number of writers, including Jorge Klor de Alva, Earl Shorris, Cornel West,⁹⁶ Deborah Ramirez,⁹⁷ Elizabeth Martínez,⁹⁸ James Jennings,⁹⁹ Jack Miles,¹⁰⁰ and Frank Wu,¹⁰¹ examine interminority group tensions.

Juan Perea addresses the likely impact of increasing demographic diversity¹⁰² and English-only statutes.¹⁰³ The transfor-

91. Pub. L. No. 103-382, 104 Stat. 4056 (codified at 42 U.S.C. § 5115a (1994)).

92. See Randall L. Kennedy, *Yes: Race-Matching Is Horrendous*, A.B.A. J., Apr. 1995, at 44.

93. See Carol Moseley-Braun, *No: Cultural Heritage Is Important*, A.B.A. J., Apr. 1995, at 45.

94. Grillo, *supra* note 4, at 23.

95. See Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender and Class*, 42 UCLA L. REV. 1509 (1995).

96. See Colloquy, *Our Next Race Question: The Uneasiness Between Blacks and Latinos*, HARPER'S, Apr. 1996, at 55 (reporting conversation between Jorge Klor de Alva, Earl Shorris, and Cornel West).

97. See Deborah Ramirez, *Multiracial Empowerment: It's Not Just Black and White Anymore*, 47 STAN. L. REV. 957 (1995).

98. See Elizabeth Martínez, *Beyond Black/White: The Racisms of Our Time*, SOC. JUST., Spring-Summer 1993, at 22.

99. See BLACKS, LATINOS, AND ASIANS IN URBAN AMERICA: STATUS AND PROSPECTS FOR POLITICS AND ACTIVISM (James Jennings ed., 1994).

100. See Jack Miles, *Blacks vs. Browns*, ATLANTIC, Oct. 1992, at 41.

101. See Frank H. Wu, *Neither Black nor White: Asian Americans and Affirmative Action*, 15 B.C. THIRD WORLD L.J. 225 (1995).

102. See Juan F. Perea, *Demography and Distrust: An Essay on American*

mation of local or regional economies and cultures, like that of Miami, is explored by Alejandro Portes and Alex Stepick;¹⁰⁴ David Rieff shows the complexity and contradiction that is Los Angeles.¹⁰⁵

Some writers, such as Luis Angel Toro¹⁰⁶ and others listed in Part D, address what will happen to bright-line racial classifications, like those currently used by the federal government, when hundreds of thousands of mixed-race individuals no longer fit into any existing category. Jim Chen argues passionately against Asian and other forms of nationalism, which he sees as a roadblock to loving interracial marriages and as a throwback to the days before *Brown* and *Loving*.¹⁰⁷ A wide-ranging anthology edited by Maria P.P. Root focuses attention on such issues as identity, blending, human rights, multiracial education, and the new millennium.¹⁰⁸

Will living in close proximity to others of a different race or hue—sometimes in the same family—cause racial intolerance to decrease, as James Gordon speculates in regard to the first Justice Harlan?¹⁰⁹ Will living in a cosmopolitan city like San Francisco cause whites or Latinos to cross racial lines and declare themselves, with Richard Rodriguez, “Chinese”?¹¹⁰ Will racial categories fall by the wayside, as advocated by Linda Chavez,¹¹¹ or become even more salient, as John Calmore suggests?¹¹² Will a “new people” emerge¹¹³ inhabiting a “postethnic America,”¹¹⁴

Languages, Cultural Pluralism, and Official English, 77 MINN. L. REV. 269 (1992).

103. See Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. REV. 965 (1995).

104. See ALEJANDRO PORTES & ALEX STEPICK, *CITY ON THE EDGE: THE TRANSFORMATION OF MIAMI* (1993).

105. See DAVID RIEFF, *LOS ANGELES: CAPITAL OF THE THIRD WORLD* (1991).

106. See 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).

107. See Jim Chen, *Unloving*, 80 IOWA L. REV. 145 (1994).

108. See THE MULTIRACIAL EXPERIENCE: RACIAL BORDERS AS THE NEW FRONTIER (Maria P.P. Root ed., 1996).

109. See James W. Gordon, *Did the First Justice Harlan Have a Black Brother?* 15 W. NEW ENG. L. REV. 159 (1993).

110. See RICHARD RODRIGUEZ, *DAYS OF OBLIGATION: AN ARGUMENT WITH MY MEXICAN FATHER* (1992).

111. See LINDA CHAVEZ, *OUT OF THE BARRIO* (1991).

112. See John O. Calmore, *Exploring the Significance of Race and Class in Representing the Black Poor*, 61 OREGON L. REV. 201 (1982).

113. See JOEL WILLIAMSON, *NEW PEOPLE: MISCEGENATION AND MULLATTOES IN THE UNITED STATES 194-95* (1980).

or will each racial group continue separate and distinct?¹¹⁵ Will the melting pot metaphor of which Nathan Glazer and Daniel Moynihan wrote¹¹⁶ gain new force, or will we see something else?¹¹⁷

In a sense, all of the scholarship mentioned under the preceding categories converges on the series of questions raised under this one, bearing on the shape of American society in the years ahead.

III. FUTURE DIRECTIONS

What issues lie ahead for critical scholars of multiracialism? Without the benefit of a benign society or an express mandate such as the Canadian Charter's Sections 15 and 27,¹¹⁸ U.S. society has been slow to address these issues. Certainly, we will see more work dealing with dissolution or refinement of racial categories. We will also see discussions of the problems of multiracial persons (marriage, job discrimination, child custody) as well as their macrosocial correlates—voting power, representation, and political clout. As globalization of markets and industries proceeds, the role of multiracial (and multilingual) persons may become more prominent. Will multinational corporations co-opt diversity in the search for greater profits? As the number of mixed-race persons increases, the possibilities of "passing for white" will be open to more and more persons. But as whites become a numerical minority and as power shifts to nonwhite groups, will this option begin to seem less attractive? Or, as sometimes happens today, will whites attempt to "pass" in the other direction?¹¹⁹

What role will multiracial people play in the new society? At first, their number will be smaller than that of either whites or persons clearly nonwhite. Will embattled whites attempt to

114. See DAVID A. HOLLINGER, *POSTETHNIC AMERICA: BEYOND MULTICULTURALISM* (1995).

115. See RONALD TAKAKI, *A DIFFERENT MIRROR: A HISTORY OF MULTICULTURAL AMERICA* (1993).

116. See GLAZER & MOYNIHAN, *supra* note 10.

117. See DREW L. SMITH, *THE LEGACY OF THE MELTING POT* (1971).

118. See Mayo Moran, *Talking About Hate Speech: A Rhetorical Analysis of American and Canadian Approaches to the Regulation of Hate Speech*, 1994 WIS. L. REV. 1425, 1487 (discussing the Canadian Supreme Court's regulation of hate speech through the use of the equality guarantee in section 15 of the Canadian Charter and the obligation to respect and enhance the multicultural heritage of Canada in section 27).

119. See, e.g., *SOUL MAN* (Warner Bros. 1986).

capture and manipulate them to do their bidding, as in the former South Africa, in an effort to resist the transfer of power? If so, will multiracials accept the offer? If whites succeed in remaining "the fairest of them all," multiracials may find that role tempting, but a decentering of white beauty and privilege is equally possible.

The concrete challenges posed by the numerical growth of multiracial people may prompt a wide-ranging reconsideration of the way in which legal categories and terms allocate power, authority, and other social goods.¹²⁰ If so, Critical Multiracial Studies may prove to be the most subversive, yet constructive, branch of critical thought of all.

Trina, I wish you could be here to see it.

120. See DELGADO, *supra* note 74.

