

Brown Is Beautiful

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Racism on Trial: The Chicano Fight for Justice. By Ian F. Haney López
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In one of his most compelling speeches Malcolm X cried out, “We want freedom by any means necessary. We want justice by any means necessary. We want equality by any means necessary” (Malcolm X 1970:37). In this conservative era, it feels a bit odd to recall how fervently students, activists, parents, and even a few parish priests debated the range of strategies and goals available to the Chicano Movement (1960s to early 1970s). Dozens of scholarly works have examined the Chicano Movement, including diverse groups ranging from the United Farm Workers (UFW)¹ (Matthiessen 1969; Ferriss & Sandoval 1997; Jenkins 1985; Levy 1975) to the Chicano Liberation Front² (August Twenty-Ninth Movement 1975), from the G.I. Forum³ (Allsup 1976; Marquez 1993) to the

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¹ Although César Chávez become a national leader in the UFW (and the Chicano Movement), his leadership emerged during his participation with Filipinos in the Agricultural Workers Organizing Committee’s (AWOC) strike against grape growers in the San Joaquin Valley in fall 1965. The following summer the National Farm Workers Organization (NFWO) and AWOC merged and become the United Farm Workers Organizing Committee (UFWOC). Chávez was most popularly known for his use of boycotts and fasting as major forms of resistance.

² The Chicano Liberation Front (CLF) was linked to numerous bombings in the United States and Mexico. Its revolutionary manifesto, *Fan the Flames* (1975), offers a Communist analysis of the Chicano situation.

³ Dr. Hector Pérez founded the American G.I. Forum in Corpus Christi, Texas. The G.I. Forum is most widely known for its role in fighting for burial services for Félix Longoria, a soldier killed in the Philippines during World War II. His family was rejected access to full funeral services in their hometown in Texas. In response to G.I. Forum protests, Senator Lyndon B. Johnson arranged for Private Longoria to be buried in

Crusade for Justice⁴ (Vigil 1999) and La Alianza Federal de Mercedes⁵ (Nabokov 1969; Tijerina 2000; Blawis 1971). Movement struggles have included the fight for bilingual education and school desegregation (Carter & Segura 1979; Donato 1997), attempts to gain representation on school boards (San Miguel 1987, 2001), and seeking representation in local and state government and on juries (Acuña 1981), but the movement has also included bombings (Vigil 1999); Reies López Tijerina's 1967 courthouse raid (Nabokov 1969), student walkouts in spring 1968 (jail breaks, as they were frequently called) (Muñoz 1989), the August 29, 1970, Chicano Moratorium against the Vietnam War (Chávez 2002; Mariscal 1999), and an incredible loathing toward the police (Morales 1972). A growing number of books (e.g., Treviño 2001; Chávez 2002; Rosales 2000), dissertations (e.g., Gomez 2003), and articles (e.g., Chávez 2000), as well as a documentary film series (Norberg 1995), have contributed to preserving as well as interpreting the history of the Chicano Movement. Each addition to this project adds new perspectives, challenges interpretations, and identifies new links connecting past approaches to current political agendas.

Ian F. Haney López's *Racism on Trial: The Chicano Fight for Justice* focuses on two pivotal criminal cases during the Chicano Movement involving litigation that Mexican identity is a distinct racial group. López uncovers court proceedings providing detailed descriptions that he dissects alongside his insightful analysis of the defendants' legal defense. These are important sources that social scientists and historians have not mined in studying the Chicano Movement. Court cases and lawyering strategies open a perspective on the Chicano Movement that adds to studies of more familiar struggles: in the streets, against police brutality; in the schools, for better education; in the fields, for the unions; and on college campuses, for admissions and relevant curricula. The first part of the

Arlington National Cemetery with full honors. The Forum was active in testifying at the hearings of the state Good Neighbor Commission on the practice of racial burial practices in Texas. In 1954, the Forum assisted in *Hernandez v. the State of Texas* before the Supreme Court. In the 1960s, the Forum joined civil rights activists in Detroit to eliminate discrimination in public institutions against Mexicans. However, during most of the 1960s and 1970s, the Forum supported U.S. immigration policy and did not include the civil or human rights of undocumented workers within their agenda. As recipients of government funding, they remained much more conservative than other civil rights organizations.

⁴ Rodolfo "Corky" Gonzales founded the Crusade for Justice in 1965 in Denver, Colorado. After holding the first Chicano Youth Conference in 1969, the Crusade became synonymous with the urban barrio struggle against police brutality. The Crusade established a school (Tlatelolco, La Plaza de las Tres Culturas), newspaper (*El Gallo: La Voz de la Justicia*), a curio shop, bookstore, and social center.

⁵ La Alianza Federal de Mercedes (The Federal Alliance of Land Grants) fought to regain communal land grants lost in New Mexico. Since much of the land became state and national forest land, the Forest Service became the focus of their protests, such as the occupation of the Echo Amphitheater in the Kit Carson National Forest in 1966.

book sets up the increasing activism in Los Angeles that led up to cases known as the East L.A. Thirteen and the Biltmore Six in 1968 and examines the challenges posed by the decision to use an equal protection defense to expose judicial bias. By examining legal violence toward Mexican American youth, and the responses that Los Angeles Superior Court judges gave to inquiry about their grand jury selections, López unearths micro-levels of the social construction of race and begins to reveal the rise, dissemination, and acceptance of racial ideas, racist practices, and racial inequality. López postulates the notion of race as “common sense” to explain how Chicano youth, community activists, and judges draw from their everyday experiences to construct racial ideas that are then acted upon. Applying his “common-sense” theory of racism and court and police discrimination as legal violence, the second part analyzes judges’ selection of grand juries and policing in Mexican American communities. In the last section, López demonstrates the increasing use of race rather than ethnicity as identity in the Chicano Movement and draws a connection between protest, legal repression, and race. The book is structured to meet three goals: “to describe the evolution of a non-white racial identity among Mexicans in East Angeles during the Chicano movement years; to illustrate how racial thinking leads to and stems from legal violence; and to offer a general theory of race as common sense” (p. 2).

In this review, I explore the significance of López’s examination of the early activism in the Chicano Movement through the East L.A. Thirteen and Biltmore Six cases that immediately followed high school student demonstrations in 1968. Both cases were among the first civil disobedience and protest actions to gain national media attention in Los Angeles. The cases also served as primary public sites for activists to articulate discrimination against Mexican Americans, as well as to express their Chicano identity. I find that López’s most noteworthy accomplishment is grounding the beginning of substantive legal struggles in the movement and thus filling the void of previous works on the Chicano Movement that have focused on political and social struggles fought in the schools, fields, barrios, and streets but not in the courts. *Racism on Trial* is the first serious dissection of Oscar Acosta’s defense tactics, which anticipated the beginnings of Chicano civil rights lawyering. Presenting the legal obstacles and approaches used during this period of the Chicano Movement in Los Angeles helps link the ongoing legal challenges for civil rights lawyers, confronted with courts that only recognize racism when discrimination occurs through explicit intentional acts rather than institutional exclusionary practices.

I begin by summarizing the two cases that López uses to analyze the Chicano Movement as a legal struggle, linking the

movement's influence in shaping social and political struggles. I identify the significance of López's study of Oscar Acosta's lawyering strategies, particularly the challenges posed by questioning judges who claimed color blindness in these cases. Following a brief summary of López's conceptualization of commonsense racism and legal violence, I will argue that his use of commonsense racism ignores significant writings by critical race theorists and the struggles of working-class Mexican Americans. I conclude with an argument for adopting only critical social constructionist analysis for explaining class-based (and gendered) racism.

East L.A. Thirteen and the Biltmore Six

For a general reader who is likely to assume that members of the Mexican population in the United States during the Chicano Movement were immigrants, López quickly sets the stage by noting that 85% of Mexican residents in 1968 were U.S. citizens. More than half of this population had been in the United States for at least three generations (p. 16). Three major organizing efforts were bringing Mexican Americans, particularly the youth, together in protesting injustices. Employing the icon of the Virgen de Guadalupe, César Chávez organized the UFW and began striking and boycotting agribusiness in California. Organizing around property rights guaranteed by the Treaty of Guadalupe Hidalgo, Reies López Tijerina and La Alianza Federal de Mercedes made appeals in national and international courts, and later took up arms to reclaim land occupied by the U.S. Forest Service. In Denver, Colorado, Rodolfo "Corky" Gonzales moved his activism farther from the Democratic Party and founded the Crusade for Justice, making significant links with the Black Power Movement, the American Indian Movement (AIM), and the anti-war movement (Vigil 1999). This is the political climate in which the cases of the East L.A. Thirteen and the Biltmore Six occurred.

In East Los Angeles, where 87% of the population were Mexican, median family income was less than three-quarters of that of Los Angeles as a whole. Forty-four percent of the Mexican population was under 20 years of age, and only one-quarter had completed high school (pp. 15–6). East Los Angeles was clearly a segregated, poor, working-class neighborhood. Four dilapidated high schools served East Los Angeles: Garfield, Roosevelt, Lincoln, and Wilson. These schools, staffed predominantly by white faculty, graduated only half of their Mexican American students (during the 1950s and 1960s). In 1967, under the guidance of civics teacher Sal Castro and members of the United Mexican American Students

(UMAS), professors, professionals, clergy, and the Brown Berets,⁶ high school students began organizing to protest conditions in the schools. Among their listed grievances were large classes, too few teachers and counselors, inadequate libraries, lack of representation on school boards, and the need for more Mexican American teachers and bilingual education. In response to the principal's decision to cancel the senior play, the students at Garfield High School decided to walk out earlier than planned and initiated the first "blow-out" on March 5, 1968. In support and solidarity with the students at Garfield, students at Lincoln and Roosevelt joined the walkout throughout the week (pp. 20–1).

Los Angeles Police Chief Tom Reddin and Governor Ronald Reagan condemned the walkouts and claimed that outside agitators, namely the Brown Berets, had organized and initiated the protests. City prosecutors called witnesses before the grand jury; they then issued multiple indictments against thirteen men that clearly illustrate the range and diversity of the Chicano Movement: Eliezer Risco (founder and lead editor of *La Raza* newspaper and former UFW organizer), Joe Razo (editor at *La Raza*), David Sánchez (Brown Berets' prime minister, former chair of L.A. Mayor Richard Yorty's Youth Advisory Council), Cruz Olmedia (Brown Berets officer and a decorated Vietnam War veteran and Volunteers in Service to America employee), Moctezuma Esparza (University of California at Los Angeles [UCLA] student, chair of UMAS chapter at UCLA, executive vice chairman for UMAS in California, and former member of the mayor's Youth Advisory Council), Sal Castro (Lincoln High School civic teacher, Korean War veteran), Carlos Muñoz (Vietnam veteran, president of local UMAS chapter, accepted into a Ph.D. program at Stanford University), Henry Gómez (Lincoln School graduate, East LA College student and hospital laboratory technician), Fred López (Brown Berets' minister of communication and University of Southern California student), Patricio Sánchez (aerospace engineer, chair of the local chapter of the American Political Association), Richard Vigil (former paratrooper, college student), Carlos Montes (student vice president at East LA College, Brown Berets' minister of public

⁶ The origins of the Brown Berets can be traced to the 1966 organization the Young Citizens for Community Action (YCCA). This group of Mexican American high school students, primarily involved in local elections and community service, participated in the Los Angeles County Commission on Human Relations and the Mayor's Youth Advisory Council in Los Angeles. Marching in protest against police brutality wearing brown berets and field jackets, they became referred to as the Brown Berets. Gradually the group included former gang members and incarcerated youths (*People v. Castro*, No. A-232902, Reporter's Transcript of Grand Jury Proceedings, California Superior Court, Los Angeles County [1968]).

relations), and Ralph Ramírez (Brown Berets' minister of discipline). The indictments were all misdemeanors—multiple counts of disturbing the peace, failing to disperse, and trespassing on school grounds. However, included were felony charges of conspiracy to commit crimes, which carried a possible 45-year sentence. Demonstrations in support of the East L.A. Thirteen took place all summer and continued into the fall. The Los Angeles Police Department responded with violence, and in cooperation with other law enforcement agencies, informants were found and undercover officers were planted in communities and student organizations identifying with the Chicano Movement (*Castro v. Superior Court*, 9 Cal. App. 3d 675 [1970]).

On April 24, 1969, the California Department of Education invited Governor Reagan as the keynote speaker at the banquet held at the Biltmore Hotel in downtown Los Angeles. Chicano demonstrators attempted to drown out his speech by shouting, stomping, and clapping. However, they were quickly removed by the police. During Reagan's speech, a fire broke out in a linen closet on the tenth floor. Firefighters arrived immediately, and no public attention was drawn to the fire. Later, the Los Angeles grand jury responded by indicting ten persons, six for arson, burning personal property, burglary, malicious destruction of electrical lines, and conspiracy to commit felonies. Only six of the ten stood trial. Among the six, three of the defendants from the East L.A. Thirteen were named: Carlos Montes, Ralph Ramírez, and Motezuma Esparza. The defendants in this case became known as the Biltmore Six (*Montez v. Superior Court*, 10 Cal. App. 3d [1970]).

Sharing the defendants' hostility toward police and courts, Oscar "Zeta" Acosta was the ideal lawyer for the East L.A. Thirteen and the Biltmore Six. The son of Mexican immigrant parents, Acosta was born in El Paso, Texas. He joined the Air Force after graduating from high school. Upon returning from service, he completed college and went on to graduate from San Francisco Law School in 1965. He worked as a legal aid lawyer in Oakland for a year but became frustrated with the inequalities his clients faced before the legal system and his inability to make significant change. Acosta left his position and began traveling, picking up odd jobs in construction and restaurants. He had long wanted to write a novel and recognized the activism arising from the Chicano Movement in Los Angeles as a way to get back before the bar and as a source of literary inspiration (pp. 28–31). Scholars are indebted to López for returning Acosta's legal battles to academic discussion. Drawing on transcripts of the grand jury proceedings, newspaper accounts, and interviews, the reader is (re)introduced to Acosta, an activist lawyer who exposed the internal workings of the law and the courtroom practices that produce injustice. López's analysis of Acosta's legal

arguments and strategies goes a long way in discrediting the simplistic racist stereotype that Stavans constructed in his book *Bandido* (1995), or the journalistic perspective presented in Moore's *Love & Riot* (2003). In restoring Oscar "Zeta" Acosta, Esq., López introduces the reader to the beginnings of Chicano lawyering and legal writings.

With the assistance of the National Lawyer's Guild, the American Civil Liberties Union, and members of the La Raza Law Student Association, Acosta prepared for his first major criminal trial. Creating a Chicano Legal Defense Fund, Acosta began fundraising with sponsors who included prominent politicians,⁷ Mexican American leaders, and community activists in the Chicano Movement.⁸ In the case of the East L.A. Thirteen,

the defendants advanced three distinct defenses: first, that insufficient evidence existed to sustain the conspiracy charges; second, that the charges violated their First Amendment rights of free association and free speech; and third, that the absence of Mexicans on the indicting grand jury resulted from discrimination and thus violated the Equal Protection clause of the Fourteenth Amendment. (p. 31)

Although the constitutional protection of freedom of speech was perhaps a stronger case, the decision was made to focus on the claim of discrimination because the arguments would construct a legal platform to expose racism in the judicial process of selecting grand juries. Between 1958 and 1968, statistics on the racial make-up of the 1,501 jurors selected for 210 grand juries demonstrated that only 1.3% of Mexican Americans were ever nominated, and an even lower percent actually served (p. 32). In a city where Mexican Americans were 18% of the population, they had comprised less than 2% of all grand jurors over the decade. These data led to the major defense strategy of direct questioning of the Superior Court judges (p. 32; *People v. Castro*, No. A-232902, California Superior Court, Los Angeles County [1968]).

As the lead defense attorney in the Biltmore Six case, Acosta began by filing equal protection pretrial motions, arguing discrimination based on the racial composition of the grand jury. However, in this case, more was at stake because the three indicted in both cases—Carlos Montes, Ralph Ramírez, and Moctezuma Esparza—were now facing possible life sentences. The discrimination defense was not as clearly visible because both the judge and the principal witness against the defendants were both Mexican Americans. Acosta's request to question 109 Superior Court judges on

⁷ These included Edmund G. Brown and Thomas Bradley.

⁸ Among this group were César Chávez, Bert Corona, and Rodolfo Acuña.

the witness stand was granted; the examination took six weeks and ended with Judge Arthur Alarcon ruling against the defendants on the basis of discrimination. Charges were dropped against Juan Rojas because of insufficient evidence. At the end of the trial, the jury acquitted Rene Nuñez and Moctezuma Esparza. Judge Alarcon “declared a mistrial with respect to Ralph Ramírez and Ernest Eichwald Cebada,” and in the second trial, they were acquitted (López 2003:39). Carlos Montes fled prosecution in 1970, but upon his return to Los Angeles in 1979, he too was acquitted (p. 295, note 66).

López attributes Acosta’s ability and willingness to challenge the court and the general legal system, as well as constructing a risky defense, to his eccentric personality.⁹ Acosta had acknowledged why lawyers before him had not attempted a similar defense: “Perhaps the most compelling reason for their failure to raise the issue is that ultimately what the lawyer says in such a motion is an indictment of the profession which he professes and a castigation of the society to which he belongs” (p. 33). Acosta’s claim that his choice of defense strategy was probably conceived while taking psychedelic rugs or getting stoned was probably a more common strategy for thinking out of the box in the late 1960s than today. Only a rare person indeed would risk everything after achieving so much, particularly a first-generation son of a janitor and cannery worker from Modesto, California (Moore 2003).

If I Am White, Why Don’t You Know Me?

López’s purpose in examining the East L.A. Thirteen and the Biltmore Six cases is to interrogate the social construction of race, specifically of Mexican American identity. The 1954 case *Hernandez v. Texas* opened the possibility for Acosta to employ the strategy to

⁹ There is no doubt that Oscar “Zeta” Acosta was outrageous. Before becoming the lawyer for the East L.A. Thirteen and the Biltmore Six, his personal history included being a Baptist preacher, attempted suicide, ten years of psychiatric treatment, dropping acid, being stoned, and joining writer Hunter S. Thompson for the famous “gonzo” adventures. Acosta appears as the Samoan lawyer in Thompson’s *Fear and Loathing in Las Vegas* (1971) and in Thompson’s “Strange Rumbblings in Aztlán” (1971). If there was any doubt about Acosta’s unconventional life, his own *Autobiography of a Brown Buffalo* (1972) and the *Revolt of the Cockroach People* (1973) attest to his bigger-than-life personality. At the same time, Acosta’s books are monuments to connections between the Chicano Movement and the counterculture of the 1960s. Acosta captured the bohemian drug and free love culture that linked the Chicano Movement, the Black Power Movement, white radicals, and AIM. An engaging writer, Acosta masterfully merged humor and anger, political conviction mixed with cynicism, and strong doses of sexism. He honestly depicted a powerful characterization of our generation that came of age amidst the Vietnam War and the civil rights movement. *Racism on Trial* adds a sober dimension of Acosta’s life that has been glossed over for the more sensational aspects.

argue that Mexican Americans in Los Angeles had been discriminated against (Johnson 2004). *Hernandez* established the “precedent for applying the Fourteenth Amendment to prohibit discrimination against Mexicans,” not as a racial group but as an identifiable class “within a community” (p. 42). Thus, Acosta needed to provide evidence for both cases that Mexicans had been racialized and considered a distinct group in Los Angeles. A key witness was sociologist Joan Moore. Using census data, she demonstrated distinct socioeconomic patterns, shared cultural traditions, and low rates of intermarriage. However, her analysis was weakened by the fact that in 1960 and 1950 census data was not collected on “Mexicans” but rather on “White persons of Spanish surname” (p. 43).

Acosta used the Superior Court judges’ testimony to establish Mexicans as a distinct group. Once judges admitted that they recognized Mexicans as distinct from Anglos but identified them as white, Acosta’s questions bore down on their personal acquaintance with specific Mexican individuals. He began by asking judges to name these individuals. Quoting from several transcripts from the judges’ testimony, López provides the reader with a keen appreciation for the difficulty Acosta had in getting judges to either name any Mexican acquaintance or to respond that they were completely unaware of an individual’s race or ethnicity. For instance, Judge Joseph Call’s response to whether he knew any Mexican Americans began by identifying “the gentleman that is a gardener at my house” (p. 98) and then claimed to have met thousands over his lifetime but was unable to provide names. Similar responses were made by the other judges: Judge Samuel Greenfield named his two domestics, Judge Harold Schweitzer identified the gardeners employed at the courthouse, and Judge George Dockweiler identified the owner of a gas station. Some judges admitted to trying to increase Mexican representation on grand juries; others offered romantic stereotypes. Even though Acosta convinced the court that Mexicans constituted a distinct class, Judge Kathleen Parker dismissed the defendants’ discrimination claim because intentional racism had not been proved (p. 91). López mines the transcripts’ rich data to study the intricacies of the legal system’s construction of race and how this shapes the decisions and practices of judges.

Although the California Penal Code required jury commissioners to compose a list of all eligible residents in the state, few if any did. In practice, Superior Court judges selected jurors from their network of friends and neighbors. Acosta’s interrogation of thirty-three judges in the East L.A. Thirteen case requested that they name their relationship to each of their nominees, exposing the cronyism in the 225 nominations made between 1959 and 1968: 53% were described as friends, 25% as members of their

church, 8% as neighbors, 5% as friends' spouses, 2% as family members, and 15% as business acquaintances. Nine out of every ten nominees were selected from the judges' social circles and all of the judges selected nominees in the similar manner—picked from their personal acquaintances from private clubs, churches, businesses or neighbors (p. 96).¹⁰ Since most of the judges had demonstrated their inability to name any Mexicans that they knew, Mexicans were highly unlikely to ever be nominated to serve on the grand jury. Most Mexicans identified did not actually enter the judges' social circle but rather inhabited the shadows, working as gardeners or domestics. In his frustration with the responses from the judges, Acosta switched from questions that might identify Mexicans as a race on the basis of ancestry, to one based on appearance and to culture. López interprets Acosta's switch as an indication of the ambiguous and shifting notions of Chicano racial identity and the transition toward a new racial identity as non-white—rather than as a defense strategy to force judges to be explicit about their taken-for-granted social world.

Unconcerned about the pattern of bias, the prosecutor employed his cross-examination of the judges to demonstrate that they had not deliberately decided to exclude any member of a specific racial or ethnic group. The prosecutor argued “that the defendants have not sustained their burden of proof to show that there was any purposeful systematic discrimination of persons of Spanish surname in selecting the jury” and “no evidence at all of any intent on the part of any of the Judges” or any other person involved in jury selection (p. 104). Acosta conceded that judges had not intentionally excluded Mexicans, but he identified practices used to select grand jurors as discriminatory. He argued, “But the whole question of discrimination is not predicated on any morality or conscious evil, we are talking about facts, we are talking about the results of a system . . . since they are nominating their friends, how in the world are they going to nominate us since they don't know us? We don't exist” (pp. 104–5). Needless to say, Acosta failed to convince a court based on an intent-centered theory of racism that the “nomination process in which Mexicans did not exist amounted to discrimination under the Fourteenth Amendment” (p. 105).

Dismissing the two models, associational and statistical,¹¹ used by rational choice theorists to explain discrimination, López applies

¹⁰ López cites the 1970 U.S. Commission on Civil Rights report, “Mexican Americans and the Administration of Justice in the Southwest” and its identification of Los Angeles County as a “leader . . . in discrimination against minority grand jurors” (cited p. 101).

¹¹ López contrasts Becker's (1971) notion of discrimination resulting from a “taste” for associating or disassociating with specific groups to Phelps' (1972) statistical model that argues that people discriminate based on information gathered on crime rates and on other measures of deviance and pathology to make choices about groups of people.

the concept of “common sense” to explain the judges’ exclusion of Mexican Americans from grand juries, and to Mexican American activists who redefined themselves as Chicanos, brown, and victims of racism (p. 107). Based on the assumption that our behavior reflects our racial beliefs and practices or our common sense (or taken-for-granted world) knowledge, discrimination then is a result of acting according to standard scripts. Therefore, social knowledge that includes “racial common sense of white superiority and Mexican inferiority” limited the judges’ perceptions of “best qualified” to white social worth and respectability, resulting in their selection of friends and acquaintances found within their social networks.

Although, the California Code of Civil Procedure listed only two prerequisites that addressed the personal capacity of persons eligible for jury selection—“sufficient knowledge of the English language” and “of ordinary intelligence” (cited p. 113) and the Superior Court judges received annual administrative directives to make nominations that were inclusive of racial and economic groups—standard operating procedures “disregarded the substance of such letters, albeit without formulating an intent to ignore them” (p. 115). López argues that “common sense racism” explains the “ordinariness, pervasiveness, and legitimacy of much social knowledge” (p. 110) used by judges in selecting grand juries. Given the consistency in the judges’ nomination of friends and acquaintances, they were simply following taken-for-granted solutions, or entrenched scripted responses, routinely employed to select grand jurors. Nomination practices were perceived as nondiscriminatory, as noted in the judges’ responses:

“It wouldn’t make any difference who came before if they are qualified as a nominee, but I don’t want to nominate people I don’t know.”

“I think it is the duty of each Judge to pick a nominee who he feels is qualified for the position, regardless of what race, nationality, or religion he may be.” (pp. 123–4)

In regard to the issue of diversity on the grand jury panels, the judges’ testimonies sounded quite similar to affirmative action discourse today. For example, Judge Richard Fildew’s exchange with Acosta focused solely on the issue of “qualified” rather than answering the question concerning the need for minorities to sit on grand juries: “. . . if they are qualified. If the end result is you are getting unqualified people on there, my answer would be definitely no” (p. 125). Judges’ commonsense racism interpreted racial discrimination as the demand for the inclusion of unqualified minorities.

López argues that the significance of understanding racism as common sense is that most racism is action stemming from taken-for-granted racial beliefs that do reinforce racial hierarchy but do not necessarily intend to discriminate. Three implications stemming from this argument are that “racism is ubiquitous,” racism can occur even with the purest of intentions, and “racism is highly intractable” (pp. 128–9). However, the Superior Court only recognized racial discrimination when it occurred from actions with intent to discriminate. Consequently, most racism is not acknowledged by the judicial system. Rather than applying the concept of institutional racism to explain the intractable and ubiquitous nature of everyday racism, Lopez argues that institutional racism fails as a theory of social behavior and is assumed to be purposeful discrimination.

The last segment of *Racism on Trial* establishes links between protest, legal repression, and racialized identity. The U.S. Commission on Civil Rights report, “Mexican Americans and the Administration of Justice in the Southwest,” found that police used excessive force, “stop and frisk” techniques, and “investigation” arrests. It also found discriminatory treatment of suspects and differential enforcement of motor vehicle ordinances alongside a general discourtesy in the behavior of law enforcement agents. Mexicans faced numerous obstacles in bail proceedings, from the absence to bail hearings to bails resembling punishment rather than a guarantee of a court appearance (U.S. Commission on Civil Rights 1970). Lopez’s examination of law enforcement and legal violence argues that police brutality and racial profiling by officers are not only purposeful racism but also constitute another example of “common sense racism” because the practices were routine behavior. Legal violence thus becomes the pivot for López’s claim that during this period of history there was a transition from the ethnic identification of Mexican Americans to an adoption of the racialized label “Chicano.” He argues, “Race and law constituted each other, in the sense that law influenced how people understood their racial identity, and race shaped how they conceived of law” (p. 153). Presenting a portion of Morales’ 1972 survey of police-community relations that disaggregates responses about police behavior in East Los Angeles by respondents’ self-ascribed ethnic identity (Mexican American vs. Chicano), López concludes that first individuals become politicized, and then they define police behavior as abusive. Morales found that persons who identified as Chicano were more likely to report observing (as well as being a victim of) abusive police behavior. Morales interpreted the results as indicating that persons self-identifying by the self-ascribed political ethnic label Chicano were politicized and thus more likely to be critical of police practices (cited p. 153).

Drawing primarily from Chicano Movement writings in community and student newspapers, books, and pamphlets, López chronicles the increasing cultural nationalism and racialized identity in the Chicano Movement. Interrogating the use of the term *la raza* in the movement, López notes the changing emphasis from the notion of peoplehood to the biological notion of race. Movement literature increasingly addressed discrimination explicitly as racism. López devotes an entire chapter to the increasing racialization and radicalization of the Brown Berets as depicted in their newspaper, *La Causa* (p. 191). He further explores the impact that *Chicano* as a racialized term had upon other communities and organizations among Mexican Americans, noting both the reluctance of the G.I. Forum to identify racially and the embracing reception from the La Raza Unida party (p. 209).

In addition, links between Chicanos and Meso-America, particularly the Aztecs, was as much a claim about race as it was about culture. With the mythical land Aztlán as a rallying cry for the movement, Chicano ideology espoused cultural nationalism alongside an increasingly racialized emphasis on mestizo identity. Chicano identity embracing carnalismo (brotherhood) privileged males alongside patriarchal notions of family, gender, and sexuality. Consistent with feminist critiques of Chicano ideology, López identifies the nationalistic and masculine racial identity politics in the Chicano Movement. Early writings of the Chicano Movement mythologized Chicanos as descendants of Aztecs and claimed the Southwest as Aztlán, thereby essentializing a notion of culture and the mestizo that was later amplified in poetry, art, literature, and dance. Inventing Chicanos as indigenous descendants of pre-contact Indian civilizations is found in the early writings of the movement, including Armando Rendón's *Chicano Manifesto* (1971), Corky Gonzales' epic poem "Yo Soy Joaquín" (1972), and Luis Valdez's *Teatro Campesino* (1971).

López's epilogue summarizes the legacy of the Chicano Movement on Mexican American identity as condemning racist stereotypes, changing Chicanos' political position, and making major strides in education at the college level. Acosta's demonstration of discrimination in grand jury selections created a public forum exposing how Mexican Americans suffered unequal treatment in the legal system. The struggle in the courtroom included Acosta's attempts to establish that Mexicans constituted a separate class. Acosta's defense exposed the difficulties of proving the existence of a socially, but not legally, recognized racial identity. He drew attention to daily interactions in schools, banks, and workplaces that established and maintained racial categories and fall outside the rigidly constructed legal black/white binary racial paradigm. While Acosta was unable to successfully argue discrimination, his questioning

of judges exposed the internal workings of structural racism that reproduced political exclusion and institutionalized racism without racists. The East L.A. Thirteen and Biltmore Six cases set the scene for a later grand jury investigation into the killing of *Los Angeles Times* reporter Rubén Salazar. And most fitting indeed is López's epigraph from one of Salazar's last *Los Angeles Times* articles: "Justice is the most important word in race relations" (p. xii; Salazar 1970: part 2 at 7).

Meanwhile, Latinos are one-third of the population in California today but only 4.3% of the judges at the Superior Court level. Even with various changes in the process for increasing the application pool for grand juries, the prerequisite that judges do the nominating continues. Consequently, merely 6.5% of the grand jurors in Los Angeles County were Latino over the last decade (p. 241). López cites numerous contemporary legal cases that have faced the same obstacles Acosta had in addressing court rejection of any form of racism (such as common-sense racism) other than behavior stemming from "intentional discrimination." He concludes that "injustice creates races, especially where such injustice seems like common sense" (p. 250).

Common Sense or Institutional Racism?

I find two arguments in *Racism on Trial* unconvincing: first, the substitution of "common-sense racism" for the older concept of institutional racism; second, the claim that the beginning of a non-white racial identity developed among Mexicans in East Los Angeles during the movement years is overstated. Evidence does not support the author's contention that leaders of the Mexican American community claimed to be white prior to 1968 and that the transformation from Mexican American to Chicano was primarily the development of a nonwhite racialized identity.

First, I address my objection to using "common sense" as opposed to institutional racism to explain the judges' thinking and behavior. In his summation of the case, Acosta made a significant observation that still applies to racial discrimination cases today: "The whole question of discrimination is not predicated on any morality or conscious evil, we are talking about facts, we are talking about the *results* of a system" (p. 110, emphasis added). Rather than conceptualizing institutional racism as both the process and the end result, López argues that theorizing "institutional racism has been elusive, with the term functioning more often as a label for a problem than as a theory of social behavior" and that it tends to be limited to "purposeful discrimination in formally organized settings" (p. 132). Institutional racism is an absolutely crucial concept

that moves analysis away from the hearts and minds of white folks and rivets attention on the consequences of bureaucratic and other everyday practices that transcend hateful attitudes and individual racist acts. Institutional racism gets us out of the psychological swamp of white guilt and lets us focus on the irrationalities built into supposedly rational institutions. The significance of the concept of institutional racism is precisely López's argument that racism can be, and is, generated with or without "intent."

López draws heavily on Berger and Luckmann's *The Social Construction of Reality* (1966). In the 1960s, this was an important contribution to a sociological understanding of how members of society make sense of the world around them. The book's impact was most notable in ethnomethodology, generally defined as the study of the methods people use to make sense of their world.¹² While Marxist, feminist, and other critical theorists found ethnomethods useful to uncover the commonsense reality of everyday life, its failure to link everyday life to the political economic structure has been rejected (Smith 1987, 1990a, 1990b; Burawoy et al. 1991; Megan & Wood 1974; McLaren 1986; Solorzano & Yosso 2001). Critical theorists do not see social structure as the sum of individual acts—it has its own dynamics. Critical sociology has kept politics in the forefront, such as in Mills' *The Power Elite* (1956), and has sought ways to incorporate state and economic power into the analysis of social reality, as in Sartre's *Search for a Method* (1963) and Smith's *Conceptual Practices of Power* (1990b). Researchers have sought to understand how institutional and cultural practices have fostered discriminatory behavior, as well as how racist behavior and beliefs are normalized and legitimated in everyday life. The weakness of the "common-sense" framework employed by López is that racial beliefs and practices do not become "common sense" without a political economy that rewards, legitimates, and reproduces a particular social reality. We already know the "common-sense" racism in the United States that produces scripts such as "I am not a racist but . . ." and "Oh, but you are different . . ." or "Some of my best friends are . . ." (Blum 2002; Gallagher 2003; Bonilla-Silva 2003; Doane & Bonilla-Silva 2003), just as we already know the coded language for race used in the media and in everyday speech: illegal aliens, urban decay, street crime, and the latest—Muslim

¹² Garfinkel (1967) was a primary contributor to developing ethnomethodology as both a method for studying social reality and a theory explaining how knowledge and understanding are constructed in everyday life. The lack of interest in issues of power and oppression in ethnomethodology is evident in the title of Garfinkel's most recent article (with Livingston) in *Visual Studies*, entitled, "Phenomenal field properties of order in formatted queues and their neglected standing in the current situation of inquiry" (2003). Critical research questions would ask about the political economy of order in "formatted queues"—that is, welfare lines, unemployment lines, or the lines of day laborers in front of Home Depot at 4 a.m. on Monday morning.

extremists. Focusing on “common-sense reality” instead of on institutional racism separates the individual from the larger criminal justice system.

The idea that racism is constructed as “common sense” has implications for debates over strategy and politics: Do we focus our efforts on overt racism or on unintentional racism? I argue that two perspectives have emerged. One perspective argues that winning the minds and hearts of whites was essential in the struggle against racism and proponents evolved into the multicultural/diversity approach to race relations and concentrated their efforts on broadening the “common-sense reality of whites. However, the other perspective argues that changing attitudes placed the burden on the racial subordinated groups and that the focus of civil rights needed to be on identifying and changing the behavior or specific practices that perpetuate racial inequality. Many of us in the movement have felt strongly that the focus should be on improving the conditions of racial minorities in the United States, not on saving the souls of whites. The multicultural/diversity approach is evident in textbooks that section off racialized ethnic groups, offer a statistical profile of their differences, and frequently link these “differences” to social problems (i.e., delinquency, high school dropout rates, teenage pregnancy, drug use, crime rates), whereas the institutional racism approach moves the focus of analysis onto issues of power and privilege and, thus, explains why differences between groups matter.

As I read the judges’ responses to Acosta’s examination of their choice of jurors, privilege is the major concept that leapt off the pages at me. Their privileged lifestyle allowed them to overlook Mexicans who were truly invisible in their lives, and it kept them in the shadows mowing their lawns, opening their car doors at the country club, cleaning their toilets, and wiping their children’s noses. “Common sense” theory denies the judges agency in making choices that created this social reality. The choice to hire a live-in Mexican immigrant woman to clean the house, cook meals, and care for children is made from the recognition that the vulnerability of workers lowers their market value. Not bothering to learn her name or calling her “María” (because the Anglo stereotype of Mexican women is that we are all named María) is a choice grounded in race, class, and gender privilege (Romero 2002). It is also the case that using “common sense” to theorize racist behavior ignores the fact that many whites struggled alongside Chicanos for equality. These whites rejected racial privilege and challenged everyday routine practices that legitimate and reproduce a racial hierarchy.

In no way do I want to imply that López’s use of “common sense” rationalizes and excuses the judges’ racism, but one must

recognize how easily the concept can be co-opted by right-wing politicians. The concept continues to define white racists as simply making *rational choices* based on their experiences, personal tastes, or statistical data. Therefore, instead of refuting the associational and statistical models of rational theory, commonsense racism just adds another layer of explanation that racism is rational behavior without intentional discrimination. We already understand the everyday routines and practices that reproduce racial inequality, but we need to challenge the institutional mechanisms that legitimate racial privilege. Smith's (1990a) conceptualization of the everyday processes of the ruling apparatus is a much more useful approach to uncovering the everyday management of social control and domination that occurs through political and economic power processed in bureaucratic forms of organizations, such as the criminal justice system. What López refers to as "common sense" can also be recognized as patterns or incidents that become legitimated; agency is not erased, and responsibility is not shifted to Mexican Americans as unqualified candidates. Within this framework, legal violence would then be seen as state violence and render invisible the link between white supremacy and the underrepresentation of Mexican Americans on grand juries and unequal treatment under the law.

Beginning with his first book, *White by Law* (1996), López has focused on the use of common knowledge or common sense as one of the four methods courts used for measuring racial identity.¹³ Analysis of specific cases, particularly lawyering strategies and judges' decisions, offers a micro-perspective into the ways that the law is interpreted and argued at particular points in time. However, without a macro-analysis of political and economic power, this micro-history analysis of cases ignores the broader social, political, and economic context in which cases emerge and are conducted. Questions essential to the analysis are: Whose "common-sense" knowledge gets represented and legitimated in the courtroom? Whose "common-sense" knowledge is missing or absent from the debate? And how are all these voices related to issues of power? The East L.A. Thirteen and Biltmore Six were cases conducted within a specific political climate and power structure that limited the strategies used by the various actors. Consequently, the assumption that the judges' explanations about their behavior is a sociological finding of "common-sense" knowledge at the time may not be inaccurate. The law's use of common knowledge as a

¹³ The other methods identified are scientific evidence, congressional intent, and legal precedent.

method for measuring racial identity is not the same as the sociological use of ethnomethods.

White by Law or Nonwhite by Social, Economic, and Political Exclusion?

My second disagreement with López regards his curious and unqualified assertion that leaders of the Mexican American community claimed to be white prior to 1968. His claim that a nonwhite racial identity only evolved among Mexican Americans in East Los Angeles during the movement years is overstated.

The notion that leaders claimed whiteness is largely based on López's reading of assimilationist strategies used by middle-class associations from the 1940s and 1950s. The League of United Latin American Citizens (LULAC) has been the primary organization employed by historians, Mario García (1989) in particular, to portray the acceptance of assimilationist and integrationist agendas within the Mexican American community. However, as a middle-class organization, LULAC has represented the political and economic interests of a very thin slice of the Mexican American population. Focusing on LULAC and the G.I. Forum ignores the entire sweep of labor history from the 1880s through the 1950s: the struggles against dual wage systems waged by copper and coal miners, and the importance of radical unions such as the Industrial Workers of the World (IWW), the National Miners' Union, and the Communist Party in countering the nativism and racism of mainstream labor (Monroy 1999; Barrera 1979; Guerin-Gonzales 1994). The difficulty in gaining ethnic solidarity in union organizing prior to 1968 makes notions of a Mexican white identity questionable. Radical unions gained support among Mexican miners because they were excluded from organizing efforts by the United Mine Workers of America. To his credit, López includes Campa's (1946) research on working-class Mexicans and Pachucos but contends that their identity is class and national rather than racial. The zoot-suiters in Los Angeles might have called themselves Pachucos, but they shared dress and music with Filipinos and blacks and rejected assimilationist dreams (Pagán 2003; Loza 1993; Reyes 1998). Moreover, to make his assertion, López must sever Mexican Americans from Mexicans; at least since President Benito Juárez, Mexico's national imaginary has embraced an Indian/mestizo identity, not a European one. More convincing arguments about the roots of Chicano politics have been suggested in association with non-assimilationist politics (Gómez-Quiñones 1994), friction among Mexicans in the United States (Gutiérrez 1995; Navarro 1995), and the various ideological strands within the

multifaceted Mexican working-class community (Chávez 2000; Griswold del Castillo 1996; I. García 1997).¹⁴

In general, I question applying whiteness to Mexican Americans, a population with a history of racial segregation in schools, churches, and neighborhoods, as well as a distinct history that consistently distinguishes between Mexican Americans and Anglos after generations of citizenship. Faced with two racial choices (and all the legal, political, and economic consequences attached to each), to interpret the claim of being “white” rather than “black” in a courtroom is not evidence that a local community of Mexican Americans thought of themselves as white but rather that they understood how the system worked.¹⁵ Furthermore, the thesis that a nonwhite racial identity developed among Mexicans in East Los Angeles during the movement years is myopic. It ignores political activity occurring in San Francisco, Denver, and other areas throughout the Southwest (Acuña 1981; San Miguel 2001; Vigil 1999). Organizing Filipino and Mexican farm workers occurred before César Chávez’s rise in leadership (Acuña 1981:268). The first ethnic studies department in America was the result of the 1968–69 student strike led by the Third-World Liberation Front that consisted of Chicano, black, Asian American, and American Indian students at San Francisco State University (Cho & Westley 2000). Identifying as “raza” and as “brown” was a significant political strategy that tied the Chicano Movement to the struggles of other third world people. López quotes Rendón’s *Chicano Manifesto* (1971), which indeed was a must-read among Chicano students, but no more so than *Wretched of the Earth* (Fanon 1968), *The Other America* (Harrington 1962), *Reveille for Radicals* (Alinsky 1969), *Soul on Ice* (Cleaver 1968), and *Pedagogy of the Oppressed* (Freire 1970).

López’s epilogue concludes by pointing to 1992 and 2000 census data as evidence of the continued negotiation over white versus nonwhite racial identity among Mexican Americans. Acosta grappled with the inconsistencies of the census classifications of “Mexicans” and the use of racial codes embedded in ethnic identifiers such as “Spanish-speaking” and “Spanish-surname.” López’s discussion is painfully ironic given that he selects the same institutional mechanism (Census data) that presented a major barrier to

¹⁴ Mariscal captures the differences in the following descriptions of Chicano Vietnam veterans as including “Chicano’s refusal to fight for an unjust war,” “identification with non-Americans of Color,” and “patriotism and desire for assimilation” (1999:32–3).

¹⁵ Menchaca (2001) traces the Mexican, American Indian, black, and white roots of Mexican Americans and notes the inconsistency of the “white by law” classification and its application in segregation and miscegenation laws among states. She also cites several cases in which citizens of Mexican origin attempted to gain access to public facilities that were reserved for whites but lost their cases because their dark color indicated that they were mixed rather than Spanish. For example, see *Lueras v. Town of Lafayette* (1937) and *Terrell Wells Swimming Pool v. Rodríguez* (1944).

Acosta's argument that Mexicans constituted a distinct class.¹⁶ Although López states his preference for a diversity celebration based on a concept other than race, he does acknowledge that race can be a significant vehicle of resistance.¹⁷

Debates over race, class, gender, and citizenship arose with the Chicano Movement and are still evident today. We live in a contradictory time: César Chávez is commemorated on a stamp, but unions are being crushed everywhere, and horrible reports of slavery emerge from crop-pickers' camps in Florida and coyotes' (migrant smugglers') "safe houses" in Arizona. Chávez, like Malcolm X, has been sanitized for public consumption. We no longer remember that Corky Gonzalez and others had to pressure him to identify with the Chicano Movement; nor do we remember his reluctance to come out against the Vietnam War (Mariscal 1999:193–4); nor do we remember the struggle to get the UFW to include undocumented workers in its organizing efforts (Gutierrez 1995), and we never mention the sweetheart contracts signed with teamsters, or agreements to purge the UFW of Marxists, radicals, or Communists, including many black, brown, and white college students. *Racism on Trial* goes a long way in discounting the bandido characterizations of Acosta and demonstrates the complexity of legal arguments and strategies used in the Chicano Movement. López makes a significant contribution to the study of the Chicano Movement by unraveling the interconnections between legal racism and racial politics. There is still much work to be done.

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¹⁶ Rodríguez (2000) offers a detailed critique of the U.S. Census, particularly its numeration of Latinos in the last few decades. Among the methodological issues she addresses are the format of distinguishing between the racial and ethnic classification of "Hispanic," the context in which the question is asked, reclassification by the Census, respondents' interpretation of race versus national origin, the Latino undercount, different census-taking methods though the history of race and ethnicity numeration in the United States, and omissions conflating changes in terminology to changes in definition of self-ascribed race and ethnicity.

¹⁷ For a comprehensive discussion of the political race project, see Guinier and Torres' *The Miner's Canary: Enlisting Race, Resisting Power, Transforming Democracy* (2003).

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